

TEMPORARY ORDINANCE NO. 14-13

PERMANENT ORDINANCE NO. _____

AN ORDINANCE ENACTING CHAPTER 567 OF THE CODIFIED ORDINANCES OF THE CITY OF CITY OF LANCASTER, OHIO, TO PROVIDE FOR THE IMPLEMENTATION OF LIVE DIGITAL VIDEO SCHOOL BUS VIOLATION DETECTION MONITORING TECHNOLOGY ("DMT") TO ASSIST THE ENFORCEMENT OF SCHOOL BUS TRAFFIC STOPPAGE LAWS, AND TO DECLARE AN EMERGENCY

WHEREAS, disobedience to school bus traffic stoppage laws occurs frequently within the City of Lancaster sometimes resulting in injuries and death to pedestrians, motor vehicle crashes, personal injury or substantial property damage; and

WHEREAS, the frequency of disobedience to school bus stoppage laws creates a substantial risk to the safety of the citizens, particularly children, on the streets and roadways within the City of Lancaster; and,

WHEREAS, the City of Lancaster seeks to increase compliance with school bus stoppage laws, thereby decreasing danger to pedestrians, especially children, and decreasing the number of motor vehicle crashes and the amount of personal injury and property damage that are caused by such disobedience; and

WHEREAS, the use of DMT will assist the City of Lancaster in increasing compliance with school bus stoppage laws without the disadvantages attendant to conventional traffic enforcement, such as disruptions in traffic flow and expenses associated with increased police manpower; and

WHEREAS, the use of DMT is not intended to replace or to otherwise act as a substitute for the enforcement of the traffic laws enacted by the State of Ohio, but only to supplement the enforcement of those laws when a law enforcement officer is not present when an infraction occurs; and

WHEREAS, the Ordinances of Lancaster must be amended by enacting a new Chapter 567 to enable the City to implement and utilize DMT; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO THAT Chapter 567 IS HEREBY ENACTED TO READ AS FOLLOWS:

SECTION 1. That the following Chapter be adopted:

CHAPTER 567: CIVIL PENALTIES FOR VIOLATIONS UNDER LIVE DIGITAL VIDEO SCHOOL BUS VIOLATION DETECTION MONITORING TECHNOLOGY ("DMT").

(a) Applicability.

- (1) Notwithstanding any other provision of this traffic code, there is hereby adopted a civil enforcement system for school bus stoppage law violations as outlined in this Section. The DMT system imposes monetary liability on the Registered Owner or Designated Party for failure of an operator thereof to comply with school bus stoppage laws in accordance with the provisions of this Section.
- (2) The City of Lancaster Police Department shall be solely responsible for administering violations of the DMT system; the Lancaster City Schools District shall provide access to its bus fleet for installation of the DMT. .
- (3) The Police Department shall solely administer the DMT system and shall maintain a list of the buses within the city limits where DMT is installed.
- (4) Whenever a Lancaster Police Officer witnesses a violation of Section 4511.75 of the Ohio Revised Code or otherwise has issued a citation pursuant to those sections, this Ordinance does not apply. However, the recorded images produced by the DMT system may be used as evidence for a violation of Ohio Revised Code Section 4511.75. Any citation for a violation of Ohio Revised Code Section 4511.75 issued personally by a police officer need not be issued in the manner described under this Ordinance and shall instead be treated in the same manner as prescribed by applicable Traffic or other Rules.
- (5) This Section shall not apply to violations involving vehicle or pedestrian collisions.

(b) Definitions.

For purposes of this Section, the following words and phrases shall have the meanings indicated.

- (1) "Registered Owner" means the person or entity identified by the Ohio Bureau of Motor Vehicles or registered with any state vehicle registration office as the owner of a vehicle; a lessee of a motor vehicle under a lease of thirty days or more; or the renter of a vehicle during the period of infraction pursuant to a written rental agreement with a motor vehicle renting dealer.
- (2) "Recorded Images" means images recorded by an automated traffic control signal photographic system on any of the following:
 - (A) Two or more photographs; or
 - (B) Two or more microphotographs; or
 - (C) Two or more electronic images; or
 - (D) Two or more Digital images; or

- (E) Videotape; or
- (F) Any other medium; and
- (G) Showing the front or rear of a motor vehicle and on at least one image or portion of tape, clearly identifying the license plate number of the motor vehicle.

- (3) "Live Digital Video School Bus Violation Detection Monitoring Technology" or "DMT" means a device with one or more motor vehicle sensors installed on school buses to produce recorded images of motor vehicles failing to stop as required pursuant to Ohio Revised Code Section 4511.75.
- (4) "In Operation" means operating in good working condition.
- (5) "Smart Bus" is a school bus on which DMT is installed to monitor offenses under this Ordinance.

(c) Notice Requirements.

- (1) Prior to DMT implementation, the City or its designee shall publish notice in a local newspaper of general circulation. Said notice must announce when DMT enforcement will begin.
- (2) Prior to DMT implementation, the City or its designee shall post any required signs in the time and manner set forth in Ohio Revised Code Section 4511.094. The City shall maintain substantial compliance with the requirements of Revised Code Section 4511.094 throughout the use of DMT.
- (3) For the first thirty (30) calendar days that DMT is in operation, no Notices of Liability may be issued on the basis of the images produced by the system. Warnings may be issued during that 30-day period.

(d) Offense.

- (1) An officer employed by the Lancaster Police Department shall examine the images recorded by DMT to determine whether an infraction of Ohio Revised Code 4511.75 has occurred. If the image recorded by DMT shows an infraction, contains a date and time of the alleged violation, and shows the letter and numbers on the vehicle's license plate, as well as the state in which the license was issued, the officer may use any lawful means to identify the Registered Owner.
- (2) The fact that a person or entity is the Registered Owner shall be prima facie evidence that said person or entity is the person who was operating the vehicle at the time of the violation.

- (3) A certified copy of a Notice of Liability alleging violation of this Section, sworn to or affirmed by a duly authorized Police Officer of the City of Lancaster, with the recorded images produced by DMT, shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding for review of the Notice of Liability under this Ordinance.
- (4) Within thirty (30) calendar days of the infraction, the City or its designee may issue and send by first-class United States mail a Notice of Liability charging the Registered Owner with an infraction. Said Notice of Liability must substantially comply with the requirements set forth in (e)(1) of this Section.
- (5) The recipient of a Notice of Liability shall be required to respond to it in one of the manners set forth in (f)(1) of this Section.
- (6) The Registered Owner shall not be responsible for the violation if, within fifteen (15) calendar days after receipt of the Notice of Liability, the Registered Owner furnishes the Police Department with:
 - (A) An affidavit by the Registered Owner identifying the person whom the Registered Owner believes was in control of the vehicle at the time of the violation (the "Designated Party"). Such Affidavit must contain, at a minimum, the Designated Party's name and current address; or
 - (B) An affidavit by the Registered Owner stating that at the time of the violation, the vehicle or the license plates of the vehicle were stolen or were in the care, custody, or control of some person or entity who did not have the Registered Owner's permission to use the vehicle. In order to demonstrate that the vehicle or the license plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the Registered Owner must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred; or
 - (C) If the Registered Owner is a "motor vehicle leasing dealer" or a "motor vehicle renting dealer" as defined in Ohio Revised Code Section 4511.092(A) and consistent with Section 4511.092(B), then such Registered Owner shall notify the Police Department of the name and address of the vehicle's lessor or renter at the time of the violation. A motor vehicle leasing dealer or motor vehicle renting dealer who receives a ticket for an alleged traffic law violation detected by a traffic law photo-monitoring device is not liable for a ticket issued for a vehicle that was in the care, custody, or control of a lessee or renter at the time of the alleged violation. In no case shall the dealer pay such a ticket and then attempt to collect a fee or assess the lessee or renter a charge for any payment of such a ticket made on behalf of the lessee or renter.

- (7) If the vehicle involved in the violation is a commercial vehicle and the Notice of Liability is issued to a corporate entity, the corporate entity must provide to the Police Department an affidavit, sworn to or affirmed by the statutory agent of the corporate entity, that:
 - (A) States that the person or entity named in the Notice of Liability was not in operation of the vehicle at the time of the violation; and
 - (B) Provides the name, address, and driver's license identification number of the person who had the contractual right of possession of the vehicle, e.g. an employee, (also known as a "Designated Party") .
- (8) Nothing in this Section shall be construed as limiting the liability of an operator of a vehicle for any violation of Ohio Revised Code Section 4511.75.

(e) Notice of Liability.

