

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

IN THE MATTER OF:

**Amending Chapter 9.08 of the Town of
Moraga Municipal Code Regarding
Liability for Police Response To Loud
or Unruly Parties**)
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ORDINANCE NO. 254

WHEREAS, Chapter 9.08: Liability for Police Response to Loud or Unruly Parties was initially added to the Town of Moraga Municipal Code after adoption of Ordinance 187 by the Town Council in 2001; and

WHEREAS, in 2008, Chapter 9.08 of the Moraga Municipal Code was deleted in its entirety, and replaced adding 180-day periods between police responses as applicable for enforcement; and

WHEREAS, in 2008, Chapter 9.08 also added specified fines for multiple responses within the 180-day time period at \$100 for the first subsequent police response (after a written warning issuance), \$500 for a second subsequent police response, and \$1,000 for a third subsequent police response; and

WHEREAS, the Moraga Town Council desires to amend Chapter 9.08 to lengthen the 180-day period to a 12 month period; increase the fine for the first subsequent police response (after a written warning issuance) to \$250; and affirm that the enforcement remedies set forth in Chapter 9.08 are in addition to any other enforcement remedies set forth in the Moraga Municipal Code.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 9.08 entitled, "Liability for Police Response to Loud or Unruly Parties," is hereby deleted in its entirety and replaced with the following:

"Chapter 9.08

LIABILITY FOR POLICE RESPONSE TO LOUD OR UNRULY PARTIES

Sections:

- 9.08.010 Authority and purpose.
- 9.08.020 Definitions.
- 9.08.030 Notification of liability for costs of Subsequent Police Response.

- 9.08.040 Violation and Fines.
- 9.08.050 Police Service Fee.
- 9.08.060 Billing.
- 9.08.070 Appeal.
- 9.08.080 Recovery of Police Service Fee as a Nuisance Abatement Lien or Special Assessment.

9.08.010 Authority and Purpose.

- A. Authority. This Chapter is enacted pursuant to Government Code sections 38771 through 38773.5 and the Town's police powers.
- B. Purpose. The Town Council finds and determines that loud or unruly parties may constitute a public nuisance and threat to the peace, health, safety, or general welfare of the public. The Town's police officers have been required to make multiple responses to parties in order to abate such threats and disperse loud or unruly participants. Requiring multiple responses drains the resources of the Police Department and can leave other areas of the Town without minimal levels of police protection.

9.08.020 Definitions.

In this chapter, unless the context otherwise requires, the following terms shall have the following meanings.

- A. "Loud or Unruly Party" shall mean a group of persons who are assembling for a social gathering, activity, or event where any person(s):
 - 1. Makes, continues or causes to be made any loud or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to a reasonable person of normal sensitivity for an unreasonable amount of time;
Causes excessive traffic or obstruction of public streets due to crowds, vehicles, or public drunkenness;
 - 3. Unlawfully fights, riots, or uses force or violence; or
 - 4. Commits any unlawful act, including but not limited to, service of alcohol to minors, disorderly conduct, or crimes against the public peace as set forth under state or local law.

Loud or Unruly Party shall not include (i) any activity protected by Article I, Section 4 of the California Constitution, (ii) an organized sporting or theatrical event, or (iii) a Town-sponsored or sanctioned event.

- B. "Person Responsible" shall mean (i) any person(s) who owns, rents, leases, occupies, or otherwise controls the premises where the Loud or Unruly Party occurs, or (ii) any person(s) who organized the Loud or Unruly Party. If the Person Responsible is a minor, then his or her parent(s) or guardian(s) shall also be considered Person(s) Responsible.
- C. "Subsequent Police Response" is a subsequent response by any member of the Police Department to the same Loud or Unruly Party after the police have previously provided written notification in accordance with section 9.08.030 and such a response (i) is made pursuant to a citizen complaint, and (ii) results in the abatement of the Loud or Unruly Party because the Person Responsible failed to cease and desist the loud or unruly nature of the party.
- D. "Special Security Assignment" means the police services provided during a subsequent call to the same location within a 12 month period to respond to a Loud or Unruly Party after issuance of written notification pursuant to section 9.08.030.

9.08.030 Notification of Liability for Costs of Subsequent Police Response.

When the police respond to the scene of a Loud or Unruly Party and determine that there is a threat to the public peace, health, safety or general welfare, the police shall provide written notification to the Person Responsible that (i) the Loud or Unruly Party constitutes a public nuisance, (ii) the Person Responsible may be held liable for the costs incurred in providing police services for a Subsequent Police Response, and (iii) a continued allowance of the Loud or Unruly Party is a violation of the Moraga Municipal Code.

