

ORDINANCE NO. 3017

AN ORDINANCE AMENDING CHAPTER 10, "TRAFFIC CODE", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY ADDING A NEW SECTION 11 AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That Chapter 10, "Traffic Code", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any violation by any person, firm, or corporation of the provisions of this chapter shall be deemed a civil penalty as provided herein. Said Ordinance becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

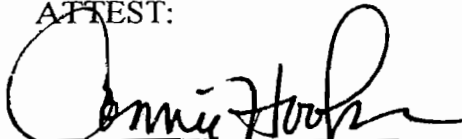
PASSED, ADOPTED and APPROVED this 25th day of October, 2007.

APPROVED:



Mayor

ATTEST:



City Secretary

APPROVED:



City Attorney

EXHIBIT "A"

That Chapter 10, "Traffic Code", of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by adding a new Section 11 as set out hereafter to read as follows:

"SECTION 11: AUTOMATED TRAFFIC SIGNAL ENFORCEMENT"**A. Definitions.**

In this section:

- (1) *Owner* shall mean 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.
- (2) *Photographic traffic signal enforcement system* shall mean a system that:
 - (a) Consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic-control signal; and
 - (b) Is capable of producing at least two (2) 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.
- (3) *Recorded image* shall mean a photographic or digital image that depicts the front or the rear of a motor vehicle.
- (4) *Traffic control signal* has the meaning assigned by Section 541.304 of the Texas Transportation Code.

B. Imposition of Civil Penalty for Violations.

- (1) Except as provided below, the owner of a motor vehicle is liable for a civil penalty of seventy-five dollars (\$75.00) if, while facing only a steady red signal displayed by an electronically operated traffic-control signal located in the City, the motor vehicle is operated in violation of the instructions of that traffic-control signal as specified by Section 544.007(d) of the Texas Transportation Code.
- (2) An owner who fails to timely contest or pay the civil penalty shall be subject to a late payment penalty of twenty-five dollars (\$25.00).

C. Enforcement Procedures.

- (1) The College Station Police Department is responsible for the enforcement of this section. The College Station Municipal Court is responsible for the administration of this section. The Police Chief, Presiding Judge of the Municipal Court, and the Municipal Court Administrator shall establish and implement appropriate procedures to effect the policy of this section.
- (2) In order to impose a civil penalty under this section, the Municipal Court shall cause to be mailed a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than thirty (30) days after the date the violation is alleged to have occurred to:
 - (a) The owner's address as shown on the registration records of the Texas Department of Transportation; or
 - (b) If the motor 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.
- (3) A notice of violation issued under this section shall contain the following:
 - (a) A description of the violation alleged;
 - (b) The location of the intersection where the violation occurred;
 - (c) The date and time of the violation;
 - (d) The name and address of the owner of the motor vehicle involved in the violation;
 - (e) The registration number displayed on the license plate of the motor vehicle involved in the violation;
 - (f) A copy of a recorded image of the violation limited solely to a depiction of the area of the registration number displayed on the license plate of the motor vehicle involved in the violation;
 - (g) A statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;
 - (h) The amount of the civil penalty for which the owner is liable;

- (i) The number of days the person has in which to pay or contest the imposition of the civil penalty and a statement that the person incurs a late payment penalty of \$25.00 if the civil penalty is not paid or imposition of the penalty is not contested within that period;
 - (j) A statement that the owner of the motor vehicle in the notice of violation may pay the civil penalty by mail sent to a specified address in lieu of appearing at the time and place of the administrative adjudication hearing;
 - (k) Information that informs the owner of the motor vehicle named in the notice of violation:
 - (i) of the owner's right to contest the imposition of the civil penalty against the person in an administrative adjudication hearing;
 - (ii) that imposition of the civil penalty may be contested by submitting a written request for an administrative adjudication hearing before the expiration of the period specified in (i) above; and
 - (iii) that failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty assessed in the notice of violation, and is a waiver of the right to appeal under Section G.
 - (l) A statement that if the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner an arrest warrant may not be issued and the imposition of the civil penalty may not be recorded on the owner's driving record.
 - (m) Any other information deemed necessary by the City.
- (4) A notice of violation under this section is presumed to have been received on the 5th day after the date the notice of violation is mailed.
- (5) In lieu of issuing a notice of violation, the Municipal Court may cause to be mailed a warning notice to the owner.

D. Presumption.

- (1) It is presumed that the owner of the motor vehicle committed the violation alleged in the notice of violation mailed to the person if the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system belongs to the owner of the motor vehicle.

- (2) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system was owned by a person in the business of selling, renting, or leasing motor vehicles or by a person who was not the person named in the notice of violation, the presumption under Subsection (1) is rebutted on the presentation of evidence establishing that the vehicle was at the time:
 - (a) being test driven by another person;
 - (b) being rented or leased by the vehicle's owner to another person; or
 - (c) owned by a person who was not the person named in the notice of violation.
- (3) Notwithstanding Section E below, the presentation of evidence under Subsection (2) above by a person who is in the business of selling, renting, or leasing motor vehicles or did not own the vehicle at the time of the violation must be made by affidavit, through testimony at the administrative adjudication hearing under Section E, or by a written declaration under penalty of perjury. The affidavit or written declaration may be submitted by mail to the City or the entity with which the City contracts.
- (4) If the presumption established by Subsection (1) is rebutted under Subsection (2), a civil penalty may not be imposed on the owner of the vehicle or the person named in the notice of violation, as applicable.
- (5) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in the photograph or digital image taken by the photographic traffic signal enforcement system was owned by a person in the business of renting or leasing motor vehicles and the vehicle was being rented or leased to an individual, the owner of the motor vehicle shall provide to the City or the entity with which the City contracts the name and address of the individual who was renting or leasing the motor vehicle depicted in the photograph or digital image and a statement of the period during which that individual was renting or leasing the vehicle. The owner shall provide the information required by this subsection not later than the 30th day after the date the notice of violation is received. If the owner provides the required information, it is presumed that the individual renting or leasing the motor vehicle committed the violation alleged in the notice of violation and the City or contractor may send a notice of violation to that individual at the address provided by the owner of the motor vehicle.

E. Administrative adjudication hearing.

- (1) A person who receives a notice of violation may contest the imposition of the civil penalty by requesting in writing an administrative adjudication of the civil penalty within thirty (30) days after the date the violation was mailed. Upon receipt of a timely request, the City or its contractor shall notify the person of the date and time of the administrative adjudication hearing which shall be heard within thirty (30) days from receipt of the request. The administrative adjudication hearing shall be heard before and conducted by an adjudicative hearing officer appointed by the City Manager or his delegee. The adjudicative hearing officer shall have the authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents.
- (2) A person who fails to pay the civil penalty or to contest liability for the penalty in a timely manner or who requests an administrative adjudication hearing to contest the imposition of the civil penalty against the person and fails to appear at that hearing is considered to:
 - (a) admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person; and
 - (b) waive the person's right to appeal the imposition of the civil penalty.
- (3) If a person liable for the violation fails to pay the civil penalty in a timely manner, the City will request that the County Assessor-Collector and the Texas Department of Transportation refuse to register the motor vehicle alleged to have been involved in the violation.
- (4) In an administrative adjudication hearing, the issues must be proved by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the motor vehicle involved in the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or 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 officer or employee of the City that alleges a violation based on an inspection of the pertinent recorded image is admissible in a proceeding under this section and is evidence of the facts contained in the affidavit.
- (5) The civil penalty shall not be imposed against a person if, after the administrative adjudication hearing, the administrative hearing officer enters a finding of no liability.
- (6) A person who is found liable for a civil penalty after the administrative adjudication hearing shall pay the civil penalty within ten (10) days after the hearing.

- (7) The city attorney or his designee is not required to attend the administrative adjudication hearing. However, if the person charged is represented by legal counsel at the hearing, the adjudicative hearing officer shall notify the city attorney or his designee who shall have a right to appear on behalf of the city at said hearing.
- (8) It shall be an affirmative defense to the imposition of civil liability under this section, to be proven by a preponderance of the evidence, that:
- (a) The traffic control signal was not in proper position and sufficiently visible to an ordinarily observant person;
 - (b) The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;
 - (c) The operator of the motor vehicle violated the instructions of the traffic control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle;
 - (d) The motor vehicle was being operated as an authorized emergency vehicle under Chapter 546 of the Texas Transportation Code and that the operator was acting in compliance with that Chapter;
 - (e) The motor vehicle was a stolen motor vehicle and being operated by a person other than the owner of the motor vehicle without the effective consent of the owner;
 - (f) 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;
 - (g) The presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this section more dangerous under the circumstances than non-compliance; or
 - (h) The person who received the notice of violation was not the owner of the motor vehicle at the time of the violation.
- (9) To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate, the owner must submit proof acceptable to the adjudicative hearing officer that the theft of the motor vehicle or license plate had been timely reported to the appropriate law enforcement agency.

