

ORDINANCE 2024-01

AN ORDINANCE ESTABLISHING A CIVIL LAW SPEED AND TRAFFIC CONTROL DEVICE ENFORCMENT SYSTEM, REPEALING ORDINANCE 2022-16, AND DECLARING AN EMERGENCY

WHEREAS, the ongoing problem of motorists disobeying speed limits and traffic control devices threatens the safety of the residents of the Village of Monroeville and the safety of those passing through the Village; and

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

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

WHEREAS, the Village of Monroeville has a small police force that is unable to constantly check for traffic violators while effectively enduring the safety of the rest of the Village; and

WHEREAS, the General Assembly has authorized local authorities to utilize a traffic law photo-monitoring device for the purpose of detecting traffic law violations; and

WHEREAS, Article XVIII, Section 3 of the Ohio Constitution provides that “municipalities shall have the authority to exercise all powers of local self-governance and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws [;]” and

WHEREAS, it has been found that the General Assembly has not indicated that the relevant state statutes were to control this subject (usage of traffic law photo-monitoring devices) exclusively. *See City of Toledo v. State*, 2019-Ohio-1681 ¶107; and

WHEREAS, pursuant to its powers granted by the Ohio State Constitution, the Village desires to establish a civil mechanism by which it may enforce traffic laws via automated photo-monitoring devices, which gives perceived violators their full due process rights; and

WHEREAS, a small claims complaint will be filed in the Norwalk Municipal Court against the owner of a vehicle perceived to have disobeyed speed limits and traffic control devices. Vehicle owners will receive a “Notice of Liability” prior to a complaint being filed. The vehicle owners may choose to contest the Notice of Liability, at which point the Village will file a small claims complaint in the Norwalk Municipal Court to enforce its Ordinance; and

WHEREAS, the perceived violator will have as a defense that: (1) the vehicle owner was not the individual driving the vehicle at the time of the alleged traffic law violation, (2) the vehicle,

or its license, had been reported stolen within forty-eight (48) hours of the alleged 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 alleged traffic law violation; and

WHEREAS, the Village Council is convinced that adoption of an automated traffic control enforcement program will increase the health, safety, and welfare of the residents of the Village and those who pass through the Village.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MONROEVILLE, HURON COUNTY, OHIO:


Section 1. That Ordinance No. 2022-16, passed by Council on August, 9 2022, is repealed in its entirety and replaced as set forth in Exhibit A attached hereto.

Section 2. 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 3. That pursuant to Section 731.30 of the Ohio Revised Code this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public's health, safety, peace, and welfare and for the further reason that the enforcement system needs to be in place to enforce speed limits and traffic control device laws to further protect the safety of the Village residents and those passing through the Village.

WHEREFORE, this Ordinance shall be in full force and effect immediately upon its passage.

Passed this 13TH day of February, 2024


Joseph A. Galea, Mayor

ATTEST:


Bonnie Beck, MMC, Fiscal Officer

Passed: Yes Nay
Vote: Yes 5 No 0
Immediate effect: Yes No

301 TITLE, PURPOSE, AND OBJECTIVES.

As used in this chapter, words and phrases are defined as follows:

(a) "Automated traffic enforcement program" is a system with one or more sensors working in conjunction with traffic law photo-monitoring devices to produce recorded images of vehicles (1) traveling at a prohibited rate of speed, and/or (2) non-compliant with traffic control devices. This program is intended to increase compliance with speed limits and traffic control devices.

(b) "Law enforcement officer" means an Ohio Police Officer Training Academy certified police officer employed by the Village of Monroeville.

(c) "Local authority" means the Village of Monroeville.

(d) "Motor vehicle" has the same definition as in Ohio R.C. 4511.01(B), as adopted by the Village and amended from time to time.

(e) "Motor vehicle leasing dealer" has the same meaning as in section 4517.01 of the Ohio Revised Code.

(f) "Motor vehicle renting dealer" has the same meaning as in section 4549.65 of the Ohio Revised Code.

(g) "Notice of Liability," means a notice issued alleging a violation of this Chapter of the Village ordinances occurred which was detected by a photo-monitoring device.

(h) "Recorded images" means images recorded by a photo-monitoring device that show, on at least one image or on a portion of the videotape, the rear or front of a motor vehicle and the letters and numerals on the rear or front license plate of the vehicle, 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.

(i) "Registered owner" or "vehicle owner" means all of the following:

- (1) Any person or entity identified by the Ohio bureau of motor vehicles or any other state motor vehicle registration bureau, department, or office as the owner of a motor vehicle;
- (2) The lessee of a motor vehicle under a lease of six months or longer;
- (3) The renter of a motor vehicle pursuant to a written rental agreement with a motor vehicle rental dealer.

(j) "System Location" means the approach to an intersection or area of roadway toward which a traffic law photo-monitoring device is directed and is in operation.