9.08.040 Violation / Fines.

- A. Violation. It is unlawful for a Person Responsible to continue to create, cause, commit or allow a Loud or Unruly Party after the police have issued written notification in accordance with section 9.08.030. Further, it is hereby declared that a Loud or Unruly Party that creates a threat to the public peace, health, safety or general welfare constitutes a public nuisance.
- B. Penalty. A first violation of any provision of this Chapter shall constitute an infraction. Any subsequent violation within a 12 month period by the same Person Responsible concerning the same address shall constitute a misdemeanor.

- C. Fines. A first violation of this Chapter shall be punishable by a fine of \$250. A second violation of this Chapter within a 12 month period by the same Person Responsible concerning the same address shall be punishable by a fine of \$500. A third or subsequent violation of this Chapter within a 12 month period by the same Person Responsible concerning the same address shall be punishable by a fine of \$1,000.
- D. Other Enforcement Remedies. A violation of this Chapter may be subject to any other civil and criminal procedures and fines as provided by the Town of Moraga Municipal Code and California State Law, including the Town's administrative citation regulations set forth in Chapter 1.28, as may be amended from time to time.
- E. Cumulative Remedies. The remedies set forth herein are cumulative and may be pursued alternatively or in combination with one another.

9.08.050 Police Services Fee.

The Person Responsible for a Loud or Unruly Party that results in a Subsequent Police Response and/or a Special Security Assignment shall pay a police services fee to defray the reasonable costs of abating the Loud or Unruly Party.

The police services fee shall not exceed \$1,000 and shall include all costs of personnel and equipment for the amount of time actually spent during a Subsequent Police Response and/or Special Security Assignment to the Loud or Unruly Party, including but not limited to, the salaries and benefits of the police personnel, the actual cost of any medical treatment to injured police officers, the cost of any damaged Town equipment or property, and any costs associated with the recovery of the police services fee. Nothing herein shall be interpreted as waiving the Town's right to seek reimbursement for actual costs including those exceeding \$1,000 through any other legal remedy which may be available.

9.08.060 Billing.

- A. The police chief shall cause appropriate billings to be made to the Person Responsible. Payment shall be due within thirty (30) days from the date of the bill's deposit in the United States mail, unless the Person Responsible files a written appeal pursuant to section 9.08.070.A
- B. The billing statement shall also include a notice of the appeal provisions and nuisance abatement lien or special assessment provisions of sections 9.08.070 and 9.08.080.
- C. If the Town is unsuccessful in collecting the debt, the debt may be turned over to a collection agency and/or recovered through other lawful means including the nuisance abatement cost recovery provisions of section 9.08.080. Collection fees charged by the collection agency will be added to the debt.

9.08.070 Appeal.

- A. Any person receiving a bill for the police services fee may, within fifteen (15) days from the date of the bill's deposit in the United States mail, file a written request with the Town Manager appealing the police services fee imposed.
- B. After any appeal is filed, the Town shall withhold collection of the bill until the conclusion of the appeal.
- C. The Town Manager shall promptly schedule and conduct a hearing to consider the appeal. The determination of the Town Manager is final and may result in confirmation, modification or cancellation of the fee.

9.08.080 Recovery of police services fee and/or Special Security Assignment as a nuisance abatement lien or special assessment.

If the Person Responsible is the owner of real property upon which the nuisance of the Loud or Unruly Party was maintained, the Town may initiate nuisance abatement proceedings and make the police services fee a lien or special assessment against the real property in accordance with Chapter 7.16.

SECTION 2: Environmental Review. The Town Council has determined that in accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, this project is categorically exempt pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty there is no possibility that adopting the ordinance provisions may have a significant effect on the environment.

SECTION 3. Effective Date. This ordinance becomes effective thirty (30) days after its final passage and adoption.

SECTION 4. Publication. The Town Clerk shall either (a) have this ordinance published once within fifteen (15) days after adoption in a newspaper of general circulation or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again fifteen (15) days after adoption.

SECTION 5. Severability. If any provision of the Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

The foregoing ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga, California, held on August 26, 2015 and was passed and adopted at a regular meeting of the Town Council held on September 9, 2015 by the following vote.

AYES: Mayor Wykle, Vice Mayor Metcalf, Councilmembers Arth,
Onoda and Trotter
NOES: None
ABSTAIN: None
ABSENT: None

Roger N. Wykle, Mayor

ATTEST:

Marty C. McInturf, Town Clerk