

VILLAGE OF LINNDALE
ORDINANCE NO. 2013-37

BY: Ashlee McLaughlin

AN ORDINANCE ADOPTING AN AUTOMATED SPEED ENFORCEMENT PROGRAM AND ESTABLISHING CIVIL PENALTIES FOR AUTOMATED SPEED VIOLATIONS AND DECLARING AN EMERGENCY.

WHEREAS, the ongoing problem of motorists disobeying speed limit control devices threatens the safety of the residents of the Village of Linndale;

WHEREAS, the Village of Linndale seeks to increase compliance with traffic control devices, particularly speed limits, and thereby decrease the potential for motor vehicle crashes and pedestrian injuries that are caused by such failures to comply; and

WHEREAS, an automated speed enforcement program will assist the Village in increasing compliance with traffic control devices and speed limits without the disadvantages attendant to conventional traffic enforcement, such as disruptions in the flow of traffic at heavily traveled intersections, and expenses associated with increased police manpower; and

WHEREAS, it is now necessary to establish a civil penalty for violations and a method by which persons can appeal the finding of civil violations; and

WHEREAS, Village Administration recommends: (a) the establishment of a fine of approximately \$100.00, similar to that which would be assessed in a traffic case with court costs; (b) increase the fine if the violator does not pay within thirty (30) days; (c) that these provisions not apply to emergency and public safety vehicles engaged in an emergency response to a call for service; and

WHEREAS, it is also recommended that a vehicle owner be eligible to appeal said actions to a hearing officer if: (1) the vehicle owner was not the driver at the time of the incident; (2) the vehicle or its license plates had been reported stolen within forty-eight (48) hours of the violation time; (3) the vehicle is a commercial or rental vehicle and the owner was not the person having custody or control of the vehicle at the time of the incident; and

WHEREAS, the Mayor is authorized and directed to execute a service agreement with Optotraffic, LLC for the provision of automated speed enforcement service:

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LINNDALE, COUNTY OF CUYAHOGA AND THE STATE OF OHIO:

SECTION 1: As used in this Ordinance, words and phrases are defined as follows:

Definitions:

- (a) “Automated speed enforcement program” is a program intended to reduce speeding violations using an automated speed enforcement system.
- (b) “Automated speed enforcement system” is a system with one or more sensors working in conjunction with a speed measuring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.
- (c) “Hearing officer” is the independent third party appointed by, but not an employee of, the Village Mayor or other office of the Village, and who is an active, registered attorney in good standing with the Ohio Supreme Court.

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- (d) “Vehicle owner” is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other state vehicle registration office, as the registered owner of a vehicle or a lessee of a motor vehicle under a lease of six months or more, or the renter of a vehicle during the period of infraction pursuant to a written rental agreement with a motor vehicle renting dealer.
- (e) “Motor vehicle” has the same definition as in the Village of Linndale Basic Code Section 301.20, as amended from time to time.
- (f) “Recorded images” means images recorded by an automated speed enforcement system photographic system on any of the following:
 - (1) Two or more photographs; or
 - (2) Two or more microphotographs; or
 - (3) Two or more electronic images; or
 - (4) Two or more digital images; or
 - (5) Videotape or video recording; or
 - (6) Any other medium; and
 - (7) Showing the front or rear of a motor vehicle and on at least one image or portion of tape, clearly identifying the license plate number of the motor vehicle.
- (g) “Date of issuance of notice of liability” shall be the date printed on the notice of liability immediately prior to its mailing.

SECTION 2: General.

