

DEWITT CHARTER TOWNSHIP
CLINTON COUNTY, MICHIGAN

ORDINANCE NO. 2019-01-04

PREAMBLE

AN ORDINANCE TO AMEND ORDINANCE 94, AS AMENDED BY ORDINANCE 94.1 THROUGH 94.7 OF THE CHARTER TOWNSHIP OF DEWITT, RELATING TO CERTAIN CRIMES AS BEING SUBJECT TO PROSECUTION AS DISORDERLY CONDUCT; RELATING TO PURCHASE, CONSUMPTION, OR POSSESSION OF ALCOHOLIC LIQUOR BY MINOR; ATTEMPT; VIOLATION; PENALTIES; FURNISHING FRAUDULENT IDENTIFICATION TO MINOR; PROBATION; PRIOR JUDGMENT; SCREENING AND ASSESSMENT; CHEMICAL BREATH ANALYSIS; CUSTODIAN, OR GUARDIAN; EXCEPTIONS; RECRUITMENT FOR UNDERCOVER OPERATION PROHIBITED; DEFINITIONS.; TO ESTABLISH PENALTIES FOR VIOLATION; USE OF PRELIMINARY CHEMICAL BREATH ANALYSIS; AND TO PROVIDE AN EFFECTIVE DATE HEREOF.

THE CHARTER TOWNSHIP OF DEWITT, CLINTON COUNTY, MICHIGAN

ORDAINS:

SECTION 1. Amendment to the Code of Ordinances Charter Township of Dewitt, Clinton County, Michigan, to Chapter 26 – OFFENSES, ARTICLE VIII. – OFFENSES CONCERNING MINORS, SECTION 26-200 - CONSUMPTION OF ALCOHOLIC LIQUORS PROHIBITED and Section (35) 1) of the DeWitt Charter Township Ordinance No. 2019-01-04, as amended, is hereby amended to read as follows:

- (a) Prohibition. 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 except as provided in this section. A person less than 21 years of age who violates this subsection is responsible for a civil infraction or guilty of a misdemeanor by the following fines and sanctions:
 - 1. For the first violation, a person less than 21 years of age is responsible for a civil infraction and shall be fined not more than \$100.00 and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services (as defined in § 6230 of the public health code, 1978 PA 368, MCL § 333.6230, and designated by the administrator of substance abuse services),

and may be ordered to perform community service and undergo substance abuse screening and assessment at the person's own expense. A minor may be found responsible or admit responsibility only once under this subdivision.

2. For a second violation that occurs after 1 judgment, the minor is guilty of a misdemeanor and punishable by imprisonment for not more than 30 days but only if the person 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 \$200, or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services (as defined in § 6230 of the public health code, 1978 PA 368, 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 the person's own expense.
 3. For a third or subsequent violation that occurs after 2 or more judgments, the minor is guilty of a misdemeanor and punishable by imprisonment for not more than 60 days but only if the person 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 \$500 or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services (as defined in § 6230 of the public health code, 1978 PA 368, 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 the person's own expense.
- (b) An individual 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) If an individual who pleads guilty to a misdemeanor violation of Subsection (a)(2) or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor violation of Subsection (a)(2), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense 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 of this Ordinance, Subsection (a)(3), payment of the costs including minimum state cost as provided for in § 18 m of Chapter XIIA of the Probate

Code of 1939, 1939 PA 288, MCL § 712A.18m, and § 1j of Chapter IX of the Code of Criminal Procedure, 1927 PA 175, MCL § 769.1j, and the costs of probation as prescribed in § 3 of Chapter XI of the Code of Criminal Procedure, 1927 PA 175, MCL § 771.3. If a court find violation of a term or condition of probation or upon a finding that the individual is utilizing this subsection of this Ordinance or an ordinance or statute substantially corresponding to this Ordinance in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. If 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 or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions or juvenile adjudications under of this Ordinance. There may be only one discharge and dismissal under this subsection 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 section. These records shall be furnished to 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 prosecutor's, or law enforcement agency's request, subject to all of the following conditions:
 - i. 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.
 - ii. 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) A misdemeanor violation of subsection (a) successfully deferred, discharged, and dismissed under subsection (c) is considered a prior judgment for the purposes of subsection (a)(3).

