

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 12-1, ARTICLE 6 OF THE CITY CODE RELATING TO AUTOMATED RED LIGHT ENFORCEMENT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 12-1 (*Traffic Regulation and Administration*) of the City Code is amended to repeal Article 6 and replace it with a new Article 6 to read:

ARTICLE 6. AUTOMATED RED LIGHT ENFORCEMENT.

§ 12-1-61 DEFINITIONS.

In this article:

- (1) COURT means the Austin Municipal Court.
- (2) DATE OF THE NOTICE means the date that appears in the heading of the notice. Date of the notice does not mean the date of the alleged violation.
- (3) DEPARTMENT means the City of Austin Police Department.
- (4) OWNER means the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country.
- (5) PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM means a system that:
 - (a) consists of a camera system and vehicular sensor installed to exclusively work in conjunction with an electrically operated traffic control signal; and
 - (b) is capable of producing at least two recorded images that depict the license plate attached to the front or the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal.

1 (6) RECORDED IMAGE means a photographic or digital image that
2 depicts the front or the rear of a motor vehicle and includes the
3 registration number displayed on the license plate of the vehicle.

4 (7) SYSTEM LOCATION means the approach to an intersection toward
5 which a photographic traffic signal enforcement system is directed and
6 in operation.

7 (8) TRAFFIC CONTROL SIGNAL has the meaning assigned by Texas
8 Transportation Code, Section 541.304 (*Traffic Control*).

9 **§ 12-1-62 IMPOSITION OF CIVIL PENALTY FOR VIOLATIONS.**

10 (A) An owner of a motor vehicle is liable for a civil penalty if the vehicle
11 proceeds into an intersection at a system location when facing only a steady
12 red signal displayed by a traffic control signal, as specified by Texas
13 Transportation Code, Section 544.007(d)(*Traffic-Control Signals in General*).

14 (B) Except as provided in Subsection (C) below, the civil penalty for which the
15 owner is liable cannot exceed \$75.

16 (C) An owner who fails to timely contest or pay the civil penalty shall be subject
17 to a late payment penalty of \$25.

18 (D) Failure to timely pay the civil penalty or to timely contest liability is an
19 admission of liability in the full amount of the civil penalty assessed in the
20 notice of violation and constitutes a waiver of the right to an administrative
21 adjudication hearing and an appeal under Section 12-1-64 (*Administrative*
22 *Adjudication Hearing*).

23 **§ 12-1-63 ENFORCEMENT; PROCEDURES.**

24 (A) The court and the department are responsible for the enforcement and
25 administration of this article.

26 (B) To impose a civil penalty under this article, not later than the thirtieth day
27 after the violation is alleged to have occurred, the court or the department
28 shall mail, or cause to be mailed, a notice to:

29 (1) the owner's address as shown on the registration records of the Texas
30 Department of Transportation; or

31 (2) if the vehicle is registered in another state or country, the owner's
32 address as shown on the motor vehicle registration records of the

1 department or agency of the other state or country analogous to the
2 Texas Department of Transportation.

3 (C) A notice of violation issued under this article shall include:

- 4 (1) a description of the alleged violation;
- 5 (2) the location of the intersection where the violation occurred;
- 6 (3) the date and time of the violation;
- 7 (4) the name and address of the owner of the vehicle involved in the
8 violation;
- 9 (5) the registration number displayed on the license plate of the vehicle
10 involved in the violation;
- 11 (6) a copy of a recorded image of the violation limited solely to a depiction
12 of the area of the registration number displayed on the license plate of
13 the vehicle involved in the violation;
- 14 (7) the amount of the civil penalty for which the owner is liable;
- 15 (8) the number of days the person has in which to pay or contest the
16 imposition of the civil penalty and a statement that the person incurs a
17 late payment penalty if the civil penalty is not paid or imposition of the
18 penalty is not contested within that period;
- 19 (9) a statement that the owner of the vehicle in the notice of violation may
20 pay the civil penalty in person, by mail sent to a specified address or
21 other electronic means instead of appearing at the time and place of the
22 administrative adjudication hearing;
- 23 (10) information that informs the owner of the vehicle named in the notice
24 of violation:
 - 25 (a) of the owner's right to contest the imposition of the civil penalty
26 against the person in an administrative adjudication hearing;
 - 27 (b) that imposition of the civil penalty may be contested in person or
28 by submitting a written request for an administrative adjudication
29 hearing before the expiration of the period specified under
30 paragraph (C)(8); and

(c) that failure to pay the civil penalty or to contest liability for the penalty in a timely manner is an admission of liability and a waiver of owner's right to appeal the imposition of the civil penalty;

(11) a statement that, if at the time and place of the alleged violation, the vehicle depicted in the photograph or digital image taken by the traffic control enforcement system was being operated by a person other than the owner, then the owner may transfer liability for the violation to the person who was operating the vehicle if the owner provides to the court in an affidavit of non-liability, or under oath at an administrative adjudication hearing, the name and current address of the person who was:

(a) operating the vehicle at the time and place of the alleged violation;

(b) renting or leasing the vehicle at the time of the alleged violation, if the vehicle was rented or leased from a person in the business of renting or leasing motor vehicles at that time;

(c) the subsequent owner of the motor vehicle, if ownership of the vehicle was transferred by the owner before the time of the alleged violation; or

(d) test driving the vehicle at the time of the alleged violation; and,

(12) a statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty.

(D) A notice of violation is presumed to have been received on the fifth day after the date the notice of violation was mailed.

(E) A copy of a transfer of certificate of title form or a statement from the tax assessor's office verifying transfer of title before the date of the alleged violation shall be accepted as proof of title transfer.

(F) Only a registered owner of the vehicle involved in the alleged violation may submit an affidavit of non-liability.

(G) A registered owner may submit only one affidavit of non-liability for each alleged violation.

(H) The person named in an affidavit of non-liability described in paragraph (C)(11) shall be issued a notice of violation within thirty days of the court receiving the owner's affidavit of non-liability.

- 1 (I) If the court, department or hearing officer determines that a registered owner
2 failed to submit current information, or submitted false information in an
3 affidavit of non-liability, then potential liability for the alleged violation shall
4 revert to that registered owner.
- 5 (J) The court shall ensure that a form affidavit of non-liability is provided with
6 each notice of violation and posted on the City website.
- 7 (K) The City reserves the right to designate the name and address of the operator
8 of a vehicle in violation of this ordinance when the vehicle is owned by the
9 City. The City shall follow the procedures set forth in this Section 12-1-63
10 *Enforcement; Procedures*) to make the designation.

11 **§ 12-1-64 ADMINISTRATIVE ADJUDICATION HEARING.**

- 12 (A) A person who receives a notice of violation under this article may contest the
13 imposition of a civil penalty by requesting, in person or in writing, an
14 administrative adjudication hearing within thirty days of the date the notice of
15 violation is received. Upon receipt of the request, the court shall notify the
16 person of the date and time of the administrative adjudication hearing. The
17 administrative adjudication hearing shall be held before a hearing officer
18 appointed by the Clerk of the Municipal Court. The hearing officer shall have
19 the authority to administer oaths and issue orders compelling the attendance of
20 witnesses and the production of documents.
- 21 (B) Failure to appear at an administrative adjudication hearing after having
22 requested one is an admission of liability for the full amount of the civil
23 penalty assessed in the notice of violation and constitutes a waiver of the right
24 to a hearing under paragraph (A) and an appeal under paragraph (J).
- 25 (C) The civil penalty may not be assessed against the owner if:
- 26 (1) after a hearing, the hearing officer enters a finding of no liability; or
- 27 (2) within the time prescribed in the notice of violation, the person against
28 whom the civil penalty is to be assessed submits proof that the vehicle
29 was being operated by another person, as described in Section 12-1-
30 63(C)(11)(*Enforcement; Procedures*).
- 31 (D) In an administrative adjudication hearing, the department must prove each
32 issue by a preponderance of the evidence. The reliability of the photographic
33 traffic signal enforcement system used to produce the photographic or digital
34 image of the alleged violation may be attested to by affidavit of an employee
35 of the City or the entity with which the City contracts to install or operate the
36 system and who is responsible for inspecting and maintaining the system.

- 1 (E) An affidavit of an employee of the City that alleges a violation based on an
2 inspection of the pertinent recorded image is admissible in a proceeding under
3 this article, is evidence of the facts contained in the affidavit, and is prima
4 facie evidence of the violation alleged in the notice of violation.
- 5 (F) A person who requests an administrative adjudication hearing, whether in
6 person or by mail, may assert affirmative defenses regarding the imposition of
7 the civil liability. The hearing officer may continue an administrative
8 adjudication hearing if the affirmative defense asserted by the person
9 contesting civil liability challenges the installation, operation or maintenance
10 of the photographic traffic signal enforcement system. It is an affirmative
11 defense to liability under this article that:
- 12 (1) the traffic-control signal was not in a proper position to observe the
13 violation, and the recorded image is not sufficiently legible for a
14 reasonable person to conclude that a violation occurred;
 - 15 (2) the operator of the motor vehicle was acting in compliance with the
16 lawful order or direction of a police officer;
 - 17 (3) the operator of the motor vehicle entered the intersection to yield the
18 right-of-way to an immediately approaching authorized emergency
19 vehicle;
 - 20 (4) the motor vehicle was being operated as an authorized emergency
21 vehicle under Texas Transportation Code Chapter 546 (*Operation of*
22 *Authorized Emergency Vehicles and Certain Other Vehicles*);
 - 23 (5) the motor vehicle was a stolen vehicle;
 - 24 (6) the license plate depicted in the recorded image of the violation was a
25 stolen license plate being displayed on a motor vehicle other than the
26 motor vehicle for which the plate was issued;
 - 27 (7) the vehicle was being operated by a person other than the owner of the
28 vehicle;
 - 29 (8) the presence of ice, snow, unusual amounts of rain or, other unusually
30 hazardous road conditions existed that would make compliance with
31 this article more dangerous under the circumstances than non-
32 compliance; or
 - 33 (9) a peace officer issued a citation to the driver of the vehicle for the same
34 incident.

