

ORDINANCE 1023

CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON, ADOPTING CERTAIN PROVISIONS OF STATE LAW PASSED DURING THE 1995 LEGISLATIVE SESSION, MODIFYING THE PENALTY PROVISIONS OF THE LACEY MUNICIPAL CODE APPLICABLE TO ALCOHOL OR DRUG RELATED DRIVING OFFENSES, REPEALING SECTIONS 10.04.014, 10.04.015 AND 10.04.016 AND AMENDING SECTIONS 10.04.010, 10.04.013 AND 10.04.019 OF THE LACEY MUNICIPAL CODE AND ADDING A NEW SECTION, 10.04.014 TO SAID CODE.

WHEREAS, the 1995 session of the Washington State Legislature adopted chapter 50 and chapter 332 which chapters amend portions of the Washington Model Traffic Ordinance which has previously been adopted by the City and further amended the penalty provisions for alcohol and drug related driving offenses which penalty provisions must apply to the violation of similar city ordinances;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1. Sections 10.04.014, 10.04.015 and 10.04.016 of the Lacey Municipal Code are hereby repealed.

Section 2. Section 10.04.010 of the Lacey Municipal code is hereby amended to read as follows:

10.04.010 Washington Model Traffic Ordinance and Additional Statutes Adopted. Chapter 308-330 of the Washington Administrative Code, except Sections 308-330-500 through 308-330-565 of said code and any portion of said code which adopts by reference RCW 46.61.502, 46.61.504, 46.61.506 and 46.61.520, which chapter is known as the "Washington Model Traffic Ordinance," is hereby adopted. ~~Sections 1, 10, 11, 12,~~

~~13, 21, 22 and 23 of Chapter 275, Laws of 1994, and all of Chapters 139, 141, and 100, Laws of 1994 Chapter 50 and all of Chapter 332 except Sections 5 and 18 thereof,~~ are also hereby adopted by reference and all provisions adopted by this section together with the balance of this Chapter shall constitute the traffic code of the City of Lacey. It is the intent of the council in adopting said statutes and laws by reference that the addition of or the renumbering of sections by the Legislature or the renumbering of sections or the addition of statutes by those adopting the Washington Administrative Code shall be deemed to amend this Chapter of the Lacey Municipal Code and that it shall not be necessary for the Council to take any action with respect to such addition, amendment, repeal or renumbering.

Section 3. Section 10.04.013D of the Lacey Municipal Code is hereby amended to read as follows:

- D. When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

Section 4. There is hereby added to the Lacey Municipal Code a new Section, 10.04.014 to read as follows:

- A. A person who is convicted of a violation of LMC 10.04.011 or 10.04.012 and who has no prior offense within five years shall be punished as follows:
 - 1. In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:
 - a. By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

- b. By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and
 - c. By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of ninety days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege; or
2. In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:
- a. By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of the mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and
 - b. By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and
 - c. By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one hundred twenty days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's

license, permit, or privilege.

B. A person who is convicted of a violation of LMC 10.04.011 or 10.04.012 and who has one prior offense within five years shall be punished as follows:

1. In the case of a person whose alcohol concentration was less than 0.15, or for who for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is not test result indicating the person's alcohol concentration:

a. By imprisonment for not less than thirty days nor more than one year. Thirty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

b. By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

c. By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one year. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

2. In the case of a person whose alcohol concentration was at least 0.15, or for who by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

a. By imprisonment for not less than forty-five days nor more than one year. Forty-five days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or

mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

- b. By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and
- c. By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of four hundred fifty days. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offenders license, permit or privilege.

