

# Memo

To: City Commission  
From: Toby Dougherty, City Manager  
Date: 9-8-16  
Re: September 15, 2016 Work Session

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Please find the attached agenda and supporting documentation for the September 15, 2016 Work Session.

Item 2 – 2016 Uniform Public Offense Code/2016 Standard Traffic Ordinance

Please refer to the attached memorandum from the Police Chief, Don Scheibler. This is a routine item that the City Commission deals with every year. Don has more details on the changes to the Uniform Public Offense Code and Standard Traffic Ordinance outlined in his memo and supporting documentation.

Item 3 – Update on the Hays Fire Department/Ellis County Fire Department Automatic Aid Trial Program

Please refer to the attached memorandum from Gary Brown, Fire Chief. Chief Brown has been working with the newly-appointed Ellis County Rural Chief, Darin Myers, on instituting an Automatic Aid Trial Program. The two Chiefs are ready to move forward with the program, and Chief Brown would like to update the Commission on the planned operation. This is not something that requires City Commission action as the Fire Chief has the authority, under direction of the City Manager, to institute such a program. City staff feels that this program is very beneficial to the City of Hays as well as Ellis County.

Item 4 – Sandblasting and Painting of the East Primary Clarifier

Please refer to the attached memorandum from Jeff Crispin, Assistant Director of Utilities, regarding sandblasting and painting of the east primary clarifier. This is a capital maintenance item that is much needed and will assure the continued viability of the water treatment facility.

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**CITY OF HAYS  
CITY COMMISSION WORK SESSION  
THURSDAY, SEPTEMBER 15, 2016 – 6:30 P.M.  
AGENDA**

- 1. ITEM FOR REVIEW: [September 1, 2016 Work Session Notes \(PAGE 1\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance
  
- 2. ITEM FOR REVIEW: [2016 Uniform Public Offense Code/2016 Standard Traffic Ordinance \(PAGE 5\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Don Scheibler, Chief of Police
  
- 3. ITEM FOR REVIEW: [Update on the Hays Fire Department/Ellis County Fire Department Automatic Aid Trial Program \(PAGE 39\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Gary Brown, Fire Chief
  
- 4. ITEM FOR REVIEW: [Sandblasting and Painting of the East Primary Clarifier \(PAGE 41\)](#)**  
DEPARTMENT HEAD RESPONSIBLE: Johnny O'Connor, Director of Utilities
  
- 5. OTHER ITEMS FOR DISCUSSION**
  
- 6. EXECUTIVE SESSION (IF REQUIRED)**
  
- 7. ADJOURNMENT**

**ANY PERSON WITH A DISABILITY NEEDING SPECIAL ACCOMMODATIONS TO ATTEND THIS MEETING SHOULD CONTACT THE CITY MANAGER'S OFFICE 48 HOURS PRIOR TO THE SCHEDULED MEETING TIME. EVERY ATTEMPT WILL BE MADE TO ACCOMMODATE ANY REQUESTS FOR ASSISTANCE.**



City of Hays  
City Commission  
Work Session Notes  
Thursday, September 1, 2016 – 6:30 p.m.

Present: Eber Phelps, Shaun Musil, James Meier, Lance Jones, John Bird, Toby Dougherty, and Kim Rupp

Absent: Henry Schwaller IV

**August 18, 2016 Work Session Notes**

There were no corrections or additions to the minutes of the work session held on August 18, 2016; the minutes stand approved as presented.

**Contract Sewer Cleaning – Award of Bid**

Jeff Crispin, Assistant Director of Utilities, reported that the Utilities Department initiated a multi-year program to clean sewer mains in 2013 in order to ensure proper operation and maintenance of the collection system. In March of 2015, the Commission asked staff to rebid the sewer cleaning contract after extending the current contract for a third year to Mayer Specialty Service, LLC. Staff received four proposals and recommends accepting the low bid from Pro Pipe, based out of Denver, Colorado; to perform light cleaning and video inspection of 119,170 linear feet of sanitary sewer at the unit price of \$.95 per linear foot, not to exceed \$120,000.

At the September 8, 2016 Commission meeting, Commissioners will be asked to authorize the City Manager to enter into an agreement with Pro Pipe to perform light cleaning and video inspection of 119,170 linear feet of sanitary sewer at the unit price of \$.95 per linear foot not to exceed \$120,000, to be funded from Wastewater Other Contractual Services.

**Airport Wildlife Fence – Design Contract**

John Braun, Assistant Director of Public Works, reported that the Airport Capital Improvement Plan within the 2017 Budget included a project to construct a wildlife fence around the Hays Regional Airport. The fence is required by the

Federal Aviation Administration (FAA), who would reimburse the City for 90% of the costs associated with the project. In order to complete construction in 2017, it is necessary to begin engineering design at this time. The City's airport engineer, Burns and McDonnell, has prepared a work authorization in the amount of \$99,950 for the City Commission's consideration. The city share of this project would be funded out of the Airport Improvement Fund.

In 2010 FAA inspectors observed several deer on the Hays Regional Airport property, which prompted a Wildlife Hazard Assessment (WHA) in 2011. One recommendation of the WHA, performed by the USDA Wildlife Services, was the construction of a wildlife fence around the airport property. Since then, the wildlife fence has been listed on the Airport CIP as a future project. The FAA is now requiring the fence to be built under the FAA Airport Improvement Program, in which, the FAA funds 90% of the project cost.

City Manager, Toby Dougherty, stated there are other significant projects the City hopes to complete at the airport in the future and we could not move forward on these projects without federal funding, which would be withheld until the fence is completed.

At the September 8, 2016 Commission meeting, Commissioners will be asked to authorize the City Manager to execute Work Authorization No. 10 with Burns and McDonnell, contingent on FAA approval, in the amount of \$99,950 with the city share to be funded out of the Airport Improvement Fund.

#### **Other Items for Discussion**

Commissioner Meier commented that Hays Medical Center has a new policy that employees traveling on hospital business are required to fly out of Hays. He thanked the hospital administration for this community oriented move and encouraged other businesses to do the same.

Chairperson Phelps encouraged travelers to check ticket prices to fly out of Hays as they can be comparable when you consider eliminating the drive and parking costs.

**Executive Session**

Shaun Musil moved, James Meier seconded, that the Governing Body recess to executive session at 6:58 p.m. for a period not to exceed 25 minutes to discuss labor negotiations and confidential material related to proprietary information. The executive session included the City Commissioners, the City Attorney, the City Manager, and the Assistant City Manager. K.S.A. 75-4319 authorizes the use of executive session to discuss the topics stated in the motion.

Vote: Ayes: Eber Phelps  
Shaun Musil  
James Meier  
Lance Jones

No action was taken during the executive session.

Shaun Musil moved, Lance Jones seconded, that the Governing Body recess to a second executive session at 7:24 p.m. for a period not to exceed 20 minutes to discuss labor negotiations and confidential material related to proprietary information. The executive session included the City Commissioners, the City Attorney, the City Manager, and the Assistant City Manager. K.S.A. 75-4319 authorizes the use of executive session to discuss the topics stated in the motion.

Vote: Ayes: Eber Phelps  
Shaun Musil  
James Meier  
Lance Jones

No action was taken during the executive session.

The work session was adjourned at 7:44 p.m.

Submitted by: \_\_\_\_\_

Brenda Kitchen – City Clerk



# Commission Work Session Agenda

## Memo

**From:** Don Scheibler, Chief of Police

**Work Session:** September 1, 2016

**Subject:** 2016 Uniform Public Offense Code  
2016 Standard Traffic Ordinance

**Person(s) Responsible:** Don Scheibler, Chief of Police

### Summary

The Hays City Commission is being asked to adopt by ordinance, the updated 2016 Uniform Public Offense Code for Kansas Cities (UPOC) and the updated 2016 Standard Traffic Ordinance for Kansas Cities (STO) for use within the City of Hays. The ordinances and any changes to the UPOC and the STO are presented to the Commission annually. It is the recommendation of city staff that the Commission approve the ordinances adopting the 2016 revised UPOC and STO.

### Background

The League of Kansas Municipalities (LKM) publishes a revised version of the Uniform Public Offense Code for Kansas Cities and the Standard Traffic Ordinance for Kansas Cities on a yearly basis. These publications are made available for purchase by municipalities. The municipalities may adopt these two sets of ordinances for their use. These ordinances contain the most current legislative changes and updates put into place annually by the Kansas Legislature.

### Discussion

The majority of the UPOC and STO remains the same from year to year, with only a few changes being made. Changes to the UPOC and STO are noted on the last page of each publication. A handout has been prepared by staff, listing the ordinances that have been changed with a brief outline of the changes.

Some of the changes and additions to the 2016 UPOC include the following:

**3.2 Battery Against A Law Enforcement Officer** – In 2015 changes were made to this section to include battery against judges, attorneys and probation officers engaged in the performance of their duties. This year Sec. 3.2 was amended to specify City Attorneys, Assistant City Attorneys, City Prosecutors, and Assistant City Prosecutors. This violation is a Class A misdemeanor.

**5.8 Purchase, Consumption or Possession of Alcoholic Liquor or Cereal Malt Beverage by a Minor; 18-21** – This section was amended to include immunity from

prosecution for a minor(s) who initiates contact with law enforcement or emergency medical services to request medical assistance for a person they reasonably believe is in need of medical assistance. This law requires the minor to cooperate with emergency medical services personnel and law enforcement officers in providing medical assistance. These changes were created to encourage minors to do the right thing and seek medical assistance in an emergency, even if they have been drinking.

**6.1 Theft** – With the amendments to this section, the lower level felony theft changes from \$1000 to \$1500. In addition, the third or subsequent misdemeanor theft must now be a loss of at least \$50 for the crime to be a felony.

The majority of changes to the **2016 STO** are related to DUI laws. These changes were caused by a recent Kansas Supreme Court ruling that said refusal to submit to chemical testing in a DUI investigation was not a crime.

Like all other states, Kansas has an “implied consent” law for drivers suspected of DUI. These laws generally require that drivers arrested for driving under the influence submit to chemical testing for the purpose of determining whether and how much alcohol or drugs are in their bodies.

In most states, the consequences of refusing a chemical test are administrative. The driver’s license will often be suspended for a period of time and the driver might need to pay a fine or install an ignition interlock device. These administrative penalties for refusing testing are often in addition to any punishment for driving drunk.

