

ORDINANCE NO. 3879

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 9 OF THE CODE OF THE CITY OF MESQUITE BY ADDING A NEW ARTICLE IX; THEREBY ESTABLISHING REGULATIONS FOR AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council finds that one of the largest causes of serious injury crashes in Texas is related to red light running and that automated enforcement has been found to be an effective resource to reduce the number of crashes at signalized intersections; and

WHEREAS, the City Council has determined 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; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good of the government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City Council finds that it is necessary and proper for the good of the government, peace or order of the City to adopt an ordinance implementing a photographic traffic signal enforcement system that consists of a camera system installed to work in conjunction with an electrically operated traffic control signal and shall produce at least two recorded images that depict the license plate attached to the front or rear of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the foregoing recitals are incorporated into this ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. That Chapter 9 of the Code of the City of Mesquite is hereby amended by adding a new Article IX to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

ARTICLE IX. AUTOMATED TRAFFIC SIGNAL ENFORCEMENT

Sec. 9-286. Generally.

This ordinance shall be cited as the "Automated Traffic Signal Enforcement Ordinance."

- (a) *Purpose.* This ordinance implements a photographic traffic signal enforcement system and provides that the owner of a motor vehicle is liable to the City for a civil penalty if, while facing only a steady red signal displayed by an electrically operated traffic control signal located in the City, the 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. This ordinance further provides definitions, enforcement procedures, administrative adjudication hearings, imposition of civil penalties for violations, which civil penalty is not a criminal conviction for any purpose, and procedures to collect said penalties and fees from imposition of civil liability which shall be deposited in a traffic safety fund account.
- (b) *Application.* This article applies to the issuance of a notice of violation for proceeding into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal alleging a civil penalty not to exceed the maximum amount permitted by State law within the jurisdiction of the Municipal Court. The procedures of this article apply only to offenses alleged to occur on or after the date of enactment.
- (c) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

City shall mean the City of Mesquite, Texas, an incorporated municipality located in Dallas and Kaufman counties, Texas, authorized to enact traffic laws under the laws of Texas.

Contracting entity shall mean the entity with which the City contracts for the administration, enforcement, installation and operation of the system.

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

Intersection shall mean the place or area where two or more streets intersect.

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.

Photographic traffic signal enforcement system shall mean a system that:

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

- (2) Is capable of producing at least two recorded images that depict the license plate attached to the front or rear of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal.

Recorded image shall mean a photographic or digital image recorded by a photographic traffic monitoring system that depicts the rear of a motor vehicle.

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

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

Sec. 9-287. Imposition of civil penalty for violations.

- (a) 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 electronically operated traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal as specified by Section 544.007(d) of the Texas Transportation Code.
- (b) An owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of \$25.00.

Sec. 9-288. Enforcement; procedures.

- (a) The Department and contracting authority are responsible for the enforcement and administration of this article.
- (b) *Intersection selection, signage and change interval.*
 - (1) The selection of the intersection approaches for the installation of a photographic traffic signal enforcement system shall be based on traffic volume, the history of accidents at the approach, the number or frequency of red light violations at the intersection, and similar traffic engineering and safety criteria, without regard to the ethnic or socioeconomic characteristics of the area in which the approach is located.
 - (2) The City shall cause signs complying with the requirements set forth in Chapter 707 of the Texas Transportation Code to be installed along each roadway that leads to an intersection at which a photographic traffic signal enforcement system is in active use.
 - (3) *Minimum change interval.* At an intersection at which a photographic traffic monitoring system is in use, the minimum change interval for a steady yellow signal must be established in accordance with the Texas Manual on Uniform Traffic Control Devices.
- (c) *Notice of violation.*

- (1) In order to impose a civil penalty under this article, the Department, a municipal employee authorized by the Department or the contracting entity 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:
 - a. The owner's address as shown on the registration records of the Texas Department of Transportation; or
 - b. 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.