- (1) The Notice of Liability shall be processed by the City or its designee, and shall be served by ordinary mail to the Registered Owner address as given on the motor vehicle registration from the Bureau of Motor Vehicles of the state registered. The Notice of Liability shall include:
 - (A) The name and address of the Registered Owner;
 - (B) The license plate number of the motor vehicle involved in the violation;
 - (C) The violation charged;
 - (D) The location of the intersection;
 - (E) The date and time of the violation;
 - (F) A copy of the recorded images(s);
 - (G) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and where the payment should be made;
 - (H) A signed statement by a Lancaster Police Officer that based on inspection of recorded images, the motor vehicle was being operated in violation of subsection (d) of this Section, and a statement that the recorded images are prima facie evidence of a violation of subsection (d) of this Section;
 - (I) Information advising the person or entity alleged to be liable of the options as provided in subsection (f) of this Section;

- (J) The time, place, and manner in which an administrative appeal can be initiated and a warning that failure to exercise the options provided under subsection (f) of this Section in a timely manner is an admission of liability.
- (K) A copy of the image(s) that served as a basis for the Notice of Liability must accompany the Notice of Liability.
- (2) The City of Lancaster or its designee may serve by ordinary mail a warning notice in lieu of a Notice of Liability under this Section.
- (3) Except as provided in (f)(3) of this Section, a Notice of Liability shall be mailed no later than thirty (30) calendar days after the alleged violation.
- (4) Except as provided in (f)(3) of this Section, the Police Department or its designee may not mail a Notice of Liability to a person or entity who is not the Registered Owner.

(f) Options Upon Notice of Liability, Administrative Appeal.

- (1) A person or entity named in a Notice of Liability under this Section may do any one of the following:
 - (A) Pay the civil penalty, in accordance with instructions on the Notice of Liability, thereby waiving the opportunity to contest the violation and admitting liability; or
 - (B) Within fifteen (15) calendar days, provide the Police Department one of the affidavits described at subsection (d)(6) herein; in the case of a “motor vehicle leasing dealer” or “motor vehicle renting dealer” as defined in Ohio Revised Code 4511.092, provide the Police Department the name and address of the vehicle’s lessee or renter at the time of the violation as described at subsection (d)(7) herein; or
 - (C) Contest the Notice of Liability by filing both a written request for a hearing to review of the Notice of Liability and payment in the amount equal to the civil penalty as an administrative bond with the Police Department or its designee. Said written request and bond payment must be filed within fifteen (15) calendar days after receipt of the Notice of Liability. **Failure to request review and pay the bond amount within this time period shall constitute a waiver of the right to contest the violation, a waiver of all legal defenses that could have been asserted, and an admission of liability.** The administrative bond shall be refunded if the person or entity named in a Notice of Liability is found not liable.
- (2) When a person or entity named in a Notice of Liability chooses to contest the Notice of Liability and timely completes the requirements in (f)(1)(C) of this Section, the following shall apply.

- (A) A Hearing Officer selected by the Service-Safety Director of the City of Lancaster shall hear reviews. A hearing shall be held within twenty-one (21) business days after filing of a written request for review and administrative bond as set forth in (f)(1)(C) of this section. This time may be extended upon a written request for additional time.
- (B) The hearing shall be open to the public, and a docket shall be posted in a conspicuous place near the entrance to the hearing room that shall identify, by respondent, the hearings scheduled for that day and the time of each hearing. More than one hearing may be scheduled for the same time to allow for such things as non-appearances or admissions of liability. The Hearing Officer shall determine whether a preponderance of evidence establishes that a violation of this section occurred and the person or entity requesting the review is party operating the vehicle at the time of the violation. The Hearing Officer shall advise the person or entity of the Hearing Officer's decision.
- (C) If the Hearing Officer finds sufficient evidence of a violation, but the person or entity named in the Notice of Liability is not the party operating the vehicle at the time of the violation, the Hearing Officer shall issue a written decision finding the individual not liable and submit it to the Police Department or its designee.
- (D) In determining whether the person or entity named in the Notice of Liability is liable, the Hearing Officer may consider any of the following as an affirmative defense of a violation:
 - (i) That the vehicle caused the infraction in order to yield the right-of-way to an emergency vehicle in accordance with Ohio Revised Code Section 4511.45, or to a funeral procession in accordance with Section 4511.451.
 - (ii) That the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the Registered Owner at the time of the violation. In order to demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the Registered Owner at the time of the violation, the Registered Owner must submit proof that a police report about the stolen motor vehicle or registration plates was filed prior to the violation or within 48 hours after the violation occurred.

