

ORDINANCE NO.: 17-2013
INTRODUCED BY: Henry

AN ORDINANCE ENACTING CHAPTER 307 OF THE CODIFIED ORDINANCES OF THE CITY OF RICHMOND HEIGHTS TO PROVIDE FOR THE IMPLEMENTATION OF AN AUTOMATED TRAFFIC CONTROL PHOTOGRAPHIC SYSTEM FOR THE ENFORCEMENT OF TRAFFIC CONTROL SIGNALS AND SPEED LIMITS.

WHEREAS, disobedience to traffic control signals and speed limits occurs frequently within the City of Richmond Heights sometimes resulting in motor vehicle crashes, which have resulted in personal injury and/or substantial property damage; and

WHEREAS, the frequency of running red lights and exceeding speed limits creates a substantial risk to the safety of the citizens on the streets and roadways within the City of Richmond Heights; and

WHEREAS, the City of Richmond Heights seeks to increase compliance with traffic control devices and speed limits, thereby decreasing the frequency with which disobedience to traffic control signals and speed limits and the number of motor vehicle crashes that are caused by such failure to comply; and

WHEREAS, the use of automated traffic control photographic systems ("System") will assist the City to increase compliance with traffic control devices and speed limits without the disadvantages attendant to conventional traffic enforcement, such as disruptions in the flow of traffic at heavily traveled intersections, and expenses associated with increased police manpower; and

WHEREAS, the use of the System is not intended to replace or to otherwise act as a substitute for the enforcement of the traffic laws enacted by the State of Ohio, but only to supplement the enforcement of those laws when a law enforcement officer is not present when an infraction occurs; and

WHEREAS, the Ordinances of the City of Richmond Heights must be amended by enacting a new Chapter 307 of the City's Traffic Code to enable the City to implement this System;

NOW, THEREFORE, Be It Ordained by the Council of the City of Richmond Heights, State of Ohio; that:

Section 1: Title One of Part Three, "Traffic Code", of the City is amended to add new Chapter 307, entitled "Civil Penalties for Violations Under Automatic Traffic Control Photographic System", as follows:

**"CHAPTER 307
CIVIL PENALTIES FOR VIOLATIONS UNDER AUTOMATED TRAFFIC
CONTROL PHOTOGRAPHIC SYSTEM.**

307.01 APPLICABILITY.

- (a) Notwithstanding any other provision of this Traffic Code, there is hereby adopted a civil enforcement system for red-light violations and speed limit violations as outlined in this Chapter. The automated traffic control photographic system (ATCPS) imposes monetary liability on Vehicle Owner or Responsible Party for failure of an operator thereof to comply with traffic control indications in accordance with the provisions of this Chapter.
- (b) The City of Richmond Heights Division of Police shall be solely responsible for administering the ATCPS. Specifically, that Division shall be authorized to install and operate the ATCPS within the City.
- (c) Intersections in which an ATCPS is installed shall have visible postings upon approach of the intersection indicating that the intersection is equipped with an automated traffic control signal monitoring system.
- (d) The Division of Police shall administer the ATCPS program and shall maintain a list of system locations within the City limits where traffic-control photographic systems are installed.
- (e) Whenever an officer of the Division of Police witnesses a violation of Sections 313.01, 313.03, and/or 333.03 of the Traffic Code or Ohio Revised Code Sections 4511.13 and/or 4511.21 or otherwise has issued a citation pursuant to those sections, this Ordinance does not apply. However, the recorded images produced by the ATCPS may be used as evidence for a violation of Sections 313.01, 313.03 and/or 333.03 of the Traffic Code or Ohio Revised Code Sections 4511.13 and/or 4511.21. Any citation for a violation of foregoing sections of the Traffic Code or the Ohio Revised Code issued personally by a Police Officer at an ATCPS

location need not be issued in the manner described under this Chapter and shall instead be treated in the same manner as prescribed by applicable traffic or other rules.

- (f) This Chapter shall not apply to violations involving vehicle or pedestrian collisions.

307.02 DEFINITIONS.

For purposes of this Chapter, the following words and phrases shall have the meanings indicated.

