

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2008-47

3
4
5 AN ORDINANCE

6 CREATING 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. A new Article 24-4 SFCC 1987 is ordained to read:

12 24-4 [NEW MATERIAL.] SANTA-FE TRAFFIC OPERATIONS PROGRAM

13 Section 2. A new Section 24-4.1 SFCC 1987 is ordained to read:

14 24-4.1 [NEW MATERIAL.] Short Title. Article 24-4 SFCC 1987 shall be referred
15 to as the Santa-Fe Traffic Operations Program or "STOP" and may sometimes be referred to as
16 "this Article."

17 Section 3. A new Section 24-4.2 SFCC 1987 is ordained to read:

18 24-4.2 [NEW MATERIAL.] Findings and Intent.

19 A. The governing body finds that there is a significant risk to the health and safety
20 of the community from drivers who run red lights and exceed the posted speed limits. The
21 governing body finds that the City of Santa Fe has a high fatality and serious injury rate resulting
22 from red light violations and a blatant disregard by drivers for existing state red light laws.
23 Drivers in the city shall progress away from the attitude that a red light is merely a suggestion to
24 stop toward an appreciation that red light violations injure and even kill too many of our citizens.
25 The governing body finds that red light violations are a nuisance. Within the State of New

1 Mexico, red light violations are a great matter of local concern for in Santa Fe due to high traffic
2 volume and crowded intersections. The governing body finds that the State Legislature wants
3 municipalities to implement local traffic laws to address local problems and that the Legislature
4 does not intend for the State of New Mexico Motor Vehicle Code to apply statewide to the
5 exclusion of local traffic laws.

6 B. The governing body finds that many states and municipalities across the country
7 have experienced substantial decreases in red light violations by using red light cameras. The
8 governing body finds that red light cameras produce reliable evidence of red light violations. The
9 governing body finds that it is reasonable for police officers to rely on red light camera evidence
10 even if the officer did not personally observe the violation. The governing body finds that red
11 light cameras save lives and make our streets safer.

12 C. Red light violations are a nuisance that shall be abated by the assessment of fines
13 to compensate the city and tax payers who do not commit these violations. Drivers who fail or
14 refuse to pay the fines and repeatedly run red lights create a severe nuisance that will not be
15 abated unless the city temporarily seizes the cars of these drivers and thus removes the
16 instrumentality used to create this nuisance. The governing body finds that the current penalty
17 under state for running a red light is inadequate to meaningfully address the nuisance and that the
18 city of Santa Fe must implement meaningful civil remedial measures that will stop red light
19 violations making our streets safer and saving lives. Red light violations are causally connected to
20 death or serious injury to a degree not evident with regard to other traffic infractions.

21 D. The governing body finds that some drivers in Santa Fe repeatedly violate posted
22 speed limits. The governing body finds that state law against speeding is inadequate to preserve
23 public safety in Santa Fe. The governing body finds that photographic and electronic devices that
24 measure speed are accurate and reliable. The governing body finds that implementation of
25 enforcement of speed limits by means of photographic and electronic equipment will abate the

1 nuisance of speeding.

2 E. The governing body declares that a vehicle used to violate this Article is the
3 instrumentality of a nuisance and shall be abated in the city.

4 F. The governing body declares that this Article is a nuisance abatement Article
5 enacted pursuant to the city's inherent authority under state law and that the remedies are purely
6 civil and not criminal in nature.

7 **Section 4. A new Section 24-4.3 SFCC 1987 is ordained to read:**

8 **24-4.3 [NEW MATERIAL.] Definitions.** For the purposes of this Article, the
9 following definitions shall apply unless the context clearly indicates or requires a different
10 meaning.

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

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

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

23 *City* means the city of Santa Fe.

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

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

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

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

5 *Delivery or Delivered* means the mailing of a STOP fine notification to a registered
6 owner or nominee or personal service of a STOP fine notification or hearing officer decision on a
7 registered owner or nominee.

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

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

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

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

15 *Finance Department* means the city department established as per Article 2-8 SFCC
16 1987.

17 *Hearing Officer* means the city hearing officer, as appointed by the city manager. The
18 hearing officer shall be a licensed member of the New Mexico Bar.

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

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

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

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

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

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

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

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

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

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

18 *School Zone* means a posted "safety zone" as that term is defined under NMSA 1978 66-
19 1-4.16 (2001) as amended from time to time.

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

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

23 *Violation* means a violation of this Article.

24 **Section 5. A new Section 24-4.4 SFCC 1987 is ordained to read:**

25 **24-4.4 [NEW MATERIAL.] Violation.** Any violation of Section 12-5-6 or Section

1 12-6-1.2 of the city of Santa Fe Traffic Code is a violation of this Article. This Article does apply
2 to authorized emergency vehicles responding to an emergency. This Article does not apply to
3 vehicles in an intersection during a red light while involved in a police officer or public safety
4 aide controlled funeral procession or a city permitted parade or when responding to a police
5 officer directing traffic.

6 **Section 6. A new Section 24-4.5 SFCC 1987 is ordained to read:**

7 **24-4.5 [NEW MATERIAL.] Enforcement.**

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

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

19 C. *STOP Fine Notification.*

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

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

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

19 D. *Response to A STOP Fine Notification.* Within 35 days from the effective date,
20 the registered owner shall pay the fine, file an owner's affidavit making a nomination, or request
21 a hearing. To pay the fine, the recipient shall deliver the STOP fine notification with payment to
22 the city or to the contractor according to the instructions on the STOP fine notification. To make a
23 nomination, the recipient shall return the STOP fine notification with a completed owner's
24 affidavit to the contractor. To request a hearing, the recipient shall return the STOP fine
25 notification with the request for hearing to the hearing officer. There is no fee to request a

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

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

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

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

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

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

23 (b) The registered owner is a place of business, corporation or other
24 non-natural entity that owns a vehicle that was being driven by a natural person
25 who was the employee, contractor or agent of the business, corporation or other

1 non-natural entity at the time of the alleged violation. Said entities shall nominate
2 and identify the driver.

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

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

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

24 F. *Hearing.* In the event of a demand for a hearing, the hearing officer shall hold a
25 hearing within 90 days from the date of the request for hearing unless a continuance is granted

1 pursuant to the consent of the parties. The hearing does not need to be held within 90 days if a
2 continuance is granted. The hearing officer is in charge of the proceedings and may exclude any
3 person for inappropriate conduct. The evidentiary standards for administrative adjudicatory
4 proceedings will be followed. The department has the burden to prove by a preponderance of the
5 evidence that the violation occurred. The respondent has the burden to prove any defenses by a
6 preponderance of the evidence. A photograph, videotape or other electronic evidence of a
7 violation is authentic, is not hearsay and shall be admitted into evidence by the hearing officer.
8 The respondent may challenge the weight or accuracy of the evidence. If the department prevails,
9 the respondent shall pay the fine. The hearing officer shall render a decision in writing in ten days
10 and provide the decision to the department and the finance department. The hearing officer may
11 refer the respondent to teen court according to the municipal court's procedures for teen court
12 referrals. Failure to pay a fine as ordered by the hearing officer within ten consecutive days from
13 the date of the decision is a default and will apply against the vehicle without service of a notice
14 of default. Following a hearing, the respondent may appeal the decision of the hearing officer to
15 district court within 30 days of the decision and may recover the costs of filing the appeal if
16 successful.

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

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

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

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

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

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

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

14 H. *Fine.*

15 (1) The fine for the first violation for running a red light is \$66. The fine for
16 a *second violation* for running a red light within two years from the date of the first
17 violation is \$117. The fine for a third or subsequent violation for running a red light
18 within two years from the date of the first violation is \$168.

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) From 11 up to and including 15 miles per hour over the speed
23 limit: \$116;

24 (c) From 16 up to and including 20 miles per hour over the speed
25 limit: \$186;

1 (d) From 21 up to and including 25 miles per hour over the speed
2 limit: \$256;

3 (e) From 26 up to and including 30 miles per hour over the speed
4 limit: \$306;

5 (f) From 31 up to and including 35 miles per hour over the speed
6 limit: \$356; and

7 (g) More than 35 miles per hour over the speed limit: \$456.

8 (3) The hearing officer may allow service to the city as an alternative to
9 payment of fines. A violator who elects to avail themselves of the option of service to the
10 city in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits
11 conferred upon city employees, including, without limitation, workers compensation. The
12 city is not responsible for damages incurred except as otherwise provided by law. The
13 person seeking relief hereunder shall timely request the option of service to the city in
14 lieu of payment of a fine by requesting a hearing before a hearing officer at which to
15 demonstrate that the person eligible for the option and shall not be in default on payment
16 of other fines levied by the city of Santa Fe. If the hearing officer approves the person for
17 relief under this paragraph, the city manager shall enter a settlement agreement whereby
18 the person shall provide services to the city in lieu of payment of a fine. No person who
19 cannot pass the background check to qualify as a volunteer may obtain relief under this
20 paragraph. The services include, without limitation, cleaning up weeds and litter,
21 volunteering at local food banks, cleaning kennels at the Santa Fe animal Shelter, and
22 assisting with the maintenance of city property. Services shall be rendered in not less than
23 full hour increments and shall be credited against the fine payable at \$10.00 per hour.

24 I. *Seizure.* A police officer may seize or immobilize a vehicle for 90 days pursuant
25 to the provisions of Article 24-9 SFCC 1987 upon discovery of a vehicle in the city with unpaid

1 STOP fines. If the registered owner fails to cure the default and pay all impound and storage fees,
2 the vehicle is subject to forfeiture under Article 24-9 SFCC 1987. If a non-Santa Fe resident
3 defaults, the department shall immobilize the vehicle of a delinquent or defaulting party for
4 ninety days if said vehicle is found in the city limits any time within ten years of any violation of
5 this Article.

6 **Section 7. A new Section 24-4.6 SFCC 1987 is ordained to read:**

7 **24-4.6 [NEW MATERIAL.] Administration.**

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

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

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

16 D. The revenue generated through STOP, shall be placed in a special revenue fund
17 to be designated for contracted services and equipment to implement and maintain STOP. Excess
18 revenue received through STOP shall first be used for the resynchronization of traffic signals that
19 are affected by STOP and thereafter any excess revenue shall be designated for use by the city of
20 Santa Fe police department for service enhancement and public safety.

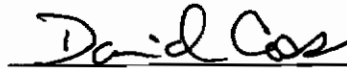
21 E. The police department shall present a monthly report to the public safety
22 committee in such a format as to assist in evaluating the effectiveness of STOP in preventing
23 accidents. The report shall include, without limitation:

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

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

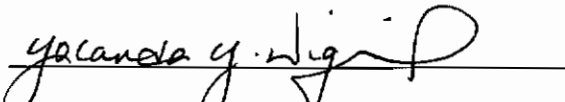
3 F. The police department shall report back to the governing body one year after the
4 effective date of this ordinance regarding the implementation and enforcement of this ordinance;
5 and to present any amendments to this ordinance.

6 PASSED, APPROVED and ADOPTED this 10th day of September, 2008.

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9 DAVID COSS, MAYOR

10 ATTEST:

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12 
13 YOLANDA Y. VIGIL, CITY CLERK

14
15 APPROVED AS TO FORM:

16
17 
18 FRANK D. KATZ, CITY ATTORNEY