

ORDINANCE NO. _____

**AN ORDINANCE ADOPTING NEW SECTION 333.11 “CIVIL
PENALTIES FOR HAND-HELD SPEEDING SYSTEM VIOLATIONS”
OF THE CITY OF TROTWOOD CODIFIED ORDINANCES.**

WHEREAS, the City Council has determined that it would be in the best interest of the City to adopt a new Section 333.11 to allow City of Trotwood Police Officers to use photo-enforcement devices to enforce speed limits in the City to promote public safety and the welfare of its citizens; and

WHEREAS, new technology allows for the use of portable devices, which can be particularly valuable in encouraging safe speeds within the City of Trotwood; and

WHEREAS, the City is authorized as a charter municipality to exercise all powers of local self-government.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY
OF TROTWOOD, STATE OF OHIO:**

SECTION I: New Section 333.11, entitled “Civil Penalties for Hand-Held Speeding System Violations,” is hereby enacted as follows.

§ 333.11 CIVIL PENALTIES FOR HAND-HELD SPEEDING SYSTEM VIOLATIONS.

(a) Hand-Held Speeding System/Civil Violation General.

- (1) Notwithstanding any other provision of this Traffic Code, the City of Trotwood hereby adopts a civil enforcement system for hand-held speeding camera system violations as outlined in this Section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to comply with speed limit indications in the City of Trotwood in accordance with the provisions of this Section.
- (2) The City of Trotwood Police Department or its assignee shall be responsible for administering the hand-held speeding system. Specifically, the Trotwood Police Department or its assignee shall be empowered to operate hand-held speeding camera systems within the City of Trotwood. The Trotwood Police Department will make the determination as to which intersection locations will be utilized.
- (3) Any citation for a hand-held speeding system violation pursuant to this Section, known as a "Notice of Liability" shall:
 - A. Be processed by officials or agents of the City of Trotwood;

B. Be forwarded by ordinary mail or personal service to the vehicle's registered owner's address as given on the State's motor vehicle registration, and

C. Clearly state the manner in which the violation may be appealed.

(b) Definitions.

(1) "Hand-held speeding system" is a hand-held system consisting of a photographic, video or electronic camera and a vehicle sensor that produces a photograph, video or digital image of speed limit violations.

(2) "In operation" means operating in good working condition.

(3) "System location" is the approach to an intersection toward which a hand-held photographic, video or electronic camera is directed and is in operation. It is the location where the hand-held camera system is being used to monitor offenses under this Section.

(4) "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.

(c) Offense.

(1) 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 in the City of Trotwood Codes of Ordinances.

(2) 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, Commonwealth, or Provincial vehicle registration office was operating the vehicle at the time of the offense set out in subsection (c)(1) above.

(3) Notwithstanding subsection (c)(2) above, the owner of the vehicle shall not be responsible for the violation if, within 30 days from the date listed on the Notice of Liability, as set forth in subsection (d)(3) below, the owner furnishes the Hearing Officer:

A. An affidavit signed by the owner, stating the name and address of the person or entity who leased, rented, or otherwise had the care, custody and control of the vehicle at the time of the violation. The person or entity listed in the affidavit has 30 days from the date of issuance to pay or contest the Notice of Liability. Failure to do so will result in the additional penalty listed in subsection (d) (3). A failure of the person or entity to respond within the 30 day limit shall cause the responsibility for the Notice of Liability to return to the registered owner of the vehicle; or

