

CITY of ALBUQUERQUE

TWENTY FOURTH COUNCIL

COUNCIL BILL NO. F/S O-21-69 ENACTMENT NO. _____

SPONSORED BY: Peña, Sena, Bassan, Benton

1 **ORDINANCE**

2 **ENACTING THE ALBUQUERQUE AUTOMATED SPEED ENFORCEMENT**
3 **ORDINANCE TO MONITOR THE SPEED OF TRAVEL AND ENFORCE THE**
4 **SPEED LIMIT THROUGH SPEED ENFORCEMENT CAMERAS.**

5 **WHEREAS, traffic safety is an important piece of our overall effort to**
6 **improve public safety; and**

7 **WHEREAS, in 2019, ninety-seven (97) people were killed while simply trying**
8 **to move around our city, the highest number of traffic fatalities in more than**
9 **10 years; and**

10 **WHEREAS, that is 97 too many of our neighbors, children, and friends lost**
11 **unnecessarily to traffic violence; and**

12 **WHEREAS, from 2014 to 2018, excessive speed was considered the top**
13 **contributing factor in 8% of fatal crashes; and**

14 **WHEREAS, it is estimated that excessive speed plays a role in 25% or more**
15 **of all fatal crashes, in conjunction with other dangerous driving behaviors;**
16 **and**

17 **WHEREAS, our community needs a shared commitment to save lives and**
18 **protect our residents from dangerous crashes; and**

19 **WHEREAS, concerns over safety keep many Albuquerque residents from**
20 **walking, riding a bicycle, and taking transit; and**

21 **WHEREAS, traffic crashes have increased in Albuquerque since 2010 and**
22 **the trends are alarming; and**

23 **WHEREAS, two studies in 2018 and 2019 found that Albuquerque is among**
24 **the 20 most dangerous cities in the United States for all road users, and**
25 **especially for people walking and bicycling; and**

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1 WHEREAS, examining fatalities in crashes involving different modes of
2 transportation, there have been slight increases in fatalities in crashes
3 involving bicycles, motorcycles, and motor vehicles (cars, trucks, SUVs, vans,
4 semis, and buses) in recent years; and

5 WHEREAS, pedestrian fatalities, on the other hand, have increased four
6 times over this period, representing as much as half of all traffic deaths in our
7 community in any given year; and

8 WHEREAS, the City has committed to a Vision Zero Action Plan that
9 establishes a roadmap for Albuquerque to improve traffic safety today and
10 eliminate traffic deaths and serious injuries by 2040; and

11 WHEREAS, pursuant to Section 8-1-2-4 ROA (1994), the Mayor, or his
12 designated representative, may place and maintain such additional traffic
13 control devices as are deemed necessary to regulate traffic under this Traffic
14 Code or state law, or to guide or warn traffic; and

15 WHEREAS, speed enforcement cameras are different from red light
16 cameras because speed enforcement cameras monitor the speed of travel to
17 enforce the speed limit and do not monitor red light violations; and

18 WHEREAS, speeding is a serious issue in Albuquerque, but the police also
19 have other crime fighting priorities that require difficult enforcement
20 decisions; and

21 WHEREAS, traffic enforcement is the leading cause of interactions between
22 police and the public, according to a 2018 report by the Department of Justice;
23 and

24 WHEREAS, speed enforcement cameras would result in more consistent
25 and unbiased enforcement of traffic laws; and

26 WHEREAS, speed enforcement cameras would limit unnecessary
27 interactions between civilians and police; and

28 WHEREAS, speed enforcement cameras conserve police resources and
29 increase safety to officers and the public; and

30 WHEREAS, the City Council finds that some drivers in Albuquerque
31 repeatedly violate posted speed limits and that state law against speeding is
32 inadequate to preserve public safety in Albuquerque without enforcement; and

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1 WHEREAS, the City Council finds that law enforcement and other local
2 agencies employ a variety of methods to reduce speeding, including traffic
3 engineering, education, and enforcement; and

4 WHEREAS, the City Council finds that traffic speed enforcement is critical
5 to the efforts of Albuquerque to reduce factors that contribute to traffic
6 collisions that result in fatalities or injuries; and

7 WHEREAS, the City Council finds that additional tools, including
8 automated speed enforcement, are available to assist cities in addressing
9 excessive speeding and speed-related crashes; and

10 WHEREAS, the City Council finds that automated speed enforcement (ASE)
11 offers a high rate of detection, and, in conjunction with education, traffic
12 engineering, and law enforcement measures, it can significantly improve
13 traffic safety and prevent traffic related fatalities and injuries; and

14 WHEREAS, the City Council declares that enforcing speed limits using ASE
15 systems on streets where speeding drivers negatively impact traffic safety is a
16 reliable and cost-effective means to prevent further fatalities and injuries and
17 would be in the public interest; and

18 WHEREAS, the City Council declares that speeding is a nuisance that must
19 be abated by the assessment of fines; and

20 WHEREAS, the City Council declares that this article is a nuisance
21 abatement article enacted pursuant to the City’s authority under state law and
22 the remedies are purely civil and not criminal in nature.

