

***Agenda Item 6.9***

**Board Appointments - City Secretary:** Consider one appointment to the Building Board of Appeals, two appointments to the Health/Education Facilities Authority, Board of Directors, one appointment to the Permit & License Appeal Board, two appointments to the Reese Redevelopment Authority Board of Directors, one appointment to the Urban Design/Historic Preservation Commission, two appointments to the Airport Board, three appointments to the Lubbock Economic Development Alliance, four appointments to Market Lubbock Economic Development Corporation Board of Directors, and seven appointments to the Citizens' Photographic Traffic Signal Enforcement Committee.

***Item Summary***

Board appointments include one appointment to the Building Board of Appeals, two appointments to the Health/Education Facilities Authority, Board of Directors, one appointment to the Permit & License Appeal Board, two appointments to the Reese Redevelopment Authority Board of Directors, one appointment to the Urban Design/Historic Preservation Commission, two appointments to the Airport Board, three appointments to the Lubbock Economic Development Alliance, four appointments to Market Lubbock Economic Development Corporation Board of Directors, and seven appointments to the Citizens' Photographic Traffic Signal Enforcement Committee.

***Fiscal Impact***

No fiscal impact.

***Staff Submitting/Recommendation***

Becky Garza, City Secretary

ORDINANCE NO. 2007-00084

AN ORDINANCE OF THE CITY OF LUBBOCK, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, BY AMENDING CHAPTER 16, ARTICLE XIV, AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; WITH REGARD TO AMENDING SAID ARTICLE TO CONFORM SAID ARTICLE TO SENATE BILL 1119, 80<sup>TH</sup> REGULAR SESSION, (CHAPTER 707, TEXAS TRANSPORTATION CODE); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE IMPOSITION OF CIVIL PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lubbock is a home rule municipality of the State of Texas with Constitutional authority to enact any ordinance that is not in conflict with any general law or the Constitution of the State of Texas pursuant to Article 11, Section 5, Texas Constitution; and

WHEREAS, the Legislature of the State of Texas has enacted Senate Bill 1119 in the 80<sup>th</sup> Regular Session, which creates a new Chapter 707 of the Texas Transportation Code authorizing and regulating photographic traffic signal enforcement systems; and

WHEREAS, the City of Lubbock has heretofore established a photographic traffic signal enforcement system by passage of Ordinance No. 2006-00131 on December 19, 2006; and

WHEREAS, certain amendments to said ordinance are required to be made in order to conform it to the newly enacted state law; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK, TEXAS:

SECTION 1. THAT Section 16-381 of the Code of Ordinances, City of Lubbock, Texas, is hereby amended to read as follows:

Sec. 16-381. Definitions.

In this article:

- (1) *Department* shall mean the Police Department of the City of Lubbock, Texas.
- (2) *Local Authority* shall have the meaning assigned by Section 541.002, Texas Transportation Code, as amended.
- (3) *Owner* shall mean 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.
- (4) *Photographic Traffic Signal Enforcement System* shall mean a system that:

- (a) consists of a camera system, vehicle sensor and appropriate signage installed to work exclusively in conjunction with an electrically operated traffic-control signal; and
  - (b) is capable of producing at least two recorded images that depict the license plate attached to the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.
- (5) *Recorded Image* means a photographic or digital image that depicts the rear of a motor vehicle.
- (6) *System Location* means the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation as designated by the local authority.
- (7) *Traffic Control Signal* shall have the meaning assigned by Section 541.304 of the Texas Transportation Code, as amended.

SECTION 2. THAT Section 16-382 of the Code of Ordinances, City of Lubbock, Texas, is hereby amended to read as follows:

Sec. 16-382. Imposition of Civil Penalty for Violations.

(a) The City Council finds and determines that a vehicle that proceeds into an intersection, as defined by Section 541.303 of the Texas Transportation Code, when the City's traffic control utility system signal for that vehicle's direction of travel is emitting a steady red signal damages the public by endangering motor vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control utility system 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.

(b) The owner of a motor vehicle shall be presumed responsible for violation of the provisions of this Article by such vehicle. Except as provided in (c) and (d) and Section 16-386 below, the owner of a motor vehicle is liable for a civil penalty of seventy-five dollars (\$75) if the motor vehicle proceeds into an intersection at a system location when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal.

(c) An owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of twenty-five dollars (\$25).

SECTION 3. THAT Section 16-383 of the Code of Ordinances, City of Lubbock, Texas, is hereby amended to read as follows:

Sec. 16.383. Enforcement; procedures.

(a) Intersections to be monitored by photographic traffic signal enforcement shall be selected based on a traffic engineering study, considering traffic volume, the history of accidents within at least the past 18 months at the approach, the number or frequency of red light violations at the intersection and similar traffic engineering and safety criteria without regard to the ethnic or socioeconomic characteristics of the area in which the approach is located. A Citizen's Photographic Traffic Signal Enforcement Committee shall advise the City on matters pertaining to the installation and operation of an automated photographic traffic signal enforcement system. The Committee shall consist of one person appointed by each member of the City Council. Initial terms for the members shall be two (2) years for three (3) members and three (3) years for four members. Thereafter the terms for all members shall be three (3) years. Members with two year initial terms shall be selected by the drawing of lots.

(b) The Department, as assisted by other City departments and any vendor of equipment and software under contract to the City in connection with the City's Automated Traffic Signal Enforcement program, is responsible for the enforcement and administration of this article. Any determination of violation shall be the responsibility of the Department. The Department shall make such reports to the Texas Department of Transportation as are required by law.

(c) In order to impose a civil penalty under this article, the Department shall mail a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than the 30<sup>th</sup> day after the date the violation is alleged to have occurred to:

- (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.

(d) A notice of violation issued under this article shall contain the following:

- (1) a description of the violation alleged;
- (2) the date, time, and location of the violation;
- (3) the name and address of the owner of the vehicle involved in the violation;
- (4) the registration number displayed on the license plate of the vehicle involved in the violation.

- (5) a copy of a recorded image of the vehicle involved in the violation limited solely to a depiction of the area of the registration number displaced on the license plate of the vehicle involved in the violation;
- (6) the amount of the civil penalty to be imposed for the violation;
- (7) the of days the person has in which to pay or contest the imposition of the civil penalty, which shall not be earlier than 30 days after the date the notice of violation is mailed 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;
- (8) 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
- (9) information that informs the person named in the notice of violation;
  - (A) of the person's right to contest the imposition of the civil penalty against the person in an administrative adjudication hearing;
  - (B) that imposition of the civil penalty may be contested by submitting a written request for an administrative adjudication hearing before the expiration of the period specified under subsection (7); and
  - (C) that failure to pay the civil penalty or to contest liability for the penalty in a timely manner is an admission of liability and a waiver of the owner's right to appeal the imposition of the civil penalty;
- (10) a statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;
- (11) a statement that failure to pay the civil penalty or to contest liability within the time allowed shall result in the imposition of a late penalty of \$25.00 but that an arrest warrant may not be issued for the owner and the imposition of a civil penalty will not be recorded on the owner's driving record; and
- (12) a statement that failure to pay the civil penalty or to contest liability within the time allowed may result in the County Tax Assessor-Collector refusing to register a vehicle alleged to have been in violation of this ordinance.
- (13) any other information deemed necessary by the Department.

(e) A notice of violation under this article is presumed to have been received on the fifth day after the date the notice of violation is mailed.

(f) In lieu of issuing a notice of violation, the Department may mail a warning notice to the owner.

SECTION 4. THAT Section 16-384 of the Code of Ordinances, City of Lubbock, Texas, is hereby amended to read as follows:

Sec. 16-384. Administrative adjudication hearing.

(a) A person who receives a notice of violation may contest the imposition of the civil penalty by requesting in writing an administrative adjudication of the civil penalty within thirty (30) days after receipt of the notice of violation. Upon receipt of a timely request, the Department shall notify the person of the date and time of the hearing on the administrative adjudication. The administrative adjudication hearing shall be held before a hearing officer, who shall be a temporary and substitute judge of the Municipal Court of the City of Lubbock appointed by the governing body with authority to administer oaths and issue orders compelling attendance of witnesses and production of documents. A written finding of liability or no liability shall be entered at the conclusion of the hearing by the hearing officer, which finding shall be filed with the clerk of the municipal court and recorded on microfilm, microfiche or using data processing techniques. A written finding of liability shall state the amount of the civil penalty for which the person is liable.

(b) Failure to pay a civil penalty or to contest liability in a timely manner or failure to appear at that hearing is considered an admission of liability for the full amount of the civil penalty stated in the notice of violation mailed to the person, and to have waived the right to appeal the imposition of the civil penalty under section 16-384(i).

(c) The civil penalty shall not be assessed if after a hearing, the hearing officer enters a finding of no liability.

(d) Administrative adjudication hearings shall be conducted substantially in the manner provided by the Texas Administrative Procedure Act, Subchapter C, "Contested Cases: General Rights and Procedures." The issues must be proven by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or employee of the City or the entity with which the City contracts to install or operate the system and who is responsible for inspecting and maintaining the system. An affidavit of an officer or employee of the City that alleges a violation based on an inspection of the pertinent recorded image, is admissible in a proceeding under this article and is evidence of the facts contained in the affidavit.

(e) A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for administrative hearing costs in the amount of \$25.00 in addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within 10 days of the hearing.

(f) It shall be presumed that the owner of the motor vehicle committed the violation alleged in the notice of violation mailed to the person if the motor vehicle depicted in a photograph or digital image taken by the photographic traffic signal enforcement system belongs to the owner of the motor vehicle. If, at the time of the violation alleged in the notice of violation, the motor vehicle was owned by a person in the business of selling, renting or leasing motor vehicles or by a person who was not named in the notice of violation, the presumption is rebutted on presentation of evidence that the motor vehicle was being test driven or was rented, leased or owned by another person. Such evidence may be presented by testimony or by affidavit or by written declaration under penalty of perjury. An affidavit or written declaration may be submitted by mail to the local authority or any entity with which the local authority contracts. If the presumption is rebutted by testimony or a valid affidavit or written declaration, a civil penalty may not be imposed on owner or the vehicle or the person named in the notice of violation. It is an affirmative defense to the imposition of civil 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 that the operator was acting in compliance with that Chapter;
- (5) the motor vehicle was a stolen vehicle 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 and being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued; or
- (7) 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.

(g) if the registered owner rebuts the presumption of liability in paragraph (f), the registered owner may transfer liability to the lessee under contract at the time of the violation. To transfer liability, the registered owner must provide the name, address, driver's license number and a copy of the lease agreement to the City on or before the 30<sup>th</sup> day after the notice of violation is received. If the owner provides the required information, it is presumed that the individual renting, leasing or actually owning the vehicle committed the violation and the local authority or Contractor, may dismiss the original notice and send a new notice to the lessee or owner *as* indicated by the registered owner's information.

(h) 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 or to the County Tax Assessor-Collector.

(i) Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:

- (1) the person submits a written request for a hearing to the hearing officer and files 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 hearing officer not later than the 30<sup>th</sup> day after the person actually received the notice of violation.

(j) A person who is found liable after an administrative adjudication hearing may appeal that finding of civil liability on the record of such hearing to the Municipal Judge of the City of Lubbock sitting as an administrative appeals hearing officer by filing an appeal petition with the office of the Municipal Judge. The appeal hearing shall be conducted by the Municipal Judge. The appeal shall be by trial de novo. The appeal petition must be filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of civil liability. The appeal petition shall be accompanied by payment of the costs required by law for the court and a notarized statement of personal financial obligation. Filing of a perfected appeal petition stays enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. A person whose adjudication of liability is overturned by the administrative appeals hearing officer shall be reimbursed for the full amount of the costs of appeal. A person whose adjudication of liability is upheld shall not be reimbursed for the costs of appeal.

SECTION 5. THAT Section 16-385 of the Code of Ordinances, City of Lubbock, Texas, is hereby amended to read as follows:

Sec. 16-385. Order and findings.



(a) The hearing officer at any administrative adjudication hearing under this article shall issue a written order stating:

- (1) whether the person charged with the violation is found to be liable or not liable for the violation; and
- (2) the amount of any civil penalty, late penalty, and any administrative adjudication costs assessed against the person.

(b) The orders issued under subsection (a) shall be filed with the clerk of the municipal court. The clerk shall keep the orders in a separate index. The orders may be recorded using microfilm, microfiche, or data processing techniques.

SECTION 6. THAT Section 16-386 of the Code of Ordinances, City of Lubbock, Texas, is hereby amended to read as follows:

Sec. 16.386. Effect of liability; exclusion of civil remedy.

(a) The imposition of a civil penalty under this article is not a conviction and may not be considered a criminal conviction for any purpose.

(b) A civil penalty may not 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 the same violation of Section 544.007(d) of the Texas Transportation Code recorded by the photographic traffic signal enforcement system.

(c) An owner who fails to pay the civil penalty or to timely contest liability for the penalty is considered to admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person.

(d) The City Attorney is authorized to file a suit in the nature of a "suit on account" to enforce collection of a civil penalty imposed under this article for violation of the red light regulations of the traffic signal utility system of the City of Lubbock.

(e) The Department, assisted by the Contractor or other City departments shall maintain and file such records as state law may require with the Texas Department of Transportation or other state agency and remit such funds as state law may require to the Texas Department of Transportation or other state agency from the photographic traffic signal enforcement system.

SECTION 7. THAT all provisions of the ordinances of the City of Lubbock in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Lubbock not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 8. THAT should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 9. THAT this Ordinance shall take effect immediately from and after its passage, and the publication of the caption, as provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading this 9th day of August, 2007.


Passed by the City Council on second reading this 23rd day of August, 2007.

  
\_\_\_\_\_  
DAVID A. MILLER, MAYOR

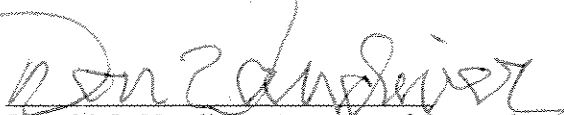
ATTEST:

  
\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Jeryl D. Hart, Jr., P.E., Traffic Engineer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Donald G. Vandiver, Attorney of Counsel

DD/Ord/AutomatedRedLightEnforcementAmendOrd2  
July 19, 2007