

CITY of ALBUQUERQUE

SEVENTEENTH COUNCIL

COUNCIL BILL NO. F/S(2) O-07-74 ENACTMENT NO. _____

SPONSORED BY: SANCHEZ & O'MALLEY

1 ORDINANCE

2 AMENDING CHAPTER 7, ARTICLE 11 OF THE REVISED ORDINANCES OF
3 ALBUQUERQUE 1994, THE SAFE TRAFFIC OPERATIONS PROGRAM, TO
4 CHANGE THE ADMINISTRATIVE PROCEDURES FOR DEALING WITH RED
5 LIGHT AND SPEEDING VIOLATIONS AND REVISING THE FINES ALLOWED
6 UNDER THAT ARTICLE.

7 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
8 ALBUQUERQUE:

9 Section 1. Section 7-11-3 is amended to add the following definition in
10 alphabetical order:

11 “[+LOW INCOME PERSON. A Person who possesses (a) an EBT card
12 issued by the State of New Mexico for Food Stamps, (b) either the annual letter
13 of statement of benefits or monthly benefit card for Supplemental Security
14 Income, (c) an EBT card issued by the State of New Mexico for the Temporary
15 Assistance for Needy Families program or (d) a Medicaid health benefit card.
16 Additionally, a Hearing Officer may determine that a person is a Low Income
17 Person by virtue of the fact that they are a person whose income is 50% or
18 less of the median gross income for the City adjusted for family size, as
19 determined by the U.S. Department of Housing and Urban Development or by
20 figures obtainable from the Family and Community Services Department of the
21 City of Albuquerque or its successor agencies.+]”

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

23 “(D) Response to STOP fine. Within [-20-] [+35+] days from the effective
24 date, the registered owner shall pay the fine, make a nomination or request a
25 hearing. To pay the fine, the recipient shall deliver the STOP fine to the city or
26 to the contractor according to the instructions on the STOP fine. To make a

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1 nomination, the recipient shall return the STOP fine with attached certificate to
2 the contractor. To request a hearing, the recipient shall return the STOP fine
3 with the request for hearing to the ~~[-City Clerk-]~~[+Administrative Hearing
4 Officer+]. There is no fee ~~[-for-]~~[+to request+] a hearing. Three days for
5 mailing is not allowed and the contractor must actually receive the STOP fine
6 20 consecutive days (including holidays) from the effective date. The
7 contractor shall forthwith notify the Department and ~~[-City Clerk-]~~
8 [+Administrative Hearing Officer+] concerning the receipt of payment for a
9 STOP fine. If the fine has not been paid, there has been no nomination or a
10 request for hearing within ~~[-20-]~~ [+35+] days from the effective date, the
11 contractor shall send written Notice of Default to the Department and the
12 registered owner or nominee or both.

13 (1) No contest payment of fine. Upon receipt of the STOP fine, the
14 recipient may elect to admit the violation and pay the fine. To proceed under
15 this section, the recipient shall admit the violation by signing and dating the
16 STOP fine on a space provided and returning the STOP fine to the contractor
17 [+or to the City within 35 days. The City may, but is not required to, adopt
18 procedures for alternative methods of payment of fines using the Internet or
19 other on-line services+]. There shall be a ~~[-\$100-]~~[+\$50+] penalty for any ~~[-~~
20 ~~check returned for insufficient funds-]~~[+payment tendered that is not honored
21 or is returned for any reason+] .

22 (2) Appeal. The recipient of the STOP fine may request a hearing
23 by so indicating and returning the STOP fine to the ~~[-City Clerk-]~~
24 [+Administrative Hearing Officer+] within ~~[-20-]~~ [+35+] days of the effective
25 date. There is no fee for a hearing. The ~~[-City Clerk-]~~[+Administrative Hearing
26 Officer+] shall ~~[-forward the request for hearing to the Hearing Officer who will-~~
27 ~~] schedule a hearing.~~

28 (3) Nomination. Any registered owner who was not driving the
29 car at the time of the violation may either accept responsibility or identify the
30 driver so the ~~[-city-]~~[+contractor+] can send a Notice of Violation to the driver.
31 The nomination procedure described in this paragraph is available to any
32 registered owner and is not limited to corporations and governmental entities.
33 If the registered owner claims that another person was driving the vehicle at

