



**CITY OF YPSILANTI
NOTICE OF ADOPTED ORDINANCE
Ordinance No. 1296**

AN ORDINANCE TO AMEND YPSILANTI CITY CODE CHAPTER 6 "ALCOHOLIC LIQUOR" TO BE CONSISTENT WITH STATE LAW AND SETTING FORTH THE PENALTIES.

THE CITY OF YPSILANTI HEREBY ORDAINS:

Section 1: Amendments, additions, and deletions to the Code of Ordinances, City of Ypsilanti, Michigan.

That Chapter 6 of the Code of Ordinances, City of Ypsilanti, Michigan, entitled "Alcoholic Liquor", Article I "In General", Section 6-1 "Definitions", is hereby amended as follows:

Sec. 6-1. – Definitions.

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

Alcohol means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

Alcoholic liquor means any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, or patented, and by whatever names called, containing one-half of one percent or more of alcohol by volume that which are fit for use for food purposes or beverage purposes as defined and classified by the liquor control commission according to alcoholic content as belonging to 1 of the varieties defined in MCL Chapter 436.

Any bodily alcohol content means either of the following:

- (a) 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.
- (b) 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.

Beer means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.

Emergency medical services personnel means that term as defined in 1978 PA 368, MCL 333.20904.

Health facility or agency means that term as defined in 1978 PA 369, MCL 333.20106.

Mixed spirit drink means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink that contains 10% or less alcohol by volume consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials and that may also contain 1 or more of the following:

- (a) Water.
- (b) Fruit juices.
- (c) Fruit adjuncts.
- (d) Sugar.
- (e) Carbon dioxide.
- (f) Preservatives.

Mixed wine drink means a drink or similar product marketed as a wine cooler that contains less than 7% alcohol by volume, consists of wine and plain, sparkling, or carbonated water, and contains any 1 or more of the following:

- (a) Nonalcoholic beverages.
- (b) Flavoring.
- (c) Coloring Materials.
- (d) Fruit juices.
- (e) Fruit adjuncts.
- (f) Sugar.
- (g) Carbon dioxide.
- (h) Preservatives.

Prior judgment means a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of the State of Michigan, a local ordinance substantially corresponding to a law of the State of Michigan, a law of the United States substantially corresponding to a law of the State of Michigan, or a law of another state substantially corresponding to a law of the State of Michigan:

- (a) MCL 436.1701, 436.1703, or 436.1707.
- (b) MCL 257.624a, 257.624b, or 257.625.
- (c) MCL 324.80176, 324.81134, or 324.82127.
- (d) MCL 750.167a or 750.237.

Sacramental wine means wine containing not more than 24% of alcohol by volume which is used for sacramental purposes.

Spirits means ~~a any~~ beverage ~~that contains~~ ~~containing~~ alcohol ~~obtained~~ by distillation, mixed with potable water ~~or and~~ other substances, ~~or both~~, in solution, and ~~includes~~ ~~including~~, among other things, wine containing an alcohol content of ~~more than 21% over 16 percent~~ by volume, except sacramental wine and mixed spirit drink.

Wine means the product made by the normal alcohol fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than ~~21 16~~ percent of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks. ~~It shall also include fermented fruit juices other than grapes.~~

That Chapter 6 of the Code of Ordinances, City of Ypsilanti, Michigan, entitled "Alcoholic Liquor", Article I "In General", Section 6-3 "Penalty", is hereby amended as follows:

Sec. 6-3. – Penalty.

Anyone who violates this chapter, ~~except where otherwise stated with the exception of~~ section 6-53, shall upon conviction be guilty of a misdemeanor and punished as provided in section 1-15.

That Chapter 6 of the Code of Ordinances, City of Ypsilanti, Michigan, entitled "Alcoholic Liquor", Article III "Operating Requirements", Section 6-52 "Sale, etc., to minors, purchases by minors", is hereby amended as follows:

Sec. 6-52. - Sale, etc., to minors; purchases by minors.

