

Memorandum

City Attorney's Office

No. 13-0124

To: Honorable Mayor and Commissioners

From: Harry A. Stewart, City Attorney/5037 *Has*

Date: May 16, 2013

Re: Red Light Camera Program - Legislative Changes

In the 2013 Legislative Session, the Florida Legislature passed HB 7125, which provided certain changes to the original Mark Wandall Traffic Safety Act of 2010 to take effect on July 1, 2013. My office has reviewed the Bill and below is a summary of the changes that directly affect the City of Fort Lauderdale's red light camera program.

There is a new process for enforcing the red light camera violations. After a violation is recorded, the registered owner of the vehicle receives a notice of the violation within thirty (30) days of the violation. The owner, hereinafter "petitioner", now has sixty (60) days to decide whether to: (1) pay the \$158.00 fine under the statute; (2) submit an affidavit provided for under the statute to avoid liability; or (3) request a hearing before a "local hearing officer" in the City. The "local hearing officer" is defined as a person designated by the City authorized to conduct hearings and the City may use their code enforcement board or code enforcement special magistrate(s).

If the owner files an affidavit and transfers liability to another person, a notice of violation shall be sent to that identified person within 30 days after receipt of the affidavit and that person has 60 days to follow the procedure identified above.

The new changes require the City to designate a staff member to serve as the clerk for the local hearing officer. There is a penalty of \$50.00 for nonappearance before the local hearing officer, in addition to the \$158.00 fine. There is also the possibility of imposition of administrative costs not to exceed \$250.00.

All testimony at the hearing to contest the notice of violation shall be under oath and recorded. The local hearing officer must take testimony from the traffic infraction officer and petitioner, and may take testimony from other witnesses. The local hearing officer must review the photographic or electronic images or live streaming video of the violation. The formal rules of evidence do not apply, but due process must be observed and govern the proceedings. At the conclusion of the hearing, the local hearing officer must determine whether a violation has occurred and either uphold or dismiss the violation. The local hearing officer is to issue a final administrative order and to include the determination and, if the notice of violation is upheld, require the petitioner to pay the \$158.00 fine and may also require the petitioner to pay administrative costs. The final administrative order must be mailed to the petitioner by first class mail. A petitioner

Honorable Mayor and Commissioners
City Attorney Memorandum 13-0124
May 16, 2013
Page -2-

may appeal the final administrative order to the circuit court, similar to a code enforcement order appeals process.

If the petitioner fails to pay the fine and costs, the clerk shall notify the Department of Highway Safety and Motor Vehicles (DHSMV) of the failure to pay and DHSMV may not issue a license plate or revalidation sticker to the petitioner until the amounts assessed have been fully paid.

Additional changes to the statute include clarification of permissible right turn red light violations. If a vehicle came to a complete stop after crossing the stop line and before turning right at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required, a notice of violation and UTC may not be issued.

Once the legislation is in effect on July 1, 2013, the City will need to have in place a designated time and place for the contested hearings in front of the local hearing officer. The City currently has two code enforcement special magistrates that will need to be designated local hearing officers and, if necessary, seek additional special magistrates depending upon the volume of cases scheduled for hearings. The City will also need to designate and possibly hire additional staff to act as the clerk for the local hearing officer. The City will need to coordinate with ATS the procedures necessary to effectuate these changes and possibly amend the current contract to ensure that these procedures are being performed pursuant to the new law.

Our office will prepare any required changes to be made to the current ordinance, including the resolution designating the clerk and local hearing officers, for approval by the City Commission prior to the effective date of the legislation.

HAS/GEW/mr

cc : Lee R. Feldman, ICMA-CM, City Manager
John Herbst, City Auditor
Jonda K. Joseph, City Clerk
Douglas Wood, Finance Director

L:\HAS\memos\comm\0124.comm