

ORDINANCE NO. 96-1

AN ORDINANCE TO AMEND CHAPTER 13, ARTICLE III, OF THE ALLEN PARK CODE OF ORDINANCES TO PROVIDE FOR NEW RULES, REGULATIONS AND PENALTIES FOR POSSESSION OF OR CONSUMPTION OF OR TRANSPORTATION OF ALCOHOLIC LIQUOR BY PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE, AND FURNISHING ALCOHOLIC LIQUOR TO PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE.

THE CITY OF ALLEN PARK ORDAINS:

SECTION 1. AMENDMENT TO CODE.

Chapter 13, Article III of the Allen Park Code of Ordinances is amended as follows:

ARTICLE III - ALCOHOLIC BEVERAGES

Section 13-31. Possession by Person under 21 years.

a. 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, except as provided in this section and section 13-33(a).

b. A person less than 21 years of age who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions, and is not subject to the penalties prescribed in Chapter 1, Section 1-7:

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 (c).
2. For a second violation a fine of not more than \$200.00, and may be ordered to participate in substance abuse prevention 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, being section 333.6107 of the Michigan Compiled Laws, 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 (c). The person is also subject to

sanctions against his or her operator's or chauffeur's license imposed in subsection (d).

3. For a third or subsequent violation a fine of not more than \$500.00 and may be ordered to participate in substance abuse prevention 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, being section 333.6107 of the Michigan Compiled Laws 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 (c). The person is also subject to sanctions against his or her operator's or chauffeur's license imposed in subsection (d).

c. The Court may order the person found violating subsection (a) 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, being section 333.6103 of the Michigan Compiled Laws, 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.

d. Immediately upon the entry of a conviction or a probate court disposition for a violation of subsection (a), the court shall consider all prior convictions or probate court dispositions of subsection (a), or a local ordinance or law of another state substantially corresponding to subsection (a), and shall impose the following sanctions:

1. If the Court finds that the person has one (1) such prior conviction or probate court disposition, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than ninety (90) days or more than one hundred eighty (180) days. The court may order the secretary of state to issue to the person a restricted license after the first thirty (30) days of the period of suspension in the manner described in subsection (c) and provided for in section 319 of Act No. 300 of the Public Acts of 1949, being section 257.319 of the Michigan Compiled Laws. In the case of a person who does not possess an operator's or chauffeur's license the secretary of state shall deny the application for an operator's or chauffeur's license for the applicable suspension period.
2. If the Court finds that the person has two (2) or more such prior convictions or probate court dispositions, the court

shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than one hundred eighty (180) days or more than one (1) year. The court may order the secretary of state to issue to the person a restricted license after the first sixty (60) days of the period of suspension in the manner described in subsection (6) and provided for in section 319 of Act No. 300 of the Public Acts of 1949, being section 257.319 of the Michigan Compiled Laws. In the case of a person who does not possess an operator's or chauffeur's license, the secretary of state shall deny the application for an operator's or chauffeur's license for the applicable suspension period.

e. In those cases in which a restricted license is allowed under these sections, the court shall not order the secretary of state to issue a restricted license unless the person states under oath, and the court finds based upon the record in open court, that the person is unable to take public transportation to and from the person's work location, place of alcohol or drug education treatment, probation department, court ordered community service program, or educational institution, and does not have any family members or others who are able to provide transportation. The court order under subsection (d) and the restricted license issued shall indicate the work location of the person to whom it is issued, the approved route or routes and permitted times of travel, and shall permit the person to whom it is issued only to do one (1) or more of the following:

1. Drive to and from the person's residence and work location;
2. Drive in the course of the person's employment or occupation;
3. Drive to and from the person's residence and an alcohol or drug education or treatment program as ordered by the court;
4. Drive to and from the person's residence and the court probation department, or a court ordered community service program, or both; and
5. Drive to and from the person's residence and an educational institution at which the person is enrolled as a student.

f. If license sanctions are imposed, immediately upon the entry of a court ordered sanction pursuant to subsection (d), the court shall order the person convicted for the violation to surrender to the court his or her operator's or chauffeur's license. The court shall immediately forward a notice of court ordered license sanctions to the secretary of state. If the license is not

forwarded to the Secretary of State, an explanation of the reason why the license is absent shall be attached.

g. A peace officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic liquor may require the person to submit to a preliminary chemical breath analysis. A legal presumption shall be made by the court that the person less than 21 years of age has consumed or possessed alcoholic liquor if a preliminary chemical breath analysis or other acceptable blood alcohol test indicates the person's blood contained .02% or more by weight of alcohol. A person less than 21 years of age who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a civil infraction.