1 the time of the violation, the registered owner must so indicate on the
2 certificate and identify the person who was driving the vehicle. The contractor
3 shall forthwith deliver the STOP fine and certificate to the Department to the
4 attention of the issuing Police Officer. The Police Officer may send a new
5 STOP fine to the nominee or cause the contractor to deliver a new STOP fine
6 to the nominee. The effective date of the STOP fine sent to the nominee is the
7 day the STOP fine is issued to the nominee as indicated on the face of the new
8 STOP fine. If the nominee appeals denying he or she was the driver or
9 defaults, the city may proceed against the registered owner by issuing a
10 subsequent STOP fine to the registered owner with the effective date being the
11 date so indicated on the face of the subsequent STOP fine. If the city cannot
12 assert jurisdiction over the nominee, the registered owner is responsible,
13 subject to the remaining defenses available in this article. Any registered
14 owner who submits a certificate does so under penalty of perjury or any other
15 applicable penalties if any information contained therein is knowingly false.

16 [+If the registered owner operates a business that uses a fleet of one or more
17 vehicles and nominated the driver on a previous violation and the driver paid
18 the fine or otherwise cleared the violation, a subsequent violation pertaining to
19 the fleet vehicle shall not be considered a second, third or subsequent offense
20 regarding that vehicle.+] Without limitation on the foregoing, nomination may
21 be used when:

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

28 (b) The registered owner is a place of business, corporation
29 or other non-natural entity that owns a vehicle that was being driven by a
30 natural person who was the employee, contractor or agent of the [-
31 governmental-][+business, corporation or other non-natural+] entity at the
32 time of the alleged violation. Said entities must nominate and identify the
33 driver.

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

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

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

11 “(E) Default. If the city does not receive payment of the fine, a
12 nomination or a request for hearing within ~~[-20-]~~ [+35+] days from the effective
13 date, the registered owner is in default. Default automatically results in
14 liability to the registered owner for the violation and the registered owner is
15 barred from requesting or obtaining any hearing on the merits of the STOP
16 fine after the date of default. ~~[-A default results in additional penalties of twice~~
17 ~~the amount of the underlying fine.-]~~ [+A default results in an additional penalty
18 of \$25.+] The Department shall cause the contractor to mail the Notice of
19 Default to the defaulting party. The Notice of Default shall inform the recipient
20 that they have 20 days from the date of mailing of the Notice of Default to pay
21 the fine or request a hearing from the ~~[-City Clerk-]~~ [+Administrative Hearing
22 Officer+]. If the default is not cured, the city may pursue all remedies for
23 collection of a debt and is entitled to an award of reasonable attorney’s fees
24 incurred. An uncured Notice of Default shall be entered into the records of the
25 Department and any Police Officer who discovers a vehicle in the city in the
26 course of a traffic stop or otherwise may seize the vehicle for unpaid fines.
27 The registered owner is liable for a default by a nominee.”

28 Section 4. Section 7-11-5(F) is amended to read as follows:

29 “(F) Hearing. In the event of a demand for hearing, the Hearing Officer will
30 hold a hearing within 90 days from the ~~[-effective date-]~~ [+date of the request
31 for hearing+] unless a continuance is granted pursuant to the consent of the
32 parties. The hearing does not have to be held in 90 days if a continuance is
33 granted. The Hearing Officer is in charge of the proceedings and may exclude

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1 any person for inappropriate conduct. The rules of evidence are relaxed. The
2 Department has the burden to prove by a preponderance of the evidence that
3 the violation occurred. The respondent has the burden to prove any defenses
4 by a preponderance of the evidence. A photograph, videotape or other
5 electronic evidence of a violation is authentic, is not hearsay and shall be
6 admitted into evidence by the Hearing Officer. The respondent may challenge
7 the weight or accuracy of the evidence. If the Department prevails, the
8 respondent shall pay the fine. The Hearing Officer shall render a decision in
9 writing in ten days and provide the decision to the Department and the
10 Treasury Division. Failure to pay a fine as ordered by the Hearing Officer
11 within ten consecutive days from the date of the decision is a default and will
12 apply against the vehicle without service of a Notice of Default. Following a
13 hearing, the respondent may appeal the decision of the Hearing Officer to
14 District Court within 30 days of the decision and may recover the costs of
15 filing the appeal if successful.”

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

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

22 (6) The registered owner did not receive notice because the notice of
23 violation was not mailed to an alternative address of record with the
24 Department of Motor Vehicles.+]”

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

26 “(H) Fine.

