

ORDINANCE NO. 2013-11

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING CHAPTER XA OF THE CITY CODE ENTITLED "DANGEROUS INTERSECTION SAFETY ORDINANCE," IN ORDER TO IMPLEMENT THE 2013 CHANGES TO THE STATE OF FLORIDA'S "MARK WANDALL TRAFFIC SAFETY ACT"; PROVIDING FOR LOCAL HEARING OFFICERS CONSISTENT WITH GENERAL LAW; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on February 19, 2013 the Mayor and City Council approved Resolution No. 2013-11 authorizing the City Manager to execute an amendment to the Agreement between American Traffic Solutions, Inc. and the City of North Miami Beach to maintain and implement a Traffic Safety Program within the City of North Miami Beach.

WHEREAS, the Florida Legislature passed HB 7125 during the 2013 Legislative Session amending certain provisions of the "Mark Wandall Traffic Safety Act" and also authorizing municipalities to conduct hearings for notices of violation connected with the use of red light cameras in accordance with Chapter 316 of the Florida State Statutes; and

WHEREAS, the Governor of the State of Florida signed HB 7125 into law on June 12, 2013, taking effect on July 1, 2013; and

WHEREAS, the new law mandates the use of Local Hearing Officers to preside over matters involving red light camera citations separate from the traffic court process; and

WHEREAS, the City of North Miami Beach wishes to appoint Special Masters to serve as Local Hearing Officers to implement the local hearing process as predicated within the new law; and

WHEREAS, the City of North Miami Beach wishes to amend its Code of Ordinances to conform with and to the 2013 amendments to the State of Florida's "Mark Wandall Traffic Safety Act".

NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of North Miami Beach, Florida:

Section 1. The foregoing recitals are true and correct.

Section 2. Chapter XA of the Code of Ordinances of the City of North Miami Beach, entitled "Dangerous Intersection Safety Ordinance," is hereby amended as follows:

10A-1 - INTENT.

The purpose of this ~~Act~~ Ordinance is to authorize the use of traffic infraction detectors to promote compliance with red light signal directives and to adopt a civil enforcement system for red light signal violations, in accordance with Chapters 2010-80 and the 2013 amendments to the "Mark Wandall Traffic Safety Act" or the "Act" (Chapter 2013-160), as of the effective date of this Ordinance or July 1, 2013, whichever occurs later, within the City's jurisdictional limits. This chapter will also supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement officers from issuing a citation for a red light signal violation in accordance with normal statutory traffic enforcement techniques.

10A-2 - USE OF TRAFFIC INFRACTION DETECTORS.

The City exercises its option under Section 316.0083, Florida Statutes as of the effective date of this Ordinance or July 1, 2013, whichever occurs later, to shall utilize traffic infraction detectors within its jurisdiction to enforce Section 316.074(1) or 316.075(1)(C), Florida Statutes, when a driver fails to stop at a traffic signal on streets and highways in the City's jurisdiction. The City may utilize traffic infraction detectors pursuant to the Mark Wandall Traffic Safety Act as a supplemental means of monitoring compliance with laws related to traffic control signals, while and assisting law enforcement personnel in the enforcement of compliance with such laws related to traffic control signals as permitted and provided for by state law, which are designed to protect and improve public health, safety and welfare of the community. This section shall not supersede, infringe, curtail or impinge upon State laws related to red light signal violations or conflict with such laws. ~~This chapter shall serve to enable the City to provide enhanced enforcement and respect for authorized traffic signal devices pursuant to Sections 316.008 and 316.0083, Florida Statutes (2010). The City shall utilize traffic infraction detectors as an ancillary deterrent to traffic control signal violations and thereby reduce accidents and injuries associated with such violations.~~

10A-3 - DEFINITIONS.

The following definitions shall apply to this chapter:

Final Administrative Order shall mean the written determination issued by a Local Hearing Officer, upon the conclusion of a hearing on a Notice of Violation, either dismissing or upholding a Notice of Violation, containing findings of fact, and if a violation is found, stating the penalty the violator is required to pay, plus municipal costs, not to exceed \$250. The Final Administrative Order shall be mailed to the violator by first-class mail.

