ORDINANCE No. 118105

COUNCIL BILL No. 111213

AN ORDINANCE relating to the traffic code, amending Sections 11.20.010, 11.23.400, 11.34.020, 11.56.020 and 11.58.005 of the Seattle Municipal Code.

OK

COMPTROLLER FILE No. _____

Introduced: APR 2 2 1996	By: NOLAND
Referred: APR 2 2 1996	To: PUBLIC SAFETY COMMITTEE
Referred:	To:
Referred:	To:
Reported: APR 2 9 1996	Second Reading: APR 2 9 1996
Third Reading: APR 2 9 1996	Signed: APR 2 9 1996
Presented to Mayor: APR 3 0 1996	Approved: MAY - 3 1996
Returned to City Clerk: MAY - 3 1996	Published: Full
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

over

NO

Law Department

The City

ORDERED

Honorable President:

Your Committee on _____

to which was referred the within Co
report that we have considered the

Provide Public

Full Co

Department

The City of Seattle--Legislative Department

Date Reported and Adopted

REPORT OF COMMITTEE

President:

mittee on

was referred the within Council Bill No.

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

Passed Public Safety 3-0 Yes/Law

Full Council vote 8-0

Committee Chair

RG:rg
Traffic ord
April 8, 1996
(version 8)

ORDINANCE 118105

AN ORDINANCE relating to the traffic code, amending Sections 11.20.010, 11.23.400, 11.34.020, 11.56.020 and 11.58.005 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 11.20.010 of the Seattle Municipal Code (Ordinance 108200, § 1(11.20.010), as last amended by Ordinance 116872, § 2) is further amended as follows:

11.20.010 Driver's license required -- Exception -- Penalty.

A. No person, except those expressly exempted by RCW Chapter 46.20, shall operate a motor vehicle within the City unless such person has a valid driver's license issued under the provisions of RCW Chapter 46.20.

B. A violation of this section is a misdemeanor and is a lesser included offense within the offenses described in Section 11.56.320 or Section 11.56.340. However, if a person in violation of this section provides the citing officer with an expired driver's license or other valid identifying documentation under RCW 46.20.035 at the time of the stop and is not in violation of Section 11.56.320 or Section 11.56.340, the violation of this section is an infraction and is subject to a penalty of Two Hundred Fifty Dollars ($250.00). If the person appears in person before the court or submits by mail written proof that he or she obtained a valid license after being cited, the court shall reduce the penalty to Fifty Dollars ($50.00). (RCW 46.20.021)

Section 2. Section 11.23.400 of the Seattle Municipal Code (Ordinance 108200 § 2(11.23.400), as last amended by Ordinance 112421 § 12) is further amended as follows:

11.23.400 Disabled parking -- Location -- Enforcement.

The unauthorized use of a disabled person's placard ((~~card, decal~~)) or license plate issued by the Washington State Department of Licensing under RCW 46.16.381 is a

CS 19.2

misdemeanor ((~~traffic infraction~~)). Any peace officer or parking checker finding any unauthorized use of such placard ((~~card, decal~~)) or license plate shall issue and affix a notice indicating the unauthorized uses thereof in the form and in the manner required by Section 11.31.030.

Section 3. Section 11.34.020 of the Seattle Municipal Code (Ordinance 108200 § 2(11.34.020), as last amended by Ordinance 116872 § 3) is further amended as follows:

11.34.020 Penalties for criminal offenses.

A. Any person convicted of any of the following offenses may be punished by a fine in any sum not to exceed Five Thousand Dollars ($5,000.00) or by imprisonment for a term not to exceed one (1) year, or by both such fine and imprisonment:

1. Section 11.55.340, Vehicles carrying explosives, flammable liquids and poison gas, liquefied petroleum gas (LPG) and cryogenics must stop at all railroad grade crossings;

2. Section 11.56.120, Reckless driving;

3. Section 11.56.320 B, Driving while license is suspended or revoked in the first degree;

4. Section 11.56.320 C, Driving while license is suspended or revoked in the second degree;

5. Section 11.56.340, Operation of motor vehicle prohibited while license is suspended or revoked;

6. Section 11.56.420, Hit and run (attended);

7. Section 11.56.445, Hit and run (by an unattended vehicle);

8. Section 11.56.450, Hit and run (pedestrian or person on a device propelled by human power);

9. Section 11.60.690, Transportation of liquefied petroleum gas;

10. Section 11.62.020, Flammable liquids,

combustible liquids and hazardous chemicals;

