

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE 02-358

A CODE ORDINANCE AMENDING CHAPTER 38, TRAFFIC AND VEHICLES, ARTICLE V, SECTION 293, TO ABOLISH CERTAIN FEE ASSESSMENTS ASSOCIATED WITH A CONVICTION FOR OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS TO COMPLY WITH AMENDMENTS TO STATE LAW THAT TAKE EFFECT JULY 1, 2024

WHEREAS, the Incorporated County of Los Alamos ("County") has general authority to enact and/or amend legislation designed to protect the safety, health, and welfare of its citizens and the general public; and

WHEREAS, Chapter 38 of the Code of Ordinances of the incorporated County of Los Alamos governs Traffic and Vehicles; and

WHEREAS, the New Mexico Legislature passes and the Governor signed legislation addressing penalty assessment provisions for certain traffic vehicles, driving while intoxicated; and

WHEREAS, County desires to adopt similar amendments to bring the County ordinances governing traffic and vehicles into conformity with recently adopted state law; and

WHEREAS, the purpose of this amendment is to correct our Ordinances to conform with state law in Section 38-293(m), penalty for violation – Fee's.

BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS, the Los Alamos County Code of Ordinances is hereby amended as follows:

Section 1. Chapter 38, Article V, Section 38-293 of the Code of the Incorporated County of Los Alamos is hereby amended to read as follows:

Sec. 38-293. Operating a motor vehicle under the influence of intoxicating liquor or drugs; penalties; sentencing; fees.

- (a) If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs (subsections 38-292(a)—(d)) the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter.
- (b) When a person is charged with a violation of subsections 38-292(a)—(d), any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to violation of section 38-292 and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act (NMSA 1978 §§ 66-8-105—66-8-112) discloses that the blood of the person charged contains an alcohol concentration of:
 - (1) Eight one-hundredths (0.08) or more; or
 - (2) Four one-hundredths (0.04) or more if the person is driving a commercial vehicle.
- (c) A person under first conviction pursuant to this section shall be punished by imprisonment for not more than 90 days or by a fine of not more than \$999.00, or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend

beyond 90 days but shall not exceed one year. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of sentence, upon a first conviction under this section, an offender shall be sentenced to a jail term of not less than three consecutive days. Upon a first conviction pursuant to this section, an offender may be sentenced to not less than 48 hours of community service. The offender shall be ordered by the court to participate in and complete a screening program described in subsection (f) of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school," approved by the traffic safety bureau of the state transportation department and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than five days in jail, of which two days must be consecutive. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or fails to comply with any other condition of parole, the offender shall be sentenced to not less than two consecutive days in jail. Notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part, and the offender violates a condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation. Any jail sentence imposed pursuant to this section for failure to complete within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

- (d) A second or third conviction pursuant to this section shall be punished by imprisonment for not more than 179 days or by a fine of not more than \$999.00, or both imprisonment and fines as described herein; provided that if the sentence is suspended in whole or part, the period of probation may extend beyond 179 days but shall not exceed one year. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:
- (1) Upon a second conviction, each offender shall be sentenced to a jail term of not less than five consecutive days, not less than 48 hours of community service and a fine of not more than \$999.00. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to an additional jail term of not less than four consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and
 - (2) Upon a third conviction, an offender shall be sentenced to a jail term of not less than 30 consecutive days, not less than 96 hours of community service and a fine of not less than \$750.00. In addition to those penalties, when an offender commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than 60 consecutive days. If an offender fails to complete, within a time specified by the court, any screening program or treatment

program ordered by the court, the offender shall be sentenced to no less than an additional 60 consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

- (e) Fourth and subsequent offenses shall be prosecuted under state law in magistrate or district court.
- (f) Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program approved by the New Mexico Department of Finance and Administration and if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.
- (g) Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court:
 - (1) Not less than a 28-day inpatient, residential or in-custody substance abuse program approved by the court;
 - (2) Not less than a 90-day-outpatient treatment program approved by the court;
 - (3) A drug court program approved by the court; or
 - (4) Any other substance abuse treatment approved by the court. The requirement imposed pursuant to this section shall not be suspended, deferred or taken under advisement.
- (h) Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to rules adopted by the traffic safety bureau. Unless determined by the bureau to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicle. The offender shall operate only those vehicles equipped with ignition interlock device for:
 - (1) A period of one year, for a first offense;
 - (2) A period of two years, for a second conviction pursuant to this section;
 - (3) A period of three years, for a third conviction pursuant to this section.

If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

- (i) An offender who obtains an ignition interlock license and installs an ignition interlock device prior to conviction shall be given credit at sentencing for the time period the ignition interlock device has been in use.
- (j) A conviction pursuant to the provisions of section 38-292 shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.
- (k) Except as otherwise prohibited in this section, a municipal judge may suspend in whole or in part the execution of sentence or place the defendant on probation for a period not exceeding one year on terms and conditions the municipal judge deems best, or both, or defer sentence. If the municipal judge decides to defer the execution of a sentence, such deferral shall be granted only as allowed in subsection (l) of this section. A suspension of execution of sentence or probation, or both, as allowed pursuant to this section, shall be granted only when the municipal judge is satisfied it will serve the ends of justice and of the public, and that the defendant's liability for any fine or other punishment imposed if fully discharged upon successful completion of the terms and conditions of probation.

- (l) If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of subsections 38-292(a), (b), (c) or (d) as a first offender, at the discretion of the trial court after a presentence investigation, including an inquiry to the Motor Vehicle Division of the New Mexico Department of Transportation concerning the driver's driving record, may receive a deferred sentence on the condition that the driver attend a driver rehabilitation program, also known as the "driving-while-intoxicated-school," approved by the court and the division and such other rehabilitative services as the court may determine to be necessary; however, imposition of a deferred sentence shall classify the person as a first offender. The municipal court shall forward to the division the abstract of all proceedings and the report of the disposition of the case. For the purpose of this subsection, marijuana, as defined in the Controlled Substance Act, shall be classified as a drug.
- ~~(m) A person convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of subsections 38-292(a), (b), (c) or (d) shall be assessed, in addition to any other fee or fine, a fee of \$85.00 to defray the cost of chemical and other tests used to determine the influence of alcohol or drugs. Additionally, the person shall be assessed a fee of \$75.00 to fund comprehensive community programs for the prevention of driving while under the influence of intoxicating liquor or drugs or for other traffic safety purposes. The municipal court shall collect the fees and maintain the fees in separate funds and transfer the fees along with other funds collected by the court per NMSA 1978, § 35-14-7. The municipality shall maintain the fees pursuant to this subsection in separate funds and transfer the fees collected pursuant to this subsection to the administrative office of the courts for credit to the crime laboratory fund and the traffic safety fund.~~
- (m) As used in this section and in section 38-292:
- (1) Bodily injury means an injury to a person not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body.
 - (2) Conviction means adjudication of guilt and does not include imposition of a sentence.
 - (3) Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - a. Has a gross combination weight rating of more than 26,000 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - b. Has a gross vehicle weight rating of more than 26,000 pounds;
 - c. Is designed to transport 16 or more passengers, including the driver; or
 - d. Is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law.
- (n) A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory, or possession of the United States or of a tribe where that ordinance is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, prescribing penalties for driving while under the influence of intoxicating liquor or drugs shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

Section 2. Severability. If any section, paragraph, clause or provision of this Code Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or enforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Code Ordinance.

Section 3. Effective Date. This Code Ordinance shall become effective July 1, 2024.

Section 4. Repealer. All other ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

ADOPTED this 28th day of May 2024.

**COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS**

**Denise Derkacs,
Council Chair**

ATTEST:

**Naomi D. Maestas,
Los Alamos County Clerk**