

ORDINANCE NO. 18-2172

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ADDING CHAPTER 10.05 "SOCIAL HOST RESPONSIBILITY" TO THE CUPERTINO MUNICIPAL CODE, ARTICLE 10 "PUBLIC PEACE AND MORALS" TO DETER UNDERAGE DRINKING AND DRUG USE AT SOCIAL EVENTS/GATHERINGS

WHEREAS, the City of Cupertino is empowered under the California Constitution and state law to exercise police powers to enact laws that promote the public health, safety and general welfare of its residents;

WHEREAS, drinking alcoholic beverages and using illegal drugs is detrimental to health and a threat to the peace, safety, and quiet enjoyment of neighboring residents as well as the general welfare of the public. According to the Drug Abuse Warning Network (DAWN), nearly 188,000 alcohol-related emergency department (ED) visits in 2011 involved patients aged 12 to 20. Of these visits, 20% resulted in a serious outcome including admission to the hospital, transfer to another health care facility, or death. Visits involving alcohol and other drugs were more likely than visits involving alcohol only to result in a serious outcome (33 vs. 12 percent)¹;

WHEREAS, in 2005, an American Medical Association survey showed that the most common connection between a minor and drinking alcoholic beverages at a party was the adult who either provided the alcohol or provided the setting where underage drinking could occur.²

WHEREAS, some private gatherings and events held at private residences, rented residential premises, or rented commercial premises in the City, may allow minors and underage persons to consume alcoholic beverages or use controlled substances;

WHEREAS, adult and minor persons responsible for hosting private gatherings/events attended by minors and underage persons should take responsibility for the event, supervise minors, and ensure that alcoholic beverages or controlled substances are not served to or consumed by underage persons;

WHEREAS, problems associated with private gatherings involving underage persons drinking alcohol or using controlled substances can be difficult to prevent and deter, and law enforcement requires additional methods to deal with underage drinking and its attendant problems;

WHEREAS, imposing reasonable fines on social hosts will encourage more supervision and responsibility for these events, and requiring offending minor social hosts to face consequences such as attending a substance abuse class and performing community service will serve to educate them on the risks of using drugs or consuming alcohol, deterring them from allowing underage drinking at future social gatherings;

¹ Drug Abuse Warning Network (DAWN). National Estimates of Drug-Related Emergency Department Visits (2011). Available at: <https://www.samhsa.gov/data/sites/default/files/DAWN2k11ED/DAWN2k11ED/DAWN2k11ED.pdf>.

² American Medical Association (AMA). Adults Most Common Source of Alcohol for Teens, According to Poll of Teens 13-18 (2005). Available at: http://www.alcoholpolycymd.com/press_room/Press_releases/adults_give_youth_alcohol.htm.

WHEREAS, research on social host laws show that teens are less likely to engage in social drinking in communities with social host policies.³

WHEREAS, the City's Teen Commission and Public Safety Commission both unanimously recommend that the City Council adopt this Social Host Responsibility Ordinance. **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. Chapter 10.05 "Social Host Responsibility" is added to Title 10 "Public Peace, Safety and Morals" of the Cupertino Municipal Code, as follows:

CHAPTER 10.05 SOCIAL HOST RESPONSIBILITY

Section

10.05.005	Definitions
10.05.010	Unlawful
10.05.020	Penalties
10.05.030	Remedies Cumulative
10.05.040	Exceptions

10.05.005 Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

“Alcoholic beverage” means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer that contain one-half of one percent (0.005) or more of alcohol by volume; and is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. (California Business and Professional Code Section 23004).

“Controlled substance” means a drug or substance whose possession and use are regulated under the California Controlled Substances Act (California Health and Safety Code Section 11000 et seq.). Such term does not include any drug or substance for which the individual found to have consumed or possessed such substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription.

“Minor” means any person less than eighteen (18) years of age.

“Property” means private property, rented residential premises, or rented commercial residences; including, but not limited to, a home, yard, garage, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, for a party or other social function, and whether owned, leased, rented, or used with or without compensation.

"Event" means a party or gathering where a group of three or more persons assemble for a social occasion or a social activity or for entertainment.

