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ORDINANCE NO. 19589

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning immobilization and impoundment of vehicles for unpaid parking tickets creating Article XI of Chapter 10.60 of the Code of the City of Topeka, amending § 10.10.160 and repealing said original section.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That The Code of the City of Topeka, Kansas, is hereby amended by adding ARTICLE XI to Chapter 10.60 to be entitled "Vehicle Immobilization."

Section 2. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section to ARTICLE XI to be numbered 10.60.620, which said section reads as follows:

Authorization and procedure for immobilization of vehicles with unpaid parking tickets.

(a) Authorization. Parking control officers and police officers are hereby authorized to use a vehicle immobilizer ("boot") to immobilize any vehicle that has three (3) or more unpaid parking tickets issued to the vehicle by the City. A parking ticket is considered unpaid under any of the following circumstances:

(1) The registered owner or lessee has not paid the full amount of the fine within sixty (60) days of the violation notice or has not, within five (5) business days of the violation notice, either submitted the written materials necessary for adjudication by mail or requested an administrative hearing pursuant to the provisions of Section 10.60.560;

29 (2) The registered owner or lessee has not paid the full amount of the
30 fine within ten (10) business days of the issuance of a final determination of
31 liability pursuant to Article X of this Title; or

32 (3) The registered owner or lessee has not successfully contested the
33 parking violation through the procedure set forth in Article X of this Title.

34 (b) Subject to immobilization notice. When a vehicle has been issued three
35 (3) or more unpaid parking tickets, the registered owner or lessee shall be sent a
36 warning that the vehicle may now be subject to immobilization. All such notices will be
37 delivered by first class mail and shall be deemed served as of the date of deposit in the
38 U.S. mail.

39 (c) Immobilization device unusable. If the vehicle subject to immobilization
40 cannot be fitted with a device because of the vehicle's size or shape, then the vehicle
41 may be impounded in accordance with the procedures for impoundment set forth in
42 section 10.60.660.

43 Section 3. That The Code of the City of Topeka, Kansas, is hereby amended
44 by adding a section to ARTICLE XI to be numbered 10.60.630, which said section reads
45 as follows:

46 **Unauthorized removal of vehicle or device prohibited.**

47 (a) It shall be unlawful for any person to move or attempt to move any vehicle
48 that has an immobilization device attached thereto, except as authorized by a police
49 officer or a parking control officer.

50 (b) It shall be unlawful for any person to tamper with an immobilization device
51 or remove or attempt to remove an immobilization device placed thereon by a parking
52 control officer or police officer.

(c) Any person violating this section may be punished by:

(1) A fine of not more than \$499.00;

(2) Imprisonment in jail for not more than 179 days; or

(3) Both such fine and imprisonment not to exceed the limits set out in subsection (c)(1) and (c)(2) of this section.

Section 4. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section to ARTICLE XI to be numbered 10.60.640, which said section reads as follows:

Notice of procedures for release of the vehicle.

(a) When a vehicle is immobilized, a notice shall be affixed to the vehicle, advising the registered owner or lessee of the procedures and requirements to have the immobilization device removed. Such notice shall include:

(1) A caution not to attempt to move the vehicle or remove the immobilization device without City authorization and assistance;

(2) The date and time when the immobilization device was affixed to the vehicle;

(3) The signature and identification number of the person who affixed the immobilization device to the vehicle;

(4) The state registration number, if known, and make of the vehicle;

(5) The number and amount of unpaid parking tickets and fines;

(6) A statement that payment of the fines along with a removal charge will be required for removal of the device and final disposition of the matter;

(7) A statement that the opportunity to contest the grounds for the immobilization is available, but must be written and filed with the city traffic

77 compliance administrator within five (5) business days of the time at which the
78 immobilization device was affixed to the vehicle;

79 (8) The contact name, telephone number, and daytime hours of the
80 City office where payment of the fines can be made or information regarding the
81 procedures for contesting the immobilization can be obtained;

82 (9) The contact name and telephone number of a City official
83 responsible for providing after-hours assistance; and

84 (10) A warning that if the vehicle remains immobilized for forty-eight (48)
85 hours, it will be subject to impoundment.

