

### 313.035 TRAFFIC LAW PHOTO-MONITORING DEVICES.

(a) Definitions. As used in this section, the meanings of applicable terms are as defined in R.C. 4511.092. In addition, the term "System" may be used interchangeably with the term "Traffic Law Photo-Monitoring Device."

(b) Civil Enforcement System Established.

- (1) General. The City hereby adopts the use of traffic law photo-monitoring devices to detect and enforce violations of applicable speed limits in school zones. The City shall operate this system in compliance with all pertinent requirements and limitations set forth in R.C. Chapter 4511.

A violation of this section shall be deemed a civil violation for which a fine is assessed. No points shall be assessed against the operating record of any person on whom liability is imposed under this section.

- (2) Prerequisites to System Deployment. The Safety Director shall ensure the requirements of R.C. 4511.094 and R.C. 4511.095 are met prior to deploying any traffic law photo-monitoring device.
- (3) System Locations. Traffic law photo-monitoring devices may be deployed in any area used as a school zone in the City.
- (4) Program Oversight. The Safety Director shall oversee the program authorized by this section. The Service Director shall oversee the installation and maintenance of all traffic law photo-monitoring devices by a vendor.
- (5) Rules and Regulations. The Safety Director may issue rules and regulations to carry out the provisions of this section, which shall be effective 30 days after being posted at the Council office. The rules and regulations may also be published on the City website and kept on file with the Safety Director.

(c) Offense.

- (1) Speeding Violation; Civil Fine. The registered owner of a vehicle that is recorded by a traffic law photo-monitoring device being operated in a school zone at a speed greater than five miles per hour over the speed limit set forth in Section 333.03(b) of these Codified Ordinances is liable for the following civil penalties:

A. Six to nine miles per hour over the speed limit: \$100.



- B. Ten miles per hour or more over the speed limit: \$200.
- (2) Evidence of Ownership. It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles, or with any other State vehicle registration office, was operating the vehicle at the time of the offense set out in division (c)(1) of this section.
- (3) Issuing Ticket. Any ticket for a traffic violation set forth in this section shall be issued in compliance with R.C. 4511.096, as follows:
- A. A Parma police officer shall examine evidence of alleged traffic law violations recorded by the system to determine whether a violation has occurred. If the image(s) recorded by the traffic law photo-monitoring device shows a violation, contains the date and time of the violation, and shows the letter and numerals on the license plate of the vehicle involved as well as the state that issued the license plate, the officer may use any lawful means to identify the registered owner.
- B. Within 30 days of the traffic law violation, the City or its designee ~~may issue and send by regular mail a ticket charging the registered owner with the violation will file the ticket with the Parma Municipal Court in compliance with the Courts rules and regulations relating to such tickets. The Court may then~~ issue and send by regular mail **or other methods consistent with the Court's rules**, a ticket charging the registered owner with the violation.
- C. A certified copy of the ticket alleging a traffic law violation, sworn to or affirmed by a Parma police officer, including by electronic means, and the recorded images produced by the traffic law photo-monitoring device, is prima facie evidence of the facts contained therein and is admissible in a proceeding for review of the ticket issued under this section.
- (4) Content of Ticket. Any ticket issued pursuant to this section shall contain the following information, in accordance with R.C. 4511.097:
- A. The name and address of the registered owner;
- B. The letters and numerals appearing on the license plate issued to the motor vehicle;
- C. The traffic law violation charged;
- D. The system location;
- E. The date and time of the violation;

F. A copy of the recorded images;

~~G. The name and badge number of the Parma police officer who was present at the system location at the time of the violation;~~

**HG.** The amount of the civil penalty imposed, the date by which the civil penalty is required to be paid, and the court address to which the payment is to be sent;

**IH.** A statement signed by a Parma police officer indicating that, based on an inspection of recorded images, the motor vehicle was involved in a traffic law violation, and a statement indicating that the recorded images are prima facie evidence of that traffic law violation both of which may be signed electronically;

**JI.** Information advising the person or entity alleged to be liable of the options prescribed in division (d)(1) of this section, specifically to include the time, place, and manner in which an **administrative** appeal may be initiated and the procedure for disclaiming liability by submitting an affidavit as prescribed in that subsection;

**KJ.** A warning that failure to exercise one of the options prescribed in division (d)(1) of this section is deemed to be an admission of liability and waiver of the opportunity to contest the violation.

(5) Payments; Default Fees. The amount of the penalty shall be paid within 30 days from the mailing date of the ticket. If the amount of the penalty is not paid within this time, twenty dollars (\$20.00) shall be imposed as a default fee. Failure to pay the penalty and the twenty-dollar (\$20.00) default fee within 60 days from the date of mailing of the ticket will result in the imposition of an additional twenty-dollar (\$20.00) default fee, bringing the default fee to forty dollars (\$40.00). Failure to pay the penalty and the forty-dollar (\$40.00) default fee within 90 days from the date of mailing of the ticket will result in an additional twenty-dollar (\$20.00) default fee, bringing the default fee to the total amount of sixty dollars (\$60.00), and the unpaid penalty and default fee **being shall be** forwarded for collection.

(6) Default and Collection. Failure to timely elect and perform one of the options contained in division (d)(1) of this section shall constitute an admission of the violation and a waiver of the opportunity to contest the violation. Further, if the registered owner or operator fails to pay the penalty within the period set forth in division (c)(5) of this section, the penalty, along with the additional late fee(s), may be collected by civil suit or other appropriate means of collection.

(7) Other Offenses and Penalties Not Abrogated. Nothing in this section shall be construed as altering or limiting Sections 333.03 or 313.03 of these Codified

Ordinances, the criminal penalties imposed by those sections, or the ability of a police officer to enforce those sections against any offender observed by the officer violating either of those sections. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of division (c)(1) of this section.

(d) Contesting Ticket.

(1) Options Upon Receipt of Ticket. Consistent with R.C. 4511.098, a recipient of a ticket shall elect to do one of the following:

- A. In accordance with instructions on the ticket, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the violation;
- B. Within 30 days after receipt of the ticket, provide the ~~Safety Director~~ **Court** with either of the following affidavits:
  - 1. An affidavit executed by the registered owner stating that another person was operating the vehicle of the registered owner at the time of the violation, identifying that person as a designated party who may be held liable for the violation, and containing at a minimum the name and address of the designated party;
  - 2. An affidavit executed by the registered owner stating that at the time of the violation, the motor vehicle or the license plates issued to the motor vehicle were stolen and therefore were in the care, custody, or control of some person or entity to whom the registered owner did not grant permission to use the motor vehicle. In order to demonstrate that the motor vehicle or the license plates were stolen prior to the traffic law violation and therefore were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the violation or within 48 hours after the violation occurred.
- C. If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the Safety Director of the name and address of the lessee or renter of the motor vehicle at the time of the traffic law violation. A motor vehicle leasing dealer or motor vehicle renting dealer who receives a ticket for an alleged traffic law violation detected by a traffic law photo-monitoring device is not liable for a ticket issued for a motor vehicle that was in the care, custody, or control of a lessee or renter at the time of the alleged violation. The dealer shall not pay such a ticket and subsequently attempt to collect a fee or assess the lessee or renter a charge for any payment of such a ticket made on behalf of the lessee or renter;

- D. If the vehicle involved in the traffic law violation is a commercial motor vehicle and the ticket is issued to a corporate entity, provide to the **Safety Director Court** an affidavit, sworn to or affirmed by an agent of the corporate entity, that provides the name and address of the employee who was operating the motor vehicle at the time of the alleged violation and who is the designated party;
- E. Contest the ticket by filing a written request for an administrative hearing to review the ticket. The person or entity shall file the written request not later than 30 days after receipt of the ticket. The failure to request a hearing within this time period constitutes a waiver of the right to contest the violation and ticket, and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation.

(2) A registered owner is not responsible for a traffic law violation if, within 30 days after the date of mailing of the ticket, the registered owner furnishes an affidavit specified in division (d)(1)B.1. or 2. of this section to the **Safety Director Court** in a form established by the **City Court** and the following conditions are met:

- A. If the registered owner submits an affidavit as specified in division (d)(1)B.1. of this section, the designated party either accepts liability for the violation by paying the civil penalty or failing to request an administrative hearing within 30 days or is determined liable in an administrative hearing;
- B. If the registered owner submits an affidavit as specified in division (d)(1)B.2. of this section, the affidavit is supported by a stolen vehicle or stolen license plate report as required in that division.

(3) If the **City Court** timely receives an affidavit described in division (d)(1)B.1. or (d)(1)D. of this section or a notification under division (d)(1)C. of this section from a registered owner, it may proceed to send a ticket to the designated party. The **City Court** shall send the ticket to the designated party by ordinary mail not later than 21 days after receipt of the affidavit or notification.

(4) Hearing Procedures.

- A. When a person or entity named in a ticket elects to contest the ticket and completes the requirements prescribed in division (d)(1)E. of this section in a timely manner, all of the following apply:
  - 1. ~~A hearing officer appointed by the City.~~ **The Parma Municipal Court** shall hear the case. The ~~hearing officer~~ **Court** shall conduct a hearing not sooner than 21 but not later than 45 days after the filing of a written request for the hearing. The ~~hearing officer~~ **Court** may extend the time period by which a hearing must be

conducted upon a request for additional time by the person or entity who requested the hearing.

2. The ~~hearing officer~~ **Court** shall ensure that the hearing is open to the public. The ~~hearing officer~~ **Court** shall post a docket in a conspicuous place near the entrance to the hearing room. The ~~hearing officer~~ **Court** shall identify on the docket, by respondent, the hearings scheduled for that day and the time of each hearing. The ~~hearing officer~~ **Court** may schedule multiple hearings for the same time to allow for occurrences such as nonappearances or admissions of liability.
  3. The person who requested the administrative hearing or a representative of the entity that requested the hearing shall appear for the hearing and may present evidence at the hearing.
  4. The ~~hearing officer~~ **Court** shall determine whether a preponderance of the evidence establishes that the violation alleged in the ticket did in fact occur and that the person or entity requesting the review is the person who was operating the vehicle at the time of the violation.
- B.
1. If the ~~hearing officer~~ **Court** finds by a preponderance of the evidence that the alleged traffic law violation did in fact occur and that the person or entity named in the ticket is the person who was operating the vehicle at the time of the violation, the ~~hearing officer~~ **Court** shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the City or its designee and the person or entity named in the ticket.
  2. If the ~~hearing officer~~ **Court** finds by a preponderance of the evidence that the alleged traffic law violation did not occur or did in fact occur but the person or entity named in the ticket is not the person who was operating the vehicle at the time of the violation, the ~~hearing officer~~ **Court** shall issue a written decision finding that the individual or entity is not liable for the violation and submit it to the City or its designee and the person or entity named in the ticket.
  3. If the person who requested the administrative hearing or a representative of the entity that requested the hearing fails to appear at the hearing, the ~~hearing officer~~ **Court** shall determine that the person or entity is liable for the violation. In such a case, the ~~hearing officer~~ **Court** shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the City or its designee and the person or entity named in the ticket.
  4. The ~~hearing officer~~ **Court** shall render a decision on the day a hearing takes place.
- C.
1. The ~~hearing officer~~ **Court** may consider any of the following as an affirmative defense to a traffic law violation provided herein:

- a. The motor vehicle or license plates of the motor vehicle were stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the traffic law violation or within 48 hours after the traffic law violation occurred.
  - b. At the time and place of the alleged traffic law violation, the traffic law photo-monitoring device was not in proper position and the recorded image is not of sufficient legibility to enable an accurate determination of the information necessary to impose liability.
  - c. The registered owner or person or entity named in the ticket was not the person operating the motor vehicle at the time of the violation. In order to meet the evidentiary burden imposed under this division, the registered owner or person or entity named in the ticket shall provide to the ~~hearing officer~~ **Court** the identity of the designated party, that person's name and current address, and any other evidence that the ~~hearing officer~~ **Court** determines to be pertinent.
2. The ~~hearing officer~~ **Court** also may consider the totality of the circumstances when determining whether to impose liability upon the person or entity named in the ticket.
- D. 1. If the ~~hearing officer~~ **Court** finds that the person or entity named in the ticket was not the person who was operating the vehicle at the time of the violation or receives evidence identifying the designated party, the ~~hearing officer~~ **Court** shall provide to the City or its designee, within five days of the hearing, a copy of any evidence substantiating the identity of the designated party.
2. Upon receipt of evidence of the identity of the designated party, the City or its designee may issue a ticket to the designated party. The City shall send the ticket by ordinary mail not later than 21 days after receipt of the evidence from the ~~hearing officer~~ **Court** or the registered owner of the identity of the designated party.
- E. If a designated party who is issued a ticket under this section contests the ticket by filing a written request for an administrative hearing to review the ticket not later than 30 days after receipt of the ticket, the **City Court** shall require the registered owner of the motor vehicle also to attend the hearing. If at the hearing involving the designated party the ~~hearing officer~~ **Court** cannot determine the identity of the operator of the vehicle at the time of the violation, the registered owner is liable for

the violation. The ~~hearing officer~~ **Court** then shall issue a written decision imposing liability for the violation on the registered owner. ~~and submit it to the City or its designee and to the registered owner.~~ If the designated party also is a registered owner of the vehicle, liability for the violation shall follow the order of registered owners as listed on the title to the vehicle.

F. A person who is named in a ticket for a traffic violation under this section may assert a testimonial privilege in accordance with R.C. 2317.02(D).

~~G. A person or entity may appeal a written decision rendered by a hearing officer under this section to the Parma Municipal Court.~~

**HG.** No decision rendered under this section, and no admission of liability under this section or R.C. 4511.098, is admissible as evidence in any other judicial proceeding in this state.

(Ord. 317-08. Passed 12-1-08; Ord. 80-09. Passed 3-23-09; Ord. 55-10. Passed 5-17-10; Ord. 62-15. Passed 3-23-15.)