

(Published in the Topeka Metro News July 4, 2011)

**ORDINANCE NO. 19596**

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning driving under the influence, amending City of Topeka Code § 10.15.020 and specifically repealing said original section as well as creating Article IV of Chapter 10.20 consisting of § 10.20.230, § 10.20.240, § 10.20.250 and § 10.20.260.

WHEREAS, the City of Topeka currently follow DUI laws provided for in the 2010 Standard Traffic Ordinance; and

WHEREAS, as of July 1, new state laws pertaining to driving under the influence will become effective and the provisions of the STO will not be in compliance with the new state law; and

WHEREAS, the City needs to amend the City Code in order to be in compliance with the new state law.

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

Section 1. That section 10.15.020, Amendments, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Amendments.**

The current edition of the Standard Traffic Ordinance for Kansas Cities, as adopted by reference, shall be amended as follows:

(a) Section 33 of the Standard Traffic Ordinance, relating to maximum speed limits, is hereby declared to be and is omitted and deleted and the provisions set forth at TMC [10.20.060](#) shall be substituted therefor.

(b) Section 50 of the Standard Traffic Ordinance relating to right, left and U-turns at intersection – obedience to, is hereby declared to be and is omitted and deleted and the provisions set forth at TMC [10.20.200](#) shall be substituted therefor.

(c) Section 67 of the Standard Traffic Ordinance, relating to pedestrians to use right half of crosswalks, is hereby declared to be and is omitted and deleted.

(d) Section 104 of the Standard Traffic Ordinance, relating to inattentive driving, is hereby declared to be and is omitted and deleted and the provisions set forth at TMC [10.20.100](#) shall be substituted therefor.

(e) Section 107 of the Standard Traffic Ordinance, relating to unattended motor vehicles, is hereby declared to be and is omitted and deleted and the provisions set forth at TMC [10.20.125](#) shall be substituted therefor.

(f) Section 119 of the Standard Traffic Ordinance, relating to parades and processions, is hereby declared to be and is omitted and deleted and the provisions set forth in Chapter [10.50](#) TMC shall be substituted therefor.

(g) Section 194 of the Standard Traffic Ordinance, relating to driving while license canceled, suspended or revoked, is hereby declared to be and is omitted and deleted.

(h) Section 195.1 of the Standard Traffic Ordinance, relating to operation of a motor vehicle when a habitual violator, is hereby declared to be and is omitted and deleted.

(i) Section 198 of the Standard Traffic Ordinance, relating to vehicle license – illegal tag, is hereby declared to be and is omitted and deleted and the provisions set forth at TMC [10.05.060](#) shall be substituted therefor.

(j) Section 1 of the Standard Traffic Ordinance, specifically the definition for "Other Competent Evidence" is hereby declared to be and is omitted and deleted and the following provisions shall be substituted therefore: Other Competent Evidence (1) Includes alcohol concentration tests obtained from samples taken three hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

(k) Section 30 of the Standard Traffic Ordinance, relating to driving under the influence of intoxicating liquor or drugs, is hereby declared to be and is omitted and deleted and the provisions set forth in TMC 10.20.230 shall be substituted therefor.

(l) Section 30.1 of the Standard Traffic Ordinance, relating to driving commercial motor vehicle under the influence of intoxicating liquor or drugs, is hereby declared to be and is omitted and deleted and the provisions set forth in TMC 10.20.240 shall be substituted therefor.

(m) Section 30.2 of the Standard Traffic Ordinance, relating to preliminary breath test, is hereby declared to be and is omitted and deleted and the provisions set forth in TMC 10.20.250 shall be substituted therefor.

(n) Section 30.3 of the Standard Traffic Ordinance, relating to ignition interlock devices; tampering, is hereby declared to be and is omitted and deleted and the provisions set forth in TMC 10.20.260 shall be substituted therefor.

