

CHARTER TOWNSHIP OF HAMPTON ORDINANCE NO. 34-3

An Ordinance to amend the Charter Township of Hampton Traffic Ordinance, being the Charter Township of Hampton Ordinance No. 34-2.

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

SECTION 1. SHORT TITLE

This ordinance shall be known as the "First Amendment to the Hampton Township Traffic Ordinance 34-2".

SECTION 2. AMENDMENTS TO ORDINANCE NO. 34-2.

The following sections and sub-sections of the Charter Township of Hampton Traffic Ordinance being the Charter Township of Hampton Ordinance No. 34-2 are hereby amended or deleted as set forth in additional sections and subsections are added as indicated. Subsequent section numbers used in this ordinance shall refer to the like numbered sections of the Charter Township of Hampton Traffic Ordinance.

2.6 and 2.7

Sec. 2.5/ of Chapter 2 of Ordinance No. 34-2 is hereby repealed to the extent that there is any inconsistency with the following provisions.

Sec. 2.5a of Chapter 2 of Ordinance No. 34-2 is hereby amended to read in full as follows:

Sec. 2.5a Abandoned vehicle procedures.

- (1) As used in this section, "abandoned vehicle" means a vehicle which has remained on public property or private property for a period of 48 hours after a police agency or other governmental agency designed by the police agency has affixed a written notice to the vehicle.
- (2) If a vehicle has remained on public or private property for a period of time so that it appears to the police agency to be abandoned, the police agency shall do all of the following:
  - (a) Determine if the vehicle has been reported stolen.
  - (b) Affix a written notice to the vehicle. The written notice shall contain the following information:
    - (i) The date and time the notice was affixed.
    - (ii) The name and address of the police agency taking the action.
    - (iii) The name and badge number of the police officer

- affixing the notice.
- (iv) The date and time the vehicle may be taken into custody and stored at the owner's expense or scrapped if the vehicle is not removed.
  - (v) The year, make, and vehicle identification number of the vehicle, if available.
- (3) If the vehicle is not removed within 48 hours after the date the notice was affixed, the vehicle is deemed abandoned and the police agency may have the vehicle taken into custody.
- (4) A police agency which has a vehicle taken into custody shall do all of the following:
- (a) Recheck to determine if the vehicle has been reported stolen.
  - (b) Within 24 hours after taking the vehicle into custody, enter the vehicle as abandoned into the law enforcement information network.
  - (c) Within 7 days after taking the vehicle into custody, send to the registered owner and secured party, as shown by the records of the secretary of state, by first-class mail or personal service, notice that the vehicle has been deemed abandoned. The form for the notice shall be furnished by the secretary of state. Each notice form shall contain the following information:
    - (i) The year, make, and vehicle identification number of the vehicle if available.
    - (ii) The location from which the vehicle was taken into custody.
    - (iii) The date on which the vehicle was taken into custody.
    - (iv) The name and address of the police agency which had the vehicle taken into custody.
    - (v) The business address of the custodian of the vehicle.
    - (vi) The procedure to redeem the vehicle.
    - (vii) The procedure to contest the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees.
    - (viii) A form petition which the owner may file in person or by mail with the specified court which requests a hearing on the police agency's action.
    - (ix) A warning that the failure to redeem the vehicle or to request a hearing within 20 days after the date of the notice may result in the sale of the vehicle and the termination of all rights of the owner and the secured party to the vehicle or the proceeds of the sale.
- (5) The registered owner may contest the fact that the vehicle has been deemed abandoned or the reasonableness

of the towing fees and daily storage fees by requesting a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice within 20 days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing conducted pursuant to sections 2.5e and 2.5f. An owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond in an amount equal to the accrued towing and storage fees with the court. The owner of the vehicle who requests a hearing may obtain release of the vehicle by paying the towing and storage fees instead of posting the towing and storage bond. If the court finds that the vehicle was not properly deemed abandoned, the police agency shall reimburse the owner of the vehicle for the accrued towing and storage fees.

