

**TOWN OF EATONVILLE**  
**PLANNING COMMISSION AGENDA**  
*Tuesday, January 19<sup>th</sup>, 2016 – 7:00 P.M.*  
**COMMUNITY CENTER**  
**305 CENTER STREET WEST**

Call to Order

*Phil Beach and Judy Justice have renewed their terms on the Planning Commission*  
*Introduce Andrew Powell – Planning Commissioner*

Roll Call: Beach \_\_\_ Bertoia \_\_\_ Justice \_\_\_ Lambert \_\_\_ *Miller -Excused* Powell \_\_\_\_\_

Town Staff Present: Mayor Schaub and Kerri Murphy

Pledge of Allegiance

Approval of the Agenda:

Approval of Minutes: December 7, 2015

Communications and Announcements:

From Public:

From Commissioners:

Public Hearing:

New Business:

Old Business: Madison Ave for possible parking of semi-tractor/trailers

Public Comments:

Staff Comments:

Commissioner Comments:

Next Meeting: **TBD**

**Town of Eatonville  
PLANNING COMMISSION MEETING  
Monday, December 7, 2015  
COMMUNITY CENTER  
305 CENTER STREET WEST**

**DRAFT**

**CALL TO ORDER**

**Chairman Lambert** called the meeting to order at 7:00 PM.

**ROLL CALL**

Present: **Commissioners Beach, Bertoia, Justice, Lambert and Miller.**

**STAFF PRESENT: Mayor Schaub and Kerri Murphy.**

**OPENING CEREMONIES**

**Commissioner Miller** led the Pledge of Allegiance.

**APPROVAL OF AGENDA**

**Commissioner Beach** move to approve the agenda. Seconded by **Commissioner Miller.** AIF

**APPROVAL OF MINUTES**

Approval of **November 2, 2015** minutes. **Commissioner Beach** motion to approve the corrected minutes provided to commissioners this evening. Seconded by **Commissioner Miller.** AIF

**Election of Officers for 2016:** Chairman – **Commissioner Beach** nominated Chairman Lambert for the Chairman position. Seconded by **Commission Justice.** AIF  
Vice-Chairman- **Commissioner Beach** nominated Commissioner Justice for Vice-Chairman. Seconded by **Commissioner Miller.** AIF  
Secretary – **Commissioner Justice** nominated Commissioner Miller for Secretary. Seconded by **Commissioner Bertoia.** AIF

**COMMUNICATIONS OR ANNOUCEMENTS**

There were no communications or announcements from the public or the commissioners.

**PUBLIC HEARING**

**3 Hour Parking – Ordinance 2013-8**

**Mayor Schaub** discussed how the 3 hour parking came to be in place in the town. The high school was under a major remodel and the high school students were attending school at the middle school. To prevent the students from parking long term, more than 3 hours in front of local businesses an ordinance was put in place. This limited parking longer than 3 hours on certain streets and parks. Mayor Schaub suggested keeping the parking lot at Nevitt Park and the Visitor's Center at minimum 3 hour parking. **Commissioner Beach** said that when he asked for this to be put on the agenda he was only asking for the 3 hour parking. He said if he was to make a motion he would simply motion to strike out Section A which has to do with 3 hour parking and leave the rest of it. If someone wanted to put back in the Visitor's Center that is fine with him but it would just be a cleaner way of amending the ordinance. Then the school loading and unloading zones are retained along with the parking of commercial vehicles. **Mayor Schaub** added that the parking of the commercial vehicles addresses on the west side of Washington Ave. but there have been a lot of concerns about the east side of Washington for cars entering from Carter St. E and Lynch Creek Rd. You don't want to limit the commercial vehicle not to have the ability to stop and park. You want them to be able to stop to access the businesses.

Commissioner Beach did not have any objection with anyone making a motion regarding the east side of Washington Ave. but he was mainly focusing on the 3 hour parking, explaining that until he saw the ordinance he did realize that it included the other matters of parking so he thought it was appropriate to retain "B" and "C" under the circumstances. He added that it was up to the other commissioners also as far as how far they go with this.

**Chairman Lambert** said that if "C" was going to be retained he asked for a better definition of a commercial vehicle. He was pretty sure his truck was in excess of 20 feet in length.

**Commissioner Beach** felt that the first sentence defined what a commercial vehicle is and the second sentence is saying we are particularly interested in those that exceed 10,000 pounds etc. and he did not feel that a motorhome would fit under the first sentence.

