

ORDINANCE No. 119189

COUNCIL BILL No. 112400

*Law Department*

The City of

AN ORDINANCE relating to persons under the influence of intoxicating liquor or any drug, amending Sections 11.34.020, 11.56.020 and 16.20.110 and adding sections to Chapters 11.14, 11.20 and 11.56 of the Seattle Municipal Code.

Honorable President:

Your Committee on \_\_\_\_\_

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

COMPTROLLER FILE No. \_\_\_\_\_

Introduced: <u>OCT 5 - 1998</u>	By: <b>PODLODOWSKI</b>
Referred: <u>OCT 5 - 1998</u>	To: Public Safety, Health and Technology Committee
Referred:	To:
Referred:	To:
Reported: <u>10-12-98</u>	Second Reading:
Third Reading: <u>10-12-98</u>	Signed: <u>10-12-98</u>
Presented to Mayor:	Approved: <u>OCT 19 1998</u>
Returned to City Clerk: <u>OCT 20 1998</u>	Published: <u>bill 13 pg</u>
Vetoed by Mayor:	Veto Published
Passed over Veto:	Veto Sustained

*PSH's T Comm 10/19/98*  
10-12-98 Full Co

NO DISK

*Department*

# The City of Seattle--Legislative Department

Date Reported  
and Adopted

## REPORT OF COMMITTEE

by President:

Committee on \_\_\_\_\_

was referred the within Council Bill No. \_\_\_\_\_

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

SENATE Comm 10/7/98 3-0 DO PASS

12-98 Full Council Passed 9-0

NO DISC



1998  
Paul Telt

Committee Chair

ORDINANCE 119189

1  
2  
3 AN ORDINANCE relating to persons under the influence of intoxicating liquor or any drug, amending  
4 Sections 11.34.020, 11.56.020 and 16.20.110 and adding sections to Chapters 11.14, 11.20 and  
5 11.56 of the Seattle Municipal Code.

6 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

7 **Section 1.** Chapter 11.14 of the Seattle Municipal Code (Ordinance 108200, as amended) is  
8 further amended by adding the following section:

9 **11.14.183 Drug.**

10 "Drug" includes, but is not limited to, those drugs and substances regulated by RCW Chapters  
11 69.41 and 69.50. (RCW 46.61.540)

12 **Section 2.** Chapter 11.14 of the Seattle Municipal Code (Ordinance 108200, as amended) is  
13 further amended by adding the following section:

14 **11.14.257 Ignition interlock device.**

15 "Ignition interlock device" means breath alcohol analyzing ignition equipment, certified by the  
16 Washington State Patrol, designed to prevent a motor vehicle from being operated by a person who has  
17 consumed an alcoholic beverage. (RCW 46.04.215)

18 **Section 3.** Chapter 11.14 of the Seattle Municipal Code (Ordinance 108200, as amended) is  
19 further amended by adding the following section:

20 **11.14.403 Other biological or technical device.**

21 "Other biological or technical device" means any device meeting the standards of the National  
22 Highway Traffic Safety Administration or the Washington State Patrol, designed to prevent the  
23 operation of a motor vehicle by a person who is impaired by alcohol or drugs. (RCW 46.04.215)

24 **Section 4.** Chapter 11.20 of the Seattle Municipal Code (Ordinance 108200, as amended) is  
further amended by adding the following section:

**11.20.230 Ignition interlock or other biological or technical device required.**

A. The court may order that after a period of suspension, revocation, or denial of driving  
privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense  
involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only  
a motor vehicle equipped with a functioning ignition interlock or other biological or technical device.

B. If a person is convicted of a violation of Section 11.56.020A or B, the court shall order that  
after a period of suspension, revocation, or denial of driving privileges, the person may drive only a  
motor vehicle equipped with a functioning ignition interlock or other biological or technical device.

C. The court shall establish a specific calibration setting at which the ignition interlock or other  
biological or technical device will prevent the motor vehicle from being started and the period of time  
that the person shall be subject to the restriction.

D. In the case of a person subject to the restriction under subsection B of this section, the  
duration of the restriction shall be as follows:

1. for a person subject to subsection N1b, N2 or N3 of Section 11.56.020 who has not previously been restricted under this section, RCW 46.20.720 or equivalent local ordinance, a period of not less than one (1) year;

2. for a person who has previously been restricted under subsection D1 of this section, RCW 46.20.720(3)(a), or equivalent local ordinance, a period of not less than five (5) years;

3. for a person who has previously been restricted under subsection D2 of this section, RCW 46.20.720(3)(b), or equivalent local ordinance, a period of not less than ten (10) years.

E. For purposes of this section, "convicted" means being found guilty of an offense or being placed on a deferred prosecution program under RCW Chapter 10.05. (RCW 46.20.720)

**Section 5.** Section 11.34.020 of the Seattle Municipal Code (Ordinance 108200 § (11.34.020), as last amended by Ordinance 119011 § 10) 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 11.22.070 B, Licenses and plates required -- Penalties -- Exemptions;
2. Section 11.22.090, Vehicle trip permits -- Restrictions and requirements -- Penalty;
3. Section 11.23.400, Disabled parking -- Enforcement;
4. 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;
5. Section 11.56.120, Reckless driving;
6. Section 11.56.130, Reckless endangerment of roadway workers;
7. Section 11.56.320 B, Driving while license is suspended or revoked in the first degree;
8. Section 11.56.320 C, Driving while license is suspended or revoked in the second degree;
9. Section 11.56.340, Operation of motor vehicle prohibited while license is suspended or revoked;
10. Section 11.56.420, Hit and run (attended);
11. Section 11.56.355, Assisting another in starting and operating motor vehicle in violation of court order regarding ignition interlock or other biological or technical device;
12. Section 11.56.445, Hit and run (by an unattended vehicle);
13. ~~((12-))~~ Section 11.56.450, Hit and run (pedestrian or person on a device propelled by human power);
14. ~~((13-))~~ Section 11.60.690, Transportation of liquefied petroleum gas;
15. ~~((14-))~~ Section 11.62.020, Flammable liquids, combustible liquids and hazardous chemicals;
16. ~~((15-))~~ Section 11.62.040, Explosives;
17. ~~((16-))~~ Section 11.80.140 B, Certain vehicles to carry flares or other warning devices (subsection B only);
18. ~~((17-))~~ Section 11.80.160 E, Display of warning devices when vehicle disabled (subsection E only);
19. ~~((18-))~~ Section 11.84.380, Fire extinguishers;
20. ~~((19-))~~ Section 11.86.080, Flammable or combustible labeling;
21. ~~((20-))~~ Section 11.86.100, Explosive cargo labeling;

22. ~~((21-))~~ Section 11.34.040, with respect to aiding and abetting the foregoing criminal offenses.

1 B. Any person convicted of any of the following offenses may be punished by a fine in any sum  
2 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:

3 1. Section 11.20.010, Driver's license required -- Exception -- Penalty, unless the person  
4 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;

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

6 3. Section 11.20.120, Loaning driver's license;

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

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

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

10 7. Section 11.22.025, Transfer of ownership;

11 8. Section 11.22.070 A, Licenses and plates required -- Penalties -- Exceptions;

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

13 10. Section 11.31.100, Failure to respond -- Parked, stopped or standing notice;

14 11. Section 11.32.100, Failure to appear;

15 12. Section 11.40.430, Prohibited entry to no admittance area;

16 13. Section 11.56.320 D, Driving while license is suspended or revoked in the third  
17 degree;

18 14. Section 11.56.350, Operation of a motor vehicle without required ignition interlock  
19 or other biological or technical device;

20 15. Section 11.56.430, Hit and run (unattended vehicle) -- Duty in case of accident with  
21 unattended vehicle;

22 16. ~~((15-))~~ Section 11.56.440, Hit and run (property damage) -- Duty in case of accident  
23 with property;

24 17. ~~((16-))~~ Section 11.58.005 A, Negligent driving in the first degree;

18. ~~((17-))~~ Section 11.58.190, Leaving minor children in unattended vehicle;

19. ~~((18-))~~ Section 11.59.010, Obedience to peace officers, flaggers, and firefighters;

20. ~~((19-))~~ Section 11.59.040, Refusal to give information to or to cooperate with officer;

21. ~~((20-))~~ Section 11.59.060, Refusal to stop;

22. ~~((21-))~~ Section 11.59.080, Examination of equipment;

23. ~~((22-))~~ Section 11.59.090, Duty to obey peace officer -- Traffic infraction;

24 24. ~~((23-))~~ Section 11.34.040, Aiding and abetting with respect to the criminal offenses  
in this subsection.

