

ORDINANCE NO. 401

AN ORDINANCE PROHIBITING DRIVING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE; PROVIDING DEFINITIONS; ESTABLISHING LEGAL PRESUMPTIONS OF INTOXICATION; ESTABLISHING PENALTIES AND PROVIDING FOR ENHANCED PENALTIES.

WHEREAS, it is deemed necessary for the preservation of the safety, health, and general welfare of the residents of the Town of Mills, Wyoming, that ordinances be enacted governing the operation of motor vehicles within the Town of Mills by persons under the influence of intoxicating liquor, alcohol, controlled substances, or drugs.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MILLS, WYOMING:

Section 1. Driving While Under the Influence Prohibited.

It is unlawful for any person who is under the influence of intoxicating liquor, alcohol, controlled substances, or drugs, to a degree which renders him or her incapable of safely driving a motor vehicle, to drive or have actual physical control of any motor vehicle within the Town of Mills.

Section 2. Definitions. As used in this Ordinance:

(a) "Alcohol Concentration" means:

- (i) The number of grams of alcohol per 100 cubic centimeters of blood;
- (ii) The number of grams of alcohol per 210 liters of breath;
- (iii) The number of grams of alcohol per 75 milliliters of urine.

(b) "Controlled Substance" includes:

- (i) Any drug or substance defined by §35-7-1002(a)(iv) as it presently exists or is hereafter amended;
- (ii) Any glue, aerosol, or other toxic vapor which when intentionally inhaled or sniffed results in impairment of an individual's ability to drive safely.

(c) "Conviction" means as defined in §31-7-102(a)(iv) as it presently exists or is hereafter amended, and the definition

contained in the above-referenced section of the Wyoming Statutes is incorporated herein by this reference.

(d) "Driver's License" means as defined in §31-7-102(a)-(viii) W.S. and includes non-resident operating privileges as defined in §31-7-102(a)(xiii) W.S. which state statutes are by this reference incorporated herein.

(e) "Other law prohibiting driving while under the influence" means any statute of another state, the United States, or district of the United States or any ordinance of any governmental entity of this or another state or of an Indian tribe which prohibits driving while under the influence of intoxicating liquor, alcohol, controlled substance, or drugs.

Section 3. Amount of Alcohol or Drugs in Blood--Legal Presumptions. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of any motor vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath, or other bodily substances shall give rise to the following presumptions:

(a) If there was at the time five one-hundredths of one percent (0.05%), or less, by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor;

(b) If there was at the time in excess of five one-hundredths of one percent (0.05%), but less than ten one-hundredths of one percent (0.10%), by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor to a degree which renders him or her incapable of safely driving a motor vehicle;

(c) If there was at the time ten one-hundredths of one percent (0.10%), or more, by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor to a degree which renders him or her incapable of safely driving a motor vehicle;

(d) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred (100) cubic centimeters of blood;

(e) The foregoing provisions shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of intoxicating liquor nor shall the foregoing provisions require the introduction of evidence bearing on the blood alcohol concentration of an individual to establish proof that an individual has violated the provisions of this Ordinance.

Section 4. Driving While Under the Influence of Drugs or Similar Substances Prohibited. It is unlawful for a person who is under the influence of a prescription drug, non-prescription drug, controlled substance, or under the influence of any combination of the above, with or without alcohol, to a degree which renders him or her incapable of safely driving a vehicle to drive or have actual physical control of a motor vehicle within the Town. The fact that any person charged with a violation of this section is, or has been entitled to use the controlled substance, prescription drug, or non-prescription drug under the laws of this State, shall not constitute a defense against any charge of violating this section.

Section 5. Penalty. A person convicted of violating this Ordinance is guilty of a misdemeanor punishable by a fine of not more than Seven Hundred Fifty Dollars (\$750.00) or imprisonment for not more than six (6) months to which may be added court costs as provided by law. On a subsequent conviction of a violation of this Ordinance within five (5) years after a conviction for a violation of this Ordinance or other law prohibiting driving while under the influence, said person

convicted shall be punished by imprisonment for not less than seven (7) days nor more than six (6) months and shall not be eligible for probation or suspension of sentence or release on any other basis until the convicted person has served at least seven (7) days in jail. In addition, the person shall be fined not less than Two Hundred Dollars (\$200.00) nor more than Seven Hundred Fifty Dollars (\$750.00), to which may be added court costs as provided by law. The judge may, as a condition for suspension of all or part of the discretionary portion of any imprisonment sentence under this section, require the defendant to pursue and complete an alcohol education or treatment program as prescribed by the judge.

