

Form and Correctness Approved: *BAP*

Contents Approved:

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NORFOLK, VIRGINIA

R-8 ORDINANCE NO. 48,586

AN ORDINANCE TO AMEND AND REORDAIN ARTICLE VI OF CHAPTER 25 OF THE NORFOLK CITY CODE, 1979, SO AS TO ADD ONE NEW SECTION 25-233 REGARDING PHOTO SPEED MONITORING DEVICES IN HIGHWAY WORK ZONES AND SCHOOL CROSSING ZONES IN ACCORDANCE WITH VIRGINIA CODE § 46.2-882.1.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Article VI of Chapter 25 of the Norfolk City Code, 1979, is hereby amended and reordained so as to add one new Section 25-233 to read as follows in accordance with Virginia Code § 46.2-882.1:

Sec. 25-233 Photo Speed Monitoring Devices in Highway Work Zones and School Crossing Zones.

(a) For the purposes of this section:

"Highway work zone" has the same meaning ascribed to it in Code of Virginia § 46.2-878.1.

"Photo speed monitoring device" means equipment that uses radar or LIDAR-based speed detection and produces one or more photographs, microphotographs, videotapes, or other recorded images of vehicles.

"School crossing zone" has the same meaning ascribed to it in Code of Virginia § 46.2-873.

(b) As authorized by the City Manager, the Norfolk Police Department may place and operate photo speed monitoring devices within the boundaries of the City in school crossing zones for the purposes of recording

violations of Code of Virginia § 46.2-873 and in highway work zones for the purposes of recording violations of Code of Virginia § 46.2-878.1.

1. The operator of a vehicle shall be liable for a monetary civil penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a photo speed monitoring device, to be traveling at speeds of at least 10 miles per hour above the posted school crossing zone or highway work zone speed limit within such school crossing zone or highway work zone. Such civil penalty shall not exceed \$100, and any prosecution shall be instituted and conducted in the same manner as prosecution for traffic infractions. Civil penalties collected under this section resulting from a summons issued by a local law-enforcement officer shall be paid to the locality in which such violation occurred. Civil penalties collected under this section resulting from a summons issued by a law-enforcement officer employed by the Department of State Police shall be paid into the Literary Fund.
2. If a photo speed monitoring device is used, proof of a violation of Code of Virginia § 46.2-873 or 46.2-878.1 shall be evidenced by information obtained from such device. A certificate, or a facsimile thereof, sworn to or affirmed by a law-enforcement officer, based upon inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo speed monitoring device, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotapes, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation of Code of Virginia § 46.2-873 or 46.2-878.1.
3. In the prosecution for a violation of Code of Virginia § 46.2-873 or 46.2-878.1 in which a summons was issued by mail, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of Code of Virginia § 46.2-873 or 46.2-878.1, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in

evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle:

- i. Files an affidavit by regular mail with the Clerk of the Norfolk General District Court that he was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person who was operating the vehicle at the time of the alleged violation; or
- ii. Testifies in open court under oath that he was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person who was operating the vehicle at the time of the alleged violation.

Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of Code of Virginia § 46.2-873 or 46.2-878.1, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

4. Imposition of a penalty pursuant to this section by mailing a summons shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. However, if a law-enforcement officer uses a photo speed monitoring device to record a violation of Code of Virginia § 46.2-873 or 46.2-878.1 and personally issues a summons at the time of the violation, the conviction that results shall be made a part of such driver's driving record and used for insurance purposes in the provision of motor vehicle insurance coverage.

5. A summons for a violation of Code of Virginia § 46.2-873 or 46.2-878.1 issued by mail pursuant to this section may be executed pursuant to Code of Virginia § 19.2-76.2. Notwithstanding the provisions of Code of Virginia § 19.2-76, a summons issued by mail pursuant to this section may be executed by mailing by first-class mail a copy thereof to the owner, lessee, or renter of the vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained in the records of or accessible to the Department of Motor Vehicles. In the case of a vehicle lessee or renter, the copy shall be mailed to the address contained in the records of the lessor or renter. Every such mailing shall include, in addition to the summons, a notice of:

- i. The summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subdivision (3) above, and
- ii. Instructions for filing such affidavit, including the address to which the affidavit is to be sent.

If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in Code of Virginia § 19.2-76.3. No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons. If the summons is issued to an owner, lessee, or renter of a vehicle with a registration outside the Commonwealth and such person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons will be eligible for all legal collections activities. Any summons executed for a violation of Code of Virginia § 46.2-873 or 46.2-878.1 issued pursuant to this section shall provide to the person summoned at least 30 days from the mailing of the summons to inspect information collected by a photo speed monitoring device in connection with the violation. If the law-enforcement agency that was

operating the photo speed monitoring device does not execute a summons for a violation of Code of Virginia § 46.2-873 or 46.2-878.1 issued pursuant to this section within 30 days from the date of the violation, all information collected pertaining to that suspected violation shall be purged within 60 days from the date of the violation.

6. A private vendor may enter into an agreement with the Norfolk Police Department through the City of Norfolk to be compensated for providing a photo speed monitoring device and all related support services, including consulting, operations, and administration. However, only a law-enforcement officer may swear to or affirm the certificate required by this subsection. Any such agreement for compensation shall be based on the value of the goods and services provided, not on the number of violations paid or monetary penalties imposed. Any private vendor contracting with the City of Norfolk pursuant to this section may enter into an agreement with the Department of Motor Vehicles, in accordance with the provisions of subdivision B 31 of Code of Virginia § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that committed a violation of Code of Virginia § 46.2-873 or 46.2-878.1. Any such information provided to such private vendor shall be protected in a database.

7. Information collected by a photo speed monitoring device operated pursuant to this section shall be limited exclusively to that information that is necessary for the enforcement of school crossing zone and highway work zone speeding violations. Information provided to the operator of a photo speed monitoring device shall be protected in a database and used only for enforcement against individuals who violate the provisions of this section or Code of Virginia § 46.2-873 or 46.2-878.1. Notwithstanding any other provision of law, all photographs, microphotographs, videotapes, or other recorded images collected by a photo speed monitoring device shall be used exclusively for enforcing school crossing zone and highway work zone speed limits and shall not be:

- i. Open to the public;
- ii. Sold or used for sales, solicitation, or marketing purposes;
- iii. Disclosed to any other entity except as may be necessary for the enforcement of school crossing zone and highway work zone speed limits or to a vehicle owner or operator as part of a challenge to the violation; or
- iv. Used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of this section or Code of Virginia § 46.2-873 or 46.2-878.1, or such information is requested upon order from a court of competent jurisdiction.

Information collected under this section pertaining to a specific violation shall be purged and not retained later than 60 days after the collection of any civil penalties. While using photo speed monitoring devices, the Norfolk Police Department shall annually certify compliance with this section and Code of Virginia § 46.2-882.1 and make all records pertaining to such system available for inspection and audit by the Commissioner of Highways or the Commissioner of the Department of Motor Vehicles or his designee. Any person who discloses personal information in violation of the provisions of this subdivision shall be subject to a civil penalty of \$1,000 per disclosure.

8. A conspicuous sign shall be placed within 1,000 feet of any school crossing zone or highway work zone at which a photo speed monitoring device is used, indicating the use of the device. There shall be a rebuttable presumption that such sign was in place at the time of the commission of the speed limit violation.
9. While the Norfolk Police Department places and operates a photo speed monitoring device pursuant to the provisions of this section shall report to the Department of State Police, in a format to be determined by the Department of State Police, by January 15 of each year on the number of traffic violations prosecuted, the number of successful prosecutions, and the total amount of monetary civil penalties collected.

Section 2:- That this ordinance shall be in effect from and after the date of its adoption.

Adopted by Council December 7, 2021
Effective December 7, 2021