

ORDINANCE NO. 17-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO, CALIFORNIA,

ADDING: CHAPTER 10.05 "SOCIAL HOST RESPONSIBILITY" OF CHAPTER 10 PUBLIC PEACE AND MORALS OF THE CUPERTINO MUNICIPAL CODE REGARDING RESPONSE TO UNDERAGE DRINKING

WHEREAS, the City of Cupertino, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws that promote the public health, safety and general welfare of its residents; and,

WHEREAS, underage persons consuming alcoholic beverages or using controlled substances at gatherings held at private residences, rented residential premises, or rented commercial premises is harmful and a threat to the peace, health, safety, quiet enjoyment of neighboring residents and the general welfare of the public. Underage persons who have been consuming alcoholic beverages or using controlled substances are at greater risk of automobile accidents, suicide, physical and sexual assault; and,

WHEREAS, persons responsible for the occurrence of these types of gatherings on private property they control or own have failed to ensure that alcoholic beverages or controlled substances are not served to or consumed by underage persons at these gatherings; and,

WHEREAS, problems associated with 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; and,

WHEREAS, if adult persons are held responsible by having to pay a fine for hosting a gathering where there is underage drinking, they will be more likely to supervise or to stop such conduct at events held on property that they own or control; and,

WHEREAS, if underage persons are held responsible by having to take a substance abuse course and/or do community service for hosting a gathering where underage drinking or use of controlled substances takes place, they will be less likely to host such events or be more likely to prevent such conduct at events they host

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

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

CHAPTER 10.05: SOCIAL HOST RESPONSIBILITY

Section

10.05.005	Definition
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.

“Juvenile” 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.

"Party, gathering or event" means a group of three or more persons who have assembled or are assembling for a social occasion or a social activity or for entertainment.

“Social Host” means any adult person responsible for the event.

“Juvenile host” means the underage person responsible for the event.

A "loud party, gathering or event" shall mean an incident that results in a “noise disturbance” (as defined in Chapter 10.48 of the Cupertino Municipal Code) 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.

An "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.

"Person responsible for the event" means and includes, but is not limited to:

1. The person who 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;

2. The person in charge of the premises;
3. The person who organized the event and/or the host of the event.
4. If the person responsible for the event is a juvenile, then the parents or guardians of that juvenile and the juvenile shall be considered "persons" and as such shall be jointly and severally liable for penalties imposed pursuant to this chapter, irrespective of whether the parent(s) knew of the event or knew or intended that alcoholic beverages would be possessed or consumed by minors.

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

10.05.010 Unlawful.

It is unlawful for persons to have or to allow gatherings to occur in private property as defined above, where either alcohol is served to, consumed by or in the possession of underage persons, or controlled substances are served to, ingested by or in the possession of underage persons. This shall constitute a nuisance under the Cupertino Municipal Code.

10.05.020 Penalties.

It shall be a civil violation for a person to knowingly conduct or allow a gathering where either alcohol is served to, consumed by or in the possession of an underage person or persons or controlled substances are served to, ingested by or in the possession of underage persons on premises owned by the person responsible for the event, on premises rented by or to the person responsible for the event, on premises where the person responsible for the event resides or on premises where the person responsible for the event is in control of such premises during the gathering. The sheriff at his or her discretion, may immediately issue a citation for this civil violation upon evidence of the violation. The sheriff may also issue a first warning at his or her discretion before issuing a civil citation.

- (1) Each and every violation of this section, which is deemed an infraction, is punishable by:
 - (a) A fine not exceeding five hundred dollars (\$500.00) payable by the person responsible for the event for a second violation occurring within one (1) year after a written warning has been issued; and
 - (b) A fine not exceeding one thousand dollars (\$1,000.00) payable by the person responsible for the event for a third violation and any subsequent violation occurring within a one year period.
- (2) Juvenile 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
 - (c) 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.

All remedies prescribed in this chapter shall be cumulative, and the use of any remedy by the City shall not bar the use of any other remedy authorized by the California Penal Code, any other statute of the State or other ordinances of the City.

10.05.040 Exemptions.

This chapter shall not apply to activities protected by Article 1, Section 4, of the California Constitution; the California Alcoholic Beverage Control Act; or the First or Fourteenth Amendments to the United States Constitution.

SECTION 2. 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 3. 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 4. 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 5. 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 XX day of XX, 2018 and ENACTED at a regular meeting of the City Council of the City of Cupertino the ____ of ____ 2018, by the following vote:

Vote:	<u>Members of the City Council</u>
Ayes:	
Noes:	
Absent:	
Abstain:	

ATTEST:

Grace Schmidt, City Clerk

APPROVED:

Darcy Paul, Mayor, City of Cupertino

DRAFT