

CHAPTER 27

TRAFFIC

Sec. 27-1. Incorporating the standard traffic ordinance.

SECTION 1.

(a) Incorporating Standard Traffic Ordinance. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Merriam, Kansas, that certain standard traffic ordinance known as the “2010 Standard Traffic Ordinance for Kansas Cities,” 37th edition prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. At least one (1) copy of the “2010 Standard Traffic Ordinance” shall be marked or stamped “Official Copy as Incorporated by Ordinance No. 1651” 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 2010 Standard Traffic Ordinance shall be supplied, at the cost of the city, such number of official copies of said Standard Traffic Ordinance similarly marked, as may be deemed expedient. (Ord. No. 1085, § 2, 11-6-89; Ord. No. 1101, § 1, 10-15-90; Ord. No. 1123, § 1, 1-20-92 Ord. No. 1151 § 1, 2-22-93, Ord. No. 1175 § 1, 7-23-93, Ord. No. 1221 § 1, 8-22-94; Ord. No. 1254 § 1, 10-23-95; Ord. No. 1276 §1, 9-23-96, Ord. No. 1312 § 1, 9-22-97, Ord. No. 1350 § 1, 1-25-99, Ord. No. 1364 § 1, 10-25-99; Ord. No. 1387 § 1, 9-25-00, Ord. No. 1406, § 1, 6-29-01, Ord. No. 1429 § 1, 09-23-02, Ord. No. 1455 § 1, 9-29-03, Ord. No. 1469, §1, 07-26-04; Ord. No. 1515, §1, 09-19-05; Ord. No. 1549, §1, 08-21-06; Ord. No. 1571, §1, 08-21-07; Ord. No. 1606, § 1, 8-18-08; 1623 § 1, 8-24-09; Ord. No. 1651; 8-9-2010).

(b.) Traffic Infractions and Traffic Offenses.

1. An ordinance traffic infraction is a violation of any section of this Article that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified a traffic infraction in K.S.A. 8-2118, or any amendments thereto.
2. All traffic violations which are included within this Article, and which are not ordinance traffic infractions as defined in subsection 1 of this section, shall be considered traffic offenses.

(Ord. No. 1085, § 2, 11-6-89; Ord. 1101, § 2, 10-15-90; Ord. No. 1123, § 2, 1-20-92; Ord. No. 1151 § 2, 2-22-93, Ord. No. 1175 § 2, 7-23-93. Ord. No. 1221 § 2, 8-22-94; Ord. No. 1254 § 2, 10-23-95; Ord. No. 1276 § 2, 9-23-96, Ord. No. 1312 § 2, 9-22-97, Ord. No. 1350 § 2, 1-25-99, Ord. No. 1364 § 2, 10-25-99, Ord. No. 1387 § 2, 9-25-00, Ord. No. 1406, § 2, 6-29-01, Ord. No. 1429 § 2, 09-23-02, Ord. No. 1455 § 2, 9-29-03, Ord. No. 1469, §1, 07-26-

04; Ord. No. 1515, § 2, 09-19-05; Ord. No. 1549, §1, 08-21-06; Ord. No. 1571, §1, 08-21-07; Ord. No. 1606, § 1, 8-18-08; Ord. No. 1623 § 2, 8-24-09; Ord. No. 1651; 8-9-2010).

State law references--Traffic generally, K.S.A. Ch. 8; powers of local authorities, K.S.A. Ch. 8, Art. 20.

(c) 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 more than five hundred dollars (\$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 five hundred dollars (\$500.00).” (Ord. No. 829, § 1, 11-19-79; Ord. No. 936, § 1, 1-3-83; Ord. No. 983, § 1, 1-7-85; Ord. No. 1034, §§ 1-3, 4-6-87; Ord. No. 1048, §§ 1-3, 12-7-87; Ord. No. 1066, §§ 1-3, 11-7-88; Ord. No. 1085, § 1, 11-6-89; Ord. No. 1101, § 3, 10-15-90; Ord. No. 1123, § 3, 1-20-92; Ord. No. 1151, § 3, 2-23-93, Ord. No. 1175, § 3; 7-23-93, Ord. No. 1221, § 3; 8-22-94; Ord. No. 1276 § 3, 9-23-96, Ord. No. 1312 § 3, 9-22-97, Ord. No. 1364 § 3, 10-25-99, Ord. No. 1387 § 3, 9-25-00, Ord. No. 1406, § 3, 6-29-01, Ord. No. 1429, § 3, 09-23-02, Ord. No. 1455 § 3, 9-29-03, Ord. No. 1469, §1, 07-26-04; Ord. No. 1515, § 3, 09-19-05; Ord. No. 1549, §1, 08-21-06; Ord. No. 1571, §1, 08-21-07; Ord. No. 1606, § 1, 8-18-08; Ord. No. 1623 § 3, 8-24-09).