In 2012, Kansas made refusing a chemical test a crime if the driver has at least one prior DUI conviction or instance of refusing a chemical test. So a person who drove drunk and refused testing could be convicted of both a DUI and test refusal.

On February 26, 2016 the Kansas Supreme Court ruled that drivers who refuse to submit to a chemical test in DUI investigations cannot be criminally prosecuted for that refusal. The court found unconstitutional the law making it a crime to refuse such a test when no court-ordered warrant exists. In its 6-1 ruling, the court found that the tests were in essence searches and the law punishes people for exercising their constitutional right to be free from unreasonable searches and seizures.

**Sections 30 – 30.1.2** of the 2016 STO have been amended as a result of this court decision.

A handout has been prepared by staff noting the other additions and/or changes to the UPOC and STO.

### **Legal Consideration**

There are no legal obstacles to proceeding as recommended by City Staff.

### **Financial Consideration**

There are no financial considerations other than staff hours incurred drafting these ordinances.

## **Options**

The City Commission has the following options:

- Approve the ordinances adopting the 2016 revised UPOC and STO.
- Not approve the ordinances adopting the 2016 revisions, and continue to use the current (2015) versions of the UPOC and STO.

## **Recommendation**

It is the recommendation of city staff that the Commission approve the ordinances adopting the 2016 revised versions of the Uniformed Public Offense Code and Standard Traffic Ordinances.

## **Action Requested**

Approve the ordinances adopting the 2016 revised versions of the Uniformed Public Offense Code and Standard Traffic Ordinance.

## **Supporting Documentation**

List of additions or changes made in the 2016 UPOC and STO

Draft ordinances adopting the 2016 UPOC and STO for use in the City of Hays

**OVERVIEW OF CHANGES TO THE 2016 UNIFORM  
PUBLIC OFFENSE CODE FOR KANSAS CITIES**

**Brief outline of changes made to ordinance**

**Words Added**

**~~Words Deleted~~**

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1.1 DEFINITIONS

(pages 6, 12 & 16-20, ) **Added language to Act. Deleted Juvenile Correctional Facility Officer or Employee. Removed language from Smoking (subsection h).**

**Act.** **Includes** a failure or omission to take action.

~~**Juvenile Correctional Facility Officer or Employee.** Any officer or employee of the juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. 38-2302, and amendments thereto.~~

**Smoking; Definitions.**

- (a) Access Point means the area within a 10 foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of section 10.24.
- (b) Bar means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-premises consumption.
- (c) Employee means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.
- (d) Employer means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.
- (e) Enclosed Area means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an enclosed area:

- (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and
  - (2) Rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.
- (f) Food Services Establishment means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.
- (g) Gaming Floor means the area of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, where patrons engage in Class III gaming. The gaming floor shall not include any areas used for accounting, maintenance, surveillance, security, administrative offices, storage, cash or cash counting, records, food service, lodging or entertainment, except that the gaming floor may include a bar where alcoholic beverages are served so long as the bar is located entirely within the area where Class III gaming is conducted.
- (h) Medical Care Facility means a physician's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto. ~~And any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto.~~
- (i) Outdoor Recreational Facility means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.
- (j) Place of Employment means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during

the course of employment. For purposes of this section, a private residence shall not be considered a place of employment unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

- (k) Private Club means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.
- (l) Public Building means any building owned or operated by:
  - (1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof;
  - (2) Any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or
  - (3) Any other separate corporate instrumentality or unit of the state or any municipality.
- (m) Public Meeting means any meeting open to the public pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of this state.
- (n) Public Place means any enclosed areas open to the public or used by the general public including, but not limited to: Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a public place unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.
- (o) Smoking means possession of a lighted cigarette, cigar, pipe or burning tobacco in any other form or device designed for the use of tobacco.
- (p) Tobacco Shop means any indoor area operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65% of its gross receipts from the sale of tobacco.

- (q) Substantial Dues or Membership Fee Requirements means initiation costs, dues or fees proportional to the cost of membership in similarly-situated outdoor recreational facilities that are not considered nominal and implemented to otherwise avoid or evade restrictions of a statewide ban on smoking.
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### 3.2 BATTERY AGAINST A LAW ENFORCEMENT OFFICER.

(pages 30 & 31) Added language to subsection (b)(2).

### 3.2 BATTERY AGAINST A LAW ENFORCEMENT OFFICER.

- (a) Battery against a law enforcement officer is a battery, as defined in Section 3.1(b) of this article, committed against a:
  - (1) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
  - (2) Uniformed or properly identified state, county, or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty;
  - (3) Judge, while such judge is engaged in the performance of such judge's duty;
  - (4) Attorney, while such attorney is engaged in the performance of such attorney's duty; or
  - (5) Community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty;
- (b) As used in this section:
  - (1) **Judge** means a duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of any district court of Kansas, district magistrate judge or municipal court judge;
  - (2) **Attorney** means a (A) **City attorney, assistant city attorney, city prosecutor, assistant city prosecutor**, county attorney, assistant county attorney, special assistant county attorney, district attorney, assistant district attorney, special assistant district attorney, attorney general, assistant attorney general or special assistant attorney general; and (B) public defender, assistant public defender, contract counsel for the state board of indigents' defense services or an attorney who is appointed by

the court to perform services for an indigent person as provided by article 45 of chapter 22 of the Kansas Statutes Annotated and amendments thereto;

- (3) **Community Corrections Officer** means an employee of a community correctional services program responsible for supervision of adults or juveniles as assigned by the court to community corrections supervision and any other employee of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs; and
- (4) **Court Services Officer** means an employee of the Kansas judicial branch or local judicial district responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court. (K.S.A. Supp. 21-5413)

Battery against a law enforcement officer is a Class A violation.

