



TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: November 17, 2009
SUBJECT: Amendment to Minor in Possession of Alcohol Ordinance

In 1995, the Michigan legislature enacted tougher laws to curb underage drinking. Several communities, including Troy, adopted regulations that mirrored these state statutory provisions. For example, Chapter 98, Section 10.03 and Section 10.04 is very similar to MCL 436.1703 (1) and (7).

These ordinance provisions were recently challenged as unconstitutional in a case of first impression, *People of the City of Troy v. Chowdhury*. In *Chowdhury*, Troy police officers were dispatched to a party where underage minors were drinking alcohol. When the officers arrived at the scene, there were several young adults, under the legal drinking age, who were leaving the party. Several of these young adults admitted that they illegally consumed alcohol at the party. Troy's police officers then administered a PBT (Preliminary Breath Test) to these persons who were outside the residence, including Mr. Chowdhury. Since the PBT results indicated that Mr. Chowdhury had consumed alcohol, and since he was under 21 years old, he was charged as a minor in possession of alcohol, in violation of Chapter 98.10.03. Subsequently, he filed a motion in the 52-4 District Court to suppress the PBT results, arguing that the administration of the PBT test was in violation of his Fourth Amendment right against unlawful search and seizure. The District Court Judge granted his motion, and this was affirmed by the Oakland County Circuit Court Judge, who determined that the trial court judge had not abused his discretion. However, since this was an issue of first impression in the Michigan state courts, the Michigan Court of Appeals granted the City's application for leave to appeal.

The Michigan Court of Appeals affirmed the trial court in the *Chowdhury* case. This decision directly impacts both state statutory provisions and local ordinances that allow police officers to administer PBT tests to minors who are suspected of illegally drinking alcohol.

Since the City has not filed an application for leave to appeal with the Michigan Supreme Court, the City now needs to amend its ordinance. A proposed amendment to Chapter 98, Section 10.03 and a repeal of Chapter 98.10.04 is attached for your review and consideration. The amendment substitutes the word "request" for the word "require." If a minor does not consent to a PBT test, then the police officer can still request a warrant to preserve the evidence. The proposed revision also corrects a grammatical error, and deletes Section 98.10.04, which provided a penalty for refusing to submit to a PBT test.

Please let us know if you have any questions concerning this matter.

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 98.10.03 is amended and Section 98.10.04 is repealed as follows: (*Underlining and strikeout denote changes*)

98.10.03 Under 21 – Purchase, Consume or Possess Alcohol. 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. A person who violates this section is guilty of a misdemeanor punishable as follows:

- a. For the first violation a fine of not more than \$100.00, and the court may order all applicable sanctions and programs provided in the State of Michigan minor in possession of alcohol statutes.
- b. For a second violation of this section or a local ordinance or state law which substantially corresponds to this section a fine of not more than \$200.00 and the court may order all applicable sanctions and programs provided in the State of Michigan minor in possession of alcohol statutes.
- c. For a third or subsequent violation of this section or a local ordinance or state law which substantially corresponds to this section a fine of not more than \$500.00 and the court may order all applicable sanctions and programs provided in the State of Michigan minor in possession of alcohol statutes.

A ~~peace~~police officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic liquor may ~~require~~request the person to submit to a preliminary chemical breath analysis. A ~~peace~~police officer may arrest a person based in whole or in part upon the results of a 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 the minor has consumed or possessed alcoholic liquor.

A police officer who witnesses a violation of this ordinance may stop and detain the person for purposes of obtaining satisfactory identification, seizing illegally possessed alcoholic liquor, and issuing an appearance ticket.

This section does not prohibit a person less than 21 years of age from possessing alcoholic liquor where permitted by state law.

~~98.10.04 Under 21 — PBT Refusal. A peace officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic liquor may require the person to submit to a preliminary chemical breath analysis. A person less than 21 years of age who refuses to submit to a preliminary chemical breath analysis as required in this section is responsible for a civil infraction and may be ordered to pay a civil fine of not more than \$100.00.~~

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 penal 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 _____, 2009.

Louise E. Schilling, Mayor

Tonni Bartholomew, City Clerk