- (e) A court may order an individual found responsible for or convicted of violating subsection (a) to undergo screening and assessment by a person or agency as designated by the department-designated community mental health entity as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a misdemeanor conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsection (a) to submit to a random or regular preliminary chemical breath analysis. The parent, guardian, or custodian of a minor who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.
- (f) The Secretary of State shall suspend the operator's or chauffeur's license of an individual convicted of a second or subsequent violation of subsection (a)(2) or of violating subsection (a)(3) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.
- (g) A law enforcement officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request that individual to 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. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a state civil infraction proceeding or criminal prosecution to determine if the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.
- (h) A law enforcement officer, on determining that an individual who is less than 18 years of age and not emancipated under 1968 PA 293, 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 individual 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 law enforcement agency shall notify the parent, guardian, or custodian not later than 48 hours after the law enforcement agency determines that the individual who allegedly violated subsection (a) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. The law enforcement agency may notify the parent, guardian, or custodian 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 subsections (a)(2) or (a)(3), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

- (i) This subsection 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 this act, by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.
- (j) 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 police officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.
- (k) If a minor who is less than 18 years of age and 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 (i), 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.
- (l) This section does not limit the civil or criminal liability of a vendor or the vendor's clerk, servant, agent, or employee for a violation of the Michigan Liquor Control Code of 1998 (MCL 436.1101 et seq.).
- (m) 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.

- (n) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this Ordinance.
- (o) 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.
- (p) In a 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.
- (q) As used in this subsection, the following terms shall have the following meanings:
 - 1. **ANY BODILY ALCOHOL CONTENT**
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 a generally recognized religious service or ceremony.
 - 2. **EMERGENCY MEDICAL SERVICES PERSONNEL**

That term as defined in Section 20904 of the Public Health Code, 1978 PA 368, MCL 333.20904.
 - 3. **HEALTH FACILITY OR AGENCY**

That term as defined in Section 20106 of the Public Health Code, 1978 PA 368, MCL 333.20106.

4. MINOR

A person under the age of 21.

5. PRIOR JUDGMENT

A conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

- i. This section or section of the Michigan Liquor Control Code 701 or 707 of the Michigan Liquor Control Code.
- ii. Section 624a, 624b, or 625 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.
- iii. Section 80176, 81134, or 82127 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.80176, 324.81134, and 324.82127.
- iv. Section 167a or 237 of the Michigan Penal Code, 1939 PA 328, MCL 750.167a and 750.237.

State law reference: Similar provisions, MCL. 436.1703

(r) 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 a person less than 21 years of age has consumed or possessed alcoholic liquor or had any bodily alcohol content. A legal presumption shall be made by the court that a person less than 21 years of age has consumed or possessed alcoholic liquor if a preliminary chemical breath analysis or other acceptable blood alcohol test indicates the person's blood contained 0.02% or more by weight of alcohol.

SECTION 2. REPEALER.

All Ordinances or parts of Ordinances and provisions of the Code, in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect, and the DeWitt Charter Township Code of Ordinances shall remain in full force and effect, amended only as specified above.

SECTION 3. VALIDITY and SEVERABILITY.

If any section, clause or provision of this Ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any court of competent jurisdiction such section, clause, or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

SECTION 4. SAVINGS.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law in force when they were commenced.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall become effective thirty (30) days after its passage and publication and recording as required by law.

Rick Galardi, Supervisor

Adam Cramton, Clerk

I, Adam Cramton, Clerk of the Charter Township of DeWitt, do hereby certify that the above is a true action taken by the DeWitt Charter Township Board of Trustees as follows:

First Reading:	January 29, 2019
First Publication (Posting)	February 3, 2019
Second Reading:	_____
Second Publication (Posting)	_____
Effective Date:	_____

Adam Cramton, Clerk