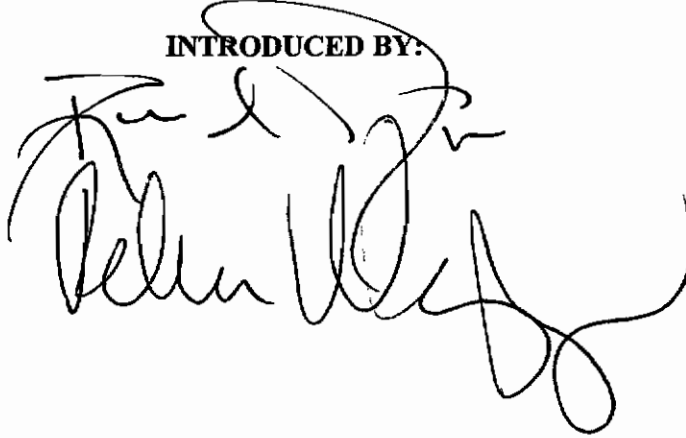


CITY OF SANTA FE, NEW MEXICO

BILL NO. 2008-51

INTRODUCED BY:



AN ORDINANCE

CREATING ARTICLE 24-4 SFCC 1987, THE SANTA-FE TRAFFIC OPERATIONS PROGRAM OR "STOP", REGARDING VIOLATIONS OF THE TRAFFIC CODE DETECTED BY A CAMERA OR SPEED DEVICE.

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

Section 1. A new Article 24-4 SFCC 1987 is ordained to read:

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

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

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

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

24-4.2 [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

1 governing body finds that the City of Santa Fe has a high fatality and serious injury rate resulting  
2 from red light violations and a blatant disregard by drivers for existing state red light laws.  
3 Drivers in the city shall progress away from the attitude that a red light is merely a suggestion to  
4 stop toward an appreciation that red light violations injure and even kill too many of our citizens.  
5 The governing body finds that red light violations are a nuisance. Within the State of New  
6 Mexico, red light violations are a great matter of local concern for in Santa Fe due to high traffic  
7 volume and crowded intersections. The governing body finds that the State Legislature wants  
8 municipalities to implement local traffic laws to address local problems and that the Legislature  
9 does not intend for the State of New Mexico Motor Vehicle Code to apply statewide to the  
10 exclusion of local traffic laws.

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

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

1           D.       The governing body finds that some drivers in Santa Fe repeatedly violate posted  
2 speed limits. The governing body finds that state law against speeding is inadequate to preserve  
3 public safety in Santa Fe. The governing body finds that photographic and electronic devices that  
4 measure speed are accurate and reliable. The governing body finds that implementation of  
5 enforcement of speed limits by means of photographic and electronic equipment will abate the  
6 nuisance of speeding.

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

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

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

13           **24-4.3 [NEW MATERIAL.] Definitions.** For the purposes of this Article, the  
14 following definitions shall apply unless the context clearly indicates or requires a different  
15 meaning.

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

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

25           *Owner's Affidavit* means a written statement signed under oath and submitted to the city

1 or the city's contractor under penalty of perjury by the registered owner of a vehicle who asserts  
2 therein that the registered owner was not driving a vehicle at the time of a violation.

3 *City* means the city of Santa Fe.

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

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

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

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

10 *Delivery or Delivered* means the mailing of a STOP fine notification to a registered  
11 owner or nominee or personal service of a STOP fine notification or hearing officer decision on a  
12 registered owner or nominee.

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

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

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

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

20 *Finance Department* means the city department established as per Article 2-8 SFCC  
21 1987.

22 *Hearing Officer* means the city hearing officer, as appointed by the city manager.

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

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

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

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

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

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

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

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

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

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

22       *School Zone* means a posted "safety zone" as that term is defined under NMSA 1978 66-  
23 1-4.16 (2001) as amended from time to time.

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

25       *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 24-4.4 SFCC 1987 is ordained to read:**

**24-4.4 [NEW MATERIAL.] Violation.** Any violation of Section 12-5-6 or Section 12-6-1.2 of the city of Santa Fe Traffic Code is a violation of this Article. This Article does 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 24-4.5 SFCC 1987 is ordained to read:**

**24-4.5 [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 Santa Fe 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

1 fine notification, the type of violation, the date, time, and location of the violation, a  
2 picture of the violation, the license number of the vehicle, the name and identification of  
3 the issuing police officer, the amount of the fine, whether the fine is a first or subsequent  
4 offense, the response due date and the address of the city clerk. The STOP fine  
5 notification shall conspicuously and in bold face type state; "Failure to pay this fine on  
6 time will lead to serious legal consequences including the loss of your vehicle and the  
7 assessment of additional fines and monies due. A second or subsequent STOP violation  
8 within two years from the date of this STOP fine notification will lead to increasing fines  
9 and penalties including the loss of the subject vehicle. After you have received this STOP  
10 fine notification, it is a criminal violation to sell, transfer, or otherwise convey title to the  
11 subject motor vehicle to another person unless all applicable STOP fines are paid." The  
12 STOP fine notification shall include an owner's affidavit form. The STOP fine  
13 notification shall contain a return envelope addressed to the contractor or the Santa Fe  
14 police department. The STOP fine notification shall inform the registered owner or the  
15 nominee of the right to request a hearing by so indicating in a space provided on the form  
16 and returning same to the city clerk.

