

CITY OF FARMINGTON
COUNCIL PROCEEDINGS
(Summary)

A regular meeting of the Farmington City Council was called to order at 8:00 p.m. on July 6, 1982, by Mayor Alton L. Bennett in Council Chambers, 23600 Liberty Street, Farmington, Michigan.

ROLL CALL: Mayor Bennett, Councilmen Hartsock, Mitchell, Yoder.

CITY OFFICIALS PRESENT: City Manager Dearden, Director Billing, Director Selfert, Attorney Kelly, City Engineer Papke, City Clerk Bushey.

Minutes of previous meetings were approved.

The City Attorney presented his report relative to the appointment of Bayard Tupper to fill the Council vacancy. Following the formal appointment, the City Clerk administered the Oath of Office to Mr. Tupper.

Council held a Public Hearing to review the Special Assessment Roll for the Grand River Sidewalk Program, and adopted a resolution confirming the Special Assessment Roll in the amount of \$23,409.85.

John Clappison, Farmington's Boys State Representative, reported on his week spent with 500 other participants who studied the government process.

Council received petitions and public comments relative to conditions at the Boat-landers.

Public comments were received relative to basement flooding.

Council granted permission to Lucy's Oldies And Goodies for the following:

Antique-Craft Show & Sale	July 29 & 30, 1982
Saturday Morning Farmers' Market	July 17 to Sept. 1, 1982

Garage Sale: August 22, 1982

Minutes of other boards were received and/or filed.

Council denied the request for "Children Playing" signs in front of 21352 Birchwood.

Council approved parking on Gill Road during the July 14th Annual Pig Roast at Oak Hill Nursing Home.

Council granted a fence variance for 22804 Power Road.

Council approved closing Moore Drive for the residents' July 17th annual Block Party.

Council adopted a resolution opposing Senate Bills 2172 and 2445 relative to federal control of cable T.V.

Council introduced Ordinance C-491-82 to establish a one-way street for River Glen Condominiums.

The following ordinances were adopted:

ORDINANCE NO. C-492-82

AN ORDINANCE TO REPEAL ORDINANCE NO. C-483-81

THE CITY OF FARMINGTON ORDAINS:

That Ordinance No. C-483-81, adopted and enacted on October 5, 1981, and effective October 15, 1982 is hereby repealed.

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

This ordinance was introduced, adopted and enacted at a regular meeting of the Farmington City Council on July 6, 1982, and will become effective IMMEDIATELY.

AYES: Yoder, Bennett, Hartsock, Mitchell, Tupper.

NAYS: None.

ORDINANCE NO. C-493-82

AN ORDINANCE TO AMEND THE UNIFORM TRAFFIC CODE FOR MICHIGAN CITIES, TOWNSHIPS AND VILLAGES

THE CITY OF FARMINGTON ORDAINS:

The following sections and sub-sections of the Uniform Traffic Code for Cities, Townships and Villages, adopted by reference by Ordinance No. C-482-81, are hereby amended or deleted as set forth and additional sections and sub-sections are added as indicated. Subsequent section numbers used in this ordinance shall refer to the like numbered sections of the Uniform Traffic Code.

Section 2.5

Section 2.5 is hereby deleted.

Section 2.5a

Section 2.5a is hereby amended to read as follows:

Section 2.5a. "Abandoned Vehicle" defined: Taking Abandoned Vehicles Into Custody; Authority; Procedure; Public Sale.

(1) As used in this section, "abandoned vehicle" means a vehicle which has remained on public property or private property for a period of forty-eight (48) hours after the police agency has been notified of the location of the vehicle by the police agency.

(2) If a vehicle has remained on public or private property for a period of time so that it appears to the police agency to be abandoned, the police agency shall do all of the following:

(a) Determine if the vehicle has been reported stolen.

(b) Affix a written notice to the vehicle. The written notice shall contain the following information:

- (i) The date and time the notice was affixed;
- (ii) The name and address of the police agency taking the action;
- (iii) The name and badge number of the police officer affixing the notice;
- (iv) The date and time the vehicle was taken into custody and stored at the owner's expense or scrapped if the vehicle is not removed;
- (v) The year, make, and vehicle identification number of the vehicle, if available;

(3) If a vehicle is not removed within forty-eight (48) hours after the date the notice was affixed, the vehicle is deemed abandoned and the police agency may have the vehicle taken into custody.

(4) A police agency which has a vehicle taken into custody shall do all of the following:

(a) Recheck to determine if the vehicle has been reported stolen.

