

TITLE XIII: GENERAL OFFENSES

Chapter

130. GENERAL OFFENSES

131. ALCOHOLIC BEVERAGES

CHAPTER 130: GENERAL OFFENSES

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Repeated incidence of nuisance parties, see §§ 90.80 through 90.90

GENERAL PROVISIONS

§ 130.01 OFFENSES AGAINST PERSON.

No person shall:

- (A) Assault or batter another person;
- (B) Willfully molest, annoy, threaten, or frighten another person;

(C) Recklessly endanger the life, health, or well-being of another person.
(’88 Code, Title IX, Ch. 111, § 9.111) (Ord 226-12-86, passed 1-29-86) Penalty, see § 130.99

§ 130.02 PROPERTY OFFENSES.

No person shall:

(A) Trespass upon the land or premises of another.

(B) Remain upon the land or premises of another after being directed to depart by the lawful owner, tenant, or resident, or agent thereof.

(C) Prowl about the land or premises of another person in the nighttime without the permission of the owner, tenant, or person in charge of said land or premises.

(D) Willfully or recklessly damage, destroy, mutilate, or deface the property of another person or public entity, which property includes personal property, fixtures, or structures attached to real estate, and shrubs, trees, grass, or plants.

(E) Take, conceal, or transport the property of another person or public entity with the intent to steal.

(F) Sell, transport, conceal or possess stolen property.

(G) (1) Obtain goods, credit, money, or labor from another person by fraud, trick, or false pretense.

(2) Some acts specifically within this subsection include the following:

(a) Obtain money or credit through an automatic teller device through the unauthorized use of any bank or credit card, or facsimile thereof;

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(b) Withdraw money through an automatic teller device while knowing there were insufficient funds on deposit to cover the withdrawal; an intent or plan to deposit sufficient funds at a later time shall not be a defense to this division;

(c) Misrepresent the amount of money deposited through a night deposit or automatic teller device, regardless of whether or not said misrepresentations are followed by withdrawals.

(H) Move, damage, disconnect, or otherwise meddle or tamper with the property of another person.

(I) Enter the motor vehicle of another person without the permission of the owner or the owner's agent.

(J) Fail to return the rental property of another person with the intent to deprive the other person of the ownership or use of said property. There must be some writing, receipt, or invoice which clearly states the date by which the rental property must be returned. Twenty-one days must elapse from the return date before prosecution can be commenced under this division; should 30 days elapse from the return date, it shall stand as *prima facie* evidence of the intent specified above.

(K) Deposit litter upon public property, or upon the private property or another person.

(L) Knowingly deposit trash or garbage in the receptacles of another without having the permission or authority to do so. This division is not intended to prohibit the good faith disposal of small amounts of litter.

(M) Knowingly utilize a telecommunications service of any sort, including telephone or cable TV, with the intent to avoid having to pay for such service, whether by improper connections, false billings, false charges, or other artifice.

(N) Enter the house, apartment, building, garage, shed, outbuilding, barn, dwelling, shop, store, office, warehouse, or other structure without the express or implied permission of the owner or a person with possessory control of the premises.

(O) Possess, consume, purchase, obtain, process, transport or sell up to 2.5 ounces of marihuana, or cultivate up to 12 marihuana plants, while under 21 years of age.

(P) Consume marihuana by smoking or any other means in a public place, including public streets, parks, sidewalks, alleys, parking lots, and public facilities, buildings, and grounds.

(Q) Draw, paint, mark, inscribe upon or otherwise deface any structure without the permission of the owner. ('88 Code, Title IX, Ch. 111, § 9.112) (Ord. 226-12-86, passed 1-29-86; Am. Ord. 316-7-92, passed 7-20-92; Am. Ord. 323-4-93, passed 4-19-93; Am. Ord. 389-5-95, passed 5-15-95; Am. Ord. 411-11-96, passed 11-18-86; Am. Ord. 504-12-02, passed 12-16-02; Am. Ord. 732-01-19, passed 1-22-19; Am. Ord. 734-03-19, passed 3-18-19; Am. Ord. 735-03-19, passed 3-18-19) Penalty, see § 130.99

§ 130.03 OFFENSES AGAINST GOVERNMENT ORDER.

No person shall:

(A) Hinder, oppose, or resist any police law enforcement officer in the performance of his duties as such.

(B) Fail to step back a reasonable distance or otherwise clear the scene when directed to do so by a police officer who is questioning others, examining evidence, or otherwise investigating a felony or misdemeanor.

(C) Furnish to any police or law enforcement officer a false name, address, age, date of birth, or piece of identification containing such false information.

(D) Knowingly furnish false information to any police or law enforcement officer pertaining to an alleged criminal violation.

(E) Escape from the lawful custody of any police or law enforcement officer.

(F) Impersonate a police officer, employee, or official of the City or other governmental entity.

(G) Loiter within or around a public building or facility after being directed to leave by a person having lawful authority or control over the facility.

(H) Create or excite a disturbance within or around a public facility, to the extent the normal use or operation of the public facility is disrupted. This division includes, without limitations, courthouses,

libraries, post offices, Ferris State University, City Hall, City offices, county offices and state offices. ('88 Code, Title IX, Ch. 111, § 9.113) (Ord. 226-12-86, passed 1-29-86) Penalty, see § 130.99

§ 130.04 BREACH OF THE PEACE OFFENSES.

No person shall:

(A) Create or engage in any disturbance, fight or quarrel in a public place or in the commons, halls, rooms, lobbies or foyers of any apartment building, dormitory or place of business.

(B) Create or engage in any disturbance, fight, quarrel or party that causes or tends to cause a breach of the peace.

(C) Knowingly permit or encourage others to engage in any disturbance, fight, quarrel or party that causes or tends to cause a breach of the peace.

(D) Disturb the public peace through loud, boisterous, profane or obscene conduct.

(E) Disturb any lawful assembly or meeting of other persons.

(F) Create, encourage, incite or engage in a riot.

(G) Peep in the windows or doors of any inhabited house, dwelling, room or other inhabited place.

(H) Urinate or defecate upon the private property of another person or in a public place or in a manner intended to display such action to others.

(I) Discharge any firearm, BB gun or pellet gun within the City. This section shall not apply to persons participating in special hunts approved by the Big Rapids City Commission within the geographic area open to the special hunt, provided the actions of the individual do not violate the guidelines for the hunt as established by the Director of Public Safety and approved by City Commission or the laws of the State of Michigan or rules and regulations of the Department of Natural Resources.

(J) Carry or otherwise possess a firearm of .177 caliber or greater while intoxicated or while under the influence of any controlled substance.

(K) Brandish, with the intent to threaten, rob or frighten another person, a fake or inoperable firearm or other dangerous weapon.

(L) Expose one's body or the body of another person, in an indecent manner; the public exposure of a person's genitalia or buttocks shall be *prima facie* evidence of "an indecent manner."

(M) Enter any cemetery, park, or public facility after posted hours.

(N) Enter any area of a public facility which is obviously fenced, posted, or otherwise closed to the general public.

(O) Operate a motor vehicle in a manner which disturbs the public peace by needlessly racing the engine, spinning tires, squealing tires, or blowing the horn.

(P) Leave outside or in a place accessible to children an abandoned or unattended ice box, refrigerator, or other container with an airtight door or lock which may not be released from the inside, without first having removed or disabled the door or lock.

('88 Code, Title IX, Ch. 111, § 9.114) (Ord. 226-12-86, passed 1-29-86; Am. Ord. 634-12-10, passed 12-6-10; Am. Ord. 638-1-11, passed 2-7-11) Penalty, see § 130.99

Cross-reference:

Nuisance parties, see § 90.65 et seq.

§ 130.05 OFFENSES ON SCHOOL GROUNDS.

No person shall:

(A) Loiter on public or private school grounds by remaining on the grounds after having been directed to leave by school personnel.

(B) Disturb the peace and good order of public or private schools by making excessive noise or creating or exciting a disturbance on or immediately adjacent to school grounds.

(C) Possess, peddle or offer for sale or distribution any controlled substance, or commodity held out to be a controlled substance, on public or private school grounds.

(D) Tamper with, remove, deface, damage, or destroy school property.

('88 Code, Title IX, Ch. 111, § 9.115) (Ord. 226-12-86, passed 1-29-86) Penalty, see § 130.99

§ 130.06 RETAIL FRAUD.

A person who does any of the following in a store or in its immediate vicinity is guilty of retail

fraud in the third degree, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500 or three times the value of the difference in price, property stolen, or money or property obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine, plus restitution to victims and the costs of prosecution:

(A) While a store is open to the public, alters, transfers, removes and replaces, conceals or otherwise misrepresents the price at which property is offered for sale, with the intent not to pay for the property or to pay less than the price at which the property is offered for sale if the resulting difference in price is less than \$200.

(B) While a store is open to the public, steals property of the store that is offered for sale at a price less than \$200.

(C) With intent to defraud, obtains or attempts to obtain money or property from the store as a refund or exchange for property that was not paid for and belongs to the store if the amount of money, or the value of the property obtained or attempted to be obtained is less than \$200.
(Ord. 320-2-93, passed 2-15-93; Am. Ord. 456-9-99, passed 9-20-99) Penalty, see § 130.99

§ 130.07 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PUBLIC NUDITY. Knowingly or intentionally displaying in a public place any individual's genitals or anus with less than a fully opaque covering, or any female individual's breast with less than a fully opaque covering of the nipple and areola, for payment or promise of payment.

