CITY OF FARMINGTON COUNCIL PROCEEDINGS
(Summary)

A regular meeting of the Farmington City Council was called to order by Mayor Hartsock at 8:02 p.m. on January 20, 1992, in Council Chambers, 23600 Liberty Street, Farmington, Michigan. Notice of the meeting was posted in compliance with Public Act 267-1976.

PRESENT: Campbell, Hartsock, McShane, Richardson.

ABSENT: Tapper.

OTHERS PRESENT: City Manager Deadman, Director Lashell, Director Billing, Adm. Assistant Schultz, City Clerk Bushey.

Minutes of the previous meeting of January 6, 1992, were approved as written.
Minutes of other boards were received and/or filed.
Council received and filed the National Association of Broadcasters' letter relative to cable television.
Council suggested that the City's concerns relative to the U.S. Postal Service be sent to Rep. Broomfield.
Council accepted, with regret, the resignation of Rae Hartshallow from the Board of Review.
Council noted the City Manager's report on the proposed water/sewer rate increases for 1992-93.
Council issued the following proclamations:
JAYCEE WEEK - January 20-26, 1992.
MUSCULAR DYSTROPHY WALK - May 8-10, 1992.
Council approved the transfer of ownership of resort Class C licensed business with Dance Permit to Mr. Ho of Farmington.
Council authorized issuance of 1997 Taxicab licenses to Northwest Transport Company and to ADC Cab Company.
Council authorized a one-year renewal of the Oakland County Solid Waste Disposal Contract.
Council authorized $1,851.00 for continued participation in the Tri-Party Road Improvement Program.
Council authorized the following payments on the Sewer Improvement Project to:

Fusco Construction, Inc.	- $219,623.62
Dan's Excavating, Inc.	- 12,057.34
Black & Veatch	- 43,898.30

Public comments and Council comments and announcements were heard.
Council established a special meeting at 7:00 p.m. prior to the February 3 regular meeting, also a special work session at 5:00 p.m. on February 4, 1992.
Council received the following reports:
- Department of Public Works/Water & Sewer Department, also Building Department Quarterly Reports, October-December 1991;
- Farmington Community Library 1991 Audit Report.

The following ordinances were adopted with Emergency Status:

CITY OF FARMINGTON
ORDINANCE NO. C-194-91

AN ORDINANCE TO AMEND CHAPTER 31, TRAFFIC AND MOTOR VEHICLES, ARTICLE II, DIVISION 3, BY REPEALING SECTIONS 31-303 THROUGH 31-311 OF THE CITY CODE AND ENACTING NEW SECTIONS 31-303 AND 31-305 THROUGH 31-311 REGARDING THE PROHIBITION AGAINST OPERATING OR PERMITTING OPERATION OF A VEHICLE WHILE UNDER INFLUENCE OF ALCOHOLIC LIQUOR OR CONTROLLED SUBSTANCE; OPERATING A VEHICLE WITH UNLAWFUL BLOOD ALCOHOL LEVEL; OR OPERATING A VEHICLE WHILE VISIBLY IMPAIRED.

THE CITY OF FARMINGTON ORDAINS:

Section 1.
Chapter 31, Traffic and Motor Vehicles, Article II, Division 3, Sections 31-303 through 31-311 are repealed and in their place and stead are enacted Sections 31-303 and 31-305 a - k, which shall read as follows:

31-303 Operating under influence of alcoholic liquor or controlled substance; operating with unlawful blood alcohol content; operating while visibly impaired, attempt; penalties.

(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this city if either of the following applies:
(a) The person is under the influence of intoxicating liquor or controlled substance, or a combination of intoxicating liquor and a controlled substance.
(b) The person has a blood alcohol content of 0.10% or more by weight of alcohol.

(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 or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this city 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, or who has a blood alcohol content of 0.10% or more by weight of alcohol.

(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, when, due to consumption of an intoxicating liquor, a controlled substance, or a combination of an intoxicating liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be considered.

(4) (1) a person is convicted of violating section (1), the following shall apply:
(a) Except as otherwise provided in subdivisions (b) and (d), the person is guilty of a misdemeanor, and may be punished by 1 or more of the following:
(i) Service to the community for a period of not more than 45 days.
(ii) Imprisonment for not more than 90 days.
(iii) A fine of not more than $100.00 or more than $500.00.
(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to both a fine of not less than $100.00 or more than $500.00 and either of the following:
(i) Performing service in the community for a period of not less than 10 days or more than 90 days and may be imprisoned for not more than 90 days.
(ii) Imprisonment for not less than 48 consecutive hours or more than 90 days, and may be sentenced to service to the community for a period of not more than 90 days.
(c) A term of imprisonment imposed under subdivision (b)(ii) shall not be suspended.
(d) A person sentenced to perform service to the community under this subsection shall not receive compensation, and shall reimburse the city for the cost of supervision incurred by the city as a result of the person's activities in that service.
(e) As used in this subsection, "prior conviction" means a conviction under section (1) or former section 31-303 (1) (b); a local ordinance or law of this state substantially corresponding to section (1) or former section 31-303 (1) (b); or a law of another state or local unit of government substantially corresponding to section (1) or former section 31-303 (1) (b).
(f) In addition to imposing the sanctions prescribed in subdivision (a), the court may also order the person to pay the costs of the prosecution.
(g) The court shall impose license sanctions pursuant to section 31-303b.

(5) A person who is convicted of violating section (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than $100.00 or more than $500.00, or both.

(6) If a person is convicted of violating section (1), the following shall apply:
(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:
(i) Service to the community for a period of not more than 45 days.
(ii) Imprisonment for not more than 90 days.
(iii) A fine of not more than $500.00.
(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to both a fine of not less than $100.00 or more than $500.00, and either of the following:
(i) Performing service in the community for a period of not less than 10 days or more than 90 days and may be sentenced to imprisonment for not more than 90 days.
(ii) Imprisonment for not more than 90 days and may be sentenced to community service for not more than 90 days.
(c) If the violation occurs within 10 years of 2 or more convictions, the person shall be sentenced to both a fine of not less than $200.00 or more than $500.00, and either of the following:
(i) Performing service in the community for a period of not less than 10 days or more than 90 days and may be sentenced to imprisonment for not more than 90 days.
(ii) Imprisonment for not more than 90 days and may be sentenced to community service for not more than 90 days.
(d) As used in subdivisions (b) and (c), "prior conviction" means a conviction under sections (1) or (3) or former sections 31-303 (3) or 30-305 (3 15b); or local ordinance or law of this state substantially corresponding to sections (1) or (3) or former sections 31-303 (3 15) or 30-305 (3 15b); or a law of another state or local unit of government substantially corresponding to sections (1) or (3) or former sections 31-303 (3 15) or 30-305 (3 15b).
(e) In addition to imposing the sanctions prescribed in subdivision (a), (b) or (c), the court may also order the person to pay the costs of the prosecution.
(f) The court shall order the secretary of state to impose license sanctions pursuant to section 31-303b.
(g) A person sentenced to perform service to the community under this subsection shall not receive compensation, and shall reimburse the city for the cost of supervision incurred by the city as a result of the person's activities in that service.
(h) If the prosecuting attorney intends to seek an enhanced sentence under subsection (4)(b) or (5)(b) or (6) based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall file with the district court or probate court a statement listing the defendant's prior convictions.
(i) A prior conviction shall be established at sentencing by 1 or more of the following:
(i) An abstract of conviction.
(ii) A record of the defendant's driving record.
(iii) An admission by the defendant.

(11) A person who is convicted of an attempted violation of section (1) or (3) shall be punished and licensing action shall be taken as if the offense had been completed.

31-305a Arrests, preliminary chemical breath analysis, chemical tests and analysis of blood, urine or breath - rights and consequences of refusal; use of chemical test results in civil or criminal proceeding; uniform rules for administration of chemical tests.

(1) A peace officer, without a warrant, may arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vehicle involved in the accident in this city while in violation of section 31-303(1) or (3).

(2) 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 or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this city, 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. The following provisions shall apply with respect to a preliminary chemical breath analysis:
(a) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.
(b) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime enumerated in section 31-303(1) or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.
(c) A person who submits to a preliminary chemical breath analysis shall remain subject to the requirements of sections 31-303(c)(d)(e) and (f) for the purposes of chemical tests described in those sections.
(d) 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.

