

CITY OF SEATTLE

ORDINANCE \_\_\_\_\_

COUNCIL BILL 117919

AN ORDINANCE relating to the City's traffic code; amending various sections and subsections in and adding sections to Chapters 3.33, 11.14, 11.20, 11.22, 11.30, 11.31, 11.56, 11.57, 11.58, 11.64, 11.72 and 11.84 of the Seattle Municipal Code to conform with changes in state law.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 3.33.020 of the Seattle Municipal Code is amended as follows:

**3.33.020 Jurisdiction—Authority.**

The Municipal Court has jurisdiction to try violations of all City ordinances and all other actions brought to enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith; provided, that for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than is authorized by state law. Judges of the Municipal Court shall not defer sentence for an offense sentenced under Section 11.56.025. As authorized by RCW 35.20.255, the period of probation shall not extend for more than five (5) years from the date of conviction for a defendant sentenced under Section 11.56.025 or for a domestic violence crime, which includes any non-felony crime listed in RCW 10.99.020, and the following crimes when committed by one (1) family or household member, as that term is defined in Section 12A.06.120, against another: Assault under Section 12A.06.010, Stalking under Section 12A.06.035, Reckless Endangerment under Section 12A.06.050, Coercion under Section 12A.06.090, Interfering with the Reporting of Domestic Violence under Section 12A.06.187, Violation of an Order under Section 12A.06.180, Property Destruction under Section 12A.08.020, Criminal Trespass First Degree under Section 12A.08.040 and Criminal Trespass

1 Second Degree under Section 12A.08.040; and two (2) years in all other cases. All civil and criminal  
2 proceedings in Municipal Court, and judgments rendered therein, shall be subject to review in the  
3 Superior Court by writ of review or on appeal. Costs in civil and criminal cases may be taxed as  
4 provided by law.

5 Section 2. A new section is added to Chapter 11.14 of the Seattle Municipal Code as follows:

6 **11.14.637 THC concentration.**

7 “THC concentration” means nanograms of delta-9 tetrahydrocannabinol per milliliter of a  
8 person's whole blood. THC concentration does not include measurement of the metabolite THC-COOH,  
9 also known as carboxy-THC. (RCW 46.04.\_\_\_\_)

10 Section 3. Section 11.20.340 of the Seattle Municipal Code is amended as follows:

11 **11.20.340 Financial responsibility required.**

12 A. No person may operate a motor vehicle subject to registration under Chapter 46.16A RCW in  
13 this City unless the person is insured under a motor vehicle liability policy with liability limits of at least  
14 the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a  
15 certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least  
16 the amounts provided in RCW 46.29.090. Proof (~~Written proof~~) of financial responsibility for motor  
17 vehicle operation must be provided on the request of a law enforcement officer in the format specified  
18 under RCW 46.30.030.

19 B. A person who drives a motor vehicle that is required to be registered in another state that  
20 requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility  
21 shall, when requested by a law enforcement officer, provide evidence of financial responsibility or  
22 insurance as is required by the laws of the state in which the vehicle is registered.  
23  
24

1 C. When asked to do so by a law enforcement officer, failure to display proof of financial  
2 responsibility for motor vehicle operation (~~((an insurance identification card))~~) as specified under RCW  
3 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

4 D. Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to  
5 penalties as set by the supreme court under RCW 46.63.110 or community service.

6 E. For the purposes of this section, when a person uses a portable electronic device to display  
7 proof of financial security to a law enforcement officer, the officer may only view the proof of financial  
8 security and is otherwise prohibited from viewing any other content on the portable electronic device.

9 F. Whenever a person presents a portable electronic device pursuant to this section, that person  
10 assumes all liability for any damage to the portable electronic device. (RCW 46.30.020(1))

11 Section 4. Section 11.20.347 of the Seattle Municipal Code is amended as follows:

12 **11.20.347 Scope of financial responsibility sections.**

13 The provisions of Sections 11.20.340 and 11.20.345 shall not govern:

14 A. The operation of a motor vehicle registered under RCW 46.18.220 or 46.18.255  
15 (~~((46.16.305(1)))~~), governed by RCW 46.16A.170 (~~((46.16.020))~~), or registered with the Washington  
16 Utilities and Transportation Commission as common or contract carriers; or

17 B. The operation of a motorcycle as defined in Section 11.14.340, a motor-driven cycle as  
18 defined in Section 11.14.345, or a moped as defined in RCW 46.04.304. (RCW 46.30.020(3))

19 Section 5. A new section is added to Chapter 11.22 of the Seattle Municipal Code as follows:

20 **11.22.085 License plate must correspond with vehicle registration.**

21 A. 1. It is unlawful for a person to display a license plate on a vehicle that does not match or  
22 correspond with the registration of the vehicle unless the vehicle is inventory for a properly licensed  
23 vehicle dealer.  
24

1 2. It is unlawful for a person to have an installed license plate flipping device on a vehicle, use  
2 technology to flip a license plate on a vehicle, or use technology to change the appearance of a license  
3 plate on a vehicle.

