Ordinance No. 119630

Council Bill No. 112996

The City of Seattl
Council Bill/Ordina

AN ORDINANCE relating to the penalties for persons under the influence of intoxicating liquor or any drug, setting forth the circumstances and conditions pertaining to a waiver of electronic home monitoring requirements, specifying the order and terms pursuant to which a combination of jail time and electronic home monitoring or alternative sentence shall be served under certain circumstances, clarifying the applicability of requirements concerning alcohol information school or more intensive treatment, and amending Paragraph 7 of Subsection N of Section 11.56.020 of the Seattle Municipal Code and adding a new Paragraph 10 to said subsection.

9-1-9

7-0 ce

CF No.

Date Introduced: JUL 19 1999	
Date 1st Referred: JUL 19 1999	To: (committee) Public Safety, Health and Technology Committee
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: 9/7/99	Full Council Vote: 7-0
Date Presented to Mayor: 9/8/99	Date Approved: SEP 8 8 1999
Date Returned to City Clerk: SEP 8 9 999	Date Published: T.O. ___ F.T. 1
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

8-7-9

This file is complete and ready

Law Department

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: PODLODOWSKI

Councilmember

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Committee Action:

9-1-99 PSHT TP/MC 2-0 DPass

7-0 amend; cure / brago

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed

RG: rg
July 20, 1999
99JuneDUI.doc
(Ver. 2)

ORDINANCE 119636

AN ORDINANCE relating to the penalties for persons under the influence of intoxicating liquor or any drug, setting forth the circumstances and conditions pertaining to a waiver of electronic home monitoring requirements, specifying the order and terms pursuant to which a combination of jail time and electronic home monitoring or alternative sentence shall be served under certain circumstances, clarifying the applicability of requirements concerning alcohol information school or more intensive treatment, and amending Paragraph 7 of Subsection N of Section 11.56.020 of the Seattle Municipal Code and adding a new Paragraph 10 to said subsection.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Paragraph 7 of Subsection N of Section 11.56.020 of the Seattle Municipal Code is hereby amended, and a new Paragraph 10 is hereby added to said subsection as follows:

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

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) 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) 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, a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) and a court-ordered restriction under Section 11.20.230. In lieu of the mandatory minimum term of imprisonment required under this subsection N1b, the court may order not less than thirty (30) days of electronic home monitoring.

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 seven (7) 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, sixty (60) days of electronic home monitoring, a fine of not less than Five Hundred Dollars ($500.00) 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 one (1) prior offense within seven (7) 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, ninety (90) days of electronic home monitoring, a fine of not less than Seven Hundred Fifty Dollars ($750.00) nor more than Five Thousand Dollars ($5,000.00) and a court-ordered restriction under Section 11.20.230.

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 seven (7) 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, one hundred

twenty (120) days of electronic home monitoring, 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) 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, 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 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), (iv) or (v) of this section if committed within this state;

(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 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 46.61.5249, 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 seven (7) years" means that the arrest for the prior offense occurred within seven (7) years of the arrest for the current offense.

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 seven (7) 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. Neither the mandatory minimum jail sentence nor the mandatory minimum period of electronic home monitoring shall be suspended or deferred unless the judge finds that the imposition of this sentence will pose a substantial risk to the defendant's physical or mental well-being. Whenever the mandatory minimum 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. 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 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 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 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 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 vehicle with one (1) or more passengers at the time of the offense.

7. A person convicted ((~~under~~)) <u>of a violation of subsection A or B of</u> 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 five (5) 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, 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.

9. 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.

10. A court may waive the electronic home monitoring requirements of this subsection when (i) the offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system; (ii) the offender does not reside in the state of Washington; or (iii) the court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty. Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp. Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five (365) days, the offender shall serve the jail portion of the sentence first,

and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five (365) days.

Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 7th day of Sept., 1999, and signed by me in open session in authentication of its passage this 7th day of Sept., 1999.

President — of the City Council

Approved by me this 8th day of Sept., 1999.

Mayor pro tem.

Filed by me this 9th day of September, 1999.

City Clerk

(Seal)

SEATTLE CITY ATTORNEY
MARK H. SIDRAN

July 9, 1999

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 (DUI) ordinance to a change made to the corresponding state statute in the past session of the Legislature. As city traffic ordinances must be identical to state law, both in the substance of the prohibition and in the penalty for violation, this change in city law is required.

The purpose of this amendment is to allow a court sentencing a defendant for DUI to impose a sanction other than electronic home monitoring when the particular defendant's circumstances make electronic home monitoring impossible or ineffectual. Another change made by the proposed ordinance is to clarify the applicability of requirements concerning alcohol information school.

It would be helpful if these changes could be made at the Council's earliest convenience.

Richard Greene of my office would be happy to provide any further information to the Public Safety Committee and the Council upon request. Richard may be reached at 684-8538.