- 1 (G) The burden of proof for an affirmative defense to liability is on the person
2 asserting the defense.
- 3 (H) To demonstrate an affirmative defense listed in paragraph (F)(5) or (F)(6)
4 above, the owner must submit evidence acceptable to the hearing officer that
5 the theft of the vehicle or license plate had been reported to the appropriate
6 law enforcement agency before or about the time of the alleged violation.
- 7 (I) Notwithstanding anything in this article to the contrary, a person who fails to
8 timely pay the amount of a civil penalty or request an administrative
9 adjudication hearing is entitled to an administrative adjudication hearing on
10 the violation if:
- 11 (1) the person submits a written request for a hearing attesting to the actual
12 date on which the person received the mailed notice of violation; and
- 13 (2) the request and affidavit are submitted not later than the thirtieth day
14 after the person actually received the notice of violation.
- 15 (J) A person who is found liable for a civil penalty by a hearing officer may
16 appeal that determination to the Municipal Court by filing an appeal petition
17 with the Clerk of the Municipal Court.
- 18 (1) The petition must be filed not later than the thirtieth calendar day after
19 the date on which the administrative hearing officer entered the finding
20 of liability.
- 21 (2) The Clerk of the Municipal Court shall schedule a hearing and notify
22 the owner or operator and the department of the date, time and place of
23 the hearing on appeal.
- 24 (3) An appeal stays enforcement and collection of the civil penalty imposed
25 against the owner of the motor vehicle.
- 26 (4) An appeal shall be determined by the court by hearing de novo. All
27 evidence, to include the affidavits, statements and declarations of non-
28 liability submitted under Section 12-1-63(C)(10)(*Enforcement;*
29 *Procedures*), may be submitted and all issues must be proved by a
30 preponderance of the evidence.
- 31 (5) Failure to appear at a hearing on appeal after having requested one is an
32 admission of liability for the full amount of the civil penalty assessed in
33 the notice of violation and constitutes a waiver of the right to a hearing
34 under this Section 12-1-64 (*Administrative Adjudication Hearing*).

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2 **§ 12-1-65 EFFECT OF LIABILITY; EXCLUSION OF CIVIL REMEDY.**

- 3 (A) The imposition of a civil penalty under this article is not a conviction and may
4 not be considered a conviction for any purpose.
- 5 (B) If the owner of a motor vehicle determined to be involved in a violation of this
6 ordinance is delinquent in the payment of a civil penalty imposed under this
7 article, the county assessor or the Texas Department of Transportation may
8 refuse to register the motor vehicle determined to be involved in the violation.
- 9 (C) The court may refer cases that are at least sixty days delinquent in payment to
10 a contracted outside vendor for commencement of collection actions. The
11 sixty day delinquency period begins on:
- 12 (1) the thirty-first day after the date of receipt of the notice of violation;
 - 13 (2) the thirty-first day after the date of a finding of liability at an
14 administrative adjudicative hearing from which a timely appeal has not
15 been taken; or
 - 16 (3) the thirty-first day after the date of a finding of liability at an appellate
17 hearing.
- 18 (D) The City is authorized to file suit to enforce collection of a civil penalty
19 assessed under this article.
- 20 (E) If the owner of the motorized vehicle determined to be liable for a civil
21 penalty fails to timely pay the amount of the civil penalty:
- 22 (1) an arrest warrant may not be issued for the owner;
 - 23 (2) the imposition of the civil penalty may not be recorded on the owner's
24 driving record; and,
 - 25 (3) the matter cannot be referred to a credit bureau.

26 **§ 12-1-66 DISPOSITION OF FEES.**

- 27 (A) The City shall, not later than the sixtieth day after the end of its fiscal year,
28 after deducting amounts it is authorized to deduct to retain for installation,
29 operating and maintenance costs of the traffic signal enforcement system:
- 30 (1) send fifty percent of the revenue derived from civil or administrative
31 penalties to the comptroller for deposit to the credit of the regional

1 trauma account established under Texas Health and Safety Code,
2 Section 782.002 (*Regional Trauma Account*); and

- 3 (2) deposit the remainder of the revenue in a special account in the City's
4 treasury to fund traffic safety programs, including pedestrian safety
5 programs, public safety programs, intersection improvements, and
6 traffic enforcement.

7 **PART 2:** This ordinance takes effect on December 10, 2007.

8 **PASSED AND APPROVED**

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12 _____, 2007

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Will Wynn
Mayor

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17 **APPROVED:** _____

18 David Allan Smith
19 City Attorney

20 **ATTEST:** _____

21 Shirley A. Gentry
22 City Clerk