

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,  
COUNTY OF NAPA, STATE OF CALIFORNIA REPEALING AND REPLACING CHAPTER 9.16  
(SPECIAL POLICE RESPONSES) WITH A NEW CHAPTER 9.16  
(SOCIAL HOST ACCOUNTABILITY)

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

4           **WHEREAS**, the occurrence of loud or unruly gatherings on private property and certain  
5 public properties is a threat to the public health, safety, general welfare, and quiet enjoyment of  
6 residential property and constitutes a public nuisance;

7           **WHEREAS**, section 25658 of the State of California Business and Professions Code makes  
8 it unlawful for a person under the age of twenty-one (21) years to purchase or consume alcoholic  
9 beverages and makes it unlawful for any person to sell any alcoholic beverage to any person under  
10 the age of twenty-one (21) years;

11           **WHEREAS**, according to the Calistoga Police Department, in 2009 Police Officers  
12 responded to 9 calls for service due to complaints for loud and unruly gatherings; of these  
13 responses 2 were a second response to the same property within a six month period;

14           **WHEREAS**, law enforcement response to loud and unruly gatherings causes a drain of law  
15 enforcement resources and, in some cases, leaves other areas of the City with inadequate law  
16 enforcement protection;

17           **WHEREAS**, responses to loud and unruly gatherings result in a disproportionate  
18 expenditure of public safety resources, which are underwritten by general taxes paid to the City by  
19 its taxpayers and residents;

20           **WHEREAS**, according to the California Healthy Kids Survey (2009), 34% of Calistoga 9<sup>th</sup>  
21 and 11<sup>th</sup> graders report obtaining alcohol at parties or other events outside school – the number  
22 one source of alcohol for Calistoga youth;

23           **WHEREAS**, research regarding underage drinking shows that when communities reduce  
24 youth access to alcohol, communities experience reductions in youth alcohol use and related  
25 problems;

26           **WHEREAS**, ordinances that reduce youth access to alcohol from social sources have been  
27 recognized as a best practice by the United States Department of Justice;

28           **WHEREAS**, communities that have adopted such ordinances have seen reductions in the  
29 size of gatherings, reductions in youth perception of ease of access to alcohol, and reductions in  
30 repeat calls for service for loud and unruly gatherings;

31           **WHEREAS**, the ability of law enforcement to abate gatherings where alcohol is consumed  
32 by minors on private property will help to decrease the abuse of alcohol by minors, physical  
33 altercations and injuries, sexual assaults, truancy, driving under the influence of alcohol,  
34 adolescent crime, motor vehicle crashes, neighborhood vandalism, and excessive noise  
35 disturbance thereby improving public safety and the overall quality of life of Calistoga residents;



74 **9.18.020 Legislative Purpose.**

75 The purposes of this chapter are to:

76 A. Protect the public health, safety and general welfare;

77 B. Promote the reduction of underage drinking by imposing a civil fine on persons  
78 responsible for loud or unruly gatherings at which alcohol is consumed by, served to, or in the  
79 possession of minors;

80 C. Facilitate the enforcement of laws prohibiting the service to, consumption of, or  
81 possession of alcoholic beverages by minors; and

82 D. Offset the city's costs associated with providing fire, police, and other emergency  
83 services to loud or unruly gatherings by recouping some of the costs associated with providing  
84 such services.

85 **9.18.030 Definitions.**

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

87 "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever  
88 source or by whatever process produced.

89 "Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid  
90 containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one percent or more  
91 of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or  
92 combined with other substances.

93 "Juvenile" means any person less than eighteen years of age.