Section 2. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 10.20.230, of Article IV, Chapter 10.20, which said section reads as follows:

**Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties.**

74           (a)   Driving under the influence is operating or attempting to operate any  
75 vehicle within this city while:

76                   (1)   The alcohol concentration in the person's blood or breath as shown  
77 by any competent evidence, including other competent evidence, is .08 or more;

78                   (2)   The alcohol concentration in the person's blood or breath, as  
79 measured within three hours of the time of operating or attempting to operate a  
80 vehicle, is .08 or more;

81                   (3)   Under the influence of alcohol to a degree that renders the person  
82 incapable of safely driving a vehicle;

83                   (4)   Under the influence of any drug or combination of drugs to a  
84 degree that renders the person incapable of safely driving a vehicle; or

85                   (5)   Under the influence of a combination of alcohol and any drug or  
86 drugs to a degree that renders the person incapable of safely driving a vehicle; or

87                   (6)   The person is a habitual user of any narcotic, hypnotic,  
88 somnifacient or stimulating drug.

89           (b)   Penalties.

90                   (1)   Driving under the influence is:

91                           (A)   on a first conviction a class B, nonperson misdemeanor.  
92 The person convicted shall be sentenced to not less than 48 consecutive  
93 hours nor more than six months' imprisonment, or in the court's discretion  
94 100 hours of public service, and fined not less than \$750 nor more than  
95 \$1,000. The person convicted shall serve at least 48 consecutive hours'  
96 imprisonment or 100 hours of public service either before or as a condition  
97 of any grant of probation or suspension, reduction of sentence or parole.

98           The court may place the person convicted under a house arrest program  
99           pursuant to section 249 of chapter 136 of the 2010 Session Laws of  
100           Kansas, and amendments thereto, to serve the remainder of the minimum  
101           sentence only after such person has served 48 consecutive hours'  
102           imprisonment.

103           (B)    on a second conviction a class A, nonperson misdemeanor.  
104           The person convicted shall be sentenced to not less than 90 days nor  
105           more than one year's imprisonment and fined not less than \$1,250 nor  
106           more than \$1,750. The person convicted shall serve at least five  
107           consecutive days' imprisonment before the person is granted probation,  
108           suspension or reduction of sentence or parole or is otherwise released.  
109           The five days' imprisonment mandated by this subsection may be served  
110           in a work release program only after such person has served 48  
111           consecutive hours' imprisonment, provided such work release program  
112           requires such person to return to confinement at the end of each day in  
113           the work release program. The person convicted, if placed into a work  
114           release program, shall serve a minimum of 120 hours of confinement.  
115           Such 120 hours of confinement shall be a period of at least 48  
116           consecutive hours of imprisonment followed by confinement hours at the  
117           end of and continuing to the beginning of the offender's work day. The  
118           court may place the person convicted under a house arrest program  
119           pursuant to section 249 of chapter 136 of the 2010 Session Laws of  
120           Kansas, and amendments thereto, to serve the remainder of the minimum  
121           sentence only after such person has served 48 consecutive hours'

122 imprisonment. The person convicted, if placed under house arrest, shall  
123 be monitored by an electronic monitoring device, which verifies the  
124 offender's location. The offender shall serve a minimum of 120 hours of  
125 confinement within the boundaries of the offender's residence. Any  
126 exceptions to remaining within the boundaries of the offender's residence  
127 provided for in the house arrest agreement shall not be counted as part of  
128 the 120 hours;

129 (2) In addition, prior to sentencing for any conviction, the court shall  
130 order the person to participate in an alcohol and drug evaluation conducted by a  
131 provider in accordance with K.S.A. 8-1008, and amendments thereto. The  
132 person shall be required to follow any recommendation made by the provider  
133 after such evaluation, unless otherwise ordered by the court.

134 (c) Any person convicted of violating this section who had one or more  
135 children under the age of 14 years in the vehicle at the time of the offense shall have  
136 such person's punishment enhanced by one month of imprisonment. This imprisonment  
137 must be served consecutively to any other minimum mandatory penalty imposed for a  
138 violation of this section. Any enhanced penalty imposed shall not exceed the maximum  
139 sentence allowable by law. During the service of the enhanced penalty, the judge may  
140 order the person on house arrest, work release or other conditional release.

141 (d) If a person is charged with a violation of this section involving drugs, the  
142 fact that the person is or has been entitled to use the drug under the laws of this state  
143 shall not constitute a defense against the charge.

144 (e) The court may establish the terms and time for payment of any fines, fees,  
145 assessments and costs imposed pursuant to this section. Any assessment and costs

146 shall be required to be paid not later than 90 days after imposed, and any remainder of  
147 the fine shall be paid prior to the final release of the defendant by the court.