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3.12 **BREACH OF PRIVACY.**

(pages 36-38) Added language to subsection (c).

3.12 **BREACH OF PRIVACY.**

- (a) Breach of privacy is knowingly and without lawful authority:
  - (1) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication;
  - (2) Divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if such person illegally learned of the message in the course of employment with an agency in transmitting it;
  - (3) Entering with intent to listen surreptitiously to private conversations in a private place or to observe the personal conduct of any other person or persons entitled to privacy therein;
  - (4) Installing or using outside or inside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible without the use of such device, without the consent of the person or persons entitled to privacy therein; or

- (5) Installing or using any device or equipment for the interception of any telephone, telegraph or other wire or wireless communication without the consent of the person in possession or control of the facilities for such communication. (K.S.A. Supp. 21-6101)
- (b) Subsection (a)(1) shall not apply to messages overheard through a regularly installed instrument on a telephone party line or on an extension.
- (c) The provisions of this section shall not apply to: (1) an operator of a switchboard, or any officer, employee or agents of any public utility providing telephone communications service, whose facilities are used in the transmission of a communication, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such public utility; (2) a provider of an interactive computer service, as defined in 47 U.S.C. 230, for content provided by another person; (3) a radio common carrier, as defined in K.S.A. 66-1,143, and amendments thereto; and (4) a local exchange carrier or telecommunications carrier as defined in K.S.A. 66-1, 187, and amendments thereto.

Breach of privacy, as defined in this section, is a Class A violation.

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**5.8 PURCHASE, CONSUMPTION OR POSSESSION OF ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE BY A MINOR; 18-21.**

**(pages 47-50) Added language to subsection (c). Added subsection (d) and all subsections under subsection (d).**

**5.8 PURCHASE, CONSUMPTION OR POSSESSION OF ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE BY A MINOR; 18-21.**

- (a) Except with regard to serving of alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704, and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, no person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law.

- (b) In addition to any other penalty provided for a violation of this section:
  - (1) The court may order the offender to do either or both of the following:
    - (A) Perform 40 hours of public service; or
    - (B) Attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans.
  - (2) Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 30 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 30 days whether or not that person has a driver's license.
  - (3) Upon a second conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 90 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 90 days whether or not that person has a driver's license.
  - (4) Upon a third or subsequent conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not that person has a driver's license.
- (c) This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.
- (d) (1) A person and, if applicable, one or two other persons acting in concert with such person are immune from criminal prosecution for a violation of this section, if such person:
  - (A) (i) Initiated contact with law enforcement or emergency medical services and requested medical assistance on such person's behalf because such person reasonably believed such person was in need of medical assistance; and
  - (ii) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance;

- (B) (i) Initiated contact with law enforcement or emergency medical services, or was one of one or two other persons who acted in concert with such person, and requested medical assistance for another person who reasonably appeared to be in need of medical assistance;
  - (ii) Provided their full name, the name of one or two other persons acting in concert with such person, if applicable, and any other relevant information requested by law enforcement or emergency medical services;
  - (iii) Remained at the scene with the person who reasonably appeared to be in need of medical assistance until emergency medical services personnel and law enforcement officers arrives; and
  - (iv) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance; or
  - (C) (i) Was the person who reasonably appeared to be in need of medical assistance as described in subsection (d)(1)(B), but did not initiate contact with law enforcement or emergency medical services; and
  - (ii) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance.
- (2) A person shall not be allowed to initiate or maintain an action against a law enforcement officer, or such officer's employer, based on the officer's compliance or failure to comply with this subsection. (K.S.A. Supp. 41-727)

Violation of this section by a person 18 or more years of age but less than 21 years of age is a Class C violation for which the minimum fine is \$200.

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6.1           **THEFT.**

**(pages 50-51) Removed language from subsection (a)(5). Amended language in subsection (b). Amended and added language to subsections (b)(1), (b)(2) and (b)(3). Removed language from subsection (c)(2).**

6.1           **THEFT.**

- (a) Theft is any of the following acts done with the intent to permanently deprive the owner of the possession, use or benefit of the owner's property or services.

- (1) Obtaining or exerting unauthorized control over property or services;
- (2) Obtaining control over property or services by deception;
- (3) Obtaining control over property or services by threat;
- (4) Obtaining control over stolen property or services knowing the property or services to have been stolen by another; or
- (5) Knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel.  
(K.S.A. Supp. 21-5801)

(b) Theft of property or services of the value of less than ~~\$1,000~~ \$1,500 is a Class A violation, except as provided below.

- (1) Property of the value of less than ~~\$1,000~~ \$1,500 from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony;
- (2) Property of the value of ~~less than \$1,000~~ at least \$50 but less than \$1,500 is a severity level 9, nonperson felony if committed by a person who has, within five years immediately preceding commission of the crime, excluding any period of imprisonment, been convicted of theft two or more times; and
- (3) Property which is a firearm of the value of less than \$25,000 is a severity level 9, nonperson felony. (K.S.A. Supp. 21-5801)

(c) As used in this section:

- (1) **Conviction** or **convicted** includes being convicted of a violation of K.S.A. 21-3701, prior to its repeal, this section or a municipal ordinance which prohibits the acts that this section prohibits;
- (2) **Regulated scrap metal** means the same as in K.S.A. ~~2013~~ ~~Supp.~~ 50-6, 109, and amendments thereto; and
- (3) **Value** means the value of property or, if the property is regulated scrap metal, the cost to restore the site of the theft of such regulated scrap metal to its condition at the time immediately prior to the theft of such regulated scrap metal, whichever is greater.

**(pages 98-99) Added subsections (a)(3) and (a)(4).**

**10.14 OPERATION OF A MOTORBOAT OR SAILBOAT.**

- (a) (1) No person born on or after January 1, 1989, shall operate on public waters of this city any motorboat or sailboat unless the person possesses a certificate of completion of an approved boater safety education course of instruction lawfully issued to such person as provided by K.S.A. 32-1101 *et seq.*
- (2) No owner or person in possession of any motorboat or sailboat shall permit another person, who is subject to the requirements in subsection (a)(1), to operate such motorboat or sailboat unless such other person either:
  - (A) Has been lawfully issued a certificate of completion of an approved boater safety education course of instruction as provided by K.S.A. 32-1101 *et seq.*; or
  - (B) Is legally exempt from the requirements of subsection (a)(1).

~~The requirement in subsection (a)(1), shall not apply to a person 21 years of age or older.~~

- (3) The requirement in subsection (a)(1), shall not apply to a person 21 years of age or older.
  - (4) The requirement in subsection (a)(1), shall not apply to a person operating a sailboat that does not have a motor and has an overall length of 16 feet, seven inches or less, while such person is enrolled in an instructor-led class.
- (b) The requirement in subsection (a)(1), shall not apply to a person operating a motorboat or sailboat accompanied by and under the direct and audible supervision of a person over 17 years of age who either:
    - (1) Possesses a certificate of completion of an approved boater safety education course; or
    - (2) Is legally exempt from the requirements of subsection (a)(1).
  - (c) No person who is charged with a violation of subsection (a)(1) shall be convicted of the violation if such person produces in court or in the office of the arresting officer a certificate of completion of an approved boater safety education course of instruction lawfully issued to such person and valid at the time of such person's arrest. (K.S.A. 32-1139)
  - (d) As used in this section:

- (1) **Owner** means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
- (2) **Operate** means to navigate or otherwise use a motorboat or a vessel.

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF HAYS, KANSAS, INCORPORATING BY REFERENCE "THE UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES," EDITION OF 2016, AND REPEALING ORDINANCE NO. 3904 OF THE CODE OF ORDINANCES OF THE CITY OF HAYS, KANSAS, AS PASSED ON OCTOBER 22, 2015.

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

Section 1. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Hays, Kansas, that certain code known as "The Uniform Public Offense Code," Edition of 2016, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. \_\_\_\_\_," and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

Section 2. REPEAL. Ordinance No. 3904, adopted October 22, 2015, is hereby repealed.

Section 3. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in The Hays Daily News, the official city newspaper.

PASSED by the Commission the \_\_\_\_\_ day of September, 2016.

APPROVED AND SIGNED by the Mayor this \_\_\_\_\_ day of September, 2016.

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SHAUN MUSIL  
Mayor

ATTEST:

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BRENDA KITCHEN  
City Clerk

(SEAL)

OVERVIEW OF CHANGES TO THE 2016 STANDARD  
TRAFFIC ORDINANCE FOR KANSAS CITIES

Brief outline of changes made to ordinance

Words Added

~~Words Deleted~~

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Sec. 1. Definitions.

(pages 8 & 18) Removed Compression Release Engine Braking System and Director from definitions. Amended School Bus.

~~Compression Release Engine Braking System. A hydraulically operated device that converts a power producing diesel engine into a power absorbing retarding mechanism.~~

~~Director. The director of vehicles.~~

**School Bus.** Every motor vehicle defined and designated as a school bus in ~~Subsection (g)(1) of~~ K.S.A. 72-8301(g), as amended.

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Sec. 30. Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties

(pages 36-41) Removed previous subsection (h)(2)(A).

Sec. 30. Driving Under the Influence of Intoxicating Liquor or Drugs; 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:
- (A) An ordinance violation. On a first conviction of a violation of this section, the person convicted shall be sentence to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$750 nor more than \$1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. 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 48 consecutive hours' imprisonment;
- (B) On a second conviction of a violation of this section the person convicted shall be sentence to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. 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 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of a least 48 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 48 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 120 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 120 hours;

- (2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), 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 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other 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 90 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 \$5 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) Conviction 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 diversion 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:
    - ~~(A) Refusing to submit to a test to determine the presence of alcohol or drugs, as provided in K.S.A. Supp. 8-1025 or Section 30.2.1;~~
    - ~~(B)~~ (A) Driving a commercial motor vehicle under the influence, K.S.A. 8-2, 144, and amendments thereto; or section 30.1
    - ~~(C)~~ (B) Operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
    - ~~(D)~~ (C) 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;
    - ~~(E)~~ (D) Aggravated battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413, and amendments thereto; and
    - ~~(F)~~ (E) 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:
    - (A) 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);

- (B) 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
  - (C) 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) **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.
  - (2) **Drug** includes toxic vapors as such term is defined in K.S.A. Supp. 21-5712, and amendments thereto. (K.S.A. Supp. 8-1567)

**Ref.:** For persons under 21 years of age, see also K.S.A. 8-1567a.

**{Editor’s Note:** Since 2007 the Kansas Legislature has acted to give municipal courts jurisdiction over the felony level offences of Third, Fourth, and Subsequent Driving Under the Influence (DUI), K.S.A. Supp. 8-1567 (k)(1) and (k)(3). However, K.S.A. Supp. 8-1567 (l)(2) appears to remove this authority from municipal courts. Because of this apparent conflict, and concerns about sentencing issues and cost, the Editor has determined that Third, Fourth, and Subsequent Driving Under the Influence (DUI) would not be included in this Code. Should a city wish to implement these provisions concerning prosecuting felony level DUI in municipal court, a separate ordinance will need to be adopted.}

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**Sec. 30.1. Driving Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; Penalties.**

**(pages 41-46) Removed previous subsection (m)(2)(B).**

**Sec. 30.1. Driving Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; 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 30 of this ordinance.
- (b) (1) Driving a commercial motor vehicle under the influence is:
- (A) An ordinance violation. On a first conviction, the person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion, 100 hours of public service, and fined not less than \$750 nor more than \$1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 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;
  - (B) On a second conviction, the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. 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 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 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 48 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 120 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 120 hours; and

- (2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), 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 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment 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 90 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 \$5 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:
  - (A) This section or K.S.A. 8-2, 144, and amendments thereto;
  - ~~(B) refusing to submit to a test to determine the presence of alcohol or drugs, as provided in K.S.A. Supp. 8-1025, or Section 30.2.1;~~
  - ~~(B)~~ (B) Operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
  - ~~(C)~~ (C) Involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. ~~2014 Supp.~~ 21-5405(a)(3), and amendments thereto;
  - ~~(D)~~ (D) Aggravated battery as described in K.S.A. ~~2014 Supp.~~ 21-5413(b)(3), and amendments thereto; and
  - ~~(E)~~ (E) 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:
  - (A) 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);
  - (B) 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
  - (C) 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) **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
  - (2) **Drug** includes toxic vapors as such term is defined in K.S.A. Supp. 21-5712, and amendments thereto. (K.S.A. Supp. 8-2, 144)
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**Sec. 30.2. Preliminary Breath Test.**

**(pages 46-47) Removed previous subsection (c)(2). Removed language from subsection (d).**

**Sec. 30.2. 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; and
  - ~~(2) Refusal to submit to testing is a traffic infraction; and~~
  - ~~(3)~~(2) 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. (K.S.A. Supp. 8-1012)

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**Sec. 30.2.1. Refusal to Submit to Alcohol or Drug Test.**

(page 47) **Removed the entire section.**

**Sec. 30.2.1. Reserved for Future Use.**

~~**Sec. 30.2.1. Refusal to Submit to Alcohol or Drug Test.**~~

- ~~(a) — Refusing to submit to a test to determine the presence of alcohol or drugs is refusing to submit to or complete a test or tests deemed consented to under K.S.A. 8-1001(a), and amendments thereto, if such person has:~~
- ~~(1) — Any prior test refusal as defined in K.S.A. 8-1013, and amendments thereto, which occurred:
    - ~~— (A) On or after July 1, 2001; and~~
    - ~~— (B) when such person was 18 years of age or older; or~~~~
  - ~~(2) — any prior conviction for a violation of K.S.A. 8-1567 or 8-2, 144, 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, which occurred:
    - ~~(A) On or after July 1, 2001; and~~
    - ~~(B) when such person was 18 years of age or older.~~~~
- ~~(b) — (1) — Refusing to submit to a test to determine the presence of alcohol or drugs is:
  - ~~— On a first conviction a code violation. The person convicted shall be sentence to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. 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 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 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 pursuant to K.S.A. Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection only after such person has served 48 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 120 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 120 hours;~~

~~(2) In addition, prior to sentencing for any conviction, 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 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other 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) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessments and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.~~

- (e) ~~In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 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.~~
- (f) ~~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.~~
- (g) ~~For the purpose of determining whether a conviction is a first, second, third, fourth 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:~~
- (A) ~~On or after July 1, 2001~~
- (B) ~~when such person was 18 years of age or older. 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 which occurred during a person's lifetime shall be taken into account, but only convictions occurring when such person was 18 years of age or older:~~
- (A) ~~This section or K.S.A. Supp. 8-1025;~~

- ~~(B) driving a commercial motor vehicle under the influence, K.S.A. 8-2-144, and amendments thereto;~~
  - ~~(C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;~~
  - ~~(D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2014 Supp. 21-5405(a)(3), and amendments thereto;~~
  - ~~(E) aggravated battery as described in K.S.A. 2014 Supp. 21-5413(b)(3), and amendments thereto; and~~
  - ~~(F) 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:~~
    - ~~(A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (g)(2);~~
    - ~~(B) 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 (g)(1) or (g)(2); and~~
    - ~~(C) 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 (g)(1) or (g)(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;~~
  - ~~(5) multiple convictions of any crime described in subsection (g)(1) or (g)(2) arising from the same arrest shall only be counted as one conviction;~~
  - ~~(6) the prior conviction that is an element of the crime of refusing to submit to a test to determine the presence of alcohol or drugs shall not be used for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section and shall not be considered in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense; and~~
  - ~~(7) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or an ordinance which prohibits the acts of this section, only once during the person's lifetime.~~
- ~~(h) 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.~~

- ~~(i) Upon conviction of a person of a violation of this section, the court may 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 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.~~~~
- ~~(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 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 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.~~
- ~~(l) As used in this section, **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. (K.S.A. Supp. 8-1025)~~

~~{**Editor's Note:** Due to concerns about sentencing issues and cost, the Editor has determined that Second, Third, or Subsequent Refusal to Submit to Alcohol or Drug Test offenses would not be included in this Code. Should a city wish to implement these provisions concerning prosecuting felony level Refusal to Submit to Alcohol or Drug Test offenses in municipal court, a separate ordinance will need to be adopted.}~~

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**Sec. 175.1. Compression Release Engine Braking System.**

**(page 118) Added language to the section.**

**Sec. 175.1. Compression Release Engine Braking System.**

It shall be unlawful for the driver of any motor vehicle to use or cause to be used or operated any compression release engine braking system without such motor vehicle being equipped with a muffler in accordance with Section 175.

As used in this section, “compression release engine braking system” means a hydraulically operated device that converts a power producing diesel engine into a power absorbing retarding mechanism. (K.S.A. Supp. 8-1761)

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF HAYS, KANSAS, INCORPORATING BY REFERENCE "THE STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES," EDITION OF 2016, PROVIDING CERTAIN PENALTIES AND REPEALING ORDINANCE NO. 3905 OF THE CODE OF ORDINANCES OF THE CITY OF HAYS, KANSAS, AS PASSED ON OCTOBER 22, 2015.

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

Section 1. INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Hays, Kansas, that certain standard traffic ordinance known as the *Standard Traffic Ordinance* for Kansas Cities, Edition of 2016, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts of portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of said Standard Traffic Ordinance shall be marked or stamped "Official Copy as Adopted By Ordinance No. \_\_\_\_\_", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such *Standard Traffic Ordinance* similarly marked, as may be deemed expedient.

Section 2. TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.

(a) An ordinance traffic infraction is a violation of any section of this ordinance 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.

(b) All traffic violations which are included within this ordinance and which are not ordinance traffic infractions, as defined in subsection (a) of this section, shall be considered traffic offenses.

Section 3. PENALTY FOR SCHEDULED FINES. The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than -0- nor more than \$2,500.00. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the Court not to exceed \$2,500.00.

Section 4. REPEAL. Ordinance No. 3905, as passed on October 22, 2015, is hereby repealed.

Section 5. EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication in The Hays Daily News, the official city newspaper.

PASSED by the Commission the \_\_\_\_\_ day of September, 2016.

APPROVED AND SIGNED by the Mayor this \_\_\_\_\_ day of September, 2016.

\_\_\_\_\_  
SHAUN MUSIL  
Mayor

ATTEST:

\_\_\_\_\_  
BRENDA KITCHEN  
City Clerk

## **MEMO**

**To:** Toby Dougherty, City Manager  
**From:** Gary Brown, Fire Chief  
**CC:** Jacob Wood, Assistant City Manager  
**Date:** September 8, 2016  
**Re:** **FIRE DEPARTMENT AUTOMATIC AID  
Trial Program Planning Update**

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Planning and preparation continues for the implementation of a trial program for limited automatic mutual aid between the Ellis County Fire Department [ECFD] and the HFD. As we have discussed, our existing mutual aid program is helpful but does not allow for the most effective operations. In an automatic aid program, the fire departments work and train together on a more regular basis. This should result in better teamwork and a more efficient and cost effective sharing of firefighters and fire trucks to better protect the entire community.

In the automatic aid program, the ECFD will respond with one fire truck and crew into the city on the first alarm for all reported building fires. We expect the ECFD will respond to assist the HFD about 70 times a year. The HFD will automatically send one fire truck and crew into a limited area surrounding the city for reported building fires about five times a year. This is the area with the most complex and urban fire problems for the ECFD.

Additionally, the HFD will automatically dispatch our breathing air supply truck staffed by one firefighter to all reported building fires in the rural fire district and Victoria. [The Ellis FD declined this service because they have adequate air resupply capabilities.]

We expect this program to start on January 1, 2017. A joint training program has begun to prepare the members of both fire departments to work together. We also expect that both the city and the rural fire district area included in automatic aid will receive increased credit in our public fire protection rating score.

As you requested, I will brief the City Commission on this matter at the September 15, 2017 work session.



# Commission Work Session Agenda

## Memo

**From:** Jeff Crispin, Assistant Utilities Director

**Work Session:** September 15, 2016

**Subject:** Sandblasting and Painting of the East Primary Clarifier

**Person(s) Responsible:** Johnny O'Connor, Director of Utilities  
Jeff Crispin, Assistant Director of Utilities

### Summary

The east primary basin at the Water Treatment Plant requires sandblasting and painting of metal surfaces to preserve the integrity of metal surfaces against rust. After years of submersion in water, the paint coatings are failing to protect the metal parts. The Utilities Department received 4 proposals for sandblasting and painting. Staff recommends accepting the low bid from D.E.M. Enterprises LLC of Wichita, KS in the amount of \$55,000.

### Background

In order to properly maintain equipment and extend the life regular routine maintenance needs to be performed. Over the last 4 years, all of the clarifier basins at the Water Treatment Plant have been sandblasted and painted except for the east primary basin. This basin was constructed in 1975. Sandblasting and painting is necessary to protect the metal surfaces and extend the life of the basin. \$75,000 was budgeted in 2016 as part of the Capital Improvement Plan.

### Discussion

In July, the Utilities Department sent out an RFP for sandblasting and painting of the east primary basin. The City received 4 proposals with D.E.M Enterprises LLC being the lowest bid at \$55,000. The bids are as follows:

- D.E.M Enterprises- \$55,000
- Coblaco Services, Inc- \$66,717
- Envirotech Gates LLC/Fab Tech- \$68,000
- Genesis Enviropmnetal Solutions Inc.- \$69,162

The project is scheduled to be completed by May 1, 2017. It is necessary for this project to take place during the winter months when water demand is at the lowest point in year. This will assure that the City has the capacity to provide water while the basin is off-line.

City Staff is recommending that the Commission accept the proposal from D.E.M Enterprises LLC to complete the required sandblasting and painting of the east primary clarifier in the amount of \$55,000 to be funded from the Water Fund. Reference checks and company history were found acceptable. The complete bid tab from the 4 bidders is attached.

### **Legal Consideration**

There are no known legal obstacles to proceeding as recommended by City Staff.

### **Financial Consideration**

The 2016 Budget includes \$75,000 in the Capital Improvement Plan to be funded from Water Fund.

### **Options**

1. Accept proposal from D.E.M Enterprises LLC. for sandblasting and painting of the east primary at \$55,000.
2. Provide alternate direction to City Staff

### **Recommendation**

1. Staff recommends accepting the proposal to perform sandblasting and painting of the east primary clarifier at the water treatment plant from D.E.M. Enterprises LLC. at \$55,000

### **Action Requested**

1. Authorize the City Manager to enter into an agreement with D.E.M Enterprises LLC. to perform sandblasting and painting of the east primary clarifier at a price of \$55,000 to be funded from the Capital Improvement Water

### **Supporting Documentation**

2016 Invitation to Bid  
Project Form  
Arial Map

## NOTICE TO CONTRACTORS

July 29, 2016

OFFICE OF CITY CLERK  
HAYS, KANSAS

Request for Proposals (RFP's), will be received by the City of Hays, Kansas, at the office of the City Clerk, City Hall, until 3:00 P.M., Prevailing Time, August 29, 2016 for Sandblasting and Painting of the East Primary Clarifier at the Water Plant, City of Hays. At said time and place, and promptly thereafter, all Proposals that have been duly received will be publicly opened and read aloud.

The Request for Proposal details are posted at [www.haysusa.com](http://www.haysusa.com).

Questions can be directed to:

Jeff Crispin  
Assistant Director of Utilities  
1000 Vine St.  
Hays, Kansas 67601  
(785) 628-7380  
[jcrispin@haysusa.com](mailto:jcrispin@haysusa.com)

City of Hays reserves the right to reject or accept any and all proposals, to waive any irregularities in proposals, and to accept such proposals that are the most responsive and best suits the City of Hays.

CITY OF HAYS, KANSAS

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Date

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City Clerk

**PROJECT FORM**

**PROJECT:** Sandblasting and Painting of the East Primary

**FISCAL YEAR:** 2016

**FUND:** Water and Sewer

**DEPARTMENT:** Utilities



**PROJECT DESCRIPTION:** Sandblasting and Painting of all metal surfaces within the basin.

**NEED, JUSTIFICATION, BENEFIT:** To preserve the integrity of the metal surfaces against rust.

**CONSEQUENCES OF DELAYING OR ELIMINATING THIS PROJECT:** Delaying the sandblasting and painting of the East Primary basin could jeopardize water quality and the integrity of the metal surfaces resulting in high costs for repair and/or the possible need for replacement.

**THIS PROJECT IS RELATED TO THE FOLLOWING:** Regular operation and maintenance of the Primary Clarifiers.

**EXPLANATION OF IMPACT ON OPERATING BUDGET:** This would not impact the operating budget. This would be Capital Improvement expenditure out of the Water/Sewer Fund.

**TIMELINE/CURRENT STATUS:** The East Primary Clarifier is currently in need of sandblasting and painting and would be recommended that this take place in 2016.

**COMMENTS:**

<b><u>IMPACT ON OPERATING BUDGET:</u></b>		<b><u>FINANCING:</u></b>	
2016	\$75,000	Water and Sewer Fund	\$75,000
2017	\$		\$
2018	\$		\$
2019	\$		\$
2020	\$		\$
5-YEAR TOTAL:	\$75,000		\$

