ORDINANCE 2007-26-132

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS CREATING REGULATIONS FOR INTERSECTIONS DETERMINED TO BE DANGEROUS; PROVIDING FOR INTENT AND DEFINITIONS; ESTABLISHING AN ENFORCEMENT PROGRAM WITHIN THE CITY; AUTHORIZING THE CITY TO PERMIT AND IMPLEMENT THE USE OF UNMANNED CAMERAS/MONITORING DEVICES FOR RED LIGHT INFRACTIONS; PROVIDING ENFORCEMENT PROCEDURES; PROVIDING FOR NOTICE; PROVIDING FOR APPEALS; PROVIDING FOR PENALTIES AND ADMINISTRATIVE CHARGES; PROVIDING FOR EXCEPTIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Gardens ("City") is located in a high density traffic area and regularly experiences traffic incidents related to the failure of motorists to obey duly erected traffic control devices, which exposes its citizens to the dangers of personal injury and property damage, and

WHEREAS, the City Council is concerned with the inability to sufficiently enforce the State Statute prohibiting running of red lights, due mainly to the requirement that enforcement of the State Statute requires the personal observation of police officers, affecting the ability to effectively reduce the significant dangers presented to motorists and pedestrians by the failure to stop for a red light, and,

WHEREAS, the use of unmanned cameras to enforce toll violations on the state's toll roads has been determined to be fair, reasonable and sufficient by the State of Florida in order to effectively enforce laws regulating the payment of tolls without the need to commit the extreme amount of personnel that would be necessary without the use of unmanned cameras, and,

WHEREAS, similarly, the use of unmanned cameras will be effective in enforcing

laws requiring vehicles to stop for red lights; therefore freeing City police personnel to respond to other, and sometimes more, significant incidents as well as serious crime, and,

WHEREAS, local governments in different parts of the state and country have demonstrated the enhancement of vehicular and pedestrian traffic safety attributable to the integration of automated image capture technologies with traditional traffic law enforcement methodology, and

WHEREAS, §316.008, Florida Statutes, grants municipalities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of police power, authority to regulate and monitor traffic by means of police officers and security devices, and

WHEREAS, the City of Miami Gardens has home rule authority pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes, to enact an ordinance making the failure to stop for a red light indication a violation of the City's Code of Ordinances, and to provide for enforcement of such violations of the City's Code of Ordinances through the use of the City's Code Enforcement Special Masters, and,

WHEREAS, Attorney General Opinion 05-41, dated July 12, 2005, confirms the authority of the City to enact an ordinance making the failure to stop at a red light indication a violation of the City's Code of Ordinances, to use unmanned cameras to monitor intersections in the City for such violations of the City's Code, and to record the license tag numbers of vehicles involved in such violations, and,

WHEREAS, the Attorney General has opined that the City may not issue traffic

citations under the State Statutes to drivers for violations observed by the use of unmanned cameras and not otherwise observed by police officers, and,

WHEREAS, in order to be consistent with state law and the Attorney General's Opinion, the City will issue City Notices of Violations to registered owners of vehicles, will not utilize the uniform traffic citation prescribed by Chapter 316, and will not prosecute offenses of its City ordinance through county court, and,

WHEREAS, the City Council finds it to be fair and reasonable to use the same procedure used by the state to enforce toll violations through unmanned cameras, to provide alleged violators with the opportunity to have a hearing within the City using the City's Code Enforcement Special Magistrates and the City's code enforcement procedures adopted pursuant to Chapter 162, Florida Statutes, and set forth in Ordinance No. 2004-11-27, as amended, and,

WHEREAS, the City Council of the City of Miami Gardens finds that implementation of the enforcement program as set forth herein will promote, protect and improve the health, safety and welfare of its citizens, consistent with the authority of and limitations on the City pursuant to the Florida Constitution and Florida statutes,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. CREATION OF THE ORDINANCE: An ordinance of the City of Miami Gardens, Florida, creating regulations for intersections determined to be

dangerous is hereby created to read as follows:

A. Intent.

The purpose of this Ordinance is to authorize the use of an unmanned camera/monitoring system to promote compliance with red light signal directives as proscribed by this Ordinance, and to adopt a civil enforcement system for red light signal violations. This Ordinance 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.

B. Use of Image Capture Technologies.

The City shall utilize image capture technologies as a supplemental means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This Ordinance shall not supersede, infringe, curtail or impinge upon state laws related to red light signal violations or conflict with such laws. The City shall utilize image capture technologies as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations. Notices of Infractions issued pursuant to this Ordinance shall be addressed using the City's own Special Magistrates and not uniform traffic citations or county courts.