- (iii) That this Section is unenforceable because at the time and place of the alleged violation, the DMT system was not in proper position and the recorded image is not legible enough to determine the information needed.
 - (iv) Substantial and convincing evidence that the Registered Owner or person or entity named in the Notice of Liability was not the party operating the vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the Registered Owner or person or entity named in the Notice of Liability shall provide to the Hearing Office evidence showing the identity of the person operating the vehicle at the time of the violation, including, at a minimum, such person's name and current address, and any other evidence that the Hearing Officer deems pertinent (also known as a "Designated Party").
- (3) If the Hearing Officer finds that the person or entity named in the Notice of Liability was not the person operating the vehicle at the time of the violation or receives evidence identifying the Designated Party, the Hearing Officer shall provide to the Police Department or its designee within five (5) calendar days, a copy of any evidence substantiating the identity of the Designated Party.
 - (A) Upon receipt of evidence of the identity of the Designated Party, the Police Department or its designee may issue a Notice of Liability to the Designated Party.
 - (B) A Notice of Liability issued under this subsection (f)(3)(B) shall be sent by ordinary mail no later than twenty-one (21) business days after receipt of the evidence from the Hearing Officer or the Registered Owner of the Designated Party's identity.
 - (C) The content of a Notice of Liability issued under this subsection shall be the same as set forth in subsection (e)(1) above, and the applicable procedures shall be the same as set forth in subsection (f)(1) above.

(g) Civil Penalties.

- (1) Unless the person received a citation from a Police Officer at the time of the violation, the Registered Owner or Designated Party is subject to a civil penalty if the motor vehicle is recorded by DMT while being operated in violation of this Section.
- (2) The civil penalty under this Section shall be \$250.00. A Registered Owner or Designated Party who chooses to pay the civil penalty without appearing before a Hearing Officer may do so in the manner indicated on the Notice of Liability. A Registered Owner or Designated Party who fails to pay the civil penalty within fifteen (15) calendar days after either receiving a Notice of Liability (if not contesting it) or after a Hearing Officer's decision finding liability, shall be liable for an additional penalty in the amount of \$100.00.

- (iii) That this Section is unenforceable because at the time and place of the alleged violation, the DMT system was not in proper position and the recorded image is not legible enough to determine the information needed.
 - (iv) Substantial and convincing evidence that the Registered Owner or person or entity named in the Notice of Liability was not the party operating the vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the Registered Owner or person or entity named in the Notice of Liability shall provide to the Hearing Office evidence showing the identity of the person operating the vehicle at the time of the violation, including, at a minimum, such person's name and current address, and any other evidence that the Hearing Officer deems pertinent (also known as a "Designated Party").
- (3) If the Hearing Officer finds that the person or entity named in the Notice of Liability was not the person operating the vehicle at the time of the violation or receives evidence identifying the Designated Party, the Hearing Officer shall provide to the Police Department or its designee within five (5) calendar days, a copy of any evidence substantiating the identity of the Designated Party.
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 - (B) A Notice of Liability issued under this subsection (f)(3)(B) shall be sent by ordinary mail no later than twenty-one (21) business days after receipt of the evidence from the Hearing Officer or the Registered Owner of the Designated Party's identity.
 - (C) The content of a Notice of Liability issued under this subsection shall be the same as set forth in subsection (e)(1) above, and the applicable procedures shall be the same as set forth in subsection (f)(1) above.

(g) Civil Penalties.

- (1) Unless the person received a citation from a Police Officer at the time of the violation, the Registered Owner or Designated Party is subject to a civil penalty if the motor vehicle is recorded by DMT while being operated in violation of this Section.
- (2) The civil penalty under this Section shall be \$250.00. A Registered Owner or Designated Party who chooses to pay the civil penalty without appearing before a Hearing Officer may do so in the manner indicated on the Notice of Liability. A Registered Owner or Designated Party who fails to pay the civil penalty within fifteen (15) calendar days after either receiving a Notice of Liability (if not contesting it) or after a Hearing Officer's decision finding liability, shall be liable for an additional penalty in the amount of \$100.00.

- (3) A person against whom a decision is entered may appeal the decision as otherwise provided by law. Service of a notice of appeal does not stay enforcement and collection of applicable civil penalties for the decision from which appeal is taken unless the appellant posts bond in the amount of the penalty plus costs.
- (4) A violation for which a civil penalty is imposed under this section is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4507.021(16) for minor misdemeanor moving traffic offenses and shall not be recorded on the driving record of the owner or operator of the vehicle and shall not be reported to the Bureau of Motor Vehicles.

SECTION 2. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to protect the safety of children as they load and unload from school buses in the City, wherefore this ordinance shall be in full force, and effect immediately upon its passage and approval by the Mayor.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Approved: _____

President of Council

Clerk: _____

Mayor

Offered by: _____

Second by: _____

Requested by Public Service Boards and Administration Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2013 and _____, 2013 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council