

**CITY OF GALLUP
ORDINANCE NO. C2011-7**

AN ORDINANCE PROVIDING FOR SOCIAL HOST LIABILITY AND ESTABLISHING A REQUIREMENT THAT HOSTS REIMBURSE THE CITY FOR EMERGENCY SERVICES RESPONSE COSTS.

WHEREAS, pursuant to the police powers delegated to the City of Gallup, the governing body has the authority to adopt Ordinances that promote the public health, safety and general welfare of its residents and in particular underage persons; and

WHEREAS, the occurrence of loud or unruly gatherings where alcoholic beverages are served to or consumed by underage persons is harmful to the underage persons and a threat to public health, safety, general welfare and quiet enjoyment of persons occupying adjoining property; and

WHEREAS, underage persons often obtain alcoholic beverages at gatherings held at private residences or at rented residential, commercial or public premise ("premises") that are under the control of person(s) who know or should know of the underage serving and/or consumption of alcohol; and

WHEREAS, law enforcement, fire and other emergency response services personnel which are funded by gross receipts taxes paid by city of Gallup residents are required to respond, sometimes on multiple occasions, to loud or unruly gatherings at which alcoholic beverages are served to or consumed by underage persons, and responses to such gatherings result in a disproportionate expenditure of public safety resources of the City of Gallup, delaying police responses to other regular and emergency calls; and

WHEREAS, persons responsible for the occurrence of a loud or unruly gathering on premises over which they have possession or control who fail to ensure that alcoholic beverages are neither served to nor consumed by underage persons should be charged with a misdemeanor and should be required to reimburse the City its costs of response; and

WHEREAS, landlords have failed to prevent the occurrence or reoccurrence of loud or unruly gatherings, including those where alcoholic beverages are served to or consumed by underage persons, which seriously disrupts the quiet enjoyment of neighboring residents; and

WHEREAS, problems associated with loud or unruly gatherings at which alcoholic beverages are served to or consumed by underage persons are difficult to prevent and deter unless the City of Gallup police department has the legal authority to direct the Host to disperse the gathering; and

WHEREAS, Hosts held responsible for abetting or tolerating loud or unruly gatherings will be more likely to properly supervise or stop such conduct at their gatherings.

BE IT ORDAINED by the Governing Body of the City of Gallup, New Mexico, that:

Definitions.

The following terms shall have the following meanings:

- 1) **Alcohol** means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- 2) **Alcoholic beverage** means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, 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.
- 3) **Drug** means a drug or substance listed in Schedules I through V of the Controlled Substance Act of the State of New Mexico.
- 4) **Loud or unruly gathering** means a party or gathering of two or more persons at or on a residence, other private property, or public property where a license for it has not been obtained upon which loud or unruly conduct occurs. A loud or unruly gathering shall constitute a public nuisance. Loud or unruly conduct includes, without limitation:
 - a. Excessive noise;
 - b. Excessive traffic;
 - c. Obstruction of public streets or crowds that have spilled into public streets;
 - d. Public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;
 - e. Service to or consumption of alcohol or alcoholic beverages by any underage person, except as permitted by law.
 - f. Consumption of drugs contrary to the laws of the State of New Mexico;
 - g. Assaults, batteries, fights, domestic violence or other disturbances of the peace;
 - h. Vandalism;
 - i. Litter, and
 - j. Any other conduct which constitutes a threat to public health, safety, quiet enjoyments of residential property or general welfare.
- 5) **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:
 - a. Salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with loud or unruly gatherings, and the administrative costs attributable to such response(s).
 - b. 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 a loud or unruly gathering;
 - c. The cost of repairing any city equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of a loud or unruly gathering.

- 6) Responsible person/Host means a person or persons with a right of possession in the residence, other private property or public property on which a loud or unruly gathering is conducted, including, without limitation;
 - a. An owner of the residence or other private property;
 - b. A tenant or lessee of the residence or other private property;
 - c. The landlord of another person responsible for the gathering;
 - d. The person(s) in charge of the residence or other private property; and
 - e. The person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering.
- 7) Underage person means any person under twenty-one years of age.
- 8) Residence or other private property means a home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented, or used with or without compensation.

Responsibility.

