

# Adopting the Uniform Traffic Code

and Other Traffic Code Enforcement Statutes in  
General Law Townships

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Prepared by the  
**Michigan Townships  
Association**

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# MTA Legal Counsel Overview

## Recent Revisions Have Limited the Uniform Traffic Code's Application

The new Uniform Traffic Code promulgated by the Michigan State Police, which became effective October 30, 2002, rescinds a large portion of the former UTC promulgated by the State in 1981, including significant traffic offense provisions at the heart of most traffic prosecutions under local ordinances.

Many provisions of the UTC were removed because they mirrored existing provisions of the Michigan Vehicle Code (MVC), Public Act 300 of 1949 (MCL 275.1, *et seq.*). The now-shortened version of the UTC may require townships and other local governments to adopt new traffic ordinances relying less on the UTC (which is a set of rules promulgated by state agencies) and more on provisions of state law—primarily the MVC—adopted by reference.

It is the opinion of MTA Legal Counsel that it is advisable for each township with an existing traffic code ordinance to adopt a new ordinance consolidating the desired provisions into a single ordinance. For many townships, this new ordinance will include the new UTC and certain provisions of the MVC pertaining to offenses that are not addressed in the new UTC.

Other townships may wish to include in their traffic code ordinance certain other statutory provisions that may be particularly relevant in their communities, such as various provisions from the Natural Resources and Environmental Protection Act (NREPA), PA 451 of 1994, pertaining to the operation of off-road vehicles (Part 811, MCL 324.81101, *et seq.*) and snowmobiles (Part 821, MCL 324.82101, *et seq.*).

In each instance the UTC and statutory provisions are adopted by reference, pursuant to statutory authority. Because they are adopted by reference, the township's traffic ordinance does not include the text of the actual underlying provisions of the UTC, MVC or other statutes to be enforced. MTA Legal Counsel recommend that a township create a "master" copy of its traffic ordinance that includes the complete text of all the regulations and statutory provisions to be enforced. A copy of this "master" should be given to all law enforcement officers involved in enforcing the traffic ordinance (or at least the department), and MTA recommends that a copy should also be kept at the township office for reference, inspection and copying by township officials and the public. To facilitate enforcement, MTA recommends that the township coordinate with the district court regarding the distribution of copies to appropriate court officials.

## Selection of Traffic Code Provisions

MTA Legal Counsel have spent a considerable amount of time reviewing the Michigan Vehicle Code to select the provisions that were candidates for inclusion in these sample township traffic code ordinances—as well as those provisions that have been excluded from the sample ordinances. For example, MTA has not knowingly included any reference to an offense provision designated as a felony, because of the doubtful authority for townships to prosecute such offenses under local ordinance. Other provisions have been excluded because they are not likely to arise with any frequency (or in some cases ever). There may be a handful of offense provisions retained in the new UTC that overlap in whole or in part MVC provisions included in the sample ordinances.

## Severability Provision

Each of the sample ordinances includes a "severability" provision relating to the "maximum penalty" that may be determined by a court to be within the authority of a township to impose. There is a rather respectable legal argument supporting the contention that, under MCL 41.181(3) general law town-

ships cannot enforce a penalty for an ordinance violation in excess of 90 days in jail and/or a \$500 fine. The language in the sample ordinances is intended to give a township prosecuting attorney something to “hang his/her hat on” if the maximum penalty issue arises, by advocating for the court to enforce the ordinance offense with the undisputed maximum possible penalty (instead of determining that the offense with the specified greater maximum penalty cannot be prosecuted at all under the local ordinance).

### **Future Amendments**

A final important legal issue is whether a township adopting any of these sample ordinances is required to amend the ordinance when the underlying UTC and/or statutory provisions are themselves amended in the future. In the opinion of MTA Legal Counsel, there is no clear legal authority for automatic updates of an ordinance adopting a code or statute by reference.

