



CITY of NOVI CITY COUNCIL

Agenda Item 2
September 25, 2017

SUBJECT: Consideration of adoption of Ordinance 17-149.13, amending Chapter 3, Alcoholic Liquor, Article 1, In General, Section 3-5, Persons Under Twenty-One—Unlawful Purchase, Consumption or Possession, of the City of Novi Code of Ordinances. **FIRST READING**

SUBMITTING DEPARTMENT: Department of Public Safety

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

This proposed ordinance amendment would bring the penalty/fine provisions of the City's ordinance governing minors in possession of alcohol into compliance with the recently-adopted changes to state law governing that subject, which the City's ordinances have traditionally followed.

The most significant change in the state law was to make first offenses a civil infraction. Second and subsequent offenses remain misdemeanors, with the maximum term of imprisonment and fine for third and subsequent offenses (60 days/\$500) being higher than for second offenses (30 days/\$200).

The second significant change was to the statute that allows a court to place first offenders pleading guilty on a probationary status, with a chance to earn a dismissal and end up with no criminal record. That process remains available for the first misdemeanor charge (a second offense since first offenses are civil infractions), but with a narrowing of the eligibility for that status. Under the old statute, only a prior conviction for minor in possession/consuming alcohol would disqualify a minor from eligibility for the probationary/dismissal program. Under the new statute, the types of prior convictions that would prevent probationary/dismissal status has been expanded to encompass other alcohol/controlled substance related violations you will find listed in Section 3-5(5) of the proposed Ordinance Amendment.

Most of the changes to the state law were originally scheduled to take effect on January 1, 2018, and were contained in Public Act No. 357 of 2016. However, the State Legislature recently adopted another law, Public Act No. 89 of 2017, that added provisions for court-ordered breath tests. That second law (PA 89) was given an effective date of October 10, 2017—that is, an effective date that was before that of the first law (PA 357). By passing PA 89 the legislature, probably inadvertently, expedited the provisions of PA 357 of 2016 to October 2017 instead of the previously effective date of January 1, 2018. *In order to ensure City Code is aligned with the superseding state statute this ordinance change comes before City Council without first being considered by the Ordinance Review Committee.* The intention is to bring the City Code into compliance with the new state law as soon as possible.

RECOMMENDED ACTION: APPROVE FIRST READING of Ordinance 17-149.13 amending Chapter 3, Alcoholic Liquor, Article 1, In General, Section 3-5, Persons Under Twenty-One—Unlawful Purchase, Consumption or Possession, of the City of Novi Code of Ordinances.



JOHNSON ROSATI SCHULTZ JOPPICH PC

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Gary L. Dovre
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September 20, 2017

Novi City Council
45175 West Ten Mile Road
Novi, MI 48375-3024

RE: Proposed Amendment to Minors in Possession/Consuming Alcohol Ordinance

Dear City Council Members:

Provided with this letter is an Ordinance Amendment that is presented for introduction/first reading at your meeting on September 25, 2017. A mark-up version showing proposed changes from the current Ordinance Code Section 3-5 is also provided. This Ordinance Amendment is to conform the City Ordinance to changes in state law regarding minors that purchase, possess or consume alcohol, to maintain consistency with this area of uniform state-wide regulation.

While those changes under Public Act No. 357 of 2016, were given an effective date of January 1, 2018, we recently learned that Public Act No. 89 of 2017 (which added provisions for court ordered breath tests) essentially reenacted the 2016 changes but with an accelerated, October 10, 2017, effective date. That development and the goal to conform the Ordinance to the state law as soon as possible explains why this has not been presented to the Ordinance Review Committee.

As for the changes in state law, the most significant was to make first offenses a civil infraction. Second and subsequent offenses remain misdemeanors, with the maximum term of imprisonment and fine for third and subsequent offenses (60 days/\$500) being higher than for second offenses (30 days/\$200).

The second significant change was to the statute that allows a court to place first offenders pleading guilty on a probationary status with a chance to earn a dismissal and end up with no criminal record. That process remains available for the first misdemeanor charge (a second offense since first offenses are civil infractions), but with a narrowing of the eligibility for that status. Under the old statute, only a prior conviction for minor in possession/consuming alcohol would disqualify a minor from eligibility for the probationary/dismissal program. Under the new statute, the types of prior convictions that would prevent probationary/dismissal status has been expanded to encompass other alcohol/controlled substance related violations you will find listed in Section 3-5(5) of the proposed Ordinance Amendment.

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If the proposed Ordinance Amendment is acceptable and introduced at your meeting on the 25th, we would recommend that it be scheduled for possible adoption at your meeting on October 9, 2017.

Sincerely yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Gary L. Dovre

Enclosures

cc: Pete Auger, Manager
Victor Cardenas, Asst. Manager
Cortney Hanson, Clerk
David Molloy, Police Chief
Jerrod Hart, Asst. Police Chief
Thomas R. Schultz, Esq.

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 17-149.13

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, CHAPTER 3, ALCOHOLIC LIQUOR, ARTICLE 1, IN GENERAL, SECTION 3-5, PERSONS UNDER TWENTY-ONE—UNLAWFUL PURCHASE, CONSUMPTION OR POSSESSION IN ORDER TO COMPORT WITH STATE LAW REGARDING PENALTIES, FINES, AND SANCTIONS.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 3, Alcoholic Liquor, Article 1, In General, Section 3-5, Persons Under Twenty-One—Unlawful Purchase, Consumption or Possession, of the City of Novi Code of Ordinances is hereby amended to read as follows:

Sec. 3-5. - Persons under twenty-one—Unlawful purchase, consumption or possession.

(a) A minor shall not purchase or attempt to purchase alcoholic liquor, possess or attempt to possess alcoholic liquor, consume or attempt to consume alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions:

- (1) For the first violation of this subsection (a), MCL 436.1703(1), or other local ordinance substantially corresponding to that statute, the minor is responsible for a municipal civil infraction, shall be fined ~~of~~ not more than one hundred dollars (\$100.00), and may be ordered to participate in substance ~~abuse disorder prevention~~ services ~~or substance abuse treatment and rehabilitation~~ as defined in MCL 333.6~~230107~~, 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 as provided in MCL 436.1703(5) at his or her own expense as described in subsection (d). A minor may be found responsible or admit responsibility only once under this subsection (a)(1), MCL 436.1703(1)(a), or other local ordinance substantially corresponding to that statute.
- (2) ~~For~~ a violation of this subsection (a), MCL 436.1703(1), or other local ordinance substantially corresponding to that statute, occurs after one (1) prior judgment for an alcohol or controlled substance violation identified in subsection (a)(5), the minor is guilty of a misdemeanor, which is punishable following a prior conviction or juvenile adjudication for a violation of this subsection, former MCL 436.33b, or a local ordinance substantially corresponding to this subsection or

~~former MCL 436.33b~~, by imprisonment for not more than thirty (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 or juvenile adjudication, a fine of not more than two hundred dollars (\$200.00), or both, and may be ordered to participate in substance ~~abuse disorder treatment and rehabilitation~~ services as defined in MCL 333.6~~230407~~, 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 (d). A minor who pleads guilty, or admits in a juvenile delinquency proceeding to a violation of this subsection (a)(2), may request deferral of proceedings and placement on probation under subsection (c).

(3) ~~For~~ if a violation of this subsection (a), MCL 436.1703(1), or other local ordinance substantially corresponding to those statutes, occurs after two (2) or more prior judgments for an alcohol or controlled substance violation identified in subsection (a)(5), the minor is guilty of a misdemeanor, which is punishable following two (2) or more prior convictions or juvenile adjudications for a violation of this subsection, former MCL 436.33b, or a local ordinance substantially corresponding to this subsection or former MCL 436.33b, by imprisonment for not more than ~~sixty~~thirty (~~360~~) 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 or juvenile adjudication, a fine of not more than five hundred dollars (\$500.00), or both, and may be ordered to participate in substance ~~abuse treatment and rehabilitation~~ services as defined in MCL 333.6~~230407~~, 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 (d).

