

Chapter 9.60

UNDERAGE DRINKING

Sections:

- 9.60.010 Title.
- 9.60.020 Definitions.
- 9.60.030 Prohibition of loud or unruly gatherings where alcohol is served to, consumed by, or in the possession of underage persons.
- 9.60.040 Violations/administrative fines.
- 9.60.050 Imposition of cost recovery fee for public safety responses.
- 9.60.060 Hearings on the imposition of administrative fines; Appeals.
- 9.60.070 Administrative fines – debt to town; Enforcement
- 9.60.080 Severability.

9.60.010 Title. This chapter shall be known as the Ross Underage Drinking Ordinance. (Ord. 607 (part), 2008).

9.60.020 Definitions. The following words and phrases, whenever used in this article, shall have the following meanings:

(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 (18) years of age.

(d) “Loud or unruly gathering” means a party or gathering of five 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 drunkenness or unlawful public consumption of alcohol or alcoholic beverages;

(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.

(e) “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 loud or unruly 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 Administrative Fine and/or for the costs incurred for public safety services pursuant to this chapter.

(f) “Public Safety Services Costs” 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 cost of law enforcement, fire or other response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the loud or unruly gathering, calculated as the public safety rate plus benefits times the number of public safety officer hours at the scene of the emergency response plus thirty-three percent overhead; and

(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 the loud or unruly gathering; and

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

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

(Ord. 607 (part), 2008).

9.60.030 Prohibition of loud or unruly gatherings where alcohol 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 loud or unruly gathering at his or her place of residence or other private property, place or premises or host a loud or unruly gathering at a public place under his or her control where five or more persons

under the age of twenty-one (21) are present, where alcoholic beverages are in the possession of, being consumed by, or served to any underage person. (Ord. 607 (part), 2008).

9.60.040 Violations/administrative fines. (a) It shall be a civil violation for a person to knowingly conduct or allow a loud or unruly gathering of five or more persons under the age of twenty-one where alcohol 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.

(b) Administrative Fine: A first violation of this chapter shall result in a citation with a \$750.00 fine. A second violation and subsequent violations shall result in a citation with a \$1,000.00 fine.

(c) The enforcement officer shall give notice of a violation of this chapter by issuing a citation to any and all responsible persons identified by the chapter within 10 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.

(d) The administrative fine prescribed in this section is in addition to any cost recovery fee for public safety responses that may be assessed pursuant to section 9.60.050 (b).

(e) In the event that the responsible person who is in violation of this chapter is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the civil violation. (Ord. 607 (part), 2008).

9.60.050 Imposition of cost recovery fee for public safety responses. (a) In addition to any administrative fine imposed for violation of this section, when any loud or unruly gathering where alcohol is served to, consumed by or in the possession of underage person(s) occurs on private property 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 a warning that a second or follow up violation of this section on the same date or on any later date will 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 underage drinking at the loud or unruly gathering. The cost recovery for public safety responses shall be separate and distinct from a citation and administrative fine for a violation described in section 9.60.040.

(b) The amount of cost recovery under this subsection shall be calculated pursuant to 9.60.020(e) of this chapter.

(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 imposition of penalties for the cost of providing public safety services.

(d) Cost recovery fee(s) will not be imposed in those situations where those present at the gathering call for emergency services for an actual emergency at the premises. (Ord. 607 (part), 2008).

9.60.060 Hearings on the imposition of administrative fines; Appeals.

(a) Administrative Hearing. Any person subject to an administrative fine pursuant to Section 9.60.030 or subject to a civil cost recovery fee for public safety responses pursuant to Section 9.60.050 shall have the right to request an administrative hearing within 45 days of the issuance of a citation for a civil violation of this ordinance [Section 9.60.030] and/or the issuance of a citation for the imposition of civil cost recovery fees for a public safety response as specified in this ordinance [Section 9.60.050]. To request such a hearing, the person requesting the hearing shall notify the Town Manager in writing within 45 days of the issuance of the citation.

The Town Manager shall refer any request for a hearing under Section 9.60.030 and/or Section 9.60.050 to an Administrative Law Judge. The Administrative Law Judge shall conduct a hearing on the matter within 90 days of the request for the hearing unless one of the parties requests a continuance for good cause. The Administrative Law Judge shall render a decision within 30 days of the conclusion of the hearing. Either party may appeal the decision of the Administrative Law Judge pursuant to the requirements set forth below in subsection (b).

(b) Appeal from Decision of Administrative Law Judge. The person upon whom an administrative fine is imposed pursuant to Section 9.60.030 and/or a civil cost recovery fee for public safety responses pursuant to Section 9.60.050 may appeal the decision of the Administrative Law Judge. The Town may also appeal the decision of the Administrative Law Judge. No appeal can lie unless the party filing the appeal has first properly requested and obtained a hearing under Section 9.60.060(a).

The Appeal must be filed within 20 days after service of the final decision issued by the Administrative Law Judge pursuant to California Government Code Section 53069.4, subdivision (b). The procedures outlined in Government Code 53069.4 shall apply. (Ord. 607 (part), 2008)

9.60.070 Administrative fines— debt to town; Enforcement. The amount of an administrative fine and/or a civil cost recovery fee for public safety responses pursuant to Section 9.60.050 shall be deemed a debt owed to the Town by the person found in violation of Section 9.60.030 and, if that person is a juvenile, then also his/her parents or guardians. Any person owing such fine shall be liable in an action brought in the name of the Town for recovery of such fine and/or fees. These recovery costs may include reasonable attorney fees incurred in the action if the Town prevails, as the Town reserves the right to seek to recover reasonable attorney fees, on a case by case basis, pursuant to California Government Code Section 38773.5 (b). In those cases in which the Town seeks to recover reasonable attorney fees, the other party may likewise do so. (Ord. 607 (part), 2008).

9.60.080 Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter, or its application to any other person or circumstance. The Ross Town Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable. (Ord. 607 (part), 2008).