

**AN ORDINANCE** amending Chapter 114, Article VII, Operation of Vehicles, Division 1., Generally, Section 114-174, Seat belts required., of the Joplin City Code, by repealing Section 114-174, of the Joplin City Code, and enacting a new Section 114-174, Seat belts required., in lieu thereof; and amending Section 114-175, Passenger restraint system for children under four years of age., by repealing Section 114-175 of the Joplin City Code, and enacting a new Section 114-175, Passenger restraint system for children under sixteen years of age., in lieu thereof.

WHEREAS, the State of Missouri has recently amended its legislation regarding passenger restraints for children under age sixteen (16) who are being transported in a motor vehicle; and,

WHEREAS, it is necessary to amend the Joplin City Code, Section 114-174 and Section 114-175, to mirror the now existing Missouri State Statutes relating to the use of passenger restraint systems for children under sixteen (16) years of age.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That Section 114-174 of the Joplin City Code, Seat belts required., is hereby repealed, and a new Section 114-174, Seat belts required., is enacted in lieu thereof, to read as follows:

"Sec. 114-174. Seat belts required.

(a) As used in this section, the term "passenger car" means every motor vehicle designed for carrying ten persons or less and used for the transportation of persons; except that, the term "passenger car" shall not include motorcycles, motorized bicycles, motor tricycles and trucks with a licensed gross weight of twelve thousand pounds or more.

(b) Each driver, except persons employed by the United States Postal Service, while performing duties for that federal agency which require the operator to service postal boxes from their vehicles, or which require frequent entry into and exit from their vehicles, and front seat passenger of a passenger car manufactured after January 1, 1968, operated on a street or highway in this city, and persons less than eighteen years of age operating or riding in a truck, as defined in RSMo 301.010, on a street or highway of this city shall wear a properly adjusted and fastened safety belt that meets federal National Highway, Transportation and Safety Act requirements. No person shall be stopped, inspected, or detained solely to determine compliance with this subsection. The provisions of this section shall

not be applicable to persons who have a medical reason for failing to have a seat belt fastened about their body, nor shall the provisions of this section be applicable to persons while operating or riding a motor vehicle being used in agricultural work-related activities. Noncompliance with this subsection shall not constitute probable cause for violation of any other provision of law. The provisions of this subsection shall not apply to the transporting of children under sixteen years of age, as provided in Section 114-175.

(c) Each driver of a motor vehicle transporting a child less than sixteen years of age shall secure the child in a properly adjusted and fastened restraint under Section 114-175.

(d) In any action to recover damages arising out of the ownership, common maintenance or operation of a motor vehicle, failure to wear a safety belt in violation of this section shall not be considered evidence of comparative negligence. Failure to wear a safety belt in violation of this section may be admitted to mitigate damages, but only under the following circumstances:

(1) Parties seeking to introduce evidence of the failure to wear a safety belt in violation of this section must first introduce expert evidence proving that a failure to wear a safety belt contributed to the injuries claimed by plaintiff;

(2) If the evidence supports such a finding, the trier of fact may find that the plaintiff's failure to wear a safety belt in violation of this section contributed to the plaintiff's claimed injuries, and may reduce the amount of the plaintiff's recovery by an amount not to exceed one percent of the damages awarded after any reductions for comparative negligence.

(e) Each driver who violates the provisions of subsection (b) or (c) of this section is guilty of an infraction for which a fine not to exceed ten dollars may be imposed. All other provisions of law and court rules to the contrary notwithstanding, no court costs shall be imposed on any person due to a violation of this section.

(f) If there are more persons than there are seat belts in the enclosed area of a motor vehicle, then the passengers who are unable to wear seat belts shall sit in the area behind the front seat of the motor vehicle unless the motor vehicle is designed only for a front-seated area. The passenger or passengers occupying a seat location referred to in this subsection is not in violation of this section."

Section 2. That Section 114-175 of the Joplin City Code, Passenger restraint system for children under four years of age., is hereby repealed, and a new Section 114-175, Passenger restraint system for children under sixteen years of age., is enacted in lieu thereof, to read as follows:

"Sec. 114-175. Passenger restraint system for children under sixteen years of age.

1. As used in this section, the following terms shall mean:

(1) "Child booster seat", a seating system which meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213, as amended, that is designed to elevate a child to properly sit in a federally approved safety belt system;

(2) "Child passenger restraint system", a seating system which meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213, as amended, and which is either permanently affixed to a motor vehicle or is affixed to such vehicle by a safety belt or a universal attachment system;

(3) "Driver", a person who is in actual physical control of a motor vehicle.

2. Every driver transporting a child under the age of sixteen years shall be responsible, when transporting such child in a motor vehicle operated by that driver on the streets or highways of this state, for providing for the protection of such child as follows:

(1) Children less than four years of age, regardless of weight, shall be secured in a child passenger restraint system appropriate for that child;

(2) Children weighing less than forty pounds, regardless of age, shall be secured in a child passenger restraint system appropriate for that child;

(3) Children at least four years of age but less than eight years of age, who also weigh at least forty pounds but less than eighty pounds, and who are also less than four feet, nine inches tall, shall be secured in a child passenger restraint system or booster seat appropriate for that child;

(4) Children at least eighty pounds or children more than four feet, nine inches in height shall be secured by a vehicle safety belt or booster seat appropriate for that child;

(5) A child who otherwise would be required to be secured in a booster seat may be transported in the back seat of a motor vehicle while wearing only a lap belt if the back seat of the motor vehicle is not equipped with a combination lap and shoulder belt for booster seat installation;

(6) When transporting children in the immediate family when there are more children than there are seating positions in the enclosed area of a motor vehicle, the children who are not able to be restrained by a child safety restraint device appropriate for the child shall sit in the area behind the front seat of the motor vehicle unless the motor vehicle is designed only for a front seat area. The driver transporting children referred to in this subsection is not in violation of this section.

This subsection shall only apply to the use of a child passenger restraint system or vehicle safety belt for children less than sixteen years of age being transported in a motor vehicle.

3. Any driver who violates subdivision (1), (2) or (3) of subsection 2 of this section, upon conviction, may be punished by a fine of not more than \$50.00 and court costs. Any driver who violates subdivision (4) of subsection 2 of this, upon conviction, may be punished by a fine of not more than \$10.00. If a driver receives a citation for violating subdivision (1), (2) or (3) of subsection 2 of this section, the charges shall be dismissed or withdrawn if the driver prior to or at his or her hearing provides evidence of acquisition of a child passenger restraint system or child booster seat which is satisfactory to the court or the party responsible for prosecuting the driver's citation.

4. The provisions of this section shall not apply to any public carrier for hire. The provisions of this section shall not apply to students four years of age or older who are passengers on a school bus designed for carrying eleven passengers or more and which is manufactured or equipped pursuant to Missouri Minimum Standards for School Buses as school buses are defined in section 301.010, RSMo."

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 2nd day of April, 2007.

Jon Tupper, Mayor

ATTEST:

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney