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**CITY OF SANTA FE, NEW MEXICO**

**ORDINANCE NO. 2008 - 44**

**AN ORDINANCE**

**AMENDING SECTION 24-1.1 SFCC 1987 REGARDING THE CITY OF SANTA FE  
UNIFORM TRAFFIC CODE; AMENDING SECTION 12-6-12.2 OF THE CITY OF  
SANTA FE UNIFORM TRAFFIC CODE REGARDING OPERATING A MOTOR  
VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AND  
SECTION 12-6-13.13 OF THE CITY OF SANTA FE UNIFORM TRAFFIC CODE  
REGARDING MANDATORY SEAT BELT USE.**

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

**Section 1. Section 24-1.1 SFCC 1987 (being Ord. #2006-34 as amended) is  
amended to read:**

**24-1.1 Creation of City of Santa Fe Uniform Traffic Code.**

**A. Pursuant to Section 3-17-6 NMSA 1978, the New Mexico Uniform Traffic  
Ordinance 2004 Compilation containing all revisions through April 2008, compiled by the New  
Mexico municipal league is adopted by reference and incorporated as if fully set out herein,  
except as amended by the governing body. The New Mexico Uniform Traffic Ordinance 2004  
Compilation containing all revisions through April 2008 and as amended by the governing body  
shall be known as "city of Santa Fe uniform traffic code".**

**B. The city of Santa Fe uniform traffic code shall be kept on file at the police  
department and the city clerk's office and shall be, at all reasonable times, available and subject  
to inspection. A copy of the uniform traffic code is available to any individual upon request and**

1 payment of a reasonable charge as set by the city.

2           **Section 2.       Section 12-6-12.2 of the City of Santa Fe Uniform Traffic Code**  
3 **(being Ord. #2006-34 as amended) is amended to read:**

4 **12-6-12.2       OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF**  
5 **INTOXICATING LIQUOR OR DRUGS; PENALTIES; SENTENCING; FEES.**

6           A.       If a person is convicted of driving a motor vehicle while under the influence of  
7 intoxicating liquor or drug (12-6-12.1A through D) the trial judge shall be required to inquire into  
8 the past driving record of the person before sentence is entered in the matter. (66-8-110 NMSA  
9 1978)

10           B.       When a person is charged with a violation of 12-6-12.1A through D, any plea of  
11 guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to  
12 violation 12-6-12.1A, B, C or D and no other disposition by plea of guilty to any other charge in  
13 satisfaction of such charge shall be authorized if:

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

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

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

21           C.       A person under first conviction pursuant to this section shall be punished by  
22 imprisonment for not more than ninety days or by a fine of not more than nine hundred ninety-  
23 nine dollars (\$999.00), or both; provided that if the sentence is suspended in whole or in part or  
24 deferred, the period of probation may extend beyond ninety days but shall not exceed one year.

25 Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than 24

1 hours of community service. In addition, the offender may be required to pay a fine of three  
2 hundred dollars (\$300.00). The offender shall be ordered by the court to participate in and  
3 complete a screening program described in Subsection F of this section and to attend a driver  
4 rehabilitation program for alcohol or drugs, also known as a "DWI school," approved by the  
5 traffic safety bureau of the state transportation department and also may be required to participate  
6 in other rehabilitative services as the court shall determine to be necessary. In addition to those  
7 penalties, when an offender commits aggravated driving while under the influence of intoxicating  
8 liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in  
9 jail. If an offender fails to complete, within a time specified by the court, any community service,  
10 screening program, treatment program or DWI school ordered by the court or fails to comply with  
11 any other condition of parole, the offender shall be sentenced to not less than an additional forty-  
12 eight consecutive hours in jail. Any jail sentence imposed pursuant to this section for failure to  
13 complete, within a time specified by the court, any community service, screening program,  
14 treatment program or DWI school ordered by the court or for aggravated driving while under the  
15 influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under  
16 advisement. On a first conviction pursuant to this section, time spent in jail for the offense prior  
17 to the conviction for that offense shall be credited to any to any term of imprisonment fixed by the  
18 court. A deferred sentence pursuant to this subsection shall be considered a first conviction for  
19 the purpose of determining subsequent convictions.

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

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

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

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

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

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

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

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

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

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

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

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

18                   (1)     a period of one year, for a first offender;

19                   (2)     a period of two years, for a second conviction pursuant to this section;

20                   (3)     a period of three years, for a third conviction pursuant to this section; or

21                   (4)     the remainder of the offender's life, for a fourth or subsequent conviction  
22 pursuant to this section.