No person, either directly or indirectly, by himself or by any clerk, agent, servant or employee, shall, at any time, sell, furnish, give or deliver any alcoholic liquor to any person unless such person shall have attained the age of 21 years except as otherwise provided by law. In any criminal prosecution for any violation of this section, proof that the defendant licensee, or his agent or employee, demanded and was shown, before furnishing any alcoholic liquor to a minor, a motor vehicle operator's license or a registration certificate issued by the federal selective service or other bona fide documentary evidence of the age and identity of such person, may be offered as evidence in a defense to such prosecution.

That Chapter 6 of the Code of Ordinances, City of Ypsilanti, Michigan, entitled "Alcoholic Liquor", Article III "Operating Requirements", Section 6-53 "Purchase, consumption, or possession of alcoholic liquor by person less than 21 years of age; attempt; violation", is hereby amended as follows:

Sec. 6-53. - Purchase, consumption, or possession of alcoholic liquor by person less than 21 years of age; attempt; violations; exclusions; defenses.

(a) 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, in the city, except as provided in this section and section 624b of Act No. 493 of the Public Acts of Michigan of 1996 (MCL 257.624b). A person less than 21 years of age who violates this subsection is responsible for a civil infraction or guilty of a misdemeanor punishable by the following fines and sanctions as follows and is not subject to the penalties prescribed in MCL 436.1999 or an ordinance substantially corresponding to MCL 436.1999:

(1) For the first violation, the person is responsible for a civil infraction and shall be fined a fine of not more than \$100.00, and may be ordered to participate in substance use disorder abuse prevention or substance abuse treatment and rehabilitation services as defined in section 6230 6107 of the Public Health Code, 1978 PA 368, MCL 333.6230, Act No. 268 of the Public Acts of Michigan of 1978 (MCL 333.6107), and designated by the administrator of the office 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 MCL 436.1703(5). A person may be found responsible or admit responsibility only once under this subsection.

(2) If a violation of this section occurs after 1 prior judgment, the person is guilty of a misdemeanor punishable by imprisonment for not more than 30 days if the court finds that the person 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, For a second violation a fine of not more than \$200.00, and may be ordered to participate in substance use disorder abuse prevention or substance abuse treatment and rehabilitation services as defined in section 6230 6107 of the Public Health Code, 1978 PA 368, MCL 333.6230, Act No. 268 of the Public Acts of Michigan of 1978, and designated by the administrator of the office 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 MCL 436.1703(5).

(3) If a violation of this section occurs after 2 or more prior judgments, the person is guilty of a misdemeanor punishable by imprisonment for not more than

60 days, if the court finds that the person 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, as applicable, For a third or subsequent violation a fine of not more than \$500.00, and may be ordered to participate in substance use disorder abuse prevention or substance abuse treatment and rehabilitation services as defined in section 6230 6107 of the Public Health Code, 1978 PA 368, MCL 333.6230, Act No. 268 of the Public Acts of Michigan of 1978, and designated by the administrator of the office 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 MCL 436.1703(5).

(b) A peace officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic liquor or has any bodily alcohol content may request ~~require~~ the person to submit to a preliminary chemical breath analysis. If the person does not consent to a preliminary chemical breath analysis, the analysis shall not be administered without a court order, but a peace officer may seek to obtain a court order. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a civil infraction proceeding or criminal prosecution to determine if the person has consumed or possessed alcoholic liquor or had any bodily alcohol content. A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis or other acceptable blood alcohol test 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.

