

**EFFECTIVE DATE  
OF ORDINANCE**

November 15, 2007

**ORDINANCE NO. 2285 N.C.S.**

1 Introduced by

Seconded by

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3  
4  
5 Mike O'Brien

Samantha Freitas

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11 **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA**  
12 **AMENDING TITLE 10 OF THE PETALUMA MUNICIPAL CODE BY**  
13 **ADDING CHAPTER 10.68 ENTITLED "ALCOHOL-RELATED NUISANCE ORDINANCE"**  
14

15 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PETALUMA AS FOLLOWS:

16 Section 1. Title 10 of the Petaluma Municipal Code is hereby amended by adding  
17 Chapter 10.68 entitled "Alcohol-Related Nuisance Ordinance" to read as follows:  
18

19 **CHAPTER 10.68**  
20 **ALCOHOL-RELATED NUISANCE ORDINANCE**

21

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**10.68.010 Title.**

This chapter is entitled and shall be known as the "Alcohol-Related Nuisance Ordinance."

**10.68.020 Findings, Intent and Purpose.**

A. The City Council of the City of Petaluma, pursuant to the City's police powers under Article XI, sections 3 and 5 of the California Constitution, and the City Charter established pursuant to such sections, has the authority to enact and enforce laws that promote the public health, safety and general welfare of its residents. Providing alcoholic beverages to persons in a manner that leads to over-consumption of alcohol and related nuisances is a threat to public health and safety, quiet enjoyment of both commercial and residential property, and the general welfare of the City and its residents.

B. The City Council finds that, although State law prohibits alcoholic beverage sales establishments from selling alcohol to intoxicated persons and persons under 21 years of age, State law does not address the alcohol-related nuisances and criminal activities that result from over-consumption of alcohol, such as littering, loitering, public drunkenness, public urination, vandalism, graffiti, unruly behavior, and escalated noise levels. These activities disturb neighboring merchants and residents and threaten the health, safety and welfare of surrounding property owners and the community at large. California Business and Professions Code Section 25612.5 sets forth operating standards for off-sale alcoholic beverage sales establishments and permits cities to adopt more stringent operating standards. These operating standards do not apply to establishments that sell alcoholic beverages for consumption only on-site. Moreover, the City's Zoning Ordinance only regulates on-sale bars and taverns. The City Council further finds that the Petaluma Police Department can more effectively ensure that alcoholic beverage sales establishments are not the source of public nuisances in the community with a comprehensive ordinance that regulates nuisance activities that are frequently associated with the over-consumption of alcoholic beverages.

C. According to the California State Department of Alcoholic Beverage Control, Petaluma has a higher concentration of alcoholic beverage sales establishments per resident population than the statewide average. Numerous studies have shown that

1 areas with higher density rates of alcoholic beverage sales establishments experience  
2 higher rates of intoxication, alcohol-related traffic collisions, assaults, homicides and  
3 other crimes. A county-wide study indicated that 70% of those willing to report where  
4 they had been drinking prior to being arrested for driving under the influence of alcohol  
5 indicated Petaluma bars and restaurants as their place of last drink. Law enforcement  
6 personnel have in the past been required to respond to numerous calls for service in the  
7 downtown Petaluma area for alcohol-related problems, including public intoxication,  
8 fights, driving under the influence, and property damage. At times, the number of  
9 intoxicated persons has required multi-jurisdictional law enforcement response.  
10 Downtown merchants consistently complain about the damage to their property and  
11 rowdy crowds that occur Thursday through Saturday nights.

12  
13 D. Pursuant to a paper written by the Santa Rosa Policy Panel on Youth Access to  
14 Alcohol, 89% of high school juniors reported that alcohol was easy to obtain from local  
15 merchants. A study conducted in Berkeley from 2004 to 2006 found that 37% of all on-  
16 sale outlets sold alcohol to minors. Moreover, the University of Minnesota's Alcohol  
17 Epidemiology Program indicated that, in a study of 372 alcoholic beverage sales  
18 establishments, 79% sold alcohol to obviously intoxicated persons. In order to address  
19 these issues, many local jurisdictions in California have adopted mandatory responsible  
20 server training programs. A 1999 study published in the *Journal of Studies on Alcohol*  
21 found that responsible beverage server training can reduce underage drinking by  
22 changing server behavior. And, a study published in *Contemporary Drug Problems* in  
23 2000 similarly found that the proportion of highly intoxicated patrons decreased in  
24 establishments where server training programs had been implemented. Robert Salz of  
25 the Prevention Research Center in Berkeley noted that responsible server training  
26 programs were only effective if managers of the alcoholic beverage establishments also  
27 participated in the program. The U.S. Department of Justice further indicated that a  
28 combination of merchant education and integrated law enforcement provides the most  
29 effective programs for reducing under-age consumption of alcohol.

