



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Susan M. Lancaster, Assistant City Attorney
DATE: August 5, 2008
SUBJECT: Amendment to Chapter 98, Criminal Code for Liquor License
Decoy Enforcement Operations

Our comprehensive review of the liquor licensing provisions in the City of Troy ordinances extended to Chapter 98, and we make the following recommended revisions to Section 98.10.06 and 98.10.11, as well as the addition of a new section, 98.10.14, in order to be consistent with revisions in the state law. Specifically, state law provides that in those instances where a clerk or employee of a liquor licensee sells alcohol to a minor who is a decoy in a sting operation, the maximum punishment is a \$100 civil infraction.

According to the legislative analysis:

The reduced consequences this bill offers for selling alcohol to a minor involved in a sting operation are fairer than the standard penalty, since a sting deliberately creates an opportunity for an employee to sell to a minor, when the employee might not ever be faced with such a situation otherwise. Holding the employee responsible for a civil infraction rather than a misdemeanor still provides a punishment but is more appropriate when a potential sale is set up. Senate Fiscal Agency Bill Analysis.

The proposed amendments incorporate these changes in the state law, and we recommend approval. If you have any questions, please let us know.

CITY OF TROY

AN ORDINANCE TO AMEND
CHAPTER 98 OF THE CODE
OF THE CITY OF TROY

The City of Troy ordains:

Section 1. Short Title

This Ordinance shall be known and may be cited as an amendment to Chapter 98 of the Code of the City of Troy.

Section 2. Amendment

Section 98.10.06 of Chapter 98 shall be amended as follows:

98.10.06 Furnish or Sell Alcohol to Person Under 21. No person shall willfully give, furnish or sell alcoholic liquor to any person under the age of 21, except pursuant to a prescription from a licensed physician. **Except as set forth in Section 98.10.14, a** A person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 93 days or by a fine of not more than \$500, or both.

Section 98.10.11 of Chapter 98 shall be amended as follows:

98.10.11 Fail to Inquire as to Age. No person shall sell or furnish alcoholic liquor to any person less than 21 years of age and no person shall fail to make diligent inquiry as to whether a person attempting to obtain alcoholic liquor is less than 21 years of age. **Except as set forth in Section 98.10.14, a** A person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 93 days or by a fine of not more than \$500, or both.

Chapter 98 shall be amended to add a new Section 98.10.14 as follows:

98.10.14 **Furnishing, Sale To Persons Under 21 and/or Failure to Inquire As To Age During Enforcement Action.** If an employee, clerk, or agent of an establishment that has been issued a license to sell or serve alcoholic liquor by the Michigan Liquor Control Commission violates either Section 98.10.06 or 98.10.11, and those violations result from an undercover operation in which the minor is under the direction of the Troy Police Department as part of an enforcement action,

then that employee, clerk, or agent is responsible for a Civil Infraction and may be ordered to pay a civil fine of not more than \$100.

Section 3. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 4. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 5. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the _____ day of _____.

Louise E. Schilling, Mayor

Tonni Bartholomew. City Clerk