ORDINANCE NO. 802

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING FAIRFAX TOWN CODE CHAPTER 9.28 ('SOCIAL HOST ACCOUNTABILITY')

WHEREAS, in 2007, the Town Council of the Town of Fairfax adopted a 'Social Host Ordinance' (codified at Fairfax Town Code Chapter 9.28) for the purpose of regulating social host accountability within the Town of Fairfax; and

WHEREAS, the Social Host Ordinance was adopted by the Town Council to address community impacts associated with social gatherings where alcoholic beverages are served to or consumed by underage persons and become unruly, necessitating sometimes police response and resulting in a disproportionate expenditure of public safety resources and potentially delaying official responses to other calls in town; and

WHEREAS, the Social Host Ordinance imposes on property owners, and other persons responsible for gatherings that allow underage drinking, liability for the nuisances created by such gatherings and the costs associated with responding to them; and

WHEREAS, the use of controlled substances by underage persons has been found to increase the likelihood of substance abuse later in life; and

WHEREAS, the Town Council finds that the purposes of the Social Host Ordinance are served by extending its provisions to apply to loud or unruly social gatherings where controlled substances are served to, possessed by, or ingested by underage persons.

NOW THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1. Fairfax Town Code Title 9 ('Public Peace, Morals and Welfare'), Chapter 9.28 ('Social Host Accountability'), Section 9.28.010 ('Legislative Purpose') is hereby amended to read as follows:

"**§ 9.28.010 LEGISLATIVE PURPOSE.**

The purposes of this chapter are:

(A) To protect the public health, safety and general welfare;

(B) To promote the reduction of underage drinking and use of controlled substances by imposing administrative fines on persons responsible for loud or unruly gatherings where alcohol and/or controlled substances are consumed by, served to or in the possession of underage persons;

(C) To facilitate the enforcement of laws prohibiting the service to, consumption of, or possession of alcoholic beverages and/or controlled substances by underage persons."

SECTION 2. Fairfax Town Code Title 9 ('Public Peace, Morals and Welfare'), Chapter 9.28 ('Social Host Accountability'), Section 9.28.020 ('Legislative Findings') is hereby amended to read as follows:

"§ 9.28.020 LEGISLATIVE FINDINGS.

The Town Council finds as follows:

(A) The town, pursuant to the 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;

(B) The occurrence of loud or unruly gatherings on private property where alcoholic beverages and/or controlled substances are served to, consumed by, or in the possession of underage persons is harmful to the underage persons themselves and is a threat to the public health, safety, or quiet enjoyment of residential property and the general welfare;

(C) The town, through the Police Department, has made numerous and substantial efforts to enforce underage drinking and controlled substance laws; yet, despite these efforts, alcohol and controlled substance use by youth remains a serious problem in the town, contributing significantly to the incidence of adolescent crime, addiction, sexual assault, truancy, driving under the influence, and motor vehicle crashes involving alcohol and/or controlled substances and causing injury and/or death;

(D) Underage persons often obtain alcoholic beverages and/or controlled substances at gatherings held at private residences or at rented residential and commercial premises that are under the control of a person who knows or should know of the service to, possession by, and/or consumption of alcohol and/or controlled substances by underage persons. The town wishes to prevent occurrences wherein persons responsible for loud or unruly gatherings on private property over which they have possession or control have failed to ensure that alcoholic beverages and/or controlled substances are not served to, consumed by or possessed by underage persons at these gatherings;

(E) The town further wishes to encourage residents to prevent the occurrence or recurrence of loud or unruly gatherings, including those where alcoholic beverages and/or controlled substances are served to, consumed by or possessed by underage persons, on private property, which seriously disrupt neighboring residents' quiet enjoyment of their property;

(F) Control of loud or unruly gatherings on private property where alcoholic beverages and/or controlled substances are served to, consumed by, or in the possession of underage persons is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;

(G) Persons held responsible for abetting or allowing loud or unruly gatherings where alcohol and/or controlled substances are served to, consumed by, or in the possession of underage persons will be more likely to properly supervise or to stop such conduct at gatherings held on property in their possession or under their control;

(H) Problems associated with loud or unruly gatherings at which alcoholic beverages and/or controlled substances are served to, consumed by, or in the possession of underage persons are difficult to prevent or deter unless the town has the legal authority to issue an administrative citation for an administrative fine;

(I) The intent of this chapter is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish;

(J) California Business and Professions Code § 25658 makes it unlawful for a person under the age of 21 years to purchase or attempt to purchase, or consume alcoholic beverages and makes it unlawful for any person to sell any alcoholic beverage to any person under the age of 21 years;

(K) According to local, state and federal surveys, alcohol is overwhelmingly and consistently the most widely used drug at all adolescent age levels. A child who begins alcohol use prior to age 15 is four times as likely to experience alcohol dependence than one who refrains from alcohol use until age 20 or older; and

(L) California Health and Safety Code §§ 11350 and 11377 make it unlawful for any person to possess enumerated controlled substance without a written prescription, with limited exceptions; and

(M) According to the National Center on Addiction and Substance Abuse, nine out of 10 people with addiction began smoking, drinking or using other drugs before they turned 18; and

(N) This Town Council therefore determines that this chapter is a reasonable and necessary means to protect and promote the health, safety, and general welfare of the youth and other residents of the town."

