

CITY OF LUNA PIER
ORDINANCE # 182

AN ORDINANCE TO PROHIBIT POSSESSION
OF ALCOHOLIC LIQUOR BY MINORS

The City of Luna Pier ordains:

Section 1 Title.

This ordinance shall be referred to as the "Luna Pier Liquor Control Act."

Section 2 Code and Amendments and Revisions adopted.

(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 subsection is guilty of a misdemeanor punishable by the following fines and sanctions;

- (a) For the violation a fine of 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 section 6170 of the Michigan public health code, 1978 PA 368, MCL 333.6170, and designates by the administrator of substance abuse services, and may be ordered to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).
- (b) For a violation of this subsection following a prior conviction or juvenile adjudication for a violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or MCL 436.1703, by imprisonment for not more than 30 days but only if the minor has been found by the court to have violated an order of the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than \$200.00 or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, 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 (4).
- (c) For a violation of this subsection following 2 or more prior convictions or juvenile adjudications for a violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or MCL 436.1703, by imprisonment for not more than 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 a fine for that conviction or juvenile adjudication, a fine of not more than \$500.00, or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, 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 (4).

- (2) 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 90 days or a fine of not more than \$100.00, or both.
- (3) 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 (1) or offers a plea of admission in a juvenile delinquency proceeding for a violation of subsection (1), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has completed 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 set forth in subsection 1(a), payment of the costs. 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, or a determination of juvenile delinquency proceeding that the individual has committed the offense, 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 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 the 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 subsection 1(b) and (c). There may be only 1 discharge or dismissal under this subsection as to an individual. The court shall maintain a nonpublic record of the matter while proceeding are deferred and the individual is on probation 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:
 - (a) To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this subsection.

- (b) To the department of corrections, a prosecutor or 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 the criteria for employment.
- (4) The court may order the person convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the substance abuse coordinating agency as defined in section 6103 of the Michigan Public Health Code, 1978 PA 368, 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.
- (5) The Secretary of State shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (1) or (2) as provided in section 319 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.319.
- (6) A peace officer who has reasonable cause to believe a minor has consumed liquor or has any bodily alcohol content may require the person to submit to a preliminary chemical breath analysis. A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content. A minor who refuses to submit to a preliminary chemical breath analysis as required in this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.
- (7) A law enforcement agency upon determining that a person less than 18 years of age who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (1) shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation if the name of a parent, guardian, or custodian is reasonable ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than 48 hours after the law enforcement agency determined

that the person who allegedly violated subsection (1) is less than 18 years of age and not emancipated under 1968 PA 293, 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 17 years of age is incarcerated for violating subsection (1), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

- (8) 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 as 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.
- (9) This section does not limit the civil or criminal liability of the vendor or the vendor's clerk, servant or agent, or employee for a violation of this act.
- (10) 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 is not prohibited by this act if the purpose of the consumption is solely educational and is a requirement of the course.
- (11) 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.
- (12) Subsection (1) does not apply to a minor who participates in either or both of the following:
 - (a) 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.
 - (b) An undercover operation in which the minor purchases or receives 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 alcohol 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.
- (13) 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 (1), section 801(2) or section 701(1).
- (14) In a criminal prosecution for the violation of subsection (1) 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.

- (15) As used in this section, "any bodily alcohol content" means either of the following:
- (a) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
 - (b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as part of a generally recognized religious service or ceremony.

Section 3 References in Code.

References to the Commission shall mean the Michigan Liquor Control Commission.

Section 4 Penalties.

Penalties for violations of this ordinance are listed in the language of the ordinance.

Section 5 Notice to be Published.

The City of Luna Pier clerk shall publish this ordinance in the manner required by law and shall publish, at the same time, a notice stating the purpose of the Uniform Traffic Code for Cities, Townships and Villages and the fact that a complete copy of the code is available to the public at the office of the clerk for inspection.

Section 6 Severability.

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion of this Ordinance, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 7 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 are commenced.

Section 8 Repealer.

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 9 Effective Date.

This Ordinance shall become effective twenty (20) days after final passage and publication.

I hereby certify that this ordinance was passed at a regular meeting of the City Council of the City of Luna Pier, Luna Pier, Michigan held on Thursday, the 10th day of March, 2005.

P. Michelle Cureton
P. Michelle Cureton
City Clerk

Published: March 29, 2005

Effective Date: April 18, 2005