

VILLAGE OF OTISVILLE
VEHICLE CODE, DRIVING WHILE IMPAIRED
Ordinance No. 164

AN ORDINANCE TO AMEND PORTIONS OF ORDINANCE NOS. 79 AND 102 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF OTISVILLE AND ADOPTING PORTIONS OF THE MICHIGAN VEHICLE CODE BY REFERENCE, AND AS AMENDED HEREINAFTER; TO AMEND PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRIVING WHILE IMPAIRED, UBAL, AND SUSPENDED OPERATOR'S LICENSE INCLUDING VEHICLE IMMOBILIZATION.

The Village of Otisville Ordains:

SECTION 1:

That those portions Ordinance Nos. 79 and 102 adopting Uniform Traffic Code (UTC) Sections 5.15, 5.15b, 5.62(1), and 5.62a(1) are here repealed.

SECTION 2:

That the codified ordinances of the Village of Otisville shall be amended by the adoption of portions of the Michigan Vehicle Code as follows:

(a) Sections 625, 625a, 625b, 625c, 625d, 625e, 625f, 625g, 625h, 625i, 625k, 625l, 625m, 625n, covering alcohol-related driving offenses and the amendments relating to the Repeat Offender Package, effective October 1, 1999, as adopted and promulgated by the State of Michigan as Public Act 340-359 of the Michigan Public Acts of 1998, and as from time to time amended by the State of Michigan, being MCLA 257.625 et. seq., and MSA 24.13101 et. seq., are hereby adopted by the Village of Otisville and placed on filed with the Village Clerk.

(Sec.625) Persons under the influence of intoxicating liquor or controlled substance; operation motor vehicles; punishments; prior convictions; payments of costs; plea bargains; special verdicts

(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 governmental unit if either of the following applies:

- (a) The person is under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.
 - (b) The person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- (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 governmental unit by a person who is under the influence of intoxicating liquor, a substance, who has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or whose ability to operate the motor vehicle is visibly impaired due to the consumption of intoxicating liquor, or controlled substance, or a combination of intoxicating liquor and a controlled substance.
- (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, within this governmental unit when, due to the consumption of 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 rendered.
- (6) A person who is less than 21 years of age, 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 governmental unit if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:
- (a) An alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
 - (b) Any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony.
- (7) A person who operates a vehicle in violation of subsection (1), (3), (4), (5), or (6) while another person who is less than 16 years of age is occupying the vehicle is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both. The judgment of sentence may

impose the sanction permitted under section 625n. If the violation occurs within 7 years of a prior conviction or within 10 years of 2 or more prior convictions, the court shall unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization under section 904d in the judgment of sentence. This section does not prohibit a person from being charged with, convicted of, or punished for a violation of subsection (1), (3), (4), (5), or (6) that is committed by the person while violating this subsection. However, points shall not be assessed under section 320a for both a violation of subsection (1), (3), (4), (5), or (6) and a violation of this subsection for conduct arising out of the same transaction.

(8) If a person is convicted of violating subsection (1), all of the following 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) Community service for not more than 45 days.

(ii) Imprisonment of not more than 93 days.

(iii) A fine of not less 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 pay a fine of not less than \$200.00 or more than \$1000.00 and 1 or more of the following:

(i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(ii) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.

(e) In the judgment of sentence under subdivision (a), the court may order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (b) or (c), the court shall, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d.

(f) In the judgment of sentence under subdivision (b) or (c), the court may impose the section permitted under section 625n.

(9) A person who is convicted of violating subsection (2) is guilty of a crime as follows:

(a) A misdemeanor punishable by imprisonment for not more than 93 days or a fine of not less than \$100.00 or more than \$500.00, or both.

(10) If a person is convicted of violating subsection (3), all of the following 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) Community service for not more than 45 days.

(ii) Imprisonment for not more than 93 days.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00, and 1 or more of the following:

(i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Community service for not less than 30 days or more than 90 days.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.

(e) In the judgment of sentence under subdivision (a), the court may order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (b) or (c), the court shall, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d.

(f) In the judgment of sentence under subdivision (b) or (c), the court may impose the sanction permitted under section 625n.

(11) If a person is convicted of violating subsection (6), all of the following apply:

(a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:

(i) Community service for not more than 45 days.

(ii) Fine of not more than \$250.00.

(b) If the violation occurs within 7 years of 1 or more prior convictions, the person may be sentenced to 1 or more of the following:

(i) Community service for not more than 60 days.

(ii) A fine of not more than \$500.00.

(iii) Imprisonment for not more than 93 days.

(12) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 776.22.

(13) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the governmental unit or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(14) If the prosecuting attorney intends to seek an enhanced sentence under this section or a sanction under section 625n or 904d based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information, or an amended complaint and information, filed in district court, circuit court, municipal court, or family division of circuit court, a statement listing the defendant's prior convictions.

(15) If a person is charged with a violation of subsection (1), (3), (4), (5) or (7) or section 625m, the court shall not permit the defendant to enter a plea of guilty or nolo contendere to a charge of violating subsection (6) in exchange for dismissal of the original charge. This subsection does not prohibit the court from dismissing the charge upon the prosecuting attorney's motion.

(16) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) An abstract of conviction.

(b) A copy of the defendant's driving record.

(c) An admission by the defendant.

(17) Except as otherwise provided in subsection (19), if a person is charged with operating a vehicle while under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance in violation of subsection (1) or a local ordinance substantially corresponding to subsection (1), the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether the person was under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance at the time of the violation.

(18) Except as otherwise provided in subsection (19), if a person is charged with operating a vehicle while his or her ability to operate the vehicle was visibly impaired due to his or her consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance in violation of subsection (3) or a local ordinance substantially corresponding to subsection (3), the court shall require the jury to return a special verdict in the form of a written

finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether, due to the consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance, the person's ability to operate a motor vehicle was visibly impaired at the time of the violation.

- (19) A special verdict described in subsections (17) and (18) is not required if a jury is instructed to make a finding solely as to either of the following:
- (a) Whether the defendant was under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance at the time of violation.
 - (c) Whether the defendant was visibly impaired due to his or her consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance at the time of the violation.
- (20) If a jury or court finds under subsection (17), (18), or (19) that the defendant operated a motor vehicle under the influence of or while impaired due to the consumption of a controlled substance or a combination of a controlled substance and an intoxicating liquor, the court shall do both of the following:
- (a) Reporting the finding to the secretary of state.
 - (b) On a form or forms prescribed by the state court administrator, forward to the department of state police a record that specifies the penalties imposed by the court, including any term of imprisonment, and any sanction imposed under section 625n or 904d.
- (21) Except as otherwise provided by law, a record described in subsection (20) (b) is a public record and the department of the state police shall retain the information contained on that record for not less than 7 years.
- (22) In a prosecution for a violation of subsection (6), the defendant bears the burden of proving that the consumption of intoxicating liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence.
- (23) Subject to subsection (25), as used in this section, "prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:
- (a) Except as provided in subsection (24), a violation or attempted violation of

subsection (1), (3), (4), (5), (6) or (7), section 625m former section 625 (1) or (2), or former section 625b.

(b) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(24) Except for purposes of the enhancement described in subsection (11) (b), only 1 violation or attempted violation of subsection (6), a local ordinance substantially corresponding to subsection (6), or a law of another state substantially corresponding to subsection (6) may be used as a prior conviction.

SECTION 3:

That the codified ordinances of the Village of Otisville shall be amended by the adoption of portions of the Michigan Vehicle Code as follows:

Sections 904, 904b, 904c, 904d, 904e of the Michigan Vehicle Code covering operator's or chauffeur's license or registration; suspension, revocation, or denial; and vehicle immobilization, as adopted and promulgated by the State of Michigan, and otherwise known as the Repeat Offender Package, effective October 1, 1999, adopted and promulgated by the State of Michigan as Public Act 340-359 of the Michigan Public Acts of 1998, and as from time to time amended by the State of Michigan, being MCLA 275.904 et. seq., are hereby adopted by reference, together with the following local amendments thereto as adopted by the Village of Otisville.

(Sec. 904) Operator's or Chauffeur's license or registration; suspension, revocation or denial; penalty for operation of vehicle; subsequent offenses; confiscation of plates, status and record of persons.

(1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in section 212 of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, shall not operate a motor 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 motor vehicles, within this governmental unit.

(2) A person shall not knowingly permit a motor vehicle owned by the person 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 vehicles, within this governmental unit by a person whose license or registration certificate is suspended or revoked, whose application for license has been

denied, or who has never applied for a license, except as permitted under this act.

