

**AN ORDINANCE AMENDING SECTION 333.04 OF THE MORGANTOWN TRAFFIC CODE FOR THE INTERPRETATION AND USE OF CHEMICAL TESTS FOR ARRESTS FOR DRIVING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.**

The City of Morgantown hereby ordains that Section 333.04 of its Traffic Code is amended as follows (new matter underlined, deleted matter struck through):

- (a) Upon trial for the offense of driving a motor vehicle in this City while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, a controlled substance or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood; ~~or breath, or urine;~~ is admissible, if the sample or specimen was taken within ~~two hours from and after the time of arrest or of the acts alleged;~~ the time period provided in subsection (g).
- (b) The evidence of the amount of alcohol in the person's blood at the time of the arrest or the acts alleged ~~and~~ shall give rise to the following presumptions or have the following effect:
- (~~a~~) (1) Evidence that there was at that time five hundredths of one percent (.05%) or less, by weight, of alcohol in his or her blood, shall be prima facie evidence that the person was not under the influence of alcohol;
- (~~b~~) (2) Evidence that there was, at that time, more than five hundredths of one percent (.05%) and less than eight hundredths of one percent (.08%) by weight of alcohol in the person's blood shall be relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;
- (~~c~~) (3) Evidence that there was, at that time, eight hundredths of one percent (.08%) or more, by weight of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol;
- (~~d~~)(~~c~~) A determination of the percent, by weight, of alcohol in the blood shall be based upon a formula of:
- (1) The number of grams of alcohol per one hundred cubic centimeters of blood;
- (2) The number of grams of alcohol per two hundred ten liters of breath; ~~or~~
- (~~3~~) ~~The number of grams of alcohol per sixty-seven milliliters of urine;~~
- (~~4~~) (3) The number of grams of alcohol per eight-six milliliters of serum.
- (d) A chemical analysis of blood for the purpose of determining the controlled substance or drug concentration of a person's blood, must include, but is not limited to, the following drugs or classes of drugs:

- (1) Marijuana metabolites;
- (2) Cocaine metabolites;
- (3) Amphetamines;
- (4) Opiate metabolites;
- (5) Phencyclidine (PCP);
- (6) Benzodiazepines;
- (7) Propoxyphene;
- (8) Methadone;
- (9) Barbiturates; and
- 10 Synthetic narcotics

(e) A chemical analysis of a person's blood; ~~or breath or urine~~, in order to give rise to the presumptions or to have the effect provided for in ~~subsections (a), (b) and © here of, this section~~, must be performed in accordance with methods and standards approved by the State ~~Division Bureau of for Public Health~~. A chemical analysis of blood ~~or urine~~ to determine alcoholic content ~~or the controlled substance or drug content~~ of blood shall be conducted by a qualified laboratory or by the State Police Scientific Laboratory of the ~~Criminal Identification Bureau of the West Virginia State Police Forensic Laboratory~~.

(f) The provisions of this article shall not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.

(g) For the purpose of the admissibility of a chemical test under subsection (a):

(1) A sample or specimen taken to determine the alcohol concentration of a person's blood, must be taken within two hours from the time of the person's arrest; or

(2) For a sample or specimen to determine the controlled substance or drug content of a person's blood, must be taken within four hours of the person's arrest.

(h) The results of any test administered pursuant to this section for the purpose of detecting the concentration of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_ MAYOR

ADOPTED:

FILED:

\_\_\_\_\_ CITY CLERK

RECORDED: