

BIRMINGHAM CITY COMMISSION MINUTES
OCTOBER 30, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 7:32 p.m.

II. ROLL CALL

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| ROLL CALL: Present, | Mayor Nickita Mayor Pro Tem Harris Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Sherman |
| Absent, | None |

Administration: City Manager Valentine, City Attorney Currier, City Planner Ecker, Police Commander Grewe, City Clerk Mynsberge, City Engineer O'Meara, BSD Director Tighe, DPS Director Wood

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

Mayor Nickita announced:

- On Monday, November 13, from 7:00 to 8:30 p.m. in the Library, a community forum will be held about the initial design phase of a proposed expansion and renovation of the Baldwin Library's Youth Services wing. Parents, caregivers, children, residents, and other community members are welcome to attend. People wishing to comment on the Youth Services expansion and renovation, but unable to attend the community forum on November 13, may send their thoughts to Director Doug Koschik.
- Tuesday, November 7th is Election Day in Birmingham. Polls will be open from 7:00 a.m. to 8:00 p.m. Complete election information is available at www.Michigan.gov/VOTE. The City Clerk's Office will be open on Saturday, November 4th from 9:00 a.m. to 2:00 p.m. for issuing Absent Voter ballots.
- Celebrate the 90th anniversary of the Baldwin Public Library at a speakeasy-themed fundraiser on Friday, November 10th from 6:00 until 9:00 p.m. Proceeds will be used for an expansion and renovation of the Youth Room. Tickets can be purchased at www.baldwinlib.org, or by calling 248.554.4683.
- The Veterans Day wreath laying ceremony is at 11:00 a.m. on Saturday, November 11th in Shain Park. The ceremony is sponsored by the Piety Hill Chapter of the D.A.R.
- Boy Scouts from Troop 1001 are in attendance as they work on earning the Citizen in the Community badge.

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

10-278-17 APPROVAL OF CONSENT AGENDA

The following item was removed from the Consent Agenda:

- Commissioner Hoff: Item F

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Boutros:
To approve the Consent Agenda, with Item F removed.

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| ROLL CALL VOTE: | Yeas, | Commissioner Bordman Commissioner Boutros Commissioner DeWeese Mayor Pro Tem Harris Commissioner Hoff Mayor Nickita Commissioner Sherman |
| | Nays, | None |
| | Absent, | None |

- A. Resolution approving the City Commission minutes of October 16, 2017.
- B. Resolution approving the warrant list, including Automated Clearing House payments, of October 18, 2017 in the amount of \$1,678,786.55.
- C. Resolution approving the warrant list, including Automated Clearing House payments, of October 25, 2017 in the amount of \$350,282.57.
- D. Resolution approving a request from the Birmingham Bloomfield Art Center to hold Art Birmingham in Shain Park and on the surrounding streets on May 11 – 13, 2018 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- E. Resolution accepting the resignation of Scott Weller from the Cablecasting Board, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.
- G. Resolution approving the purchase and planting of 134 trees from KLM Landscape for the 2017 fall tree purchase and planting project for a total project cost not to exceed \$43,280.00. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005-819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005-729.0000 and the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
- H. Resolution approving the contract with Gardiner C. Vose, Inc., in the amount of \$13,065.00 to replace the Wall Partition System in conference rooms 202 and 203. Further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- I. Resolution setting Monday, November 20, 2017 at 7:30 p.m. for a Public Hearing to consider ordinance amendments to allow the use of Economic Development Liquor Licenses in an expanded area.

J. Resolution setting Monday, November 20, 2017 at 7:30 p.m. for a Public Hearing to consider the proposed lot combination of 412 & 420 E. Frank as well as the small strip of parking that abuts 420 E. Frank on the east.

**10-279-17 2017 BIRMINGHAM SHOPPING DISTRICT HOLIDAY
ADVERTISING CAMPAIGN PARKING (Item F)**

BSD Director Tighe confirmed for Commissioner Hoff that:

- Birmingham currently advertises with WXYZ and Comcast.
- The advertising contracts are not exclusive.
- The BSD is looking into advertising on other stations as well.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese:
Resolution authorizing the expenditure of \$25,000 from the Automobile Parking System fund promotion account (Account No. 585-538.001-901.0300) to assist the BSD in creating their proposed 2017 holiday promotional TV campaign.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

V. UNFINISHED BUSINESS

**10-280-17 SET A PUBLIC HEARING TO AMEND THE ZONING ORDINANCE TO
ADD A DEFINITION FOR PERSONAL SERVICES.**

Commissioner Sherman suggested postponing the public hearing until November 20 or December 4, 2017.