**Chairman Lambert** felt that it certainly would the second. (not audible)

**Commissioner Beach** said if there is a general agreement about getting rid of "A", then he would go ahead and make the motion and then people could make amendments to that motion. He move to close the public hearing.

**Commissioner Miller** seconded the motion. AIF

**Commissioner Beach** made the motion recommending partial repeal of Ordinance 2013-8 stating,

*Whereas, it is very evident that the three hour parking restriction is being violated and not enforced, thereby creating a poor image of the town's governance and administration;*

*Whereas, it is unlikely that the town will in the foreseeable future have the resources necessary to systematically enforce the parking restriction;*

*Whereas, non-systematic enforcement leads to the possibility of selective enforcement which is neither fair nor legal;*

*Therefore, the Planning Commission recommends that Section 110.16.015(A), Ordinance 2013-8 should be repealed in its entirety.*

**Commissioner Miller** seconded that motion. AIF.

**Commissioner Beach** said that if any of the commissioners wanted to add the town center restricted parking back into the ordinance they could do so at this time.

**Commissioner Miller** was concerned that if the town does not have the resources to enforce the 3 hour parking will they be able to enforce the town center and Nevitt Park parking.

**Mayor Schaub** thought that the students would start parking at Nevitt Park if it was not posted as 3 hour parking.

**Commissioner Beach** thought that they would be parking there now but thinks it's too far away.

**Commissioner Miller** motion to keep the 3 hour parking at the Eatonville Town Square, 132 Mashell Ave N.

**Chairman Lambert** confirmed that the motion is to retain the language in item # 6 under 106.16.015 A, and asked for a vote on the amendment.

**Commissioner Justice** seconded the motion. AIF.

**Chairman Lambert** asked for a vote on the original amendment by Commissioner Beach to remove items 1-6 under 106.16.0156 A. AIF.

**Commissioner Justice** made a motion to amend 10.16.015 C. 1 to read Washington Ave. from Lynch Creek Rd. to a point 300 feet south of Carter St.

**Commissioner Beach** seconded the motion.

**Mayor Schaub** asked if they wanted to make it where there is no parking at all or anything over a certain period?

**Chairman Lambert** said it was for commercial vehicles.

**Commissioner Justice** suggested it should only be while school is in session.

**Kerri Murphy** asked what about when there are sporting or special events at the schools.

**Commissioner Beach** said the people parking there live somewhere in the vicinity, as a practical matter where are they going to park their truck? He did not know of any parking areas in that vicinity.

**Commissioner Miller** suggested possibly the area located along the east side of Madison Ave. between Center St E and Oak St. Scrap some blackberry bushes out and they would have an area to park their semi, get in their car and drive home.

**Chairman Lambert** said right across from Arrow Lumber. He thought there was an issue as to where the right-of-way actually was.

**Commissioner Beach** suggested postponing this particular motion until the town staff can report back as to some alternate parking place for the trucks.

**Mayor Schaub** asked the commissioners if it is the town's place to provide parking for the semi-trucks and commercial vehicles.

**Commissioner Beach** said he did not know if there was an obligation but on the other hand if there are residents to drive commercial vehicles, they live in Eatonville,

**Chairman Lambert** said that on a practical matter if you want to keep the trucks off the residential streets then we should have a designated area.

**Commissioner Beach** said that for a while there was a semi flatbed truck parked on Carter Street at night. He didn't know if the town had an obligation but on the other hand, Eatonville is kind of remote. It isn't as though somebody is driving for interstate and lives in Tacoma and parks his truck in Eatonville. It is a different situation. They may be able to park down the hill...but they would not want to walk up the hill which is a safety issue in itself.

**Mayor Schaub** felt that if the truck was not parked by their residence, they are not going to be happy with it anywhere because of breaking in. He thinks the theft piece will always be an issue.

**Commissioner Beach** felt that if this is allowed, then they will start parking on residential streets.

**Mayor Schaub** explained that parking in residential areas is not allowed. With one of the drivers he agreed to only leave the trailer and not have both the tractor and trailer because it is such an issue pulling out from the side street. He can also see an issue having someplace that may not be in an area where it can be better watched.

**Chairman Lambert** – not audible.

**Kerri Murphy** explained that she and the Mayor had discussed other options for parking for the tractor-trailers like the school parking lot but they would have to be removed by a certain hour of the morning; some other areas where it would be open enough to maneuver around.

