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May 21, 2004

Mayor Pat Somerville
City of Rochester Hills
1000 Rochester Hills Dr.
Rochester Hills, MI 48309

Re: Ordinance Section 98-68 (Adoption of Michigan Vehicle Code)

Dear Mayor Somerville:

We have been informed of a recent decision handed down by Judge Nicholson in a City of Auburn Hills drinking and driving case that we feel deserves attention and action on the part of Rochester Hills. Judge Nicholson's opinion held that the Auburn Hills ordinance, which incorporated the Michigan Vehicle Code by reference, was in conflict with the Michigan Vehicle Code, specifically as it was amended in October 2003 reducing the legal limit for drinking and driving from .10 to .08.

The reason given for granting the motion to dismiss the case was due to a lack of "uniformity" with the state law as required by MCL 257.605. The Auburn Hills ordinance, like the Rochester Hills ordinance, adopted the Michigan Vehicle Code by reference. The Rochester Hills ordinance was passed in 2001. The ordinance language adopting the Code by reference includes "as amended" language, the intent of which was to not only adopt the Vehicle Code as it existed on that day, but also subsequent changes to the Vehicle Code. This was done to avoid having to re-adopt the Vehicle Code every time a change was implemented in it. However, Judge Nicholson interpreted the "as amended" language to only mean the Vehicle Code as it was previously amended up to the date of the ordinance enactment, not as changed in the future. Following this logic, the Rochester Hills ordinance has the same "defect."

Since Rochester Hills did not "re-adopt" their incorporation by reference ordinance after the new drinking and driving laws took effect, it is anticipated that if Judge Nicholson was presented with a motion to dismiss a drinking and driving offense that occurred after the

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October 2003 changes, she should likely dismiss that case as well. Until there is a higher court decision to the contrary, we need to be proactive and pass an ordinance as soon as possible re-adopting the Michigan Vehicle Code by reference. This will incorporate the changes to the drinking and driving law passed in October 2003. This will effectively "shut the window" of time where the Rochester Hills ordinance would, in Judge Nicholson's opinion, be contrary to the Michigan Vehicle Code. We will be addressing any challenges to the ordinance for incidents that take place from October 2003 until the Rochester Hills Council re-adopts the code. It is my understanding that the City of Auburn Hills will not be appealing this decision.

I have drafted a proposed ordinance re-adopting the Michigan Vehicle Code by reference. In addition, I have added specific "intent" language indicating that the Vehicle Code is adopted by reference as amended, and as may be amended in the future. I am not sure that the additional language would overcome a similar interpretation rejecting a municipality's ability to adopt changes in the future, at least it expresses the intent in case there is ever an appeal. To be safe, the City should re-adopt the Michigan Vehicle Code on a regular basis (i.e. every year) in case there are subtle changes to the Michigan Vehicle Code that we are not made aware of unless specific statute change dictated immediate code re-adoption

I would request that this ordinance be given to the City Council for adoption at the earliest convenience so as to close the window of lack of uniformity. I would be happy to discuss this matter with you if you have further questions.

Very truly yours,

BEIER HOWLETT, P.C.


Jeffrey S. Kragt

JSK/jmh
Enclosure

cc: Susan Galeczka, Rochester Hills Clerk's Office
John D. Staran