

ORDINANCE NO. 478

AN ORDINANCE AMENDING SECTION 5-305 OF THE MUNICIPAL CODE OF THE CITY OF GOTHENBURG, DAWSON COUNTY, NEBRASKA, ORDINANCE NO. 272 AS AMENDED; DEFINING THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOLIC LIQUOR OR DRUGS; PROVIDING PENALTIES THEREFORE; DECLARING AN EMERGENCY, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GOTHENBURG, DAWSON COUNTY, NEBRASKA AS FOLLOWS:

Section 1. Definitions: R.R.S. shall refer to the Revised Reissued Statutes of the State of Nebraska.

Section 2. Section 5-305 of the Gothenburg Municipal Code, Ordinance No. 272 is hereby amended to read as follows:

Driving under influence of alcoholic liquor or drug; penalties; revocation of operator's license; applicable to violation of statutes or ordinances; probation; alcoholism treatment program. It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or when that person has ten-hundredths of one per cent or more by weight of alcohol in his or her body fluid as shown by chemical analysis of his or her blood, breath, or urine. Any person who shall operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or while having ten-hundredths of one per cent by weight of alcohol in his or her body fluid as shown by chemical analysis of his or her blood, breath, or urine shall be deemed guilty of a crime and, upon conviction thereof, shall be punished as follows:

(1) If a person (a) has not had a previous conviction under this section or section 39-669.07, R.R.S. since July 17, 1982, (b) was not convicted under this section or section 39-669.07, R.R.S. prior to July 17, 1982, (c) has not been convicted under a city or village ordinance enacted pursuant to this section or section 39-669.07, R.R.S. either prior or subsequent to July 17, 1982, such person shall be guilty of a Class W misdemeanor as defined in section 28-106, R.R.S., and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of six months from the date of his or her conviction, and shall order that the operator's license of such person be revoked for a like period. If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle for any purpose for a period of sixty days from the date of the order;

(2) If such person (a) has had one previous conviction under this section or section 39-669.07, R.R.S. since July 17, 1982, (b) has been convicted once under this section or section 39-669.07, R.R.S. as it existed prior to July 17, 1982, or (c) has been convicted once under a city or village ordinance enacted pursuant to section 39-669.07 R.R.S. either prior or subsequent to July 17, 1982, such person shall be guilty of a Class W misdemeanor, as defined by section 28-106, R.R.S. and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date of his or her conviction, and shall order that the operator's license of such person be revoked for a like period.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of six months from the date of the order and such order of probation shall include as one of its conditions confinement in the city or county jail for forty-eight hours; and

(3) If such person (a) has had two or more convictions under this section or section 39-669.07, R.R.S. since July 17, 1982, (b) has been convicted two or more times under this section or section 39-669.07, R.R.S. as it existed prior to July 17, 1982, (c) has been convicted two or more times under a city or village ordinance enacted pursuant to section 39-669.07 R.R.S. either prior or subsequent to July 17, 1982, or (d) has been convicted as described in subdivisions (3) (a) to (3) (c) of this section or section 39-669.07 R.R.S. a total of two or more times, such person shall be guilty of a Class W misdemeanor as defined by section 28-106, R.R.S. and the court shall, as part of the judgment of conviction, order such person to never again drive any motor vehicle in the State of Nebraska for any purpose from the date of his or her conviction, and shall order that the operator's license of such person be permanently revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year, and such order of probation shall include as one of its conditions confinement in the city or county jail for seven days.

For each conviction under this section or section 39-669.07 R.R.S., the court shall as part of the judgment of conviction make a finding on the record as to the number of the defendant's prior convictions under this section or section 39-669.07 R.R.S., prior or subsequent to July 17, 1982, and the defendant's prior convictions under a city or village ordinance enacted pursuant to section 39-669.07 R.R.S. either prior or subsequent to July 17, 1982. The defendant shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

At the discretion of the court, any person convicted of violating this section or section 39-669.07, R.R.S., may be required to attend, at the conviction person's expense, an alcoholism treatment program as a term of probation.

Section 3. An emergency exists in that it is necessary to eliminate the differences in penalties currently existing for the crime as defined in this ordinance, and three-fourths or more of the council has voted for passage of this ordinance.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall become effective immediately, be posted in three public places, and be published according to law.

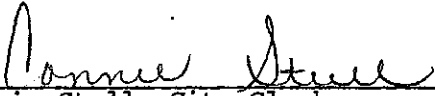
Passed and approved this 6th day of December, 1983.

CITY OF GOTHENBURG, DAWSON COUNTY,
NEBRASKA

BY


Mayor Blaine Peterson

ATTEST:



Connie Stull, City Clerk

APPROVED AS TO FORM:



Michael L. Bacon, City Attorney