

ORDINANCE NO. 130904

Enacting a new Section 70-962 entitled “Automated photo enforcement of intersections” establishing procedures for enforcing traffic signals through automated photo enforcement.

WHEREAS, 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 needlessly endangers vehicle operators, passengers and pedestrians alike, by decreasing the efficiency of the 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, it is impracticable for the Kansas City Police Department to station police officers at each traffic signal at all times of the day to reduce the incidence of red light running; and

WHEREAS, pursuant to statutory and charter authority the City may establish rules of the road or traffic regulations to meet its needs and traffic conditions; and

WHEREAS, the KCPD reports that red light enforcement programs, including the use of automated photo enforcement programs, have significantly reduced the number of red light runners and the number of serious “T-bone” accidents; and

WHEREAS, the number of repeat violators at automated photo enforcement intersections is drastically reduced once a person is made responsible for the unlawful behavior; and

WHEREAS, motor vehicles are typically driven by their owners, and thus, it is reasonable to presume, absent evidence to the contrary, that the owner of a motor vehicle, as indicated in the records of the Missouri Director of Revenue or analogous department or agency of another state or country, is driving the motor vehicle at a given time and place; and

WHEREAS, when motor vehicles are not driven by their owners or when vehicle owners are not natural persons, vehicle owners or their representatives typically are aware of who is driving their vehicles and are in the best position to identify the drivers of their vehicles, and thus, it is reasonable to presume, absent evidence to the contrary, that individuals identified by vehicle owners or their representatives as the driver of their vehicle at a given time and place were in fact operating their vehicle; and

WHEREAS, the Kansas City Police Department reports that red light enforcement program videos have proven to be an effective tool and on over sixty occasions utilized the video in simple accident reconstructions as well as in more serious investigations of robberies and homicides; and

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WHEREAS, in the interest of the public health, safety, and welfare of its citizens the City desires to enforce traffic regulations through the implementation of safety programs, such as an automated red light enforcement program, which are proven to reduce red light running and the commensurate accidents and injuries resulting from that dangerous behavior; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That there is enacted a new Section 70-962, Code of Ordinances, entitled "Automated photo enforcement of intersections" to read as follows:

Sec. 70-962. Automated photo enforcement of intersections.

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

- (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.

(b) *Violations.*

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- (1) *Street or highway - intersection.* No operator shall drive a motor vehicle into an intersection controlled by a traffic control signal at which an automated traffic control system is installed while the traffic control signal facing the vehicle displays a steady red signal, including a steady red arrow.
 - a. *Exception.* Except when a sign is in place prohibiting a turn or permitting a turn without stopping, a motor vehicle facing any steady red signal, including a steady red arrow, may be cautiously driven into the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required by section 70-954 of this code.
 - (2) *Street or highway.* No operator shall drive a motor vehicle past a traffic control signal located along a street or highway, but not at an intersection, at which an automated traffic control system is installed while the traffic control signal facing the vehicle displays a steady red signal.
 - (3) *Railroad crossing.* No operator shall drive a motor vehicle through, around or under any such crossing gate or barrier at a railroad crossing or through a railroad crossing at which a stop signal is installed and at which an automated traffic control system is installed while such gate or barrier is closed or is being opened or closed or while such stop signal displays a steady red light.
- (c) *Affirmative defenses.* It shall be an affirmative defense that:
- (1) The traffic control signal was not in proper position and sufficiently visible to an ordinarily observant person; or
 - (2) The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer; or
 - (3) 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; or
 - (4) The motor vehicle was being operated as part of a funeral procession or violated the instruction of the traffic control signal in order to yield the right-of-way to an immediately approaching funeral procession pursuant to RSMo § 194.503; or
 - (5) The motor vehicle was being operated as an authorized emergency vehicle as defined and in compliance with RSMo § 304.022; or

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- (6) 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; or
- (7) 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; or
- (8) Ownership of the motor vehicle had in fact been transferred prior to the violation (provided state records substantiate this statement); or
- (9) The presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this section more dangerous under the circumstances than non-compliance; or
- (10) The motor vehicle was being operated by a person other than the owner of the vehicle, provided that the owner, or the owner's representative in the circumstance where the owner is not a natural person, submits to the City by affidavit, on a form provided by the City, or under oath at the court proceeding, the name and current address of the person:
 - a. who had possession and control of the motor vehicle at the time of the violation; or
 - b. who was the lessee of the motor vehicle at the time of the violation, if the motor vehicle was rented or leased from a person in the business of renting or leasing motor vehicles at that time.

(d) *Rebuttable presumptions.*

- (1) *Privately owned vehicles.* A rebuttable presumption exists that the owner of a motor vehicle operated or used in violation of this section was the operator of the vehicle at the time and place the violation was captured by the automated traffic control system record if the following things are proved:
 - a. That a motor vehicle was being operated or used;
 - b. That the operation or use of the motor vehicle was in violation of this section; and

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- c. That the defendant is the owner of the motor vehicle in question.
- (2) *Identified operators.* A rebuttable presumption exists that if an owner of a motor vehicle operated or used in violation of this section is not a natural person who provides the City with the name, address and, if available, an operator's license number of the person renting or leasing the motor vehicle or using the motor vehicle with the permission of the owner, the person named by the entity was the operator of the vehicle at the time and place the violation was captured by the automated traffic control system record if the following things are proved:
- a. That a motor vehicle was being operated or used;
 - b. That the operation or use of the motor vehicle was in violation of this section; and
 - c. That the defendant is the person named on an official affidavit of the owner as the operator of the motor vehicle in question.

(e) *Basis for proof of ownership or operation if vehicle not owned by a natural person.*

- (1) *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 Kansas City Police Department, 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 state department of revenue shall be admitted in evidence as to such ownership.
- (2) *Operation by non-owner.* Testimony or a notarized affidavit submitted by the owner, or if there are multiple owners the person receiving notice of the violation, stating that the motor vehicle was being operated by a person other than the owner of the vehicle receiving notice, provided that the owner, or the owner's representative in the circumstance where the owner is not a natural person, provides the name and current address of the person who had possession and control of the motor vehicle at the time of the violation, or who was the lessee of the motor vehicle at the time of the violation, if the motor vehicle was rented or leased from a person in the business of renting or leasing motor vehicles at that time, shall be admitted in evidence as to such operation.

(f) *Basis for citation.* Recorded images shall constitute sufficient basis for citation and shall be admitted in evidence if, alone or in combination, they clearly

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show a violation of this section and the license plate and license number of the motor vehicle.

(g) *Additional use of images.* Recorded images may also be used as evidence of other violations to the extent permitted by applicable law.

(h) *No limitation on relevant information.* 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 for violations of this ordinance

(i) *Notice to defendant.*

(1) *Service of summons and other information.* Upon the filing of an information in the Municipal Division of the Circuit Court the Court Administrator shall issue a summons, with a court date established, pursuant to Missouri Supreme Court Rule 37.

(2) *Presumption of service.* A violation notice and summons mailed under this section is presumed to have been received by the owner on the fifth day after the date the violation notice is mailed.

(j) *Action based on supplemental information.* If an owner furnishes satisfactory evidence pursuant to this section, the City may terminate the prosecution of the citation issued to the owner, and, if appropriate, issue a citation to the operator of the motor vehicle at the time of the violation.

(k) *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. 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.

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

(m) *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

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- 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.

(n) *No pre-emption of other provisions.* Nothing within this section is intended to pre-empt the use of any other statute, ordinance or other applicable law or regulation by a person authorized to enforce this chapter, except that a violation of this section shall not be prosecuted if the owner or other proper defendant is also accused of committing a violation of section 70-954 of this code prohibiting running red lights.

(o) *Reporting.* The Court Administrator will report any violations under this section as directed by the Missouri Department of Revenue and Office of State Court Administrator.

(p) *Clauses severable.* Should any sentence, clause, part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof other than the part declared to be invalid.

Approved as to form and legality:

William D. Geary
Assistant City Attorney