



**CITY OF LARKSPUR
Staff Report**

December 5, 2018 City Council Meeting

DATE: November 13, 2018

TO: Honorable Mayor Hillmer and the Larkspur City Council

FROM: Dan Schwarz, City Manager

SUBJECT: CONSIDERATION OF ORDINANCE 1031 AMENDING CHAPTER 19.01 OF THE LARKSPUR MUNICIPAL CODE ENTITLED "SOCIAL HOST ACCOUNTABILITY ORDINANCE" TO ADD CONTROLLED SUBSTANCES AND MARIJUANA, INCLUDE PARTY BUSES AND LIMOUSINES, AND ADD PROVISIONS FOR REQUIRING PARTICIPATION BY OFFENDERS IN A RESTORATIVE JUSTICE PROGRAM

ACTION REQUESTED

Waive first reading and introduce Ordinance 1031.

SUMMARY AND BACKGROUND

In 2008, the City Council adopted a Social Host Accountability Ordinance. The Ordinance prohibited any person from permitting, allowing or hosting a party or other gathering at premises under his or her control where two or more minors are present and alcoholic beverages are in the possession of or being consumed by one or more minors. The Ordinance vested discretion in the arresting officer to treat any violation as a criminal offense or as an administrative penalty.

On January 1, 2013, the Central Marin Police Authority (CMPA) was created, made up of the City/Towns of Corte Madera, Larkspur and San Anselmo. The Town of Corte Madera and the Town of San Anselmo also had Social Host Accountability Ordinances which were codified in their municipal codes. On June 13, 2017, the Marin County Board of Supervisors approved an amendment to the County Social Host Ordinance extending its application to unruly gatherings where marijuana is present as well as encompassing any unruly gatherings on "party buses and limousines".

DISCUSSION

On May 3, 2018, after three prior discussions regarding potential amendments to the current Social Host Accountability Ordinance, the Central Marin Police Council directed staff to address the following items in the proposed ordinance amendment:

1. Add the ingestion of controlled substances and marijuana to the ordinance;
2. Expand the definition of "premises" to include public premises, party bus, or limousine;
3. Expand "the person in charge of the event" to include the owner, renter, or lessor;
4. Add a restorative justice element to the ordinance that would not place a burden on the Police Authority or the individual cities/towns to implement and facilitate.

The Town/City Managers have been asked to bring the amended ordinance request back to the respective councils for adoption. The intent is to mirror our ordinances to the best of our ability to assist Central Marin Police Authority with their enforcement efforts.

FISCAL IMPACT

There is no fiscal impact associated with the requested action.

STAFF RECOMMENDATION

Staff recommends that Council waive first reading and introduce Ordinance 1031.

Respectfully submitted,

Jamie Kuryllo, City Clerk

Attachments

1. Amended Ordinance (Clean Version)
2. Amended Ordinance (Red Line Version)

Chapter 19.01
Social Host Accountability Ordinance

Sections:

- 19.01.010 Purpose and Findings.
- 19.01.020 Definitions.
- 19.01.030 Unlawful Minor Gatherings
- 19.01.040 Enforcement and Penalties
- 19.01.050 Administrative Penalty Authority and Notice.
- 19.01.060 Hearing Request and Procedure.
- 19.01.070 Administrative Order.
- 19.01.080 Collections and Lien Proceedings.
- 19.01.090 Judicial Review.
- 19.01.100 Supplementary Enforcement Authority.

19.01.010 Purpose and Findings.

The City Council of the City of Larkspur does hereby find and declare all of the following:

- A. The intent of this chapter is to protect the public health, safety and general welfare, rather than to punish;
- B. The consumption of alcohol, the ingestion of controlled substances and the use or possession of marijuana by persons under the age of twenty-one years is unlawful and presents a threat to the well-being of the minor and other persons having contact with the minor who has consumed alcohol or used controlled substances or marijuana;
- C. Any party or gathering where the person owning or controlling the premises or event suffers or permits any minor to consume alcohol or ingest controlled substances and/or marijuana is being conducted in a manner that is not properly supervised or controlled and presents a threat to the public safety, health, and welfare;
- D. Unsupervised parties on private or public property where alcohol, marijuana or controlled substances are consumed by minors constitute a potential hazard for the partygoers and those who might come into contact with them during the party or after the minor leaves the party and enters the public domain;
- E. Control by the police of unsupervised parties, gatherings, or events as described above is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;
- F. The occurrence of parties or gatherings as described above contributes to an increase in alcohol and drug abuse and driving under the influence by minors, excessive noise, traffic, and vandalism within the neighborhood or area of the party or gathering, and threatens public safety