4 3. It is unlawful for a person or entity to sell a license plate flipping device or sell technology  
5 that will change the appearance of a license plate.

6 B A person who switches or flips license plates on a vehicle physically, utilizes technology to  
7 flip or change the appearance of a license plate on a vehicle, sells a license plate flipping device or  
8 technology that will change the appearance of a license plate, or falsifies a vehicle registration in  
9 violation of this section, in addition to any traffic infraction, is guilty of a gross misdemeanor punishable  
10 by confinement of up to three hundred sixty-four (364) days in jail and a fine of one thousand dollars  
11 (\$1,000) for the first offense, two thousand five hundred dollars (\$2,500) for a second offense, and five  
12 thousand dollars (\$5,000) for any subsequent offense, which may not be suspended, deferred, or  
13 reduced.

14 C. For purposes of this section, "license plate flipping device" means a device that enables a  
15 license plate on a vehicle to be changed to another license plate either manually or electronically.  
16 "License plate flipping device" includes technology that is capable of changing the appearance of a  
17 license plate to appear as a different license plate. (RCW 46.37. \_\_\_)

18 Section 6. Subsection A of Section 11.30.120 of the Seattle Municipal Code is amended as  
19 follows:

20 **11.30.120 Redemption of impounded vehicles.**

21 Vehicles impounded by the City shall be redeemed only under the following circumstances:

22 A. The vehicle may be redeemed only by the following persons or entities: the legal owner;  
23 ~~((Only))~~ the registered owner; ~~((s))~~ a person authorized in writing by the registered owner; the vehicle's  
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insurer or a vendor working on behalf of the vehicle's insurer; a third-party insurer that has a duty to repair or replace the vehicle, has obtained consent from the registered owner or the owner's agent to move the vehicle, and has documented that consent in the insurer's claim file, or a vendor working on behalf of a third-party insurer that has received such consent; provided, however, that at all times the registered owner must be granted access to and may reclaim possession of the vehicle. For the purposes of this subsection, "owner's agent" means the legal owner of the vehicle, a driver in possession of the vehicle with the registered owner's permission, or an adult member of the registered owner's family; a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle; or a person (~~or one~~) who has purchased the vehicle from the registered owner, who produces proof of ownership or authorization and signs a receipt therefore (~~may redeem an impounded vehicle~~)). A person redeeming a vehicle impounded pursuant to Section 11.30.105 must prior to redemption establish that he or she has a valid driver's license and is in compliance with Section 11.20.340. A vehicle impounded pursuant to Section 11.30.105 can be released only pursuant to a written release authorization from the Seattle Police Department pursuant to Section 11.30.120 C or a written release authorization or order from Municipal Court pursuant to Section 11.30.120 B or C.

\* \* \*

Section 7. Section 11.31.121 of the Seattle Municipal Code is amended as follows:

**11.31.121 Monetary penalties—Parking infractions**

The base monetary penalty for violation of each of the numbered provisions of the Seattle Municipal Code listed in the following table is as shown, unless and until the penalty shown below for a particular parking infraction is modified by Local Rule of the Seattle Municipal Court adopted pursuant to the Infraction Rules for Courts of Limited Jurisdiction ("IRLJ") or successor rules to the IRLJ:

Municipal Code Reference	Parking Infraction Short Description	Base Penalty Amount
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\* \* \*

1 11.72.125 Electric Vehicle Charging Station \$124 ((\$42))

2 \* \* \*

3 Section 8. Section 11.56.020 of the Seattle Municipal Code and the title of that section are  
4 amended as follows:

5 **11.56.020 Persons under the influence of intoxicating liquor, marijuana or any drug.**

6 A. Driving While Intoxicated.

7 1. A person is guilty of driving while under the influence of intoxicating Liquor, marijuana or  
8 any drug if the person drives a vehicle within the City:

9 a. And the person has, within two (2) hours after driving, an alcohol concentration of 0.08 or  
10 higher, as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

11 b. The person has, within two (2) hours after driving, a THC concentration of 5.00 or higher as  
12 shown by analysis of the person's blood made under RCW 46.61.506; or

13 c. ~~((b-))~~ While the person is under the influence of or affected by intoxicating liquor, marijuana  
14 or any drug; or

15 d. ~~((e-))~~ While the person is under the combined influence of or affected by intoxicating liquor,  
16 marijuana and any drug.

17 2. The fact that any person charged with a violation of this subsection is or has been entitled to  
18 use a drug under the laws of this state shall not constitute a defense against any charge of violating this  
19 subsection.  
20

21 3. a. It is an affirmative defense to a violation of subsection A1a of this section which the  
22 defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient  
23 quantity of alcohol after the time of driving and before the administration of an analysis of the person's  
24

1 breath or blood to cause the defendant's alcohol concentration to be 0.08 or higher (~~more~~) within two  
2 (2) hours after driving. The court shall not admit evidence of this defense unless the defendant notifies  
3 the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the  
4 affirmative defense.

5 b. It is an affirmative defense to a violation of subsection A1b of this section, which the  
6 defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient  
7 quantity of marijuana after the time of driving and before the administration of an analysis of the  
8 person's blood to cause the defendant's THC concentration to be 5.00 or higher within two (2) hours  
9 after driving. The court shall not admit evidence of this defense unless the defendant notifies the  
10 prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the  
11 affirmative defense.

12 4. a. Analysis of blood or breath samples obtained more than two (2) hours after the alleged  
13 driving may be used as evidence that within two (2) hours after the alleged driving a person had an  
14 alcohol concentration of 0.08 or higher (~~more~~) in violation of subsection A1a of this section, and in  
15 any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that  
16 a person was under the influence of or affected by intoxicating liquor or any drug in violation of  
17 subsections (~~(A1b or)~~) A1c or A1d of this section.

18 b. Analyses of blood samples obtained more than two (2) hours after the alleged driving may be  
19 used as evidence that within two (2) hours of the alleged driving a person had a THC concentration of  
20 5.00 or higher in violation of subsection A1b of this section, and in any case in which the analysis shows  
21 a THC concentration above 0.00 may be used as evidence that a person was under the influence of or  
22 affected by marijuana in violation of subsection A1c or A1d of this section.

23 5. Driving while under the influence of intoxicating liquor or any drug is a gross misdemeanor.  
24

B. Physical Control.

1 1. A person is guilty of being in actual physical control of a motor vehicle while under the  
2 influence of intoxicating liquor, marijuana or any drug if the person has actual physical control of a  
3 vehicle within the City:

4 a. And the person has, within two (2) hours after being in actual physical control of the vehicle,  
5 an alcohol concentration of 0.08 or higher, as shown by analysis of the person's breath or blood made  
6 under RCW 46.61.506; or

7 b. The person has, within two (2) hours after being in actual physical control of a vehicle, a THC  
8 concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506;

9 or

10 c. While the person is under the influence of or affected by intoxicating liquor, marijuana or any  
11 drug; or

12 d. ~~((e.))~~ While the person is under the combined influence of or affected by intoxicating liquor,  
13 marijuana and any drug.

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

18 3. a. It is an affirmative defense to a violation of subsection B1a of this section which the  
19 defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient  
20 quantity of alcohol after the time of being in actual physical control of the vehicle and before the  
21 administration of an analysis of the person's breath or blood to cause the defendant's alcohol  
22 concentration to be 0.08 or higher ~~((more))~~ within two (2) hours after being in actual physical control of  
23  
24

1 the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the  
2 prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the  
3 affirmative defense

4 b. It is an affirmative defense to a violation of subsection B1b of this section, which the  
5 defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient  
6 quantity of marijuana after the time of being in actual physical control of the vehicle and before the  
7 administration of an analysis of the person's blood to cause the defendant's THC concentration to be  
8 5.00 or higher within two (2) hours after being in control of the vehicle. The court shall not admit  
9 evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial  
10 hearing in the case of the defendant's intent to assert the affirmative defense.

11 4. a. Analysis of blood or breath samples obtained more than two (2) hours after the alleged  
12 being in actual physical control of a vehicle may be used as evidence that within two (2) hours after the  
13 alleged being in actual physical control of a vehicle a person had an alcohol concentration of 0.08 or  
14 higher ((more)) in violation of subsection B1a of this section, and in any case in which the analysis  
15 shows an alcohol concentration above 0.00 may be used as evidence that a person was under the  
16 influence of or affected by intoxicating liquor or any drug in violation of subsections ((B1b-0r)) B1c or  
17 B1d of this section.

18 b. Analyses of blood samples obtained more than two (2) hours after the alleged being in actual  
19 physical control of a vehicle may be used as evidence that within two (2) hours of the alleged being in  
20 control of the vehicle, a person had a THC concentration of 5.00 or higher in violation of subsection B1b  
21 of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be  
22 used as evidence that a person was under the influence of or affected by marijuana in violation of  
23 subsection B1c or B1d of this section.  
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5. Being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is a gross misdemeanor.

