

ORDINANCE NO. 7091

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF AMARILLO, TEXAS: AMENDING THE MUNICIPAL CODE OF THE CITY OF AMARILLO, CHAPTER 16-3, TRAFFIC, ADDING ARTICLE XII, PROVIDING FOR PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM; PROVIDING A CIVIL PENALTY, LATE FEE, NOTICE, APPEAL AND OTHER PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, the City Commission finds and determines that a nuisance is created when a motor vehicle proceeds into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal, which damages the public by endangering motor vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.

WHEREAS, the City Commission finds that the acts and omissions described above constitute a sufficient nuisance to justify imposition of a civil penalty upon the Owner of a vehicle that creates such danger and nuisance; and,

WHEREAS, the City Commission finds that the use of photographic traffic signal enforcement equipment to document such nuisances is an appropriate and effective method to control same;

WHEREAS, the City Commission desires to take all steps necessary to comply with Texas Transportation Code, Chapter 707 (S.B. 1119, 80th Leg.), and enacts this ordinance to that end;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF AMARILLO, TEXAS:

SECTION 1. That Chapter 16-3. Traffic, of the Amarillo Municipal Code of Ordinances, be and hereby is amended to add Article XII, to read as follows:

ARTICLE XII. PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT

Sec. 16-3-379. Definitions.

In this Article the following terms have the meaning stated unless context indicates a different meaning:

(1) Owner shall mean the titled owner of a motor vehicle as shown on the 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 installed to work in conjunction with an electrically operated traffic-control signal; and

b. Is capable of producing at least two (2) recorded images 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.

(3) 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 photograph or digital image.

(4) System location means the approach to an intersection toward which a photographic traffic enforcement system is directed and in operation.

(5) Traffic control signal shall mean a traffic control device that displays alternating red, amber and green lights that directs traffic when to stop at or proceed through an intersection.

Sec. 16-3-380. Imposition of civil penalty for violations.

(a) It is hereby declared to be a nuisance against public health, safety, and welfare for a motor vehicle to proceed into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal. Such an event damages the public by endangering motor vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.

(b) Except as provided in (c) and (d) below, the Owner of a motor vehicle is liable for a civil penalty of seventy-five dollars (\$75.00) if the motor vehicle proceeds into an intersection at a System Location when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal.

(c) An Owner who fails to timely pay the civil penalty shall be subject to a late payment fee of twenty-five dollars (\$25.00).

(d) An Owner who fails to either timely pay the civil penalty, or to timely contest liability by requesting an administrative hearing in accordance with this Article, or to timely perfect an appeal to municipal court in accordance with this Article, is deemed to have admitted liability for the full amount of the civil penalty stated in the notice of violation, and to have waived the right to a hearing and appeal.

(e) A civil penalty imposed by this section is due and payable not later than the 30th day after the notice of violation is issued, unless within that period the Owner contests the notice by making written request for an administrative hearing.

Sec. 16-3-381. Enforcement; procedures.

(a) A notice of violation will not be issued until the Amarillo Police Department has first reviewed the Recorded Image and found there is cause for the notice to be issued. If the reviewing

police officer determines that circumstances constituting an affirmative defense or other extenuating conditions are plainly visible, then a notice shall not be issued.

(b) The City or its contractor shall mail a notice of violation to the Owner of the motor vehicle liable for the civil penalty not later than the 30th day after the date the violation is alleged to have occurred to the Owner's address as shown on the registration records of the Texas Department of Transportation or as shown on the records of the analogous department or agency of another state or country when the suspect license plate is from another jurisdiction.

(c) A notice of violation issued under this Article shall contain the following:

(1) A description of the violation alleged;

(2) The date, time, and location of the violation;

(3) A copy of the Recorded Image of the vehicle license plate and violation involved and an internet URL where the Recorded Image of the violation may be viewed;

(4) The amount of the civil penalty to be imposed for the violation;

(5) The date by which the civil penalty must either be paid or the matter contested by a written request for an administrative hearing, and that failure to pay or contest the civil penalty within the time allowed shall result in imposition of a late fee of twenty-five dollars (\$25.00);

(6) A statement that the person named in the notice of violation may pay the civil penalty in lieu of appearing at an administrative hearing;

(7) Information that informs the person:

a. Of the right to, manner of, and time for contesting the imposition of the civil penalty in an administrative hearing; and

b. That failure to timely pay the civil penalty or to contest liability is an admission of liability; and,

c. That the notice of violation and penalty are civil in nature, not criminal, and will not be reported to any insurance company or any state agency that maintains driving records or issues driver licenses.