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by permitting violations of law to go unpunished and unabated and increasing the risks of alcohol or drug related incidents causing personal injury and/or death; and

G. State law prohibiting conduct which contributes to the delinquency of minors does not address liability for allowing consumption of alcohol by persons who are eighteen years of age or older, but under the legal drinking age, on premises under the control of the adult. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.010)

19.01.020 Definitions.

As used in this chapter, the following terms shall be defined as follows:

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 the possession and use of which are regulated under the California Controlled Substances Act (California Health and 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 substances 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.

D. “Marijuana” is defined as any and all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin and includes concentrated marijuana. The prohibition herein includes marijuana in any form including but not limited to cigarettes, vapor, food products containing marijuana or concentrated marijuana, hash oil and any other product of marijuana that can be smoked or ingested.

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 private or public premises, party bus, limousine or other conveyance where the gathering occurs; and/or
- (2) The person in charge of such 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 under this chapter.

F. “Hearing Officer” means an individual selected by the City Manager from an existing list of duly qualified hearing officers maintained for the purpose of hearing appeals under LMC 19.01.060. The employment, performance, evaluation, compensation and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of administrative

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citation fines upheld by the Hearing Officer.

G. “Minor” means any person less than twenty-one years of age.

H. “Juvenile” means any person less than eighteen years of age.

I. “City” means the City of Larkspur and its officers, employees, and all other persons acting on its behalf.

J. “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 loud or unruly and which is occurring at a place where alcohol is being consumed or controlled substances/marijuana is being ingested by one or more persons.

K. “Loud or unruly gathering” means a party or gathering of two or more persons at a residence or on other private or public property or a party bus, limousine or other conveyance or rented 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 which constitutes a threat to the public health, safety, or quiet enjoyment of residential property or the general welfare. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.020)

19.01.030 Unlawful Minor Gatherings

Except as permitted by Article 1, Section 4, of the California Constitution, no person responsible for an event shall suffer, permit, allow, or host a loud or unruly party, gathering, or event at his or her place of residence or other private property, place, or premises under his or her control or host a gathering at a public place under his or her control or arrange for a party bus, limousine or other conveyance or the renting of same where two or more minors are present and alcoholic beverages, controlled substances or marijuana are in the possession of, or being consumed by or ingested by, one or more minors. Any violation of this section shall be deemed a public nuisance.

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(Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.030)

19.01.040 Enforcement and Penalties

A. Upon a determination that a violation of LMC 19.01.030 has been committed, a public safety officer of the Central Marin Police Authority may issue a notice of violation. A notice of violation shall indicate whether the violation shall be enforced as a criminal offense or administrative penalty. If the violation is enforced as a criminal offense, the notice of violation shall be issued and forwarded for prosecution in the same manner as all other criminal offenses punishable as misdemeanors under this code. If the violation is enforced as an administrative penalty, then the administrative penalty procedures in this chapter shall be followed.

B. In determining whether the offense should be subject to criminal prosecution, the officer shall exercise his or her discretion in considering the following factors: the circumstances surrounding the incident; the number of complaints received regarding similar incidents at the same location or involving the same persons within a twelve-month period; the number of minors attending the party, gathering, or event, the number of minors consuming or in possession of alcohol and/or marijuana or controlled substances, and the conduct of the minors attending the gathering; and any other factors that would support criminal prosecution. The selection of criminal or administrative enforcement under this section shall not be subject to any form of challenge or appeal.

C. If enforced as a criminal offense, a violation of LMC 19.01.030 is punishable as a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) per violation.