27 [+ (1)+] The date of a violation is the effective date. If the registered owner
28 or nominee requested a hearing and did not prevail, the date of the violation is
29 the effective date. The fine for the first violation for running a red light is [-
30 \$100-][+\$89+]. The fine for a second violation for running a red light within [-
31 two years-] [one year+] from the date of the first violation is [-\$250-] [\$150+] .
32 The fine for a third or subsequent violation for running a red light within [-two
33 years-] [one year+] from the date of the first violation is [-\$500-] [\$200+] .

1 **[+(2)+] The fines for speeding are as follows:**

2 **[~~-(1)~~][+(a)+] Up to and including ten miles per hour over the speed**
3 **limit: \$100.**

4 **[~~-(2)~~][+(b)+] From 11 up to and including 15 miles per hour over the**
5 **speed limit: \$150.**

6 **[~~-(3)~~][+(c)+] From 16 up to and including 20 miles per hour over the**
7 **speed limit: \$200.**

8 **[~~-(4)~~][+(d)+] From 21 up to and including 25 miles per hour over the**
9 **speed limit: \$250.**

10 **[~~-(5)~~][+(e)+] From 26 up to and including 30 miles per hour over the**
11 **speed limit: \$300.**

12 **[~~-(6)~~][+(f)+] From 31 up to and including 35 miles per hour over the**
13 **speed limit: \$350.**

14 **[~~-(7)~~][+(g)+] More than 35 miles per hour over the speed limit: \$400.**

15 **[+(3)+] The Mayor may promulgate regulations instructing the Department**
16 **to waive fines for minimum speed violations from time to time in specific**
17 **locations. [~~The fine for any violation not listed above shall be \$500.-~~]**

18 **[+(4)+] The Mayor may, but is not required to, enter settlement agreements**
19 **for payment of fines with persons. To apply for relief under this paragraph,**
20 **the person wanting a settlement agreement must request a hearing and prove**
21 **to the satisfaction of the Hearing Officer that they are: a) a Low Income**
22 **Person; or b) that they are otherwise in good faith unable to pay; or c) that**
23 **circumstances, that would otherwise create an uncommon hardship and**
24 **which are specified in the Hearing Officer's order granting the request, justify**
25 **special treatment for the person. A violator who elects to avail themselves of**
26 **the option of service to the City in lieu of payment of a fine does so voluntarily**
27 **and is entitled to none of the benefits conferred upon City employees,**
28 **including, without limitation, workers compensation. The City is not**
29 **responsible for damages incurred except as otherwise provided by law. The**
30 **person seeking relief hereunder must have requested the hearing prior to**
31 **default and must not be in default on payment of other fines levied by the City**
32 **of Albuquerque. If the Hearing Officer approves the person for relief under**
33 **this paragraph, the Mayor may enter a settlement agreement whereby the**

1 person can provide services to the City in lieu of payment of a fine. Further, if
2 the Hearing Officer approves the person for relief under this paragraph, the
3 Hearing Officer may allow the person to provide services in lieu of payment of
4 a fine. No person who would not pass the background check to qualify as a
5 volunteer can obtain relief under this paragraph. The services include,
6 without limitation, cleaning up weeds and litter, cleaning kennels or walking
7 dogs at the Albuquerque Animal Care Center and assisting with maintenance
8 of City property. Services shall be rendered in not less than full hour
9 increments and shall be credited against the fine payable at the minimum
10 wage in effect in Albuquerque on the day the service is rendered.+]]

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

12 "§ 7-11-6 ADMINISTRATION.

13 [+1+]The Department shall be responsible for administration of this article.
14 Reasonable rules and regulations may be promulgated by the Mayor or his
15 designee to carry out the intent and purpose of this article.

16 [+ (2) The Mayor may establish a STOP ombudsman to address and
17 resolve citizen grievances with STOP procedures and technical issues
18 regarding automated enforcement technology. The ombudsman shall have
19 the authority to dismiss pending violations, purge previous violations, refund
20 fines paid and make recommendation to the Mayor regarding improvement to
21 the program.+]]"

22 Section 8. SEVERABILITY CLAUSE. If any section, paragraph, clause or
23 provision of this Ordinance shall for any reason be held to be invalid or
24 unenforceable, the invalidity or unenforceability of such section, paragraph,
25 clause or provision shall not affect any of the remaining provisions of this
26 Ordinance.

27 Section 9. EFFECTIVE DATE. This Ordinance shall take effect five days
28 after publication by title and general summary.

29 Section 10. COMPILATION. Sections 1 through 7 of this Ordinance shall be
30 incorporated in and made part of the Revised Ordinances of Albuquerque,
31 New Mexico, 1994.

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