

# ORIGINAL

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## ORDINANCE NO. 114

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, AMENDING SECTIONS 4, 5 AND 7 OF ORDINANCE NO. 93, ADDING AN AFFIRMATIVE DEFENSE TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS, AND ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS, PROVIDING A SEVERABILITY CLAUSE AND A SAVINGS CLAUSE, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the 1994 state legislature passed the Omnibus Drunk Driving Act which provided enhanced penalties for the crimes of Drinking While Under the Influence of Intoxicating Liquor or Drug and for being in Actual Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor or Drug, and

WHEREAS, the 1994 legislature has also determined that persons charged with the crime of Driving While Under the Influence of Intoxicating Liquor or Drug, and/or Actual Physical Control of a Motor Vehicle, should be given the opportunity to assert an affirmative defense to such charges, and

WHEREAS, the City Council adopted the Woodinville Traffic Ordinance No. 93, Sections 4, 5 and 7 of Ordinance No. 93, adopting the Washington Model Traffic Ordinance, but provided its own definition of the crimes of Driving While Under the Influence of Intoxicating Liquor or Drug and for being in Actual Physical Control of a Motor Vehicle, and

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WHEREAS, the City desires to add a severability clause to Sections 4 and 5 of Ordinance No. 93 and add the affirmative defenses to these sections, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON,  
DO ORDAIN AS FOLLOWS:

Section 1. Section 4 of Ordinance No. 93, is hereby amended by adding new subsections E and F to read as follows:

Section 4. Driving While Under the Influence of Intoxicating Liquor or Drug--What Constitutes.

\* \* \* \*

E. It is an affirmative defense to a violation of subsections 4(A) and (B) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

F. Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsections 4(A) and (B) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsections 4(C) and (D) of this section.

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Section 2. Section 5 of Ordinance No. 93 is hereby amended by adding new subsections E and F to read as follows:

Section 5. Actual Physical Control of Motor Vehicle While Under Influence of Intoxicating Liquor or Drug--What Constitutes--Defenses.

\* \* \* \*

E. It is an affirmative defense to a violation of subsections 5(A) and (B) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of a motor vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in actual physical control of a motor vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

F. Analyses of blood or breath samples obtained more than two hours after the alleged actual physical control of a motor vehicle may be used as evidence that within two hours of the alleged actual physical control of a motor vehicle, a person had 0.08 grams or more of alcohol per two hundred ten liters of breath or 0.08 percent or more of alcohol in the person's blood, pursuant to subsections 5(A) and (B) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquors or any drug pursuant to subsections 5(C) and (D) of this section.

Section 3. Section 7 of Ordinance No. 93 is hereby amended to read as follows:

Section 7. Penalty for Violation of Section 4 or Section 5 of Woodinville Traffic Ordinance. The penalties for violating Section 4 or Section 5 of this ordinance are the same penalties as set forth in the 1994 Session Laws, Chapter 275, and codified at RCW 46.61.5051-.5057, 46.61.5151 and 46.61.5152 for a violation of RCW 46.61.502 or RCW 46.61.504. Therefore, such penalties as established by Chapter 275, Sections 4-9, 10, 14, 32, 39 and 40

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of the 1994 Session Laws, and codified at RCW 46.61.5051-.5056, 46.61.5151 and 46.61.5152, including any future additions to, and amendments and repeals thereof, are hereby specifically adopted by reference as if set forth in full.

Section 4. Savings. The amendment of Ordinance No. 93 by this ordinance as provided shall not affect the prosecution for any violation of any provision of said ordinance prior to the effective date of this ordinance.

Section 5. Severability. The provisions of this ordinance and Sections 4 and 5 of Ordinance No. 93 are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, Ordinance No. 93 or the validity of its application to other persons or circumstances. In the event that a court should declare void any provisions of this ordinance or Ordinance No. 93, Sections 4 and 5, affected by this ordinance because the alcohol concentration is 0.08 rather than 0.10, then an alcohol concentration of 0.10 rather than 0.08 shall be in full force and effect as though "0.10" appeared everywhere "0.08" appears in this ordinance and Ordinance No. 93, and prosecutions shall be made and shall continue thereunder as if the alcohol concentration was 0.10.

In the event that a court should declare void any portion or any application of the second sentence of Chapter 275, Laws of 1994, Section 4, paragraph (1)(c), then that sentence shall be deemed severed and not effective, and the remainder of this ordinance, including the remainder of Chapter 275, Laws of 1994, Section 4, paragraph (1)(c), shall continue in full force and effect as if the second sentence had never been enacted, and the court shall in no case

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under this sentence suspend any part of any period of suspension of a person's license, permit or privilege to drive.

Section 6. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

PASSED by the City Council of the City of Woodinville this 13<sup>th</sup> day of

March, 1995.

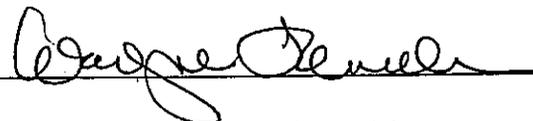
APPROVED:

  
MAYOR, LUCY DEYOUNG

ATTEST/AUTHENTICATED:

  
CITY CLERK/TREASURER, JAMES KATICA

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY 

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. \_\_\_\_\_