

ORDINANCE NO. 09-12

AN ORDINANCE ADOPTING AN AUTOMATED SPEED ENFORCEMENT PROGRAM AND ESTABLISHING CIVIL PENALTIES FOR AUTOMATED SPEED VIOLATIONS, SUPPLEMENTING THE CODIFIED ORDINANCES OF THE VILLAGE OF ELMWOOD PLACE, OHIO BY ADDING THERETO NEW CHAPTER Sec 77 TO PROVIDE FOR THE IMPLEMENTATION OF SAID PROGRAM.

WHEREAS, the ongoing problem of motorists disobeying speed limit control devices has contributed to a significant number of motor vehicle crashes in the Village of Elmwood Place, which have resulted in death, serious personal injury and or substantial property damage; and

WHEREAS, the Village of Elmwood Place seeks to increase compliance with traffic control devices, particularly speed limits, and thereby decrease the number of motor vehicle crashes and pedestrian injuries that are caused by such failure to comply; and

WHEREAS, an automated speed enforcement program will assist the Village in increasing compliance with traffic control devices without the disadvantages attendant to conventional traffic enforcement, such as disruptions in the flow of traffic at heavily traveled intersections, and expenses associated with increased police manpower; and

WHEREAS, the Village Chief of Police is authorized and directed to execute a service agreement with Optotraffic, LLC for the provision of automated speed enforcement service; and

WHEREAS, it is now necessary to establish a civil penalty for violations and a method by which persons can take appeals of the civil violations; and

WHEREAS, Village Administration recommends: (a) the establishment of a fine of approximately \$105.00, similar to that which would be assessed in a traffic case with court costs; (b) increase said fine if the violator does not pay within the first twenty (20) days; (c) that these provisions not apply to emergency and public safety vehicles engaged in an emergency response to a call for service; and (d) that if a Village employee is operating a Village vehicle and a notice of liability is issued, the penalty shall be paid by the employee driver and not the Village; and

WHEREAS, it is also recommended that a vehicle owner be eligible to appeal said actions to a hearing officer if: (1) the owner was not the driver at the time of the incident; (2) the vehicle or its license plates had been reported stolen within forty-eight (48) hours of the violation time; (3) the vehicle is a commercial or rental vehicle and the owner was not the person having custody or control of the vehicle at the time of the incident; and

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WHEREAS, in order to enact these provisions it is necessary to supplement the Village's Codified Ordinances by adding thereto new Chapter Sec 77 to provide for the implementation of an automated speed enforcement program and for the administrative enforcement of automated speed violations;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Elmwood Place, Ohio:

SECTION I: That the Codified Ordinances of the Village of Elmwood Place, Ohio are hereby supplemented by adding thereto new Chapter Sec 77, relative to the implementation of an automated speed enforcement program for the administrative enforcement of automated speed violations, which shall be and read substantially in the form of Exhibit No. 1 attached hereto, incorporated herein by reference and made a part hereof.

SECTION II: This ordinance shall take effect and be in full force from and after the earliest period allowed by law.

PASSED: July 10, 2012

Mayor

Effective Date: 7/10/12

ATTEST: Nancy S. Riley
Village Clerk

CERTIFICATE

I, N. Riley, Village Clerk of the Village of Elmwood Place, Ohio, State of Ohio, hereby certify that the foregoing Ordinance No. 09-12 was duly published as provided by Section 3013 of the Codified Ordinances of the Village of Elmwood Place, Ohio, by o

Village Clerk
VILLAGE OF ELMWOOD PLACE, OHIO

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EXHIBIT NO. 1

CHAPTER Sec. 77

CIVIL PENALTIES FOR AUTOMATED
SPEED ENFORCEMENT VIOLATIONS.

Sec. 77.01: Definitions.

- (a) "Automated speed enforcement program" is a program intended to reduce speeding violations using an automated speed enforcement system.
- (b) "Automated speed enforcement system" is a system with one or more sensors working in conjunction with a speed measuring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.
- (c) "Hearing Officer" is the independent third party appointed by the Village Manager.
- (d) "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other state vehicle registration office, as the registered owner of a vehicle or a lessee of a motor vehicle under a lease of six months or more.
- (e) "Motor Vehicle" has the same definition as in Section 77 of the Codified Ordinances of the Village of Elmwood Place Ohio.
- (f) "Recorded Images" means images recorded by an automated speed enforcement system photographic system on any of the following:
 - (1) Two or more photographs; or

- (2) Two or more microphotographs; or
 - (3) Two or more electronic images; or
 - (4) Two or more digital images; or
 - (5) Videotape; or
 - (6) Any other medium and showing the front or rear of a motor vehicle and on at least one image or portion of tape, clearly identifying the license plate number of the motor vehicle.
- (g) **“Date of Issuance of Notice of Liability” shall be the date printed on the notice of liability immediately prior to its mailing.**

