

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2011-5

3 INTRODUCED BY:

4
5 Councilor Trujillo

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9
10 AN ORDINANCE

11 AMENDING SECTIONS 24-4.4 AND 24-4.5 SFCC 1987 REGARDING THE SANTA FE
12 TRAFFIC OPERATIONS PROGRAM IN ORDER TO MAKE ALL SPEEDING FINES ONE
13 HUNDRED DOLLARS AND TO MAKE CLARIFICATIONS AND CORRECTIONS.

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

16 Section 1. Section 24-4.4 SFCC 1987 (being Ord. #2008-47, §5) is amended to
17 read:

18 24-4.4 Violation.

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

24 Section 2. Section 24-4.5 SFCC 1987 (being Ord. #2008-47, §6 as amended) is
25 amended to read:

1 **24-4.5 Enforcement.**

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

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

14 C. *STOP Fine Notification.*

15 (1) Form and contents. The STOP fine notification shall state and contain the
16 name of the registered owner or owners or nominee, the effective date of the STOP fine
17 notification, the type of violation, the date, time, and location of the violation, a picture of
18 the violation, the license number of the vehicle, the name and identification of the issuing
19 police officer, the amount of the fine, whether the fine is a first or subsequent violation,
20 the response due date and the address of the city clerk. The STOP fine notification shall
21 conspicuously and in bold face type state; "Failure to pay this fine on time will lead to
22 serious legal consequences including the loss of your vehicle and the assessment of
23 additional fines and monies due. A second or subsequent STOP violation within two (2)
24 years from the date of this STOP fine notification will lead to increasing fines and
25 penalties including the loss of the subject vehicle. The STOP fine notification shall

1 include an owner's affidavit form. The STOP fine notification shall contain a return
2 envelope addressed to the contractor or the Santa Fe police department. The STOP fine
3 notification shall inform the registered owner or the nominee of the right to request a
4 hearing by so indicating in a space provided on the form and returning same to the city
5 clerk.

6 (2) Delivery. The STOP fine notification shall be delivered to the address of
7 the registered owner according to the address registered with the department of motor
8 vehicles or to the address of the nominee according to the owner's affidavit. The
9 registered owner has a duty to timely notify DMV of a change of address and the failure
10 to do so does not entitle the registered owner to assert the defense of inadequate notice.
11 The mailing of a STOP fine notification to the address of the registered owner of a
12 vehicle according to the records of DMV or to the address of the nominee according to
13 the owner's affidavit is constructive notice of a STOP fine notification.

14 D. *Response to a STOP Fine Notification.* Within thirty-five (35) days from the
15 effective date, the registered owner shall pay the fine, file an owner's affidavit making a
16 nomination, or request a hearing. To pay the fine, the recipient shall deliver the STOP fine
17 notification with payment to the city or to the contractor according to the instructions on the
18 STOP fine notification. To make a nomination, the recipient shall return the STOP fine
19 notification with a completed owner's affidavit to the contractor. To request a hearing, the
20 recipient shall return the STOP fine notification with the request for hearing to the hearing
21 officer. There is no fee to request a hearing. Three (3) days for mailing is not allowed and the
22 response shall be actually received no later than thirty-five (35) consecutive days (including
23 holidays) from the effective date. The department and hearing officer shall forthwith notify the
24 contractor concerning the receipt of a request for hearing. If the fine has not been paid, there has
25 been no nomination or a request for a hearing within thirty-five (35) days from the effective date,

1 the contractor shall send written notice of default to the department and the registered owner or
2 nominee or both.

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

11 (2) Appeal. The recipient of the STOP fine notification may request a
12 hearing by so indicating and returning the STOP fine notification to the hearing officer
13 within thirty-five (35) days of the effective date. There is no fee for a hearing. The
14 hearing officer shall schedule a hearing.

15 (3) Nomination. Any registered owner who was not driving the car at the
16 time of the violation may either accept the responsibility or identify the driver so the
17 contractor can send a notice of violation to the driver. The nomination procedure
18 described in this paragraph is available to any registered owner and is not limited to
19 corporations and governmental entities. If the registered owner claims that another person
20 was driving the vehicle at the time of the violation, the registered owner shall so indicate
21 on the owner's affidavit and identify the person who was driving the vehicle. The
22 contractor shall forthwith deliver the STOP fine notification and owner's affidavit to the
23 department to the attention of the issuing police officer. The police officer may send a
24 new STOP fine notification to the nominee or cause the contractor to deliver a new STOP
25 fine notification to the nominee. The effective date of the STOP fine notification sent to

1 the nominee is the day the STOP fine notification is issued to the nominee as indicated on
2 the face of the new STOP fine notification. If the nominee successfully appeals the
3 allegation that he or she was the driver or defaults the city may proceed against the
4 registered owner by issuing a subsequent STOP fine notification to the registered owner
5 with the effective date being the date so indicated on the face of the subsequent STOP
6 fine notification. If the city cannot assert jurisdiction over the nominee, the registered
7 owner is responsible, subject to the remaining defenses available in this section. Any
8 registered owner who submits an owner's affidavit does so under penalty of perjury. If the
9 registered owner operates a business that uses a fleet of one (1) or more vehicles and
10 nominated the driver on a previous violation and the driver paid the fine or otherwise
11 cleared the violation, a subsequent violation pertaining to the fleet vehicle shall not be
12 considered a second, third or subsequent violation regarding that vehicle unless driven by
13 the same driver. Without limitation on the foregoing, nomination may be used when:

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

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

24 (c) The registered owner is an automobile rental business,
25 automobile dealership or other business entity that, in the ordinary course of

1 business, leases vehicles to others and the lessee was driving the vehicle at the
2 time of the alleged violation. Said entities shall nominate and identify the driver.

