

AN ORDINANCE AMENDING SECTION 333.03 OF THE MORGANTOWN TRAFFIC CODE PROVIDING IMPLIED CONSENT TO TEST FOR CONTROLLED SUBSTANCES OR DRUGS; REMOVING URINE AS A SUBJECT OF TESTING TO DETERMINE ITS ALCOHOL CONTENT OR CONCENTRATION, OR ITS CONTROLLED SUBSTANCE AND DRUG CONTENT; AND SPECIFYING WHERE TESTING CAN BE DONE.

The City of Morgantown hereby ordains that Section 333.03 of its Traffic Code is amended as follows (new matter underlined, deleted matter struck through):

333.03 IMPLIED CONSENT.

- (a) Any person who drives a motor vehicle in this Municipality shall be deemed to have given his or her consent by the operation thereof, to a preliminary breath analysis and a secondary chemical test of either his or her blood; ~~or breath or urine for the purposes of determining the alcoholic content of~~ to determine the alcohol concentration in his or her blood; ~~or the concentration in the person's body of a controlled substance, drug, or any combination thereof.~~
- (b) A preliminary breath analysis may be administered in accordance with the provisions of West Virginia Code 17C-5-5 whenever a police officer has reasonable cause to believe a person to have been driving a motor vehicle in this Municipality while under the influence of alcohol, controlled substances or drugs as prohibited by Section 333.01.
- (c) A secondary test of blood; ~~or breath or urine~~ shall be incidental to a lawful arrest and shall be administered at the direction of the arresting law enforcement officer having reasonable grounds to believe the person has committed an offense prohibited by Section 333.01.
- (d) The Police Chief shall designate ~~which one of the aforesaid~~ the secondary tests shall ~~to be~~ administered; ~~provided, that if the test so designated is a blood test, and the person so arrested refuses to submit to such blood test, then the law enforcement officer making such arrest shall designate in lieu thereof, either a breath or urine test be administered, and notwithstanding~~ Notwithstanding the provisions of West Virginia Code 17C-5-7 ~~such~~ the refusal to submit to a blood test only shall not result in the ~~suspension~~ revocation of the arrested person's license to operate a motor vehicle in this State.
- (e) Any person to whom a preliminary breath test is administered who is ~~then~~ arrested ~~and any other person under arrest as specified in this section,~~ shall be given an oral warning and a written statement advising him or her that his/her refusal to submit to the secondary chemical test finally designated as provided in this section, will result in the revocation of his/ her license to operate a motor vehicle in this State for a period of at least forty-five days and up to life; and that after fifteen minutes following the warnings the refusal is considered final. The arresting officer after that period of time expires has no further duty to provide the person with an opportunity to take the secondary test.

- (f) Any law enforcement officer who has been properly trained in the administration of any secondary chemical test authorized by this article, including, but not limited to, certification by the Bureau for Public Health in the operation of any equipment required for the collection and analysis of a breath sample, may conduct the test at any location in the county wherein the arrest is made: Provided, that the law-enforcement officer may conduct the test at the nearest available properly functioning secondary chemical testing device located outside the county in which the arrest was made, if: (i) There is no properly functioning secondary chemical testing device located within the county the arrest was made; or (ii) There is no magistrate available within the county the arrest was made for the arraignment of the person arrested. A law-enforcement officer who is directing that a secondary chemical test be conducted has the authority to transport the person arrested to where the secondary chemical testing device is located.
- (g) If the arresting officer lacks proper training in the administration of a secondary chemical test, then any other law-enforcement officer who has received training in the administration of the secondary chemical test to be administered may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct the secondary test. The results of a test conducted pursuant to this subsection may be used in evidence to the same extent and in the same manner as if the test had been conducted by the arresting law-enforcement officer.
- (h) (b) For the purpose of this article, “law enforcement officer” or “police officer” means and is limited to any member of the Police Department of this City. Only the person actually administering or conducting such test shall be competent to testify as to the results and veracity of such tests.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

Mayor

ADOPTED:

FILED:

City Clerk

RECORDED: