

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF CASA GRANDE, ARIZONA ADOPTING SECTIONS 9.16.050 AND 9.08.010 OF THE CITY OF CASA GRANDE MUNICIPAL CODE TO INCLUDE A PROHIBITION AGAINST PERMITTING OR ENCOURAGING UNDERAGE DRINKING AND A PROHIBITION AGAINST UNRULY GATHERINGS AND SETTING A PUNISHMENT FOR VIOLATING THOSE SECTIONS; ESTABLISHING THE SEVERABILITY OF THE VARIOUS SECTIONS OF THE ORDINANCE; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF CASA GRANDE, ARIZONA:

Section 1: Section 9.16.050 of Chapter 9.16 of Title 9 of the Casa Grande Municipal Code is hereby adopted, to read as follows

9.16.050 Permitting or Encouraging Underage Drinking

(a) No person eighteen years or older who owns or occupies any premises shall knowingly permit or fail to take reasonable action to prevent illegal consumption of spirituous liquor or drugs by any person.

(b) A person who violates this section is guilty of a class 1 misdemeanor.

Section 2: Section 9.08.010 of Chapter 9.08 of Title 9 of the Casa Grande Municipal Code is hereby adopted, to read as follows:

9.08.010 Unruly Gatherings

(a) *Definitions.* For the purposes of this section, unless the context otherwise requires, the following terms or phrases are defined as:

Owner means any owner, as well as any agent of an owner acting on behalf of the owner to control or otherwise regulate the occupancy or use of the property.

Premises means the property that is the site of an unruly gathering. For residential properties, premises means the dwelling unit or units where the unruly gathering occurs.

Unruly gathering means a gathering of five (5) or more persons on any private property, including property used to conduct business, in a manner which causes a disturbance of the quiet enjoyment of private or public property by any person or persons. Such disturbances include, but are not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, drinking in public, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and littering.

(b) *Abatement of unruly gathering.* A peace officer may abate an unruly gathering by reasonable means including, but not limited to, citation or arrest of violators under applicable ordinances or state statutes, and dispersal of the persons attending the gathering.

(c) *Notice of unruly gathering; posting; removal of notice prohibited; right to contest posting*

(1) *Contents of notice.* The premises at which the unruly gathering occurs shall be posted with a notice stating:

- a. That an unruly gathering has occurred at the premises;
- b. The date of the unruly gathering;
- c. That any subsequent unruly gathering on the same premises within a one hundred and eighty (180) day period shall result in liability for the penalties provided in this section. Parties liable include any persons in attendance causing the gathering to be unruly, or any owner, occupant or tenant of the premises at which the unruly gathering occurred, or any sponsor of the event constituting the unruly gathering; and
- d. The right to contest the posting as provided in subsection (c)(4) of this section.

(2) *Posting requirements.* Premises shall be posted with a notice as provided in this section each time an unruly gathering occurs. The owner, occupant or tenant of the premises or sponsor of the event constituting the unruly gathering, if present, shall be consulted as to the location in which such notice is posted in order to achieve both the security of the notice and its prominent display.

In the event that a premises is already posted at the time of a subsequent posting, the one hundred and eighty (180) day period from the date of the existing posting shall be extended to one hundred and eighty (180) days from the date of the subsequent posting. Once a premises is initially posted as a result of an unruly gathering and the conduct causing the gathering to be unruly has ceased, a resumption of unruly behavior on the premises resulting in another police response shall constitute a new and separate unruly gathering for purposes of this section.

(3) *Removal of notice prohibited.* The owner, occupant, or tenant of the posted premises shall be responsible for ensuring that the notice is not removed, defaced, or concealed. The removal, defacement, or concealment of a posted notice is a civil infraction carrying a penalty of a minimum, mandatory one

hundred dollar (\$100.00) fine, in addition to any other penalties which may be imposed under this section.

(4) *Right to contest posting.*

- a. An owner, occupant, or tenant of the posted premises may contest the posting of the notice by filing a written petition for review with the civil infractions division of the city court requesting that the court determine whether justification existed for posting of the notice under the provisions of this section. The petition must be filed within ten (10) days after the posting of the notice or, if the notice is given by mail, within fifteen (15) days after the date of the mailing of the notice, and not thereafter. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the written petition and shall notify both the petitioner and the criminal division of the city attorney's office of the hearing date. In order to avoid the possibility of conflicting rulings, if more than one (1) petition is filed under this subsection relating to a single posting, for example by multiple lawful occupants of the posted premises, the court shall set only one (1) hearing and shall consolidate the petitions and notify all petitioners of the hearing date and time. At the hearing, the city has the burden of proving by a preponderance of evidence that the posting of the notice was justified pursuant to the provisions of this section.
- b. An owner of a posted premises, at any time after the posting or the mailing of the notice, may petition the court for an order directing the removal of the notice on the grounds that the owner has taken reasonable and necessary actions, such as evicting a tenant responsible for the violation, to prevent the occurrence of a subsequent unruly gathering at the posted location. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the petition and shall notify both the petitioner and the criminal division of the city attorney's office of the hearing date. At the hearing, the petitioner has the burden of proving by a preponderance of evidence that the petitioner has taken reasonable and necessary actions to prevent the occurrence of a subsequent unruly gathering. This petition process is not available to an owner who was present at the unruly gathering and engaged in conduct causing the gathering to be unruly.

(d) *Notification of property owner.*

- (1) Notification of the posting of the notice of unruly gathering shall be mailed to any property owner at the address shown on the Pinal County Property Tax Assessment Records. The notification shall advise the property owner that any subsequent unruly gathering within one hundred and eighty (180) days on the same premises shall result in liability of the property owner for

all applicable penalties as provided in this article. Notification shall be made by certified mail. The return receipt shall be prima facie evidence of service.

Additionally, notice shall be provided to an agent of the owner who controls or regulates the use of the premises, if known. Notice to the owner's agent may be provided by hand delivery or by certified or regular mail sent to the agent's last known address.

- (2) The failure to serve notice to any person described in this subsection shall not invalidate any citation or other proceedings as to any other person duly served, or relieve any such person from any duty imposed by this section.
- (e) *Unruly gathering a civil infraction; parties responsible.* An unruly gathering is unlawful and constitutes a civil infraction. The following parties, if found responsible for such an infraction, are liable for the penalties provided in subsection (g)(1):
- (1) The person or persons who organized or sponsored the event constituting the unruly gathering, including any owner or occupant in attendance at the unruly gathering.
 - (2) Any person in attendance at the unruly gathering who engaged in any conduct causing the gathering to be unruly.
- (f) *Subsequent unruly gathering a civil infraction; parties responsible.* The occurrence of an unruly gathering on the same premises more than once in any one hundred and eighty (180) day period is a civil infraction. The following parties, if found responsible for such an infraction, are liable for the penalties provided in subsection (g)(2):
- (1) The owner of the property where the subsequent unruly gathering occurred, if either:
 - a. The owner was present when the property was posted, or
 - b. Notification of posting was mailed or delivered to the owner of the property per subsection (d), and the subsequent unruly gathering occurred not less than two (2) weeks after the mailing of such notification.
 - (2) The occupant or tenant of the property where the subsequent unruly gathering occurred.
 - (3) The person or persons who organized or sponsored the event constituting the subsequent unruly gathering.
 - (4) Any person in attendance at the subsequent unruly gathering who engaged in any conduct causing the gathering to be unruly.

Nothing in this section shall be construed to impose liability on the owner, occupant, or tenant of the premises or sponsor of the event constituting the unruly gathering, for the conduct of persons who are in attendance without the express or implied consent of the owner, occupant, tenant, or sponsor, as long as the owner, occupant, tenant or sponsor has taken steps reasonably necessary to prevent a subsequent unruly gathering or to exclude the uninvited persons from the premises, including owners who are actively attempting to evict a tenant from the premises. Where an invited person engages in unlawful conduct which the owner, occupant, tenant or sponsor could not reasonably foresee and could not reasonably control without the intervention of the police, the unlawful conduct of the person shall not be attributable to the owner, occupant, tenant or sponsor for the purposes of determining liability under this section.

(g) *Penalties.*

- (1) *Unruly gathering.* The penalty for a party found responsible for an unruly gathering, as provided in subsection (e), shall be a minimum mandatory fine of one hundred dollars (\$100.00).
- (2) *Subsequent unruly gathering.* The penalty for a party found responsible for the occurrence of a subsequent unruly gathering, as provided in subsection (f), shall be a minimum mandatory fine of five hundred dollars (\$500.00) for a first violation, a minimum mandatory fine of one thousand dollars (\$1,000.00) for a second violation, and minimum mandatory fines of one thousand five hundred dollars (\$1,500.00) for each third or subsequent violation.
- (3) *Abatement.* The civil fines provided herein shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of an unruly gathering. The court shall also enter an order of abatement against a party found responsible for a violation of this section pursuant to Title 8 of the City of Casa Grande Municipal Code.

(h) *Enforcement.* The police department is authorized to enforce the provisions of this section provided that enforcement is initiated by a complaint from a member of the public. The complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible.

Section 3: If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of any code or amendment adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 4: The provisions of this ordinance and the public records adopted herein are effective on and after _____.

PASSED AND ADOPTED by the Mayor and Council of the City of Casa Grande, Arizona, this _____ day of _____, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT