

ORDINANCE NO. 2007-08

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY ADDING A NEW ARTICLE VIII TO CHAPTER 78 THEREOF; PROVIDING RULES AND REGULATIONS IMPLEMENTING A PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM WITHIN THE CITY; PROVIDING DEFINITIONS; PROVIDING A CIVIL PENALTY IN AN AMOUNT OF \$75.00 FOR VIOLATION OF ANY PROVISION HEREOF; PROVIDING A LATE FEE FOR NONPAYMENT OF SUCH PENALTY; PROVIDING AN ADMINISTRATIVE ADJUDICATION HEARING PROCEDURE; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

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WHEREAS, the City Council of the City of Tomball, Texas (the “City”), seeks to promote the health, safety, and welfare of the citizens of the City; and

WHEREAS, there is convincing documented evidence that the matter of motorists running red lights is a growing problem resulting in injuries, fatalities, and damage to property; and

WHEREAS, the City Council finds that a motor vehicle that proceeds into an intersection when the traffic control signal for that vehicle’s direction of travel is emitting a steady red signal endangers motor vehicle operators and pedestrians, decreases the efficiency of traffic control and traffic flow efforts of the City, and increases the number of accidents to which public safety agencies must respond at the expense of taxpayers; and

WHEREAS, the City Council finds that automated red light camera enforcement systems are effective deterrence tools and have a positive safety impact; and

WHEREAS, a red light camera program helps to bolster and support the efforts of the City’s law enforcement personnel in enforcing the City’s traffic rules and regulations; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by adding a new Article VIII to Chapter 78 thereof, to provide as follows:

“ARTICLE VIII. AUTOMATED RED LIGHT ENFORCEMENT

Sec.78-220. Definitions.

In this article:

Department means the Police Department of the City of Tomball, Texas.

Intersection means the place or area where two (2) or more streets intersect.

Owner means 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.

Photographic traffic monitoring system means a system that:

(1) consists of a camera and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic control signal; and

(2) 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.

Recorded image means a photographic or digital image that depicts the front or rear of a motor vehicle.

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

Traffic control signal has the meaning assigned by Section 541.304 of the Texas Transportation Code.

Sec. 78-221. Imposition of civil penalty for creating dangerous intersections.

The owner of a motor vehicle is liable to the City 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 within 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.

Sec. 78-222. Enforcement; procedures.

(a) 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 liable for the civil penalty not later than the thirtieth (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

(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.

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

(1) a description of the violation alleged;

(2) the location of the intersection where the violation occurred;

(3) the date and time of the violation;

(4) the name and address of the owner of the vehicle involved in the violation;

(5) the registration number displayed on the license plate of the vehicle involved in the violation;

(6) 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 vehicle involved in the violation;

(7) the amount of the civil penalty for which the owner is liable;

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

(9) a statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;

(10) information that informs the person named in the notice of violation:

a. of the person's right to contest the imposition of the civil penalty against the person in an administrative adjudication;

b. 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 Section 78-224(a);

c. that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and a waiver of the owner's right to appeal the imposition of the civil penalty and that

failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability; and

d. that failure to pay the civil penalty or contest the imposition of such penalty within the time allowed shall result in the imposition of a late payment fee of twenty-five dollars (\$25.00);

(11) a statement that, if at the time and place of the violation, the vehicle was owned by a person in the business of selling, renting, or leasing motor vehicles or by a person who was not named in the notice of violation, the owner may transfer liability for the violation to the person who was operating the vehicle at that time and place if the owner submits to the department, not later than thirty (30) days after the date the notice was received, by affidavit, a written declaration under penalty of perjury, or testimony under oath at an administrative adjudication hearing, the name and current address of the person and that such person:

a. was test driving the vehicle at the time and place of the violation;

b. was renting or leasing the vehicle at the time of the violation; or

c. was the subsequent owner of the motor vehicle, if ownership of the vehicle was transferred by the owner before the time of the violation;

(12) a statement that the owner of the vehicle in the notice of violation may elect to pay the civil penalty by mail sent to a specified address instead of appearing at the time and place of the administrative adjudication hearing; and

(13) a statement that 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.

(c) A notice of violation under this article is presumed to have been received on the fifth (5th) day after the date the notice of violation is mailed.