C. A person who is convicted of a violation of LMC 10.04.011 or 10.04.012 and who has two or more prior offenses within five years shall be punished as follows:

- 1. In the case of a person whose alcohol concentration was less than 0.15, or for whom the reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:
 - a. By imprisonment for not less than ninety days nor more than one year. Ninety days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and
 - b. By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and
 - c. By revocation of the offender's license or permit to drive, or suspension of any nonresident

privilege to drive, for a period of two years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

2. In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:
 - a. By imprisonment for not less than one hundred twenty days nor more than one year. One hundred twenty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and
 - b. By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and
 - c. By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of three years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege.
- D. In exercising its discretion in setting penalties within the limits allowed by this section, 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.
- E. An offender punishable under this section is subject to the alcohol assessment and treatment provisions of LMC 10.04.017 and 10.04.018

F.1. In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that include:

- a. Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future;
 - b. not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and
 - c. 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 reasonable grounds 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. The court may impose conditions of probation that include nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon any violation of a condition of probation during the suspension period.
2. For each violation of mandatory conditions of probation under 1.a. and b. or 1.a. and c. of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.
 3. For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

G.1. A "prior offense" means any of the following:

- a. A conviction for a violation of RCW 46.61.502, LMC 10.04.011 or any equivalent local ordinance of any other jurisdiction;

- b. A conviction for a violation of RCW 46.61.504, LMC 10.04.012 or any equivalent local ordinance of any other jurisdiction.
 - c. A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;
 - d. A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;
 - e. An out-of-state conviction for a violation that would have been a violation of 1.a., b., c., or d. of this subsection if committed in this state; or
 - f. A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, LMC 10.04.011, LMC 10.04.012 or an equivalent local ordinance of any other jurisdiction.
2. "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense.

Section 4. Section 10.04.019 of the Lacey Municipal Code is hereby amended to read as follows:

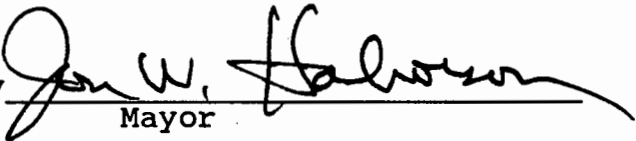
10.04.019 Severability. The provisions of this chapter and the ordinances enacting and amending said chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter or the ordinances enacting and amending said chapter, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter or the ordinance enacting said chapter or the validity of its application to other persons or circumstances. Specifically, without limiting the severability of other portions of this chapter and the ordinances enacting and amending it, the following provisions shall apply:

- A. In the event that a court should declare void any provision of this chapter upon the basis that said provision calls for an alcohol concentration of 0.08 rather than 0.10, then an alcohol concentration of 0.10 rather than 0.08 shall be in full force and effect as though "0.10" appeared everywhere "0.08" appears in this chapter and prosecutions shall be made and shall continue thereunder as if the alcohol concentration was 0.10~~+~~ and

B. ~~In the event that a court should declare void the second sentence of LMC 10.04.014A.3. then said provision shall be deemed severed and not effective, and the remainder of this chapter, including the remainder of LMC 10.04.011A.3. shall continue in full force and effect as if said second sentence had never been enacted and the court shall in no case under LMC 10.04.014A.3. suspend any part of any period of suspension of a person's license, permit or privilege to drive. (Ord. 990 §11, 1994).~~

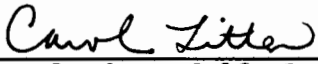
PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON,
this 26TH day of OCTOBER, 1995.

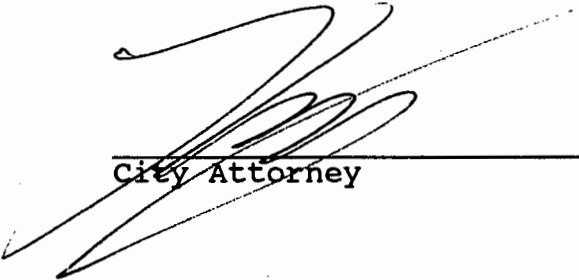
CITY COUNCIL

By 
Mayor

Attest:

Approved as to form:


City Clerk - DEPUTY


City Attorney

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