

CHARTER TOWNSHIP OF HAMPTON ORDINANCE NO 34-2

An Ordinance to adopt by reference the Uniform Traffic Code for Michigan Cities, Townships and Villages.

THE CHARTER TOWNSHIP OF HAMPTON, BAY COUNTY, MICHIGAN , ORDAINS:

SECTION 1. CODE ADOPTED

The Uniform Traffic Code for cities, townships and villages promulgated by the Director of State Police and published in the 1979 edition of the Michigan Administrative Code and amendments as published in the Quarterly Supplement No. 5 to the 1979 edition of the Michigan Administrative Code, and made effective January 27, 1981, in accordance with Public Act 62 of 1956, State of Michigan, is hereby adopted by reference as in this ordinance modified.

SECTION 2. REFERENCES IN CODE

References in the Uniform Traffic Code for Michigan Cities, Townships and Villages to "governmental unit" shall mean the Charter Township of Hampton, Bay County, Michigan.

SECTION 3. NOTICE TO BE PUBLISHED

The Township Clerk shall publish this ordinance in the manner required by law and shall at the same time publish a supplementary notice setting forth the purpose of the said Uniform Traffic Code and of the fact that a complete copy of the Code is available at the office of the Clerk for inspection by the public at all times.

SECTION 4. CONFLICTING ORDINANCES REPEALED

Ordinance No. 34 adopted June 26, 1978, relating to traffic is hereby specifically repealed. All other ordinances inconsistent with the provisions of the Uniform Traffic Code are, to the extent of such inconsistency, hereby repealed.

SECTION 5. WHEN EFFECTIVE

The Uniform Traffic Code will be in effect in the Charter Township of Hampton, Bay County, Michigan, on the 31st day after publication following the adoption as required by law.

SECTION 6. CHANGES IN CODE

The following sections and sub-sections of the Uniform Traffic Code for cities, townships and villages are hereby amended or deleted as set forth and additional sections and sub-sections are added as indicated. Subsequent section numbers used in this Ordinance shall refer to the like numbered sections of the Uniform Traffic Code.

SECTION 5.15 Person under the influence of intoxicating liquor or controlled substance, driving on highway or parking area prohibited

(1) A person, whether licensed or not, who is under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, shall not operate a vehicle upon a highway or other place open to the general public, including an area designated for the parking of vehicles, within the Township. A peace officer may, without a warrant, arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the driver of a vehicle involved in the accident and was operating the vehicle upon a public highway or other place open to the general public, including an area designated for the parking of vehicles, in the Township while under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance. A violation of this subsection is punishable as provided in subsection (3) and (4).

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public, including an area designated for the parking of motor vehicles, within the Township by a person who is under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance. A violation of this subsection is punishable as provided in subsections (3) and (4).

(3) A person who is convicted of a violation of subsection (1) or (2) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 nor more than \$500.00 or both, together with costs of the prosecution. A subsequent offense is punishable as follows:

(a) On a second conviction under this section or state law substantially corresponding to this section, a person is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00 or both.

(b) On a third or subsequent conviction within a period of 10 years under this section or state law substantially corresponding to this section, a person is guilty of a felony.

(4) Upon conviction of a person under this section or state law substantially corresponding to this section, the court, in addition to the penalty imposed under subsection (3) and as part of the sentence, shall order the operator's or chauffeur's license of that person to be suspended by the secretary of state for a period of not more than 2 years and may order the secretary of state to issue to that person a restricted license permitting the person during all or a specified portion of the period of suspension to drive only to and from the person's residence and place of employment; in the course of employment; to and from an alcohol training program as ordered by the court; or pursuant to a combination of those restrictions. The court shall not order the secretary of state to issue a restricted chauffeur's license which would permit a person to operate a truck or truck tractor, including trailers, which hauls a hazardous material.

(5) The court, before accepting a plea of guilty under this section, shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of an operator's or chauffeur's license, the penalty imposed for violation of this section, and the limitation on the right of appeal.