94 "Loud or unruly gathering" means a party or gathering of two or more persons at a  
95 residence, other private property, or rented public property upon which loud or unruly conduct  
96 occurs. Loud or unruly conduct includes without limitation:

97 1. Making, continuing, maintaining, or causing to be made or continued any excessive,  
98 unnecessary, unreasonable, or unusually loud noise in such a manner as to disturb the quiet and  
99 repose of the residents of nearby properties so as to interfere with the comfortable and quiet  
100 enjoyment of life and property;

101 2. Making, continuing, maintaining, or causing to be made or continued excessive  
102 traffic;

103 3. Obstruction of public streets and/or public rights-of-way;

104 4. Public drunkenness or unlawful public consumption of alcohol, alcoholic beverages,  
105 or other intoxicating substance;

106 5. Service to or consumption of alcohol, alcoholic beverages, or other intoxicating  
107 substance by minors;

108 6. Assaults, batteries, fights, domestic violence or other disturbances of the peace;

109 7. Vandalism or litter; or

110 8. Conduct that constitutes a threat to the public health, safety, general welfare, or  
111 quiet enjoyment of residential property.

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

113 "Other private property" refers to a hotel or motel room; assembly hall or meeting room;  
114 common room of a dwelling unit used for a party (e.g., recreation room of an apartment building);  
115 site in a privately-owned campground; privately-owned vacant lot; privately-owned agricultural  
116 land; or privately-owned rural land however occupied and whether owned, leased, rented, or used  
117 without compensation.

118 "Responsible person" means and includes without limitation:

119 1. The person who owns, rents, leases or otherwise has control of the premises where  
120 a loud or unruly gathering occurs;

121 2. The person in charge of the premises where a loud or unruly gathering occurs;  
122 and/or

123 3. The person who organized a loud or unruly gathering.

124 If the responsible person is a juvenile, the parent or guardian of that juvenile shall also be  
125 deemed a responsible person.

126 "Public safety services fee" refers to the fee imposed to recover a portion of the costs  
127 associated with the response by law enforcement, fire and other emergency providers to loud or  
128 unruly gatherings, including but not limited to:

129 1. The portion of the cost of salaries and benefits of law enforcement, fire or other  
130 emergency response personnel for the amount of time spent responding to a loud or unruly  
131 gathering, together with the administrative costs attributable to such response;

132 2. The cost of any medical treatment to or for any law enforcement, fire or other  
133 emergency response personnel injured responding to a loud or unruly gathering; and

134 3. The cost of any equipment or property used or damaged while responding to a loud  
135 or unruly gathering.

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

144 **9.18.040 Loud or Unruly Gathering – Public Nuisance/Penalty.**

145 It shall be unlawful and constitute a public nuisance for any responsible person to conduct,  
146 aid, organize, permit, or host a loud or unruly gathering. A violation of this chapter shall constitute  
147 a misdemeanor unless the citing officer, in his or her discretion, charges the violation as an  
148 infraction. Any person violating any provision of this chapter shall also be subject to a civil fine if  
149 alcohol is served to, consumed by, or in the possession of a minor at the loud or unruly gathering.  
150 In addition to the imposition of any civil fines or any other lawful penalty, the responsible person  
151 may also be subject to a public safety services fee in accordance with section 9.18.070.

152 **9.18.050 Protected Activities.**

153 This chapter shall not apply to activities (1) protected by Article 1, Section 4, of the  
154 California Constitution; (2) protected by the First or Fourteenth Amendments to the United States  
155 Constitution; or (3) regulated by the California Alcohol Beverage Control Act.

156 **9.18.060 Violation — Civil Fine.**

157 A. A violation of this chapter is punishable by the following civil fines:

- 158 1. \$500 for a first violation;
- 159 2. \$750 for a second violation within six months of the first violation; and
- 160 3. \$1,000 for each additional violation within six months of the first violation.

161 B. In the event that a responsible person in violation of this chapter is a juvenile, the  
162 parent or guardian of that juvenile will be jointly and severally liable for the civil fine.

163 C. The civil fine provided for in this section is in addition to any public safety services  
164 fee that may be assessed pursuant to section 9.18.070.

165 **9.18.070 Public Safety Services Fee.**

166 A. Regardless whether alcohol is served to, consumed by, or in the possession of  
167 minors, a public safety officer responding to a violation of this chapter who determines that there is  
168 a threat to the public peace, health, safety, or general welfare may issue a written warning to any  
169 responsible person that a subsequent violation of this chapter within six months from the date of  
170 the first violation may result in the responsible person being liable for a public safety services fee.