**Commissioner Miller** said that possibly Madison but that there were people right across the street that might not want trucks there and starting up in the early hours of the morning.

**Commissioner Beach** said that the trucks on Washington Ave are a safety hazard, and he agrees that it is not an issue of getting rid of them because some residents don't want them.

**Mayor Schaub** said that staff would check to see if there is enough shoulder to add adequate parking until the area was developed and offer that as an alternative.

**Commissioner Miller** said it would take care of the immediate problem which is a safety issue.

**Kerri Murphy** said that the Hamilton property is Mixed Use.

**Chairman Lambert** asked Commissioner Beach if he made motion to table the ....(not audible)

**Commissioner Beach** said it was not a motion and there was no second to it so it is not on the table.

**Chairman Lambert** explained that the original motion is still on the table.

**Commissioner Beach** said that the commission has a commitment from the administration so he has withdrawn his motion to postpone. It was not seconded so he can withdraw it.

**Kerri Murphy** confirmed that the original motion is from Commissioner Justice to amend 10.16.015 C. 1 to read Washington Ave. between Lynch Creek Rd. and a point 300 feet south of Carter St.

**Chairman Lambert** called for a vote on the amendment to commercial parking on Washington Ave. AIF.

**Commissioner Beach** asked **Chairman Lambert** if he wished to make an amendment to the definition of "commercial vehicle".

**Mayor Schaub** said that he would look at that too.

## DRAFT WATV –ORDINANCE 2015-XX

**Mayor Schaub** explained that this was the final version after the discussion at the last meeting in “draft” ordinance form after all the discussion. This has been reviewed by the attorney. There was a place holder on 10.30.050 B & C just in case there are some streets that may need to be inserted. This is mirrored after the Okanogan ATV Ordinance.

**Chairman Lambert** asked about 10.30.050 B. A list of public roadways designated for use by WATVs shall be publicly available and shall be accessible from the main page of the Town’s website. It was discussed that it would be easier to list the streets that were not available. .... (not audible)

**Commissioner Beach** said because it is 35 mph or less, other than the state highway is there any road in Eatonville where someone can legally drive over 35 mph.?

**Mayor Schaub** answered no.

**Kerri Murphy** read from the minutes where Doug Beagle said pg. 3, *10.30.050 Street Designation – A.1. All Eatonville public streets and roads are open to WATV’s use unless posted closed or unless designated as closed in the subsection below.*

**Commissioner Beach** said that there is nothing so strike out B and C. He then asked , under 10.30.040 A., if someone could explain what it says.

**Commissioner Miller** said if you are riding your ATV on a 35 mph road and come to a 60 mph highway, you are not allowed to cross it.

**Commissioner Beach** asked if it specifically says 60 mph road or highway.

**Commissioner Miller** said no, it is anything in excess of 35 mph.

**Commissioner Beach** asked if this was a state requirement.

**Commissioner Miller** thought it had something to do with the RCW. (RCW 47.17)

**Chairman Lambert** asked if the staff ever found out if a DUI is a misdemeanor or a felony.

**Mayor Schaub** said staff will get him an answer.

Chairman Lambert asked if 10.30.020 B. states *“appropriate on-road tab, which must be of a bright color that can be seen from a reasonable distance,” ....the town has nothing to do with this, this is a state issue.*

**Kerri Murphy** told the commissioners that this is based on the Okanogan Ordinance for ATV’s and that the attorney has reviewed its content.

**Commissioner Beach** suggested an orange flag for visibility.

**Chairman Lambert** added that the definitions should be the same language as they use in the ordinance.

**Commissioner Miller** said that this what the state requires and the operator does not have to have a special license for a WATV “Wheeled All-Terrain Vehicle”.

**Chairman Lambert** – not audible.

**Commissioner Beach** suggested that if no special license is required for a WATV that this portion should be struck from the ordinance.

**Commissioner Miller** motion to send the WATV Ordinance on to council as discussed. **Commissioner Beach** seconded the motion. AIF

## DISCUSSION OF DRAFT DESIGN GUIDELINES AMENDMENT

**Mayor Schaub** explained that this is the language that we discussed before to add the deviations for design standards. The Planning Consultant went through everything making sure everything was worded correctly; this was the end result to being able to add the departure language. After the last meeting, instead of having multiple updates to the design standards this allows the planning commission to review it and possible add any other changes that they wish to make at the same time due to the expense of adding To the EMC. This allows us intermediate time because we have some comp plan updates that will be coming forward next year that will have to be in place before we can go into changing this specific code. This will allow us to deal with any issue that comes up with Aviator Heights coming in and be able to deal with issues when it met criteria that were brought forward but also dealing with some of those that were in

the waiting to just update the code. Next year the Comprehensive Plan will be going through its process and this was going to go on the back burner to make sure that it is consistent with the comp plan.