23 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY
24 ALBUQUERQUE:

25 SECTION 1. A new Article 15, the “Albuquerque Automated Speed
26 Enforcement Ordinance,” is hereby added and adopted within Chapter 7
27 “Transportation, Vehicles, and Traffic,” as follows:

28 § 7-15-1 SHORT TITLE.

29 This article may be referred to as the Albuquerque Automated Speed
30 Enforcement Ordinance or “ASE.”

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1 § 7-15-2 DEFINITIONS.

2 For the purposes of the Albuquerque Automated Speed Enforcement
3 Ordinance, the following definitions shall apply unless the context clearly
4 indicates or requires a different meaning:

5 ASE SYSTEM FINE. The fine assessed for a violation, as set forth in
6 Section 7-15-3, or successor provision under this article (or successor article
7 of the city’s codified ordinances).

8 ASE SYSTEM FINE NOTICE. A written document mailed to the address of
9 the registered owner or nominee stating that a violation has occurred and
10 payment is due.

11 CAMERA SPEED DEVICE or “CSD.” The instrument that detects a violation
12 of this article. The definition includes but is not limited to cameras and
13 electronic speed detection equipment reasonably relied upon by police
14 officers.

15 CONTRACTOR. A person or entity that enters into a contract with the City
16 of Albuquerque to provide photographic or electronic evidence of a speed
17 violation through a CSD.

18 DEPARTMENT. The Albuquerque Police Department.

19 DRIVER. The person operating a motor vehicle at the time of a violation.

20 IDENTIFY. To submit information on the actual driver of a vehicle sufficient
21 to allow the city to locate and notify the driver in lieu of the registered owner,
22 including but not limited to, the name and address of the driver.

23 NOMINATE or NOMINATION. A written statement by the registered owner
24 identifying the actual driver of a car as the responsible party for a violation.

25 NOMINEE. The person or entity identified by the registered owner as the
26 driver or responsible party.

27 NUISANCE. The act of operating a vehicle in violation of this article.

28 OWNER’S AFFIDAVIT. A written statement signed under oath and
29 submitted to the city or the city’s contractor under penalty of perjury by the
30 registered owner of a vehicle who asserts therein that the registered owner
31 was not driving the vehicle at the time of a violation.

32 RESPONDENT. An accused violator who has received an ASE System Fine
33 Notice and requested a hearing.

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1 **§ 7-15-3 VIOLATION.**

2 Any action or conduct constituting a violation under § 8-1-2-6 of this Code
3 of Ordinances, NMSA 1978 § 66-7-104 of the New Mexico State Motor Vehicle
4 Code, or any other city or state laws pertaining to speeding is a violation. This
5 article does not apply to emergency vehicles responding to an emergency.

6 **§ 7-15-4 ENFORCEMENT.**

7 **(A) Violation recorded by CSD. The contractor shall provide all evidence**
8 **of a CSD-recorded violation to the Albuquerque Police Department. The**
9 **Albuquerque Police Department shall review all CSD evidence provided by the**
10 **contractor.**

11 **(1) If the Albuquerque Police Department determines that a**
12 **violation has occurred and that a citation is warranted, the Albuquerque**
13 **Police Department shall cause an ASE fine notice to be delivered to the**
14 **registered owner.**

15 **(2) The registered owner is strictly and vicariously liable for the**
16 **violation unless one of the defenses herein applies. If there is more than one**
17 **registered owner, all registered owners shall be jointly and severally liable for**
18 **the violation.**

19 **(B) ASE fine notice.**

20 **(1) The ASE fine notice shall state and contain the name of the**
21 **registered owner or nominee, the effective date of the ASE fine notice, the**
22 **type of violation, the date, time, and location of the violation, a picture of the**
23 **violation, the license plate number of the vehicle, the name and identification**
24 **of the issuing Albuquerque Police Department official, the amount of the fine,**
25 **the response due date and the return address. The ASE fine notice shall**
26 **inform the registered owner or the nominee of the option to complete**
27 **community service in lieu of payment of the ASE fine, and the right to request**
28 **a hearing.**

29 **(2) Delivery. The ASE fine notice shall be delivered to the address**
30 **of the registered owner according to the address registered with the**
31 **Department of Motor Vehicles, from information obtained from the**
32 **Metropolitan Court, from Department Records, or from any other**

1 documentation or records reasonably relied upon by police officers, or it shall
2 be delivered to the address of the nominee according to the owner’s affidavit.

3 (C) Response to an ASE fine notice. The registered owner shall pay the
4 fine, elect to complete community service, file an owner’s affidavit making a
5 nomination, or request a hearing by the response due date as indicated by
6 the ASE fine notice.

