

ORDINANCE NO. 2011-4

AN ORDINANCE ALLOWING FOR AUTOMATED PHOTOGRAPHIC ENFORCEMENT OF TRAFFIC CONTROL DEVICE VIOLATIONS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDFIELD, ALABAMA, as follows:

Section 1. Findings by the City Council of the City of Midfield, Alabama. The City Council (herein called "Council") of the City of Midfield, Alabama (herein called "City"), in the State of Alabama, does hereby find and declare that there is a significant risk to the health and safety of the community from drivers of vehicles that run red lights within the City, and that the running of said traffic control signals against a red light is a public nuisance. Accident data establishes that vehicles running red lights have been and are a dangerous problem in Midfield, Alabama.

Section 2. Definitions.

In this article:

(1) *City* shall mean the City of Midfield, Alabama

(2) *Department* shall mean the Municipal Court of the City of Midfield, Alabama.

(3) *Intersection* shall mean the place or area where two (2) or more streets intersect.

(4) *Owner* shall mean the owner of a motor vehicle as shown on the motor vehicle registration records of the Alabama Department of Revenue or the analogous department or agency of another state or country. The term shall not include a motor vehicle rental or leasing company when a motor vehicle registered by the company is rented or leased to another person under a rental or lease agreement with the company, in which event "owner" shall mean the person to whom the vehicle is rented or leased; nor shall the term include motor vehicles displaying dealer license plates, in which event "owner" shall mean the person to whom the vehicle is assigned for use; nor shall the term include the owner of any stolen motor vehicle, in which event "owner" shall mean the person who is guilty of stealing the motor vehicle.

(5) *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 device using vehicle sensors synchronized to automatically record, either by conventional film or digital imaging, sequenced photographs or full motion video of the rear of a motor vehicle while proceeding through a signalized intersection; and

b. Is capable of producing at least two (2) recorded images, at least one of which is capable of depicting the license plate attached to the motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.

(6) *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.

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

(8) *Traffic control signal* shall mean any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed as defined in Section 32-1-1.1, Code of Alabama 1975.

(9) *Traffic-Control Violation* shall mean any violation of section 32-5A-31, section 32-5A-32, or Section 32-5A-35, Code of Alabama 1975, or of any combination thereof, wherein a vehicle proceeds into a signalized intersection at a time while traffic-control signal for that vehicle's lane of travel is emitting a steady red signal. A traffic signal violation shall be a civil violation.

(10) *Trained Technician.* A sworn law enforcement officer employed by the City of Midfield, who alternatively:

- a. Is a professional engineer in the field of civil engineering;
- b. Has received instruction and training in the proper use of the photographic traffic signal enforcement system to be used by the city by the city's traffic engineer or his or her designee; or
- c. Has been trained by the vendor installing the equipment. Under no circumstances shall the salary or other compensation of the trained technician be related to the number of notices of violation issued or amount of fines collected.

Section 3. 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 for 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 (c) and (d) of Section 3 below, the owner of a motor vehicle is liable for a civil penalty of one hundred dollars (\$100.00) if a motor vehicle registered to that owner proceeds into an intersection in the city at a system location when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal. Said one hundred dollars (\$100.00) penalty shall be assessed for a first or second violation of this ordinance within a twelve month period.

(c) For a third or subsequent violation committed by the owner of the same motor vehicle during any twelve-month period, the amount of the civil penalty shall be one hundred dollars (\$100.00).

(d) An owner who fails to timely pay the civil penalty as set out in Section 3 shall be subject to a late payment penalty of twenty dollars (\$25.00).

Section 4. Enforcement; procedures.

(a) The Municipal Court of the City of Midfield is responsible for the enforcement and administration of this ordinance.

(b) In order to impose a civil penalty under this ordinance, the Department 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:

- (1) The owner's address as shown on the registration records of the Alabama Department of Revenue; 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 Alabama Department of Revenue.

- (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 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 lieu of appearing in municipal court for an adjudicative 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 municipal court;
 - 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 statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;
 - (9) A statement that failure to pay the civil penalty within the time allowed shall result in the imposition of a late penalty of twenty dollars (\$20.00); and
 - (10) Any other information deemed necessary by the department.
- (d) A notice of violation under this article is presumed to have been received on the 10th day after the date the notice of violation is mailed.
- (e) The civil penalty imposed by ordinance shall be paid within 30 days of the 10th day after the date the notice of violation is mailed.
- (f) In lieu of issuing a notice of violation, the department may mail a warning notice to the owner.

Section 5. Adjudicative Hearing in Municipal Court.

- (a) A person who receives a notice of violation may contest the imposition of the civil penalty by submitting a request for an adjudication hearing of the civil penalty, in writing, within fifteen (15) days of the 10th day after the date the notice of violation is mailed. Upon receipt of a timely request, the Department shall notify the person of the date and time of the municipal court hearing on the adjudication. The adjudicative hearing shall be held before a Municipal Judge.
- (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.
- (c) The civil penalty shall not be assessed if after a hearing the municipal judge enters a finding of no liability.
- (d) In the adjudicative 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 the adjudicative 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.

(e) The notice of violation, the recorded and reproduced images of the traffic signal violation, regardless of the media on which they are recorded, accompanied by a certification of authenticity of a trained technician, and evidence of ownership of a vehicle as shown by copies or summaries of official records shall be admissible into evidence without foundation unless the municipal court finds there is an indication of untrustworthiness, in which case the city shall be given a reasonable opportunity to lay an evidentiary foundation.

(f) A person who is found liable after an adjudicative hearing or who requests an adjudicative hearing and thereafter fails to appear at the time and place of the hearing is liable for municipal court costs and fees in the amount of ten dollars (\$10.00) 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 adjudicative hearing shall pay the civil penalty and costs within ten (10) days of the hearing. The \$10.00 shall be paid to the Alabama Criminal Justice Information Center as compensation for record keeping with respect to violation notices issued under this act.

(g) 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 visible 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 §32-5A-7 and §32-5-213 of the Alabama Code and that the operator was acting in compliance with that Chapter;
- (5) The motor vehicle was stolen or 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 more dangerous under the circumstances than non-compliance; or
- (8) The person who received the notice of violation was not the owner of the motor-vehicle at the time of the violation.

(h) 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 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.

(i) Notwithstanding anything in this ordinance 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 adjudicative hearing in municipal court on the violation if:

- (1) The person files an affidavit with the municipal court stating the date on which the person received the notice of violation that was mailed to the person, if not received by the tenth (10th) day after same is mailed as set out in Section 5(a) above; and
- (2) Within the fifteen (15) days of the date of actual receipt, the person requests an adjudicative hearing.

(j) If the evidence produced by a photographic traffic signal enforcement system does not produce an image of the license plate with sufficient clarity for a trained technician to determine the identity of the owner, and if the identity cannot otherwise be reliably established, then no notice of violation may be issued pursuant to this act. If, however, a notice of violation is issued, to the degree constitutionally allowed, those issues related to the identity of the vehicle or its owner shall affect the weight to be accorded the evidence and shall not affect its admissibility.

Section 6. Order.

(a) The municipal judge at any adjudicative hearing under this ordinance shall issue an order stating:

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

(b) The orders issued under section 6(a) above shall be filed in the office of the Municipal Court. The Municipal Court shall keep the orders in a separate index and file. The orders shall be recorded using microfilm, microfiche, or other data processing techniques.

(c) Orders issued by the Municipal Judge may be filed in the office of the Probate Judge of Jefferson County, Alabama, and shall operate as a judicial lien in the same manner and with the same weight and effect as any other civil judgment filed therein.

Section 7. Appeal to Circuit Court.

(a) A person who is found liable after an adjudicative hearing in municipal court may appeal that finding of civil liability to the Circuit Court of Jefferson County, Alabama by filing a notice of appeal with the clerk of the municipal court. The notice of appeal must be filed not later than the 14th day after the date on which the municipal judge entered the finding of civil liability. Unless the person, on or before the filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be determined by the circuit court by trial de novo.

(b) The Circuit Court hearing on appeal shall use the procedures that apply to criminal convictions in municipal court with the following qualifications:

- (1) Proceeding shall retain their civil nature on appeal with the circuit court applying the preponderance of the evidence standard.
- (2) If the person is adjudicated by the circuit court to be responsible for payment of the fine, circuit court costs shall be owed by the person adjudicated responsible, with 100 percent of those court costs retained by the circuit court. Court costs in the circuit shall be calculated as are court costs for criminal appeals from the municipal court, and in the event the circuit court finds the person appealing to not be responsible, no municipal court costs shall be owed to the city.
- (3) The Circuit court may assign case numbers as for criminal appeals and place the appeals on criminal dockets in the same manner as criminal appeals from municipal court.
- (4) The circuit court shall sit as trier of both fact and law in the civil proceedings in the circuit court.
- (5) The City shall be responsible for providing an attorney to represent the city and to prosecute the civil proceedings in the circuit court.

Section 8. Effect of liability; exclusion of civil remedy.

- (a) No person may be arrested or incarcerated for nonpayment of a civil fine or late fee. 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 a criminal violation of any portion of Article II, Chapter 5A, Title 32 (§32-5A-31, 34, and 35) of the Code of Alabama 1975, or any other municipal ordinance that embraces and incorporates the said statutes, that occurred simultaneously with and under the same set of facts which were recorded by the photographic traffic signal enforcement system.
- (c) No record of an adjudication of civil penalty made under this ordinance shall be listed, entered, or reported on any criminal record or driving record, whether the record is maintained by the City of Midfield or an outside agency.
- (d) 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.
- (e) The city attorney or his designee is authorized to file suit to enforce collection of a civil penalty imposed under this article.

Section 9. Record keeping; compliance.

- (a) The Chief of the Midfield Police Department shall keep statistical data regarding the effectiveness of photographic traffic signal enforcement systems in reducing traffic-control device violations and intersectional collisions and shall communicate the data on an annual basis to the Alabama Department of Transportation and the Alabama Criminal Justice Information Center.
- (b) The placement of control devices and timing of yellow lights and red light clearance intervals shall conform to the most recent edition of the Traffic Engineering handbook. It shall be presumed that the city is in compliance with this section unless the contrary is shown by a preponderance of the evidence.

Section 10. Operator's Liability.

- (a) Any person against whom an adjudication of liability for a civil violation, who actually pays the civil fine imposed thereby shall have a cause of action against any person who may be shown to have been in operation of the vehicle recorded at the time of the violation for the amount of the civil fine actually paid plus and consequential or compensatory damages and a reasonable attorney fee, without regard to the rules regarding joint and several liability, contribution, or indemnity. Provided, however that as a condition precedent to the bringing of a civil action, that the person held responsible for payment of the civil fine must first make written demand on the other person for reimbursement of the civil fine, giving a minimum of 60 days to remit payment, and if reimbursement is fully made within the 60-day period then the cause of action shall be extinguished and no attorney fees or other damages shall attach to the reimbursement.

- (b) Said cause of action must be commenced within two (2) years from the date of payment of the civil fine for a red light violation.

Section 11. Notice and postings prior to implementation.

- (a) The city shall cause a sign to be posted at each of a minimum of five roadway entry points to the city to provide motorists with notice that photographic traffic signal enforcement systems are in use. The sign will comply with this

requirement if it states substantially the following: "AUTOMATED CAMERAS USED IN RED LIGHT ENFORCEMENT," or if it otherwise gives sufficient notice.

- (b) Prior to operating a photographic traffic signal enforcement system, the city shall make a public announcement and conduct a public awareness campaign of the use of a photographic traffic signal enforcement system a minimum of 30 days before using the devices. The City may place photographic traffic signal enforcement systems at locations without public notice of the specific location, may change locations without public notice, and may install and move as needed decoy devices designed to resemble photographic traffic signal enforcement systems.
- (c) The City of Midfield shall post a sign or signs at each intersection at which a device is located informing motorists that a photographic traffic signal enforcement system is in operation at the intersection.

ADOPTED this the 27th day of June 2011

ATTEST

Tameeka Eprimam, City Clerk

APPROVED:

Cary R. Richardson, Mayor