

CITY OF DERBY

MEETING OF THE ORDINANCE REVIEW ADVISORY BOARD

July 20th, 2010

6:00 PM

ROLL CALL:

DAN BILLMAN
BETTY WILKEN
RICK BROWN
THANE ROCKHILL
GUNTER HANSEN

ABSENT:

Agenda Item #1

Changes to Standard Traffic Ordinance – new texting and seat belt laws.

ADJOURNMENT

Next Meetings: August 17th
September 21st

“The mission of the ORAB shall be to review, comment on and make recommendations to the City Council with respect to current or proposed ordinances of general applicability. The ORAB will be advisory to the City Council and will forward its suggestions and recommendations to the Council through the city manager.”

ORDINANCE REVIEW AND ADVISORY BOARD ACTION REPORT

To: Ordinance Review and Advisory Board
From: Chief Robert Lee, Police Department
Subject: Adoption of Amendments to the 2009 Standard Traffic Ordinance

Proposed Agenda Date: July 20, 2010

Background/Discussion:

- The City of Derby regularly adopts revisions to the Standard Traffic Ordinance (STO) published by the League of Kansas Municipalities (LKM).
- The STO contains traffic regulations ordinances based upon Kansas Statutes and widely used by municipalities in Kansas.
- During the 2010 session, the Kansas Legislature made changes to statutes regarding the use of safety belts and enacted new regulations on the use of wireless communication devices while driving.
- Previously, law enforcement could not stop a driver for failure to wear a safety belt absent an additional violation being committed.
- The proposed amendments to the STO will:
 - Make not wearing safety belts a primary violation in most situations;
 - Provide for citing an adult driver for allowing a minor (14 to 18 yrs.) to be transported while not wearing a safety belt.
 - Make it a violation to use wireless communication devices to write, send or read a written communication while driving.
- As part of the review and adoption process, amendments to the STO are drafted by the city attorney to tailor specific sections to local needs.
- These amendments will allow local enforcement of these two newly enacted state laws.

Financial Considerations:

- State law decreases the fine for adults not wearing safety belts from \$30 to \$5 until July 11, 2011. After that date, the fine increases to \$10.
- The proposed ordinance prescribes a \$30 fine, inclusive of court costs, for adult safety belt violations. This penalty, which is higher than prescribed by state law, is consistent with current City ordinance as well as amendments recently enacted by the City of Wichita.
- The penalty for violations involving minors 14 to 18 years of age would remain at \$60, inclusive of court costs. This penalty is consistent with state statute.
- The proposed ordinance includes a new provision that would impose a fine of \$60, inclusive of court costs, on drivers who allow passengers ages 14-18 to be transported without safety belts.
- Because the prohibition on texting while driving does not have a specific fine, it is covered by the STO's general provision imposing a fine of up to \$500. The municipal judge has the authority to, and typically does, establish a specific fine for such infractions.
- Judge Jim Wilson has set the local fine at ??? which will be reflected in the updated municipal court fine schedule.

Legal Considerations:

- The Police Department is responsible for enforcing the STO.
- The current edition of the STO was passed by Derby City Council December 22nd, 2009 and will be readopted when the 2010 Edition is published later this year.

Policy Considerations:

- Adoption of these amendments would allow local enforcement of safety belt and wireless communication regulations similar to recently enacted state laws.
- It is important to make the proposed changes to the STO now because of their anticipated impact on traffic safety.
 - Vehicle occupants wearing safety belts are less likely to be seriously injured than occupants not wearing safety belts.
 - Drivers using wireless communication devices to text or receive texts are much more likely to be involved in a traffic accident.
- The recommended provision making it an infraction for an adult driver to allow a minor (14 to 18) years of age to be transported while not wearing a safety belt has been proposed because:
 - These violations can more effectively enforced in municipal court, and
 - Drivers need to be held responsible for the safety of their minor passengers.
- City Council has the authority to adopt ordinances that are more restrictive than state statute.
- Additional changes to the STO will be brought to the City Council later this year once the League of Kansas Municipalities has revised its annual publication.

Recommend a Motion to:

- Adopt the proposed amendments to the 2009 STO relating to safety belt use and texting while driving.

Passed: _____
Published: _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 182.1 OF THE STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES AS ADOPTED BY REFERENCE BY §10.04.010 OF THE DERBY MUNICIPAL CODE; RESTRICTING THE USE OF WIRELESS COMMUNICATION DEVICES TO SEND OR RECEIVE WRITTEN COMMUNICATIONS WHILE OPERATING A MOTOR VEHICLE; AND REPEALING ORIGINAL §182.1 OF SAID STANDARD TRAFFIC ORDINANCE.