In the case of the Uniform Traffic Code, MCL 257.951 specifically authorizes the adoption by reference of “a code” that has been promulgated by the State Police. MCL 257.952 requires the ordinance to “clearly identify the code adopted by reference”. MCL 257.953 specifically addresses situations where the State Police amend the promulgated code and states that any city, township or village which has adopted such code by reference “may adopt such amendment by reference by the same procedure as required for the adoption of the original code”. This statutory language also appears verbatim in the new UTC at R 28.1905. Finally, it is noteworthy that legislation to allow an ordinance adopting the UTC to explicitly provide for future amendments to the UTC promulgated by the State to be “automatically incorporated in the ordinance” (Senate Bill No. 138) was introduced, but not adopted in the 2001-2002 legislative session.

MTA Legal Counsel are of the opinion that the current governing law does not provide any clear legal authority for a township (or a city or village) to adopt the new UTC with language automatically incorporating any amendments to the adopted UTC as such amendments are promulgated by the State in the future. The current governing law only authorizes adoption of a clearly identified code, such as the new UTC as it has been identified in the enclosed sample ordinances. As amendments of the identified UTC may be promulgated in the future by the State, such amendments must be adopted through the appropriate ordinance adoption procedures.

With respect to the provisions of the MVC and other state laws adopted by reference in the sample ordinances, there is some argument that a township ordinance adopting by reference specified provisions of, for example, the MVC, “as amended”, is sufficient to adopt the specified statutory provisions as they exist at the time of ordinance adoption and as such statutory provisions may be amended in the future. However, in the absence of a dispositive court case or new statutory language supporting this conclusion, as provisions of the MVC adopted by reference in a township traffic code ordinance are amended from time to time, it is recommended that townships adopt the amendments by reference through the appropriate ordinance adoption process. This would avoid the risk of cases being dismissed on the grounds that a traffic code ordinance was not properly amended to keep the ordinance provisions consistent with corresponding provisions of state law, as statutorily required.

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## TOWNSHIP ORDINANCES (EXCERPT)

### Act 246 of 1945

#### **MCL 41.181 Adoption of ordinances by township board.**

Sec. 1. (1) The township board of a township, at a regular or special meeting by a majority of the members elect of the township board, may adopt ordinances regulating the public health, safety, and general welfare of persons and property, including, but not limited to ordinances concerning fire protection, licensing or use of bicycles, traffic, parking of vehicles, sidewalk maintenance and repairs, the licensing of business establishments, the licensing and regulating of public amusements, and the regulation or prohibition of public nudity, and may provide sanctions for the violation of the ordinances. The township shall enforce the ordinances and may employ and establish a police department with full power to enforce township ordinances and state laws. If state laws are to be enforced, a township shall have a law enforcement unit or may by resolution appropriate funds and call upon the sheriff of the county in which the township is located, the department of state police, or another law enforcement agency to provide special police protection for the township. The sheriff, department of state police, or other local law enforcement agency shall, if called upon, provide special police protection for the township and enforce local township ordinances to the extent that township funds are appropriated for the enforcement. Special township deputies appointed by the sheriff shall be under the jurisdiction of and solely responsible to the sheriff. Ordinances regulating traffic and parking of vehicles and bicycles shall not contravene the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(2) Ordinances enacted may apply to streets, roads, highways, or portions of the township determined by the township board or may be limited to specified platted lands within the township, and with respect to these lands shall be valid and enforceable whether the roads and streets have been dedicated to public use or not. Township boards of townships enacting ordinances under this section may accept contributions from duly constituted representatives of the platted lands benefited by the ordinances to defray administrative and enforcement costs incident to the enactment of ordinances.

(3) A township may adopt a provision of any state statute for which the maximum period of imprisonment is 93 days or the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, by reference in an adopting ordinance, which statute shall be clearly identified in the adopting ordinance. A township shall not enforce any provision adopted by reference for which the maximum period of imprisonment is greater than 93 days.

(4) As used in this section, “public nudity” means knowingly or intentionally displaying in a public place, or for payment or promise of payment by any person including, but not limited to, payment or promise of payment of an admission fee, any individual’s genitals or anus with less than a fully opaque covering, or a female individual’s breast with less than a fully opaque covering of the nipple and areola. Public nudity does not include any of the following:

- (a) A woman’s breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.
- (b) Material as defined in section 2 of 1984 PA 343, MCL 752.362.
- (c) Sexually explicit visual material as defined in section 3 of 1978 PA 33, MCL 722.673.

**History:** 1945, Act 246, Eff. Sept. 6, 1945;—CL 1948, 41.181;—Am. 1952, Act 224, Eff. Sept. 18, 1952;—Am. 1953, Act 87, Eff. Oct. 2, 1953;—Am. 1955, 1st Ex. Sess., Act 5, Imd. Eff. Nov. 10, 1955;—Am. 1959, Act 55, Imd. Eff. June 2, 1959;—Am. 1961, Act 18, Eff. Sept. 8, 1961;—Am. 1963, Act 39, Eff. Sept. 6, 1963;—Am. 1968, Act 300, Imd. Eff. July 1, 1968;—Am. 1969, Act 17, Imd. Eff. June 5, 1969;—Am. 1974, Act 375, Imd. Eff. Dec. 23, 1974;—Am. 1978, Act 590, Imd. Eff. Jan. 4, 1979;—Am. 1989, Act 78, Imd. Eff. June 20, 1989;—Am. 1991, Act 177, Eff. Mar. 30, 1992;—Am. 1994, Act 14, Eff. May 1, 1994;—Am. 1994, Act 315, Imd. Eff. July 21, 1994;—Am. 1999, Act 253, Imd. Eff. Dec. 28, 1999;—Am. 1999, Act 257, Eff. Dec. 29, 1999.

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# MTA Sample Ordinances: General Law Townships

*MTA Legal Counsel have prepared two sample ordinances for general law townships to consider. Both versions are only samples, and each township board should carefully consider which provisions will be most effective and will most accurately reflect the needs of their community. The purpose of these sample ordinances is to provide a suggested guideline for the types of items that should be included within an ordinance. Certainly, no sample ordinance should be used unless, after careful review, it is the professional judgment of your legal counsel that using the sample will accomplish the particular objectives and intentions of your township, and in the case of traffic enforcement ordinances, after coordination with the law enforcement agency that will enforce the ordinance. Although these sample ordinances are the result of much thought and effort, neither the author nor the Michigan Townships Association assumes any responsibility for the results of using these samples word-for-word in individual cases.*

## **Basic Model Traffic Code Ordinance (No. 1)**

The first sample ordinance, designated “No. 1” is intended to serve as a “basic” ordinance for a general law township. This ordinance is intended for general law townships desiring a comprehensive traffic code ordinance, but without including provisions from NREPA pertaining specifically to off-road vehicles and snowmobiles. This ordinance therefore adopts by reference the new UTC, and the provisions of the MVC that MTA Legal Counsel believe are appropriately included in a comprehensive “basic” traffic code ordinance. Since the frequently-cited offense of “No Insurance” is not included in the new UTC, and exists statutorily in the Michigan Insurance Code, not the MVC, this “basic” ordinance also adopts by reference the relevant provision from the Insurance Code.

## **Basic Model PLUS Traffic Code Ordinance (No. 2)**

Sample ordinance “No. 2” includes the same content as the “basic” ordinance for a general law township (No. 1) plus the provisions from NREPA specifically pertaining to off-road vehicles and snowmobiles, and a provision from the Liquor Control Act pertaining to minors in possession of alcoholic beverages, commonly known as “minor in possession” or simply MIP. Please note that this MIP offense is not restricted to vehicular situations. However, this offense does often arise in a vehicular context as well as in non-vehicular situations, and perhaps for that reason seems to be commonly included in most existing township traffic code ordinances. Accordingly, townships should give some thought to whether the MIP provisions should be included in the “basic” sample ordinance (No. 1).

