

ARTICLE 11: SAFE TRAFFIC OPERATIONS PROGRAM

Ordinance 65-2005

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§ 7-11-1 FINDINGS AND INTENT.

(A) City Council finds that there is a significant risk to the health and safety of the community from drivers who run red lights and speed through school zones. City Council finds that the City of Albuquerque has one of the highest fatality and serious injury rates in the nation resulting from red light violations and blatant disregard by drivers for existing state red light laws. Drivers in the city must progress away from the attitude that a red light is merely a suggestion to stop. Red light violations kill far too many of our citizens. City Council finds that red light violations are a nuisance. Within the State of New Mexico, red light violations are a matter of unique local concern in Albuquerque, in part, because of high traffic volume and crowded intersections. City Council finds that the State Legislature wants municipalities to implement local traffic laws to address local problems and that the Legislature does not intend for the State of New Mexico Motor Vehicle Code to apply statewide to the exclusion of local traffic laws.

(B) City Council finds that many states and municipalities across the country have experienced substantial decreases in red light violations by using red light cameras. City Council finds that red light cameras produce scientifically reliable evidence of red light violations. City Council finds that it is reasonable for any police officer to rely on red light camera evidence even if the officer did not personally observe the violation. City Council finds that red light cameras save lives.

(C) Red light violations are a nuisance that must be abated by assessment of fines to compensate the city and taxpayers who do not commit these violations. Drivers who fail or refuse to pay the fines and repeatedly run red lights create a severe nuisance that will

not be abated unless the city temporarily seizes the cars of these drivers and thus removes the instrumentality used to create this nuisance. City Council finds that the current penalty under state law for running a red light is inadequate to meaningfully address the nuisance and that the City of Albuquerque must implement meaningful civil remedial measures that will stop red light violations and save lives. Red light violations are causally connected to death and serious injury to a degree not evident with regard to other traffic infractions.

(D) The City Council finds that some drivers in Albuquerque ignore speed limits in school zones and expose our children to serious danger. City Council finds that state law against school zone violations is inadequate to deter those violations in Albuquerque and that such violations are a nuisance that must be abated by or through civil remedial measures. City Council finds that photographic and electronic devices that measure speed are accurate and reliable. City Council finds that implementation of enforcement of speed limits in school zones by means of photographic and electronic equipment will abate the nuisance of speeding in school zones and make life safer for our children.

(E) The City Council declares that a vehicle used to violate this article is the instrumentality of a nuisance that must be abated in the city.

(F) The City Council declares that this article is a nuisance abatement article enacted pursuant to the city's inherent authority under state law and that the remedies are purely civil and not criminal in nature.

§ 7-11-2 SHORT TITLE.

This article shall be referred to as the Safe Traffic Operations Program or "STOP" and may sometimes be referred to herein as "this article."

§ 7-11-3 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AUTHORIZED EMERGENCY VEHICLE. This term shall have the same meaning as defined under NMSA 1978 § 66-1-4.1(E) (2001) as amended from time to time and without limitation on the foregoing shall mean any fire department vehicle, police vehicle, ambulance and any emergency vehicles of municipal departments or public utilities that are designated or authorized as emergency vehicles by the director of the New Mexico State Police Division of the Department of Public Safety or the Chief of Police of the City of Albuquerque.

CAMERA, SPEED DEVICE or "CSD." The instrument that detects a violation of this article. The definition includes but is not limited to photo red light cameras and electronic speed detection equipment reasonably relied upon by Police Officers.

CERTIFICATE. A written statement signed under oath and submitted to the city or the city's contractor under penalty of perjury by the registered owner of a vehicle who asserts therein that the registered owner was not driving a vehicle at the time of a violation.

CITY. The City of Albuquerque.

CITY CLERK. The City Clerk of the City of Albuquerque.

CONTRACTOR. A person or entity that enters a contract with the city to provide the city with photographic or electronic evidence of a violation through a CSD.

DEFAULT. The failure to timely pay a STOP fine or to timely pay a fine pursuant to a decision of a Hearing Officer under this article.

DELIVERY or DELIVERED. The mailing of a STOP fine to a registered owner or nominee or personal service of a STOP fine or Hearing Officer decision on a registered owner or nominee.

