

**ORDINANCE NO. 9-12      AN ORDINANCE TO AMEND CHAPTER 87, ALCOHOLIC BEVERAGES, OF THE CODE OF THE BOROUGH OF KINNELON**

**WHEREAS**, N.J.S.A 40:48-1.2 permits a municipality to make and amend an ordinance as it may deem necessary and proper for good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

**WHEREAS**, the Borough Council of the Borough of Kinnelon (“Borough”) desires to amend and supplement Chapter 87, ALCOHOLIC BEVERAGES, of the Code of the Borough of Kinnelon, New Jersey.

**NOW, THEREFORE, BE IT ORDAINED** by the Governing Body of the Borough of Kinnelon, County of Morris, State of New Jersey, as follows:

§87-9 (c) shall be deleted.

§87-10 shall be added as follows:

**Possession and Consumption by Minors**

**A. Purpose**

1. The Borough of Kinnelon does hereby declare that the abuse of alcohol is a serious problem affecting the health and welfare of all citizens. The Borough does further declare and determine that all reasonable steps should and must be taken to discourage and prohibit the possession and consumption of alcohol by underage persons.
2. This ordinance shall only be enforced as a secondary violation and requires another violation to precede it as the reason for entering upon the private property.
3. The purpose of this section also is to provide for the enforcement of P.L. 2000, c. 33.

**B. Definitions**

As used in this article, the following terms shall be defined as follows:

GUARDIAN - A person who is qualified as a guardian of the underage person pursuant to testamentary or court appointment.

RELATIVE - The underage person's parent, grandparent, aunt, uncle, sibling, first cousin or closer relative by blood, marriage or adoption who has attained the legal age to purchase and consume alcoholic beverages.

C. Violation; Exception

Any person under the legal age to purchase and consume alcoholic beverages who, without legal authority, on private property, knowingly possesses, orders, purchases, serves or consumes alcoholic beverages or who is under the influence of alcoholic beverages within the municipal boundary of the Borough of Kinnelon shall be in violation of this ordinance and subject to the penalties hereof.

1. This section shall not apply to the following:
  - a. an underage person consuming or possessing an alcoholic beverage in connection with a religious observance, ceremony or rite,
  - b. consuming or possessing an alcoholic beverage in the presence of and with the permission of a parent, guardian or relative who has attained the legal age to purchase and consume alcoholic beverages,
  - c. an underage person while actually engaged in the performance of employment by a person who is licensed under Title 33 of the revised statutes or while actively engaged in the preparation of food while enrolled in a culinary arts or hotel management program at a county vocational school or post secondary educational institution.
2. This ordinance shall not be construed to preclude the imposition of a penalty under this section, N.J.S.A. 33:1-81 or any other section of law against a person who is convicted of unlawful alcoholic beverage activity on or at premises licensed for the sale of alcoholic beverages.

D. Responsibility of Property Owner

1. Any person who makes real property that is owned, leased or managed by such person, or over which such person has actual and effective control, available to persons who are under the legal age for consuming alcoholic beverages with the knowledge that alcoholic beverages will be made available for consumption or will be consumed by persons who are under the legal age for consuming alcoholic beverages shall be in violation of this ordinance and subject to penalties hereof. Any person who, within the Borough of Kinnelon, leaves real property, owned, leased or managed by such person or over which such person has actual and effective control in the care of another person with the knowledge that alcoholic beverages will be made available for consumption by or will be consumed by persons who are under the legal age for consuming alcoholic beverages shall be in violation of this ordinance and subject to penalties hereof. This section shall not apply if:

- a. The real property is licensed or required to be licensed by the Division of Alcoholic Beverage Control in accordance with the provisions of N.J.S.A. 33:1-1 et seq.;
  - b. The person making the property available or leaving it in the care of another person is of the legal age to consume alcoholic beverages and is the parent or guardian or first cousin or closer relative by blood, marriage or adoption of the person who consumes alcoholic beverages while under legal age for consuming alcoholic beverages; or
  - c. The alcoholic beverages are consumed by a person under the legal age for consuming alcoholic beverages during a religious observance, ceremony or rite.
2. This section shall not apply to those actions constituting a violation of law as set forth in N.J.S.A. 2C:33-17 or any successor statute.

#### E. Violations and Penalties

1. Any person under the legal age to purchase alcoholic beverages who knowingly possesses or knowingly consumes an alcoholic beverage on private property shall be punished by a fine of \$250.00 for a first offense and \$350.00 for any subsequent offense. The Court may, in addition, in egregious circumstances such as defendants with prior offenses, defendants where the violation involves a motor vehicle, or for defendants who have caused a significant danger to themselves or others, suspend or postpone for six months the driving privilege of the defendant. Upon the conviction of any person and the suspension or postponement of that person's driver's license, the Court shall forward a report to the Division of Motor Vehicles stating the first and last day of the suspension or postponement period imposed by the Court pursuant to this section. If a person at the time of the imposition of a sentence is less than 17 years of age, the period of license postponement, including a suspension or postponement of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period of six months after the person reaches the age of 17 years.

In lieu of, or in combination with, the fine and/or license suspension imposed pursuant to the previous paragraph of this section, the Court may exercise discretion to order the defendant to complete six hours of alcohol education in a formal classroom setting.

2. If a person, at the time of the imposition of a sentence has a valid Driver's License issued by this state, the Court shall immediately collect the license and forward it to the Division, along with the report. If for any reason the license cannot be collected, the Court shall include in the report the complete name, address, date of birth, eye color and sex of the person, as well as the first and last date of the license suspension period imposed by the Court.
3. The Court shall inform the person orally and in writing that if the person is convicted of operating a motor vehicle during the period of suspension or postponement, the person shall be subject to the penalties set forth in N.J.S.A. 39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive

a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of N.J.S.A. 39:3-40.

4. If the person convicted under such an ordinance is not a New Jersey resident, the Court shall suspend or postpone, as appropriate, the nonresident driving privilege of the person based on the age of the person and submit to the Division the required report. The Court shall not collect the license of a nonresident convicted under this section. Upon receipt of a report by the Court, the Division shall notify the appropriate officials in the licensing jurisdiction of the suspension or postponement.

F. Duty of Law Enforcement Officer

All law enforcement officers of the Borough of Kinnelon are hereby directed to apprehend any person observed by such officer to be in violation hereof and any person for whom the officer has probable cause to believe to be in violation hereof.

SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

INCONSISTENT ORDINANCES. Ordinances, resolutions, and regulations or parts of ordinances, resolutions, and regulations inconsistent herewith, are hereby repealed to the extent of such inconsistency.

EFFECTIVE DATE. This Ordinance shall take effect upon passage and publication according to law.

SUNSET PROVISION. This Ordinance shall expire three years from the date of adoption.

ATTEST:

BOROUGH OF KINNELON

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Elizabeth M. Sebrowski, Borough Clerk

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Robert Collins, Mayor

## **C E R T I F I C A T I O N**

I, Elizabeth M. Sebrowski, Borough Clerk of the Borough of Kinnelon, County of Morris, State of New Jersey, do hereby certify the foregoing to be a true copy of an Ordinance introduced, read by title and passed on the first reading at a regular meeting of the Borough held on \_\_\_\_\_, 2012 and adopted by the Governing Body at a regular meeting of the Borough held on \_\_\_\_\_, 2012.

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Elizabeth M. Sebrowski, Borough Clerk