

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2010-15

3
4
5 AN ORDINANCE

6 AMENDING SECTION 1-3.2 SFCC 1987 REGARDING THE IMPOSITION OF
7 MUNICIPAL COURT FEES AND SECTION 12-6-12.2 OF THE *CITY OF SANTA FE*
8 *UNIFORM TRAFFIC CODE* REGARDING PENALTIES FOR OPERATING A MOTOR
9 VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

10
11 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

12 Section 1. Section 1-3.2 SFCC 1987 (being Ord. #2005-7, §1 as amended) is
13 amended to read:

14 **1-3.2 Imposition of Municipal Court Fees.**

15 A. The city hereby imposes the following fees which shall be collected by the
16 municipal court upon conviction from persons convicted of violating any ordinance relating to the
17 operation of a motor vehicle, except those related to parking, or any ordinance that may be
18 enforced by the imposition of a term of imprisonment:

- | | | | |
|----|-----|--------------------------|---------|
| 19 | (1) | Corrections fee | \$30.00 |
| 20 | (2) | Judicial education fee | \$3.00 |
| 21 | (3) | Court automation fee | \$6.00 |
| 22 | (4) | Court administrative fee | \$10.00 |
| 23 | (5) | In-house automation fee | \$2.00 |
| 24 | (6) | Public safety fee | \$5.00 |

25 B. As used in this section, convicted means the defendant has been found guilty of a

1 criminal charge by the municipal judge, either after trial, a plea of guilty or a plea of nolo
2 contendere.

3 C. The corrections fee shall be deposited in a special city fund and shall be used for
4 the uses set forth in this paragraph. Twenty dollars (\$20.00) of the corrections fee shall be used
5 for housing municipal prisoners in a county jail or detention facility or housing juveniles in a
6 detention facility and ten dollars (\$10.00) of the corrections fee shall be transferred into the city's
7 general fund and used for the court related purposes set forth below.

8 (1) Municipal jailer or juvenile detention officer training;

9 (2) The construction planning, construction, operation and maintenance of a
10 municipal jail or juvenile detention facility;

11 (3) Complying with match or contribution requirements for the receipt of
12 federal funds relating to jails or juvenile detention facilities;

13 (4) Providing inpatient treatment or other substance abuse programs in
14 conjunction with or as an alternative to jail sentencing;

15 (5) Defraying the cost of transporting prisoners to jails or juveniles to
16 juvenile detention facilities; or

17 (6) Providing electronic monitoring systems.

18 D. The judicial education fee and the court automation fee shall be remitted to the
19 state according to the applicable state law.

20 E. The court administrative fee shall be retained by the city for the municipal court.

21 F. The in-house automation fee shall be retained by the city and used for in-house
22 automation systems in the municipal court.

23 G. The public safety fee shall be retained by the city for use by the police
24 department.

25 H. Five dollars (\$5.00) out of the ten dollar (\$10.00) administrative fee shall be

1 specifically earmarked for alternative sentencing programs at the municipal court. If the amount
2 collected under this paragraph is more than is needed for this program, the funds may be used for
3 other court programs or costs.

4 I. A person convicted of a violation of the provisions of the Controlled Substances
5 Act [30-31-1 NMSA 1978] or a person convicted of distribution or possession of a controlled
6 substance pursuant to Article 16-15 SFCC 1987 shall be assessed, in addition to any other fee or
7 fine, a fee of seventy-five dollars (\$75.00) to defray the costs of chemical and other analyses of
8 controlled substances. Collection of such fees shall be transmitted to the administrative office of
9 the courts pursuant to §31-12-9 NMSA 1978.

10 J. A person convicted of driving while under the influence of intoxicating liquor or
11 drugs in violation of Section 12-6-12.2 of the *City of Santa Fe Uniform Traffic Code* shall be
12 assessed by the court, in addition to any other fee or fine, the fees as set forth in said section.

13 K. Upon issuance of a bench warrant, the municipal court shall assess an
14 administrative fee of one hundred dollars (\$100.) against the individual whose arrest is
15 commanded by the bench warrant. Money collected pursuant to the bench warrant fee assessment
16 authorized by this subsection shall be deposited in the general fund of the city of Santa Fe.