- B. A law enforcement incident report/general offense report from any state or local law enforcement agency/record bureau stating that the vehicle involved was reported as stolen before the time of the violation.
- (4) An imposition of liability under this Section shall not be deemed a conviction as an operator and shall not be made part of the operating record upon whom such liability is imposed.
- (5) Nothing in this Section shall be construed to limit the liability of an operator of a vehicle for any violation of subsection (c)(1) herein.
- (6) This Section shall not apply to violations involving vehicle collisions.
- (d) Penalty; Administrative Appeal.
- (1) Any violation of subsection (c)(1) herein shall be deemed a noncriminal violation for which a civil penalty of \$85.00 shall be assessed and for which no points authorized by Ohio Revised Code Section 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.
- (2) The owner or driver of the vehicle who receives a Notice of Liability shall be required to respond to it by paying the civil penalty as directed on the Notice of Liability within 30 days of its issuance date, or by submitting proof of non-liability as set forth in subsection (c)(3) hereof.
- (3) The failure to respond by full payment, affidavit, or law enforcement incident/offense report to the Notice of Liability within 30 days of its issuance date shall constitute a waiver of the right to contest liability for the violation. Said failure shall also result in an additional penalty of \$50.00.
- (4) The City of Trotwood, via its Police Department, and Law Department may establish procedures for the collection of the civil penalties imposed herein, and may enforce the penalties by a civil action in the nature of a debt.
- (5) A notice of appeal shall be filed with the Hearing Officer within 30 days from the date listed on the Notice of Liability. The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the citation and will be considered an admission. Appeals shall be heard through an administrative process established by the City of Trotwood Police Department. An individual desiring a hearing must post a bond equal to the amount of the civil penalty before an appeal hearing will be scheduled. A Hearing Officer shall hear reviews. A hearing shall be held within thirty business days of the receipt of the request for review; this time may be extended upon a written request for additional time.

- A. The Hearing Officer shall determine whether a preponderance of evidence establishes that a violation of this Section occurred and the person requesting the review is liable. A certified copy of the Notice of Liability alleging the violation of this Section occurred, sworn to or affirmed by a duly authorized Police Officer of the City of Trotwood, with the recorded images produced by the hand-held speeding system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this Section. Adjudication of liability shall be based on a preponderance of the evidence.
 - B. If the Hearing Officer finds sufficient evidence of a violation, but the owner or the responsible party is not liable, the Hearing Officer shall, in writing, issue a decision finding the individual not liable and submit it to the City of Trotwood Police Department or its designee.
- (6) 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 of a violation:
- A. That the motor vehicle or registration 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 the registration 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 registration plates was filed prior to the violation or within 48 hours after the violation occurred.
 - B. That this Section is unenforceable because at the time and place of the alleged violation, the posted speed limit signs were removed or damaged.
 - C. The hand-held speeding system was not in proper position and the recorded image is not legible enough to determine the information needed.
 - D. Evidence, other than that adduced pursuant to subsection (d)(5)B. of this Section, that the owner or person named in the Notice of Liability was not operating the 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 vehicle at the time of the violation, including, at a minimum, the operator's name and current address, and any other evidence that the Hearing Officer deems pertinent.
- (7) If the Hearing Officer finds that the person or entity named in the Notice of Liability was not operating the vehicle at the time of the violation or receives evidence under subsection (d)(5)B. identifying the person driving the vehicle at the time of the

violation, the Hearing Officer shall provide to the City of Trotwood Police Department or its designee within five calendar days, a copy of any evidence substantiating who was operating the vehicle at the time of the violation.

A. Upon the receipt of evidence of the responsible party pursuant to this subsection or pursuant to subsection (c)(3)A., the City of Trotwood Police Department or its designee may issue a Notice of Liability, with the name and address of the responsible party to the person that the evidence indicates was operating the vehicle at the time of the violation.

B. A Notice of Liability issued under subsection (d)(5) shall be sent by ordinary mail no later than five business days after receipt of the evidence from the Hearing Officer or the owner.

(8) In the event that the decision of the hearing officer is in favor of the City of Trotwood, the bond monies previously posted shall be paid to the City of Trotwood. A decision in favor of the City of Trotwood may be enforced by means of a civil action.

SECTION II:

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that any and all deliberations of this Council that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION III:

This Ordinance shall take effect at the earliest date allowed by law.

PASSED THIS _____ DAY OF _____, 2016.

ATTEST:

APPROVED:

CLERK OF COUNCIL

MAYOR

VICE-MAYOR

CERTIFICATE OF RECORDING OFFICER

I, _____, Clerk of the City of Trotwood, Ohio, do,
hereby certify that the foregoing is a true and correct copy of Ordinance No. _____
adopted by the Trotwood City Council at a regular scheduled meeting held on the _____ day
of _____, 2016 and that I am duly authorized to execute this certificate.

IN TESTIMONY WHEREOF, witness my hand and official seal on this _____ day
of _____, 2016.

CLERK OF COUNCIL