11. Section 11.62.040, Explosives;

12. Section 11.80.140 B, Certain vehicles to carry flares or other warning devices (subsection B only);

13. Section 11.80.160 E, Display of warning devices when vehicle disabled (subsection E only);

14. Section 11.84.380, Fire extinguishers;

15. Section 11.86.080, Flammable or combustible labeling;

16. Section 11.86.100, Explosive cargo labeling;

17. Section 11.34.040, with respect to aiding and abetting the foregoing criminal offenses.

B. Any person convicted of any of the following offenses may be punished by a fine in any sum not to exceed One Thousand Dollars ($1,000.00) or by imprisonment for a term not to exceed ninety (90) days, or by both such fine and imprisonment:

1. Section 11.20.010, Driver's license required -- Exception -- Penalty, unless the person cited for the violation provided the citing officer with an expired driver's license or other valid identifying documentation under RCW 46.20.035 at the time of the stop and was not in violation of Section 11.56.320 or Section 11.56.340, in which case the violation is an infraction;

2. Section 11.20.100, Display of nonvalid driver's license;

3. Section 11.20.120, Loaning driver's license;

4. Section 11.20.140, Displaying the driver's license of another;

5. Section 11.20.160, Unlawful use of driver's license;

6. Section 11.20.350 C, Providing false evidence of financial responsibility;

7. Section 11.23.400, Unauthorized use of a disabled person's parking placard or license plate;

8. Section 11.31.090, Failure to respond -- Written and signed promise;

9. ((~~8.~~)) Section 11.31.100, Failure to respond -- Parked, stopped or standing notice;

10. ((~~9.~~)) Section 11.32.100, Failure to appear;

11. ((~~10.~~)) Section 11.40.430, Prohibited entry to no admittance area;

12. ((~~11.~~)) Section 11.56.320 D, Driving while license is suspended or revoked in the third degree;

13. ((~~12.~~)) Section 11.56.430, Hit and run (unattended vehicle) -- Duty in case of accident with unattended vehicle;

14. ((~~13.~~)) Section 11.56.440, Hit and run (property damage) -- Duty in case of accident with property;

15. Section 11.58.005 A, Negligent driving in the first degree;

16. ((~~14.~~)) Section 11.58.190, Leaving minor children in unattended vehicle;

17. ((~~15.~~)) Section 11.59.010, Obedience to peace officers, flaggers, and firefighters;

18. ((~~16.~~)) Section 11.59.040, Refusal to give information to or to cooperate with officer;

19. ((~~17.~~)) Section 11.59.060, Refusal to stop;

20. ((~~18.~~)) Section 11.59.080, Examination of equipment;

21. ((~~19.~~)) Section 11.59.090, Duty to obey peace officer -- Traffic infraction;

22. ((~~20.~~)) Section 11.34.040, Aiding and abetting with respect to the criminal offenses in this subsection.

Section 4. Section 11.56.020 of the Seattle Municipal Code (Ordinance 108200 § 2(11.56.020), as last amended by Ordinance 117734 § 2) is further 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 the person drives a vehicle within the City:

a. and the person has, within two (2) hours after driving, an alcohol concentration of 0.10 ((~~0.08~~)) or higher, as shown by analysis of the person's breath or blood made under the provisions of this section; 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 subsection is or has been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating this subsection.

3. It is an affirmative defense to a violation of subsection A1a 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 persons's breath or blood to cause the defendant's alcohol concentration to be 0.10 ((~~0.08~~)) or more within two (2) 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. Analysis of blood or breath samples obtained

more than two (2) hours after the alleged driving may be used as evidence that within two (2) hours after the alleged driving a person had an alcohol concentration of 0.10 ((~~0.08~~)) or more in violation of subsection A1a 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 A1b or A1c of this section.

5. Driving while under the influence of intoxicating liquor or any drug is a gross misdemeanor.

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 the person has actual physical control of a vehicle within the City:

a. and the person has, within two (2) hours after being in actual physical control of the vehicle, an alcohol concentration of 0.10 ((~~0.08~~)) or higher, as shown by analysis of the person's breath or blood made under the provisions of this section; 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 subsection is or has been entitled to use a 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, the person has moved the vehicle safely off the roadway.

3. It is an affirmative defense to a violation of subsection B1a 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 ((~~0.08~~)) or more within two (2) hours after being in actual physical control of the 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.

4. Analysis of blood or breath samples obtained more than two (2) hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two (2) hours after the alleged being in actual physical control of a vehicle a person had an alcohol concentration of 0.10 ((~~0.08~~)) or more in violation of subsection B1a 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 B1b or B1c of this section.

5. Being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is a gross misdemeanor.

C. Minor Driving Or Being In Actual Physical Control Of A Motor Vehicle After Consuming Alcohol.

1. Notwithstanding any other provision of this title, a person is guilty of minor driving or being in actual physical control of a motor vehicle after consuming alcohol if the person:

a. operates or is in actual physical control of a motor vehicle in the City;

b. is under the age of twenty-one (21); and

c. has, within two (2) hours after operating or being in actual physical control of the motor vehicle, an alcohol concentration of 0.02 or more, as shown by an analysis of the person's breath or blood made under the provisions of this section.

2. It is an affirmative defense to a violation of this subsection 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 or being in actual physical control of the vehicle and before the administration of an analysis of the persons's breath or blood to cause the defendant's alcohol concentration to be 0.02 or more within two (2) hours after driving or being in actual physical control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of (i) seven (7) days prior to trial or (ii) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

3. Analyses of blood or breath samples obtained more than two (2) hours after the alleged driving or being in actual physical control of the vehicle may be used as evidence that within two (2) hours after the alleged driving or being in actual physical control of the vehicle a person had an alcohol concentration of 0.02 or more in violation of this subsection.

4. Minor driving or being in actual physical control of a motor vehicle after consuming alcohol is a misdemeanor.

D. Implied Consent.

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 alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has probable cause to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of subsection C of this section. The test or tests of breath shall be administered at the direction of a law enforcement officer having probable cause 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 intoxicating liquor or in violation of subsection C of this section. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has probable cause to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4).

The officer shall inform the person of the person's right to refuse the breath or blood test, and of the person's right to have additional tests administered by any qualified person of the person's choosing as provided elsewhere in this section. The officer shall warn the driver that (i) the driver's license, permit, or privilege to drive will be revoked or denied if the driver refuses to submit to the test, (ii) the driver's license, permit, or privilege to drive will be suspended, revoked, denied, or placed in probationary status if the test is administered and the test indicates the alcohol concentration of the driver's breath or blood is 0.10

or more in the case of a person age twenty-one (21) or over, or 0.02 or more in the case of a person under age twenty-one (21), and (iii) the driver's refusal to take the test may be used in a criminal trial. Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520, or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in this section, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

E. Person Incapable of Refusal.

Any person who is dead, unconscious, or who is otherwise in a condition rendering the person incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection D 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 D of this section.

F. Refusal to Submit to Test.

If, following his/her arrest and receipt of warnings under subsection D 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 D or E of this section.

G. Notices to Person After Arrest.

If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is

administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.10 or more if the person is age twenty-one (21) or over, or 0.02 or more if the person is under the age of twenty-one (21), or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given shall give the person the notices and mark the person's Washington state driver's license or permit to drive, if any, as provided by RCW 46.20.308.

H. Notification of Arrest and Test Result or Refusal to Department of Licensing.

After giving the notices to the person and marking the person's Washington state driver's license or permit to drive, if any, the law enforcement officer shall, within seventy-two (72) hours, except as delayed as the result of a blood test, transmit to the Washington State Department of Licensing a sworn report or report under a declaration authorized by RCW 9A.72.085 stating: (i) that the officer had probable cause to believe that the arrested person had been driving or was in actual physical control of a motor vehicle within the City while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one (21) years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration of 0.02 or more; (ii) that after receipt of the warnings required by subsection D of this section the person refused to submit to a test of the person's breath or blood, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.10 or more if the person was age twenty-one (21) or over, or was 0.02 or more if the person was under the age of twenty-one (21); and (iii) any other information that the Director of the Washington State Department of Licensing may require by rule.

I. Admissibility of Evidence.

Upon the trial of any civil or 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 intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.10 ((~~0.08~~)) 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 (210) 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.

J. 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.

K. Blood Tests.

When a blood test is administered in accordance with this section, the withdrawal of blood for the purpose of determining its alcoholic or drug 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.

L. 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 (1) 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.

M. 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.

N. Penalty.

1. a. A person who is convicted of a violation of subsection A or B of this section, who has no prior offense within five (5) years and whose alcohol concentration was less than 0.15, or for any reason other than the person's refusal to take a test offered pursuant to subsection D of this section there is no test result indicating the person's alcohol concentration, shall be punished by imprisonment for not less than twenty-four (24) consecutive hours nor more than one (1) year and by a fine of not less than Three Hundred Fifty Dollars ($350.00) and not more than Five Thousand Dollars ($5,000.00).

b. A person who is convicted of a violation of subsection A or B of this section, who has no prior offense within five (5) years and whose alcohol concentration was 0.15 or more, or who refused to take a test offered pursuant to subsection D of this section, shall be punished by imprisonment for not less than two (2) consecutive days nor more than one (1) year and by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00).