(3) The following provisions apply with respect to chemical tests and analysis of a person's blood, urine, or breath, other than preliminary chemical breath analysis:
(a) The amount of alcohol or presence of a controlled substance or both in a driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.
(b) A person arrested for a crime described in section 31-303(1) or (3) shall be advised of all of the following:
(i) That if he or she takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding and shall be considered with other competent evidence in determining the innocence or guilt of the defendant, and that he or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request.
(ii) That if he or she refuses the request of a peace officer to take a test described in subdivision (i), a test shall not be given without a court order, but the peace officer may seek to obtain such a court order.
(iii) That his or her refusal of the request of a peace officer to take a test described in subdivision (i) 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.
(c) 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 subsection. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures shall not attach to a qualified person who withdraws or analyzes blood or assists in the withdrawal or analysis unless the withdrawal or analysis is performed in a grossly negligent manner.
(d) A chemical test described in this subsection shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 31-303(1) or (3). 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 subsection 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.
(e) 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 purposes of medical treatment, the results of a chemical analysis of that sample shall be admissible in any civil or criminal proceeding 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 subdivision. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.
(f) If, after an 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 the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.
(g) The department of state police shall promulgate uniform rules for the administration of chemical tests for the purposes of this section.

(4) The provisions of section (3) relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or of 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.

(5) If a chemical test described in section (3) is administered, 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 results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in the trial. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.

(6) Except in a prosecution relating solely to a violation of section 31-303(1)(b), 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's ability to operate a motor vehicle was not impaired due to the consumption of intoxicating liquor, and 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 motor vehicle was impaired within the provisions of section 31-303(1) 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.

(7) A person's refusal to submit to a chemical test as provided in section (3) shall be admissible in a criminal prosecution for a crime described in section 31-303 (1) or (3) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.

31-303b Arraignment, pretrial conference, duty of court before accepting plea of guilty or nolo contendere, screening and assessment as to alcohol or drug abuse and rehabilitative services, license sanctions, assessment and treatment fees.

(1) A person arrested for a violation of section 31-303(1) or (3) shall be arraigned on the citation, complaint, or warrant not more than 14 days after the date of arrest or, if an arrest warrant is reissued, not more than 14 days after the reissued warrant is served on the person.

(2) The court shall schedule a pretrial conference between the prosecuting attorney, the defendant, and the defendant's attorney in each case in which the defendant is charged with a violation of section 31-303(1) or (3). The pretrial conference shall be held not more than 35 days after the date of the person's arrest for the violation or, if an arrest warrant is reissued, not more than 35 days after the date the reissued arrest warrant is served. The court shall order the defendant to attend the pretrial conference and may accept a plea by the defendant at the conclusion of the pretrial conference. The court may adjourn the pretrial conference upon the motion of a party for good cause shown. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days. The court shall, except for delay attributable to the unavailability of the defendant or witnesses, or for material evidence, or due to an interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, finally adjudicate, by a plea of guilty or nolo contendere, or the entry of a verdict or by other final disposition, a case in which the defendant is charged with a violation of section 31-303(1) or (3) within 77 days after the person is arrested for the violation or, if an arrest warrant is reissued, not more than 77 days after the date the reissued arrest warrant is served.

(3) Before accepting a plea of guilty or nolo contendere under section 31-303(1), (3), or (5), the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible license sanctions that may be imposed shall be based upon the master driving record maintained by the secretary of state.

(4) Before imposing sentence, other than court-ordered license sanctions, for a violation of section 31-303(1) or (3), 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 profit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As a 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) Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 31-303(1) or (3), whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions currently reflected in records of the Michigan driving record of the person, except those convictions which, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following licensing sanctions:

(a) For a conviction under section 31-303(1)
(i) If the court finds that the person has no prior convictions within 7 years for a violation of section 31-303(1) or (3), or former sections 31-303(3 15) or 30-305(3 15b); or a local ordinance or law of this state substantially corresponding to section 31-303(1) or (3) or former sections 31-303 (3 15) or 30-305(3 15b), or a law of another state or local unit of government substantially corresponding to section 31-303(1) or former sections 31-303(3 15) or 30-305 (3 15b), 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 or more than 2 years. The court may order the secretary of state to issue to the person a restricted license during all or a specified portion of the period of suspension, except that a restricted license shall not be issued during the first 30 days of the period of suspension.
(ii) If the court finds that the person has 1 or more prior convictions within 7 years for a violation of section 31-303(1) or former section 31-303(3 15); a local ordinance or law of this state substantially corresponding to section 31-303(3) or former section 30-305(3 15b); or a law of another state or local unit of government substantially corresponding to section 31-303(3) or former sections 31-303(3 15) or 30-305(3 15b), 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 or more than 2 years. The court may order the secretary of state to issue to the person a restricted license during all or any portion of the period of suspension, except that a restricted license shall not be issued during the first 60 days of the period of suspension.
(iii) If the court finds that the person has 1 or more prior convictions within 7 years for a violation of section 31-303(1) or former section 31-303(3 15); a local ordinance or law of this state substantially corresponding to section 31-303(1) or former section 31-303(3 15); or a law of another state or local unit of government substantially corresponding to section 31-303(1) or former sections 31-303(3 15) or 30-305(3 15b), the court shall order the secretary of state to revoke the operator's or chauffeur's license of the person and shall not order the secretary of state to issue a restricted license to the person.