(3) Except as otherwise provided in this section, a person who violates subsection (1) or (2) is guilty of a misdemeanor punishable as follows:

(a) For a first violation, by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be canceled by the secretary of state upon notifications by a peace officer.

(b) For a violation that occurs after a prior conviction, by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both. Unless the vehicle was stolen, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer.

(6) In addition to being subject to any other penalty provided for in this act, if a person is convicted under subsection (4) or (5), the court may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.

(7) A person shall not knowingly permit a motor vehicle owned by the person 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 vehicles, within this governmental unit, by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never been licensed except as permitted by this act.

(9) A prior conviction, a suspension, or a revocation under this section shall be established at or before sentencing by 1 or more of the following:

(a) An abstract of conviction.

(b) A copy of the defendant's driving record.

(c) An admission by the defendant.

(14) Before a person is arraigned before a district court magistrate or judge on a charge of violating this section, the arresting officer shall obtain the person's driving record from the secretary of state and shall furnish the record to the court. The driving record of the person may be obtained from the secretary of state's

computer information network.

(15) This section does not apply to a person who operates a vehicle solely for the purpose of protecting human life or property if the life or property is endangered and summoning prompt aid is essential.

(16) A person whose vehicle group designation is suspended or revoked and who has been notified as provided in section 212 of that suspension or revocation, or whose application for a vehicle group designation has been denied as provided in this act, or who has never applied for a vehicle group designation and who operated a commercial motor vehicle within this government unit, except as permitted under this act, while any of those conditions exist is guilty of a misdemeanor punishable, except as otherwise provided in this section, by imprisonment for not less than 3 days or more than 93 days or a fine of not more than \$100.00, or both.

(17) If a person has a second or subsequent suspension or revocation under this section within 7 years as indicated on the person's Michigan driving record, the court shall proceed as provided in section 904d.

(18) This section does not apply to a person who has one currently effective suspension or denial of his or her Michigan driving record under section 321a and has never been convicted of or received a civil infraction determination for a violation that occurred during that suspension or denial.

(19) For purposes of this section, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again.

(Sec. 904c.) Detention of driver; vehicle immobilization; temporary vehicle registration plate.

(1) When a peace officer detains the driver of a motor vehicle for a violation of a law of this state or local ordinance for which vehicle immobilization is required, the peace officer shall do all of the following:

(a) Immediately confiscate the vehicle's registration plate and destroy it.

(b) Issue a temporary vehicle registration plate for the vehicle in the same form prescribed by the secretary of state for temporary registration plates issued under section 226a or 226b.

(c) Place the temporary vehicle registration plate on the vehicle in the

manner required by the secretary of state.

(d) Notify the secretary of state through the law enforcement information network in a form prescribed by the secretary of state that the registration plate was confiscated and destroyed, and a temporary plate was issued.

(2) A temporary vehicle registration plate issued under this section is valid until the charges against the person are dismissed the person pleads guilty or nolo contendere to those charges, or the person is found guilty of or is acquitted of those charges.

(Sec.904d) Vehicle immobilization, violations of 257.625; suspension, revocation, or denial of license; prior suspensions

(a) For a conviction under section 625 (1), (3) or (7) or a local ordinance substantially corresponding to section 625 (1) or (3) with no prior convictions, the court may order vehicle immobilization for not more than 180 days.

(b) For a conviction under section 625 (4) or (5) with no prior convictions, the court shall order vehicle immobilization for not more than 180 days.

(c) For a conviction under section 625 (1), (3), (4), (5), or (7) within 7 years after a prior conviction, the court shall order vehicle immobilization for not less than 90 days or more than 180 days.

(d) For a conviction under section 625 (1), (3), (4), (5), or (7) within 10 years after 2 or more prior convictions, the court shall order vehicle immobilization for not less than 1 year or more than 3 years.

(2) For a conviction or civil infraction determination occurring during a period of suspension, revocation, or denial, the following apply:

(a) For one prior suspension, revocation, or denial under section 904 within the past 7 years, the court may order vehicle immobilization for not more than 180 days.

(b) For any combination of 2 or 3 prior suspensions, revocations, or denials under section 904 within the past 7 years, the court shall order vehicle immobilization for not less than 1 year or more than 3 years.

(3) The defendant shall provide to the court the vehicle identification number and registration plate number of the vehicle involved in the violation.

(4) The court may order vehicle immobilization under this section under either of the following circumstances:

(a) The defendant is the owner, co-owner, lessee, or co-lessee of the vehicle operated during the violation.