- (6) If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.
- (7) If the owner does not redeem the vehicle or request a hearing with 20 days after the date of the notice, the secured party may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle and the police agency for its accrued costs.
- (8) Not less than 20 days after the disposition of the hearing described in subsection (5) or, if a hearing is not requested, not less than 20 days after the date of the notice, the police agency shall offer the vehicle for sale at a public sale pursuant to section 2.5g.
- (9) If the ownership of a vehicle which has been deemed abandoned under this section cannot be determined either because of the condition of the vehicle identification numbers or because a check with the records of the secretary of state does not reveal ownership, the police agency may sell the vehicle at public sale pursuant to section 2.5g, not less than 30 days after public notice of the sale has been published.

Chapter 2 of Ordinance No. 34-2 is hereby amended by the addition of the following new section 2.5b.

Sec. 2.5b Abandoned scrap vehicle procedure.

- (1) As used in this section:
  - (a) "Registered abandoned scrap vehicle" means a vehicle which meets all of the following requirements:

- (i) Is on public or private property.
  - (ii) Is 7 or more years old.
  - (iii) Is apparently inoperable or is extensively damaged, to the extent that the cost of repairing the vehicle so that it is operational and safe as required by section 5.71 would exceed the fair market value of that vehicle.
  - (iv) Is currently registered in the state of Michigan or displays current year registraton plates from another state.
  - (v) Is not removed within 48 hours after a written notice as described in section 2.5a(2)(b) is affixed to the vehicle.
- (b) "Unregistered abandoned scrap vehicle" means a vehicle which meets all of the following requirements:
- (i) Is on public or private property.
  - (ii) Is 7 or more years old.
  - (iii) Is apparently inoperable or is extensively damaged, to the extent that the cost of repairing the vehicle so that it is operational and safe as required by section 5.71, would exceed the fair market value of that vehicle.
  - (iv) Is not currently registered in this state and does not display current year registration plates from another state.
  - (v) Is not removed within 48 hours after a written notice as described in section 2.5a(2)(b) is affixed to the vehicle.
- (2) A police agency may have an unregistered abandoned scrap vehicle taken into custody, in which case the police agency shall do all of the following:
- (a) Determine if the vehicle has been reported stolen.
  - (b) Take 2 photographs of vehicle.
  - (c) Make a report to substantiate the vehicle as an unregistered abandoned scrap vehicle. The report shall contain the following information:
    - (i) The year, make, and vehicle identification number if available.
    - (ii) The date of abandonment.
    - (iii) The location of abandonment.
    - (iv) A detailed listing of the damage or the missing equipment.
    - (v) The reporting officer's name and title.
    - (vi) The location where the vehicle is being held.
  - (d) Within 24 hours after taking the vehicle into custody, enter the vehicle into the law enforcement information network.

- (3) Within 24 hours, excluding Saturday, Sunday, and legal holidays, after taking the vehicle into custody, the police agency shall complete a release form and release the vehicle to the towing service or a used vehicle parts dealer or vehicle scrap metal processor, who shall then transmit that release form to the secretary of state and apply for a certificate of the title or a certificate of scrapping. Upon receipt of the release form and application, the secretary of state shall issue a certificate of title or a certificate of scrapping.
- (4) The release form described in subsection (3) shall be furnished by the secretary of state and shall include a certification executed by the applicable police agency when the abandoned scrap vehicle is released. The certification shall state that the police agency has complied with all the requirements of subsection (2)(b) and (c).
- (5) The secretary of state shall retain the records relating to an abandoned scrap vehicle for not less than 2 years. The 2 photographs taken pursuant to subsection (2)(b) shall be retained by the police agency for not less than 2 years. After the certificate of scrapping has been issued, a certificate of title for the vehicle shall not be issued again.
- (6) A police agency may have a registered abandoned scrap vehicle taken into custody, in which case the police agency shall do all of the following:
  - (a) Determine if the vehicle has been stolen.
  - (b) Take 2 photographs of the vehicle.
  - (c) Make a report to substantiate the vehicle as a registered abandoned scrap vehicle. The report shall contain the following information:
    - (i) The year, make, and vehicle identification number if available.
    - (ii) The date of abandonment.
    - (iii) The location of abandonment.
    - (iv) A detailed listing of the damage or the missing equipment.
    - (v) The reporting officer's name and title.
    - (vi) The location where the vehicle is being held.
  - (d) Within 24 hours after taking the vehicle into custody, enter the vehicle into the law enforcement information network.
  - (e) Within 7 days after taking the vehicle into custody,

send to the registered owner and secured party, as shown by the records of the secretary of state, by first-class mail or personal service, notice that the vehicle has been deemed abandoned. The form for the notice shall be furnished by the secretary of state. Each notice form shall contain the following information.

