

ORDINANCE NO. 975

AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON, ESTABLISHING THE MAXIMUM PERMISSIBLE BLOOD AND BREATH ALCOHOL LEVELS FOR DRIVING MOTOR VEHICLES OR BEING IN PHYSICAL CONTROL OF MOTOR VEHICLES WITHIN THE CITY, AMENDING SECTION 10.04.010 OF THE LACEY MUNICIPAL CODE AND ADDING SECTIONS 10.04.012, 10.04.014 AND 10.04.016 TO SAID CODE.

WHEREAS, the Council finds that the driving or physical control of motor vehicles while under the influence of or effected by intoxicating liquor is a major health and safety problem within the City since such driving contributes to loss of life, personal injuries and property damage; and

WHEREAS, the Council finds that the health and safety of the residents and visitors to the City will be promoted and better protected if the level of breath alcohol and blood alcohol for purposes of determining whether persons driving or in physical control of motor vehicles are under the influence of or effected by intoxicating liquor is set at a level lower than currently provided by state statute; NOW, THEREFORE,

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

Section 1. Section 10.04.010 of the Lacey Municipal Code is hereby amended to read as follows:

All of RCW Chapter 46.90 except Sections 46.90.500 through 46.90.565 and those portions of said chapter which adopt RCW 46.61.502, 46.61.504, 46.61.506 and 46.61.520 by reference the penalty provisions thereof, which chapter is known as the

"Washington Model Traffic Ordinance," and ~~RCW 46.61.687, 46.61.688~~
~~and Section 3 of Chapter 275, Laws of 1984,~~ are is adopted and said
chapter together with the balance of this chapter 10.04 shall
constitute as the traffic code of the city. The penalty provisions
of RCW Chapter 46.90 are further adopted as the penalties within
the City of Lacey and those penalty provisions of section 46.61.515
adopted by said chapter which refer to a violation of RCW 46.61.502
or 46.61.504 shall be considered to apply to the violation of
Section 10.04.012 and Section 10.04.014 of this Chapter. It is the
intent of the council in adopting said statutes by reference that
the addition of or the renumbering of sections by the legislature
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 2. There is hereby added to the Lacey Municipal
Code a new section, 10.04.012 to read as follows:

(1) A person is guilty of driving while under the influence of
intoxicating liquor or any drug if the person drives a vehicle
within this state:

(a) And the person has 0.08 grams or more of alcohol per two
hundred ten liters of breath within two hours after driving, as
shown by analysis of the person's breath made under RCW 46.61.506;
or

(b) And the person has 0.08 percent or more by weight of alcohol
in the person's blood within two hours after driving, as shown by
analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by
intoxicating liquor or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1)(a) and (b) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had 0.08 grams or more of alcohol per two hundred ten liters of breath or 0.08 percent or more of alcohol in the person's blood, pursuant to subsection (1)(a) and (b) of this section, and may be used as evidence that a person was under the influence of or affected by intoxicating liquors or any drug pursuant to subsection (1)(c) and (d) of this section.

Section 3. There is hereby added to the Lacey Municipal Code a new section, 10.04.014 to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has 0.08 grams or more of alcohol per two hundred ten liters of breath within two hours after being in actual physical control of a motor vehicle, as shown by analysis of the person's breath made under RCW 46.61.506; or

(b) And the person has 0.08 percent or more by weight of alcohol in the person's blood within two hours after being in actual physical control of a motor vehicle, as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

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

(3) It is an affirmative defense to a violation of subsection (1)(a) and (b) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of a motor vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in actual physical control of a motor vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged actual physical control of a motor vehicle may be used as evidence that within two hours of the alleged actual physical control of a motor vehicle, a person had 0.08 grams or more of alcohol per two hundred ten liters of breath or 0.08 percent or more of alcohol in the person's blood, pursuant to subsection (1)(a) and (b) of this section, and may be used as evidence that a person was under the influence of or affected by intoxicating liquors or any drug pursuant to subsection (1)(c) and (d) of this section.

Section 4.

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the amount of alcohol in the person's blood or breath at the time alleged as shown by analysis of his blood or breath is less than 0.08 percent by weight of alcohol in his blood or 0.08 grams of alcohol per two hundred ten liters of the person's breath, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2) The breath analysis shall be based upon grams of alcohol per

two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or section 10.04.012 or 10.04.014 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4) 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 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.

(5) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of the person's own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(6) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to such person or the person's attorney.

Section 5. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. This Ordinance shall become effective five days after its passage and publication as required by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, this 28TH day of October, 1993.

CITY COUNCIL

By John W. Halverson
Mayor

Attest:

Approved as to form:

Charlotta Taylor
City Clerk

[Signature]
City Attorney

Published: November 4, 1993
Thursday