

ORDINANCE NO. 20061102-014

AN ORDINANCE AMENDING CHAPTER 12-1 OF THE CITY CODE TO ADD ARTICLE 6 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 add 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 Department of Public Works
- (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 MONITORING SYSTEM means a system that
 - (a) consists of a camera system installed to work in conjunction with an electrically operated traffic control signal, and
 - (b) is capable of producing a recorded image that depicts the license plate attached to the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal
- (6) RECORDED IMAGE means an image recorded by a photographic traffic monitoring system that depicts the rear of a motor vehicle and is automatically recorded on a digital image

(7) **SYSTEM LOCATION** means the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation

(8) **TRAFFIC CONTROL SIGNAL** means a traffic control device that displays alternating red, yellow and green lights and directs traffic when to stop at or proceed through an intersection

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

- (A) The owner of a motor vehicle is liable for a civil penalty if the vehicle proceeds into an intersection at a system location when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal
- (B) Except as provided in Subsections (C) and (D) below, the civil penalty for which the owner is liable is \$75
- (C) The civil penalty for which the owner is liable is \$100 if the owner pays the penalty on or after the twenty-first day after the date of the notice, fails to timely request an administrative adjudication hearing, or fails to appear at an administrative adjudication hearing without good reason
- (D) For a third or subsequent offense in a 12-month period, the amount of the penalty is \$150

§ 12-1-63 ENFORCEMENT; PROCEDURES.

- (A) The court and the department are responsible for the enforcement and administration of this article
- (B) To impose a civil penalty under this article, the court or the department shall mail, or cause to be mailed, a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than the thirtieth calendar day after the date the violation is alleged to have occurred to
 - (1) the owner's address as shown on the registration records of the Texas Department of Transportation, or
 - (2) if the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Texas Department of Transportation
- (C) A notice of violation issued under this article shall include
 - (1) a description of the alleged violation,

- (2) the date, time, and location of the alleged violation,
- (3) the name and address of the owner of the vehicle involved in the alleged violation,
- (4) the license plate number of the vehicle involved in the alleged violation,
- (5) a copy of a recorded image of the vehicle involved in the alleged violation that depicts the license plate number of that vehicle,
- (6) the amount of the civil penalty to be imposed for the alleged violation,
- (7) the date by which the civil penalty must be paid,
- (8) a statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty,
- (9) a description of the person's right to contest the imposition of the civil penalty at an administrative adjudication hearing,
- (10) a description of the manner and time in which imposition of the civil penalty may be contested;
- (11) a statement that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability, and that failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability, and
- (12) a statement that failure to timely pay the \$75 penalty shall result in the imposition of a \$25 late payment fee, and
- (13) a statement that, if at the time and place of the violation, the vehicle was being operated by a person other than the owner, then the owner may transfer liability for the violation to that person who was operating the vehicle if the owner submits to the City on 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 violation,
 - (b) the lessee of the vehicle at the time of the violation, if the vehicle was rented or leased from a person in the business of renting or leasing motor vehicles at that time, or
 - (c) the subsequent owner of the motor vehicle, if ownership of the vehicle was transferred by the owner before the time of the violation

- (D) A copy of a transfer of certificate of title form or a statement from the tax assessor's office verifying transfer of title shall be accepted as proof of title transfer
- (E) Only a registered owner of the vehicle involved in the alleged violation may submit an affidavit of non-liability
- (F) A registered owner may submit only one affidavit of non-liability for each alleged violation
- (G) If the court, department or hearing officer determines that a registered owner failed to submit current information, or submitted false information in an affidavit of non-liability, then potential liability for the alleged violation shall revert to that registered owner
- (H) The department shall include an affidavit of non-liability with a notice of violation and post an affidavit on the City of Austin webpage
- (I) A notice of violation under this article is presumed to have been received on the fifth day after the notice of violation was mailed

§ 12-1-64 ADMINISTRATIVE ADJUDICATION HEARING.

- (A) A person who receives a notice of violation under this article may contest the imposition of a civil penalty by requesting, in writing, an administrative adjudication hearing of the civil penalty within twenty days of the date of the notice. Upon receipt of the request, the court shall notify the person of the date and time of the hearing. The administrative adjudication hearing shall be held before a hearing officer appointed by the Municipal Court Clerk
- (B) Failure to timely pay a civil penalty or to timely contest liability is an admission of liability in the full amount of the civil penalty assessed in the notice of violation and constitutes a waiver of the right to a hearing under Subsection (A) and an appeal under Subsection (J)
- (C) Failure to appear at an administrative adjudication hearing after having requested one is an admission of liability for the full amount of the civil penalty assessed in the notice of violation and constitutes a waiver of the right to a hearing under Subsection (A) and an appeal under Subsection (J)
- (D) The civil penalty shall not be assessed if
 - (1) after a hearing, the hearing officer enters a finding of no liability, or
 - (2) within the time prescribed in the notice of violation, the person against whom the civil penalty is to be assessed submits proof that the vehicle

was being operated by another person, as described in Section 12-1-63(C)(13)(*Enforcement, Procedures*)