Intersection shall mean the area embraced within the prolongation or connection of the lateral curblines; or, if none, then the lateral boundary lines, of the roadways of two (2) roads which join or intersect one another at, or approximately at, right angles; or the area within which vehicles traveling upon different roads joining at any other angle may come in conflict.

Local Hearing Officer shall mean the person designated by the City who is authorized to conduct hearings related to a Notice of Violation issued pursuant to Section 316.0083, Florida Statutes.

Motor vehicle shall mean any self-propelled vehicle not operated upon rails or guideways, but not including any bicycle, motorized scooter, electric personal assisted mobility device, or moped.

Notice of violation or traffic citation shall mean a citation issued for a Red Zone infraction.

Owner/vehicle owner shall mean the person or entity identified by the Florida Department of Motor Vehicles, or other State vehicle registration office, as the registered owner of a vehicle. Such term shall also mean a lessee of a motor vehicle pursuant to a lease of six (6) months or more.

Recorded images shall mean images recorded by a traffic infraction detector which is operated in accordance with this chapter.

Red Zone Infraction shall mean a traffic offense whereby a traffic infraction detector indicates a violation of this chapter.

Traffic control signal shall mean a device exhibiting different colored lights or colored lighted arrows, successively one (1) at a time or in combination, using only the colors green, yellow, and red which indicate and apply to drivers of motor vehicles as provided in Section 316.075, Florida Statutes.

Traffic Infraction Clerk shall mean the staff designated by the City to assist the Local Hearing Officers.

Traffic infraction detector shall mean a vehicle sensor(s) installed to work in conjunction with a traffic control signal and camera or cameras synchronized to automatically record two (2) or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar line when facing a traffic control signal steady red light.

Traffic Infraction Enforcement Officer shall mean the employee designated by the City to appear and testify at a hearing on a Notice of Violation before a Local Hearing Officer concerning the issuance of the Notice of Violation.

Traffic Infraction Review Officer shall mean the City of North Miami Beach employee designated in accordance with ~~the Act~~ Section 316.0083, Florida Statutes, and as set forth in Section 316.640(5)(A), Florida Statutes, to review recorded images and issue Red Zone infractions based upon those images.

10A-4 - ADHERENCE TO RED LIGHT TRAFFIC CONTROL SIGNALS.

a. Pursuant to ~~the Act~~ Section 316.0083, Florida Statutes, motor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown on the traffic control signal; however, the driver of a vehicle which is approaching a clearly marked stop line, or, if none, is approaching the crosswalk on the near side of the intersection or, if none, then is approaching the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right turn in a careful and prudent manner (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield right-of-way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection.

b. Pursuant to the general law, motor vehicle traffic facing a traffic control signal that is malfunctioning, inoperable or is emitting a flashing red light shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest to the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign. In the event that only some of the traffic control signals within an intersection are malfunctioning, inoperative or emitting a flashing red light, the driver of the vehicle approaching the malfunctioning, inoperative or flashing red traffic control signal shall stop in the above prescribed manner.

10A-5 - VIOLATION.

A violation of this chapter, known as a Red Zone Infraction, shall occur when a vehicle does not comply with the requirements of Section 10A-4. Violations shall be enforced pursuant to Section 316.0083, Florida Statutes.

10A-6 - IMPLEMENTATION OF THE MARK WANDALL TRAFFIC SAFETY ACT GENERAL LAW AND DESIGNATION OF LOCAL HEARING OFFICER.

~~The City Manager is authorized to implement the provisions and requirements of Chapter 2010-80, Laws of Florida (2010) as may be amended from time to time, and may take any action which is necessary for such purpose.~~

In accordance with the provisions of Section 316.0083, Florida Statutes, known as the Mark Wandall Traffic Safety Act, as of the effective date of this Ordinance or July 1, 2013, whichever occurs later, the City authorizes the implementation of the provisions and requirements of Chapter 2010-80 and the 2013 amendments to the Mark Wandall Traffic Safety Act (Chapter 2013-160). Effective July 1, 2013, the City shall appoint Local Hearing Officers as defined by and in accordance with the provisions of the Mark Wandall Traffic Safety Act.