Sincerely,

for Mark H. Sidran
Seattle City Attorney

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

RG: rg
July 9, 1999
99JuneDUI.doc
(Ver. 2)

ORDINANCE _____

AN ORDINANCE relating to the penalties for persons under the influence of intoxicating liquor or any drug, setting forth the circumstances and conditions pertaining to a waiver of electronic home monitoring requirements, specifying the order and terms pursuant to which a combination of jail time and electronic home monitoring or alternative sentence shall be served under certain circumstances, clarifying the applicability of requirements concerning alcohol information school or more intensive treatment, and amending Paragraph 7 of Subsection N of Section 11.56.020 of the Seattle Municipal Code and adding a new Paragraph 10 to said subsection.

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

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) 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) 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, a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) and a court-ordered restriction under Section 11.20.230. In lieu of the mandatory minimum term of imprisonment required under this subsection N1b, the court may order not less than thirty (30) days of electronic home monitoring.

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 seven (7) 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, sixty (60) days of electronic home monitoring, a fine of not less than Five Hundred Dollars ($500.00) 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 one (1) prior offense within seven (7) 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, ninety (90) days of electronic home monitoring, a fine of not less than Seven Hundred Fifty Dollars ($750.00) nor more than Five Thousand Dollars ($5,000.00) and a court-ordered restriction under Section 11.20.230.

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 seven (7) 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, one hundred twenty (120) days of electronic home monitoring, 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) 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, 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 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), (iv) or (v) of this section if committed within this state;

(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 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 46.61.5249, 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 seven (7) years" means that the arrest for the prior offense occurred within seven (7) years of the arrest for the current offense.

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

seven (7) 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. Neither the mandatory minimum jail sentence nor the mandatory minimum period of electronic home monitoring shall be suspended or deferred unless the judge finds that the imposition of this sentence will pose a substantial risk to the defendant's physical or mental well-being. Whenever the mandatory minimum 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. 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 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 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 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 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 vehicle with one (1) or more passengers at the time of the offense.

7. A person convicted ((~~under~~)) <u>of a violation of subsection A or B of</u> 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 five (5) 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, 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.

9. 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.

10. A court may waive the electronic home monitoring requirements of this subsection when (i) the offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system; (ii) the offender does not reside in the state of Washington; or (iii) the court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty. Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp. Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five (365) days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five (365) days.

Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 1999, and signed by me in open session in authentication of its passage this _____ day of _____, 1999.

_____
President _____ of the City Council

Approved by me this _____ day of _____, 1999.

_____
Mayor

Filed by me this _____ day of _____, 1999.

_____
City Clerk

(Seal)

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

C.S. 20-28

STATE OF WASHINGTON - KING COUNTY

110539
City of Seattle, City Clerk

—ss.

No. ORDINANCE IN

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:119636/ORD FULL

was published on

10/01/99

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

L. Patterson

Subscribed and sworn to before me on 10/01/99

M Olivarez

Notary Public for the State of Washington, residing in Seattle

City of Seattle

ORDINANCE 119636

AN ORDINANCE relating to the penalties for persons under the influence of intoxicating liquor or any drug, setting for the circumstances and conditions pertaining to a waiver of electronic home monitoring requirements, specifying the order and terms pursuant to which a combination of jail time and electronic home monitoring or alternative sentence shall be served under certain circumstances, clarifying the applicability of requirements concerning alcohol information school or more intensive treatment, and amending Paragraph 7 of Subsection N of Section 11.56.020 of the Seattle Municipal Code and adding a new Paragraph 10 to said subsection.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Paragraph 7 of Subsection N of Section 11.56.020 of the Seattle Municipal Code is hereby amended, and a new Paragraph 10 is hereby added to said subsection as follows:

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

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) 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 (here 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) 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, a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) and a court-ordered restriction under Section 11.20.230. In lieu of the mandatory minimum term of imprisonment required under this subsection N1b, the court may order not less than thirty (30) days of electronic home monitoring.

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 seven (7) 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 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), (iv), or (v) of this section if committed within this state;

(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 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 46.61.5249, 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 seven (7) years" means that the arrest for the prior offense occurred within seven (7) years of the arrest for the current offense.

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 seven (7) 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. Neither the mandatory minimum jail sentence nor the mandatory minimum period of electronic home monoring shall be suspended or deferred unless the judge finds that the imposition of this sentence will pose a substantial risk to the defendant's physical or mental well-being. Whenever the mandatory minimum 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. 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 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 be paid for by the offender and determined by the City. In exercising its [illegible]cretion in setting penalties within th[illegible]ts allowed by this subsecti[illegible]e co[illegible]hall particularly consider w[illegible]r 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 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.

9. 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.

10. A court may waive the electronic home monitoring requirements of this subsection when (i) the offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system; (ii) the offender does not reside in the state of Washington; or (iii) the court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty. Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp. Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five (365) days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five (365) days.

SECTION 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 7th day of September, 1999, and signed by me in open session in authentication of its passage this 7th day of September, 1999.

SUE DONALDSON,
President of the City Council.
Approved by me this 8th day of September, 1999.
SUE DONALDSON,
Mayor, Protem.
Filed by me this 9th day of September, 1999.
(Seal) JUDITH E. PIPPIN,
City Clerk.
Publication ordered by JUDITH PIPPIN