

AGENDA SUMMARY PAGE
RECOMMENDING COMMITTEE MEETING OF: OCTOBER 17, 2006

DEPARTMENT: CITY ATTORNEY

DIRECTOR: BRADFORD R. JERBIC

Consent Discussion

SUBJECT:

NEW BILL:

Bill No. 2006-58 Updates and strengthens Municipal Code provisions so as to better discourage, detect and punish those who would drive under the influence of alcohol, controlled substances, chemicals, organic solvents, compounds of any combination of these. Sponsored by: Councilman Steve Wolfson

Fiscal Impact:

No Impact

Budget Funds Available

Augmentation Required

Dept./Division:

Amount:

Funding Source:

PURPOSE/BACKGROUND:

It has been determined that the Municipal Code provisions relating to driving under the influence of alcohol, controlled substances, chemicals, organic solvents, compounds, etc. are in need of updating. This bill will accomplish that objective, and is intended to better discourage, detect and punish those who would drive under the influence of these substances.

RECOMMENDATION:

This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:

1. Bill No. 2006-58
2. Business Impact Statement
3. Submitted at meeting Exhibits 1, 2 and 3

Motion made by STEVEN D. ROSS to Approve as a Do Pass

Passed For: 2; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

LOIS TARKANIAN, STEVEN D. ROSS; (Against-None); (Abstain-None); (Did Not Vote-None); (Excused-None)

Minutes:

COUNCILWOMAN TARKANIAN declared the Public Hearing open.

BEN LITTLE, Assistant City Attorney of the Criminal Division, commented that this bill resulted from COUNCILMAN WOLFSON'S desire to strengthen related laws to discourage DUI. Hence, staff researched legislative proposals regarding DUI submitted by every state for

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the past five years, in order to submit proposals for COUNCILMAN WOLFSON'S review. Language inconsistencies with State of Nevada Law were culled, and staff came up with essential changes, which he then outlined with the use of Exhibit Nos. 1, 2 and 3, copies of which were submitted and made a part of the minutes.

ASSISTANT CITY ATTORNEY LITTLE stated that Exhibit No. 1 contains language in harmony with Nevada State Law, and it defines the phrase "actual physical control" and evaluates vehicle control for DUI prosecutive purposes; thereby not requiring staff to prove that a person was driving, but rather that a person was in position to drive. This will keep people from being in position to drive under the influence, for which they could be punished.

Exhibit No. 2 defines the phrases "under the influence" and "combined influence" for purposes of the ordinance and DUI enforcement, and it is consistent with DUI case law. Exhibit No. 3, which includes Supreme Court Rule 123, is being submitted to point out that the Nevada Supreme Court Order is not considered legal precedent or authority, but simply serves as a guide to show Council where the language came from, as well as to show the Court's inclination to accept it as being in harmony with State Statute.

Bill No. 2006-58 would allow the courts to order DUI offenders attend a Coroner's program designed to discourage drivers from drinking and driving, which would encourage such orders where there is an accident involving a blood alcohol content of .30 or more, where the offense is not the offender's first offense, or the offender is under the age of 25.

The Coroner's program in place is designed to deal with youthful offenders who are engaged in risky behavior. The program requires these offenders to undergo six scenarios consisting of situations where someone has died. The participants are shown pictures of the individuals who died in that event, are made aware of the risky behavior in which the subjects were involved and are prepped for a tour of the autopsy room. This program has been very successful, because it is very difficult to forget the malodors of a coroner. Judges and staff believe that this is a powerful deterrent. Lastly, ASSISTANT CITY ATTORNEY LITTLE noted that the bill includes a minimum fine of \$300 and a driver inattention awareness class, with the presiding judge having the ultimate discretion regarding the mandatory minimum.

COUNCILMAN ROSS opined that the minimum \$300 fine is insufficient, to which ASSISTANT CITY ATTORNEY LITTLE indicated that the fine only applies in situations not involving a DUI, but rather a person that has alcohol in the vehicle. COUNCILMAN ROSS appreciated the efforts made on this bill, but insisted that the City needs to send a clear message that DUIs will not be tolerated, and people will make changes if the fines impact their pocketbooks. ASSISTANT CITY ATTORNEY LITTLE advised that the proposed bill could be amended to include a tougher fine.

COUNCILWOMAN TARKANIAN suggested forwarding the bill to City Council with a recommendation to increase the fine to \$500. COUNCILMAN ROSS asked how the offense could be made a gross misdemeanor. ASSISTANT CITY ATTORNEY LITTLE answered that it

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would have to be done through the State Legislature, adding that the court does waive fines for people who have a hardship in paying fines; however, community service would most likely be imposed. He noted that Municipal Court has approximately 5,000 DUI cases a year, and, even though this is a high number, it is surprising that the cases have not increased in correlation with the rapid growth in population. COUNCILMAN ROSS interjected that he would like to see the number of DUI cases decrease as the City implements tougher laws.

ASSISTANT CITY ATTORNEY LITTLE recommended approval of Bill 2006-58.

The Committee members discussed with CHIEF DEPUTY CITY ATTORNEY STEED and ASSISTANT CITY ATTORNEY LITTLE the options for this bill, in order to impose a stricter fine. It was decided that ASSISTANT CITY ATTORNEY LITTLE would confer with COUNCILMAN WOLFSON about the Committee's suggestion rather than holding the bill any longer.

COUNCILMAN ROSS applauded staff for its efforts, adding that he expects an ordinance amendment involving stiffer penalties for domestic violence offenders will be forthcoming.

No one appeared in opposition.

COUNCILWOMAN MURKANTIAN declared the Public Hearing closed.