- (a) Notwithstanding any other provision of the traffic code ordinances of the Village of Linndale, the Village hereby adopts a civil enforcement program for automated speed enforcement system violations as outlined in this Ordinance. This program imposes monetary liability on the owner of a vehicle for failure of an operator thereof to strictly comply with the posted speed limit in school zones or streets or highways within the Village of Linndale. The imposition of liability under this Ordinance shall not be deemed a conviction for any purpose and shall not be made part of the operating record of any person upon whom the liability is imposed.
- (b) The Chief of Police shall be responsible for administering the automated speed enforcement program. Specifically, the Chief of Police shall be empowered to deploy and operate the automated speed enforcement system within the Village of Linndale using trained technicians who may or may not be police officers, Village employee, or other trained technicians who are not employees of the Village of Linndale.
- (c) Any citation for an automated speed system violation pursuant to this section, known as a “notice of liability” shall:
 - (1) Be approved by a law enforcement officer of the Village of Linndale Police Department, or under contract with the Village of Linndale, in either case such individual having been certified by the Ohio Peace Officer Training Academy and who shall (a) examine evidence of an alleged violation recorded by the automated speed enforcement system to determine whether a speeding infraction has occurred, and (b) determine whether the recorded images in connection with an alleged violation shows an infraction, contains a date and time of the

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alleged violation, shows the letters and numbers on the vehicle's license plate and shows the state in which the license plate was issued; and

- (2) Be forwarded by first-class mail or personal service to the vehicle owner's address as given on the state's motor vehicle registration; and
- (3) Clearly state the manner in which the violation may be appealed.

SECTION 3: Offense.

(a) The vehicle owner shall be liable for a penalty imposed pursuant to this section if such vehicle is operated at a speed in excess of those set forth in Section 333.03 of the Basic Code of the Village of Linndale, Ohio or Ohio Revised Code Section 4511.21 as each may be amended from time to time.

(b) The vehicle owner shall not be responsible for the violation if, within thirty (30) calendar days from the date of issuance of the notice of liability, the owner furnishes the Village of Linndale or its designee with:

(1) The name and address of the person who leased, rented, borrowed, or otherwise had the care, custody, and control of the motor vehicle at the time of the violation, a signed affidavit sworn to before a notary public that the affiant was operating the motor vehicle; or

(2) An affidavit by the vehicle owner stating that at the time of the violation, the motor vehicle or the license plates of the motor vehicle involved were stolen or were in the care, custody, and control of some person who did not have the owner's permission to use the motor vehicle, or that the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen before the violation occurred and were not under the control or possession of the vehicle owner at the time of the violation, the vehicle owner must submit proof that a police report, incident report/general offense report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.

(c) A certified copy of the notice of liability alleging the violation of this Ordinance occurred, sworn to or affirmed by a law enforcement officer of the Village of Linndale Police Department, or under contract with the Village of Linndale, with the recorded images produced by an automated speed enforcement system photographic system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this Ordinance.

(d) Exception for emergency or public safety vehicles:

The provisions of this Ordinance shall not apply to emergency vehicles or public safety vehicles when those vehicles are responding to emergency or call for emergency service.

SECTION 4: Notice of Liability.

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- (a) The notice of liability shall be processed by the Village of Linndale or its designee and shall be served by ordinary mail to the owner's address as given on the motor vehicle registration from the Bureau of Motor Vehicles, or its equivalent of the state in which it is registered. The notice of liability shall include:
- (1) The name and address of the vehicle owner;
 - (2) The license plate number of the motor vehicle involved in the violation;
 - (3) The violation charged;
 - (4) The location of the violation;
 - (5) The date and time of the violation;
 - (6) A copy of the recorded image(s);
 - (7) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and where the payment should be made;
 - (8) Information advising the person alleged to be liable of the options as provided in Section 3(b) of this Ordinance;
 - (9) The time, place, and manner in which an administrative appeal can be initiated and a warning that failure to exercise the options provided under Section 6 of this Ordinance in a timely manner is an admission of liability; and
 - (10) The date of issuance of the notice of liability.
- (b) A notice of liability issued under this Ordinance shall be mailed no later than thirty (30) calendar days after the alleged violation.
- (c) Except as provided under Section 3(b) of this Ordinance, the Village of Linndale or its designee may not mail a notice of liability to a person who is not the vehicle owner.
- (d) It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other state vehicle registration office) was operating the vehicle at the time of the offense set out in Section 3 of this Ordinance. This evidence and presumption may be rebutted in accordance with Section 3(b) of this Ordinance.
- (e) Nothing in this Section shall be construed to limit the liability of an owner of a vehicle for any violation of Section 3 of this Ordinance.

SECTION 5: Civil Penalties.

- (a) Unless the driver of the motor vehicle received a citation from a police officer at the time of the violation, or unless the exception or defense to liability set forth in Section 3 (d) applies, the owner or responsible party for the motor vehicle is subject to a civil penalty if the motor vehicle is recorded by an automated speed enforcement system while being operated in violation of this Ordinance.
- (b) The civil penalty under this Ordinance shall be in accordance with the following schedule:
- (1) If the civil penalty is paid within thirty (30) calendar days of the date of issuance of the notice of liability – one hundred dollars (\$100.00);

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- (2) If the civil penalty is paid more than thirty (30) calendar days, but within forty five (45) calendar days after date of issuance of the notice of liability – one hundred and twenty five dollars (\$125.00);
- (3) If the civil penalty is paid more than forty five (45) calendar days of the date of issuance of the notice of liability – one hundred and eighty dollars (\$180.00);
- (4) The failure to respond to a notice of liability in a timely fashion as set forth in this Ordinance shall constitute a waiver of the right to contest liability for the violation under Section 3(b) of this Ordinance.
- (5) Persons who choose to pay the civil penalty without appearing before a Hearing Officer may do so in the manner indicated on the notice of liability.
- (6) A violation for which a civil penalty is imposed under this Ordinance is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4507.021 for minor misdemeanor moving traffic offenses and may not be recorded on the driving record of the owner or operator of the motor vehicle and shall not be reported to Bureau of Motor Vehicles.

SECTION 6: Collection of Civil Penalty.

If the civil penalty is not paid, the civil penalty imposed under the provisions of this Ordinance shall be collectable, together with any interest and penalties thereon, in any manner authorized by law including but not limited to civil suit. In addition to any other fees or charges authorized by this Ordinance in relation to the commission of a violation of this Ordinance, a person liable for the penalties established under this Ordinance may be assessed a fee under this Ordinance in an amount equal to the costs of collection of the debt.

SECTION 7: Administrative Appeal.

- (a) A vehicle owner or responsible party who receives a notice of liability, under this Ordinance may do one of the following:
 - (1) Pay the civil penalty, in accordance with the instructions on the notice of liability; or
 - (2) Within thirty (30) calendar days of the date of issuance of the notice of liability, submit to the Village police department or its designee one of the affidavits described in Section 3(b) of this Ordinance. Upon receipt of such an affidavit timely submitted, the Village shall suspend further action against the owner of the vehicle and instead direct notices and collection efforts to the person identified in the affidavit submitted by the owner of the motor vehicle. If the person named in the affidavit, when notified, denies being the driver or denies liability, then the Village shall resume the notice and collection process against the vehicle owner, the same as if no affidavit had been submitted, and if the violation is found to have been committed by a preponderance of evidence, the vehicle owner shall be liable for any penalties imposed for the violation.
 - (3) Contest the notice of liability by filing a written request for a hearing to review of the notice of liability with the Village police department or its designee. A written notice of request for review must be

received by the Village police department, or its designee, within thirty (30) calendar days after the date of issuance of the notice of liability. The failure to give notice of request for review within this time period shall constitute a waiver of the right to contest the notice of liability. A hearing officer shall hear reviews. Hearings shall be held within forty-five (45) business days of the date received by the Village, or its designee, of the request for review; this time may be extended upon a written reasonable request for additional time or upon reasonable notification of the hearing officer or local authority with prior notice to all parties. If the owner or responsible party requests a review of the notice of liability and a hearing, a \$25.00 fee per notice of liability for such review and hearing shall be assessed to the applicant. The Hearing Officer may waive this administrative hearing fee only if the owner or responsible person pleads liable and pays the full amount of the civil penalty prior to commencement of the hearing.