(b) Within twenty-four (24) hours after taking the vehicle into custody, enter the vehicle as abandoned into the law enforcement information network.

(c) Within seven (7) days after taking the vehicle into custody, send to the registered owner and secured party, as shown by the records of the Secretary of State, by first class mail or personal service, notice that the vehicle has been deemed abandoned. Each notice form shall contain the following information:

- (i) The year, make, and vehicle identification number of the vehicle, if available;
- (ii) The location from which the vehicle was taken into custody;
- (iii) The date and time the vehicle was taken into custody;
- (iv) The name and address of the police agency which had the vehicle taken into custody;
- (v) The business address of the custodian of the vehicle;
- (vi) The procedure to redeem the vehicle;

(vii) The procedure to contain the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees.

(viii) A form petition which the owner may file in person or by mail with a specified court which requests a hearing on the police agency's action.

(ix) A warning that the failure to redeem the vehicle or to request a hearing within twenty (20) days after the date of the notice may result in the sale of the vehicle and the determination of all rights of the owner and the secured party to the vehicle or the proceeds of the sale.

(x) The registered owner may contest the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees by requesting a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice within twenty (20) days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing conducted pursuant to Sections 2.7b and 2.7c. An owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond in an amount equal to the accrued towing and storage fees with the court. The owner of the vehicle who requests a hearing may obtain release of the vehicle by paying the towing and storage fees instead of posting the towing and storage bond. If the court finds that the vehicle was not properly deemed abandoned, the police agency shall reimburse the owner of the vehicle for the accrued towing and storage fees.

(b) If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.

(7) If the owner does not redeem the vehicle or request a hearing within twenty (20) days after the date of the notice, the secured party may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.

(8) Not less than twenty (20) days after the disposition of the hearing described in Subsection (b) or if a hearing is not requested, not less than twenty (20) days after the date of the notice, the police agency shall offer the vehicle for sale at a public sale pursuant to Section 2.7b.

(9) If the ownership of a vehicle which has been deemed abandoned under this Section cannot be determined, the condition of the vehicle identification number or because a check with the records of the Secretary of State does not reveal ownership, the police agency may sell the vehicle at public sale pursuant to Section 2.7b, not less than thirty (30) days after public notice of the sale has been published.

Section 2.6

Section 2.6 is hereby amended to read as follows:

Section 2.6. "Abandoned Scrap Vehicle" defined: Taking Abandoned Scrap Vehicles Into Custody; Authority; Procedure; Scrapping Vehicles.

(1) As used in this section:

(a) "Registered abandoned scrap vehicle" means a vehicle which meets all of the following requirements:

- (i) Is on public or private property;
- (ii) Is seven (7) or more years old;
- (iii) Is apparently inoperable or is extensively damaged, to the extent that the cost of repairing the vehicle so that it is operational and safe would exceed the fair market value of that vehicle;
- (iv) Is currently registered in the State of Michigan or displays current year registration plates from another State;
- (v) Is not removed within forty-eight (48) hours after a written notice as described in Section 2.5a(2)(b) is affixed to the vehicle;

(b) "Unregistered abandoned scrap vehicle" means a vehicle which meets all of the following requirements:

- (i) Is on public or private property;
- (ii) Is seven (7) or more years old;
- (iii) Is apparently inoperable or is extensively damaged, to the extent that the cost of repairing the vehicle so that it is operational and safe would exceed the fair market value of that vehicle;
- (iv) Is not currently registered in this State and does not display current year registration plates from another State;
- (v) Is not removed within forty-eight (48) hours after a written notice as described in Section 2.5a(2)(b) is affixed to the vehicle;

(2) A police agency may remove an unregistered abandoned scrap vehicle taken into custody, in which case the police agency shall do all of the following:

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

(3) A police agency may have a registered abandoned scrap vehicle taken into custody in which case the police agency shall do all of the following:

