

Town of Dolores

Ordinance No. 514

Series 2013

Underage possession, Consumption of Alcohol

WHEREAS, there is a persistent and substantial problem in Dolores, Colorado with the consumption and possession of ethyl alcohol by underage persons, and

WHEREAS, the Legislature has authorized local municipalities to enact ordinances which prohibit persons under the age of 21 from possessing or consuming ethyl alcohol, and

NOW THEREFORE, it is ordained by the Town Board of the Town of Dolores, Colorado:

The Dolores Municipal Code shall be amended to add Section 9.12.43 Underage Possession/Consumption of Alcohol.

(1) As used in this ordinance, unless the context otherwise requires:

(a) "Establishment" means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group, or residence, and any real property, including buildings and improvements, connected therewith, and shall also include any members, employees, and occupants associated therewith.

(b) "Ethyl alcohol" means any substance, which is or contains ethyl alcohol.

(c) "Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his person, or that a person owns or has custody of ethyl alcohol, or has ethyl alcohol within his immediate presence and control.

(d) "Private property" means any dwelling and its curtilage which is being used by a natural person or natural persons for habitation and which is not open to the public and privately owned real property which is not open to the public. "Private property" shall not include:

(I) Any establishment which has or is required to have a license pursuant to article 46, 47, or 48 of title 12, C.R.S.; or

(II) Any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold; or

(III) Any establishment, which leases, rents, or provides accommodations to members of the public generally.

(2) (a) Any person age 18 to 20 years of age who possesses or consumes ethyl alcohol anywhere in the Town of Dolores commits illegal possession or consumption of ethyl alcohol by an underage person.

Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

(b) Illegal possession or consumption of ethyl alcohol by an underage person shall be punished as set forth in Dolores Municipal Code Section 1.12.010 Violation Penalty. The court, upon sentencing a defendant pursuant to this paragraph (b), may, in addition to any fine, suspend jail time on condition that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program at such defendant's own expense.

(3) It shall be an affirmative defense to the offense described in subsection (2) of this section that the ethyl alcohol was possessed or consumed by a person under twenty-one years of age under the following circumstances:

(a) While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the ethyl alcohol was possessed or consumed with the consent of his parent or legal guardian who was present during such possession or consumption; or

(b) When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed by Section 25.5.410 (1) (i) (II), C.R.S.; or the ingestion of any substance which was manufactured, designed, or intended primarily for a purpose other than oral human ingestion; or the ingestion of any substance which was manufactured, designed, or intended solely for medicinal or hygienic purposes; or solely from the ingestion of a beverage which contained less than one-half of one percent of ethyl alcohol by weight.

(c) The person is a student who:

(I) Tastes but does not imbibe an alcohol beverage only while under the direct supervision of an instructor who is at least twenty-one years of age and employed by a post-secondary school;

(II) Is enrolled in a university or a post-secondary school accredited or certified by an agency recognized by the United States department of education, a nationally recognized accrediting agency or association, or the "Private Occupational Education Act of 1981", article 59 of title 12, C.R.S.;

(III) Is participating in a culinary arts, food service, or restaurant management degree program, and

(IV) Tastes but does not imbibe the alcohol beverage for instructional purposes as a part of a required course in which the alcohol beverage, except the portion the student tastes, remains under the control of the instructor.

(4) The possession or consumption of ethyl alcohol shall not constitute a violation of this section if such possession or consumption takes place for religious purposes protected by the first amendment to the United States constitution.

(4.5) An underage person and one or two other persons shall be immune from criminal prosecution under this section if they establish the following:

(a) One of the underage persons called 911 and reported that another underage person was in need of medical assistance due to alcohol consumption;

(b) The underage person who called 911 and, if applicable, one or two other persons acting in concert with the underage person who called 911 provided each

of their names to the 911 operator;

(c) The underage person was the first person to make the 911 report; and

(d) The underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

(5) Prima facie evidence of a violation of subsection (2) of this section shall consist of:

(a) Evidence that the defendant age 18 to 20 years of age and possessed or consumed ethyl alcohol anywhere in the Town of Dolores; or

(b) Evidence that the defendant was age 18 to 20 years of age and manifested any of the characteristics commonly associated with ethyl alcohol intoxication or impairment while present anywhere in the Town of Dolores.

(6) During any trial for a violation of subsection (2) of this section, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and the information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can, or other container as "beer", "ale", "malt beverage", "fermented malt beverage", "malt liquor", "wine", "champagne", "whiskey" or "whisky", "gin", "vodka", "tequila", "schnapps", "brandy", "cognac", "liqueur", "cordial", "alcohol", or "liquor" shall constitute prima facie evidence that the contents of the bottle, can, or other container was composed in whole or in part of ethyl alcohol.