(8) A statement that the Recorded Image is evidence in a proceeding for the imposition of a civil penalty; and,

(9) Nonpayment of penalty and any late fee, with or without a hearing or appeal may

be reported to the Texas Department of Transportation and a county may subsequently refuse to register the suspect vehicle until the delinquent sum is paid.

(d) A notice of violation under this Article is presumed to have been received on or before the 5th day after the date the notice is mailed.

Sec. 16-3-382. Administrative hearing; affirmative defenses; records retention.

(a) A person who receives a notice of violation may contest the imposition of the civil penalty by a written request for administrative hearing within thirty (30) days after issuance of the notice of violation. Upon receipt of such request, the Traffic Engineering Department or its contractor shall notify the person of the date, time, and location of the administrative hearing. Such hearing shall be set for a date no sooner than 7 and no longer than 30 days after the request is received. One or more hearing officers shall be appointed by the city manager or his designee.

(b) 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 hearing if the person files an affidavit with the hearing officer stating the date on which the person actually received the notice of violation that was mailed to the person, provided that the person files said affidavit within thirty (30) days after actual date of receipt of the notice of violation.

(c) In an administrative 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 violation may be attested to by affidavit of an employee of the city or the entity with which the city contracts to install, maintain, inspect, and operate the system. An affidavit of a city employee or the contractor that alleges a violation, based on an inspection of the Recorded Image, is admissible in a proceeding under this Article and is evidence of the facts contained in the affidavit.

(d) It shall be an affirmative defense to the imposition of civil liability under this Article, to be proven by a preponderance of the evidence, that:

- (1) The traffic-control signal was faulty;
- (2) The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer or other person directing traffic at the request of a police officer, or was a participant in an authorized funeral procession or parade that had the right-of-way through the intersection in disregard of the red signal;
- (3) The operator of the motor vehicle disregarded the traffic control signal to safely

yield the right-of-way to and make a path for an immediately approaching authorized emergency vehicle;

(4) The suspect motor vehicle was operating as an authorized emergency vehicle;

(5) The motor vehicle was a stolen vehicle being operated by a person without the effective consent of the Owner;

(6) The license plate depicted in the Recorded Image of the violation was a stolen plate being displayed on a motor vehicle other than the motor vehicle for which the plate was issued;

(7) The presence of ice, snow, unusual amounts of rain or other unusual hazardous road condition existed that would make compliance with this Article more dangerous under the circumstances than disregarding the traffic control signal and, the disregard of such signal did not cause an accident or require evasive maneuver by another driver or pedestrian; or

(8) The person who received the notice of violation was not the Owner of the motor-vehicle at the time of the violation, as evidenced by a proper and prior transfer or assignment of the State-issued certificate of title for that motor vehicle.

(e) To establish that the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate at the time of the violation, the Owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been promptly reported to an appropriate law enforcement agency.

(f) At the conclusion of the hearing, the hearing officer shall issue a signed and dated order stating whether the person charged with the violation is liable for the violation and if so, shall re-state the penalty amount and describe the right to appeal to municipal court in accordance with other provisions of this Article.

(g) The orders issued under this section together with affidavits and other documents associated with each hearing shall be filed with and maintained by the City's Traffic Engineering Department in a separate index and file for each hearing. Such documents do not have to be retained in hardcopy but may be preserved using microfilm, microfiche, or digital imaging, or other electronic data processing methods used for other business records of the City of Amarillo. Such information shall be retained for a period of three (3) years or as otherwise provided by law.

Sec. 16-3-383. Appeal.

(a) A person who is found liable after an administrative hearing may appeal that determination of civil liability to the municipal court, by filing a written notice of appeal with the clerk of the municipal court not later than the 31st day after the date on which the administrative hearing officer entered the written finding of civil liability. Collection or enforcement of the civil penalty is stayed during the period allowed for perfecting an appeal and during the pendency of the appeal.

