

ARTICLE XI. AUTOMATED TRAFFIC SIGNAL ENFORCEMENT**Sec. 19-180. Definitions.**

In this article:

Department shall mean the Police Department of the City of Duncanville, Texas.

Intersection shall mean the place or area where two or more streets or roadways intersect and is defined as the common area at the junction of two or more streets or roadways, the dimensions of which include only the common area within the connection of the lateral curb lines or, in the absence of curb lines, the lateral boundary lines of the streets or roadways.

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 Texas Department of Public Safety or the analogous department or agency of another state or country.

Photographic traffic signal enforcement system shall mean a system that:

- (1) Consists of a camera system installed to work in conjunction with an electrically operated traffic-control signal; and
- (2) Is capable of producing at least two 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.

Recorded image means an image recorded by a photographic traffic signal enforcement system that depicts the rear of a motor vehicle and is automatically recorded on a photograph or digital image.

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

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.

(Ord. No. 1971, § 1, 2-7-06)

Sec. 19-181. Imposition of civil penalty for violations.

(a) The city council finds and determines that a vehicle that proceeds into an intersection when the traffic control signal controlling that vehicle's direction of travel is emitting a steady red signal 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 subsection (c) below, the owner of a motor vehicle is liable for a civil penalty of \$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 penalty of \$25.00.

(Ord. No. 1971, § 1, 2-7-06; Ord. No. 2028, § 1, 8-21-07)

Sec. 19-182. Enforcement; procedures.

(a) The department shall be responsible for the enforcement and administration of this article.

(b) In order to impose a civil penalty under this article, the department shall mail a notice of violation to the owner of the motor vehicle not later than the 30th 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 the Texas Department of Public Safety; 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 or Department of Public Safety.

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

(1) A description of the violation alleged;

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

(3) A copy of a recorded image of the vehicle involved in the violation;

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

(5) The date by which the civil penalty must be paid;

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

(7) Information that informs the person named in the notice of violation:

a. Of the right to contest the imposition of the civil penalty in an administrative adjudication;

b. Of the manner and time in which to contest the imposition of the civil penalty; and

c. That failure to pay the civil penalty or to contest liability is an admission of liability.

(8) A copy of a recorded image of the violation limited solely to a depiction of the area the registered number displayed on the license plate of the vehicle involved in the violation is evidence in a proceeding for the imposition of a civil penalty.

(9) A statement of the amount of the civil penalty and that to failure to timely request a hearing or to pay the civil penalty within 30 days shall result in a late payment fee of \$25.00.

(10) That failure to pay the civil penalty imposed will not:

a. Result in the issuance of a warrant; and

b. Result in the imposition of the civil penalty on the recorded owners driving record.

(11) Any other information deemed necessary by the department.

(d) A notice of violation under this article is presumed to have been received on the tenth day after the date the notice of violation is mailed.

(e) In lieu of issuing a notice of violation, the department in its sole discretion may mail a warning notice to the owner.

(Ord. No. 1971, § 1, 2-7-06; Ord. No. 2028, § 1, 8-21-07)

Sec. 19-183. Administrative adjudication hearing.

(a) A person who receives a notice of violation may contest the imposition of the civil penalty within 30 days by requesting in writing an administrative adjudication of the civil penalty within 15 days after receipt of the notice of violation. Upon receipt of a timely request, the department shall within 60 days hold a hearing and notify the person of the date and time of the hearing on the administrative adjudication. The administrative adjudication hearing shall be held before a hearing officer appointed by the city manager.

(b) 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 this section.

(c) The civil penalty shall not be assessed if after a hearing, the hearing officer enters a finding of no liability.

(d) (1) In an administrative adjudication hearing, the issues must be proved at the hearing 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 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 article and is evidence of the facts contained in the affidavit.

(2) The hearing officer shall have the authority to administer oaths and to issue orders compelling the attendance of witnesses and production of documents.

(e) A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for late payment fee in the amount of \$25.00 in addition to the amount of the civil penalty assessed for the violation administrative hearing costs in the amount of \$25.00 in addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within ten days of the hearing.

(f) 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 not in proper position and sufficiently legible to an ordinarily observant person;

(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 so as 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 of the Texas Transportation Code and that the operator 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 presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this article and with the traffic control signal more dangerous under the circumstances than noncompliance; or

(8) The person who received the notice of violation was not the owner of the motor vehicle at the time of the violation.

(9) If, at the time of the violation, the motor vehicle depicted in the photograph or digital image was owned by a person in the business of selling, renting or leasing motor vehicles or was not the person named in the notice, was at the time:

- a. Being test driven by another person;
- b. Being rented or leased by the vehicle owner to another; or
- c. Owned by a person who was not the person named in the notice.

(10) If an affirmative defense of non-ownership or in the business of selling, renting or leasing a motor vehicle under subsection (f)(8) or (f)(9), then owner may submit an affidavit or written statement under penalty of perjury by mail to the department attesting to the facts under such subsections.

(g) 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 hearing officer that the theft of the vehicle or license plate had been timely reported to the appropriate law enforcement agency.

(h) 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 notice of violation that was mailed to the person; and

(2) Within the same period required by this section for a hearing to be timely requested, but measured from the date the mailed notice was received as stated in the affidavit, the person requests an

administrative adjudication hearing.

(i) A person who is found liable after an administrative adjudication hearing may appeal that finding of civil liability to the municipal court of the City of Duncanville by filing a notice of appeal or file a notarized statement of personal financial obligation to perfect such appeal with the clerk of the municipal court. The notice of appeal must be filed not later than the 31st day after the date on which the administrative adjudication hearing officer entered the finding of civil liability. Unless the person, on or before the filing of the notice of appeal, posts a bond in the total amount of the penalty, fees and costs, an appeal does stay the enforcement of the civil penalty. An appeal shall be determined by the municipal court by trial de novo. Any affidavits submitted at the administrative adjudication hearing to establish the reliability of the photographic traffic signal enforcement system shall be admitted by the municipal judge in the trial de novo, and the facts must be proven by a preponderance of the evidence. A person found liable by the municipal court shall pay an appellate filing fee of \$50.00 in addition to the civil penalty and any other costs and fees due the city.

(Ord. No. 1971, § 1, 2-7-06; Ord. No. 2028, § 1, 8-21-07)

Sec. 19-184. Order.

(a) Following an administrative adjudication hearing, the hearing officer shall issue a written order stating:

- (1) Whether the person charged with the violation is liable for the violation; and
- (2) The amount of any civil penalty and late penalty payment fee, if any, assessed against the person.

(b) The orders issued under subsection (a) shall be in writing, signed and dated by the hearing officer, and may be filed with the office of the hearing examiner. The hearing examiner shall keep the orders in a separate index and file. The orders may be recorded using microfilm, microfiche, or data processing techniques.

(Ord. No. 1971, § 1, 2-7-06; Ord. No. 2028, § 1, 8-21-07)

Sec. 19-185. Effect of liability; exclusion of civil remedy.

(a) The imposition of a civil penalty under this article is not a criminal conviction for any purpose.

(b) A civil penalty may not be imposed 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 the same violation of Section 544.007(d) of the Texas Transportation Code recorded by the photographic traffic signal enforcement system.

(c) An owner who fails to pay the civil penalty or to timely contest liability for the penalty is considered to admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person.

(d) The city attorney is authorized to file suit to enforce collection of a civil penalty imposed under this article.

(Ord. No. 1971, § 1, 2-7-06)

Sec. 19-186. Civil nature of penalties and costs; use of civil penalty funds.

The penalties assessed under this article and collected by the city are to be used to pay for the enforcement of the automated red light enforcement program, including but not limited to operation, maintenance, improvement, personnel and program management, fund traffic safety programs, including pedestrian safety programs, public safety programs, intersection improvement and traffic enforcement.

(Ord. No. 1971, § 1, 2-7-06; Ord. No. 2028, § 1, 8-21-07)