

Introduced: September 25, 2017
Adopted: _____
Effective: _____

CITY OF CHARLOTTE
ORDINANCE NO. 2017-10

AN ORDINANCE TO AMEND SECTION 6-10 MINOR IN POSSESSION - AND TO REPEAL SECTION 6-12 – REFUSAL TO SUBMIT TO A PRELIMINARY BREATH ANALYSIS; CIVIL INFRACTION - OF ARTICLE I OF CHAPTER 6 – ALCOHOLIC LIQUORS - OF THE CODE OF THE CITY OF CHARLOTTE, IN ORDER TO CONFORM THE OFFENSE OF MINOR IN POSSESSION OF ALCOHOL WITH STATE LAW WITHIN THE CITY OF CHARLOTTE.

Councilmember _____ moved the following:

THE CITY OF CHARLOTTE ORDAINS:

1. Sections 6-10 Article I of Chapter 6 of the Code of the City of Charlotte is hereby amended to read as follows:

Sec. 6 – 10. MINOR IN POSSESSION.

(a) *Prohibited; enforcement.*

- (1) 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. A minor who violates this section is responsible for a civil infraction or guilty of a misdemeanor as set forth in 6-10(h) of this code.
- (2) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request the person to submit to a preliminary chemical breath analysis. If the 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 civil infraction proceeding or criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.
- (3) 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 subsection (1) shall comply with MCL 436.1703(8).

(b) *Exceptions.* The provisions of subsection (a) of this section shall not apply to the following:

- (1) A minor who possesses 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, by the liquor control commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.
- (2) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited post-secondary educational institution in an academic building of the institution under the supervision of a faculty member, if the purpose of the consumption is solely educational and is a requirement of the course.
- (3) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple.
- (4) An undercover operation as set forth at MCL 436.1703(15).
- (5) A minor who has consumed alcoholic liquor and who voluntarily presents himself of or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of MCL 750.520b to MCL 750.520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to MCL 750.520g, committed against a minor.
- (6) 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 of agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of MCL 750.520b to MCL 750.520g, committed against a minor.
- (7) A minor who initiates contact with a peace officer or emergency medical service personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

(c) *Affirmative defense.* In a prosecution for a violation of this section, it is an affirmative defense that the minor consumed alcoholic liquor in a venue or location where that consumption

is legal.

(d) *Definition of “any bodily alcohol content”.* 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 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.

(e) *Definition of “Emergency medical services personnel.”* As used in this section “emergency medical services personnel” means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(f) *Definition of “Health facility or agency.”* As used in this section “health facility or agency” means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(g) *Definition of “minor”.* As used in this section a “minor” means a person less than 21 years of age.

(h) A person who violates section 6-10(a) is responsible for a civil infraction or guilty of a misdemeanor as follows and subject to the following fines, penalties and sanctions:

- (1) For the first violation, the minor is responsible for a civil infraction and shall be fined not more than \$100.00,. A Court may order a minor under this subdivision 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 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 MCL 436.1703(5). A minor may be found responsible or admit responsibility only once under this subdivision or a corresponding subdivision of state law or another municipal ordinance.
- (2) If a violation of sec. 6-10(a) occurs after 1 prior judgement , the minor is guilty of a misdemeanor. A misdemeanor under this subsection is punishable by imprisonment for not more than 30 days if the court finds 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, a fine of not more than \$200.00 or both. A court may order a minor under this subsection to participate in substance use prevention disorder services as defined in section 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 his or her own expense as described in MCL 436.1703(5). A person is also subject to sanctions against his or her operator's or chauffeur's license imposed under state law.

- (3) If a violation of sec. 6-10(a) occurs after 2 or more prior judgments, the minor is guilty of a misdemeanor. A misdemeanor under this section is punishable by imprisonment for not more than 60 days if the court finds the minor has 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, by a fine of not more than \$500.00, or both, as applicable. A court may order a minor under this subsection 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 substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in MCL 436.1703(5). A person is also subject to sanctions against his or her operator's or chauffeur's license imposed under state law.
- (4) If an individual who pleads guilty to a misdemeanor violation of sec. 6-10(a), the court, without entering a judgment of guilt, 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 section 6-10(h)(3), payment of the costs including any minimum state costs, and the costs of probation. If a court finds that an individual violated a term or condition of probation or that the individual is utilizing a corresponding provision in another court, the court may enter an adjudication of guilt 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. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. An individual may obtain only 1 discharge or dismissal under this section as to an individual or any corresponding provision of the state law or local ordinance. In accordance with the corresponding provisions of state law, the court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation under this section. The court shall provide the secretary of state with a record of the plea and discharge under this section to allow the secretary of state to retain and disseminate a nonpublic record of a plea and of the discharge and dismissal under the procedures established for the corresponding state law provision.
- (5) A misdemeanor violation of sec. 6-10(a) successfully deferred, discharged and dismissed under sec. 6-10(h)(4) is considered a prior judgment for the purposes of sec. 6-10(h)(3).
- (6) As used in this section, prior judgment means 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) MCL 436.701, MCL 436.703 or MCL 436.707.
- (ii) MCL 257.624a, MCL 257.624b or MCL 257.625.
- (iii) MCL 324.80176, MCL 324.81134 or MCL 324.82127.
- (iv) MCL 750.167a and MCL 750.237.

2. Section 6-12 of Article I of Chapter 6 of the Code of the City of Charlotte is hereby repealed in its entirety from the Code of the City of Charlotte and is void and no longer in full force and effect.

This ordinance shall become effective January 1, 2018 and after publication.

Second, _____ () Yeas. () Nays.

Dated: _____, 2017.

Timothy M. Lewis, Mayor

Ginger Terpstra, Clerk