- (10) Notwithstanding anything in this section to the contrary, a person who receives a notice of violation under this section and who fails to timely pay the amount of the civil penalty or fails to timely request an administrative adjudication hearing is entitled to an administrative adjudication hearing if:
- (a) the person submits a written request for the hearing to the designated administrative hearing officer accompanied by an affidavit that attests to the date on which the person received the notice of violation; and
 - (b) the written request and affidavit are submitted to the hearing officer within the same number of days after the date the person received the notice of violation as specified under Subsection C(3)(i) above.

F. Order of the adjudicative hearing officer

- (1) At the conclusion of the administrative adjudication hearing, the hearing officer shall enter a finding of liability for the civil penalty or a finding of no liability for the civil penalty. A finding under this section must be in writing and dated by the hearing officer.
- (2) A finding of liability or a finding of no liability entered under this section:
 - (a) shall be filed with the Municipal Court Administrator. All such orders shall be kept in a separate index or file by the Municipal Court Administrator; and
 - (b) may be recorded on microfilm or microfiche or using data processing techniques.

G. Appeal

- (1) The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to the City's municipal judge by filing a petition with the City's Municipal Court.
- (2) The petition must be filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty and must be accompanied by payment of the costs required by law for the court.
- (3) The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the City's Legal Department of the date, time and place of the hearing.

- (4) An appeal stays enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. The owner shall file a notarized statement of personal financial obligation to perfect the owner's appeal.
- (5) An appeal under this section shall be determined by the court by trial de novo.

H. Effect of liability; exclusion of civil remedy; enforcement.

- (1) The imposition of a civil penalty under this section is not a conviction and may not be considered a conviction for any purpose.
- (2) The implementation of a photographic traffic signal enforcement system by the City under this section does not prohibit a peace officer from arresting a violator of Section 544.007(d) of the Texas Transportation Code as provided by Chapter 543 of the Texas transportation Code, if the peace officer personally witnesses the violation, or from issuing the violator a citation and notice to appear as provided by Chapter 543.
- (3) The City may not impose a civil penalty under this section on the owner of a motor vehicle if the operator of the motor vehicle was arrested or was issued a citation and notice to appear by a peace officer for the same violation of Section 544.007(d) of the Texas Transportation Code recorded by the photographic traffic signal enforcement system.
- (4) The city attorney is authorized to file suit to enforce collection of a civil penalty imposed under this section.
- (5) If the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner:
 - (a) an arrest warrant may not be issued for the owner; and
 - (b) the imposition of the civil penalty may not be recorded on the owner's driving record.

I. Disposition of fees.

- (1) Not later than the 60th day after the end of the City's fiscal year, after deducting amounts the City is authorized by Subsection (b) to retain, the City shall:
 - (a) send 50 percent of the revenue derived from civil or administrative penalties collected by the City under this section to the comptroller for

deposit to the credit of the regional trauma account established under Section 782.002, Texas Health and Safety Code; and

- (b) deposit the remainder of the revenue in a special account in the City's treasury that may be used only to fund traffic safety programs, including pedestrian safety programs, public safety programs, intersection improvements, and traffic enforcement.
- (2) The City may retain an amount necessary to cover the costs of:
- (a) purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the City;
 - (b) installing the photographic traffic signal enforcement system at sites in the City, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs;
 - (c) operating the photographic traffic signal enforcement system in the City, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by City employees, the processing of fine payments and collections, and the costs associated with administrative adjudications and appeals; and
 - (d) maintaining the general upkeep and functioning of the photographic traffic signal enforcement system, including but not limited to, the proportional salaries and benefits for the City's Traffic Superintendent, Traffic Engineer and Traffic Planner."