

ORDINANCE NO. XXX N. S. (DRAFT)

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIBURON
REPEALING PORTIONS OF CHAPTER 25 “OFFENSES—MISCELLANEOUS”,
REPEALING CHAPTER 22 “MINORS”, AND ADOPTING A NEW CHAPTER 22
“MINORS AND SOCIAL HOST ACCOUNTABILITY”
OF THE TIBURON MUNICIPAL CODE**

SECTION 1. Findings.

- (A) With respect to the adoption of Article I set forth herein, the Town Council of the Town of Tiburon finds as follows:
1. Loitering by minors during the late hours of the night increases the likelihood of criminal activity by and against the young people of the City. Such loitering therefore represents a threat to the health, safety, and general welfare of the City, and to the welfare of its youth.
 2. Reasonable restrictions on late-night loitering by minors in the City will reduce criminal activity by and against youth, enhancing the health, safety, and general welfare of the City’s residents.
 3. It is the intent of the City Council to allow minors under the age of eighteen to move about freely while participating in legitimate activities, and to pursue legitimate activities during the hours specified in Section 9.06.020 with the permission of his or her parent, guardian, or other adult person having the lawful care and custody of the minor.
 4. The Town Council finds that the provisions contained in Article I are in large part a restatement and re-codification of existing ordinance provisions adopted by the Council in 1964.
- (B) With respect to the adoption of Article II set forth herein, the Town Council of the Town of Tiburon finds and declares as follows:
1. Underage drinking is directly involved in the deaths of approximately 5,000 youths under the age of 21 every year nationwide.
 2. A 2007 Surgeon’s General’s Call to Action reports that alcohol use may alter adolescents’ development and put them at a higher risk for long-lasting, detrimental effects on the developing brain.
 3. State law now allows the use of marijuana by adults age 21 and over, and data is available indicating marijuana use by minors is increasing.
 4. Minors obtain, possess, or consume alcohol, marijuana and/or controlled substances at private parties held on private property that are under the control of an adult or “social host” who knows, or should know, of such conduct but fails to stop it.
 5. Town of Tiburon Municipal Code provisions regarding Social Host Accountability were first adopted in 1992 in order to reduce underage access to alcohol by holding adults responsible for hosting youth gatherings where alcohol is present.
 6. Unlawful youth gatherings with alcohol and controlled substances not only occur in homes, but also in other private property including rented halls and facilities, and rented vehicles.

7. The Town of Tiburon wishes to discourage minors from using alcohol and other controlled substances, and prevent unlawful minor gatherings with alcohol and other controlled substances wherever they occur.
8. The Town of Tiburon wishes to add a restorative justice component to its regulations for offenders under the age of 18 in order to encourage rehabilitation.
9. The consumption of alcohol, controlled substances and/or marijuana by persons under the age of 21 years is unlawful and presents a danger to the well-being of the underage persons consuming alcohol and those persons coming into contact with such persons.
10. A party or gathering is not properly supervised or controlled and presents a threat to the public safety, health, and welfare when the person owning or controlling the premises suffers or permits any person under the age of 21 years to consume alcohol, controlled substances, and/or marijuana.
11. Any party or gathering where persons under the age of 21 years are consuming alcohol, controlled substances, and/or marijuana constitutes a potential hazard for those present at the event and those who might come into contact with any such underage persons after said persons leave the event and enter the public realm.
12. Control by the police of parties or gatherings where alcohol, controlled substances, and/or marijuana is being consumed by persons under the age of 21 years is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public.
13. The occurrence of parties or gatherings at which persons under the age of 21 years consume alcohol, controlled substances, and/or marijuana contributes to an increase in alcohol and other substance abuse, driving under the influence, excessive noise, traffic, and vandalism within the neighborhood or area of the party or gathering, and threatens public safety by increasing the risks of alcohol, controlled substance, and/or marijuana-related incidents causing personal injury and/or death.
14. Police responses associated with dispersing parties and gatherings where alcohol, controlled substances, and/or marijuana is consumed by persons under the age of 21 years and/or controlling participants at such events causes a shift of police staffing and resources and diverts police resources from other law enforcement activities that are necessary to protect the public safety and welfare.
15. Current State law prohibiting conduct that contributes to the delinquency of a minor does not address liability for allowing the consumption of alcohol, controlled substances, and/or marijuana by persons who are 18 years of age or older on premises under the control of an adult.