**Section 6.** Section 11.56.020 of the Seattle Municipal Code (Ordinance 108200 § 2 (11.56.020),  
as last amended by Ordinance 118992 § 1) 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 0.08 (~~(0.10)~~) 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 person's breath or blood to cause the defendant's alcohol concentration to be 0.08 (~~(0.10)~~) 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 0.08 (~~(0.10)~~) 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 Alb 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 0.08 (~~(0.10)~~) 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 0.08 (~~(0.10)~~) 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.

1           4. Analysis of blood or breath samples obtained more than two (2) hours after the alleged  
2 being in actual physical control of a vehicle may be used as evidence that within two (2) hours after the  
3 alleged being in actual physical control of a vehicle a person had an alcohol concentration of 0.08  
4 (~~0.10~~) or more in violation of subsection B1a of this section, and in any case in which the analysis  
5 shows an alcohol concentration above 0.00 may be used as evidence that a person was under the  
6 influence of or affected by intoxicating liquor or any drug in violation of subsections B1b or B1c of this  
7 section.

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

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

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

- 14           a. operates or is in actual physical control of a motor vehicle in the City;  
15           b. is under the age of twenty-one (21); and  
16           c. has, within two (2) hours after operating or being in actual physical control of  
17 the motor vehicle, an alcohol concentration of at least 0.02 but less than 0.08 (~~0.02 or more~~), as shown  
18 by an analysis of the person's breath or blood made under the provisions of this section.

19           2. It is an affirmative defense to a violation of this subsection which the defendant must  
20 prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol  
21 after the time of driving or being in actual physical control of the vehicle and before the administration  
22 of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be at  
23 least 0.02 but less than 0.08 (~~0.02 or more~~) within two (2) hours after driving or being in actual  
24 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. Analysis 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,

1 clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath  
2 testing instrument is not present or where the officer has probable cause to believe that the person is  
3 under the influence of a drug, a blood test shall be administered by a qualified person as provided in  
4 RCW 46.61.506(4).

5 The officer shall inform the person of the person's right to refuse the breath or blood test, and of  
6 the person's right to have additional tests administered by any qualified person of the person's choosing  
7 as provided elsewhere in this section. The officer shall warn the driver that (i) the driver's license,  
8 permit, or privilege to drive will be revoked or denied if the driver refuses to submit to the test, (ii) the  
9 driver's license, permit, or privilege to drive will be suspended, revoked, or denied (~~(, or placed in~~  
10 ~~probationary status)~~) if the test is administered and the test indicates the alcohol concentration of the  
11 driver's breath or blood is 0.08 (~~(0.10)~~) or more in the case of a person age twenty-one (21) or over, or in  
12 violation of this section (~~((0.02 or more))~~) in the case of a person under age twenty-one (21), and (iii) the  
13 driver's refusal to take the test may be used in a criminal trial. Except as provided in this section, the  
14 test administered shall be of the breath only. If an individual is unconscious or is under arrest for the  
15 crime of vehicular homicide as provided in RCW 46.61.520, or vehicular assault as provided in RCW  
16 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of  
17 intoxicating liquor or drugs as provided in this section, which arrest results from an accident in which  
18 there has been serious bodily injury to another person, a breath or blood test may be administered  
19 without the consent of the individual so arrested.

20 E. Person Incapable of Refusal.

21 Any person who is dead, unconscious, or who is otherwise in a condition rendering the person  
22 incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection D of  
23 this section and the test or tests may be administered, subject to the provisions of this section (~~(hereof)~~),  
24 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 0.08 (~~(0.10)~~) or more if the person is age  
twenty-one (21) or over, or in violation of this section (~~((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 in violation of subsection C of this section (~~(of 0.02 or~~

1 ~~more~~); (ii) that after receipt of the warnings required by subsection D of this section the person refused  
2 to submit to a test of the person's breath or blood, or a test was administered and the results indicated  
3 that the alcohol concentration of the person's breath or blood was 0.08 (~~0.10~~) or more if the person was  
4 age twenty-one (21) or over, or was in violation of this section (~~0.02 or more~~) if the person was under  
5 the age of twenty-one (21); and (iii) any other information that the Director of the Washington State  
6 Department of Licensing may require by rule.

7 I. Admissibility of Evidence.

8 Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have  
9 been committed by any person while driving or in actual physical control of a vehicle while under the  
10 influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08  
11 (~~0.10~~), it is evidence that may be considered with other competent evidence in determining whether the  
12 person was under the influence of intoxicating liquor or any drug. The breath analysis shall be based  
13 upon grams of alcohol per two hundred ten (210) liters of breath. The foregoing provisions of this  
14 subsection shall not be construed as limiting the introduction of any other competent evidence bearing  
15 upon the question whether the person was under the influence of intoxicating liquor or any drug.

16 J. Methods of Analysis.

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

20 K. Blood Tests.

21 When a blood test is administered in accordance with this section, the withdrawal of blood for  
22 the purpose of determining its alcoholic or drug content may be performed only by a physician, a  
23 registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath  
24 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 seven (7) (~~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). In lieu of the mandatory minimum term of imprisonment required under this subsection  
N1a, the court may order not less than fifteen (15) days of electronic home monitoring.

b. A person who is convicted of a violation of subsection A or B of this section,  
who has no prior offense within seven (7) (~~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

1 imprisonment for not less than two (2) consecutive days nor more than one (1) year, ~~((and by))~~ a fine of  
2 not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) and a  
3 court-ordered restriction under Section 11.20.230. In lieu of the mandatory minimum term of  
4 imprisonment required under this subsection N1b, the court may order not less than thirty (30) days of  
5 electronic home monitoring.

6 2. a. A person who is convicted of a violation of subsection A or B of this section,  
7 who has one (1) prior offense within seven (7) ~~((five (5)))~~ years and whose alcohol concentration was  
8 less than 0.15, or for any reason other than the person's refusal to take a test offered pursuant to  
9 subsection D of this section there is no test result indicating the person's alcohol concentration, shall be  
10 punished by imprisonment for not less than thirty (30) consecutive days nor more than one (1) year,  
11 sixty (60) days of electronic home monitoring, ~~((and by))~~ a fine of not less than Five Hundred Dollars  
12 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) and a court-ordered restriction under  
13 Section 11.20.230.

14 b. A person who is convicted of a violation of subsection A or B of this section,  
15 who has one (1) prior offense within seven (7) ~~((five (5)))~~ years and whose alcohol concentration was  
16 0.15 or more, or who refused to take a test offered pursuant to subsection D of this section, shall be  
17 punished by imprisonment for not less than forty-five (45) consecutive days nor more than one (1) year,  
18 ninety (90) days of electronic home monitoring, ~~((and by))~~ a fine of not less than Seven Hundred Fifty  
19 Dollars (\$750.00) nor more than Five Thousand Dollars (\$5,000.00) and a court-ordered restriction  
20 under Section 11.20.230.

21 3. a. A person who is convicted of a violation of subsection A or B of this section,  
22 who has two (2) or more prior offenses within seven (7) ~~((five (5)))~~ years and whose alcohol  
23 concentration was less than 0.15, or for any reason other than the person's refusal to take a test offered  
24 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, one hundred twenty (120) days of electronic home monitoring, ~~((and by))~~ a fine  
of not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00)  
and a court-ordered restriction under Section 11.20.230.

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 seven (7) ~~((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, one hundred fifty (150) days of electronic home monitoring, ~~((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) and a court-ordered restriction under Section 11.20.230.

