

ORDINANCE NO. 2024-766

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA ADDING CHAPTER 9.05 TO ARTICLE 9 OF THE FORTUNA MUNICIPAL CODE TO ADOPT SOCIAL HOST REGULATIONS AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the City of Fortuna, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, pursuant to its broad police powers, the City may provide regulations to reduce underage drinking by imposing penalties on persons responsible for loud or unruly gatherings where alcohol is consumed by, served to or in the possession of minors; and

WHEREAS, by way of this Ordinance No. 2024-766, the City Council desires to add Chapter 9.05 to Article 9 of the Fortuna Municipal Code; and

WHEREAS, adoption of this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment; and

WHEREAS, the City Council has considered the staff report, supporting documents, public comment, and all appropriate information that has been submitted with this Ordinance; and

WHEREAS, all legal prerequisites to the adoption of the Ordinance have occurred.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FORTUNA DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. CEQA. Adoption of this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The City Council hereby directs staff to prepare, execute, and file with the Humboldt County Clerk a notice of exemption within five (5) working days of the adoption of this Ordinance.

SECTION 3. Findings.

- A.** Article XI, Section 7 of the California Constitution authorizes the City to enact and enforce ordinances regulating conditions that may be public nuisances or health hazards, or that promote social, economic, or aesthetic considerations;

- B. It is in the public interest for the City to take appropriate actions to protect citizens and their property from conditions that threaten public health, safety, and welfare; and
- C. It is in the public interest to promote the reduction of underage alcohol consumption within the City by, among other things, imposing penalties on persons responsible for loud or unruly gatherings where alcohol is consumed by, served to, or in the possession of minors.

SECTION 4. Municipal Code Amendment. Chapter 9.05 is hereby added to Article 9--Public Peace, Morals and Welfare--of the Fortuna Municipal Code in the form and substance set forth in **Exhibit "A"**, attached hereto and incorporated herein by reference. Without modifying the substance, following approval of this Ordinance, the City Clerk shall cause the Fortuna Municipal Code amendments to be consistent in form and style with Title 9 of the Fortuna Municipal Code.

SECTION 5. Effective Date. The effective date of this ordinance is thirty (30) days after its adoption by the City Council.

SECTION 6. Severability. If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

INTRODUCED and FIRST READING CONDUCTED at a regular meeting of the City Council of the City of Fortuna, California, on this 18th day of December, 2023 by the following vote:

AYES: City Council Members Conley, Losey, Mobley, Mayor Pro Tem Johnson, Mayor Trent

NAYS: None

ABSENT: None

ABSTAIN: None

Tami Trent, Mayor

ATTEST:

Siana L. Emmons, City Clerk

SECOND READING CONDUCTED, PASSED, and ADOPTED at a regular meeting of the City Council of the City of Fortuna, California, on this 16th day of January, 2024 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Tami Trent, Mayor

ATTEST:

Siana L. Emmons, City Clerk

Exhibit "A"

9.05

SOCIAL HOST ORDINANCE

Sections:

- 9.05.010 Purpose.**
- 9.05.020 Definitions.**
- 9.05.030 Prohibition of loud or unruly gatherings.**
- 9.05.040 Protected activities.**
- 9.05.050 Violation - Civil fine.**
- 9.05.060 Payment of fine.**
- 9.05.070 Cost recovery fee for public safety responses.**
- 9.05.080 Appeals.**
- 9.05.090 Remedies Cumulative-Actions-Relationship to other laws.**

9.05.010 Purpose.

- A. To protect the public health, safety and general welfare; and
- B. To promote the reduction of underage drinking by imposing penalties on persons responsible for loud or unruly gatherings where alcohol is consumed by, served to or in the possession of minors; thereby enhancing the enforcement of laws prohibiting the consumption of alcohol by minors and reducing the costs of providing police services to parties, gatherings, or events by requiring hosts to ensure minors are not consuming alcoholic beverages.

9.05.020 Definitions.

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

- A. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- B. "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.
- C. "Juvenile" means any person less than eighteen years of age.
- D. "Loud or unruly gathering" means 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; making, continuing, maintaining or causing to be made or continued, any excessive, unnecessary, unreasonable or unusually loud noise in such a manner as to disturb the quiet and repose of the residents of nearby properties so as to interfere with the comfortable enjoyment of life and property;

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

E. "Minor" means any person less than twenty-one years of age.

F. "Other private property" refers to hotel or motel room; an assembly hall or meeting room; a common room of a dwelling unit used for a party (e.g., recreation room of an apartment building); a site in a privately owned campground; privately owned vacant lot; privately owned agricultural land; or privately owned rural land whether occupied as a dwelling, part or other social function, and whether owned, leased, rented or used without compensation.

G. "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 gathering occurs; and/or
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 civil fine and/or for the costs incurred for public safety services pursuant to this chapter.

H. "Public safety services" and/or "Response costs" means the costs associated with responses by law enforcement, fire and other emergency response providers to loud or unruly gatherings, including but not limited to:

1. The portion of the cost of salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the loud or unruly gathering(s), and the administrative costs attributable to such response(s);
2. The cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured responding to, remaining at or leaving the scene of a loud or unruly gathering; and

3. The cost of the use of any equipment or property, and the cost of repairing any equipment or property damaged, in responding to, remaining at or leaving the scene of a loud or unruly gathering.

I. "Residence" includes a dwelling unit such as a home, condominium or apartment; structures on the residence other than the dwelling unit such as a garage, studio, tent, boat dock, swimming pool, barn or boat house; land on the residence whether improved or unimproved such as a yard, patio, open fields, piers or lake shores; water bodies on the residence such as a pond, lake, river or stream; a motor vehicle, camper or trailer located on the residence or a boat, watercraft, or other marine vessel located on the residence whether occupied on a temporary or permanent basis, whether occupied as a dwelling or for a party or gathering, and whether owned, leased, rented, or used with or without compensation.

J. "Underage person" means any person less than twenty-one years of age and shall have the same meaning as "minor," defined above.

9.05.030 Prohibition of loud or unruly gatherings.

The following shall apply to the permitting, allowing, or hosting of a loud or unruly gathering where alcoholic beverages have been consumed by a minor:

A. It is unlawful for any person to permit, allow, or host a loud or unruly gathering at his or her place of residence, or on other private property or rented public property, if such person either knows or reasonably should have known that a minor has consumed an alcoholic beverage.

B. A person who permits, allows, or hosts a loud or unruly gathering shall be deemed to have actual or constructive knowledge that a minor has consumed alcoholic beverages if the person has not taken all reasonable steps to prevent the consumption of alcoholic beverages by minors.

C. Any person who permits, allows, or hosts a loud or unruly gathering shall be rebuttably presumed to have actual or constructive knowledge that minors have consumed alcoholic beverages if such person is present at the premises of the gathering at the time any minor consumes an alcoholic beverage.

9.05.040 Protected activities.

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

9.05.050 Violation - Civil fine.

It shall be a civil violation for a person to conduct or allow a loud or unruly gathering where alcohol is served to, consumed by or in the possession of an underage person 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 event. Law enforcement

personnel, 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 law enforcement to issue this civil citation.

A. Civil fine: A first violation of this section shall result in a citation with a \$500.00 fine. A second violation shall result in a citation with a \$750.00 fine. A third or subsequent violation shall result in a citation with a \$1,000.00 fine.

B. Law enforcement shall give notice of a violation of this section by issuing a citation to any and all responsible persons identified by law enforcement within thirty days of the violation. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing in accordance with Chapter 1.09 of this Code.

C. In the event that the responsible person who is in violation of this section is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the civil violation.

9.05.060 Payment of fine.

A. The fine shall be paid to the city within 30 days from the date of the violation.

B. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

9.05.070 Cost recovery fee for public safety responses.

A. In addition to any civil fine imposed for violation of this section, when any loud or unruly gathering occurs on private property whether or not alcohol is served to, consumed by or in the possession of underage person(s) and a public safety officer at the scene determines that there is a threat to the public peace, health, safety or general welfare, the public safety officer shall give to the person(s) responsible for the event warning that a second or follow up violation of this section on the same date or within six (6) months of the date of the warning shall result in his/her/their liability for the cost of providing public safety services (i.e., fire, ambulance, sheriff, and other emergency providers). The requirement of a first warning does not limit the ability of public safety personnel to issue a civil citation for the imposition of civil penalties for cost recovery on the same day that the warning is given if the warning does not end the loud or unruly gathering. The cost recovery for public safety responses shall be separate and distinct from a citation and fine for a civil violation described in Section 9.05.050 of this Chapter.

B. The amount of cost recovery under this subsection shall be the response costs.

C. If the responsible person who is in violation of this section is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the imposition of civil penalties for the cost of providing public safety services.

D. If there is more than one responsible person for the event then each responsible person shall be jointly and severally liable for the civil fine and/or for the costs incurred for public safety services pursuant to this chapter.

E. Civil cost recovery fee(s) shall not be imposed for the medical response costs in those situations where those present at the gathering call for emergency services for an actual emergency at the premises.

9.05.080 Appeals.

Any person subject to a civil fine pursuant to Section 9.05.050 shall have the right to request an administrative hearing in accordance with Chapter 1.09 of this Code.

9.05.090 Remedies Cumulative-Actions-Relationship to other laws.

The remedies provided under this chapter are cumulative and shall not restrict the City to any other remedy to which it is entitled under law or equity. Nothing in this chapter shall be deemed to preclude the imposition of any criminal penalty under state law. Nor shall anything in this chapter be deemed to conflict with any penalty or provision under state law, or prohibit any conduct authorized by the state or federal constitution.