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MEMORANDUM

TO: Honorable Mayor Armitage; City Council

FROM: Caitlin K. Gillies, Assistant City Attorney

DATE: January 6, 2023

RE: **Report of proposed adoption of the “High BAC” portion of the MVC**

Background – Michigan’s “Super Drunk” Law

On January 9, 2009, Governor Jennifer Granholm signed two public acts that created what has become commonly known as Michigan’s “super drunk” law. With an effective date of October 31, 2010, the law amended several sections of the Michigan Vehicle Code and most notably adds a new definition of drunk driving applicable to drivers with a bodily alcohol content (“BAC”) of 0.17 or more grams of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. Drivers convicted under this definition are subject to enhanced punitive¹ and licensing sanctions² and are required to undergo one year of alcohol rehabilitation, which may be an alcohol treatment program or a self-help program.

Statutory amendments in early 2012 granted municipalities the power to impose the enhanced penalties for a super drunk driving offense, provided that the local government approves an ordinance adopting it.³ A home rule city, such as Charlotte, must specifically adopt the “super drunk” section of Michigan’s drunk driving statute by reference (MCL 257.625(1)(c)).

¹ Potential fines are increased to a minimum of \$200 and up to \$700, increased maximum jail from 93 days to 180 days.

² Upon notice of conviction of a high BAC offense, the Secretary of State (“SOS”) will suspend driving privileges for one year, resulting in a 45 day hard suspension and the possibility of a restricted license for the remaining 320 days if the offender pays to have a breath alcohol ignition interlock device (“interlock device”) installed in any vehicle the offender would drive, impoundment and immobilization of a vehicle if offender is stopped and operating without the interlock device and confiscation of plate.

³ MCL 257.625(1)(c); see MCL 117.3(k), .4i(k) (home rule cities).

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The 2012 amendments increased the authority of municipal prosecutors to include 180-day offenses instead of the previous 93-day⁴ limit. These amendments provide another mechanism for prosecution outside the traditional exclusive jurisdiction of the county prosecutor. Given the difficulty in many jurisdictions where plea bargaining at the county level is restricted on super BAC charges, the 2012 amendments allow local police departments and prosecutors to retain super drunk driving offenses.

Background – Current Prosecutions of OWIs

Currently, the City has adopted the Michigan Motor Vehicle Code (“MVC”), pursuant to Charlotte City Code 66-31. Michigan’s drunk driving law is contained in the MVC at MCL 257.625 et seq. The City has not yet adopted the “super drunk” amendment contained in MCL 257.625(1)(c), which means that the highest penalty that an accused may face is an Operating While Intoxicated (“OWI”) first, which carries a maximum penalty of 93 days jail and/or up to a \$500 fine. When a suspect is pulled over by the Charlotte Police Department, the officer, when making a charging decision, must decide whether to charge a suspect with an OWI and send it to the City Attorney, regardless of the BAC, or send it to the county for enhanced charges, such as OWI second or third, or a super drunk OWI.

As it currently stands, I have prosecuted OWIs with a BAC as low as 0.07 and as high as 0.35. Under the current charging scheme and in the absence of adoption of the super drunk ordinance, the penalties for a suspect are the same, whether they are just over the legal limit to drive, or whether they are three times over the legal limit. Options for rehabilitation through district court are the same, regardless of the BAC. Common sense tells us that it is likely that someone operating a vehicle with a “high BAC” may benefit from treatment opportunities available under the super drunk law that might not be needed for a lower -BAC offender.

The national average BAC is around 0.16, so the number of cases that are affected by this offense is high. In implicating the super drunk driving offense, courts and prosecuting officials have a different leverage dynamic in plea bargaining and sentencing bargaining, as the difference in possible punishment is doubled. Equally important is the mandatory one-year of alcohol rehabilitation that is attached to the super drunk offense. Presently, I can bargain OWI cases where probation, alcohol testing, and mandatory treatment are terms and conditions of probation, but the judge is free to impose the length of those terms. Additionally, some offenders prefer to take jail over probation, even if they could benefit from rehabilitative measures, which arguably does little to reduce the possibility of recidivism later because underlying conditions contributing to alcohol abuse and/or dependency are not addressed.

Recommendation

1. Approve the first reading of the proposed ordinance and set a public hearing before the City Council for Monday, _____ at 7 p.m.

⁴ MCL §117.4i(k) previously held that “the penalty for city ordinances must not exceed a fine of \$500 or imprisonment for 90 days, or both. However, unless otherwise provided by law, the ordinance may provide that a violation of the ordinance is punishable by imprisonment for not more than 93 days or a fine of not more than \$500 or both, if the violation substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days.” *Id.*

Financial Impacts

There are no direct financial impacts to the City of Charlotte.

Suggested Motion

1. I move to approve the first reading of Ordinance No. 2023-XX – Chapter 66 – Traffic and Vehicles – Article II – Michigan Vehicle Code – Section 66-33, and set for a public hearing before the Charlotte City Council for Monday, _____ at 7 p.m.

Introduced:
Adopted:
Effective:

CITY OF CHARLOTTE
EATON COUNTY, MICHIGAN
ORDINANCE NO. ____

AN ORDINANCE TO AMEND SECTION 66-31 OF CHAPTER 66 - TRAFFIC AND VEHICLES – ARTICLE II – TO ADOPT THE MICHIGAN VEHICLE CODE, PA 1949 NO. 300, AS AMENDED, BEING SECTION 257.625(1)(c) OF THE MICHIGAN COMPILED LAWS, AND THE MICHIGAN UNIFORM TRAFFIC CODE (EXCEPT WHEN NOT IN CONFORMITY WITH THE MICHIGAN MOTOR VEHICLE CODE), PURSUANT TO MCL 257.951 AND PURSUANT TO MCL 117.3(K) AND .4I(K); AND TO PROVIDE A PENALTY FOR VIOLATION THEREOF; AND TO PROVIDE AN EFFECTIVE DATE HEREOF.

Councilmember _____ moved the following:

THE CITY OF CHARLOTTE ORDAINS:

Section 1. Purpose. The purpose of this ordinance is for the health, safety, and welfare of citizens of the City of Charlotte and persons traveling on the highways and places open to vehicle traffic within the City of Charlotte and jurisdictions authorized under the control of the City of Charlotte.

Section 2. Adoption of Section 66-33 of Chapter 66 - Traffic and Vehicles – Article II- Michigan Vehicle Code - of the City of Charlotte is hereby adopted to read as follows:

Sec. 66-33 Adoption of the Michigan Vehicle Code, section 625(1)(c).

(a) Adoption. The Michigan Vehicle Code, PA 1949 No. 300, as amended, being Section 257.625(1)(c) of the Michigan Compiled Laws, and the Michigan Uniform Traffic Code (except when not in conformity with the Michigan Motor Vehicle Code) pursuant to MCL 257.951 and pursuant to MCL 117.3(k) and .4i(K), is hereby adopted and amends the City of Charlotte Motor Vehicle Ordinance.

(b) **Penalties.** A violation of the prohibited conduct in section 625(1)(c), which has been adopted in this Ordinance and the City Coder, is a misdemeanor punishable by one (1) or more of the following:

- (1) Community service for not more than three hundred sixty (360) hours.
- (2) Imprisonment for not more than one hundred eighty (180) days.
- (3) A fine of not less than two hundred dollars (\$200.00) or more than seven hundred dollars (\$700.00).

(c) **Reference to local authorities.** References in the Michigan Vehicle Code to "local authorities" or "local units of government" or "police agency" or any similar reference referring to local government shall be deemed to refer to the City of Charlotte, its police officers and police department, and any other personnel authorized to enforce the City of Charlotte Motor Vehicle Ordinance.

(d) **Copies of vehicle ordinance.** At the time of adoption of the ordinance adopted in this section, sufficient copies of the motor vehicle code adopted hereby and amendments thereto shall be made available for public use at a reasonable charge at the office of the City of Charlotte.

Section 3. Effective. This ordinance shall become effective 20 days after adoption.

Motion, _____, Second _____. () Yeas. () Nays. () Absent.

Dated:

Michael Armitage, Mayor

Mary LaRocque, Clerk