

VILLAGE OF MARTIN

ALLEGAN COUNTY, MICHIGAN

ORDINANCE NO. 42

An ordinance to adopt by reference the Uniform Traffic Code for Michigan Cities, Townships and Villages together with certain amendments thereto.

THE VILLAGE OF MARTIN 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, 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 Village of Martin, Michigan.

SECTION 3. NOTICE TO BE PUBLISHED

The Village 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 CONFLICTING ORDINANCES REPEALED

All other ordinances inconsistent with the provisions of the Uniform Traffic Code and additional amendments adopted herein are, to the extent of such inconsistency, hereby repealed.

SECTION 5. CHANGES IN CODE

The following sections and sub-sections of the Uniform Traffic Code for cities, townships and villages as referred to in Section 1 above, are hereby amended or deleted as set forth and additional sections and sub-sections are added as indicated. Subsequent section numbers used in Section 5 of this Ordinance shall refer to the liked numbered sections of the Uniform Traffic Code.

Sec. 5.15 is hereby amended to read:

"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 public place open to the general public,

including an area designated for the parking of vehicles, within the state. 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 state, 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 state.
- (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 state 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 the prosecution.
- (5) As part of the sentence for a violation of 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 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.

- (7) "Operate" or "operating" means being in actual physical control of a vehicle regardless of whether or not the person is licensed as an operator or chauffeur."

Sec. 5.15a. is hereby amended to read:

"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 0.7% 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 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 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 test 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 as the result 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 a 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 privileges, 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 refusal a chemical test. You are instrued 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 is hereby amended to read:

"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 state, 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 a vehicle. If a person is charged with violation 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.
- (3) As part of the sentence for a violation of 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 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 to appeal.

Sec. 5.15c is hereby amended to read:

"Sec. 5.15c. Implied consent; blood sample from

killed 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 a chemical test 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.
 - (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 is amended to read:

"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 is deleted and reserved.

Sec. 5.15f is deleted and reserved.

Sec. 5.15g is hereby amended to read:

"Sec. 5.15g. Uniform standards.

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

Sec. 5.15h. is added after Sec. 5.15g. to read:

"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 a 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 purpose 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."

Sec. 5.14c: After Section 5.14b, add Section 5.14c as follows:

"Sec. 5.14c. Exhibition Driving Prohibited.

- (1) No person shall engage in any exhibition driving of a motor vehicle as defined herein, upon any highway or any other place open to the general public, including any area designated for the parking of motor vehicles.

- (2) Exhibition driving is defined as the driving of a motor vehicle in such an unusual manner or out of the usual flow of traffic, whether or not other traffic is present, so as it is likely to attract the attention of the public, whether or not there is anyone present, or it shall consist of two (2) or more of the following acts:
- (a) Rapid acceleration.
 - (b) Squealing, peeling or burning of the tires.
 - (c) The swaying of the motor vehicle from side to side commonly referred to as "fish-tailing".
 - (d) Racing or running the engine of a motor vehicle at such high revolutions per minute combined with the engaging of the gears causing excessive or unusual noise.
 - (e) Unnecessary and excessive changing of lanes.
 - (f) The omission of any unreasonably loud or raucous or disturbing and unnecessary noise from the engine or exhaust system of any motor vehicle.
 - (g) Drag racing.
- (3) A person convicted of this section shall be punished, upon conviction, by a fine of not more than \$100.00 and such person who violates this section is responsible for a civil infraction."

Sec. 8.14b: After Section 8.14, add Section 8.14b as follows:

"Sec. 8.14b. All Night Parking Prohibited.

- (1) A person shall not park or permit to be parked any motor vehicle or trailer upon any of the public streets within the corporate limits of the Village of Martin between the hours of 1:00 a.m. and 6:00 a.m.
- (2) A person who violates this section is responsible for a civil infraction."

Sec. 9.3 (2) to be amended to hereinafter read and provide as follows:

"(2) Misdemeanors: Every person who is convicted of a misdemeanor violation of any provision of this code, including any amendment thereto, shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than 90 days, or both."

SECTION 6. SAVING CLAUSE

Nothing in this ordinance shall be construed to affect any suit or proceeding in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 4

of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or effected by this ordinance.

SECTION 7. WHEN EFFECTIVE

This Ordinance shall take effect twenty (20) days after publication thereof a synopsis of this ordinance as provided by law.

Passed and Approved on the 12 day of March, 1984, with the following vote:

YES: BRANDON, FLOWER, LEVETT, PORTER
VANDEBERG AND WYKSTRA
NO: NONE
ABSENT: ANTLES

Robert Brandon, President

Mary Beth Porter, Clerk

CERTIFICATE

I hereby certify that the above Ordinance, known as Ordinance No. 42 was published in the Wayland Globe, on the 26th day of March, 1984.

Mary Beth Porter
Mary Beth Porter
Village of Martin Clerk

ROPER, MEYERS, KNOLL & JOUPPI

IT IS NOT NECESSARY TO PUBLISH THE ENTIRE ORDINANCE

- ONLY THE SYNOPSIS

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a horizontal line extending to the right.

ROPER, MEYERS, KNOLL & JOUPPI

ATTORNEYS AT LAW

11 EAST MAIN

ZEELAND, MICHIGAN 49464

(616) 772-9000

ROBERT K. HICK
OF COUNSEL

HOLLAND OFFICE
246 RIVER AVENUE

HOLLAND, MICHIGAN 49423

WALTER J. ROPER
HANNES MEYERS, JR.
DAVID J. KNOLL
JOHN R. JOUPPI
GEORGE E. BAUER
BRADLEY S. KNOLL

TO: President and Martin Village Council

FROM: John R. Jouppi

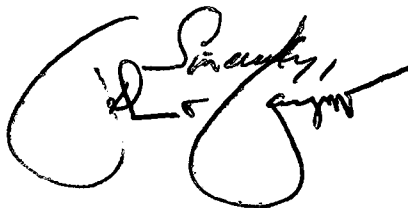
DATE: March 12, 1984

In order to up-date your understanding of Village ordinance adoption procedures, I have briefly outlined the current status of the law as follows:

1. State law, M.S.A. Section 5.1271 requires that all Village ordinances be styled "the Village of Martin ordains." All ordinances require the concurrence of a majority of the Council and no ordinance imposing a penalty shall take effect in less than 20 days after passage.
2. A person violating the ordinance may be punished by imprisonment for not more than 90 days or a fine of not more than \$500.00 or both.
3. Section 3 requires that all ordinances be recorded by the Clerk of the Council in a book to be called "The Record of Ordinances", and it shall be the duty of the President and Clerk to authenticate such ordinances by their official signature.
4. Of most significance, Section 4 clearly allows that within 15 days after the passage of an ordinance, the ordinance or a synopsis of the ordinance shall be published in a newspaper circulated in the Village.

Please note that by allowing the publication of a synopsis of the ordinance, publication fees should be substantially reduced. I have prepared an synopsis of the ordinance attached hereto to be used for publication. However, the original ordinance should be signed by the Clerk and President and added to the "Record of Ordinances".

Please call upon me if you have any questions with regard to the procedure to be followed.

A handwritten signature in black ink, appearing to read "John R. Jouppi". The signature is written in a cursive style with a large, looping initial "J".

ROPER, MEYERS, KNOLL & JOUPPI
ATTORNEYS AT LAW

11 EAST MAIN

ZEELAND, MICHIGAN 49464

(616) 772-9000

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WALTER J. ROPER
HANNES MEYERS, JR.
DAVID J. KNOLL
JOHN R. JOUPPI
GEORGE E. BAUER
BRADLEY S. KNOLL

TO: President and Martin Village Council

FROM: John R. Jouppi

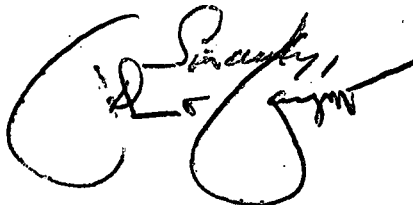
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Please call upon me if you have any questions with regard to the procedure to be followed.



VILLAGE OF MARTIN

NOTICE OF ADOPTION OF UNIFORM TRAFFIC CODE
AND SYNOPSIS OF ORDINANCE NO. 42

Notice is hereby given that pursuant to the provisions of Act 62 of the Public Acts of 1956, State of Michigan, the Uniform Traffic Code for cities, townships and villages was adopted by reference by the Council of the Village of Martin on the 12th day of March, 1984.

The purpose of such Code is to regulate the operation of vehicles, to provide for the regulation and use of street, highways and alleys and other public and semi-public places within the Village of Martin, Michigan, and to provide penalties for the violation of said Code.

A complete copy of the Uniform Traffic Code is available at the office of the Village Clerk for inspection by the public at all times.

No further or additional publication of the Uniform Traffic Code or the amendments adopted with respect thereto other than as set forth in Ordinance No. 42 which appears below is required or contemplated.

In addition to adopting the current edition of the Uniform Traffic Code, Ordinance No. 42 further amends the Uniform Traffic Code to reflect recent revisions of law effecting the operation of a vehicle while under the influence of intoxicating liquor or a controlled substance, and further providing specific definitions, criteria and penalties associated with conduct in violation of the Ordinance. The Ordinance also defines impaired driving and sets specific penalties therefore, defines implied consent as to what circumstances give rise to the implied consent that an operator of a vehicle consents 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 and sets forth the presumptions that can be made from the results thereof.

In addition, the Ordinance describes a persons right to refuse a chemical test and the consequences thereof, and the procedures to be followed in utilization of a preliminary chemical breath analysis.

In addition, the Ordinance defines exhibition driving and overnight parking and sets forth penalties therefore in accordance with their respective status as civil infractions.

Mary Beth Porter, Village of Martin Clerk

DATED: March 12, 1984.