

1 **CITY OF SANTA FE, NEW MEXICO**

2 **BILL NO. 2010-7**

3 **INTRODUCED BY:**

4  
5 Councilor Wurzbarger

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9  
10 **AN ORDINANCE**

11 **AMENDING SECTION 1-3.2 SFCC 1987 REGARDING THE IMPOSITION OF**  
12 **MUNICIPAL COURT FEES AND SECTION 12-6-12.2 OF THE *CITY OF SANTA FE***  
13 ***UNIFORM TRAFFIC CODE* REGARDING PENALTIES FOR OPERATING A MOTOR**  
14 **VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.**

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

17 **Section 1. Section 1-3.2 SFCC 1987 (being Ord. #2005-7, §1 as amended) is**  
18 **amended to read:**

19 **1-3.2 Imposition of Municipal Court Fees.**

20 A. The city hereby imposes the following fees which shall be collected by the  
21 municipal court upon conviction from persons convicted of violating any ordinance relating to the  
22 operation of a motor vehicle, except those related to parking, or any ordinance that may be  
23 enforced by the imposition of a term of imprisonment:

24 (1) Corrections fee [~~\$20.00~~] \$30.00

25 (2) Judicial education fee \$3.00

- 1 (3) Court automation fee \$6.00
- 2 (4) Court administrative fee \$10.00
- 3 (5) In-house automation fee \$2.00
- 4 (6) Public safety fee \$5.00

5 B. As used in this section, convicted means the defendant has been found guilty of a  
6 criminal charge by the municipal judge, either after trial, a plea of guilty or a plea of nolo  
7 contendere.

8 C. The corrections fee shall be deposited in a special city fund and shall be used for  
9 the uses set forth in this paragraph. Twenty dollars (\$20.00) of the corrections fee shall be used  
10 for housing municipal prisoners in a county jail or detention facility or housing juveniles in a  
11 detention facility and ten dollars (\$10.00) of the corrections fee shall be transferred into the city's  
12 general fund and used for the court related purposes set forth below. [The city may credit the  
13 interest collected from the correction fees deposited in the special fund to the city's general fund.]

- 14 (1) Municipal jailer or juvenile detention officer training;
- 15 (2) The construction planning, construction, operation and maintenance of a  
16 municipal jail or juvenile detention facility;
- 17 ~~[(3) — Paying the cost of housing municipal prisoners in a county jail or~~  
18 ~~detention facility or housing juveniles in a detention facility;]~~
- 19 [(4)](3) Complying with match or contribution requirements for the receipt of  
20 federal funds relating to jails or juvenile detention facilities;
- 21 ~~[(5)]~~(4) Providing inpatient treatment or other substance abuse programs in  
22 conjunction with or as an alternative to jail sentencing;
- 23 ~~[(6)]~~(5) Defraying the cost of transporting prisoners to jails or juveniles to  
24 juvenile detention facilities; or
- 25 ~~[(7)]~~(6) Providing electronic monitoring systems.

1 D. The judicial education fee and the court automation fee shall be remitted to the  
2 state according to the applicable state law.

3 E. The court administrative fee shall be retained by the city for the municipal court.

4 F. The in-house automation fee shall be retained by the city and used for in-house  
5 automation systems in the municipal court.

6 G. The public safety fee shall be retained by the city for use by the police  
7 department.

8 H. Five dollars (\$5.00) out of the ten dollar (\$10.00) administrative fee shall be  
9 specifically earmarked for alternative sentencing programs at the municipal court. If the amount  
10 collected under this paragraph is more than is needed for this program, ~~[there shall be an~~  
11 ~~alternative place to put the money]~~ the funds may be used for other court programs or costs.

12 I. A person convicted of a violation of the provisions of the Controlled Substances  
13 Act [30-31-1 NMSA 1978] or a person convicted of distribution or possession of a controlled  
14 substance pursuant to Article 16-15 SFCC 1987 shall be assessed, in addition to any other fee or  
15 fine, a fee of seventy-five dollars (\$75.00) to defray the costs of chemical and other analyses of  
16 controlled substances. Collection of such fees shall be transmitted to the administrative office of  
17 the courts pursuant to §31-12-9 NMSA 1978.

18 J. A person convicted of driving while under the influence of intoxicating liquor or  
19 drugs in violation of Section 12-6-12.2 of the City of Santa Fe Uniform Traffic Code shall be  
20 assessed by the court, in addition to any other fee or fine, the fees as set forth in said section.

21 ~~[J.]~~ K. Upon issuance of a bench warrant, the municipal court shall assess an  
22 administrative fee of one hundred dollars (\$100.) against the individual whose arrest is  
23 commanded by the bench warrant. Money collected pursuant to the bench warrant fee assessment  
24 authorized by this subsection shall be deposited in the general fund of the city of Santa Fe.

25 **Section 2. Section 12-6-12.2 of the City of Santa Fe Uniform Traffic Code**

1 (being Ord. No. 2008-44) is amended to read:

2 **12-6-12.2 OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF**  
3 **INTOXICATING LIQUOR OR DRUGS; PENALTIES; SENTENCING; FEES.**

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

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

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

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

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

19 C. A person under first conviction pursuant to this section shall be punished by  
20 imprisonment for not more than ninety days or by a fine of not more than nine hundred ninety-  
21 nine dollars (\$999.00), or both; provided that if the sentence is suspended in whole or in part or  
22 deferred, the period of probation may extend beyond ninety days but shall not exceed one year.  
23 Upon a first conviction pursuant to this section, an offender shall be sentenced to not less than 24  
24 hours of community service. In addition, the offender may be required to pay a fine of three  
25 hundred dollars (\$300.00). The offender shall be ordered by the court to participate in and

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

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

24 (1) upon a second conviction, each offender shall be sentenced to a jail term  
25 of not less than ninety-six consecutive hours, not less than forty-eight hours of community service

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 I. A person who is issued an ignition interlock license and operates a vehicle that is  
22 not equipped with an ignition interlock device is driving with a license that was revoked for  
23 driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent  
24 Act and may be subject to the penalties provided in section 12-6-12.6.

25 J. A person who is issued an ignition interlock license and who knowingly and

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

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

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

22 |       M.       If a person is convicted of driving a motor vehicle while under the influence of  
23 | intoxicating liquor or drugs in violation of 12-6-12.1A, B, C or D, a first offender, at the  
24 | discretion of a trial court after a pre-sentence investigation, including an inquiry to the motor  
25 | vehicle division of the transportation department concerning the driver's driving record, shall



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

8 N. A person convicted of driving a motor vehicle while under the influence of  
9 intoxicating liquor or drugs in violation of 12-6-12.1A, B, C or D shall be assessed, in addition to  
10 any other fee or fine, a fee of [~~sixty-five dollars (\$65.00)~~] eighty-five dollars (\$85.00) to defray  
11 the cost of chemical and other tests used to determine the influence of alcohol or drugs.  
12 Additionally, the person shall be assessed a fee of seventy-five dollars (\$75.00) to fund  
13 comprehensive community programs for the prevention of driving while under the influence of  
14 intoxicating liquor or drugs or for other traffic safety purposes. The municipal court shall collect  
15 the fees and maintain the fees in separate funds and transfer the fees along with other funds  
16 collected by the court per 35-14-7 NMSA 1978. The municipality shall maintain the fees  
17 pursuant to this subsection in separate funds and transfer the fees collected pursuant to this  
18 subsection to the administrative office of the courts for credit to the crime laboratory fund and the  
19 traffic safety fund. (31-12-7 through 31-12-9 NMSA 1978) In addition to the two fees previously  
20 described, the person shall be assessed a probation (tracking) fee of one hundred and twenty-five  
21 dollars (\$125.00) to be retained by the city in the general fund to offset the costs related to  
22 supervised probation by the municipal court.

23 O. With respect to this section and notwithstanding any provision of law to the  
24 contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender  
25 violates any condition of probation, the court may impose any sentence that the court could have

1 originally imposed and credit shall not be given for time served by the offender on probation.

2 (66-8-102 NMSA 1978)

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

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

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

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

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

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

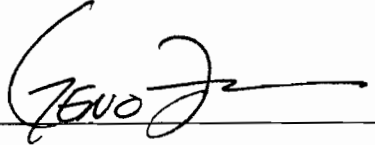
16 (c) is designed to transport sixteen or more passengers, including the  
17 driver; or

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

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

1 R. A law enforcement officer making an arrest for a violation of the provisions of  
2 12-6-12.2 or of similar municipal or county ordinances shall use standard arrest reports and  
3 procedures developed and approved by the Department of Public Safety in accordance with  
4 Section 8 of Laws of 2005, Chapter 269.

5 APPROVED AS TO FORM:

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8 GENO ZAMORA, CITY ATTORNEY