

ORDINANCE No.

113550

Law Department

COUNCIL BILL No.

106220

The City of

AN ORDINANCE relating to the Traffic Code, amending Section 11.56.020 of the Seattle Municipal Code to conform to State law providing an additional method of defining the crimes of driving while intoxicated and physical control.

July 28, 1987

Do Pass

Honorable President:

Your Committee on

Public Safety

to which was referred the within Council Bill, report that we have considered the same and

COMPTROLLER FILE No.

Introduced: JUN 29 1987	By: City Attorney
Referred: JUN 29 1987	To: Public Safety
Referred:	To:
Referred:	To:
Reported: AUG 10 1987	Second Reading: AUG 10 1987
Third Reading: AUG 10 1987	Signed: AUG 10 1987
Presented to Mayor: AUG 11 1987	Approved: AUG 20 1987
Returned to City Clerk: AUG 20 1987	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained: OK

RECEIVED AUG 11 1987

Do Pass

106220

H. Brown

Department

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

President:

Committee on

as referred the within Council Bill No.

we have considered the same and respectfully recommend that the same:

DB 85

Committee Chair

DBW:sr
6/22/87
IC:ORD5.

ORDINANCE 113550

AN ORDINANCE relating to the Traffic Code, amending Section 11.56.020 of the Seattle Municipal Code to conform to State law providing an additional method of defining the crimes of driving while intoxicated and physical control.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 11.56.020 of the Seattle Municipal Code (Section 2 of Ordinance 108200 as last amended by Ordinance 112959) is amended as follows:

11.56.020. Persons under the influence of intoxicating liquor or any drug - Chemical analysis - Tests, evidence and penalties.

A. Driving While Intoxicated.

1. A person is guilty of driving while under the influence of intoxicating liquor or any drug if ((he/she)) the person drives a vehicle within the City while:

a. ((He/she)) The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of ((his/her)) the person's breath ((, blood, or other bodily substance)) made under the provisions of this section ; or

b. The person has 0.10 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood made under the provisions of this section; or

((b)). c. ((He/she)) The person is under the influence of or affected by intoxicating liquor or any drug; or

((c)). d. ((He/she)) 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 subsection 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 subsection.

1 B. Physical Control.

2 1. A person is guilty of being in actual physical
3 control of a motor vehicle while under the influence of
4 intoxicating liquor or any drug if ((he/she)) the person has
5 actual physical control of a vehicle within the City while:

6 a. ((He/she)) The person has 0.10 grams or more of
7 alcohol per two hundred ten liters of breath, as
8 shown by analysis of ((his/her)) the person's breath
9 ((or blood, or other bodily substance)) made under the
10 provisions of this section; or

11 b. The person has 0.10 percent or more by weight of
12 alcohol in the person's blood as shown by analysis of
13 the person's blood made under the provisions of this
14 section; or

15 ((b)) c. ((He/she)) The person is under the influence of
16 or affected by intoxicating liquor or any drug; or

17 ((c)) d. ((He/she)) The person is under the combined
18 influence of or affected by intoxicating liquor and
19 any drug.

20 2. The fact that any person charged with a violation of
21 this subsection is or has been entitled to use such drug under
22 the laws of this state shall not constitute a defense against
23 any charge of violating this subsection. No person may be
24 convicted under this subsection if, prior to being pursued by
25 a law enforcement officer, ((he/she)) the person has moved the
26 vehicle safely off the roadway.

27 C. Implied Control. Any person who operates a motor vehicle
28 within the City is deemed to have given consent, subject to
the provisions of this section, to a test or tests of his or
her breath or blood for the purpose of determining the alco-
holic content of his or her breath or blood if arrested for
any offense where, at the time of the arrest, the arresting
officer has reasonable grounds to believe the person had been
driving or was in actual physical control of a motor vehicle
while under the influence of intoxicating liquor. The test or

1 tests of breath shall be administered at the direction of a
2 law enforcement officer having reasonable grounds to believe
3 the person to have been driving or in actual physical control
4 of a motor vehicle within the City while under the influence
5 of an intoxicating liquor. However, in those instances where:
6 (1) The person is incapable due to physical injury, physical
7 incapacity, or other physical limitation, of providing a
8 breath sample; or (2) as a result of a traffic accident the
9 person is being treated for a medical condition in a hospital,
10 clinic, doctor's office, or other similar facility in which a
11 breath testing instrument is not present, a blood test shall
12 be administered by a qualified person as provided in RCW
13 46.61.506(4).

14 The officer shall inform the person of ((his/her)) the
15 person's right to refuse the breath or blood test, and of
16 ((his/her)) the person's right to have additional tests
17 administered by any qualified person of ((his/her)) the
18 person's choosing as provided elsewhere in this section. The
19 officer shall warn the driver, that ((his/her)) the driver's
20 privilege to drive will be revoked or denied if ((he/she)) the
21 driver refuses to submit to the test. The officer shall warn
22 the driver that ((his/her)) the driver's refusal to take the
23 test may be used in a criminal trial. Except as provided in
24 this section, the test administered shall be of the breath
25 only. If an individual is unconscious or is under arrest for
26 the crime of vehicular homicide as provided in RCW 46.61.520,
27 or vehicular assault as provided in RCW 46.61.522, or if an
28 individual is under arrest for the crime of driving while
under the influence of intoxicating liquor or drugs in which
another person has been injured and there is a reasonable

1 likelihood that such other person may die as a result of
2 injuries sustained in the accident, a breath or blood test may
3 be administered without the consent of the individual so
4 arrested.

5 D. Person Incapable of Refusal. Any person who is dead,
6 unconscious, or who is otherwise in a condition rendering
7 ((him/her)) the person incapable of refusal, shall be deemed
8 not to have withdrawn the consent provided by subsection C of
9 this section and the test or tests may be administered,
10 subject to the provisions hereof, and the person shall be
11 deemed to have received the warnings required under subsection
12 C of this section.

13 E. Refusal to Submit to Test. If, following his/her arrest
14 and receipt of warnings under subsection C of this section,
15 the person arrested refuses upon the request of a law enforce-
16 ment officer to submit to a test of his/her breath or blood,
17 no test shall be given except as authorized under subsection C
18 or D or this section. The law enforcement officer shall
19 forward to the Department of Licensing a sworn report that
20 ((he/she)) the officer has reasonable grounds to believe that
21 the arrested person had been driving or was in actual physical
22 control of a motor vehicle within the City under the influence
23 of intoxicating liquor and that the person had refused to
24 submit to the test upon the request of the law enforcement
25 officer after being informed that such refusal would result in
26 the revocation or denial of his/her privilege to drive.

27 F. Admissibility of Evidence. Upon the trial of any civil or
28 criminal action or proceeding arising out of acts alleged to
have been committed by any person while driving or in actual
physical control of a vehicle while under the influence of

1 intoxicating liquor or any drug, if the amount of alcohol in
2 the person's blood or breath at the time alleged as shown by
3 analysis of ((his/her)) the person's blood((7)) or breath ((or
4 other bodily substance)) is less than 0.10 percent by weight
5 of alcohol in the person's blood or 0.10 grams of alcohol per
6 two hundred ten liters of the person's breath, it is evidence
7 that may be considered with other competent evidence in
8 determining whether the person was under the influence of
9 intoxicating liquor or any drug. The breath analysis shall be
10 based upon grams of alcohol per two hundred ten liters of
11 breath. The foregoing provisions of this subsection shall not
12 be construed as limiting the introduction of any other
13 competent evidence bearing upon the question whether the
14 person was under the influence of intoxicating liquor or any
15 drug.

16 G. Methods of Analysis. Analysis of the person's blood or
17 breath to be considered valid under the provisions of this
18 section shall have been performed according to methods
19 approved by the State Toxicologist and by an individual
20 possessing a valid permit issued by the State Toxicologist for
21 this purpose.

22 H. Blood Tests. When a blood test is administered in accor-
23 dance with this section, the withdrawal of blood for the
24 purpose of determining its alcoholic content may be performed
25 only by a physician, a registered nurse, or a qualified
26 technician. This limitation shall not apply to the taking of
27 breath specimens.

28 I. Right to Additional Tests. The person tested may have a
physician or a qualified technician, chemist, registered nurse
or other qualified person of his or her own choosing administer

1 one or more tests in addition to any administered at the
2 direction of a law enforcement officer. The failure or
3 inability to obtain an additional test by a person shall not
4 preclude the admission of evidence relating to the test or
5 tests taken at the question of a law enforcement officer.

6 J. Right to Information. Upon the request of the person who
7 shall submit to a test or tests at the request of a law
8 enforcement officer, full information concerning this test or
9 tests shall be made available to him/her or his/her attorney.