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

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

- a. Operates or is in actual physical control of a motor vehicle in the City;
- b. Is under the age of twenty-one (21); and
- c. Has, within two (2) hours after operating or being in actual physical control of the motor vehicle, either an alcohol concentration of at least 0.02 but less than 0.08, as shown by an analysis of the person's breath or blood made under RCW 46.61.506; or a THC concentration above 0.00 but less than the concentration specified in subsection Alb of this section, as shown by analysis of the person's blood made under RCW 46.61.506.

2. It is an affirmative defense to a violation of this subsection which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol or marijuana after the time of driving or 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 or THC concentration to be in violation of subsection C1 of this section ((at least 0.02 but less than 0.08)) within two (2) hours after driving or being in actual physical control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of (a) seven (7) days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

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

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

7 D. Mandatory Appearance After Charging and Conditions of Release.

8 1. A defendant who is charged with a violation of this section shall be required to appear in  
9 person before a judicial officer within one (1) judicial day after the arrest if the defendant is served with  
10 a citation or complaint at the time of the arrest. The Municipal Court may by local court rule waive the  
11 requirement for an appearance within one (1) judicial day if it provides for the appearance at the earliest  
12 practicable day following arrest and establishes the method for identifying that day in the rule.

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

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

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

21 5. Failure of the court to comply with the requirements of this subsection shall not be grounds  
22 for dismissal of any charge under this section nor the establishment of a constructive date of arraignment  
23 for purposes of Criminal Rule for Courts of Limited Jurisdiction 3.3.  
24

1 6. a. When any person charged with or arrested for a violation of subsection A or B of this  
2 section, in which the person has a prior offense as defined in RCW 46.61.5055 and the current offense  
3 involves alcohol, is released from custody before arraignment or trial on bail or personal recognizance,  
4 the Municipal Court shall require, as a condition of release, that person (i) have a functioning ignition  
5 interlock device installed on all motor vehicles operated by the person, with proof of installation filed  
6 with the court by the person or the certified interlock provider within five (5) business days of the date  
7 of release from custody or as soon thereafter as determined by the court based on availability within the  
8 jurisdiction; or (ii) comply with 24/7 sobriety program monitoring, as defined in Laws of 2013, 2<sup>nd</sup> Sp.  
9 Sess., chapter 35, section 26; or both.

10 (b) Upon acquittal or dismissal of all pending or current charges relating to a violation of  
11 subsection A or B of this section, the court shall authorize removal of the ignition interlock device and  
12 lift any requirement to comply with electronic alcohol/drug monitoring imposed under this subsection.  
13 Nothing in this section limits the authority of the court under Section 11.20.230.

14 Section 9. Section 11.56.025 of the Seattle Municipal Code is amended as follows:

15 **11.56.025 Penalty for persons under the influence of intoxicating liquor or any drug.**

16 \* \* \*

17 B.1. A person who is convicted of a violation of Subsection 11.56.020 A or B who has one (1)  
18 prior offense within seven (7) years and whose alcohol concentration was less than 0.15, or for any  
19 reason other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test  
20 result indicating the person's alcohol concentration, shall be punished by imprisonment for not less than  
21 thirty (30) consecutive days nor more than three hundred sixty-four (364) days, sixty (60) days of  
22 electronic home monitoring, and a fine of not less than Five Hundred Dollars (\$500) nor more than Five  
23 Thousand Dollars (\$5,000). In lieu of the mandatory minimum term of sixty (60) days of electronic  
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home monitoring, the court may order at least an additional four (4) days in jail or, if available in  
1 Seattle, a six-month period of 24/7 sobriety program monitoring pursuant to Laws of 2013, 2<sup>nd</sup> Sp. Sess.,  
2 chapter 35, sections 23 through 32, and the court shall order an expanded alcohol assessment and  
3 treatment, if deemed appropriate by the assessment.

4           2. A person who is convicted of a violation of Subsection 11.56.020 A or B who has one (1)  
5 prior offense within seven (7) years and whose alcohol concentration was 0.15 or more, or who refused  
6 to take a test offered pursuant to RCW 46.20.308, shall be punished by imprisonment for not less than  
7 forty-five (45) consecutive days nor more than three hundred sixty-four (364) days, ninety (90) days of  
8 electronic home monitoring, and a fine of not less than Seven Hundred Fifty Dollars (\$750) nor more  
9 than Five Thousand Dollars (\$5,000). In lieu of the mandatory minimum term of ninety (90) days of  
10 electronic home monitoring, the court may order at least an additional six (6) days in jail or, if available  
11 in Seattle, a six-month period of 24/7 sobriety program monitoring pursuant to Laws of 2013, 2<sup>nd</sup> Sp.  
12 Sess., chapter 35, sections 23 through 32, and the court shall order an expanded alcohol assessment and  
13 treatment, if deemed appropriate by the assessment.

