

10/17/2017

ORDINANCE NO. _____

AN ORDINANCE TO AMEND SECTION 70-323 OF CHAPTER 70, OFFENSES, OF THE CODE OF ORDINANCES OF THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, TO MODIFY AND UPDATE REGULATIONS RELATING TO PURCHASE, CONSUMPTION, OR POSSESSION OF ALCOHOLIC LIQUOR BY A MINOR; TO REPEAL CONFLICTING ORDINANCES; AND TO PRESCRIBE A PENALTY FOR VIOLATIONS.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. Section 70-323 of Chapter 70 of the Code of Ordinances of the City of Rochester Hills shall be amended as follows:

Sec. 70-323. Prohibited conduct and penalties.

~~(a) — The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:~~

~~*Probate court disposition* means an order of disposition of the probate court or the family division of the circuit court for a child found to be within the provisions of chapter XIA of Public Act No. 288 of 1939 (MCL 712A.1 et seq.).~~

~~*Work location* means, as applicable, either the specific place of employment or the territory regularly visited by the person in pursuance of the person's occupation, or both.~~

~~(b) A person less than 21 years of age minor 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. ~~Notwithstanding section 909 of Public Act No. 58 of 1998, MCL 436.1909, a~~ person less than 21 years of age minor who violates this subsection is responsible for a municipal civil infraction or guilty of a misdemeanor punishable by the following fines and sanctions, and is not subject to the penalties prescribed in section 909 of Public Act No. 58 of 1998 (MCL 436.1909)~~

(1) *First offense.* For the first violation, ~~a fine of the minor is responsible for a~~ municipal civil infraction and shall be fined not more than \$100.00, ~~and may be ordered~~ A court may order the minor to participate in substance ~~abuse prevention or substance abuse treatment and rehabilitation use disorder~~ services as defined in section ~~61076230~~ of the ~~p~~Public ~~h~~Health ~~e~~Code, Public Act No. 368 of 1978, MCL 333.~~61076230~~, and designated by the ~~a~~Administrator of ~~s~~Substance ~~a~~Abuse ~~s~~Services, and may be ordered to perform community service and to undergo

substance abuse screening and assessment at ~~his~~ the minor's own expense ~~as described in subsection (1)~~.

(2) *Second offense.* ~~For~~ If a violation of this subsection ~~(b) following a prior conviction or juvenile adjudication of this subsection (b), MCL 436.1703(1), or any other local ordinance substantially corresponding to this subsection (b) or MCL 436.1703(1), after 1 prior judgment, the minor is guilty of a misdemeanor punishable~~ by 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, by a fine of not more than \$200.00, or both, and may be ordered to participate in ~~substance abuse prevention or substance abuse treatment and rehabilitation use disorder~~ services as defined in section ~~61076230~~ of the ~~p~~Public ~~h~~Health ~~e~~Code, Public Act No. 368 of 1978 (MCL 333.~~61076230~~), and designated by the ~~a~~Administrator of ~~s~~Substance ~~a~~Abuse ~~s~~Services, to perform community service and to undergo substance abuse screening and assessment at ~~his or her~~ the minor's own expense, ~~as described in subsection (1). The person is also subject to sanctions against his or her operator's or chauffeur's license.~~

(3) *Third or subsequent offense.* ~~For~~ If a violation of this subsection ~~(b) following occurs after two or more prior convictions or juvenile adjudications of this subsection (b), MCL 436.1703(1) or any other local ordinance substantially corresponding to this subsection (b) or MCL 436.1703, judgments, the minor is guilty of a misdemeanor punishable~~ by 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, by a fine of not more than \$500.00, or both, and may be ordered to participate in ~~substance abuse prevention or substance abuse treatment and rehabilitation use disorder~~ services as defined in section ~~61076230~~ of the ~~p~~Public ~~h~~Health ~~e~~Code, Public Act No. 368 of 1978, MCL 333.~~61076230~~ and designated by the ~~a~~Administrator of ~~s~~Substance ~~a~~Abuse ~~s~~Services, to perform community service, and to undergo substance abuse screening and assessment at ~~his or her~~ the minor's own expense ~~as described in subsection (1). The person is also subject to sanctions against his or her operator's or chauffeur's license.~~

(~~e~~) b) A person who furnishes fraudulent identification to a ~~person less than 21 years of age~~ minor, or notwithstanding subsection (~~b~~) a) of this section, a ~~person less than 21 years of age~~ 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.