148 (f) In lieu of payment of a fine imposed pursuant to this section, the court may  
149 order that the person perform community service specified by the court. The person  
150 shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour  
151 spent by the person in the specified community service. The community service ordered  
152 by the court shall be required to be performed not later than one year after the fine is  
153 imposed or by an earlier date specified by the court. If by the required date the person  
154 performs an insufficient amount of community service to reduce to zero the portion of  
155 the fine required to be paid by the person, the remaining balance of the fine shall  
156 become due on that date.

157 (g) Exceptions.

158 (1) Except as provided in paragraph (5) of this subsection (g), in  
159 addition to any other penalty which may be imposed upon a first conviction of a  
160 violation of this section, the court may order that the convicted person's motor  
161 vehicle or vehicles be impounded or immobilized for a period not to exceed one  
162 year and that the convicted person pay all towing, impoundment, and storage  
163 fees or other immobilization costs.

164 (2) The court shall not order the impoundment or immobilization of a  
165 motor vehicle driven by a person convicted of a violation of this section if the  
166 motor vehicle had been stolen or converted at the time it was driven in violation  
167 of this section.

168           (3) Prior to ordering the impoundment or immobilization of a motor  
169 vehicle or vehicles owned by a person convicted of a violation of this section, the  
170 court shall consider, but not be limited, the following:

171           (A) Whether the impoundment or immobilization if the motor  
172 vehicle would result in the loss of employment by the convicted person or  
173 a member of such person's family; and

174           (B) Whether the ability of the convicted person or a member of  
175 such person's family to attend school or obtain medical care would be  
176 impaired.

177           (4) Any personal property in a vehicle impounded or immobilized  
178 pursuant to this subsection may be retrieved prior to or during the period of such  
179 impoundment or immobilization.

180           (5) As used in this subsection, the convicted person's motor vehicle or  
181 vehicles shall include any vehicle leased by such person. If the lease on the  
182 convicted person's motor vehicle subject to impoundment or immobilization  
183 expires in less than one year from the date of the impoundment or  
184 immobilization, the time of impoundment or immobilization of such vehicle shall  
185 be the amount of the time remaining on the lease.

186 (h) Responsibility of City Attorney.

187           (1) Upon filing a complaint, citation or notice to appear alleging a  
188 violation of this section, and prior to a conviction thereof, the city attorney shall  
189 request and shall receive from the:



190                   (A) Division a record of all prior convictions obtained against  
191                   such person for any violations of any of the motor vehicle laws of this  
192                   state; and

193                   (B) Kansas Bureau of Investigation central repository of all  
194                   criminal history record information concerning such person.

195                   (2) If the elements of a violation of this section are the same as the  
196                   elements of a violation of K.S.A. 8-1567 that would constitute, and be punished  
197                   as, a felony, the city attorney shall refer the violation to the district attorney for  
198                   prosecution.

199                   (i) The court shall electronically report every conviction of a violation of this  
200                   section and every diversion agreement entered into in lieu of further criminal  
201                   proceedings on a complaint alleging a violation of this section to the division. Prior to  
202                   sentencing under the provisions of this section, the court shall request and shall receive  
203                   from the division a record of all prior convictions obtained against such person for any  
204                   violations of any of the motor vehicle laws of this state.

205                   (j) For the purpose of determining whether a conviction is a first or second  
206                   conviction in sentencing under this section:

207                   (1) **Conviction** includes being convicted of a violation of this section or  
208                   entering into a diversion agreement in lieu of further criminal proceedings on a  
209                   complaint alleging a violation of this section;

210                   (2) **Conviction** includes being convicted of a violation of a law of any  
211                   state or an ordinance of any city, or resolution of any county, which prohibits the  
212                   acts that this section prohibits or entering into a diversion agreement in lieu of

213 further criminal proceedings in a case alleging a violation of such law, ordinance  
214 or resolution;

215 (3) Only convictions occurring on or after July 1, 2001, shall be taken  
216 into account when determining the sentence to be imposed for a first or second  
217 offender;

218 (4) It is irrelevant whether an offense occurred before or after  
219 conviction for a previous offense; and

220 (5) A person may enter into a diversion agreement in lieu of further  
221 criminal proceedings for a violation of this section, and amendments thereto, only  
222 once during the person's lifetime.

