

**CITY OF CORAL GABLES, FLORIDA**

**ORDINANCE NO. 2009-41**

AN ORDINANCE AMENDING CHAPTER 74 OF THE CODE OF THE CITY OF CORAL GABLES, FLORIDA, ENTITLED "TRAFFIC AND VEHICLES", IN PARTICULAR, SECTION 74-352, ENTITLED "USE OF IMAGE CAPTURE TECHNOLOGY" BY PROVIDING FURTHER CLARIFICATION; SECTION 74-353, ENTITLED "DEFINITIONS", BY ADDING DEFINITIONS FOR FURTHER CLARIFICATION; SECTION 74-356, BY CHANGING THE TITLE FROM "NINETY-DAY NOTICE; INTRODUCTORY PERIOD" TO "THIRTY-DAY NOTICE; INTRODUCTORY PERIOD," THEREBY INCREASING THE NOTIFICATION PERIOD FROM NINETY (90) DAYS FROM THE ADOPTION OF THE ORDINANCE (ON NOVEMBER 12, 2007) TO THIRTY (30) DAYS, FOLLOWING THE NOTIFICATION FROM THE POLICE CHIEF INDICATING THAT THE RED LIGHT CAMERA SYSTEM IS OPERATIONAL AT THE INITIAL LOCATION ESTABLISHED; SECTION 74-359, ENTITLED "VEHICLE OWNER RESPONSIBILITIES" BY PROVIDING FURTHER CLARIFICATION; PROVIDING FOR A SEVERABILITY CLAUSE, REPEALER PROVISION, CODIFICATION, AND PROVISION FOR AN EFFECTIVE DATE.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:**

**SECTION 1.** Chapter 74, entitled "Traffic and Vehicles" of the Code of the City of Coral Gables, Florida is hereby amended as follows:

**Sec. 74-352. Use of image capture technologies.**

The City shall utilize image capture technologies as a supplemental means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This section shall not supersede, infringe, curtail or impinge upon state or county laws related to red light signal violations or conflict with such laws. This Article shall serve to enable the City to provide enhanced enforcement and respect for authorized traffic signal devices. The city may utilize image capture technologies as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations to drivers of all states whom legally transverse the roadways within the city. Notices of infractions issued pursuant to this article shall be addressed using the City's own Hearing Officer, pursuant to Article VI, of Chapter 101 of the City Code of Ordinances and not through uniform traffic citations or County Courts. This article pertains to the safety of pedestrians as well those drivers who use the roadways within the city in vehicles. The use of image

capturing of the offending automobile only relates to the area the vehicle occupies, contrary to a steady red indication of a traffic control signal, and the associated roadway markings that are used in conjunction with the signal. This shall not bar the use of uniform traffic citations and the County Courts when City Police personnel decide not to rely on this Article as the enforcement mechanism for a specific violation.

**Sec. 74-353. Definitions.**

The following definitions shall apply to this article:

*City's Hearing Officer.* The City's Hearing Officer, as described in Article VI, Chapter 101 of the City Code, with interest in traffic enforcement.

*Intersection.*

(a) The area embraced within the prolongation or connection of the lateral curb lines; or, if none, then the lateral boundary lines of the roadways of two roads or highways which join or intersect one another at, or approximately at right angles; or the area within which vehicles traveling upon different roads or highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

*Motor vehicle.* Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. The term shall include but not be limited to boats mounted on trailers, recreational vehicles and motor homes.

*Owner/Vehicle Owner.* The person or entity identified by the Florida Department of Motor Vehicles, or other State registration office, as the registered owner of a vehicle. Such term shall also mean a lessee of a motor vehicle, pursuant to a lease of six months or more.

*Recorded images.* Images recorded by a traffic control signal monitoring system/device:

- 1) On:
  - a) Two or more photographs;
  - b) Two or more electronic images;
  - c) Two or more digital images;
  - d) Digital or video movies; or
  - e) Any other medium that can display a violation; and
- 2) Showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.

*Red Zone Infraction.* A traffic offense whereby a traffic control signal monitoring system established that a vehicle entered an intersection controlled by a duly erected traffic control device at a time when the traffic control signal for such vehicle's direction of travel was emitting a steady red signal.

*Traffic control infraction review officer, or designee.* The city police department employee designated by the city's police chief who shall be a police officer of the city, to review recorded images and issue red zone infractions based upon those images.

*Traffic control signal.* A device exhibiting different colored lights or colored lighted arrows, successively, one at a time, or in combination, using only the colors green, yellow, and red, which indicate and apply to drivers of motor vehicles, as provided in F.S. 316.075.

*Traffic control signal monitoring system/device.* An electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still camera and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication.

*Traffic Control Infraction Review Officer.* The City Police department employee designated here within this Article to review record images and issue red zone infractions based upon those images.

**Sec. 74-356. Thirty-day notice; introductory period.**

The Police Chief shall notify the City Manager when the red light camera system is operating correctly at the initial location established. For the first thirty (30) days following said notification, unless the driver of a vehicle received a citation from a police officer at the time of a red zone infraction in accordance with normal traffic enforcement techniques, the vehicle owner shall receive a warning in the form of a courtesy notice of the violation. Commencing thirty-one (31) days after the above referenced notification, the vehicle owner is subject to the enforcement provision as provided herein and no warning shall be given pursuant to this article.

**Sec. 74-357. Review of recorded images.**

(a) The owner of the vehicle, regardless of who the driver is at the time of the infraction, which is observed by recorded images committing an intersection safety ordinance violation, shall be issued a notice of infraction. The recorded image shall be sufficient grounds to issue a city notice of infraction.

(b) The city shall designate a traffic control infraction review officer, or designee, within the police department who shall meet the qualifications set forth in F.S. § 316.640(5)(a), or any other relevant statute. The traffic control infraction review officer, or designee, shall review recorded images prior to the issuance of a notice of violation/infraction to ensure accuracy and the integrity of the recorded images.

(c) Once the traffic control infraction review officer, or designee, has verified the accuracy of the recorded images and functionality of the traffic control monitoring system/devices, he or she shall authorize the issuance, of a notice of violation/infraction

which shall be sent to the vehicle owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles or any other state vehicle registration office.

**Sec. 74-359. Vehicle owner responsibilities.**

(a) A vehicle owner receiving a notice of infraction may, within 21 days of the date of the notice of infraction:

- (1) Pay the assessed civil penalty pursuant to instructions on the notice of infraction; or
- (2) Request an appeal pursuant with procedures as outlined in this article. A person who elects such an appeal hearing is deemed to have waived the limitation of civil penalties imposed for the violation.

(b) The failure to comply with the provisions of this section within 21 days from the date of the notice of infraction shall constitute a waiver of the right to contest the notice of infraction and will be considered an admission of liability by the vehicle owner and in such case an order may be entered against the violator for an amount up to the maximum civil penalty, plus any administrative costs.

**Sec. 74-360. Appeal to hearing officer.**

(1) The city's code enforcement hearing officers are authorized to consider appeals under this chapter, as set forth in sections 101-181 through 101-190 of the City Code. A hearing shall be scheduled for all notices for which the vehicle owner timely requests an administrative hearing.

(2) Upon receipt of the vehicle owner's timely request for an administrative hearing, the city shall schedule a hearing before the Hearing Officer in accordance with Article VI of the City Code.

(3) The Traffic Control Infraction Review Officer may testify at the hearing. The vehicle owner may present testimony and evidence.

(4) Recorded images indicating a red zone infraction, verified by the Traffic Control Infraction Review Officer, are admissible in any proceeding before the City's Hearing Officer to enforce the provisions of this article, and shall constitute *prima facie* evidence of the violation.

(5) Unless an affidavit is provided pursuant to section 74-361, it is presumed the person registered as the vehicle owner with the Florida Department of Motor Vehicles or any other state vehicle registration office, or that an individual having the owner's consent, was operating the vehicle at the time of an intersection safety ordinance infraction or that the vehicle was entrusted to the custody of one who operated it at the time of the infraction. With the exception of these exemptions specially provided for herein, this Article imposes strict liability on the Owner or Owners of every motor vehicle, which fails to adhere to the red light traffic control signals within the City of Coral Gables, Florida.

(6) The following shall be permissible grounds for an appeal to the Hearing Officer:

- a. At the time of the infraction, the motor vehicle was not under the care, custody, or control of the motor vehicle owner or an individual with owner's consent, established pursuant to affidavit as provided in section 74-361.
- b. The motor vehicle driver was issued a citation by a law enforcement officer, which was separate and distinct from the civil violation issued under this section, for violating the steady red traffic control signal;
- c. The motor vehicle driver was required to violate the steady red traffic control signal in order to comply with other governing laws;
- d. The motor vehicle driver was required to violate the steady red traffic control signal in order to reasonably protect the property or person of another;
- e. The steady red traffic control signal was inoperable or malfunctioning; or
- f. Any other reason the hearing officer deems appropriate.

**Sec. 74-361. Vehicle owner affidavit of non-responsibility.**

(a) In order for the vehicle owner to establish that the motor vehicle was at the time of the intersection safety ordinance infraction, in the care, custody, or control of another person without the consent of the registered owner, the vehicle owner is required, within 21 days from the date listed on the notice of infraction, to furnish to the city, an affidavit setting forth the circumstances demonstrating that the motor vehicle was not in the vehicle owner's care, custody, or control, or that of a person with vehicle owner's consent. The affidavit must be executed in the presence of a notary, and include:

1. If known to the motor vehicle owner, the name, address, and the driver license number of the person who leased, rented or otherwise had care, custody, or control of the motor vehicle at the time of the alleged intersection safety ordinance infraction; or
2. If the vehicle was stolen, the police report indicating the vehicle was stolen at the time of the alleged intersection safety ordinance infraction.
3. The following language immediately above the signature line: "Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true."

(b) Upon receipt of an affidavit pursuant to this section, any civil action of the notice of infraction issued to the vehicle owner shall be terminated. Proceedings may be commenced by the City against the responsible person identified in the affidavit, and in such event, the responsible person shall be subject to the same process and procedures, which are applicable to vehicle owners.

**SECTION 2. Severability.**

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

**SECTION 3. Repeater.**

All ordinances or parts of the ordinances in conflict herewith, be and the same, are hereby repealed.

#### **SECTION 4. Codification.**

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

#### **SECTION 5. Effective Date.**

This ordinance shall become effective ten days upon the date of its passage and adoption of same.

PASSED AND ADOPTED THIS TWENTY-SECOND DAY OF SEPTEMBER, A.D., 2009.

(Moved: Anderson / Seconded: Kerdyk)

(Yea: Anderson, Cabrera, Kerdyk, Withers, Slesnick)

(Unanimous; 5-0 Vote)

(Agenda Item: E-2)

APPROVED:



DONALD D. SLESNICK II

MAYOR

ATTEST:



WALTER J. FOEMAN

CITY CLERK

APPROVED AS TO FORM

AND LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ

CITY ATTORNEY