2. a. A person who is convicted of a violation of subsection A or B of this section, who has one (1) prior offense within five (5) years and whose alcohol concentration

was less than 0.15, or for any reason other than the person's refusal to take a test offered pursuant to subsection D of this section there is no test result indicating the person's alcohol concentration, shall be punished by imprisonment for not less than thirty (30) consecutive days nor more than one (1) year and by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00).

b. A person who is convicted of a violation of subsection A or B of this section, who has one (1) prior offense within five (5) years and whose alcohol concentration was 0.15 or more, or who refused to take a test offered pursuant to subsection D of this section, shall be punished by imprisonment for not less than forty-five (45) consecutive days nor more than one (1) year and by a fine of not less than Seven Hundred Fifty Dollars ($750.00) nor more than Five Thousand Dollars ($5,000.00).

3. a. A person who is convicted of a violation of subsection A or B of this section, who has two (2) or more prior offenses within five (5) years, and whose alcohol concentration was less than 0.15, or for any reason other than the person's refusal to take a test offered pursuant to subsection D of this section there is no test result indicating the person's alcohol concentration, shall be punished by imprisonment for not less than ninety (90) consecutive days nor more than one (1) year and by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00).

b. A person who is convicted of a violation of subsection A or B of this section, who has two (2) or more prior offenses within five (5) years, and whose alcohol concentration was 0.15 or more, or who refused to take a test offered pursuant to subsection D of this section, shall be punished by imprisonment for not less than one hundred twenty

(120) consecutive days nor more than one (1) year and by a fine of not less than One Thousand Five Hundred Dollars ($1,500.00) nor more than Five Thousand Dollars ($5,000.00).

4. a. "Prior offense" means any of the following:

(i) a conviction for a violation of subsection A of this section, RCW 46.61.502 or equivalent local ordinance;

(ii) a conviction for a violation of subsection B of this section, RCW 46.61.504 or equivalent local ordinance;

(iii) a conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) a conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) a conviction for a violation of Section 11.58.005 A, RCW 46.61.525(1) or equivalent local ordinance, if the conviction was the result of a charge that was originally filed as a violation of subsection A or B of this section, RCW 46.61.502 or RCW 46.61.504, or equivalent local ordinance, or RCW 46.61.520 or RCW 46.61.522;

(vi) an out-of-state conviction for a violation that would have been a violation of subsections N4a(i), (ii), (iii), ((~~or~~)) (iv), or (v) of this section if committed within this state; ((~~or~~))

(vii) ((~~(vi)~~)) a deferred prosecution under RCW Chapter 10.05 granted in a prosecution for a violation of subsection A or B of this section, RCW 46.61.502 ((~~,~~)) or RCW 46.61.504 or equivalent local ordinance; or

(viii) a deferred prosecution under RCW Chapter 10.05 granted in a prosecution for a violation of

Section 11.58.005 A, RCW 46.61.525(1), or equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of subsection A or B of this section, RCW 46.61.502 or RCW 46.61.504, or equivalent local ordinance, or RCW 46.61.520 or RCW 46.61.522.

b. "Within five (5) years" means that the arrest for the prior offense occurred within five (5) years of the arrest for the current offense.

5. For purposes of sentencing pursuant to subsections N1, N2, and N3 of this section, the court shall determine, based on a preponderance of the evidence, the number of prior offenses within five years the person has, whether the person's alcohol concentration was less than 0.15 or 0.15 or more, whether the person refused to take a test offered pursuant to subsection D of this section or whether for any reason other than the person's refusal to take a test offered pursuant to subsection D of this section there is no test result indicating the person's alcohol concentration. The prosecutor or the court may obtain an abstract of the person's driving record, which shall be prima facie evidence of the person's prior offenses.

6. Unless the judge finds the person to be indigent, the mandatory minimum fine shall not be suspended or deferred. The mandatory minimum jail sentence shall not be suspended or deferred unless the judge finds that the imposition of this jail sentence will pose a substantial risk to the defendant's physical or mental well-being. Whenever the mandatory minimum 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. In exercising its discretion in setting penalties within the limits allowed by this subsection, the court shall particularly consider whether the person's driving

at the time of the offense was responsible for injury or damage to another or another's property, whether the person's license, permit or privilege to drive was suspended, revoked, denied or in probationary status at the time of the violation and whether the person was in compliance with Section 11.20.340 at the time of the violation.

7. A person convicted under this section shall be required to complete a course in an alcohol information school approved by the Washington State Department of Social and Health Services or more intensive treatment at a program approved by the Washington State Department of Social and Health Services, as determined by the court. The court shall notify the Washington State Department of Licensing of a conviction under this section and whenever it orders a person to complete a course or treatment under this subsection N7 of this section. A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the Washington State Department of Social and Health Services or a qualified probation department approved by the Washington State Department of Social and Health Services. A copy of the report shall be sent to the Washington State Department of Licensing. Based on the diagnostic evaluation, the court shall determine whether the person shall be required to complete a course in an alcohol information school or more intensive treatment.

8. In addition to any nonsuspendable and nondeferrable jail sentence required by this subsection, whenever the court imposes less than one (1) year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two (2) years. The court shall impose conditions of probation that include: (i) not driving a motor vehicle within this state without a valid

license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two (2) hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has probable cause to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. For each violation of mandatory conditions of probation (i) and (ii) or (i) and (iii) of this subsection N8 of this section, the court shall order the convicted person to be confined for thirty (30) days, which shall not be suspended or deferred. For each incident involving a violation of a mandatory condition of probation imposed under this subsection N8 of this section, the court shall suspend the person's license, permit or privilege to drive for thirty (30) days or, if the person's license, permit or privilege to drive already is suspended, revoked or denied at the time the finding of probation violation is made, then the suspension, revocation or denial then in effect shall be extended by thirty (30) days. The court shall notify the Washington State Department of Licensing of a person's violation of any mandatory condition of probation imposed under subsection N8 of this section and the suspension of or extension of the suspension, revocation or denial of a person's license, permit or privilege to drive. The court may impose conditions of probation that include nonrepetition, 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 probation during the suspension period.

9. At the time a person is convicted on the third occasion within five (5) years of driving a motor vehicle

while under the influence of intoxicating liquor or any drug, the convicting court shall notify the person, orally and in writing, that the person may not possess a firearm unless the person's right to do so is restored by a court of record. The convicting court also shall forward a copy of the person's driver's license or identicard, or comparable information, to the Washington State Department of Licensing, along with the date of conviction.

10. In addition to the penalties set forth in this subsection, a fee of One Hundred Twenty-five Dollars ($125.00) shall be assessed to a person who is either convicted, sentenced to a lesser charge or given a deferred prosecution as a result of an arrest for violating subsection A or B of this section, RCW 46.61.520 or RCW 46.61.522. Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay. The fee shall be collected by the clerk of the court and distributed according to RCW 46.61.5054.

O. Vehicle Seizure and Forfeiture.

1. Upon conviction for a violation of subsection A or B of this section, where the person has a prior offense within five (5) years, as defined in subsection N4 of this section, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture pursuant to RCW 46.61.5058.

2. Upon the arrest or filing of a complaint or citation in Municipal Court based on probable cause to believe that a person has violated subsection A or B of this section, if such person has a prior offense within five (5) years, as defined by subsection N4 of this section, the person shall be

provided written notice that any transfer, sale or encumbrance of the person's interest in the vehicle the person was driving or over which the person had actual physical control at the time of the offense is unlawful pending acquittal, dismissal, sixty (60) days after conviction or other termination of the charge, except that:

a. A vehicle encumbered by a bona fide security interest may be transferred to the secured party or a person designated by the secured party;

b. A leased or rented vehicle may be transferred to the lessor, rental agency or a person designated by the lessor or rental agency; and

c. A vehicle may be transferred to a third party or a vehicle dealer who is a bona fide purchaser or may be subject to a bona fide security interest unless it is established that either (i) the purchaser had actual notice that the vehicle was subject to the prohibition prior to the transfer of title or (ii) the holder of the security interest had actual notice that the vehicle was subject to the prohibition prior to the encumbrance of title.

P. Refusal Admissible.

The refusal of a person to submit to a test of the alcoholic content of the person's blood or breath under Seattle Municipal Code Section 11.56.020 D is admissible into evidence at a subsequent criminal trial.

Section 5. Section 11.58.005 of the Seattle Municipal Code (Ordinance 108200 § 2(11.58.005), as last amended by Ordinance 117156 § 1) is further amended as follows:

11.58.005 Operating motor vehicle in a negligent manner - - Penalty.

~~A. No person shall operate a motor vehicle in a negligent manner over and along the streets, alleys or ways open to the public of the City. For the purpose of this~~

~~section, to "operate in a negligent manner" shall be construed to mean the operation of a vehicle upon the streets, alleys or ways open to the public of this City in such a manner as to endanger or be likely to endanger any person or property; provided, that any person operating a motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent shall not be guilty of negligent driving.~~

~~B. The offense of operating a vehicle in a negligent manner shall be considered to be a lesser offense than, but included in, the offense of reckless driving, and any person charged with reckless driving may be convicted of the lesser offense of operating a vehicle in a negligent manner.~~

~~C. Any person convicted of a violation of subsection A of this section is guilty of a misdemeanor and shall be punished by a fine not to exceed Two Hundred Fifty Dollars ($250.00), and may not be punished by imprisonment. (RCW 46.61.525)~~

A. 1. A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug.

2. It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed an illegal drug, that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed and has been consuming it according to the prescription directions and warnings.

3. Negligent driving in the first degree is a misdemeanor.

B. 1. A person is guilty of negligent driving in the

second degree if, under circumstances not amounting to negligent driving in the first degree, he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property.

2. It is an affirmative defense to negligent driving in the second degree, that must be proved by the defendant by a preponderance of the evidence, that the driver was operating the motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent.

3. Negligent driving in the second degree is a traffic infraction and is subject to a penalty of Two Hundred Fifty Dollars ($250.00).

C. For the purposes of this section:

1. "Negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

2. "Exhibiting the effects of having consumed liquor" means that the person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

a. is in possession of or in close proximity to a container that has or recently had liquor in it; or

b. is shown by other evidence to have recently consumed liquor.

3. "Exhibiting the effects of having consumed an illegal drug" means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug, and

either:

a. is in possession of an illegal drug; or

b. is shown by other evidence to have recently consumed an illegal drug.

4. "Illegal drug" means a controlled substance under RCW Chapter 69.50 for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under RCW Chapter 69.41 for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

D. Any act prohibited by this section that also constitutes a crime under any other law of this City may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section. (RCW 46.61.525)

Section 6. The provisions of this ordinance 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, or the validity of its application to other persons or circumstances.

Section 7. This ordinance shall take effect and be in force on June 6, 1996.

RG:rg
Traffic ord
April 8, 1996
(version 8)

Passed by the City Council the 29 day of April, 1996, and signed by me in open session in authentication of its passage this 29 day of April, 1996.

President of the City Council

Approved by me this 3 day of May, 1996.

Mayor

Filed by me this 3 day of May, 1996.

City Clerk

CS 19.2

SEATTLE CITY ATTORNEY
MARK H. SIDRAN

April 12, 1996

Honorable Jan Drago
President
Seattle City Council

Dear Councilmember Drago:

I am forwarding to you for the Council's consideration three proposed ordinances that address a number of public safety related issues. Most of these proposals are legally required in order to conform city laws with recently enacted corresponding state laws. As you may recall, state law requires that where city and state law both define the same acts as crimes, the penalties under city ordinance must be "uniform" with those provided under state law.

In order to avoid potential problems that could arise if city and state law should differ for a period of time, it is important to enact those provisions required by state law so that they take effect at the same time as the new state laws. The relevant state laws will take effect on June 6, 1996, which means the Mayor would have to sign corresponding city ordinances by May 6th. Needless to say, this timeline will require prompt action on the Council's part. I have previously discussed this matter with Councilmember Noland, Chair of the Public Safety Committee, and she is planning to address these proposals in her committee in a timely way.

Some of the attached proposals are not required by state law but would, I believe, improve our city laws. These discretionary proposals are presented now in the interests of legislative efficiency, because they generally relate to the same subject matter as the required legislation. For the convenience of the Council, we have summarized each of the proposed ordinances and provided explanatory comments, including which provisions are required by state law and which are discretionary. Those summaries accompany each proposed ordinance.

Thank you for your prompt attention to these matters. If you have any questions, please contact me.

Sincerely,

Mark H. Sidran

Mark H. Sidran
Seattle City Attorney

cc: Councilmember Jane Noland
Mayor Norm Rice

CIVIL DIVISION
An equal employment opportunity - affirmative action employer
600 FOURTH AVENUE, 10TH FLOOR, SEATTLE, WASHINGTON 98104-1877
(206) 684-8200 TDD (206) 233-7206 FAX (206) 684-8284

SEATTLE CITY ATTORNEY
MARK H. SIDRAN

M E M O R A N D U M

TO: Honorable Jan Drago
President, Seattle City Council

FROM: Mark H. Sidran

RE: Proposed Ordinance Relating to the Traffic Code

DATE: April 12, 1996

As indicated below, this proposed ordinance contains provisions which are required by state law with the exception of a new negligent driving crime based on aggravating factors of alcohol or drugs:

No Valid Operator's License. **Required.** Section 1 makes No Valid Operator's License a traffic infraction if the driver does not have a valid driver's license, but has another form of picture identification, such as an expired driver's license, a Washington identicard, a military identification or a passport. The maximum penalty for the infraction is $250, which must be reduced to $50 if the defendant obtains a valid driver's license before going to court.

Disabled Parking. **Required.** Section 2 increases the penalty for Unauthorized Use of a Disabled Person's Parking Permit from a traffic infraction to a misdemeanor.

DWI "Per Se" Alcohol Level. **Required.** Section 4 increases the alcohol concentration required to prove a "per se" violation of Driving While Intoxicated or Physical Control from 0.08 to 0.10 to comply with the Supreme Court's decision in Seattle v. Williams, 128 Wn.2d 341 (1996).

Decriminalization of "Ordinary" Negligent Driving. **Required.** Section 5 changes "ordinary" negligent driving from a nonjailable "misdemeanor" to a non-criminal traffic infraction. Negligent Driving currently is defined as a "misdemeanor" crime subject to a maximum fine of $250 and no jail. Since a "crime" that cannot be punished by jail is not meaningfully different than a noncriminal offense, but requires affording much of the same due process provided in criminal cases, the Legislature has recategorized this offense as a noncriminal "infraction" with the same maximum fine. The City must do the same. The definition of Negligent Driving has also been clarified without significant substantive changes to be consistent with state law.

Alcohol Or Drug Related Negligent Driving. **Discretionary.** Section 5 also creates a new negligent driving crime based on the aggravating factors of alcohol or drugs. While decriminalizing "ordinary" Negligent Driving (see above), the Legislature created a new crime of alcohol/drug related negligent driving, defined as careless and dangerous driving while exhibiting the effects of consuming alcohol or an "illegal drug." An "illegal drug" includes prescription drugs consumed contrary to the prescription's directions and warnings. This crime is not intended to be a lesser included offense of DWI, but to be an alternative charge where there is insufficient evidence to prove DWI. This new crime is labeled Negligent Driving in the First Degree (the former "ordinary" Negligent Driving is relabeled "Second Degree") and is punishable by a maximum of 90 days in jail and a $1,000 fine. Under state law, conviction of Negligent Driving in the First Degree counts the same as a prior DWI conviction in the event of a subsequent DWI sentencing. The City is not required to adopt this new crime, but the City Attorney strongly encourages the Council to do so.

MHS:lm

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

_____

_____

_____

PRESIDENT'S SIGNATURE

STATE OF WASHINGTON - KING COUNTY

67839
City of Seattle,City Clerk

—ss.

No. ORD IN FULL

AN ORDINANCE
11.20.010,
of the Sea

BE IT ORDAINED
Secti

Code (Ordi

Ordinance

11.20.

A.

Chapter

unless st

the provi

B. A vi

a lesser include

Section 11.56.320,

in violation of thi

an expired driv

documentation

is not in

the) clati

Affidavit of Publication

Affidavit of Publication

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

CT:ORD 118105

was published on

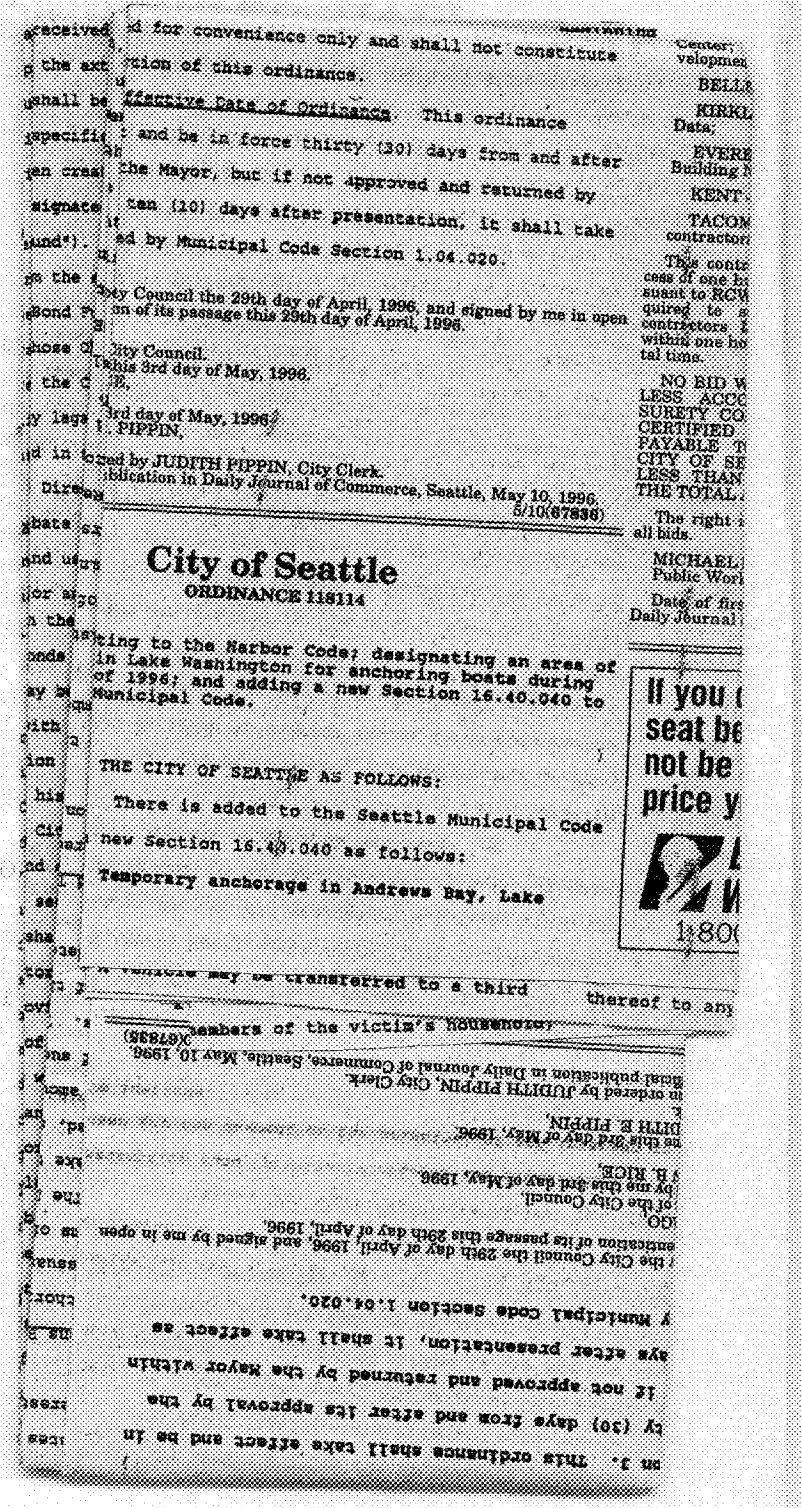
05/10/96

The amount of the fee charged for the foregoing publication is the sum of $, which amount has been paid in full.

Subscribed and sworn to before me on

05/10/96

Notary Public for the State of Washington,
residing in Seattle



d for convenience only and shall not constitute
tion of this ordinance.

Effective Date of Ordinance. This ordinance
and be in force thirty (30) days from and after
the Mayor, but if not approved and returned by
ten (10) days after presentation, it shall take
ed by Municipal Code Section 1.04.020.

City Council the 29th day of April, 1996, and signed by me in open
on of its passage this 29th day of April, 1996.

City Council.
this 3rd day of May, 1996.

3rd day of May, 1996.
PIPPIN,

ned by JUDITH PIPPIN, City Clerk.
blication in Daily Journal of Commerce, Seattle, May 10, 1996.
5/10(67836)

City of Seattle

ORDINANCE 118114

king to the Harbor Code; designating an area of
in Lake Washington for anchoring boats during
of 1996; and adding a new Section 16.40.040 to
Municipal Code.

THE CITY OF SEATTLE AS FOLLOWS:

There is added to the Seattle Municipal Code
new Section 16.40.040 as follows:

Temporary anchorage in Andrews Bay, Lake

Center;
velopmen
BELL
KIRKL
Data;
EVERE
Building
KENT
TACOM
contractor
This contr
cess of one h
suant to RCW
quired to s
ontractors
within one ho
tal time.
NO BID W
LESS ACCO
SURETY CO
CERTIFIED
PAYABLE T
CITY OF SE
LESS THAN
THE TOTAL
The right
all bids.
MICHAEL
Public Work
Date of fir
Daily Journal

If you
seat be
not be
price y

1-80

transferred may be transferred to a third thereof to any

members of the victim's household

(67836)

...ordered by JUDITH PIPPIN, City Clerk.
...final publication in Daily Journal of Commerce, Seattle, May 10, 1996.

...DITH E. PIPPIN,

...e this 3rd day of May, 1996.

...Y H. NICE,

...of the City Council
...by me this 3rd day of May, 1996

...GO
...the City Council the 29th day of April, 1996, and signed by me in open
...nsecution of its passage this 29th day of April, 1996.

...y municipal code section 1.04.020.

...ay (10) days from and after its approval by the
...it not approved and returned by the Mayor within
...aye after presentation, it shall take effect as

...n 3. This ordinance shall take effect and be in