

ORDINANCE NO. 09 - 08

AN ORDINANCE OF THE CITY OF PALATKA, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF ORDINANCES OF THE CITY OF PALATKA, BY CREATING A NEW ARTICLE IV, ENTITLED "THE CITY OF PALATKA TRAFFIC LIGHT SAFETY ACT"; AND NEW SECTIONS 82-87 THROUGH 82-102; PROVIDING FOR INTENT AND DEFINITIONS; ESTABLISHING AN ENFORCEMENT PROGRAM WITHIN THE CITY; AUTHORIZING AN ENFORCEMENT PROGRAM WITHIN THE CITY; AUTHORIZING THE CITY TO PERMIT AND IMPLEMENT THE USE OF UNMANNED CAMERAS/MONITORING DEVICES FOR RED LIGHT INFRACTIONS; PROVIDING ENFORCEMENT PROCEDURES, INCLUDING NOTICE, APPEAL HEARINGS, PENALTIES, IMPOSITION OF ADMINISTRATIVE CHARGES AND COLLECTION; PROVIDING FOR EXCEPTIONS; PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, the City of Palatka is located in a high density traffic area and regularly experiences traffic incidents related to the failure of motorists to obey duly erected traffic control devices, exposing its citizens to the dangers of personal injury and property damage; and

WHEREAS, the City Commission of the City of Palatka is concerned with the inability to sufficiently enforce the State statutes prohibiting running of red lights, due mainly to the requirement that enforcement of the State law requires the personal observation of police officers, affecting the ability to effectively reduce the significant dangers presented to motorists and pedestrians by the failure to stop for a red light; and

WHEREAS, the use of unmanned cameras to enforce toll violations on the State's system of toll roads has been determined to be fair, reasonable and sufficient by the State in order to effectively enforce laws regulating the payment of tolls without the need to commit the extreme amount of personnel that would be necessary without the use of unmanned cameras; and

WHEREAS, similarly, the use of unmanned cameras will be effective in enforcing laws requiring drivers of motor vehicles to stop for red lights and will have the effect of freeing law enforcement personnel to respond to other, and sometimes more significant, incidents as well as serious crime; and

WHEREAS, local governments in different parts of the State and Nation have demonstrated the enhancement of vehicular and pedestrian traffic safety attributable to the integration of automated image capture technologies with traditional traffic law enforcement methodology; and

WHEREAS, Section 316.008, Florida Statutes, grants municipalities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, the authority to regulate and monitor traffic by means of law enforcement officers and security devices; and

WHEREAS, the City of Palatka is vested with home rule authority pursuant to Article VII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes, to enact an ordinance making the failure to stop for a red light indication a code violation, and to provide for enforcement of such violations; and

WHEREAS, Opinion 05-41 of the Attorney General of the State of Florida, dated July 12, 2005, issued to Samuel S. Goren, City Attorney for the City of Pembroke Pines, confirms the authority of the City to enact an ordinance making the failure to stop at a red light indication a code violation, to use unmanned cameras to monitor intersections in the City for such code violations, and to record the license tag numbers of vehicles involved in such violations; and

WHEREAS, the Attorney General has opined that the cities may not issue traffic citations under the State law to drivers for violations observed by the use of unmanned cameras and not otherwise observed by law enforcement officers; and

WHEREAS, in order to be consistent with State law and the referenced Attorney General Opinion, the City will issue the uniform traffic citation prescribed by Chapter 316, Florida Statutes, and will not prosecute offenses of this Ordinance through the County Court, but, rather, through the City's code enforcement program, procedures and processes; and

WHEREAS, the City Commission of the City of Palatka finds it to be fair and reasonable to use the same procedure used by the State to enforce toll violations through unmanned cameras, and to provide alleged violators with the opportunity to have a hearing within the City using the City's code enforcement procedures, program, and processes; and

WHEREAS, the City Commission of the City of Palatka finds that implementation of the enforcement program as set forth in this Ordinance will promote, protect and improve the health, safety and welfare of its citizens, consistent with the authority of and limitations on the City pursuant to the Constitution of the State of Florida and the Florida Statutes.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF PALATKA, FLORIDA:

Section 1. Recitals Adopted. That the recitals set forth above are hereby adopted and confirmed.

Section 2. That Chapter 82 of the Code of Ordinances of the City of Palatka is hereby amended by adopting a new Article IV, Section 82-87 through Section 82-102 to read as follows:

Article III – The City of Palatka Traffic Light Safety Act

Sec. 82-87. Intent.

The purpose of this article is to authorize the use of an unmanned cameras/monitoring system to promote compliance with red light signal directives a proscribed by this article, and to adopt a civil enforcement system for red light signal violations. This article will also supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement officers from issuing a citation for a red light signal violation in accordance with other routine statutory traffic enforcement techniques.

Sec. 82-88. Use of Image Capture Technologies.

The City shall utilize image capture technologies as a supplemental means of monitoring compliance with the State laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This section shall not supersede, infringe, curtail or impinge upon State laws related to red light signal violations or conflict with such laws. The City shall utilize image capture technologies as an ancillary deterrent to traffic control and traffic signal violations and to thereby reduce accidents and injuries associated with such violations. Notices of infractions issued pursuant to this article shall be addressed using ~~the City's code~~ a City enforcement process and not uniform traffic citations or County Courts.

Sec. 82-89. Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Hearing officer means a person whom the City Commission authorizes to conduct appeals or other administrative hearings. Hearing officers must be members of

The Florida Bar in good standing and have adequate experience or knowledge in the area of the matters over which they will preside and make recommendations, determinations, decisions, or findings of facts and conclusions of law, or any combination thereof. Hearing officers shall be selected through the request for proposal process in a manner authorized by the City Attorney consistent with the City's purchasing procedures.

Intersection means the area embraced within the prolongation or connection of the lateral curb line; or, if none, then the lateral boundary lines, of the roadways of two roads which join or intersect one another at, or approximately at, right angles; or the area within which vehicles traveling upon different roads joining at any other angle may come in conflict.

Motor vehicle means the meaning set forth in the definition in Section 316.003(21), Florida Statutes, or its successor provision.

Notice of infraction means a citation issued for a red zone infraction.

Owner means the person or entity identified by the Florida Department of Highway Safety and Motor Vehicles, or other State Vehicle Registration Office, as the registered owner of a vehicle. Such term shall also mean a lessee of a motor vehicle pursuant to a lease of six months or more.

Recorded images means images recorded by a traffic control signal monitoring system/device:

(1) On:

Two or more photographs, or

Two or more electronic images; or

Two or more digital images, or

Digital or video movies; or

Any other medium that can display a violation; and

(2) Showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.

Red zone infraction means a traffic offense whereby a traffic control signal monitoring system established that a motor vehicle entered an intersection controlled by a duly erected traffic control device at a time when the traffic control signal for such motor vehicle's direction of travel was emitting a steady red signal.

Traffic Control Infraction review Officer. The city police department employee designated, pursuant to Sec. 82-93 herein, to review recorded images and issue red zone infractions based upon those images.

Traffic control signal means a device exhibiting different colored lights or colored lighted arrows, successively, one at a time, or in combination, using only the colors green, yellow, and red which indicate and apply to drivers of motor vehicles as provided in Section 316.075, Florida Statutes.

Traffic control signal monitoring system/device means an electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still cameras and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication.

Sec. 82-90. Adherence to Red Light Traffic Control Signals.

Motor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown on the traffic control signal; however, the driver of a vehicle which is stopped at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the

intersection in obedience of a steady red traffic control signal, may make a right turn (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield right-of-way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection.

Sec. 82-91. Violation.

A violation of this article, known as a red zone infraction, shall occur when a motor vehicle does not comply with the requirements of Sec. 82-90 shall be enforced pursuant to Sec. 82-93.

Sec. 82-92. Ninety Day notice; introductory period.

The Police Chief shall notify the City Manager when the red light camera system is operating correctly at the initial location established. For the ninety days following said notification, unless the driver of a vehicle received a citation from a police officer at the time of a red zone infraction in accordance with routine traffic enforcement techniques, the vehicle owner shall receive a warning in the form of a courtesy notice of the violation. Commencing ninety-one days after the above referenced notification, the vehicle owner is subject to the enforcement provisions as provided herein and no warning shall be given pursuant to this article.

Sec. 82-93. Review of Recorded Images.

(a) The owner of the vehicle, which is observed by recorded images committing a red zone infraction, shall be issued a notice of violation (hereinafter also known as a "notice"). The recorded image shall be sufficient grounds to issue a notice.

(b) The City's Chief of Police shall designate a Traffic Control Infraction Review Officer, who shall be a police officer of the City or who shall meet the qualifications set forth in F.S. § 316.640(5)(A), or any other relevant statute. The Traffic Control Infraction Review Officer shall review recorded images prior to the issuance of a notice to ensure the accuracy and integrity of the recorded images. Once the Traffic Control Infraction Review Officer has verified the accuracy of the recorded images, he or she shall complete a report, and a notice shall be sent to the vehicle owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles or the address on record with the appropriate agency having such information in another state.

Sec. 82-94. Notice of Violation.

- (a) The notice of violation/infraction shall include at a minimum.
- (1) The name and address of the owner;
 - (2) The license plate number and registration number of the motor vehicle;
 - (3) The make, model, and year of the motor vehicle;
 - (4) Notice that the violation charged is pursuant to this article;
 - (5) The location of the intersection where the violation occurred;
 - (6) The date and time of the red zone infraction;
 - (7) Notice that the recorded images relating to the vehicle and a statement that the recorded images are evidence of a red zone infraction;
 - (8) The civil penalty imposed;
 - (9) Images depicting violation;
 - (10) The procedures for payment of the civil penalty and contesting the notice of infraction;
 - (11) A signed statement by the Traffic Control Infraction Officer that, based on inspection of recorded images, the vehicle was involved in a red zone infraction;
 - (12) Information advising the person alleged to be liable under this section, the manner and time in which liability as alleged in the notice of infraction may be appealed and warning that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability.
- (b) The City Manager shall have authority to promulgate the form described herein.

