

ARTICLE 11: SAFE TRAFFIC OPERATIONS PROGRAM

Section

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§ 7-11-1 FINDINGS AND INTENT.

(A) The City Council finds that there is a significant risk to the health and safety of the community from drivers who run red lights and exceed posted speed limits. The 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. Red light violations are causally connected to death and serious injury to a degree not evident with regard to other traffic infractions. 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.

(B) The City Council finds that many states and municipalities across the country have experienced substantial decreases in red light violations by using red light cameras. The City Council finds that red light cameras produce scientifically reliable evidence of red light violations. The 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. The City Council finds that red light cameras save lives.

(C) The Council declares that red light violations are a nuisance that must be abated by assessment of fines.

(D) The City Council finds that some drivers in Albuquerque repeatedly violate posted speed limits. The City Council finds that state law against speeding is inadequate to preserve public safety in Albuquerque. The City Council finds that photographic and

electronic devices that measure speed are accurate and reliable. The City Council declares that speeding is a nuisance that must be abated by the assessment of fines.

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

(Ord. 65-2005; Am. Ord. 16-2006; Am. Ord. 30-2008; Am. Ord. 17-2009)

§ 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."

(Ord. 65-2005; Am. Ord. 30-2008; Am. Ord. 17-2009)

§ 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.

CONTRACTOR. A person or entity that enters into 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 Albuquerque Police Department.

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. The City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994).

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.

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.

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

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.

(Ord. 65-2005; Am. Ord. 31-2007; Am. Ord. 30-2008; Am. Ord. 17-2009)

§ 7-11-4 VIOLATION.

Any civil infraction under this article resulting from any action or conduct that would otherwise be defined as a traffic violation under § 8-1-2-6 or 8-2-2-2 of this Code of Ordinances, NMSA 1978 §§ 66-7-105, 66-7-301 - 66-7-303 of the New Mexico State Motor Vehicle Code or any other city or state laws pertaining to running red lights or speeding is a violation. 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.

(Ord. 65-2005; Am. Ord. 16-2006; Am. Ord. 30-2008; Am. Ord. 17-2009)

§ 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 the Officer's 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 detected 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 and the response due date. The STOP fine shall conspicuously and in bold face type state: "If not paid, this fine shall constitute a lawful debt which will be collected pursuant to legal process." The STOP fine shall include any 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 Independent Office of Hearings.

(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, from similar motor vehicle agencies outside New Mexico, from information obtained from the Metropolitan Court, from Department records, or from any other documentation or methods reasonably relied upon by Police Officers or it shall be delivered 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 any other records or documentation as set forth herein, or to the address of the nominee according to the certificate is constructive notice of a STOP fine.

(D) Response to STOP fine. Within 35 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 Independent Office of Hearings. There is no fee to request a hearing. Three days for mailing is not allowed and the 35 consecutive days (including holidays) is from the effective date and ends upon receipt by the city or the contractor of the appropriate payment or request. If the fine has not been paid, there has been no nomination or a request for hearing within 35 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 or to the city within 35 days. The city may, but is not required to, adopt procedures for alternative methods of payment of fines using the Internet or other on-line services. There shall be a \$50 penalty for any payment tendered that is not honored or is returned for any reason.

(2) Hearing request. The recipient of the STOP fine may request a hearing by so indicating and returning the STOP fine to the Independent Office of Hearings within 35 days of the effective date. There is no fee for a hearing. The Independent Office of Hearings shall schedule a hearing.

(3) Nomination. Any registered owner who was not driving the vehicle at the time of the violation may either accept responsibility or identify the driver so the contractor 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 sent to the nominee as indicated on the face of the new STOP fine. If the nominee denies he or she was the driver or defaults, the city may proceed against the registered owner by delivering 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 an 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 an employee, contractor or

agent of the business, corporation or other non-natural 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.

(E) Default. If the city does not receive payment of the fine, a nomination or a request for hearing within 35 days from the effective date, the registered owner is in default. Default automatically results in liability to the registered owner for the violation. 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 Independent Office of Hearings on the issue of whether notice was adequate. If notice is found not to have been adequate then the City Hearing Officer shall proceed to determine if there was a violation. 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.

(F) Hearing. In the event of a demand for hearing, the Hearing Officer will hold a hearing within 90 days from the date of the request for hearing 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 and the Rules of Civil Procedure shall be followed for the hearing. 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. 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. Following a hearing, the respondent may appeal the decision of the Hearing Officer to District Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

(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 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.

(4) The registered owner did not receive notice because the notice of violation was not mailed to an alternative address of record with the Department of Motor Vehicles.

(H) CSD evidence. An objection to the admissibility of the CSD evidence requires the city to make additional preparations for the hearing, up to and including the production of an expert witness on the operation of the CSD. The respondent shall notify the Independent Office of Hearings of the intent to challenge the admissibility of the CSD evidence at least 30 days prior to the hearing. Notification of such intent fewer than 30 days prior to the hearing shall constitute a consent to a continuance beyond the 90 day period for conducting a hearing. Failure to notify the Independent Office of Hearings of the intent to challenge the admissibility of the CSD evidence more than seven days prior to a scheduled hearing shall constitute consent to the admission of that evidence.

(I) Fine.

(1) The fine for running a red light is \$75.

(2) The fine for speeding is \$75.

(3) The Mayor may promulgate regulations instructing the Department to waive fines for minimum speed violations from time to time in specific locations.

(4) The Mayor shall enter settlement agreements for payment of fines with persons. A violator who elects to avail themselves of the option of service to the city in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits conferred upon city employees, including, without limitation, workers compensation. The city is not responsible for damages incurred except as otherwise provided by law. The person seeking relief hereunder must have requested to use the option of service to the

city in lieu of payment of a fine and requested a hearing before the Hearing Officer to demonstrate that they are not ineligible for the option prior to default and must not be in default on payment of other fines levied by the City of Albuquerque. If the Hearing Officer approves the person for relief under this paragraph, the Mayor shall enter a settlement agreement whereby the person can provide services to the city in lieu of payment of a fine. Further, if the Hearing Officer approves the person for relief under this paragraph, the Hearing Officer shall allow the person to provide services in lieu of payment of a fine. No person who would not pass the background check to qualify as a volunteer can obtain relief under this paragraph. The services include, without limitation, cleaning up weeds and litter, cleaning kennels or walking dogs at the Albuquerque Animal Care Center and assisting with maintenance of city property. Services shall be rendered in not less than full hour increments and shall be credited against the fine payable at a rate of \$10 per hour.

(Ord. 65-2005; Am. Ord. 16-2006; Am. Ord. 16-2007; Am. Ord. 6-2008; Am. Ord. 30-2008; Am. Ord. 17-2009)

§ 7-11-6 ADMINISTRATION.

(A) 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.

(B) The Mayor may establish a STOP ombudsman to address and resolve citizen grievances with STOP procedures and technical issues regarding automated enforcement technology.

(Ord. 65-2005; Am. Ord. 16-2007; Am. Ord. 30-2008; Am. Ord. 17-2009)