(~~d~~) ~~The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (b) or (c) as provided in Section 319 of the Michigan Vehicle Code, Public Act No. 300 of 1949, MCL 257.319.~~

- (~~ec~~) A peace officer who has reasonable cause to believe a ~~person less than 21 years of age~~ minor has consumed alcoholic liquor or has any bodily alcohol content may request ~~that person~~ that 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 municipal civil infraction proceeding or criminal prosecution to determine whether the ~~person less than 21 years of age~~ minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.
- (~~fd~~) A law enforcement agency, upon determining that a person less than 18 years of age ~~who is and~~ not emancipated pursuant to Public Act No. 293 of 1968, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased, or attempted to consume, possess, or purchase alcoholic liquor in violation of subsection (~~ba~~) of this section shall notify the 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~~ notification 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 (~~ba~~) of this section is less than 18 years of age and not emancipated pursuant to Public Act No. 293 of 1968, MCL 722.1 to 722.6. The ~~notice~~ notification 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 (~~ba~~) of this section, his or her parents or legal guardian shall be notified immediately as provided in this subsection.
- (~~ge~~) This section does not prohibit a ~~person less than 21 years of age~~ 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, Public Act No. 58 of 1998, MCL 436.1101 et seq. by the Michigan Liquor Control Commission, or by an agent of the Commission, if the alcoholic liquor is not possessed for his or her personal consumption.
- (~~f~~) The following individuals are not considered to be in violation of subsection (1):
- (1) A minor 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) A minor who accompanies an 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) A minor 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.

(hg) This section shall not be construed to limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent, or employee for a violation of the Michigan Liquor Control Code, Public Act No. 58 of 1998, MCL 436.1101 et seq.

(ih) The consumption of alcoholic liquor by a ~~person less than 21 years of age~~ 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 division~~ if the purpose of the consumption is solely educational and is a requirement of the course.

(ji) The consumption by a ~~person less than 21 years of age~~ minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited ~~by the Michigan Liquor Control Code, Public Act No. 58 of 1998, MCL 436.1101 et seq.~~

(kj) Subsection (ba) of this section does not apply to a ~~person less than 21 years of age~~ minor who participates in either or both of the following:

(1) An undercover operation in which the ~~person less than 21 years of age~~ minor purchases or receives alcoholic liquor under the direction of the person's employer and with prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(2) An undercover operation in which the ~~person less than 21 years of age~~ minor 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~~ unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the ~~person less than 21 years of age~~ minor was not under the direction of the state police, the commission, or the local police agency and was not part of the undercover operation. ~~The state police, the 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 (b) of this section, or section 801(2) or section 701(1) of Public Act No. 58 of 1998, MCL 436.1701(1) or 436.1801(2).~~

~~(l) The court may order the person convicted of violating subsection (b) 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, Public Act No. 368 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.~~

(mk) In a ~~criminal~~ prosecution for the violation of subsection (ba) concerning a ~~person less than 21 years of age~~ 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.

(nl) As used in this section:

(1) “Any bodily alcohol content” means either of the following:

(4i) 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.

(2ii) 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) “Minor” means an individual less than 21 years of age.

(3) “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.

(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.

Section 2. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Section 3. Repeal, Effective Date, Adoption.

(1) Repeal. All regulatory provisions contained in other City ordinances, which are inconsistent with the provisions of this ordinance, are hereby repealed.

(2) Effective Date. This ordinance shall become effective on _____ following its publication in the *Oakland Press* on _____, 2017.

(3) Adoption. This ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof held on _____, 2017.

Bryan K. Barnett, Mayor
City of Rochester Hills

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS ADOPTED BY THE CITY COUNCIL OF THE CITY OF ROCHESTER HILLS AT A MEETING THEREOF ON _____, 2017.

Tina Barton, Clerk
City of Rochester Hills