Commissioner Hoff stated that she would not like the public hearing postponed to December 4, especially because three Commissioners had previously expressed dissent regarding having the public hearing as late as November 13.

City Manager Valentine confirmed for Commissioner Sherman and Mayor Nickita that some items scheduled for November 13 could be moved to allow time for both the Commission's organizational meeting and the public hearing.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Harris:
To set Monday, November 13 at 7:30 PM for a public hearing to consider an amendment to Article 9, section 9.02 to add a definition for personal services to the Zoning Ordinance.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

VI. NEW BUSINESS

**10-281-17 SPECIAL EVENT REQUEST – HOTWORKS BIRMINGHAM FINE ART
SHOW**

From City Clerk Mynsberge's staff report to City Manager Valentine dated October 23, 2017:

Hot Works, LLC Fine Art & Fine Craft Shows is requesting permission to hold Hotworks Birmingham Fine Art Show in Shain Park on August 24 – 26, 2018. This will be the first time in Birmingham for this event.

The set-up is August 24th, and the show will be open 10:00 AM – 5:00 PM on Saturday, August 25th and Sunday, August 26th. Tear-down begins at 5:15 PM on Sunday, August 26th, and is scheduled to be completed at 10:00 PM.

There are no approved events or planned events that would affect the use of Shain Park on the dates requested.

The application has been circulated to the affected departments and approvals and comments have been noted.

Patty Narozny, the Owner of Hotworks Fine Art and Fine Craft Shows and President of the Institute for the Arts in Education, a 501(c)(3) organization focusing on fostering art education among youth, introduced herself. She explained:

- That the flagship show is the Orchard Lake Fine Arts Show in West Bloomfield, which has been voted a top 100 art show ten years in a row.
- The advertising strategy, which is wide-reaching across many local communities.
- The Hotworks approach to getting young artists involved in the shows through a young artists' competition and classes on how to do art shows for a living.
- That since the investment is large up-front, she would want this to be a recurring event in Birmingham for many years.
- That Birmingham, MI would be getting exposure through advertising for the show across the United States.
- That any city that hosts a Hotworks show usually experiences a \$500,000 to \$1 million positive economic impact during the show.

Ms. Narozny elaborated:

- For Commissioner Sherman that Hotworks and the Institute for Arts in Education are Michigan businesses, but not specifically Birmingham-affiliated.
- For Commissioner Hoff that Ms. Narozny is an Oakland County resident.
- For Mayor Pro Tem Harris that the only Michigan show put on by Hotworks LLC is the Orchard Lake Fine Arts show, which has been running since 2003.

Commissioner Sherman expressed concern with the scheduling, since there is a Birmingham art show three weeks after the proposed date, and the Dream Cruise one week before. Commissioner Hoff agreed.

Commissioner Bordman agreed with the aforementioned concerns. She added that these events can draw people away from permanent retailers in Birmingham and take up parking spaces, thus having a negative impact on retailers. She stated she was disinclined to support another art show.

Commissioner DeWeese stated that he shared the other Commissioners' concerns, and added that 2018 would be a challenging year to add something new due to the planned S. Old Woodward construction project.

Jeff Merriam, owner of Teacups and Toys, explained that any economic value the City experiences in bringing in this show would not be shared by the principal shopping district. Mr. Mariam continued that of seventeen weekends in the summer, 35% of them are disrupted by either federal holidays or special events, and that adding another event would have a large negative impact on the permanent retailers who rely on foot traffic.

Jeff Kapuscinski, Director of Business Development at Common Ground, noted Common Ground has partnered with the City to sponsor the Birmingham Street Art Fair for the last 43 years. Mr. Kapuscinski expressed his agreement with several Commissioners' concerns. He stated that adding the Hotworks art show could have a negative financial impact on Common Ground, which in turn would affect the organization's ability to render services in the community.

Mayor Nickita summarized the Commission's concerns, and reiterated the need for events like this to integrate well with the local community. He stated that the Commission appreciates Ms. Narozny's interest in Birmingham.

Mayor Nickita then confirmed for Ms. Narozny that the Commission would be taking no action to approve her request.

The Commission took no action.

10-282-17 AMENDMENT TO CITY CODE SEC. 110-67, INTERFERENCE WITH NORMAL FLOW OF TRAFFIC

From Chief of Police Clemence's staff report to City Manager Valentine dated October 18, 2017:
In July of 2017, the Michigan Legislature allowed civic and charitable organizations to seek donations in the roadway. Previously, Michigan Legislature banned these organizations from the roadway after a fire fighter was tragically killed while participating in a "boot campaign" to raise funds.

The state has changed this, to allow, with a number of conditions, civic and charitable organizations to return to the roadway when seeking donations. The statute also states that no municipality may prevent a charitable organization from soliciting donations. Therefore, it is necessary to add the ordinance to reflect the current state law.