The hearing shall be open to the public, and a docket shall be posted in a conspicuous place near the entrance to the hearing room that shall identify, by alleged violator, the hearings scheduled for that day and the time of each hearing. More than one hearing may be scheduled for the same time to allow for such things as non-appearances or admissions of liability.

- A. The Hearing Officer shall determine whether a preponderance of evidence establishes that a violation of this Ordinance occurred and the person requesting the review is the party operating the vehicle at the time of the violation. The hearing officer shall advise the person or entity on the day of the hearing of the Hearing Officer's decision. A certified copy of the notice of liability alleging the violation of this Ordinance occurred, sworn to or affirmed by a duly authorized official or agent of the Village of Linndale, or its designee, with the recorded images or data produced by an automated speed enforcement system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this Ordinance. Adjudication of liability shall be based on a preponderance of the evidence.
 - B. If the hearing officer finds a sufficient evidence of a violation, but the vehicle owner or responsible party is not liable, the hearing officer shall, in writing, issue a decision finding the vehicle owner and/or responsible party not liable and submit it to the Village of Linndale, or its designee.
- (b) If the owner or responsible party chooses to contest the notice of liability, the hearing officer may consider any of the following as an affirmative defense to a violation upon the defense being established by a preponderance of the evidence by the vehicle owner or responsible party:
- (1) That the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.

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- (2) That the motor vehicle was under the custody and/or control of another person at the time of the violation. In order to establish this, the owner or responsible person must provide the name and address of the person who had custody and/or control of the motor vehicle at the time of the violation.
 - (3) That this section is unenforceable because the recorded image is not legible enough to determine the information needed.
 - (4) Evidence, other than that adduced pursuant to Section 7(b)(1) of this Ordinance, that the vehicle owner or person named in the notice of liability was not operating the motor vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the notice of liability shall provide to the Hearing Officer evidence showing the identity of the person who was operating the motor vehicle at the time of the violation, including, but not limited to, the operator's name and current address, and any other evidence the Hearing Officer deems pertinent.
 - (5) That the motor vehicle operator was yielding the right-of-way to an emergency vehicle in accordance with Ohio law, or to a funeral procession.
 - (6) That under consideration of the totality of the circumstances the person or entity named in the notice of liability is not liable.
- (c) If the Hearing Officer finds that the person or entity named in the notice of liability was not operating the motor vehicle at the time of the violation or receives evidence under Section 7(b)(4) identifying the person driving the motor vehicle at the time of the violation, the Hearing Officer shall provide it to the Village of Linndale or its designee within five (5) calendar days, a copy of any evidence substantiating who was operating the motor vehicle at the time of the violation.
- (1) Upon receipt of evidence of the responsible party pursuant to this Section or pursuant to Section 3(b) the Village of Linndale or its designee may issue a notice of liability, with the name and address of the responsible party and the information required by Section 4 of this Ordinance, to the person that the evidence indicates was operating the motor vehicle at the time of the violation.
 - (2) A notice of liability issued under this Section 7(c), shall be sent by the Village of Linndale or its designee by ordinary mail no later than twenty-one (21) business days after the receipt of the evidence from the Hearing Officer. The content of a notice of liability issued under this subsection shall be the same as set forth in division (a) of Section 4 of this Ordinance.

SECTION 8: No fine shall be authorized unless a minimum thirty (30) day grace or public awareness period is observed prior to issuing any notice of liability.

SECTION 9: The Village Department of Public Works shall erect signs on every highway, which is not a freeway, that is part of the state highway system and that enters into the Village and at each fixed automated speed enforcement system location. The signs shall inform inbound traffic that the local authority utilizes traffic law photo-monitoring devices to enforce traffic laws. The signs shall be erected within the first three hundred feet of the boundary of the Village and a fixed automated speed enforcement system location or, if the signs cannot be located within the first three hundred feet of the boundary of the Village or a fixed traffic law photo-monitoring device, as close to that distance as possible, in accordance with Ohio Revised Code Chapter 4511.094(B).