(6) The operator's or chauffeur's license of a person found guilty of violating this section or state law substantially corresponding to this section, shall be surrendered to the court in which the person was convicted and the court shall immediately forward the surrendered license and an abstract of conviction to the secretary of state. The abstract of conviction shall indicate the sentence imposed pursuant to subsections (3) and (4). Upon receipt of, and pursuant to the abstract of conviction, the secretary of state shall suspend the person's license and, if ordered by the court and the person is otherwise eligible for a license, issue to the person a restricted license stating the limited driving privileges indicated on the abstract. If the license is not forwarded to the secretary of state, an explanation of the reason why the license is absent shall be attached. If the conviction is appealed to circuit court, that court may, ex parte, order the secretary of state to rescind the suspension or restricted license issued pursuant to this section.

SECTION 5.15a Driving under influence of intoxicating liquor; tests, evidence

(1) In a criminal prosecution for operating a vehicle while under the

Influence of intoxicating liquor, for operating a vehicle while visibly impaired, or in a criminal prosecution pertaining to manslaughter or negligent homicide resulting from the operation of a motor vehicle, while the driver is alleged to have been under the influence of intoxicating liquor, the amount of alcohol in the driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath shall be admissible into evidence. If a test is given, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the report at least 2 days before the day of the trial and the results shall be offered as evidence by the prosecution in a criminal proceeding. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution. The amount of alcohol in the driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath shall give rise to the following presumptions:

(a) If there was at the time 0.07% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor.

(b) If there was at the time in excess of 0.07% but less than 0.10% by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a vehicle was impaired within the provisions of section 5.15 due to the consumption of intoxicating liquor.

(c) If there was at the time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

(2) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the alcoholic content of the blood under this act. Liability for a crime or civil damages predicated on the act of withdrawing blood and related procedures shall not attach to a qualified person who withdraws blood or assists in the withdrawal in accordance with this act unless the withdrawal is performed in a negligent manner.

(3) A person charged with a crime enumerated in subsection (1) who takes a chemical test administered at the request of a peace officer,

as provided in subsections (1) and (2), shall be informed that the person will be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests, as provided in this section, within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. A person charged with a crime enumerated in subsection (1) who is requested by the peace officer to take a chemical test as provided in subsections (1) and (2) shall be informed that he or she has the right to demand that 1 of the tests provided for in subsection (1) shall be given him or her, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant.

(4) The person charged shall be advised that the person's refusal to take a test as provided in this section shall result in the suspension or revocation of his or her operator's or chauffeur's license or his or her operating privilege.

(5) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor.

(6) Notwithstanding any other provision of this Ordinance, a person requested to take this test shall be advised that he or she has the option to demand that only a breath test shall be given, in which case his or her refusal to submit to another test shall not constitute a refusal for the purposes of sections 5.15d and 5.15f.

(7) If a jury instruction regarding a defendant's refusal to submit to a chemical test under this section is requested by the prosecution or the defendant, the jury instruction shall be given as follows:

"Evidence was admitted in this case which, if believed by the jury, could prove that the defendant had exercised his or her right to refuse a chemical test. You are instructed that such a refusal is within the statutory rights of the defendant and is not evidence of his guilt. You are not to consider such a refusal in determining the guilt or innocence of the defendant."

SECTION 5.15b Operation of vehicle after impairment of ability due to consumption of intoxicating liquor or controlled substance; violation; penalty

(1) A person shall not operate a vehicle upon a highway or other place open to the general public, including an area designated for

the parking of vehicles, within the township when, due to the consumption of an intoxicating liquor, a controlled substance, or a combination of an intoxicating liquor and a controlled substance, the person has visibly impaired his or her ability to operate the vehicle. If a person is charged with violating section 5.15, a finding of guilty is permissible under this section.

(2) A person convicted of a violation of this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$300.00 or both, together with costs of the prosecution. On a second and subsequent conviction under this section or state law substantially corresponding to this section, the person is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

SECTION 5.15c Consent to chemical tests for intoxication,
exception, grounds for administering tests;
blood from deceased driver

(1) A person who operates a vehicle upon a public highway or other place open to the general public, including an area designated for the parking of vehicles, in the state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood if:

(a) The person is arrested for a violation of section 5.15 or 5.15b or state law substantially corresponding to section 5.15 or 5.15b.