# MTA Basic Model Traffic Code Ordinance (No. 1, General Law)

TOWNSHIP OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, STATE OF MICHIGAN

\_\_\_\_\_ TOWNSHIP ORDINANCE NO. \_\_\_\_\_

Adopted: \_\_\_\_\_

Effective: \_\_\_\_\_

## \_\_\_\_\_ TOWNSHIP TRAFFIC CODE ORDINANCE

An Ordinance enacted pursuant to MCL 257.951-257.955 and MCL 41.181 to adopt by reference the Uniform Traffic Code for Michigan Cities, Townships and Villages as promulgated by the Director of the Michigan Department of State Police pursuant to the Administrative Procedures Act of 1969, 1969 Public Act 306, as amended (MCL 24.201 et seq) and made effective October 30, 2002, and to adopt by reference certain state laws; and to repeal all ordinances or parts of ordinances in conflict herewith.

TOWNSHIP OF \_\_\_\_\_

\_\_\_\_\_ COUNTY, MICHIGAN

ORDAINS:

### SECTION I

#### TITLE

This Ordinance and the provisions of the Uniform Traffic Code and state laws adopted by reference herein shall be collectively known and may be cited as the “\_\_\_\_\_ Township Traffic Code Ordinance”.

### SECTION II

#### ADOPTION OF UNIFORM TRAFFIC CODE BY REFERENCE

The Uniform Traffic Code for Cities, Townships, and Villages as promulgated by the Director of the Michigan Department of State Police pursuant to the Administrative Procedures Act of 1969, 1969 Public Act 306, as amended (MCL 24.201 et seq) and made effective October 30, 2002 is hereby adopted by reference. All references in said Uniform Traffic Code to a “governmental unit” shall mean the Township of \_\_\_\_\_.

**SECTION III**

**ADOPTION OF PROVISIONS OF MICHIGAN VEHICLE CODE BY REFERENCE**

The following provisions of the Michigan Vehicle Code, 1949 Public Act 300, as amended (MCL 257.1 et seq.) are hereby adopted by reference:

- A. Chapter I (Words and Phrases Defined): MCL 257.1-257.82
- B. Chapter II (Administration, Registration): MCL 257.223, 257.225, 257.228, 257.243, 257.244, 257.255, 257.256.
- C. Chapter III (Operator’s and Chauffeur’s License): MCL 257.301, 257.310e, 257.311, 257.312, 257.312a, 257.324, 257.325, 257.326, 257.328.
- D. Chapter VI (Obedience to and Effect of Traffic Laws): MCL 257.601-257.601b, 257.602-257.606, 257.611-257.616, 257.617a-257.622, 257.624a-257.624b, 257.625 (except felony provisions), 257.625a, 257.625m, 257.626-257.626b, 257.627-257.627b, 257.628, 257.629b, 257.631-257.632, 257.634-257.645, 257.647-257.655, 257.656-257.662, 257.667-257.675d, 257.676-257.682b, 257.683-257.710e, 257.716-257.724.
- E. Chapter VIII (License Offenses): MCL 257.904-257.904a, 257.904e, 257.905.

**SECTION IV**

**ADOPTION OF OTHER STATE LAWS BY REFERENCE**

The following provisions of state law are hereby adopted by reference:

- A. Section 3102 of the Michigan Insurance Code of 1956, 1956 Public Act 218, as amended, pertaining to required insurance (MCL 500.3102).

**SECTION V**

**PENALTIES**

The penalties provided by the Uniform Traffic Code and the provisions of the state laws hereinabove adopted by reference are hereby adopted as the penalties for violations of the corresponding provisions of this Ordinance.

**SECTION VI**

**SEVERABILITY**

If a court of competent jurisdiction declares any provision of this Ordinance or the Uniform Traffic Code or a statutory provision adopted by reference herein to be unenforceable, in whole or in part, such declaration shall only affect the provision held to be unenforceable and shall not affect any other part or provision; provided that if a court of competent jurisdiction declares a penalty provision to exceed the authority of the Township, the penalty shall be construed as the maximum penalty that is determined by the court to be within the authority of the Township to impose.

**SECTION VII**

**REPEAL OF CONFLICTING PROVISIONS AND EFFECTIVE DATE**

This ordinance shall take effect 30 days after publication as required by law. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this ordinance are hereby repealed; provided that any violation charged before the effective date of this Ordinance under an Ordinance provision repealed by this Ordinance shall continue under the Ordinance provision then in effect.