PUBLIC PLACE. Any premises within the City used or controlled in whole or in part for the purpose of displaying an individual's genitals, anus, or female breast for payment or promise of payment, and which is open to the general public as a business, club, or association.
(Ord. 394-9-95, passed 9-5-95)

§ 130.08 PUBLIC NUDITY PROHIBITED.

(A) No person, corporation, business, club, or association shall knowingly or intentionally cause,

promote, invite, employ, or encourage any person to knowingly or intentionally display in a public place for payment or promise of payment his or her genitals or anus with less than a fully opaque covering, or her female breast with less than a fully opaque covering of the nipple and areola.

(B) No person shall knowingly or intentionally display his or her genitals or anus in a public place for payment or promise of payment with less than a fully opaque covering.

(C) No female shall knowingly or intentionally display her breast in a public place for payment or promise of payment with less than a fully opaque covering of the nipple and areola. A woman's breast-feeding of a baby does not under any circumstances constitute public nudity within the purview of this section.

(D) Violation of this section shall be a misdemeanor punishable as provided in § 130.99(A).
(Ord. 394-9-95, passed 9-5-95) Penalty, see § 130.99

§ 130.09 PUBLIC NUISANCE.

Any premises, building, dwelling, or other structure in which public nudity as defined in § 130.07 is offered, promoted, allowed, or encouraged shall constitute a public nuisance and shall be subject to civil abatement proceedings initiated by the City before the circuit court.
(Ord. 394-9-95, passed 9-5-95)

NUISANCE PARTIES

§ 130.15 DEFINITION.

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

NUISANCE PARTY. A social gathering or party conducted on any premises within the City and which, by reason of the conduct of those persons in attendance, results in any one or more of the following conditions or events occurring on the premises or neighboring public or private property:

(1) The unlawful sale, furnishing, possession, or consumption of alcoholic beverages;

(2) Urination or defecation on neighboring public or private property, or on the premises in view of another person;

(3) Unlawful deposit of trash or litter;

(4) Destruction of property;

(5) Unlawful vehicular traffic, or the unlawful standing or parking of vehicles which obstructs the free flow of traffic or interferes with the ability to render emergency services;

(6) Unlawful parking of vehicles within the public streets, alleys, or sidewalks, or upon private property;

(7) Unreasonably loud noise under the circumstances which disturbs the comfort, quiet or repose of one or more members of the neighborhood.

(8) Conduct or a condition which injures any person;

(9) Conduct or a condition which endangers the safety of persons or property in the neighborhood;

(10) Conduct or a condition which results in the indecent exposure of a person, or the display of graphic sexual behavior, whether real or simulated, to a member of the public not attending the social gathering or party.

(11) Unlawful sale, furnishing, manufacture, use, or possession of a controlled substance as defined by federal or state law. ('88 Code, Title IX, Ch. 109, § 9.60) (Ord. 210-8-85, passed 8-19-85; Am. Ord. 436-8-98, passed 8-3-98; Am. Ord. 637-1-11, passed 2-7-11)

§ 130.16 NUISANCE PARTY PROHIBITED.

Any owner, occupant, tenant, guests or person otherwise having any possessory control, individually or jointly, of any premises who either sponsors, conducts, hosts, invites, or permits a social gathering or party which is or during the course thereof becomes a nuisance party which is either the intentional result of or within the reasonable expectations of the person or persons having such possessory control is hereby deemed to have committed a violation of this code, and upon conviction shall be subject to the penalties as provided by § 130.99. In any prosecution for a

violation of this section or the section prohibiting persons from attending nuisance parties, proof of specific intent shall not be required as a necessary element, but proof of general criminal intent shall be a necessary element. The penalty for a subsequent violation of this section is set forth in § 130.99. ('88 Code, Title IX, Ch. 109, § 9.61) (Ord. 210-8-85, passed 8-19-85; Am. Ord. 436-8-98, passed 8-3-98) Penalty, see § 130.99

Cross-reference:

Breach of peace offenses, see § 130.04

§ 130.17 PERSONS IN ATTENDANCE AT NUISANCE PARTIES.

Any person knowingly in attendance at a nuisance party as defined by § 130.15, whether or not such person has any possessory control over the premises, shall be deemed to have committed a violation of this section and upon conviction shall be punished as provided in § 130.99(B). "Knowingly" shall require as an element of proof that the person knew or had clear reason to know of the actual existence of one or more of the conditions or events listed in the definition of a nuisance party. (Ord. 322-4-93, passed 4-19-93; Am. Ord. 436-8-98, passed 8-3-98) Penalty, see § 130.99

DOMESTIC ASSAULTS

§ 130.20 WARRANTLESS ARREST.

A peace officer may arrest an individual for violating Section 81 or 81a of the Michigan Penal Code (Act 328 of the Public Acts of 1931, as amended), being MCL §§ 750.81 and 750.81a, and the local ordinance substantially corresponding to MCL § 750.81, regard-less of whether the peace officer has a warrant or whether the violation was committed in his or her presence, if the peace officer has reasonable cause to believe both of the following:

(A) That the violation occurred or is occurring.

(B) That the individual has had a child in common with the victim, resides or has resided in the same household as the victim, is a spouse or former spouse of the victim, or has or has had a dating relationship with the victim. (Ord. 369-9-94, passed 9-19-94; Am. Ord. 519-08-03, passed 8-4-03)

§ 130.21 OFFENSE OF DOMESTIC ASSAULT.

(A) For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

DATING RELATIONSHIP. Frequent, intimate associations primarily characterized by the expectation of affectional involvement. **DATING RELATIONSHIP** does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

(B) A person who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household is guilty of a misdemeanor punishable by imprisonment for not more than 93 days, a fine of not more than \$500, or both.

(Ord. 370-9-94, passed 9-19-94; Am. Ord. 455-9-99, passed 9-20-99; Am. Ord. 519-08-03, passed 8-4-03)

CHECKS; INSUFFICIENT FUNDS

§ 130.30 DISHONORED CHECKS.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADDRESS OF RECORD. The address that appears on the check or the last known address of record with the Secretary of State at the time the check was presented for payment of goods or services.

CHECK. Any check, draft, or order for the payment of money, to apply on account, or otherwise, upon any bank or other depository.

DISHONORED.

(1) Any check, draft, or order drawn or written on any account, or otherwise, upon any bank or other depository, without sufficient funds for the payment of same when presentment is made to the drawee.

(2) Any check, draft, or order drawn or written on any account which has been closed with or by the bank or other depository upon which it is drawn.

(B) *Checks drawn without sufficient funds.*

(1) No person shall with intent to defraud, make, draw, utter, or deliver any check knowing at the time of the making, drawing, uttering, or delivering that the maker or drawer does not have sufficient funds in or credit with the bank or other depository for the payment of the check in full upon its presentation in the amount payable in such check, draft, or order.

(2) No person shall with intent to defraud make, draw, utter, or deliver any check unless the person has sufficient funds for payment for same when presentment is made to the drawee, except where the lack of funds is due to garnishment, attachment, levy, or other lawful cause and such fact was not known to the person who made, drew, uttered, or delivered the instrument.

(3) As against the maker or drawer thereof, the making, drawing, uttering, or delivering of a check which is refused by the drawee when presented in the usual course of business shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided that such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with bank fees, within five business days after receiving notice by first class mail at the address of record that such check, draft, or order has not been paid by the drawee.

(4) Where such dishonored check is protested, the notice of protest thereof shall be admissible as proof of presentment, nonpayment, and protest and shall be prima facie evidence of intent to defraud and knowledge of insufficient funds or credit with such bank or other depository.

(5) Any person convicted of violating this section shall be subject to a maximum penalty of 93 days in jail or an equal amount of time of community service, plus a fine of not more than \$500.00, plus actual costs of prosecution and mandatory restitution to victims.

(Ord. 389-5-95, passed 5-15-95; Am. Ord. 503-12-02, passed 12-16-02) Penalty, see § 130.99

Cross-reference:

Civil collection of expenses, see Ch. 120

§ 130.98 VIOLATIONS.

(A) *Attempt to commit prohibited act.* Any person who attempts to commit any act prohibited in this chapter shall be subject to prosecution for said act as if it were completed upon proof of the requisite intent and some substantial overt acts in furtherance of that intent. The maximum penalty for a conviction of an attempt shall be one-half of the maximum of that set for the completed act, except restitution to a victim shall be fully assessed.

('88 Code, Title IX, Ch. 111, § 9.116)

(B) *Aiders and abettors.* Any person who aids, abets, procures, commands, assists, or conspires in the commission of any act prohibited in this chapter shall be subject to prosecution, conviction, and punishment as a principal.

('88 Code, Title IX, Ch. 111, § 9.117) (Ord. 226-12-86, passed 1-29-86)

§ 130.99 PENALTY.

(A) Except for those offenses for which a specific penalty is otherwise provided, any person convicted under this chapter shall be subject to a maximum penalty of 90 days in jail, or an equal amount of community service, or any combination thereof not exceeding 90 days, plus \$500 fine, plus actual costs of prosecution, plus mandatory restitution to victims.

('88 Code, Title IX, Ch. 111, § 9.118) (Ord. 226-12-86, passed 1-29-86; Am. Ord. 323-4-93, passed 4-19-93; Am. Ord. 520-08-03, passed 8-4-03)

(B) Any person convicted of violating § 130.16 for a subsequent offense within four years after commission of a previous offense, shall be punished by a fine of not less than \$250 nor more than \$500 and a mandatory imprisonment for a term of not less than three days and not exceeding 90 days for each of said subsequent violations within four years of each previous violation thereof.

