

**STATE OF MICHIGAN
COUNTY OF WAYNE
CITY OF ALLEN PARK**

ORDINANCE #07-2012

AN ORDINANCE OF THE CITY OF ALLEN PARK CODE OF ORDINANCES; AMENDING CHAPTER 26, OFFENSES, ARTICLE VIII, OFFENSES AFFECTING UNDERAGE PERSONS, DIVISION III, ALCOHOLIC LIQUORS BY DELETION OF SECTION 26-497(e), MANDATORY SUBMISSION TO PRELIMINARY CHEMICAL BREATH ANALYSIS.

The City of Allen Park Ordains:

SECTION 1. Amendment to Code.

Chapter 26, Article VIII, Division III, Section 497 is hereby amended as follows:

Sec. 26-497. - Possession by person under 21 years of age.

- (a) A minor 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 and section 26-499(a).

- (b) A minor who violates this section is guilty of a misdemeanor punishable by the following fines and sanctions, and is not subject to the penalties prescribed in section 1-14 .
 - (1) For the first violation a fine of not more than \$100.00 and may be ordered to perform community service and to undergo substance abuse screening and assessment at the person's own expense as described in subsection (d) of this section and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, that being MCL 333.6107, and designated by the administrator or substance abuse services.

 - (2) For a second violation a fine of not more than \$200.00 or imprisonment for not more than 30 days but only if the minor has been found by the court to have 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 both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the Public Health Code, Act No. 368 of the Public Acts of 1978 (MCL 333.6107), and designated by the

administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at the person's own expense as described in subsection (d) of this section. The person is also subject to sanctions against his operator's or chauffeur's license imposed by the secretary of state.

(3) For a third or subsequent violation a fine of not more than \$500.00 or imprisonment for not more than 60 days but only if the minor has been found by the court to have 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 both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the Public Health Code Act No. 368 of the Public Acts of 1978 (MCL 333.6107) and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at the person's own expense as described in subsection (d) of this section. The person is also subject to sanctions against his operator's or chauffeur's license imposed by the secretary of state.

(c) When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (b)(1) of this section pleads guilty to a violation of subsection (b)(1) of this section or offers a plea of admission in a juvenile delinquency proceeding for a violation of subsection (b)(1) of this section, 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 upon terms and conditions that include, but are not limited to, the sanctions set forth in subsection (b)(1) of this section, payment of the costs including minimum state cost as provided for in section 18m of chapter XIII A of the probate code of 1939, Public Act No. 288 of 1939 (MCL 712A.18m), and section 1j of chapter IX of the code of criminal procedure, Public Act No. 175 of 1927 (MCL 769.1j), and the costs of probation as prescribed in section 3 of chapter XI of the code of criminal procedure, Public Act No. 175 of 1927 (MCL 771.3). Upon violation of a term or condition of probation or upon a finding 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. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be 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 this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions or juvenile adjudications under subsections (b)(2) and (3) of this section. There may be only one discharge or dismissal under this subsection as to an individual. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation under this subsection. The secretary of

state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. This record shall be furnished to any of the following:

(1) To a court, prosecutor, or police agency upon 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, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:

a. 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.

b. 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 conditions of employment or whether an applicant meets criteria for employment.

(d) The court may order the person found violating subsection (a) of this section to undergo screening and assessment by a person or agency as designated by the substance abuse coordinating agency as defined in section 6103 of Act No. 368 of the Public Acts of 1978 (MCL 333.6103), in order to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs.

~~(e) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content, may require the person to submit to a preliminary chemical breath analysis. A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content. A minor who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$100.00.~~

~~(f)~~ (e) A law enforcement agency, upon determining that a person less than 18 years of age who is not emancipated pursuant to Public Act No. 293 of 1968 (MCL 772.1 et seq.), allegedly consumed, possessed, purchased alcoholic liquor, or attempted to consume, possess, or purchase alcoholic liquor or had any bodily alcohol content in violation of subsection (a) of this section shall notify the parent, custodian or guardian of the person as to the nature of the violation if the name of the parent, guardian, or custodian is

reasonably ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than 48 hours after the law enforcement agency determines that the person who allegedly violated subsection (a) of this section is less than 18 years of age and not emancipated pursuant to Public Act No. 293 of 1968 (MCL 772.1 et seq.). The notice may be made 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 a person less than 17 years of age is incarcerated for violating subsection (a) of this section, then his parents or legal guardian shall be notified immediately as provided in this subsection.

~~(g)~~ (f) This division shall not prohibit:

- (1) A minor from possessing alcoholic liquor during regular working hours and in the course of the person's employment if employed by a person licensed by the Michigan Liquor Control Code of 1998 (MCL 436.1101 et seq.), by the liquor control commission, or by an agent of the commission, if the alcoholic liquor is not possessed for the person's personal consumption.
- (2) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited post secondary educational institution in an academic building of the institution under the supervision of a faculty member if the purpose of the consumption is solely educational and is a requirement of the course.
- (3) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, temple or other commonly recognized place of religious service.
- (4) A minor who participates in either or both of the following:
 - a. 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 or city attorney's office as part of an employer-sponsored internal enforcement action.
 - b. 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 liquor control commission, or the local police agency and was not part of the undercover operation. The state police, the state liquor control commission, or a local police agency shall not recruit or attempt to recruit a minor for participation in an undercover operation at the scene of a violation of subsection (a) of this section, section 701(1) or 801(2) of

Public Act No. 58 of 1998 (MCL 436.1701(1) or 436.1801(2)) or section 26-499(a) or section 26-500

~~(h)~~ (g) In a criminal prosecution for the violation of subsection (a) of this section 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.

(i) This section shall not limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent, or employee for a violation of this division and/or the Michigan Liquor Control Code of 1998 (MCL 436.1101 et seq.).

(Code 1978, § 13-31; Ord. No. 82-2, § 2, 2-23-1982; Ord. No. 96-1, § 1(13-31), 2-27-1996; Ord. No. 2006-15, § 1(13-31A), 1-23-2007; Amended by Ord. No. ____)

State law reference— Similar provisions, MCL 436.1703.

SECTION 2. Repeal. All ordinance or parts of ordinances in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. Saving Clause.

Nothing in this Ordinance or in the code hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquiring or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character by lost, impaired or affected by this Ordinance.

SECTION 4. Severability.

Should any word, sentence, phrase or any portion of this Ordinance be held in a manner invalid by any court of competent jurisdiction or by any state agency having authority to do so for any reason whatsoever, such holdings shall be construed and limited to such work, sentence, phrase, or any portion of the Ordinance held to be so invalid shall not be construed as affecting the validity of any of the remaining words, sentences, phrases or portions of this Ordinance.

SECTION 5. Publication.

The Clerk for the City of Allen Park shall cause this ordinance to be published in the manner required by law.

SECTION 6. Adoption.

This Ordinance is hereby declared to have been adopted by the City Council of the City of Allen Park, County of Wayne, State of Michigan, at a regular meeting, called and held on the **13th day of November, 2012.**

WILLIAM MATAKAS, Mayor
City of Allen Park

MICHAEL I. MIZZI , City Clerk
City of Allen Park