Section 6. Penalty-Alternative Provisions for Employment and Education. The court may upon pronouncement of any jail sentence under the preceding Section provide in the sentence that the defendant may be permitted, if he or she is employed or enrolled in school and can continue his or her employment or education, to continue such employment or education for not more than the time necessary, as certified by his employer or school administrator, and the remaining day, days or parts of days shall be spent in jail until the sentence is served. The convicted person shall be allowed out of jail only long enough to complete the actual hours of employment or education and a reasonable time to travel to and from the place of employment or school.

Section 7. Trial Procedure When Prior Conviction Exists. In the event the Complaint, information, or citation alleges a prior conviction for violation of this Ordinance or a conviction for a violation of a law prohibiting driving while under the influence from any other jurisdiction, within five (5) years of the charge of a violation of this Ordinance, the trial on the charged violation shall proceed as in other cases. If the defendant is convicted of the charged violation and does not plead guilty to the charge of the prior conviction, he shall be tried immediately by the same judge on the charge of

the prior conviction. In a trial where a prior conviction is alleged, a duly authenticated copy of the record of prior conviction and judgment against the defendant from any court is prima facie evidence of the prior conviction and may be used in evidence against the defendant.

Section 8. Consideration of Prior Conviction for Purposes of Enhancing Penalty Permitted. A conviction under a law prohibiting driving while under the influence, which occurred within five (5) years before the effective date of a subsequent violation of driving while under the influence, may be alleged in a complaint, information, or citation, and considered by the court for the purpose of enhancing the penalty for the current violation of this Ordinance as provided in Section 5.

Section 9. Driving Under the Influence of Narcotic Drugs Prohibited. It is unlawful and punishable for any 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 or any other substance to a degree which renders him or her incapable of safely driving a vehicle to drive any motor vehicle within the Town. The fact that any person charged with a violation of this section is or has been entitled to use such drug or substance under the laws of this State shall not constitute a defense against any charge of a violation of this section.

Section 10. Effective Date. This Ordinance shall be in full force and effect ten (10) days following its passage and approval on final reading.

Section 11. Repeal Clause. Any and all other ordinances of the Mills Municipal Code in conflict herewith are hereby repealed.

Section 12. Invalidity Clause. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause,

or provision shall not affect the remaining provisions of this Ordinance.

PASSED and APPROVED on FIRST READING the 8th day of January 1992.

PASSED and APPROVED on SECOND READING the 12th day of February 1992.

PASSED, APPROVED, and ADOPTED on THIRD and FINAL READING the 4th day of March 1992.

TOWN OF MILLS, a Municipal Corporation

Attest:

By Alan Sword
Alan Sword, Mayor

Norene Kilmer
Norene Kilmer, Clerk
Town of Mills

I, Norene Kilmer, Town Clerk of the Town of Mills, Wyoming, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 401, entitled "AN ORDINANCE PROHIBITING DRIVING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE; PROVIDING DEFINITIONS; ESTABLISHING LEGAL PRESUMPTIONS OF INTOXICATION; ESTABLISHING PENALTIES AND PROVIDING FOR ENHANCED PENALTIES". Passed on Third Reading by the Town Council of the Town of Mills, Wyoming, at a regular meeting held at the Council Chambers on the 4th day of March, 1992.

(Seal)

Norene Kilmer
Norene Kilmer, Town Clerk

I, the regularly appointed, duly qualified and acting Town Clerk of the Town of Mills, Wyoming, do hereby certify that signed, attested, sealed and certified copies of this Ordinance No. 401 approved and passed as certified above, were, following its passage by the Town Council, posted in the Town Clerk's office and the Mills Post Office for a period of ten (10) days as required by law; that it took effect and became in force as a legal ordinance of the Town of Mills, Wyoming, on the 20th day of March, 1992.

(Seal)

Norene Kilmer
Norene Kilmer, Town Clerk