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ORDINANCE NO. 146

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, AMENDING SECTIONS 4, 5, 6 and 7 OF ORDINANCE NO. 93, ADOPTING THE STATE LIMIT OF 0.10 FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS AND THE 1995 STATE LEGISLATURE'S PENALTIES FOR DRIVING UNDER INFLUENCE OF INTOXICANTS AND ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER INFLUENCE OF INTOXICANTS, ADOPTING A NEW CRIME OF A MINOR DRIVING WITH A CERTAIN BREATH OR BLOOD ALCOHOL AND DESIGNATING A PENALTY, REPEALING SECTIONS 1, 2 AND 3 OF ORDINANCE NO. 114, PROVIDING A SAVINGS CLAUSE, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in December of 1995, the State Supreme Court held in Seattle v. Williams that a City could not adopt a 0.08 breath standard for the crime of Driving While Under the Influence of Intoxicants (DUI) when the State standard is a 0.10, and

WHEREAS, the City Council of the City of Woodinville desires to be in conformance with said decision by amending the sections of Ordinance Nos. 93 and 114 which reference the 0.08 standard, and

WHEREAS, the 1995 state legislature repealed sections of the 1994 Omnibus Drunk Driving Act which provided certain penalties for the crimes of DUI and Actual Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor or Drug, and

WHEREAS, the 1995 legislature added a new section to Chapter 46.61 RCW to establish new penalties for said crimes, and also to create a new crime regarding a minor driving with 0.02 breath or blood alcohol concentration, and

WHEREAS, the City Council adopted Ordinance No. 114, amending Woodinville Traffic Ordinance No. 93, in order to adopt the penalties established by the 1994 Omnibus Drunk Driving Act, its repeals, additions or amendments thereto, and

WHEREAS, the City Council desires to add the new penalty provisions established by the 1995 legislature to its Traffic Ordinance for clarity and ease of reference, to adopt the new crime of a minor driving with a breath or blood alcohol concentration of 0.02, and to repeal Sections 1, 2 and 3 of Ordinance No. 114, NOW, THEREFORE,

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

Section 1. Sections 4 and 5 of Ordinance No. 93, as amended by Sections 1 and 2 of Ordinance No. 114, are hereby amended to read as follows:

Section 4. Driving While Under the Influence of Intoxicating Liquor or Drug--What Constitutes. (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within the City of Woodinville:

- (a) And the person has, within two hours after driving, an alcohol concentration of 0.10 or higher as shown by analysis of the person's breath or blood made under Section 6 of this ordinance; or
- (b) While the person is under the influence of or affected by intoxicating liquor or any drug; or
- (c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1)(a) 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 0.10 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.

(4) 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 0.10 or more in violation of subsections (1)(a) 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 subsection (1)(b) or (c) of this section.

(5) A violation of this section is a gross misdemeanor.

Section 5. Actual Physical Control of Vehicle While Under Influence of Intoxicating Liquor or Drug--What Constitutes--Defenses. (1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within the City of Woodinville:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.10 or higher as shown by analysis of the person's breath or blood made under Section 6 of this ordinance; or

(b) While the person is under the influence of or affected by intoxicating liquor and any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3) It is an affirmative defense to a violation of subsection (1)(a) 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 the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.10 or more within two hours after being in such control. 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.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.10 or more or 0.10 percent or more in violation of subsection (1)(a) 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 in violation of subsection (1)(b) or (c) of this section.

(5) A violation of this section is a gross misdemeanor.

Section 2. Section 6 of Ordinance No. 93 is hereby amended to read as follows:

Section 6. Persons Under Influence of Intoxicating Liquor or Drug--Evidence--Tests--Information Concerning Tests.

A. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed within the City by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol

concentration is less than 0.10, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

B. The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of intoxicating liquor or any drug.

C. Analysis of the person's blood or breath to be considered valid under the provisions of this section or Sections 4 or 5 of this ordinance shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. Pursuant to RCW 46.61.506, the state toxicologist is directed by the State to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

D. When a blood test is administered under the provisions of RCW 46.20.308, and any amendments, repeals or additions thereto, the withdrawal of blood for the purpose of determining its alcoholic content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

E. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

F. Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

Section 3. Section 7 of Ordinance No. 93, as amended by Section 3 of Ordinance

No. 114, 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 for a violation of RCW 46.61.502 or RCW 46.61.504. Therefore, the penalties for RCW 46.61.502 and RCW 46.61.504, as established by Chapter 332, Section 5 of the 1995 Session Laws, and codified at RCW 46.61.5055 and RCW 46.61.5056, including any future additions to, amendments and repeals thereof, are hereby specifically adopted by reference as if set forth in full.

Section 4. A new subsection 32 is hereby added to Section 3 of Ordinance No.

93 to read as follows:

Section 3. State Statutes Adopted by Reference. The following sections of the Revised Code of Washington (RCW), including any future additions to, amendments and repeals thereof, are hereby adopted by reference:

* * * *

32. The Laws of 1995, Chapter 332, Section 2,
codified at RCW 46.61.503.

Section 5. Sections 1, 2 and 3 of Ordinance No. 114 are hereby repealed.

Section 6. Savings. The amendment of Ordinance No. 93, and the repeal of Sections 1, 2 and 3 of Ordinance No. 114 by this ordinance, shall not affect the prosecution for any violation of any provision of said ordinance prior to the effective date of this ordinance.

Section 7. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

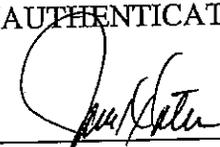
Section 8. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

PASSED by the City Council of the City of Woodinville this 28th day of March, 1996.

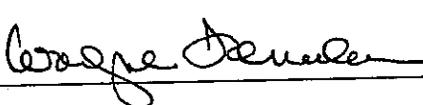
APPROVED:


MAYOR, ROBERT R. MILLER

ATTEST/AUTHENTICATED:


CITY CLERK/TREASURER, JAMES KATICA

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 

FILED WITH THE CITY CLERK: March 28, 1996
PASSED BY THE CITY COUNCIL: March 28, 1996
PUBLISHED: April 1, 1996
EFFECTIVE DATE: April 6, 1996
ORDINANCE NO. 146