

**CITY OF ALBION  
ORDINANCE #2017-07**

AN ORDINANCE TO AMEND ORDINANCE 58-226 MINOR IN POSSESSION OF  
ALCOHOL

**Purpose and Finding:** The City of Albion presently has a Minor in Possession of Alcohol (MIP) ordinance that closely mirrors that of the state statute. The Michigan legislature has amended the state statute through Public Act 357 of 2016 and again through Public Act 89 of 2017. The latest amendment takes effect October 10, 2017. As such, it is necessary to amend the city ordinance accordingly. The primary substantive change in the legislation is that first offense MIPs will no longer be a criminal offense and will be designated as a civil infraction. It is recommended that the ordinance be amended as follows to comply with state law.

THE CITY OF ALBION ORDAINS:

**Sec. 58-226 – Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; use by minor; prior violation; screening and assessment; prior judgment; chemical breath analysis; notice to parent, custodian, or guardian; exceptions; recruitment of minor for undercover operation prohibited; affirmative defense; definitions.**

(a) Fines and sanctions. A person less than 21 years of age shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, or possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A person less than 21 years of age who violates this subsection is responsible for a civil infraction or guilty of a misdemeanor punishable by the following fines and sanctions:

1. For a first violation, the individual is responsible for a civil infraction and shall be fined not more than \$100.00. A court may order participation in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of the office of substance abuse services, and may order the performance community service and substance abuse screening and assessment at the individual's own expense.
2. For a violation that occurs after 1 prior judgment, the individual is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, or by a fine of not more than \$200.00, or both. A court may

order participation in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, performance of community service, and substance abuse screening and assessment at the individual's own expense.

3. For a violation that occurs after 2 or more prior judgments, the minor is guilty of a misdemeanor, punishable by imprisonment for not more than 60 days, if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, or by a fine of not more than \$500.00, or both, as applicable. A court may order participation in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, the performance of community service, and substance abuse screening and assessment at the individual's own expense.
- (b) An individual who furnishes fraudulent identification to a minor or, notwithstanding subsection (a), a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.
- (c) If an individual who pleads guilty to a misdemeanor violation of subsection (a)(2) or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor violation of subsection (a)(2), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in subsection (a)(3), payment of the costs including minimum state cost as provided for in section 18m of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18m, and section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as prescribed in section 3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3. If a court finds that an individual violated a term or condition of probation or that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. A discharge and dismissal under this section is without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of disqualifications or disabilities imposed by law on conviction of a crime. An individual may obtain only 1 discharge and dismissal

under this subsection. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:

1. To a court, prosecutor, or police agency on request for the purpose of determining if an individual has already utilized this subsection.
  2. To the department of corrections, a prosecutor, or a law enforcement agency, on the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:
    - i. At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.
    - ii. The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.
- (d) A misdemeanor violation of subsection (a) successfully deferred, discharged, and dismissed under subsection (c) is considered a prior judgment for the purposes of subsection (a)(3).
- (e) A court may order an individual found responsible for or convicted of violating subsection (a) to undergo screening and assessment by a person or agency as designated by the department-designated community mental health entity as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a misdemeanor conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsection (a) to submit to a random or regular preliminary chemical breath analysis. The parent, guardian, or custodian of a minor who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.
- (f) A law enforcement officer, on determining that an individual who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, or purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (a) shall notify the parent or parents, custodian,

or guardian of the individual as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The law enforcement officer shall notify the parent, guardian, or custodian not later than 48 hours after the law enforcement agency determines that the individual who allegedly violated subsection (a) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. The law enforcement officer may notify the parent, guardian, or custodian by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (a), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(g) This section does not prohibit a minor from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by the Michigan Liquor Control Code of 1998 (MCL 436.1101 et seq.), by the state liquor control commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(h) The following individuals are not considered to be in violation of subsection (a):

1. An individual who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.
2. An individual who accompanies another individual who meets both of the following criteria:
  - i. Has consumed alcoholic liquor.
  - ii. Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.
3. An individual who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

- (i) This section does not limit the civil or criminal liability of a vendor or the vendor's clerk, servant, agent, or employee for a violation of the Michigan Liquor Control Code of 1998 (MCL 436.1101 et seq.).
- (j) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited postsecondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this section if the purpose of the consumption is solely educational and is a requirement of the course.
- (k) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this section.
- (l) Subsection (a) does not apply to a minor who participates in either or both of the following:
  - 1. An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
  - 2. An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the state police, the state liquor control commission, or a local police agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the minor was not under the direction of the state police, the state liquor control commission, or the local police agency and was not part of the undercover operation.
- (m) In a prosecution for the violation of subsection (a) concerning a minor having any bodily alcohol content, it is an affirmative defense that the minor consumed the alcoholic liquor in a venue or location where that consumption is legal.
- (n) As used in this section:
  - 1. "Any bodily alcohol content" means either of the following:
    - i. An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

- ii. Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.
- 2. "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.
- 3. "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.
- 4. "Minor" means a person under the age of 21.
- 5. "Prior judgment" means a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:
  - i. This section or section 701 or 707 of the Michigan Liquor Control Code.
  - ii. Section 624a, 624b, or 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.
  - iii. Section 80176, 81134, or 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.81134, and 324.82127.
  - iv. Section 167a or 237 of the Michigan penal code, 1939 PA 328, MCL 750.167a and 750.237.

**State law reference:** Similar provisions, MCL 436.1703

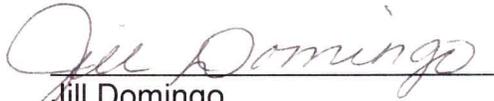
This Ordinance shall take effect after publication on January 1, 2018.

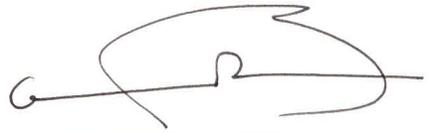
First Reading:  
October 2, 2017

Second Reading & Adoption:  
October 16, 2017

Ayes 5  
Nays 0  
Absent 2 (Barnes, Spicer)

Ayes 7  
Nays 0  
Absent 0

  
Jill Domingo  
City Clerk

  
Garrett Brown,  
Mayor