30  
31 E. The City Council finds that voluntary responsible beverage sales and service  
32 training programs cannot ensure that all alcohol servers receive reliable or effective  
33 training. Voluntary training programs also have not been shown to be as successful in  
34 reducing over-consumption and sales to minors as mandatory programs with  
35 accountability measures and consistent systems of enforcement. An ordinance that

1 mandates training for licensees, servers and managers of alcoholic beverage sales  
2 establishments and imposes liability on on-sale and off-sale alcoholic beverage sales  
3 establishment owners and operators who operate their businesses in a manner that  
4 creates a public nuisance is necessary to deter and prevent such nuisances. Business  
5 owners should be held liable for the alcohol-related nuisances resulting from their  
6 actions, and such business owners and operators, and not the public, should be  
7 responsible for the costs associated with responding to multiple calls for service for  
8 alcohol related nuisance activities.

9  
10 F. The purposes of this ordinance include: protecting the public health, safety and  
11 welfare by requiring owners and operators of alcoholic beverage sales establishments  
12 to attend a California State certified training program that addresses their legal  
13 responsibilities to conduct their operations in a way that does not create nuisances or  
14 foster criminal activity; providing enforcement mechanisms to address problems often  
15 associated with the public consumption of alcoholic beverages, such as litter, loitering,  
16 public drunkenness, public urination, vandalism, graffiti, unruly behavior, and escalated  
17 noise levels; holding alcoholic beverage sales establishments responsible for the alcohol-  
18 related nuisances that occur on or near such establishments when efforts at obtaining  
19 voluntary compliance have failed; authorizing the creation of a regulatory fee program  
20 to cover the City's reasonable costs associated with the alcoholic beverage sales  
21 establishment program; ensuring the proper maintenance of alcoholic beverage sales  
22 establishments to avoid negative impacts on surrounding properties; monitoring  
23 alcoholic beverage sales establishments to ensure they do not substantially change their  
24 mode or character of operation without obtaining the proper authorization; and  
25 reducing the costs to the public of providing multiple police responses to alcohol-related  
26 nuisance service calls, both in terms of monetary costs and availability of law  
27 enforcement personnel for other calls. These purposes are implemented by the  
28 imposition of administrative, civil, and criminal penalties when an alcoholic beverage  
29 sales establishment is the source of public nuisances; implementation of a mandatory  
30 training program for those who serve alcoholic beverages; and the imposition of fees to  
31 recover the costs incurred by the City in providing multiple law enforcement service  
32 responses for alcohol-related nuisance activities attributable to an alcoholic beverage  
33 establishment.

1 G. For these reasons, the Petaluma City Council declares that providing alcoholic  
2 beverages to persons who subsequently engage in alcohol-related nuisance activities  
3 such as littering, loitering, public drunkenness, public urination, vandalism, graffiti, unruly  
4 behavior, and escalated noise levels within the City is a threat to the public peace,  
5 health, safety and general welfare, and a public nuisance as it affects at the same time  
6 the entire Petaluma community as well as the neighborhoods in which they occur.  
7

8 **10.68.030 Definitions.**

9 For the purposes of this chapter, the following definitions apply:

- 10 A. "Alcohol." The definition of "alcohol" in Section 23003 of the California  
11 Business & Professions Code, as amended from time to time, shall apply to this  
12 chapter. As of the introduction of this chapter, section 23003 defined  
13 "alcohol" to mean "ethyl alcohol, hydrated oxide of ethyl, or spirits of wine,  
14 from whatever source or by whatever process produced."  
15 B. "Alcoholic beverage." The definition of "alcoholic beverage" in Section  
16 23004 of the California Business & Professions Code, as amended from time to  
17 time, shall apply to this chapter. As of the introduction of this chapter, section  
18 23004 defined "alcoholic beverage" to mean "alcoholic beverage includes  
19 alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol,  
20 spirits, wine, or beer, and which contains one-half of 1 percent or more of  
21 alcohol by volume and which is fit for beverage purposes either alone or  
22 when diluted, mixed, or combined with other substances."  
23 C. "Alcoholic beverage sales establishment" means any off-sale or on-sale  
24 commercial establishment where alcoholic beverages are sold, served, or  
25 given away.  
26 D. "Alcohol-related nuisance activity attributable to an alcoholic beverage  
27 sales establishment" means nuisance activities that occur on or near an  
28 alcoholic beverage sales establishment or that involve a call for service  
29 where a law enforcement officer determines that the alcoholic beverage  
30 sales establishment provided alcohol to a person involved in the nuisance  
31 activity within the preceding three (3) hours, where the nuisance activities are  
32 attributable to the operations of an alcoholic beverage sales establishment  
33 subject to this chapter and could be abated by reasonable steps by the  
34 establishment pursuant to this chapter.  
35 E. "City" means the City of Petaluma.