- (i) The year, make, and vehicle identification number of vehicle if available.
  - (ii) The location from which the vehicle was taken into custody.
  - (iii) The date on which the vehicle was taken into custody.
  - (iv) The name and address of the police agency which had the vehicle taken into custody.
  - (v) The business address of the custodian of the vehicle.
  - (vi) The procedure to redeem the vehicle.
  - (vii) The procedure to contest the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees.
  - (viii) A form petition which the owner may file in person or by mail with the specified court which requests a hearing on the police agency's action.
  - (ix) A warning that the failure to redeem the vehicle or to request a hearing within 20 days after the date of the notice may result in the termination of all rights of the owner and the secured party to the vehicle.
- (7) The registered owner of a registered abandoned scrap vehicle may contest the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees by requesting a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice within 20 days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing conducted pursuant to sections 2.5e and 2.5f. An owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond with the court in an amount as determined by the court. The owner of the vehicle who requests a hearing may obtain release of the vehicle by paying the towing and storage fees instead of posting the towing and storage bond. If the court finds that the vehicle was not properly deemed abandoned, the police agency shall reimburse the owner of the vehicle for the accrued towing and storage fees, or amount of bond, if less.
- (8) If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.

- (9) If the owner does not redeem the vehicle or request a hearing within 20 days after the date of the notice, the secured party may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.
- (10) Not less than 20 days after the disposition of the hearing described in subsection (7), or if a hearing is not requested, not less than 20 days after the date of the notice described in subsection (6)(e), the police agency shall follow the procedures established in subsections (3) to (5).

Chapter 2 of Ordinance No. 34-2 is hereby amended by the addition of the following new section 2.5c.

Sec. 2.5c Vehicle removed from private property.

- (1) When a vehicle is removed from private property at the direction of a person other than the registered owner of the vehicle or a police agency, the custodian of the vehicle immediately shall notify the police agency from whose jurisdiction the vehicle was towed. The custodian shall supply that information which is necessary for the police agency to enter the vehicle into the law enforcement information network.
- (2) Upon receipt of the notification described in subsection (1), the police agency immediately shall do all of the following:
  - (a) Determine if the vehicle has been reported stolen.
  - (b) Enter the vehicle into the law enforcement information network.
- (3) The owner of the vehicle removed as described in subsection (1) may obtain release of the vehicle by paying the accrued towing and storage fees to the custodian of the vehicle. Upon release of the vehicle, the custodian shall notify the police agency of the disposition of the vehicle.
- (4) If the vehicle described in subsection (1) is not claimed by the owner within 7 days after the police agency has been notified by the custodian that it has been taken into custody, the vehicle is deemed abandoned and the procedures prescribed in section 2.5a(4)(c) to (9) shall apply.

Chapter 2 of Ordinance No.34-2 is hereby amended by the addition of the following new section 2.5d.

Sec. 2.5d Vehicle removed by police.