A person who violates this section is responsible for a civil infraction. The attached proposed ordinance is consistent with current state law.

Police Commander Grewe confirmed for Commissioner Hoff that this ordinance is entirely new to the City of Birmingham, and that no police permit is required for organizations to fundraise in this way.

Commissioner DeWeese clarified that adding any restrictions would be very difficult due to the state law requiring that no municipality may prevent a charitable organization from soliciting donations.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Bordman: To amend Part II of the City Code, Chapter 110 Transportation Systems, Article III Michigan Vehicle Code, to add section 110-67 Interference with Normal Flow of Traffic, and to authorize the Mayor and City Clerk to sign the ordinance on behalf of the city. (*Appended to these minutes as Attachment A.*)

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

10-283-17 AMENDMENT TO CITY CODE SEC. 74-324, MINOR IN POSSESSION (MIP)

From Chief of Police Clemence's staff report to City Manager Valentine dated October 18, 2017:
The Michigan Legislature has recently made changes to MCL 436.1703 (Minor in Possession) that becomes effective January 1, 2018. The primary change is decriminalizing a first offense Minor in Possession (MIP) making it a civil infraction instead of a misdemeanor. Numerous other changes to MCL 436.1703 were made, such as requiring notifying parents/guardians after a civil infraction was issued.

As a result, the City of Birmingham, Ordinance 74-324 must be updated to reflect the changes that take effect in 2018.

The proposed ordinance is to replace the current ordinance in order to be consistent with state law effective January 1, 2018.

Police Commander Grewe clarified that this ordinance entails the decriminalization of a first offense Minor in Possession (MIP).

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Bordman:
To replace Part II of the City Code, Chapter 74 Offenses, Article VII Offenses Against Public Morals, Division 5 Controlled Substances, Subdivision III. Alcoholic Liquors Generally, Section 74-324 with attached ordinance effective January 1, 2018, and to authorize the Mayor and City Clerk to sign the ordinance on behalf of the city. (*Appended to these minutes as Attachment B.*)

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

VII. REMOVED FROM CONSENT AGENDA

The items removed were discussed earlier in the meeting.

VIII. COMMUNICATIONS

None.

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

None.

X. REPORTS

10-284-17 COMMISSIONER REPORTS

The Commission will appoint a regular member to the Cablecasting board on December 4, 2017 at 7:30 p.m.

COMMISSIONER COMMENTS

Commissioner DeWeese congratulated the Boy Scouts on picking the shortest meeting ever. City Manager Valentine invited them to come up to the dais after and have their picture taken in the Mayor's chair.

10-285-17 CITY STAFF REPORTS

The Commission received the Seaway Painting Update, submitted by DPS Director Wood.

The Commission received the September Investment Report, submitted by Finance Director Gerber.

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| XII ADJOURN |
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Mayor Nickita adjourned the meeting at 8:13 p.m.

J. Cherilynn Mynsberge, City Clerk

**CITY OF BIRMINGHAM
ORDINANCE NO. 2250**

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 110 TRANSPORTATION SYSTEMS, ARTICLE III – MICHIGAN VEHICLE CODE, TO ADD SECTION 110-67 INTERFERENCE WITH NORMAL FLOW OF TRAFFIC.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 110 Transportation Systems, Article III – Michigan Vehicle Code, shall be amended to add Section 110-67 Interference with Normal Flow of Traffic, as follows:

ARTICLE III – Michigan Vehicle Code

Sec. 110-67. – Interference with Normal Flow of Traffic.

- (a) Subject to subsection (b) a person without authority shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in the City of Birmingham by means of barricade, object, device or with his or her person. This section does not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or highway.
- (b) Subsection (a) and any provision of the Michigan Administrative Code that prohibits a person from standing in a roadway, other than a limited access highway, for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle, do not apply to a person who is soliciting contributions on behalf of a charitable or civic organization during daylight hours, if all the following are satisfied:
 - (1) The charitable or civic organization complies with all City of Birmingham ordinances.
 - (2) The charitable or civic organization maintains at least five hundred thousand dollars (\$500,000) in liability insurance.
 - (3) The person is eighteen (18) years of age or older.
 - (4) The person is wearing high visibility safety apparel that meets current American standards promulgated by the Internal Safety Equipment Association.
 - (5) The portion of the roadway upon which the solicitation occurs is not a work zone.
 - (6) The portion of the roadway upon which the solicitation occurs is within an intersection where traffic control devices are present.
- (c) The City of Birmingham or the Oakland County Road Authority that has jurisdiction over a roadway upon which solicitation occurs as described in subsection (b) is not liable for

any claim for damages arising out of the use of the roadway as described in subsection (b).