('88 Code, Title IX, Ch. 109, § 9.62) (Ord. 210-8-85, passed 8-19-85)

(C) The penalty for the following enumerated violations shall be a maximum of 93 days in jail or an equal amount of community service, or any combination thereof not exceeding 93 days, plus a fine of not more than \$500, plus actual costs of prosecution and mandatory restitution to victims:

(1) Section 130.01(A), assault or battery;

(2) Section 130.06, retail fraud;

(3) Section 130.30, dishonored checks;

(4) Section 130.21, domestic assault.

(Ord. 520-08-03, passed 8-4-03)

(D) (1) For a first violation of § 130.02(O), a civil infraction punishable as follows:

(a) If the person is less than 18 years of age, by a fine of not more than \$100 or community service, forfeiture of the marihuana, and completion of four hours of drug education or counseling; or

(b) If the person is at least 18 years of age, by a fine of not more than \$100 and forfeiture of the marihuana.

(2) For a second violation of § 130.02(O), a civil infraction punishable as follows:

(a) If the person is less than 18 years of age, by a fine of not more than \$500 or community service, forfeiture of the marihuana, and completion of eight hours of drug education or counseling; or

(b) If the person is at least 18 years of age, by a fine of not more than \$500 and forfeiture of the marihuana.

(Ord. 734-03-19, passed 3-18-19)

(E) (1) For a first violation of § 130.02(P), a civil infraction punishable by a fine of not more than \$100 or community service and forfeiture of the marihuana; and

(2) For a second violation of § 130.02(P), a civil infraction punishable by a fine of not more than \$500 and forfeiture of the marihuana.

(Ord. 735-03-19, passed 3-18-19)

CHAPTER 131: ALCOHOLIC BEVERAGES

Section

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Cross-reference:

Repeated illegal activity involving alcohol, see §§ 90.80 through 90.90

GENERAL PROVISIONS

§ 131.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALCOHOLIC LIQUOR or **ALCOHOLIC BEVERAGE.** Any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether

or not medicated, proprietary, patented, and by whatever name called, containing 1/2% or more of alcohol by volume, fit for beverage purposes.

BODILY ALCOHOL CONTENT. As used in this Chapter, "any bodily alcohol content" means either of the following:

(1) 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.

(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.

INTOXICATED CONDITION. Any person who is intoxicated, as defined in *Lefler vs. Fisher*, 121 Michigan, Pages 60-63.

LICENSED PREMISES. The premises described in the license granted to a person and under which he sells alcoholic liquor and beverages.

LICENSEE. Those persons licensed by state or City authority to sell alcoholic liquors or beverages for both consumption on and off the premises.

MINOR. A person not yet 21 years of age. ('88 Code, Title IX, Ch. 112, § 9.151) (Am. Ord. 568-06-06, passed 6-5-06)

§ 131.02 SUNDAY SALES.

A licensee issued a Sunday sales permit by the liquor control commission permitting the sale of spirits on Sunday between the hours of 12 noon, EST and 12 midnight shall be permitted to sell at retail, give away or furnish alcoholic liquor for consumption on or off the premises.

('88 Code, Title IX, Ch. 112, § 9.152) (Ord. 103, passed 6-5-72; Am. Ord. 568-06-06, passed 6-5-06)

§ 131.03 SALES; REGULATIONS.

(A) No licensee shall sell, give away, or furnish any alcoholic liquor between the hours of 2:00 a.m. and 7:00 a.m. on any day and shall not sell, give away, or furnish alcoholic liquor between the hours of 2:00 a.m. and 12 noon, EST on Sundays without authorization from the Michigan Liquor Control Commission.

(B) No licensee shall sell any alcoholic liquor or beverage except for cash.

(C) No licensee shall sell, give or furnish alcoholic liquors or beverages to any person in an intoxicated condition.

('88 Code, Title IX, Ch. 112, § 9.157) (Am. Ord. 568-06-06, passed 6-5-06) Penalty, see § 10.99

§ 131.04 CONSUMPTION ON STREET OR PARKING LOT.

It shall be a municipal civil infraction to consume any alcoholic beverage on any street, alley, sidewalk, parkway, alley or parking lot open to the public.

('88 Code, Title IX, Ch. 112, § 9.159) (Am. Ord. 437-8-98, passed 8-3-98; Am. Ord. 568-06-06, passed 6-5-06; Am. Ord. 652-9-12, passed 9-17-12) Penalty, see § 10.99

§ 131.05 POSSESSING OPEN ALCOHOLIC BEVERAGE.

It shall be a municipal civil infraction for any person to transport or possess any alcoholic liquor in a container which is open, uncapped, or upon which the seal is broken on any street, sidewalk, parkway, alley or parking lot open to the public.

(Ord. 324-6-93, passed 6-7-93; Am. Ord. 437-98, passed 8-3-98; Am. Ord. 568-06-06, passed 6-5-06; Am. Ord. 652-9-12, passed 9-17-12) Penalty, see § 10.99

§ 131.06 PERSONS, EMPLOYEES; RESPONSIBILITY.

Any person, whether in the employ of another or in the employ of a partnership, association, corporation or self-employed, shall be subject to the provisions of this code in selling alcoholic liquor at retail, giving it away or furnishing it contrary to the provisions of this chapter.

('88 Code, Title IX, Ch. 112, § 9.153) (Am. Ord. 568-06-06, passed 6-5-06)

§ 131.07 SALE TO MINORS PROHIBITED.

Alcoholic liquor shall not be sold or furnished to a minor. Except as otherwise provided in § 131.08, a person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the person is a minor, is guilty of a misdemeanor. A retail licensee or a retail licensee's clerk, agent, or employee who violates this section shall be punished in the manner provided for licensees in MCL 436.1909 except that if the violation is the result of an undercover operation in which the minor received alcoholic liquor under the direction of the State Police, the Commission, or a local police agency as part of an enforcement action, the retail licensee's clerk, agent, or employee is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100. Except as otherwise provided in § 131.09, a person who is not a retail licensee or a retail licensee's clerk, agent, or employee and who violates this section is guilty of a misdemeanor punishable by a fine of not more than \$1,000 and imprisonment for not more than 60 days for a first offense, a fine of not more than \$2,500 and imprisonment for not more than 90 days for a second or subsequent offense, and may be ordered to perform community service. For a second or subsequent offense, the Secretary of State shall suspend the operator's or chauffeur's license of an individual who is not a retail licensee or retail licensee's clerk, agent, or employee and who is convicted of violating this section as provided in section 319 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.319. A suitable sign describing the content of this section and the penalties for its violation shall be posted in a conspicuous place in each room where alcoholic liquor is sold. The signs shall be approved and furnished by the Commission. (Ord. 396-10-95, passed 10-2-95; Am. Ord. 568-06-06, passed 6-5-06; Am. Ord. 712-10-17, passed 10-2-17; Am. Ord. 713-10-17, passed 10-16-17) Penalty, see § 131.99

§ 131.08 PURCHASE, CONSUMPTION, AND POSSESSION BY MINORS PROHIBITED.

(A) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section.

(B) 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 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.

(C) 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.

(D) 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.

(E) Division (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 of 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.
(Ord. 396-10-95, passed 10-2-95; Am. Ord. 568-06-06, passed 6-5-06; Am. Ord. 712-10-17, passed 10-2-17; Am. Ord. 713-10-17, passed 10-16-17) Penalty, see § 131.99

§ 131.09 FURNISHING OR USING FRAUDULENT IDENTIFICATION.

A person who furnishes fraudulent identification to a minor or, notwithstanding § 131.08(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, or both.
(Ord. 396-10-95, passed 10-2-95; Am. Ord. 568-06-06, passed 6-5-06; Am. Ord. 712-10-17, passed 10-2-17; Am. Ord. 713-10-17, passed 10-16-17) Penalty, see § 131.99

§ 131.10 AUTHORITY TO STOP; APPEARANCE TICKETS.

(A) A sworn police officer who witnesses a violation of this chapter may stop and detain a person and obtain satisfactory identification, seize illegally possessed alcoholic liquor, and issue an appearance ticket.

(B) A sworn police officer may stop and detain a person based upon reasonable and articulable suspicion of a violation of this chapter and obtain satisfactory identification, seize illegally possessed alcoholic liquor, and issue an appearance ticket.

(C) A sworn police officer may issue an appearance ticket for a violation of § 131.08 to a person when advised by an employee of a business possessing a state liquor license that the person has presented false identification to the employee and the officer observes the false identification.
(Ord. 396-10-95, passed 10-2-9; Am. Ord. 268-06-06, passed 6-5-06; Am. Ord. 712-10-17, passed 10-2-17; Am. Ord. 713-10-17, passed 10-16-17) Penalty, see § 131.99

§ 131.11 NOTICE TO PARENTS OR GUARDIANS.

A law enforcement agency, 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 § 131.08, shall notify the parent or parents, custodian, or guardian of the individual as to the nature of the violation if the name of the 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 determine that the individual who allegedly violated § 131.08 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 § 131.08, his or her parents or legal guardian shall be notified immediately as provided in this section.
(Ord. 396-10-95, passed 10-2-95; Am. Ord. 568-06-06, passed 6-5-06; Am. Ord. 712-10-17, passed 10-2-17; Am. Ord. 713-10-17, passed 10-16-17)

§ 131.12 LICENSE SANCTIONS.

The Secretary of State shall suspend the operator's or chauffeur's license of an individual convicted of a second or subsequent violation of § 131.08(A) or of violating § 131.09 as provided in section 319 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.319.