- (1) A police agency or a governmental agency designated by the police agency may provide for the immediate removal of a vehicle from public or private property to the place of safekeeping at the expense of the registered owner of the vehicle in any of the following circumstances:
  - (a) If the vehicle is in such a condition that the continued operation of the vehicle upon the highway would constitute an immediate hazard to the public.
  - (b) If the vehicle is parked or standing upon the highway in such a manner as to create an immediate public hazard or an obstruction of traffic.
  - (c) If a vehicle is parked in a posted tow away zone.
  - (d) If there is reasonable cause to believe that the vehicle or any part of the vehicle is stolen.
  - (e) If the vehicle must be seized to preserve evidence of a crime, or when there is reasonable cause to believe that the vehicle was used in the commission of a crime.
  - (f) If the removal is necessary in the interest of public safety because of fire, flood, storm, snow, natural or man-made disaster, or other emergency.
  - (g) If the vehicle is hampering the use of private property by the owner or person in charge of that property or is parked in a manner which impedes the movement of another vehicle.
- (2) A police agency which authorizes the removal of a vehicle under subsection (1) shall do all of the following:
  - (a) Check to determine if the vehicle has been reported stolen.
  - (b) Within 24 hours after removing the vehicle, enter the vehicle into the law enforcement information network if the vehicle has not been redeemed. This subdivision does not apply to a vehicle that is removed from the scene of a motor vehicle traffic accident.
  - (c) If the vehicle has not been redeemed within 10 days after moving the vehicle, send to the registered owner



and the secured party as shown by the records of the secretary of state, by first-class mail or personal service a notice that the vehicle has been removed; however, if the police agency informs the owner or operator of the vehicle of the removal and the location of the vehicle within 24 hours after the removal, and if the vehicle has not been redeemed within 30 days and upon complaint from the towing service, the police agency shall send the notice within 30 days after the removal. The notice shall be by a form furnished by the secretary of state. The notice form shall contain the following information:

- (i) The year, make, and vehicle identification number of vehicle.
  - (ii) The location from which the vehicle was taken into custody.
  - (iii) The date on which the vehicle was taken into custody.
  - (iv) The name and address of the police agency which had the vehicle taken into custody.
  - (v) The location where the vehicle is being held.
  - (vi) The procedure to redeem the vehicle.
  - (vii) The procedure to contest the fact that the vehicle was properly removed or the reasonableness of the towing and daily storage fees.
  - (viii) A form petition which the owner may file in person or by mail with the specified court which requests a hearing on the police agency's action.
  - (ix) A warning that the failure to redeem the vehicle or to request a hearing within 20 days after the date of the notice may result in the sale of the vehicle and the termination of all rights of the owner and the secured party to the vehicle or the proceeds of the sale or to both the vehicle and the proceeds.
- (3) The registered owner may contest the fact that the vehicle was properly removed or the reasonableness of the towing fees and daily storage fees by requesting a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice within 20 days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing conducted pursuant to sections 2.5e and 2.5f. An owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond in an amount equal to the accrued towing and storage fees with the court. The owner of the vehicle who requests a hearing may obtain release of the vehicle by paying the towing and storage fees instead of posting the towing and storage bond. If the court finds that the vehicle was not properly removed, the police agency shall reimburse the owner of the vehicle for the accrued towing and storage fees.

- (4) If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.
- (5) If the owner does not redeem the vehicle or request a hearing within 20 days, the secured party may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle prior to the date of the sale.
- (6) Not less than 20 days after the disposition of the hearing described in subsection (3) or, if a hearing is not requested, not less than 20 days after the date of the notice described in subsection (2)(c), the police agency shall offer the vehicle for sale at a public sale unless the vehicle is redeemed. The public sale shall be held pursuant to section 2.5g.
- (7) If the ownership of a vehicle which has been removed under this section cannot be determined either because of the condition of the vehicle identification numbers or because a check with the records of the secretary of state does not reveal ownership, the police agency may sell the vehicle at public sale pursuant to section 2.5g, not less than 30 days after public notice of the sale has been published.

Chapter 2 of Ordinance No.34-2 is hereby amended by the addition of the following new section 2.5e.

Sec. 2.5e. Abandoned vehicle, jurisdiction of court.

- (1) The following courts shall have jurisdiction to determine if a police agency has acted properly in processing a vehicle under section 2.5a, 2.5b(6) to (10), 2.5c, or 2.5d:
  - (a) The district court.
- (2) The court specified in the notice prescribed in section 2.5a(4)(c), 2.5b(6), 2.5c(4), or 2.5d(2)(c) shall be the court which has territorial jurisdiction at the location from where the vehicle was removed or deemed abandoned. Venue in the district court shall be governed by section 8312 of Act No 236 of the Public Acts of 1961, as amended, being section 600.8312 of the Michigan Compiled Laws.

- (3) If the owner fails to pay the accrued towing and storage fees, the towing and storage bond posted with the court to secure release of the vehicle under section 2.5a, 2.5b, 2.5c, or 2.5d shall be used to pay the towing and storage fees.

Chapter 2 of Ordinance No. 34-2 is hereby amended by the addition of the following new section 2.5f.

Sec. 2.5f Abandoned vehicle, duties of the court.

- (1) Upon receipt of a petition prescribed in section 2.5a, 2.5b, 2.5c, or 2.5d, signed by the owner of the vehicle which has been taken into custody, the court shall do both of the following:
  - (a) Schedule a hearing within 30 days for the purpose of determining whether the police agency acted properly.
  - (b) Notify the owner and the police agency of the time and place of the hearing.
- (2) At the hearing specified in subsection (1) the police agency shall have the burden of showing by a preponderance of the evidence that it has complied with the requirements of this act in processing the abandoned vehicle or vehicle removed pursuant to section 2.5d.
- (3) After the hearing the court shall make a decision which shall include 1 or more of the following:
  - (a) A finding that the police agency complied with the procedures established for the processing of an abandoned vehicle or a vehicle removed under section 2.5d, and an order providing a period of 20 days after the decision for the owner to redeem the vehicle. If the owner does not redeem the vehicle within 20 days, the police agency shall dispose of the vehicle pursuant to section 2.5b or 2.5g.
  - (b) A finding that the police agency did not comply with the procedures established for the processing of an abandoned vehicle or a vehicle removed pursuant to section 2.5d. After making such a finding, the court shall issue an order directing that the vehicle immediately be released to the owner, and that the police agency is responsible for the accrued towing and storage charges.
  - (c) A finding that the towing and daily storage fees were reasonable.
  - (d) A finding that the towing and daily storage fees were unreasonable and issue an order directing an appropriate reduction.

Chapter 2 of Ordinance No. 34-2 is hereby amended by the addition of the following new section 2.5g.

Sec. 2.5g Abandoned vehicle, public sale.

- (1) A public sale for a vehicle which has been deemed abandoned under section 2.5a or 2.5c or removed under section 2.5d shall be conducted in the following manner:
  - (a) It shall be under the control of the police agency or agent of the police agency.
  - (b) It shall be open to the public and consist of open auction bidding or bidding by sealed bids. If sealed bids are received, the person submitting the bid shall receive a receipt for the bid from the police agency or agent of the police agency.
  - (c) Except as provided by sections 2.5a(9) and 2.5d(7), it shall be held not less than 5 days after public notice of the sale has been published.
  - (d) The public notice shall be published at least once in a newspaper having a general circulation within the county in which the vehicle was abandoned. The public notice shall give a description of the vehicle for sale and shall state the time, date, and location of the sale.
- (2) The money received from the public sale of the vehicle shall be applied in the following order of priority:
  - (a) Towing and storage charges.
  - (b) Expenses incurred by the police agency.
  - (c) To the secured party, if any, in the amount of the debt outstanding on the vehicle.
  - (d) Remainder to the owner. A reasonable attempt shall be made to mail the remainder to the registered owner. If delivery of the remainder cannot be accomplished, the remainder shall become the property of the unit of government that the police agency represents.
- (3) If there are no bidders on the vehicle, the police agency may do 1 of the following:
  - (a) Turn the vehicle over to the towing firm to satisfy charges against the vehicle.
  - (b) Obtain title to the vehicle for the police agency or the unit of government the police agency represents, by doing the following:

- (i) Paying the towing and storage charges.
- (ii) Applying for title to the vehicle.
- (c) Hold another public sale pursuant to subsection (1).
- (4) A person who acquires ownership of a vehicle under subsection (1) or (3), which vehicle has been designated as a distressed vehicle, shall make application for a salvage certification of title within 15 days after obtaining the vehicle.
- (5) Upon disposition of the vehicle, the police agency shall cancel the entry into the law enforcement information network.

Sec. 5.15 of Chapter 5 of Ordinance No. 34-2 is hereby amended to read in full as follows:

Sec. 5.15 Operating under influence.

