

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2009-28

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5 AN ORDINANCE

6 AMENDING ARTICLE 24-4 SFCC 1987, THE SANTA FE TRAFFIC OPERATIONS  
7 PROGRAM OR “STOP”, REGARDING VIOLATIONS OF THE TRAFFIC CODE  
8 DETECTED BY A CAMERA OR SPEED DEVICE.

9  
10 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

11 Section 1. Section 24-4.3 SFCC 1987 (being Ord. No. 2008-47, §4) is amended  
12 to read:

13 24-4.3 Definitions. For the purposes of this Article, the following definitions shall  
14 apply unless the context clearly indicates or requires a different meaning.

15 *Authorized Emergency Vehicle* means the same as defined under NMSA 1978 66-1-4.1  
16 (E) (2001) as amended from time to time and, without limitation on the foregoing, shall mean any  
17 fire department vehicle, police vehicle, ambulance and any emergency vehicles of municipal  
18 departments or public utilities that are designated or authorized as emergency vehicles by the  
19 director of the New Mexico State Police Division of the Department of Public Safety or Chief of  
20 Police of the Santa Fe Police Department.

21 *Camera, Speed Device or “CSD”* means the instrument that detects a violation of this  
22 Article. The definition includes but is not limited to photo red light cameras and electronic speed  
23 detection equipment reasonably relied upon by Police Officers.

24 *Owner’s Affidavit* means a written statement signed under oath and submitted to the city  
25 or the city’s contractor under penalty of perjury by the registered owner of a vehicle who asserts

1 therein that the registered owner was not driving a vehicle at the time of a violation.

2 *City* means the city of Santa Fe.

3 *City Clerk* means the city clerk of the city of Santa Fe.

4 *City Manager* means the city manager of the city of Santa Fe.

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

7 *Default* means the failure to pay a STOP fine or to timely pay a fine pursuant to a  
8 decision of a hearing officer under this Article.

9 *Delivery or Delivered* means the mailing of a STOP fine notification to a registered  
10 owner or nominee or personal service of a STOP fine notification or hearing officer decision on a  
11 registered owner or nominee.

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

14 *Department of Motor Vehicles or DMV* means the motor vehicle division of the taxation  
15 and revenue department of the state of New Mexico or its successor agencies.

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

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

19 *Finance Department* means the city department established as per Article 2-8 SFCC  
20 1987.

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

24 *Identify* means to submit all information on a driver sufficient to allow the city to locate  
25 and notify the driver in lieu of the registered owner including but not limited to the name and

1 address of the driver.

2 *Immobilization or Immobilized* means seizure of a vehicle by placement of a device on  
3 the vehicle so that the vehicle cannot be moved.

4 *Nomination* means identification of the actual driver of a car by the registered owner as  
5 the responsible party for a violation.

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

8 *Notice of Default* means a document delivered to the registered owner and stating that the  
9 registered owner is in default.

10 *Nuisance* means the act of operating a vehicle in violation of this Article.

11 *Police Officer* mean a sworn member of the Santa Fe city police department, the Santa Fe  
12 county sheriff's office, The New Mexico state police, or any other public official with authority  
13 to stop a vehicle for a traffic violation in the city of Santa Fe.

14 *Public Safety Aide* means a public safety aide of the Santa Fe city police department.

15 *Registered Owner* means the owner or owners of a vehicle according to the license plate  
16 number or information obtained from the department of motor vehicles, from similar motor  
17 vehicle agencies outside New Mexico, from information obtained from the Santa Fe municipal  
18 court, from the Santa Fe county magistrate court, from department records, from a CSD or from  
19 any other documentation or methods reasonably relied upon by police officers. The singular  
20 includes the plural.

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

23 *School Zone* means a posted "safety zone" as that term is defined under NMSA 1978 66-  
24 1-4.16 (2001) as amended from time to time.

25 *Seize* means to take a vehicle from the registered owner for a failure to cure a default.

1            *Stop Fine Notification* means a written document mailed to the address of the registered  
2 owner or nominee stating that a violation has occurred and payment is due.

3            *Violation* means a violation of this Article.

4            **Section 2.        Section 24-4.5 SFCC 1987 (being Ord. No. 2008-47, §6) is amended**  
5 **to read:**

6            **24-4.5 Enforcement.**

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

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

18            C.        *STOP Fine Notification.*

19            (1)        Form and contents. The STOP fine notification shall state and contain  
20 the name of the registered owner or owners or nominee, the effective date of the STOP  
21 fine notification, the type of violation, the date, time, and location of the violation, a  
22 picture of the violation, the license number of the vehicle, the name and identification of  
23 the issuing police officer, the amount of the fine, whether the fine is a first or subsequent  
24 violation, the response due date and the address of the city clerk. The STOP fine  
25 notification shall conspicuously and in bold face type state; "Failure to pay this fine on

1 time will lead to serious legal consequences including the loss of your vehicle and the  
2 assessment of additional fines and monies due. A second or subsequent STOP violation  
3 within two years from the date of this STOP fine notification will lead to increasing fines  
4 and penalties including the loss of the subject vehicle. The STOP fine notification shall  
5 include an owner's affidavit form. The STOP fine notification shall contain a return  
6 envelope addressed to the contractor or the Santa Fe police department. The STOP fine  
7 notification shall inform the registered owner or the nominee of the right to request a  
8 hearing by so indicating in a space provided on the form and returning same to the city  
9 clerk.