- 1 F. "Licensee" means any person holding a license, permit, or other authorization  
2 to sell alcoholic beverages to the public issued by the California Department  
3 of Alcoholic Beverage Control.
- 4 G. "Manager" means the person, regardless of job title or description, who has  
5 discretionary powers to organize, carry on, control or direct the operation of  
6 an alcoholic beverage sales establishment.
- 7 H. "Nuisance activity" includes, but is not limited to, disturbance of the peace,  
8 public drunkenness, drinking in public, harassment of passersby, gambling,  
9 prostitution, littering, loitering, public urination, graffiti, lewd conduct,  
10 vandalism, unruly behavior, drug trafficking, or escalated noise levels.
- 11 I. "Off-sale" means the sale of alcoholic beverages for consumption off the  
12 premises where sold.
- 13 J. "On-sale" means the sale of alcoholic beverages for consumption on the  
14 premises where sold.
- 15 K. "Over-consumption of alcohol" means consumption of an amount of alcohol  
16 such that the person is under the influence of alcohol pursuant to California  
17 Vehicle Code Section 23610, as that provision is amended from time-to-time.
- 18 L. "Person" includes any individual, firm, partnership, joint venture, association,  
19 corporation, estate, trust, business trust, receiver, syndicate, or any other  
20 group or combination acting as a unit.
- 21 M. "Reasonable steps" include: 1) monitoring the consumption of alcoholic  
22 beverages by patrons of the alcoholic beverage sales establishment; 2)  
23 calling the Petaluma Police Department as soon as practicably possible upon  
24 discovering a nuisance activity occurring on or near the alcoholic beverage  
25 sales establishment; and 3) requesting those persons engaging in nuisance  
26 activities to cease those activities, unless the responsible person, or his or her  
27 agents or employees, feel that their personal safety would be threatened in  
28 making that request.
- 29 N. "Responsible Beverage Service Training" or "RBS Training" means an  
30 educational course in responsible beverage sales and service methods and  
31 practices, conducted by the California Department of Alcoholic Beverage  
32 Control or an organization certified by the California Department of Alcoholic  
33 Beverage Control, that provides a certificate of completion.

- 1           O.     "Response costs" means the costs associated with responses by law  
2 enforcement to alcohol-related nuisance activities attributable to an  
3 alcoholic beverage sales establishment including but not limited to:  
4           1) salaries and benefits of law enforcement personnel for the amount of time  
5 spent responding to, remaining at, or otherwise dealing with alcohol-  
6 related nuisance activities attributable to an alcoholic beverage sales  
7 establishment, and the administrative costs attributable to such  
8 response(s);  
9           2) the cost of any medical treatment to or for any law enforcement  
10 personnel injured responding to, remaining at or leaving the scene of a  
11 call based on an alcohol-related nuisance activity attributable to an  
12 alcoholic beverage sales establishment;  
13           3) the cost of repairing any City equipment or property damage, and the  
14 cost of the use of any such equipment, in responding to, remaining at or  
15 leaving the scene of a call based on an alcohol-related nuisance activity  
16 attributable to an alcoholic beverage sales establishment; and  
17           4) any costs recoverable in accordance with California Civil Code section  
18 1714.9.
- 19           P.     "Responsible person" means a person who is an owner, operator, licensee or  
20 manager of an alcoholic beverage sales establishment in the City.
- 21           Q.     "Server" means any person who, as part of his or her employment, sells, or  
22 serves any alcoholic beverage.