(b) The owner, co-owner, lessee, or co-lessee knowingly permitted the vehicle to be operated in violation of section 625 (2) or section 904 (1) regardless of whether a conviction resulted.

(5) An order required to be issued under this section shall not be suspended.

(6) If a defendant is ordered imprisoned for the violation for which immobilization is ordered, the period of immobilization shall begin at the end of the period of imprisonment.

(7) This section does not apply to any of the following:

(a) A suspension, revocation, or denial based on a violation of the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650.

(b) A vehicle that is registered in another state or that is a rental vehicle.

(c) Any of the following:

(i) A violation of chapter II.

(ii) A violation of chapter V.

(iii) A violation for failure to change address.

(iv) A parking violation.

(v) A bad check violation.

(vi) An equipment violation.

(vii) A pedestrian, passenger, or bicycle violation, other than a violation of section 703 (1) or (2) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, or a local ordinance substantially corresponding to section 703 (1) or (2) of the Michigan liquor control code of 1998, 1998 PA 58, MCL

436.1703, or section 624a or 624b or a local ordinance substantially corresponding to section 624a or 624b.

- (viii) A violation of a local ordinance substantially corresponding to a violation described in subparagraphs (i) to (vii).

Definitions

(8) As used in this section:

(a) Subject to subsection (9), “**prior conviction**” means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state.

- (i) Except as otherwise provided in this subparagraph, a violation or attempted violation of section 625 (1), (3), (4), (5), (6), or (7), section 625m, former section 625 (1) or (2), or former section 625b. However, only 1 violation or attempted violation of section 625 (6), a local ordinance substantially corresponding to section 625 (6), or a law of another state substantially corresponding to section 625 (6) may be used as a prior conviction:
- (ii) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(c) “**Vehicle Immobilization**” means requiring the motor vehicle involved in the violation immobilized in a manner provided in section 904e.

(9) If 2 or more convictions described in subsection (8) (a) are convictions for violations arising out of the same incident, only 1 conviction shall be used to determine whether the person has a prior conviction.

(Sec.904e.) Vehicle immobilization, available technology to prevent operation of vehicle; sale or lease of immobilization vehicle; removal or tampering with immobilization device; penalties; preemption

- (1) A court shall order a vehicle immobilized under section 904d by the use of any available technology approved by the court that locks the ignition, wheels, or steering of the vehicle or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle. If a vehicle is immobilized under this section, the court may order the vehicle stored at a location and in a manner considered appropriate by the court. The court may

order the person convicted of violating section 625 or a suspension, revocation, or denial under section 904 to pay the cost of immobilizing and storing the vehicle.

- (2) A vehicle subject to immobilization under this section may be sold during the period of immobilization, but shall not be sold to a person who is exempt from paying a use tax under section 3 (3) (a) of the use tax act, 1937 PA 94, MCL 205.93, without a court order.
- (3) A defendant who is prohibited from operating a motor vehicle by vehicle immobilization shall not purchase, lease, or otherwise obtain a motor vehicle during the immobilization period.
- (4) A person shall not remove, tamper with, or bypass or attempt to removed, tamper with, or bypass a device that he or she knows or has reason to know has been installed on a vehicle by court order for vehicle immobilization or operate or attempt to operate a vehicle that he or she knows or has reason to know has been ordered immobilized.
- (5) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.
- (6) To the extent that a local ordinance regarding the storage or removal of vehicles conflicts with an order of immobilization issued by the court, the local ordinance is preempted.
- (7) If a peace officer stops a vehicle that is being operated in violation of an immobilization order, the vehicle shall be impounded pending an order of a court of competent jurisdiction.
- (8) The court shall require the defendant or person who provides immobilization services to the court under this section to certify that a vehicle ordered immobilization by the court is immobilized as required.

SECTION 6: **Severability.**

If any section, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance.

SECTION 4: **Savings.**

All proceedings pending and all rights and liability 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 commenced.

SECTION 5: **Repealer.**

All 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 6: **Effective Date.**

This ordinance shall become effective the 1st day of January, 1999.

VILLAGE OF OTISVILLE

(Signed) Tom Bess, Jr, Village President
Andrea Barden, Village Clerk

I hereby certify that the preceding ordinance was adopted by the Village of Otisville Council at its regular meeting held December 20, 1999, and published in the Millington Messenger on December 29, 1999.

(Signed) Andrea M. Barden, Village Clerk