C. Definitions.

The following definitions shall apply to this Ordinance:

1. *Intersection* shall mean the area embraced within the prolongation or connection of the lateral curb line; or, if none, then the lateral boundary lines, of the roadways of two 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.

2. *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.

3. *Notice of Infraction* shall mean a citation issued for a red zone infraction,

4. *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 months or more.

5. *Recorded Images* shall mean images recorded by a traffic control signal monitoring system/device on:

   a. Two or more photographs, or
      Two or more electronic images; or
      Two or more digital images; or
      Digital or Video movies; or
      Any other medium that can display a violation; and

   b. Showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.

6. *Red Zone infraction* shall mean a traffic offense whereby a traffic control signal monitoring system established that a vehicle entered an intersection controlled by a duly erected traffic control device at a time when the traffic control signal for such vehicle's direction of travel was emitting a steady red signal.

7. *Special Master* shall mean the City's Code Enforcement Special Master.

8. *Traffic Control Signal* shall mean a device exhibiting different colored lights or colored lighted arrows, successively one 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 Florida Statutes §316.075.

9. *Traffic Control Signal Monitoring System/Device* shall mean an electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still camera and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication.

D. Adherence to Red Light Traffic Control Signals.

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 that is stopped at a clearly marked stop line, or if none, before entering the crosswalk on the near side of the intersection or, if none, then at 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 (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.

E. Violation.

A violation of this Ordinance, known as a Red Zone Infraction, shall occur when a vehicle does not comply with the requirements of Section G. Violations shall be enforced pursuant to paragraph (7) herein.

F. Six-month notice: introductory period.

For the first two months of this Ordinance, unless the driver of a vehicle received a citation from a police officer at the time of a Red Zone Infraction in accordance with normal traffic enforcement techniques, the vehicle owner shall receive a courtesy notice of the violation. Commencing two months after the effective date of the Ordinance, the vehicle owner is subject to the enforcement provision as provided herein.

G. Review of Recorded Images.

1. The owner of the vehicle, which is observed by Recorded Images committing a Red Zone Infraction, shall be issued a Notice of infraction. The Recorded Image shall be sufficient grounds to issue a City Notice of Infraction.

2. The City shall designate a Traffic Control Infraction Review Officer(s), who shall meet the qualifications set forth in §316.640(5)(A), Florida Statutes, or any other relevant statute. The Traffic Control Infraction Review Officer(s) shall review Recorded Images prior to the issuance of a Notice of Violation/Infraction to ensure accuracy and the integrity of the Recorded Images. The Traffic Control Infraction Officer(s) shall also verify that the Traffic Control Monitoring System/Devices that captured the Recorded Images was functioning properly at the time the Recorded Images were captured. Once the Traffic Control Infraction Review Officer has verified the accuracy of the Recorded Images and functionality of the Traffic Control Monitoring System/Devices, he or she shall complete a report, and a Notice of Violation/Infraction shall be sent to the Vehicle Owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles.

H. Notice of Violation/Infraction.

The Notice of Violation/Infraction shall include:

1. The name and address of the vehicle owner

2. The license Plate number and registration number of the vehicle

3. The make, model, and year of the vehicle

4. Notice that the violation charged is pursuant to this Ordinance

5. The location of the intersection where the violation occurred

6. The date and time of the red zone infraction

7. Notice that the Recorded Images relating to the vehicle and a statement that the recorded images are evidence of a red zone infraction:

8. The civil penalty imposed

9. Images depicting violation

10. The procedures for payment of the civil penalty and contesting the notice of infraction

11. A signed statement by the Traffic Control Infraction Officer that, based on inspection of recorded images, the vehicle was involved in a Red Zone Infraction

12. Information advising the person alleged to be liable under this Section, the manner and time in which liability as alleged in the Notice of Infraction may be appealed and warning that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability.

I. Vehicle Owner Responsibilities.

A vehicle Owner receiving a Notice of Infraction may, within twenty one (21) days of the date of the Notice of Infraction:

1. Pay the assessed civil penalty pursuant to instructions on the notice of infraction; or

2. Request an appeal pursuant with procedures as outlined in this Ordinance.

The failure to comply with the provisions of this Section within twenty-one days from the date of the Notice of Infraction shall constitute a waiver of the right to contest the Notice of Infraction and will be considered an admission.

J. Appeal to Special Master.

1. The City's Code Enforcement Special Magistrates are authorized to

consider appeals under this Chapter within twenty one (21) days of the date of the Notice of Infraction; the Vehicle Owner may file an appeal with the City pursuant to the directions in the Notice of Infraction. A hearing on the appeal shall be scheduled for all appeals except those in which the Vehicle Owner submits an affidavit pursuant to Section K of this Ordinance in which the Vehicle Owner affirms under penalty of perjury that the vehicle was not under his or her care, custody or control, or that of someone with Vehicle Owner's consent.

2. Upon receipt of the appeal, the City shall schedule a hearing before the Special Master to occur not later than sixty (60) days after City's receipt of the appeal. A Notice of Hearing shall be provided to the Vehicle Owner no less than ten (10) days prior to the hearing, and shall be provided by certified and U.S. mail to the same address to which the Notice of Infraction was sent.

3. The following shall be permissible grounds for an appeal:

   a. At the time of the infraction, the vehicle was not under the care, custody, or control of the Vehicle Owner or an individual with Vehicle Owner's consent, established pursuant to affidavit as provided in Section K of this Ordinance;

   b. The motor vehicle driver was issued a citation by a law enforcement officer, which was separate and distinct from the citation issued under this Section, for violating the steady red traffic control signal;

   c. The motor vehicle driver was required to violate the steady red traffic control signal In order to comply with other governing laws;

   d. The motor vehicle driver was required to violate the steady red traffic control signal in order to reasonably protect the property or person of another'

   e. The steady red traffic control signal was inoperable or malfunctioning; or

   f. Any other reason the Special Master deems appropriate.

4. The hearing shall be conducted in accordance with Ordinance No. 2004-11-27, as amended.

5. Recorded Images indicating a Red Zone Infraction, verified by the Traffic Control Infraction Review Officer, are admissible in any proceeding before

the City's Special Master to enforce the provisions of this Chapter and shall constitute prima facie evidence of the violation.

6. Unless an affidavit is provided pursuant to Section K of this Ordinance, it is presumed the person registered as the vehicle owner with the Florida Department of Motor Vehicles or any other state vehicle registration office, or an individual having the owner's consent, was operating the vehicle at the time of a Red Zone Infraction.

K. Vehicle Owner Affidavit of Non-responsibility.

In order to for the Vehicle Owner to establish that the motor vehicle was at the time of the Red Zone Infraction, in the care, custody, or control of another person without the consent of the registered owner, the Vehicle Owner is required, within twenty-one (21) days from the date listed on the Notice of Infraction, to furnish to the City, an affidavit setting forth the circumstances demonstrating that the motor vehicle was not in the Vehicle Owner's care custody or control, or that of a person with Vehicle Owner's consent. The affidavit must be executed in the presence of a notary, and include:

a If known to the Vehicle Owner, the name, address, and the driver license number of the person who leased, rented or otherwise had care, custody, or control of the motor vehicle at the time of the alleged Red Zone Infraction; or

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

c The following language must be placed immediately above the signature line:

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

d. Upon receipt of an affidavit pursuant to this section, any prosecution of the Notice of Infraction issued to the vehicle owner shall be terminated.

L. Penalties.

A violation of this Ordinance shall be deemed a non-criminal, non-moving violation for which a civil penalty in the amount of $125.00 shall be assessed. As the violation relates to this Ordinance and not the State Statutes, no points as provided in §322.27, Florida Statutes, shall be recorded on the driving record of the vehicle owner or responsible party.

M. Administrative Charges.

In addition to the assessment, administrative charges may be assessed in the event of an appeal or the necessity to institute collection procedures.

N. Collection of Fines.

The City may collect a penalty in accordance with Florida Statutes and the City's Code Enforcement Procedures. In addition, the City may enforce such penalty by civil action in the nature of debt.

O. Exceptions.

This Ordinance shall not apply to Red Zone Infractions involving vehicle collisions or to any authorized emergency vehicle responding to a bonafide emergency; nor shall a Notice of Infraction be issued in any case where the operator of the vehicle was issued a citation for violating the State Statute regarding the failure to stop at a red light.

SECTION 3. CONFLICT All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. INCLUSION IN THE CODE It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 6. EFFECTIVE DATE This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 24TH DAY OF OCTOBER, 2007.

PASSED AND ADOPTED on second reading this 14th day of October 2007

SHIRLEY GIBSON, MAYOR

ATTEST:

RONETTA TAYLOR, CMC, CITY CLERK

Reviewed by SONJA K. DICKENS ESQ.
City Attorney

SPONSORED BY: Danny O. Crew, City Manager

MOVED BY: Councilman Braynon
SECONDED BY: Vice Mayor Watson

VOTE: 7-0

Mayor Shirley Gibson	x (Yes)	___(No)
Vice Mayor Barbara Watson	x (Yes)	___(No)
Councilman Melvin L. Bratton	x (Yes)	___(No)
Councilman Aaron Campbell	x (Yes)	___(No)
Councilman Oscar Braynon, II	x (Yes)	___(No)
Councilman André Williams	x (Yes)	___(No)
Councilwoman Sharon Pritchett	x (Yes)	___(No)