- (a) “Vehicle Owner” means the person or entity identified by the Ohio Bureau of Motor Vehicles or registered with any state vehicle registration office as the registered owner of a vehicle, or a lessee of a motor vehicle under a lease agreement that has a lease term of not less than six months.
- (b) “Recorded Images” means images recorded by an automated traffic control signal photographic system on any of the following:
 - (1) Two or more photographs; or
 - (2) Two or more microphotographs; or
 - (3) Two or more electronic images; or
 - (4) Two or more Digital images; or
 - (5) Videotape; or
 - (6) Any other medium; and
 - (7) Showing the front or rear of a motor vehicle and on at least one image or portion of tape, clearly identifying the license plate number of the motor vehicle.
- (c) “Automated Traffic Control Photographic System” means a device with one or more motor vehicle sensors, installed to work in conjunction with a traffic control signal, to produce recorded images of motor vehicles entering an intersection against a red signal indication.
- (d) “In Operation” means operating in good working condition.
- (e) “Hearing Officer” means an independent third party, not an employee of the City of Richmond Heights.

- (f) “System Location” is the approach to an intersection toward which a photographic, microphotographic, electronic image, digital image, videotape, or any other medium is directed and is in operation. It is the location where the automated traffic control photographic system is installed to monitor offenses under this Chapter.
- (g) “Responsible Party” is the person who was operating the vehicle at the time of the violation or the person or entity who had care, custody, and control of the vehicle at the time of the violation.
- (h) “Division of Police” is the police agency of the City of Richmond Heights, Ohio.
- (i) “Police Officer” is a sworn law enforcement officer employed by the City of Richmond Heights Division of Police.

307.03 NOTICE REQUIREMENTS.

- (a) Prior to ATCPS implementation, the City or its designee shall publish notice in a local newspaper of general circulation. Said notice must announce when the ATCPS will begin.
- (b) Prior to ATCPS implementation, the City or its designee shall post all required signs in the time and manner set forth in Ohio Revised Code Section 4511.094(B)(1) to provide notice that an ATCPS is being used to monitor traffic. The City shall maintain compliance with the requirements of Revised Code Section 4511.094 throughout the use of the ATCPS.
- (c) For the first thirty (30) calendar days that an ATCPS is in operation no Notices of Liability may be issued on the basis of the images produced by the system. Warnings may be issued during that 30-day period.

307.04 OFFENSE.

- (a) An officer employed by the Division of Police shall examine the images recorded by the ATCPS to determine whether an infraction of Sections 313.01, 313.03 and/or 333.03 of the Traffic Code or Ohio Revised Code Sections 4511.13 and/or 4511.21 has occurred. If the image recorded by the ATCPS shows an infraction, contains a date and time of the alleged violation, and shows the letter and numbers on the vehicle's license plate, as well as the state in which the license was issued, the officer may use any lawful means to identify the Vehicle Owner.

- (b) The fact that a person or entity is the Vehicle Owner shall be *prima facie* evidence that said person or entity was operating the vehicle at the time of an infraction recorded by an ATCPS.
- (c) A certified copy of the Notice of Liability alleging violation of this Section, sworn to or affirmed by a duly authorized Police Officer of the Division of Police, with the recorded images produced by an ATCPS, shall be *prima facie* evidence of the facts contained therein and shall be admissible in a proceeding for review of the Notice of Liability under this Chapter.
- (d) Within thirty (30) calendar days of the infraction and upon identification of the Vehicle Owner, the City or its designee may issue and send by first-class United States Mail a Notice of Liability charging the Vehicle Owner with an infraction. Said Notice of Liability must be consistent with the requirements set forth in Section 307.05(a).
- (e) A person or entity who receives a Notice of Liability shall be required to respond to it in one of the manners set forth in Section 307.06(a).
- (f) The Vehicle Owner shall not be responsible for the violation if, within fifteen (15) calendar days after receipt of the Notice of Liability, the Vehicle Owner furnishes the Division of Police with:
 - (1) Substantial and convincing evidence of the identity of the Responsible Party at the time of the violation, including, at a minimum, the Responsible Party's name and current address; or
 - (2) An affidavit by the Vehicle Owner stating that at the time of the violation, the vehicle or the license plates of the vehicle involved were stolen or were in the care, custody, or control of some person or entity who did not have the Vehicle Owner's permission to use the vehicle. In order to demonstrate that the vehicle or the license plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the Vehicle Owner must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred; or
 - (3) The name and address of the vehicle's lessee or renter at the time of the violation, if the Vehicle Owner is a "motor vehicle leasing dealer" or a "motor vehicle renting dealer" as defined in Ohio Revised Code Section 4511.092(A) and consistent with Section 4511.092(B).

(g) If the vehicle involved in the violation is a commercial vehicle and the Notice of Liability is issued to a corporate entity, the corporate entity must provide to the Division of Police an affidavit, sworn to or affirmed by the statutory agent of the corporate entity, that:

- (1) States that the person or entity named in the Notice of Liability was not in operation of the vehicle at the time of the violation; and
- (2) Provides the name, address, and driver's license identification number of the person who was in operation of the vehicle at the time of the violation.

(h) Nothing in this Chapter shall be construed as limiting the liability or an operator of a vehicle for any violation of Sections 313.01, 313.03 and/or 333.03 of the Traffic Code or Sections 4511.13 and/or 4511.21.

307.05 NOTICE OF LIABILITY.

(a) The Notice of Liability shall be processed by the City or its designee, and shall be served by regular United States Mail to the Vehicle Owner's address as given on the motor vehicle registration from the Bureau of Motor Vehicles of the state registered. The Notice of Liability shall include:

- (1) The name and address of the Vehicle Owner;
- (2) The license plate number of the motor vehicle involved in the violation;
- (3) The violation charged;
- (4) The location of the intersection;
- (5) The date and time of the violation;
- (6) A copy of the recorded images(s);
- (7) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and where the payment should be made;
- (8) A signed statement by a Police Officer that based on inspection of recorded images, the motor vehicle was being operated in violation of Section 307.04(a), and a statement that the recorded images are *prima facie* evidence of a violation Section 307.04(a);

- (9) Information advising the person or entity alleged to be liable of the options as provided in Section 307.06;
- (10) The time, place, and manner in which an administrative appeal can be initiated and a warning that failure to exercise the options provided under Section 307.06 in a timely manner is an admission of liability.
- (11) A copy of the image(s) that served as a basis for the Notice of Liability must accompany the Notice of Liability.

- (b) The City of Richmond Heights or its designee may serve by regular United States Mail a warning notice in lieu of a Notice of Liability under this Section.
- (c) Except as provided in Section 307.06(c), a Notice of Liability shall be mailed no later than fifteen (15) calendar days after the alleged violation.
- (d) Except as provided in Section 307.06(c), the Division of Police or its designee may not mail a Notice of Liability to a person or entity who is not the Vehicle Owner.

307.06 OPTIONS UPON NOTICE OF LIABILITY, ADMINISTRATIVE APPEAL.

- (a) A person or entity named in a Notice of Liability under this Section may do any one of the following:
 - (1) Pay the civil penalty, in accordance with instructions on the Notice of Liability, thereby waiving the opportunity to contest the violation and admitting liability; or
 - (2) Within fifteen (15) calendar days, provide the Division of Police or its designee information as to the Responsible Party at the time of the violation; in the case of a "motor vehicle leasing dealer" or "motor vehicle renting dealer" as defined in Ohio Revised Code 4511.092, provide the Division of Police or its designee the name and address of the lessee or renter at the time of the violation; or
 - (3) Contest the Notice of Liability by filing both a written request for a hearing to review of the Notice of Liability and payment in the amount equal to the civil penalty as an administrative bond with the Division of Police or its designee. Said written request and bond payment must be filed within fifteen (15) calendar days after

receipt of the Notice of Liability. Failure to request review and pay the bond amount within this time period shall constitute a waiver of the right to contest the violation, a waiver of all legal defenses that could have been asserted, and an admission of liability.