(Ord. 396-10-95, passed 10-2-95; Am. Ord. 568-06-06, passed 6-5-06; Am. Ord. 712-10-17, passed 10-2-17; Am. Ord. 713-10-17, passed 10-16-17)

§ 131.13 PRELIMINARY BREATH TEST.

A peace 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.

(Ord. 712-10-17, passed 10-2-17; Am. Ord. 713-10-17, passed 10-16-17)

§ 131.14 PENALTIES.

(A) A minor who violates § 131.08 is responsible for a civil infraction or guilty of a misdemeanor as follows and is not subject to the penalties prescribed in MCL 436.1909:

(1) For the first violation, the minor is responsible for a civil infraction and shall be fined not more than \$100. A court may order a minor under this division (A)(1) to participate in substance use disorder services as defined in section 6230 of the Public Health Code, 1978 PA 368, MCL 333.6230, and designated by the Administrator of the Office of Substance Abuse Services, and may order the minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in § 131.14(D). A minor may be found responsible or admit responsibility only once under this division (A)(1).

(2) If a violation of this division (A) occurs after one prior judgment, the minor is guilty of a misdemeanor. A misdemeanor under this division

(A)(2) is punishable by imprisonment for not more than 30 days 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, or both. A court may order a minor under this division (A)(2) to participate in substance use disorder services as defined in section 6230 of the Public Health Code, 1978 PA 368, MCL 333.6230, 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 § 131.14(D).

(3) If a violation of this division (A) occurs after two or more prior judgments, the minor is guilty of a misdemeanor. A misdemeanor under this division (A)(3) is punishable by imprisonment for not more than 60 days, 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, or both, as applicable. A court may order a minor under this division (A)(3) to participate in substance use disorder services as defined in section 6230 of the Public Health Code, 1978 PA 368, MCL 333.6230, 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 § 131.14(D).

(B) If an individual who pleads guilty to a misdemeanor violation of division (A)(2) above or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor violation of division (A)(2) above, 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. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in division (A)(3) above, payment of the costs including minimum state cost as provided for in section 18m of chapter XIIA of the Probate Code of 1939, 1939 PA 288, MCL 712A.18m, and section 1j of chapter IX of the Code of Criminal Procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as prescribed in section 3 of chapter XI of the Code of Criminal Procedure, 1927 PA 175, MCL 771.3. If a court finds that an individual violated a term or condition of probation or that the individual is

utilizing this division (B) 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 an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. A discharge and dismissal under this section is 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 disqualifications or disabilities imposed by law on conviction of a crime. An individual may obtain only one discharge and dismissal under this division (B). 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. These records 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 division (B).

(2) To the Department of Corrections, a prosecutor, or a law enforcement agency, on 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.

(C) A misdemeanor violation of § 131.08 successfully deferred, discharged, and dismissed under division (B) is considered a prior violation for the purposes of divisions (A)(2) and (3) above.

(D) A court may order an individual found responsible for or convicted of violating section § 131.08 to undergo screening and assessment by a person or agency as designated by the

Department-designated community mental health entity as defined in section 1100a 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 § 131.08 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.

(E) The Secretary of State shall suspend the operator's or chauffeur's license of an individual convicted of a second or subsequent violation of section § 131.08 or of violating § 131.09 as provided in section 319 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.319. (Ord. 712-10-17, passed 10-2-17; Am. Ord. 713-10-17, passed 10-16-17)

LICENSES

§ 131.20 TITLE.

This subchapter shall be known as the City's "Liquor License Ordinance." (Am. Ord. 415-2-97, passed 2-17-97)

§ 131.21 PURPOSE.

The purpose of this subchapter is to establish standards and procedures for the review and input of the City on the issuance, renewal, transfer, revocation, or modification of a liquor license. (Am. Ord. 415-2-97, passed 2-17-97)

§ 131.22 APPLICATION FOR NEW LICENSE OR LICENSE TRANSFER.

(A) *Application contents.* Applications for a license to sell beer, wine, or spirits shall be made to the City Commission by filing a written application, signed by the applicant, with the City Clerk. The application shall be in a form required by the City Clerk and shall contain at a minimum the following statements and information:

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(1) The name, age, and address of the applicant and all partners of the applicant. If the applicant is a corporation, a copy of the articles of incorporation and current corporation records disclosing the identity and address of all directors, officers, and shareholders.

(2) The location and legal description of the premises or place of business at which the liquor license will be utilized, and the name and address of the owner, if different from the holder of the liquor license, and written evidence of the applicant's right to possession of the premises.

(3) A zoning permit or similar clearance from the Zoning Administrator verifying that the proposed use of the location at which the liquor license will be utilized is in compliance with the zoning ordinance.

(4) A certificate of occupancy or similar clearance from the Building Inspector verifying that the structure and premises at which the liquor license will be utilized is in compliance with building, property maintenance, and all other applicable local code provisions.

(5) Certification or other written evidence from the City Treasurer demonstrating that all real and personal property taxes and City utility bills associated with the premises at which the liquor license will be used are paid to date and that all real and personal property taxes, City income taxes, and City utility bills in the name of the applicant are paid to date.

(6) Specific personal information on the applicant, partners, directors, and shareholders as required by the Department of Public Safety to run a criminal history or similar record check.

(7) A statement that the applicant will not violate any of the laws of the state or the ordinances of the City in conducting the business in which the liquor license will be used and that a violation on the premises may be cause for objecting to renewal of the license or for requesting revocation of the license.

(8) A statement that the applicant understands that the City has an ordinance prohibiting public nudity and that a violation of the ordinance on the premises where the liquor license is used will be cause for objecting to renewal of the license or for requesting revocation of the license.

(B) *Liquor license transfers.* Applications for liquor license transfers shall be submitted to the City Clerk on a form required by the City Clerk and signed by both the current license holder and the proposed license holder. The application shall contain, at a minimum, the information and statements required in an application for a new license.

(C) *Restrictions on licenses.* The City Commission shall not approve, grant, or recommend the issuance or transfer of a liquor license:

(1) Without a fully completed application that meets the requirements listed above for the contents of an application for a license;

(2) To an applicant who has had a liquor license revoked under this ordinance or by the state Liquor Control Commission;

(3) To a corporation with a manager, officer, director, or shareholder who would be ineligible under this ordinance or state Liquor Control Commission regulations to receive a liquor license; or

(4) Where the proposed location is not readily accessible to police, fire, and EMS vehicles.

(D) *Term of license approval.* The City Commission's approval or positive recommendation to the State Liquor Control Commission concerning a proposed liquor license shall be for a period not to exceed one year. Any required remodeling or new construction for the use of the license shall be completed within six months of the Liquor Control Commission's approval or issuance of the license, unless a specific allowance of up to two additional months is granted by the City for good cause.

(E) *Discretion.* The City Commission shall exercise its discretionary authority in reviewing and acting on applications for liquor licenses and liquor license transfers.

(F) *Public hearing.* The City Commission may hold a public hearing on any application for a new liquor license or a transfer of a liquor license.

(G) *Applicant's presentation.* The applicant shall be allowed a reasonable opportunity to make a presentation to the City Commission in support of the application for a new liquor license or a transfer of an existing liquor license.

(Am. Ord. 415-2-97, passed 2-17-97)

**§ 131.23 OBJECTIONS TO RENEWAL;
REQUESTS FOR REVOCATION.**

(A) *Objection to renewal.* The City Commission may object to the renewal of a liquor license by filing a resolution describing the basis of the objection with the State Liquor Control Commission, along with all substantiating documents, not later than March 31, to be considered for a renewal effective April 30.

(B) *Request for revocation.* The City Commission may request revocation of a liquor license at any time by filing a resolution describing the basis of the request, along with all substantiating documents.

(C) *Procedure.*

(1) Before filing an objection to a license renewal or a request for revocation of a license with the State Liquor Control Commission, the City Commission shall conduct a hearing on the subject. The City Commission shall serve the license holder with notice of the hearing by first class mail, mailed at least ten days prior to the hearing.

(2) The notice of hearing shall contain:

- (a) Notice of the proposed action;
- (b) Reasons for the proposed action;
- (c) The date, time, and place of the hearing; and

(d) A statement informing the license holder that he or she may confront adverse witnesses and may present witnesses, evidence, and arguments.

(3) At the close of the hearing, while in open session, the City Commission shall make factual findings and any determination necessary for a resolution objecting to a license renewal or requesting revocation of a license. The City Commission shall submit a written statement of its findings, determinations, and resolution to the license holder and the State Liquor Control Commission within 15 days of the hearing.

(D) *Criteria for non-renewal or revocation.* The City Commission may recommend to the State Liquor Control Commission non-renewal or revocation of a liquor license based upon a determination that a preponderance of the evidence presented at the hearing indicated the existence of:

(1) A failure to meet the conditions or maintain compliance with the standards established by this subchapter in reference to applications for a new license or the transfer of an existing license; or

(2) One or more violations of state law or local ordinance on the premises; or

(3) Maintenance of a nuisance on the premises; or

(4) A demonstrated history of excessive calls for public safety (police, fire, and EMS) services originating from the premises.
(Am. Ord. 415-2-97, passed 2-17-97)

§ 131.99 PENALTY.

Any person violating a provision of this chapter for which no other specific penalty applies shall be subject to the penalty set forth in § 10.99.
(Ord. 396-10-95, passed 10-2-95; Am. Ord. 712-10-17, passed 10-2-17; Am. Ord. 713-10-17, passed 10-16-17)

