City of Las Cruces®
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Council Action and Executive Summary

Item # 19 **Ordinance #** 2527 **Council District:** ___

For Meeting of June 15, 2009
(Adoption Date)

AN ORDINANCE AMENDING ORDINANCE NO. 2495, *SAFE TRAFFIC OPERATIONS PROGRAM*, TO BE CONSISTENT WITH LEGISLATIVE AMENDMENTS TO NEW MEXICO STATUTES ANNOTATED, SECTION 3-18-17, INCLUDING FINES, APPOINTMENT OF A HEARING OFFICER, AND THE CONDUCT OF HEARINGS, AS WELL AS MAKING VARIOUS STYLISTIC CHANGES.

PURPOSE(S) OF ACTION: This ordinance amendment is presented so that the City's Safe Traffic Operations Program ("STOP") is consistent with state law as passed during the 49th Legislature of the State of New Mexico, 2009.

Name of Drafter: Monica Campbell		**Department:** Legal		**Phone:** 541-2128	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Originating Department			Budget		541-2107
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to Senate Bill 519, the 49th Legislature of the State of New Mexico, 2009, adopted amendments to NMSA 1978, Section 3-18-17, *Nuisances and Offenses—Regulation or Prohibition*.

The amendments include:

- A provision that the District Court appoints the Hearing Officer;
- Fines assessed in the maximum amount of $100 for running a red light or speeding in violation of the ordinance; and
- A provision that hearings shall be conducted following the rules of evidence and civil procedure for the district courts.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Ordinance with Exhibit "A" attached.

2. Ordinance in legislative format, Exhibit "B".

3. Senate Bill 519, Attachment "1".

4. Ordinance No. 2495, Attachment "2".

OPTIONS / ALTERNATIVES:

1. Adopt the ordinance. Adoption means that the City's Safe Traffic Operations Program ordinance will comply with state law.

2. Do not adopt the ordinance. This means that the City's Safe Traffic Operations Program will not be in conformance with state law.

3. Modify the ordinance and provide further direction to staff.

(Continue on additional sheets as required)

COUNCIL BILL NO. 09-064
ORDINANCE NO. 2527

AN ORDINANCE AMENDING ORDINANCE NO. 2495, *SAFE TRAFFIC OPERATIONS PROGRAM*, TO BE CONSISTENT WITH LEGISLATIVE AMENDMENTS TO NEW MEXICO STATUTES ANNOTATED, SECTION 3-18-17, INCLUDING FINES, APPOINTMENT OF A HEARING OFFICER, AND THE CONDUCT OF HEARINGS, AS WELL AS MAKING VARIOUS STYLISTIC CHANGES.

The City Council is informed that:

WHEREAS, pursuant to Senate Bill 519, the 49th Legislature of the State of New Mexico, 2009, adopted amendments to NMSA 1978, Section 3-18-17, *Nuisances and Offenses – Regulation or Prohibition*; and

WHEREAS, the amendments include a provision that the District Court appoints the Hearing Officer, fines are assessed in the maximum amount of $100 for running a red light or speeding in violation of the ordinance, and a provision that hearings shall be conducted following the rules of evidence and civil procedure for district courts.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT Ordinance No. 2495, *Safe Traffic Operations Program,* (to be codified as Las Cruces Municipal Code, Sections 27-7, et seq.) is hereby enacted to read as shown on **Exhibit "A"** attached hereto and made a part hereof.

(II)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution and the Agreement.

DONE AND APPROVED on this _____ day of _____, 2009.

_____
Mayor

ATTEST:

_____
City Clerk

{SEAL}

Moved by: _____

Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

_____
City Attorney

Sec. 27-7 SAFE TRAFFIC OPERATIONS PROGRAM

Sec. 27-7.1 Short Title.

Section 27-7 and its subsections shall be referred to as the Safe Traffic Operations Program ("STOP") and may sometimes be referred to as "this Article."

Sec. 27-7.2 Findings and Intent

(a) The governing body finds that there is a significant risk to the health and safety of the community from drivers who run red lights and exceed the posted speed limits. The governing body finds that the City of Las Cruces has a serious injury rate resulting from red light violations within the City. Drivers in the City shall progress away from the attitude that a red light is merely a suggestion to stop toward an appreciation that red light violations injure and even kill too many of our citizens. The governing body finds that red light violations are a nuisance. Within the City of Las Cruces, red light violations are a great matter of local concern due to high traffic volume and crowded intersections. The governing body finds that the State legislature does not intend for the State of New Mexico Motor Vehicle Code to apply statewide to the exclusion of local traffic laws.

(b) The governing body finds that many municipalities across the state have experienced substantial decreases in red light violations by using red light cameras. The governing body finds that red light cameras produce reliable evidence of red light violations. The governing body finds that it is reasonable for Police Officers to rely on red light camera evidence even if the officer did not personally observe the violation. The governing body finds that red light cameras save lives and make our streets safer.

(c) Red light violations are a nuisance that shall be abated by the assessment of fines to compensate the City and tax payers who do not commit these violations. Drivers who fail or refuse to pay the fines and repeatedly run red lights create a severe nuisance that will not be abated unless the City temporarily seizes the cars of drivers and thus removes the instrumentality used to create this nuisance. The governing body finds that the current penalty under state law for running a red light is inadequate to meaningfully address the nuisance and that the City must implement meaningful civil remedial measures that will stop red light violations making the City's streets safer and

saving lives. Red light violations are causally connected to death or serious injury to a degree not evident with regard to other traffic infractions.

(d) The governing body finds that some drivers in the City repeatedly violate posted speed limits. The governing body finds that State law against speeding does not prevent the City from having provisions in its ordinance to provide for public safety on its streets. The governing body finds that implementation of enforcement of speed limits by means of photographic and electronic equipment will abate the nuisance of speeding.

(e) The governing body declares that a vehicle used to violate this Article is the instrumentality of a nuisance and shall be abated in the City.

(f) The governing body declares that this Article is a nuisance abatement Article enacted pursuant to the City's inherent authority under State law and that the remedies are purely civil and not criminal in nature.

Sec. 27-7.3 Definitions.

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

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

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

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

City means the City of Las Cruces.

City Clerk means the City Clerk of the City.

City Manager means the City Manager of the City of Las Cruces.

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

Default means the failure to pay a STOP fine or to timely pay a fine pursuant to a decision of a Hearing Officer under this Article.

Delivery or Delivered means the mailing of a STOP fine notification to a registered owner or nominee or personal service of a STOP fine notification or Hearing Officer decision on a registered owner or nominee.

Department means the City's Police Department which is the agency of the City that employs the Police Officer who issues a STOP fine notification or causes a STOP fine notification to be issued.

Department of Motor Vehicles or DMV means the Motor Vehicle Division of the Taxation and Revenue Department of the State of New Mexico or its successor agencies.

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

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

Finance Department means the City's Financial Services Department.

Hearing Officer means a ~~City~~ Hearing Officer, as appointed by the ~~City Manager~~ District Court.

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

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

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

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

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

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

Police Officer means a sworn member of the Las Cruces Police Department, Dona Ana County Sheriff's Office, the New Mexico State Police, or any other public official with authority to stop a vehicle for a traffic violation in the City of Las Cruces.

Public Safety Aide means a Public Safety Aide of the Las Cruces Police Department.

Registered Owner means the owner or owners of a vehicle according to the license plate number or information obtained from the Department of Motor Vehicles, from similar motor vehicle agencies outside New Mexico, from information obtained from the Las Cruces Municipal Court, from the Dona Ana County Magistrate Court, from Department records, from a CSD or from any other documentation or methods reasonably relied upon by Police Officers. The singular includes the plural.

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

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

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

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

Violation or Offense means a violation of this Article.

Sec. 27-7.4 Violation.

Any violation of Section 27-12-5-6 or Section 27-12-6-1.2 of the City's Municipal Code is a violation of this Article. This Article does not apply to authorized emergency vehicles responding to an emergency. This Article 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.

Sec. 27-7.5 Enforcement.

(a) *Criminal Violation Observed by Police Officer.* This Article 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 City of Las Cruces Traffic Code in the usual manner.

(b) *Violation Recorded by CSD.* The Contractor shall provide all evidence of a CSD recorded violation to a Police Officer. A Police Officer shall review all CSD evidence provided by the Contractor. If the Police Officer determines that a violation has occurred, the Police Officer shall cause a STOP fine notification to be delivered to the registered owner. The registered owner is strictly and vicariously liable for the violation unless one of the exceptions herein applies. If there is more than one registered owner, all registered owners shall be jointly and severally liable.

(c) *STOP Fine Notification.*

(1) Form and contents. The STOP fine notification shall state and contain the name of the registered owner or owners or nominee, the effective date of the STOP fine notification, the type of violation, the date, time, and location of the violation, a picture of the violation, the license number of the vehicle, the name and identification of the issuing Police Officer, the amount of the fine, whether the fine is a first or subsequent offense, the response due date and the address of the Department. The STOP fine notification shall conspicuously and in bold face type state; "Failure to pay this fine on time will lead to serious legal consequences including the loss of your vehicle and the assessment of additional fines and monies due. A second or subsequent STOP violation within two years from the date of this STOP fine notification will lead to increasing penalties including the loss of the subject vehicle. After you have received this STOP fine notification, it is unlawful to sell, transfer, or otherwise convey title to the subject motor vehicle to another person unless all applicable STOP fines are paid." The STOP fine notification shall include an owner's affidavit form. The STOP fine notification shall contain a return envelope addressed to the Contractor or the Department. The STOP fine notification shall inform the registered owner or the

nominee of the right to request a hearing by so indicating in a space provided on the form and returning same to the Department.

(2) Delivery. The STOP fine notification shall be delivered to the address of the registered owner according to the address registered with the Department of Motor Vehicles or to the address of the nominee according to the owner's affidavit. The registered owner has a duty to timely notify DMV of a change of address and the failure to do so does not entitle the registered owner to assert the defense of inadequate notice. The mailing of a STOP fine notification to the address of the registered owner of a vehicle according to the records of DMV or to the address of the nominee according to the owner's affidavit is constructive notice of a STOP fine notification.

(d) *Response to a STOP Fine Notification.* Within 35 days from the effective date, the registered owner shall pay the fine, file an owner's affidavit making a nomination, or request a hearing. To pay the fine, the recipient shall deliver the STOP fine notification with payment to the City or to the Contractor according to the instructions on the STOP fine notification. To make a nomination, the recipient shall return the STOP fine notification with a completed owner's affidavit to the Contractor. To request a hearing, the recipient shall return the STOP fine notification with the request for hearing to the Department. Three days for mailing is not allowed and the response shall be actually received no later than 35 consecutive days (including holidays) from the effective date. The Department shall forthwith notify the Contractor concerning the receipt of a request for hearing. If the fine has not been paid, there has been no nomination or a request for a hearing within 35 days from the effective date, the Contractor shall send written notice of default to the Department and the registered owner or nominee or both.

(1) Payment of STOP fine. Upon receipt of the STOP fine notification, the recipient may elect to admit the violation and pay the fine. To proceed under this section, the recipient shall admit the violation by signing and dating the STOP fine notification on a space provided and returning the STOP fine notification with payment to the Contractor or to the City within 35 days. The City may, but is not required to, adopt procedures for alternative methods of payment of fines using the internet or other

on-line services. There shall be a $50 penalty for any payment tendered that is not honored or is returned for any reason.

(2) Appeal. The recipient of the STOP fine notification may request a hearing by so indicating and returning the STOP fine notification to the Department within 35 days of the effective date. The Hearing Officer shall schedule a hearing.

(3) Nomination. Any registered owner who was not driving the vehicle at the time of the violation may either accept the responsibility or identify the driver so the Contractor can send a notice of violation to the driver. The nomination procedure described in this paragraph is available to any registered owner and is not limited to corporations and governmental entities. If the registered owner claims that another person was driving the vehicle at the time of the violation, the registered owner shall so indicate on the owner's affidavit and identify the person who was driving the vehicle. The Contractor shall forthwith deliver the STOP fine notification and owner's affidavit to the Department to the attention of the issuing Police Officer. The Police Officer may send a new STOP fine notification to the nominee or cause the Contractor to deliver a new STOP fine notification to the nominee. The effective date of the STOP fine notification sent to the nominee is the day the STOP fine notification is issued to the nominee as indicated on the face of the new STOP fine notification. If the nominee successfully appeals the allegation that he or she was the driver or defaults the City may proceed against the registered owner by issuing a subsequent STOP fine notification to the registered owner with the effective date being the date so indicated on the face of the subsequent STOP fine notification. If the City cannot assert jurisdiction over the nominee, the registered owner is responsible, subject to the remaining defenses available in this Article. Any registered owner who submits an owner's affidavit does so under penalty of perjury. If the registered owner operates a business that uses a fleet of one or more vehicles and nominated the driver on a previous violation and the driver paid the fine or otherwise cleared the violation, a subsequent violation pertaining to the fleet vehicle shall not be considered a second, third or subsequent offense regarding that vehicle unless driven by the same driver. Without limitation on the foregoing, nomination may be used when:

(i) The registered owner is the United States of America, State of New Mexico, County of Dona Ana or any other governmental entity that owns a vehicle that was being driven by a natural person who was the employee, contractor or agent of the business, corporation or other non-natural entity at the time of the alleged violation. Said entities shall nominate and identify the driver.

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

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

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

(e) *Default.* If the City does not receive payment of the fine, a nomination or a request for a hearing within 35 days from the effective date, the registered owner is in default. Default automatically results in liability to the registered owner for the violation and the registered owner is barred from requesting or obtaining any hearing on the merits of the STOP fine after the date of the default. A default results in an additional penalty of $25. The Department shall cause the Contractor to mail the notice of default to the defaulting party. The notice of default shall inform the recipient that they have 20 days from the date of mailing of the notice of default to pay the fine or request a hearing from the Department. If the default is not cured, the City may pursue all remedies for collection of a debt and is entitled to an award of reasonable attorney's fees incurred. An uncured notice of default shall be entered into the records of the Department and any Police Officer who discovers a vehicle in the City in the course of a traffic stop or otherwise may seize the vehicle for unpaid fines. The registered owner is liable for a default by a nominee.

(f) *Hearing.* The Hearing Officer is in charge of the proceedings and may exclude any person for inappropriate conduct. The Department has the burden to prove by a preponderance of the evidence that the violation occurred. The respondent has the burden to prove any defenses by a preponderance of the evidence. A photograph, videotape or other electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence by the Hearing Officer. The respondent may challenge the weight or accuracy of the evidence. If the Department prevails, the respondent shall pay the fine. The Hearing Officer shall render a decision in writing and provide the decision to the Department and the Finance Department. Failure to pay a fine as ordered by the Hearing Officer within ten consecutive days from the date of the decision is a default and will apply against the vehicle without service of a notice of default. Following a hearing, the respondent may appeal the decision of the Hearing Officer, pursuant to Rule 1-074 of the Rules of Civil Procedure, to the Third Judicial District Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

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

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

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

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

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

(5) The registered owner did not receive notice because the STOP fine notification was not mailed to the address of record with the DMV.

(h) *Fine.*

(1) The fine for the violation for running a red light or speeding is $100.

(i) *Seizure.* A Police Officer may seize or immobilize a vehicle for 90 days pursuant to the provisions of Article 27-6 LCMC 1997 upon discovery of a vehicle in the City with unpaid STOP fines. If the registered owner fails to cure the default and pay all impound and storage fees, the vehicle is subject to forfeiture under Article 27-6 LCMC 1997. If a non-Las Cruces resident defaults, the Department shall immobilize the vehicle of a delinquent or defaulting party for 90 days if said vehicle is found in the City limits any time within ten years of any violation of this Article.

Sec. 27-7.6 Administration.

(a) The Department shall be responsible for administration of this Article. Reasonable rules and regulations may be promulgated by the City Manager or his designee to carry out the intent and purpose of this Article.

(b) The City Manager may establish a STOP ombudsman to address and resolve citizen grievances with STOP procedures and technical issues regarding automated enforcement technology.

(c) Any and all revenue obtained through the Las Cruces Safe Traffic Operations Program shall be used by the Las Cruces Police Department and the City's Traffic Engineering Department for service enhancement and public safety.

Sec. 27-7.7 Severability.

If any section, paragraph, sentence or clause of this section is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this section. The City Council hereby declares that it would have passed this section irrespective of any provision being declared unconstitutional or otherwise invalid. Additionally, should any provision of this section conflict with a provision of another applicable civil law or regulation relating to STOP, the stricter provision shall apply, unless more specifically preempted, in which case, the severability provision above will govern.

~~**Section 1. A new Article 27-7 and subsequent subsections LCMC 1997 is enacted to read as follows:**~~

Sec. 27-7 ~~[NEW MATERIAL.]~~ SAFE TRAFFIC OPERATIONS PROGRAM

~~**Section 2. A new Section 27-7.1 LCMC 1997 is enacted to read:**~~

Sec. 27-7.1 ~~[NEW MATERIAL]~~ Short Title.

~~Article~~ Section 27-7~~.1~~ and its subsections ~~LCMC 1997~~ shall be referred to as the Safe Traffic Operations Program ("STOP") and may sometimes be referred to as "this Article."

~~**Section 3. A new Section 27-7.2 LCMC 1997 is ordained to read:**~~

Sec. 27-7.2 ~~[NEW MATERIAL]~~ Findings and Intent

(a) The governing body finds that there is a significant risk to the health and safety of the community from drivers who run red lights and exceed the posted speed limits. The governing body finds that the City of Las Cruces has a serious injury rate resulting from red light violations within the City. Drivers in the City shall progress away from the attitude that a red light is merely a suggestion to stop toward an appreciation that red light violations injure and even kill too many of our citizens. The governing body finds that red light violations are a nuisance. Within the City of Las Cruces, red light violations are a great matter of local concern due to high traffic volume and crowded intersections. The governing body finds that the State legislature does not intend for the State of New Mexico Motor Vehicle Code to apply statewide to the exclusion of local traffic laws.

(b) The governing body finds that many municipalities across the state have experienced substantial decreases in red light violations by using red light cameras. The governing body finds that red light cameras produce reliable evidence of red light violations. The governing body finds that it is reasonable for Police Officers to rely on red light camera evidence even if the officer did not personally observe the violation. The governing body finds that red light cameras save lives and make our streets safer.

(c) Red light violations are a nuisance that shall be abated by the assessment of fines to compensate the City and tax payers who do not commit these violations. Drivers who fail or refuse to pay the fines and repeatedly run red lights create a severe nuisance that will not be abated unless the City temporarily seizes the cars of drivers

and thus removes the instrumentality used to create this nuisance. The governing body finds that the current penalty under state law for running a red light is inadequate to meaningfully address the nuisance and that the City must implement meaningful civil remedial measures that will stop red light violations making the City's streets safer and saving lives. Red light violations are causally connected to death or serious injury to a degree not evident with regard to other traffic infractions.

(d) The governing body finds that some drivers in the City repeatedly violate posted speed limits. The governing body finds that State law against speeding does not prevent the City from having provisions in its ordinance to provide for public safety on its streets. The governing body finds that implementation of enforcement of speed limits by means of photographic and electronic equipment will abate the nuisance of speeding.

(e) The governing body declares that a vehicle used to violate this Article is the instrumentality of a nuisance and shall be abated in the City.

(f) The governing body declares that this Article is a nuisance abatement Article enacted pursuant to the City's inherent authority under State law and that the remedies are purely civil and not criminal in nature.

~~Section 4. A new Section 27-7.3 LCMC 1997 is ordained to read:~~

Sec. 27-7.3 ~~[NEW MATERIAL]~~ Definitions.

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

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

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

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

City means the City of Las Cruces.

City Clerk means the City Clerk of the City.

City Manager means the City Manager of the City of Las Cruces.

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

Default means the failure to pay a STOP fine or to timely pay a fine pursuant to a decision of a Hearing Officer under this Article.

Delivery or Delivered means the mailing of a STOP fine notification to a registered owner or nominee or personal service of a STOP fine notification or Hearing Officer decision on a registered owner or nominee.

Department means the City's Police Department which is the agency of the City that employs the Police Officer who issues a STOP fine notification or causes a STOP fine notification to be issued.

Department of Motor Vehicles or DMV means the Motor Vehicle Division of the Taxation and Revenue Department of the State of New Mexico or its successor agencies.

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

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

Finance Department means the City's Financial Services Department.

Hearing Officer means a ~~City~~ Hearing Officer, as appointed by the ~~City Manager~~ District Court.

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

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

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

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

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

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

Police Officer means a sworn member of the Las Cruces Police Department, Dona Ana County Sheriff's Office, the New Mexico State Police, or any other public official with authority to stop a vehicle for a traffic violation in the City of Las Cruces.

Public Safety Aide means a Public Safety Aide of the Las Cruces Police Department.

Registered Owner means the owner or owners of a vehicle according to the license plate number or information obtained from the Department of Motor Vehicles, from similar motor vehicle agencies outside New Mexico, from information obtained from the Las Cruces Municipal Court, from the Dona Ana County Magistrate Court, from Department records, from a CSD or from any other documentation or methods reasonably relied upon by Police Officers. The singular includes the plural.

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

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

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

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

Violation or Offense means a violation of this Article.

~~**Section 5. A new Section 27-7.4 LCMC 1997 is ordained to read:**~~

Sec. 27-7.4 ~~[NEW MATERIAL]~~ Violation.

Any violation of Section 27-12-5-6 or Section 27-12-6-1.2 of the City's Municipal Code is a violation of this Article. This Article does not apply to authorized emergency

vehicles responding to an emergency. This Article 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 6. A new Section 27-7.5 LCMC 1997 is ordained to read:**~~

Sec. 27-7.5 ~~[NEW MATERIAL]~~ Enforcement.

(a) *Criminal Violation Observed by Police Officer.* This Article 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 City of Las Cruces Traffic Code in the usual manner.

(b) *Violation Recorded by CSD.* The Contractor shall provide all evidence of a CSD recorded violation to a Police Officer. A Police Officer shall review all CSD evidence provided by the Contractor. If the Police Officer determines that a violation has occurred, the Police Officer shall cause a STOP fine notification to be delivered to the registered owner. The registered owner is strictly and vicariously liable for the violation unless one of the exceptions herein applies. If there is more than one registered owner, all registered owners shall be jointly and severally liable.

(c) *STOP Fine Notification.*

(1) Form and contents. The STOP fine notification shall state and contain the name of the registered owner or owners or nominee, the effective date of the STOP fine notification, the type of violation, the date, time, and location of the violation, a picture of the violation, the license number of the vehicle, the name and identification of the issuing Police Officer, the amount of the fine, whether the fine is a first or subsequent offense, the response due date and the address of the Department. The STOP fine notification shall conspicuously and in bold face type state; "Failure to pay this fine on time will lead to serious legal consequences including the loss of your vehicle and the assessment of additional fines and monies due. A second or subsequent STOP violation within two years from the date of this STOP fine notification will lead to increasing ~~fines and~~ penalties including the loss of the subject vehicle. After

you have received this STOP fine notification, it is unlawful to sell, transfer, or otherwise convey title to the subject motor vehicle to another person unless all applicable STOP fines are paid." The STOP fine notification shall include an owner's affidavit form. The STOP fine notification shall contain a return envelope addressed to the Contractor or the Department. The STOP fine notification shall inform the registered owner or the nominee of the right to request a hearing by so indicating in a space provided on the form and returning same to the Department.

(2) Delivery. The STOP fine notification shall be delivered to the address of the registered owner according to the address registered with the Department of Motor Vehicles or to the address of the nominee according to the owner's affidavit. The registered owner has a duty to timely notify DMV of a change of address and the failure to do so does not entitle the registered owner to assert the defense of inadequate notice. The mailing of a STOP fine notification to the address of the registered owner of a vehicle according to the records of DMV or to the address of the nominee according to the owner's affidavit is constructive notice of a STOP fine notification.

(d) *Response to a STOP Fine Notification.* Within 35 days from the effective date, the registered owner shall pay the fine, file an owner's affidavit making a nomination, or request a hearing. To pay the fine, the recipient shall deliver the STOP fine notification with payment to the City or to the Contractor according to the instructions on the STOP fine notification. To make a nomination, the recipient shall return the STOP fine notification with a completed owner's affidavit to the Contractor. To request a hearing, the recipient shall return the STOP fine notification with the request for hearing to the ~~Hearing Officer~~ Department. ~~There is no fee to request a hearing.~~ Three days for mailing is not allowed and the response shall be actually received no later than 35 consecutive days (including holidays) from the effective date. The Department ~~and Hearing Officer~~ shall forthwith notify the Contractor concerning the receipt of a request for hearing. If the fine has not been paid, there has been no nomination or a request for a hearing within 35 days from the effective date, the Contractor shall send written notice of default to the Department and the registered owner or nominee or both.

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

(2) Appeal. The recipient of the STOP fine notification may request a hearing by so indicating and returning the STOP fine notification to the ~~Hearing Officer~~ Department within 35 days of the effective date. ~~There is no fee for a hearing.~~ The Hearing Officer shall schedule a hearing.

(3) Nomination. Any registered owner who was not driving the vehicle at the time of the violation may either accept the responsibility or identify the driver so the Contractor can send a notice of violation to the driver. The nomination procedure described in this paragraph is available to any registered owner and is not limited to corporations and governmental entities. If the registered owner claims that another person was driving the vehicle at the time of the violation, the registered owner shall so indicate on the owner's affidavit and identify the person who was driving the vehicle. The Contractor shall forthwith deliver the STOP fine notification and owner's affidavit to the Department to the attention of the issuing Police Officer. The Police Officer may send a new STOP fine notification to the nominee or cause the Contractor to deliver a new STOP fine notification to the nominee. The effective date of the STOP fine notification sent to the nominee is the day the STOP fine notification is issued to the nominee as indicated on the face of the new STOP fine notification. If the nominee successfully appeals the allegation that he or she was the driver or defaults the City may proceed against the registered owner by issuing a subsequent STOP fine notification to the registered owner with the effective date being the date so indicated on the face of the subsequent STOP fine notification. If the City cannot assert jurisdiction over the nominee, the registered owner is responsible, subject to the remaining defenses available in this Article. Any registered owner who submits an

owner's affidavit does so under penalty of perjury. If the registered owner operates a business that uses a fleet of one or more vehicles and nominated the driver on a previous violation and the driver paid the fine or otherwise cleared the violation, a subsequent violation pertaining to the fleet vehicle shall not be considered a second, third or subsequent offense regarding that vehicle unless driven by the same driver. Without limitation on the foregoing, nomination may be used when:

~~(a)~~(i) The registered owner is the United States of America, State of New Mexico, County of Dona Ana or any other governmental entity that owns a vehicle that was being driven by a natural person who was the employee, contractor or agent of the business, corporation or other non-natural entity at the time of the alleged violation. Said entities shall nominate and identify the driver.

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

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

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

(e) *Default.* If the City does not receive payment of the fine, a nomination or a request for a hearing within 35 days from the effective date, the registered owner is in default. Default automatically results in liability to the registered owner for the violation and the registered owner is barred from requesting or obtaining any hearing on the merits of the STOP fine after the date of the default. A default results in an additional penalty of $25. The Department shall cause the Contractor to mail the notice of default to the defaulting party. The notice of default shall inform the recipient that they have 20 days from the date of mailing of the notice of default to pay the fine or request a hearing

from the ~~Hearing Officer~~ Department. If the default is not cured, the City may pursue all remedies for collection of a debt and is entitled to an award of reasonable attorney's fees incurred. An uncured notice of default shall be entered into the records of the Department and any Police Officer who discovers a vehicle in the City in the course of a traffic stop or otherwise may seize the vehicle for unpaid fines. The registered owner is liable for a default by a nominee.

(f) *Hearing.* ~~In the event of a demand for a hearing, the Hearing Officer shall hold a hearing within 90 days from the date of the request for hearing unless a continuance is granted pursuant to the consent of the parties. The hearing does not need to be held within 90 days if a continuance is granted.~~ The Hearing Officer is in charge of the proceedings and may exclude any person for inappropriate conduct. ~~The rules of evidence are relaxed.~~ The Department has the burden to prove by a preponderance of the evidence that the violation occurred. The respondent has the burden to prove any defenses by a preponderance of the evidence. A photograph, videotape or other electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence by the Hearing Officer. The respondent may challenge the weight or accuracy of the evidence. If the Department prevails, the respondent shall pay the fine. The Hearing Officer shall render a decision in writing ~~in ten days~~ and provide the decision to the Department and the Finance Department. Failure to pay a fine as ordered by the Hearing Officer within ten consecutive days from the date of the decision is a default and will apply against the vehicle without service of a notice of default. Following a hearing, the respondent may appeal the decision of the Hearing Officer, pursuant to Rule 1-074 of the Rules of Civil Procedure, to the Third Judicial District Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

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

(1) The vehicle was stolen or otherwise being driven without the registered owner's knowledge or permission at the time of the alleged violation. The

registered owner shall have a police report pertaining to the theft to avail the owner of this defense.

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

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

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

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

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

(h) *Fine.*

(1) The fine for the ~~first~~ violation for running a red light or speeding is $100. ~~The fine for a second violation is $125. The fine for a third or subsequent violation for running a red light within two years from the date of the first violation is $175.~~

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

~~(a) Up to and including ten miles per hour over the speed limit: $80;~~

~~(b) From 11 up to and including 15 miles per hour over the speed limit: $100;~~

~~(c) From 16 up to and including 20 miles per hour over the speed limit: $125;~~

~~(d) From 21 up to and including 25 miles per hour over the speed limit: $150;~~

~~(e) From 26 up to and including 30 miles per hour over the speed limit: $175;~~

~~(f) From 31 up to and including 35 miles per hour over the speed limit: $200;~~

~~(g) More than 35 miles per hour over the speed limit: $250.~~

~~(3) The City Manager may allow services to the City as an alternative to payment of fines. A violator who elects to avail themselves of the option of service to the City in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits conferred upon City employees, including, without limitation, workers compensation. The City is not responsible for damages incurred except as otherwise provided by law. The person seeking relief hereunder shall timely request the option of service to the City in lieu of payment of a fine by requesting a hearing before a Hearing Officer at which to demonstrate that the person eligible for the option and shall not be in default on payment of other fines levied by the City of Las Cruces. If the Hearing Officer approves the person for relief under this paragraph, the City Manager shall enter a settlement agreement whereby the person shall provide services to the City in lieu of payment of a fine. No person who cannot pass the background check to qualify as a volunteer may obtain relief under this paragraph. Services shall be rendered in not less than full hour increments and shall be credited against the fine payable at $10.00 per hour.~~

~~(4) In addition to Fines set forth in Paragraph H above, the violator will pay the following fees:~~

~~(a) Judicial education fee . . . . . $2.00~~

~~(b) Court automation fee . . . . . $6.00~~

~~(5) All money collected pursuant to Paragraph H of subsection (4)(a) of this section shall be remitted monthly to the state treasurer for credit to the judicial education fund and shall be used for the education and training, including production of bench books and other written materials, of municipal judges and other municipal court employees.~~

~~(6) All money collected pursuant to Paragraph H of subjection (4)(b) of this section shall be remitted monthly to the state treasurer for credit to the municipal court automation fund and shall be used for the purchase and maintenance of court automation systems in the municipal courts. The court automation system shall have the capability of providing, on a timely basis, electronic records in a format specified by the judicial information systems council.~~

(i) *Seizure.* A Police Officer may seize or immobilize a vehicle for 90 days pursuant to the provisions of Article 27-6 LCMC 1997 upon discovery of a vehicle in the City with unpaid STOP fines. If the registered owner fails to cure the default and pay all impound and storage fees, the vehicle is subject to forfeiture under Article 27-6 LCMC 1997. If a non-Las Cruces resident defaults, the Department shall immobilize the vehicle of a delinquent or defaulting party for 90 days if said vehicle is found in the City limits any time within ten years of any violation of this Article.

~~Section 7. A new Section 27-7.6 LCMC 1997 is ordained to read:~~

Sec. 27-7.6 ~~[NEW MATERIAL]~~ Administration.

(a) The Department shall be responsible for administration of this Article. Reasonable rules and regulations may be promulgated by the City Manager or his designee to carry out the intent and purpose of this Article.

(b) The City Manager may establish a STOP ombudsman to address and resolve citizen grievances with STOP procedures and technical issues regarding automated enforcement technology.

(c) Any and all revenue obtained through the Las Cruces Safe Traffic Operations Program shall be used by the Las Cruces Police Department and the City's Traffic Engineering Department for service enhancement and public safety.

~~Section 8. A new Section 27-7.7 LCMC 1997 is ordained to read:~~

Sec. 27-7.7 ~~[NEW MATERIAL.]~~ Severability.

If any section, paragraph, sentence or clause of this section is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this section. The City Council hereby declares that it would have passed this section irrespective of any provision being declared unconstitutional or otherwise invalid. Additionally, should any provision of this

section conflict with a provision of another applicable civil law or regulation relating to STOP, the stricter provision shall apply, unless more specifically preempted, in which case, the severability provision above will govern.

1 AN ACT

2 RELATING TO NUISANCE ORDINANCES; RAISING CERTAIN NUISANCE
3 VIOLATION PENALTIES AND FEES; ESTABLISHING PROCEDURE FOR
4 CHALLENGES TO THE IMPOSITION OF PENALTIES FOR THE VIOLATION
5 OF CERTAIN NUISANCE ORDINANCES; PROVIDING FOR DISTRIBUTION OF
6 PENALTIES AND FEES; REQUIRING AN AUDIT; MAKING AN
7 APPROPRIATION.
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:
10 Section 1. Section 3-18-17 NMSA 1978 (being Laws 1965,
11 Chapter 300, Section 14-17-14, as amended) is amended to
12 read:
13 "3-18-17. NUISANCES AND OFFENSES--REGULATION OR
14 PROHIBITION.--A municipality, including a home rule
15 municipality that has adopted a charter pursuant to Article
16 10, Section 6 of the constitution of New Mexico, may by
17 ordinance:
18 A. define a nuisance, abate a nuisance and impose
19 penalties upon a person who creates or allows a nuisance to
20 exist; provided that:
21 (1) the total amount of assessed penalties,
22 fines, fees and costs imposed by an ordinance for failure to
23 obey a traffic sign or signal, including a red light offense
24 or violation, or for a speeding offense or violation shall
25 not exceed one hundred dollars ($100), provided that the

Attachment "1"

1 total for unlawful parking in a space or for blocking an
2 access intended for persons with significant mobility
3 limitation shall not be less than or exceed the fines
4 provided in Section 66-7-352.5 NMSA 1978;
5 (2) in a municipality with a population of
6 two hundred thousand or greater as of the last federal
7 decennial census, the penalties, fines, fees, costs and
8 procedure imposed for failure to obey a traffic sign or
9 signal, including a red light offense or violation, or for a
10 speeding offense or violation shall be subject to the
11 following:
12 (a) each month, or other period set by
13 contract, the municipality shall retain from the gross total
14 amount of penalties, fines, fees and costs assessed and
15 collected that month or period an amount subject to audit
16 that is equal to the sum of the setup, maintenance, support
17 and processing services fees charged for that month or period
18 pursuant to contractual terms by a vendor providing systems
19 and services that assist the municipality in imposing
20 penalties or fines and costs or fees as provided in Paragraph
21 (1) of this subsection;
22 (b) less the retention authorized in
23 Subparagraph (a) of this paragraph: 1) one-half of the net
24 total amount assessed in penalties, fines, fees and costs by
25 the municipality shall be remitted to the state treasurer and

1 distributed to the administrative office of the courts, of
2 which ten percent shall be credited to DWI drug court
3 programs and ninety percent shall be transferred to the New
4 Mexico finance authority for deposit into the metropolitan
5 court bond guarantee fund; and 2) one-half shall be retained
6 by the municipality for municipal traffic safety programs and
7 to offset the municipality's reasonable costs directly
8 related to administering a program imposing penalties or
9 fines and costs or fees as provided in Paragraph (1) of this
10 subsection;
11 (c) in fiscal year 2009, and annually
12 thereafter, the municipality shall cause an audit of the
13 program and contract described in Subparagraph (a) of this
14 paragraph to be conducted by the state auditor or an
15 independent auditor selected by the state auditor;
16 (d) if in the audit conducted pursuant
17 to Subparagraph (c) of this paragraph it is determined that
18 any amount retained by the municipality pursuant to this
19 paragraph is in excess of the amount the municipality is
20 authorized to retain, the municipality shall remit, when the
21 audit is finalized, the amount in excess to the state
22 treasurer to be distributed and transferred as provided in
23 Item 1) of Subparagraph (b) of this paragraph; and
24 (e) a hearing provided for a contested
25 nuisance ordinance offense or violation shall be held by a

1 hearing officer appointed by the presiding judge of the civil
2 division of the district court with jurisdiction over the
3 municipality, and the hearing itself shall be conducted
4 following the rules of evidence and civil procedure for the
5 district courts. The burden of proof for violations and
6 defenses is a preponderance of the evidence. A determination
7 by the hearing officer shall not impose a total amount of
8 penalties, fines, fees and costs in excess of that provided
9 in the nuisance ordinance; and
10 (3) in a municipality other than a
11 municipality with a population of two hundred thousand or
12 greater as of the last federal decennial census, the
13 penalties, fines, fees, costs and procedure imposed for
14 failure to obey a traffic sign or signal, including a red
15 light offense or violation, or for a speeding offense or
16 violation shall be subject to the following:
17 (a) each month, or other period set by
18 contract, the municipality shall retain from the gross total
19 amount of penalties, fines, fees and costs assessed and
20 collected that month or period an amount subject to audit
21 that is equal to the sum of the setup, maintenance, support
22 and processing services fees charged for that month or period
23 pursuant to contractual terms by a vendor providing systems
24 and services that assist the municipality in imposing
25 penalties or fines and costs or fees as provided in Paragraph

1 (1) of this subsection;

2 (b) less the retention authorized in
3 Subparagraph (a) of this paragraph: 1) one-half of the net
4 total amount assessed in penalties, fines, fees and costs by
5 the municipality shall be remitted to the state treasurer, of
6 which sixty-five percent shall be credited to the court
7 automation fund, twenty percent to the traffic safety
8 education and enforcement fund and fifteen percent to the
9 judicial education fund; and 2) one-half of the net total
10 amount assessed in penalties, fines, fees and costs shall be
11 retained by the municipality for municipal traffic safety
12 programs and to offset the municipality's reasonable costs
13 directly related to administering a program imposing
14 penalties or fines and costs or fees as provided in Paragraph
15 (1) of this subsection;

16 (c) in fiscal year 2009, and annually
17 thereafter, the municipality shall cause an audit of the
18 program and contract described in Subparagraph (a) of this
19 paragraph and the money collected and distributed pursuant to
20 this paragraph to be conducted by the state auditor or an
21 independent auditor selected by the state auditor;

22 (d) if in the audit conducted pursuant
23 to Subparagraph (c) of this paragraph it is determined that
24 any amount retained by the municipality pursuant to this
25 paragraph is in excess of the amount the municipality is

1 authorized to retain, the municipality shall remit, when the
2 audit is finalized, the amount in excess to the state
3 treasurer to be distributed and transferred as provided in
4 Item 1) of Subparagraph (b) of this paragraph; and
5 (e) a hearing provided for a contested
6 nuisance ordinance offense or violation shall be held by a
7 hearing officer appointed by the presiding judge of the civil
8 division of the district court with jurisdiction over the
9 municipality, and the hearing itself shall be conducted
10 following the rules of evidence and civil procedure for the
11 district courts. The burden of proof for offenses or
12 violations and defenses is a preponderance of the evidence.
13 A determination by the hearing officer shall not impose a
14 total amount of penalties, fines, fees and costs in excess of
15 that provided in the nuisance ordinance;
16 B. regulate or prohibit any amusement or practice
17 that tends to annoy persons on a street or public ground; and
18 C. prohibit and suppress:
19 (1) gambling and the use of fraudulent
20 devices or practices for the purpose of obtaining money or
21 property;
22 (2) the sale, possession or exhibition of
23 obscene or immoral publications, prints, pictures or
24 illustrations;
25 (3) public intoxication;

(4) disorderly conduct; and

(5) riots, noises, disturbances or disorderly assemblies in any public or private place."

Attachment "1"

COUNCIL BILL NO. 09-032
ORDINANCE NO. 2495

AN ORDINANCE REPEALING COUNCIL BILL NO. 09-011; ORDINANCE NO. 2474 ADOPTED ON SEPTEMBER 15, 2008 AND ENACTING SECTION 27-7, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE, DETECTED BY A CAMERA OR SPEED DEVICE.

The City Council is informed that:

WHEREAS, City Council approved Ordinance No. 2474 on September 15, 2008 enacting the Safe Traffic Operations Program,

WHEREAS, City staff has since reviewed the ordinance and noted the need to clarify some sections of the original ordinance,

WHEREAS, repealing the current ordinance and enacting a new section will clarify the language in order to enhance a clear understanding of the law.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the Section 27-7 as shown on Exhibit "A" and attached hereto and made part of this Ordinance, is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 5th day of January, ~~2008.~~ 2009

APPROVED:

(SEAL)

Mayor

Attachment "2"

ATTEST:

City Clerk

Moved by: Jones

Seconded by: Silva

APPROVED AS TO FORM:

Asst City Attorney

VOTE:

Mayor Miyagishima:	Aye
Councillor Silva:	Aye
Councillor Connor:	Aye
Councillor Archuleta:	Aye
Councillor Small:	Aye
Councillor Jones:	Aye
Councillor Thomas:	Aye

Attachment "2"

EXHIBIT "A"

Section 1. A new Article 27-7 and subsequent subsections LCMC 1997 is enacted to read as follows:

27-7 [NEW MATERIAL.] SAFE TRAFFIC OPERATIONS PROGRAM

Section 2. A new Section 27-7.1 LCMC 1997 is enacted to read:

27-7.1 [NEW MATERIAL.] Short Title. Article 27-7.1 and its subsection LCMC 1997 shall be referred to as the Safe Traffic Operations Program ("STOP") and may sometimes be referred to as "this Article."

Section 3. A new Section 27-7.2 LCMC 1997 is ordained to read:

27-7.2 [NEW MATERIAL.] Findings and Intent

A. The governing body finds that there is a significant risk to the health and safety of the community from drivers who run red lights and exceed the posted speed limits. The governing body finds that the City of Las Cruces has a serious injury rate resulting from red light violations within the City. Drivers in the City shall progress away from the attitude that a red light is merely a suggestion to stop toward an appreciation that red light violations injure and even kill too many of our citizens. The governing body finds that red light violations are a nuisance. Within the City of Las Cruces, red light violations are a great matter of local concern due to high traffic volume and crowded intersections. The governing body finds that the State legislature does not intend for the State of New Mexico Motor Vehicle Code to apply statewide to the exclusion of local traffic laws.

B. The governing body finds that many municipalities across the state have experienced substantial decreases in red light violations by using red light cameras. The governing body finds that red light cameras produce reliable evidence of red light violations. The governing body finds that it is reasonable for Police Officers to rely on red light camera evidence even if the officer did not personally observe the violation. The governing body finds that red light cameras save lives and make our streets safer.

C. Red light violations are a nuisance that shall be abated by the assessment of fines to compensate the City and tax payers who do not commit these violations. Drivers who fail or refuse to pay the fines and repeatedly run red lights create a severe nuisance that will not be abated unless the City temporarily seizes the cars of drivers and thus removes the instrumentality used to create this nuisance. The governing body finds that the current penalty under state law

Attachment "2"

for running a red light is inadequate to meaningfully address the nuisance and that the City must implement meaningful civil remedial measures that will stop red light violations making the City's streets safer and saving lives. Red light violations are causally connected to death or serious injury to a degree not evident with regard to other traffic infractions.

D. The governing body finds that some drivers in the City repeatedly violate posted speed limits. The governing body finds that State law against speeding does not prevent the City from having provisions in its ordinance to provide for public safety on its streets. The governing body finds that implementation of enforcement of speed limits by means of photographic and electronic equipment will abate the nuisance of speeding.

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

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

Section 4. A new Section 27-7.3 LCMC 1997 is ordained to read:

27-7.3 [NEW MATERIAL.] Definitions. For the purposes of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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

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

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

City means the City of Las Cruces.

City Clerk means the City Clerk of the City.

City Manager means the City Manager of the City of Las Cruces.

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

Default means the failure to pay a STOP fine or to timely pay a fine pursuant to a decision of a Hearing Officer under this Article.

Delivery or Delivered means the mailing of a STOP fine notification to a registered owner or nominee or personal service of a STOP fine notification or Hearing Officer decision on a registered owner or nominee.

Department means the City's Police Department which is the agency of the City that employs the Police Officer who issues a STOP fine notification or causes a STOP fine notification to be issued.

Department of Motor Vehicles or DMV means the Motor Vehicle Division of the Taxation and Revenue Department of the State of New Mexico or its successor agencies.

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

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

Finance Department means the City's Financial Services Department.

Hearing Officer means a City Hearing Officer, as appointed by the City Manager.

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

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

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

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

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

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

Police Officer means a sworn member of the Las Cruces Police Department, Dona Ana County Sheriff's Office, the New Mexico State Police, or any other public official with authority to stop a vehicle for a traffic violation in the City of Las Cruces.

Public Safety Aide means a Public Safety Aide of the Las Cruces Police Department.

Registered Owner means the owner or owners of a vehicle according to the license plate number or information obtained from the Department of Motor Vehicles, from similar motor vehicle agencies outside New Mexico, from information obtained from the Las Cruces Municipal Court, from the Dona Ana County Magistrate Court, from Department records, from a CSD or from any other documentation or methods reasonably relied upon by Police Officers. The singular includes the plural.

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

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

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

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

Violation or Offense means a violation of this Article.

Section 5. A new Section 27-7.4 LCMC 1997 is ordained to read:

27-7.4 [NEW MATERIAL.] Violation. Any violation of Section 27-12-5-6 or Section 27-12-6-1.2 of the City's Municipal Code is a violation of this Article. This Article does not apply to authorized emergency vehicles responding to an emergency. This Article 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 6. A new Section 27-7.5 LCMC 1997 is ordained to read:

27-7.5 [NEW MATERIAL.] Enforcement.

A. *Criminal Violation Observed by Police Officer.* This Article 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 City of Las Cruces Traffic Code in the usual manner.

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

C. *STOP Fine Notification.*

(1) Form and contents. The STOP fine notification shall state and contain the name of the registered owner or owners or nominee, the effective date of the STOP fine notification, the type of violation, the date, time, and location of the violation, a picture of the violation, the license number of the vehicle, the name and identification of the issuing Police Officer, the amount of the fine, whether the fine is a first or subsequent offense, the response due date and the address of the Department. The STOP fine notification shall conspicuously and in bold face type state; "Failure to pay this fine on time will lead to serious legal consequences including the loss of your vehicle and the assessment of additional fines and monies due. A second or subsequent STOP violation within two years from the date of this STOP fine notification will lead to increasing fines and penalties including the loss of the subject vehicle. After you have received this STOP fine notification, it is unlawful to sell, transfer, or otherwise convey title to the subject motor vehicle to another person unless all applicable STOP fines are paid." The STOP fine notification shall include an owner's affidavit form. The STOP fine notification shall contain a return envelope addressed to the Contractor or the Department. The STOP fine notification shall inform the registered owner or the nominee of the right to request a

hearing by so indicating in a space provided on the form and returning same to the Department.

(2) Delivery. The STOP fine notification shall be delivered to the address of the registered owner according to the address registered with the Department of Motor Vehicles or to the address of the nominee according to the owner's affidavit. The registered owner has a duty to timely notify DMV of a change of address and the failure to do so does not entitle the registered owner to assert the defense of inadequate notice. The mailing of a STOP fine notification to the address of the registered owner of a vehicle according to the records of DMV or to the address of the nominee according to the owner's affidavit is constructive notice of a STOP fine notification.

D. *Response to a STOP Fine Notification.* Within 35 days from the effective date, the registered owner shall pay the fine, file an owner's affidavit making a nomination, or request a hearing. To pay the fine, the recipient shall deliver the STOP fine notification with payment to the City or to the Contractor according to the instructions on the STOP fine notification. To make a nomination, the recipient shall return the STOP fine notification with a completed owner's affidavit to the Contractor. To request a hearing, the recipient shall return the STOP fine notification with the request for hearing to the Hearing Officer. There is no fee to request a hearing. Three days for mailing is not allowed and the response shall be actually received no later than 35 consecutive days (including holidays) from the effective date. The Department and Hearing Officer shall forthwith notify the Contractor concerning the receipt of a request for hearing. If the fine has not been paid, there has been no nomination or a request for a hearing within 35 days from the effective date, the Contractor shall send written notice of default to the Department and the registered owner or nominee or both.

(1) Payment of STOP fine. Upon receipt of the STOP fine notification, the recipient may elect to admit the violation and pay the fine. To proceed under this section, the recipient shall admit the violation by signing and dating the STOP fine notification on a space provided and returning the STOP fine notification with payment to the Contractor or to the City within 35 days. The City may, but is not required to, adopt procedures for alternative methods of payment of fines using the internet or other on-line services.

There shall be a $50 penalty for any payment tendered that is not honored or is returned for any reason.

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

(3) Nomination. Any registered owner who was not driving the vehicle at the time of the violation may either accept the responsibility or identify the driver so the Contractor can send a notice of violation to the driver. The nomination procedure described in this paragraph is available to any registered owner and is not limited to corporations and governmental entities. If the registered owner claims that another person was driving the vehicle at the time of the violation, the registered owner shall so indicate on the owner's affidavit and identify the person who was driving the vehicle. The Contractor shall forthwith deliver the STOP fine notification and owner's affidavit to the Department to the attention of the issuing Police Officer. The Police Officer may send a new STOP fine notification to the nominee or cause the Contractor to deliver a new STOP fine notification to the nominee. The effective date of the STOP fine notification sent to the nominee is the day the STOP fine notification is issued to the nominee as indicated on the face of the new STOP fine notification. If the nominee successfully appeals the allegation that he or she was the driver or defaults the City may proceed against the registered owner by issuing a subsequent STOP fine notification to the registered owner with the effective date being the date so indicated on the face of the subsequent STOP fine notification. If the City cannot assert jurisdiction over the nominee, the registered owner is responsible, subject to the remaining defenses available in this Article. Any registered owner who submits an owner's affidavit does so under penalty of perjury. If the registered owner operates a business that uses a fleet of one or more vehicles and nominated the driver on a previous violation and the driver paid the fine or otherwise cleared the violation, a subsequent violation pertaining to the fleet vehicle shall not be considered a second, third or subsequent offense regarding that

vehicle unless driven by the same driver. Without limitation on the foregoing, nomination may be used when:

(a) The registered owner is the United States of America, State of New Mexico, County of Dona Ana or any other governmental entity that owns a vehicle that was being driven by a natural person who was the employee, contractor or agent of the business, corporation or other non-natural entity at the time of the alleged violation. Said entities shall nominate and identify the driver.

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

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

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

E. *Default.* If the City does not receive payment of the fine, a nomination or a request for a hearing within 35 days from the effective date, the registered owner is in default. Default automatically results in liability to the registered owner for the violation and the registered owner is barred from requesting or obtaining any hearing on the merits of the STOP fine after the date of the default. A default results in an additional penalty of $25. The Department shall cause the Contractor to mail the notice of default to the defaulting party. The notice of default shall inform the recipient that they have 20 days from the date of mailing of the notice of default to pay the fine or request a hearing from the Hearing Officer. If the default is not cured, the City may pursue all remedies for collection of a debt and is entitled to an award of reasonable attorney's fees incurred. An uncured notice of default shall be entered into the records of the Department and any Police Officer who discovers a vehicle in the City in the

course of a traffic stop or otherwise may seize the vehicle for unpaid fines. The registered owner is liable for a default by a nominee.

F. *Hearing.* In the event of a demand for a hearing, the Hearing Officer shall hold a hearing within 90 days from the date of the request for hearing unless a continuance is granted pursuant to the consent of the parties. The hearing does not need to be held within 90 days if a continuance is granted. The Hearing Officer is in charge of the proceedings and may exclude any person for inappropriate conduct. The rules of evidence are relaxed. The Department has the burden to prove by a preponderance of the evidence that the violation occurred. The respondent has the burden to prove any defenses by a preponderance of the evidence. A photograph, videotape or other electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence by the Hearing Officer. The respondent may challenge the weight or accuracy of the evidence. If the Department prevails, the respondent shall pay the fine. The Hearing Officer shall render a decision in writing in ten days and provide the decision to the Department and the Finance Department. Failure to pay a fine as ordered by the Hearing Officer within ten consecutive days from the date of the decision is a default and will apply against the vehicle without service of a notice of default. Following a hearing, the respondent may appeal the decision of the Hearing Officer, pursuant to Rule 1-074 of the Rules of Civil Procedure, to the Third Judicial District Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

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

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

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

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

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

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

(6) The registered owner did not receive notice because the STOP fine notification was not mailed to the address of record with the DMV.

H. *Fine.*

(1) The fine for the first violation for running a red light is $100. The fine for a second violation is $125. The fine for a third or subsequent violation for running a red light within two years from the date of the first violation is $175.

(2) The fines for speeding are as follows:

(a) Up to and including ten miles per hour over the speed limit: $80;

(b) From 11 up to and including 15 miles per hour over the speed limit: $100;

(c) From 16 up to and including 20 miles per hour over the speed limit: $125;

(d) From 21 up to and including 25 miles per hour over the speed limit: $150;

(e) From 26 up to and including 30 miles per hour over the speed limit: $175;

(f) From 31 up to and including 35 miles per hour over the speed limit: $200;

(g) More than 35 miles per hour over the speed limit: $250.

(3) The City Manager may allow services to the City as an alternative to payment of fines. A violator who elects to avail themselves of the option of service to the City in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits

conferred upon City employees, including, without limitation, workers compensation. The City is not responsible for damages incurred except as otherwise provided by law. The person seeking relief hereunder shall timely request the option of service to the City in lieu of payment of a fine by requesting a hearing before a Hearing Officer at which to demonstrate that the person eligible for the option and shall not be in default on payment of other fines levied by the City of Las Cruces. If the Hearing Officer approves the person for relief under this paragraph, the City Manager shall enter a settlement agreement whereby the person shall provide services to the City in lieu of payment of a fine. No person who cannot pass the background check to qualify as a volunteer may obtain relief under this paragraph. Services shall be rendered in not less than full hour increments and shall be credited against the fine payable at $10.00 per hour.

(4) In addition to Fines set forth in Paragraph H above, the violator will pay the following fees:

(a) Judicial education fee $2.00

(b) Court automation fee $6.00

(5) All money collected pursuant to Paragraph H of subsection (4)(a) of this section shall be remitted monthly to the state treasurer for credit to the judicial education fund and shall be used for the education and training, including production of bench books and other written materials, of municipal judges and other municipal court employees.

(6) All money collected pursuant to Paragraph H of subjection (4)(b) of this section shall be remitted monthly to the state treasurer for credit to the municipal court automation fund and shall be used for the purchase and maintenance of court automation systems in the municipal courts. The court automation system shall have the capability of providing, on a timely basis, electronic records in a format specified by the judicial information systems council

I. *Seizure.* A Police Officer may seize or immobilize a vehicle for 90 days pursuant to the provisions of Article 27-6 LCMC 1997 upon discovery of a vehicle in the City with unpaid STOP fines. If the registered owner fails to cure the default and pay all impound and storage fees, the vehicle is subject to forfeiture under Article 27-6 LCMC 1997. If a non-Las Cruces

resident defaults, the Department shall immobilize the vehicle of a delinquent or defaulting party for 90 days if said vehicle is found in the City limits any time within ten years of any violation of this Article.

Section 7. A new Section 27-7.6 LCMC 1997 is ordained to read:

27-7.6 [NEW MATERIAL.] Administration.

A. The Department shall be responsible for administration of this Article. Reasonable rules and regulations may be promulgated by the City Manager or his designee to carry out the intent and purpose of this Article.

B. The City Manager may establish a STOP ombudsman to address and resolve citizen grievances with STOP procedures and technical issues regarding automated enforcement technology.

C. Any and all revenue obtained through the Las Cruces Safe Traffic Operations Program shall be used by the Las Cruces Police Department and the City's Traffic Engineering Department for service enhancement and public safety.

Section 8. A new Section 27-7.7 LCMC 1997 is ordained to read:

27-7.7 [NEW MATERIAL.] Severability. If any section, paragraph, sentence or clause of this section is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this section. The City Council hereby declares that it would have passed this section irrespective of any provision being declared unconstitutional or otherwise invalid. Additionally, should any provision of this section conflict with a provision of another applicable civil law or regulation relating to STOP, the stricter provision shall apply, unless more specifically preempted, in which case, the severability provision above will govern.

Attachment "A"

COUNCIL BILL NO. 09-011
ORDINANCE NO. 2474

AN ORDINANCE ENACTING LCMC 1997 SECTION 27-7 ET SEQ, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE DETECTED BY A CAMERA OR SPEED DEVICE.

The City Council is informed that:

WHEREAS, NMSA 1978, 3-17-1A, allows for the City of Las Cruces ("the City") to provide for the safety, and to preserve the health, and improve the comfort and convenience of the municipality and its citizens; and

WHEREAS, NMSA 1978, 3-18-1F, allows the municipality to preserve peace and order within the municipality; and

WHEREAS, NMSA 1978 3-49-1A, allows a municipality to regulate the use of its streets. It also allows the City to establish ordinances consistent with this power; and

WHEREAS, the City for the protection of its residents has also enacted the New Mexico Uniform Traffic Ordinance as amended LCMC 1997, Sect 27-1 et seq; and

WHEREAS, the State has not preempted the City from enacting a Safe Traffic Operations Program (STOP) Ordinance; and

WHEREAS, the enactment of STOP will allow the use of cameras to enforce red light and speeding violations and allow the implementation of civil remedial measures to address red light and speeding violations.

NOW, THEREFORE, Be it resolved by the governing body of the City of

Las Cruces:

(I)

THAT the Safe Traffic Operations Program (STOP) is hereby enacted.

(II)

THAT Article 27-7 and subsections 27-7.1 through 27-7.7 are hereby added to the LCMC 1997.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 15th day of September 2008.

APPROVED:

(SEAL)

Mayor

ATTEST:

City Clerk

VOTE:

Mayor Miyagishima	Aye
Councillor Silva	Aye
Councillor Connor	Aye
Councillor Archuleta	Aye
Councillor Small	Aye
Councillor Jones	Aye
Councillor Thomas	Aye

Moved by : Archuleta

Seconded by: Silva

APPROVED AS TO FORM:

City Attorney

Attachment "2"

COUNCIL BILL NO._____
ORDINANCE NO._____

AN ORDINANCE ENACTING LCMC 1997 SECTION 27-7, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE DETECTED BY A CAMERA OR SPEED DEVICE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

Section 1. A new Article 27-7 and subsequent subsections LCMC 1997 is enacted to read as follows:

27-7 [NEW MATERIAL.] SAFE TRAFFIC OPERATIONS PROGRAM

Section 2. A new Section 27-7.1 LCMC 1997 is enacted to read:

27-7.1 [NEW MATERIAL.] Short Title. Article 27-7.1 and its subsection LCMC 1997 shall be referred to as the Safe Traffic Operations Program ("STOP") and may sometimes be referred to as "this Article."

Section 3. A new Section 27-7.2 LCMC 1997 is ordained to read:

27-7.2 [NEW MATERIAL.] Findings and Intent

A. The governing body finds that there is a significant risk to the health and safety of the community from drivers who run red lights and exceed the posted speed limits. The governing body finds that the City of Las Cruces has a serious injury rate resulting from red light violations within the City. Drivers in the City shall progress away from the attitude that a red light is merely a suggestion to stop toward an appreciation that red light violations injure and even kill too many of our citizens. The governing body finds that red light violations are a nuisance. Within the City of Las Cruces, red light violations are a great matter of local concern due to high traffic volume and crowded intersections. The governing body finds that the State legislature does not intend for the State of New Mexico Motor Vehicle Code to apply statewide to the exclusion of local traffic laws.

B. The governing body finds that many municipalities across the state have experienced substantial decreases in red light violations by using red light cameras. The governing body finds that red light cameras produce reliable evidence of red light violations. The governing body finds that it is reasonable for Police Officers to rely on red light camera evidence even if the officer did not personally observe the violation. The governing body finds that red light cameras save lives and make our streets safer.

Attachment "2"

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

D. The governing body finds that some drivers in the City repeatedly violate posted speed limits. The governing body finds that State law against speeding does not prevent the City from having provisions in its ordinance to provide for public safety on its streets. The governing body finds that implementation of enforcement of speed limits by means of photographic and electronic equipment will abate the nuisance of speeding.

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

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

Section 4. A new Section 27-7.3 LCMC 1997 is ordained to read:

27-7.3 [NEW MATERIAL.] Definitions. For the purposes of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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

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

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

City means the City of Las Cruces.

City Clerk means the City Clerk of the City.

City Manager means the City Manager of the City of Las Cruces.

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

Default means the failure to pay a STOP fine or to timely pay a fine pursuant to a decision of a Hearing Officer under this Article.

Delivery or Delivered means the mailing of a STOP fine notification to a registered owner or nominee or personal service of a STOP fine notification or Hearing Officer decision on a registered owner or nominee.

Department means the City's Police Department which is the agency of the City that employs the Police Officer who issues a STOP fine notification or causes a STOP fine notification to be issued.

Department of Motor Vehicles or DMV means the Motor Vehicle Division of the Taxation and Revenue Department of the State of New Mexico or its successor agencies.

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

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

Finance Department means the City's Financial Services Department.

Hearing Officer means a City Hearing Officer, as appointed by the City Manager.

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

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

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

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

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

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

Police Officer means a sworn member of the Las Cruces Police Department, Dona Ana County Sheriff's Office, the New Mexico State Police, or any other public official with authority to stop a vehicle for a traffic violation in the City of Las Cruces.

Public Safety Aide means a Public Safety Aide of the Las Cruces Police Department.

Registered Owner means the owner or owners of a vehicle according to the license plate number or information obtained from the Department of Motor Vehicles, from similar motor vehicle agencies outside New Mexico, from information obtained from the Las Cruces Municipal Court, from the Dona Ana County Magistrate Court, from Department records, from a CSD or from any other documentation or methods reasonably relied upon by Police Officers. The singular includes the plural.

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

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

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

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

Violation or Offense means a violation of this Article.

Section 5. A new Section 27-7.4 LCMC 1997 is ordained to read:

27-7.4 [NEW MATERIAL.] Violation. Any violation of Section 27-12-5-6 or Section 27-12-6-1.2 of the City's Municipal Code is a violation of this Article. This Article does not apply to authorized emergency vehicles responding to an emergency. This Article 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 6. A new Section 27-7.5 LCMC 1997 is ordained to read:

27-7.5 [NEW MATERIAL.] Enforcement.

A. *Criminal Violation Observed by Police Officer.* This Article 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 City of Las Cruces Traffic Code in the usual manner.

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

C. *STOP Fine Notification.*

(1) Form and contents. The STOP fine notification shall state and contain the name of the registered owner or owners or nominee, the effective date of the STOP fine notification, the type of violation, the date, time, and location of the violation, a picture of the violation, the license number of the vehicle, the name and identification of the issuing Police Officer, the amount of the fine, whether the fine is a first or subsequent offense, the response due date and the address of the Department. The STOP fine notification shall conspicuously and in bold face type state; "Failure to pay this fine on time will lead to serious legal consequences including the loss of your vehicle and the assessment of additional fines and monies due. A second or subsequent STOP violation within two years from the date of this STOP fine notification will lead to increasing fines and penalties including the loss of the subject vehicle. After you have received this STOP fine notification, it is unlawful to sell, transfer, or otherwise convey title to the subject motor vehicle to another person unless all applicable STOP fines are paid." The STOP fine notification shall include an owner's affidavit form. The STOP fine notification shall contain a return envelope addressed to the Contractor or the Department. The STOP fine notification shall inform the registered owner or the nominee of the right to request a hearing by so indicating in a space provided on the form and returning same to the Department.

(2) Delivery. The STOP fine notification shall be delivered to the address of the registered owner according to the address registered with the Department of Motor Vehicles or to the address of the nominee according to the owner's affidavit. The registered owner has a duty to timely notify DMV of a change of address and the failure to do so does not entitle the registered owner to assert the defense of inadequate notice. The mailing of a STOP fine notification to the address of the registered owner of a vehicle according to the records of DMV

or to the address of the nominee according to the owner's affidavit is constructive notice of a STOP fine notification.

D. *Response to a STOP Fine Notification.* Within 35 days from the effective date, the registered owner shall pay the fine, file an owner's affidavit making a nomination, or request a hearing. To pay the fine, the recipient shall deliver the STOP fine notification with payment to the City or to the Contractor according to the instructions on the STOP fine notification. To make a nomination, the recipient shall return the STOP fine notification with a completed owner's affidavit to the Contractor. To request a hearing, the recipient shall return the STOP fine notification with the request for hearing to the Hearing Officer. There is no fee to request a hearing. Three days for mailing is not allowed and the response shall be actually received no later than 35 consecutive days (including holidays) from the effective date. The Department and Hearing Officer shall forthwith notify the Contractor concerning the receipt of a request for hearing. If the fine has not been paid, there has been no nomination or a request for a hearing within 35 days from the effective date, the Contractor shall send written notice of default to the Department and the registered owner or nominee or both.

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

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

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

Officer. The Police Officer may send a new STOP fine notification to the nominee or cause the Contractor to deliver a new STOP fine notification to the nominee. The effective date of the STOP fine notification sent to the nominee is the day the STOP fine notification is issued to the nominee as indicated on the face of the new STOP fine notification. If the nominee successfully appeals the allegation that he or she was the driver or defaults the City may proceed against the registered owner by issuing a subsequent STOP fine notification to the registered owner with the effective date being the date so indicated on the face of the subsequent STOP fine notification. If the City cannot assert jurisdiction over the nominee, the registered owner is responsible, subject to the remaining defenses available in this Article. Any registered owner who submits an owner's affidavit does so under penalty of perjury. If the registered owner operates a business that uses a fleet of one or more vehicles and nominated the driver on a previous violation and the driver paid the fine or otherwise cleared the violation, a subsequent violation pertaining to the fleet vehicle shall not be considered a second, third or subsequent offense regarding that vehicle unless driven by the same driver. Without limitation on the foregoing, nomination may be used when:

(a) The registered owner is the United States of America, State of New Mexico, County of Dona Ana or any other governmental entity that owns a vehicle that was being driven by a natural person who was the employee, contractor or agent of the business, corporation or other non-natural entity at the time of the alleged violation. Said entities shall nominate and identify the driver.

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

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

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

Attachment "2"

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

F. *Hearing.* In the event of a demand for a hearing, the Hearing Officer shall hold a hearing within 90 days from the date of the request for hearing unless a continuance is granted pursuant to the consent of the parties. The hearing does not need to be held within 90 days if a continuance is granted. The Hearing Officer is in charge of the proceedings and may exclude any person for inappropriate conduct. The rules of evidence are relaxed. The Department has the burden to prove by a preponderance of the evidence that the violation occurred. The respondent has the burden to prove any defenses by a preponderance of the evidence. A photograph, videotape or other electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence by the Hearing Officer. The respondent may challenge the weight or accuracy of the evidence. If the Department prevails, the respondent shall pay the fine. The Hearing Officer shall render a decision in writing in ten days and provide the decision to the Department and the Finance Department. Failure to pay a fine as ordered by the Hearing Officer within ten consecutive days from the date of the decision is a default and will apply against the vehicle without service of a notice of default. Following a hearing, the respondent may appeal the decision of the Hearing Officer to Las Cruces Municipal Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

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

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

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

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

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

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

(6) The registered owner did not receive notice because the STOP fine notification was not mailed to the address of record with the DMV.

H. *Fine.*

(1) The fine for the first violation for running a red light is $100. The fine for a second violation is $125. The fine for a third or subsequent violation for running a red light within two years from the date of the first violation is $175.

(2) The fines for speeding are as follows:

(a) Up to and including ten miles per hour over the speed limit: $80;

(b) From 11 up to and including 15 miles per hour over the speed limit: $100;

(c) From 16 up to and including 20 miles per hour over the speed limit: $125;

(d) From 21 up to and including 25 miles per hour over the speed limit: $150;

(e) From 26 up to and including 30 miles per hour over the speed limit: $175;

(f) From 31 up to and including 35 miles per hour over the speed limit: $200;

(g) More than 35 miles per hour over the speed limit: $250.

Attachment "2"

(3) The City Manager may allow services to the City as an alternative to payment of fines. A violator who elects to avail themselves of the option of service to the City in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits conferred upon City employees, including, without limitation, workers compensation. The City is not responsible for damages incurred except as otherwise provided by law. The person seeking relief hereunder shall timely request the option of service to the City in lieu of payment of a fine by requesting a hearing before a Hearing Officer at which to demonstrate that the person eligible for the option and shall not be in default on payment of other fines levied by the City of Las Cruces. If the Hearing Officer approves the person for relief under this paragraph, the City Manager shall enter a settlement agreement whereby the person shall provide services to the City in lieu of payment of a fine. No person who cannot pass the background check to qualify as a volunteer may obtain relief under this paragraph. The services include, without limitation, cleaning up weeds and litter, cleaning kennels at the Las Cruces Animal Shelter, and assisting with the maintenance of City property. Services shall be rendered in not less than full hour increments and shall be credited against the fine payable at $10.00 per hour.

I. *Seizure.* A Police Officer may seize or immobilize a vehicle for 90 days pursuant to the provisions of Article 27-6 LCMC 1997 upon discovery of a vehicle in the City with unpaid STOP fines. If the registered owner fails to cure the default and pay all impound and storage fees, the vehicle is subject to forfeiture under Article 27-6 LCMC 1997. If a non-Las Cruces resident defaults, the Department shall immobilize the vehicle of a delinquent or defaulting party for 90 days if said vehicle is found in the City limits any time within ten years of any violation of this Article.

Section 7. A new Section 27-7.6 LCMC 1997 is ordained to read:

27-7.6 [NEW MATERIAL.] Administration.

A. The Department shall be responsible for administration of this Article. Reasonable rules and regulations may be promulgated by the City Manager or his designee to carry out the intent and purpose of this Article.

B. The City Manager may establish a STOP ombudsman to address and resolve citizen grievances with STOP procedures and technical issues regarding automated enforcement technology.

C. Any and all revenue obtained through the Las Cruces Safe Traffic Operations Program shall be used by the Las Cruces Police Department and the City's Traffic Engineering Department for service enhancement and public safety.

Section 8. A new Section 27-7.7 LCMC 1997 is ordained to read:

27-7.7 [NEW MATERIAL.] Severability. If any section, paragraph, sentence or clause of this section is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this section. The City Council hereby declares that it would have passed this section irrespective of any provision being declared unconstitutional or otherwise invalid. Additionally, should any provision of this section conflict with a provision of another applicable civil law or regulation relating to STOP, the stricter provision shall apply, unless more specifically preempted, in which case, the severability provision above will govern.

DONE AND APPROVED THIS _____ DAY OF _____, 2008.

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Connor: _____
Councillor Silva: _____
Councillor Archuleta: _____
Councillor Small: _____
Councillor Jones: _____
Councillor Thomas: _____

Moved by: _____
Seconded by: _____

Approved as to Form:

_____
City Attorney

Attachment "2"

City of Las Cruces®
PEOPLE HELPING PEOPLE

Executive Summary for September 15, 2008

ITEM NUMBER: 24. **Resolution/Ordinance Number:** 2474 **Council District** ____

TITLE:

AN ORDINANCE ENACTING LCMC 1997 SECTION 27-7 ET SEQ, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE DETECTED BY A CAMERA OR SPEED DEVICE.

STAFF CONTACT: Mike Johnson, Public Works Director, Public Works, 528-3333 and Chris Miller, Lieutenant, Police Department, 528-4289.

BACKGROUND:

Purpose(s) of Action: Enact Safe Traffic Operations Program (STOP) Ordinance.

Key Issues/Contributing Factors: The approval of this Ordinance will allow the use of cameras to enforce red light and speeding violations and allow the implementation of civil remedial measures to address red light and speeding violations.

COUNCIL OPTIONS:
1. Approve the Ordinance as drafted.
2. Modify the Ordinance as Council deems appropriate.
3. Deny the Ordinance and provide direction to staff as Council deems appropriate.

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action Form

For Meeting of September 15, 2008
(Adoption Date)

TITLE:

AN ORDINANCE ENACTING LCMC 1997 SECTION 27-7 ET SEQ, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE DETECTED BY A CAMERA OR SPEED DEVICE.

BACKGROUND:

NMSA 1978, 3-17-1A, allows for the City of Las Cruces ("the City") to provide for the safety, and to preserve the health, and improve the comfort and convenience of the municipality and its citizens; NMSA 1978, 3-18-1F, allows the municipality to preserve peace and order within the municipality; and NMSA 1978 3-49-1A, allows a municipality to regulate the use of its streets. It also allows the City to establish ordinances consistent with this power. The City for the protection of its residents has also enacted the New Mexico Uniform Traffic Ordinance as amended LCMC 1997, Sect 27-1 et seq. The State has not preempted the City from enacting a Safe Traffic Operations Program (STOP) Ordinance.

Statistics within the United States, New Mexico and the City reflect that there is a significant risk to the health and safety of the community from drivers who run red lights and exceed the posted speed limits. The City of Las Cruces has a serious injury rate resulting from red light violations within the municipality. It is vitally

(Continue on additional sheets as required)

Name of Drafter:	Department:	Phone:
Mike Johnson Chris Miller	Public Works Police Department	528-3135 528-4289
Account Number	**Amount of Expenditure**	**Budget Amount**
N/A	N/A	N/A

Strategic Plan Goal / Objective / Strategy Addressed: N/A

Performance Budget Goal / Objective Addressed: N/A

Department	Signature	Phone	Department	Signature	Phone
Public Works		528-3333	Budget		2300
			Assistant City Manager		2271
Legal		541-2128	City Manager		207

Rev 11/05

Attachment "2"

important that drivers within the City progress away from the attitude that a red light is merely a suggestion to stop toward an appreciation that red light violations injure and even kill too many of our citizens. Red light violations are a great matter of local concern due to high traffic volumes and crowded intersections.

Many municipalities across the state and the western United States including Albuquerque and El Paso have experienced substantial decreases in red light violations by using red light cameras. Red light cameras have been demonstrated to produce reliable evidence of red light violations and as a result it is reasonable for police officers to rely on red light camera evidence even if the officer did not personally observe the violation.

Red light violations are a nuisance that shall be abated by the assessment of fines to compensate the city and tax payers who do not commit these violations. The current penalty under state law for running a red light is inadequate to meaningfully address the nuisance and as a result the City must implement meaningful civil remedial measures that will stop red light violations making the City's streets safer and in turn save lives. Red light violations are causally connected to death or serious injury to a degree not evident with regard to other traffic infractions.

Some drivers in the City repeatedly violate posted speed limits. Current state law against speeding does not prevent the City from having provisions in its ordinance to provide for public safety on its streets. The implementation of enforcement of speed limits by means of photographic and electronic equipment will abate the nuisance of speeding.

The approval of this Ordinance by the City Council is necessary to initiate the enactment of the STOP which will allow the use of cameras to enforce red light and speeding violations and allow the implementation of civil remedial measures to address red light and speeding violations.

SUPPORT INFORMATION:

1. Ordinance.

COUNCIL OPTIONS:

1. Approve the Ordinance as drafted.
2. Modify the Ordinance as Council deems appropriate.
3. Deny the Ordinance and provide direction to staff as Council deems appropriate.

(Continue on additional sheets as required)

Legal Advertising Affidavit

Stephanie L. Griffin, who, being duly sworn as the Assistant to the Publisher of the Las Cruces BULLETIN, a weekly newspaper of general distribution published in the City of Las Cruces, County of Doña Ana, State of New Mexico, disposes and states that the legal advertising for City of Las Cruces Notice of Intent to Adopt; I/M/O Ordinance No. 2474

In accordance with the laws of the State of New Mexico, the attached was published in its entirety one time(s) in the Las Cruces BULLETIN, the first publication date being 8/29/08 and subsequent publications being N/A.

Stephanie L. Griffin

Sworn to and subscribed before me this 29th day of August 2008 in the
CITY OF LAS CRUCES
COUNTY OF DOÑA ANA
STATE OF NEW MEXICO
My Commission expires: **August 11, 2011**

Jacqueline McCollum - Notary Public

$23.67
Advertising Costs

NOTICE OF INTENT TO ADOPT

The City Council of The City of Las Cruces, New Mexico, Hereby Gives Notice of Its Intent to Adopt The Following Ordinance at The Regular City Council Meeting to be Held on September 15, 2008:

1. Council Bill No. 09-011: Ordinance No. 2474: An Ordinance Enacting LCMC 1997 Section 27-7 ET SEQ, the Safe Traffic Operations Program, Regarding Violations of the Traffic Code Detected by a Camera or Speed Device.

Copies Are Available for Inspection During Working Hours at the Office of the City Clerk. Witness My Hand and Seal of the City of Las Cruces on this the 27th day of August, 2008

Esther Martinez, CMC
City Clerk

Pub #8170
Dates 8/29, 2008

Attachment "2"

City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 10 **Ordinance #** 2495 **Council District:** 1-6

For Meeting of January 5, 2009
(Adoption Date)

AN ORDINANCE REPEALING COUNCIL BILL NO. 09-011; ORDINANCE NO. 2474 ADOPTED ON SEPTEMBER 15, 2008 AND ENACTING SECTION 27-7, THE SAFE TRAFFIC OPERATIONS PROGRAM, REGARDING VIOLATIONS OF THE TRAFFIC CODE, DETECTED BY A CAMERA OR SPEED DEVICE.

PURPOSE(S) OF ACTION: To repeal original ordinance and enact a new ordinance and to address the need to compensate the State of New Mexico their fair share of fines imposed.

Name of Drafter: Karyn Schmidt		Department: Public Works		Phone: 528-3333	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Originating Department		528-3333	Budget		541-2107
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: On September 15, 2008, the City Council adopted Ordinance 2474, which enacted the Safe Traffic Operations Program regarding violations of the traffic code detected by a camera or speed device.

City staff has since reviewed the ordinance, met with representatives of RedFlex Traffic Systems, Inc., and noted the need to clarify some sections of the original ordinance.

It is "cleaner" to repeal the past ordinance rather than to make multiple minor amendments.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Ordinance.
2. Exhibit "A"
3. Attachment "A" – Ordinance No. 2474

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes." This action will enact a new Ordinance to include clarification in Sections 27-7.5F noting that a decision of the hearing officer is appealable to District Court and Section 27-7.5H, adding (4), (5), and (6) concerning fines and the amounts to be sent to the State of New Mexico.

2. Vote "No." Not adopting the Ordinance will mean that the current ordinance stay in effect and the state will not receive its fair share of fines, and that appeals will be directed to the incorrect court.

3. Modify the ordinance and direct staff accordingly.