(k) "Traffic law photo-monitoring device" or "photo-monitoring device" means an electronic system consisting of photographic, video or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces recorded images.

(l) "Violation of this Chapter of the Monroeville Ordinances " a violation of this Chapter of the Codified Ordinances of Village of Monroeville due to failure to observe the applicable speed limit or obey traffic control devices.

302 GENERAL.

(a) Notwithstanding any other provision of the traffic code ordinances of the Village of Monroeville, the Village hereby adopts an automated traffic enforcement program utilizing automated photo-monitoring devices to record violations as outlined in this Chapter. This automated traffic enforcement program is a mechanism by which the registered owner of a vehicle may be civilly liable for failure of an operator thereof to comply with the posted speed limit in school zones or streets or highways within the Village of Monroeville and for disobeying traffic control devices. The imposition of a civil penalty under this section 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.

303 OFFENSES.

(a) The vehicle owner may be liable for a civil penalty imposed pursuant to this section if such vehicle is operated at a speed in excess of those set forth in this Chapter or fails to obey a traffic control device as set forth in this Chapter of the Codified Ordinances of Village of Monroeville, as each may be amended from time to time, provided that:

(1) For an automated traffic enforcement system location that is located within a school zone or within the boundaries of a state or local park or recreation area, the Village shall not issue a notice of liability as described in this section using an automated speed enforcement system unless the vehicle involved in the violation is traveling at least six miles per hour over the posted speed limit.

(2) For an automated traffic enforcement system location that is located within any other location than those described in 303(a) above, the Village shall not issue a notice of liability as described in this section using an automated speed enforcement system unless the vehicle involved in the violation is traveling at least ten miles per hour over the posted speed limit.

(b) A person or entity who receives a notice of liability shall elect to do one of the following:

(1) In accordance with the instructions on the notice of liability, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the violation;

(2) Within forty-five days after the mailing of the complaint, provide the Village of Monroeville with either of the following affidavits:

(A) An affidavit executed by the registered owner stating that another person was operating the vehicle of the registered owner at the time of the alleged violation, identifying that person as a designated party who may be held liable for the alleged violation, and containing at a minimum the name and address of the designated party;

(B) An affidavit by the vehicle owner stating that at the time of the alleged 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 alleged violation occurred and were not under the control or possession of the owner at the time of the alleged violation. In order to demonstrate that the motor vehicle or license plates were stolen before the alleged violation occurred and were not under the control or possession of the vehicle owner at the time of the alleged 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 alleged violation or within forty-eight (48) hours after the alleged violation occurred.

(C) An affidavit by the vehicle owner stating the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer and stating the name and address of the lessee or renter of the motor vehicle at the time of the alleged violation. A motor vehicle leasing dealer or motor vehicle renting dealer who receives a notice of violation for an alleged law violation detected by a photo-monitoring device is not liable for any alleged violations for a motor vehicle that was in the care, custody, or control of a lessee or renter at the time of the alleged violation. The dealer shall not pay such notice of liability and subsequently attempt to collect a fee or assess the lessee or renter a charge for any payment made on behalf of the lessee or renter; or

(D) An affidavit stating the vehicle involved in the alleged violation is a commercial motor vehicle and the complaint is issued to a corporate entity, sworn to or affirmed by an agent of the corporate entity, providing the name and address of the employee who was operating the motor vehicle at the time of the alleged violation and who is the designated party;

(3) Provide notice to the Village of Monroeville that the person or entity would like to contest the alleged liability.

(c) A registered owner is not responsible for a civil violation if, within forty-five days after the date of mailing of the complaint, the registered owner furnishes an affidavit specified in above to the Village of Monroeville and the following conditions are met:

(1) If the registered owner submits an affidavit as specified above in this section, the designated party either accepts liability for the violation by paying the civil penalty or is determined liable in a civil hearing;

(2) If the registered owner submits an affidavit as specified above and the affidavit is supported by a stolen vehicle or stolen license plate report as required in that division;

(d) In the event that the Village of Monroeville Police Department receives from a registered owner an affidavit described above, the Village of Monroeville Police Department may proceed

to send a notice of liability that conforms with this Chapter to the designated party, not later than twenty-one days after receipt of the affidavit.

(e) A 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 Monroeville Police Department, with the recorded images produced by an automated traffic enforcement system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this chapter.

(f) Exception for emergency or public safety vehicles: The provisions of this chapter shall not apply to emergency vehicles or public safety vehicles when those vehicles are responding to emergency or call for emergency service.