14           C. 1. A person who is convicted of a violation of Subsection 11.56.020 A or B who has two (2)  
15 or more prior offenses within seven (7) years and whose alcohol concentration was less than 0.15, or for  
16 any reason other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no  
17 test result indicating the person's alcohol concentration, shall be punished by imprisonment for not less  
18 than ninety (90) consecutive days nor more than three hundred sixty-four (364) days, if available in  
19 Seattle, a six-month period of 24/7 sobriety program monitoring pursuant to Laws of 2013, 2<sup>nd</sup> Sp. Sess.,  
20 chapter 35, sections 23 through 32, one hundred twenty (120) days of electronic home monitoring, and a  
21 fine of not less than One Thousand Dollars (\$1,000) nor more than Five Thousand Dollars (\$5,000). In  
22 lieu of the mandatory minimum term of one hundred twenty (120) days of electronic home monitoring,  
23  
24

1 the court may order at least an additional eight (8) days in jail. The court shall order an expanded  
2 alcohol assessment and treatment, if deemed appropriate by the assessment.

3 2. A person who is convicted of a violation of Subsection 11.56.020 A or B who has two (2) or  
4 more prior offenses within seven (7) years and whose alcohol concentration was 0.15 or more, or who  
5 refused to take a test offered pursuant to RCW 46.20.308, shall be punished by imprisonment for not  
6 less than one hundred twenty (120) consecutive days nor more than three hundred sixty-four (364) days,  
7 if available in Seattle, a six-month period of 24/7 sobriety program monitoring pursuant to Laws of  
8 2013, 2<sup>nd</sup> Sp. Sess., chapter 35, sections 23 through 32, one hundred fifty (150) days of electronic home  
9 monitoring, and a fine of not less than One Thousand Five Hundred Dollars (\$1,500) nor more than Five  
10 Thousand Dollars (\$5,000). In lieu of the mandatory minimum term of one hundred fifty (150) days of  
11 electronic home monitoring, the court may order at least an additional ten (10) days in jail. The court  
12 shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment.

13 D. "Prior offense," "treatment" (~~offense~~) and "within seven (7) years" have the same meaning  
14 as in RCW 46.61.5055.

15 E. If a person convicted of a violation of Subsection 11.56.020 A or B committed the offense  
16 while a passenger under the age of sixteen (16) years was in the vehicle, the court shall:

17 1. order the use of an ignition interlock or other device under RCW 46.20.720 for an additional  
18 six (6) months;

19 2. in any case in which the person has no prior offenses within seven (7) years, order an  
20 additional twenty-four (24) hours of imprisonment and (~~a penalty by~~) a fine of not less than One  
21 Thousand Dollars (\$1,000) and not more than Five Thousand Dollars (\$5,000). One Thousand Dollars  
22 (\$1,000) of the fine may not be suspended (~~or deferred~~) unless the court finds the person to be  
23 indigent;  
24

1 3. in any case in which the person has one (1) prior offense within seven (7) years, order an  
2 additional five (5) days of imprisonment and ((a penalty by)) a fine of not less than Two Thousand  
3 Dollars (\$2,000) and not more than Five Thousand Dollars (\$5,000). One Thousand Dollars (\$1,000) of  
4 the fine may not be suspended ((or deferred)) unless the court finds the person to be indigent;

5 4. in any case in which the person has two (2) or more prior offenses within seven (7) years,  
6 order an additional ten (10) days of imprisonment and ((a penalty by)) a fine of not less than Three  
7 Thousand Dollars (\$3,000) and not more than Ten Thousand Dollars (\$10,000). One Thousand Dollars  
8 (\$1,000) of the fine may not be suspended ((or deferred)) unless the court finds the person to be  
9 indigent.