- (E) In an administrative adjudication hearing, the department must prove each issue by a preponderance of the evidence. The reliability of the photographic traffic-control signal monitoring system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of an employee of the City or the entity with which the City contracts to install or operate the system and who is responsible for inspecting and maintaining the system. An affidavit of an employee of the City that alleges a violation based on an inspection of the pertinent recorded image is admissible in a proceeding under this article, is evidence of the facts contained in the affidavit, and is prima facie evidence of the violation alleged in the notice of violation.
- (F) It is an affirmative defense to liability under this article, to be proved by a preponderance of the evidence, that
 - (1) the traffic-control signal was not in a proper position to observe the violation, and the recorded image is not sufficiently legible for an ordinarily observant person to conclude by a preponderance of the evidence that a violation occurred,
 - (2) the operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer,
 - (3) the operator of the motor vehicle violated the instructions of the traffic-control signal to yield the right-of-way to an immediately approaching authorized emergency vehicle,
 - (4) the motor vehicle was being operated as an authorized emergency vehicle under Chapter 546 (*Operation of Authorized Emergency Vehicles and Certain Other Vehicles*) of the Texas Transportation Code and that the person operating the vehicle was acting in compliance with that chapter,
 - (5) the motor vehicle was a stolen vehicle and being operated by a person other than the owner of the vehicle without the effective consent of the owner,
 - (6) the license plate depicted in the recorded image of the violation was a stolen plate and being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued,
 - (7) the vehicle was being operated by a person other than the owner of the vehicle,

- (8) the presence of ice, snow, unusual amounts of rain or, other unusually hazardous road conditions existed that would make compliance with this article more dangerous under the circumstances than non-compliance, or
 - (9) that a peace officer issued a citation to the driver of the vehicle for the same incident
- (G) The burden of proof for an affirmative defense to liability is on the person asserting the defense
- (H) To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or that the license plate displayed on the motor vehicle was a stolen plate, the owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been reported to the appropriate law enforcement agency
- (I) Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if
 - (1) the person files an affidavit with the hearing officer stating the date on which the person received the mailed notice of violation, and
 - (2) not later than the twentieth day after receiving the notice, the person requests an administrative adjudication hearing
- (J) A person who is found liable after an administrative adjudication hearing may appeal that finding of liability to the Municipal Court by filing a notice of appeal with the Clerk of the Municipal Court. The notice of appeal must be filed not later than the tenth calendar day after the date of the finding of liability and accompanied by the payment of an appellate filing fee of \$10 and a cash bond in the amount of \$75. The bond form shall include the statement that the cash bond will be forfeited to pay the civil penalty, in full, if the appellant does not appear as scheduled. The appellate filing fee is non-refundable, regardless of the finding at the appellate hearing. An appeal shall be determined by the Municipal Court by hearing de novo. All evidence, to include the affidavits, statements and declarations of non-liability submitted under section 12-1-63(C)(10) (*Enforcement, Procedures*), may be admitted by the municipal judge in the de novo hearing, and all issues must be proved by a preponderance of the evidence.

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

- (A) The imposition of a civil penalty under this chapter is not a conviction and may not be considered a conviction
- (B) The court may not impose a civil penalty under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for a violation of Section 544 007(d) (*Traffic-Control Signals in General*) of the Texas Transportation Code
- (C) The court may refer cases that are at least sixty days delinquent in payment to a contracted outside vendor for commencement of collection actions. The sixty day delinquency period begins on
 - (1) the twenty-first day after the date of the notice,
 - (2) the twenty-first day after the date of a finding of liability at an administrative adjudicative hearing from which a timely appeal has not been taken, or
 - (3) the twenty-first day after the date of a finding of liability at an appellate hearing
- (D) The City of Austin is authorized to file suit to enforce collection of a civil penalty assessed under this article

§ 12-1-66 DISPOSITION OF FEES.

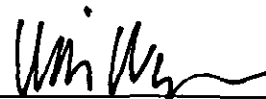
All penalties and fees collected from the imposition of civil liability under this article shall be deposited into the traffic safety fund account established by the city council. Funds from the traffic safety fund may only be expended for the costs of automated signal enforcement under this article, public traffic or pedestrian safety programs, traffic enforcement and roadway improvements.

PART 2. This ordinance takes effect on November 13, 2006

PASSED AND APPROVED

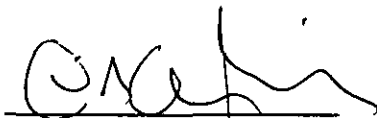
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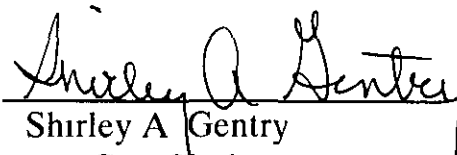
Will Wynn
Mayor

APPROVED:



David Allan Smith
City Attorney

ATTEST:



Shirley A Gentry
City Clerk