

**ORIGINAL**

ORDINANCE NO. 1842

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, AMENDING CHAPTER 10.14 OF THE REDMOND MUNICIPAL CODE ENTITLED "DRIVING UNDER THE INFLUENCE OF INTOXICANTS OR DRUGS" TO REFLECT REVISIONS PURSUANT TO CHAPTER 332, LAWS OF 1995, AMENDING SECTIONS 10.14.030, 10.14.090, AND 10.14.100; REPEALING SECTIONS 10.14.005, 10.14.060, 10.14.070, AND 10.14.080; AND ADDING SECTIONS 10.14.065 AND 10.14.075.

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WHEREAS, the Washington State Legislature has enacted changes to provisions relating to driving offenses involving alcohol or drugs, and

WHEREAS, the Redmond City Council finds that this ordinance is in the interest of the public health, safety, and welfare, and

WHEREAS, the City of Redmond must provide for penalties for violations of the above laws which are consistent with state law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Penalty: DUI. A new section 10.14.065 is added to the Redmond Municipal Code to read as follows:

- (1) A person who is convicted of a violation of Redmond Municipal Code Sections 10.14.010 or 10.14.020 and who has no prior offense within five years shall be punished as follows:
  - (a) 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:
    - (i) 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
- (ii) 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
  - (iii) 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
- (b) 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:
- (i) 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 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
  - (ii) 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
  - (iii) 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.
- (2) A person who is convicted of a violation of Redmond Municipal Code Sections 10.14.010 or 10.14.020 and who has one prior offense within five years shall be punished as follows:
- (a) 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:
    - (i) 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 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
- (ii) 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
  - (iii) 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
- (b) 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:
- (i) 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
  - (ii) 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
  - (iii) 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 offender's license, permit, or privilege.
- (3) A person who is convicted of a violation of Redmond Municipal Code Sections 10.14.010 or 10.14.020 and who has two or more prior offenses within five years shall be punished as follows:
- (a) 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:
    - (i) 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
- (ii) 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
  - (iii) 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
- (b) 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:
- (i) 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
  - (ii) 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
  - (iii) 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.
- (4) 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.
- (5) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of Redmond Municipal Code Section 10.14.100.

- (6) (a) 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:
- (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 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 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 violation of a condition of probation during the suspension period.
- (b) For each violation of mandatory conditions of probation under (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.
- (c) 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.
- (7) (a) A "prior offense" means any of the following:
- (i) A conviction for a violation of RCW 46.61.502, RMC 10.14.010 or an equivalent local ordinance;
  - (ii) A conviction for a violation of RCW 46.61.504, RMC 10.14.020 or an 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) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), or (iv) of this subsection if committed in this state; or
  - (vi) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, RCW 46.61.504, RMC 10.14.010, RMC 10.14.020 or an equivalent local ordinance.

- (b) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense.

Section 2. Sentencing: DUI. A new section 10.14.075 is added to the Redmond Municipal Code to read as follows:

A sentencing court may allow persons convicted of violating RMC 10.14.010 or RMC 10.14.020 to fulfill the terms of the sentence provided in RMC 10.14.065 in nonconsecutive or intermittent time periods. However, any mandatory minimum sentence under RMC 10.14.065 shall be served consecutively unless suspended or deferred as otherwise provided by law.

Section 3. Persons under influence of intoxicating liquor or drug - Evidence - Tests - Information concerning tests. Redmond Municipal Code section 10.14.030, is hereby amended to read as follows:

- (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 person's alcohol concentration is less than 0.08, 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 Redmond Municipal Code Sections 10.14.010 or 10.14.020 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. Pursuant to state law, 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 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.

- (5) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one 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 him or her or his or her attorney.

Section 4. Assessment Fee. Redmond Municipal Code 10.14.090 is

hereby amended to read as follows:

- (1)
  - (a) In addition to penalties set forth in this act, a one hundred twenty-five dollar fee shall be assessed to a person who is either convicted, sentenced to a lesser charge, or given deferred prosecution, as a result of an arrest for violating Redmond Municipal Code Sections 10.14.010 or 10.14.020. This fee is for the purpose of funding the Washington state toxicology laboratory and the Washington state patrol breath test program.
  - (b) 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.
  - (c) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of Redmond Municipal Code Sections 10.14.010 or 10.14.020, the court shall assess the one hundred twenty-five dollar fee under (a) of this subsection. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee if it finds that the minor does not have the ability to pay the fee.
- (2) The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and distributed as follows:
  - (a) Forty percent shall be subject to distribution under RCW 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.
  - (b) If the case involves a blood test by the state toxicology laboratory, the remainder of the fee shall be forwarded to the state treasurer for deposit in the death investigations account to be used solely for funding the state toxicology laboratory blood testing program.
  - (c) Otherwise, the remainder of the fee shall be forwarded to the state treasurer for deposit in the state patrol highway account to be used solely for funding the Washington state patrol breath test program.
- (3) This section applies to any offense committed on or after July 1, 1993.

Section 5.     Treatment.     Redmond Municipal Code 10.14.100 is hereby

amended to read as follows:

- (1)     A person subject to alcohol assessment and treatment under this chapter shall be required by the court to complete a course in an alcohol information school approved by the Washington State Department of Social and Health Services or to complete more intensive treatment in 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 whenever it orders a person to complete a course or treatment program under this chapter.
- (2)     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 forwarded 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 approved by the Washington State Department of Social and Health Services or more intensive treatment in a program approved by the Washington State Department of Social and Health Services.
- (3)     Pursuant to state law, standards for approval for alcohol treatment programs shall be prescribed by the Washington State Department of Social and Health Services. The Washington State Department of Social and Health Services shall periodically review the costs of alcohol information schools and treatment programs.
- (4)     Any agency that provides treatment ordered under this chapter or under Laws of 1995, Chapter 332, Section 5, shall immediately report to the appropriate probation department where applicable, otherwise to the court, and to the Washington State Department of Licensing any noncompliance by a person with the conditions of his or her ordered treatment. The court shall notify the Washington State Department of Licensing and the Washington State Department of Social and Health Services of any failure by an agency to so report noncompliance. Pursuant to state law, any agency with knowledge of noncompliance that fails to so report shall be fined two hundred fifty dollars by the Washington State Department of Social and Health Services. Upon three such failures by an agency within one year, the Washington State Department of Social and Health Services shall revoke the agency's approval under this section.
- (5)     Pursuant to state law, the Washington State Department of Licensing and the Washington State Department of Social and Health Services may adopt such rules as are necessary to carry out this section.



Section 6: Repeal. Redmond Municipal Code sections 10.14.005, 10.14.060, 10.14.070, and 10.14.080 are hereby repealed.

Section 7: Savings Clause. These amendments do not affect any pending or existing litigation and do not operate as an abatement or bar to any action or proceeding pending under or by virtue of any other ordinance.

Section 8. Severability Clause. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances. In the event that a court should declare void any provision of the Municipal Code affected by this ordinance because the alcohol concentration is 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 the Municipal Code, and prosecutions shall be made and shall continue thereunder as if the alcohol concentration was 0.10.

Section 9. Effective Date. This ordinance shall take effect from and after September 1, 1995.

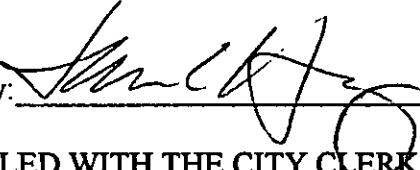
CITY OF REDMOND

  
MAYOR ROSEMARIE IVES

ATTEST/AUTHENTICATED:

  
CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By:  \_\_\_\_\_

FILED WITH THE CITY CLERK: July 12, 1995  
PASSED BY THE CITY COUNCIL: July 18, 1995  
SIGNED BY THE MAYOR: July 18, 1995  
PUBLISHED: July 26, 1995  
EFFECTIVE DATE: September 1, 1995  
ORDINANCE NO. 1842