

CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2011-5

AN ORDINANCE

AMENDING SECTIONS 24-4.4 AND 24-4.5 SFCC 1987 REGARDING THE SANTA FE TRAFFIC OPERATIONS PROGRAM IN ORDER TO MAKE ALL SPEEDING FINES ONE HUNDRED DOLLARS AND TO MAKE CLARIFICATIONS AND CORRECTIONS.

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

Section 1. Section 24-4.4 SFCC 1987 (being Ord. #2008-47, §5) is amended to read:

24-4.4 Violation.

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

Section 2. Section 24-4.5 SFCC 1987 (being Ord. #2008-47, §6 as amended) is amended to read:

24-4.5 Enforcement.

A. Criminal Violation Observed by Police Officer. This section does not abrogate or impair enforcement authority of existing traffic laws by a police officer for a violation committed in their presence. Specifically, if a police officer personally and contemporaneously observes a traffic violation, the police officer may stop the vehicle and issue a citation under state law or the

1 city of Santa Fe Traffic Code in the usual manner.

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

9 C. *STOP Fine Notification.*

10 (1) Form and contents. The STOP fine notification shall state and contain the
11 name of the registered owner or owners or nominee, the effective date of the STOP fine
12 notification, the type of violation, the date, time, and location of the violation, a picture of
13 the violation, the license number of the vehicle, the name and identification of the issuing
14 police officer, the amount of the fine, whether the fine is a first or subsequent violation,
15 the response due date and the address of the city clerk. The STOP fine notification shall
16 conspicuously and in bold face type state; "Failure to pay this fine on time will lead to
17 serious legal consequences including the loss of your vehicle and the assessment of
18 additional fines and monies due. A second or subsequent STOP violation within two (2)
19 years from the date of this STOP fine notification will lead to increasing fines and
20 penalties including the loss of the subject vehicle. The STOP fine notification shall
21 include an owner's affidavit form. The STOP fine notification shall contain a return
22 envelope addressed to the contractor or the Santa Fe police department. The STOP fine
23 notification shall inform, in bold face, the registered owner or the nominee of the right to
24 request a hearing by so indicating in a space provided on the form and returning same to
25 the city clerk within 35 days of the effective date.

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

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

23 (1) Payment of STOP fine. Upon receipt of the STOP fine notification, the
24 recipient may elect to admit the violation and pay the fine. To proceed under this
25 paragraph, the recipient shall admit the violation by signing and dating the STOP fine

1 notification on a space provided and returning the STOP fine notification with payment
2 to the contractor or to the city within thirty-five (35) days. The city may, but is not
3 required to, adopt procedures for alternative methods of payment of fines using the
4 internet or other on-line services. There shall be a fifty (\$50.00) dollar penalty for any
5 payment tendered that is not honored or is returned for any reason.

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

10 (3) Nomination. Any registered owner who was not driving the car at the
11 time of the violation may either accept the responsibility or identify the driver so the
12 contractor can send a notice of violation to the driver. The nomination procedure
13 described in this paragraph is available to any registered owner and is not limited to
14 corporations and governmental entities. If the registered owner claims that another person
15 was driving the vehicle at the time of the violation, the registered owner shall so indicate
16 on the owner's affidavit and identify the person who was driving the vehicle. The
17 contractor shall forthwith deliver the STOP fine notification and owner's affidavit to the
18 department to the attention of the issuing police officer. The police officer may send a
19 new STOP fine notification to the nominee or cause the contractor to deliver a new STOP
20 fine notification to the nominee. The effective date of the STOP fine notification sent to
21 the nominee is the day the STOP fine notification is issued to the nominee as indicated on
22 the face of the new STOP fine notification. If the nominee successfully appeals the
23 allegation that he or she was the driver or defaults the city may proceed against the
24 registered owner by issuing a subsequent STOP fine notification to the registered owner
25 with the effective date being the date so indicated on the face of the subsequent STOP

1 fine notification. If the city cannot assert jurisdiction over the nominee, the registered
2 owner is responsible, subject to the remaining defenses available in this section. Any
3 registered owner who submits an owner's affidavit does so under penalty of perjury. If the
4 registered owner operates a business that uses a fleet of one (1) or more vehicles and
5 nominated the driver on a previous violation and the driver paid the fine or otherwise
6 cleared the violation, a subsequent violation pertaining to the fleet vehicle shall not be
7 considered a second, third or subsequent violation regarding that vehicle unless driven by
8 the same driver. Without limitation on the foregoing, nomination may be used when:

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

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

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

23 (d) The registered owner was not driving the vehicle at the time of
24 the violation. To assert the defense mentioned in this paragraph, the registered
25 owner shall identify the actual driver and comply with the nomination provision

1 above to assert this defense.

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

15 F. *Hearing.* In the event of a demand for a hearing, the hearing officer shall hold a
16 hearing within ninety (90) days from the date of the request for hearing unless a continuance is
17 granted pursuant to the consent of the parties. The hearing does not need to be held within ninety
18 (90) days if a continuance is granted. The hearing officer is in charge of the proceedings and may
19 exclude any person for inappropriate conduct. The hearing shall be conducted following the rules
20 of evidence and civil procedure for the district courts. The department has the burden to prove by
21 a preponderance of the evidence that the violation occurred. The respondent has the burden to
22 prove any defenses by a preponderance of the evidence. A photograph, videotape or other
23 electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence
24 by the hearing officer. The respondent may challenge the weight or accuracy of the evidence. If
25 the department prevails, the respondent shall pay the fine. The hearing officer shall render a

1 decision in writing in ten (10) days and provide the decision to the department and the finance
2 department. A determination by the hearing officer shall not impose a total amount of penalties,
3 fines, fees and costs in excess of that provided in this section. The hearing officer may refer the
4 respondent to teen court according to the municipal court's procedures for teen court referrals.
5 Failure to pay a fine as ordered by the hearing officer within twenty (20) consecutive days from
6 the date of the decision is a default and will apply against the vehicle without service of a notice
7 of default. Following a hearing, the respondent may appeal the decision of the hearing officer to
8 district court within thirty (30) days of the decision and may recover the costs of filing the appeal
9 if successful.

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

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

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

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

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

25 (5) The vehicle should not be assessed an increased fine for a subsequent

1 violation because the registered owner owns or operates a fleet of vehicles in a business
2 and nominated the actual driver who satisfied payment of the fine on the previous
3 violation.

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

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

11 (1) The fine for the first violation for running a red light is sixty-six dollars
12 (\$66.00). The fine for a subsequent violation for running a red light within two (2) years
13 from the date of the first violation is one hundred dollars (\$100.).

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

15 (a) From five (5) to ten (10) miles per hour over the speed limit in
16 school and construction zones: one hundred dollars (\$100.);

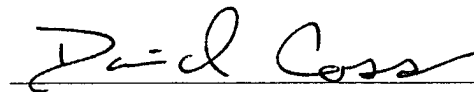
17 (b) More than eleven (11) miles per hour over the speed limit: one
18 hundred dollars (\$100.).

19 (3) The hearing officer may allow service to the city as an alternative to
20 payment of fines. A violator who elects to avail themselves of the option of service to the
21 city in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits
22 conferred upon city employees, including, without limitation, workers compensation. The
23 city is not responsible for damages incurred except as otherwise provided by law. The
24 person seeking relief hereunder shall timely request the option of service to the city in
25 lieu of payment of a fine by requesting a hearing before a hearing officer at which to

1 demonstrate that the person eligible for the option and shall not be in default on payment
2 of other fines, fees, or liens levied by the city of Santa Fe. Respondents ordered to
3 perform community service in lieu of payment of a fine shall complete such community
4 service within thirty (30) days from the date of hearing. No person who cannot pass the
5 background check to qualify as a volunteer may obtain relief under this paragraph. The
6 services shall be performed with approved organizations or city departments. Services
7 shall be rendered in not less than full hour increments and shall be credited against the
8 fine payable at ten dollars (\$10.00) per hour. The city manager or designee shall establish
9 procedures for administering this paragraph including, but not limited to, the nature of
10 services performed.

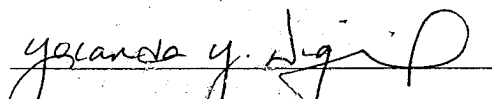
11 I. *Seizure.* A police officer may seize or immobilize a vehicle for ninety (90) days
12 pursuant to the provisions of Section 24-9 SFCC 1987 upon discovery of a vehicle in the city
13 with unpaid STOP fines. If the registered owner fails to cure the default and pay all impound and
14 storage fees, the vehicle is subject to forfeiture under Section 24-9 SFCC 1987. If a non-Santa Fe
15 resident defaults, the department shall immobilize the vehicle of a delinquent or defaulting party
16 for ninety (90) days if said vehicle is found in the city limits any time within ten (10) years of any
17 violation of this section.

18 PASSED, APPROVED and ADOPTED this 9th day of March, 2011.

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20 DAVID COSS, MAYOR

21 ATTEST:

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24 VOLANDA Y. VIGIL, CITY CLERK
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APPROVED AS TO FORM:



GENO ZAMORA, CITY ATTORNEY