³ Wagoner, K. G., Sparks, M., Francisco, V. T., Wyrick, D., Nichols, T., & Wolfson, M. (2013). Social host policies and underage drinking parties. *Substance use & misuse*, 48(1-2), 41-53

Thomas, S., Paschall, M. J., Grube, J. W., Cannon, C., & Treffers, R. (2012). Underage alcohol policies across 50 California cities: an assessment of best practices. *Substance abuse treatment, prevention, and policy*, 7(1), 1.

“Social Host” means an adult or underage person responsible for the Event. An Adult Social Host or a Minor Social Host are responsible for the Event if:

1. The person owns, rents, leases or otherwise has control of the premises where the party, gathering or event takes place irrespective of whether such person knew of the event or knew or intended that alcoholic beverages would be possessed or consumed by minors; provided, however, that the term "person" shall not include the owner of the premises where the owner leases or rents the premises to a third party and has no actual knowledge that the party, gathering or event in question would take place on the premises, unless the owner or owner's representative has received written notice pursuant to Section 10.05.020; or
2. The person is present during the Event; or
3. The person is in charge of the premises; or
4. The person organized or advertised the event
5. If the Event involves a Minor Social Host, the parents or guardians will be considered persons responsible and held jointly and severally liable for penalties imposed pursuant to this chapter, irrespective of whether the parent(s) knew or should have known of the Event or that alcoholic beverages or drugs were intended to be made available to minors.

"Loud party, gathering or event" shall mean an incident that results in a “noise disturbance” which disturbs the peace and quiet of a neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitivity residing in the neighborhood, as defined in Chapter 10.48 of the Cupertino Municipal Code.

"Unruly party, gathering or event" is any incident that threatens the public health, safety or welfare and is unlawful under the provisions of this Code or the laws of the State of California.

“Underage person” means any person under twenty-one (21) years of age.

10.05.010 Unlawful.

It shall be unlawful and a public nuisance for any person to host an Event on Property where either alcohol or controlled substances are served to, consumed by, made available to, or in the possession of minors or underage persons, or where said substances are allowed to be used or ingested by minors or underage persons.

10.05.020 Penalties.

Violations of this Chapter shall constitute a civil infraction subject to enforcement by the Santa Clara County Sheriff or the City’s code enforcement officers, as follows:

- (1) Adult Social Hosts and the parents or guardians of Minor Social Hosts shall be subject to the following fines and penalties for violations:
 - (a) Issuance of a written warning and a cease and desist notice on the first offense/violation, as determined by the Sheriff or City Code Enforcement Officer within their discretion;
 - (b) A fine not exceeding five hundred dollars (\$500.00) for a second violation occurring within one (1) year of the written warning; and
 - (c) A fine not exceeding one thousand dollars (\$1,000.00) for a third violation and any

subsequent violation occurring within a one year period.

(2) Minor Social Hosts shall be required to:

- (a) Complete a sheriff-approved alcohol and drug abuse prevention course after the first violation; and
- (b) Twenty-five (25) hours of community service for the second violation occurring within a one year period; and
- (d) Forty (40) hours of community service for the third violation and any subsequent violation occurring within a one year period.

10.05.030 Remedies Cumulative.

Remedies under this Chapter are cumulative and not exclusive. They are in addition to and do not supersede or limit any and all other remedies, civil or criminal, provided by law.

SECTION 2. INAPPLICABILITY.

Nothing in this Chapter is intended to apply to activities that are constitutionally protected or authorized by law.

SECTION 3. CEQA EXEMPTION

The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(2), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that the adoption of an ordinance of general policy and procedure does not constitute a project within the meaning of CEQA.

SECTION 4. SEVERABILITY.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect and be in force thirty (30) days from and after adoption as provided by Government Code Section 36937.

SECTION 6. CERTIFICATION.

The City Clerk shall certify the adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 6th day of March, 2018 and ENACTED at a regular meeting of the City Council of the City of Cupertino the

20th of March 2018, by the following vote:

Vote: Members of the City Council

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor, City of Cupertino