(b) To perfect the appeal, the person must also file with the notice of appeal, a notarized statement of personal financial obligation (that is, either post a bond or sign a promissory note that is immediately due and payable upon entry of a judgment of liability by the municipal court and providing for recovery of city's reasonable attorney fees and court costs for collection of the note, and providing for waiver of notice, presentment, and demand) in the amount of the civil penalty and, pay the applicable civil court costs to the court clerk, being the sum of \$ 27.00.

(c) The clerk of the municipal court shall set the matter for a trial-by judge as expeditiously as possible on the court's docket and issue notice of the date, time and place of the trial to the appellant and the City attorney's office. The appeal shall be conducted as a civil trial *de novo* and all issues determined by the judge upon a preponderance of the evidence. The affidavits submitted under Section 16-3-382 shall be admitted into evidence by the municipal judge.

(d) At the conclusion of the trial, the trial judge shall enter a written judgment declaring whether the person is liable for the nuisance and civil penalty stated in this Article or is not liable for same. A person found liable in the municipal court trial shall immediately pay the civil penalty prescribed by this Article. The court is authorized to immediately collect the civil penalty by cash, credit card, or by immediately proceeding against any bond posted by the person. If the person is exonerated, then the statement of personal financial obligation required to perfect the appeal shall be immediately released.

Sec. 16-3-384. Nature of liability; collection; no double violations.

(a) The imposition of a civil penalty under this Article is not a criminal conviction for any purpose and shall not be reported to any insurance company or state agency that issues driver licenses or maintains driving records. However, a failure to pay the civil penalty or a late fee may be reported to the Texas Department of Transportation and a county may thereafter refuse to re-register the vehicle used in the violation until the amount is paid to the City.

(b) Unless prohibited by other law, the city attorney or designee is authorized to file suit and take other reasonable steps to collect the civil penalty and any fees imposed under this Article.

(c) A civil penalty may not be imposed under this Article on the Owner of a vehicle if the operator of the vehicle was arrested or was issued a citation or summons to appear in municipal court for the same violation recorded by a Photographic Traffic Signal Enforcement System. However, a civil penalty may be imposed on the vehicle Owner for the violation recorded by a Photographic Traffic Signal Enforcement System, if the arrest, citation, or summons of the vehicle operator is for a different violation of law than disregarding the traffic control device in the Recorded Image.

Sec. 16-3-385. Safety & Traffic Fund.

The civil penalties and late fees collected under this Article shall be deposited in a traffic management account established by the City Commission. Funds from the traffic management account may be expended only for: the costs of Photographic Traffic Signal enforcement under this Article, traffic or pedestrian safety programs, public safety, traffic enforcement, intersection improvements, or payments to the State of Texas required by law for operating a Photographic Traffic Signal Enforcement System.

Sec. 16-3-386. Statute incorporated.

It is the intention of the City that all applicable provisions of Texas Transportation Code, Chapter 707, as amended, are addressed in this ordinance either as expressly stated hereinabove or incorporated here by this reference. In the event of a conflict or omission between this ordinance and Chapter 707, then the applicable provision of said statute shall prevail.

ARTICLES ~~XII~~ XIII – XX.

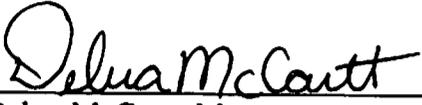
SECTIONS 16-3-~~379~~ -387 -- 16-3-1000. RESERVED.

SECTION 2. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Commission of the City of Amarillo, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 3. Repealer. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

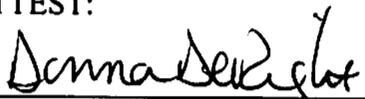
SECTION 4. Publishing and Effective Date. This ordinance shall be published and become effective according to law.

INTRODUCED AND PASSED by the City Commission of the City of Amarillo, Texas, on First Reading on the 15th day of April, 2008; and PASSED on Second and Final Reading on the 22nd day of April, 2008.



Debra McCartt, Mayor

ATTEST:



Donna DeRight, City Secretary