

ORDINANCE NO. TC-1260, ~~XXYY~~

AN ORDINANCE RELATING TO THE TRAFFIC CODE FOR THE CITY OF OVERLAND PARK, KANSAS, AMENDING AND REPEALING EXISTING OVERLAND PARK MUNICIPAL CODE SECTIONS 12.04.030, 12.04.107 AND 12.04.163.

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

SECTION 1. Overland Park Municipal Code Section 12.04.030 is hereby amended to read as follows:

**12.04.030 Driving Under the Influence of Alcohol or Drugs; Penalties**

- (a) No person shall operate or attempt to operate any 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 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;
  - (2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;
  - (3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
  - (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or
  - (5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.
- (b) No person shall operate or attempt to operate any vehicle within this City if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.
- (c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state or the ordinances of this City shall not constitute a defense against the charge.
- (d) Prior to sentencing a person convicted of this section which offense resulted in serious bodily injury or the death of a person, the court shall cause reasonable attempts to be made to notify the victim or the victim's family, who shall be given an opportunity to make a victim's impact statement as to the impact of the offense on the victim's life or the lives of the victim's family members. In addition, the court may require that a person convicted of a violation of this section which offense resulted in personal injury to a person, the death of a person or injury to a person's property in addition to any other penalty provided by law, that the convicted person pay restitution as a condition of probation or parole; provided such restitution shall be in addition to any other penalties provided by law.
- (e) On a first conviction of a violation of this section, a person 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 \$500 nor more than \$1,000. The person

convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or a treatment program as provided in K.S.A. 8-1008 and any amendments thereto both the education and treatment programs. In all cases the person shall be evaluated by an alcohol and drug counselor prior to sentencing.

- (f) On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must 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 court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008 and any amendments thereto.
- (g) Upon a person's second or subsequent conviction for an alcohol related offense, if the person had an alcohol concentration of .15 or more in the person's blood or breath, the convicting court shall restrict the person's driving privileges to driving only a motor vehicle equipped with an ignition interlock device, approved by the state of Kansas, and obtained, installed and maintained at the person's expense. Any fine imposed by the court for the conviction may be reduced in an amount equal to the expense incurred by the person for obtaining, installing, and maintaining the ignition interlock device.
- (h) The municipal court shall not have jurisdiction to hear cases involving third and subsequent violations of this section or any other felony violation.
- (i) Any person convicted of violating this ordinance who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this ordinance. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.
- (j) Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.
- (k) Upon convicting a person of an alcohol or drug related offense the convicting court, in lieu of the restrictions set out in K.S.A. 8-1015(a), may restrict the person's driving privileges to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and obtained, installed and maintained at the person's expense. Any fine imposed by the court

for the conviction shall be reduced by the court in an amount equal to the expense incurred by the person for obtaining, installing and maintaining the ignition interlock device.

- (l) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.
- (m) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5.00 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.
- (n)
  - (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a person convicted of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.
  - (2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.
  - (3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:
    - (A) Whether the impoundment or immobilization of a motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and
    - (B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.
  - (4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.
  - (5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.
- (~~no~~) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against

such person for any violation of any of the motor vehicle laws of this state.

- (ep) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:
- (1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;
  - (2) "Conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;
  - (3) Any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;
  - (4) It is irrelevant whether an offense occurred before or after convictions for a previous offense; and
  - (5) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of K.S.A. 8-1567, and any amendments thereto, this ordinance or any ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.
- (pq) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* and any amendments thereto, or 22-2906 *et seq.*, and amendments thereto shall not constitute plea bargaining.
- (qr) 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. In addition, the City may charge the defendant with operation or attempted operation of a motor vehicle in the alternative, and the City may, but shall not be required, to elect one of the two alternatives prior to submission of the case to the fact finder.
- (rs) It shall not be a defense to any prosecution under this section that the person did not understand any written or oral notice required under the laws of this state because of any condition produced by the person's voluntary intoxication or by injury resulting from that intoxication.
- (st) For the purpose of this ordinance, (1) "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 Governing Body of the City, (2) "Drug" includes toxic vapors as such term is defined at O.P.M.C. §11.56.190.

SECTION 2. Overland Park Municipal Code Section 12.04.107 is hereby amended to read as follows:

**12.04.107 Unattended Motor Vehicle; Ignition; Key and Brakes.**

- (a) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.
  
- (b) For the purpose of this section, unattended shall not be construed to mean a motor vehicle with an engine that has been activated by a remote starter system, when the motor vehicle is locked and when the ignition keys are not in the motor vehicle.

SECTION 3. Overland Park Municipal Code Section 12.04.163 is hereby amended to read as follows:

**12.04.163 Additional Lighting Equipment.**

- (a) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.
- (b) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof, which shall emit a white or amber light without glare.
- (c) Any motor vehicle may be equipped with one or more back-up lamps, either separately or in combination with other lamps, but any such back-up lamp or lamps shall not be lighted when the motor vehicle is in forward motion.
- (d) Any vehicle 80 inches or more in overall width, if not otherwise required by 12.04.151 may be equipped with not more than three identification lamps showing to the front which shall emit an amber light without glare, and not more than three identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be mounted as specified in 12.04.151(f).
- (e) Any vehicle may be equipped with one or more side marker lamps and any such lamp may be flashing in conjunction with turn or vehicular hazard warning signals. Side marker lamps located toward the front of a vehicle shall be amber and side marker lamps located toward the rear shall be red.
  
- (f) Any motor vehicle may be equipped with neon ground effect lighting, except that such lighting shall not flash, be any shade of red nor shall any portion of the neon tubes be visible. “Neon ground effect lighting” means neon tubes placed underneath the motor vehicle for the purpose of illuminating the ground below the motor vehicle creating a halo light effect.

SECTION 4. Existing Overland Park Municipal Code Sections 12.04.030, 12.04.107 and 12.04.163 are hereby repealed.

SECTION 5. This ordinance shall take effect and be in force July 1, 2003, and after its publication in *The Overland Park Sun*, an official City newspaper.

PASSED by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2003.

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Ed Eilert, Mayor

ATTEST

\_\_\_\_\_  
Marian Cook  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Tammy M. Owens  
Assistant City Attorney