



CITY OF BALLWIN

14811 Manchester Road, Ballwin, MO 63011

INTRODUCED BY

ALDERMEN TERBROCK, FINLEY, ROACH, STALLMANN, FLEMING, LEAHY, KERLAGON, BULLINGTON

AN ORDINANCE AMENDING SECTION 15-412 REGARDING ABANDONED MOTOR VEHICLES AND SECTIONS 15-112 THROUGH 15-117.5 REGARDING ALCOHOL RELATED TRAFFIC OFFENSES OF THE CODE OF ORDINANCES OF THE CITY OF BALLWIN.

WHEREAS, Section 15-412 of the City Code of Ordinances addresses abandoned motor vehicles and Sections 15-112 through 15-117.5 address alcohol related traffic offenses; and

WHEREAS, changes in state law (2014 SB 491, HB 1371) require parallel revisions to the City's ordinances, effective as of January 1, 2017;

NOW, THEREFORE, be it ordained by the Board of Aldermen of the City of Ballwin, Missouri, as follows:

Section 1. Section 15-412 of the Municipal Code is amended to read as follows:

Section 15-412. Abandoned motor vehicles — last owner of record deemed the owner of abandoned motor vehicle, procedures — penalty — civil liability.

- (a) A person commits the offense of abandoning a vehicle, vessel or trailer if he or she knowingly abandons any vehicle, vessel or trailer on the right-of-way of any public road or State highway or on or in any of the waters in this State or on the banks of any stream, or on any land or water owned, operated or leased by the State, any board, department, agency or commission thereof, or any political subdivision thereof or on any land or water owned, operated or leased by the Federal Government or on any private real property owned by another without his or her consent.
- (b) For purposes of this Section, the last owner of record of a vehicle, vessel or trailer found abandoned and not shown to be transferred pursuant to Sections 301.196 and 301.197, RSMo., shall be deemed by prima facie evidence to have been the owner of such vehicle, vessel or trailer at the time it was abandoned and to have been the person who abandoned the vehicle, vessel or trailer or caused or procured its abandonment.

Section 2. Sections 15-112 through 15-117 are hereby amended to read as follows:

Sec. 15-112. - Alcoholic beverages in motor vehicles prohibited.

- (a) *Restriction.* No person shall knowingly transport in any motor vehicle operated on a public highway, street, road or alley any alcoholic beverage except:

- (1) In the original container which shall not have been opened; and
- (2) The seal upon which shall not have been broken and from which the original cap or cork shall not have been removed;

unless the open container is in the rear trunk or compartment or in a locked compartment or container within the motor vehicle and not accessible to the driver or any other person in such motor vehicle while it is being operated. In the case of a pickup truck, station wagon, hatchback or other similar vehicle, the rear most storage area shall not be considered accessible to the driver or any other person.

- (b) *Consuming in vehicles.* No driver of a motor vehicle shall allow any alcoholic beverage to be consumed in a motor vehicle operated on a public highway, street, road or alley; nor shall any person consume any alcoholic beverage while in a moving motor vehicle.
- (c) *Chartered vehicles.* Nothing in this section shall be construed to prohibit the otherwise legal consumption of an alcoholic beverage by passengers riding in a private- or public-owned transit authority that has been chartered and is not being utilized for conveyance of the general public, but the driver of such motor vehicle may not possess, have ready access to or consume any alcoholic beverage while the motor vehicle is operated on a public highway, street, road or alley.
- (d) *Recreational motor vehicles.* Nothing in this section shall be construed to prohibit the otherwise legal consumption of an alcoholic beverage by passengers riding in the living quarters of a recreational motor vehicle. Nothing contained in this section shall prevent any motor vehicle from being registered as a commercial motor vehicle if it could otherwise be so registered.

Sec. 15-113. - Driving while intoxicated.

