

**CITY OF ALBION
ORDINANCE #2013-02**

**AN ORDINANCE TO AMEND CITY ORDINANCE 58-226 (MINORS IN
POSSESSION OF ALCOHOL).**

Purpose and Finding:

To amend City Ordinance 58-226 to make it constitutionally compliant and to mirror existing Michigan statutes. The current Albion ordinance governing minors in possession of alcohol deviates from the state statute in eliminating the possibility of jail sentences for repeat offenders. MCL 436.1703 provides a maximum 30 day incarceration for a second offense upon a finding of a violation of probation terms and a 60 day incarceration for a third offense upon a finding of a violation of probation terms. The Albion ordinance should be modified to include those penalties to ensure uniformity in enforcement of the law, to prevent and deter repeat violations of controlled substance laws, and to allow the Court to deter violations of terms of probation through the use of incarceration. Additionally, the State of Michigan recently enacted Public Act 125 of 2012 which added provisions that exempted minors from prosecution of the offense of Minor in Possession of Alcohol in certain circumstances, namely when legitimately seeking medical treatment or when aiding another in seeking medical treatment. Those changes have been integrated. Furthermore, Section (e) had been previously deleted due to the Michigan Court of Appeals ruling in *People v Chowdhury*, 285 Mich App 509, 775NW2d 845 (2009), which declared part of that section unconstitutional. The constitutional sections are being reintroduced and reintegrated as it relates to the use of Preliminary Breath Analysis. The Albion City Ordinance governing Minors in Possession of Alcohol must be amended to reflect the aforementioned changes in statutory law to remain constitutionally compliant and should be modified to mirror the current state penalties.

THE CITY OF ALBION ORDAINS:

Sec. 58-226. Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; prior violation; screening and assessment; chemical breath analysis; notice to parent, custodian, or guardian; exceptions; definitions.

(a) A minor 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. A minor who violates this section is guilty of a misdemeanor punishable by the following fines and sanctions:

(1) 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, 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 (c).

(2) For a violation of this section following a prior conviction or juvenile adjudication for a violation of this section by imprisonment of not more than 30 days but only if the court finds that the minor 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, or by a fine of not more than \$200.00, or both. A court may order a minor under this subdivision to participate in substance abuse prevention 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 (c).

(3) For a violation of this section following two or more prior convictions or juvenile adjudications for a violation of this section by imprisonment of not more than 60 days but only if the court finds that the minor 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, or by a fine of not more than \$500.00, or both. A court may order a minor under this subdivision to participate in substance abuse prevention 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 (c).

(b) A person who furnishes fraudulent identification to a minor, or, notwithstanding subsection (a), a 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.

(c) The court may order the person convicted of 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 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.

(d) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (a) or (b) as provided in section 319 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.319.

(e) A peace officer may arrest an individual 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 minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.

(f) 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, 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 if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The notice required by this section shall be made not later than 48 hours after the law enforcement agency determines that the person who allegedly violated subsection (a) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1--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 (a), his or her parents or legal guardian shall be notified immediately as provided in this section.

(g) This section does not prohibit a 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 Liquor Control Act, by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(h) The following individuals are not considered to be in violation of subsection (a):

- (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.

(i) If a minor under the age of 18 who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (h), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.

(j) 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 section or a state act.

(k) The consumption of alcoholic liquor by a 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 section if the purpose of the consumption is solely educational and is a requirement of the course.

(l) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this section.

(m) Subsection (a) does not apply to a minor who participates in either or both of the following:

(1) An undercover operation in which the minor 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.

(2) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the state police, the state 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 minor was not under the direction of the state police, the state liquor control commission, or the local police agency and was not part of the undercover operation.

(n) The state police, the liquor control commission, or a local police agency shall not recruit or attempt to recruit a minor for participation in an undercover operation at the scene of a violation of subsection (a).

(o) In a criminal prosecution for the violation of subsection (a) concerning a 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 was legal.

(p) As used in this section:

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

(i) 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.

(ii) 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 generally recognized religious service or ceremony.

(2) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(3) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

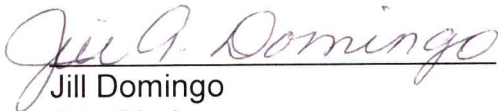
State Law Reference: MCL 436.1703, PA 125 of 2012

This Ordinance shall take effect after publication in the Albion Recorder and on March 18, 2013.

First Reading:

February 4, 2013

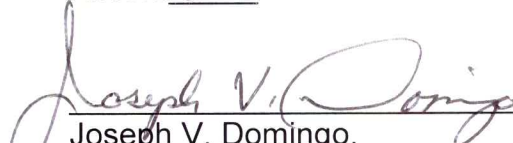
Ayes 7
Nays 0
Absent 0


Jill Domingo
City Clerk

Second Reading & Adoption:

February 18, 2013

Ayes 5
Nays 0
Absent 2


Joseph V. Domingo,
Mayor