State law reference--Adoption by reference, K.S.A. 12-3009--12-3012, 12-3301, 12-3302.

Sec. 27-2. Amendment of Standard Traffic Ordinance

A. Section 30 of the “2010 Standard Traffic Ordinance for Kansas Cities,” as adopted and incorporated pursuant to Section 27-1, is hereby amended as follows:

Sec. 30. 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 as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;
- (2) the alcohol concentration in the person's blood or breath, as measured within two 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) 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 the State of Kansas 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 \$500 nor more than \$1,000. 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 requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, 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 \$1,000 nor more than \$1,500. 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. 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 court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of 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. 8-1008, and amendments thereto.
- (f) (1) On the third 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 \$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 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 72 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.

- (2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and

satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

- (g) (1) On the fourth or subsequent conviction of a violation of this section, a person shall be sentenced to not less than 180 days nor more than one year's imprisonment and fined \$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 180 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 144 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.
- (2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified

copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary.

- (h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits 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 or an ordinance which prohibits the acts that this section prohibits. 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.
- (i) 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) 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.
- (k) 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.
- (l)
 - (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.
 - (2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this

- section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.
- (3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:
 - (A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and
 - (B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.
 - (4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.
 - (5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.
- (m) (1) Except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs.
- (2) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.
 - (3) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than two years from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.
- (n) (1) Prior to filing a complaint alleging a violation of this section, a prosecutor 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.

- (2) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.
- (o) 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 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.
- (p) For the purpose of determining whether a conviction is a first, second, third, fourth 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 a law of another state or 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 in a case alleging a violation of such law, ordinance or resolution;
 - (3) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;
 - (4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and
 - (5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.
- (q) 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, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. 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.
- (r) 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.

- (s) Upon a third or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.
- (t) For the purpose of this section:
 - (1) 'Alcohol concentration' means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
 - (2) '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.
 - (3) 'Drug' includes toxic vapors as such term is defined in K.S.A. 2009 Supp. 21-36a12, and amendments thereto.
- (u) Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such presentence evaluation shall be made available, and shall be considered by the sentencing court.

B. Section 182.1 of the "2010 Standard Traffic Ordinance for Kansas Cities," as adopted and incorporated pursuant to Section 27-1, is hereby amended to read as follows:

Sec. 182.1. Seat Belts.

- (a) Except as provided in Section 182 and in subsection (b) or (c), 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) 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.
- (d) 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.
- (e) Persons violating subsection (a) or (b) of this section shall be fined and assessed court costs (if any) as set forth in the court fines schedule established by the municipal court judge as set forth in the City's Schedule of Fees.
- (f) 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.
Ord. 1656; 10-25-2011

Sec. 27-3. Prosecution of juveniles.

Any person who has attained the age of fourteen (14) years shall be subject to prosecution in the Municipal Court of Merriam, Kansas, and shall be subject to the penalties for violation of the traffic laws and Standard Traffic Ordinance as adopted by the City of Merriam, Kansas. (Ord. No. 797, §§ 1, 2, 8-21-78; Ord. No. 1125, § 1, 3-2-92)

Sec. 27-4. Reserved.

Sec. 27-5. Traffic signs, signals, etc.

The location and existence of all traffic-control signs, signals, marking and devices while in place on the adoption date of this Code are hereby ratified and confirmed and shall be considered to have been authorized by the governing body.

Sec. 27-6. Limited access streets.

Sixty-third Street within the city limits of the city be and is hereby designated a limited access street, and that all future ingress and egress to said street be controlled through independent access roads. (Code 1976, § 15-202)

Sec. 27-7. Careless driving.

Any person operating a motor vehicle within the city limits of the city in a careless or heedless manner so as to endanger the lives of persons or damage their property, upon conviction, shall be deemed guilty of a misdemeanor. (Code 1976, § 15-104; Ord. No. 928, §§ 1, 2, 9-20-82; Ord. No. 945, § 1, 10-3-83)

Sec. 27-8. Parking after snowfalls.

All persons having vehicles parked on the streets of the city shall remove the same therefrom within two (2) hours after any snowfall which shall leave a covering of two (2) inches or more, said covering to be measured and determined by the street department. Confirmation of such determination by said street department may be obtained by any resident by calling the city clerk, police department or the county sheriff's dispatcher, who shall have previously been advised of the applicability of this article by the city street department. All cars remaining in the street two (2) hours after such snowfall, and obstructing snow removal operations of the street department, shall be towed off the street. All tow-in charges shall be paid by the owner of any vehicle so removed from the street. (Code 1976, § 14-302)

Sec. 27-9. Operation of vehicle without license.

It shall be unlawful for any person to operate a motor vehicle upon the public streets of the City of Merriam, Kansas, without having in his possession a current valid driver's license; said operator shall upon demand by a law enforcement officer of the city display his operator's license.

It shall be a defense to the charge of operating a motor vehicle while not having in possession a valid driver's license if said person so charged presents to the judge of the municipal court or the clerk of the municipal court a current driver's license that was valid at the time of the alleged offense. (Ord. No. 880, §§ I, II, 3-16-81)

Sec. 27-10. Municipal parking lot; time limitation upon parking; penalty.

- (a) Whenever any appropriate sign shall be placed and maintained by lawful authority of the city giving notice that any of the following city-controlled parking areas may be used for parking vehicles for a limited time only, it shall be unlawful for any person to fail or refuse to comply with such sign:
 - (1) Streamway Trail access parking area, 75th Street and Wedd Street;
 - (2) Campbell Park parking area, 9500 W. 61st Street;
 - (3) Park property parking area, 5245 Merriam Drive;
 - (4) Downtown parking area located on the west side of the access drive behind 5842 and 5844 Merriam Drive, adjacent to Turkey Creek.
- (b) Any person who violates subsection (a) of this section shall, upon conviction, be liable to pay a fine not to exceed twenty-five dollars (\$25.00).

- (c) Any vehicle parked in violation of subsection (a) hereof shall be subject to tow.
- (d) For purposes of this section, the terms “park” or “parking”, “person,” and “vehicle” shall have the meanings ascribed to them in Article 14 of Chapter 8 of the Kansas Statutes Annotated, as amended.
- (e) Kansas Statutes Annotated Sections 8-2112 through 8-2114, as amended, shall govern the citation and prosecution of violations of this section.

(Ord. No. 1484, §1, 09-27-04)

Sec. 27-11. Truck routes.

It shall be unlawful for any truck, as defined in this Chapter, to enter upon or be operated upon any street within the City of Merriam, Kansas, except those streets designated as and identified as Truck Routes. (Ord. No. 1106, § 1, 1-7-91)

Sec. 27-12. Exceptions to Section 27-11.

The provisions of Section 27-11 shall not be applicable to those vehicles engaged in repairing or construction of streets under the authority of the City or vehicles carrying goods, wares or merchandise or other articles to and from any house, residence or business establishment which is not on a street designated as a truck route, provided the vehicle takes the most direct route to and from the facilities when entering or leaving the premises, and utilizes truck routes when reasonably available. The provisions of Section 27-11 shall also not apply to vehicles entering upon streets and areas under construction or where construction and building are taking place for the purpose of delivering and receiving construction goods or materials, provided the vehicle takes the most direct route to and from the facilities when entering or leaving the construction area or area where building is taking place. (Ord. No. 1371, §1, 3-27-2000).

Sec. 27-13. Bridge and culvert load limits signs to have precedence.

On streets designated as Truck Routes, bridge and culvert load limit signs and regulations shall be complied with and take precedence over Truck Route designations.

Sec. 27-14. Truck routes designated.

The following streets are hereby designated as Truck Routes within the limits and jurisdiction within the City of Merriam, Kansas.

East and westbound 75th Street, 67th Street (Farley to Antioch) Shawnee Mission Parkway, Johnson Drive east of Merriam Drive, 47th Street; north and southbound Merriam Drive, West Frontage Road, Carter and Antioch.

Sec. 27-15. Posting of signs.

The streets set forth in Section 27-14 shall be properly identified and posted as Truck Routes within the limits and jurisdiction of the City.

Sec. 27-16. Truck Defined.

For purposes of this Chapter, "truck" shall mean every motor vehicle designed, used or maintained primarily for the transportation of property that is registered for a gross weight of more than 18,000 pounds (18M). (Ord. No. 1180, §1, 11-22-93)

Sec. 27-17. Violation, penalty.