(4) A minor that is subject to a misdemeanor conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsections (a)(2) or (3), may be ordered by court to submit to random or regular preliminary chemical breath analysis, which may be requested by the minor's parent, guardian, or custodian as provided in MCL 436.1703(5).

(5) For purposes of subsections (a)(2) and (3), "prior judgment" means a conviction, juvenile adjudication, or finding or admission of responsibility for a violation of the statutes listed in this subsection, or any federal or state law or local ordinance that substantially corresponds to any of those listed statutes:

a. This subsection (a), MCL 436.1703(1), or former MCL 436.33b.

b. A misdemeanor violation that is dismissed under subsection (c), MCL 436.1703(3), or other local ordinance substantially corresponding to that statute.

c. MCL 436.1701 (Sale/furnish alcohol to minors.)

d. MCL 436.1707 (Sale/service/furnish alcohol to intoxicated persons.)

e. MCL 257.624a (Transport/possess open alcohol in motor vehicle.)

f. MCL 257.624b (Transport/possess open alcohol in motor vehicle by minor.)

g. MCL 257.625 (Operating motor vehicle while intoxicated/impaired.)

h. MCL 324.80176 (Operating boat while under influence.)

i. MCL 324.81134 (Operating off-road vehicle while under influence.)

j. MCL 324.82127 (Operating snowmobile while under influence.)

k. MCL 750.167a (Hunting with firearm/weapon while intoxicated.)

l. MCL 750.237 (Carry/possess/use/discharge firearm while under influence.)

(b) A person who furnishes fraudulent identification to a minor, or notwithstanding subsection (1), a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or a fine of not more than one hundred dollars (\$100.00), or both.

(c) If a minor pleads guilty, or admits in a juvenile delinquency proceeding to a violation of subsection (a)(2), the court may defer further proceedings and place the minor on probation under MCL 436.1703(3), which provides for dismissal of the proceedings upon the terms and conditions of probation being fulfilled, which may ~~When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (1) pleads guilty to a violation of subsection (a), the court, without entering a judgment of guilt in a criminal proceeding and with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that~~ include, but are not limited to, the sanctions set forth in subsection (a)(~~4~~2), payment of the costs including minimum state cost as provided for in MCL 769.1j, and the costs of probation as prescribed in MCL 771.3. Upon violation of a term or condition of probation or upon a finding that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, ~~including the additional penalties imposed for second or subsequent convictions under subsection (a)(2) and (3).~~ There may be only one (1) discharge or dismissal under this subsection or MCL 436.1703(3) as to an individual. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. This record shall be furnished to any of the following:

- (1) To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this subsection.
- (2) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:
 - a. At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an

applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.

- b. The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

- (d) The court may order the person found responsible for or 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 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 as provided in MCL 436.1703(5).
- (e) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of violating subsections (a) (2), (a)(3), or (b) as provided in MCL 257.319.
- (f) A police officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request that the minor voluntarily submit to a preliminary chemical breath analysis test or other chemical test. If a minor 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. A police officer may initiate municipal civil infraction or misdemeanor charges for a violation of subsection (a) 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 chemical test are admissible in a municipal civil infraction or criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.
- (g) A law enforcement agency, upon determining that a person is less than eighteen (18) years of age who is not emancipated under MCL 722.1 to 722.6, allegedly consumed, possessed, or purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content 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 is readily ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than forty-eight (48) hours after the law enforcement agency determines that the person who allegedly violated subsection (a) is less than eighteen (18) years of age and not emancipated under MCL 722.1 to 722.6. The notice may be made by any means reasonable 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 seventeen (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 subsection.
- (h) 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 under the Michigan Liquor Control Code of 1998, Public Act 58 of 1998, as

~~amended by this act~~, by the State Liquor Control Commission, or by an agent of ~~the Commission~~, if the alcoholic liquor is not possessed for his or her personal consumption.

