City of Las Cruces®

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Council Action and Executive Summary

Item # 28 **Ordinance/Resolution#** 2709

For Meeting of March 17, 2014 (Ordinance First Reading Date) **For Meeting of** April 7, 2014 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE REPEALING LAS CRUCES MUNICIPAL CODE, 1997, SECTION 27-7, SAFE TRAFFIC OPERATIONS PROGRAM, AND ENACTING A NEW SECTION 27-7.

PURPOSE(S) OF ACTION:

To enact a new Safe Traffic Operations Program ordinance.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Robert A. Cabello	**Department/Section:** Legal/City Attorney	**Phone:** 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Safe Traffic Operations Program ("STOP") is the City program which uses the red light and speed cameras at some City intersections. As part of a standard review process, the City Attorney's office in conjunction with the Las Cruces Police Department evaluated recent litigation and associated final outcomes within the STOP program. The proposed changes of Las Cruces Municipal Code ("LCMC"), 1997, Section 27-7 have no relationship or effect on the City's recent decision to not renew Redflex's contract.

The evaluation identified portions of Las Cruces Municipal Code ("LCMC"), 1997, Section 27-7 that should be repealed, and determined that a new Section 27-7 should be enacted. The current version of Section 27-7 provides for vehicle forfeiture as an enhanced punishment for subsequent violations or failure to pay fines. It is the understanding of the City Attorney that the Council is not comfortable with the vehicle forfeiture provisions. The forfeiture provisions are eliminated in the new Section 27-7. To prevent legal challenges the new Section 27-7.5(f) specifically enumerates the standard of due process required by New Mexico law for administrative hearings. The new Section 27-7.5(f) also eliminates a provision which reads "[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." This provision is inconsistent with New Mexico law as a determination on hearsay is within the discretion of the hearing officer, and not

(Continue on additional sheets as required)

pre-determined by ordinance. Hence the new version of the ordinance will update the STOP program through the removal of unused and unnecessary processes.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", LCMC 1997, Section 27-7.
3. Attachment "1", LCMC 1997, Section 27-7, in legislative format.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____ for FY__.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will repeal the existing STOP ordinance, LCMC 1997, Section 27-7, and replace it with the new Section 27-7.
2. Vote "No"; this will keep the ordinance as it currently exists. This action would mean that processes that are unused and unnecessary would continue to be part of the STOP ordinance.
3. Vote to "Amend"; this would allow the City Council to modify the ordinance.
4. Vote to "Table"; this would allow the City Council to further direct staff.

(Continue on additional sheets as required)

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 14-024
ORDINANCE NO. 2709

AN ORDINANCE REPEALING LAS CRUCES MUNICIPAL CODE, 1997, SECTION 27-7, SAFE TRAFFIC OPERATIONS PROGRAM, AND ENACTING A NEW SECTION 27-7.

The City Council is informed that:

WHEREAS, the Safe Traffic Operations Program ("STOP") is the program which used the red light and speed cameras operated by Redflex Inc. at some City intersections; and

WHEREAS, as part of a standard review process, the City Attorney's office in conjunction with the Las Cruces Police Department evaluated recent litigation and associated final outcomes in court within the STOP ordinance; and

WHEREAS, the evaluation identified numerous sections within the STOP ordinance that were unused and unnecessary; and

WHEREAS, the evaluation also determined that LCMC 1997, Section 27-7 should be repealed and a new Section 27-7 be enacted to remove unused and unnecessary processes and to bring the ordinance into compliance with recent court decisions.

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

(I)

THAT LCMC 1997, Section 27-7, is repealed and a new Section 27-7 is enacted to read as shown on Exhibit "A" attached hereto and made a part hereof.

(II)

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

DONE AND APPROVED on this _____ day of _____, 20___.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Levatino: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

City Attorney

Exhibit "A"

Sec. 27-7. - Safe Traffic Operations Program.

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."

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. 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 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.

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.

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.

Contractor means a person or entity that enters into 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 hearing officer, as appointed by the 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.

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.

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.

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.

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.

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.

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 and the assessment of the costs of collections including service of process fees, court costs, and reasonable attorney fees." 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 $50.00 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. 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 $25.00. 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

(f) *Hearing.* Pursuant to NMSA 1978 3-18-17 A(2)(e), the hearing provided for a contested STOP violation shall be held by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality, and the hearing itself shall be conducted following the rules of evidence and civil procedure for the district courts. The burden of proof for

offenses or violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties, fines, fees and costs in excess of that provided in this ordinance. 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. 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 $100.00.

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) 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.

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.

Attachment "1"

Sec. 27-7. - Safe Traffic Operations Program.

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."

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.~~

~~(e)~~(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.

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.

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.

Contractor means a person or entity that enters into 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 hearing officer, as appointed by the 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.

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.

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.

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.

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 and including the loss of your vehicle and the assessment of the costs of collections including service of process fees, court costs, and reasonable attorney fees. 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 $50.00 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 $25.00. 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.* Pursuant to NMSA 1978 3-18-17 A(2)(e), the hearing provided for a contested STOP violation shall be held by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality, and the hearing itself shall be conducted following the rules of evidence and civil procedure for the district courts. The burden of proof for offenses or violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties, fines, fees and costs in excess of that provided in this ordinance. 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 $100.00.

~~(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 City may pursue all remedies for collection of a debt and is entitled to an award of reasonable attorney's 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.~~

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.~~

(b) ~~(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.

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.

(Ord. No. 2474, §§ 1—8, 9-15-08; Ord. No. 2495, § I, 1-5-09; Ord. No. 2527, § I, 6-15-09)