

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: El Paso Police Department

AGENDA DATE: April 1, 2008 for introduction. Public hearing on April 8, 2008.

CONTACT PERSON/PHONE: Assistant Chief Diana Kirk 564-7000

DISTRICT(S) AFFECTED: All

SUBJECT:

APPROVE an ordinance amending Title 12 (Vehicles and Traffic), Chapter 12.21 (Photographic Traffic Signal Enforcement System) of the El Paso City Code to amend the Chapter title, definitions and processes; and to make appropriate references to state statutes regarding the City's existing Photographic Traffic Signal Enforcement System.

BACKGROUND / DISCUSSION:

The Texas State Legislature amended the Texas Transportation Code to include a chapter that regulates photographic traffic signal enforcement systems. The proposed ordinance will amend the title of the City Code chapter, the definitions, and processes including the penalty structure, so that the language used is identical with the state statute. The enhanced penalty for multiple violations is being eliminated, as state law does not provide for this penalty. State statute now sets forth the requirements for hearings and appeals, and some several provisions are being updated to reflect this and include appropriate references to the state statute.

PRIOR COUNCIL ACTION:

November 8, 2005: The City Council created Chapter 12.21 (dangerous intersection monitoring system and enforcement) of the El Paso City Code to impose a civil penalty for creating dangerous intersections adding provisions relating to definitions; civil penalty; enforcement and procedures; administrative hearing; affirmative defenses; orders of hearing officer; appeal; and effect of liability.

March 6, 2007: The City Council amended the ordinance to provide for an affirmative defense for those turning on a red light after stopping, as allowed by statute.

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____

*****, Asst. City Attorney

FINANCE: (if required) _____

OTHER: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

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ORDINANCE NO.: _____

**AN ORDINANCE AMENDING TITLE 12 (VEHICLES AND TRAFFIC),
CHAPTER 12.21 (PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT
SYSTEM) OF THE EL PASO CITY CODE TO AMEND THE CHAPTER TITLE,
DEFINITIONS AND PROCESSES; AND TO MAKE APPROPRIATE
REFERENCES TO STATE STATUTES REGARDING THE CITY'S EXISTING
PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM.**

WHEREAS, the City Council for the City of El Paso recognizes and acknowledges that Chapter 12.21 of the El Paso City Code needs to be amended to provide for a procedural and enforcement process for photographic traffic signal enforcement systems as now set forth in Chapter 707 of the Texas Transportation Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That the title of Chapter 12.21 be amended to read Photographic Traffic Signal Enforcement System.

Section 2. That Chapter 12.21, Photographic Traffic Signal Enforcement System, be amended, in its entirety, to read as follows:

Section 12.21.010 Definitions.

As used in this chapter, the following words and terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

A. **“Intersection”** means the common area at the junction of two highways, other than the junction of an alley and a highway. The dimensions of an intersection include only the common area: (1) within the connection of the lateral curb lines or, in the absence of curb lines, the lateral boundary lines of the roadways of intersecting highways that join at approximate right angles; or (2) at the place where vehicles could collide if traveling on roadways of intersecting highways that join at any angle other than an approximate right angle. Each junction of each roadway of a highway that includes two roadways at least 30 feet apart with the roadway of an intersecting highway, including each roadway of an intersecting highway that includes two roadways at least 30 feet apart, is a separate intersection.

B. **“Local authority”** means a county, municipality, or other local entity authorized to enact traffic laws under the laws of this state.

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C. **“Owner of a motor vehicle”** 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.

D. **“Photographic traffic signal enforcement system”** means a system that (1) consists of a camera system 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 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.

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

F. **“System location”** means an intersection toward which a photographic traffic monitoring system is directed and in operation.

G. **“Traffic control signal”** means manual, electric, or mechanical device that alternately directs traffic to stop and to proceed.

Section 12.21.020 Imposition and Amount of Civil Penalty

A. The owner of a motor vehicle is liable for a civil penalty of \$75.00, if while facing only a steady red signal displayed by an electrically operated traffic-control signal located in the local authority, 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.

B. The imposition of a civil penalty under this chapter is initiated by the mailing of a notice of violation to the owner of the motor vehicle that the City of El Paso seeks to impose a civil penalty for failing to comply with the instructions of a traffic control signal.

C. An owner of a motor vehicle who fails to timely pay the civil penalty assessed for violation of the instructions of a traffic control signal shall be subject to a late payment penalty of \$25.00 under this chapter.

Section 12.21.030 Enforcement and Procedures.

A. The police department and the municipal clerk’s department, office of municipal court clerk, shall be responsible for the enforcement and administration of this chapter.

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The police chief and the chief clerk of the municipal courts shall establish and implement appropriate procedures to affect the policy of this chapter.

B. To impose a civil penalty under this chapter, the municipal clerk's department shall mail or cause to be mailed a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than thirty (30) days after the date the violation is alleged to have occurred to the owner at:

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.

C. The notice of violation shall contain the following:

1. A description of the violation alleged;

2. Location of the intersection where 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 the 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 number of days the person has in which to pay or contest the imposition of the civil penalty and a statement that the person incurs a late payment penalty if the civil penalty is not paid or imposition of the penalty is not contested within that period;

9. 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

10. Information that informs the owner of the vehicle named in the notice of violation:

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

b. That the imposition of a civil penalty may be contested by submitting a written request for an administrative adjudication hearing within thirty (30) days after the date the notice of violation was mailed; and

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c. That failure to pay the civil penalty or to contest liability for the penalty within thirty (30) days after the date the notice of violation was mailed, or failure to appear at the requested administrative adjudication hearing to contest the imposition of the civil penalty, is an admission of liability for the full amount of the civil penalty stated in the notice of violation mailed to the person and waives the person's right of appeal the imposition of the civil penalty.

D. A person who receives a notice of violation of this chapter may pay the civil penalty in lieu of requesting an administrative hearing as provided in Section 12.21.040.

Section 12.21.040 Administrative Adjudication Hearing.

A. A person who receives a notice of violation of this chapter may contest the imposition of the civil penalty specified in the notice of violation by filing a written request for an administrative adjudication hearing.

1. The request for a hearing must be filed with the entity specified on the notice of violation on or before the date specified in the notice of violation.

2. Upon receipt of a timely request, the administrative adjudication hearing may be set within one hundred twenty (120) days and the person shall be notified of the date and time of the administrative adjudication hearing. The administrative adjudication hearing shall be held before an El Paso Municipal Court Hearing Officer.

3. The City Council for the City of El Paso designates any employee who is employed in the position of municipal court hearing officer or are otherwise assigned the duties and responsibilities of such position as the hearing officer under this chapter. The hearing officer shall have the authority to administer oaths and to issue orders compelling the attendance of witnesses and the production of documents. An order compelling the attendance of witnesses or the production of documents may be enforced by the municipal courts.

B. The reliability of the photographic traffic signal enforcement system used to produced the recorded image of the violation may be attested to by affidavit as provided by Chapter 707 of the Texas Transportation Code. Said affidavit shall be admissible at the administrative adjudication hearing and in the appeal, if any.

C. At the end of the administrative adjudication hearing, the hearing officer shall enter a finding of either liability or no liability. Said finding must be in writing, 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. The hearing officer shall also specify the amount of any late penalties and administrative adjudication costs assessed for which the person is liable. The finding shall be filed with the municipal court clerk. All such findings shall be kept in a separate index or file by the municipal court clerk.

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D. A person who fails to timely 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 office of the 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 office of the hearing officer within thirty (30) days after the person received the notice of violation.

E. A 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 written proof of ownership 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 as rebuttal evidence in accordance with Section 707.013(b) of the Texas Transportation Code.

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Section 12.21.050 Affirmative Defenses.

A. It shall be an affirmative defense to 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 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 being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued;

7. The vehicle was being operated by a person other than the owner of the vehicle;

8. 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

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

10. The operator, after stopping or standing, entered the intersection safely yielding the right-of-way to pedestrians lawfully in an adjacent crosswalk and other traffic lawfully using the intersection and turned right, or turned left where intersecting streets were both one-way streets and a left turn is permissible.

B. 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.

Section 12.21.060 Appeal.

A. The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination of liability to the El Paso Municipal Courts by filing a petition of appeal with the Municipal Court Clerk.

B. The appeal petition must be filed:

1. Not later than 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 docketing fee of \$25.00 plus an appeal bond. The appeal bond must be in the amount of \$100.00 or double the amount of the fines and costs adjudged against the owner, whichever is greater.

C. The Municipal Court Clerk shall schedule a hearing and notify the owner of the motor vehicle and the El Paso Police Department of the date, time and place of the hearing.

D. An appeal stays enforcement and collection of the civil penalty and other fees assessed by the hearing officer. The owner of the motor vehicle shall file a notarized statement of personal financial obligation to perfect the owner's appeal.

1. The enforcement and collection of the civil penalty and other fees assessed by the hearing officer will not be stay if the appeal is not perfected.

E. An appeal under this section shall be determined by the municipal courts by trial de novo.

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Section 12.21.070 Effect of Liability; Exclusion of Civil Remedy; Enforcement

A. The imposition of a civil penalty under this chapter is not a conviction and may not be considered a conviction for any purpose.

B. No civil penalty may 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 violation of Section 544.007(d) of the Texas Transportation Code recorded by the photographic traffic monitoring system.

C. The city attorney is authorized to file suit to enforce collection of a civil penalty assessed under this article.

Section 3. Except as expressly amended herein, all other provisions of Title 12 (Vehicles and Traffic) of the El Paso City Code shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2008.

THE CITY OF EL PASO

John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Jennifer F. Callan
Assistant City Attorney

APPROVED AS TO CONTENT:

Greg Allen
Interim, Chief of Police

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