D. If enforced as an administrative penalty, a first violation of LMC 19.01.030 shall be subject to an administrative penalty of a fine in the amount of seven hundred fifty dollars (\$750.00). A second violation within a twelve-month period shall be subject to an administrative penalty of a fine in the amount of eight hundred fifty dollars (\$850.00). A third or subsequent violation within a twelve-month period shall be subject to an administrative penalty of a fine in the amount of one thousand dollars (\$1,000) for each violation. The Hearing Officer may in his or her discretion require community service for a violation of LMC 19.01.030 in addition to or in lieu of an administrative fine.

E. In the event that a person in violation of LMC 19.01.030 is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for any administrative fine imposed under this chapter. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.040)

19.01.050 Administrative Penalty Authority and Notice.

A. The administrative penalty proceedings described by this chapter shall be applicable to violations of this chapter only. The fines and administrative penalties provided under this chapter are enacted under the authority of Government Code Sections 36901, 38773.5 and 53069.4.

B. A notice of violation enforceable by administrative penalties under this chapter shall include the following information:

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1. Date and location of the violation, including the address or definite description of the location where the violation occurred or is occurring;
2. Section of the code being violated and a description of the violation;
3. Notice that the violator may, within fifteen days of the date of the notice of violation, appeal said violation to the Hearing Officer;
4. An order prohibiting the continuation or repeated occurrence of a violation of this code described in the notice of violation; and
5. The signature of the citing enforcement officer.

C. The notice of violation required under this section shall be personally served on the violator, or shall be sent by registered or certified United States mail to the property owner at the last known address listed on the most recent tax assessor's records. In the case of service by registered mail or certified mail upon the property owner, a copy of the notice of violation shall be conspicuously posted at the property which is the subject of the notice of violation. The failure of any person to receive a notice of violation that was sent via registered or certified mail shall not affect the validity of any enforcement proceedings under this chapter.

D. The Central Marin Police Authority shall retain a declaration of the person making service, declaring the date, time and manner that service was made, and the date and place of posting if applicable. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.060 Hearing Request and Procedure.

A. Any recipient of a notice of violation enforceable by administrative penalties under this chapter may request an appeal hearing to contest there was a violation, as specified in the notice of violation, or that he or she is responsible for said violation, by completing a "request for hearing form" and returning it to the City Clerk within fifteen days from the date of the notice of violation. At the time of returning the request for hearing form to the City Clerk, the person or entity requesting the appeal hearing shall pay an appeal processing fee of one hundred fifty dollars (\$150.00). Failure to pay the appeal processing fee, or make arrangements for the payment of the fee, may result in the hearing being postponed until the payment of such fee.

B. Any hearing conducted pursuant to this section shall be set for a date not less than fifteen days nor more than sixty days from the date that the request for hearing form is filed in accordance with this chapter, unless the matter is urgent or good cause exists for an extension of time, in which case the date for such hearing may be shortened, or extended, as warranted by the circumstances.

C. Any hearing provided under this section shall provide a full opportunity for the person or persons subject to a notice of violation to appear and contest the determination that a violation has occurred and/or that the violation continues to exist. If the appeal hearing involves a juvenile,

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such a hearing shall be private and confidential unless the juvenile's parents/guardians specifically request that the hearing be public. The failure of any interested party to appear at a requested appeals hearing shall constitute a failure by such party to exhaust his/her/their administrative remedies, and a waiver of the same.

D. At the place and time set forth in the notice of hearing, the Hearing Officer shall conduct a hearing on the notice of violation. The Hearing Officer shall consider any written or oral evidence regarding the violation that may be presented by the violator, real property owner, any officer or agent of the Authority and/or City, and any other interested party.

E. After receiving all of the evidence presented, the public testimony portion of the hearing shall be closed. The hearing officer may then consider what action, or actions, if any, should be taken, including the imposition of any fines or penalties.

F. Within thirty days following the conclusion of the hearing, the Hearing Officer shall issue written findings and make a determination regarding the existence of the violation. If the Hearing Officer finds by a preponderance of the evidence that a violation occurred, the Hearing Officer shall issue a written finding of those facts. The decision of the Hearing Officer shall be final.

G. The recipient or recipients of a notice of violation shall be served with a copy of the decision of the Hearing Officer, including an administrative order if one is issued, in the manner and method set forth by LMC 19.01.050(C). (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.070 Administrative Order.

