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October 21, 2004

Mayor Pat Somerville
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: Rochester Hills Ordinance Section 70-321 et seq

Dear Mayor Somerville:

On March 22 of this year, I sent a letter to you recommending an ordinance change to the City's underage drinking ordinance, Section 70-321 et seq. That letter was prompted by a November 18, 2003, decision in the case of *Spencer v City of Bay City*. In essence, the suggested change at that time was to change the City's ordinance from requiring a person under 21 years of age to submit to a PBT to that of requesting a person to do so. The suggested changes also included the removal of the civil infraction for refusing to voluntarily submit to the PBT. This would still allow an officer to request them to do so and obtain a warrant to obtain the results if they refuse. The officer could also issue the ticket based on the other observations of alcohol if he or she chose.

Effective September 2004, the state statute concerning underage drinking violations, which the Rochester Hills ordinance mirrors, went through a number of substantial changes. It is our recommendation to revise the City's ordinances to bring its ordinance back in line with the current corresponding state statute. In this regard, I have drafted and now submit to you a proposed ordinance amendment to these sections. This amendment includes the changes previously recommended, as well as the newly suggested changes.

I would note that the changes in the state statute did not include the changes previously recommended to you (removal of the civil penalty for refusal of the PBT and changing the wording from "require" to "request"). However, our recommendations would still be

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to make those changes for the reasons set forth in our March 22, 2004, letter to you. I have included a copy of that letter also for your easy reference.

We await your direction.

Very truly yours,

BEIER HOWLETT, P.C.



Jeffrey S. Kragt

JSK/jmh

Enclosures

cc: Susan Galeczka
Captain Smith
John D. Staran