86 (b) The fee for the removal of the immobilization device is thirty-five dollars
87 (\$35.00).

88 Section 5. That The Code of the City of Topeka, Kansas, is hereby amended
89 by adding a section to ARTICLE XI to be numbered 10.60.650, which said section reads
90 as follows:

91 **Procedures following immobilization.**

92 (a) The registered owner or lessee may secure the release of the
93 immobilization device provided the person pays all parking fines and removal charges
94 within forty-eight (48) hours of the notice in section 10.60.640. This does not preclude
95 the registered owner or lessee from subsequently contesting the immobilization
96 pursuant to section (b) or (c). If successful, the person will be reimbursed the amount of
97 the removal charge.

98 (b) After payment of all fines and removal charges, the registered owner or
99 lessee may contest the immobilization only if the registered owner or lessee submits,
100 within five (5) business days of the date the immobilization device was affixed to the

101 vehicle, written materials to obtain adjudication by mail. Compliance with this time limit
102 shall be a jurisdictional prerequisite. Failure to comply shall bar any contest.

103 (1) The Request shall include an affidavit, signed by the owner and
104 made subject to the penalties of perjury, that the owner denies there are three (3)
105 or more unpaid parking violations outstanding against the license plate on the
106 vehicle at the time of immobilization.

107 (2) The notice affixed to the vehicle or a copy thereof shall be prima
108 facie evidence of the correctness of the facts specified therein.

109 (3) The only issue for determination will be whether there were three
110 (3) or more unpaid parking violations outstanding against the license plate on the
111 vehicle at the time of immobilization.

112 (4) A hearing officer appointed by the municipal court administrative
113 judge will determine whether there is proof by a preponderance of the evidence
114 that the immobilization was warranted.

115 (5) Upon review of the materials submitted, the hearing officer shall
116 determine whether the immobilization was warranted and shall notify, in writing,
117 the owner or lessee.

118 (c) After payment of all fines and removal charges, the registered owner or
119 lessee may contest the immobilization only if the registered owner or lessee submits,
120 within five (5) business days of the date the immobilization device was affixed to the
121 vehicle, a request for an administrative hearing. Compliance with this time limit shall be
122 a jurisdictional prerequisite. Failure to comply shall bar any contest.

123 (1) Administrative hearings shall be held before a hearing officer
124 appointed by the municipal court administrative judge. The registered owner or

125 lessee may appear with or without an attorney. An attorney who appears on
126 behalf of such person shall file an entry of appearance. If the registered owner or
127 lessee or his or her attorney fails to appear or request a continuance, the request
128 for hearing shall be considered withdrawn.

129 (2) The rules of evidence shall not apply in the conduct of the
130 administrative hearing.

131 (3) All testimony shall be given under oath or affirmation which shall be
132 administered by the hearing officer.

133 (4) The hearing officer shall cause a record to be made of the hearing.

134 (5) The only issue for determination will be whether there were three
135 (3) or more unpaid parking violations outstanding against the license plate on the
136 vehicle at the time of immobilization.

137 (6) The notice affixed to the vehicle or a copy thereof shall be prima
138 facie evidence of the correctness of the facts specified therein.

139 (7) The hearing officer shall determine whether there is proof by a
140 preponderance of the evidence that the immobilization was warranted and shall
141 notify, in writing, the owner or lessee.

142 Section 6. That The Code of the City of Topeka, Kansas, is hereby amended
143 by adding a section to ARTICLE XI to be numbered 10.60.660, which said section reads
144 as follows:

145 **Vehicle impoundment; Procedure to reclaim vehicle.**

146 (a) If a vehicle remains immobilized after forty-eight (48) hours from the date
147 of the notice in section 10.60.640, it will be subject to impoundment by the police
148 department. Members of the police department are authorized to remove such vehicle

149 to the nearest private garage or a place designated or maintained by the police
150 department and hold it until the requirements for claiming the vehicle in section (c) are
151 satisfied.

152 (b) A written notice shall be sent by first-class mail to the registered owner
153 and lienholder of record within forty eight (48) hours of the vehicle's removal advising
154 such person(s) of the procedures available to regain possession of the vehicle and
155 challenge the impoundment.

156 (c) Once a vehicle has been impounded, the registered owner or lienholder
157 may:

158 (1) Regain possession by paying all charges associated with the
159 impoundment, including but not limited to the removal fee, parking fines, towing
160 fees, and storage charges;

161 (2) Regain possession by signing a signature bond in the amount of
162 the charges in section (c)(1); or

163 (3) Request a hearing on the validity of the impoundment to be held
164 before the municipal court judge before the seventh business day following such
165 request. Before the registered owner or lienholder can regain possession, the
166 municipal court judge must determine whether or not there was probable cause
167 for the impoundment. If there was probable cause, the judge will order the
168 registered owner or lienholder to comply with section (c)(1) or (c)(2) before
169 possession may be regained. If no probable cause for the impoundment can be
170 shown, the vehicle shall be returned to the registered owner or lienholder. No
171 vehicle shall be returned until the registered owner or lienholder provides
172 sufficient documentation to establish right to possession.

173 (4) The purpose of the hearing in section (c)(3) will be to determine
174 whether the impoundment was warranted. If the impoundment was not
175 warranted and the registered owner or lienholder has previously paid the charges
176 identified in section (c)(1), such charges shall be refunded by the city. Refunds
177 may be ordered by the municipal court and the registered owner or lienholder
178 shall not be required to submit a claim to the city council.

179 (d) Personal property found in the vehicle may be released at any time to the
180 owner of such property upon presentation of proof of ownership or right to possession of
181 such personal property.

182 Section 7. That The Code of the City of Topeka, Kansas, is hereby amended
183 by adding a section to ARTICLE XI to be numbered 10.60. 670, which said section
184 reads as follows:

185 **Disposition of impounded vehicles by public sale.**

186 (a) Disposition of vehicles which remain unclaimed by the registered owner or
187 lienholder of record for a period of thirty (30) days or more shall be done in compliance
188 with the procedures for impoundment, notice and public auction provided by paragraph
189 (2) of subsection (a) of K.S.A. 8-1102 and amendments thereto.

190 (b) Pursuant to K.S.A. 8-1102 and amendments thereto, all moneys derived
191 from the sale of motor vehicles, after payment of the expenses of impoundment and
192 sale, shall be paid into the fund for construction and maintenance of streets. No
193 moneys derived from the sale of motor vehicles shall be used for the payment of
194 parking fines.

195 Section 8. That section 10.10.160, Immobilization, of the Code of the City of
196 Topeka, Kansas is hereby amended to read as follows:

197 **Immobilization.**

198 (a) Where it is not feasible to tow or immediately remove motor vehicles
199 against which there have been issued two or more summonses, members of the police
200 department and their agents are authorized to temporarily and for a period not to
201 exceed 48 hours immobilize the motor vehicle by attaching or affixing an appropriate
202 device thereto. The person so attaching or affixing the immobilizing device shall also
203 conspicuously attach or affix to such motor vehicle a notice in writing on a form to be
204 provided by the chief of police that the motor vehicle has been immobilized; that release
205 of the immobilization may be obtained at a designated time and place; and that unless
206 arrangements are made for the release of the motor vehicle within 48 hours, the motor
207 vehicle will be removed by the police department.

208 (b) It shall be unlawful for any person to remove or cause to be removed any
209 immobilizing device or to move or cause to be moved any motor vehicle on which an
210 immobilizing device has been placed before such vehicle is released by the police
211 department. Whenever any motor vehicle has been so immobilized in the manner
212 aforesaid, there shall be charged and collected by the police department before the
213 release of such motor vehicle a fee of ~~\$4.00~~\$5.00.

214 Section 9. That original § 10.10.160 of the Code of the City of Topeka is
215 hereby specifically repealed.

216 Section 10. This ordinance shall take effect and be in force from and after its
217 passage, approval and publication in the official City newspaper.

218 Section 11. This ordinance shall supersede all ordinances, resolutions or rules,
219 or portions thereof, in conflict with the provisions of this ordinance.

Section 12. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council June 14, 2011.

CITY OF TOPEKA, KANSAS

William W. Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk