

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 120932

Repealing Section 70-961, Code of Ordinances, entitled “Automated traffic control systems” and enacting a new Section 70-961, Code of Ordinances, entitled “Violation of public safety at intersections and the automated photo enforcement of traffic control signal regulations” to enact a prohibition on owning a vehicle located within an intersection after a traffic signal displays a red light.

WHEREAS, the City currently makes it a violation of the traffic code to drive into an intersection after a traffic signal displays a red light; and

WHEREAS, a variety of regulatory approaches have been used to encourage compliance with traffic signals; and

WHEREAS, the use of automated traffic control systems have been shown to improve the safety of the regulated streets and intersections; and

WHEREAS, the Missouri Court of Appeals has approved the use of an ordinance that penalizes an owner of a vehicle if the vehicle is found in an intersection after the traffic signal displays a red light in the case of *City of Creve Coeur v. Nottebrok*, 365 S.W.3d 252 (Mo.App. 2011) (*per curiam*), *transfer denied*, 2012 Mo. LEXIS 29 (Mo. 2012).; and

WHEREAS, this approach is consistent with that already adopted by the City in the regulation of illegal parking and approved almost 40 years ago by the Missouri Supreme Court in the case of *City of Kansas City v. Hertz Corp.*, 499 S.W.2d 449 (Mo. 1973); and

WHEREAS, by changing the City’s enforcement philosophy to that already approved by the Court of Appeals the threat of challenges to the regulations will be reduced, people can be more confident of the validity of the approach, and enforcement and prosecution will be simplified; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Section 70-961, Code of Ordinances, entitled “Automated traffic control systems” is repealed and a new Section 70-961, Code of Ordinances, entitled “Violation of public safety at intersections and the automated photo enforcement of traffic control signal regulations” is enacted to read as follows:

Sec. 70-961. Violation of public safety at intersections and the automated photo enforcement of traffic control signal regulations.

(a) *Definitions.* For the purpose of this section, the following words and phrases shall have the meaning given herein:

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- (1) *Automated photo traffic enforcement system:* A system that consists of camera(s) and vehicle sensor(s) installed to work in conjunction with an electrically operated traffic control signal.
- (2) *Municipal Court:* The Kansas City Municipal Division of the Circuit Court of Jackson County.
- (3) *Operator:* Any person who operates or drives a motor vehicle and has the same meaning as "driver".
- (4) *Owner:* The owner(s) of a motor vehicle as shown on the motor vehicle registration records of the Missouri Department of Revenue or the analogous department or agency of another State or country. If the operator of a stolen vehicle or a vehicle bearing stolen license plates or tags that violates this section is identified, such person shall be liable as if an owner.
- (5) *Recorded image:* Images digitally recorded by an automated photo traffic enforcement system.
- (6) *System location:* An intersection or other location, such as a school crosswalk controlled by a traffic signal, at which an automated photo traffic enforcement system has been installed.
- (7) *Traffic control signal:* A traffic control device that displays red, yellow and/or green lights intended to direct traffic when to stop at or proceed through an intersection or other location.
- (8) *Person:* The term "person" includes a corporation, firm, partnership, association, organization, governmental or quasi-governmental entity or agency, and any other group acting as a unit as well as individuals. It shall also include an executor, administrator, trustee, receiver or other representative appointed according to law.

(b) *Violation of Public Safety at Intersections.*

- (1) *Violation.* Except as otherwise provided in this section, a person commits a violation of public safety at an intersection or other system location when a motor vehicle of which that person is an owner is present in an intersection while the traffic control signal for the intersection is emitting a steady red signal for the direction of travel or orientation of that vehicle in or through the intersection or other system location.
- (2) *Exceptions.* It shall not be a violation if:
 - a. the motor vehicle is in the process of making a lawful turn; or

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- b. the motor vehicle entered the intersection or other system location while the traffic control signal for the intersection or other system location was not emitting a steady red signal for the direction of travel or orientation of that vehicle in or through the intersection or other system location and the motor vehicle did not obstruct the passage of other vehicles or pedestrians.
- (3) *Violation excused.* Provided however, that a violation shall be excused as provided herein upon submission of a sufficient sworn statement that the presence of the motor vehicle in the intersection or other system location was justified or excused because:
- 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 instruction of the traffic control signal in order to yield the right-of-way to an immediately approaching authorized emergency vehicle;
 - d. The motor vehicle was being operated as part of a funeral procession pursuant to Section 194.503, RSMo.;
 - e. The motor vehicle was being operated as an authorized emergency vehicle as defined and in compliance with Section 304.022, RSMo.;
 - f. The motor vehicle was a stolen vehicle and being operated by a person other than the owner without the effective consent of the owner (but this shall not be a justification for such an operator) and the theft was timely reported to the appropriate law enforcement agency;
 - g. The license plate and/or tags depicted in the recorded image(s) were stolen and being displayed on a motor vehicle other than the motor vehicle for which they were issued (but this shall not be a justification for the operator of the motor vehicle) and the theft was timely reported to the appropriate law enforcement agency;
 - h. Ownership of the motor vehicle had in fact been transferred prior to the violation (provided State records substantiate this statement);