10A-7 - REVIEW OF RECORDED IMAGES.

a. The owner of the vehicle which is observed by recorded images committing a Red Zone Infraction shall be issued a Notice of Violation or Traffic Citation ("Notice") no later than thirty (30) days after the Red Zone Infraction occurs. The recorded image shall be sufficient grounds to issue a City Notice of ~~Infraction~~ Violation.

b. The City shall designate a Traffic Infraction Review Officer, who shall meet the qualifications set forth in Section 316.640(5)(A), Florida Statutes, or any other relevant statute. The Traffic Infraction Review Officer shall review recorded images prior to the issuance of a Notice of Violation/Traffic Citation to ensure accuracy and the integrity of the recorded images. Once the Traffic ~~Control~~ Infraction Review Officer has verified the accuracy of the recorded images, he or she shall complete a report, and a Notice of Violation/Traffic Citation shall be sent to the vehicle owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles.

~~e. If a vehicle owner receiving a notice fails to pay the penalty imposed by Section 316.0083, Florida Statute or to provide an affidavit that complies with the provisions of Section 316.0083, Florida Statutes within thirty (30) days of the date the notice is issued, then a Uniform Traffic Citation shall be issued to the vehicle owner as provided by general law. The Uniform Traffic Citation shall be issued no later than sixty (60) days after the Red Zone Infraction occurs.~~

10A-8 - NOTICE OF VIOLATION.

The Notice of Violation shall be served via first class mail and shall include:

- a. The name and address of the vehicle owner.
- b. The license plate number and registration number of the vehicle.
- c. The make, model, and year of the vehicle.
- d. Notice that the violation charged is pursuant to this chapter.
- e. The location of the intersection where the violation occurred.
- f. The date and time of the Red Zone Infraction.

- g. A statement that the owner has the right to review the recorded images that constitute a rebuttable presumption against the owner, together with a statement of the time and place or internet location where the evidence may be observed.
- h. Images depicting violation.
- i. Instructions on all methods of payment of the penalty.
- j. A signed statement by the Traffic Infraction Review Officer that based on inspection of recorded images, the vehicle was involved in a Red Zone Infraction.
- k. A statement specifying the remedies available under Section ~~318.14~~ 316.0083, Florida Statutes.
- l. ~~A statement that the owner must pay a penalty of one hundred fifty eight (\$158.00) dollars to the City of North Miami Beach or provide an affidavit that complies with Section 316.0083, Florida Statutes within thirty (30) days of the date the notice is issued in order to avoid court fees, costs and the issuance of a Uniform Traffic Citation. A statement of the procedures for payment of the civil penalty and contesting the Notice of Violation.~~

10A-8.1 - VEHICLE OWNER RESPONSIBILITIES

- a. A vehicle owner receiving a Notice of Violation may, within sixty (60) days of the date of the Notice of Violation:
 - (i) Pay the assessed civil penalty pursuant to instructions on the Notice of Violation;
 - (ii) Request a hearing before the Local Hearing Officer to contest the Notice of Violation pursuant to procedures as outlined in this Chapter; or
 - (iii) Submit an Affidavit of Non-Responsibility, as provided under 10A-8.2.
- b. The failure to comply with the provisions of this section within sixty (60) days from the date of the Notice of Violation shall result in the issuance of a Uniform Traffic Citation.

10A-8.2 - VEHICLE OWNER AFFIDAVIT OF NONRESPONSIBILITY.

In order for the vehicle owner to establish non-responsibility of the violation at the time of the Red Zone Infraction, the vehicle owner shall, within sixty (60) days from the date listed on the Notice of Violation, furnish an Affidavit to the City setting the circumstances demonstrating either (a) or (b) below:

- a. The vehicle was in the care, custody, or control of another person without the consent of the registered owner; or
- b. The vehicle was subject to a short-term (less than six (6) months) car rental agreement entered into between a car rental agency, which is licensed as required by applicable law and is authorized to conduct business in the state, and the operator of the vehicle.

The affidavit must be executed in the presence of a notary, and include:

a. If known to the vehicle owner, the name, address, and driver's license number of the person who had care, custody, or control of the motor vehicle, without the vehicle owner's consent, at the time of the alleged Red Zone Infraction; or

b. The name, address and driver's license number of the person who rented the motor vehicle from the car rental agency which has received the Notice, at the time of the alleged Red Zone Infraction, and provide a true and correct copy of the short term car rental agreement, as applicable; or

c. If the vehicle was stolen, the police report indicating the vehicle was stolen at the time of the alleged Red Zone Infraction; and

d. Include language that "Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true."