10 \* \* \*

11 G. Unless the judge finds the person to be indigent, the mandatory minimum fine shall not be  
12 suspended ((or deferred)). Neither the mandatory minimum jail sentence nor the mandatory minimum  
13 period of electronic home monitoring shall be suspended ((or deferred)) unless the judge finds that the  
14 imposition of this sentence will pose a substantial risk to the defendant's physical or mental well-being.  
15 Whenever the mandatory minimum sentence is suspended ((or deferred)), the judge must state, in  
16 writing, the reason for granting the suspension ((or deferral)) and the facts upon which the suspension  
17 ((or deferral)) is based. Whenever the court sentences an offender to a period of electronic home  
18 monitoring, the court may also require the offender's home electronic monitoring device or other  
19 separate alcohol monitoring device to include an alcohol detection breathalyzer and may restrict the  
20 amount of alcohol the offender may consume during the period of electronic home monitoring. The cost  
21 of electronic home monitoring shall be paid for by the offender and determined by the City. In  
22 exercising its discretion in setting penalties within the limits allowed by this section, the court shall  
23 particularly consider whether the person's driving at the time of the offense was responsible for injury or  
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1 damage to another or another's property, whether the person's license, permit or privilege to drive was  
2 suspended, revoked, denied or in probationary status at the time of the offense, whether the person was  
3 in compliance with Section 11.20.340 at the time of the offense and whether the person was driving or in  
4 actual physical control of a vehicle with one (1) or more passengers at the time of the offense, whether  
5 the driver was driving in the opposite direction of the normal flow of traffic on a multiple lane highway,  
6 as defined by RCW 46.04.350, with a posted speed limit of forty-five (45) miles per hour or greater; and  
7 whether a child passenger under the age of sixteen (16) was an occupant in the driver's vehicle.

8 \* \* \*

9 I. In addition to any nonsuspendable and nondeferrable jail sentence required by this subsection,  
10 whenever the court imposes less than three hundred sixty-four (364) days in jail, the court shall also  
11 suspend but shall not defer a period of confinement for a period not exceeding five (5) years. The court  
12 shall impose conditions of probation that include: (1) not driving a motor vehicle within this state  
13 without a valid license to drive and proof of liability insurance or other financial responsibility for the  
14 future pursuant to Section 11.20.340; (2) not driving or being in physical control of a motor vehicle  
15 within this state while having an alcohol concentration of 0.08 or more or a THC concentration of 5.00  
16 nanograms per milliliter of whole blood or higher within two (2) hours after driving or being in physical  
17 control; and (3) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug  
18 concentration upon request of a law enforcement officer who has probable cause to believe the person  
19 was driving or was in actual physical control of a motor vehicle within this state while under the  
20 influence of intoxicating liquor or drug. For each violation of mandatory conditions of probation (1),  
21 (2), or (3) of this subsection, the court shall order the convicted person to be confined for thirty (30)  
22 days, which shall not be suspended or deferred. For each incident involving a violation of a mandatory  
23 condition of probation imposed under this subsection, the court shall suspend the person's license,  
24

1 permit or privilege to drive for thirty (30) days or, if the person's license, permit or privilege to drive  
2 already is suspended, revoked or denied at the time the finding of probation violation is made, then the  
3 suspension, revocation or denial then in effect shall be extended by thirty (30) days. The court shall  
4 notify the Washington State Department of Licensing of a person's violation of any mandatory condition  
5 of probation imposed under this subsection and the suspension of or extension of the suspension,  
6 revocation or denial of a person's license, permit or privilege to drive. The court may impose conditions  
7 of probation that include nonrepetition, installation of an ignition interlock device on the probationer's  
8 motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be  
9 appropriate, including attendance at an educational program, such as a victim impact panel meeting the  
10 minimum standards established under RCW 10.01.230 (~~Washington Laws of 2011, chapter 293, section~~  
11 ~~15~~)), focusing on the emotional, physical and financial suffering of victims who were injured by persons  
12 convicted of driving while under the influence of intoxicants. The sentence may be imposed in whole or  
13 in part upon violation of a condition of probation during the suspension period.

14 \* \* \*

15 K. A court may waive the electronic home monitoring requirements of this section when (1) the  
16 offender does not have a dwelling, telephone service, or any other necessity to operate an electronic  
17 home monitoring system. However, if a court determines that an alcohol monitoring device utilizing  
18 wireless reporting technology is reasonably available, the court may require the person to obtain such a  
19 device during the period of required electronic home monitoring; (2) the offender does not reside in the  
20 State of Washington; or (3) the court determines that there is reason to believe that the offender would  
21 violate the conditions of the electronic home monitoring penalty. Whenever the mandatory minimum  
22 term of electronic home monitoring is waived, the court shall state in writing the reason for granting the  
23 waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with  
24

similar punitive consequences. The alternative sentence may include, but is not limited to, use of an ignition interlock device, the 24/7 sobriety program monitoring, 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-four (364) 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-four (364) days.

\* \* \*

Section 10. A new section is added to Chapter 11.57 of the Seattle Municipal Code as follows:

**11.57.050 Operating motorcycle on laned roadway.**

A. All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

B The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken. However, this subsection shall not apply when the operator of a motorcycle overtakes and passes a pedestrian or bicyclist while maintaining a safe passing distance of at least three feet (3').

C. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

D. Motorcycles shall not be operated more than two abreast in a single lane.

E. Subsections B and C of this section shall not apply to police officers in the performance of their official duties. (RCW 46.61.608)

Section 11. Section 11.58.005 of the Seattle Municipal Code is amended as follows:

**11.58.005 Operating motor vehicle in a negligent manner—Penalty.**

1 A.1. A person is guilty of negligent driving in the first degree if he or she operates a motor  
2 vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property,  
3 and exhibits the effects of having consumed liquor, marijuana or any ((an illegal)) drug or exhibits the  
4 effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating  
5 or hallucinatory effects.

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

10 \* \* \*

11 D. For the purposes of this section:

12 \* \* \*

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

17 a. Is in possession of or in close proximity to a container that has or recently had liquor,  
18 marijuana or any drug in it; or

19 b. Is shown by other evidence to have recently consumed liquor, marijuana or any drug.

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

23 a. ~~Is in possession of an illegal drug; or~~  
24

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

1 4.) "Exhibiting the effects of having inhaled or ingested any chemical, whether or not a legal  
2 substance, for its intoxicating or hallucinatory effects" means that a person by speech, manner,  
3 appearance, behavior or lack of coordination or otherwise exhibits that he or she has inhaled or ingested  
4 a chemical and either:

5 a. Is in possession of the canister or container from which the chemical came; or

6 b. Is shown by other evidence to have recently inhaled or ingested a chemical for its intoxicating  
7 or hallucinatory effects.

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

12 ~~6.)~~ 4. "Great bodily harm" and "substantial bodily harm" have the same meaning as provided in  
13 RCW 9A.04.110.

14 5. ~~((7.))~~ "Vulnerable user of a public way" means a pedestrian, a person riding an animal or a  
15 person operating any of the following on a public way: a farm tractor or implement of husbandry,  
16 without an enclosed shell, a bicycle, an electric-assisted bicycle, an electric personal assistive mobility  
17 device, a moped, a motor-driven cycle, a motorized foot scooter or a motorcycle.

18 Section 12. A new section is added to Chapter 11.64 of the Seattle Municipal Code as follows:

19 **11.64.200 Limitation on passengers in towed vehicle.**

20 A. Except as provided in subsection B of this section, no person may occupy a vehicle while it is  
21 being towed by a tow truck as defined in RCW 46.55.010.  
22  
23  
24

1 B. 1. A tow truck operator may allow passengers to ride in a vehicle that is carried on the deck  
2 of a flatbed tow truck only when the following conditions are met:

3 a. The number of people that need to be transported exceeds the seating capacity of the tow  
4 truck or a person needing to be transported has a disability that limits that person's ability to enter the  
5 tow truck;

6 b. All passengers in the carried vehicle and in the tow truck comply with sections 11.58.195 and  
7 11.58.198;

8 c. Any passenger under sixteen (16) years of age is accompanied by an adult riding in the same  
9 vehicle; and

10 d. There is a way for the passengers in the carried vehicle to immediately communicate, either  
11 verbally, audibly, or visually, with the tow truck operator in case of an emergency.

12 2. No passenger of such a carried vehicle may exit the carried vehicle, ride outside of the  
13 passenger compartment of the carried vehicle, or exhibit dangerous or distracting behaviors while in the  
14 carried vehicle. shall occupy any trailer while it is being moved upon a street or alley, except a person  
15 occupying a proper position for steering a trailer designed to be steered from a rear-end position. (RCW  
16 46.61.625)

17 Section 13. Section 11.72.320 of the Seattle Municipal Code is amended as follows:

18 **11.72.320 Planting strip.**

19 No person shall stop, stand or park a vehicle on a planting strip unless the vehicle bears a special  
20 placard or license plate issued under RCW Chapter 46.19 (~~card or decal issued pursuant to RCW~~  
21 ~~46.16.381~~)).

22 Section 14. A new subsection is added to Section 11.84.460 of the Seattle Municipal Code as  
23 follows:  
24

**11.84.460 Text message on wireless device.**

\* \* \*

1  
2 C. A person driving a commercial motor vehicle, as defined in RCW 46.25.010, including while  
3 temporarily stationary because of traffic, a traffic control device, or other momentary delays, who, by  
4 means of an electronic wireless communications device, sends, reads, or writes a text message, is guilty  
5 of a traffic infraction. For purposes of this subsection, "driving" does not include operating a  
6 commercial motor vehicle with or without the motor running when the driver has moved the vehicle to  
7 the side of, or off, a highway and has stopped in a location where the vehicle can safely remain  
8 stationary. Provided, this subsection does not apply to a person operating a commercial motor vehicle  
9 when necessary to communicate with law enforcement officials or other emergency services. (RCW  
10 46.61.668)

11 Section 15. Section 11.84.480 of the Seattle Municipal Code is amended as follows:

12 **11.84.480 Cell phones.**

13 \* \* \*

14  
15 C. A person driving a commercial motor vehicle, as defined in RCW 46.25.010, including while  
16 temporarily stationary because of traffic, a traffic control device, or other momentary delays, while  
17 using a hand-held mobile telephone is guilty of a traffic infraction. For purposes of this subsection,  
18 "driving" does not include operating a commercial motor vehicle with or without the motor running  
19 when the driver has moved the vehicle to the side of, or off, a highway and has stopped in a location  
20 where the vehicle can safely remain stationary. Provided, this subsection does not apply to a person  
21 operating a commercial motor vehicle when necessary to communicate with law enforcement officials  
22 or other emergency services or using a mobile telephone in hands-free mode.  
23  
24



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Law	Richard Greene/684-8538	

**Legislation Title:**

AN ORDINANCE relating to the City's traffic code; amending various sections and subsections in and adding sections to Chapters 3.33, 11.14, 11.20, 11.22, 11.30, 11.31, 11.56, 11.57, 11.58, 11.64, 11.72 and 11.84 of the Seattle Municipal Code to conform with changes in state law.

**Summary of the Legislation:**

This ordinance prohibits Municipal Court from deferring sentence for a DUI or Physical Control conviction, allows proof of automobile insurance to be displayed to a police officer on a portable electronic device, prohibits displaying a license plate that was not issued for the car, allows an automobile insurer to redeem an impounded car, increases the monetary penalty for unlawful parking at an electric vehicle charging station from \$42 to \$124, prohibits driving or being in physical control of a car while having a specified THC concentration, requires that a defendant charged with alcohol-related DUI or Physical Control who has a prior offense have an ignition interlock device installed on his car as a condition of pretrial release, authorizes alcohol treatment in lieu of electronic home detention for a defendant convicted of DUI or Physical Control who has a prior offense, increases the mandatory minimum punishment for a defendant convicted of DUI or Physical Control where a passenger under 16 was in the car, specifies the conditions for motorcycles occupying a lane of traffic, prohibits driving a car in a negligent manner and while exhibiting the effects of having consumed marijuana, authorizes a tow truck driver to allow persons to ride in a vehicle carried on a flatbed tow truck, and prohibits a commercial vehicle driver from sending a text message or using a cell phone while driving.

**Background:**

This ordinance is designed to make changes to Seattle's traffic code to reflect changes made to identical state statutes by the 2013 Legislature.

Please check one of the following:

X  **This legislation does not have any financial implications.**

**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
No.
- b) **What is the financial cost of not implementing the legislation?** None seems apparent.

- c) **Does this legislation affect any departments besides the originating department?**  
No.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** Doing nothing, as these crimes are already crimes under state law.
- e) **Is a public hearing required for this legislation?** No.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No.
- g) **Does this legislation affect a piece of property?** No.
- h) **Other Issues:**

**List attachments to the fiscal note below:**



August 27, 2013

Honorable Sally J. Clark  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Clark:

Enclosed for the City Council's consideration is an ordinance making several changes to Seattle's traffic code to reflect changes made to the corresponding state statutes by the 2013 Legislature. These changes are necessary because our traffic code must be identical with state law.

Section 1 prohibits Municipal Court from deferring imposition of a sentence imposed for a DUI or Physical Control conviction. Section 3 authorizes display of automobile insurance on a cell phone. Section 5 requires that a vehicle's license plate match its registration. Section 6 allows redemption of an impounded vehicle by the owner's insurer. Section 7 increases the penalty for unlawful parking at an electric vehicle charging station from \$42 to \$124. Sections 2 and 8 prohibit driving or being in physical control of a vehicle while having a specified THC concentration and require that a defendant charged with an alcohol-related DUI or Physical Control who has a prior conviction have an ignition interlock device installed on his car as a condition of pretrial release. Section 9 authorizes alcohol treatment in lieu of electronic home monitoring for a defendant convicted of DUI or Physical Control who has a prior conviction and increases the mandatory minimum punishment for a defendant convicted of DUI or Physical Control where a passenger under 16 was in the vehicle. Section 10 specifies the conditions for motorcycles occupying a lane of traffic. Section 11 prohibits operating a vehicle in a negligent manner and while exhibiting the effects of having consumed marijuana. Section 12 authorizes a tow truck driver to allow persons to ride in a vehicle carried on a flatbed tow truck. Sections 14 and 15 prohibit a commercial truck driver from sending a text message or using a cell phone while driving.

Again, the reason for these changes is that Seattle's traffic code must be the same as state traffic laws.

August 27, 2013

Page 2

Thank you for your consideration of this legislation. Should you have questions, please contact Richard Greene at 684-8538.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter S. Holmes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Peter S. Holmes  
Seattle City Attorney