If the Hearing Officer determines that a violation occurred as set forth by the notice of violation, the Hearing Officer shall issue an administrative order.

A. An administrative order may impose an administrative fine in the applicable amount set forth by LMC 19.01.040(D) per violation, or, in the alternative, a number of hours of community service as determined by the Hearing Officer. The denial of community service by the Hearing Officer may not be appealed under Government Code Section 53069.4.

B. Any appeal processing fee that is paid pursuant to LMC 19.01.060(A) shall be refunded to the payee if it is determined, after a hearing, that the person charged in the notice of violation was not responsible for the violation or that there was no violation as charged in said notice. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.080 Collections and Lien Proceedings.

A. Any administrative fine or penalty in the amount set forth by the notice of violation, if an appeal is not requested in a timely manner, or as ordered by the Hearing Officer, if the matter is timely appealed, shall be paid to the City within thirty days of service of the notice of violation or administrative order, unless an extension of time is requested by the violator and granted by the City.

B. Payment of a fine or penalty imposed pursuant to this chapter shall not excuse or permit any

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continuation or repeated occurrence of the violation that is the subject of the notice of violation.

C. Any administrative penalty or fines imposed within the notice of violation, if no timely appeal is made, or ordered by the Hearing Officer, if the matter is appealed, are a debt owed to the City. In addition to all other means of enforcement, any fines or penalties specified in the notice of violation, if no timely appeal is made, or specified in the administrative order of the Hearing Officer, may be enforced as a personal obligation of the violator.

D. If the violation is connected with real property and the violator is an owner of the real property, any fines or penalties may be enforced by imposition of a lien on the real property. The Central Marin Police Authority shall prepare and file with the City Clerk a report stating the amount due and owing. The City may record notice of this lien after a hearing before the City Council to consider any protest or objection to the lien. The City shall serve notice of the hearing upon the owner of record of the real property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of hearing shall include the time, date, and place of the hearing and the amount of the lien to be imposed, and shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation published in Marin County, California. If the City Council determines that the lien should be imposed, the City may cause notice of the lien to be recorded with the County Recorder. Once recorded, the lien shall have the force and effect and priority of a judgment lien. Any fee imposed on the City by the County Recorder for costs of processing and recording the lien and the cost of providing notice to the property owner in the manner described herein may be recovered from the property owner in any foreclosure action to enforce the lien after recordation.

E. The remedies set forth in this section are not exclusive. The City may collect administrative penalties and fines by the use of the small claims court or by any other legal remedy. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.090 Judicial Review.

Any person aggrieved by an administrative fine determination of the Hearing Officer may obtain review of that decision by filing a petition for review in the Marin County Superior Court, in accordance with Government Code Section 53069.4. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.050)

19.01.100 Supplementary Enforcement Authority.

Nothing in this chapter shall prevent the City from initiating a civil or administrative action, or any other legal or equitable proceeding, to obtain compliance or to discourage noncompliance with the provisions of this code. The enforcement procedures described by this chapter are intended to be alternative methods of obtaining compliance and/or discouraging noncompliance with the provisions of this code and are expressly intended to be in addition to any other remedies provided by law. It is the intent of the City Council that the immunities prescribed in Penal Code Section 836.5 shall be applicable to personnel of the Central Marin Police Authority and of the City acting in the course and scope of employment pursuant to this chapter. (Ord.

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1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.060)

The Larkspur Municipal Code is current through Ordinance 1025, passed November 15, 2017, and other legislation passed December 6, 2017.

Disclaimer: The City Clerk's Office has the official version of the Larkspur Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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Chapter 19.01
Social Host Accountability Ordinance

Sections:

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19.01.010 Purpose and Findings.