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

Section 1. Section 182.1 of the Standard Traffic Ordinance for Kansas Cities, as adopted by reference by section 10.04.010 of the Derby Municipal Code, is hereby amended to read as follows:

Sec. 182.1. Safety Belts.

- (a) Except as provided in Section 182 and in subsection (b) or (c) of this section, each occupant of a passenger car manufactured with safety belts in compliance with federal motor vehicle safety standard no. 208, who is 18 years of age or older, shall have a safety belt properly fastened about such person’s body at all times when the passenger car is in motion.
- (b) Each occupant of a passenger car manufactured with safety belts in compliance with federal motor vehicle safety standard no. 208, who is at least 14 years of age but less than 18 years of age, shall have a safety belt properly fastened about such person’s body at all times when the passenger car is in motion.
- (c) Every driver who transports a child who is at least 14 years of age but under 18 years of age shall provide for the protection of such child by properly ensuring that child has a safety belt properly fastened about such person’s body at all times when the passenger car is in motion.
- (d) This section does not apply to:
 - (1) An occupant of a passenger car who possesses a written statement from a licensed physician that such person is unable for medical reasons to wear a safety belt system;
 - (2) Carriers of United States mail while actually engaged in delivery and collection of mail along their specified routes;
 - (3) Newspaper delivery persons while actually engaged in delivery of newspapers along with their specified routes; or
 - (4) An occupant of a passenger car required to be protected by a safety restraining system under the child passenger safety act.
- (e) Law enforcement officers shall not stop drivers for violations of subsection (a) by a back seat occupant in the absence of another violation of law. A citation for violation of

subsection (a) by a back seat occupant shall not be issued without citing the violation that initially caused the officer to effect the enforcement stop.

- (f) (1) Any person violating subsection (a) of this section shall be fined \$30 including court costs.
- (2) Any person violating subsection (b) or (c) of this section shall be fined \$60 including court costs.
- (g) As used in this section, passenger car means a motor vehicle, manufactured or assembled after January 1, 1968, or a motor vehicle manufactured or assembled prior to 1968 which was manufactured or assembled with safety belts, with motive power designed for carrying 10 passengers or fewer, including vans, but does not include a motorcycle or a motor-driven cycle.

Section 2. (a) Except as provided in subsections (b) and (c) of this section, no person shall operate a motor vehicle on a public road or highway while using a wireless communications device to write, send or read a written communication.

- (b) The provisions of subsection (a) shall not apply to:
 - (1) Law enforcement officers or emergency service personnel when acting within the course and scope of their employment;
 - (2) A person while in a motor vehicle stopped off the regularly traveled portion of the roadway;
 - (3) A person who reads, selects or enters a telephone number or name in a wireless communications device for the purpose of making or receiving a phone call;
 - (4) A person who receives an emergency, traffic or weather alert message; or
 - (5) A person receiving a message related to the operation or navigation of the motor vehicle.
- (c) The provisions of subsection (a) shall not prohibit a person from using a wireless communications device while operating a moving motor vehicle to:
 - (1) Report current or ongoing illegal activity to law enforcement;
 - (2) Prevent imminent injury to a person or property; or
 - (3) Relay information between a transit or for-hire operator and the operator's dispatcher, when the device used is permanently affixed to the motor vehicle.
- (d) From and after the effective date of this ordinance and prior to January 1, 2011, a law enforcement officer shall issue a warning citation to anyone violating subsection (a) of this section.
- (e) As used in this section:
 - (1) "Wireless communication device" means any wireless electronic communication device that provides for voice or data communication between two or more parties, including, but not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages or a laptop computer. "Wireless communication device" does not include a device which is voice-operated and which allows the user to send or receive a text-based communication without the use of either hand, except to activate or deactivate a feature or function.

- (2) “Write, send or read a written communication” means using a wireless communication device to manually type, send or read a written communication, including, but not limited to, a text message, instant message or electronic mail.

Section 3. Original §182.1 of the Standard Traffic Ordinance for Kansas Cities is hereby repealed.

Section 4. This Ordinance shall be effective from and after its publication once in the official City newspaper.

ADOPTED BY THE GOVERNING BODY this ____ day of _____, 2010.

Dion P. Avello, Mayor

ATTEST:

Jean Epperson, City Clerk

Approved as to form:

Philip H. Alexander, City Attorney