- (d) A person who violates this section is responsible for a civil infraction.
- (e) As used in this section "charitable or civic organization" means a non-profit organization that is qualified under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, 26 USC 501, or a veteran's organization that has a tax exempt status under the Internal Revenue Code.

Secs. 110-68 - 110-80. Reserved.

All other Sections of Chapter 110, Transportation Systems, Article III. Michigan Vehicle Code shall remain unaffected.

Ordained this 30th day of October, 2017. Effective upon publication.

Mark Nickita, Mayor
J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held October 30, 2017 and that a summary was published in the Observer and Eccentric Newspaper on November 5, 2017.

J. Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM
ORDINANCE NO. 2251

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE VII– OFFENSES AGAINST PUBLIC MORALS, DIVISION 5 CONTROLLED SUBSTANCES, SUBDIVISION III. ALCOHOLIC LIQUORS GENERALLY, SECTION 74-324

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article VII – Offenses Against Public Morals, Division 5 Controlled Substances, Subdivision III Alcoholic Liquors Generally, Section 74-324, shall be amended, as follows:

Sec. 74-324. - Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; use by minor; prior violation; screening and assessment; prior judgment; chemical breath analysis; notice to parent, custodian, or guardian; exceptions; recruitment of minor for undercover operation prohibited; affirmative defense; definitions.

(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 responsible for a civil infraction or guilty of a misdemeanor as follows:

- (a) For the first violation, the minor is responsible for a civil infraction and shall be fined not more than \$100.00. The 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 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 subsection (5). A minor may be found responsible or admit responsibility only once under this subdivision.
- (b) If a violation of this subsection occurs after 1 prior judgment, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision 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 \$200.00, or both. The court may order a minor under this subdivision to complete a term of probation, 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 subsection (5).

(c) If a violation of this subsection occurs after 2 or more prior judgments, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision 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 \$500.00, or both, as applicable. The court may order a minor under this subdivision to complete a term of probation, 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 subsection (5).

(2) An individual 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 93 days or a fine of not more than \$100.00, or both.

(3) If an individual who pleads guilty to a misdemeanor violation of subsection (1)(b) or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor violation of subsection (1)(b), 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 subsection (1)(c), 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 subsection 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 1 discharge and dismissal under this subsection. 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:

- (a) To a court, prosecutor, or police agency on request for the purpose of determining if an individual has already utilized this subsection.
- (b) 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:

- (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 criteria for employment.

(4) A misdemeanor violation of subsection (1) successfully deferred, discharged, and dismissed under subsection (3) is considered a prior judgment for the purposes of subsection (1)(c).

(5) A court may order an individual found responsible for or convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the department-designated community mental health entity as defined in section 100a 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 subsection (1) 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.

(6) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of a second or subsequent violation of subsection (1) or of violating subsection (2) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.

(7) 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 civil infraction proceeding or criminal prosecution to determine if the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.

(8) The Birmingham Police Department, 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 notify the parent or parents, custodian, or guardian of the individual as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the Birmingham Police Department. The Birmingham Police Department shall notify the parent, guardian or custodian not later than 48 hours after the Birmingham Police Department determines that the individual 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 Birmingham Police Department 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 subsection (1), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(9) 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.

(10) The following individuals are not considered to be in violation of subsection (1):

(a) A minor who has consumed alcoholic liquor and who voluntarily presents himself 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 sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(b) 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 or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(c) A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

(11) If a minor who is less than 18 years of age and who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (10), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.

(12) This section does not limit the civil or criminal liability of a vendor or the vendor's clerk, servant, agent, or employee for a violation of this act.

(13) 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.

(14) 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.

(15) 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 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 or 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.

(16) 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 701(1), or section 801(2).

(17) In a 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.

(18) As used in this section:

- (a) "Any bodily alcohol content" means either of the following:
 - (i) 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.
 - (ii) 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.
- (b) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.
- (c) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.
- (d) "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) This section or section 701 or 707.
 - (ii) Section 624a, 624b, or 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.

(iii) Section 80176, 81134, or 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.81134, and 324.82127.

(iv) Section 167a or 237 of the Michigan penal code, 1939 PA 328, MCL 750.167a and 750.237.

All other Sections of Chapter 74, Offenses, Article VII. Offenses Against Public Morals shall remain unaffected.

Ordained this 30th day of October, 2017. Effective upon publication.

Mark Nickita, Mayor

J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held October 30, 2017 and that a summary was published in the Observer and Eccentric Newspaper on December 31, 2017.

J. Cherilynn Mynsberge, City Clerk

** Ordinance to be published in December so as to become effective at the same time as the State Law.*