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

18 D. *Response to A STOP Fine Notification.* Within 35 days from the effective date,  
19 the registered owner shall pay the fine, file an owner's affidavit making a nomination, or request  
20 a hearing. To pay the fine, the recipient shall deliver the STOP fine notification with payment to  
21 the city or to the contractor according to the instructions on the STOP fine notification. To make a  
22 nomination, the recipient shall return the STOP fine notification with a completed owner's  
23 affidavit to the contractor. To request a hearing, the recipient shall return the STOP fine  
24 notification with the request for hearing to the hearing officer. There is no fee to request a  
25 hearing. Three days for mailing is not allowed and the response shall be actually received no later

1 than 35 consecutive days (including holidays) from the effective date. The department and  
2 hearing officer shall forthwith notify the contractor concerning the receipt of a request for  
3 hearing. If the fine has not been paid, there has been no nomination or a request for a hearing  
4 within 35 days from the effective date, the contractor shall send written notice of default to the  
5 department and the registered owner or nominee or both.

6 (1) Payment of STOP fine. Upon receipt of the STOP fine notification, the  
7 recipient may elect to admit the violation and pay the fine. To proceed under this section,  
8 the recipient shall admit the violation by signing and dating the STOP fine notification on  
9 a space provided and returning the STOP fine notification with payment to the contractor  
10 or to the city within 35 days. The city may, but is not required to, adopt procedures for  
11 alternative methods of payment of fines using the internet or other on-line services. There  
12 shall be a \$50 penalty for any payment tendered that is not honored or is returned for any  
13 reason.

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

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

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

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

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

1 and identify the driver.

2 (c) The registered owner is an automobile rental business,  
3 automobile dealership or other business entity that, in the ordinary course of  
4 business, leases vehicles to others and the lessee was driving the vehicle at the  
5 time of the alleged violation. Said entities shall nominate and identify the driver.

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

10 E. *Default.* If the city does not receive payment of the fine, a nomination or a  
11 request for a hearing within 35 days from the effective date, the registered owner is in default.  
12 Default automatically results in liability to the registered owner for the violation and the  
13 registered owner is barred from requesting or obtaining any hearing on the merits of the STOP  
14 fine after the date of the default. A default results in an additional penalty of \$25. The department  
15 shall cause the contractor to mail the notice of default to the defaulting party. The notice of  
16 default shall inform the recipient that they have 20 days from the date of mailing of the notice of  
17 default to pay the fine or request a hearing from the hearing officer. If the default is not cured, the  
18 city may pursue all remedies for collection of a debt and is entitled to an award of reasonable  
19 attorney's fees incurred. An uncured notice of default shall be entered into the records of the  
20 department and any police officer who discovers a vehicle in the city in the course of a traffic  
21 stop or otherwise may seize the vehicle for unpaid fines. The registered owner is liable for a  
22 default by a nominee.

23 F. *Hearing.* In the event of a demand for a hearing, the hearing officer shall hold a  
24 hearing within 90 days from the date of the request for hearing unless a continuance is granted  
25 pursuant to the consent of the parties. The hearing does not need to be held within 90 days if a

1 continuance is granted. The hearing officer is in charge of the proceedings and may exclude any  
2 person for inappropriate conduct. The hearing shall be conducted following the rules of evidence  
3 and civil procedure for the district courts. The department has the burden to prove by a  
4 preponderance of the evidence that the violation occurred. The respondent has the burden to  
5 prove any defenses by a preponderance of the evidence. A photograph, videotape or other  
6 electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence  
7 by the hearing officer. The respondent may challenge the weight or accuracy of the evidence. If  
8 the department prevails, the respondent shall pay the fine. The hearing officer shall render a  
9 decision in writing in ten days and provide the decision to the department and the finance  
10 department. A determination by the hearing officer shall not impose a total amount of penalties,  
11 fines, fees and costs in excess of that provided in this Section. The hearing officer may refer the  
12 respondent to teen court according to the municipal court's procedures for teen court referrals.  
13 Failure to pay a fine as ordered by the hearing officer within ten consecutive days from the date  
14 of the decision is a default and will apply against the vehicle without service of a notice of  
15 default. Following a hearing, the respondent may appeal the decision of the hearing officer to  
16 district court within 30 days of the decision and may recover the costs of filing the appeal if  
17 successful.

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

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

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

1 conveyance.

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

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

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

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

15 H. *Fine.*

16 (1) The fine for the first violation for running a red light is \$66. The fine for  
17 a subsequent violation for running a red light within two years from the date of the first  
18 violation is \$100.

19 (2) The fines for speeding are as follows:

20 (a) From five to ten miles per hour over the speed limit in school  
21 and construction zones: \$86;

22 (b) More than 11 miles per hour over the speed limit: \$100.

23 (3) The hearing officer may allow service to the city as an alternative to  
24 payment of fines. A violator who elects to avail themselves of the option of service to the  
25 city in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits

1 conferred upon city employees, including, without limitation, workers compensation. The  
2 city is not responsible for damages incurred except as otherwise provided by law. The  
3 person seeking relief hereunder shall timely request the option of service to the city in  
4 lieu of payment of a fine by requesting a hearing before a hearing officer at which to  
5 demonstrate that the person eligible for the option and shall not be in default on payment  
6 of other fines levied by the city of Santa Fe. If the hearing officer approves the person for  
7 relief under this paragraph, the city manager shall enter a settlement agreement whereby  
8 the person shall provide services to the city in lieu of payment of a fine. No person who  
9 cannot pass the background check to qualify as a volunteer may obtain relief under this  
10 paragraph. The services include, without limitation, cleaning up weeds and litter,  
11 volunteering at local food banks, cleaning kennels at the Santa Fe animal Shelter, and  
12 assisting with the maintenance of city property. Services shall be rendered in not less than  
13 full hour increments and shall be credited against the fine payable at \$10.00 per hour.

14 I. *Seizure.* A police officer may seize or immobilize a vehicle for 90 days pursuant  
15 to the provisions of Article 24-9 SFCC 1987 upon discovery of a vehicle in the city with unpaid  
16 STOP fines. If the registered owner fails to cure the default and pay all impound and storage fees,  
17 the vehicle is subject to forfeiture under Article 24-9 SFCC 1987. If a non-Santa Fe resident  
18 defaults, the department shall immobilize the vehicle of a delinquent or defaulting party for  
19 ninety days if said vehicle is found in the city limits any time within ten years of any violation of  
20 this Article.

21 **Section 3. Section 24-4.6 SFCC 1987 (being Ord. No. 2008-47, §7) is amended**  
22 **to read:**

23 **24-4.6 Administration.**

24 A. The city shall install advance signal warnings as required by Section 66-7-103.1  
25 NMSA 1978.

1           B.       The department shall be responsible for administration of this Article.  
2 Reasonable rules and regulations may be promulgated by the city manager or his designee to  
3 carry out the intent and purpose of this Article.

4           C.       The city manager may establish a STOP ombudsman to address and resolve  
5 citizen grievances with STOP procedures and technical issues regarding automated enforcement  
6 technology.

7           D.       The revenue generated through STOP shall be retained and distributed as  
8 follows:

9                   (1)       Each month, or other period set by contract, the city shall retain from the  
10 gross total amount of penalties, fines, fees and costs assessed and collected that month or  
11 period an amount subject to audit that is equal to the sum of the setup, maintenance,  
12 support and processing services fees charged for that month or period pursuant to  
13 contractual terms by a vendor providing systems and services including, but not limited  
14 to, all costs associated with the hearing officer, that assist the city in imposing penalties  
15 or fines and costs or fees as provided in Section 24-4.5 SFCC 1987.

16                   (2)       Less the retention authorized in paragraph (1) above:

17                           (a)       One-half of the net total amount assessed in penalties, fines, fees  
18 and costs by the city shall be remitted to the state treasurer and credited in  
19 accordance with §3-18-17 NMSA 1978; and

20                           (b)       One-half of the net total amount assessed in penalties, fines, fees  
21 and costs shall be retained by the city for city traffic safety programs and to  
22 offset the city's reasonable costs directly related to administering the STOP  
23 program.

24                   (3)       In fiscal year 2009, and annually thereafter, the city shall cause an audit  
25 of the STOP program in accordance with §3-18-17 NMSA.

1 E. The police department shall present a monthly report to the public safety  
2 committee in such a format as to assist in evaluating the effectiveness of STOP in preventing  
3 accidents. The report shall include, without limitation:

4 (1) Statistical information regarding the number of violations that have been  
5 issued through STOP; and

6 (2) Types of accidents that have occurred at the intersections where STOP  
7 has been implemented; and

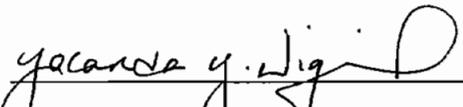
8 F. The police department shall report back to the governing body one year after the  
9 effective date of this ordinance regarding the implementation and enforcement of this ordinance;  
10 and to present any amendments to this ordinance.

11 PASSED, APPROVED, and ADOPTED this 24<sup>th</sup> day of June, 2009.

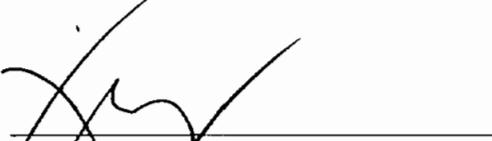
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14 DAVID COSS, MAYOR

15 ATTEST:

16  
17   
18 YOLANDA Y. VIGIL, CITY CLERK

19  
20 APPROVED AS TO FORM:

21  
22   
23 FRANK D. KATZ, CITY ATTORNEY

24  
25 *mdb/ca/jpmb/2009 ordinances/traffic operations program state amend*