The City Council of the City of Larkspur does hereby find and declare all of the following:

A. The intent of this chapter is to protect the public health, safety and general welfare, rather than to punish;

A.B. The consumption of ~~alcohol~~ alcohol, the ingestion of controlled substances and the use or possession of marijuana by persons under the age of twenty-one years is unlawful and presents a threat to the well-being of the minor ~~consuming alcohol~~ and other persons having contact with the minor ~~that who~~ has consumed alcohol or used controlled substances or marijuana;

B.C. Any party or gathering where the person owning or controlling the premises or event suffers or permits any minor to consume alcohol or ingest controlled substances and/or marijuana is being conducted in a manner that is not properly supervised or controlled and presents a threat to the public safety, health, and welfare;

C.D. Unsupervised parties on private or public property where alcohol, marijuana or controlled substances are- is consumed by minors constitute a potential hazard for the partygoers and those who might come into contact with them during the party or after the minor leaves the party and enters the public domain;

D.E. Control by the police of unsupervised parties, gatherings, or events ~~on private property at which alcohol is consumed by minors~~ as described above is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;

E.F. The occurrence of parties or gatherings ~~at which minors consume alcohol~~ as described above contributes to an increase in alcohol and drug abuse and driving under the influence by minors, excessive noise, traffic, and vandalism within the neighborhood or area of the party or

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gathering, and threatens public safety by permitting violations of law to go unpunished and unabated and increasing the risks of alcohol or drug-related incidents causing personal injury and/or death; and

~~F.G.~~ State law prohibiting conduct which contributes to the delinquency of minors does not address liability for allowing consumption of alcohol by persons who are eighteen years of age or older, but under the legal drinking age, on premises under the control of the adult. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.010)

19.01.020 Definitions.

As used in this chapter, the following terms shall be defined as follows:

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

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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 the possession and use of which are regulated under the California Controlled Substances Act (California Health and 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 substances 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.

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

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 private or public premises, party bus, limousine or other conveyance where the gathering occurs; and/or

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(2) The person in charge of such premises; and/or

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(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 under this chapter.

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~~E.F.~~ "Hearing Officer" means an individual selected by the City Manager from an existing list of duly qualified hearing officers maintained for the purpose of hearing appeals under LMC 19.01.060. The employment, performance, evaluation, compensation and benefits of the Hearing

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Officer, if any, shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the Hearing Officer.

~~D.G.~~ “Minor” means any person less than twenty-one years of age.

~~E.H.~~ “Juvenile” means any person less than eighteen years of age.

~~F.I.~~ “City” means the City of Larkspur and its officers, employees, and all other persons acting on its behalf.

~~G.J.~~ “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 loud or unruly and which is occurring at a place where alcohol is being consumed or controlled substances/marijuana is being ingested by one or more persons.

~~H.K.~~ “Loud or unruly gathering” means a party or gathering of two or more persons at a residence or on other private or public property or a party bus, limousine or other conveyance 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 which constitutes a threat to the public health, safety, or quiet enjoyment of residential property or the general welfare. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.020)

19.01.030 Unlawful Minor Gatherings ~~on Private Property.~~

Except as permitted by Article 1, Section 4, of the California Constitution, no person responsible for an event shall suffer, permit, allow, or host a loud or unruly party, gathering, or event at his or her place of residence or other private property, place, or premises under his or her control or host a gathering at a public place under his or her control or arrange for a party bus, limousine or other conveyance or the renting of same where two or more minors are present and alcoholic beverages, controlled substances or marijuana are in the possession of, or being consumed by or

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ingested by, one or more minors. Any violation of this section shall be deemed a public nuisance. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.030)

19.01.040 Enforcement and Penalties

A. Upon a determination that a violation of LMC 19.01.030 has been committed, a public safety officer of the Central Marin Police Authority may issue a notice of violation. A notice of violation shall indicate whether the violation shall be enforced as a criminal offense or administrative penalty. If the violation is enforced as a criminal offense, the notice of violation shall be issued and forwarded for prosecution in the same manner as all other criminal offenses punishable as misdemeanors under this code. If the violation is enforced as an administrative penalty, then the administrative penalty procedures in this chapter shall be followed.

B. In determining whether the offense should be subject to criminal prosecution, the officer shall exercise his or her discretion in considering the following factors: the circumstances surrounding the incident; the number of complaints received regarding similar incidents at the same location or involving the same persons within a twelve-month period; the number of minors attending the party, gathering, or event, the number of minors consuming or in possession of alcohol and/or marijuana or controlled substances, and the conduct of the minors attending the gathering; and any other factors that would support criminal prosecution. The selection of criminal or administrative enforcement under this section shall not be subject to any form of challenge or appeal.

