

## **ORDINANCE NO. 1071**

An Ordinance to amend Ordinance 571, being an Ordinance codifying and adopting a new Code of Ordinances for the City of Madison Heights, Michigan, by amending Chapter 16, Article IV, Sections 16-56 and 16-59 of the Code of Ordinances, of the City of Madison Heights, Michigan, to regulate the sale of alcoholic liquor to a person under 21; to regulate the purchase, consumption, or possession of alcoholic liquor by a person under 21; to proscribe penalties, sanctions and fines for violations; to prohibit furnishing fraudulent identification to person under 21; to provide for screening and assessment; to regulate chemical breath analysis; to provide notice to a parent, custodian, or guardian for a violation; to define exceptions; to provide for deferral proceedings for a first offense and to define "any bodily alcohol content."

### **THE CITY OF MADISON HEIGHTS ORDAINS:**

#### Section 1.

That Chapter 16, Article IV, Sections 16-56 and 16-59 of the Code of Ordinances, of the City of Madison Heights, Michigan, are hereby amended in their entirety to read as follows:

Sec. 16-56. Furnishing or selling alcoholic liquor to a person under twenty-one.

Alcoholic liquor shall not be sold or furnished to a person unless said person has attained 21 years of age. A person who knowingly sells or furnishes alcoholic liquor to a person who has not attained 21 years of age, or who fails to make diligent inquiry as to whether the person is 21 years of age, is guilty of a misdemeanor punishable by imprisonment for not more than 60 days or a fine of not more than \$500.00, or both. If a retail licensee or a retail licensee's clerk, agent or employee violates this section and the violation is the result of an undercover operation in which the person under 21 received alcoholic liquor under the direction of a police agency as part of an enforcement action, the retail licensee or a retail licensee's clerk, agent or employee is responsible for a civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

Sec. 16-59. Purchase, consumption, possession by person under twenty-one

(1) A person less than twenty-one (21) years of age shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A person under 21 who violates this

section is guilty of a misdemeanor punishable by the following fines and sanctions:

(a) For the first violation a fine of not more than \$100.00, 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, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, and may be ordered to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

(b) For a violation of this subsection following a prior conviction or juvenile adjudication for a violation of MCL 436.1703 or a local ordinance substantially corresponding to MCL 436.1703, by imprisonment for not more than 30 days but only if the person under 21 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, a fine of not more than \$200.00, 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, 1978 PA 368, 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 his or her own expense as described in subsection (4).

(c) For a violation of this subsection following 2 or more prior convictions or juvenile adjudications for a violation of MCL 436.1703 or a local ordinance substantially corresponding to MCL 436.1703, by imprisonment for not more than 60 days but only if the person under 21 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, a fine of not more than \$500.00, 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, 1978 PA 368, 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 his or her own expense as described in subsection (4).

(2) A person who furnishes fraudulent identification to a person under 21, or notwithstanding subsection (1) a person under 21 who uses fraudulent identification to attempt to purchase or purchases alcoholic liquor, is guilty of a

misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(3) When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (1) or a law substantially corresponding, pleads guilty or nolo contendere to a violation of subsection (1), the court, without entering a judgment of guilt 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 (1)(a), 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. 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 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 and is not a conviction 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 subsection (1)(b) and (c). There may be only 1 discharge and 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 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:

(a) To a court, prosecutor, city attorney, or police agency upon request for the purpose of determining if an individual has already utilized this subsection.

(b) To the department of corrections, a prosecutor, city attorney, or a law enforcement agency, upon the department's, a prosecutor's, city attorney, 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.

(4) The court may order the person convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the substance abuse coordinating agency as defined in section 6103 of the public health code, 1978 PA 368, 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. The court may order a person, subject to a conviction or placed on probation regarding a violation of subsection (1), to submit to a random or regular preliminary chemical breath analysis.

(5) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (1) or (2) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.

(6) A peace officer who has reasonable cause to believe a person under 21 has consumed alcoholic liquor or has any bodily alcohol content may request consent of the person to submit to a preliminary chemical breath analysis. If the person under 21 refuses the request of the peace officer to take the test, a test shall not be given without a court order. 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 person under 21 has consumed or possessed alcoholic liquor or had any bodily alcohol content.

(7) A law enforcement agency, upon determining that a person less than 18 years of age who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (1) shall notify the parent or parents, custodian, or guardian of the person 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 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 (1) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. 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 an individual less than 17 years of age is incarcerated for violating subsection (1), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(8) This section does not prohibit a person under 21 from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by Michigan Liquor Control Code, 1998 PA 58, MCL 436.1101 et. seq., by the Michigan Liquor Control Commission, or by an agent of the Michigan Liquor Control Commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(9) This section does not limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent, or employee for a violation of this ordinance.

(10) The consumption of alcoholic liquor by a person under 21 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 ordinance if the purpose of the consumption is solely educational and is a requirement of the course.

(11) The consumption by a person under 21 of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this ordinance.

(12) Subsection (1) does not apply to a person under 21 who participates in either or both of the following:

(a) An undercover operation in which the person under 21 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.

(b) An undercover operation in which the person under 21 purchases or receives alcoholic liquor under the direction of the state police, the Michigan 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 person under 21 was not under the direction of the state police, the Michigan Liquor Control Commission, or the local police agency and was not part of the undercover operation.

(13) The local police agency shall not recruit or attempt to recruit a person under 21 for participation in an undercover operation at the scene of a violation of subsection (1).

(14) In a criminal prosecution for the violation of subsection (1) concerning a person under 21 having any bodily alcohol content, it is an affirmative defense that the person under 21 consumed the alcoholic liquor in a venue or location where that consumption is legal.

(15) As used in this section, "any bodily alcohol content" means either of the following:

(a) 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.

(b) 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.

Section 2. Repealer.

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

Section 3. Severability.

Should any section, subdivision, clause, or phrase of this ordinance be declared by the courts to be invalid, the validity of the ordinance as a whole, or in part, shall not be affected other than the part invalidated.

Section 4. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

Section 5. Effective Date.

This ordinance as ordered shall take effect ten (10) days after its adoption and upon publication.

Section 6. Enactment.

A copy of this ordinance may be inspected or purchased at the City Clerk's office between the hours of 8:00 a.m. and 4:30 p.m. on regular business days.

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Edward C. Swanson  
Mayor

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Marilyn J. Haley  
City Clerk

CERTIFICATION:

I, the duly authorized Clerk of the City of Madison Heights do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Madison Heights City Council on November 9, 2009.

ADOPTED:	November 9, 2009	_____
PUBLISHED:	November 13, 2009	Marilyn J. Haley
EFFECTIVE:	November 19, 2009	City Clerk