- (a) Determine if the vehicle has been stolen;
- (b) Take two (2) photographs of the vehicle;
- (c) Make a report to substantiate the vehicle as a registered abandoned scrap vehicle. The report shall contain the following information:
 - (i) The year, make, and vehicle identification number, if available;
 - (ii) The date of abandonment;
 - (iii) The location of abandonment;
 - (iv) A detailed listing of the damage or the missing equipment;
 - (v) The reporting officer's name and title;
 - (vi) The location where the vehicle is being held;
 - (vii) Within twenty-four (24) hours after taking the vehicle into custody, enter the vehicle into the law enforcement information network;
- (d) Within seven (7) days after taking the vehicle into custody, send to the registered owner and secured party, as shown by the records of the Secretary of State, by first class mail or personal service, notice that the vehicle has been deemed abandoned. The form for the notice shall be furnished by the Secretary of State. Each notice form shall contain the following information:
 - (i) The year, make, and vehicle identification number, if available;
 - (ii) The location from which the vehicle was taken into custody;
 - (iii) The date on which the vehicle was taken into custody;
 - (iv) The name and address of the police agency which had the vehicle taken into custody;
 - (v) The business address of the custodian of the vehicle;
 - (vi) The procedure to redeem the vehicle;
 - (vii) The procedure to contain the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees;
 - (viii) A form petition which the owner may file in person or by mail with a specified court which requests a hearing on the police agency's action;
- (e) A warning that the failure to redeem the vehicle or to request a hearing within twenty (20) days after the notice may result in the termination of all rights of the owner and the secured party to the vehicle;

(7) The registered owner of a registered abandoned scrap vehicle may contest the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and the daily storage fees by requesting a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice within twenty (20) days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing conducted pursuant to Sections 2.7b and 2.7c. An owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond with the court in an amount as determined by the court. The owner of the vehicle who requests a hearing may obtain release of the vehicle by paying the towing and storage fees instead of posting the towing and storage bond. If the court finds that the vehicle was not properly deemed abandoned, the police agency shall reimburse the owner of the vehicle for the accrued towing and storage fees.

(8) If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.

(9) If the owner does not redeem the vehicle or request a hearing within twenty (20) days after the date of the notice, the secured party may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.

(10) Not less than twenty (20) days after the disposition of the hearing described in Subsection (7), or if a hearing is not requested, not less than twenty (20) days after the date of the notice described in Subsection (6), the police agency shall follow the procedures established in Subsections (3) to (5).

Section 2.7

Section 2.7 is hereby amended to read as follows:

Section 2.7. Notifying Local Police Agency Upon Removal of a Vehicle from Private Property; Police Agency Duties Upon Notification; Unclaimed Vehicle.

(1) When a vehicle is removed from private property at the direction of a person other than a registered owner of the vehicle or a police agency, the custodian of the vehicle immediately shall notify the police agency in whose jurisdiction the vehicle was towed. The custodian shall supply that information which is necessary for the police agency to enter the vehicle into the law enforcement information network.

(2) Upon receipt of the notification described in Subsection (1), the police agency immediately shall do all of the following:

- (a) Determine if the vehicle has been reported stolen;
- (b) Enter the vehicle into the law enforcement information network;
- (c) The owner of the vehicle removed as described in Subsection (1), may obtain release of the vehicle by paying the accrued towing and storage fees to the custodian of the vehicle. Upon release of the vehicle, the custodian shall notify the police agency of the disposition of the vehicle;
- (d) If the vehicle in Subsection (1) is not claimed by the owner within seven (7) days after the date of the notice, the police agency shall follow the procedures described in Section 2.5a(4)(c) and 2.5a(5) through (9) shall apply.

Section 2.7a

Section 2.7a is hereby amended to read as follows:

Section 2.7a. Impounding of Vehicles; Authority; Procedure.

(1) A police agency or a governmental agency designated by the police agency may provide for the immediate removal of a vehicle from public or private property to provide for safe keeping at the expense of the registered owner of the vehicle in any of the following circumstances:

- (a) If the vehicle is in such a condition that the continued operation of the vehicle on the highway would constitute an immediate hazard to the public;
- (b) If the vehicle is parked or standing upon the highway in such a manner as to create an immediate public hazard or an obstruction to traffic;
- (c) If a vehicle is parked in a posted tow-away zone;
- (d) If there is reasonable cause to believe that the vehicle or any part of the vehicle is stolen;
- (e) If the vehicle must be seized to preserve evidence of a crime, or when there is reasonable cause to believe that the vehicle was used in the commission of a crime;
- (f) If removal is necessary in the interest of public safety because of fire, flood, storm, snow, natural or man made disaster or other emergency;
- (g) If the vehicle is handicapped or the use of the vehicle by the owner or operator is in charge of that property or is parked in a manner which impedes the movement of another vehicle;
- (h) When a vehicle is left unattended on a bridge, viaduct, causeway, tube, or tunnel where the vehicle constitutes an obstruction to traffic;
- (i) When a disabled vehicle on a street constitutes an obstruction to traffic and the person in charge of the vehicle is, by reason of physical injury, incapacitated and unable to provide for the vehicle's custody or removal;
- (j) When a vehicle is left unattended on a street and is parked in a manner which constitutes a definite hazard or obstruction to the normal movement of traffic;
- (k) When a vehicle is found being driven on the streets or highways in an unsafe condition which endangers persons or property;
- (l) When a vehicle is left continuously unattended on a street for more than forty-eight (48) hours and may be presumed to be abandoned;
- (m) When the driver of a vehicle is taken into custody by the police department and the vehicle would thereby be left unattended on the street;
- (n) When the owner of a vehicle has failed to answer six (6) or more parking violation notices or citations regarding illegal parking issued or served after March 31, 1981;

(2) A police agency which authorizes the removal of a vehicle under Subsection (1) shall do all of the following:

- (a) Check to determine if the vehicle has been reported stolen;
- (b) Within twenty-four (24) hours after removing the vehicle, enter the vehicle into the law enforcement information network. If the vehicle has not been redeemed, this subdivision does not apply to a vehicle that has been removed from the scene of a motor vehicle traffic accident;
- (c) If the vehicle has not been redeemed within ten (10) days after moving the vehicle, send to the registered owner and the secured party as shown by the records of the Secretary of State, by first class mail or personal service a notice that the vehicle has been removed; however, if the police agency informs the

owner or operator of the vehicle of the removal and the location of the vehicle within twenty-four (24) hours after the removal, and if the vehicle has not been redeemed within thirty (30) days and upon complaint from a towing service, the police agency shall send a notice within thirty (30) days after the removal. The notice shall be by a form furnished by the Secretary of State.

(3) The registered owner may contest the fact that the vehicle was properly removed or the reasonableness of the towing fees and daily storage fees by requesting a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice within twenty (20) days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing conducted pursuant to Sections 2.7b and 2.7c. An owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond with the court in an amount equal to the accrued towing and storage fees. The owner of a vehicle who requests a hearing may obtain release of the vehicle by paying the towing and storage fees instead of posting the towing and storage bond. If the court finds that the vehicle was not properly deemed abandoned, the police agency shall reimburse the owner of the vehicle for the accrued towing and storage fees.

(4) If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.

(5) If the owner does not redeem the vehicle or request a hearing within twenty (20) days, the secured party may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle prior to the date of the sale.

(6) Not less than twenty (20) days after the disposition of the hearing described in Subsection (3), or if a hearing is not requested, not less than twenty (20) days after the date of the notice described in Subsection (2)(c), the police agency shall offer the vehicle for sale at a public sale unless the vehicle is redeemed. The public sale shall be held pursuant to Section 2.7a.

(7) If the ownership of a vehicle which has been removed under this section cannot be determined either because of the condition of the vehicle identification number, or because a check with the records of the Secretary of State does not reveal ownership, the police agency may sell the vehicle at public sale pursuant to Section 2.7b, not less than thirty (30) days after public notice of the sale has been published.

Section 2.7b

Section 2.7b is hereby added to read as follows:

Section 2.7b. Hearing Process.

(1) The District Court shall have jurisdiction to determine if a police agency has acted properly in the processing of a vehicle under this ordinance.

(2) The hearing specified in Subsection (1), the police agency shall have the burden of showing by a preponderance of the evidence that it has complied with the requirements of this ordinance in processing the abandoned vehicle or vehicle removed pursuant to Section 2.7a.

(3) If the owner fails to pay the accrued towing and storage fees, the towing and storage bond posted with the court to secure release of the vehicle shall be used to pay the towing and storage fees.

Section 2.7c

Section 2.7c is hereby added to read as follows:

Section 2.7c. Hearing Process.

(1) Upon receipt of a petition prescribed in Sections 2.5a, 2.6, 2.7, or 2.7a signed by the owner of the vehicle which has been taken into custody, the court shall do both of the following:

(a) Schedule a hearing within thirty (30) days for the purpose of determining whether the police agency acted properly;

(b) Notify the owner and the police agency of the time and place of the hearing.

(2) At the hearing specified in Subsection (1), the police agency shall have the burden of showing by a preponderance of the evidence that it has complied with the requirements of this ordinance in processing the abandoned vehicle or vehicle removed pursuant to Section 2.7a.