23           I.     A person who is issued an ignition interlock license and operates a vehicle that is  
24 not equipped with an ignition interlock device is driving with a license that was revoked for  
25 driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent

1 Act and may be subject to the penalties provided in section 12-6-12.6.

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

7 K. Five years from the date of conviction and every five years thereafter, a fourth or  
8 subsequent offender may apply to a district court for removal of the ignition interlock device  
9 requirement provided in this section and for restoration of a driver's license. A district court may,  
10 for good cause shown, remove the ignition interlock device requirement and order restoration of  
11 the license; provided that the offender has not been subsequently convicted of driving a motor  
12 vehicle while under the influence of intoxicating liquor or drugs. Good cause may include an  
13 alcohol screening and proof from the interlock vendor that the person has not had violations of  
14 the interlock device. (66-8-102 NMSA 1978)

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

24 M. If a person is convicted of driving a motor vehicle while under the influence of  
25 intoxicating liquor or drugs in violation of 12-6-12.1A, B, C or D, a first offender, at the

1 discretion of a trial court after a pre-sentence investigation, including an inquiry to the motor  
2 vehicle division of the transportation department concerning the driver's driving record, shall  
3 receive a deferred sentence on the condition that the driver attend a driver rehabilitation program,  
4 also known as the "driving-while-intoxicated-school," approved by the court and the division and  
5 such other rehabilitative services as the court may determine to be necessary; however,  
6 imposition of a deferred sentence shall classify the person as a first offender. The municipal  
7 court shall forward to the division the abstract of all proceedings and the report of the disposition  
8 of the case. For the purpose of this subsection, marijuana, as defined in the Controlled Substance  
9 Act, shall be classified as a drug. (\*)

10 N. A person convicted of driving a motor vehicle while under the influence of  
11 intoxicating liquor or drugs in violation of 12-6-12.1A, B, C or D shall be assessed, in addition to  
12 any other fee or fine, a fee of sixty-five dollars (\$65.00) to defray the cost of chemical and other  
13 tests used to determine the influence of alcohol or drugs. Additionally, the person shall be  
14 assessed a fee of seventy-five dollars (\$75.00) to fund comprehensive community programs for  
15 the prevention of driving while under the influence of intoxicating liquor or drugs or for other  
16 traffic safety purposes. The municipal court shall collect the fees and maintain the fees in  
17 separate funds and transfer the fees along with other funds collected by the court per 35-14-7  
18 NMSA 1978. The municipality shall maintain the fees pursuant to this subsection in separate  
19 funds and transfer the fees collected pursuant to this subsection to the administrative office of the  
20 courts for credit to the crime laboratory fund and the traffic safety fund. (31-12-7 through 31-12-  
21 9 NMSA 1978)

22 O. With respect to this section and notwithstanding any provision of law to the  
23 contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender  
24 violates any condition of probation, the court may impose any sentence that the court could have  
25 originally imposed and credit shall not be given for time served by the offender on probation.

1 (66-8-102 NMSA 1978)

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

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

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

8 (3) "commercial motor vehicle" means a motor vehicle or combination of  
9 motor vehicles used in commerce to transport passengers or property if the motor vehicle:

10 (a) has a gross combination weight rating of more than twenty-six  
11 thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten  
12 thousand pounds;

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

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

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

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

25 R. A law enforcement officer making an arrest for a violation of the provisions of



1 12-6-12.2 or of similar municipal or county ordinances shall use standard arrest reports and  
2 procedures developed and approved by the Department of Public Safety in accordance with  
3 Section 8 of Laws of 2005, Chapter 269.

4 **Section 3. Section 12-6-13.13 of the City of Santa Fe Uniform Traffic Code**  
5 **(being Ord. #2006-34) is amended to read:**

6 **12-6-13.13 MANDATORY USE OF SEATBELTS.**

7 A. Except as provided by Section 12-6-13.12 and in Subsection B of this section,  
8 each occupant of a motor vehicle having a gross vehicle weight of ten thousand pounds or less  
9 manufactured with safety belts in compliance with federal motor vehicle safety standard number  
10 208 shall have a safety belt properly fastened about his body at all times when the vehicle is in  
11 motion on any street or highway.

12 B. This section shall not apply to an occupant of a motor vehicle having a gross  
13 vehicle weight of ten thousand pounds or less who possesses a written statement from a licensed  
14 physician that he is unable for medical reasons to wear a safety belt or to a rural letter carrier of  
15 the United States postal service while performing the duties of a rural letter carrier. (66-7-372  
16 NMSA 1978)

17 C. Each person violating Subsection A of Section 12-6-13.13 shall be fined as set  
18 forth in the Traffic Violation Penalty Assessment Schedule, Exhibit A of this Code.

19 D. Failure to be secured by a child passenger restraint device or by a safety belt as  
20 required in this Section shall not in any instance constitute fault or negligence and shall not limit  
21 or apportion damages.

22 E. The provisions of this Section shall be enforced whether or not associated with  
23 the enforcement of any other statute. (66-7-373 NMSA 1978)

24 PASSED, APPROVED and ADOPTED this 11<sup>th</sup> day of August, 2008.  
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David Coss

DAVID COSS, MAYOR

ATTEST:

Yolanda Y. Vigil

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

Frank D. Katz

FRANK D. KATZ, CITY ATTORNEY