

BY AUTHORITY

ORDINANCE NO. 64
SERIES OF 2022

COUNCIL BILL NO. 37
INTRODUCED BY COUNCIL
MEMBER WINK

AN ORDINANCE AMENDING TITLE 11, CHAPTER 1B, SECTIONS 11-1B-1 AND 11-1B-2 OF ENGLEWOOD MUNICIPAL CODE REGARDING TRAFFIC PROCEDURES, DEFINITIONS.

WHEREAS, Englewood Municipal Code § 11-1B-1 provides definitions and procedure for traffic violations within the City and prosecuted in Englewood Municipal Court; and

WHEREAS, this section requires revision to ensure statutory consistency and compliance, specifically to denote that criminal speeding offenses are only those in excess of 24 mph over the posted speed limit, not 19 mph as currently stated; and

WHEREAS, Englewood Municipal Code §§ 11-1B-1 and 11-1B-2 contain provisions that are largely duplicative of state rules of traffic violation procedures and definitions of misdemeanor traffic offenses; and

WHEREAS, in a continuing effort to update Municipal Code sections for clarity and brevity, and to comport with best practices, in addition to amendments to mirror state traffic laws, the Municipal Code amendments contained herein remove duplicative rules and procedures, incorporate state rules by reference, and provide amendments to reflect current best practices previously implemented by the City of Englewood Municipal Court.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. Amendment of Englewood Municipal Code

Title 11, Chapter 1B, Section 11-1B-1 of Englewood Municipal Code is hereby amended to read as follows (new provisions bold/italics, deleted provisions ~~struck through~~):

11-1B-1: Traffic *Infractions*~~Violation Procedures~~.

A. *The Colorado Court Rules Chapter 29.7 Rules for Traffic Infractions (C.R.T.I.) Rules 2,3,4,6,7,9,11,12,13,15,16,17, and 18 are incorporated by reference as if fully set forth herein. To the extent a C.R.T.I. provision is not otherwise applicable, it shall be interpreted to apply to the City or EMC equivalent. In any conflict, EMC provisions shall apply.*

B. *Definitions. The following words, Terms and phrases, when used in this Chapter shall These definitions shall supplement C.R.T.I. and Model Traffic Code (MTC): have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning. In the event of any conflict between the Model Traffic Code and the definitions contained in this Section, this Section shall be controlling:*

Charging Document: Means the document commencing or initiating the traffic violation matter whether denoted as a complaint, summons and complaint, citation, penalty assessment notice, or other document charging the person with the commission of a traffic violation.

~~*Defendant:* Means any person charged with the commission of a traffic violation.~~

~~1. *Judgment:* Means the admission of guilt or liability for any traffic violation, the entry of judgment of guilt or liability, or the entry of default judgment as set forth in this Code in Title 11, Articles 1A or 1B, against any person for the commission of a traffic violation.~~

~~1. *Penalty includes:* Means that a fine and/or imprisonment under imposed pursuant to EMC § Section 1-4-1, but not imprisonment. of this Code.~~

~~2. *Tender in C.R.T.I. 4 includes conspicuously attaching a parking violation charging document to the subject vehicle.*~~

~~3. *Traffic Infraction includes:* Means every violation of any provision of EMC Title 11, Chapters 1, and this Chapter 1A and the MTC, relating to traffic or any provision of the Model Traffic Code, as adopted or amended by the City, excluding except those traffic violations defined as misdemeanors and traffic offenses.~~

~~4. *Traffic Offense:* Means the following offenses as set forth in this Chapter or in Article I of the Model Traffic Code as adopted and amended by the City:~~

~~1. Section 235 MTC: Minimum Standards for Commercial Vehicles.~~

~~2. Sec. 1903 MTC: Stopping for School Buses.~~

~~3. Secs. 1101, 1102, 1103, 1104 MTC: Basic Speed Rules Including Decreasing of Speed Limits, Altering of Speed Limits and Elevated Structures Speed Limits Only Where the Speed Alleged is Greater Than 19 Miles Per Hour Over the Posted Speed Limit.~~

~~4. Sec. 1105 MTC: Speed Contests/Exhibition of Speed.~~

~~5. Sec. 1401 MTC: Reckless Driving.~~

~~6. Sec. 1402 MTC: Careless Driving.~~

~~7. Sec. 1409 MTC: Compulsory Insurance Penalty, as amended by E.M.C. § 11-1-1B(21) E.M.C.~~

~~8. Sec. 1413 MTC: Eluding or Attempting to Elude Police Officer.~~

~~9. Sec. 603(5) MTC: Obedience to Official Truck Traffic Control Devices.~~

~~5. *Traffic Violation:* Means any violation of Title 11, Chapters 1, 1A or 1B, whether or not such violation is a traffic infractions or a traffic offense.~~

~~CB. *Civil Matters: Traffic Infractions Not Criminal:* All Traffic infractions are deemed and shall constitute civil matters, and are not criminal violations, tried to a referee and not to a jury unless the charging document includes an offense that provides the defendant with a right to a jury trial. In that case, the action shall follow rules of procedure for that offense.~~

~~C. *No Jury Trial for Traffic Infractions:*~~

~~1. A defendant brought to trial solely upon a traffic infraction shall have no right to a trial by jury as contemplated by C.R.S. Section 13-10-114 or Rules 223, of the Municipal Court Rules of Procedure. Trial of all traffic infractions shall be to the Court. No defendant found liable for a traffic infraction shall be punished by imprisonment for such traffic infraction.~~

~~2. Trials for traffic infractions shall in all other matters be subject to the same procedures as any other Municipal ordinance violation.~~

~~D. *Right to Jury Trial for Traffic Offenses:*~~

1. ~~Any defendant charged with any traffic offense shall have the right to a jury trial upon proper perfection of a jury trial demand pursuant to Rule 223 of the Municipal Court Rules of Procedure.~~
 2. ~~If a defendant is charged with more than one traffic violation arising out of the same incident and at least one of the charged traffic violations is a traffic offense, the defendant shall have the right to demand a trial by jury as set forth in subsection D1 of this Section as to all violations, which shall be consolidated for purposes of trial.~~
- E. ~~*Commencement of Traffic Infraction Action:* An action under this Chapter charging a traffic infraction is commenced by the tender or service of a charging document upon the defendant or by conspicuously attaching a parking traffic infraction document to the subject vehicle and by filing the charging document with the Municipal Court.~~
- F. ~~*Payment of Traffic Infraction Penalty Without Appearance:*~~
1. ~~The clerk of the Court shall accept payment of a traffic infraction penalty by a defendant without an appearance before the Court under the following conditions:~~
 - a. ~~If payment is made no later than the close of business on the thirtieth day following the date of issuance of the charging document.~~
 - b. ~~If payment is allowable by mail, telecommunications, electronic means, or at the Traffic Violations Bureau under the fine schedule.~~
 - c. ~~At the time of payment, which shall include all costs, fees, and surcharges regularly assessed by the Court; as the same are required for defendants pleading or being found guilty of non-civil Municipal violations, the defendant shall sign a waiver of rights and acknowledgment of guilt or liability upon a form approved by the Court.~~
 2. ~~This procedure shall constitute an entry in satisfaction of judgment.~~
- G. ~~*Traffic Infraction First Appearance:*~~
1. ~~If the defendant has not previously acknowledged guilt or liability and satisfied the judgment on the traffic infraction, he or she shall appear before the Court within the time period scheduled for first appearance.~~
 2. ~~The defendant may appear in person or by counsel who shall enter an appearance in the case; provided, however, if an admission of guilt or liability is entered, the Court may require the presence of the defendant for the assessment of the penalty.~~
 3. ~~If the defendant appears in person, he or she shall be advised of the following:~~
 - a. ~~The nature of the traffic infraction alleged in the charging document;~~
 - b. ~~The penalty, fees, costs and surcharges that may be assessed, and the penalty points that may be assessed against his or her driving privilege;~~
 - c. ~~The consequences of the failure to appear at any subsequent hearing, including entry of judgment against the defendant and reporting the judgment to the State Motor Vehicle Division which may assess points against his or her driving privilege and may deny an application for a driver's license;~~
 - d. ~~He or she has the right to be represented by an attorney at his or her expense;~~
 - e. ~~He or she has the right to deny the allegations and to have a final hearing before the Court;~~

- ~~f. He or she has the right to remain silent because any statement made by the defendant may be used against him or her;~~
 - ~~g. Guilt or liability for a traffic infraction must be proven beyond a reasonable doubt;~~
 - ~~h. He or she has the right to testify, subpoena witnesses, present evidence, and cross-examine any witness;~~
 - ~~i. Any answer must be voluntary and not the result of undue influence or coercion on the part of any person; and~~
 - ~~j. An admission of guilt or liability constitutes a waiver of the rights in the subsection and any right to appeal.~~
- ~~4. The defendant personally or by counsel shall answer the allegations in the charging document either by admitting guilt or liability or by denying the allegations.~~
 - ~~5. If the defendant admits guilt or liability, the Court shall enter judgment and assess the appropriate penalty, fees, costs and surcharges.~~

~~DH. Rule 13(b), Post-Hearing Motions and Appeal, shall be amended as follows: (b) Appeal of any finding of guilt or liability of a traffic infraction judgment shall follow the same procedure as other Municipal Court convictions subject to the same procedures applicable to convictions of Municipal offenses generally.~~

~~E. Rule 16, Default shall be amended as follows: Judgment On Traffic Infraction After Final Hearing:~~