Any person, firm or corporation violating the provisions of this Chapter relating to Truck Routes is guilty of a public offense and upon conviction thereof shall be fined not less than \$50.00 nor more than \$500.00 for each offense.

ARTICLE II. TOWING AND TOWING COMPANIES**Sec. 27-18. Authority to tow or impound.**

The Police Department is authorized to remove and/or tow away, or have removed and towed away by commercial towing service to an impound lot or other place designated by the City, all motor vehicles found under the following enumerated circumstances:

- a. When any motor vehicle upon a street is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle cannot safely operate the motor vehicle or are unable to provide for its custody or removal to a lawfully secure location. (Ord. No. 1241, § 1, 5-22-95)
- b. When any motor vehicle is parked illegally in such a manner as to constitute a hazard or obstruction to the safe movement of traffic. (Ord. No. 1241, § 1, 5-22-95)
- c. When the operator of any motor vehicle is arrested and taken into custody by the Police Department and such vehicle would thereby be left unattended and create a hazard or obstruction to the safe movement of traffic. (Ord. No. 1241, § 1, 5-22-95)
- d. When any motor vehicle is abandoned or left unattended on a highway or public road for a period of time in excess of 24 consecutive hours. (Ord. No. 1241, § 1, 5-22-95)

- e. When any vehicle is found being driven on the streets and is not in proper or safe condition to be driven and cannot be removed safely to a lawfully secured location by the owner or operator. (Ord. No. 1241, § 1, 5-22-95)
- f. When any motor vehicle is determined to be stolen. (Ord. No. 1241, § 1, 5-22-95, Ord. No. 1444, § 1, 5-19-03, Ord. No. 1445, § 1, 7-28-03)

Sec. 27-19. Notice to owner of vehicle to be towed or impounded in non-emergency situation.

Vehicles that are subject to being towed and impounded under conditions that do not constitute an immediate obstruction to the normal and safe movement of traffic and are determined to be abandoned shall not be towed or impounded until the motor vehicle has placed on its windshield or in another prominent location a sticker or placard indicating the vehicle is in violation of Merriam City Code and shall be removed by the Merriam Police Department after 24 hours from the time the sticker or placard was attached to the vehicle. The sticker or placard shall include such other information as the Chief of Police determines is necessary. (Ord. No. 1241, § 1, 5-22-95)

Sec. 27-20. Notice.

Whenever any motor vehicle is towed and impounded pursuant to the provisions of Section 27-18, notice, if possible, shall be given to the registered owner or person entitled to custody thereof, that such vehicle has been towed and impounded, the reasons for the tow, how the vehicle may be recovered, to include the right of hearing set out in Section 27-22. (Ord. No. 1241, § 1, 5-22-95)

Sec. 27-21. Recovery Procedures.

- a. All motor vehicles towed and impounded pursuant to the provisions of this chapter shall be surrendered to the owner or person entitled to custody of the vehicle subject to the provisions of subparagraph b herein, upon presentation of the following to the commercial tow service where the vehicle is impounded:
 - (1) Proof of ownership of the vehicle by lawful title or other proof of lawful entitlement to the vehicle;
 - (2) Proof of liability insurance on the vehicle as required by the laws of the state of Kansas;
 - (3) Proof of current registration of the vehicle as required by the laws of the state of Kansas; and
- b. Payment of all storage charges and towing fees incurred in the towing and impounding of the vehicle must be made prior to release of the vehicle unless

otherwise relieved of that requirement by application of the hearing provisions set forth in Section 27-22.

Should a person seeking release of a motor vehicle impounded under the provisions of this chapter not present proof of current registration and proof of insurance, the vehicle will not be released to be driven away from the impound lot, but the vehicle may be released to be towed from the tow lot if proof of ownership is shown and all storage and towing charges are paid.

(Ord. No. 1241, § 1, 5-22-95)

Sec. 27-22. Hearing procedure.

- a. Owners or persons entitled to the lawful custody of impounded motor vehicles who wish to contest the validity of the motor vehicle tow may request a hearing for such purpose by filing with the Merriam Police Department a request in writing upon forms approved by the Chief of Police within thirty (30) days after the date of the notice described in Section 27-20.
- b. A hearing for the purpose of determining the validity of the tow shall be held by the Municipal Court within a reasonable period after such hearing is requested, however not greater than ten (10) days. The time of the hearing shall be set by the Clerk of the Municipal Court.
- c. Pending such hearing, the owner or person lawfully entitled to custody of any impounded vehicle may retrieve the impounded vehicle upon posting bond with the Clerk of the Court in the amount of the towing charge and storage fees. Upon showing to the commercial tow service proof of posting of the bond, the motor vehicle shall be released immediately. If a bond is not posted, the vehicle shall remain in storage until the requested hearing is held.
- d. If the Municipal Court Judge determines the vehicle was lawfully towed pursuant to the provisions of Section 27-18 herein, then all charges shall be paid by the owner or person lawfully entitled to custody of the vehicle. Such charges may be paid for partly or in whole by the bond, if posted, and any surplus bond money shall be returned.
- e. If the Municipal Court Judge determines the vehicle was not towed pursuant to the provisions of Section 27-18 herein, the Court shall order the immediate release of the vehicle to its lawful owner without costs, and any bond posted shall be returned.
- f. Should any owner or person lawfully entitled to custody of an impounded vehicle post bond but fail to appear after being notified of the time of the hearing, such bond shall be forfeited.

(Ord. No. 1241, § 1, 5-22-95)

Sec. 27-23. Wrecker or tow service, foreclosure of lien.

Any person or commercial towing service that tows and impounds a motor vehicle pursuant to this chapter or any other legal request for towing and impounding by a law enforcement officer of the City shall have a possessory lien as provided for under Kansas law, and shall comply with all notice and disposition provisions for foreclosure of the lien as provided by law. (Ord. No. 1241, § 1, 5-22-95)

Sec. 27-24. Tow Service Regulation.

Any person, firm, partnership or corporation desiring to perform wrecker or towing service for the Merriam Police Department shall first be approved by the Chief of Police before being added to the list of companies authorized to respond for wrecker or towing service requests by the Merriam Police Department on a rotation basis. Any such wrecker or towing service that meets the requirements of Section 27-25 and all other provisions of this Article shall be eligible to be placed on such list and be called on such rotation basis. (Ord. No. 1241, § 1, 5-22-95)

Sec. 27-25. Requirements for approval.

The following requirements and criteria shall be met by any wrecker or towing service seeking approval to be authorized and listed as eligible to respond to requests for towing services by the Merriam Police Department.

- a. Exclusive of legal holidays, each wrecker or towing service shall be open and have a representative actually on the premises of the location or area where towed vehicles are stored or kept 9-1/2 hours per day, from 8 a.m. to 5:30 p.m. Monday through Friday and from 10:00 a.m. to Noon on Saturday. In addition thereto, each wrecker or towing service shall conspicuously post a sign at the front of their business stating the business name and a telephone number where information can be obtained about any vehicle towed or stored by the business. (Ord. No. 1241, § 1, 5-22-95)
- b. Towing and wrecker services and drivers must be available on a 24-hour, seven-days-a-week basis. (Ord. No. 1241, § 1, 5-22-95)
- c. Each towing and wrecker service must have properly zoned adequate storage facilities within a radius of five (5) miles of the City Limits of Merriam, Kansas. All automobiles towed pursuant to this chapter shall be stored within said radius. The outside storage areas shall be fenced and secured, with at least six foot high chain link fence. (Ord. No. 1241, § 1, 5-22-95)
- d. Each towing and wrecker service must have available storage area which is totally enclosed within a building for the protection and security of recovered

stolen property to be processed and valuable property left in vehicles. (Ord. No. 1241, § 1, 5-22-95)

e. Each towing and wrecker service must provide the City with proof of the following insurance protection:

(1) Garage Keepers Legal Liability insurance in the amount of at least \$50,000 on each vehicle. Coverage is to include the perils of collision, fire, lightning, explosion, theft, windstorm, hail, earthquake, flood, vandalism and, damage caused by the collision of any conveyance transporting the vehicle. (Ord. No. 1241, § 1, 5-22-95, Ord. No. 1444, § 2, 5-19-03)

(2) Garage Liability insurance to include the following:

Limits: \$500,000 Each accident, Combined Single Limits, Bodily Injury and Property Damage

Conditions: Premises & Operations Products/Completed Operations Automobile, including:

- (i) Owned
- (ii) Hired
- (iii) Non-Owned

(Ord. No. 1241, § 1, 5-22-95, Ord. No. 1444, § 2, 5-19-03)

(3) Proof of insurance must be furnished to the City in such form as may be required by the City Clerk. (Ord. No. 1241, § 1, 5-22-95)

f. Each towing and wrecker service must be certified and designated as an agent and authorized representative for the City of Merriam for the purposes of towing, removing, storing and selling of abandoned motor vehicles. In addition thereto, each towing and wrecker service must enter into and sign a hold harmless agreement with the City and provide a surety bond in the amount of \$10,000. (Ord. No. 1241, § 1, 5-22-95)

g. The criteria and requirements set forth in subsections (a) through (g) shall not apply when the person whose vehicle is to be towed shall indicate a preference as to which towing and wrecker service is to be utilized or when the person whose vehicle is to be towed shall request a specific towing or wrecker service. (Ord. No. 1241, § 1, 5-22-95)

Sec. 27-26. Fees and charges.

All wrecker or towing services shall provide to the City a current schedule of charges for towing services and storage fees. (Ord. No. 1241, § 1, 5-22-95)

Sec. 27-27. Medicine or medical supplies in towed vehicles.

No wrecker or towing service, or owner, employee or agent thereof, shall prohibit or refuse to allow the owner, operator, person in charge or possession of the towed and stored vehicle, who has proof of title or registration, to retrieve any medicine or medical supplies from such towed and stored vehicle. (Ord. No. 1241, § 1, 5-22-95)

No wrecker or towing service shall require the payment of any fees or charges before permitting access to a person retrieving medicine or medical supplies permitted to be retrieved under this section. (Ord. No. 1241, § 1, 5-22-95)

Sec. 27-28. Enforcement authority.

The Chief of Police shall establish, distribute and cause the enforcement of reasonable rules and regulations for wrecker or towing services, subject to the provisions of this chapter, as from time to time he or she deems appropriate for the safety, well-being and protection of citizens and their property within the City of Merriam, Kansas. (Ord. No. 1241, § 1, 5-22-95)

Sec. 27-29. Suspension or revocation of approval and authorization; grounds.

The Chief of Police may order that the approval and authority of a wrecker or towing service to respond to requests of said Police Department be suspended or revoked and order such wrecker or tow service be struck from the rotational call list. Any such suspension shall be effective until the deficiency is corrected or for a maximum of 60 days, said period to be determined by the Chief of Police. If such approval and authority is revoked, such wrecker or towing service shall not be eligible for reinstatement for at least one year from the date of revocation.

Such suspension or revocation shall be by written notice to the wrecker or towing service advising such service of its failure to comply with any of the requirements of this chapter or of the violation by such wrecker or towing service of the following provisions upon which a suspension or revocation may be based:

- a. Obtaining the approval and authority by fraudulent conduct or false statements;
- b. The wrecker or towing service violated the fee and charge schedule by overcharge;
- c. Such wrecker or towing service consistently refuses to respond to requests for such service by said Police Department or consistently fails to answer telephone calls from said Police Department at the telephone number supplied by the business for towing services;

- d. the wrecker or towing service responds to the scene of an accident, emergency, or impoundment situation, when not specifically called to do so, and solicits wrecker or towing business;
- e. Failure to comply with any rules or regulations governing towing services established by the Chief of Police.
- f. The City of Merriam is not satisfied with the general services of the owner and/or employees or with the cooperation it has received from such wrecker or towing service or other justifiable cause.

(Ord. No. 1241, § 1, 5-22-95)

Sec. 27-30. Appeal of suspension or revocation.

Any wrecker or towing service's approval and authority to respond to police requests which are suspended or revoked by the Chief of Police may appeal such suspension or revocation to the Finance, Administration and Operations Committee of said city by filing a written notice of appeal with the Chief of Police within five (5) days of receipt of the notice of suspension or revocation. The filing of such notice of appeal shall stay the effect of such suspension or revocation until a hearing is held before said committee at its next regular meeting; provided, however, that if the committee renders a decision upholding the suspension or revocation, the wrecker or towing service may appeal such decision to the entire governing body of said city at its next regular meeting. (Ord. No. 1241, § 1, 5-22-95)

The Finance, Administration and Operations Committee shall have the power to reverse, alter, modify, uphold or increase any suspension or revocation ordered by the Chief of Police. The Governing body shall have the power to reverse, alter, modify, uphold, or increase any suspension or revocation ordered by the Chief of Police or said committee. (Ord. No. 1241, § 1, 5-22-95)