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

7 E. *Default.* If the city does not receive payment of the fine, a nomination or a
8 request for a hearing within thirty-five (35) days from the effective date, the registered owner is
9 in default. Default automatically results in liability to the registered owner for the violation and
10 the registered owner is barred from requesting or obtaining any hearing on the merits of the STOP
11 fine after the date of the default. A default results in an additional penalty of twenty-five (\$25.00)
12 dollars. The department shall cause the contractor to mail the notice of default to the defaulting
13 party. The notice of default shall inform the recipient that they have twenty (20) days from the
14 date of mailing of the notice of default to pay the fine and default penalty [~~or request a hearing~~
15 ~~from the hearing officer~~]. If the default is not cured, the city may pursue all remedies for
16 collection of a debt and is entitled to an award of reasonable attorney's fees incurred. An uncured
17 notice of default shall be entered into the records of the department and any police officer who
18 discovers a vehicle in the city in the course of a traffic stop or otherwise may seize the vehicle for
19 unpaid fines. The registered owner is liable for a default by a nominee.

20 F. *Hearing.* In the event of a demand for a hearing, the hearing officer shall hold a
21 hearing within ninety (90) days from the date of the request for hearing unless a continuance is
22 granted pursuant to the consent of the parties. The hearing does not need to be held within ninety
23 (90) days if a continuance is granted. The hearing officer is in charge of the proceedings and may
24 exclude any person for inappropriate conduct. The hearing shall be conducted following the rules
25 of evidence and civil procedure for the district courts. The department has the burden to prove by

1 a preponderance of the evidence that the violation occurred. The respondent has the burden to
2 prove any defenses by a preponderance of the evidence. A photograph, videotape or other
3 electronic evidence of a violation is authentic, is not hearsay and shall be admitted into evidence
4 by the hearing officer. The respondent may challenge the weight or accuracy of the evidence. If
5 the department prevails, the respondent shall pay the fine. The hearing officer shall render a
6 decision in writing in ten (10) days and provide the decision to the department and the finance
7 department. A determination by the hearing officer shall not impose a total amount of penalties,
8 fines, fees and costs in excess of that provided in this section. The hearing officer may refer the
9 respondent to teen court according to the municipal court's procedures for teen court referrals.
10 Failure to pay a fine as ordered by the hearing officer within [~~ten (10)~~] twenty (20) consecutive
11 days from the date of the decision is a default and will apply against the vehicle without service
12 of a notice of default. Following a hearing, the respondent may appeal the decision of the hearing
13 officer to district court within thirty (30) days of the decision and may recover the costs of filing
14 the appeal if successful.

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

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

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

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

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

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

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

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

16 (1) The fine for the first violation for running a red light is sixty-six dollars
17 (\$66.00). The fine for a subsequent violation for running a red light within two (2) years
18 from the date of the first violation is one hundred dollars (\$100.).

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

20 (a) From five (5) to ten (10) miles per hour over the speed limit in
21 school and construction zones: [~~eighty-six dollars (\$86.00)~~] one hundred dollars
22 (\$100.);

23 (b) More than eleven (11) miles per hour over the speed limit: one
24 hundred dollars (\$100.).

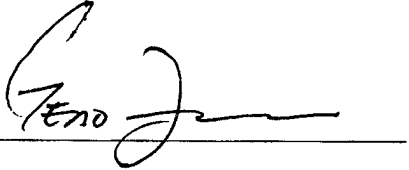
25 (3) The hearing officer may allow service to the city as an alternative to

1 payment of fines. A violator who elects to avail themselves of the option of service to the
2 city in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits
3 conferred upon city employees, including, without limitation, workers compensation. The
4 city is not responsible for damages incurred except as otherwise provided by law. The
5 person seeking relief hereunder shall timely request the option of service to the city in
6 lieu of payment of a fine by requesting a hearing before a hearing officer at which to
7 demonstrate that the person eligible for the option and shall not be in default on payment
8 of 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 community
10 service within thirty (30) days from the date of hearing. [~~If the hearing officer approves~~
11 ~~the person for relief under this paragraph, the city manager shall enter a settlement~~
12 ~~agreement whereby the person shall provide services to the city in lieu of payment of a~~
13 ~~fine.] No person who cannot pass the background check to qualify as a volunteer may
14 obtain relief under this paragraph. The services shall be performed with approved
15 organizations or city departments [~~and may include, without limitation, cleaning up~~
16 ~~weeds and litter, volunteering at local food banks, cleaning kennels at the Santa Fe~~
17 ~~animal shelter, and assisting with the maintenance of city property]. Services shall be
18 rendered in not less than full hour increments and shall be credited against the fine
19 payable at ten dollars (\$10.00) per hour. The city manager or designee shall establish
20 procedures for administering this paragraph including, but not limited to, the nature of
21 services performed.~~~~

22 I. *Seizure.* A police officer may seize or immobilize a vehicle for ninety (90) days
23 pursuant to the provisions of Section 24-9 SFCC 1987 upon discovery of a vehicle in the city
24 with unpaid STOP fines. If the registered owner fails to cure the default and pay all impound and
25 storage fees, the vehicle is subject to forfeiture under Section 24-9 SFCC 1987. If a non-Santa Fe

1 resident defaults, the department shall immobilize the vehicle of a delinquent or defaulting party
2 for ninety (90) days if said vehicle is found in the city limits any time within ten (10) years of any
3 violation of this section.

4 APPROVED AS TO FORM:

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7 GENO ZAMORA, CITY ATTORNEY

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