(b) For a conviction under 31-303(3)
(i) If the court finds that the convicted person has no prior convictions within 7 years for a violation of section 31-303(1) or (3), or former sections 31-303(3 15) or 30-305(3 15b); a local ordinance or law of this state substantially corresponding to section 31-303(1) or former sections 31-303 (3 15) or 30-305(3 15b), or a law of another state or local unit of government substantially corresponding to section 31-303(1) or former sections 31-303(3 15) or 30-305(3 15b), 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 or more than 1 year. The court may order the secretary of state to issue to the person a restricted license during all or a specified portion of the period of the suspension.
(ii) If the court finds that the person has one or more convictions within 7 years for a violation of section 31-303(1) or (3) or former sections 31-303(3 15) or 30-305(3 15b); a local ordinance or law of this state substantially corresponding to section 31-303(1) or (3) or former sections 31-303(3 15) or 30-305(3 15b); or a law of another state or local unit of government substantially corresponding to section 31-303(1) or (3) or former sections 31-303(3 15) or 30-305(3 15b), 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 or more than 2 years. The court may order the secretary of state to issue to the person a restricted license during all or any portion of the suspension period, except that a restricted license shall not be issued during the first 60 days of the period of suspension.
(iii) If the court finds that the person has 2 or more convictions within 10 years for a violation of section 31-303(1) or (3), or former sections 31-303(3 15); a local ordinance or law of this state substantially corresponding to section 31-303(1) or (3) or former sections 31-303(3 15) or 30-305(3 15b), or a law of another state or local unit of government substantially corresponding to section 31-303(1) or (3) or former sections 31-303(3 15) or 30-305(3 15b), the court shall order the secretary of state to revoke the operator's or chauffeur's license of the person and shall not order the secretary of state to issue a restricted license to the person.

(6) A restricted license issued pursuant to an order under subsection (5) shall permit the person to whom it is issued to do 1 or more of the following:
(a) Drive to and from the person's residence and work location.
(b) Drive in the course of the person's employment or occupation.
(c) Drive to and from the person's residence and an alcohol or drug education or treatment program as ordered by the court.
(d) Drive to and from the person's residence and the court probation department, or a court-ordered community service program, or both.
(e) Drive to and from the person's residence and an educational institution at which the person is enrolled as a student.

(7) The court may order that the restricted license issued pursuant to subsection (5) include the requirements that the person shall operate a motor vehicle into which there is equipped with a functioning ignition interlock device. The device shall be set to render the motor vehicle inoperable if the device detects a blood alcohol content of 0.05% or more by weight of alcohol in the person who offers a breath sample. The court may order the installation of an ignition interlock device on any motor vehicle that the person owns or operates, the costs of which shall be borne by the person whose license is restricted.

(8) The court shall not order the secretary of state under subsection (5) to issue a restricted license that would permit a person to operate a truck or truck tractor, including a trailer, that hauls hazardous materials.

(9) The court shall not order the secretary of state to issue a restricted license unless the person states, under oath, and the court finds pursuant to testimony taken in open court or pursuant to statements contained in a sworn affidavit on a form prescribed by the state court administrator, that the person is unable to take public transportation to and from his place of employment, place of school or drug education treatment, court-ordered community service program, or educational institution, and does not have any family members or other individuals able to provide transportation.

(10) The court order issued under subsection (5) for a restricted license shall indicate the permitted destination of the person, the approved route or routes if specified by the court, and permitted times of travel.

(11) As used in this section, "work location" means, as applicable, either the specific place or places of employment, or the territory or territories regularly visited by the person in pursuance of the person's occupation, or both.

(12) Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 31-303(1) or (3), the person shall surrender to the court his or her operator's or chauffeur's license or permit. The court shall immediately destroy the license or permit and forward an abstract of conviction with court-ordered license sanctions to the secretary of state. Upon receipt of, and pursuant to, the abstract of conviction with court-ordered license sanctions, 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 judgment and sentence is appealed to circuit court, the court may, as part of the judgment, stay the suspension, revocation, or restricted license issued pursuant to this section pending the outcome of the appeal.

31-303c Implied consent to chemical tests, certain persons exempt from blood withdrawal.

(1) A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the city is considered to have given consent to chemical tests of his or her blood, but not including for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood, if the person is arrested for a violation of section 31-303(1) or (3).

(2) A person who is affected 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 31-303a(3).

31-303d Refusal of chemical test - right of driver, report to secretary of state.

(1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 31-303a(3), a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) A written report shall immediately 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 31-303(1), 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.

31-303e. Refusal to submit to chemical tests, notice of report; request for hearing, counsel.

(1) Upon receipt of the report made pursuant to section 31-303d, 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 31-303f.

(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.

31-303f License action upon refusal to submit to chemical test, secretary of state hearing; appeal.

(1) If a person who has refused to submit to a chemical test pursuant to section 31-303e(3) does not request a hearing within 14 days of the date of notice pursuant to section 31-303(e), the secretary of state shall suspend or deny the person's operator's or chauffeur's license or permit to drive, or prohibit operating privilege, for a period of 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 of state 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 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 conditions as provided in MCL 257.323. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 31-303d, and if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the city. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest and shall, except for delay attributable to the unavailability of the defendant, a witness, or material evidence, or due to an interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, be finally adjudicated within 77 days after the date of arrest. 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 31-303(1) or (3).
(b) Whether the person was placed under arrest for a crime described in section 31-303(1) or (3).
(c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.
(d) Whether the person was advised of the rights under section 31-303a(3).

(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 MCL 24.286. Upon notification of the filing of a petition for judicial review pursuant to MCL 257.323, the hearing officer shall transmit to the court in which the petition is filed, not less than 10 days before the date 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 a hearing, if the person who requested the hearing does not prevail, the secretary of state shall suspend or deny the issuance of a license or driving permit or a nonresident operating privilege of the person for a period of 6 months, or for a second or subsequent refusal within 7 years, or 1 year. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary of state 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 within 7 years, for 1 year. The person may file a petition in the circuit court of the county in which the arrest was made to review the suspension or denial as provided in MCL 257.323. If after the hearing the person who requested the hearing prevails, that peace officer who filed the report under section 31-303d may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in MCL 257.323.

(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.

31-303g Police confiscation of drivers license or permit, issuance of temporary license or permit, return of license or permit.

(1) If a person refuses a chemical test offered pursuant to section 31-303a(3), or submits to the chemical test and the test reveals a blood alcohol content of 0.10% or more by weight of alcohol, the peace officer who requested the person to submit to the test shall do all of the following:
(a) On behalf of the secretary of state, immediately confiscate the person's license or permit to operate a motor vehicle, and, if the person is otherwise eligible for a license or permit, issue a temporary license or permit to the person that is valid until the criminal charges against the person are finally dismissed, or until the person pleads guilty or nolo contendere to or is found guilty of those charges. The temporary license or permit shall be on a form provided by the secretary of state.
(b) Except as provided in subsection (1), immediately do all of the following:
(i) Forward a copy of the written report of the person's refusal to submit to a chemical test to the secretary of state.
(ii) Notify the secretary of state by means of the law enforcement information network that a temporary license or permit was issued to the person.
(iii) Except as provided in subsection (1), destroy the person's driver's license or permit.

(2) If a person submits to a chemical test offered pursuant to section 31-303a(3) that requires the withdrawal of blood and a report of the results of that chemical test is not immediately available, the peace officer who requested the person to submit to the test shall comply with subsection (1)(a) pending receipt of the test report. If, upon receipt, the report reveals a blood alcohol content of 0.10% or more by weight of alcohol, the peace officer who requested the person to submit to the test shall immediately comply with subsection (1)(b). If, upon receipt, the report reveals a blood alcohol content of less than 0.10% by weight of alcohol, the peace officer who requested the person to submit to the test shall immediately notify the person of the test results, and immediately return the person's license or permit by first-class mail to the address given at the time of arrest.

31-303h Nolo contendere pleas.

A conviction based upon a plea of nolo contendere shall be treated in the same manner as a conviction based upon a plea of guilty or a finding of guilty, except that neither the plea nor the conviction shall be admissible as substantive evidence of conduct at issue in a civil case arising out of the same occurrence.

Section 2. Savings.
All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

Section 3. Severability.
If any section, clause or provision of this ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this ordinance, but the remainder of this ordinance shall stand and be in full force and effect.

