

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY OF HOLLISTER APPROVING AN AMENDMENT TO TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE HOLLISTER MUNICIPAL CODE TO ADOPT CHAPTER 9.50, RECOVERY OF EMERGENCY RESPONSE COSTS FOR DRIVING UNDER THE INFLUENCE INCIDENTS**

**WHEREAS**, persons who drive a vehicle while under the influence of alcohol or any drug create a serious hazard to themselves and others; and

**WHEREAS**, the City of Hollister's ("City") Police and Fire Departments are required to spend a significant amount of time in the apprehension and arrest of persons who drive while under the influence of alcohol or any drug and in responding to accidents caused by persons driving under the influence ("DUI"); and

**WHEREAS**, the time spent by the Police and Fire Departments for that purpose is costly and detrimentally affects the ability of those departments from being available to respond to other calls or incidents; and

**WHEREAS**, as authorized pursuant to California Government Code sections 53150 et seq., the City intends to recover costs incurred for emergency responses for driving under the influence incidents.

**NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HOLLISTER DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** The Hollister Municipal Code is hereby amended to add Title 9, Chapter 9.50, Recovery of Emergency Response Costs for Driving Under the Influence Incidents, to read as follows:

**TITLE 9 – PUBLIC PEACE, MORALS AND WELFARE  
CHAPTER 9.50 - RECOVERY OF EMERGENCY RESPONSE COSTS FOR DRIVING  
UNDER THE INFLUENCE INCIDENTS**

**9.50.010 Purpose**

It is the policy of the City of Hollister ("City") to discourage the operation of motor vehicles while under the influence of alcohol and/or drugs and to discourage the operation of motor vehicles in a manner intended to injure another person or property. It is also the policy of the City to encourage careful and responsible conduct by persons operating motor vehicles.

The City has determined that the negligent operation of a motor vehicle by persons driving under the influence of alcohol and/or drugs imposes a burden upon City services above and beyond the regular services normally required for traffic law enforcement.

The City has further determined that persons who negligently operate motor vehicles while under the influence of alcohol and/or drugs should bear a share of the extraordinary burden on the public risk they create.

In furtherance of these policies and in light of these findings, the City has implemented a program for the recovery of emergency response costs for driving under the influence incidents ("Costs Recovery Program") as authorized by Government Code sections 53150 through 53158.

#### **9.50.020 Definitions**

(a) For purposes of this chapter, a person is under the influence of an alcoholic beverage or any drug, or combined influence of an alcoholic beverage and any drug, when as a result of drinking an alcoholic beverage or using a drug, or both, his or her physical or mental abilities are impaired to a degree that he or she no longer has the ability to operate a motor vehicle with the caution and characteristic of a sober person of ordinary prudence under the same or similar circumstances. For the purposes of this chapter, the presumptions described in provisions of Section 23152 of the California Vehicle Code shall apply.

(b) For purposes of this chapter, an "emergency response" is one for which police personnel and equipment respond to an "incident" beyond the police response required for a mere traffic stop leading to an arrest.

(c) For purposes of this chapter, an "incident" is an event involving any person who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug, whose negligent operation of a motor vehicle due to influence results in, or presents the potential of, loss of life, significant bodily injury, significant property damage, or environmental hazard, and includes, but is not limited to, the following:

- (1) An accident with another vehicle, person, or property.
- (2) Evading a peace officer in violation of California Vehicle Code section 2800.1. A conviction is not required.
- (3) Failure to stop within a reasonable time after the officer activates the emergency lights or siren with the intent to pull the suspect over. A reasonable time is presumed to be one-half (1/2) of a mile after the officer is behind the suspect, provided the emergency lights or siren are visible or audible to the suspect and the suspect sees or hears or reasonably should have seen or heard the lights or siren. A reasonable time may be less or more than one-half (1/2) of a mile depending on surrounding circumstances, including type of street, speed, weather conditions, level of traffic, and availability of a safe place to stop.
- (4) Failure to yield to an emergency vehicle in violation of California Vehicle Code section 21806. A conviction is not required.
- (5) Driving the wrong way on a one-way street.
- (6) Driving on the wrong side of the road.
- (7) Repeatedly crossing median dividers.
- (8) Stopping or abandoning a vehicle in a lane of traffic, on a median divider, on railroad crossing tracks, or similar dangerous situation.
- (9) Weaving across heavy lanes of traffic or weaving on and off the roadway.

(10) Reckless driving in violation of California Vehicle Code section 23103. A conviction is not required.

(11) Driving in a manner causing other vehicles to take evasive action to avoid an accident.

This is a nonexclusive list. Other driving situations that the arresting officer believes may constitute an emergency response shall be reviewed on a case-by-case basis.

#### **9.50.030 Emergency Cost Recovery**

Calculation of the amount due for “emergency response” shall include the direct and reasonable costs of an appropriate emergency response, including salary, benefits and overhead as established by the City, for each member of the Police Department or Fire Department responding to the incident. The calculation shall also be comprised of direct costs which include, but are not limited to:

(1) The costs of police, fire, emergency medical services, and other emergency services in responding to the scene of the incident;

(2) The costs of the emergency services at the scene of the incident, including directing traffic and ensuring public safety at the scene of the accident;

(3) The costs of obtaining appropriate medical assistance, removing vehicles, investigating the cause of an accident, conducting field sobriety tests, and arresting and detaining the suspect;

(4) The costs of transporting the suspect, booking, performing chemical tests, writing customarily required reports, and performing follow-up investigation to complete the reports.

#### **9.50.040 Collection of Charges**

(a) The chief of police or his/her designee shall calculate the charges payable under this section and shall forward the information that is required to invoice the person responsible for the incident to the finance and management services agency.

(b) If the person responsible for the incident is a minor, then the parents or guardian of such minor shall be liable for the cost of the emergency response as defined in this chapter.

(c) If the invoice remains unpaid within thirty (30) days after it is mailed, and no arrangements have been made for payments, at its discretion, the City may pursue any and all legal and equitable remedies to collect the unpaid invoice pursuant to this chapter, including the commencement of a collections action. Pursuit of one remedy does not preclude the pursuit of another remedy

#### **9.50.050 Procedures for Implementation of Cost Recovery Program**

(a) The City shall not pursue recovery of driving under the influence response costs when providing assistance to an allied agency during an incident subject to this ordinance.

(b) The City may seek recovery of incident-related costs for driving under the influence of alcohol or a combination of alcohol and controlled substances when all of the following conditions are satisfied:

(1) An arrest has been made for violation of California Vehicle Code Section 23152, Section 23153, or a more serious offense involving alcohol and/or controlled substances;

(2) The arrested individual has been determined by the investigating officer to have caused the incident requiring City response; and

(3) A supporting evidential test demonstrates a Blood Alcohol Concentration of 0.08 percent or greater, with breath tests requiring two readings of at least 0.08 percent each (Preliminary Alcohol Screening tests shall not satisfy this requirement); or

(4) For commercial vehicle operators, a supporting evidential test demonstrates a Blood Alcohol Concentration of 0.04 percent or greater while operating a commercial vehicle.

(c) A conviction for violation of California Vehicle Code Section 23152, Section 23153, or a more serious related offense shall be required for cost recovery when any of the following circumstances apply:

(1) Blood Alcohol Concentration test results fall below 0.08 percent, or below 0.04 percent for commercial vehicle operators;

(2) Chemical testing yields positive results for controlled substances only;

(3) No supporting Blood Alcohol Concentration or controlled substance test is available due to refusal or other circumstances.

(d) For purposes of this cost recovery program, a conviction shall include cases resulting in a plea of nolo contendere to the original charges under California Vehicle Code Section 23152, Section 23153, or more serious offenses involving alcohol and/or controlled substances. Cases resolved through plea agreements to lesser offenses shall also constitute convictions under this section.

#### **9.50.060 Appeal**

Any person who wishes to file an appeal of an invoice issued pursuant to this chapter, may do so pursuant to sections 1.18.060 through 1.18.080, except that such request for hearing must be made within fifteen (15) days from the issuance of the invoice.

#### **9.50.070 Severability**

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council declares that it would have adopted each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

#### **9.50.080 Enforcement of Other Laws**

Nothing in this chapter prevents the City from enforcing other laws pertaining to the recovery of emergency response costs, including recovery pursuant to Government Code sections 53150 through 53158, or pursuant to any subsequently enacted laws or amendments to existing laws.

**SECTION 2. SEVERABILITY.** If any part of this Ordinance is held invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of the Ordinance if such invalid portion thereof had been deleted.

**SECTION 3. EFFECTIVE DATE.** This Ordinance shall take effect and be in force thirty (30) days from and after its final passage.

**SECTION 4. PUBLICATION.** Within fifteen (15) days after passage, the City Clerk shall cause this Ordinance to be published in a newspaper of general circulation.

**INTRODUCED** at a regular City Council meeting on [DATE], and **ADOPTED** as an ordinance of the City of Hollister at a regular City Council meeting on [DATE] by the following vote:

AYES:  
NOES:  
ABSTAINED:  
ABSENT:

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Roxanne Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:  
Lozano Smith Attorneys at Law

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Jennifer Woodworth, MMC, City Clerk

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Mary Lerner, City Attorney

I, JENNIFER WOODWORTH, MMC, City Clerk of the City of Hollister, do hereby certify that the attached Ordinance No. [NUMBER] is an original ordinance, or true and correct copy of a City ordinance, duly adopted by the Council of the City of Hollister at a regular meeting of said Council held on [DATE], at which meeting a quorum was present.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Hollister on [DATE].

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Jennifer Woodworth, MMC  
City Clerk of the City of Hollister