Sec. 82-95. Vehicle owner responsibilities.

(a) An owner receiving a notice of infraction may, within 21 days of the notice of infraction:

- (1) Pay the assessed civil penalty pursuant to instructions on the notice of infraction; or
 - (2) Request an appeal pursuant to section 82-97.
- (b) The failure to comply with the provisions of this section within 21 days from the date of the notice of infraction shall constitute a waiver of the right to contest the notice of infraction and will be considered an admission of liability.

Sec. 82-96. Appeal to Hearing Officer.

(a) The City's Hearing Officer shall consider appeals under this section that are filed within 21 days of the date of the notice of infraction. The owner may file an appeal with the City pursuant to the directions in the notice of infraction. A hearing on the appeal shall be scheduled for all appeals.

(b) Upon receipt of the appeal, the City shall schedule a hearing before the Hearing Officer to occur not later than 60 days after City's receipt of the appeal request. A notice of hearing shall be provided to the owner no less than ten days prior to the hearing, and shall be delivered via certified U.S. mail to the same address to which the notice of infraction was sent. The Hearing Officer shall issue a written order either granting or denying the appeal.

(c) The following shall be permissible grounds for an appeal:

(1) At the time of the infraction, the vehicle was not under the care, custody, or control of the owner or an individual with owner's consent, established pursuant to affidavit as provided in section 82-97.

(2) The motor vehicle driver was issued a citation by a Law Enforcement Officer, which was separate and distinct from the citation issued under this section, for violating the steady red traffic control signal;

(3) The motor vehicle driver was required to violate the steady red traffic control signal in order to comply with other governing laws;

(4) The motor vehicle driver was required to violate the steady red traffic control signal in order to reasonably protect the property or person of another;

(5) The steady red traffic control signal was inoperable or malfunctioning; or

(6) Any other reason the Hearing Officer deems appropriate.

(d) The Traffic Control Infraction Review Officer shall testify at the appeal. The owner, or his or her representative, may also present testimony and evidence.

(e) Recorded images indicating a red zone infraction, verified by the traffic Control Infraction Review Officer, are admissible in any proceeding before the Hearing Officer to enforce the provisions of this article, and shall constitute prima facie evidence of the violation.

(f) Unless an affidavit is provided pursuant to section 82-97, it is presumed the person registered as the owner with the Florida Department of Highway Safety and Motor Vehicles or any other State Vehicle Registration Office, or an individual having the owner's consent, was operating the vehicle at the time of a red zone infraction.

Sec. 82-97. Vehicle Owner affidavit of non-responsibility.

(a) In order for the owner to establish that the motor vehicle was, at the time of the red zone infraction, in the care, custody, or control of another person without the consent of the owner, the owner is required to complete an affidavit setting forth the circumstances demonstrating that the motor vehicle was not in the owner's care, custody or control, or that of a person with owner's consent. The affidavit must be executed in the presence of a notary, and include at a minimum:

(1) If known to the owner, the name, address, and the driver license number of the person who leased, rented or otherwise had care, custody, or control of the motor vehicle at the time of the alleged red zone infraction; or

(2) If the motor vehicle was stolen, the police report indicating the motor vehicle was stolen at the time of the alleged red zone infraction.

(3) The following language immediately above the signature line: "Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true."

(b) The owner may present an affidavit pursuant to this section, as a defense in any proceeding before the Hearing Officer.

Sec. 82-98. Penalties.

(a) A violation of this article shall be deemed a non-criminal, non-moving violation for which a civil penalty in the amount of \$150.00 shall be assessed.

(b) As the violation relates to this article and not the Florida Statutes and no points as provided in Section 322.27, Florida Statutes, shall be recorded on the driving record of the vehicle owner or responsible party.

Sec. 82-99. Administrative charges.

In addition to the assessment pursuant to section 82-99, administrative charges in the amount of the City's actual costs shall be assessed in the event of an unsuccessful appeal or the necessity to institute collection procedures.

Sec. 82-101. Collection of fines.

The City Manager may establish procedures and processes for the collection of any penalty or charge imposed or assessed under the provisions of this article and may enforce such penalty by civil action in the nature of debt.

Sec. 82-102. Exceptions.

(a) This article shall not apply to red zone infractions involving motor vehicle collisions or to any authorized emergency vehicle responding to a bona fide emergency.

(b) A notice of infraction may be issued in any case where the operator of the motor vehicle was issued a citation for violating State law regarding the failure to stop at a red light indication.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Palatka; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED by the City Commission of the City of Palatka on this 12th day of March, 2009.

CITY OF PALATKA

By: Karl H. Flagg
Its Mayor

ATTEST:

Betty J. Duggins
City Clerk