

ORDINANCE NO. 2296

AN ORDINANCE RELATING TO THE TRAFFIC ORDINANCE OF THE CITY OF DERBY, KANSAS; AMENDING AND REPEALING SECTIONS 10.04.001, 10.04.025, 10.04.029, 10.04.029.1, 10.04.029.2, 10.04.029.4, AND 10.04.041 OF THE DERBY MUNICIPAL CODE AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR; AND FURTHER DELETING AND RESERVING SECTION 10.04.029.3 OF THE SAME FOR FUTURE USE.

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

Section 1. Section 10.04.001 of the Derby Municipal Code is hereby amended to read as follows:

“10.04.001 - Definitions.

The following words and phrases when used in this ordinance shall, for the purpose of this article and other traffic ordinances, have the meanings respectively ascribed to them in this section except when the context otherwise requires.

"Alcoholic beverage" means any alcoholic liquor, as defined by K.S.A. 41-102 and amendments thereto, or any cereal malt beverage, as defined by K.S.A. 41-2701 and amendments thereto.

"Alcohol concentration" means the number of grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath.

"Alley" or "alleyway" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

"All-terrain vehicle" means any motorized non-highway vehicle fifty inches or less in width, having a dry weight of one thousand five hundred pounds or less, traveling on three or more non highway tires. As used in this subsection, non-highway tire means any pneumatic tire six inches or more in width, designed for use on wheels with rim diameter of fourteen inches or less.

"Arterial street" means any U.S. or state numbered route, controlled access highway or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

"Authorized emergency vehicle" means such fire department vehicles or police bicycles or police vehicles which are publicly owned; motor vehicles operated by ambulance services permitted by the emergency medical services board under the provisions of K.S.A. 65-6101 *et. seq.*, and amendments thereto; wreckers, tow trucks or car carriers, as defined by K.S.A. 66-

1329, and amendments thereto, and having a certificate of public service from the state corporation commission; and such other publicly or privately owned vehicles which are designated as emergency vehicles pursuant to K.S.A. 8-2010, and amendments thereto.

"Autocycle" means a three-wheel motorcycle that has a steering wheel and seating that does not require the operator to straddle or sit astride it.

"Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels, either of which is more than fourteen inches in diameter.

"Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

"Business district" means the territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks or office buildings, railroad stations and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

"Chief of police" means the chief of police of the city, or any member of the police department of the city designated by the chief of police to act in his or her place.

"Church bus" means every bus owned by a religious organization, and operated for the transportation of persons to or from services or activities of such religious organization. As used in this section, "religious organization" means any organization, church, body of communicants or group, gathered in common membership for mutual edification in piety, worship and religious observances, or a society of individuals united for religious purposes at a definite place.

"City" or "this city" means the city of Derby, Kansas.

"Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property, if:

1. The vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds or such lesser rating, as determined by rules and regulations adopted by the secretary, but shall not be more restrictive than the federal regulation;
2. The vehicle is designed to transport sixteen or more passengers, including the driver; or
3. The vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. 172, subpart F.

"Compression release engine braking system" means a hydraulically operated device that converts a power producing diesel engine into a power absorbing retarding mechanism.

"Controlled-access highway" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

"Crosswalk" means:

1. That part of a roadway at an intersection included within the connections of the lateral lines of sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or
2. Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

"Day care programs" means those which provide day service for development in self-help, social, recreational, and work skills for people with intellectual and other disabilities, giving priority to providing services for young people with severe intellectual and other disabilities.

"Day care program bus" means every bus used primarily to carry out functions of a day care program or used by a child care facility licensed by the Kansas department of health and environment who provides transportation for children six through eighteen years of age.

"Department" or "motor vehicle department" or "vehicle department" means the division of vehicles of the department of revenue, acting directly or through its duly authorized officers and agents. When acting on behalf of the department of revenue pursuant to this act, a county treasurer shall be deemed to be an agent of the state of Kansas.

"Director" means the director of vehicles.

"Divided highway" means a highway divided into two or more roadways by leaving an intervening space or by a physical barrier or by a clearly indicated dividing section so constructed as to impede vehicular traffic.

"Division" means the division of vehicles of the department of revenue.

"Drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

"Drawbar" means a bar across the rear of a motor vehicle, or a device securely attached to the motor vehicle, which maintains a fixed position and to which a towbar may be coupled.

"Driveaway-towaway operations" means any operation in which any motor vehicle, trailer or semitrailer, singly or in combination, new or used, constitutes the commodity being transported, when one set or more of wheels of any such vehicle are on the roadway during the course of transportation, whether or not any such vehicle furnishes the motive power.

"Driver" means every person who drives or is in actual physical control of a vehicle.

"Driver's license" means any license to operate a motor vehicle issued under the laws of this state.

"Electric-assisted bicycle" means a bicycle with two or three wheels, a saddle, fully operative pedals for human propulsion, and an electric motor. The electric-assisted bicycle's electric motor must have a power output of no more than one thousand watts, be incapable of propelling the device at a speed of more than twenty miles per hour on level ground and incapable of further increasing the speed of the device when human power alone is used to propel the device beyond twenty miles per hour.

"Electronic certificate of title" means any electronic record of ownership, including any lien or liens that may be recorded, retained by the division in accordance with K.S.A. Supp. 8-135d, and amendments thereto.

"Electric personal assistive mobility device" means a self-balancing two non-tandem wheeled device, designed to transport only one person, with an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less.

"Electric vehicle" means a vehicle that is powered by an electric motor drawing current from rechargeable storage batteries or other portable electric energy storage devices, provided the recharge energy must be drawn from a source off the vehicle, such as, but not limited to:

1. Residential electric service;
2. An electric vehicle charging station, also called an EV charging station, an electric recharging point, a charging point, EVSE (Electric Vehicle Supply Equipment) or a public charging station.

"Essential parts" mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.

"Exhibition of speed or acceleration" means those acts which cause or create unnecessary rapid acceleration, unnecessary tire squeal, skid, smoke, or slide upon acceleration or stopping including the casting of tread, gravel, dirt or other road surface materials from the tires; acts that simulate a temporary race; acts that cause the vehicle to unnecessarily turn abruptly, sway or lose traction with the road surface.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

"Farm tractor" means every motor vehicle designed and used as a farm implement power unit operated with or without other attached farm implements in any manner consistent with the structural design of such power unit.

"Farm trailer" means every trailer and semitrailer as those terms are defined in this section, designed and used primarily as a farm vehicle.

"Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-cup test device.

"Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, an unladen weight of not more than one thousand eight hundred pounds, is designed to be and is operated at not more than twenty-five miles per hour and is designed to carry not more than four persons including the driver.

"Governing body" means the mayor and council of this city.

"Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.

"Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel. The term highway shall not be deemed to include a roadway or driveway upon grounds owned by private owners, colleges, universities or other institutions. See also Street or Highway.

"House trailer" means:

1. A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets and highways; or
2. A trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in paragraph 1, but which is used instead permanently or temporarily for the advertising, sales, display or promotion of merchandise or services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.
3. "House trailer" does not include a manufactured home or a mobile home, as such terms are defined in K.S.A. 58-4202.

"Identifying numbers" means the numbers, and letters, if any, on a vehicle designated by the division for the purpose of identifying the vehicle.

"Ignition interlock device" means a device which uses a breath analysis mechanism to prevent a person from operating a motor vehicle if such person has consumed an alcoholic beverage.

"Implement of husbandry" means every vehicle designed or adapted and used exclusively for agricultural operations, including feedlots, and only incidentally moved or operated upon the highways. Such term shall include, but not be limited to:

1. A farm tractor;
2. A self-propelled farm implement;
3. A fertilizer spreader, nurse tank or truck permanently mounted with a spreader used exclusively for dispensing or spreading water, dust or liquid fertilizers or agricultural chemicals, as defined in K.S.A. 2-2202, and amendments thereto, regardless of ownership;
4. A truck mounted with a fertilizer spreader used or manufactured principally to spread animal dung; or
5. A mixer-feed truck owned and used by a feedlot, as defined by K.S.A. 47-1501, and amendments thereto, and specially designed and used exclusively for dispensing feed to livestock in such feedlot.