SECTION 10: The Village shall not issue a violation as described in this Ordinance using an automated speed enforcement system located in a school zone, as described in 4511.21, or in a residential area, or within 900 feet of the boundaries of a state or local park or recreation area or facility, unless the vehicle involved in the violation is traveling at least six miles per hour over the posted speed limit.

SECTION 11: The Village shall not issue a violation as described in this Ordinance using an automated speed enforcement system that is not located in a school zone, as described in 4511.21, or in a residential area, or within 900 feet of the boundaries of a state or local park or recreation area or facility, unless the vehicle involved in the violation is traveling at least ten miles per hour over the posted speed limit.

SECTION 12: The manufacturer or operator of the automated speed enforcement system used by the Village, or an independent calibration laboratory, shall calibrate said device before it is used by the Village. The manufacturer or operator of the automated speed enforcement system shall certify to the accuracy of each traffic law photo-monitoring device in accordance with applicable federal law, if any. For each traffic law photo-monitoring device that is considered mobile or portable, meaning it is attached to a trailer, vehicle, or other apparatus that is easily transported to different the automated speed enforcement system locations, the Village shall perform or cause to be performed a system self-test and calibration verification of said traffic law photo-monitoring device in accordance with the manufacturer's specifications prior to its use at each the automated speed enforcement system location. For each device that is considered mobile or portable, meaning it is attached to a trailer, vehicle or other apparatus that is easily transported to different system locations, the Village police department or its designee shall clearly and conspicuously mark on the outside of the trailer, vehicle, or apparatus that contains the traffic law photo-monitoring device that the device is the property or under the control of the Village.

SECTION 13: The Service Agreement between the Village of Linndale and Optotraffic, LLC, in substantially the form attached hereto is approved, and the Mayor is hereby authorized to execute and deliver the Service Agreement, with such changes as the Mayor may approve as neither inconsistent with the Ordinance nor materially detrimental to the Village. The Mayor's execution of the Service Agreement is to be conclusive evidence of such approval.

SECTION 14: If any section, subsection, paragraph, clause or provision or any part thereof of this Ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Ordinance shall be unaffected by such adjudication and all the remaining provisions of this Ordinance shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

SECTION 15: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in conformance with applicable open meetings laws and that all deliberations of this Council and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meetings requirements.

SECTION 16: Determined by Legislative Authority This Legislative Authority hereby determines that it is necessary and a proper municipal public purpose and in the best interest of the Village to proceed with this Ordinance.

SECTION 17: Authorization for Mayor to Execute this Agreement. The Mayor is further directed to take all steps necessary to effect due execution and delivery of the Ordinance.

SECTION 18: Compliance with Open Meeting Laws. It is found and determined that all formal actions of this Legislative Authority concerning and relating to the passage of this Ordinance were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of any of its committees that resulted in those formal actions were in meetings open to the public and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 19: Findings and Recitals of Validity. It is further found and determined, and is hereby presented and recited, that the Village of Linndale rules of the Legislative Authority and its Ordinances and Resolutions have been fully complied with and that this Ordinance was passed in conformity therewith.

SECTION 20: Governing Law. The provisions of this Ordinance are subject to the laws of the State of Ohio.

SECTION 21: Effective Date. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, property, health, safety and welfare within the Village for the reasons set forth and defined in the preamble to this Ordinance; and provided it receives the affirmative vote of two-thirds of all members elected to Council and approval by the Mayor; otherwise it shall take effect and be in force after the earliest period by law.

Read August 6, 2013

Julie Ostrowski
President of Council

Read _____, 2013

Passed: August 6, 2013

Ashlee McLaughlin
Mayor Ashlee McLaughlin, Esq.

Approved: August 6, 2013

I hereby certify this is a true and correct copy of Ordinance No. 2013-37 passed by the Council of the Village of Linndale, Ohio at its regular meeting held in Linndale Town Hall on August 6, 2013.

Date August 6, 2013

Shannon Condon
Clerk of Council Shannon Condon