- 1) Every owner, occupant, lessee, licensee or holder of any possessory interest of a residence, other private or public property within the City of Gallup is required to maintain, manage and supervise the property and all persons thereon in a manner so as not to violate the provisions of this Ordinance. The Host remains liable for such violations regardless of any contract or agreement with any third party regarding the property.
- 2) The Host shall not conduct, aid, allow, permit or condone a loud or unruly gathering at a residence or other private property.
- 3) If the Host of the gathering is under the age of eighteen, then his/her parents or guardians and the person under the age of eighteen are jointly and severally liable for the response costs incurred pursuant to this Ordinance.
- 4) To incur liability for response costs imposed by this Ordinance, the Host of the loud or unruly gathering need not be present at such gathering resulting in the response giving rise to the imposition of response costs. This Ordinance therefore imposes vicarious as well as direct liability upon a responsible person.

Warning Issued.

- 1) When a law enforcement, fire or other emergency response provider official makes an initial response to a loud or unruly gathering at a residence or other private or public property within the City of Gallup, the official shall inform any responsible person(s) for the gathering at the scene that:
 - a. The official has determined that a loud or unruly gathering exists; and
 - b. Hosts will be charged for any response costs required for subsequent responses to the scene for a loud or unruly gathering within a twelve-month period. Only one warning will be given to a Host pursuant to this Section before the City of Gallup assesses response costs. If a Host

cannot be identified at the scene, the official may subsequently return to the premises and issue the warning to a then-present Host. Warnings given to a Host who do not reside at the premises in question shall be delivered by certified mail.

- c. A warning given pursuant to this Section shall remain in effect for the premises at a given address until a full twelve month period has elapsed during which there have been no response to a loud or unruly gathering at that premises;

Recover of Response Costs.

- 1) When a law enforcement, fire or other emergency response provider responds to a loud or unruly gathering at a premises within the City within a twelve-month period of a warning given to a Host for a loud or unruly gathering, all responsible persons shall be jointly and severally liable for the City's costs of providing response and for all subsequent responses during the warning period according to the schedule of cost for recovery established by the police department. The cost recover schedule shall be available at the city's police department and at the city clerk's office.

Billing and Collection.

- 1) The amount of response costs shall be deemed a debt owed to the City of Gallup by the Host responsible for the loud or unruly gathering. Notice of the costs for which the Host is liable shall be mailed via certified mail within fourteen (14) days of the response giving rise to such costs. The notice shall contain the following information:
 - a. The name of the person(s) being held liable for the payment of such costs;
 - b. The premises address of the loud or unruly gathering;
 - c. The date and time of the response;
 - d. The law enforcement, fire or emergency service provider who responded;
 - e. The date and time of any previous warning given pursuant to this Ordinance and/or previous warning given pursuant to this Ordinance and/or previous responses to loud or unruly gatherings at the residence or other private property in question within the previous twelve months; and
 - f. The recovery cost assessed as set forth in the cost recovery schedule.
- 2) The Host shall remit payment of the notice response cost to the City of Gallup within thirty (30) days of the date of the notice.

Reservation of Legal Options.

Nothing in this Ordinance shall be construed as a waiver by the City of Gallup of any right to seek reimbursement for actual costs of response services through other legal remedies or procedures. The procedures provided for in this Ordinance are in addition to any other statute, ordinance or law, civil or criminal. This Ordinance in no

way limits the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this Ordinance.

Appeals.

Any person upon whom is imposed response costs shall have the right to petition district court for writ of certiorari pursuant to Rule 1-075 NMRA.

Severability.

If any provisions of this Ordinance or its application to any person or circumstances are held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Effective Date.

This Ordinance shall become effective the 13th day of January, 2012.

PASSED, APPROVED AND ADOPTED this 13th day of December, 2011.

CITY OF GALLUP, NEW MEXICO

By: /s/ Jackie D. McKinney, Mayor

ATTEST:

/s/ Alfred Abeita, City Clerk

VOTE:

Mayor McKinney	<u>Aye</u>
Councilor Garcia	<u>Aye</u>
Councilor Enfield	<u>Absent</u>
Councilor Landavazo	<u>Aye</u>
Councilor Wall	<u>Aye</u>

Motion made by: Councilor Garcia

Seconded by: Councilor Landavazo