17 **Section 2. Section 12-6-12.2 of the City of Santa Fe Uniform Traffic Code**
18 **(being Ord. No. 2008-44) is amended to read:**

19 **12-6-12.2 OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF**
20 **INTOXICATING LIQUOR OR DRUGS; PENALTIES; SENTENCING; FEES.**

21 A. If a person is convicted of driving a motor vehicle while under the influence of
22 intoxicating liquor or drug (12-6-12.1A through D) the trial judge shall be required to inquire into
23 the past driving record of the person before sentence is entered in the matter. (66-8-110 NMSA
24 1978)

25 B. When a person is charged with a violation of 12-6-12.1A through D, any plea of

1 guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to
2 violation 12-6-12.1A, B, C or D and no other disposition by plea of guilty to any other charge in
3 satisfaction of such charge shall be authorized if:

4 (1) the results of a test performed pursuant to the Implied Consent Act
5 discloses that the blood of the person charged contains an alcohol concentration of eight one-
6 hundredths or more; (66-8-102 NMSA 1978 as amended)

7 (2) four one-hundredths or more if the person is driving a commercial
8 vehicle; or

9 (3) the defendant has refused to submit to a chemical test or tests of his
10 breath or blood. (66-8-102 NMSA 1978)

11 C. A person under first conviction pursuant to this section shall be punished by
12 imprisonment for not more than ninety days or by a fine of not more than nine hundred ninety-
13 nine dollars (\$999.00), or both; provided that if the sentence is suspended in whole or in part or
14 deferred, the period of probation may extend beyond ninety days but shall not exceed one year.
15 Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than 24
16 hours of community service. In addition, the offender may be required to pay a fine of three
17 hundred dollars (\$300.00). The offender shall be ordered by the court to participate in and
18 complete a screening program described in Subsection F of this section and to attend a driver
19 rehabilitation program for alcohol or drugs, also known as a "DWI school," approved by the
20 traffic safety bureau of the state transportation department and also may be required to participate
21 in other rehabilitative services as the court shall determine to be necessary. In addition to those
22 penalties, when an offender commits aggravated driving while under the influence of intoxicating
23 liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in
24 jail. If an offender fails to complete, within a time specified by the court, any community service,
25 screening program, treatment program or DWI school ordered by the court or fails to comply with

1 any other condition of parole, the offender shall be sentenced to not less than an additional forty-
2 eight consecutive hours in jail. Any jail sentence imposed pursuant to this section for failure to
3 complete, within a time specified by the court, any community service, screening program,
4 treatment program or DWI school ordered by the court or for aggravated driving while under the
5 influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under
6 advisement. On a first conviction pursuant to this section, time spent in jail for the offense prior
7 to the conviction for that offense shall be credited to any to any term of imprisonment fixed by the
8 court. A deferred sentence pursuant to this subsection shall be considered a first conviction for
9 the purpose of determining subsequent convictions.

10 D. A second or third conviction pursuant to this section shall be punished by
11 imprisonment for not more than one hundred seventy-nine days or by a fine of not more than nine
12 hundred ninety-nine dollars (\$999.00), or both; provided that if the sentence is suspended in
13 whole or part, the period of probation may extend beyond one hundred seventy-nine days but
14 shall not exceed one year. Notwithstanding any provision of law to the contrary for suspension or
15 deferment of execution of a sentence:

16 (1) upon a second conviction, each offender shall be sentenced to a jail term
17 of not less than ninety-six consecutive hours, not less than forty-eight hours of community service
18 and a fine of five hundred dollars (\$500.00). In addition to those penalties, when an offender
19 commits aggravated driving while under the influence of intoxicating liquor or drugs, the
20 offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an
21 offender fails to complete, within a time specified by the court, any community service, screening
22 program or treatment program ordered by the court, the offender shall be sentenced to not less
23 than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph
24 shall not be suspended or deferred or taken under advisement; and

25 (2) upon a third conviction, an offender shall be sentenced to a jail term of

1 not less than thirty consecutive days, not less than 96 hours of community service and a fine of
2 nine hundred ninety-nine dollars (\$999.00). In addition to those penalties, when an offender
3 commits aggravated driving under the influence of intoxicating liquor or drugs, the offender shall
4 be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to
5 complete, within a time specified by the court, any community service, screening program or
6 treatment program ordered by the court, the offender shall be sentenced to not less than an
7 additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not
8 be suspended or deferred or taken under advisement.

9 E. Fourth and subsequent offenses shall be prosecuted under state law in magistrate
10 or district court. (66-8-102 NMSA 1978)

11 F. Upon any conviction pursuant to this section, an offender shall be required to
12 participate in and complete, with a time specified by the court, an alcohol or drug abuse screening
13 program approved by the Department of Finance and Administration and if necessary, a
14 treatment program approved by the court. The requirement imposed pursuant to this subsection
15 shall not be suspended, deferred or taken under advisement.

16 G. Upon a second or third conviction pursuant to this section, an offender shall be
17 required to participate in and complete, within a time specified by the court:

18 (1) not less than a twenty-eight-day inpatient, residential or in-custody
19 substance abuse program approved by the court;

20 (2) not less than a ninety-day outpatient treatment program approved by the
21 court;

22 (3) a drug court program approved by the court; or

23 (4) any other substance abuse treatment approved by the court.

24 The requirement imposed pursuant to this section shall not be suspended, deferred or taken under
25 advisement. (66-8-102 NMSA 1978)

1 H. Upon a conviction pursuant to section 12-6-12.1, an offender shall be required to
2 obtain an ignition interlock license and have an ignition interlock device installed and operating
3 on all motor vehicles driven by the offender, pursuant to rules adopted by the Traffic Safety
4 Bureau of the Department of Transportation. Unless determined by the sentencing court to be
5 indigent, the offender shall pay all costs associated with having an ignition interlock device
6 installed on the appropriate motor vehicles. The offender shall operate only those vehicles
7 equipped with ignition interlock devices for:

- 8 (1) a period of one year, for a first offender;
- 9 (2) a period of two years, for a second conviction pursuant to this section;
- 10 (3) a period of three years, for a third conviction pursuant to this section; or
- 11 (4) the remainder of the offender's life, for a fourth or subsequent conviction
12 pursuant to this section.

13 I. A person who is issued an ignition interlock license and operates a vehicle that is
14 not equipped with an ignition interlock device is driving with a license that was revoked for
15 driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent
16 Act and may be subject to the penalties provided in section 12-6-12.6.

17 J. A person who is issued an ignition interlock license and who knowingly and
18 deliberately tampers or interferes or causes another to tamper or interfere with the proper and
19 intended operation of an ignition interlock device may be subject to the penalties for driving with
20 a license that was revoked for driving under the influence of intoxicating liquor or drugs or a
21 violation of the Implied Consent Act as provided in Section 12-6-12.6. (66-5-504 NMSA 1978)

22 K. Five years from the date of conviction and every five years thereafter, a fourth or
23 subsequent offender may apply to a district court for removal of the ignition interlock device
24 requirement provided in this section and for restoration of a driver's license. A district court may,
25 for good cause shown, remove the ignition interlock device requirement and order restoration of

1 the license; provided that the offender has not been subsequently convicted of driving a motor
2 vehicle while under the influence of intoxicating liquor or drugs. Good cause may include an
3 alcohol screening and proof from the interlock vendor that the person has not had violations of
4 the interlock device. (66-8-102 NMSA 1978)

5 L. Except as otherwise prohibited in this section, a municipal judge may suspend in
6 whole or in part the execution of sentence or place the defendant on probation for a period not
7 exceeding one year on terms and conditions that municipal judge deems best, or both, or defer
8 sentence. If the municipal judge decides to defer the execution of a sentence, such deferral shall
9 be granted only as allowed in Subsection L of this section. A suspension of execution of sentence
10 or probation, or both, as allowed pursuant to this section, shall be granted only when the
11 municipal judge is satisfied it will serve the ends of justice and of the public, and that the
12 defendant's liability for any fine or other punishment imposed if fully discharged upon successful
13 completion of the terms and conditions of probation.

14 M. If a person is convicted of driving a motor vehicle while under the influence of
15 intoxicating liquor or drugs in violation of 12-6-12.1A, B, C or D, a first offender, at the
16 discretion of a trial court after a pre-sentence investigation, including an inquiry to the motor
17 vehicle division of the transportation department concerning the driver's driving record, shall
18 receive a deferred sentence on the condition that the driver attend a driver rehabilitation program,
19 also known as the "driving-while-intoxicated-school," approved by the court and the division and
20 such other rehabilitative services as the court may determine to be necessary; however,
21 imposition of a deferred sentence shall classify the person as a first offender. The municipal
22 court shall forward to the division the abstract of all proceedings and the report of the disposition
23 of the case. For the purpose of this subsection, marijuana, as defined in the Controlled Substance
24 Act, shall be classified as a drug. (*)

25 N. A person convicted of driving a motor vehicle while under the influence of

1 intoxicating liquor or drugs in violation of 12-6-12.1A, B, C or D shall be assessed, in addition to
2 any other fee or fine, a fee of eighty-five dollars (\$85.00) to defray the cost of chemical and other
3 tests used to determine the influence of alcohol or drugs. Additionally, the person shall be
4 assessed a fee of seventy-five dollars (\$75.00) to fund comprehensive community programs for
5 the prevention of driving while under the influence of intoxicating liquor or drugs or for other
6 traffic safety purposes. The municipal court shall collect the fees and maintain the fees in
7 separate funds and transfer the fees along with other funds collected by the court per 35-14-7
8 NMSA 1978. The municipality shall maintain the fees pursuant to this subsection in separate
9 funds and transfer the fees collected pursuant to this subsection to the administrative office of the
10 courts for credit to the crime laboratory fund and the traffic safety fund. (31-12-7 through 31-12-
11 9 NMSA 1978) In addition to the two fees previously described, the person shall be assessed a
12 probation (tracking) fee of one hundred and twenty-five dollars (\$125.00) to be retained by the
13 city in the general fund to offset the costs related to supervised probation by the municipal court.

14 O. With respect to this section and notwithstanding any provision of law to the
15 contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender
16 violates any condition of probation, the court may impose any sentence that the court could have
17 originally imposed and credit shall not be given for time served by the offender on probation.
18 (66-8-102 NMSA 1978)

19 P. As used in this section and in 12-6-12.1:

20 (1) "bodily injury" means an injury to a person not likely to cause death or
21 great bodily harm to the person, but does cause painful temporary disfigurement or temporary
22 loss or impairment of the functions of any member or organ of the person's body; and

23 (2) "conviction" means adjudication of guilt and does not include imposition
24 of a sentence.

25 (3) "commercial motor vehicle" means a motor vehicle or combination of

1 motor vehicles used in commerce to transport passengers or property if the motor vehicle:

2 (a) has a gross combination weight rating of more than twenty-six
3 thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten
4 thousand pounds;

5 (b) has a gross vehicle weight rating of more than twenty-six
6 thousand pounds;

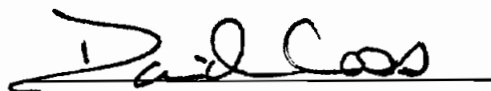
7 (c) is designed to transport sixteen or more passengers, including the
8 driver; or

9 (d) is of any size and is used in the transportation of hazardous
10 materials, which requires the motor vehicle to be placarded under applicable law.

11 Q. A conviction pursuant to a municipal or county ordinance in New Mexico or a
12 law of any other jurisdiction, territory, or possession of the United States or of a tribe where that
13 ordinance is equivalent to New Mexico law for driving while under the influence of intoxicating
14 liquor or drugs, prescribing penalties for driving while under the influence of intoxicating liquor
15 or drugs shall be deemed to be a conviction pursuant to this section for purposes of determining
16 whether a conviction is a second or subsequent conviction. (66-8-102.M NMSA 1978)

17 R. A law enforcement officer making an arrest for a violation of the provisions of
18 12-6-12.2 or of similar municipal or county ordinances shall use standard arrest reports and
19 procedures developed and approved by the Department of Public Safety in accordance with
20 Section 8 of Laws of 2005, Chapter 269.

21 PASSED, APPROVED and ADOPTED this 30th day of June, 2010.

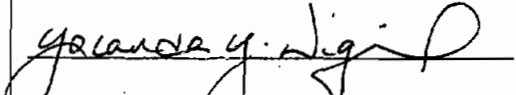
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24 DAVID COSS, MAYOR
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1 ATTEST:

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YOLANDA Y VIGIL, CITY CLERK

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6 APPROVED AS TO FORM:

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GENO ZAMORA, CITY ATTORNEY

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25 Jp/ca/jpmb/2010 ord/court fees