"Intersection" means:

1. The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one

another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict; or

2. Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

The junction of an alley with a street or highway shall not constitute an intersection.

“Interstate system” refers to the national system of interstate and defense highways.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

"License" or "license to operate a motor vehicle" means any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:

1. Any temporary license or instruction permit;
2. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
3. Any nonresident's operating privilege.

"Light transmission" means the ratio of the amount of total light to pass through a product or material including any safety glazing material to the amount of the total light falling on the product or material and the glazing.

"Low speed vehicle" means any four-wheeled electric vehicle whose top speed is greater than twenty miles per hour but not greater than twenty-five miles per hour and is manufactured in compliance with the National Highway and Traffic Safety Administration standards for low-speed vehicles in 49 C.F.R. 571.500.

"Luminous reflectants" means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or material.

"Mail" means to deposit in the United States mail properly addressed and with postage prepaid.

"Metal tire" means every tire the surface of which, in contact with the highway, is wholly or partly of metal or other hard nonresilient material.

"Micro utility truck" means any motor vehicle which is not less than forty-eight inches in width, has an overall length, including the bumper, of not more than one hundred sixty inches, has an unladen weight, including fuel and fluids, of more than one thousand five hundred pounds, can exceed forty miles per hour as originally manufactured and is manufactured with a metal cab. Micro utility truck does not include a work-site utility vehicle or recreational off-highway vehicle.

“Motor home” means every motor vehicle designed to provide temporary living quarters for recreational, camping or travel use.

"Motor vehicle" means every vehicle, other than a motorized bicycle, motorized wheelchair, or motorized scooter, which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated on rails.

"Motorcycle" means every motor vehicle, including autocycles, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

"Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed five brake horsepower, and every bicycle with motor attached, except a motorized bicycle or an electric-assisted bicycle.

"Motorized bicycle" means every device having two tandem wheels or three wheels which may be propelled by either human power or helper motor, or both, and which has: (1) A motor which produces not more than 3.5 brake horsepower; (2) a cylinder capacity of not more than one hundred thirty cubic centimeters; (3) an automatic transmission; and (4) the capability of a maximum design speed of no more than thirty miles per hour.

"Motorized scooter" means every motor vehicle that is a two- or three-wheeled device that has handlebars, is designed to be stood or sat upon by the operator, and is powered by an engine or electric motor that is capable of propelling the device with or without human propulsion; provided, that the term shall not include motorized bicycles, motorcycles, motor-driven cycles, low powered cycles or motorized wheelchairs as defined in this chapter.

"Motorized skateboard" means a self-propelled device which has a motor or engine, a deck on which a person may ride and at least two wheels in contact with the ground.

"Motorized wheelchair" means any self-propelled vehicle designed specifically for use by a physically disabled person and such vehicle is incapable of a speed in excess of fifteen miles per hour.

"Narrow width lane" means a lane that is too narrow for a bicycle and a vehicle to travel safely side-by-side within the lane.

"Nonreflective" means a product or material designed to absorb light rather than to reflect it.

"Nonresident" means every person who is not a resident of this state.

"Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this state.

"Official time standard" means whenever certain hours are specified they shall mean standard time or daylight-saving time as may be in current use in this city.

"Official traffic-control devices" means all signs, signals, markings, and devices, not inconsistent with this ordinance, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.

"Official traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

"Oil well servicing," "oil well clean-out" or "oil well drilling machinery or equipment" means a vehicle constructed as a machine used exclusively for servicing, cleaning-out or drilling

an oil well and consisting in general of a mast, an engine for power, a draw works and a chassis permanently constructed or assembled for one or more of those purposes. The passenger capacity of the cab of a vehicle shall not be considered in determining whether such vehicle is oil well servicing, oil well clean-out or oil well drilling machinery or equipment.

"Ordinance traffic infraction" is a violation of any section of this article that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118, as amended.

"Other competent evidence" includes:

1. 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.

"Owner" means a person who holds the legal title of the vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with the immediate right of possession vested in the conditional vendee or in the event a vehicle is subject to a lease of thirty days or more with an immediate right of possession vested in the lessee; or in the event a party having a security interest in a vehicle is entitled to possession, then such conditional vendee or lessee or secured party shall be deemed the owner for the purpose of this code.

"Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

"Passenger vehicle" means every motor vehicle, as defined in this title, including passenger cars where the term is used in this code, which is designed primarily to carry ten or fewer passengers, and which is not used as a truck.

"Pedestrian" means:

1. Any person afoot;
2. Any person in a wheelchair, either manually or mechanically propelled, or other low powered, mechanically propelled vehicle designed specifically for use by a physically disabled person; or
3. Any person using an electric personal assistive mobility device.

"Person" means every natural person, firm, partnership, association or corporation.

"Person with a disability" means any individual who:

1. Has a severe visual impairment;
2. Cannot walk one hundred feet without stopping to rest;
3. Cannot walk without the use of or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistive device;
4. Is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

5. Uses portable oxygen;
6. Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or
7. Is severely limited in such person's ability to walk at least one hundred feet due to an arthritic, neurological or orthopedic condition.

"Pickup truck" means a light truck with an open body bed with low sides and not specifically designed for business or commercial use.

"Pneumatic tire" means every tire in which compressed air is designed to support the load.

"Pole trailer" means any two-wheel vehicle used as a trailer with bolsters that support the load, and do not have a rack or body extending to the tractor drawing the load.

"Police officer" means every law enforcement officer, as defined in K.S.A. 21-5111, and amendments thereto, authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

"Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

"Racing" means the use of one or more vehicles in an attempt to out-gain, out-distance or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

"Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

"Railroad sign or signal" means any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails.

"Recreational off-highway vehicle" means any motor vehicle more than fifty but not greater than sixty-four inches in width, having a dry weight of two thousand pounds or less, traveling on four or more nonhighway tires.

"Recreational vehicle" means a vehicular-type unit built on or for use on a chassis and designed primarily as living quarters for recreational, camping, vacation or travel use and which has its own motive power or is mounted on or drawn by another vehicle, and which has a body width not exceeding eight feet and a body length not exceeding forty feet; but such term shall not include a unit which has no electrical system which operates above twelve volts and has no provisions for plumbing, heating and any other component or feature for which a standard is adopted by the state uniform standards code for mobile homes and recreational vehicles.

"Registration" means the registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of vehicles.

"Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred

feet or more is in the main improved with residences or residences and buildings in use for business.

"Revocation of driver's license" means the termination by formal action of the division of a person's license or privilege to operate a motor vehicle on the highways, which termination shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the division after the expiration of the applicable period of time prescribed by state law.

"Right-of-way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

"Road construction zone" means the portions of a highway which are identified by posted or moving signs as being a construction or maintenance work area. The zone starts at the first sign identifying the zone and continues until a posted or moving sign indicates that the road construction zone has ended.

"Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "road-way" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

"Safety hitch" means a chain, cable, or other material of sufficient weight which will prevent the towed vehicle from breaking loose in the event the towbar or drawbar fails or becomes disconnected.

"Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

"Samples" includes breath supplied directly for testing, which breath is not preserved.

"School bus" means every motor vehicle defined and designated as a school bus in subsection (g)(1) of K.S.A. 72-8301 as amended.

"School crossing guard" means a person eighteen years of age and older or any person under eighteen years of age who is being directly supervised by a person at least eighteen years of age, acting with or without compensation and who is authorized under K.S.A. 8-15,104, and amendments thereto, to supervise, direct, monitor, or otherwise assist school children at a street or intersection in the vicinity of a school crosswalk or bus stop.

"Secretary" means the Secretary of Transportation.

"Security agreement" means a written agreement which reserves or creates a security interest.

"Security interest" means an interest in a vehicle reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions.

"Self-propelled farm implement." means every farm implement designed for specific use applications with its motive power unit permanently incorporated in its structural design.

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.

"Sidestrip" means that portion of the right-of-way of a street or highway lying between the curb or edge of the traveled roadway and the adjacent boundary of such right-of-way.

"Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

"Solid rubber tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

"Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: Ditch digging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carry-alls and scrapers, power shovels and drag lines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

"Special purpose vehicle" means any golf cart, micro utility truck or worksite utility vehicle.

"Specially constructed vehicle" means any vehicle which shall not have been originally constructed under a distinctive name, make, model or type, or which, if originally otherwise constructed shall have been materially altered by the removal of essential parts, or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles.

"Stand" or "standing" means the halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

"State" means the state of Kansas.

"Stop when required" means complete cessation from movement.

"Stop" or "stopping when prohibited" means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

"Street" or "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. Where the word "highway" or the word "street" is used in this ordinance, it shall mean street, avenue, boulevard, thoroughfare, trafficway, alley and other public way for vehicular travel by whatever name unless the context clearly indicates otherwise.

"Sun screening devices" means a film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

"Suspension of a driver's license" means the temporary withdrawal by formal action of the division of a person's license or privilege to operate a motor vehicle on the highways.

"Through highway" means every highway or portion thereof on which vehicular traffic is given preferential right-of-way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield the right-of-way to vehicles on such highway in obedience to either a stop sign, yield sign or other traffic-control device, when such signs or devices are erected as provided in this ordinance.

"Tow bar" means a rigid piece of material which is structurally adequate to hold any weight vehicle towed and which is properly and securely mounted to the towed vehicle without excessive slack but with sufficient play to allow for universal action of the connection and which is equipped with a suitable locking device to prevent accidental separation of the towing vehicle and the towed vehicle.

"Toxic vapors" means vapors from the following substances or products containing such substances:

1. Alcohols, including methyl, isopropyl, propyl, or butyl;
2. Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
3. Acetone;
4. Benzene;
5. Carbon tetrachloride;
6. Cyclohexane;
7. Freons, including freon 11, freon 12 and other halogenated hydrocarbons;
8. Hexane;
9. Methyl ethyl ketone;
10. Methyl isobutyl ketone;
11. Naptha;
12. Perchlorethylene;
13. Toluene;
14. Trichloroethane; or
15. Xylene.

"Traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any highway for purposes of travel.

"Traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

"Traffic-control signal preemption device" means any device, instrument, or mechanism designed, intended, or used to interfere with the operation or cycle of a traffic-control signal.

"Traffic infraction" means a violation of any of the statutory provisions listed in subsection (c) of K.S.A. Supp. 8-2118 as amended.

"Trailer" means every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

"Travel trailer" means every vehicle without motive power designed to be towed by a motor vehicle constructed primarily for recreational purposes.

"Truck" means a motor vehicle which is used for the transportation or delivery of freight and merchandise or more than ten passengers.

"Truck-camper" means any structure designed, used or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office or commercial space.

"Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle or load so drawn.

"Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses, situated at intervals of less than one hundred feet for a distance of a quarter of a mile or more.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting electric personal assistive devices, motorized skateboards, motorized scooters, and devices moved exclusively by human power or used exclusively upon stationary rails or tracks.

"Wide-base single tires" means all tires having a section width, as specified by the manufacturer, of fourteen inches or more.

"Wireless communication device" means any wireless electronic communication device that provides for voice or data communication between two or more parties, including, but not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages or a laptop computer.

Wireless communication device does not include a device which is voice-operated and which allows the user to send or receive a text based communication without the use of either hand, except to activate or deactivate a feature or function.

"Work-site utility vehicle" means any motor vehicle which is not less than forty-eight inches in width, has an unladen weight, including fuel and fluids, of more than eight hundred pounds and is equipped with four or more nonhighway tires, a steering wheel and bench or bucket-type seating allowing at least two people to sit side-by-side, and may be equipped with a bed or cargo box for hauling materials. "Work-site utility vehicle" does not include a micro utility truck.

"Wrecker" or "tow truck" means any motor vehicle equipped with booms, winches or similar equipment specifically designed for recovery or towing of vehicles.

"Write, send or read a written communication" means using a wireless communication device to manually type, send or read a written communication, including, but not limited to, a text message, instant message or electronic mail."

Section 2. Section 10.04.025 of the Derby Municipal Code is hereby amended to read as follows:

“10.04.025 – Duty to give information and render aid.

- A. 1. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any attended vehicle or other property shall give such driver's name, address, and the registration number of the vehicle such driver is driving, and upon request shall exhibit such driver's license or permit to drive, the name of the company with which there is in effect a policy of motor vehicle liability insurance covering the vehicle involved in the accident and the policy number of such policy to any person injured in such accident or to the driver or occupant of or person attending any vehicle or other property damaged in such accident, and shall give such information and upon request exhibit such license or permit and the name of the insurer and policy number to any police officer at the scene of the accident or who is investigating the accident.
- 2. Such driver, insofar as possible, shall immediately make efforts to determine whether any person involved in such accident was injured or killed, and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.
- B. If no police officer is present, the driver of any vehicle involved in such accident, or any occupant of such vehicle eighteen years of age or older, shall immediately report such accident, by the quickest available means of communication, to the nearest office of a duly authorized police authority if:
 - 1. There is apparently property damage of one thousand dollars or more;
 - 2. Any person involved in the accident is injured or killed; or
 - 3. The persons specified in subsection A. are not present or in condition to receive such information.
- C. Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with failing to provide the name of such person's insurance company and policy number as required in subsection A., shall be convicted if such person produces in court, within ten days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number, make and year of the vehicle and the effective and expiration dates of the policy, or a certificate of self-insurance signed by the commissioner of insurance. Such evidence also may be produced by displaying on a cellular phone or other type of portable electronic device evidence of financial security required by this subsection. Any person to whom such evidence of financial security is displayed shall view only such evidence of financial security. Such person shall be prohibited from viewing any other content or information

stored on such cellular phone or other portable electronic devices. Upon the production in court of evidence of financial security, the court shall record the information displayed thereon on the insurance verification form prescribed by the secretary of revenue, immediately forward such form to the department of revenue, and stay any further proceedings on the matter pending a request from the prosecuting attorney that the matter be set for trial. Upon receipt of such form the department shall mail the form to the named insurance company for verification that insurance was in force on the date indicated on the form. It shall be the duty of insurance companies to notify the department within thirty calendar days of the receipt of such forms of any insurance that was not in force on the date specified. Upon return of any form to the department indicating that insurance was not in force on such date, the department shall immediately forward a copy of such form to the office of the prosecuting attorney or the city clerk of the municipality in which such prosecution is pending when the prosecuting attorney is not ascertainable. Receipt of any completed form indicating that insurance was not in effect on the date specified shall be prima facie evidence of failure to provide proof of financial security and violation of this section. A request that the matter be set for trial shall be made immediately following the receipt by the prosecuting attorney of a copy of the form from the department of revenue indicating that insurance was not in force. Any charge hereunder shall be dismissed if no request for a trial setting has been made within sixty days of the date evidence of financial security was produced in court.

Section 3. Section 10.04.029 of the Derby Municipal Code is hereby amended to read as follows:

“10.04.029 – Driving under the influence; penalties.

- A. Driving under the influence is operating or attempting 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, is .08 or more;
 2. The alcohol concentration in the person's blood or breath, as measured within three 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. 1. Driving under the influence is:
- i. An ordinance violation. On a first conviction of a violation of this section, the person convicted shall be sentenced to not less than forty-eight consecutive hours nor more than six months' imprisonment, or in the court's discretion one hundred hours of public service, and fined not less than seven hundred fifty dollars nor more than one

thousand dollars. The person convicted shall serve at least forty-eight consecutive hours' imprisonment or one hundred hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the person convicted under a house arrest program to serve the remainder of the sentence only after such person has served forty-eight consecutive hours' imprisonment;

- ii. On a second conviction of a violation of this section the person convicted shall be sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than one thousand two hundred fifty dollars nor more than one thousand seven hundred fifty dollars. 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 forty-eight 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 one hundred twenty hours of confinement. Such one hundred twenty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this subsection only after such person has served forty-eight consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of one hundred twenty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of one hundred twenty hours;
2. In addition, prior to sentencing for any conviction pursuant to Section 10.04.029B.1.i. or B.1.ii., the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.
- C. Any person convicted of violating this section who had one or more children under the age of fourteen 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 minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.
 - D. 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 shall not constitute a defense against the charge.

- E. 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 ninety days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.
- F. 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 five dollars 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.
- G. The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on 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 violations of any of the motor vehicle laws of this state.
- H. For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:
 - 1. Convictions for a violation of this section, K.S.A. 8-1567, and amendments thereto, or a violation of 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 on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;
 - 2. Any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account;
 - i. Driving a commercial motor vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; or Section 10.04.029.1;
 - i. Operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
 - iii. Involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. Supp. 21-5405, and amendments thereto;
 - iv. Aggravated battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413, and amendments thereto; and

- v. Aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;
3. Conviction includes:
 - i. Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection H.2.;
 - ii. Conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection H.1. or H.2.; and
 - iii. Receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection H.1. or H.2. if committed off a military reservation in this state;
 4. Multiple convictions of any crime described in subsection H.1. or H.2. arising from the same arrest shall only be counted as one conviction;
 5. It is irrelevant whether an offense occurred before or after conviction for a previous offense; and
 6. A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, only once during the person's lifetime.
- I. 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.
 - J. Upon conviction of a person of a violation of this section, the court may order the convicted person to pay restitution to any victim who suffered loss due to the violation for which the person was convicted.
 - K. Upon the filing of a complaint, citation, or notice to appear alleging a person has violated the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the:
 1. Division, a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and
 2. Kansas bureau of investigation central repository, all criminal history record information concerning such person.
 - L. 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 to avoid the mandatory penalties established by this section. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq., or K.S.A. 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

- M. 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.
- N. As used in this section:
1. "Alcohol concentration" means the number of grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath.
 2. "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.
 3. "Drug" includes toxic vapors as such term is defined in K.S.A. Supp. 21-5712 or Section 10.04.001, and amendments thereto."

Section 4. Section 10.04.029.1 of the Derby Municipal Code is hereby amended to read as follows:

“10.04.029.1 – Driving commercial motor vehicle under the influence; 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 Section 10.04.029 of this ordinance.
- B. 1. Driving a commercial motor vehicle under the influence is:
- i. An ordinance violation. On a first conviction, the person convicted shall be sentenced to not less than forty-eight consecutive hours nor more than six months' imprisonment, or in the court's discretion, one hundred hours of public service, and fined not less than seven hundred fifty dollars nor more than one thousand dollars. The person convicted shall serve at least forty-eight consecutive hours' imprisonment or one hundred 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;
 - ii. On a second conviction, the person convicted shall be sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than one thousand two hundred fifty dollars nor more than one thousand seven hundred fifty dollars. 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 forty-eight 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 one hundred twenty hours of confinement. Such one hundred twenty hours of confinement shall be a period of at least forty-eight consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this section only after such person has served forty-eight consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of one hundred twenty hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the one hundred twenty hours; and

2. In addition, prior to sentencing for any conviction pursuant to Section 10.04.029B.1.i. or B.1.ii., the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.
- C. Any person convicted of a violation of this section who had one or more children under the age of fourteen years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.
 - D. 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 shall not constitute a defense against the charge.
 - E. 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 ninety days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.
 - F. 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 five dollars 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.

- G. The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on 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:
1. Division, a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state; and
 2. Kansas bureau of investigation central repository, all criminal history record information concerning such person.
- H. Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall: (1) disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2,142, and amendments thereto; and (2) suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.
- I. The court is authorized to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.
- J. Upon the filing of a complaint, citation or notice to appear alleging a violation of this section, and prior to conviction thereof, a city attorney shall request and shall receive from the: (a) division of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (b) Kansas bureau of investigation central repository all criminal history record information concerning such person.
- K. 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 which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section.
- L. 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.
- M. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:
1. Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;
 2. Any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account:
 - i. This section or K.S.A. 8-2,144, and amendments thereto;

- ii. Operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
 - iii. Involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. Supp. 21-5405, and amendments thereto;
 - iv. Aggravated battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413, and amendments thereto; and
 - v. Aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;
3. Conviction includes:
- i. Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection M.2.;
 - ii. Conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection M.1. or M.2.; and
 - iii. Receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection M.1. or M.2. if committed off a military reservation in this state;
4. It is irrelevant whether an offense occurred before or after conviction for a previous offense; and
5. Multiple convictions of any crime described in subsection M.1. or M.2. arising from the same arrest shall only be counted as one conviction.

N. For the purpose of this section:

- 1. Alcohol concentration means the number of grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath;
- 2. 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; and
- 3. Drug includes toxic vapors as such term is defined in K.S.A. Supp. 21-5712 or Section 10.04.001, and amendments thereto.”

Section 5. Section 10.04.029.2 of the Derby Municipal Code is hereby amended to read as follows:

“10.04.029.2 – 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
 - 3. Further testing may be required after the preliminary screening test.

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

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

Section 6. Section 10.04.029.3– *Refusal to submit to alcohol or drug test* is hereby deleted from the Derby Traffic Ordinance of the Derby Municipal Code. Section number 10.04.029.3 is hereby reserved for future use.

Section 7. Section 10.04.029.4 of the Derby Municipal Code is hereby amended to read as follows:

“**10.04.029.4** – Circumvention of ignition interlock device; penalty.

- A. No person shall:
 - 1. Tamper with an ignition interlock device, circumvent it or render it inaccurate or inoperative;
 - 2. Request or solicit another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device;

3. Blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device; or
 4. Operate a vehicle not equipped with an ignition interlock device while such person's driving privileges have been restricted to driving a motor vehicle equipped with such device.
- B. Violation of this section shall be punished by a fine of not more than \$2,500.00 or by imprisonment for not more than one year or by both such fine and imprisonment.
- C. In addition to any other penalties provided by law:
1. i. On a first conviction of a violation of subsection A.1. or A.2., the division shall extend the ignition interlock restriction period on the person's driving privileges for an additional ninety days; and
 - ii. On a second or subsequent conviction of a violation of subsection A.1. or A.2., the division shall restart the original ignition interlock restriction period on the person's driving privileges; and
 2. On a conviction of a violation of subsection A.4., the division shall restart the original ignition interlock restriction period on the person's driving privileges.
- D. Notwithstanding the foregoing, a person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities; provided, that such person does not partly or entirely own or control the employer's vehicle or business; and provided further, that the provisions of this subsection shall not apply to any person whose driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device and only for the purposes of getting to and from work, school or an alcohol treatment program, and the ignition interlock provider for maintenance and downloading of data from the device.”

Section 8. Section 10.04.041 of the Derby Municipal Code is hereby amended to read as follows:

“10.04.041 – Limitations on overtaking on the left.

Except as otherwise provided in this article no vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and, in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle.

Section 9. The existing provisions of Sections 10.04.001, 10.04.025, 10.04.029, 10.04.029.1, 10.04.029.2, 10.04.029.3, 10.04.029.4, and 10.04.041 of the Derby Municipal Code are hereby repealed.

Section 10. All other provisions of the Municipal Code of the City of Derby, Kansas shall remain in full force and effect except as specifically amended herein. All other ordinances or parts of other ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

Section 11. Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

Section 12. This Ordinance shall take effect and be in force from and after its publication or a summary thereof once in the official city newspaper.

PASSED by the City Council this 11th day of October, 2016 and **SIGNED** by the Mayor.





Randy White, Mayor



Karen Friend, City Clerk

Approved as to form:



Jacqueline R. Butler, City Attorney