(C) With respect to the adoption of this Ordinance generally, the Town Council of the Town of Tiburon finds as follows:

1. The Town Council held a duly noticed public hearing on March 21, 2018 to consider the adoption of this Ordinance, and considered all information and public input received.

2. Based upon the findings above, the Town Council finds that adoption of this Ordinance is necessary for the protection of the public health, safety, and welfare.
3. The Town Council finds the adoption of this Ordinance consistent with the goals and policies of the Tiburon General Plan and in furtherance of its objectives.
4. The Town Council finds that adoption of this Ordinance is categorically exempt from the California Environmental Quality Act (“CEQA”) under CEQA Guideline 15061(b)(3) (common sense exemption), because it can be seen with certainty that there is no possibility that the adoption could have a significant environmental effect.

SECTION 2. Amendment of Chapter 25.

Title VI, Chapter 25 (Offenses—Miscellaneous) of the Tiburon Municipal Code is hereby amended as follows:

- A. Section 25-4 (Unlawful Juvenile Gatherings) is hereby repealed.
- B. Section 25-5 (Police Services Fee for Second Response) is hereby repealed.

SECTION 3. Repeal of Chapter 22.

Title VI, Chapter 22 (Minors) of the Tiburon Municipal Code is hereby repealed in its entirety.

SECTION 4. Adoption of Chapter 22.

Title VI, Chapter 22 (Minors and Social Host Accountability) of the Tiburon Municipal Code is hereby adopted to read as follows:

**Chapter 22
MINORS AND SOCIAL HOST ACCOUNTABILITY**

Article I. Curfew for Minors and Minors Generally

22-10. Purpose.

The purpose of this article is to establish reasonable restrictions on the unaccompanied activities of minors with respect to curfew hours; unaccompanied presence in hotels, motels, restaurants, cafes, and similar establishments during curfew hours, and unaccompanied operation of motor vehicles during curfew hours; and to establish penalties for the violation of such restrictions and for aiding and abetting the violation of such restrictions. The adoption of these regulations is for the express purposes of protection of the public health, safety and welfare and curtailing juvenile delinquency.

22-20. Definitions.

For the purpose of this article, the following definition shall apply:

“Minor” means a person under the age of eighteen years.

22-30. Curfew for persons under eighteen years of age (minors).

It is unlawful for any person under the age of eighteen years to loiter, idle, stroll or play in any public street, public square, park or any public place between the hours of eleven p.m. and daylight immediately following; provided that the provisions of this section do not apply when the minor is accompanied by a parent, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his parent, guardian or other adult person having the care and custody of the minor.

22-40. Presence of minors in hotels, boarding houses, etc., to be reported; exceptions.

Each owner, agent, manager or keeper of a hotel, motel, boarding house, lodging house, tenement house, apartment house or similar establishment shall immediately report to the chief of police or other designated officer in charge of law enforcement for the town the presence therein of any minor who he or she has reason to believe to be under the age of eighteen years; provided that the provisions of this section do not apply when the minor is accompanied by a parent, guardian or other adult person having the care and custody of the minor. In making such report, the name, age, last known place of abode and the names and residences of the parents, guardians or other custodians of such minor shall be stated, and such report shall include such other or further information as can be ascertained from such minor or otherwise.

22-50. Minors prohibited in restaurants, cafes, bars, dance halls, etc., after certain hours; exceptions.

No proprietor, keeper, clerk or any other person having charge or control of any cafe, tavern, restaurant, bar, eating place, public dance hall, or similar establishment shall permit any person under the age of eighteen years to remain in such public place between the hours of eleven p.m. and daylight immediately following; provided that the provisions of this paragraph do not apply when the minor is accompanied by a parent, guardian or other adult person having the care and custody of the minor.

22-60. Operation, etc., of vehicles by minors after certain hours prohibited; exceptions.

It is unlawful for any person under the age of eighteen years to operate a motor vehicle or ride in or on a motor vehicle, about the public streets, alleys, avenues, parks, public squares or any other public places between the hours of eleven p.m. and daylight immediately following, when not accompanied by a parent or legal guardian having legal custody and control of such person, or when not accompanied by another adult person having the care and custody of such person; provided that the provisions of this section do not apply to any such person who shall be operating or riding in a motor vehicle engaged in gainful employment or upon an emergency

errand, or on legitimate business directed by the parent, guardian or other adult person having the care and custody of such person. The chief of police or other designated officer in charge of law enforcement for the town is empowered and authorized to impound any motor vehicle that is being operated or used in violation of this section.

22-70. Violations by minors; penalties.

Any minor who shall violate any of the provisions of this article shall be guilty of a misdemeanor and subject to the provisions of division 2, chapter 2 of the Welfare and Institutions Code of the state.

22-80. Aiding, abetting, permitting, etc., violations by minors.

Any person assisting, aiding, abetting, permitting or encouraging any minor under the age of eighteen years to violate any of the provisions of this article is guilty of a violation of this Code. As used in this section, the word "permitting" is not limited to its affirmative meaning, but includes negative action implying no affirmative act and involving no intent, but shall include passivity or abstaining from preventive action; as used in this section, such term means to allow to be done, either by consent or by not prohibiting; as used in this section such term also means to give an opportunity to a minor under the age of eighteen years who will take advantage of the opportunity unless restrained; and such term, as used in this section, also means allowing or acquiescing by failing to prevent, or conceding or granting or giving leave or suffering or tolerating or sanctioning.

Article II. Social Host Accountability

22-90. Title.

This article shall be known as the Social Host Accountability regulations of the Town of Tiburon.

22-100. Purpose.

The purpose of this article is to protect the public health, safety, and welfare by establishing reasonable regulations regarding the possession or consumption by underage persons of alcohol, controlled substances, and/or marijuana at gatherings and events; setting forth responsibility for hosting gatherings or events at which such possession or consumption occurs; and setting forth penalties for violations and recovery provisions for police service costs and related costs.

22-110. Definitions.

For the purpose of this article, 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. "Controlled substance" means a drug or substance described in California Health and Safety Code section 11007, as may be amended or superseded, provided that the term does not include any drug or substance for which an individual found to have possessed or consumed such drug or substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription.

D. "Marijuana" means all parts, as a whole or in part, of the Cannabis plant, whether growing or not, the seeds thereof, and/or the resin extracted from any such plant; and every compound, manufacture, derivative or preparation of such plant including seeds, resin, and concentrated marijuana. The prohibition herein includes marijuana in any form including, but not limited to, cigarettes, vapor, food products, or any other product of marijuana that can be smoked or ingested.

E. "Underage person" means any person less than 21 years of age.

F. "Party, gathering, or event" means a group of persons who have assembled, or are assembling, for a social occasion or for a social activity that is occurring at a place where alcohol, controlled substances, and/or marijuana are being consumed by one or more persons.

G. "Police services" include: the salaries and benefits paid to the police personnel for the amount of time actually spent in responding to, or in remaining at, the party, gathering, or event, at a rate established by resolution of the Town Council; the actual cost of any medical treatment to injured personnel; and the cost of repairing any damaged Town equipment or property.

H. "Responsible person" means a person or persons with a right of possession of the residence or other private property, party bus, or limousine, at which a party, gathering, or event takes place including, but not limited to:

1. Any owner of the residence or other private property, regardless of the actual residence of the person or entity.

2. A tenant or lessee of such residence or other private property.

3. The landlord of another person responsible for the party, gathering, or event provided that the landlord received notice of a prior loud or unruly gathering at the same residence or private property.

4. The person or persons in charge of the residence or other private property.

5. The person(s) who organizes, supervises, officiates, conducts, or controls the party, gathering, or event. A Responsible Person need not be present at such party, gathering, or event and prior knowledge of the gathering is not a prerequisite to a finding that an individual is a Responsible Person as defined in this article.

I. “Restorative justice program” means a program accredited or approved by a California Superior Court or by the Director of the Marin County Department of Health and Human Services or his or her designee that incorporates restorative practices such as peer-to-peer review, accountability, and parent participation, in an effort to reduce youth recidivism and deter future adult criminality.

J. “Threat to the public peace, health, safety or general welfare” shall mean any of the following: excessive noise, vandalism, boisterous or unruly conduct, street congestion, public drinking and/or usage of controlled substances and/or marijuana, fighting, disturbance of the peace of the neighborhood in which the event is taking place, or any violation of law committed by anyone in attendance at the party, gathering or event.

22-120. Unlawful Gatherings by Underage Persons on Private Property.

It shall be a violation of this article for any responsible person to conduct or allow in a residence or other private property, place, or premises under his or her control (including but not limited to rental halls or facilities, whether publicly or privately owned and maintained, rental vehicles of any type, or vehicles of any type licensed and/or hired to transport passengers in return for payment of a fare) a party, gathering, or event at which an underage person consumes or possesses alcohol, controlled substances and/or marijuana, where the responsible person knows, or reasonably should have known, that an underage person has obtained, possesses, or is consuming alcoholic beverages, controlled substances, and/or marijuana. This article shall not apply to possession or consumption of alcohol under the supervision of a parent or guardian in connection with a cultural or religious activity.

22-130. Hosting by Underage Persons.

In the event that an underage person hosts a party, gathering, or event at which an underage person consumes or possesses alcohol, controlled substances and/or marijuana, in violation of this article, and no other responsible person is present at such gathering, then the underage person shall be deemed to be a responsible person. If the underage person is not emancipated within the meaning of the California Family Code, then the parents or legal guardians having custody of that underage person shall be jointly and severally liable with the underage person for any penalties and response costs imposed pursuant to this article, whether or not such parents or guardians are deemed to be responsible persons hereunder or have or had knowledge of the unruly gathering.

22-140. Violations; Civil Fines; Mandatory Community Service.

Each violation of this article is punishable as follows:

A. Each violation shall constitute a civil violation punishable as set forth in Chapter 31 of this Code or by any other remedy available to the Town under this Code or state law. The election of remedies shall be at the sole discretion of the Town.

B. A first violation of this article may be punishable by a fine of seven hundred fifty dollars (\$750). A second violation of this article may be punishable by a fine of eight hundred seventy-five dollars (\$875). A third and each subsequent violation of this article may be punishable by a fine of one thousand dollars (\$1000).

C. In place of, or in addition to, any other remedies available to the Town under this Code, the Town may require a person who is under the age of eighteen at the time of the violation to participate in a restorative justice program.

22-150. Police services—second response.

When a party, gathering or event occurs on private property and a police officer at the scene determines that there is a threat to the public peace, health, safety, or general welfare, the responsible person(s) for the event will be held liable for the cost of providing police services during a second or additional response by the police, after a first warning to the responsible person(s) for the event, to control the party, gathering, or event.

22-160. Police services cost.

The police services cost to be assessed under this article shall include the cost of personnel and equipment, but shall not exceed two thousand (\$2,000.00) dollars for a single party, gathering, or event, provided, however, that the Town does not hereby waive its right to seek reimbursement for actual costs exceeding two thousand (\$2,000.00) dollars through other legal remedies. The amount of costs for providing police services shall be deemed a debt owed to the Town by the responsible person. If the responsible person is under 18 years of age and is not emancipated within the meaning of the Family Code, the parent(s) or guardian(s) of the responsible person shall be jointly and severally liable. Any person liable under this article for the costs of providing police services shall be liable in an action brought in the name of the Town for recovery of such costs, including reasonable attorney's fees incurred by the Town in recovering the costs under this article. In addition to the remedies provided by this article, the Town may seek to recover costs for damage to any Town-owned property that arises out of a violation of this article by any means available pursuant to this Code or state law.

SECTION 5. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 6. Effective Date.

This Ordinance shall take effect and be in force thirty (30) days after the date of passage, and before the expiration of fifteen (15) days after passage by the Town Council, a copy of the ordinance shall be published with the names of the members voting for and against it at least once in a newspaper of general circulation published in the Town of Tiburon.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Tiburon on _____, 2018, and was adopted at a regular meeting of the Town Council of the Town of Tiburon on _____, 2018, by the following vote:

AYES: COUNCILMEMBERS:

NAYS: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

JIM FRASER, MAYOR
Town of Tiburon

ATTEST:

LEA STEFANI, TOWN CLERK