(c) A law enforcement agency, upon determining that a person less than 18 years of age who is not emancipated under 1968 PA 293, pursuant to Act No. 293 of the Public Acts of Michigan of 1968 (MCL 722.1 et seq.), allegedly consumed, possessed, purchased, or attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (a) of this section 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 subsection shall be made not later than 48 hours after the law enforcement agency determines that the person who allegedly violated subsection (a) of this section is less than 18 years of age and not emancipated under 1968 PA 293, (MCL 722.1 et seq.). pursuant to Act No. 293 of the Public Acts of Michigan of 1968. 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 (a) of this section, his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(d) This section does not prohibit a person less than 21 years of age from possessing alcoholic liquor during regular working hours in the course of his or her employment if employed by a person licensed by 1998 PA 58, (MCL 436.1101 et seq.), by the liquor control commission, or by an agent of the liquor control commission, if the alcoholic liquor is not possessed for his or her personal consumption. Act No. 8 of the Public Acts of Michigan of 1933 (Ex. Sess) (MCL 436.1 et seq.)-

(e) The following persons are not to be considered to be in violation of subsection (a):

(1) A person less than 21 years of age 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 MCL sections 750.520b to 750.520g, committed against a minor.

(2) A person less than 21 years of age who accompanies an individual who meets 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 MCL sections 750.520b to 750.520g, committed against a minor.

(3) A person less than 21 years of age 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.

(f) This section does not limit the civil or criminal liability of a vendor or vendor's clerk, servant, agent, or employee for a violation of this Chapter.

~~(e)-(g)~~ The consumption of alcoholic liquor by a person less than 21 years of age who is enrolled in a course offered by an accredited ~~post~~ 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 necessary ~~ingredient~~ requirement of the course.

(f) (h) _____ 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 this section.

(g) (i) _____ Subsection (a) 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 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 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 unless the ~~except that any~~ initial or contemporaneous purchase or receipt of alcoholic liquor by the person less than 21 years of age was not is under the direction of the state police, the liquor control commission, or the local police agency and was not is part of the undercover operation. The state police, the liquor control 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 (a) of this section, section 6-51, or section 6-52.

(j) _____ In a prosecution for the violation of subsection (a) concerning a person less than 21 years of age having any bodily alcohol content, it is an affirmative defense that the person consumed the alcoholic liquor in a venue or location where that consumption is legal.

That Chapter 6 of the Code of Ordinances, City of Ypsilanti, Michigan, entitled "Alcoholic Liquor", Article III "Operating Requirements", Section 6-54 "Furnishing or using fraudulent identification as misdemeanor", is hereby amended as follows:

Sec. 6-54. - Furnishing or using fraudulent identification as misdemeanor.

A person who furnishes fraudulent identification to a person less than 21 years of age, or, notwithstanding subsection 6-53(a), 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.

2. Severability. If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

3. Repeal. All other Ordinances inconsistent with the provisions of this Ordinance are, to the extent of such inconsistencies, hereby repealed.

4. Savings Clause. The balance of the Code of Ordinances, City of Ypsilanti, Michigan, except as herein or previously amended, shall remain in full force and effect. The repeal provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

5. Copies to be available. Copies of the Ordinance are available at the office of the city clerk for inspection by, and distribution to, the public during normal office hours.

6. Publication and Effective Date. The City Clerk shall cause this Ordinance, or a summary of this Ordinance, to be published according to Section 11.13 of the City Charter. This Ordinance shall become effective after publication at the expiration of 30 days after adoption or on January 1, 2018, whichever is later.

MADE, PASSED AND ADOPTED BY THE YPSILANTI CITY COUNCIL THIS 28th DAY OF November, 2017.

Frances McMullan, City Clerk

Attest

I do hereby confirm that the above Ordinance No. 1296 was published according to Section 11.13 of the City Charter on the 24th day of October, 2017.

Frances McMullan, City Clerk

CERTIFICATE OF ADOPTING

I hereby certify that the foregoing is a true copy of the Ordinance passed at the regular meeting of the City Council held on the 28th day of November, 2017.

Frances McMullan, City Clerk

Notice Published: October 24, 2017

First Reading: November 14, 2017

Second Reading: November 28, 2017

Published: December 4, 2017

Effective Date: December 28, 2017