- (i) 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 act.
- (j) 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 act if the purpose of the consumption is solely educational and is a requirement of the course.
- (k) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act.
- (l) 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 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 commission, or the local police agency and was not part of the undercover operation.
- (m) The state police, the 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), or section 3-4.
- (n) In a municipal civil infraction proceeding or 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 is legal.
- (o) 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 one hundred (100) milliliters of blood, per two hundred ten (210) liters of breath, or per sixty-seven (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.

PART II. Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III. Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV. Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict as of October 10, 2017.

PART V. Effective Date. The provisions of this Ordinance are ordered to take effect following publication in the manner prescribed by the Charter of the City of Novi.

PART VI. Adoption. This ordinance is hereby declared to have been adopted by the Novi City Council in a meeting thereof duly held and called on the ___ day of _____, 2017, in order to be given publication in the manner prescribed by the Charter of the City of Novi.

Moved by _____ and supported by _____.

Robert J. Gatt, Mayor

Cortney Hanson, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ___ day of _____, 2017.

Cortney Hanson, City Clerk

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 17-149.13

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, CHAPTER 3, ALCOHOLIC LIQUOR, ARTICLE 1, IN GENERAL, SECTION 3-5, PERSONS UNDER TWENTY-ONE—UNLAWFUL PURCHASE, CONSUMPTION OR POSSESSION IN ORDER TO COMPORT WITH STATE LAW REGARDING PENALTIES, FINES, AND SANCTIONS.

THE CITY OF NOVI ORDAINS:

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(a) A minor shall not purchase or attempt to purchase alcoholic liquor, possess or attempt to possess alcoholic liquor, consume or attempt to consume alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions:

(1) For the first violation of this subsection (a), MCL 436.1703(1), or other local ordinance substantially corresponding to that statute, the minor is responsible for a municipal civil infraction, shall be fined not more than one hundred dollars (\$100.00), and may be ordered to participate in substance use disorder services as defined in MCL 333.6230, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment as provided in MCL 436.1703(5) at his or her own expense as described in subsection (d). A minor may be found responsible or admit responsibility only once under this subsection (a)(1), MCL 436.1703(1)(a), or other local ordinance substantially corresponding to that statute.

(2) If a violation of this subsection (a), MCL 436.1703(1), or other local ordinance substantially corresponding to that statute, occurs after one

(1) prior judgment for an alcohol or controlled substance violation identified in subsection (a)(5), the minor is guilty of a misdemeanor, which is punishable by imprisonment for not more than thirty (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 or juvenile adjudication, a fine of not more than two hundred dollars (\$200.00), or both, and may be ordered to participate in substance use disorder services as defined in MCL 333.6230, 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 (d). A minor who pleads guilty, or admits in a juvenile delinquency proceeding to a violation of this subsection (a)(2), may request deferral of proceedings and placement on probation under subsection (c).

- (3) If a violation of this subsection (a), MCL 436.1703(1), or other local ordinance substantially corresponding to those statutes, occurs after two (2) or more prior judgments for an alcohol or controlled substance violation identified in subsection (a)(5), the minor is guilty of a misdemeanor, which is punishable by imprisonment for not more than sixty (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 or juvenile adjudication, a fine of not more than five hundred dollars (\$500.00), or both, and may be ordered to participate in substance use services as defined in MCL 333.6230, 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 (d).
- (4) A minor that is subject to a misdemeanor conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsections (a)(2) or (3), may be ordered by court to submit to random or regular preliminary chemical breath analysis, which may be requested by the minor's parent, guardian, or custodian as provided in MCL 436.1703(5).
- (5) For purposes of subsections (a)(2) and (3), "prior judgment" means a conviction, juvenile adjudication, or finding or admission of responsibility for a violation of the statutes listed in this subsection, or any federal or state law or local ordinance that substantially corresponds to any of those listed statutes:

- a. This subsection (a), MCL 436.1703(1), or former MCL 436.33b.
 - b. A misdemeanor violation that is dismissed under subsection (c), MCL 436.1703(3), or other local ordinance substantially corresponding to that statute.
 - c. MCL 436.1701 (Sale/furnish alcohol to minors.)
 - d. MCL 436.1707 (Sale/service/furnish alcohol to intoxicated persons.)
 - e. MCL 257.624a (Transport/possess open alcohol in motor vehicle.)
 - f. MCL 257.624b (Transport/possess open alcohol in motor vehicle by minor.)
 - g. MCL 257.625 (Operating motor vehicle while intoxicated/impaired.)
 - h. MCL 324.80176 (Operating boat while under influence.)
 - i. MCL 324.81134 (Operating off-road vehicle while under influence.)
 - j. MCL 324.82127 (Operating snowmobile while under influence.)
 - k. MCL 750.167a (Hunting with firearm/weapon while intoxicated.)
 - l. MCL 750.237 (Carry/possess/use/discharge firearm while under influence.)
- (b) A person who furnishes fraudulent identification to a minor, or notwithstanding subsection (1), a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or a fine of not more than one hundred dollars (\$100.00), or both.
- (c) If a minor pleads guilty, or admits in a juvenile delinquency proceeding to a violation of subsection (a)(2), the court may defer further proceedings and place the minor on probation under MCL 436.1703(3), which provides for dismissal of the proceedings upon the terms and conditions of probation being fulfilled, which may include, but are not limited to, the sanctions set forth in subsection (a)(2), payment of the costs including minimum state cost as provided for in MCL 769.1j, and the costs of probation as prescribed in MCL 771.3. Upon violation of a term or condition of probation or upon a finding that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only one (1) discharge or dismissal under this subsection or MCL 436.1703(3) as to an individual. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. This record shall be furnished to any of the following:

- (1) To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this subsection.
- (2) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:
 - a. At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.
 - b. The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.
- (d) The court may order the person found responsible for or convicted of violating subsection (a) to undergo screening and assessment to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs as provided in MCL 436.1703(5).
- (e) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of violating subsections (a)(2), (a)(3), or (b) as provided in MCL 257.319.
- (f) A police officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request that the minor voluntarily submit to a preliminary chemical breath analysis. If a minor 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. A police officer may initiate municipal civil infraction or misdemeanor charges for a violation of subsection (a) 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 chemical test are admissible in a municipal civil infraction or criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.
- (g) A law enforcement agency, upon determining that a person is less than eighteen (18) years of age who is not emancipated under MCL 722.1 to 722.6, allegedly consumed, possessed, or purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content 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 is readily ascertainable by the law enforcement agency. The notice required by this subsection shall be made

not later than forty-eight (48) hours after the law enforcement agency determines that the person who allegedly violated subsection (a) is less than eighteen (18) years of age and not emancipated under MCL 722.1 to 722.6. The notice may be made by any means reasonable 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 seventeen (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 subsection.

- (h) 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 under the Michigan Liquor Control Code of 1998, Public Act 58 of 1998, as amended, by the State Liquor Control Commission, or by an agent of that Commission, if the alcoholic liquor is not possessed for his or her personal consumption.
- (i) 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 act.
- (j) 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 act if the purpose of the consumption is solely educational and is a requirement of the course.
- (k) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act.
- (l) 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 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 commission, or the local police agency and was not part of the undercover operation.
- (m) The state police, the 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), or section 3-4.

- (n) In a municipal civil infraction proceeding or 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 is legal.
- (o) 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 one hundred (100) milliliters of blood, per two hundred ten (210) liters of breath, or per sixty-seven (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.

PART II. Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III. Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV. Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict as of October 10, 2017.

PART V. Effective Date. The provisions of this Ordinance are ordered to take effect following publication in the manner prescribed by the Charter of the City of Novi.

PART VI. Adoption. This ordinance is hereby declared to have been adopted by the Novi City Council in a meeting thereof duly held and called on the ___ day of _____, 2017, in order to be given publication in the manner prescribed by the Charter of the City of Novi.

Moved by _____ and supported by _____.

Robert J. Gatt, Mayor

Cortney Hanson, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2017.

Cortney Hanson, City Clerk