ORDINANCE NO. 2404

AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING CHAPTER 11, TRAFFIC REGULATIONS; SECTION 11-57: AUTOMATED TRAFFIC SIGNAL ENFORCEMENT; BY DELETING FEES APPLIED TO ADMINISTRATIVE ADJUDICATION HEARINGS; BY PROVIDING ADDITIONAL REQUIREMENTS FOR VIOLATION NOTICES; BY EXTENDING THE DEADLINE TO REQUEST AN ADMINISTRATIVE HEARING; BY ESTABLISHING PROCEDURES FOR AN ADMINISTRATIVE HEARING; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE IMPOSITION OF CIVIL PENALTIES; AND PROVIDING AN EFFECTIVE DATE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS THAT:

SECTION I.

That Chapter 11, Traffic Regulations: Section 11-57: Automated Traffic Signal Enforcement of the Code of Ordinances of the City of Terrell, Texas be and the same is hereby amended in part as follows:

Sec. 11-57. Automated Traffic Signal Enforcement

(a) Definitions.

In this section:

(1) *Department* shall mean the Police Department of the City of Terrell, Texas.

(2) *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.

(3) *Photographic traffic signal enforcement system* shall mean a system that:

a. consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic-control signal; and

b. Is capable of producing at least two (2) recorded images that depict the license plate attached to the rear of a motor vehicle that is not operated in compliance with the instruction of the traffic-control signal.

(4) *Recorded image* means a photographic or digital image that depicts the front or rear of a motor vehicle.

(5) *Traffic control signal* shall mean a traffic control device that displays alternating red, amber and green lights that directs traffic when to stop at or proceed through an intersection.

(b) Imposition of civil penalty for violations.

(1) The City Council finds and determines that a vehicle that proceeds into an intersection when the traffic control 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 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, and is operated in violation of the instructions of that traffic-control signal.

(2) Except as provided in (3) below, the owner of a motor vehicle is liable for a civil penalty of seventy-five dollars ($75.00) if, while facing only a steady red signal displayed by an electrically operated traffic-control signal located in the City, the vehicle is operated in violation of the instructions of that traffic-control signal, as specified by Texas Transportation Code, Section 544.007(d).

(3) An owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of twenty-five dollars ($25.00).

(c) Enforcement; procedures.

(1) The department is responsible for the enforcement and administration of this section.

(2) In order to impose a civil penalty under this section, the department shall mail a notice of violation to the owner of the motor vehicle against whom the City seeks to impose the civil penalty not later than the 30th day after the date the violation is alleged to have occurred to

a. The owner's address as shown on the registration records of the Texas Department of Transportation; or

b. 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.

(3) A notice of violation issued under this section shall contain the following:

a. a description of the violation alleged;

b. the date, time, and location of the violation;

c. the location of the intersection where the violation occurred;

d. the name and address of the owner of the vehicle involved in the violation;

e. the registration number displayed on the license plate of the vehicle involved in the violation;

f. a copy of the recorded image limited solely to a depiction of the area of the registration number displayed on the license plate of the vehicle involved in the violation;

g. the amount of the civil penalty for which the owner is liable;

h. the number of days the person has in which to pay or contest the imposition of the civil penalty and a statement that the person incurs a late payment penalty of $25.00 if the civil penalty is not paid or imposition of the penalty is not contested within that period;

i. a statement that the person named 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;

j. Information that informs the owner of the vehicle named in the notice of violation:

[1} of the owner's right to contest the imposition of the civil penalty against the person in an administrative hearing;

[2] 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 Subdivision h.; and

[3] that failure to pay the civil penalty or 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;

k. a statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;

l. a statement that if the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner, an arrest warrant may not be issued for the owner and the imposition of the civil penalty may not be recorded on the owner's driving record; and

m. any other information deemed necessary by the department.

(4) A notice of violation under this section is presumed to have been received on the 5th day after the date the notice of violation is mailed.

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

(c) Presumption.

(1) It is presumed that the owner of the motor vehicle committed the violation alleged in the notice of violation mailed to the person if the license plate of the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system belongs to the owner of the motor vehicle.

(2) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system was owned by a person in the business of selling, renting, or leasing motor vehicles or by a person who was not the person named in the notice of violation, the presumption under Subsection (1) is rebutted on the presentation of evidence establishing that the vehicle was at the time:

a. being test driven by another person;

b. being rented or leased by the vehicle's owner to another person; or

c. owned by a person who was not the person named in the notice of violation.

(3) Notwithstanding Section (c) below, the presentation of evidence under subsection two by a person who is in the business of selling, renting, or leasing motor vehicles or did not own the vehicle at the time of the violation must be made by affidavit, through testimony at the administrative adjudication hearing under Section (c), or by a written declaration under penalty of perjury. The affidavit or written declaration may be submitted by mail to the City or the entity with which the City contracts for the administration and enforcement of the Automated Traffic Signal Enforcement program.

(4) If the presumption established by Subsection (1) is rebutted under Subsection (2), a civil penalty may not be imposed on the owner of the vehicle or the person named in the notice of violation as applicable.

(5) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in the photograph or digital image taken by the photographic traffic signal enforcement system was owned by a person in the business of renting or leasing motor vehicles and the vehicle was being rented or leased to an individual, the owner of the motor vehicle shall provide to the City or the entity with which the City contracts for the administration and enforcement of the Automated Traffic Signal Enforcement program the name and address of the individual who was renting or leasing the motor vehicle depicted in the photograph or digital image and a statement of the period during which that individual was renting or leasing the vehicle. The owner shall provide the information required in this subsection not later than the 30th day after the date the notice of violation is received. If the owner provides the required information, it is presumed that the individual renting or leasing the motor vehicle committed the violation alleged in the notice of violation and the City or contractor may send a notice of violation to that individual at the address provided by the owner of the motor vehicle.

(c) Administrative adjudication hearing.

(1) 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 the date the violation was mailed. Upon receipt of a timely request, the Department shall notify the person of the date and time of the hearing on the administrative adjudication which shall be held within thirty (30) days upon the receipt of the request. The administrative adjudication hearing shall be held before and conducted by a hearing officer appointed by the City Manager. Said hearing officer shall have the authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents.

(2) A person who fails to pay a civil penalty or to contest liability for the penalty in a timely manner or who requests and administrative adjudication hearing to contest the imposition of the civil penalty against the person and fails to appear at that hearing is considered to:

a. admit liability in the full amount of the civil penalty stated in the notice of violation mailed to the person; and

b. waive the person's right to appeal the imposition of the civil penalty.

(3) The civil penalty shall not be imposed against the person if after a hearing, the hearing officer enters a finding of no liability.

(4) In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the motor vehicle involved in 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 section and is evidence of the facts contained in the affidavit.

(5) A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty within ten (10) days of the hearing.

(6) It shall be an affirmative defense to the imposition of civil liability under this section, to be proven by a preponderance of the evidence; that

a. the traffic-control signal was not in proper position and sufficiently legible to an ordinary observant person;

b. the operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;

c. 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;

d. 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;

e. the motor vehicle was a stolen vehicle and being operated by a person

other than the owner of the vehicle without the effective consent of the owner;

f. 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;

g. the presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this section more dangerous under the circumstances than non-compliance; or

h. the person who received the notice of violation was not the owner of the motor vehicle at the time of the violation.

(7) Notwithstanding anything in this section to the contrary, a person who receives a notice of violation under this section and who fails to pay the amount of a civil penalty or to timely request an administrative adjudication hearing is entitled to an administrative hearing if:

a. the person submits a written request for the hearing to the hearing officer accompanied by an affidavit that attests to the date on which the person received the notice of violation; and

b. the written request and affidavit are submitted to the hearing officer within the same number of days after the date the person received the notice of violation as specified under subsection(c) (1) above.

(d) Order.

(1) At the conclusion of the administrative adjudication hearing, the hearing officer shall enter a finding of liability for the civil penalty or a finding of no liability for the civil penalty. A finding under this subsection must be in writing and be signed and dated by the hearing officer.

(2) A finding of liability for a civil penalty must specify the amount of the civil penalty for which the person is liable. If the hearing officer enters a finding of no liability, a civil penalty for the violation may not be imposed against the person.

(3) A finding of liability or a finding of no liability entered under this section may:

a. be filed with the clerk or secretary of the City or with a person designated by the City Council; and

b. be recorded on microfilm or microfiche or using data processing techniques.

(e) Appeal.

(1) The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to a judge by filing an appeal petition with the clerk of the court. The petition must be filed with the City's municipal court and accompanied by payment of the costs required by law for the court.

(2) The petition must be filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty.

(3) The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the Department of the date, time and place of the hearing.

(4) An appeal stays enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. The owner shall file a notarized statement of personal financial obligation to perfect the owner's appeal.

(5) An appeal under this section shall be determined by the court by trial de novo.

(f) Effect of liability; exclusion of civil remedy.

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

(2) The implementation of a photographic traffic signal enforcement system by the City under this section does not prohibit a peace officer from arresting a violator of Texas Transportation Code, Section 544.007(d) as provided by Chapter 543 of the Transportation Code, if the peace officer personally witnesses the violation, or from issuing the violator a citation and notice to appear as provided by Chapter 543.

(3) The City may not be impose a civil penalty under this section 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 a photographic traffic signal enforcement system.

(4) If the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner:

a. an arrest warrant may not be issued for the owner; and

b. The imposition of the civil penalty may not be recorded on the owner's

driving record.

(5) Notice of Subsection (4) above must be included in the notice of violation, required by Subsection (c)(2).

(g) Traffic Safety Fund.

(1) Not later than the 60th day after the end of the City's fiscal year, after deducting amounts the City is authorized by subsection (2) below to retain, the City shall:

a. send fifty percent (50%) of the revenue derived from civil or administrative penalties collected by the City under this section to the comptroller for deposit to the credit of the regional trauma account established under Section 782.002 Texas Health and Safety Code; and

b. deposit the remainder of the revenue in a special account in the City's treasury that may be used only to fund police related programs and/or purchase of equipment.

(1) The City may retain an amount necessary to cover the costs of:

a. purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the City;

b. Installing the photographic traffic signal enforcement system at sites in the City, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs.

c. operating the photographic traffic signal enforcement system in the City, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by City employees, the processing of fine payments and collections, and the costs associated with administrative adjudication and appeals; and

d. maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

SECTION II.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such

conflict, hereby repealed.

SECTION III.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION IV.

This Ordinance will take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

PASSED AND APPROVED ON THIS THE 7TH DAY OF APRIL, 2009.
PASSED AND ADOPTED ON THIS THE 21ST DAY OF APRIL, 2009

APPROVED:

_____
HAL RICHARDS, MAYOR

ATTEST:

_____
JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

_____
MARY GAYLE RAMSEY, CITY ATTORNEY