

ORDINANCE NO. 85-2

AN ORDINANCE CONCERNING DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; DRIVING WHILE A LICENSE IS CANCELED, SUSPENDED OR REVOKED; FAILURE TO COMPLY WITH A TRAFFIC CITATION; AND REPEALING ORDINANCE NO. 82-9.

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

SECTION 1: Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties.

(a) No person shall operate or attempt to operate any vehicle within this city while:

- (1) The alcohol concentration in the person's blood or breath, at the time or within two hours after the person operated or attempted to operate the vehicle, is .10 or more;
- (2) under the influence of alcohol;
- (3) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or
- (4) 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) No person shall operate or attempt to operate any vehicle within this city if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) 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.

(d) Upon a first conviction of a violation of this section, a person 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 \$200 nor more than \$500. The person convicted must 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. In addition, the court shall enter an order which (1) suspends the person's driver's license for a period of one year or, in lieu thereof, suspends the person's driver's license for 21 days or until the person completes any educational and treatment programs required by the court, whichever is longer, and thereafter places restrictions on the person's driver's license, as provided in K.S.A. Supp. 8-292 for the remainder of the one-year period; and (2) requires that the person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided in K.S.A. Supp. 8-1008, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or any other release, the person shall be required to enter

into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. Supp. 8-1008. In addition, the court shall enter an order which suspends the driver's license of the convicted person for a period of one year or, in lieu thereof, suspends the person's driver's license for 120 days or until the person completes the treatment program approved by the court, whichever is longer, and thereafter places restrictions on the person's driver's license, as provided in K.S.A. Supp. 8-292, for the remainder of the one-year period.

(f) On the third or subsequent conviction of a violation of this section, person shall be sentenced to not less than 90 days' or more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. Supp. 8-1008. In addition, the court shall revoke the driver's license of the convicted person for the period of time specified for the revocation of a driver's license under subsection (k) and in accordance with the procedure for revoking a driver's license under subsection(I).

(g) 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.

(h) 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.

(i) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or 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.

(j) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

- (1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;
- (2) "conviction" includes being convicted of a violation of law of another state or an ordinance of any municipality which prohibits the acts that

this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;

- (3) only convictions occurring in the immediately preceding five years, including prior to the effective date of this act, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and
- (4) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(k) In addition to any fine or imprisonment imposed under this section and in lieu of any restrictions on or suspension of a driver's license under this section, the court may revoke the person's driver's license or privilege to operate a motor vehicle on the public highways of this state. Whenever a license or privilege to operate a motor vehicle is revoked pursuant to this section, the person whose license or privilege has been revoked shall not be entitled to have such license or privilege restored until the expiration of one year from the date of revocation. On conviction of a third or subsequent violation of this section, revocation pursuant to this subsection shall be mandatory for a period set by the court at not less than one year.

- (1) Upon suspending or revoking any license pursuant to this section, the court shall require that such license be surrendered to the court. The court shall transmit the license to the division until further order of the court. Whenever the court restores the privilege to operate a motor vehicle on the public highways of this state to any person whose license was suspended or revoked pursuant to this section, the court shall notify the division.

(m) If a person is convicted under this section or K.S.A. Supp. 8-1567, or under a city ordinance declaring acts prohibited or made unlawful by this section, already has a suspended or revoked driver's license, any period of license suspension or revocation under this section shall not begin until the prior period of suspension or revocation has elapsed.

(n) 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., shall not constitute plea bargaining.

(o) The alternatives set out in subsections (a)(1) and (2) may be pleaded in the alternative, and the city may, but shall not be required to, elect one of the two prior to submission of the case to the court.

SECTION 2: Driving While License Canceled, Suspended or Revoked;
Penalty.

- (a)(1) Any person who drives a motor vehicle on any street or highway of this city at a time when such person's privilege to do so is canceled, suspended or revoked shall upon conviction be punished by imprisonment for not more than six months or fined not to exceed \$500, or both.

- (2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257, to the return of such person's driver's license or was, at the time of arrest, eligible under K.S.A. 8-256, to apply for a new license to operate a motor vehicle.
- (3) Except as otherwise provided by subsection (a) (4), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least \$100 and upon a second or subsequent conviction shall not be eligible for parole until completion of five days' imprisonment.
- (4) If a person (A) is convicted of a violation of this section, committed while the person's privilege to drive was suspended or revoked for a violation of Section 1 of this ordinance or K.S.A. 8-1567, or any ordinance of any city or a law of another state, which ordinance or law prohibits the acts prohibited by Section 1 of this ordinance or K.S.A. Supp. 8-1567, and (B) is or has been also convicted of a violation of Section 1 of this ordinance or K.S.A. 8-1567 or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by Section 1 of this ordinance or K.S.A. 8-1567, committed while the person's privilege to drive was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.
 - (b) For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a violation of any ordinance of any city or a law of another state which is in substantial conformity with this section.

SECTION 3: Failure to Comply with Traffic Citation.

- (a) It shall be unlawful to fail to comply with a traffic citation. Failure to comply with a traffic citation means failure to either to
 - (1) appear before the municipal court in response to a traffic citation and pay in full any fine and court costs imposed or
 - (2) otherwise comply with a traffic citation issued for an ordinance traffic infraction. Failure to comply with a traffic citation shall be unlawful regardless of the disposition of the charge for which such citation was originally issued.
- (b) In addition to penalties of law applicable under subsection (a), when a person fails to comply with a traffic citation, except for illegal parking, standing or stopping, the municipal court shall mail notice to the person that if

the person does not appear in municipal court or pay all fines, court costs, and any penalties within 30 days from the date of mailing, the division of vehicles will be notified to suspend the person's driving privileges. Upon the person's failure to comply within such 30 days, the municipal court shall notify the division of vehicles and assess a reinstatement fee of \$25 for each charge in which the person failed to make satisfaction regardless of the disposition of the charge for which such citation was originally issued. Such reinstatement fee shall be in addition to any fine or court costs and other penalties.

SECTION 4: Ordinance 82-9 is hereby repealed.

PASSED THIS 2nd DAY OF July, 1985

John D. Stephenson
MAYOR

ATTEST:

Cheryl Blaine
CITY CLERK

(SEAL)