



CITY of NOVI CITY COUNCIL

**Agenda Item G
June 4, 2012**

SUBJECT: Consideration of adoption of Ordinance No. 12-81.25 to amend the City of Novi Code of Ordinances at Chapter 33, Traffic and Motor Vehicles, to allow prosecution of cases under Section 625(1)(C) of the Motor Vehicle Code with enhanced penalties for high bodily alcohol level (BAC). **SECOND READING.**

SUBMITTING DEPARTMENT: Police *JEM*
CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

On October 31, 2010, Michigan's new "super drunk" law went into effect, meaning that Michigan drivers with a bodily alcohol level (BAC) of .17 or more grams of alcohol face greatly enhanced penalties if they are first-time high BAC offenders. One of the enhanced penalties is that the offender potentially faces 180 days in jail. As a result of the increased jail time all Novi "super drunk" cases had to proceed through the Oakland County Prosecutor's Office.

On February 7, 2012, Michigan Governor Rick Snyder signed into law Public Act 7 of 2012. In this Act, a city may adopt Section 625(1)(c) of the Michigan Vehicle Code to allow for the prosecution of high BAC offenders at the local level. The adoption of the proposed ordinance would eliminate the need to send officers or detectives to Pontiac, Michigan to seek a complaint and warrant from the Oakland County Prosecutor's Office; thus saving time, money and effort by keeping our officers on the street and not traveling to/from Pontiac. In addition, increased fines collected under local ordinances would be distributed to the local court and governing unit.

RECOMMENDED ACTION: Approve **SECOND READING** of Ordinance to amend the City of Novi Code of Ordinances at Chapter 33, Traffic and Motor Vehicles, to allow prosecution of cases under Section 625(1)(C) of the Motor Vehicle Code with enhanced penalties for high bodily alcohol level (BAC).

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

MEMORANDUM



TO: CLAY J. PEARSON, CITY MANAGER
FROM: DAVID E. MOLLOY, DIRECTOR OF PUBLIC SAFETY
SUBJECT: ADOPTION OF HIGH BAC/"SUPER DRUNK" STATUTE
DATE: MAY 6, 2012

DEM
5/9/12
To: Mayor of City
Council Member
FYI

BACKGROUND:

The Michigan Legislature passed Public Act number 7 (House Bill 4920) earlier this year, and was given immediate effect on February 15, 2012. The Act allows municipalities to enact a local ordinance that is substantially similar to the state law on driving under the influence with a high blood alcohol content (High BAC) driving. This statute is also referred to as the "super drunk" law.

SUMMARY OF HIGH BAC DRIVING:

The state law on "High BAC" (Blood Alcohol Content) went into effect at the end of October 2010, and states that it is unlawful to operate a motor vehicle with a BAC of .17% or higher. This is the offense that is commonly referred to as "drunk driving."

A typical first-offense drunk-driving case has a BAC limit of a .08% BAC and carries a certain set of penalties, whereas a first-offense High BAC case requires a .17% BAC, and carries a higher set of penalties, fines, and costs.

In addition, the High BAC law carries with it a one year (1-year) license suspension, of which 90 days must be served as a "hard suspension" (no modifications/restrictions), and the balance can be served as a "restricted license" so long as the vehicle has an ignition interlock installed (a breath analyzer that takes a sample each time the car is started and at irregular intervals throughout operation). A regular first offense charge that is not a High BAC case does not require the "hard suspension" period, and is typically only a restricted license for a few months with no ignition interlock.

The High BAC law is only a modification or another version of a *first-offense* charge of drunk driving. If an offender has one prior drunk driving conviction (within 7 years), they would be charged as a "second offense" case, or with two or more prior convictions (no time limit), charged as a 3rd or subsequent offense, both of which carry even higher penalties than a High BAC case.

A quick comparison is listed below. Note that there are other drunk driving related crimes not listed below, such as driving drunk with a minor child in the vehicle under the age of 16 ("Child Endangerment"), operating while impaired, allowing an intoxicated person to drive, drunk driving that causes serious injury or death, or injury/death to a

police officer/firefighter/emergency response personnel. Also, not addressed are additional penalties such as vehicle immobilization, vehicle forfeiture, license restrictions, suspensions, revocations, and vehicle ignition interlock devices.

QUICK SUMMARY CHART:

First Offense OWI	High BAC First Offense OWI	2nd Offense OWI	3rd+ Offense OWI
Misdemeanor	Misdemeanor	Misdemeanor	Felony
0-93 Days	0-180 Days	5-365 Days	1-5 Years*
\$100-500 fine	\$200-700 fine	\$200-1,000 fine	\$500-5,000 fine
Up to 360 hours	Up to 360 hours	30-60 Days	
Community Service	Comm. Service	Comm. Service	

** Also permissible: "Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively."*

WHY NOVI SHOULD ADOPT THE HIGH BAC LAW AS A LOCAL ORDINANCE:

When a first offense drunk driver is operating their vehicle with a BAC of a .17% or higher, the appropriate charge is not, under state law, a simple "first offense OWI", but is rather the "High BAC first offense OWI." The latter carries with it a higher jail term, higher fines, and more restrictive driver license sanctions that are more commensurate with the level of intoxication, as determined by our state legislature.

Until now, municipalities such as Novi were only able to adopt as a local ordinance any offense that carried a penalty of 93 days or less. The net effect of this was that anytime we encountered a drunk driver first offender who was a .17% BAC or higher, and we chose to pursue the more applicable High BAC law, those cases had to be sent to the Oakland County Prosecutors Office. That entailed a warrant request/warrant review packet, staff and personnel time to present the documents to them, delays in obtaining an arrest warrant, loss of local control in the prosecution of that case, and a complete loss of local revenue for any fines/costs associated with that charge. (Here there are no fines and no costs returned to the City of Novi).

With the new local ordinance for High BAC first offense OWI, we will be able to simply issue the drunk driver (who has a .17% BAC or higher) a local ordinance ticket/citation at the time of arrest with a defined court date—just as we do now for regular first offense OWI cases. The case will be prosecuted by our local city attorney's office (Charlie Cooper), and a portion of the fines/costs will be returned to the City of Novi, just as we have now for all other local ordinance citations. This process not only saves staff time and resources, but also is more fiscally sound with the fines/costs being returned, in part, to the City of Novi (under the statute the local court and some other statutory entities are still entitled to a portion of those fines/costs).

In addition, with the High BAC law being made a local ordinance, the fines are higher (\$200-\$700 per case as opposed to \$100-\$500 per case).

In short, in this instance it makes good sense to adopt the state law as a local ordinance, thus providing us the opportunity to enforce it under our own code and not just under state law.

Lieutenant Keith Wuotinen has been working with City Attorney Tom Schultz to bring this matter for City Council consideration at a future meeting.

Please let me know if you have any questions.

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI
ORDINANCE NO. 12-81.25

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 33 "TRAFFIC AND MOTOR VEHICLES," SECTION 3 "LIMITATIONS," TO ALLOW THE PROSECUTION OF CASES UNDER SECTION 625(1)(C) OF THE MICHIGAN VEHICLE CODE, 149 PA 300.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 33, "Traffic and Motor Vehicles," of the City of Novi Code of Ordinances, Section 4, "Limitations," is hereby amended to read as follows:

Sec. 33-4. Limitations.

Violations of any code or regulation adopted in this article for which the maximum period of imprisonment exceeds ninety-three (93) days shall not be enforced by the City as an ordinance violation; except for a violation of MCL 257.625(1)(c), which the City adopts by reference in Section 33-1 of the City Code of Ordinances in conformity with the Michigan Vehicle Code, Public Act 300 of 1949, as amended, and which shall constitute a misdemeanor punishable by one (1) or more of the following: community service for not more than three hundred sixty (360) hours, imprisonment for not more than one hundred eight (180) days, and a fine of not less than two hundred (\$200.00) dollars or more than seven hundred (\$700) dollars.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2012.

Maryanne Cornelius, City Clerk

JOHNSON | ROSATI | SCHULTZ | JOPPICH

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Charles D. Snell
csnell@jrsjlaw.com

April 26, 2012

David Molloy, Director/Chief
Novi Public Safety Department
45125 W. Ten Mile Road
Novi, MI 48375

RE: Super Drunk Law

Dear Chief Molloy:

On October 31, 2010, Michigan's new "super drunk" law went into effect, meaning that Michigan drivers with a bodily alcohol level (BAC) of .17 or more grams of alcohol face greatly enhanced penalties if they are first-time high BAC offenders. One of the enhanced penalties is that the offender potentially faces 180 days in jail. As a result of the increased jail time all Novi "super drunk" cases had to proceed through the Oakland County Prosecutor's Office.

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If I can be of any further assistance, do not hesitate to contact me at (248) 498-4100.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Charles D. Snell

CDS:jah