10 K. Penalty.

11 1. Every person who is convicted of a violation of the
12 provisions of this section shall be punished by imprisonment
13 for not less than twenty-four consecutive hours nor more than
14 one year, and by a fine or not less than Two Hundred and
15 Fifty Dollars (\$250.00) and not more than One Thousand Dollars
16 (\$1,000.00). Unless the judge finds the person to be
17 indigent, Two Hundred Fifty Dollars (\$250.00) of the fine
18 shall not be suspended or deferred. The person shall, in
19 addition, be required to complete a course at an alcohol
20 information school approved by the Department of Social and
21 Health Services. If, after completing an alcohol evaluation
22 at the alcohol information school, the convicted person is
23 found to have a serious alcohol problem, the alcohol informa-
24 tion school may recommend more intensive alcoholism treatment
25 in a program approved by the Washington State Department of
26 Social and Health Services. In the alternative, the court may
27 bypass alcohol information school if the court determines that
28 more intensive alcoholism treatment in a program approved by
the Department of Social and Health Services is appropriate.
Twenty-four consecutive hours of the jail sentence shall not

1 be suspended or deferred unless the judge finds that the
2 imposition of the jail sentence will pose a risk to the
3 defendant's physical or mental well-being. Whenever the
4 mandatory jail sentence is suspended or deferred, the judge
5 must state, in writing, the reason for granting the suspension
6 or deferral and the facts upon which the suspension or
7 deferral is based. The court may impose conditions of
8 probation that may include non-repetition of the offense,
9 alcohol or drug treatment, supervised probation, or other
conditions which may be appropriate.

10 2. Upon a second or subsequent conviction for a
11 violation of the provisions of this section within a five-year
12 period, a person shall be punished by imprisonment for not
13 less than seven days or more than one year and by a fine of
14 not less than Five Hundred Dollars (\$500.00) and not more than
15 Two Thousand Dollars (\$2,000.00). Unless the judge finds the
16 person to be indigent, Five Hundred Dollars (\$500.00) of that
17 fine shall not be suspended or deferred. The jail sentence
18 shall not be suspended or deferred unless the judge finds that
19 the imposition of a jail sentence will pose a risk to the
20 defendant's physical or mental well-being. Whenever the
21 mandatory jail sentence is suspended or deferred, the judge
22 must state, in writing, the reason for granting the suspension
23 or deferral and the facts upon which the suspension or
24 deferral is based. If, at the time of a second or subsequent
25 conviction, the driver is without a license or permit because
26 of a previous suspension or revocation, the minimum mandatory
27 sentence shall be ninety days in jail and a Two Hundred Dollar
28 (\$200.00) fine. The penalty so imposed shall not be suspended
or deferred. The person shall, in addition be required to

1 complete diagnostic evaluation at an alcoholism program
2 approved by the Washington State Department of Social and
3 Health Services or other diagnostic evaluation as the court
4 designates. If the person is found to have an alcohol or drug
5 problem requiring treatment, the person shall complete
6 treatment at an approved alcoholism treatment facility or
7 approved drug treatment center.

8 In addition to any non-suspendable and non-deferrable jail
9 sentence required by the preceding paragraph relating to a
10 second or subsequent conviction, the court shall sentence a
11 person to a term of imprisonment not exceeding one hundred and
12 eighty days and shall suspend but shall not defer the sentence
13 for a period exceeding one year.

14 The suspension of the sentence may be conditioned upon
15 non-repetition, alcohol or drug treatment, supervised
16 probation, or other conditions that may be appropriate. The
17 sentence may be imposed in whole or in part upon violation of
18 a condition of suspension during the suspension period.

19 L. Refusal Admissible. The refusal of a person to submit
20 to a test of the alcoholic content of ((his/her)) the person's
21 blood or breath under Seattle Municipal Code Section 11.56.020
22 C is admissible into evidence at a subsequent criminal trial.
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(To be used for all Ordinances except Emergency.)

Section 2. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 10th day of August, 1987,
and signed by me in open session in authentication of its passage this 10th day of August, 1987.

[Signature]
President of the City Council.

Approved by me this 20th day of August, 1987.

[Signature]
Mayor.

Filed by me this 20th day of August, 1987.

Attest: Norward J. Brooks
City Comptroller and City Clerk.

(SEAL)

Published _____

By Theresa Dunbar
Deputy Clerk.

THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDING . SEATTLE, WASHINGTON 98104

AREA CODE 206 TELEPHONE 625-2402

DOUGLAS N. JEWETT, CITY ATTORNEY

June 22, 1987

The Honorable Norm Rice
Chair, Public Safety Committee
Seattle City Council

Re: Proposed Ordinance Amending SMC 11.56.020
(Driving While Intoxicated)

Dear Councilman Rice:

Enclosed is a proposed ordinance adopting recent changes in the State driving while intoxicated statute. The only substantive change is the addition of a new definition of DWI: "The person has 0.10 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood."

Prior to 1986, the offense of DWI was defined as "0.10 percent or more by weight of alcohol in the person's blood." Because breath tests were used to determine a driver's blood-alcohol level, it was necessary in every case to prove that a breath test accurately measured a person's blood-alcohol level.

In 1986, the Legislature amended the law to define DWI as "0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of [the person's] breath." This eliminated the need to convert breath-alcohol test results to a corresponding blood-alcohol level.

However a problem with the new law quickly became apparent: in those few cases involving blood tests, the test results now had to be converted into a breath-alcohol reading. For example, an expert needed to testify that a .15 percent by weight of alcohol in a person's blood was equivalent to .15 grams of alcohol per two hundred ten liters of breath.

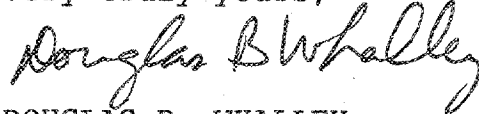
The Honorable Norm Rice
June 22, 1987
Page 2

This amendment adds a definition to use in blood-test cases.

Two other bookkeeping changes are made. First, the clumsy "he/she" references are changed to the language used by the State. Second, I have added titles to each section for clarity.

Prompt adoption of this ordinance is recommended. The State law becomes effective July 26, 1987. Although no obvious conflict arises if our amendment is not effective by then, a delay would create unnecessary problems.

Very truly yours,

A handwritten signature in cursive script that reads "Douglas B. Whalley".

DOUGLAS B. WHALLEY
Director, Criminal Division

DBW:sr
IC:MEM6.
Enclosure

C-966-X

Affidavit of Publication

STATE OF WASHINGTON
KING COUNTY—SS.

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

Ordinance No. 113550

was published on August 27, 1987

R. Spicuzza
Subscribed and sworn to before me on

August 27, 1987

Arthur C. Jones
Notary Public for the State of Washington,
residing in Seattle.

City of Seattle

ORDINANCE 113589

AN ORDINANCE relating to the Traffic Code, amending Section 11.56.020 of the Seattle Municipal Code to conform to State law providing an additional method of defining the crimes of driving while intoxicated and physical control.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 11.56.020 of the Seattle Municipal Code (Section 2 of Ordinance 108290 as last amended by Ordinance 112953) is amended as follows:

11.56.020. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUG - CHEMICAL ANALYSIS - TESTS, EVIDENCE AND PENALTIES

A. DRIVING WHILE INTOXICATED.

1. A person is guilty of driving while under the influence of intoxicating liquor or any drug if (he/she) THE PERSON drives a vehicle within the City while:

a. (He/she) THE PERSON has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of (his/her) THE PERSON'S breath (i.e. blood, or other bodily substance) made under the provisions of this section; or

b. THE PERSON HAS 0.10 PERCENT OR MORE BY WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD MADE UNDER THE PROVISIONS OF THIS SECTION; OR

(b) c. (He/she) THE PERSON is under the influence of or affected by intoxicating liquor or any drug; or

(c) d. (He/she) 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 subsection 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 subsection.

B. PHYSICAL CONTROL.

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 (he/she) THE PERSON has actual physical control of a vehicle within the City while:

a. (He/she) THE PERSON has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of (his/her) THE PERSON'S breath (i.e. blood, or other bodily substance) made under the provisions of this section; or

b. THE PERSON HAS 0.10 PERCENT OR MORE BY WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD MADE UNDER THE PROVISIONS OF THIS SECTION; OR

(b) c. (He/she) THE PERSON is under the influence of or affected by intoxicating liquor or any drug; or

(c) d. (He/she) 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 subsection 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 subsection. No person may be convicted under this subsection if, prior to being pursued by a law enforcement officer, (he/she) THE PERSON has moved the vehicle safely off the roadway.

C. IMPLIED CONTROL. Any person who operates a motor vehicle within the City is deemed to have given consent, subject to the provisions of this section, to a test or tests of his or her breath or blood for the purpose of determining the alcoholic content of his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person has been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within the City while under the influence of an intoxicating liquor. However, in those instances where: (1) The person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample; or (2) as a result of a traffic accident the person is being treated for a medical condition in a hospital, clinic, doctor's office, or other similar facility in which a breath testing instrument is not present, a blood test shall be administered by a qualified person as provided in RCW 46.61.30(4).

The officer shall inform the person of (his/her) THE PERSON'S right to refuse the breath or blood test, and of (his/her) THE PERSON'S right to have additional tests administered by any qualified person of (his/her) THE PERSON'S choice.

D. PERSON INCAPABLE OF REFUSAL. Any person who is dead, unconscious, or who is otherwise in a condition rendering (him/her) THE PERSON incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection C of this section, and the test or tests may be administered, subject to the provisions hereof, and the person shall be deemed to have received the warnings required under subsection C of this section.

E. REFUSAL TO SUBMIT TO TEST. If, following his/her arrest and receipt of warnings under subsection C of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test of his/her breath or blood, no test shall be given except as authorized under subsection C or D of this section. The law enforcement officer shall forward to the Department of Licensing a sworn report that (he/she) THE OFFICER has reasonable grounds to believe that the arrested person has been driving or was in actual physical control of a motor vehicle within the City under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the law enforcement officer after being informed that such refusal would result in the revocation or denial of his/her privilege to drive.

F. ADMISSIBILITY OF EVIDENCE. Upon the trial of any civil or criminal action proceeding arising out of acts alleged to have been committed 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 amount of alcohol in the person's blood or breath at the time alleged as shown by analysis of (his/her) THE PERSON'S blood (i.e. OR breath OR other bodily substance) is less than 0.10 PERCENT BY WEIGHT OF ALCOHOL IN THE PERSON'S BLOOD OR 0.10 grams of alcohol per two hundred ten liters of the person's breath, 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. The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

G. METHODS OF ANALYSIS. Analysis of the person's blood or breath to be considered valid under the provisions of this section 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.

H. BLOOD TESTS. When a blood test is administered in accordance with this section, 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.

I. RIGHT TO ADDITIONAL TESTS. The person tested may have a physician or a qualified technician, chemist, registered nurse or other qualified person of his or her own choosing administer one or more tests in addition to any administered at

the direction of a law enforcement officer. The failure or refusal to obtain an additional test by a person shall not preclude the admission of evidence resulting to the test or tests taken at the question of a law enforcement officer.

J. RIGHT TO INFORMATION. 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 this test or tests shall be made available to him/her or his/her attorney.

K. PENALTY.

1. Every person who is convicted of a violation of the provisions of this section shall be punished by imprisonment for not less than twenty-four consecutive hours nor more than one year, and a fine of not less than Two Hundred and Fifty Dollars (\$250.00) and not more than One Thousand Dollars (\$1,000.00). Unless the judge finds the person to be indigent, Two Hundred Fifty Dollars (\$250.00) of the fine shall not be suspended or deferred. The person shall, in addition, be required to complete a course at an alcohol information school approved by the Department of Social and Health Services. If, after completing an alcohol evaluation at the alcohol information school, the convicted person is found to have a serious alcohol problem, the alcohol information school may recommend more intensive alcoholism treatment in a program approved by the Washington State Department of Social and Health Services. In the alternative, the court may bypass alcohol information school if the court determines that more intensive alcoholism treatment in a program approved by the Department of Social and Health Services is appropriate. Twenty-four consecutive hours of the jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. The court may impose conditions of probation that may include non-repetition of the offense, alcohol or drug treatment, supervised probation, or other conditions which may be appropriate.

2. Upon a second or subsequent conviction for a violation of the provisions of this section within a five-year period, a person shall be punished by imprisonment for not less than seven days or more than one year and by a fine of not less than Five Hundred Dollars (\$500.00) and not more than Two Thousand Dollars (\$2,000.00). Unless the judge finds the person to be indigent, Five Hundred Dollars (\$500.00) of that fine shall not be suspended or deferred. The jail sentence shall not be suspended or deferred unless the judge finds that the imposition of a jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. If, at the time of a second or subsequent conviction, the driver is without a license or permit because of a previous suspension or revocation, the minimum mandatory sentence shall be ninety days in jail and a Two Hundred Dollar (\$200.00) fine. The penalty imposed shall not be suspended or deferred. The person shall, in addition, be required to complete diagnostic evaluation at an alcoholism program approved by the Washington State Department of Social and Health Services or other diagnostic evaluation as the court designates. If the person is found to have an alcohol or drug problem requiring treatment, the person shall complete treatment at an approved alcoholism treatment facility or approved drug treatment center.

In addition to any non-suspendable and non-deferrable jail sentence required by the preceding paragraph relating to a second or subsequent conviction, the court shall sentence a person to a term of imprisonment not exceeding one hundred and eighty days and shall suspend but shall not defer the sentence for a period exceeding one year.

The suspension of the sentence may be conditioned upon non-repetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of suspension during the suspension period.

L. REFUSAL ADMISSIBLE. The refusal of a person to submit to a test of the alcoholic content of (his/her) THE PERSON'S blood OR BREATH under Seattle Municipal Code Section 11.56.020 C is admissible into evidence at a subsequent criminal trial.

Section 2. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 10th day of August, 1987, and signed by me in open session in authentication of its passage this 10th day of August, 1987.

SAM SMITH,

President of the City Council