A person commits the offense of "driving while intoxicated" if he/she operates a vehicle or vessel, or manipulates any water skis while in an intoxicated or drugged condition. No person convicted of or pleading guilty to the offense of driving while intoxicated shall be granted a suspended imposition of sentence for such offense, unless such person shall be placed on probation for a minimum of two (2) years.

Sec. 15-114. - Driving with excessive blood alcohol content.

- (a) No person shall drive a noncommercial motor vehicle when the person has eight-hundredths of one percent or more by weight of alcohol in his blood. As used in this section, percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood and may be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes of determining the alcoholic content of a person's blood under this section, the tests shall be conducted in accordance with the provisions of RSMo §§ 577.020—577.041. A noncommercial motor vehicle means any motor vehicle not included within the definition of "commercial motor vehicle" set forth below.
- (b) No person shall operate a commercial motor vehicle while having an alcohol concentration in his blood, breath, urine or saliva of four-one hundredths of one percent or more. For the purposes of determining the alcoholic content of a person's blood under this section, the tests shall be conducted in accordance with the provisions of RSMo §§ 577.020—577.041. As used in this section, the term "commercial motor vehicle" shall mean a motor vehicle designed or used to transport passengers or property if:
 - (1) The vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit which has a gross vehicle weight rating of 10,000 or more pounds; or

- (2) The vehicle has a gross vehicle weight rating of 26,001 or more pounds; or
- (3) The vehicle has a gross vehicle weight rating of 26,001 or more pounds; or
- (4) The vehicle is transporting the hazardous materials as defined in RSMo § 302.7000.

Sec. 15-115. - Penalties for convictions for violating sections 15-113 and 15-114.

- (a) Any person convicted of violating the provisions of section 15-113 or 15-114 shall be punished as follows:
 - (1) Driving while intoxicated is for the first offense, a class B misdemeanor. No person convicted of or pleading guilty to the offense of driving while intoxicated shall be granted a suspended imposition of sentence for such offense, unless such person shall be placed on probation for a minimum of two years.
 - (2) For the first offense, driving with excessive blood alcohol content is a class C misdemeanor.
- (b) Evidence of prior convictions shall be heard and determined by the municipal judge, out of the hearing of a jury prior to the submission of the case to any jury, and the court shall enter its findings thereon.

Sec. 15-116. - Chemical tests for alcohol content, consent implied, administered, when, how, videotaping of chemical or field sobriety test admissible evidence.

- (a) Any person who operates a vehicle or vessel upon the public highways of this state shall be deemed to have given consent to, subject to the provisions of RSMo 577.020 through 577.041, to a chemical test or tests of his breath, blood, saliva or urine for the purpose of determining the alcohol or drug content of his breath, blood, saliva or urine for the purpose of determining the alcohol or drug content of the person's blood pursuant to the following circumstances:
 1. If the person is arrested for any offense arising out of acts which the arresting officer had reasonable grounds to believe were committed while the person was operating a vehicle or vessel while in an intoxicated condition;
 2. If the person is under the age of twenty-one (21), has been stopped by a Law Enforcement Officer, and the Law Enforcement Officer has reasonable grounds to believe that such person was operating a vehicle or vessel with a blood alcohol content of two-hundredths of one percent (.02%) or more by weight;
 3. If the person is under the age of twenty-one (21), has been stopped by a Law Enforcement Officer, and the Law Enforcement Officer has reasonable grounds to believe that such person has committed a violation of the traffic laws of the State or any political subdivision of the State, and such officer has reasonable grounds to believe, after making such stop, that such person has a blood alcohol content by weight of two-hundredths of one percent (.02%) or greater;
 4. If the person is under the age of twenty-one (21), has been stopped at a sobriety checkpoint or roadblock, and the Law Enforcement Officer has reasonable grounds to believe that such person has a blood alcohol content by weight of two-hundredths of one percent (.02%) or greater;

5. If the person, while operating a vehicle, has been involved in a collision or accident which resulted in a fatality or a readily apparent serious physical injury as defined in Section 556.061, RSMo. or has been arrested as evidenced by the issuance of a uniform traffic ticket for the violation of any State law or County or municipal ordinance with the exception of equipment violations contained in Chapters 306 and 307, RSMo., or similar provisions contained in County or municipal ordinances.

The test shall be administered at the direction of the arresting law enforcement officer whenever the person has been arrested for the offense.

- (b) The implied consent to submit to the chemical tests listed in subsection (a) of this section shall be limited to not more than two such tests arising from the same stop, detention, arrest, incident or charge.
- (c) Chemical analysis of the person's breath, blood, saliva, or urine to be considered valid under the provisions of RSMo 577.020 through 577.041 shall be performed according to methods approved by the State Department of Health and Senior Services by licensed medical personnel or by a person possessing a valid permit issued by the State Department of Health and Senior Services for this purpose.
- (d) The state division of health shall approve satisfactory techniques, devices, equipment, or methods to be considered valid under the provisions of RSMo 577.020 through 577.041 and shall establish standards to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits which shall be subject to termination or revocation by the state division of health.
- (e) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing and at his expense administer a test 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 taken at the direction of a law enforcement officer.
- (f) Upon the request of the person who is tested, full information concerning the test shall be made available to such person. Full information is limited to the following:
 1. The type of test administered and the procedures followed;
 2. The time of the collection of the blood, breath, saliva or urine sample or urine analyzed;
 3. The numerical results of the test indicating the alcohol content of the blood, breath, saliva and urine that was analyzed;
 4. The type and status of any permit which was held by the person who performed the test;
 5. If the test was administered by means of a breath testing instrument, the date of the most recent maintenance of such instrument.

Full information does not include manuals, schematics or software of the instrument used to test the person or any other material that is not in the actual possession of the City or State.

Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

(g) Any person given a chemical test of the person's breath pursuant to Subsection (a) of this Section or a field sobriety test may be videotaped during any such test at the direction of the Law Enforcement Officer. Any such video recording made during the chemical test pursuant to this Subsection or a field sobriety test shall be admissible as evidence for a violation of any municipal ordinance.

Sec. 15-117. - Driving while under influence of narcotic drug; penalty.

(a) No person who is a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of operating a motor vehicle shall operate a motor vehicle in the city. The fact that any person charged with violation of this section is or has been entitled to use such drugs under the laws of the state shall not constitute a defense against any charge of violating this section.

(b) Any person convicted of a violation of this section shall be punished as provided in section 15-115(a)(1).

Section 3. A new Section 15-117.5 is added, to read as follows:

Sec. 15-117.5 - Ignition interlock devices.

(a) It is an offense for a person to knowingly rent, lease or lend a motor vehicle to a person required to use an ignition interlock device on all vehicles operated by the person unless such vehicle is equipped with a functioning, certified ignition interlock device.

(b) It is an offense for a person who is required to use an ignition interlock device on all vehicles he or she operates to knowingly fail to notify any other person who rents, leases or loans a motor vehicle to that person of such requirement.

(c) It is an offense for any person who is required to use an ignition interlock device on all vehicles her or she operates to knowingly request or solicit any other person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing the person so restricted with an operable motor vehicle.

(d) It is an offense for any person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing an operable vehicle to a person who is required to use an ignition interlock device on all vehicles her or she operates.

(e) It is an offense to tamper with or circumvent the operation of an ignition interlock device.

(f) It is an offense to knowingly operate a motor vehicle that is not equipped with a functioning certified ignition interlock device in violation of a court or department of revenue order to use such a device.

Section 4. This ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

PASSED this _____ day of _____, 2017.

TIM POGUE, MAYOR

APPROVED this _____ day of _____, 2017.

TIM POGUE, MAYOR

ATTEST: _____
ERIC HANSON, CITY ADMINISTRATOR