DEPARTMENT. The police agency that employs the Police Officer who issued a STOP fine or caused a STOP fine to be issued.

DEPARTMENT OF MOTOR VEHICLES or DMV. The Motor Vehicle Division of the Division of Taxation and Revenue Department of the State of New Mexico or its successor agencies.

DRIVER. The person operating a motor vehicle at the time of a violation.

EFFECTIVE DATE. The date a STOP fine is mailed to the recipient by the contractor as indicated on the face of the STOP Fine.

HEARING OFFICER. An administrative hearing officer with authority from the Mayor to enforce and adjudicate matters under this article.

IDENTIFY. To submit all information on a driver sufficient to allow the city to locate and notify the driver in lieu of the registered owner including but not limited to the name and address of the driver.

IMMOBILIZATION or IMMOBILIZED. Seizure of a vehicle by placement of a device on the vehicle so the vehicle cannot be moved.

NOMINATION. Identification of the actual driver of a car by the registered owner as the responsible party for a violation.

NOMINEE. The person or entity identified by the registered owner as the driver or responsible party.

NOTICE OF DEFAULT. A document delivered to the registered owner and stating that the registered owner is in default.

NUISANCE. The act of operating a vehicle in violation of this article.

POLICE OFFICER. A sworn member of the Albuquerque Police Department, the Bernalillo County Sheriff's Office, the New Mexico State Police or any other public official with authority to stop a vehicle for a traffic violation in Albuquerque.

REGISTERED OWNER. The owner or owners of a vehicle according to the license plate number or information obtained from the Department of Motor Vehicles, from similar motor vehicle agencies outside New Mexico, from information obtained from the Metropolitan Court, from Department records, from a CSD or from any other documentation or methods reasonably relied upon by Police Officers. The singular includes the plural.

RESPONDENT. An accused violator who has received a STOP fine and requested a hearing.

SCHOOL ZONE. A posted "safety zone" as that term is defined under NMSA 1978 § 66-1-4.16 (2001) as amended from time to time.

SEIZE. To take a vehicle from the registered owner for a failure to cure a default.

STOP FINE. A written document mailed to the address of the registered owner or nominee stating that a violation has occurred and payment is due.

TREASURY DIVISION. The Treasury Division of the Finance and Administrative Services Department of the City of Albuquerque.

VIOLATION or OFFENSE. A violation of this article.

§ 7-11-4 VIOLATION.

Any violation of § 8-1-2-6 or § 8-2-2-2 of this Code of Ordinances, § 66-7-105 or 66-7-301(A)(1) of the New Mexico State Motor Vehicle Code or other city or state laws pertaining to running red lights or speeding in school zones. This article does not apply to authorized emergency vehicles responding to an emergency. This article does not apply to vehicles in an intersection during a red light while involved in a Police Officer controlled funeral procession, with a parade permit allowing same or when responding to a Police Officer directing traffic.

§ 7-11-5 ENFORCEMENT.

(A) Criminal violation observed by Police Officer. This article does not abrogate or impair enforcement of existing traffic laws by a Police Officer for a violation committed in their presence. Specifically, if a Police Officer personally and contemporaneously observes a traffic violation, the Police Officer may stop the vehicle and issue a citation under state law or the Albuquerque Traffic Code in the usual manner.

(B) Violation by CSD. The contractor shall provide all evidence of a violation to a Police Officer. A Police Officer shall review all CSD evidence provided by the contractor. If the Police Officer determines that a violation has occurred, the Police Officer shall cause a STOP fine to be delivered to the registered owner. The registered owner is strictly and vicariously liable for the violation unless one of the exceptions herein applies. If there is more than one registered owner, all registered owners shall be jointly and severally liable.

(C) STOP fine.

(1) Form and contents. The STOP fine shall state and contain the name of the registered owner or owners or nominee, the effective date of the STOP fine, the type of violation, the date, time and location of the violation, a picture of the violation, the license number of the vehicle, the name and identification number of the issuing Police Officer, the amount of the fine, whether the fine is a first or subsequent offense, the response due date and the address of the City Clerk. The STOP fine shall conspicuously and in bold face type state: "Failure to pay this fine on time will lead to serious legal consequences including the loss of your vehicle and the assessment of additional fines and monies due. A second or subsequent STOP violation within two years from the date of this STOP fine will lead to increasing fines and penalties including loss of the subject vehicle. After you have received this STOP fine, it is a criminal violation to sell, transfer or otherwise convey title to the subject motor vehicle to another person unless all applicable STOP fines are paid." The STOP fine shall include the certificate. The STOP fine shall contain

a return envelope addressed to the contractor or the Treasury Division. The STOP fine shall inform the registered owner or the nominee of the right to request a hearing by so indicating in a space provided on the form and returning same to the City Clerk.

(2) Delivery. The STOP fine shall be delivered to the address of the registered owner according to the address registered with the Department of Motor Vehicles or its successor agencies or to the address of the nominee according to the certificate. The registered owner has a duty to timely notify DMV of a change of address and the failure to do so does not entitle the registered owner to assert the defense of inadequate notice. The mailing of a STOP fine to the address of the registered owner of a vehicle according to the records of DMV or to the address of the nominee according to the certificate is constructive notice of a STOP fine.

(D) Response to STOP fine. Within 20 days from the effective date, the registered owner shall pay the fine, make a nomination or request a hearing. To pay the fine, the recipient shall deliver the STOP fine to the city or to the contractor according to the instructions on the STOP fine. To make a nomination, the recipient shall return the STOP fine with attached certificate to the contractor. To request a hearing, the recipient shall return the STOP fine with the request for hearing to the City Clerk. There is no fee for a hearing. Three days for mailing is not allowed and the contractor must actually receive the STOP fine 20 consecutive days (including holidays) from the effective date. The contractor shall forthwith notify the Department and City Clerk concerning the receipt of payment for a STOP fine. If the fine has not been paid, there has been no nomination or a request for hearing within 20 days from the effective date, the contractor shall send written Notice of Default to the Department and the registered owner or nominee or both.

(1) No contest payment of fine. Upon receipt of the STOP fine, the recipient may elect to admit the violation and pay the fine. To proceed under this section, the recipient shall admit the violation by signing and dating the STOP fine on a space provided and returning the STOP fine to the contractor. There shall be a \$100 penalty for any check returned for insufficient funds.

(2) Appeal. The recipient of the STOP fine may request a hearing by so indicating and returning the STOP fine to the City Clerk within 20 days of the effective date. There is no fee for a hearing. The City Clerk shall forward the request for hearing to the Hearing Officer who will schedule a hearing.

(3) Nomination. Any registered owner who was not driving the car at the time of the violation may either accept responsibility or identify the driver so the city can send a Notice of Violation to the driver. The nomination procedure described in this paragraph is available to any registered owner and is not limited to corporations and governmental

entities. If the registered owner claims that another person was driving the vehicle at the time of the violation, the registered owner must so indicate on the certificate and identify the person who was driving the vehicle. The contractor shall forthwith deliver the STOP fine and certificate to the Department to the attention of the issuing Police Officer. The Police Officer may send a new STOP fine to the nominee or cause the contractor to deliver a new STOP fine to the nominee. The effective date of the STOP fine sent to the nominee is the day the STOP fine is issued to the nominee as indicated on the face of the new STOP fine. If the nominee appeals denying he or she was the driver or defaults, the city may proceed against the registered owner by issuing a subsequent STOP fine to the registered owner with the effective date being the date so indicated on the face of the subsequent STOP fine. If the city cannot assert jurisdiction over the nominee, the registered owner is responsible, subject to the remaining defenses available in this article. Any registered owner who submits a certificate does so under penalty of perjury or any other applicable penalties if any information contained therein is knowingly false. Without limitation on the foregoing, nomination may be used when:

(a) The registered owner is the United States of America, State of New Mexico, County of Bernalillo, City of Albuquerque or other governmental entity that owns a vehicle that was being driven by a natural person who was the employee, contractor or agent of the governmental entity at the time of the alleged violation. Said entities must nominate and identify the driver.

(b) The registered owner is a place of business, corporation or other non-natural entity that owns a vehicle that was being driven by a natural person who was the employee, contractor or agent of the governmental entity at the time of the alleged violation. Said entities must nominate and identify the driver.

(c) The registered owner is an automobile rental business, automobile dealership or other business entity that, in the ordinary course of business, leases vehicles to others and the lessee was driving the vehicle at the time of the alleged violation. Said entities must nominate and identify the driver.

(d) The registered owner was not driving the vehicle at the time of the violation. To assert the defense mentioned in this paragraph, the registered owner must identify the actual driver and comply with the nomination provision above to assert this defense.

(E) Default. If the city does not receive payment of the fine, a nomination or a request for hearing within 20 days from the effective date, the registered owner is in default. Default automatically results in liability to the registered owner for the violation and the registered owner is barred from requesting or obtaining any hearing on the merits

of the STOP fine after the date of default. A default results in additional penalties of twice the amount of the underlying fine. The Department shall cause the contractor to mail the Notice of Default to the defaulting party. The Notice of Default shall inform the recipient that they have 20 days from the date of mailing of the Notice of Default to pay the fine or request a hearing from the City Clerk. If the default is not cured, the city may pursue all remedies for collection of a debt and is entitled to an award of reasonable attorney's fees incurred. An uncured Notice of Default shall be entered into the records of the Department and any Police Officer who discovers a vehicle in the city in the course of a traffic stop or otherwise may seize the vehicle for unpaid fines. The registered owner is liable for a default by a nominee.

(F) Hearing. In the event of a demand for hearing, the Hearing Officer will hold a hearing within 90 days from the effective date unless a continuance is granted pursuant to the consent of the parties. The hearing does not have to be held in 90 days if a continuance is granted. The Hearing Officer is in charge of the proceedings and may exclude any person for inappropriate conduct. The rules of evidence are relaxed. The Department has the burden to prove by a preponderance of the evidence that the violation occurred. The respondent has the burden to prove any defenses by a preponderance of the evidence. A photograph, videotape or other electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence by the Hearing Officer. The respondent may challenge the weight or accuracy of the evidence. If the Department prevails, the respondent shall pay the fine. The Hearing Officer shall render a decision in writing in ten days and provide the decision to the Department and the Treasury Division. Failure to pay a fine as ordered by the Hearing Officer within ten consecutive days from the date of the decision is a default and will apply against the vehicle without service of a Notice of Default.

(G) Defenses. The respondent may present the following defenses in addition to any other defenses available under law and has the burden of proof concerning the defenses:

(1) The vehicle was stolen or otherwise being driven without the registered owner's knowledge or permission at the time of the alleged violation. The registered owner must have a police report pertaining to the theft to avail themselves of this defense.

(2) The ownership of the vehicle had lawfully been transferred and conveyed from the registered owner to another person before the time of the alleged

red light violation. To assert this defense, the registered owner must identify the transferee and provide proof of conveyance.

(3) The evidence does not show that a violation was committed involving the subject vehicle.

(4) The registered owner was not driving the vehicle at the time of the violation. To assert the defense mentioned in this paragraph, the registered owner must identify the actual driver and comply with the nomination provision above to assert this defense.

(H) Fine. The date of a violation is the effective date. If the registered owner or nominee requested a hearing and did not prevail, the date of the violation is the effective date. The fine for the first violation is \$100. The fine for a second violation within two years from the date of the first violation is \$250. The fine for a third violation within two years from the date of the first violation is \$500. Each violation of this article is a subsequent and separate violation even if the two violations are not the same type of violation.

(I) Seizure. A Police Officer may seize and immobilize a vehicle for 90 days pursuant to the provisions of §§ 7-6-1 through 7-6-7 ROA 1994 upon discovery of a vehicle in the city with unpaid STOP fines. If the registered owner fails to cure the default and pay all impound and storage fees, the vehicle is subject to forfeiture under §§ 7-6-1 through 7-6-7 ROA 1994. If a non-Albuquerque resident defaults, the Department shall immobilize the vehicle of the delinquent or defaulting party for ninety days if said vehicle is found in the city limits any time within ten years of any violation of this article.

§ 7-11-6 ADMINISTRATION.

The Department shall be responsible for administration of this article. Reasonable rules and regulations may be promulgated by the Mayor or his designee to carry out the intent and purpose of this article.