171 B. Any responsible person who has been warned pursuant to this section shall be  
172 liable for a public safety services fee if such person is charged with a subsequent violation of this  
173 chapter within six months from the date of the first violation. If more than one responsible person  
174 is liable for the public safety services fee, such persons shall be jointly and severally liable.

175 C. In the event that the responsible person in violation of this section is a juvenile, the  
176 parent or guardian of that juvenile will be jointly and severally liable for the public safety services  
177 fee.

178 **9.18.080 Notice of Violation**

179 The citing officer shall give notice of a violation of this chapter by issuing a notice of  
180 violation to the responsible person within thirty days of the violation. The notice of violation shall be  
181 served in accordance with Calistoga Municipal Code section 1.04.050 and shall include the  
182 following information:

- 183 1. The name of the responsible person;
- 184 2. The address of the residence or other public or private property where the  
185 loud or unruly gathering occurred;
- 186 3. The date and time of the public safety and/or emergency response to the  
187 loud or unruly gathering;
- 188 4. A description of the loud or unruly conduct;
- 189 5. The law enforcement, fire and/or emergency service personnel who  
190 responded to the loud of unruly gathering, including the name and signature of the citing officer;
- 191 6. The date and time of any previous warning given pursuant to section  
192 9.18.070;
- 193 7. If applicable, an itemized list of the public safety services fee for which the  
194 responsible person is liable;
- 195 8. An order prohibiting the continuation or repeated occurrence of the violation;
- 196 9. An explanation of how and when to pay the fine;
- 197 10. Notification of the right to appeal, including the time within which the violation  
198 may be contested and the place to submit a written appeal;
- 199 11. Notification that the city may impose a lien on the subject property in the  
200 event of non-payment of any fines and/or fees;
- 201 12. If applicable, any election by the city under Government Code Section  
202 38773.5 or any other state or local law to allow for recovery of attorneys' fees in the event of an  
203 administrative proceeding or subsequent appeal.

204 **9.18.090 Payment of Fines.**

205 A. Within thirty days from the date of service of the notice of violation, the responsible  
206 person shall pay the fine and/or fee to the City Clerk.

207 B. Any fine and/or fee paid pursuant to this section shall be refunded in accordance  
208 with section 9.18.110 if it is determined, after a hearing, that the person charged with the fine  
209 and/or fee was not responsible for the violation or that there was no violation as charged.

210 C. Any responsible person who is unable to pay the fine and/or fee may file a request  
211 for fee waiver with the city manager ten calendar days from the date of service of the notice of  
212 violation.

213 1. The request for fee waiver shall be in writing, describe why the fine cannot  
214 be paid, and include any relevant documentation supporting the request. The request must be  
215 accompanied by a sworn affidavit and must demonstrate to the satisfaction of the city manager the  
216 responsible person's actual financial inability to pay the full amount of the fine and/or fee.

217 2. Once the request for fee waiver is filed, the requirement to pay the fine  
218 and/or fee shall be stayed until the city manager determines whether to grant or deny the request.

219 3. If the city manager grants the request for fee waiver, the responsible person  
220 shall not be required to pay the fine and/or fee. Granting a request for fee waiver shall not excuse  
221 or discharge any continuation or repeated occurrence of any violation of this chapter, nor shall it  
222 bar further enforcement action by the city.

223 4. If the city manager denies the request for fee waiver, the fine and/or fee  
224 must be paid within fifteen calendar days from the date of service of the city's manager  
225 determination. The city manager may also impose a schedule for payment of the fine that shall not  
226 exceed 180 days from the date of his or her determination.

227 5. The city manager's determination shall be (1) made within ten calendar days  
228 of the request, (2) in writing, and (3) served via U.S. certified mail, return receipt requested. The  
229 city manager's determination shall be final.

### 230 **9.18.100 Administrative Hearing.**

231 A. Any responsible person subject to a civil fine and/or public safety services fee may  
232 request an administrative hearing within thirty days from the date of service of the notice of  
233 violation. Any such request shall be in writing and presented to the city clerk.

234 B. An administrative hearing shall not be held unless the responsible person has  
235 (1) requested a hearing, in writing, from the city clerk, and (2) deposited the civil fine and/or fee  
236 with the city.

237 C. The city manager shall compile a list of qualified hearing officers and shall designate  
238 the hearing officer for the administrative hearing by random selection from the list, subject to  
239 availability of each particular hearing officer. The responsible person may request the city  
240 manager to recuse a hearing officer for reasons of actual bias or prejudice against the responsible  
241 person's cause. The hearing officer shall not be an employee of the city nor have any employment  
242 relationship with the city, except for that of hearing officer. The hearing officer's employment,  
243 evaluation, compensation, and/or benefits shall not be conditioned, either directly or indirectly,  
244 upon the amount of fine imposed on the responsible person or the number of violations upheld by  
245 the hearing officer.

246 D. The hearing officer shall conduct the hearing within sixty days of the request for the  
247 hearing unless one of the parties requests a continuance for good cause.

248 E. At least ten calendar days before the hearing, the responsible person shall be  
249 provided with copies of any and all citations, reports, and other documents submitted or relied  
250 upon by the citing officer. No other discovery shall be permitted.

251 F. The formal rules of evidence shall not apply to the administrative hearing. All  
252 relevant evidence may be considered, and the hearing officer has the discretion to exclude  
253 evidence that he or she finds to be irrelevant or repetitive.

254 G. The responsible person contesting the fine and/or fee shall be given the opportunity  
255 to (1) testify and present witnesses; (2) introduce relevant evidence; (3) cross-examine and/or  
256 rebut any witness testifying in support of the civil fine and/or fee; and (4) be represented by anyone  
257 who is lawfully permitted to do so.

258 H. The failure of a responsible person to appear at the administrative hearing shall  
259 constitute a forfeiture of the fine and/or fee and a failure to exhaust his or her administrative  
260 remedies.

261 I. The hearing officer may continue the hearing and request additional information  
262 from the citing officer or the responsible person before issuing a written decision.

263 J. In an administrative proceeding, the prevailing party shall be entitled to recover its  
264 reasonable attorneys' fees, but only if the city elects in writing, at the initiation of the administrative  
265 proceeding, to seek recovery of its own attorneys' fees. In no event shall an award of attorneys'  
266 fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in  
267 the administrative proceeding.

268 **9.18.110 Hearing Officer Decision – Appeal**

269 A. After considering all of the testimony and evidence submitted for the hearing, the  
270 hearing officer shall issue a written decision to uphold, modify or revoke the fine and/or fee that  
271 describes the reasons for the decision. The hearing officer's decision shall be final.

272 1. If the hearing officer determines that the fine and/or fee should be upheld,  
273 the amount of the fine and/or fee on deposit with the city shall be retained by the city.

274 2. If the hearing officer determines that the fine and/or fee should be modified,  
275 the city shall refund the difference between the amount of the original fine and/or fee and the  
276 modified fine and/or fee within fifteen calendar days from the date of service of the hearing officer's  
277 decision.

278 3. If the hearing officer determines that the fine and/or fee should be revoked,  
279 the city shall refund the amount deposited within fifteen calendar days from the date of service of  
280 the hearing officer's decision.

281 B. The hearing officer's decision shall include a statement that the aggrieved party may  
282 obtain review of the administrative decision by filing (1) an appeal with the Napa County Superior  
283 Court in accordance with Government Code section 53069.4, or (2) a petition for writ of mandate in  
284 accordance with Code of Civil Procedure sections 1094.5 and 1094.6.

285 C. Within five calendar days of issuance of the hearing officer's decision, the city shall  
286 serve a copy of the written decision on the responsible person by U.S. certified mail, return receipt  
287 requested. Service of the hearing officer's decision shall be deemed completed on the date of  
288 mailing.



289 **9.18.120 Billing – Debt To City – Enforcement.**

290 A. The amount of any civil fine and/or public safety services fee shall be deemed a  
291 debt owed to the City of Calistoga by the responsible person and, if that person is a juvenile, by his  
292 or her parent or guardian.

293 B. At its discretion, the city may pursue any and all legal and equitable remedies to  
294 collect unpaid fines and/or fees imposed pursuant to this chapter. Pursuit of one remedy does not  
295 preclude the pursuit of any other remedy. It is intended that persons causing, maintaining, and/or  
296 permitting the violation, and not the taxpayers, bear the financial burden of the city's enforcement  
297 efforts. Remedies available to the city to collect unpaid fines, fees, and costs include the following  
298 without limitation:

- 299 1. Referring the delinquent account to a collection agency;  
300 2. Authorizing a lien to be recorded on the property; and/or  
301 3. Authorizing a special assessment upon the property.

302 C. The city shall be entitled to recover all costs related to enforcing any violations of  
303 this chapter that are recoverable under Government Code sections 54988, 38771 *et seq.*, or any  
304 other local, state or federal law. Before invoking any of the procedures described in this section,  
305 the city shall provide notice to the property owner (if different from the responsible person) based  
306 on Napa County's last equalized property tax assessment roll, or the supplemental roll, whichever  
307 is more current.

308 D. Any person who fails to pay any fine and/or fee shall be liable in any proceeding  
309 brought by the city for the costs incurred in securing payment of the unpaid amount, including  
310 without limitation, administrative costs and attorneys' fees. Such collection costs shall be in  
311 addition to any penalties, interest, and/or late charges imposed upon the unpaid fine.

312 **9.18.130 Cumulative Remedies.**

313 The remedies provided under this chapter are cumulative, and shall not restrict the city's  
314 ability to pursue any other remedy to which it is entitled under law or equity. Nothing in this chapter  
315 shall be deemed to preclude the imposition of any criminal penalty, nor shall anything in this  
316 chapter be deemed to conflict with any penalty or provision under state law, or prohibit any conduct  
317 authorized by the state or federal constitutions.

318 **SECTION 4. Environmental Clearance.** The City Council finds that this Ordinance is not  
319 subject to the California Environmental Quality Act ("CEQA") pursuant to sections 15060(c)(2) (the  
320 activity will not result in a direct or reasonably foreseeable indirect physical change in the  
321 environment) and 15060(c)(3) (the activity is not a project as defined in section 15378) of the  
322 CEQA Guidelines because it has no potential to result in physical change to the environment,  
323 directly or indirectly.

324 **SECTION 5. Severability.** If any section, subsection, sentence, clause, phrase or word of  
325 this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such  
326 decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of  
327 the City of Calistoga hereby declares it would have passed and adopted this Ordinance and each  
328 and all provisions hereof irrespective of the fact that any one or more of said provisions be  
329 declared invalid.

330           **SECTION 6. Effective Date.** This Ordinance shall be effective thirty (30) days from and  
331 after the date of its passage.

332           **SECTION 7.**

333  
334           **THIS ORDINANCE** shall take effect thirty (30) days after its passage and before the  
335 expiration of fifteen (15) days after its passage, shall be published in accordance with law, in a  
336 newspaper of general circulation published and circulated in the City of Calistoga.

337  
338           **THIS ORDINANCE** was introduced with the first reading waived at the City of Calistoga City  
339 of Council meeting of the 6th day of July 2010 and was passed and adopted at a regular meeting  
340 of the Calistoga City Council on the \_\_\_\_ day of \_\_\_\_, 2010 by the following vote:

341  
342  
343           **AYES:**

344           **NOES:**

345           **ABSTAIN:**

346           **ABSENT:**

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350

**ATTEST:**

351

352

\_\_\_\_\_  
**SUSAN SNEDDON, City Clerk**

\_\_\_\_\_  
**JACK GINGLES, Mayor**