

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 70, OFFENSES, ARTICLE VI, OFFENSES CONCERNING UNDERAGE PERSONS, OF THE CODE OF ORDINANCES FOR THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, TO AMEND SECTION 70-232(e) ET. SEQ. TO BRING THIS ARTICLE UP TO DATE WITH THE RECENT CHANGES TO THE CORRESPONDING STATE STATUTE.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. Section 70-323 et. seq. of Chapter 70, Article VI, of the Code of Ordinances for 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: Unchanged.~~

~~*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., MSA 27.3178(598.1) 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 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. Notwithstanding section 909 of Public Act No. 58 of 1998, (MCL 436.1909, MSA 18.1175(909)), 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 section 909 of Public Act No. 58 of 1998 (MCL 436.1909), MSA 18.1175(909));

(1) *First offense.* For the first violation, a fine of not more than \$100.00, 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, Public Act No. 368 of 1978, (MCL 333.6107, MSA 14.15(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 own expense as described in subsection (1).

(2) *Second offense.* ~~For a second violation, a fine of not more than \$200.00~~ For 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), 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, 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 services as defined in section 6107 of the public health code, Public Act No. 368 of 1978 (MCL 333.6107, MSA 14.15(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 (l). The person is also subject to sanctions against his or her operator's or chauffeur's license.

~~(3) *Third or subsequent offense.* For a third or subsequent violation, a fine of not more than \$500.00~~For a violation of this subsection (b) following 2 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, 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, 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 services as defined in section 6107 of the public health code, Public Act No. 368 of 1978, (MCL 333.6107, MSA 14.15(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 (l). The person is also subject to sanctions against his or her operator's or chauffeur's license.

~~(c) A person who furnishes fraudulent identification to a person less than 21 years of age, or notwithstanding subsection (b) of this section, a person less than 21 years of age 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. The court shall order the secretary of state to suspend, pursuant to section 319(5) of the Michigan Vehicle Code, Public Act No. 300 of 1949 (MCL 257.319(5), MSA 9.2019, (5)), for a period of 90 days, the operator's or chauffeur's license of a person who is convicted of furnishing or using fraudulent identification in violation of this subsection, and the operator's or chauffeur's 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's or chauffeur's license.~~

~~(d) If license sanctions are imposed, immediately upon the entry of a court-ordered sanction, the court shall order the person convicted for the violation to surrender to the court his 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. If the finding is appealed to the circuit court, the court may, ex parte, order the secretary of state to stay the suspension issued pursuant to this section pending the outcome of the appeal. Immediately following imposition of the sanction, the court shall forward a notice to the secretary of state indicating the sanction imposed. 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.

(e) A peace officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic liquor may ~~require~~ request 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 person less than 21 years of age has consumed or possessed alcoholic liquor. ~~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 state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.~~

(f) 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 722.1 to 722.6, ~~et seq.~~, MSA 25.244(1) ~~et seq.~~) allegedly consumed, possessed, purchased, or attempted to consume, possess, or purchase alcoholic liquor in violation of subsection (b) of this section shall notify the parent, 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 (b) 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, ~~et seq.~~, MSA 25.244(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 (b) of this section, his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(g) This section does not prohibit a person less than 21 years of age from possessing alcoholic liquor during regular working hours and in the course of his employment if employed by a person licensed by the Michigan Liquor Control Code, Public Act No. 58 of 1998, (MCL 436.1101 ~~et seq.~~, MSA 18.1175(101) ~~et seq.~~), by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(h) 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.~~, MSA 18.1175(101) ~~et seq.~~).

(i) The consumption of alcoholic liquor by a person less than 21 years of age 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 ~~necessary~~ ingredient requirement of the course.

(j) The consumption by a person less than 21 years of age 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. MSA 436.1101 et seq.);

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

- (1) 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 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 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 not under the direction of the state police, the commission, or the local police agency and is 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), MSA 436.1701, (1), 436.1801, (2)).

(l) The court may order the person convicted of violating section (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.

(m) In a criminal prosecution for the violation of subsection (b) concerning a person less than 21 years of age 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.

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

- (1) 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.
- (2) 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. 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 effected thereby.

Section 3. Repeat, 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 _____, the day following its publication in the ~~Clarion Eccentric~~ _____ on _____.

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

Pat Somerville, Mayor
City of Rochester Hills

CERTIFICATE

I, BEVERLY A. JASINSKI, ROCHESTER HILLS CITY CLERK, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND COMPLETE COPY OF AN ORDINANCE, THE ORIGINAL OF WHICH IS ON FILE IN MY OFFICE, ADOPTED BY THE CITY COUNCIL OF THE CITY OF ROCHESTER HILLS AT A MEETING THEREOF HELD ON WEDNESDAY, _____.

Beverly A. Jasinski, Clerk
City of Rochester Hills