

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2017-17

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4
5 AN ORDINANCE

6 RELATING TO THE SANTA FE TRAFFIC OPERATIONS PROGRAM; AMENDING
7 SECTION 24-4 SFCC 1987 TO UPDATE SUBSECTIONS 24-4.2, FINDINGS AND
8 INTENT; 24-4.3 DEFINITIONS; 24-4.4, VIOLATIONS AND 24-4.5, ENFORCEMENT.

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10 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

11 Section 1. Subsection 24-4.2 SFCC 1987 (being Ord. #2008-47, §3) is amended
12 to read:

13 24-4.2 Findings and Intent.

14 A. The governing body finds that there is a significant risk to the health and safety
15 of the community from drivers who exceed the posted speed limits.

16 B. The governing body finds that some drivers in Santa Fe repeatedly violate posted
17 speed limits. The governing body finds that state law against speeding is inadequate to preserve
18 public safety in Santa Fe. The governing body finds that photographic and electronic devices that
19 measure speed are accurate and reliable. The governing body finds that implementation of
20 enforcement of speed limits by means of photographic and electronic equipment will abate the
21 nuisance of speeding.

22 C. The governing body declares that a vehicle used to violate this section is the
23 instrumentality of a nuisance and shall be abated in the city.

24 D. The governing body declares that this section is a nuisance abatement section
25 enacted pursuant to the city's inherent authority under state law and that the remedies are purely

1 civil and not criminal in nature.

2 **Section 2. Subsection 24-4.3 SFCC 1987 (being Ord. #2008-47, §4, as**
3 **amended) is amended to read:**

4 **24-4.3 Definitions.**

5 For the purposes of this section, the following definitions shall apply unless the context
6 clearly indicates or requires a different meaning.

7 *Authorized emergency vehicle* means the same as defined under NMSA 1978 66-1-4.1
8 (E) (2001) as amended from time to time and, without limitation on the foregoing, shall mean any
9 fire department vehicle, police vehicle, ambulance and any emergency vehicles of municipal
10 departments or public utilities that are designated or authorized as emergency vehicles by the
11 director of the New Mexico State Police Division of the Department of Public Safety or chief of
12 police of the Santa Fe police department.

13 *Camera, speed device or "CSD"* means the instrument that detects a violation of this
14 section. The definition includes but is not limited to [~~photo red light cameras and~~] electronic
15 speed detection equipment reasonably relied upon by police officers.

16 *City* means the city of Santa Fe.

17 *City clerk* means the city clerk of the city of Santa Fe.

18 *City manager* means the city manager of the city of Santa Fe.

19 *Contractor* means a person or entity that enters a contract with the city to provide the city
20 with photographic or electronic evidence of a violation through a CSD.

21 *Default* means the failure to pay a STOP fine or to timely pay a fine pursuant to a
22 decision of a hearing officer under this section.

23 *Delivery or delivered* means the mailing of a STOP fine notification to a registered owner
24 or nominee or personal service of a STOP fine notification or hearing officer decision on a
25 registered owner or nominee.

1 *Department* means the police agency that employs the police officer who issued a STOP
2 fine notification or caused a STOP fine notification to be issued.

3 *Department of motor vehicles or DMV* means the motor vehicle division of the taxation
4 and revenue department of the state of New Mexico or its successor agencies.

5 *Driver* means the person operating a motor vehicle at the time of a violation.

6 *Effective date* means the date a STOP fine notification is mailed to the recipient by the
7 contractor as indicated on the face of the STOP fine notification.

8 *Finance department* means the city department established as per Section 2-8 SFCC
9 1987.

10 *Hearing officer* means the city hearing officer, as appointed by the presiding judge of the
11 civil division of the district court. The hearing officer shall be a licensed member of the New
12 Mexico Bar.

13 *Identify* means to submit all information on a driver sufficient to allow the city to locate
14 and notify the driver in lieu of the registered owner including but not limited to the name and
15 address of the driver.

16 *Nomination* means identification of the actual driver of a car by the registered owner as
17 the responsible party for a violation,

18 *Nominee* means the person or entity identified by the registered owner as the driver or
19 responsible party.

20 *Notice of default* means a document delivered to the registered owner and stating that the
21 registered owner is in default.

22 *Nuisance* means the act of operating a vehicle in violation of this section.

23 *Owner's affidavit* means a written statement signed under oath and submitted to the city
24 or the city's contractor under penalty of perjury by the registered owner of a vehicle who asserts
25 therein that the registered owner was not driving a vehicle at the time of a violation.