Sec. 77.02: **General.**

- (a) **Notwithstanding any other provision of this traffic code, the Village of Elmwood Place hereby adopts a civil enforcement program for automated speed enforcement system violations as outlined in this section. Said program imposes monetary liability on the owner of a vehicle for failure of an operator thereof to strictly comply with the posted speed limit in school zones or streets or highways within the Village of Elmwood Place.**
- (b) **The Elmwood Place Police Department shall be responsible for administering the automated speed enforcement program. Specifically, the Elmwood Place Police Department shall be empowered to install and operate the automated speed enforcement system within the Village of Elmwood Place using trained technicians who may or may not be police officers, Police Department employees, or other trained technicians who are not employees of the Elmwood Place Police Department.**
- (c) **Any citation for an automated speed system violation pursuant to this section, known as a “notice of liability” shall:**
 - (1) **Be approved by officials or agents of the Village of Elmwood Place; and**
 - (2) **Be forwarded by first-class mail or personal service to the vehicle’s registered owner’s address as given on the state’s motor vehicle registration; and**

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(3) Clearly state the manner in which the violation may be appealed.

Sec. 77.03: Offense.

- (a) The owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle is operated at a speed in excess of those set forth in Section 47 of the Codified Ordinances of the Village of Elmwood Place, Ohio or Ohio Revised Code Section 4511.21 as each may be amended from time to time.
- (b) If the motor vehicle involved in the violation is commercial motor vehicle and the notice of liability issued to a corporate entity, the corporate entity must provide to the Village of Elmwood Place Police Department or its designee an affidavit, sworn to or affirmed by the statutory agent of the corporate entity, that:
 - (1) States that the person/entity named in the notice of liability was not in operation of the commercial motor vehicle at the time of the violation; and
 - (2) Provides the name, address, and driver's license identification number of the person who was in operation of the commercial motor vehicle at the time of the violation.
- (c) The owner of the motor vehicle shall not be responsible for the violation if, within twenty (20) calendar days from the date of issuance of the notice of liability, the owner furnishes the Village of Elmwood Place Police Department or its designee with:
 - (1) The name and address of the person who leased, rented, borrowed, or otherwise had the care, custody, and control of the motor vehicle at the time of the violation, a signed affidavit sworn to before a notary public that the affiant was operating the motor vehicle, and payment of the appropriate civil penalty as set forth herein; or
 - (2) An affidavit by the owner stating that at the time of the violation, the motor vehicle or the license plates of the motor vehicle involved were stolen or were in the care, custody, and control of some person who did not have the owner's permission to use the motor vehicle, or that the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were

not under the control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report, incident report/general offense report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.

(d) A certified copy if the notice of liability alleging the violation of this ordinance occurred, sworn to or affirmed by a duly authorized Village of Elmwood Place Police Officer, with the recorded images produced by an automated speed enforcement system photographic system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this ordinance.

(e) Exception for emergency or public safety vehicles:

The provisions of this Chapter shall not apply to emergency vehicles or public safety vehicles when those vehicles are responding to emergency or call for emergency service.

(f) Exception for Vehicles which are the property of the Village of Elmwood Place:

The provision of this Chapter relating to owner liability shall not apply to a vehicle owned by the Village of Elmwood Place which is being driven by a Village employee at the time of violation. In such circumstances, the employee and not the Village shall be liable for the civil penalty to be incurred as a result of the violation(s).

Sec. 77.04: Notice of Liability.

(a) The notice of liability shall be processed by the Village of Elmwood Place Police Department or its designee and shall be served by ordinary mail to the owner's address as given on the motor vehicle registration from the Bureau of Motor Vehicles, or its equivalent, of the state registered. The notice of liability shall include:

(1) The name and address of the registered owner of the motor vehicle;

- (2) The license plate number of the motor vehicle involved in the violation;
 - (3) The violation charged;
 - (4) The location of the violation;
 - (5) The date and time of the violation;
 - (6) A copy of the recorded image(s);
 - (7) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and where the payment should be made;
 - (8) Information advising the person alleged to be liable of the options as provided in subsection 77.03 of this ordinance;
 - (9) The time, place, and manner in which an administrative appeal can be initiated and a warning that failure to exercise the options provided under subsection 77.06 of this ordinance in a timely manner is an admission of liability.
- (b) A notice of liability issued under this ordinance shall be mailed no later than fifteen (15) calendar days after the alleged violation.
- (c) Except as provided under subsection 77.03(c) of this ordinance, the Village of Elmwood Place Police Department or its designee may not mail a notice of liability to a person who is not the owner of the motor vehicle.
- (d) 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 subsections 77.03 (b) and (c) of this section.**
- (e) Nothing in this section shall be construed to limit the liability of an owner of a vehicle for any violation of subsections 77.03 (b) or (c) of this section.**

Sec. 77.05: Civil Penalties.

- (a) Unless the driver of the motor vehicle received a citation from a police officer at the time of the violation, or unless one of the

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exceptions or defenses to liability set forth in sections 77.03 (e) and (f) applies, the owner or responsible party for the motor vehicle is subject to a civil penalty if the motor vehicle is recorded by an automated speed enforcement system while being operated in violation of this ordinance.

(b) The civil penalty under this ordinance shall be in accordance with the following schedule:

- (1) If the civil penalty is paid within twenty (20) calendar days of the date of issuance of the notice of liability – one hundred and five dollars (\$105.00);
- (2) If the civil penalty is paid more than twenty (20) calendar days, but within forty five (45) calendar days after date of issuance of the notice of liability – one hundred and thirty five dollars (\$135.00);

If the civil penalty is paid more than forty five (45) calendar days of the date of issuance of the notice of liability – one hundred and ninety five dollars (\$195.00);

- (3) The failure to respond to a “Notice of Liability” in a timely fashion as set forth in subsection 77.03 (b) of this section shall constitute a waiver of the right to contest liability for the violation under subsection (c) of this section. Said failure shall result in an additional penalty of twenty five dollars (\$25.00).
- (4) Persons who choose to pay the civil penalty without appearing before a Hearing Officer may do so in the manner indicated on the notice of liability.
- (5) A violation for which a civil penalty is imposed under this ordinance is not a moving violation for the purpose of assessing points under Ohio R.C. Section 4507.021 for minor misdemeanor moving traffic offenses and may not be recorded on the driving record of the owner or operator of the motor vehicle and shall not be reported to Bureau of Motor Vehicles.

Sec. 77.06: Collection of Civil Penalty.

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If the civil penalty is not paid, the civil penalty imposed under the provisions of this ordinance shall be collectable, together with any interest and penalties thereon, in any manner authorized by law including but not limited to civil suit.

Sec. 77.07: Administrative Appeal.

(a) An owner or responsible party who receives a "notice of liability," under this ordinance may do one of the following:

(1) Pay the civil penalty, in accordance with the instructions on the notice of liability; or

(2) Within twenty (20) calendar days of the date of issuance of the notice of liability provide the Village of Elmwood Place Police Department or its designee, information as to the driver of the motor vehicle at the time of the violation; or

(3) Contest the notice of liability by filing a written request for review of the notice of liability. A written notice of request for review must be filed within twenty (20) calendar days after issuance of the notice of liability. The failure to give notice of request for review within this time period shall constitute a waiver of the right to contest the notice of liability. A Hearing Officer shall hear reviews. Hearings shall be held within twenty (30) business days of the receipt of the request for review; this time may be extended upon a written request for additional time.

A. The Hearing Officer shall determine whether a preponderance of evidence establishes that a violation of this ordinance occurred and the person requesting a review is liable. A certified copy of the notice of liability alleging the violation of this ordinance occurred, sworn to or affirmed by a duly authorized Village of Elmwood Place Police Officer, with the recorded images or data produced by an automated speed enforcement system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this ordinance.

Adjudication of liability shall be based on a preponderance of the evidence.

B. If the Hearing Officer finds a sufficient evidence of a violation, but the owner or responsible party is not liable, the Hearing Officer shall, in writing, issue a decision finding the owner or responsible party not liable and submit it to the Village of Elmwood Place Police Department.

(b) If the owner or responsible party chooses to contest the notice of liability, the Hearing Officer may consider any of the following as an affirmative defense of a violation upon the defense being established by a preponderance of the evidence by the owner or responsible party:

(1) That the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.

(2) That the motor vehicle was under the custody and/or control of another person at the time of the violation. In order to establish this, the owner or responsible person must provide the name and address of the person who had custody and/or control of the motor vehicle at the time of the violation.

(3) That this section is unenforceable because at the time and place of the alleged violation, the automated speed enforcement was not in proper position and the recorded image is not legible enough to determine the information needed.

(4) Evidence, other than that adduced pursuant to subsections ~~17~~**17**.06 (b) (1) of this ordinance, that the owner or person named in the notice of liability was not operating the motor vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the notice of liability shall provide to the Hearing Officer evidence showing the identity of the person who was operating the motor vehicle at the

time of the violation, including, but not limited to, the operator's name and current address, and any other evidence the Hearing Officer deems pertinent.

(c) If the Hearing Officer finds that the person or entity named in the notice of liability was not operating the motor vehicle at the time of the violation or receives evidence under subsections 77.06 (b) (4) identifying the person driving the motor vehicle at the time of the violation, the Hearing Officer shall provide to the Village of Elmwood Place Police Department or its designee within five (5) calendar days, a copy of any evidence substantiating who was operating the motor vehicle at the time of the violation.

(1) Upon receipt of evidence of the responsible party pursuant to this subsection or pursuant to subsections 77.03 (b) and (c), the Village of Elmwood Place Police Department or its designee may issue a notice of liability, with the name and address of the responsible party and the information required by Section 77.04 of this ordinance, to the person that the evidence indicates was operating the motor vehicle at the time of the violation.

(2) A notice of liability issued under this subsection 77.04, shall be sent by the Village of Elmwood Place or its designee by ordinary mail no later than fifteen (15) business days after the receipt of the evidence from the Hearing Officer or the owner.