(d) 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:

(1) admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person; and

(2) waive the person's right to appeal the imposition of the civil penalty.

Sec. 78-223. Presumption.

(a) 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.

(b) 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 (a) is rebutted on the presentation of evidence establishing that the vehicle was at that time:

(1) being test driven by another person;

(2) being rented or leased by the vehicle's owner to another person; or

(3) owned by a person who was not the person named in the notice of violation.

(c) Notwithstanding Section 78.224, the presentation of evidence under subsection (b) hereof 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 78.224, or by a written declaration under penalty of perjury. The affidavit or written declaration may be submitted by mail to the department.

(d) If the presumption established by subsection (a) is rebutted under subsection (b), a civil penalty may not be imposed on the owner of the vehicle or the person named in the notice of violation, as applicable.

(e) 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 department 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 thirtieth (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 department may send a notice of violation to that individual at the address provided by the owner of the motor vehicle.

Sec. 78-224. Administrative adjudication hearing.

(a) A person who receives a notice of violation under this article may contest the imposition of the civil penalty by requesting in writing an administrative adjudication of the civil penalty within the time provided in the notice (which period shall not be less than thirty (30) days following the mailing of the notice). Upon receipt of the request, the department shall 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 within fifteen (15) days following receipt of the written request for such hearing.

(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 constitutes a waiver of the right to appeal under Section 78-225.

(c) Failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability for the full amount of the civil penalty assessed in the notice of violation and constitutes a waiver of the right to appeal under Section 78-225.

(d) A person who fails to pay a civil penalty within the time allowed by this article shall be additionally liable for a late payment penalty in the amount of twenty-five dollars (\$25.00).

(e) The civil penalty shall not be assessed if:

1. after a hearing, the hearing officer enters a finding of no liability; or
2. within the time prescribed in the notice of violation, the person against whom the civil penalty is to be assessed submits the proof described in subsection 78-222(b)(11).

(f) 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 subsection must be in writing and signed and dated by the hearing officer. A finding of liability for a civil penalty must specify the amount of the civil penalty for which the person is liable. If the hearing

officer enters a finding of no liability, a civil penalty for the violation may not be imposed against the person.

(g) 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 administrative hearing costs in the amount of fifty dollars (\$50.00) 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 (10) days of the hearing.

(h) 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 control signal monitoring 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 of the entity with which the City contracts, who is responsible for inspecting and maintaining the system. An affidavit of an officer or employee of the City, or an entity with which the City contracts, 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.

(i) The hearing office of an administrative adjudication hearing shall have the authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents.

(j) It shall be an affirmative defense to liability under this article, to prove 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 Texas Transportation Code Ch. 546 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; or

(7) the presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this article more dangerous under the circumstances than noncompliance.

(k) 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.

(l) 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 submits a written request for the hearing to the designated hearing officer, accompanied by an affidavit that attests to the date on which the person received the notice of violation; and

(2) the written request and affidavit are submitted to the department within the same number of days after the date the person received the notice of violation as specified under subsection 78.224(a).

Sec. 78-225. Appeal.

(a) The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to the judge of the Municipal Court of the City by filing an appeal petition with the clerk of the court.

(b) The petition must be:

(1) filed before the thirty-first (31st) day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty; and

(2) accompanied by payment of a fifty dollar (\$50.00) filing fee.

(c) The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the department of the date, time, and place of such hearing.

(d) 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.

(e) An appeal under this section shall be determined by the Court by trial de novo.

Sec. 78-226. Effect of liability; exclusion of civil remedy; enforcement.

(a) The imposition of a civil penalty under this article is not a conviction and may not be considered a conviction for any purpose. If the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner:

(1) an arrest warrant may not be issued for the owner; and

(2) the imposition of the civil penalty may not be recorded on the owner's driving record.

(b) The department may not impose a civil penalty under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or 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 control signal enforcement system.

(c) The City attorney is authorized to file suit to enforce collection of a civil penalty assessed under this article.”

Section 2. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 6TH DAY OF AUGUST 2007.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 20TH DAY OF AUGUST 2007.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>ABSTAIN</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

(signed) Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

(signed) Doris Speer
Doris Speer, City Secretary