1 *Police officer* means a sworn member of the Santa Fe city police department, the Santa
2 Fe county sheriff's office, the New Mexico state police, or any other public official with authority
3 to stop a vehicle for a traffic violation in the city of Santa Fe.

4 *Public safety aide* means a public safety aide of the Santa Fe city police department.

5 *Registered owner* means the owner or owners of a vehicle according to the license plate
6 number or information obtained from the department of motor vehicles, from similar motor
7 vehicle agencies outside New Mexico, from information obtained from the Santa Fe municipal
8 court, from the Santa Fe county magistrate court, from department records, from a CSD or from
9 any other documentation or methods reasonably relied upon by police officers. The singular
10 includes the plural.

11 *Respondent* means an accused violator who has received a STOP fine notification and
12 requested a hearing.

13 *School zone* means a posted "safety zone" as that term is defined under NMSA 1978 66-
14 1-4.16 (2001) as amended from time to time.

15 *Stop fine notification* means a written document mailed to the address of the registered
16 owner or nominee stating that a violation has occurred and payment is due.

17 *Violation* means a violation of this section.

18 **Section 3. Subsection 24-4.4 SFCC 1987 (being Ord. 2008-47, §6 as amended)**
19 **is amended to read:**

20 **24-4.4 Violation.**

21 Any violation of Section 12-5-6 or Section 12-6-1.2 of the city of Santa Fe Traffic Code
22 is a violation of this section. This section does not apply to authorized emergency vehicles
23 responding to an emergency.

24 **Section 4. Subsection 24-4.5 (being Ord. 2008-47, §7 as amended) is amended**
25 **to read:**

1 **24-4.5 Enforcement.**

2 A. *Criminal Violation Observed by Police Officer.* This section does not abrogate or
3 impair enforcement authority of existing traffic laws by a police officer for a violation committed
4 in their presence. Specifically, if a police officer personally and contemporaneously observes a
5 traffic violation, the police officer may stop the vehicle and issue a citation under state law or the
6 city of Santa Fe Traffic Code in the usual manner.

7 B. *Violation Recorded by CSD.* The contractor shall provide all evidence of a CSD
8 recorded violation to a police officer. A police officer shall review all CSD evidence provided by
9 the contractor. If the police officer determines that a violation has occurred, the police officer
10 shall cause a STOP fine notification to be delivered to the registered owner. The registered owner
11 is strictly and vicariously liable for the violation unless one (1) of the exceptions herein applies. If
12 there is more than one (1) registered owner, all registered owners shall be jointly and severally
13 liable.

14 C. *STOP Fine Notification.*

15 (1) Form and contents. The STOP fine notification shall state and contain the
16 name of the registered owner or owners or nominee, the effective date of the STOP fine
17 notification, the type of violation, the date, time, and location of the violation, a picture of
18 the violation, the license number of the vehicle, the name and identification of the issuing
19 police officer, the amount of the fine, whether the fine is a first or subsequent violation,
20 the response due date and the address of the city clerk. The STOP fine notification shall
21 conspicuously and in bold face type state; "Failure to pay this fine on time will lead to
22 serious legal consequences including the assessment of additional fines and monies due.
23 A second or subsequent STOP violation within two (2) years from the date of this STOP
24 fine notification will lead to increasing fines and penalties." The STOP fine notification
25 shall include an owner's affidavit form. The STOP fine notification shall contain a return

1 envelope addressed to the contractor or the Santa Fe police department. The STOP fine
2 notification shall inform the registered owner or the nominee of the right to request a
3 hearing by so indicating in a space provided on the form and returning same to the city
4 clerk within thirty-five (35) days of the effective date.

5 (2) Delivery. The STOP fine notification shall be delivered to the address of
6 the registered owner according to the address registered with the department of motor
7 vehicles or to the address of the nominee according to the owner's affidavit. The
8 registered owner has a duty to timely notify DMV of a change of address and the failure
9 to do so does not entitle the registered owner to assert the defense of inadequate notice.
10 The mailing of a STOP fine notification to the address of the registered owner of a
11 vehicle according to the records of DMV or to the address of the nominee according to
12 the owner's affidavit is constructive notice of a STOP fine notification.

13 D. *Response to a STOP Fine Notification.* Within thirty-five (35) days from the
14 effective date, the registered owner shall pay the fine, file an owner's affidavit making a
15 nomination, or request a hearing. To pay the fine, the recipient shall deliver the STOP fine
16 notification with payment to the city or to the contractor according to the instructions on the
17 STOP fine notification. To make a nomination, the recipient shall return the STOP fine
18 notification with a completed owner's affidavit to the contractor. To request a hearing, the
19 recipient shall return the STOP fine notification with the request for hearing to the hearing
20 officer. There is no fee to request a hearing. Three (3) days for mailing is not allowed and the
21 response shall be actually received no later than thirty-five (35) consecutive days (including
22 holidays) from the effective date. The department and hearing officer shall forthwith notify the
23 contractor concerning the receipt of a request for hearing. If the fine has not been paid, there has
24 been no nomination or a request for a hearing within thirty-five (35) days from the effective date,

1 the contractor shall send written notice of default to the department and the registered owner or
2 nominee or both.

3 (1) Payment of STOP fine. Upon receipt of the STOP fine notification, the
4 recipient may elect to admit the violation and pay the fine. To proceed under this
5 paragraph, the recipient shall admit the violation by signing and dating the STOP fine
6 notification on a space provided and returning the STOP fine notification with payment
7 to the contractor or to the city within thirty-five (35) days. The city may, but is not
8 required to, adopt procedures for alternative methods of payment of fines using the
9 internet or other on-line services. There shall be a fifty dollar (\$50.00) penalty for any
10 payment tendered that is not honored or is returned for any reason.

11 (2) Appeal. The recipient of the STOP fine notification may request a
12 hearing by so indicating and returning the STOP fine notification to the hearing officer
13 within thirty-five (35) days of the effective date. There is no fee for a hearing. The
14 hearing officer shall schedule a hearing.

15 (3) Nomination. Any registered owner who was not driving the car at the
16 time of the violation may either accept the responsibility or identify the driver so the
17 contractor can send a notice of violation to the driver. The nomination procedure
18 described in this paragraph is available to any registered owner and is not limited to
19 corporations and governmental entities. If the registered owner claims that another person
20 was driving the vehicle at the time of the violation, the registered owner shall so indicate
21 on the owner's affidavit and identify the person who was driving the vehicle. The
22 contractor shall forthwith deliver the STOP fine notification and owner's affidavit to the
23 department to the attention of the issuing police officer. The police officer may send a
24 new STOP fine notification to the nominee or cause the contractor to deliver a new STOP
25 fine notification to the nominee. The effective date of the STOP fine notification sent to

1 the nominee is the day the STOP fine notification is issued to the nominee as indicated on
2 the face of the new STOP fine notification. If the nominee successfully appeals the
3 allegation that he or she was the driver or defaults the city may proceed against the
4 registered owner by issuing a subsequent STOP fine notification to the registered owner
5 with the effective date being the date so indicated on the face of the subsequent STOP
6 fine notification. If the city cannot assert jurisdiction over the nominee, the registered
7 owner is responsible, subject to the remaining defenses available in this section. Any
8 registered owner who submits an owner's affidavit does so under penalty of perjury. If the
9 registered owner operates a business that uses a fleet of one (1) or more vehicles and
10 nominated the driver on a previous violation and the driver paid the fine or otherwise
11 cleared the violation, a subsequent violation pertaining to the fleet vehicle shall not be
12 considered a second, third or subsequent violation regarding that vehicle unless driven by
13 the same driver. Without limitation on the foregoing, nomination may be used when:

14 (a) The registered owner is the United States of America, state of
15 New Mexico, county of Santa Fe, city of Santa Fe or any other governmental
16 entity that owns a vehicle that was being driven by a natural person who was an
17 employee, contractor or agent of the governmental entity at the time of the
18 alleged violation. Said entities shall nominate and identify the driver.

19 (b) The registered owner is a place of business, corporation or other
20 non-natural entity that owns a vehicle that was being driven by a natural person
21 who was the employee, contractor or agent of the business, corporation or other
22 non-natural entity at the time of the alleged violation. Said entities shall nominate
23 and identify the driver.

24 (c) The registered owner is an automobile rental business,
25 automobile dealership or other business entity that, in the ordinary course of

1 business, leases vehicles to others and the lessee was driving the vehicle at the
2 time of the alleged violation. Said entities shall nominate and identify the driver.

3 (d) The registered owner was not driving the vehicle at the time of
4 the violation. To assert the defense mentioned in this paragraph, the registered
5 owner shall identify the actual driver and comply with the nomination provision
6 above to assert this defense.