(7) A parent or legal guardian of a person 18 to 20 years of age or any natural person who has the permission of such parent or legal guardian may give or permit the possession and consumption of ethyl alcohol to or by a person under the age 18 to 20 years of age under the conditions described in paragraph (a) of subsection (3) of this section. This subsection (7) shall not be construed to permit any establishment which is or is required to be licensed pursuant to article 46, 47, or 48 of title 12, C.R.S., or any members, employees, or occupants of any such establishment to give, provide, make available, or sell ethyl alcohol to a person under twenty- one years of age.

(8) The qualitative result of an alcohol test or tests shall be admissible at the trial of any person charged with a violation of subsection (2) of this section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting alcohol by the executive director of the department of public health and environment.

(9) Official records of the department of public health and environment relating to the certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions, and certification of laboratories shall be official records of the state. Copies of such records, attested by the executive director of the department of public health and environment or his deputy and accompanied by a certificate bearing the official seal for said department, which state that the executive director of the department has custody of such records, shall be admissible

in all courts of record and shall constitute prima facie evidence of the information contained in such records. The official seal of the department described in this subsection may consist of a rubber stamp producing a facsimile of the seal stamped upon the document.

(10) In any judicial proceeding in any court of this state concerning a charge under subsection (2) of this section, the court shall take judicial notice of methods of testing a person's blood, breath, saliva, or urine for the presence of alcohol and of the design and operation of devices certified by the department of public health and environment for testing a person's blood, breath, saliva, or urine for the presence of alcohol. This subsection shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

(11) No law enforcement officer shall enter upon any private property to investigate any violation of this section without probable cause.

Now therefore it is further ordained by the Town Board of Dolores:

Section 9.12.040 Public Consumption of Alcoholic Beverages: C. currently reads:

Any Person who shall violate any of the provisions of this section shall, upon conviction, be fined a sum of not less than ten dollars nor more than three hundred dollars, and serve a jail sentence of up to ninety days, or both such fine and jail time. (Ord. 461, 2005; Ord. 457, 2004: Ord. 451 § § 1, 2, 2003: Ord. 278 § § 1, 3, 1969)

Sub Section C. shall be repealed and replaced with: A violation of this section shall be punishable as set forth in Section 1.12.010 Violations Penalty Dolores Municipal Code as may be amended from time to time.

Section 9.12.040: Public Consumption of Alcoholic Beverages shall be amended to add:

D. During any trial for a violation of subsection (A) of this section, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and the information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can, or other container as "beer", "ale", "malt beverage", "fermented malt beverage", "malt liquor", "wine", "champagne", "whiskey" or "whisky", "gin", "vodka", "tequila", "schnapps", "brandy", "cognac", "liqueur", "cordial", "alcohol", or "liquor" shall constitute prima facie evidence that the contents of the bottle, can, or other container was composed in whole or in part of ethyl alcohol.

E. The qualitative result of an alcohol test or tests shall be admissible at the trial of any person charged with a violation of subsection (A) of this section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting alcohol by the executive director of the department of public health and environment.

F. Official records of the department of public health and environment relating to the certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions, and certification of laboratories shall be official records of the state. Copies of such records, attested by the executive director of the department of public health and environment or his deputy and accompanied by a certificate bearing the official seal for said department, which state that the executive director of the department has custody of such records, shall be admissible in all courts of record and shall constitute prima facie evidence of the information contained in such records. The official seal of the department described in this subsection may consist of a rubber stamp producing a facsimile of the seal stamped upon the document.

G. In any judicial proceeding in any court of this state concerning a charge under subsection (A) of this section, the court shall take judicial notice of methods of testing a person's blood, breath, saliva, or urine for the presence of alcohol and of the design and operation of devices certified by the department of public health and environment for testing a person's blood, breath, saliva, or urine for the presence of alcohol. This subsection shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

Repealer. All orders, bylaws, ordinances, and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Severability. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Recording and authentication. Upon adoption hereof, this Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Effective date. This ordinance shall be effective upon publication after final passage.

Public Hearing. This ordinance shall be considered for second or final reading on the 11th day of March, 2013, at the hour of 6:30 p.m. in the Town Board Chambers in Town Hall, Dolores Colorado, at which time and place all persons may appear and be heard concerning the same.

Passed, adopted and approved on first reading this 11th day of, 2013.

TOWN OF DOLORES

ATTEST:

DUVALL TRUELSEN, Mayor

LANA HANCOCK, Town Clerk

Passed, adopted and approved on second and final reading this 11th day of, 2013.

TOWN OF DOLORES

ATTEST:

DUVALL TRUELSEN, Mayor

LANA HANCOCK, Town Clerk

APPROVED AS TO FORM:

MICHAEL F. GREEN, Town Attorney