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

25 D. *Response to A STOP Fine Notification.* Within 35 days from the effective date,

1 the registered owner shall pay the fine, file an owner's affidavit making a nomination, or request  
2 a hearing. To pay the fine, the recipient shall deliver the STOP fine notification with payment to  
3 the city or to the contractor according to the instructions on the STOP fine notification. To make a  
4 nomination, the recipient shall return the STOP fine notification with a completed owner's  
5 affidavit to the contractor. To request a hearing, the recipient shall return the STOP fine  
6 notification with the request for hearing to the hearing officer. There is no fee to request a  
7 hearing. Three days for mailing is not allowed and the response shall be actually received no later  
8 than 35 consecutive days (including holidays) from the effective date. The department and  
9 hearing officer shall forthwith notify the contractor concerning the receipt of a request for  
10 hearing. If the fine has not been paid, there has been no nomination or a request for a hearing  
11 within 35 days from the effective date, the contractor shall send written notice of default to the  
12 department and the registered owner or nominee or both.

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

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

25 (3) Nomination. Any registered owner who was not driving the car at the



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

- 24 (a) The registered owner is the United States of America, state of  
25 New Mexico, county of Santa Fe, city of Santa Fe or any other governmental

1 entity that owns a vehicle that was being driven by a natural person who was an  
2 employee, contractor or agent of the governmental entity at the time of the alleged  
3 violation. Said entities shall nominate and identify the driver.

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

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

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

17 E. *Default.* If the city does not receive payment of the fine, a nomination or a  
18 request for a hearing within 35 days from the effective date, the registered owner is in default.  
19 Default automatically results in liability to the registered owner for the violation and the  
20 registered owner is barred from requesting or obtaining any hearing on the merits of the STOP  
21 fine after the date of the default. A default results in an additional penalty of \$25. The department  
22 shall cause the contractor to mail the notice of default to the defaulting party. The notice of  
23 default shall inform the recipient that they have 20 days from the date of mailing of the notice of  
24 default to pay the fine or request a hearing from the hearing officer. If the default is not cured, the  
25 city may pursue all remedies for collection of a debt and is entitled to an award of reasonable

1 attorney's fees incurred. An uncured notice of default shall be entered into the records of the  
2 department and any police officer who discovers a vehicle in the city in the course of a traffic  
3 stop or otherwise may seize the vehicle for unpaid fines. The registered owner is liable for a  
4 default by a nominee.

5 F. *Hearing.* In the event of a demand for a hearing, the hearing officer shall hold a  
6 hearing within 90 days from the date of the request for hearing unless a continuance is granted  
7 pursuant to the consent of the parties. The hearing does not need to be held within 90 days if a  
8 continuance is granted. The hearing officer is in charge of the proceedings and may exclude any  
9 person for inappropriate conduct. The rules of evidence are relaxed. The department has the  
10 burden to prove by a preponderance of the evidence that the violation occurred. The respondent  
11 has the burden to prove any defenses by a preponderance of the evidence. A photograph,  
12 videotape or other electronic evidence of a violation is authentic, is not hearsay and shall be  
13 admitted into evidence by the hearing officer. The respondent may challenge the weight or  
14 accuracy of the evidence. If the department prevails, the respondent shall pay the fine. The  
15 hearing officer shall render a decision in writing in ten days and provide the decision to the  
16 department and the finance department. Failure to pay a fine as ordered by the hearing officer  
17 within ten consecutive days from the date of the decision is a default and will apply against the  
18 vehicle without service of a notice of default. Following a hearing, the respondent may appeal the  
19 decision of the hearing officer to district court within 30 days of the decision and may recover the  
20 costs of filing the appeal if successful.

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

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

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

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

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

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

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

18     H.     *Fine.*

19          (1)     The fine for the first violation for running a red light is \$66. The fine for  
20 a second violation for running a red light within two years from the date of the first  
21 violation is \$117. The fine for a third or subsequent violation for running a red light  
22 within two years from the date of the first violation is \$168.

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

24                 (a)     Up to and including ten miles per hour over the speed limit: \$86;

25                 (b)     From 11 up to and including 15 miles per hour over the speed

1                   limit: \$116;

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

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

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

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

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

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

1 credited against the fine payable at \$10.00 per hour.

2 I. *Seizure.* A police officer may seize or immobilize a vehicle for 90 days pursuant  
3 to the provisions of Article 24-9 SFCC 1987 upon discovery of a vehicle in the city with unpaid  
4 STOP fines. If the registered owner fails to cure the default and pay all impound and storage fees,  
5 the vehicle is subject to forfeiture under Article 24-9 SFCC 1987. If a non-Santa Fe resident  
6 defaults, the department shall immobilize the vehicle of a delinquent or defaulting party for  
7 ninety days if said vehicle is found in the city limits any time within ten years of any violation of  
8 this Article.

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

10 **24-4.6 [NEW MATERIAL.] Administration.**

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

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

17 C. Any and all revenue obtained through the Santa Fe Safe Streets Program shall be  
18 used for the Santa Fe police department for service enhancement and public safety.

19 APPROVED AS TO FORM:

20   
21 \_\_\_\_\_  
22 FRANK D. KATZ, CITY ATTORNEY  
23  
24  
25

Jp/ca/jpmb/2008 bills/traffic operations program