- (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 state while in violation of this subsection or of subsection (2), a local ordinance, or a law of this township, substantially corresponding to this subsection or subsection (2).
- (2) A person, whether licensed or not, whose blood contains 0.10% or more by weight of alcohol, 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.
- (3) The owner of a vehicle or a person in charge or in control of a vehicles shall not authorize or knowingly permit the vehicles 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.

- (4) Except as otherwise provided in this section, a person who is convicted of a violation of subsection (1), (2), or (3) 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 prosecution. As part of the sentence for the violation of subsection (1) or (2), the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than 6 months nor more than 2 years. The court may order the secretary of state to issue to the 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 work location; in the course of the person's employment or occupation; to and from an alcohol or drug education location; in the course of the person's employment or occupation; to and from an alcohol or drug education program or treatment program as ordered by the court; to and from the person's residence and an educational institution at which the person is enrolled as a student; or pursuant to a combination of these 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 a trailer, which hauls hazardous material. The court shall not order the secretary of state to issue a restricted license unless the person states under oath and the court finds that the person is unable to take public transportation to and from his or her work location, place of alcohol or drug education or treatment, or educational institution, and does not have any family members or others able to provide transportation. The court order and license shall indicate the person's work location and the approved route or routes and permitted times of travel. For purposes of this subsection, "work location" includes, as applicable, either or both of the following:
- (i) The specific place or places of employment.
  - (ii) The territory or territories regularly visited by the person in pursuance of the person's occupation.
- (5) As part of the sentence for a violation of subsection (1) or (2), a local ordinance, or a law of this state, substantially corresponding to subsection (1) or (2), the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or

local unit of government as a result of the person's activities under this subsection.

- (6) Before imposing sentence for a violation of subsection (1) or (2), a local ordinance, or a law of this state, substantially corresponding to subsection (1) or (2), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.
- (7) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension or revocation of an operator's or chauffeur's license, the penalty imposed for violation of this section, and the limitation on the right of appeal.
- (8) The operator's or chauffeur's license of a person found guilty of violating subsection (1) or (2), a local ordinance, or a law of this state, substantially corresponding to subsection (1) or (2), 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. Upon receipt of, and pursuant to the abstract of conviction, the secretary of state shall suspend or revoke 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, revocation, or restriction license issued pursuant to this section.

Sec. 5.15a of Chapter 5 of Ordinance No. 34-2 is hereby amended to read in full as follows:

Sec. 5.15a. Motor vehicles: driving under influence of intoxicating liquor; test, evidence.

- (1) The amount of alcohol or presence of a controlled substance or both 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 in a criminal prosecution for any of the following:
  - (a) A violation of section 5.15(1), (2), or (3), or 5.15b, a local ordinance, or a law of this state, substantially corresponding to section 5.15(1), (2), or (3), or 5.15b.
  - (b) Felonious driving, negligent homicide, or manslaughter resulting from the operation of a motor vehicle while the driver is alleged to have been impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance, or to have had a blood alcohol content of 0.10% or more by weight of alcohol.
- (2) 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.
- (3) Except in a prosecution relating solely to a violation of section 5.15(2), 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 5.15b 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.



- (4) A sample of 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 amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in 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.
- (5) The tests shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in subsection (1). A person who takes a chemical test administered at the request of a peace officer, as provided in this section, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described 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. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged shall be responsible for obtaining a chemical analysis of the test sample. The person charged shall be informed that he or she has the right to demand that a person of his or her choosing administer 1 of the tests provided for in subsection (1), that 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, and that the person charged shall be responsible for obtaining a chemical analysis of the test sample.
- (6) The person charged shall be advised that if the person refuses the request of the peace officer to take a test described in this section, a test shall not be given without a court order. The person charged shall also be advised that the person's refusal of the request of a peace officer to take a test described in this section shall result in the suspension of his or her operator's or chauffeur's license or operating privilege, and in the addition of 6 points to his or her driver record.

(7) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the person was impaired by or under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or whether the person had a blood alcohol content of 0.10% or more by weight of alcohol.

(8) 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."