7 (D) Nomination. A registered owner not driving the car at the time of the
8 violation may either accept the responsibility and pay the ASE fine, or identify
9 the driver so an ASE fine notice can be sent to the driver.

10 (1) If the registered owner claims that another person was driving
11 the vehicle at the time of the violation, the registered owner shall so indicate
12 on the owner’s affidavit and identify the person who was driving the vehicle.
13 Any registered owner who submits an owner’s affidavit does so under penalty
14 of perjury.

15 (2) A new ASE fine notice will be delivered to the nominee. If the
16 nominee successfully appeals the allegation that they were the driver, the city
17 may proceed against the registered owner. The registered owner is also
18 responsible for payment of the ASE fine if the city cannot assert jurisdiction
19 over the nominee, subject to the remaining defenses available in this article.

20 (E) Default. If the city does not receive payment of the ASE fine, an
21 election to complete community service, a nomination, or a request for a
22 hearing by the response due date as indicated by the ASE fine notice, the
23 registered owner is in default. If the default is not cured, the city may pursue
24 all remedies for collection of a debt and is entitled to an award of reasonable
25 attorney’s fees incurred.

26 (F) Hearing. In the event of a demand for a hearing, the Hearing Officer
27 shall hold a hearing pursuant to the procedures outlined in the Independent
28 Office of Hearings “IHO” Ordinance, ROA 1994, §§ 2-7-8-1 to 2-7-8-9. The
29 hearing shall be conducted following the rules of evidence and civil
30 procedure for the district courts. The Department has the burden to prove the
31 violation by a preponderance of the evidence. The respondent has the burden
32 to prove any defenses by a preponderance of the evidence. If the Department
33 prevails, the respondent shall pay the fine within 30 consecutive days from

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1 the date of the decision. Following a hearing, the respondent may appeal the
2 decision of the Hearing Officer to the District Court within 30 days of the
3 decision and may recover the costs of filing the appeal if successful.

4 (G) Defenses. At a timely requested hearing, the respondent may
5 present the following 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
8 violation. The registered owner shall have a police report pertaining to the
9 theft to avail the 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.

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

15 (4) The respondent is the registered owner, but was not driving
16 the vehicle at the time of the violation. To assert this defense, the registered
17 owner shall identify the actual driver and comply with the nomination
18 provisions in subsection (D) of this section.

19 (5) The registered owner did not receive notice because the ASE
20 fine notice was not mailed to the address of record with the Department of
21 Motor Vehicles.

22 (H) Penalty.

23 (1) A violation constitutes a civil infraction punishable by a fine
24 of \$100 or completion of four (4) hours of community service.

25 (2) A violator may elect service to the City as an alternative to
26 payment of fines. A violator who elects the option of service to the City in lieu
27 of payment of a fine does so voluntarily and is entitled to none of the benefits
28 conferred upon city employees, including, without limitation, worker's
29 compensation or the payment of any wages or benefits. The City is not
30 responsible for damages incurred as a result of such service except as
31 otherwise provided by law. The person seeking relief hereunder shall timely
32 request the option of service to the City in lieu of payment of a fine. Services
33 shall be rendered in not less than full hour increments and shall be credited

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1 against the fine payable at a rate of \$25 per hour. The Mayor or the Mayor's
2 designee shall establish procedures for administering this paragraph
3 including, but not limited to, the nature of services that may be performed, the
4 timeframe in which a respondent must complete their community service, and
5 consequences for failure to complete community service.

6 § 7-15-5 ADMINISTRATION.

7 (A) The Albuquerque Police Department shall be responsible for
8 administration of this article. Reasonable rules and regulations may be
9 promulgated by the Mayor or the Mayor's designee to carry out the intent and
10 purpose of this article.

11 (B) The revenue generated through ASE shall be retained and
12 distributed in accordance with the provisions of Section 3-18-17(A)(2) NMSA
13 1978 (2009).

14 (C) The contractor hired to aid in the administration of this program
15 will not be compensated based on the number of citations issued. The
16 contractor shall be compensated by a flat fee.

17 (D) An independent third-party lab shall perform a calibration test
18 on the CSD instruments used for speed detection at least annually.

19 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, word or
20 phrase of this ordinance is for any reason held to be invalid, or unenforceable
21 by any court of competent jurisdiction, such decision shall not affect the
22 validity of the remaining provisions of this ordinance. The Council hereby
23 declares that it would have passed this ordinance and each section,
24 paragraph, sentence, clause, word or phrase thereof irrespective of any
25 provision being declared unconstitutional or otherwise invalid.

26 SECTION 3. COMPILATION. Section 1 of this ordinance shall be
27 incorporated in and made part of the City Charter and Revised Ordinances of
28 Albuquerque, New Mexico, 1994.

29 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five (5) days
30 after publication by title and general summary.

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