SECTION 3. Fairfax Town Code Title 9 ('Public Peace, Morals and Welfare'), Chapter 9.28 ('Social Host Accountability'), Section 9.28.040 ('Definitions') is hereby amended to read as follows:

"§ 9.28.040 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply:

ALCOHOL. Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

CONTROLLED SUBSTANCE. A drug or substance whose possession and use are regulated under the California Uniform Controlled Substances Act (Health & 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, or in the case of medical cannabis, a recommendation for medical marijuana from an approved provider, or a State of California medical marijuana ID card.

ALCOHOLIC BEVERAGE. Includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

JUVENILE. Any person less than 18 years of age.

LOUD OR UNRULY GATHERING. A party or gathering of two or more persons at a residence or on other private property or rented public property upon which loud or unruly conduct occurs. Such loud or unruly conduct constitutes a public nuisance and includes but is not limited to:

(1) Excessive noise;
(2) Excessive traffic;
(3) Obstruction of public streets and/or the presence of unruly crowds that have spilled into public streets;
(4) Public intoxication or unlawful public consumption of alcohol or alcoholic beverages or any controlled substance;
(5) Assaults, batteries, fights, domestic violence or other disturbances of the peace;
(6) Vandalism;
(7) Litter; or
(8) Any other conduct that constitutes a threat to the public health, safety, or quiet enjoyment of residential property or the general welfare.

MINOR. Any person less than 21 years of age.

PERSON RESPONSIBLE FOR THE EVENT. Includes, but is not limited to:

(1) The person who owns, rents, leases or otherwise has control of the premises where the gathering occurs;
(2) The person in charge of the premises; and/or
(3) The person who organized the event.

If the person responsible for the event is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the administrative fine.

UNDERAGE PERSON. Any person less than 21 years of age and shall have the same meaning as ***MINOR***, defined in this section."

SECTION 4. Fairfax Town Code Title 9 ('Public Peace, Morals and Welfare'), Chapter 9.28 ('Social Host Accountability'), Section 9.28.050 ('Prohibition of Loud or Unruly Gatherings Where Alcohol is Served to, Consumed by, or in the Possession of Underage Persons') is hereby amended to read as follows:

"§ 9.28.050 PROHIBITION OF LOUD OR UNRULY GATHERINGS WHERE ALCOHOL AND/OR ANY CONTROLLED SUBSTANCE IS SERVED TO, CONSUMED BY, OR IN THE POSSESSION OF UNDERAGE PERSONS.

Except as permitted by Article 1, Section 4, of the California Constitution, no person shall knowingly suffer, permit or host a gathering at his or her place of residence or other private property, place or premises or host a gathering at a public place under his or her control where two or more persons under the age of 21 are present, where the gathering is loud or unruly and alcoholic beverages and/or any controlled substance is in the possession of, being consumed by, or served to any underage person."

SECTION 5. Fairfax Town Code Title 9 ('Public Peace, Morals and Welfare'), Chapter 9.28 ('Social Host Accountability'), Section 9.28.060 ('Violations/Administrative Fines'), subsection (A), is hereby amended to read as follows:

"(A) It shall be a civil violation for a person to knowingly conduct or allow a loud or unruly gathering where alcohol and/or any controlled substance is served to, consumed by, or in the possession of an underage person or 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 loud or unruly gathering. The enforcement officer, at his or her discretion, may immediately issue a citation for this civil violation upon evidence of the violation. There is no requirement of a first warning in order for the enforcement officer to issue this citation."

SECTION 6. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance, and each and every 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 7. CEQA. This Ordinance is exempt from further review under the California Environmental Quality Act ('CEQA,' as codified at Public Resources Code §§ 15000, et seq., and as further governed by the CEQA Guidelines, found at 14 California Code of Resources §§ 21000, et seq.) per 14 C.C.R. § 15061(b)(3), as it can be seen with certainty that the adoption of this Ordinance has no possibility of having a significant effect on the environment, insomuch as it will not result in a substantial or potentially substantial adverse change in any of the physical conditions within the area affected by the Ordinance, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

SECTION 8. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin

Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women's Club Building, located at 46 Park Road.

The foregoing Ordinance was introduced at a meeting of the Town Council on the 13th day of July 2016, and duly adopted at the next regular meeting of the Town Council on the 3rd day of August 2016, by the following vote, to wit:

AYES: COLER, GODDARD, LACQUES, REED, WEINSOFF
NOES: None
ABSENT: None
ABSTAIN: None

Renée Goddard, Mayor

Attest:

Michele Gardner, Town Clerk

8/04/16
Date