C. If enforced as a criminal offense, a violation of LMC 19.01.030 is punishable as a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) per violation.

D. If enforced as an administrative penalty, a first violation of LMC 19.01.030 shall be subject to an administrative penalty of a fine in the amount of seven hundred fifty dollars (\$750.00). A second violation within a twelve-month period shall be subject to an administrative penalty of a fine in the amount of eight hundred fifty dollars (\$850.00). A third or subsequent violation within a twelve-month period shall be subject to an administrative penalty of a fine in the amount of one thousand dollars (\$1,000) for each violation. The Hearing Officer may in his or her discretion require community service for a violation of LMC 19.01.030 in addition to or in lieu of an administrative fine.

E. In the event that a person in violation of LMC 19.01.030 is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for any administrative fine imposed under this chapter. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.040)

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A. The administrative penalty proceedings described by this chapter shall be applicable to violations of this chapter only. The fines and administrative penalties provided under this chapter are enacted under the authority of Government Code Sections 36901, 38773.5 and 53069.4.

B. A notice of violation enforceable by administrative penalties under this chapter shall include

the following information:

1. Date and location of the violation, including the address or definite description of the location where the violation occurred or is occurring;
2. Section of the code being violated and a description of the violation;
3. Notice that the violator may, within fifteen days of the date of the notice of violation, appeal said violation to the Hearing Officer;
4. An order prohibiting the continuation or repeated occurrence of a violation of this code described in the notice of violation; and
5. The signature of the citing enforcement officer.

C. The notice of violation required under this section shall be personally served on the violator, or shall be sent by registered or certified United States mail to the property owner at the last known address listed on the most recent tax assessor's records. In the case of service by registered mail or certified mail upon the property owner, a copy of the notice of violation shall be conspicuously posted at the property which is the subject of the notice of violation. The failure of any person to receive a notice of violation that was sent via registered or certified mail shall not affect the validity of any enforcement proceedings under this chapter.

D. The Central Marin Police Authority shall retain a declaration of the person making service, declaring the date, time and manner that service was made, and the date and place of posting if applicable. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.060 Hearing Request and Procedure.

A. Any recipient of a notice of violation enforceable by administrative penalties under this chapter may request an appeal hearing to contest there was a violation, as specified in the notice of violation, or that he or she is responsible for said violation, by completing a "request for hearing form" and returning it to the City Clerk within fifteen days from the date of the notice of violation. At the time of returning the request for hearing form to the City Clerk, the person or entity requesting the appeal hearing shall pay an appeal processing fee of one hundred fifty dollars (\$150.00). Failure to pay the appeal processing fee, or make arrangements for the payment of the fee, may result in the hearing being postponed until the payment of such fee.

B. Any hearing conducted pursuant to this section shall be set for a date not less than fifteen days nor more than sixty days from the date that the request for hearing form is filed in accordance with this chapter, unless the matter is urgent or good cause exists for an extension of time, in which case the date for such hearing may be shortened, or extended, as warranted by the circumstances.

C. Any hearing provided under this section shall provide a full opportunity for the person or persons subject to a notice of violation to appear and contest the determination that a violation

has occurred and/or that the violation continues to exist. If the appeal hearing involves a juvenile, such a hearing shall be private and confidential unless the juvenile's parents/guardians specifically request that the hearing be public. The failure of any interested party to appear at a requested appeals hearing shall constitute a failure by such party to exhaust his/her/their administrative remedies, and a waiver of the same.

D. At the place and time set forth in the notice of hearing, the Hearing Officer shall conduct a hearing on the notice of violation. The Hearing Officer shall consider any written or oral evidence regarding the violation that may be presented by the violator, real property owner, any officer or agent of the Authority and/or City, and any other interested party.

E. After receiving all of the evidence presented, the public testimony portion of the hearing shall be closed. The hearing officer may then consider what action, or actions, if any, should be taken, including the imposition of any fines or penalties.