- (b) When a person or entity named in a Notice of Liability chooses to contest the Notice of Liability and timely completes the requirements in Section 307.069(a)(3), the following shall apply.
 - (1) A Hearing Officer selected by the City of Richmond Heights shall hear reviews. A hearing shall be held within twenty-one (21) business days after filing of a written request for review and administrative bond as set forth in Section 307.06(a)(3). This time may be extended upon a written request for additional time.
 - (2) The hearing shall be open to the public, and a docket shall be posted in a conspicuous place near the entrance to the hearing room that shall identify, by respondent, the hearings scheduled for that day and the time of each hearing. More than one hearing may be scheduled for the same time to allow for such things as non-appearances or admissions of liability. The Hearing Officer shall determine whether a preponderance of evidence establishes that a violation of this section occurred and the person or entity requesting the review is liable. The Hearing Officer shall advise the person or entity on the day of the hearing of the Hearing Officer's decision.
 - (3) If the Hearing Officer finds sufficient evidence of a violation, but the person or entity named in the Notice of Liability is not liable, the Hearing Officer shall issue a written decision finding the individual not liable and submit it to the Division of Police or its designee.
 - (4) In determining whether the person or entity named in the Notice of Liability is liable, the Hearing Officer may consider any of the following as an affirmative defense of a violation:
 - (A) That the vehicle passed through the intersection in order to yield the right-of-way to an emergency vehicle in accordance with Ohio Revised Code Section 4511.45, or to a funeral procession in accordance with Section 331.24 of the Traffic Code and Ohio Revised Code Section 4511.451.

(B) That the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the Vehicle Owner at the time of the violation. In order to demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the Vehicle Owner at the time of the violation, the Vehicle Owner must submit proof that a police report about the stolen motor vehicle or registration plates was filed prior to the violation or within 48 hours after the violation occurred.

(C) That this Section is unenforceable because at the time and place of the alleged violation, the traffic control signal was not operating properly or the traffic control signal monitoring system was not in proper position and the recorded image is not legible enough to determine the information needed.

(D) Substantial and convincing evidence that the Vehicle Owner or person or entity named in the Notice of Liability was not operating the vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the Vehicle Owner or person or entity named in the Notice of Liability shall provide to the Hearing Office evidence showing the identity of the Responsible Party at the time of the violation, including, at a minimum, the Responsible Party's name and current address, and any other evidence that the Hearing Officer deems pertinent.

(C) If the Hearing Officer finds that the person or entity named in the Notice of Liability was not operating the vehicle at the time of the violation or receives evidence identifying the Responsible Party at the time of the violation, the Hearing Officer shall provide to the Division of Police or its designee within five (5) calendar days, a copy of any evidence substantiating who was operating the vehicle at the time of the violation.

- (1) Upon receipt of evidence of the identity of the Responsible Party, the Division of Police or its designee may issue a Notice of Liability to the Responsible Party.
- (2) A Notice of Liability issued under this subsection (C)(2) shall be sent by regular United States Mail no later than five (5) business days after receipt of the evidence from the Hearing Officer or the Vehicle Owner.

307.07 CIVIL PENALTIES.

- (a) Unless the Vehicle Owner or Responsible Party received a citation from a Police Officer at the time of the violation, the Vehicle Owner or Responsible Party is subject to a civil penalty if the motor vehicle is recorded by an ATCPS while being operated in violation of this Chapter.
- (b) The civil penalty under this Chapter shall be determined as follows:
 - (1) A violation of Sections 313.01 or 313.03 of the Traffic Code or Section 4511.13 of the Ohio Revised Code shall be subject to a civil penalty of \$100.00.
 - (2) A violation of Section 333.03 of the Traffic Code or Section 4511.21 of the Ohio Revised Code shall be subject to a civil penalty determined as follows:
 - (A) One to twenty miles per hour above the applicable speed limit shall have a civil penalty of \$100.00.
 - (B) Over twenty miles per hour above the applicable speed limit shall have a civil penalty of \$150.00.
 - (C) Notwithstanding the provisions of Sections 307.07(b)(2)(A)-(C), if the violation occurred within a school zone, the civil penalty shall be \$150.00.
- (c) Persons or entities who choose to pay the civil penalty without appearing before a Hearing Officer may do so in the manner indicated on the Notice of Liability. Persons or entities who fail to pay the civil penalty within fifteen (15) calendar days after either receiving a Notice of Liability (if not contesting it) or after a Hearing Officer's decision finding liability, shall be liable for an additional penalty in the amount of \$50.00.
- (d) A violation for which a civil penalty is imposed under this section is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4507.021(16) for minor misdemeanor moving traffic offenses and shall not be recorded on the driving record of the owner or operator of the vehicle and shall not be reported to the Bureau of Motor Vehicles.

307.08 COLLECTION OF CIVIL PENALTIES.

If the civil penalty is not timely paid, the civil penalty imposed under the provisions of this Section shall be collectible, together with any interest and penalties thereon, by civil suit.”

Section 2: It is found and determined that all formal actions of the Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of the Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 3: This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council