

SUMMARY OF ORDINANCE NO. 2011-08

AMENDED MINOR IN POSSESSION ORDINANCE

The following is a summary of the City of Albion's Amended Minor in Possession Ordinance which was adopted by the City Council at a regular session meeting on November 21, 2011 and will be given effect on December 21, 2011:

Purpose: The purpose of the Amendment of the Ordinance is to ensure that the Minor in Possession Ordinance is constitutionally compliant as it relates to the searches of persons under the age of twenty-one years with Preliminary Breath Test Devices.

Review of Sections:

Sub-section (a) provides that 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. Subsection (a) also includes the penalties for violation, including, but not limited to, fines, substance abuse screening, community service, and license sanctions.

Sub-section (b) provides 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, or both

Sub-sections (c-e) provide more detailed and specific consequences for violations of the Ordinance.

Sub-sections (f-j) provide the various exceptions to which this ordinance does not apply.

Sub-section (k) provides that governmental agencies may not use other minors in undercover operations for enforcement of this ordinance.

Former Sub-section (e) which authorized public safety officers to administer preliminary breath tests to minor based on reasonable suspicion of consumption of alcohol, and authorized the issuance of civil infraction citations for refusal has been deleted.

A complete and true copy of the Amended Minor in Possession Ordinance is on file and available for public inspection or copying at the office of the City Clerk located at 112 W. Cass Street, Albion, Michigan 49224-1731

**CITY OF ALBION
ORDINANCE #2011-08**

**AN ORDINANCE TO AMEND CITY ORDINANCE 58-226 (MINORS IN
POSSESSION OF ALCOHOL), BY REMOVING SUBSECTION 58-226(e).**

Purpose and Finding:

To amend City Ordinance 58-226 to make it constitutionally compliant. MCL 436.1703(6) provides that: "(6) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may require 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 minor has consumed or possessed alcoholic liquor or had any bodily alcohol content. A minor 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." Albion City Ordinance 58-226(e) is directly adopted from MCL 436.1703(6), and the language contained therein is identical. The United States District Court for the Eastern District of Michigan determined in *Platte v Thomas Township*, 504 F Supp 2d 227 (2007) that MCL 436.1703(6) was unconstitutional and issued a permanent injunction against its enforcement. Furthermore, the Michigan Court of Appeals likewise held in *People v Chowdhury*, 285 Mich App 509, 775 NW2d 845 (2009), that a city ordinance adopting the language of MCL 436.1703(6) was unconstitutional on its face. The Albion City Ordinance governing Minors in Possession of Alcohol must be amended to reflect the aforementioned changes in case law.

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; chemical breath analysis; notice to parent, custodian, or guardian; construction of section; exceptions.

(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 a fine of not more than \$200.00, 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, 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, a fine of not more than \$500.00, 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, 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 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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).

This Ordinance shall take effect after publication in the Albion Recorder and on December 21, 2011.

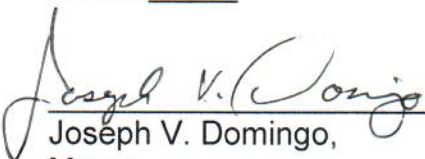
First Reading:
November 7, 2011

Ayes 7
Nays 0
Absent 0


Kerry Helmick,
City Clerk

Second Reading & Adoption:
November 21, 2011

Ayes 7
Nays 0
Absent 0


Joseph V. Domingo,
Mayor.