

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2017-15

3 INTRODUCED BY:

4  
5 Councilor Signe I. Lindell

6 Councilor Mike Harris

7 Councilor Ronald S. Trujillo

8 Councilor Peter N. Ives

9  
10 AN ORDINANCE

11 RELATING TO THE SANTA FE TRAFFIC OPERATIONS PROGRAM; AMENDING  
12 SECTION 24-4 SFCC 1987 TO UPDATE SUBSECTIONS 24-4.2, FINDINGS AND  
13 INTENT; 24-4.3 DEFINITIONS; 24-4.4, VIOLATIONS AND 24-4.5, ENFORCEMENT.

14  
15 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

16 Section 1. Subsection 24-4.2 SFCC 1987 (being Ord. #2008-47, §3) is amended  
17 to read:

18 **24-4.2 Findings and Intent.**

19 A. The governing body finds that there is a significant risk to the health and safety  
20 of the community from drivers who [~~run red lights and~~] exceed the posted speed limits. [~~The~~  
21 ~~governing body finds that the city of Santa Fe has a high fatality and serious injury rate resulting~~  
22 ~~from red light violations and a blatant disregard by drivers for existing state red light laws.~~  
23 ~~Drivers in the city shall progress away from the attitude that a red light is merely a suggestion to~~  
24 ~~stop toward an appreciation that red light violations injure and even kill too many of our citizens.~~  
25 ~~The governing body finds that red light violations are a nuisance. Within the state of New~~

1 ~~Mexico, red light violations are a great matter of local concern for in Santa Fe due to high traffic~~  
2 ~~volume and crowded intersections.]~~ The governing body finds that the State Legislature wants  
3 municipalities to implement local traffic laws to address local problems and that the Legislature  
4 does not intend for the State of New Mexico Motor Vehicle Code to apply statewide to the  
5 exclusion of local traffic laws.

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

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

21 ~~[D]B.~~ The governing body finds that some drivers in Santa Fe repeatedly violate posted  
22 speed limits. The governing body finds that state law against speeding is inadequate to preserve  
23 public safety in Santa Fe. The governing body finds that photographic and electronic devices that  
24 measure speed are accurate and reliable. The governing body finds that implementation of

1 enforcement of speed limits by means of photographic and electronic equipment will abate the  
2 nuisance of speeding.

3 [E]C. The governing body declares that a vehicle used to violate this section is the  
4 instrumentality of a nuisance and shall be abated in the city.

5 [F]D. The governing body declares that this section is a nuisance abatement section  
6 enacted pursuant to the city's inherent authority under state law and that the remedies are purely  
7 civil and not criminal in nature.

8 **Section 2. Subsection 24-4.3 SFCC 1987 (being Ord. #2008-47, §4, as**  
9 **amended) is amended to read:**

10 **24-4.3 Definitions.**

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

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

19 *Camera, speed device or "CSD"* means the instrument that detects a violation of this  
20 section. The definition includes but is not limited to [~~photo red light cameras and~~] electronic  
21 speed detection equipment reasonably relied upon by police officers.

22 *City* means the city of Santa Fe.

23 *City clerk* means the city clerk of the city of Santa Fe.

24 *City manager* means the city manager of the city of Santa Fe.

25 *Contractor* means a person or entity that enters a contract with the city to provide the city

1 with photographic or electronic evidence of a violation through a CSD.

2 *Default* means the failure to pay a STOP fine or to timely pay a fine pursuant to a  
3 decision of a hearing officer under this section.

4 *Delivery or delivered* means the mailing of a STOP fine notification to a registered owner  
5 or nominee or personal service of a STOP fine notification or hearing officer decision on a  
6 registered owner or nominee.

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

9 *Department of motor vehicles or DMV* means the motor vehicle division of the taxation  
10 and revenue department of the state of New Mexico or its successor agencies.

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

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

14 *Finance department* means the city department established as per Section 2-8 SFCC  
15 1987.

16 *Hearing officer* means the city hearing officer, as appointed by the presiding judge of the  
17 civil division of the district court. The hearing officer shall be a licensed member of the New  
18 Mexico Bar.

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

22 *Immobilization or immobilized* means seizure of a vehicle by placement of a device on  
23 the vehicle so that the vehicle cannot be moved.

24 *Nomination* means identification of the actual driver of a car by the registered owner as  
25 the responsible party for a violation,

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

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

5           *Nuisance* means the act of operating a vehicle in violation of this section.

6           *Owner's affidavit* means a written statement signed under oath and submitted to the city  
7 or the city's contractor under penalty of perjury by the registered owner of a vehicle who asserts  
8 therein that the registered owner was not driving a vehicle at the time of a violation.

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

12           *Public safety aide* means a public safety aide of the Santa Fe city police department.

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

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

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

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

24           *Stop fine notification* means a written document mailed to the address of the registered  
25 owner or nominee stating that a violation has occurred and payment is due.

1            *Violation* means a violation of this section.

2            **Section 3.        Subsection 24-4.4 SFCC 1987 (being Ord. 2008-47, §6 as amended)**

3 **is amended to read:**

4            **24-4.4 Violation.**

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

10           **Section 4.        Subsection 24-4.5 (being Ord. 2008-47, §7 as amended) is amended**

11 **to read:**

12           **24-4.5 Enforcement.**

13           A.        *Criminal Violation Observed by Police Officer.* This section does not abrogate or  
14 impair enforcement authority of existing traffic laws by a police officer for a violation committed  
15 in their presence. Specifically, if a police officer personally and contemporaneously observes a  
16 traffic violation, the police officer may stop the vehicle and issue a citation under state law or the  
17 city of Santa Fe Traffic Code in the usual manner.

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

25           C.        *STOP Fine Notification.*

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

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.

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

15                   (1)       Payment of STOP fine. Upon receipt of the STOP fine notification, the  
16 recipient may elect to admit the violation and pay the fine. To proceed under this  
17 paragraph, the recipient shall admit the violation by signing and dating the STOP fine  
18 notification on a space provided and returning the STOP fine notification with payment  
19 to the contractor or to the city within thirty-five (35) days. The city may, but is not  
20 required to, adopt procedures for alternative methods of payment of fines using the  
21 internet or other on-line services. There shall be a fifty dollar (\$50.00) penalty for any  
22 payment tendered that is not honored or is returned for any reason.

23                   (2)       Appeal. The recipient of the STOP fine notification may request a  
24 hearing by so indicating and returning the STOP fine notification to the hearing officer



1 within thirty-five (35) days of the effective date. There is no fee for a hearing. The  
2 hearing officer shall schedule a hearing.

3 (3) Nomination. Any registered owner who was not driving the car at the  
4 time of the violation may either accept the responsibility or identify the driver so the  
5 contractor can send a notice of violation to the driver. The nomination procedure  
6 described in this paragraph is available to any registered owner and is not limited to  
7 corporations and governmental entities. If the registered owner claims that another person  
8 was driving the vehicle at the time of the violation, the registered owner shall so indicate  
9 on the owner's affidavit and identify the person who was driving the vehicle. The  
10 contractor shall forthwith deliver the STOP fine notification and owner's affidavit to the  
11 department to the attention of the issuing police officer. The police officer may send a  
12 new STOP fine notification to the nominee or cause the contractor to deliver a new STOP  
13 fine notification to the nominee. The effective date of the STOP fine notification sent to  
14 the nominee is the day the STOP fine notification is issued to the nominee as indicated on  
15 the face of the new STOP fine notification. If the nominee successfully appeals the  
16 allegation that he or she was the driver or defaults the city may proceed against the  
17 registered owner by issuing a subsequent STOP fine notification to the registered owner  
18 with the effective date being the date so indicated on the face of the subsequent STOP  
19 fine notification. If the city cannot assert jurisdiction over the nominee, the registered  
20 owner is responsible, subject to the remaining defenses available in this section. Any  
21 registered owner who submits an owner's affidavit does so under penalty of perjury. If the  
22 registered owner operates a business that uses a fleet of one (1) or more vehicles and  
23 nominated the driver on a previous violation and the driver paid the fine or otherwise  
24 cleared the violation, a subsequent violation pertaining to the fleet vehicle shall not be

1 considered a second, third or subsequent violation regarding that vehicle unless driven by  
2 the same driver. Without limitation on the foregoing, nomination may be used when:

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

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

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

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

21 E. *Default.* If the city does not receive payment of the fine, a nomination or a  
22 request for a hearing within thirty-five (35) days from the effective date, the registered owner is  
23 in default. Default automatically results in liability to the registered owner for the violation and  
24 the registered owner is barred from requesting or obtaining any hearing on the merits of the STOP  
25 fine after the date of the default. A default results in an additional penalty of twenty-five dollars

1 (\$25.00). The department shall cause the contractor to mail the notice of default to the defaulting  
2 party. The notice of default shall inform the recipient that they have twenty (20) days from the  
3 date of mailing of the notice of default to pay the fine and default penalty or request a hearing  
4 from the hearing officer. If the default is not cured, the city may pursue all remedies for collection  
5 of a debt and is entitled to an award of reasonable attorney's fees incurred. An uncured notice of  
6 default shall be entered into the records of the department and any police officer who discovers a  
7 vehicle in the city in the course of a traffic stop or otherwise may seize the vehicle for unpaid  
8 fines. The registered owner is liable for a default by a nominee.

9 F. *Hearing.* In the event of a demand for a hearing, the hearing officer shall hold a  
10 hearing within ninety (90) days from the date of the request for hearing unless a continuance is  
11 granted pursuant to the consent of the parties. The hearing does not need to be held within ninety  
12 (90) days if a continuance is granted. The hearing officer is in charge of the proceedings and may  
13 exclude any person for inappropriate conduct. The hearing shall be conducted following the rules  
14 of evidence and civil procedure for the district courts. The department has the burden to prove by  
15 a preponderance of the evidence that the violation occurred. The respondent has the burden to  
16 prove any defenses by a preponderance of the evidence. A photograph, videotape or other  
17 electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence  
18 by the hearing officer. The respondent may challenge the weight or accuracy of the evidence. If  
19 the department prevails, the respondent shall pay the fine. The hearing officer shall render a  
20 decision in writing in ten (10) days and provide the decision to the department and the finance  
21 department. A determination by the hearing officer shall not impose a total amount of penalties,  
22 fines, fees and costs in excess of that provided in this section. The hearing officer may refer the  
23 respondent to teen court according to the municipal court's procedures for teen court referrals.  
24 Failure to pay a fine as ordered by the hearing officer within twenty (20) consecutive days from  
25 the date of the decision is a default and will apply against the vehicle without service of a notice

1 of default. Following a hearing, the respondent may appeal the decision of the hearing officer to  
2 district court within thirty (30) days of the decision and may recover the costs of filing the appeal  
3 if successful.

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

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

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

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

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

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

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

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

8 [~~(1) — The fine for the first violation for running a red light is sixty-six~~  
9 ~~dollars (\$66.00). The fine for a subsequent violation for running a red light~~  
10 ~~within two (2) years from the date of the first violation is one hundred dollars~~  
11 ~~(\$100.);]~~

12 ~~([2]1)~~ For the first violation, [F]the fines for speeding are as follows:

13 (a) [~~From five (5) to ten (10)] More than five (5) miles per  
14 hour over the speed limit in school and construction zones: one hundred  
15 dollars (\$100.);~~

16 (b) More than [~~eleven (11)] ten (10) miles per hour over the  
17 speed limit: [one hundred dollars (\$100.)] fifty dollars (\$50.).~~

18 ~~(2) —~~ For subsequent violations within two (2) years of the preceding  
19 violation, the fines for speeding are as follows:

20 (a) More than five (5) miles per hour over the speed limit in  
21 school and construction zones: one hundred and fifty dollars (\$150.);

22 (b) More than ten (10) miles per hour over the speed limit:  
23 one hundred dollars (\$100.).

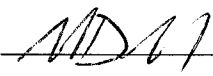
24 (3) The hearing officer may allow service to the city as an alternative  
25 to payment of fines. A violator who elects to avail themselves of the option of

1 service to the city in lieu of payment of a fine does so voluntarily and is entitled  
2 to none of the benefits conferred upon city employees, including, without  
3 limitation, workers compensation. The city is not responsible for damages  
4 incurred except as otherwise provided by law. The person seeking relief  
5 hereunder shall timely request the option of service to the city in lieu of payment  
6 of a fine by requesting a hearing before a hearing office at which to demonstrate  
7 that the person eligible for the option and shall not be in default on payment of  
8 other fines, fees, or liens levied by the city of Santa Fe. Respondents ordered to  
9 perform community service in lieu of payment of a fine shall complete such  
10 community service within thirty (30) days from the date of hearing. No person  
11 who cannot pass the background check to qualify as a volunteer may obtain relief  
12 under this paragraph. The services shall be performed with approved  
13 organizations or city departments. Services shall be rendered in not less than full  
14 hour increments and shall be credited against the fine payable at [~~ten dollars~~  
15 ~~(\$10.00) per hour~~] a rate consistent with the city of Santa Fe Living Wage  
16 Ordinance, Section 28-1.5(B) SFCC 1987. The city manager or designee shall  
17 establish procedures for administering this paragraph including, but not limited  
18 to, the nature of services performed.

19 I. *Seizure.* A police officer may seize or immobilize a vehicle for ninety (90) days  
20 pursuant to the provisions of Section 24-9 SFCC 1987 upon discovery of a vehicle in the city  
21 with unpaid STOP fines. If the registered owner fails to cure the default and pay all impound and  
22 storage fees, the vehicle is subject to forfeiture under Section 24-9 SFCC 1987. If a non-Santa Fe  
23 resident defaults, the department shall immobilize the vehicle of a delinquent or defaulting party  
24 for ninety (90) days if said vehicle is found in the city limits any time within [~~ten (10)~~] five (5)  
25 years of any violation of this section.

1 APPROVED AS TO FORM:

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4 KELLEY A. BRENNAN, CITY ATTORNEY

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25 *M/Legislation/Bills 2017/STOP Changes*