(3) After the hearing, the court shall make a decision which shall include one or more of the following:

- (a) A finding that the police agency complied with the procedures established for the processing of an abandoned vehicle or a vehicle removed under Section 2.7a, and order providing a period of twenty (20) days after the decision for the owner to redeem the vehicle. If the owner does not redeem the vehicle within twenty (20) days, the police agency shall dispose of the vehicle pursuant to Section 2.6 or 2.7a;
- (b) A finding that the police agency did not comply with the procedures established for the processing of an abandoned vehicle or a vehicle removed pursuant to Section 2.7a. After making such a finding, the court shall issue an order directing that the vehicle immediately be returned to the owner, and that the police agency is responsible for the accrued towing and storage charges;
- (c) A finding that the towing and daily storage fees were reasonable;
- (d) A finding that the towing and daily storage fees were unreasonable and issue an order directing an appropriate reduction.

Section 2.7d

Section 2.7d is hereby added to read as follows:

Section 2.7d. Public Sale.

(1) A public sale for a vehicle which has been deemed abandoned under Section 2.5a or 2.7 or removed under Section 2.7a shall be conducted in the following manner:

- (a) It shall be under the control of the police agency or agent of the police agency;
- (b) It shall be open to the public and consist of open auction bidding or bidding by sealed bids. If sealed bids are received, the person submitting the bid shall receive the vehicle within five (5) days after the date of the sale;
- (c) Except as provided by Sections 2.5a(9) and 2.7a(7), it shall be held not less than five (5) days after public notice of the sale has been published;
- (d) The public notice shall be published at least once in a newspaper having a general circulation within the jurisdiction in which the vehicle was abandoned. The public notice shall give a description of the vehicle for sale and shall state the time, date, and location of the sale;
- (e) The money received from the public sale of the vehicle shall be applied in the following order of priority:
 - (i) Towing and storage charges;
 - (ii) Expenses incurred by the police agency;
 - (iii) To the secured party, if any, in the amount of the debt outstanding on the vehicle;
 - (iv) Remainder to the owner. A reasonable attempt shall be made to mail the remainder to the registered owner. If delivery of the remainder cannot be accomplished, the remainder shall become the property of the unit of government that the police agency represents;
 - (v) If there are no bidders on the vehicle, the police agency may do one of the following:
 - (i) Return the vehicle over to the towing firm to satisfy any charges against the vehicle;
 - (ii) Obtain title to the vehicle for the police agency or the unit of government the police agency represents, by doing the following:
 - (A) Paying the towing and storage charges; and
 - (B) Applying for title to the vehicle;
 - (iii) Hold another public sale pursuant to Subsection (1).
 - (f) A person who acquires ownership of the vehicle under Subsection (1) or (3), which vehicle has been designated as a distressed vehicle, shall make application for a salvage certificate of title within fifteen (15) days after obtaining the vehicle;
 - (g) Upon disposition of the vehicle, the police agency shall cancel the entry into the law enforcement information network;

Section 5.15 and Sub-sections 5.15a through 5.15g

Sections 5.15 and Sub-sections 5.15a through 5.15g are hereby amended, and Sub-sections 5.15d and 5.15g are hereby deleted to read as follows:

Section 5.15. Operating or Allowing to Operate a Vehicle Under the Influence of Intoxicating Liquor or Controlled Substance. Violation Punishable as Misdemeanor or Penalties.

(1) A person, whether licensed or not, who is under the influence of intoxicating liquor, 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. A police officer may, without a warrant, arrest a person when the police 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 highway or other place open to the general public, including an area designated for the parking of vehicles, in the State, while under the influence of intoxicating liquor or a controlled substance, or a combination of an intoxicating liquor and a controlled substance. A violation of this subsection is punishable as provided in Subsections (3) and (4).

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public, including an area designated for the parking of 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. A violation of this subsection is punishable as provided in Subsections (3) and (4).

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

- (a) On a second conviction under this section a person is guilty of a misdemeanor, punishable by imprisonment for not more than one year or a fine of not more than One Thousand Dollars (\$1,000.00), or both;
- (b) On a third or subsequent conviction within a period of ten (10) years under this section, a person is guilty of a felony;

(4) Upon conviction of a person under this Section, the court, in addition to the penalty imposed under Subsection (3) and as part of the sentence, shall order the operator's or chauffeur's license of that person to be suspended by the Secretary of State for a period of not more than two (2) years and may order the Secretary of State to issue to that person a restricted license permitting the person during all or a specified portion of the period of suspension to drive only to and from the person's residence and place of employment; and in the course of employment; to and from an alcohol training program as ordered by the court; or pursuant to a combination of those alternatives. 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 tractor, including tractors, which have a hazardous material.

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