

ORDINANCE NO. O-2009-XXX

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF OAKLAND PARK, FLORIDA AMENDING CHAPTER 8 ENTITLED “MISCELLANEOUS OFFENSES AND PROVISIONS” BY CREATING ARTICLE VII TO BE ENTITLED “INTERSECTION AND RAILROAD CROSSING SAFETY” PROVIDING FOR INTENT AND DEFINITIONS; ESTABLISHING AN ENFORCEMENT PROGRAM WITHIN THE CITY; AUTHORIZING THE CITY TO PERMIT AND IMPLEMENT THE USE OF UNMANNED CAMERAS/MONITORING DEVICES FOR RED LIGHT/RR CROSSING INFRACTIONS; PROVIDING ENFORCEMENT PROCEDURES, INCLUDING NOTICE, APPEAL HEARINGS, PENALTIES, IMPOSITION OF ADMINISTRATIVE CHARGES AND COLLECTION; PROVIDING FOR EXCEPTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of OAKLAND PARK (“City”) 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, including railroad crossings, which exposes its citizens to the dangers of personal injury and property damage; and

WHEREAS, the City Commission is concerned with the inability to sufficiently enforce the state statute prohibiting running of red lights and obeying railroad crossings, due mainly to the requirement that enforcement of the state statute 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 or obey railroad crossing arms; and,

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

5 **WHEREAS**, similarly, the use of unmanned cameras will be effective in enforcing laws
6 requiring vehicles to stop for red lights and obey railroad crossing arms; therefore freeing City
7 police personnel to respond to other , and sometimes more, significant incidents as well as
8 serious crime; and,

9 **WHEREAS**, local governments in different parts of the state and country have
10 demonstrated the enhancement of vehicular and pedestrian traffic safety attributable to the
11 integration of automated image capture technologies with traditional traffic law enforcement
12 methodology; and

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

16 **WHEREAS**, the City of OAKLAND PARK has home rule authority pursuant to Article
17 VII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes, to enact an
18 ordinance making the failure to stop for a red light or obey railroad crossing arms an indication a
19 violation of the City's Code of Ordinances, and to provide for enforcement of such violations of
20 the City's Code of Ordinances through the use of the City's Code Enforcement Special Masters;
21 and,

1 **WHEREAS**, Attorney General Opinion 05-41, dated July 12, 2005, confirms the
2 authority of the City to enact an ordinance making the failure to stop at a red light indication a
3 violation of the City's Code of Ordinances, to use unmanned cameras to monitor intersections in
4 the City for such violations of the City's Code, and to record the license tag numbers of vehicles
5 involved in such violations; and,

6 **WHEREAS**, the Attorney General has opined that the City may not issue traffic citations
7 under the State Statutes to drivers for violations observed by the use of unmanned cameras and
8 not otherwise observed by police officers; and,

9 **WHEREAS**, in order to be consistent with state law and the Attorney General's Opinion,
10 the City will issue City Notices of Violations to registered owners of vehicles, will not utilize the
11 uniform traffic citation prescribed by Chapter 316, and will not prosecute offenses of its City
12 ordinance through county court, thus the City's enforcement program; and,

13 **WHEREAS**, the City Commission finds it to be fair and reasonable to use the same
14 procedure used by the state to enforce toll violations through unmanned cameras, to provide
15 alleged violators with the opportunity to have a hearing within the City using the City's Code
16 Enforcement Special Magistrates and the City's code enforcement procedures adopted pursuant
17 to Chapter 162, Florida Statutes; and,

1 **WHEREAS**, the City Commission of the City of OAKLAND PARK finds that
2 implementation of the enforcement program as set forth herein will promote, protect and
3 improve the health, safety and welfare of its citizens, consistent with the authority of and
4 limitations on the City pursuant to the Florida Constitution and Florida statutes; now, therefore

5 BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF OAKLAND
6 PARK, FLORIDA:

7 **Section 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as
8 being true and correct and are hereby made a specific part of this Ordinance upon adoption
9 hereof.

10 **Section 2.** Chapter 8 of the Code of Ordinances of the City of OAKLAND PARK,
11 entitled "Miscellaneous Offenses and Provisions" is hereby amended to create Article VII to be
12 entitled "Intersection and Railroad Crossing Safety" which shall read as follows:

13 **ARTICLE VII: Intersection and Railroad Crossing Safety**
14

15 8-125 Intent.
16

17 The purpose of this Act is to authorize the use of a unmanned cameras/monitoring system
18 to promote compliance with red light signal and railroad crossing arm directives as proscribed by
19 this Act, and to adopt a civil enforcement system for red light signal and railroad crossing arm
20 violations. This Act will also supplement law enforcement personnel in the enforcement of red
21 light signal and railroad crossing arms violations and shall not prohibit law enforcement officers
22 from issuing a citation for a red light signal or railroad crossing arms violation in accordance
23 with normal statutory traffic enforcement techniques.
24

25 8-126 Use of Image Capture Technologies.
26

1 The City shall utilize image capture technologies as a supplemental means of monitoring
2 compliance with laws related to traffic control signals, while assisting law enforcement
3 personnel in the enforcement of such laws, which are designed to protect and improve public
4 health, safety and welfare. This Section shall not supersede, infringe, curtail or impinge upon
5 state laws related to red light signal violations or conflict with such laws. The City shall utilize
6 image capture technologies as an ancillary deterrent to traffic control signal and railroad crossing
7 arms violations and to thereby reduce accidents and injuries associated with such violations.
8 Notices of Infractions issued pursuant to this Act shall be addressed using the City's own Special
9 Magistrates and not uniform traffic citations or county courts.

10
11 8-127 Definitions.

12
13 The following definitions shall apply to this Act:

- 14
15 (a) Intersection shall mean the area embraced within the prolongation or connection
16 of the lateral curb line; or, if none, then the lateral boundary lines, of the roadways
17 of two roads which join or intersect one another at, or approximately at, right
18 angles; or the area within which vehicles traveling upon different roads joining at
19 any other angle may come in conflict.
20
21 (b) Motor vehicle shall mean any self-propelled vehicle not operated upon rails or
22 guideway, including any motorized vehicle which is registered as a motor vehicle
23 under Florida State Statute and has a license plate affixed to it..
24
25 (c) Notice of Infraction shall mean a citation issued for a red zone infraction or RR
26 Crossing infraction.
27
28 (d) Owner/Vehicle Owner shall mean the person or entity identified by the Florida
29 Department of Motor Vehicles, or other state vehicle registration office, as the
30 registered owner of a vehicle. Such term shall also mean a lessee of a motor
31 vehicle pursuant to a lease of six months or more.
32
33 (e) Recorded Images shall mean images recorded by a traffic control signal
34 monitoring system/device:
35
36 1. On:
37 Two or more photographs;
38 Two or more electronic images;
39 Two or more digital images;
40 Video; or
41 Any other medium; and

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

(f) Red Zone Infraction shall mean a traffic offense where a traffic control signal monitoring system established that a vehicle entered an intersection controlled by a duly erected traffic control device at a time when the traffic control signal for such vehicle's direction of travel was emitting a steady red signal.

(g) Railroad Crossing infraction shall mean a traffic offense whereby a traffic control signal monitoring system established that a vehicle entered through, around or under a crossing gate or barrier at a railroad-highway grade crossing while the gate or barrier is closed or is being opened or closed and warning lights at the Railroad Crossing were operational.

(h) Special Magistrate shall mean the City's Code Enforcement Special Magistrate.

(i) Traffic Control Signal shall mean 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 Florida Statutes § 316.075.

(j) Traffic Control Signal Monitoring System/Device shall mean an electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal or railroad crossing arms, still camera and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication or around, under or through railroad crossing arms while the gate or barrier is being opened or closed..

8-128 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.

1 8-129 Adherence to Railroad Crossings

2
3 1. Any person operating a motor vehicle and approaching a railroad-highway grade crossing
4 shall stop within 50 feet but not less than 15 feet from the nearest crossing of such railroad when;
5

6 (a) A clearly visible electric or mechanical signal device gives warning of the approach of a
7 railroad train;

8 (b) A crossing gate is lowered or a human flagger gives or continues to give a signal of the
9 approach or passage of a railroad train;

10 (c) An approaching railroad train emits an audible signal or the railroad train, by reason of its
11 speed or nearness to the crossing, is an immediate hazard; or

12 (d) An approaching railroad train is plainly visible and is in proximity to the railroad-highway
13 grade crossing, regardless of the type of traffic control devices installed at the crossing.
14

15 2. No person shall drive any vehicle through, around, or under any crossing gate or barrier at a
16 railroad-highway grade crossing while the gate or barrier is closed or is being opened or closed.
17

18 8-130 Violation.

19
20 A violation of this Act, known as a Red Zone/Railroad Crossing Infraction , shall occur
21 when a vehicle does not comply with the requirements of Section 8-128 or Section 8-129.
22 Violations shall be enforced pursuant to this Article.
23

24 8-131 Three-month notice; introductory period.

25
26 For the first three months of this Ordinance, unless the driver of a vehicle received a
27 citation from a police officer at the time of a Red Zone Railroad Crossing Infraction in
28 accordance with normal traffic enforcement techniques, the vehicle owner shall receive a
29 courtesy notice of the violation. Commencing six months after the effective date of the Act, the
30 vehicle owner is subject to the enforcement provision as provided herein. Signage with camera
31 information will be posted in proposed locations, on City website and printed materials during
32 this timeframe.
33
34

1 8-132 Review of Recorded Images.

- 2
- 3 (a) The owner of the vehicle which is observed by Recorded Images committing a
- 4 Red Zone/Railroad Crossing Infraction, shall be issued a Notice of Infraction.
- 5 The Recorded Image shall be sufficient grounds to issue a City Notice of
- 6 Infraction.
- 7
- 8 (b) The City shall designate a Traffic Control Infraction Review Officer, who shall
- 9 meet the qualifications set forth in §316.640(5)(A), Florida Statutes. The Traffic
- 10 Control Infraction Review Officer shall review Recorded Images prior to the
- 11 issuance of a Notice of Infraction to ensure accuracy and the integrity of the
- 12 Recorded Images. The Traffic Control Infraction Officer shall also verify that the
- 13 Traffic Control Monitoring System/Devices which captured the Recorded Images
- 14 was functioning properly at the time the Recorded Images were captured. Once
- 15 the Traffic Control Infraction Review Officer has verified the accuracy of the
- 16 Recorded Images and functionality of the Traffic Control Monitoring
- 17 System/Devices, he or she shall complete a report, prepare the Notice of
- 18 Infraction and send it via registered mail and U.S. mail to the Vehicle Owner at
- 19 the address on record with the Florida Department of Highway Safety and Motor
- 20 Vehicles.

21 8-133 Notice of Infraction.

22

23 The City Notice of Infraction shall include:

- 24 (a) The name and address of the vehicle owner;
- 25 (b) The license plate number and registration number of the vehicle;
- 26 (c) The make, model, and color of the vehicle;
- 27 (d) Notice that the violation charged is pursuant to this Act;
- 28 (e) The location of the intersection where the violation occurred;
- 29 (f) The date and time of the red zone/railroad crossing infraction;
- 30 (g) Notice that the Recorded Images relating to the vehicle and a statement that the
- 31 recorded images are evidence of a red zone or railroad crossing infraction;
- 32 (h) The civil penalty imposed;

- 1 (i) The procedures for payment of the civil penalty and contesting the notice of
2 infraction;
- 3 (j) A signed statement by the Traffic Control Infraction Officer that, based on
4 inspection of recorded images, the vehicle was involved in a Red Zone/Railroad
5 Crossing Infraction;
- 6 (k) Information advising the person alleged to be liable under this Section, the
7 manner and time in which liability as alleged in the Notice of Infraction may be
8 appealed and warning that failure to pay the civil penalty or to contest liability in
9 a timely manner is an admission of liability.

10
11 8-134 Vehicle Owner Responsibilities.

12
13 A Vehicle Owner receiving a Notice of Infraction may, within twenty one (21) days of
14 the date of the Notice of Infraction:

- 15
16 (a) Pay the assessed civil penalty pursuant to instructions on the notice of infraction;
17 or
- 18 (b) Request an appeal pursuant with procedures as outlined in this Article;

19
20 The failure to comply with the provisions of this Section within twenty one (21) days
21 from the date of the Notice of Infraction shall constitute a waiver of the right to contest the
22 Notice of Infraction and will be considered an admission.

23
24 8-135 Appeal to Special Magistrate.

25
26 The City's Code Enforcement Special Magistrates are authorized to consider
27 appeals under this Chapter within twenty one (21) days of the date of the Notice of
28 Infraction, the Vehicle Owner may file an appeal with the City pursuant to the directions
29 in the Notice of Infraction. A hearing on the appeal shall be scheduled for all appeals
30 except those in which the Vehicle Owner submits an affidavit pursuant to 8-136 in which
31 the Vehicle Owner affirms under penalty of perjury that the vehicle was not under his or
32 her care, custody or control, or that of someone with Vehicle Owner's consent.

- 33
34 (a) Upon receipt of the appeal, the City shall schedule a hearing before the Special
35 Magistrate to occur not later than sixty (60) days after City's receipt of the appeal.
36 Notice of Hearing shall be provided to the Vehicle Owner no less than ten (10)
37 days prior to the hearing, and shall be provided by certified and U.S. mail to the
38 same address to which the Notice of Infraction was sent.

1
2 (b) The following shall be permissible grounds for an appeal:
3

4 (i) At the time of the infraction, the vehicle was not under the care, custody,
5 or control of the Vehicle Owner or an individual with Vehicle Owner's
6 consent, established pursuant to affidavit as provided in 8-136;
7

8 (ii) The motor vehicle driver was issued a citation by a law enforcement
9 officer, which was separate and distinct from the citation issued under this
10 Section, for violating the steady red traffic control signal or railroad
11 crossing arms;

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

14 (iv) The motor vehicle driver was required to violate the steady red traffic
15 control signal or railroad crossing arms in order to reasonably protect the
16 property or person of another;

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

18 (vi) Any other reason the Special Magistrate deems appropriate.
19
20

21 (c) The Traffic Control Infraction Review Officer shall testify at the appeal. Then,
22 the Vehicle Owner may present testimony and evidence.
23

24 (d) Recorded Images indicating a Red Zone or Railroad Crossing Infraction, verified
25 by the Traffic Control Infraction Review Officer, are admissible in any
26 proceeding before the City's Special Magistrate to enforce the provisions of this
27 Chapter, and shall constitute prima facie evidence of the violation.
28

29 (e) Unless an affidavit is provided pursuant to 8-136, it is presumed the person
30 registered as the vehicle owner with the Florida Department of Motor Vehicles or
31 any other state vehicle registration office, or an individual having the owner's
32 consent, was operating the vehicle at the time of a Red Zone/Railroad Crossing
33 Infraction.
34

1 8-136 Vehicle Owner Affidavit of Non-responsibility.

2
3 In order to for the Vehicle Owner to establish that the motor vehicle was at the time of
4 the Red Zone/Railroad Crossing Infraction, in the care, custody, or control of another person
5 without the consent of the registered owner, the Vehicle Owner is required, within twenty one
6 (21) days from the date listed on the Notice of Infraction, to furnish to the City, a sworn affidavit
7 setting forth the circumstances demonstrating that the motor vehicle was not in the Vehicle
8 Owner's care custody or control, or that of a person with Vehicle Owner's consent. The sworn
9 affidavit must be executed in the presence of a notary, and include:

10
11 (a) If known to the Vehicle Owner, the name, address, and the driver license number
12 of the person who leased, rented or otherwise had care, custody, or control of the
13 motor vehicle at the time of the alleged Red Zone/Railroad Crossing Infraction;
14 or

15
16 (b) If the vehicle was stolen, the police report indicating the vehicle was stolen at the
17 time of the alleged Red Zone/Railroad Crossing Infraction.

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

21
22 Upon receipt of an affidavit pursuant to this section, any prosecution of the Notice of Infraction
23 issued to the vehicle owner shall be terminated.

24
25 8-137 Penalties.

26
27 A violation of this Act shall be deemed a non-criminal, non-moving violation for which a
28 civil penalty in the amount of \$ \$125.00 for the first offence, \$250.00 for the second offence and
29 \$500.00 for the third and all subsequent offences shall be assessed. As the violation relates to
30 this Act and not the State Statutes, no points as provided in § 322.27, Florida Statutes, shall be
31 recorded on the driving record of the vehicle owner or responsible party.

32
33 8-138 Administrative Charges.

34
35 In addition to the penalties identified in Section 8-137 herein, administrative charges may
36 be assessed in the event of an appeal or the necessity to institute collection procedures.

1 8-139 Collection of Fines.

2
3 The City may establish procedures for the collection of a penalty imposed herein, and
4 may enforce such penalty by civil action in the nature of debt.

5 8-140 Exceptions.

6 This Act shall not apply to Red Zone/Railroad Crossing Infractions involving
7 vehicle collisions or to any authorized emergency vehicle responding to a bona fide
8 emergency; nor shall a Notice of Infraction be issued in any case where the operator of
9 the vehicle was issued a citation for violating the state statute regarding the failure to stop
10 at a red light indication or for going around, through or under railroad crossing arms..

11
12 **Section 3.** Severability. If any section, sentence, clause, or phrase of this Ordinance is
13 held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding
14 shall in no way affect the validity of the remaining portions of this Ordinance.

15 **Section 4.** Inclusion in Code. It is the intention of the City Commission of the City of
16 OAKLAND PARK, Florida, that the provisions of this Ordinance shall become and be made a
17 part of the City of OAKLAND PARK Code of Ordinances; and that the sections of this
18 ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to
19 "section," "article," or such other appropriate word or phrase in order to accomplish such
20 intentions.

21
22 **PASSED BY THE CITY COMMISSION OF THE CITY OF OAKLAND PARK,**
23 **FLORIDA, ON FIRST READING, THIS 1ST DAY OF JULY, 2009.**

24
25 A. MURPHY _____
26 A. NIEDWIECKI _____
27 S. BOISVENUE _____
28 A. SALLEE _____
29 S. ARNST _____
30

1
2 **PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF OAKLAND**
3 **PARK, FLORIDA, ON SECOND READING, THIS ____ DAY OF _____, 2009.**
4

5 CITY OF OAKLAND PARK,
6 FLORIDA
7
8
9

10
11 _____
12 MAYOR STEVEN ARNST
13

14 A. MURPHY _____
15 A. NIEDWIECKI _____
16 S. BOISVENUE _____
17 A. SALLEE _____
18 S. ARNST _____
19

20 ATTEST:
21
22

23 _____
24 JANETTE M. SMITH, CITY CLERK
25

26 LEGAL NOTE:
27 I HEREBY CERTIFY THAT I
28 have approved the form of this Ordinance. (O-2009-XXX)
29
30

31 _____
32 DONALD J. DOODY, CITY ATTORNEY
33

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