(9) If after an accident the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample shall be admissible in a criminal prosecution for a crime described in subsection (1) to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.

(10) 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 or presence of a controlled substance or both.

Sec. 5.15b of Chapter 5 of Ordinance 34-2 is hereby amended to read in full as follows:

Sec. 5.15b Impaired driving.

- (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(1) or (2), a finding of guilty is permissible under this section.
- (2) Except as otherwise provided in this section, 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. As part of the sentence, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than 90 days nor more than 1 year. The court may order the secretary of state to issue to the 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 work location; in the course of the person's employment or occupation; to and from an alcohol or drug education program or treatment program as ordered by the court; to and from the person's residence and an educational institution at which the person is enrolled as a student; or pursuant to a combination of these 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 a trailer, which hauls hazardous material. The court shall not order the secretary of state to issue a restricted license unless the person states under oath and the court finds that the person is unable to take public transportation to and from his or her work location, place of alcohol or drug education or treatment, or educational institution, and does not have any family members or others able to provide transportation. The court order and license shall indicate the person's work location and the approved route or routes and permitted times of travel. For purposes of this subsection, "work location" includes, as applicable, either or both of the following:
  - (i) The specific place or places of employment.
  - (ii) the territory or territories regularly visited by the person in pursuance of the person's occupation.
- (3) As part of the sentence for a violation of this section, a local ordinance, or a law of this state, substantially

corresponding to this section, the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

- (4) Before imposing sentence for a violation of this section, a local ordinance, or a law of this state, substantially corresponding to this section, the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.
- (5) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as a result of a plea of guilty in respect to suspension or revocation 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, a local ordinance, or a law of this state, substantially corresponding to this section, shall be surrendered to the court in which the person was convicted. 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. Upon receipt of and pursuant to the abstract of conviction, the secretary of state shall suspend or revoke the person's licence 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, revocation, or restricted license issued pursuant to this section.

All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or initiated before the effective date of this amendatory act, or initiated after the effective date of this amendatory act for an offense committed before that effective date.

Sec. 5.15c of Chapter 5 of Ordinance No.34-2 is hereby amended to read in full as follows:

Sec. 5.15c Implied consent; blood sample from killed driver.

- (1) A person who operated 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 amount of alcohol or presence of a controlled substance or both in his or her blood if:
  - (a) The person is arrested for a violation of section 5.15(1) or (2) or 5.15b, a local ordinance, or law of this state, substantially corresponding to section 5.15(1) or (2) or 5.15b.
  - (b) The person is arrested for felonious driving, negligent homicide, or manslaughter resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe that the person was operating the vehicle while impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance, or while having a blood alcohol content of 0.10% or more by weight of alcohol.
- (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 as provided in section 5.15a.

Sec. 5.15d of Chapter 5 of Ordinance No. 34-2 is hereby amended to read in full as follows:

Sec. 5.15d Right to refuse chemical test.

If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 5.15a,

a test shall not be given without a court order. A written report shall be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in section 5.15c(1), 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.

Sec. 5.15e of Chapter 5 of Ordinance No.34-2 is hereby amended to read in full as follows:

Sec. 5.15e Mail notice.

- (1) Upon receipt of the report made pursuant to section 5.15d, the secretary of state shall immediately notify the person in writing, mailed to his or her last known address, that the report has been received and that within 14 days of the date of the notice the person may request a hearing as provided in section 5.15f.
- (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.

Sec. 5.15f of Chapter 5 of Ordinance No. 34-2 is hereby amended to read in full as follows:

Sec. 5.15f Suspend or revoke; 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 6 months, or for a second or subsequent refusal with a period of 7 years, for 1 year. 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 6 months, or, for a second or subsequent refusal with a period of 7 years, for 1 year.
- (2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same