304 NOTICE OF LIABILITY.

(a) The notice of liability shall be processed by the Village of Monroeville or its designee and shall be served by ordinary mail to the vehicle 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 complaint shall include:

- (1) The name and address of the registered owner;
- (2) The letters and numerals appearing on the license plate issued to the motor vehicle;
- (3) The Violation of this Chapter of the Monroeville Ordinances alleged;
- (4) The system location;
- (5) The date and time of the violation;
- (6) A copy of the recorded image(s);
- (7) The amount of the civil penalty for the violation and the date by which the civil penalty should be paid to avoid a small claims complaint being filed and the address to which payment is to be sent;
- (8) Information advising the person alleged to be liable of the options as provided in in Chapter;
- (9) A statement signed by a law enforcement officer employed by the Village of Monroeville indicating that, based on an inspection of recorded images, the motor vehicle was involved in a violation of this Chapter, and a statement indicating that the recorded images are prima facie evidence of that violation, both of which may be signed electronically;
- (10) A warning that failure to exercise one of the options prescribed in in this Chapter will result in a civil complaint to be filed against the owner of the vehicle alleged to have violated the Village of Monroeville Codified Ordinances in the Norwalk Municipal Court.

(b) 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 applicable state vehicle registration office)

was operating the vehicle at the time of the offense set out in in this Chapter. This evidence and presumption may be rebutted in accordance with this Chapter

(c) Any notice of liability for a violation pursuant to this section shall:

(1) Be approved by a law enforcement officer of the Village of Monroeville Police Department, who shall:

A. Examine evidence of an alleged violation recorded by the photo-monitoring device to determine whether a violation 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 alleged violation, shows the letters and numerals on the vehicle's license plate and shows the state in which the license plate was issued.

(2) Be forwarded by regular mail or personal service to the registered owner's address as given on the state's motor vehicle registration; and

(3) Clearly state the manner in which the alleged violation will be adjudicated.

305 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 above applies, the registered owner or designated party for the motor vehicle may be subject to a civil penalty if the motor vehicle is recorded by an automated traffic enforcement system while being operated in violation of this chapter.

(b) The civil penalty under this chapter shall be in accordance with the following schedule:

10-15 mph over the posted speed limit \$110.00

16-20 mph over the posted speed limit \$140.00

21-25 mph over the posted speed limit \$170.00

26 mph and over the posted speed limit \$200.00

Failure to obey a traffic control device \$110.00

(1) 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 the Bureau of Motor Vehicles, nor shall such a violation be recorded on the driving record of the owner or operator of the vehicle involved in the violation.

(2) The Solicitor or the Chief of Police, in their sole discretion, and for good cause shown, may comprise the amount of the civil penalty.

306 CIVIL HEARING PROCESS.

(a) The Village may enforce the civil penalties provided for in this Chapter by filing a small claims complaint in the Norwalk Municipal Court. The Village may file such a complaint against any person or entity who has not paid the civil penalty or filed an affidavit in accordance with (section reference above), provided that at least 30 days have elapsed since the notice of liability was mailed. The action shall then proceed according to the laws and rules applicable to small claims actions, and appeals shall be governed by Chapter 2505 of the Ohio Revised Code.

(b) If a small claims complaint is filed and the case is heard by the court, the court 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 registered owner or designated party:

(1) That the motor vehicle or license plates of the motor vehicle were stolen before the alleged violation occurred and were not under control or possession of the registered owner at the time of the alleged 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 registered owner at the time of the alleged 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 alleged violation occurred.

(2) That the motor vehicle was under the custody and/or control of another person at the time of the alleged 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 alleged violation.

(3) That this section is unenforceable because the recorded image is not legible enough to determine the information needed.

(4) Evidence, that the registered owner or person named in the complaint was not operating the motor vehicle at the time of the alleged violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the complaint shall provide to the court evidence showing the identity of the person who was operating the motor vehicle at the time of the alleged violation, including, but not limited to, the operator's name and current address, and any other evidence the Village officer deems pertinent.

(c) Upon receipt of evidence of the designated party the Village of Monroeville or its designee may issue a notice of liability, with the name and address of the designated party and the information required by the Chapter to the person that the evidence indicates was operating the motor vehicle at the time of the violation.

(d) A notice of liability issued under this Section, shall be sent by the Village of Monroeville or its designee by ordinary mail no later than twenty-one (21) business days after the receipt of the evidence of the identity of the operator of the vehicle.

(e) If the designated party who was issued a notice of liability is a defendant in a small claims complaint filed under this Chapter, the Village of Monroeville may require the registered owner

of the motor vehicle to also attend the hearing. If at the hearing involving the designated party the court cannot determine the identity of the operator of the vehicle at the time of the violation, the registered owner is liable for the violation.

(f) A person who is named in a complaint for a civil violation may assert a testimonial privilege in accordance with division (D) of Section 2317.02 of the Ohio Revised Code.

307 CALIBRATION.

(a) The manufacturer or operator of the automated traffic 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 traffic 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 automated speed enforcement system locations, the automated speed enforcement system shall perform 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 traffic 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 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.

308 OBEDIENCE TO TRAFFIC CONTROL DEVICES.

(a) No driver of a vehicle shall disobey the instructions of any traffic control device unless at the time otherwise directed by a police officer.

309 SPEED LIMITS

(a) No person shall operate a motor vehicle at a speed greater than the posted speed limit.

