

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

2
3 **ORDINANCE NO. 19596**

4
5 AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning
6 driving under the influence, amending City of Topeka Code §
7 10.15.020 and specifically repealing said original section as well as
8 creating Article IV of Chapter 10.20 consisting of § 10.20.230, §
9 10.20.240, § 10.20.250 and § 10.20.260.

10
11 WHEREAS, the City of Topeka currently follow DUI laws provided for in the 2010
12 Standard Traffic Ordinance; and

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

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

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

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

22 **Amendments.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

73 **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 (i) 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.

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

238 (o) As used in this section:

239 (1) **Alcohol Concentration** means the number of grams of alcohol per
240 100 milliliters of blood or per 210 liters of breath.

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

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

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

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

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

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

256 (2) The alcohol concentration in the person's blood or breath, as
257 measured within three hours of the time of driving a commercial motor vehicle, is
258 .04 or more; or

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

260 (b) Penalties.

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

262 (A) on a first conviction a class B, nonperson misdemeanor. The
263 person convicted shall be sentenced to not less than 48 consecutive hours
264 nor more than six months' imprisonment, or in the court's discretion, 100
265 hours of public service, and fined not less than \$750 nor more than
266 \$1,000. The person convicted shall serve at least 48 consecutive hours'
267 imprisonment or 100 hours of public service either before or as a condition
268 of any grant of probation, suspension or reduction of sentence or parole or
269 other release;

270 (B) on a second conviction a class A, nonperson misdemeanor.
271 The person convicted shall be sentenced to not less than 90 days nor
272 more than one year's imprisonment and fined not less than \$1,250 nor
273 more than \$1,750. The person convicted shall serve at least five
274 consecutive days' imprisonment before the person is granted probation,
275 suspension or reduction of sentence or parole or is otherwise released.
276 The five days' imprisonment mandated by this subsection may be served
277 in a work release program only after such person has served 48
278 consecutive hours' imprisonment, provided such work release program
279 requires such person to return to confinement at the end of each day in
280 the work release program. The person convicted, if placed into a work
281 release program, shall serve a minimum of 120 hours of confinement.
282 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

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

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

381 (1) Farm vehicles, defined as follows:

382 (A) Registered as a farm truck or truck tractor under K.S.A. 8-
383 143, and amendments thereto;

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

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

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

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

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

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

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

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

410 **Preliminary Breath Test.**

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

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

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

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

422 (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.

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

CITY OF TOPEKA, KANSAS

William W. Buntten, Mayor

ATTEST:

Brenda Younger, City Clerk