Section 4. Repealer.
All other ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 5. Emergency Ordinance.
This Ordinance is declared to be an emergency Ordinance which is immediately necessary for the preservation of the public peace, health and safety.

Section 6. Adoption.
This ordinance was introduced at a regular meeting of the Farmington City Council on January 6, 1992, and is hereby declared to be an emergency Ordinance which is immediately necessary for the preservation of the public peace, health and safety, and is hereby adopted by the affirmative vote of the minimum number of members required to enact an emergency Ordinance at a meeting thereof duly called and held on the 20th day of January, 1992, and such Ordinance shall be published by posting copies thereof in conspicuous locations in three places in the City, and the Clerk shall, immediately after such posting, enter in the Ordinance book under the record of the Ordinance, a certificate under her hand stating the time and place of such publication by posting. This Ordinance shall also be published in accordance with Section 7.6 of the City Charter.

Moved by Richardson and supported by McShane.
AYES: Campbell, Hartsock, McShane, Richardson.
NAYS: None.
ABSENT: Tapper.
ABSTENTIONS: None.

Ordained this 20th day of January, 1992, by the City Council of the City of Farmington.

WILLIAM S. HARTSOCK, Mayor
JOSEPHINE M. BUSHEY, City Clerk

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)
SS.

I, the undersigned, the duly qualified and appointed City Clerk of the City of Farmington, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of an ordinance adopted at a regular meeting of the City Council held on the 20th day of January, 1992, the original of which is on file in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature on this 21st day of January, 1992.

JOSEPHINE M. BUSHEY, City Clerk

CITY OF FARMINGTON
ORDINANCE NO. C-195-91

AN ORDINANCE TO AMEND CHAPTER 31, TRAFFIC AND MOTOR VEHICLES, ARTICLE II, DIVISION 5, SECTION 31-312, OF THE CITY CODE TO PROHIBIT THE TRANSPORTING OR POSSESSING OF OPEN ALCOHOLIC LIQUOR WITHIN A PASSENGER COMPARTMENT OF A VEHICLE.

THE CITY OF FARMINGTON ORDAINS:

Section 1.
31-312 Transporting or possessing alcoholic liquor within passenger compartment of vehicle, violation; punishable as a misdemeanor.
(1) Except as provided in subsection (3), a person shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this city.
(2) A person may transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles in this city, if the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is enclosed or encased, and the container is not readily accessible to the occupants of the vehicle.
(3) A person who violates this section is guilty of a misdemeanor.
(4) This section does not apply to a passenger in a chartered vehicle authorized to operate by the Michigan department of transportation.

Section 2. Savings.
All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

Section 3. Severability.
If any section, clause or provision of this ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this ordinance, but the remainder of this ordinance shall stand and be in full force and effect.

Section 4. Repealer.
All other ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 5. Emergency Ordinance
This Ordinance is declared to be an emergency Ordinance which is immediately necessary for the preservation of the public peace, health and safety.

Section 6. Adoption.
This ordinance was introduced at a regular meeting of the Farmington City Council on January 6, 1992, and is hereby declared to be an emergency Ordinance which is immediately necessary for the preservation of the public peace, health and safety, and is hereby adopted by the affirmative vote of the minimum number of members required to enact an emergency Ordinance at a meeting thereof duly called and held on the 20th day of January, 1992, and such Ordinance shall be published by posting copies thereof in conspicuous locations in three places in the City, and the Clerk shall, immediately after such posting, enter in the Ordinance book under the record of the Ordinance, a certificate under her hand stating the time and place of such publication by posting. This Ordinance shall also be published in accordance with Section 7.6 of the City Charter.

Moved by Campbell and supported by Richardson.
AYES: Hartsock, McShane, Richardson, Campbell.
NAYS: None.
ABSENT: Tapper.
ABSTENTIONS: None.

Ordained this 20th day of January, 1992, by the City Council of the City of Farmington.

WILLIAM S. HARTSOCK, Mayor
JOSEPHINE M. BUSHEY, City Clerk

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)
SS.

I, the undersigned, the duly qualified and appointed City Clerk of the City of Farmington, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of an ordinance adopted at a regular meeting of the City Council held on the 20th day of January, 1992, the original of which is on file in my office.

IN WITNESS WHEREOF, I have hereunto affixed my official signature on this 21st day of January, 1992.

JOSEPHINE M. BUSHEY, City Clerk

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