condition as provided in section 322 of the Michigan Motor Vehicle Code. At least 10 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 5.15d, and, if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county or governmental unit where the arrest was made. The hearing officer shall be authorized to administer oaths, issue subpoenas for 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 committed a crime described in section 5.15c(1).
  - (b) Whether the person was placed under arrest for a crime described in section 5.15c(1).
  - (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 and 5.15c.
- (3) The hearing officer shall make a record of proceedings held pursuant to subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review pursuant to section 323 of the Michigan Motor Vehicle Code, the hearing officer shall transmit to the court in which the petition was filed, not less than 10 days before the matter is set for review, the original or a certified copy of the official record of the proceedings. Proceedings at which evidence was presented need not be transcribed and transmitted if the sole reason for review is to determine whether or not the court will order the issuance of a restricted license. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.
- (4) After the hearing, the secretary of state may suspend or deny issuance of a license or driving permit or a nonresident operating privilege of the person involved for a

period of 6 months, or, for a second or subsequent refusal within 7 years, for 1 year. If the person involved is a resident without a license or permit to operate a vehicle in the state, the secretary of state may deny to the person the issuance of a license or permit for a period of 6 months, or, for a second or subsequent refusal within 7 years, for 1 year. The person involved may file a petition in the circuit court for the county in which the arrest was made to review the suspension or denial as provided in section 323 of the Michigan Motor Vehicle Code.

- (5) 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.

Chapter 5 of Ordinance No. 34-2 is hereby amended by the addition of the following new section 5.15g:

Sec. 5.15g Uniform standards.

- (1) The department of state police may promulgate uniform rules for the administration of chemical tests for the purposes of this act.

Chapter 5 of Ordinance No. 34-2 is hereby amended by the addition of the following new section 5.15h:

Sec. 5.15h Preliminary chemical breath analysis.

- (1) A peace officer who has reasonable cause to believe that a 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 state, and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate a vehicle, may require the person to submit to a preliminary chemical breath analysis.
- (2) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.
- (3) The results of preliminary chemical breath analysis shall be admissible in a criminal prosecution for a crime enumerated in section 5.15a(1) or in an administrative



hearing under section 5.15f, solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subsection does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

- (4) A person who submits to a preliminary chemical breath analysis shall remain subject to the requirements of sections 5.15a, 5.15c, 5.15d, 5.15e and 5.15f for the purposes of chemical tests described in those sections.
- (5) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction.
- (6) Section 5.15g shall apply to a preliminary chemical breath analysis.

Chapter 5 of Ordinance No. 34-2 is hereby amended by the addition of the following new section 5.82:

Sec. 5.82 Mandatory child restraints.

- (1) Except as provided in this section, or as otherwise provided by law, a rule promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, or federal regulation, each driver transporting a child in a motor vehicle shall properly secure each child in a child restraint system as follows:
  - (a) Any child less than 1 year of age in a child restraint system which meets the standards prescribed in 49 C.F.R. 571.213.
  - (b) Any child 1 year of age or more but less than 4 years of age, when transported in the front seat, in a child restraint system which meets the standards prescribed in 49 C.F.R. 571.213.
  - (c) Any child 1 year of age or more but less than 4 years of age, when transported in the rear seat, in a child restraint system which meets the standards prescribed in 49 C.F.R. 571.213, unless the child is secured by a safety belt provided in the motor vehicle.
- (2) This section does not apply to a nonresident driver transporting a child in this state or to any child being nursed.
- (3) This section does not apply if the motor vehicle being driven is a bus, school bus, taxicab, moped, motorcycle,

or other motor vehicle not required to be equipped with safety belts under section 710b of the Michigan Motor Vehicle Code or federal law or regulations.

- (4) A person who violates this section is responsible for a civil infraction.
- (5) Points shall not be assessed for a violation of this section.
- (6) The secretary of state may exempt by rules promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, a class of children from the requirements of this section, if the secretary of state determines that the use of the child restraint system required under subsection (1) is impractical because of physical unfitness, a medical problem, or body size. The secretary of state may specify alternate means of protection for children exempted under this subsection.

#### SECTION 3. NOTICE TO BE PUBLISHED

The Township Clerk shall publish this ordinance to amend the Charter Township of Hampton Traffic Ordinance in the manner required by law.

#### SECTION 4. WHEN EFFECTIVE

The First Amendment to the Hampton Township Traffic Ordinance 34-2 shall become effective in the Charter Township of Hampton, Bay County, Michigan, immediately upon the publication thereof, as required by law.