23  
24 **10.68.040 Creating and Failing to Abate Alcohol-Related Nuisances Unlawful.**

25 A.     It is unlawful and a public nuisance for any responsible person to: operate an  
26 alcoholic beverage sales establishment in a manner that creates alcohol-related  
27 nuisance activity attributable to an alcoholic beverage sales establishment; fail to  
28 ensure property maintenance and operating conditions of the alcoholic beverage sales  
29 establishment are compatible with and do not adversely impact abutting properties and  
30 the surrounding neighborhood; or fail to take reasonable steps to abate alcohol-related  
31 nuisance activities attributable to an alcoholic beverage sales establishment.

32  
33 B.     Upon receiving a complaint from the public or any interested person of a  
34 violation of this section, the Petaluma Police Department may investigate the complaint  
35 to determine if an alcohol-related nuisance activity attributable to an alcoholic

1 beverage sales establishment has occurred. If the police officer determines that such  
2 activity has occurred, the officer may issue a citation. A police officer may revisit the  
3 establishment in three to four weeks to determine if the alcohol-related nuisance  
4 activities attributable to an alcoholic beverage sales establishment have been abated.  
5

6 C. If the police officer conducting the re-visit finds that the nuisance activities that  
7 were the subject of a prior enforcement action under this chapter within the  
8 immediately preceding 12 months have not been abated, then all current remaining  
9 violations and future violations of this section by any responsible person at that  
10 establishment will be subject to the criminal, civil and/or administrative penalties set forth  
11 in this chapter in addition to recovery of response costs in accordance with section  
12 10.68.090, and any other applicable penalties under applicable law.  
13

14 **10.68.050 Responsible Beverage Service Training Required.**

15 Every licensee, manager and server shall complete Responsible Beverage Service  
16 Training within 90 days of beginning such activities or within one year of the effective  
17 date of this Chapter, whichever is later, and every third year thereafter. Licensees shall  
18 be responsible for ensuring that all servers and managers they employ comply with this  
19 section, and licensees shall provide proof thereof to the City within 10 days of  
20 completion of said training and shall maintain a file of proof of completion that shall be  
21 available for inspection by City employees during regular business hours.  
22

23 **10.68.060 Criminal Enforcement and Penalties for Violations.**

24 Violations of this chapter may be prosecuted as misdemeanors punishable by a fine of  
25 not more than one thousand dollars or by imprisonment for a period not to exceed six  
26 months, or by both fine and imprisonment. At the discretion of the charging officer  
27 and/or city attorney, violations of this chapter may also be charged as infractions as  
28 defined in section 19(c) of the California Penal Code. Violations charged as infractions  
29 shall not be subject to imprisonment and shall be subject to a fine not exceeding \$500  
30 for each offense. If a police officer elects to charge a violation of this ordinance as a  
31 criminal violation, such officer shall issue a criminal citation with a notice to appear,  
32 signed by the alleged violator. Alternatively, the city attorney may prosecute violations  
33 of this chapter by filing a criminal complaint.  
34  
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1           **10.68.070 Civil and Administrative Enforcement and Penalties for Violations.**

2           Violations of this chapter are declared to be public nuisances. Violations of this chapter  
3           may be prosecuted as a nuisance and enforced by a civil court action as provided in  
4           Chapter 1.13 or via administrative enforcement as a nuisance as provided in Chapter  
5           1.14. Notwithstanding any other provisions of this chapter, whenever the existence or  
6           continuance of any violation of this chapter or any nuisance condition poses an  
7           imminent or immediate threat of harm to persons or property, or to public health, welfare  
8           or safety, such violation or condition may be summarily abated in accordance with  
9           section 1.15.010. Each and every day during any portion of which a nuisance condition  
10          exists or continues may be deemed a separate and distinct violation for purposes of  
11          setting the amount of penalty to be imposed.

12  
13          **10.68.080 Alternative Remedies Provided.**

14          In addition to the other remedies specified in this chapter, violations of this chapter are  
15          subject to the enforcement remedies in Chapters 1.10 through 1.12 and 1.15 of the  
16          Petaluma Municipal Code. In addition, the City expressly reserves the right to utilize  
17          enforcement remedies available under any applicable state or federal statute or  
18          pursuant to any other lawful power of the City. All such remedies shall be alternative to  
19          or in addition to or in conjunction with, and not exclusive of, one another. The election  
20          of remedies shall be at the sole discretion of the City.

