

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

SPONSORED BY: Ken Sanchez and Debbie O'Malley

9 Section 1. Section 7-11-5(D) is amended to read as follows:

10 “(D) Response to STOP fine. Within 35 days from the effective date, the
11 registered owner shall pay the fine, make a nomination or request a hearing.
12 To pay the fine, the recipient shall deliver the STOP fine to the city or to the
13 contractor according to the instructions on the STOP fine. To make a
14 nomination, the recipient shall return the STOP fine with attached certificate to
15 the contractor. To request a hearing, the recipient shall return the STOP fine
16 with the request for hearing to the Administrative Hearing Officer. There is no
17 fee to request a hearing. Three days for mailing is not allowed and the
18 contractor must actually receive the STOP fine 35 consecutive days (including
19 holidays) from the effective date. The contractor shall forthwith notify the
20 Department and Administrative Hearing Officer concerning the receipt of
21 payment for a STOP fine. If the fine has not been paid, there has been no
22 nomination or a request for hearing within 35 days from the effective date, the
23 contractor shall send written Notice of Default to the Department and the
24 registered owner or nominee or both.

25 (1) No contest payment of fine. Upon receipt of the STOP fine, the
26 recipient may elect to admit the violation and pay the fine. To proceed under

1 this section, the recipient shall admit the violation by signing and dating the
2 STOP fine on a space provided and returning the STOP fine to the contractor
3 or to the City within 35 days. The City may, but is not required to, adopt
4 procedures for alternative methods of payment of fines using the Internet or
5 other on-line services. There shall be a \$50 penalty for any payment tendered
6 that is not honored or is returned for any reason.

7 (2) **Appeal.** The recipient of the STOP fine may request a hearing
8 by so indicating and returning the STOP fine to the Administrative Hearing
9 Officer within 35 days of the effective date. There is no fee for a hearing. The
10 Administrative Hearing Officer shall schedule a hearing.

11 (3) **Nomination.** Any registered owner who was not driving the
12 car at the time of the violation may either accept responsibility or identify the
13 driver so the contractor can send a Notice of Violation to the driver. The
14 nomination procedure described in this paragraph is available to any
15 registered owner and is not limited to corporations and governmental entities.
16 If the registered owner claims that another person was driving the vehicle at
17 the time of the violation, the registered owner must so indicate on the
18 certificate and identify the person who was driving the vehicle. The contractor
19 shall forthwith deliver the STOP fine and certificate to the Department to the
20 attention of the issuing Police Officer. The Police Officer may send a new
21 STOP fine to the nominee or cause the contractor to deliver a new STOP fine
22 to the nominee. The effective date of the STOP fine sent to the nominee is the
23 day the STOP fine is issued to the nominee as indicated on the face of the new
24 STOP fine. If the nominee appeals denying he or she was the driver or
25 defaults, the city may proceed against the registered owner by issuing a
26 subsequent STOP fine to the registered owner with the effective date being the
27 date so indicated on the face of the subsequent STOP fine. If the city cannot
28 assert jurisdiction over the nominee, the registered owner is responsible,
29 subject to the remaining defenses available in this article. Any registered
30 owner who submits a certificate does so under penalty of perjury or any other
31 applicable penalties if any information contained therein is knowingly false. If
32 the registered owner operates a business that uses a fleet of one or more
33 vehicles and nominated the driver on a previous violation and the driver paid

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1 the fine or otherwise cleared the violation, a subsequent violation pertaining to
2 the fleet vehicle shall not be considered a second, third or subsequent offense
3 regarding that vehicle. Without limitation on the foregoing, nomination may be
4 used when:

5 (a) The registered owner is the United States of America,
6 State of New Mexico, County of Bernalillo, City of Albuquerque or other
7 governmental entity that owns a vehicle that was being driven by a natural
8 person who was the employee, contractor or agent of the governmental entity
9 at the time of the alleged violation. Said entities must nominate and identify
10 the driver.

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

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

21 (d) The registered owner was not driving the vehicle at the
22 time of the violation. To assert the defense mentioned in this paragraph, the
23 registered owner must identify the actual driver and comply with the
24 nomination provision above to assert this defense.”

25 Section 2. Section 7-11-5(E) is amended to read as follows:

26 “(E) Default. If the city does not receive payment of the fine, a
27 nomination or a request for hearing within 35 days from the effective date, the
28 registered owner is in default. Default automatically results in liability to the
29 registered owner for the violation and the registered owner is barred from
30 requesting or obtaining any hearing on the merits of the STOP fine after the
31 date of default. A default results in an additional penalty of \$25. The
32 Department shall cause the contractor to mail the Notice of Default to the
33 defaulting party. The Notice of Default shall inform the recipient that they

1 have 20 days from the date of mailing of the Notice of Default to pay the fine or
2 request a hearing from the Administrative Hearing Officer. If the default is not
3 cured, the city may pursue all remedies for collection of a debt and is entitled
4 to an award of reasonable attorney's fees incurred. An uncured Notice of
5 Default shall be entered into the records of the Department and any Police
6 Officer who discovers a vehicle in the city in the course of a traffic stop or
7 otherwise may seize the vehicle for unpaid fines. The registered owner is
8 liable for a default by a nominee."

9 Section 3. Section 7-11-5(F) is amended to read as follows:

10 "(F) Hearing. In the event of a demand for hearing, the Hearing Officer will
11 hold a hearing within 90 days from the date of the request for hearing unless a
12 continuance is granted pursuant to the consent of the parties. The hearing
13 does not have to be held in 90 days if a continuance is granted. The Hearing
14 Officer is in charge of the proceedings and may exclude any person for
15 inappropriate conduct. The rules of evidence are relaxed. The Department
16 has the burden to prove by a preponderance of the evidence that the violation
17 occurred. The respondent has the burden to prove any defenses by a
18 preponderance of the evidence. A photograph, videotape or other electronic
19 evidence of a violation is authentic, is not hearsay and shall be admitted into
20 evidence by the Hearing Officer. The respondent may challenge the weight or
21 accuracy of the evidence. If the Department prevails, the respondent shall pay
22 the fine. The Hearing Officer shall render a decision in writing in ten days and
23 provide the decision to the Department and the Treasury Division. Failure to
24 pay a fine as ordered by the Hearing Officer within ten consecutive days from
25 the date of the decision is a default and will apply against the vehicle without
26 service of a Notice of Default. Following a hearing, the respondent may appeal
27 the decision of the Hearing Officer to District Court within 30 days of the
28 decision and may recover the costs of filing the appeal if successful."

29 Section 4. Section 7-11-5(G) is amended to add the following subsections
30 to the section on Defenses:

31 "(5) The vehicle should not be assessed an increased fine for a
32 subsequent offense because the registered owner owns or operates a fleet of

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1 vehicles in a business and nominated the actual driver who satisfied payment
2 of the fine on the previous violation.

3 (6) The registered owner did not receive notice because the notice of
4 violation was not mailed to an alternative address of record with the
5 Department of Motor Vehicles."

6 Section 5. Section 7-11-5(H) is amended to read as follows:

7 "(H) Fine.

8 (1) The date of a violation is the effective date. If the registered owner or
9 nominee requested a hearing and did not prevail, the date of the violation is
10 the effective date. The fine for the first violation for running a red light is
11 \$100.00. The fine for a second violation for running a red light within two
12 years from the date of the first violation is \$200.00. The fine for a third or
13 subsequent violation for running a red light within two years from the date of
14 the first violation is \$300.00.

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

16 (a) Up to and including ten miles per hour over the speed limit:
17 \$100.

18 (b) From 11 up to and including 15 miles per hour over the speed
19 limit: \$150.

20 (c) From 16 up to and including 20 miles per hour over the speed
21 limit: \$200.

22 (d) From 21 up to and including 25 miles per hour over the speed
23 limit: \$250.

24 (e) From 26 up to and including 30 miles per hour over the speed
25 limit: \$300.

26 (f) From 31 up to and including 35 miles per hour over the speed
27 limit: \$350.

28 (g) More than 35 miles per hour over the speed limit: \$400.

29 (3) The Mayor may promulgate regulations instructing the Department to
30 waive fines for minimum speed violations from time to time in specific
31 locations.

32 (4) The Mayor shall enter settlement agreements for payment of fines
33 with persons. A violator who elects to avail themselves of the option of

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1 service to the City in lieu of payment of a fine does so voluntarily and is
2 entitled to none of the benefits conferred upon City employees, including,
3 without limitation, workers compensation. The City is not responsible for
4 damages incurred except as otherwise provided by law. The person seeking
5 relief hereunder must have requested to use the option of service to the City in
6 lieu of payment of a fine and requested a hearing before the Hearing Officer to
7 demonstrate that they are not ineligible for the option prior to default and must
8 not be in default on payment of other fines levied by the City of Albuquerque.
9 If the Hearing Officer approves the person for relief under this paragraph, the
10 Mayor shall enter a settlement agreement whereby the person can provide
11 services to the City in lieu of payment of a fine. Further, if the Hearing Officer
12 approves the person for relief under this paragraph, the Hearing Officer shall
13 allow the person to provide services in lieu of payment of a fine. No person
14 who would not pass the background check to qualify as a volunteer can obtain
15 relief under this paragraph. The services include, without limitation, cleaning
16 up weeds and litter, cleaning kennels or walking dogs at the Albuquerque
17 Animal Care Center and assisting with maintenance of City property. Services
18 shall be rendered in not less than full hour increments and shall be credited
19 against the fine payable at a rate of \$10.00 per hour.”

20 Section 6. Section 7-11-6 is amended to read as follows:

21 “§ 7-11-6 ADMINISTRATION.

22 (1) The Department shall be responsible for administration of this
23 article. Reasonable rules and regulations may be promulgated by the Mayor
24 or his designee to carry out the intent and purpose of this article.

25 (2) The Mayor may establish a STOP ombudsman to address and
26 resolve citizen grievances with STOP procedures and technical issues
27 regarding automated enforcement technology.”

28 Section 7. SEVERABILITY CLAUSE. If any section, paragraph, clause or
29 provision of this Ordinance shall for any reason be held to be invalid or
30 unenforceable, the invalidity or unenforceability of such section, paragraph,
31 clause or provision shall not affect any of the remaining provisions of this
32 Ordinance.

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1 **Section 8. EFFECTIVE DATE.** This Ordinance shall take effect five days
2 after publication by title and general summary.

3 **Section 9. COMPILATION.** Sections 1 through 6 of this Ordinance shall be
4 incorporated in and made part of the Revised Ordinances of Albuquerque,
5 New Mexico, 1994.

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