**Commissioner Beach** said he did not have any problem with this except for a major omission. The planning commission needs to have a report from staff every time there is an exemption or deviation from the Design Guidelines, that that be part of the code. This will keep the planning commissioners informed as to what is going on. This way we may see changes that we can make in the whole design code.

**Mayor Schaub** agreed and apologized that it was omitted and added that it is important for the planning commission to know what happening.

**Commissioner Beach** motion to approve and send it forward to the council *with addition of the provision that a report be made to the planning commission with any and all exemptions and deviations granted.*

**Commissioner Miller** seconded the motion.

**Commissioner Beach** said he believed the motion should be tabled until staff reports back with the changes for commissioner review.

**Commissioner Miller** seconded the motion. AIF

**Comments from public, commission or staff.**

**Mayor Schaub** announced that Doug Beagle resigned effective November 9, 2015.

**Next meeting: TBD**

**ADJOURNMENT**

**Chairman Lambert** adjourned the meeting at 8:40 p.m.

\_\_\_\_\_  
Chairman Lambert

\_\_\_\_\_  
Martin Miller - Secretary

**ATTEST:**

\_\_\_\_\_  
Kerri Murphy – Recording Secretary

**DRAFT**

**18.04.150 MU – Mixed use district.**  SHARE

The purpose of the MU district is to implement the policies adopted in the land use element of the comprehensive plan. This zone district is intended to provide a high level of diversity in housing types, including townhouses and flats ranging from two to three stories. In addition, ground floor neighborhood-scale commercial and/or office uses are encouraged to create a cohesive pedestrian-oriented community. These uses are designed to complement and support the downtown commercial development.

A. Principal Uses. Principal uses are:

1. Multifamily dwellings (i.e., apartments, townhouses, condominiums, and duplexes);
2. Single-family detached and attached dwellings; and
3. Nursing homes, retirement homes, convalescent centers, and congregate care residential facilities.

B. Secondary Uses. Secondary uses are:

1. For projects that include frontage on an arterial or collector street, neighborhood-scale commercial and/or office uses (consistent with the commercial uses permitted in EMC 18.04.140, C-2 – General commercial district) are permitted on the ground floor of buildings. The neighborhood-scale commercial and office uses shall front on the arterial and collector streets and associated street intersections.
2. Home occupations in accordance with EMC 18.08.040.
3. Accessory buildings that are subordinate to the principal building and are incidental

to the use of the principal building on the same lot.

C. Conditional Uses. Conditional uses shall be processed in accordance with EMC 18.09.030. Conditional uses are:

1. Day care centers;
2. Adult family home or day care;
3. Public facilities and utilities and essential public facilities;
4. Wireless and cellular communication facilities;
5. Religious facilities; and
6. Schools.

D. Review Requirements. All development in this district shall be processed as a planned unit development (PUD), EMC 18.04.190.

E. Density. The minimum density is six housing units per net acre with a maximum density of 15 housing units per net acre. Up to 23 housing units per net acre are permitted within developments that incorporate commercial and/or office uses on the ground floor.

To qualify for the density bonus, in mixed use projects the equivalent of 30 percent of the ground floor area (building footprint/gross area) of those structures fronting an arterial or a collector street shall be developed with retail or commercial uses.

F. Maximum Lot Coverage. The maximum lot coverage shall be:

1. Forty percent; or
2. Fifty percent if a development incorporates retail uses on the first floor.

G. Maximum Height. The maximum height shall be 40 feet or three stories.



H. Street Setbacks. Street setbacks shall be 15 feet minimum from the back sidewalk or 20 feet minimum from the back of curb.

I. Side Yard Setbacks. Side yard setbacks shall be no less than five feet each or 10 feet in total or more if determined by the fire chief.

J. Rear Yard Setbacks. Rear yard setback requirements are zero feet unless determined otherwise by the fire chief.

K. Landscaping. Landscaping requirements for the C-2 general commercial district in Chapter 18.07 EMC shall apply.

L. Off-Street Parking. Off-street parking requirements for residential and commercial uses in Chapter 18.05 EMC shall apply.

M. Sign Regulations. Sign regulations for commercial uses in Chapter 18.06 EMC shall apply. (Ord. 2006-04 § 2, 2006).



## **Recreational Vehicles, Trailers and Buses EMC 10.18**

### **10.18.010 Definitions.**

#### **B. Trailer.**

1. "Trailer" means a vehicular type unit primarily designed for the transport of freight by road drawn by **truck** or tractor. Trailers shall include but are not limited to semi trailers, flat beds, utility trailers, boat trailers and equipment designed to be towed by a vehicle. Trailers that include a cabin for living accommodations including travel trailers, tent trailers, and camping trailers shall not be considered a trailer for the purposes of this chapter.

### **10.18.030 Trailer parking.**

A. Trailers shall not be parked on town streets or rights-of-way for more than 24 hours

### **10.18.040 Bus parking.**

Buses shall not be parked on town streets or rights-of-way for more than 24 consecutive hours. (Ord. 2006-07 § 4, 2006).

### **10.18.050 Violation – Penalty.**

Any person violating any provision of EMC 10.18.020, 10.18.030, or 10.18.040, whether as principal, agent or employee, for which violation no other penalty is prescribed, shall be guilty of an infraction, and upon conviction shall be assessed a monetary penalty of not less than \$65.00 for each violation. Each day such a violation continues shall be considered a separate, distinct infraction. (Ord. 2014-05 § 2, 2014; Ord. 2006-07 § 5, 2006).

**From: Kathy Linnemeyer, Town Clerk**

**12/08/15**

**Kerri,**

**See the information below from Dept of Licensing as it relates to Licensing WATV's. It is a requirement to license and register the ATV's so I will not be changing that section. I will still remove the language about the color because I talked to Audrey at Thompson's and she said that the state designates the color.**

**Do you want to forward this to the Planning Commission and let them know that it is a state requirement.**

**Kathy**

### **Licensing wheeled all-terrain vehicles**

#### **Metal tags for wheeled all-terrain vehicles**

All wheeled all-terrain vehicles meeting the definition below, are required to display a metal tag. To ride your wheeled all-terrain vehicle (WATV) on approved public roads, streets and highways in permitted counties you'll need a **metal tag with an on-road tab**.

#### **Definition of WATVs that need a metal tag**

- **A motorized, non-highway vehicle with handle bars:**
  - That is 50 inches or less in width.
  - Have a seat height of at least 20 inches.
  - Weighs less than 1,500 pounds.
  - Has 4 tires with diameters of 30 inches or less.
- **or**
- **A utility-type vehicle** designed for, and capable of, travel over designated roads that:
  - Has 4 or more low-pressure tires of 20 psi or less.
  - Is less than 74 inches wide.
  - Weighs less than 2,000 pounds.
  - Has a wheelbase of 110 inches or less.
  - Meets 1 or more of the following:
    - Is at least 50 inches wide.
    - Weighs at least 900 pounds.
    - Has a wheelbase of over 61 inches.

#### **How to get a WATV metal tag**

- Visit a [vehicle licensing office location](#)
- If you've completed all the steps to modify your WATV for on-road use, we'll add "modified for on-road use" to the vehicle registration.

As a WATV owner you're required to:

- Attach the metal tag on the back of the WATV.
- Sign the registration and carry it when driving the WATV.
- Meet the off-road requirements, get an off-road tab to put on metal tag. Fee is \$18\*.
- Meet the on-road requirements, get both an on-road and an off-road tab and put on metal tag. Fee is \$12\*.
- Replace your metal tag every 7 years. Fee is \$2\*.

\* Fee doesn't include filing and service fees.

#### **Find out where you can ride**

Contact the city or county where you want to use your WATV. You can't ride everywhere, even if your WATV is licensed for road use. Some places where the speed limit is 35 miles per hour (mph) or less allow you to ride your WATV but it depends on the rules for that location. See [RCW 46.09.455](#) for requirements and restrictions.

City and county contact information:

- [Washington City and Town Profiles](#) (*mrrsc.org*)
- [Washington County Profiles](#) (*mrrsc.org*)

#### **Steps to modify your WATV for on-road use**

1. Make sure the vehicle has the following equipment installed. See [RCW 46.09.457\\*\\*](#):
  - **Head lamp** – used whenever you're driving on a road. See [RCW 46.37.030](#) and [46.37.040](#).
  - **Tail lamp**. See [RCW 46.37.525](#).
    - **2 Tail lamps** – *For utility-type vehicles*. See [RCW 46.37.070](#).
  - **Stop lamp**. See [RCW 46.37.200](#).
  - **Reflectors**. See [RCW 46.37.060](#).
  - **Turn signals**. See [RCW 46.37.200](#) and [RCW 46.61.310](#).
  - **Brakes** in working order.
  - **Mirror** on left or right handlebar.
    - **2 Mirrors** – *For utility-type vehicles*. See [RCW 46.37.400](#).
  - **Horn or warning device**. See [RCW 46.37.380](#).
  - **Spark arrester and muffling device**. See [RCW 46.09.470](#).
  - **Windshield**. See [RCW 46.37.430](#), **unless** the driver wears glasses, goggles, or a face shield that meets the requirements by the state patrol. See [WAC 204-10-026](#).
  - **Seatbelts** – *For utility-type vehicles*. See [RCW 46.37.510](#).
2. Have a WA licensed WATV dealer or repair shop inspect the vehicle. They'll complete Part 1 and sign the [Wheeled All-Terrain Vehicle Road Use Declaration](#) form.
  - Your safety inspection cost can't be more than \$50.
3. Take the following to a [vehicle licensing office](#):
  - The [Wheeled All-Terrain Vehicle Road Use Declaration](#) form.
  - A **copy of the receipt** showing you paid for the inspection – attached to form.
  - The vehicle's **title** – If your bank has the title, contact them to get it and the road use declaration submitted.

**\*\*Note:** All equipment must meet the requirements within Chapter 46.09 RCW.

**What if I remove equipment from my WATV and it no longer qualifies for on-road use?**

1. Submit the title to a vehicle licensing office and remove the on-road tab from the metal tag.
2. We'll issue a new title for the vehicle with the comment "not eligible for road use."

**Do I need a driver license to operate a WATV on a public roadway?**

Yes. It must be valid and you must comply with all:

- Applicable Rules of the road, except that wheeled all-terrain vehicles may not be operated side-by-side in a single lane of traffic.
- **and**
- Laws for motorcycle drivers under RCW 46.37.530.

**Do I need a motorcycle endorsement?**

No.

**What if I'm under 16?**

You must be supervised by someone who's over 18 years old and licensed to drive:

- On highways,
- On non-highway roads designated for off-road vehicles, and
- To cross a highway – it must have crossing signs, '*Wheeled all-terrain vehicles or off-road vehicles may be crossing*'

**Related laws**

- Chapter 46.09
- RCW 46.17.350: License fees by vehicle type
- RCW 46.63.020: Violations as traffic infractions



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## **RCW 46.61.502**

### **Driving under the influence.**

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

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after driving, a THC concentration of 5.00 or higher 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, marijuana, or any drug; or

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

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

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) 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.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an

analysis of the person's blood to cause the defendant's THC concentration to be 5.00 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)(a) 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 an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

(b) Analyses of blood 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 a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.504(6).

[2013 c 3 § 33 (Initiative Measure No. 502, approved November 6, 2012); 2011 c 293 § 2; 2008 c 282 § 20; 2006 c 73 § 1; 1998 c 213 § 3; 1994 c 275 § 2; 1993 c 328 § 1; 1987 c 373 § 2; 1986 c 153 § 2; 1979 ex.s. c 176 § 1.]

#### NOTES:

**es of court:** *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

**Intent—2013 c 3 (Initiative Measure No. 502):** See note following RCW 69.50.101.

**Effective date—2011 c 293 §§ 1-9:** See note following RCW 46.20.385.

**Effective date—2006 c 73:** "This act takes effect July 1, 2007." [2006 c 73 § 19.]

**Effective date—1998 c 213:** See note following RCW 46.20.308.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.



**Legislative finding, purpose—1987 c 373:** "The legislature finds the existing statutes that establish the criteria for determining when a person is guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs are constitutional and do not require any additional criteria to ensure their legality. The purpose of this act is to provide an additional method of defining the crime of driving while intoxicated. This act is not an acknowledgment that the existing breath alcohol standard is legally improper or invalid." [1987 c 373 § 1.]

**Severability—1987 c 373:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 373 § 8.]

**Severability—1979 ex.s. c 176:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 176 § 8.]

*Business operation of vessel or vehicle while intoxicated: RCW 9.91.020.*

*Criminal history and driving record: RCW 46.61.513.*

*Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.*

*Operation of vessel in reckless manner or while under influence of alcohol or drugs prohibited: RCW 79A.60.040.*