223 (k) Upon conviction of a person of a violation of this section, the division,  
224 upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the  
225 person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

226 (l) Upon conviction of a person of a violation of this section, the court may  
227 order the convicted person to pay restitution to any victim who suffered loss due to the  
228 violation for which the person was convicted.

229 (m) No plea bargaining agreement shall be entered into nor shall any judge  
230 approve a plea bargaining agreement entered into for the purpose of permitting a  
231 person charged with a violation of this section to avoid the mandatory penalties  
232 established by this section. For the purpose of this subsection, entering into a diversion  
233 agreement pursuant to K.S.A. 12-4413 et seq., and amendments thereto, shall not  
234 constitute plea bargaining.

(n) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

(o) As used in this section:

(1) **Alcohol Concentration** means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) **Drug** includes toxic vapors as such term is defined in Section 1.

(3) **Imprisonment** shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

Section 3. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 10.20.240 of Article IV, Chapter 10.20, which said section reads as follows:

**Driving Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; Penalties.**

(a) Driving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle within this city while:

(1) The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, is .04 or more;

(2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is .04 or more; or

(3) Committing a violation of subsection (a) of TMC 10.20.230.

(b) Penalties.

(1) Driving a commercial motor vehicle under the influence is:

(A) on a first conviction a class B, nonperson misdemeanor. The person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion, 100 hours of public service, and fined not less than \$750 nor more than \$1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation, suspension or reduction of sentence or parole or other release;

(B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48

283 consecutive hours of imprisonment followed by confinement hours at the  
284 end of and continuing to the beginning of the offender's work day. The  
285 court may place the person convicted under a house arrest program  
286 pursuant to section 249 of chapter 136 of the 2010 Session Laws of  
287 Kansas, and amendments thereto, to serve the remainder of the minimum  
288 sentence only after such person has served 48 consecutive hours'  
289 imprisonment. The person convicted, if placed under house arrest, shall  
290 be monitored by an electronic monitoring device, which verifies the  
291 offender's location. The offender shall serve a minimum of 120 hours of  
292 confinement within the boundaries of the offender's residence. Any  
293 exceptions to remaining within the boundaries of the offender's residence  
294 provided for in the house arrest agreement shall not be counted as part of  
295 the 120 hours.

296 (2) In addition, prior to sentencing for any conviction, the court shall  
297 order the person to participate in an alcohol and drug evaluation conducted by a  
298 provider in accordance with K.S.A. 8-1008, and amendments thereto. The  
299 person shall be required to follow any recommendation made by the provider  
300 after such evaluation, unless otherwise ordered by the court.

301 (c) Any person convicted of a violation of this section who had one or more  
302 children under the age of 14 years in the vehicle at the time of the offense shall have  
303 such person's punishment enhanced by one month of imprisonment. This imprisonment  
304 shall be served consecutively to any other minimum mandatory penalty imposed for a  
305 violation of this section, or a violation of a city ordinance or county resolution prohibiting  
306 the acts prohibited by this section. Any enhanced penalty imposed shall not exceed the

307 maximum sentence allowable by law. During the service of the enhanced penalty, the  
308 judge may order the person on house arrest, work release or other conditional release.

309 (d) If a person is charged with a violation of this section involving drugs, the  
310 fact that the person is or has been entitled to use the drug under the laws of this state  
311 shall not constitute a defense against the charge

312 (e) The court may establish the terms and time for payment of any fines, fees,  
313 assessments and costs imposed pursuant to this section. Any assessment and costs  
314 shall be required to be paid not later than 90 days after imposed, and any remainder of  
315 the fine shall be paid prior to the final release of the defendant by the court.

316 (f) In lieu of payment of a fine imposed pursuant to this section, the court may  
317 order that the person perform community service specified by the court. The person  
318 shall receive a credit on the fine imposed in an amount equal to not less than \$5 for  
319 each full hour spent by the person in the specified community service. The community  
320 service ordered by the court shall be required to be performed not later than one year  
321 after the fine is imposed or by an earlier date specified by the court. If by the required  
322 date the person performs an insufficient amount of community service to reduce to zero  
323 the portion of the fine required to be paid by the person, the remaining balance of the  
324 fine shall become due on that date.

325 (g) City Attorney responsibilities. Upon filing a complaint, citation or notice to  
326 appear alleging a violation of this section, and prior to a conviction thereof, the city  
327 attorney shall request and shall receive the following:

328 (1) From the Division, a record of all prior convictions obtained against  
329 such person for any violations of any of the motor vehicle laws of this state; and

330                   (2) From the Kansas Bureau of Investigation central repository all  
331                   criminal history record information concerning such person.

332                   (h) Courts responsibilities. The court shall electronically report every  
333                   conviction of a violation of this section and every diversion agreement entered into in  
334                   lieu of further criminal proceedings on a complaint alleging a violation of this section to  
335                   the division. Prior to sentencing under the provisions of this section, the court shall  
336                   request and shall receive the following:

337                   (1) From the Division, a record of all prior convictions obtained against  
338                   such person for any violation of any of the motor vehicle laws of this state; and

339                   (2) From the Kansas bureau of investigation central repository, all  
340                   criminal history record information concerning such person.

341                   (i) Upon conviction of a person of a violation of this section, the division,  
342                   upon receiving a report of conviction, shall:

343                   (1) Disqualify the person from driving a commercial motor vehicle  
344                   under K.S.A. 8-2,142, and amendments thereto; and

345                   (2) Suspend, restrict or suspend and restrict the person's driving  
346                   privileges as provided by K.S.A. 8-1014, and amendments thereto.

347                   (j) Upon conviction of a person of a violation of this section, the court may order  
348                   the convicted person to pay restitution to any victim who suffered loss due to the  
349                   violation for which the person was convicted.

350                   (k) No plea bargaining agreement shall be entered into nor shall any judge  
351                   approve a plea bargaining agreement entered into for the purpose of permitting a  
352                   person charged with a violation of this section to avoid the mandatory penalties  
353                   established by this section.

354           (l) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be  
355 pleaded in the alternative, and the city may, but shall not be required to, elect one or  
356 two of the three prior to submission of the case to the fact finder.

357           (m) For the purpose of determining whether a conviction is a first or second  
358 conviction in sentencing under this section:

359                 (1) “Conviction” includes being convicted of a violation of a law of  
360 another state or an ordinance of any city, or resolution of any county, which  
361 prohibits the acts that this section prohibits;

362                 (2) Any convictions occurring during a person’s lifetime shall be taken  
363 into account when determining the sentence to be imposed for a first or second  
364 offender; and

365                 (3) It is irrelevant whether an offense occurred before or after  
366 conviction for a previous offense.

367           (n) For the purpose of this section:

368                 (1) “Alcohol concentration” means the number of grams of alcohol per  
369 100 milliliters of blood or per 210 liters of breath;

370                 (2) “Imprisonment” shall include any restrained environment in which  
371 the court and law enforcement agency intend to retain custody and control of a  
372 defendant and such environment has been approved by the board of county  
373 commissioners or the governing body of a city; and

374                 (3) “Drug” includes toxic vapors as such term is defined in K.S.A. 2010  
375 Supp. 21-36a12, and amendments thereto; and



(4) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic and includes operation or physical control of a motor vehicle anywhere in the city.

(o) For the purpose of this section, **commercial motor vehicle** shall not include:

(1) Farm vehicles, defined as follows:

(A) Registered as a farm truck or truck tractor under K.S.A. 8-143, and amendments thereto;

(B) Used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm;

(C) Not used in the operations of a common or contract motor carrier; and

(D) Used within 150 air miles of any farm or farms owned or leased by the registered owner of such farm vehicle;

(2) Vehicles operated by firefighters and other persons which are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals and are not subject to normal traffic regulation. These vehicles include fire trucks, hook and ladder trucks, foam or water transport trucks, police SWAT team vehicles, ambulances or other vehicles that are used in response to emergencies;

(3) Military vehicles which are operated by military personnel in pursuit of military purposes and all noncivilian operators of equipment owned or operated by the United States department of defense. This applies to any active duty military personnel and members of the reserves and national guard on

active duty, including personnel on full-time national guard duty, personnel on parttime training and national guard military technicians, civilians who are required to wear military uniforms and are subject to the code of military justices; and

(4) Motor vehicles, which would otherwise be considered commercial motor vehicles, if such vehicles are used solely and exclusively for private noncommercial use and any operator of such vehicles.

Section 4. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 10.20.250 of Article IV, Chapter 10.20, which said section reads as follows:

**Preliminary Breath Test.**

(a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent to submit to a preliminary screening test of the person's breath or saliva, or both, subject to the provisions set out in subsection (b).

(b) A law enforcement officer may request a person who is operating or attempting to operate a motor vehicle within this state to submit to a preliminary screening test of the person's breath or saliva, or both if the officer has reasonable suspicion to believe that the person has been operating or attempting to operate a vehicle while under the influence of alcohol or drugs or both alcohol and drugs.

(c) At the time the test is requested, the person shall be given oral notice that:

(1) There is no right to consult with an attorney regarding whether to submit to testing;

(2) Refusal to submit to testing is a traffic infraction; and

423                   (3)     Further testing may be required after the preliminary screening test.

424                   Failure to provide the notice shall not be an issue or defense in any action. The  
425                   law enforcement officer then shall request the person to submit to the test.

426                   (d)     Refusal to take and complete the test as requested is a traffic infraction. If  
427                   the person submits to the test, the results shall be used for the purpose of assisting law  
428                   enforcement officers in determining whether an arrest should be made and whether to  
429                   request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law  
430                   enforcement officer may arrest a person based in whole or in part upon the results of a  
431                   preliminary screening test. Such results shall not be admissible in any civil or criminal  
432                   action concerning the operation of or attempted operation of a vehicle except to aid the  
433                   court or hearing officer in determining a challenge to the validity of the arrest or the  
434                   validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments  
435                   thereto. Following the preliminary screening test, additional tests may be requested  
436                   pursuant to K.S.A. 8-1001 and amendments thereto.

437                   (e)     Any preliminary screening of a person's breath shall be conducted with a  
438                   device approved pursuant to K.S.A. 65-1,107, and amendments thereto. Any  
439                   preliminary screening of a person's saliva shall be conducted with a device approved  
440                   pursuant to section 2, and amendments thereto.

441                   Section 5.     That the Code of the City of Topeka, Kansas, is hereby amended  
442                   by adding a section, to be numbered 10.20.260 of Article IV, Chapter 10.20, which said  
443                   section reads as follows:

444                   **Ignition Interlock Devices; Tampering.**

445                   (a)     No person shall:

446                   (1)   Tamper with an ignition interlock device, circumvent it or render it  
447                   inaccurate or inoperative;

448                   (2)   Request or solicit another to blow into an ignition interlock device,  
449                   or start a motor vehicle equipped with such device, providing an operable motor  
450                   vehicle to a person whose driving privileges have been restricted to driving a  
451                   motor vehicle equipped with such device;

452                   (3)   Blow into an ignition interlock device, or start a motor vehicle  
453                   equipped with such device, providing an operable motor vehicle to a person  
454                   whose driving privileges have been restricted to driving a motor vehicle equipped  
455                   with such device; or

456                   (4)   Operate a vehicle not equipped with an ignition interlock device  
457                   while such person's driving privileges have been restricted to driving a motor  
458                   vehicle equipped with such device.

459                   (b)   Violation of this section is a class A, nonperson misdemeanor pursuant to  
460                   K.S.A. 8-1017.

461                   Section 6.   That original § 10.15.020 of The Code of the City of Topeka,  
462                   Kansas, is hereby specifically repealed.

463                   Section 7.   This ordinance shall take effect and be in force from and after its  
464                   passage, approval and publication in the official City newspaper.

465                   Section 8.   This ordinance shall supersede all ordinances, resolutions or rules,  
466                   or portions thereof, which are in conflict with the provisions of this ordinance.

467                   Section 9.   Should any section, clause or phrase of this ordinance be declared  
468                   invalid by a court of competent jurisdiction, the same shall not affect the validity of this  
469                   ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

470 PASSED AND APPROVED by the City Council on June 28, 2011.

471  
472 CITY OF TOPEKA, KANSAS

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476 \_\_\_\_\_  
477 William W. Buntten, Mayor

478 ATTEST:  
479 \_\_\_\_\_  
480 Brenda Younger, City Clerk