

★ Roll Call Number

Agenda Item Number

36

Date June 28, 2010


An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by amending Sections 114-445 and 114-446, relating to safety belts and child restraint devices",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)


 Douglas P. Philiph
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by amending Sections 114-445 and 114-446, relating to safety belts and child restraint devices.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by amending Sections 114-445 and 114-446 relating to safety belts and child restraint devices, as follows:

Sec. 114-445. Use of safety belts and safety harnesses required.

- (a) Except for motorcycles or motorized bicycles, 1966 model year or newer motor vehicles subject to registration in this state shall be equipped with safety belts and safety harnesses which conform with federal motor vehicle safety standards specified in I.C. § 321.445 subsection 1. of a type and installed in a manner approved by the state department of transportation.
- (b) The driver and front seat occupants of a type of motor vehicle which is subject to registration in this state, except a motorcycle or a motorized bicycle, shall each wear a properly adjusted and fastened safety belt or safety harness any time the vehicle is in forward motion on a street or highway in this state, except that a child under sixteen years of age shall be secured as required under section 114-446 of this division. This subsection does not apply to the following:
 - (1) The driver or front seat occupants of a motor vehicle which is not required to be equipped with safety belts or safety harnesses under rules adopted by the state department of transportation.
 - (2) The driver and front seat occupants of a motor vehicle who are actively engaged in work which requires them to alight from and reenter the vehicle at frequent intervals, providing the vehicle does not exceed 25 miles per hour between stops.
 - (3) The driver of a motor vehicle while performing duties as a rural letter carrier for the United States Postal Service. This exemption applies only between the first delivery point after leaving the post office and the last delivery point before returning to the post office.
 - (4) Passengers on a bus.

- (5) A person possessing a written certification from a physicianhealth care provider licensed under I.C. chs. 148 or 151 on a form provided by the state department of transportation that the person is unable to wear a safety belt or safety harness due to physical or medical reasons. The certification shall specify the time period for which the exemption applies. The time period shall not exceed 12 months, at which time a new certification may be issued, unless the certifying physician is from a United States military facility, in which case the certificate may specify a longer period of time or a permanent exemption.
- (6) Front seat occupants of an authorized emergency vehicle while they are being transported in an emergency. However, this exemption does not apply to the driver of the authorized emergency vehicle.
- (c) The driver and front seat passengers may be each charged separately for improperly used or unused equipment under subsection (b) of this section. However, the driver shall not be charged for a violation committed by a passenger who is fourteen years of age or older unless the passenger is unable to properly fasten a seat belt due to a temporary or permanent disability. The owner of the motor vehicle may be charged for equipment violations under subsection (a) of this section.

State law reference(s) -- Similar provisions, I.C. § 321.445.

Sec. 114-446. Child restraint devices.

- (a) A child ~~under three years of age~~ one year of age and weighing less than twenty pounds who is being transported in a motor vehicle subject to registration under state law ~~which has a gross weight of 10,000 pounds or less as specified by the manufacturer, except a school bus or motorcycle, shall be secured during transit by a child restraint system which meets federal motor vehicle safety standards, and the system shall be~~ in a rear-facing child restraint system that is used in accordance with the manufacturer's instructions.
- (b) A child ~~at least three years of age but under six years of age~~ who does not meet the description in paragraph (a) and who is being transported in a motor vehicle subject to registration under state law ~~which has a gross weight of 10,000 pounds or less as specified by the manufacturer, except a school bus or motorcycle, shall be secured during transit by either a child restraint system that meets federal motor vehicle safety standards and is used in accordance with the manufacturer's instructions, or by a safety belt or safety harness of a type approved under I.C. § 321.445.~~

- (c) A child at least six years of age but under eighteen years of age who is being transported in a motor vehicle subject to registration under state law, except a school bus or motorcycle, shall be secured during transit by a child restraint system that is used in accordance with the manufacturer's instructions or by a safety belt or safety harness of a type approved under section 114-445.
- (ed) This section does not apply to the following:
- (1) ~~p~~Peace officers acting on official duty. This section also does not apply to the
 - (2) The transportation of children in 1965 model year or older vehicles, ~~or~~ authorized emergency vehicles, buses, or motor homes, except when a child is transported in a motor home's passenger seat situated directly to the driver's right. This section does not apply to the
 - (3) The transportation of a child who has been certified by a physician licensed under I.C. ch. 148, ~~150, or 150A~~ as having a medical, physical, or mental condition which that prevents or makes inadvisable securing the child in a child restraint system, safety belt or safety harness.
 - (4) A back seat occupant of a motor vehicle for whom no safety belt is available because all safety belts are being used by other occupants or cannot be used due to the use of a child restraint system in the seating position for which a belt is provided.
- (de) The operator who violates subsection (a), ~~or~~ (b) or (c) of this section is guilty of a misdemeanor and subject to a scheduled fine as required under I.C. § 805.8 ~~of \$10.00.~~ Violations shall be charged as follows:
- (1) An operator who transports a passenger under fourteen years of age in violation of subsections (a), (b) or (c) may be charged with a violation of this section.
 - (2) If a passenger fourteen years of age or older is unable to properly fasten a seatbelt due to a temporary or permanent disability, an operator who transports such a person in violation of subsection (c) may be charged with a violation of this section. Otherwise, a passenger fourteen years of age or older who violates subsection (c) shall be charged in lieu of the operator.
 - (3) If a child under fourteen years of age, or a child fourteen years of age or older who is unable to fasten a seatbelt due to a temporary or permanent disability, is being transported in a taxicab in a manner that is not in compliance with subsection (a), (b) or (c), the parent, legal guardian, or other responsible adult traveling with the child shall be served with a citation for a violation of this section in lieu of the taxicab operator. Otherwise, if a passenger being transported in the taxicab is fourteen years of age or older, the citation shall be served on the passenger in lieu of the taxicab operator.

- (ef) A person who is first charged for a violation of subsection (a) or b of this section and who has not purchased or otherwise acquired a child restraint system shall not be convicted if the person produces in court, within a reasonable time, proof that the person has purchased or otherwise acquired a child restraint system which meets federal motor vehicle safety standards.
- (fg) Failure to use a child restraint system, safety belts, or safety harnesses as required by this section does not constitute negligence nor is the failure admissible as evidence in a civil action.
- (h) For purposes of this section, "child restraint system" means a specially designed seating system, including a belt-positioning seat or a booster seat, that meets federal motor vehicle safety standards specified in I.C. § 321.446.

State law reference(s)--Similar provisions, I.C. § 321.446.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Douglas P. Philip
Assistant City Attorney

CITY ATTORNEY

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DEPUTY CITY ATTORNEYSMark Godwin
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Carol J. Moser
Douglas P. Philip

June 28, 2010

**HONORABLE MAYOR AND MEMBERS
OF THE DES MOINES CITY COUNCIL**

**Re: Ordinance Amendment Relating to Safety Belts and Child Restraint Devices
Item No. 36 on Agenda.**

This ordinance amendment is necessary to bring our city code up to date with the state law concerning seat belts and child restraint devices that are required in vehicles. The state law changes take effect as of July 1, 2010. Therefore waiver of the readings is requested by the legal department so the city ordinance can take effect as close in time to July 1, as possible.

The new law is summarized as follows. Failure to wear a seatbelt as the driver or a front seat passenger will result in a scheduled fine of \$50.00. This is up from \$25.00. Failure to use seatbelts by a person under 18 years old anywhere in the vehicle or to properly secure a child in a child restraint device will result in a scheduled fine of \$100.00. The child restraint violation is up from the \$10.00 fine noted in our current city code.

This law also provides that children under the age of eighteen must now be securely fastened in a seat belt while riding in a vehicle. The law applicable to restraint systems required for children under one and under six years old remains the same. Also the seatbelt law applicable to the driver and front seat passenger (state code section 321.445 and city code section 114-445) remains the same with one exception. The driver and front seat passenger may each still be charged separately, except now the driver shall not be charged for a violation committed by a passenger who is 14 years old or older unless the passenger is unable to properly fasten a seatbelt due to a disability.

Also, the law now specifies that seatbelt violations of the passengers shall be charged as follows:

1. To an operator who transports a passenger under 14 years old not properly belted or restrained in the vehicle. (This includes taxi drivers.)
2. To the passenger who is 14 years old or older, except if they cannot properly fasten a seatbelt due to a disability, then to the operator.
3. In lieu of a taxicab driver, the citation shall go to the parent, legal guardian or other responsible adult traveling in a taxicab with a child under 14 years old if the child is not properly belted or restrained, or if the child is 14 to under 18 years old and cannot properly fasten a seatbelt due to a disability.

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In addition to the old exceptions applicable to child safety restraints (school buses, other buses, motorcycles, peace officers while acting on official duty, 1965 or older model vehicles, emergency vehicles, motor homes except in front seat, and doctors orders) there is now no violation for a person seated in the back seat when no seat belt is available due to all belts being used by others, or if one cannot be used due the use of a child restraint system in the seating position for which a belt is provided.

The legal department recommends adoption of these proposed ordinance amendments to conform to state law and requests waiver of readings.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas P. Philip". The signature is stylized with a large initial "D" and a long, sweeping underline.

Douglas P. Philip
Assistant City Attorney