

**ORDINANCE NO. 05 OF 2023**

**AN ORDINANCE AMENDING THE CITY OF OPELOUSAS CODE OF ORDINANCES TO PROVIDE FOR THE ENFORCEMENT OF CERTAIN TRAFFIC VIOLATIONS BY AUTOMATED MEANS AND CIVIL PENALTIES FOR THOSE CERTAIN TRAFFIC VIOLATIONS ENFORCED BY AUTOMATED MEANS, AND OTHERWISE PROVIDING WITH RESPECT THERETO.**

**WHEREAS**, data collected on behalf of the Opelousas Police Department indicates a high incidence of drivers disregarding speeding laws on the streets and in the school zones of the City of Opelousas (City); and

**WHEREAS**, the City Council finds controlling speed on the streets of the city of Opelousas through a program utilizing photographic evidence and enforcement through the imposition of civil penalties will help promote and protect the health, safety, and welfare of the children and all citizens of Opelousas; and

**WHEREAS**, at council meeting on April 11, 2023, this Ordinance was duly introduced by council member Charles Cummings. Thereafter, the ordinance was advertised in the Opelousas Daily World, and a public hearing was held on May 9, 2023. Upon closing the public meeting, on Motion of council member Delita Rubin-Broussard and second by council member Marvin Richard, a vote was held and the following results were recorded:

Yay: Delita Rubin-Broussard, Charles Cummings, Sherell Roberts, Chasity Davis-Warren, Marvin Richard, and Milton Batiste III.

Nay: None.

Absent: None.

**NOW, THEREFORE, be it ordained that the electronic traffic enforcement procedure is adopted as follows:**

**Section 1:** The Opelousas City Council (Council) now finds it necessary and expedient to amend the City of Opelousas Code of Ordinances (Code), Chapter 90 – Traffic and Vehicles, by adding Article XIII. Electronic Traffic Enforcement.

**Section 2:** In consideration of Section 1 above, the Council hereby amends Chapter 90 – Traffic and Vehicles, by adding to said Chapter Article XIII, Electronic Traffic Enforcement, which said Article shall follow immediately after Article XII, Traffic Regulations on Private Streets, and shall hereafter read as follows:

**ARTICLE XIII. ELECTRONIC TRAFFICE ENFORCEMENT**

**Sec. 90-601 - Definitions.**

The following definitions shall apply:

*Administrative Adjudication Hearing* shall mean an administrative hearing of violations conducted by the Opelousas City Court.

*City Court Judge* shall mean the City Court Judge of the City of Opelousas.

*Department* shall mean the Opelousas Police Department, or an authorized representative as determined by the Chief.

*Mayor* shall mean the City of Opelousas Mayor.

*Owner* shall mean the owner of a vehicle as shown on the vehicle registration records of the Louisiana Office of Public Safety, Office of Motor Vehicles, or the analogous office or agency of another state or county.

*Photographic vehicle speed enforcement system or system* shall mean a system consisting of an electronic process which is capable of producing one or more recorded images depicting the license plate attached to the rear of a vehicle being operated at a speed in excess of the speed limit. The speed measurement component of the system shall be properly calibrated on a regular basis as determined by the Chief and the records of such calibration shall be maintained with the Opelousas Police Department.

*Recorded image* means an image recorded by the system depicting the rear of a vehicle which is automatically recorded on a photograph or digital image, which also depicts the recorded speed, date, location, and time of the recorded image.

*System location* means the highway location toward which a photographic vehicle speed enforcement system is directed and in operation or a segment of roadway on which a vehicle speed enforcement system is in operation.

*Speed limit* shall mean the established regulatory speed limit on the subject roadway.

*Violation* shall mean the notice of civil violation for speeding for this Chapter.

**Sec. 90-602 – Imposition of civil violation penalty for violations enforced by a photographic speed enforcement system.**

a. The Council finds and determines a vehicle traveling over the speed limit for the vehicle’s direction of travel damages the public by endangering vehicle operators, passengers and pedestrians alike, by increasing the number of serious traffic crashes, and causing public safety agencies to respond at the expense of the taxpayers thereby decreasing the efficiency of traffic control and traffic flow efforts.

b. Except as provided in subsections (c) and (d) below, the owner of a vehicle is responsible for a civil violation penalty as shown in the following tables if the vehicle is traveling at a speed in miles per hour (mph) greater than the speed limit as shown when captured by the system in accordance with the vehicle’s recorded speed and the corresponding speed limit of the roadway where the notice of civil violation was issued.

<b>MPH OVER SPEED LIMIT</b>	<b>FINE</b>
6 MPH to 10 MPH	\$ 140.00
11 MPH to 20 MPH	\$ 150.00
21 MPH to 30 MPH	\$ 160.00
31 MPH to 100+ MPH	\$ 170.00

<b>MPH OVER SPEED LIMIT IN SCHOOL ZONE</b>	<b>FINE</b>
6 MPH to 10 MPH	\$ 170.00
11 MPH to 15 MPH	\$ 170.00
15 MPH to 20 MPH	\$ 170.00
Over 21 MPH	\$ 170.00

Following the guidelines as established by DOTD, the following thresholds shall be established:

Posted Speed Limit (Miles Per Hour)	Minimum Speed for Violation to be Issued in a School Zone (Miles Per Hour)	Minimum Speed for Violation to be Issued (Miles Per Hour)
15	≥21	≥21
20	≥26	≥26
25	≥31	≥30
30	≥36	≥36
35	≥41	≥43
40	≥46	≥48
45	≥51	≥55
50	≥58	≥60
55	≥63	≥65
60		≥70
65		≥75
70		≥80
75		≥85

c. Any photographic vehicle speed enforcement system which is hand-held, mounted in or on a trailer or in a fixed position shall be deployed at the discretion of the Chief of Police, who shall deploy such systems in his discretion within the City of Opelousas.

**Sec. 90-603 - Late Payments.**

An owner who fails to pay a civil violation penalty beyond 30 calendar days from the date of mailing the civil notice of violation, inclusive of weekends and legal holidays, shall be subject to a late payment penalty of \$30.00 (e.g., original civil violation + 30 = total civil violation amount including late payment penalty). A notice of civil violation under this article is presumed to have been received on the tenth calendar day, inclusive of weekends and legal holidays, after the date the notice of civil violation is mailed.

**Sec. 90-604 – Enforcement; procedures.**

a. The Department is responsible for the enforcement and administration of this ordinance, or the Department may enforce and administer this ordinance in part or in whole, through one or more contractors selected in accordance with applicable law. The actions which can be used to enforce the payment of this civil penalty and related fees include, but are not limited to: referring the debt to collection agencies; and/or initiating actions through a court of competent jurisdiction, or any other lawful means, all in accordance with applicable authority, laws, and procedure.

b. In order to impose a civil violation penalty under this article, the Department shall mail a notice of civil violation to the owner of the vehicle responsible for the civil violation penalty not later than the 30th calendar day, inclusive of weekends and legal holidays, after the date the Department reviews and inspects the recorded images, and an alleged civil violation is determined by the Department to have occurred.

c. A notice of civil violation issued under this article shall contain the following:

- (1) A description of the violation alleged;
- (2) The date, time, and location of the violation;
- (3) A copy of a recorded image of the vehicle involved in the violation;
- (4) The amount of the civil violation penalty to be imposed for the violation;
- (5) The date by which the civil violation penalty must be paid;
- (6) A statement indicating the person named in the notice of civil violation may pay the civil violation penalty in lieu of appearing at an administrative adjudication hearing;
- (7) Information informing the person named in the notice of civil violation:
  - (a) Of the right to contest the imposition of the civil violation penalty in an administrative adjudication hearing;
  - (b) Of the manner and time in which to contest the imposition of the civil violation penalty; and
  - (c) Failure to pay the civil violation penalty or to contest liability within 40 calendar days from the date of receipt of the civil notice of violation, inclusive of weekends and legal holidays, is a waiver of the right to appeal.
- (8) A statement that a recorded image is evidence in a proceeding for the imposition of a civil violation penalty; and
- (9) A statement indicating failure to pay the civil violation penalty within the time allowed shall result in the imposition of an additional late penalty for each such violation.

d. A notice of civil violation under this article is presumed to have been received on the tenth calendar day, inclusive of weekends and legal holidays, after the date the notice of civil violation is mailed.

**Sec. 90-605 – Administrative Adjudication hearing.**

a. A person who receives a notice of civil violation may contest the imposition of the civil violation penalty by a request in writing for an administrative adjudication of the notice of civil violation penalty within 30 calendar days, inclusive of weekends and legal holidays, after date of mailing of the notice of civil violation and posting a hearing request and cash bond of \$50.00. Upon receipt of a request and cash bond within the prescribed time period within this paragraph, the office shall notify the person requesting such hearing of the date and time of the administrative adjudication hearing. If, after the adjudication hearing, the person is found not liable by the adjudication officer, the cash bond of \$50.00 will be refunded to that person. If that person is found liable, he or she may ask that the cash bond of \$50.00 be used towards the payment of the civil violation.

b. A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing shall forfeit their cash bond amount.

c. Administrative adjudications of violations shall be conducted by the City Judge. In conducting administrative adjudications of violations, the Judge shall have the following functions, powers, and duties:

- (1) To administer oaths, to accept admissions to, and to hear and determine contests of, violations herein.
- (2) To require the attendance of persons to give testimony at hearings, and to require the production of data and information, to the extent permitted by law.

- (3) To adjudicate violations for which a notice of civil violation has been issued herein.
- (4) To compile and maintain accurate records relating to notice of civil violations, violations and/or dispositions of violations and notice of civil violations.
- (5) Upon request of the Department or a person charged with a violation, or his attorney, to prepare or provide transcripts or audio records of hearings conducted by the City Court Judge and to furnish such transcripts or audio records to the requesting person at a reasonable cost.
- (6) To designate an individual or individuals with the responsibility to answer, within a reasonable period of time, relevant and reasonable inquiries made by a person charged with a violation, or his attorney, concerning the violation.
- (7) The functions and duties in (4), (5), and (6) identified herein may be performed by representatives of the Department, as directed by the Judge.
- (8) To prescribe regulations for the presentation and the conduct of hearings which need not necessarily be in strict conformity with the usual rules of evidence and technical rules of procedure, however, the fundamental principles governing a fair and impartial hearing or trial and due process of law must be reasonably and substantially adhered to.

d. Except as provided in subsection (h), failure to pay a civil violation penalty or to contest liability beyond 30 calendar days from the date of mailing of the notice of civil violation, inclusive of weekends and legal holidays, constitutes a waiver of the right to contest under subsection (a).

e. The civil violation penalty shall not be assessed if after a hearing, the Judge enters a finding of no liability.

f. In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of a law enforcement officer or a representative of the Department, or by actual testimony by either of them. An affidavit of a sworn law enforcement officer or representative of the Department, or actual testimony by either of them, that alleges a civil violation occurred based on an inspection of the pertinent recorded image is admissible in a proceeding under this article and is prima facie evidence of those facts contained in the affidavit or testified to. Testimony by any person shall be taken under oath or by affirmation, except to the extent such testimony is allowed by affidavit as provided above. The person charged with the ordinance violation may present any relevant evidence and testimony at such hearing.

g. It shall be an affirmative defense to the imposition of civil liability under this article, to be proven by a preponderance of the evidence, that:

- (1) The operator of the vehicle was acting in compliance with the lawful order direction of a law enforcement or public safety officer;
- (2) The operator of the vehicle violated the speed limit so as to move out of the way or an immediately approaching authorized emergency vehicle;
- (3) The vehicle was being operated as an authorized emergency vehicle under La. R.S. 32:24, and the operator was acting in compliance with La. R.S. 32:24;
- (4) The vehicle was being operated in accordance with La. R.S. 32:300.3 – Funeral Processions; however, the operators are not exempt if they fail to comply with division 2, vehicle speed;
- (5) The vehicle was being operated by a commissioned law enforcement officer performing authorized/assigned tasks;

(6) The vehicle was being operated during a bona fide medical emergency which is documented with adequate and sufficient evidence from a medical care facility, as determined by the Department;

(7) At the time of the violation, the vehicle was in the care, custody, or control of another person:

(a) As set forth in the owner's written statement identifying the name and correct mailing address of the person or entity who had the care, custody, and control of the vehicle at the time of the violation.

(b) As set forth in a document, or "Transfer of Liability," signed and dated by the person, or a representative of the entity, who had the care, custody, and control of the vehicle at the time of the violation, indicating his/her responsibility for the violation and listing his/her name and mailing address. Responsibility for the violation shall in such a case be transferred to the person identified in the "Transfer of Liability."

(c) The tender of a statement of "Transfer of Liability" shall be for the sole purpose of identifying the person who is assuming responsibility for the violation identified in the notice of civil violation, but all defenses that may be asserted by the person alleged to be responsible are reserved and are not waived by the tender of such document.

(d) As set forth in a lease, rental contract or other agreement listing the name and mailing address of the person or entity who had the care, custody, or control of the leased or rented vehicle at the time of the violation. Responsibility for the violation shall in such case be transferred to the lessee.

h. Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil violation penalty or to contest liability is entitled to an administrative adjudication hearing on the violation if:

(1) The person files an affidavit with the office stating the date on which the person received the notice of civil violation mailed to the person; and

(2) The person files a request for an administrative hearing within 30 days from the date of receipt of the notice of civil violation, as stated in the affidavit. The decision of the Judge shall be the final decision in the hearing.

#### **Sec. 90-606 – Orders of the Judge**

(1) The Judge at administrative adjudication hearings under this article shall issue an order stating:

(a) Whether the person charged with the violation is responsible for the violation; and

(b) The amount of any civil violation penalty, late penalty, and administrative adjudication costs assessed against the person.

(2) The orders issued under subsection (1) may be filed with the Department. The Department shall maintain the City Court Judge orders/determination.

#### **Sec. 90-607- Effect of liability; exclusion of civil remedy.**

a. The imposition of a civil violation penalty under this article shall not be considered a criminal conviction.

b. A civil violation penalty may not be imposed under this article upon the owner of a vehicle if the operator of the vehicle was arrested or was issued a speeding citation and notice to appear by a law enforcement or public safety officer as a violation of any of the provisions of Subpart A, Part IV, Chapter 1 of Title 32 of the Louisiana Revised States if such violation was captured by the system.

c. Upon receipt of all documents supplied to the contractor, the City Court Judge may enforce collection of all unpaid fines, fees, penalties, late payment penalties and administrative adjudication fees in a court of competent jurisdiction for vehicles registered through a filing with the Louisiana Office of Revenue and the Federal Offset Program.

d. The Chief or contractor, as applicable, shall supply to the City Court Judge, or outside counsel bringing suit, all materials and/or testimony necessary to support enforcement.

e. Defendants in enforcement suits authorized by this section have, until rendition of final judgment, the option of settlement by payment of all outstanding fines, fees, penalties, late payment penalties and administrative adjudication fees, as well as court costs and filing fees incurred (whether prepaid or otherwise) in enforcement. No defendant in such suit shall be required to pay attorney's fees in connection with such settlement.

f. Any money judgment obtained in a suit to enforce fines levied for violation of this division shall be recorded in the mortgage records of Franklin Parish, and/or any other parish, as a judicial mortgage against the property of the defendant.

**Sec. 90-608 – Collections Fees and Costs.**

In the event a fine or penalty is assessed pursuant to any provision of this Code, a default in the payment of a fine, penalty or any installment of a fine or penalty may be collected by any means authorized for the collection of monetary judgments. The Department may retain attorneys and private collection agents for the purpose of collecting any default in payment of any fine or penalty imposed by the Code, or any installment of a fine or penalty. The Department shall add a 35% cost of collections to any outstanding balance that requires the Department to retain the services of a collection agency. This 35% cost includes any default in a fine, penalty or any installment of a fine or penalty that was previously referred to an attorney or private agency and the payment of which remains outstanding.

**Section 3: EFFECTIVE DATE OF ORDINANCE:**

This ordinance shall become effective immediately upon return of the ordinance to the City Clerk (after execution by the Mayor), on the tenth (10th) day after receipt of the ordinance by the Mayor without signature or veto, or upon an override of a veto, whichever occurs first.

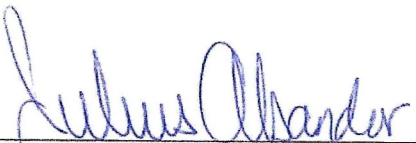
**BE IT FURTHER RESOLVED** that if any provision of this ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions, items or application of this ordinance which can be given effect without the invalid provisions, items, or application and to this end the provisions of this ordinance are hereby declared severable.

**BE IT FURTHER RESOLVED** that all ordinances or parts thereof in conflict herewith are hereby repealed.

Opelousas, Louisiana this 9<sup>th</sup> day of May, 2023.

ATTEST:

  
LEISA ANDERSON, CITY CLERK

  
HON. JULIUS ALSANDOR, MAYOR