F. Within thirty days following the conclusion of the hearing, the Hearing Officer shall issue written findings and make a determination regarding the existence of the violation. If the Hearing Officer finds by a preponderance of the evidence that a violation occurred, the Hearing Officer shall issue a written finding of those facts. The decision of the Hearing Officer shall be final.

G. The recipient or recipients of a notice of violation shall be served with a copy of the decision of the Hearing Officer, including an administrative order if one is issued, in the manner and method set forth by LMC 19.01.050(C). (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.070 Administrative Order.

If the Hearing Officer determines that a violation occurred as set forth by the notice of violation, the Hearing Officer shall issue an administrative order.

A. An administrative order may impose an administrative fine in the applicable amount set forth by LMC 19.01.040(D) per violation, or, in the alternative, a number of hours of community service as determined by the Hearing Officer. The denial of community service by the Hearing Officer may not be appealed under Government Code Section 53069.4.

B. Any appeal processing fee that is paid pursuant to LMC 19.01.060(A) shall be refunded to the payee if it is determined, after a hearing, that the person charged in the notice of violation was not responsible for the violation or that there was no violation as charged in said notice. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.080 Collections and Lien Proceedings.

A. Any administrative fine or penalty in the amount set forth by the notice of violation, if an appeal is not requested in a timely manner, or as ordered by the Hearing Officer, if the matter is timely appealed, shall be paid to the City within thirty days of service of the notice of violation or administrative order, unless an extension of time is requested by the violator and granted by the City.

B. Payment of a fine or penalty imposed pursuant to this chapter shall not excuse or permit any continuation or repeated occurrence of the violation that is the subject of the notice of violation.

C. Any administrative penalty or fines imposed within the notice of violation, if no timely appeal is made, or ordered by the Hearing Officer, if the matter is appealed, are a debt owed to the City. In addition to all other means of enforcement, any fines or penalties specified in the notice of violation, if no timely appeal is made, or specified in the administrative order of the Hearing Officer, may be enforced as a personal obligation of the violator.

D. If the violation is connected with real property and the violator is an owner of the real property, any fines or penalties may be enforced by imposition of a lien on the real property. The Central Marin Police Authority shall prepare and file with the City Clerk a report stating the amount due and owing. The City may record notice of this lien after a hearing before the City Council to consider any protest or objection to the lien. The City shall serve notice of the hearing upon the owner of record of the real property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of hearing shall include the time, date, and place of the hearing and the amount of the lien to be imposed, and shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation published in Marin County, California. If the City Council determines that the lien should be imposed, the City may cause notice of the lien to be recorded with the County Recorder. Once recorded, the lien shall have the force and effect and priority of a judgment lien. Any fee imposed on the City by the County Recorder for costs of processing and recording the lien and the cost of providing notice to the property owner in the manner described herein may be recovered from the property owner in any foreclosure action to enforce the lien after recordation.

E. The remedies set forth in this section are not exclusive. The City may collect administrative penalties and fines by the use of the small claims court or by any other legal remedy. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015)

19.01.090 Judicial Review.

Any person aggrieved by an administrative fine determination of the Hearing Officer may obtain review of that decision by filing a petition for review in the Marin County Superior Court, in accordance with Government Code Section 53069.4. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.050)

19.01.100 Supplementary Enforcement Authority.

Nothing in this chapter shall prevent the City from initiating a civil or administrative action, or any other legal or equitable proceeding, to obtain compliance or to discourage noncompliance with the provisions of this code. The enforcement procedures described by this chapter are intended to be alternative methods of obtaining compliance and/or discouraging noncompliance with the provisions of this code and are expressly intended to be in addition to any other remedies provided by law. It is the intent of the City Council that the immunities prescribed in Penal Code Section 836.5 shall be applicable to personnel of the Central Marin Police Authority

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and of the City acting in the course and scope of employment pursuant to this chapter. (Ord. 1007 § 1, 2015; Ord. 1002 §§ 2, 3, 2015; Ord. 961 § 1 (part), 2008. Formerly 9.56.060)

The Larkspur Municipal Code is current through Ordinance 1025, passed November 15, 2017, and other legislation passed December 6, 2017.

Disclaimer: The City Clerk's Office has the official version of the Larkspur Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.