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- i. The motor vehicle was present in the intersection or other system location because it was inoperable or because of other exigent circumstances specifically explained in the sworn statement such as adverse weather conditions.
 - (4) *Liability of owner.* Liability hereunder is based on ownership, without regard to whether the owner was operating the motor vehicle at the time of the violation. Any registered owner, co-owner, or joint owner of such vehicle may be held either individually or jointly liable for a violation of this section, except that, as provided in Section 304.120.4, RSMo., no liability shall be imposed on the owner of a motor vehicle when the vehicle is being permissively used by a lessee if the owner furnishes the name, address and operator's license number of the person renting or leasing the motor vehicle at the time the violation occurred to the City within three (3) working days from the time of receipt of written request for such information.
 - (5) *Basis for proof of ownership.* A computer terminal printout of an individual vehicle registration record through the Missouri Uniform Law Enforcement system from any department of revenue database, certified by an officer of the local law enforcement agency, or, if the motor vehicle is registered in another State or country, from the motor vehicle registration records of the department or agency of the other State or country analogous to the Missouri Department of Revenue shall be admitted in evidence as to such ownership.
 - (6) *Basis for citation.* Recorded images shall constitute sufficient basis for citation and shall be admitted in evidence if, alone or in combination, they clearly show a violation of this section and the license plate and license number of the motor vehicle.
 - (7) *Additional use of images.* Recorded images may also be used as evidence of other violations to the extent permitted by applicable law.
- (c) *Automated Photo Traffic Enforcement System Authorized.*
- (1) *System authorized.* An automated photo traffic enforcement system is hereby authorized to be installed and operated within the City for the purpose of detecting violations of public safety at intersections or other system locations.
 - (2) *Locations.* Specific system locations shall be determined from time to time by the director of public works in conjunction with, but not limited to, information available from the Kansas City Police Department of dangerous locations due to numerous traffic control ordinance violations.

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(d) *Examination of sworn statements.*

- (1) *City prosecutor examination.* Any sworn statement provided by an owner shall be examined by the city prosecutor.
- (2) *Citation withdrawn – in general.* If the city prosecutor determines that a statement is sufficient, and not contrary to the applicable recorded images, then the citation shall be withdrawn and a letter to that effect shall be sent to the owner by the city.
- (3) *Citation withdrawn – rental or lease vehicles.* If the statement timely provides the name, address and operator's license number of any person renting or leasing the motor vehicle at the time the violation occurred, then the citation shall be withdrawn, a letter to that effect shall be sent to the owner by the city and a new citation shall be issued to the identified person together with a copy of the identifying statement, which person shall be liable hereunder as if an owner.
- (4) *Citation withdrawn – stolen vehicles.* If the operator of a stolen vehicle or a vehicle bearing stolen license plates or tags that violates this section is identified, such person shall be liable as if an owner.
- (5) *Insufficient statement.* If the city prosecutor determines that a statement is insufficient including, but not limited to, a determination based upon a comparison of the statement to the recorded image(s), then a letter shall be sent to the owner (any or all of them) at its last known address by first class U.S. mail, postage prepaid, by the city indicating that the statement was insufficient and the fine specified in this section must be paid at the appropriate time and place in the city within thirty (30) days of the date of the letter and shall inform the owner that absent such payment the owner will receive a summons to appear before the Municipal Court regarding the citation.

(e) *Penalty.* Any citation not resolved by a voluntary plea of guilt and payment of fine or otherwise resolved as provided herein shall be considered by the Municipal Court in accordance with applicable law. In addition to the justifications and excuses identified herein, the Municipal Court may consider any and all relevant facts and applicable law in resolving such citations. Notwithstanding any other provision of the code of ordinances, the fine for the infraction of violation of public safety at an intersection shall be set by the Municipal Court from time to time on the schedule for the Traffic Violations Bureau (TVB), but not less than \$100.00. Incarceration is not authorized.

(f) *Warning Signs.* An automated photo traffic enforcement system may be identified by advance warning signs posted at entrances to the City and/or at specific system locations, if the director of public works determines that such signs will enhance

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the efficacy of the system. Absence of such signs shall not provide justification for or excuse a violation.

(g) *Failure to Respond To Citation.* Any person who:

- (1) fails to either:
 - a. respond to a citation or letter issued under this section by timely payment of fine or by timely and sufficient statement as described herein, or
 - b. appear in related Municipal Court proceedings; or
- (2) submits a false sworn statement hereunder

shall be subject to arrest under a duly issued bench warrant issued by the Municipal Court and subject to prosecution for failure to respond to citation in the Municipal Court for violation of this section.

Section 2. No prosecution or violation of section 70-961, code of ordinances, as it existed prior to the effective date of this ordinance shall be affected, released or in any way discharged by its repeal, but the trial, conviction and punishment of all such violations and the recovery and collection of any fines shall be had, prosecuted, recovered and received as fully in every respect as if such provisions had remained in force and effect.

Approved as to form and legality:

William Geary
City Attorney