7 E. *Default.* If the city does not receive payment of the fine, a nomination or a
8 request for a hearing within thirty-five (35) days from the effective date, the registered owner is
9 in default. Default automatically results in liability to the registered owner for the violation and
10 the registered owner is barred from requesting or obtaining any hearing on the merits of the STOP
11 fine after the date of the default. A default results in an additional penalty of twenty-five dollars
12 (\$25.00). The department shall cause the contractor to mail the notice of default to the defaulting
13 party. The notice of default shall inform the recipient that they have twenty (20) days from the
14 date of mailing of the notice of default to pay the fine and default penalty or request a hearing
15 from the hearing officer. If the default is not cured, the city may pursue all remedies for collection
16 of a debt and is entitled to an award of reasonable attorney's fees incurred. An uncured notice of
17 default shall be entered into the records of the department. The registered owner is liable for a
18 default by a nominee.

19 F. *Hearing.* In the event of a demand for a hearing, the hearing officer shall hold a
20 hearing within ninety (90) days from the date of the request for hearing unless a continuance is
21 granted pursuant to the consent of the parties. The hearing does not need to be held within ninety
22 (90) days if a continuance is granted. The hearing officer is in charge of the proceedings and may
23 exclude any person for inappropriate conduct. The hearing shall be conducted following the rules
24 of evidence and civil procedure for the district courts. The department has the burden to prove by
25 a preponderance of the evidence that the violation occurred. The respondent has the burden to

1 prove any defenses by a preponderance of the evidence. A photograph, videotape or other
2 electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence
3 by the hearing officer. The respondent may challenge the weight or accuracy of the evidence. If
4 the department prevails, the respondent shall pay the fine. The hearing officer shall render a
5 decision in writing in ten (10) days and provide the decision to the department and the finance
6 department. A determination by the hearing officer shall not impose a total amount of penalties,
7 fines, fees and costs in excess of that provided in this section. The hearing officer may refer the
8 respondent to teen court according to the municipal court's procedures for teen court referrals.
9 Failure to pay a fine as ordered by the hearing officer within twenty (20) consecutive days from
10 the date of the decision is a default and will apply against the vehicle without service of a notice
11 of default. Following a hearing, the respondent may appeal the decision of the hearing officer to
12 district court within thirty (30) days of the decision and may recover the costs of filing the appeal
13 if successful.

14 G. *Defenses.* The respondent may present the following defenses in addition to any
15 other defenses available under law and has the burden of proof concerning the defenses:

16 (1) The vehicle was stolen or otherwise being driven without the
17 registered owner's knowledge or permission at the time of the alleged violation.
18 The registered owner shall have a police report pertaining to the theft to avail the
19 owner of this defense.

20 (2) The ownership of the vehicle had lawfully been transferred and
21 conveyed from the registered owner to another person before the time of the
22 alleged violation. To assert this defense, the registered owner shall identify the
23 transferee and provide proof of conveyance.

24 (3) The evidence does not show that a violation was committed
25 involving the subject vehicle.

1 (4) The registered owner was not driving the vehicle at the time of
2 the violation. To assert the defense mentioned in this paragraph, the registered
3 owner shall identify the actual driver and comply with the nomination provision
4 above to assert this defense.

5 (5) The vehicle should not be assessed an increased fine for a
6 subsequent violation because the registered owner owns or operates a fleet of
7 vehicles in a business and nominated the actual driver who satisfied payment of
8 the fine on the previous violation.

9 (6) The registered owner did not receive notice because the STOP
10 fine notification was not mailed to the address of record with the department of
11 motor vehicles.

12 H. *Fine.* Except as set forth in paragraph (3) below, the following fines are
13 prescribed for all violations including those imposed by the hearing officer. Nothing in this
14 section shall prohibit the department from entering into pre-hearing settlement agreements with
15 respondents.

16 (1) For the first violation, the fines for speeding are as follows:

17 (a) More than five (5) miles per hour over the speed limit in
18 school and construction zones: one hundred dollars (\$100.);

19 (b) More than ten (10) miles per hour over the speed limit:
20 fifty dollars (\$50.).

21 (2) For subsequent violations within two (2) years of the preceding
22 violation, the fines for speeding are as follows:

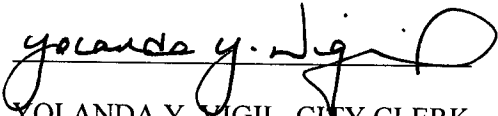
23 (a) More than five (5) miles per hour over the speed limit in
24 school and construction zones: one hundred and fifty dollars (\$150.);

25 (b) More than ten (10) miles per hour over the speed limit:

1 ATTEST:

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YOLANDA Y. VIGIL, CITY CLERK

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APPROVED AS TO FORM:

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KELLEY A. BRENNAN, CITY ATTORNEY

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M/Legislation/Ordinances 2017/2017-17 STOP Changes