- (2) A notice of violation issued under this article 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 vehicle involved in the violation;
 - e. The registration number displayed on the license plate of the 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 vehicle involved in the violations;
 - g. The amount of the civil penalty for which the owner is liable;
 - h. That the person has 30 days from the date the notice of violation was received in which to pay or contest the imposition of the civil penalty and a statement that the person incurs a late payment if the civil penalty is not paid or imposition of the penalty is not contested within that period;
 - i. 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
 - j. Information that informs the owner of the vehicle named in the notice of violation:

1. Of the owner's right to contest the imposition of the civil penalty against the person in an administrative adjudication hearing;
 2. 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 under Subsection (2)(h); and
 3. That failure to pay the civil penalty or to contest liability for the penalty 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.
- k. A statement that a recorded image of the motor vehicle involved in the violation will be used as evidence in a proceeding for the imposition of a civil penalty;
 - l. A statement that allegation and evidence of a culpable mental state is not required and that proof for the imposition of a civil penalty for the violation will be by a preponderance of the evidence;
 - m. 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 for the owner and the imposition of the civil penalty may not be recorded on the owner's driving record; and
 - n. Any other information deemed necessary by the Department.
- (3) A notice of violation under this article is presumed to have been received on the fifth day after the date the notice of violation is mailed.
 - (4) In lieu of issuing a notice of violation, the Department may mail a warning notice to the owner.

Sec. 9-289. Administrative adjudication hearing.

- (a) *Request for hearing.* A person who receives a notice of violation may contest the imposition of the civil penalty by requesting in writing an administrative adjudication hearing of the civil penalty within 30 days after date of the notice of violation was received. Upon receipt of a timely request, the City shall notify the person of the date and time of the hearing on the administrative adjudication. The administrative adjudication hearing shall be held before the City Manager or his designee who shall have the authority to administer oaths and issue orders compelling the attendance of witnesses and production of documents.
- (b) *Admission of liability.* A person who fails to pay a 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 admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person and is a waiver of the person's right to appeal the imposition of the civil penalty.

(c) *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 is rebutted on the presentation of evidence establishing that the vehicle was at that 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 9-289(a), the presentation of evidence under Subsection (2) 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 or by a written declaration under penalty of perjury. The affidavit or written declaration may be submitted by mail to the City or the contracting entity.
- (4) If the presumption established by Section 9-289(c)(1) is rebutted under Section 9-289(c)(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) In the event of a rebuttal under 9-289(c)(2) the owner of the motor vehicle shall not later than the 30th day after the date the notice of violation is received provide to the City or the contracting entity 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. 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 the contracting entity may send a notice of

violation to that individual at the address provided by the owner of the motor vehicle.

(d) *Hearing.*

- (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 of 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 by such person that alleges a violation based on an inspection of the pertinent recorded image is admissible in a proceeding under this article and in an appeal under Section 2-289(g) and is evidence of the facts contained in the affidavit.
- (2) 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, signed and dated by the hearing officer.
- (3) 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.
- (4) A finding of liability or a finding of no liability entered under this section may:
 - a. Be filed with the clerk of the Municipal Court; and
 - b. Be recorded on microfilm or microfiche or using data processing techniques.
- (5) 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 \$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 31 days of the date on which the administrative adjudication hearing officer entered the finding of civil liability.

(e) *Affirmative defenses.*

- (1) 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:

- a. The traffic control signal was not in proper position and sufficiently legible 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 vehicle and being operated by a person other than the owner of the 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 article more dangerous under the circumstances than noncompliance;
 - h. The person who received the notice of violation was not the owner of the motor vehicle at the time of the violation; or
 - i. 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 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.
- (f) *Untimely request for administrative adjudication hearing.* Notwithstanding any other provision of this article, a person who receives a notice of violation under this chapter and who fails to pay the amount of the civil penalty or fails to timely request an administrative adjudication hearing is entitled to an administrative adjudication hearing 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 hearing officer within the same number of days after the date the person received the notice of violation as specified under Section 9-288(b)(2)(h).

- (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 Municipal Court by filing an appeal petition with the clerk of the Municipal Court. The petition must be filed not later than the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty and accompanied by payment of the costs required by law for the court. The Mesquite Municipal Court shall have exclusive appellate jurisdiction within the municipality's territorial limits in a case arising under Chapter 707 of the Transportation Code.
 - (2) The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the appropriate department, agency or office of the City of the date, time and place of the hearing.
 - (3) 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.
 - (4) An appeal shall be determined by the Municipal Court by non-jury trial de novo only.
 - (5) The Municipal Court shall follow administrative hearing procedures and apply the rules of civil evidence with the express condition that the affidavits submitted under Section 9-289(d) shall be admitted by the Municipal Court Judge in the trial de novo, and the issues must be proved by a preponderance of the evidence.
 - (6) A tape recording shall be made of all testimony given in the appeal of the administrative hearing before the Municipal Court.
 - (7) 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 fees due the City.
- (h) *Enforcement.* If the owner of a motor vehicle is delinquent in the payment of a civil penalty imposed under this chapter, the County Assessor-Collector or the Texas Department of Transportation may refuse to register a motor vehicle alleged to have been involved in the violation.
- (i) *Imposition of civil penalty not a conviction.* The imposition of a civil penalty under this chapter is not a conviction and may not be considered a conviction for any purpose.

Sec. 9-290. 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 or his designee is authorized to file suit to enforce collection of a civil penalty imposed under this article.

Sec. 9-291. Traffic safety fund.

The penalties and fees collected from the imposition of civil liability under this article shall be deposited in the traffic safety fund account established by the City Council. Funds from the traffic safety fund may be expended only for the costs of automated signal enforcement under this article, public traffic or pedestrian safety programs, traffic enforcement and intersection improvements.

Sec. 9-292. Deposit of revenue from certain traffic penalties.

- (a) 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:
 - (1) 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 of the Health and Safety Code; and
 - (2) 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.
- (b) The City may retain an amount necessary to cover the costs of:
 - (1) Purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the City;
 - (2) Installing the photographic traffic signal enforcement system at sites in the City including the costs of installing cameras, flashers, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment and associated labor costs;

- (3) Operating the photographic traffic signal enforcement system in the City, including the costs of creating, distributing and delivering violation notices, conducting a review of violations by employees of the City, processing fine payments and collections, and the costs associated with administrative adjudications and appeals; and
 - (4) Maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.
- (c) Chapter 133 of the Local Government Code applies to fee revenue described by Subsection (a)(1).
- (d) If under Section 133.059 of the Local Government Code, the comptroller conducts an audit of the City and determines that the City retained more than the amounts authorized by this section or failed to deposit amounts as required by this section, the comptroller may impose a penalty on the City equal to twice the amount the City:
- (1) Retained in excess of the amount authorized by this section; or
 - (2) Failed to deposit as required by this section.

Sec. 9-293. Effect on other enforcement.

- (a) The implementation of a photographic traffic signal enforcement system by the City under this chapter does not:
- (1) Preclude the application or enforcement in the City of Section 544.007(d) in the manner prescribed by Chapter 543; or
 - (2) Prohibit a peace officer from arresting a violator of Section 544.007(d) as provided by Chapter 543, if the peace officer personally witnesses the violation, or from issuing the violator a citation and notice to appear as provided by that chapter.
- (b) The City may not impose a civil penalty under this chapter 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 recorded by the photographic traffic signal enforcement system.

Sec. 9-294. Report of accidents.

- (a) The City shall compile a written report of the number and type of traffic accidents that have occurred at the intersections selected for installing photographic traffic signal enforcement systems for a period of at least 18 months before the installation of such systems.
- (b) Not later than six months after the date of the installation of the photographic traffic signal enforcement system at the intersection, the City shall provide the

Texas Department of Transportation a copy of the report required by Subsection (a).

- (c) After installing a photographic traffic signal enforcement system at an intersection approach, the City shall monitor and annually report to the Texas Department of Transportation the number and type of traffic accidents at the intersection to determine whether the system results in a reduction in accidents or a reduction in the severity of accidents.

Sec. 9-295. General surveillance prohibited.

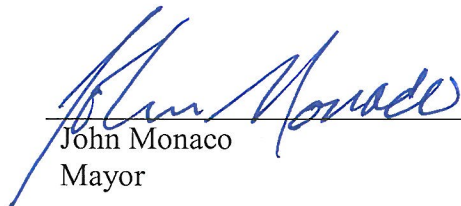
- (a) The City, the Department and contracting entity shall operate a photographic traffic control signal enforcement system only for the purpose of detecting a violation or suspected violation of a traffic-control signal.
- (b) A person commits an offense if the person uses a photographic traffic signal enforcement system to produce a recorded image other than in the manner and for the purpose specified by this chapter, which offense is a Class A misdemeanor in accordance with State law.

SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

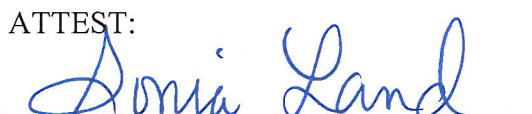
SECTION 4. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 5. That this ordinance shall take effect immediately from and after its passage.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 20th day of August, 2007.



John Monaco
Mayor

ATTEST:


Sonja Land
City Secretary

APPROVED:


B.J. Smith
City Attorney