

CITY OF AU GRES

ORDINANCE NO. 24

An Ordinance to provide for the regulation of the operation of vehicles upon the streets, highways, alleys or any other place open to the general public within the City of AuGres, to provide penalties and sanctions for a violation of this Ordinance, and to provide for the enforcement of this Act, and to repeal all other ordinances or parts thereof inconsistent with this Ordinance or contrary to this Ordinance.

The City of AuGres ordains:

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 state of Michigan or the City of AuGres. 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 or the City of AuGres, 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 or the City of AuGres.
- (3) 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 or the City of AuGres, 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.

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.

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 restricted license issued pursuant to this section.

- (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 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 one (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 one (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 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 a 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. 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 or the City of Standish 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 twelve (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 one or more 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 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 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 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 any area designated for the parking of vehicles, in the state or the City of Au Gres 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 to 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 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 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 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 six (6) months, or for a second or subsequent refusal within 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 six (6) months, or, for a second or subsequent refusal within 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 5.15 c.
- (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 ten (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 six (6) months, or, for a second or subsequent refusal within 7 years, for one (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 six (6) months, or for a second or subsequent refusal within 7 years, for one (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.

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 ordinance.

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 or the City of Au Gres, 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.

Sec. 5.15i

- (1) This ordinance shall be deemed to be severable, and should any section, paragraph or provision hereof be declared to be unconstitutional or invalid, such holding shall not affect the validity of this ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid. Any ordinance or part thereof now in conflict with this ordinance is hereby repealed.

Sec. 5.15j

- (1) This ordinance will be effective immediately upon publication thereof.

The above ordinance was duly enacted at the regular meeting of the Council of the City of Au Gres held on the 5th day of May, 1983.

CITY OF AU GRES

By: Dorothy Hill
Dorothy Hill, City Clerk