- ~~1. If the defendant is found guilty or liable the Court shall assess an applicable penalty and such additional costs and fees that are otherwise generally imposed in non-civil Municipal offenses together with applicable fees, costs, and surcharges.~~
- ~~2. The judgment shall be satisfied upon payment to the clerk of the Municipal Court of the total amount assessed.~~
- ~~3. If the defendant fails to satisfy the judgment upon the finding of guilt or liability or within the time of a reasonable extension granted upon a showing of good cause by and upon the application of the defendant, such nonpayment in the full amount of the penalty, fees, costs, and surcharges, if applicable, shall be treated as a default. (f) In addition to all other actions authorized by law, a default shall be certified to the State Motor Vehicle Division for enforcement action.~~

~~I. Traffic Infraction Post-Hearing Motions: There shall be no traffic infraction post-hearing motions except for a motion to set aside a default judgment.~~

~~J. Default On Traffic Infraction:~~

- ~~1. If the defendant fails to appear for his or her first appearance or any hearing involving a traffic infraction, the Court shall enter a default judgment against the defendant.~~
- ~~2. The amount of the judgment shall be the appropriate penalty that would be assessed after a finding of guilt or liability, fees, and additional costs assessable to Municipal violations generally upon conviction of non-civil Municipal charges, together with applicable surcharges.~~
- ~~3. The Court may set aside a default judgment entered under this rule on a showing of good cause or excusable neglect by the defendant. A motion to set aside the judgment shall be made to the Court not more than ten (10) days after the entry of judgment.~~

4. ~~The defendant may satisfy judgment entered under this rule by paying the clerk of the Court.~~
5. ~~No warrant shall be issued for the arrest of a defendant who was charged with a traffic infraction and failed to appear at a first appearance or any subsequent hearing or who failed to satisfy a judgment.~~

F. *The Municipal Prosecutor may, in the prosecutor's discretion, represent the City or Officer in traffic infraction proceedings.*

Section 2. Amendment of Englewood Municipal Code

Title 11, Chapter 1B, Section 11-1B-2 of Englewood Municipal Code is hereby amended to read as follows (new provisions bold/italics, deleted provisions ~~struck through~~):

11-1B-2: - Traffic Offenses Procedure.

A. *A Traffic Offense is every offense designated as such by this Code, the Model Traffic Code (MTC), and other applicable law, including the offenses designated in MTC § 1701 as misdemeanors.*

B. *Right to Jury Trial: A defendant charged with a traffic offense shall have the right to a jury trial for all violations arising out of the same incident upon compliance with and pursuant to Colorado Municipal Court Rules of Procedure 223.*

~~C.A. The Traffic Offenses shall follow Municipal Court procedures established in EMC Title 1, Chapter 7, Article A. commencement and all subsequent proceedings through and including appeal on matters concerning a traffic offense shall be the same as those provided and required for all criminal Municipal ordinance violations.~~

~~DB. When the Court determines that a person charged with a traffic offense is guilty of a lesser included traffic infraction, The Court may enter a judgment of guilt or liability as to a lesser-included the traffic infraction, when considering guilt for a traffic offense.~~

Section 3. General Provisions Applicable to this Ordinance

The following general provisions and findings are applicable to the interpretation and application of this Ordinance:

A. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

B. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

C. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have

been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

D. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. This Safety Clause is not intended to affect a Citizen right to challenge this Ordinance through referendum pursuant to City of Englewood Charter 47.

E. Publication. Publication of this Ordinance may be in the City's official newspaper, the City's official website, or both. Publication shall be effective upon the first publication by either authorized method.

F. Actions Authorized to Effectuate this Ordinance. The Mayor is hereby authorized and directed to execute all documents necessary to effectuate the approval authorized by this Ordinance, and the City Clerk is hereby authorized and directed to attest to such execution by the Mayor where necessary. In the absence of the Mayor, the Mayor Pro Tem is hereby authorized to execute the above-referenced documents. The execution of any documents by said officials shall be conclusive evidence of the approval by the City of such documents in accordance with the terms thereof and this Ordinance. City staff is further authorized to take additional actions as may be necessary to implement the provisions of this Ordinance.

G. Enforcement. To the extent this ordinance establishes a required or prohibited action punishable by law, unless otherwise specifically provided in Englewood Municipal Code or applicable law, violations shall be subject to the General Penalty provisions contained within EMC § 1-4-1.

Introduced, read in full, and passed on first reading on the 21st day of November, 2022.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 24th day of November, 2022.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of November, 2022 for thirty (30) days.

Read by Title and passed on final reading on the 5th day of December, 2022.

Published by Title in the City's official newspaper as Ordinance No. 64, Series of 2022, on the 8th day of December, 2022.

Published by title on the City's official website beginning on the 7th day of December, 2022 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

Othoniel Sierra, Mayor

ATTEST:

Stephanie Carlile, City Clerk

I, Stephanie Carlile, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by Title as Ordinance No. 64, Series of 2022.

Stephanie Carlile