(b) The person is arrested for manslaughter or negligent homicide resulting from the operation of a motor vehicle and the peace officer had reasonable ground to believe that the person was operating a vehicle while under the influence of intoxicating liquor, or while his or her ability to operate a vehicle was impaired due to the consumption of intoxicating liquor.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

(3) The tests shall be administered at the request of a peace officer having reasonable grounds to believe the person was operating a vehicle upon a public highway or other place open to the general

public, including an area designated for the parking of vehicles, in the township while in violation of section 5.15 or 5.15b or state law substantially corresponding to section 5.15 or 5.15b.

(4) If after a highway accident the driver of a vehicle involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining blood alcohol content. The results of an examination of the blood of a deceased driver shall be used for statistical purposes only.

SECTION 5.15d Chemical tests; right to refuse to submit to test, advice; effect of refusal; sworn report, contents, form

A person who is requested pursuant to section 5.15c(3) to take a chemical test shall be advised of the right to refuse to submit to chemical tests; and if the person refuses the request of a peace officer to submit to chemical tests, a test shall not be given without a court order. A sworn report shall be forwarded to the department by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person had been operating a vehicle on a public highway or other place open to the general public, including an area designated for the parking of vehicles, in the township while under the influence of intoxicating liquor or that the person had been operating a vehicle while his or her ability to operate a vehicle had been impaired due to the consumption of intoxicating liquor and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

SECTION 5.15e Same; notice of receipt of sworn statement and right to request hearing

(1) Upon receipt of the sworn statement, the department shall immediately notify the person in writing, mailed to his last known address, that the sworn statement has been received and that within 14 days of the date of the notice he may request a hearing as provided in section 322 of the Act.

(2) The notice shall specifically state that failure to request a hearing within 14 days will result in the suspension of the person's license or permit to drive. The notice shall also state

that there is not a requirement that the person retain counsel for the hearing, though counsel would be permitted to represent the person at the hearing.

SECTION 5.15f Same; hearing

(1) If the person who refuses to submit to a chemical test pursuant to section 5.15d does not request a hearing within 14 days of the date of notice pursuant to section 5.15e, the secretary of state shall suspend the person's operator's or chauffeur's license or permit to drive or nonresident operating privilege, for a period of not less than 90 days nor more than 2 years. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary shall deny to the person the issuance of a license or permit for a period of not less than 90 days nor more than 2 years.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322 of the Act. At least 10 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the sworn report, and, if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer shall be authorized to administer oaths, issue subpoenas for the attendance of necessary witnesses, and may grant a reasonable request for an adjournment. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person had been operating a vehicle upon a highway or other place open to the general public, including an area designated for the parking of vehicles, in the township while in violation of section 5.15 or 5.15b or state law substantially corresponding to section 5.15 or section 5.15b.

(b) Whether the person was placed under arrest for a crime enumerated in section 5.15a.

(c) Whether the person reasonably refused to submit to the test upon the request of the officer.

(d) Whether the person was advised of the rights under sections 5.15a, 5.15c and 5.15d.

(3) After the hearing, the secretary may suspend or deny issuance of a license or driving permit or a nonresident operating privilege of the person involved for a period of not less than 90 days nor more than 2 years. If the person involved is a resident without a license or permit to operate a vehicle in the state, the secretary may deny to the person the issuance of a license or permit for a period of not less than 90 days nor more than 2 years. The person involved may file a petition in the circuit court of the county in which the arrest was made to review the suspension or denial in the same manner and under the same conditions as provided in section 323 of the Act. All hearings in circuit court shall be de novo and shall be limited to the issues enumerated in subsection (2).

(4) When it has been finally determined that a nonresident's privilege to operate a vehicle in the state has been suspended or denied, the department shall give notice in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of each state in which he or she has a license to operate a motor vehicle.