\_\_\_\_\_  
Clerk, Township of \_\_\_\_\_

*MTA Legal Counsel have prepared this sample ordinance for general law townships to carefully consider which provisions will be most effective and will most accurately reflect the needs of their community. The purpose of this sample ordinance is to provide a suggested guideline for the types of items that should be included within an ordinance. Certainly, no sample ordinance should be used unless, after careful review, it is the professional judgment of your legal counsel that using the sample will accomplish the particular objectives and intentions of your township, and in the case of traffic enforcement ordinances, after coordination with the law enforcement agency that will enforce the ordinance. Although these sample ordinances are the result of much thought and effort, neither the author nor the Michigan Townships Association assumes any responsibility for the results of using these samples word-for-word in individual cases.*

# MTA Basic PLUS Model Traffic Code Ordinance (No. 2, General Law)

TOWNSHIP OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, STATE OF MICHIGAN

\_\_\_\_\_ TOWNSHIP ORDINANCE NO. \_\_\_\_\_

Adopted: \_\_\_\_\_

Effective: \_\_\_\_\_

## \_\_\_\_\_ TOWNSHIP TRAFFIC CODE ORDINANCE

An Ordinance enacted pursuant to MCL 257.951-257.955 and MCL 41.181 to adopt by reference the Uniform Traffic Code for Michigan Cities, Townships and Villages as promulgated by the Director of the Michigan Department of State Police pursuant to the Administrative Procedures Act of 1969, 1969 Public Act 306, as amended (MCL 24.201 et seq) and made effective October 30, 2002, and to adopt by reference certain state laws; and to repeal all ordinances or parts of ordinances in conflict herewith.

TOWNSHIP OF \_\_\_\_\_

\_\_\_\_\_ COUNTY, MICHIGAN

ORDAINS:

### SECTION I

#### TITLE

This Ordinance and the provisions of the Uniform Traffic Code and state laws adopted by reference herein shall be collectively known and may be cited as the “\_\_\_\_\_ Township Traffic Code Ordinance”.

### SECTION II

#### ADOPTION OF UNIFORM TRAFFIC CODE BY REFERENCE

The Uniform Traffic Code for Cities, Townships, and Villages as promulgated by the Director of the Michigan Department of State Police pursuant to the Administrative Procedures Act of 1969, 1969 Public Act 306, as amended (MCL 24.201 et seq) and made effective October 30, 2002 is hereby adopted by reference. All references in said Uniform Traffic Code to a “governmental unit” shall mean the Township of \_\_\_\_\_.

**SECTION III**

**ADOPTION OF PROVISIONS OF MICHIGAN VEHICLE CODE BY REFERENCE**

The following provisions of the Michigan Vehicle Code, 1949 Public Act 300, as amended (MCL 257.1 et seq.) are hereby adopted by reference:

- A. Chapter I (Words and Phrases Defined): MCL 257.1-257.82
- B. Chapter II (Administration, Registration): MCL 257.223, 257.225, 257.228, 257.243, 257.244, 257.255, 257.256.
- C. Chapter III (Operator's and Chauffeur's License): MCL 257.310e, 257.311, 257.312, 257.312a, 257.324, 257.325, 257.326, 257.328.
- D. Chapter VI (Obedience to and Effect of Traffic Laws): MCL 257.601-257.601b, 257.602-257.606, 257.611-257.616, 257.617a-257.622, 257.624a-257.624b, 257.625 (except felony provisions), 257.625a, 257.625m, 257.626-257.626b, 257.627-257.627b, 257.629b, 257.631-257.632, 257.634-257.645, 257.647-257.655, 257.656-257.662, 257.667-257.675d, 257.676-257.682b, 257.683-257.710e, 257.716-257.724.
- E. Chapter VIII (License Offenses): MCL 257.904-257.904a, 257.904e, 257.905.

**SECTION IV**

**ADOPTION OF OTHER STATE LAWS BY REFERENCE**

The following provisions of state law are hereby adopted by reference:

- A. Section 3102 of the Michigan Insurance Code of 1956, 1956 Public Act 218, as amended, pertaining to required insurance (MCL 500.3102).
- B. Subchapter 6 of Part 811 of the Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended, pertaining to off-road vehicles (MCL 324.81101-324.81147).
- C. Part 821 of the Natural Resources and Environmental Protection Act, 1994 Public Act 451, as amended, pertaining to snowmobiles (MCL 324.82101-324.82158).
- D. Section 703 of the Michigan Liquor Control Act, 1998 Public Act 58, as amended, pertaining to minors and alcoholic liquor (MCL 436.1703).

**SECTION V**

**PENALTIES**

The penalties provided by the Uniform Traffic Code and the provisions of the state laws hereinabove adopted by reference are hereby adopted as the penalties for violations of the corresponding provisions of this Ordinance.

**SECTION VI**

**SEVERABILITY**

If a court of competent jurisdiction declares any provision of this Ordinance or the Uniform Traffic Code or a statutory provision adopted by reference herein to be unenforceable, in whole or in part, such declaration shall only affect the provision held to be unenforceable and shall not affect any other part or provision; provided that if a court of competent jurisdiction declares a penalty provision to exceed the authority of the Township, the penalty shall be construed as the maximum penalty that is determined by the court to be within the authority of the Township to impose.

**SECTION VII**

**REPEAL OF CONFLICTING PROVISIONS AND EFFECTIVE DATE**

This ordinance shall take effect 30 days after publication as required by law. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this ordinance are hereby repealed; provided that any violation charged before the effective date of this Ordinance under an Ordinance provision repealed by this Ordinance shall continue under the Ordinance provision then in effect.

\_\_\_\_\_  
Clerk, Township of \_\_\_\_\_

*MTA Legal Counsel have prepared this sample ordinance for general law townships to carefully consider which provisions will be most effective and will most accurately reflect the needs of their community. The purpose of this sample ordinance is to provide a suggested guideline for the types of items that should be included within an ordinance. Certainly, no sample ordinance should be used unless, after careful review, it is the professional judgment of your legal counsel that using the sample will accomplish the particular objectives and intentions of your township, and in the case of traffic enforcement ordinances, after coordination with the law enforcement agency that will enforce the ordinance. Although these sample ordinances are the result of much thought and effort, neither the author nor the Michigan Townships Association assumes any responsibility for the results of using these samples word-for-word in individual cases.*

# **CHECKLIST OF STEPS FOR ENACTMENT OF NONZONING ORDINANCE (General Law Township)**

- \_\_\_1. Determine whether Township has authority to enact ordinance regarding specific subject matter. (MCL 41.181)
  
- \_\_\_2. ADOPT ORDINANCE by motion approved by majority of the members elect of the Township Board, on roll call vote, at any regular meeting or proper special meeting. (minutes of meeting must reflect decision and vote). (MCL 15.269)
  
- \_\_\_3. PUBLISH complete ordinance, or proper summary of ordinance, in newspaper circulating in Township within 30 days after adoption. (MCL 41.184(3))
  - A. Each section of ordinance must be preceded by “catch line”.
  
  - B. If summary of ordinance is published:
    - 1) It may be prepared by the person who drafted the ordinance or by the Township Board (or attorney).
    - 2) It must be written in clear and non-technical language.
    - 3) Each section must be preceded by a “catch line”.
    - 4) It must designate the location in the Township where a true copy of the complete ordinance can be inspected or obtained.
  
- \_\_\_4. FILE AFFIDAVIT OF PUBLICATION from newspaper in Township ordinance records. (MCL 41.185)
  
- \_\_\_5. FILE ATTESTED COPY OF COMPLETE ORDINANCE WITH COUNTY CLERK within one week after publication (not required if Township office is open to the public during regular hours on each business day).
  
- \_\_\_6. RECORD COMPLETE ORDINANCE in Township book of ordinances within one week after publication, with Certificate recording date of adoption of ordinance, names of Board members voting thereon, how each member voted, date of publication and name of newspaper, and (where applicable) date of filing of ordinance with County Clerk.
  
- \_\_\_7. DISTRIBUTE copies of new ordinance to appropriate Township officials.

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