h. A law enforcement agency, upon determining that a person less than eighteen (18) years of age who is not emancipated pursuant to Act No. 293 of the Public Acts of 1968, being sections 772.1 to 772.6 of the Michigan Compiled Laws, allegedly consumed, possessed, purchased, or attempted to consume, possess, or purchase alcoholic liquor in violation of subsection (a) shall notify the parent or parents, custodian or guardian of the person as to the nature of the violation or 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 forty eight (48) hours after the law enforcement agency determines that the person who allegedly violated subsection (a) is less than eighteen (18) years of age and not emancipated pursuant to Act No. 293 of the Public Acts of 1968. 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 seventeen (17) years of age is incarcerated for violating subsection (a), then his or her parents or legal guardian shall be notified immediately as provided in this subsection.

i. This ordinance shall not prohibit:

1. A person less than 21 years of age from possessing alcoholic liquor during regular working hours and in the course of the person's employment if employed by a person licensed by this act, 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 person less than 21 years of age 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 necessary ingredient of the course.
3. The consumption by a person less than 21 years of age of sacramental wine in connection with religious services at a church,

synagogue, temple or other commonly recognized place of religious service.

4. A person less than 21 years of age who participates in either or both of the following:
 - a. An undercover operation in which the person less than 21 years of age 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 person less than 21 years of age purchases or receives alcoholic liquor under the direction of the state police, the liquor control commission, or a local police agency as part of an enforcement action except that any initial or contemporaneous purchase or receipt of alcoholic liquor by the person less than 21 years of age is under the direction of the state police, the liquor control commission, or the local police agency and is part of the undercover operation. The state police, the liquor control commission, or a local police agency shall not recruit or attempt to recruit a person less than 21 years of age for participation in an undercover operation at the scene of a violation of subsection 13-31a, section 436.22(3) or section 436.33 of the Michigan Compiled Laws or section 13-33(1) or section 34.

Section 13-32 . Supplying or using false identification.

a. A person who furnishes fraudulent identification to a person less than 21 years of age, or notwithstanding section 13-31a a person less than 21 years of age who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor.

b. The court shall order the secretary of state to suspend, pursuant to section 319(5) of Act No. 300 of the Public Acts of 1949, being section 257.319 of the Michigan Compiled Laws, for a period of ninety (90) days, the operator or chauffeur license of a person who is convicted of furnishing or using fraudulent identification in violation of this subsection and the operator or chauffeur license of that person shall be surrendered to the court. The court shall immediately forward the surrendered license and an abstract of conviction to the secretary of state. A suspension ordered under this subsection shall be in addition to any other suspension of the person's operator or chauffeur license.

Section 13-33. Possession or transporting alcoholic liquor in motor vehicle by minor.

a. A person less than 21 years of age shall not knowingly transport or possess, in a motor vehicle, alcoholic liquor unless the person is employed by a licensee under the Michigan Liquor Control Act, being Michigan Compiled Law 436.1 et seq, a common carrier designated by the liquor control commission, the liquor control commission, or an agent of the liquor control commission and is transporting or having the alcoholic liquor in a motor vehicle under the person's control during regular working hours and in the course of the person's employment. A person who violates this subsection is guilty of a misdemeanor.

b. Within thirty (30) days after the conviction of a person for the violation of subsection (a), which conviction has become final, complaint may be made by the arresting officer or the officer's superior before the court from which the warrant was issued, which complaint shall be under oath and shall contain a description of the motor vehicle in which alcoholic liquor was possessed or transported by the person less than 21 years of age in committing the offense and praying that the motor vehicle be impounded as provided in this ordinance. Upon the filing of the complaint the court shall issue an order to the owner of the motor vehicle to show cause why the motor vehicle shall not be impounded. The order to show cause shall have a date and time fixed in the order for a hearing, which date shall not be less than ten (10) days after the issuance of the order and shall be served by delivering a true copy to the owner not less than three (3) full days before the date of hearing or, if the owner cannot be located, by sending a true copy by certified mail to the last known address of the owner. If the owner is a nonresident of the state, service may be made on the secretary of state as provided in section 403 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being section 257.403 of the Michigan Compiled Laws.

c. If the court determines upon the hearing of the order to show cause, from competent and relevant evidence, that at the time of the commission of the offense the motor vehicle was being driven by the person less than 21 years of age with the express or implied consent or knowledge of the owner, and that the use of the motor vehicle is not needed by the owner in the direct pursuit of the owner's employment or the actual operation of the owner's business, the court shall authorize the impounding of the vehicle for a period to be determined by the court, of not less than fifteen (15) days nor more than thirty (30) days. The court's order authorizing the impounding of the vehicle shall authorize a law enforcement officer to take possession without other process of the motor vehicle wherever located and to store the vehicle in a public or private garage at the expense and risk of the owner of the vehicle. Appeal shall lie from the order to the Circuit Court of Wayne County and the provisions governing the taking of appeals from judgements for damages shall be applicable to the appeal. This section shall not prevent a bona fide lien-holder from exercising rights under a properly filed and perfected lien.

d. A person who knowingly transfers title to a motor vehicle for the purpose of avoiding this ordinance is guilty of a misdemeanor.

Section 13-34. Sale or furnishing to persons under twenty-one (21) years Prohibited.

a. No person shall sell, furnish or allow the furnishing of alcoholic liquor to a person under twenty-one (21) years of age.

b. No person shall sell or furnish alcoholic liquor to a person under the age of twenty-one (21) years without first making a diligent inquiry as to whether the person being sold or furnished the alcoholic liquor is less than twenty-one (21) years of age.

c. A person who is a licensee by the Michigan Liquor Control Commission for consumption of alcoholic liquor on the premises or the clerk, agent or employee of the licensee shall not be charged with a violation of subsection (a) or (b) unless the licensee, clerk, agent or employee knew or should have reasonably known with the exercise of due diligence that a person less than twenty-one (21) years of age possessed or consumed alcoholic liquor on the licensed premises and the licensee, clerk, agent or employee failed to take immediate corrective action.

d. If the enforcing agency involved in the violation is the local police agency, a licensee shall not be charged with a violation of subsection (a) or (b) unless enforcement action under section 3-31 is taken against the person less than twenty-one (21) years of age who purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcoholic liquor and, if applicable, enforcement action is taken under this section against the person twenty-one (21) years of age or older who sold or furnished the alcoholic liquor to the person who is less than twenty-one (21) years of age. However, this subsection does not apply under any of the following circumstances:

1. The person against whom enforcement action is taken under section 13-31 or the person twenty-one (21) years of age or older who sold or furnished alcoholic liquor to the person less than twenty-one (21) years of age is not alive or is not present in this state at the time the licensee is charged.
2. The violation of subsection (a) or (b) is the result of an undercover operation in which the person less than twenty-one (21) years of age purchased or received alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor or City Attorney's office as part of an employer-sponsored internal enforcement action.
3. The violation of subsection (a) or (b) is the result of an undercover operation in which the person less than twenty-one (21) years of age purchased or received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an

enforcement action. However, any initial or contemporaneous purchase or receipt of alcoholic liquor by the person less than twenty-one (21) years of age shall have been under the direction of the state police, the commission, or the local police agency and shall have been part of the undercover operation.

e. If a person less than twenty-one (21) years of age participates in an undercover operation in which the person less than twenty-one (21) years of age is to purchase or receive alcoholic liquor under the supervision of a law enforcement agency, his or her parents or legal guardian shall consent to the participation if that person is less than eighteen (18) years of age.

f. In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a person less than twenty-one (21) years of age, a motor vehicle operator's or chauffeur's license or a registration certificate issue by the federal selective service, or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action brought under this section.

g. As used in this section, the following definitions shall apply:

1. "Corrective action" means action taken by a licensee or a clerk, agent, or employee of a licensee designed to prevent a person less than twenty-one (21) years of age from further possessing or consuming alcoholic liquor on the licensed premises. Corrective action includes, but is not limited to, contacting a law enforcement agency and ejecting the person less than twenty-one (21) years of age and any other person suspected of aiding and abetting the person less than twenty-one (21) years of age.
2. "Diligent inquiry" means a diligent good faith effort to determine the age of a person, which includes at least an examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, or any other bona fide picture identification which establishes the identity and age of the person.

h. A person who violates subsections (a) or (b) shall be guilty of a misdemeanor.

SECTION 2. REPEAL.

All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed only to the extent necessary to give this Ordinance full force and effect and specifically, Chapter 13, Article III is repealed.

SECTION 3. SAVING CLAUSE.

Nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or Ordinance hereby repealed pursuant to Section 2 of this Ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

SECTION 4. SEVERABILITY.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION 5. IMMEDIATE EFFECT.

To preserve the public peace, health, welfare and safety, it is necessary that this Ordinance become immediately operative. It is, therefore, declared to be an emergency measure to take effect immediately.

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 27th day of February, 1996 and ordered to be given publication in the manner prescribed by law.

KENNETH E. FORD, Mayor
City of Allen Park

BEVERLY KELLEY, City Clerk
City of Allen Park