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 46.61.5249, Section 11.56.120, RCW 46.61.500, Section 12A.06.050, RCW 9A.36.050 ~~((46.61.525(1)))~~ or

1 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  
2 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), (iv) or (v) of this section if committed within this state; ~~((or))~~

3 (vii) 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  
4 equivalent local ordinance; or

(viii) a deferred prosecution under RCW Chapter 10.05 granted in a  
5 prosecution for a violation of Section 11.58.005 A, RCW 46.61.5249 ~~((46.61.525(1)))~~, or equivalent  
local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a  
6 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.

7 b. "Within seven (7) ~~((five (5)))~~ years" means that the arrest for the prior offense  
occurred within seven (7) ~~((five (5)))~~ years of the arrest for the current offense.

8 5. For purposes of sentencing pursuant to subsections N1, N2, and N3 of this section, the  
judge shall determine, based on a preponderance of the evidence, the number of prior offenses within  
9 seven (7) ~~((five (5)))~~ 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  
10 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  
11 court may obtain an abstract of the person's driving record, which shall be prima facie evidence of the  
person's prior offenses.

12 6. Unless the judge finds the person to be indigent, the mandatory minimum fine shall  
not be suspended or deferred. Neither the ~~((The))~~ mandatory minimum jail sentence nor the mandatory  
13 minimum period of electronic home monitoring 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  
14 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  
15 the suspension or deferral is based. Whenever the court sentences an offender to a period of electronic  
home monitoring, the court may also require the offender's home electronic monitoring device to  
16 include an alcohol detection breathalyzer and may restrict the amount of alcohol the offender may  
consume during the period of electronic home monitoring. The cost of electronic home monitoring shall  
17 be paid for by the offender and determined by the City. In exercising its discretion in setting penalties  
within the limits allowed by this subsection, the court shall particularly consider whether the person's  
18 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  
19 probationary status at the time of the offense, whether the person was in compliance with Section  
11.20.340 at the time of the offense and whether the person was driving or in actual physical control of a  
20 vehicle with one (1) or more passengers at the time of the offense.

21 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  
22 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  
23 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  
24

1 recommendation shall be prepared under the direction of the court by an alcoholism agency approved by  
2 the Washington State Department of Social and Health Services or a qualified probation department  
3 approved by the Washington State Department of Social and Health Services. A copy of the report shall  
4 be sent to the Washington State Department of Licensing. Based on the diagnostic evaluation, the court  
5 shall determine whether the person shall be required to complete a course in an alcohol information  
6 school or more intensive treatment.

7 8. In addition to any nonsuspendable and nondeferrable jail sentence required by this  
8 subsection, whenever the court imposes less than one (1) year in jail, the court shall also suspend but  
9 shall not defer a period of confinement for a period not exceeding five (5) years. The court shall impose  
10 conditions of probation that include: (i) not driving a motor vehicle within this state without a valid  
11 license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within  
12 this state while having an alcohol concentration of 0.08 or more within two (2) hours after driving; and  
13 (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon  
14 request of a law enforcement officer who has probable cause to believe the person was driving or was in  
15 actual physical control of a motor vehicle within this state while under the influence of intoxicating  
16 liquor. For each violation of mandatory conditions of probation (i) and (ii) or (i) and (iii) of this  
17 subsection N8 of this section, the court shall order the convicted person to be confined for thirty (30)  
18 days, which shall not be suspended or deferred. For each incident involving a violation of a mandatory  
19 condition of probation imposed under this subsection N8 of this section, the court shall suspend the  
20 person's license, permit or privilege to drive for thirty (30) days or, if the person's license, permit or  
21 privilege to drive already is suspended, revoked or denied at the time the finding of probation violation  
22 is made, then the suspension, revocation or denial then in effect shall be extended by thirty (30) days.  
23 The court shall notify the Washington State Department of Licensing of a person's violation of any  
24 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, installation of an ignition interlock  
or other biological or technical device on the probationer's motor vehicle, 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.

16 ~~9. ((At the time a person is convicted on the third occasion within five (5) years of driving  
17 a motor vehicle while under the influence of intoxicating liquor or any drug, the convicting court shall  
18 notify the person, orally and in writing, that the person may not possess a firearm unless the person's  
19 right to do so is restored by a court of record. The convicting court also shall forward a copy of the  
20 person's driver's license or identicard, or comparable information, to the Washington State Department  
21 of Licensing, along with the date of conviction.~~

19 10.) In addition to the penalties set forth in this subsection, a fee of One Hundred  
20 Twenty-five Dollars (\$125.00) shall be assessed to a person who is either convicted, sentenced to a  
21 lesser charge or given a deferred prosecution as a result of an arrest for violating subsection A or B of  
22 this section, RCW 46.61.520 or RCW 46.61.522. Upon a verified petition by the person assessed the  
23 fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the  
24 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.

23 1. Upon conviction for a violation of subsection A or B of this section, where the person  
24 has a prior offense within seven (7) ~~((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.

1           2. Upon the arrest or filing of a complaint or citation in Municipal Court based on  
2 probable cause to believe that a person has violated subsection A or B of this section, if such person has  
3 a prior offense within seven (7) (~~five (5)~~) years, as defined in subsection N4 of this section, the person  
4 shall be provided written notice that any transfer, sale or encumbrance of the person's interest in the  
5 vehicle the person was driving or over which the person had actual physical control at the time of the  
6 offense is unlawful pending acquittal, dismissal, sixty (60) days after conviction or other termination of  
7 the charge, except that:

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

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

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

17           P. Refusal Admissible.

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

21           Q. Mandatory Appearance after Arrest or Charging.

22           1. A defendant who is arrested for a violation of this section shall be required to appear  
23 in person before a judge or magistrate within one (1) judicial day after the arrest if the defendant is  
24 served with a citation or complaint at the time of the arrest.

          2. A defendant who is charged by citation, complaint or information with a violation of  
this section and who is not arrested shall appear in court for arraignment in person as soon as practicable,  
but in no event later than fourteen (14) days after the next day on which court is in session following the  
issuance of the citation or the filing of the complaint or information.

          3. At the time of an appearance required by this subsection, the court shall determine the  
necessity of imposing conditions of pretrial release according to the procedures established by court rule  
for a preliminary appearance or an arraignment.

          4. Appearances required by this subsection are mandatory and may not be waived.

          5. Failure of the court to comply with the requirements of this subsection shall not be  
grounds for dismissal of any charge under this section nor the establishment of a constructive date of  
arraignment for purposes of Criminal Rule for Courts of Limited Jurisdiction 3.3.

**Section 7.** Chapter 11.56 of the Seattle Municipal Code (Ordinance 108200, as amended) is  
further amended by adding the following section:

**11.56.350     Operation of motor vehicle without required ignition interlock or other  
biological or technical device.**

          No person whose driver's license includes a notation, pursuant to RCW 46.20.740, that the  
person may operate only a motor vehicle equipped with an ignition interlock or other biological or  
technical device shall operate a motor vehicle that is not so equipped. Violation of this section is a  
misdemeanor. (RCW 46.20.740)

1       **Section 8.** Chapter 11.56 of the Seattle Municipal Code (Ordinance 108200, as amended) is  
further amended by adding the following section:

2       **11.56.355     Assisting another in starting and operating motor vehicle in violation of  
3                     court order regarding ignition interlock or other biological or technical  
4                     device.**

5       A. No person shall knowingly assist another person who is restricted to the use of a motor  
vehicle equipped with an ignition interlock or other biological or technical device to start and operate  
such a motor vehicle in violation of a court order regarding such device.

6       B. This section shall not apply to the starting of a motor vehicle or the request to start a motor  
vehicle equipped with an ignition interlock or other biological or technical device if done for the purpose  
of safety or mechanical repair of the device or the vehicle and the person subject to the court order does  
not operate the vehicle.

7       C. "Knowingly" has the same meaning as in Section 12A.04.030 B.

8       D. Violation of this section is a gross misdemeanor. (RCW 46.20.750)

9       **Section 9.** Section 16.20.110 of the Seattle Municipal Code (Ordinance 87983 § 13, as last  
amended by Ordinance 90653 § 3) is further amended as follows:

10       **16.20.110 Intoxication.**

11       A. 1. It shall be unlawful for any person ((who is under the influence of intoxicating liquor or  
narcotic or habit-forming drugs)) to operate or be in actual physical control of any vessel or watercraft

12               a. and the person has, within two (2) hours after operating or being in actual  
physical control, an alcohol concentration of 0.08 or more, as shown by analysis of the person's breath or  
blood made under Section 11.56.020;

13               b. while the person is under the influence of or affected by intoxicating liquor or  
any drug; or

14               c. while the person is under the combined influence of or affected by intoxicating  
liquor and any drug.

15               2. The fact that a 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 a charge of violating this  
subsection.

16               3. Analysis of blood or breath samples obtained more than two (2) hours after the alleged  
operating or being in actual physical control may be used as evidence that within two (2) hours after the  
alleged operating or being in actual physical control a person had an alcohol concentration of 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

17               4. "Alcohol concentration" has the same meaning as in Section 11.14.023.

18               5. "Drug" has the same meaning as in Section 11.14.183.

19               6. Notwithstanding Section 16.64.040, violation of this subsection is a misdemeanor.

20       B. It shall be unlawful for the owner of any vessel or watercraft or any person having such in  
charge or in control to authorize or knowingly permit the same to be operated by any person who is under  
the influence of intoxicating liquor or any drug ((~~narcotic or habit-forming drugs~~)).

21       C. Whenever it appears reasonably certain to any police or harbor officer that any person under the  
influence of, or affected by the use of, intoxicating liquor or of any ((~~narcotic~~)) drug is about to operate a  
watercraft or vessel in violation of subsection A of this section, the officer may take reasonable measures to  
22  
23  
24

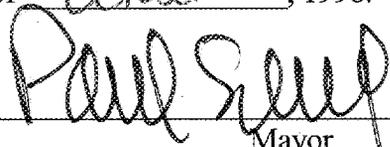
1 prevent any such person from so doing, either by taking from him the keys of such watercraft or vessel and  
2 locking the same, or by some other appropriate means. In any such case, the officer shall immediately  
3 report the facts to his Commanding Officer of the Harbor Department, and shall, as soon as possible,  
4 deposit the keys or other articles, if any, taken from the watercraft or vessel or person with the  
5 Commanding Officer. Such keys or other articles may be returned to any person upon his demand and  
6 proper identification of himself when it appears that he is no longer under the influence of intoxicating  
7 liquor or any ((narcotic)) drug.

8 **Section 10.** This ordinance shall take effect and be in force from and after January 1, 1999.

9 Passed by the City Council the 12<sup>th</sup> day of October, 1998, and signed by me in open  
10 session in authentication of its passage this 12<sup>th</sup> day of October, 1998.

11   
12 \_\_\_\_\_  
13 President of the City Council

14 Approved by me this 19<sup>th</sup> day of October, 1998.

15   
16 \_\_\_\_\_  
17 Mayor

18 Filed by me this 20<sup>th</sup> day of October, 1998.

19   
20 \_\_\_\_\_  
21 City Clerk

22 (Seal)

## SUMMARY OF 1999 DUI ORDINANCE

PROVISION	LOCATION	REASON FOR CHANGE*
reduces alcohol concentration from 0.10 to 0.08	Section 5 (pages 3, 4, 6, and 7)	required
changes alcohol concentration for Minor DUI from $\geq 0.02$ to $\geq 0.02$ but $< 0.08$	Section 5 (pages 5 and 6)	required
imposes Administrative License Suspension on 1st offenders	Section 5 (page 6)	required
imposes mandatory minimum period of ignition interlock, except for 1st offender with BAC $< 0.15$	Sections 1-3 and 5 (pages 1,2, 7 and 8)	required
authorizes probation condition of ignition interlock	Sections 1-3 and 5 (pages 1, 2 and 10)	consistency
imposes mandatory minimum period of electronic home monitoring on repeat offenders	Section 5 (page 8)	required
increases period for counting prior offenses from 5 years to 7 years	Section 5 (pages 7, 8 and 9)	required
includes Reckless Driving and Reckless Endangerment as a prior offense if originally charged as DUI	Section 5 (page 8)	required
increases period for counting prior offenses for vehicle forfeiture purposes from 5 years to 7 years	Section 5 (pages 10 and 11)	consistency
eliminates sentence consequence for 3rd DUI conviction of disqualification from owning firearm	Section 5 (page 10)	required
requires arrested defendant to appear in court 1 day after arrest and non-arrested defendant to appear in court 14 days after complaint filed for purpose of imposing conditions of pretrial release	Section 5 (page 11)	consistency

creates misdemeanor crime of driving car without ignition interlock after court requirement of ignition interlock	Sections 1-3 and 6 (pages 1, 2 and 11)	consistency
creates gross misdemeanor crime of assisting person to start car equipped with ignition interlock	Sections 1-3 and 7 (pages 1, 2 and 12)	consistency
revises definition for Boating While Intoxicated to use 0.08 standard	Section 8 (pages 12 and 13)	consistency
changes maximum penalty for Boating While Intoxicated from 6 months & \$500 to 90 days & \$1000	Section 8 (pages 12 and 13)	required

\* **“Required”** -- State law requires that local traffic ordinances be uniform with corresponding state traffic statutes regarding the definition and penalty for offenses. For non-traffic ordinances, the penalty under a local ordinance must be identical to the penalty for the same offense under state statute.

**“Consistency”** -- Although the change is optional, it is generally advisable to make city ordinances the same as the corresponding state statutes to reduce the confusion and uncertainty that can arise when two different laws (city and state) address the same subject. If the change is not made in city law, enforcement of the state law in Municipal Court will be possible, but any fine revenue will accrue to the state. If a city ordinance is enacted, any fine revenue goes to the city.

**SEATTLE CITY ATTORNEY**

**MARK H. SIDRAN**

September 30, 1998

Honorable Sue Donaldson  
President, Seattle City Council  
1106 Municipal Building  
Seattle, Washington 98104

Dear Councilmember Donaldson:

Enclosed for the City Council's consideration is an ordinance conforming Seattle's Driving While Intoxicated (DWI) ordinance to changes made to the corresponding state laws in the last session of the Legislature. For the most part the proposed changes in City ordinance are required by state law. The state DWI statutes go into effect January 1, 1999 and it would be highly desirable for Seattle's ordinance to go into effect at the same time. This would require Council passage in time for the Mayor to sign the ordinance by December 2, 1998.

The enclosed chart summarizes the proposed ordinance and indicates the provisions required by state law and those that are recommended for the sake of consistency with state law. Important changes include lowering the breath alcohol level from 0.10 to 0.08, administrative license suspension for first offenders and requiring ignition interlock and electronic home detention for repeat offenders. State law requires that city traffic ordinances be identical to state law, both in the substance of the prohibition and in the penalty for violation. A city is not required to enact any particular traffic ordinance, but if one is enacted it must be the same as the corresponding state statute.

Even without this statutory uniformity requirement, we believe consistency between city and state laws on the same subject is generally advisable absent some policy reason to do otherwise. Consistency reduces the potential confusion and uncertainty that arises from parallel but different laws and aids police, prosecutors and Municipal Court judges in determining the scope and meaning of ordinances because appellate court decisions interpreting corresponding state statutes would apply to city ordinances as well.

I would be happy to provide any further information to the Public Safety Committee and the Council upon request.

Sincerely,



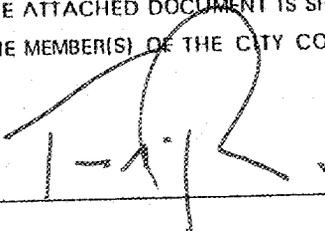
Mark H. Sidran  
Seattle City Attorney

Enclosure

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

99033

—ss.

City of Seattle, City Clerk

No. FULL ORDINAN

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 119189

was published on

11/05/98

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

*R. Peterson*

Subscribed and sworn to before me on

*[Signature]*  
11/05/98  
*[Signature]*

Notary Public for the State of Washington, residing in Seattle