Upon timely receipt of a sufficient affidavit pursuant to this Section, any prosecution of the Notice of Violation issued to the vehicle owner shall be terminated. Proceedings may be commenced by the City against the responsible person identified in the affidavit, and in such event, the responsible person shall be subject to the same process and procedures which are applicable to vehicle owners.

10A-8.3 – HEARINGS BEFORE A LOCAL HEARING OFFICER

Any alleged violator who elects to request a hearing shall be scheduled for a hearing by the Traffic Infraction Clerk to the Local Hearing Officer to appear before a Local Hearing Officer with notice of hearing sent by first-class mail. Upon receipt of the notice of hearing, the alleged violator may reschedule the hearing once by submitting a written request to reschedule to the Traffic Infraction Clerk to the Local Hearing Officer, at least five (5) calendar days before the day of the originally scheduled hearing. The alleged violator may cancel his or her appearance before the Local Hearing Officer by paying the penalty previously assessed, plus \$50 in administrative costs, before the start of the hearing.

All testimony at the hearing shall be under oath and shall be recorded. The Local Hearing Officer shall take testimony from a traffic infraction enforcement officer and the petitioner, and may take testimony from others. The Local Hearing Officer shall review the photographic or electronic images or the streaming video made available. Formal rules of evidence do not apply, but due process shall be observed and govern the proceedings.

At the conclusion of the hearing, the Local Hearing Officer shall determine whether a violation under this Chapter has occurred, in which case the Local Hearing Officer shall uphold or dismiss the violation. The Local Hearing Officer shall issue a final administrative order including the determination and, if the notice of violation is upheld, require the violator to pay the penalty assessed, and may also require the violator to pay municipal costs, not to exceed \$250. The final administrative order shall be mailed to the violator by first-class mail.

10A-8.4 - ADMINISTRATIVE CHARGES

In addition to the penalty assessed for a Red Zone Infraction, there shall be imposed and assessed against the violator an administrative cost not to exceed \$250.00 upon a Local Hearing Officer's upholding of a Notice of Violation.

If a violator requests a hearing and thereafter cancels the hearing, an administrative cost of fifty dollars (\$50) shall be assessed for cancellation of the requested hearing in addition to the penalty assessed for the Red Zone Infraction.

10A-8.4 - APPEAL OF FINAL ADMINISTRATIVE ORDER

An aggrieved party may appeal a final administrative order to the appellate division of the Circuit Court for the Eleventh Judicial Circuit, in and for Miami-Dade County, by Writ of Certiorari, consistent with the process provided under Section 162.11, Florida Statutes.

10A-8.5 - COLLECTION OF FINES

The City may establish procedures for the collection of a penalty imposed herein and may enforce such penalty by civil action in the nature of debt collection.

10A-8.6 - ENFORCEMENT

This Chapter may be enforced by any other means available to the City.

10A-9 - SIGNAGE.

When the City installs a traffic infraction detector at an intersection, it shall erect signage at the intersection sufficient to notify the public that a traffic infraction detector may be in use at the intersection and shall include specific notification of intersection safety camera enforcement of violations concerning right turns. Such signage shall meet the specifications for uniform signals and devices adopted by the Department of Transportation pursuant to Section 316.0745, Florida Statutes.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. If any section, subsection, clause or provision of this ordinance is held invalid the remainder shall not be affected by such invalidity.

Section 5. It is the intention of the City Council of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish this intention and the word "Ordinance" may be changed to "Section," "Article," or other appropriate word as the codifier may deem fit.

APPROVED BY TITLE ONLY on first reading this **18th day of June, 2013.**

APPROVED AND ADOPTED on second reading this **2nd day of July, 2013.**

ATTEST:

PAMELA L. LATIMORE
CITY CLERK
(CITY SEAL)

GEORGE VALLEJO
MAYOR

APPROVED AS TO FORM

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor and City Council

Note: Proposed additions to existing City Code text are indicated by underline; proposed deletions from existing City Code text are indicated by ~~striketrough~~.