21  
22          **10.68.090 Recovery of Response Costs.**

23          When the police make the first response within a 12-month period to an alcohol-related  
24          nuisance activity attributable to an alcoholic beverage sales establishment within the  
25          City, and a police officer issues a citation for violation of this chapter, the officer shall, in  
26          writing, inform a responsible person that:

- 27  
28                 1)         An alcohol-related nuisance activity attributable to an alcoholic  
29                         beverage sales establishment has occurred; and  
30                 2)         If, upon re-examination, the nuisance condition is not abated within thirty  
31                         (30) days of the date of the initial response, the responsible person(s) may  
32                         be charged for any response costs incurred for subsequent responses to  
33                         the property for an alcohol-related nuisance activity attributable to an  
34                         alcoholic beverage sales establishment within a 12 month period.

1 Within 30 calendar days of the initial citation, an additional written warning shall be  
2 transmitted via certified mail to the licensee at the address in the City's business license  
3 file for the alcoholic beverage sales establishment.

4  
5 When a police officer responds to an alcohol-related nuisance activity attributable to an  
6 alcoholic beverage sales establishment within the City within 12 months of a citation and  
7 warning given to a responsible person at the same alcoholic beverage sales  
8 establishment, and such officer issues a second or subsequent citation pursuant to this  
9 chapter, all responsible person(s) shall be jointly and severally liable for the City's  
10 response costs concerning such second or subsequent alcohol-related nuisance activity  
11 attributable to an alcoholic beverage sales establishment, but only to the extent that  
12 such responsible person(s) concerning the first citation remain responsible person(s) for  
13 the second or subsequent citations at such establishment.

14  
15 **10.68.100 Appeal of Administrative Enforcement.**

16 A responsible person charged with a violation of this chapter pursuant to chapter 1.14  
17 shall be entitled to pursue the appeal procedures set forth in section 1.14.070 for  
18 responsible persons named in notices of violations.

19  
20 **10.68.110 Regulatory Fee.**

21 The City may establish a regulatory fee program to cover the costs of administering the  
22 alcohol-related nuisance program, in accordance with applicable law by resolution of  
23 the City Council, as said resolution may be amended from time to time.

24  
25 **10.68.120 No Mandatory Duty of Care.**

26 This chapter is not intended to impose, and shall not be construed or given effect in a  
27 manner that imposes upon the City, or any officer, employee, agent, or representative  
28 of the City, a mandatory duty of care toward persons or property within or without the  
29 City limits, so as to provide a basis of civil liability for damages, except as may otherwise  
30 be imposed by law.

31  
32 Section 2. If any section, subsection, sentence, clause or phrase or word of this  
33 ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court  
34 of competent jurisdiction, such decision shall not affect the validity of the remaining portions of  
35 this ordinance. The City Council of the City of Petaluma hereby declares that it would have

1 passed and adopted this ordinance and each and all provisions thereof irrespective of the fact  
2 that any one or more of said provisions be declared unconstitutional, unlawful or otherwise  
3 invalid.

4  
5 Section 3. The City Council finds that adoption of this ordinance is exempt from the  
6 California Environmental Quality Act ("CEQA"), pursuant to Sections 15061(b)(3) (no possibility  
7 that the activity may have a significant impact on the environment) of the CEQA Guidelines  
8 (Title 14, Chapter 3 of the California Code of Regulations).

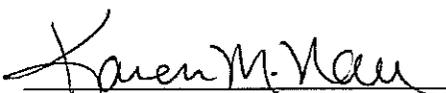
9  
10 Section 4. This ordinance shall become effective thirty (30) days after the date of its  
11 adoption by the Petaluma City Council.

12  
13 Section 4. The City Clerk is hereby directed to publish or post this ordinance or a  
14 synopsis for the period and in the manner required by Section 45 of the City Charter or as  
15 otherwise required by law.

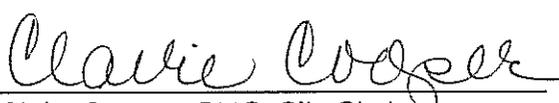
16  
17 INTRODUCED AND ORDERED POSTED/PUBLISHED THIS 1<sup>st</sup> day of October, 2007.

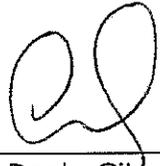
18  
19 ADOPTED THIS 15<sup>th</sup> day of October, 2007, by the following vote:

20  
21  
22 AYES: Barrett, Freitas, Harris, Vice Mayor Nau, O'Brien, Rabbitt  
23  
24 NOES: None  
25  
26 ABSENT: Mayor Torliatt  
27  
28 ABSTAIN: None  
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33 Karen Nau, Vice Mayor

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37 ATTEST: APPROVED AS TO FORM:

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41  
42   
43 Claire Cooper, CMC, City Clerk

44   
45 Eric W. Danly, City Attorney