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ORDINANCE NO. 2022-051

AN ORDINANCE AMENDING PART 3-TRAFFIC CODE OF THE CODIFIED ORDINANCES OF THE CITY OF WILLOUGHBY HILLS BY THE ESTABLISHMENT OF CHAPTER 315 CAPTIONED “OFFICER-OPERATED HANDHELD TRAFFIC LAW ENFORCEMENT DEVICE.”

WHEREAS, the Willoughby Hills Police Department as part of its law enforcement has repeatedly observed and ticketed drivers traveling in speeds in excess of 80 miles per hour, and motorists that have failed to slow down or move over when approaching stopped police vehicles; and

WHEREAS, in order to enhance officer safety and have a substantial impact on the unsafe motorists traveling through the City of Willoughby Hills, the Willoughby Hills Police Chief has recommended establishing a photo enforcement program to supplement traditional traffic enforcement operations; and

WHEREAS, the Willoughby Hills Council deems it in the best interest of the City and its residents to enact Chapter 315, Officer-Operated Handheld Traffic Law Enforcement Devices as set forth below;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. Chapter 315-Officer-Operated Handheld Traffic Law Enforcement Devices of the City’s Codified Ordinances is enacted to read and provide as fully set forth below:

CHAPTER 315 OFFICER-OPERATED HANDHELD TRAFFIC LAW ENFORCEMENT DEVICES

315.01 DEFINITIONS.

(a) “Designated party” means the person whom the registered owner of a motor vehicle, upon receipt of a ticket based upon images recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device that indicates a traffic law violation occurred, identifies as the person who was operating the vehicle of the registered owner at the time of the violation.

(b) “Prosecuting Attorney” means any person appointed by the Willoughby Hills Mayor to prosecute cases in the Willoughby Municipal Court.

(c) “Law enforcement officer” means a sheriff, marshal, deputy marshal, police officer of a police department of any municipal corporation, police constable of any township, or police officer of a township or joint police district, who is employed or an auxiliary of the City of Willoughby Hills Police Department.

(d) “Local Authority” means the City of Willoughby Hills.

(e) “Motor vehicle leasing dealer” has the same meaning as in Ohio Revised Code Section 4517.01.

(f) “Motor vehicle renting dealer” has the same meaning as in Ohio Revised Code Section 4549.65.

(g) “Recorded images” means of the following images recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device that show, on at least one image or on a portion of the videotape, the letters and numerals on the front or rear license plate of the vehicle:

- (1) Two or more photographs, microphotographs, electronic images, or digital images;
- (2) Videotape.

(h) “Registered owner” means any or all of the following:

- (1) Any person or entity identified by the Bureau of Motor Vehicles or any other state motor vehicle registration bureau, department, or office 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 renting dealer.

(i) “System location” means the approach to an intersection or area of roadway toward which an Officer-Operated Handheld Traffic Enforcement Device is directed and is in operation.

(j) “Ticket” means any traffic ticket, citation, summons, or other ticket issued in response to an alleged traffic violation detected by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device, that represents a civil violation.

(k) “Traffic law violation” means a violation of Ohio Revised Code Section 4511.21 or 4511.211 or a substantially equivalent municipal ordinance due to failure to observe the applicable speed limit.

(l) “Officer enforced traffic law system violations” means tickets for civil violations issued by a City police officer using an Officer-Operated Handheld Traffic Law Enforcement Device.

(m) “Officer-Operated Handheld Traffic Law Enforcement Device” means a portable, handheld electronic device that contains laser speed measurement and photographic imaging components that can determine the speed of a moving vehicle only upon manual activation by a person who senses the presence of a motor vehicle and activates the device. Such devices do not have a means of sensing the presence of a motor vehicle that automatically produces recorded images.

315.02 GENERAL.

(a) Notwithstanding any other provision of the traffic code ordinances of the City of Willoughby Hills, the City hereby adopts a civil enforcement program for officer-enforced traffic law system violations as outlined in this Chapter. This program imposes monetary liability on the owner of a vehicle for failure of an operator thereof to strictly comply with the posted speed limit on streets or highways within the City. The imposition of a liability under this Chapter 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.

(b) The Chief of Police shall be responsible for administering the officer-enforced traffic law system.

(c) A traffic law violation for which a civil penalty is imposed under this Chapter is not a moving violation and points shall not be assessed against a person’s driver’s license. In no case shall such a violation be reported to the Bureau of Motor Vehicles or motor vehicle registration bureau, department or office of any other state, nor shall such a violation be recorded on the driving record of the owner or operator of the vehicle involved in the violation.

(d) The City may utilize an Officer-Operated Handheld Traffic Law Enforcement Device for the purpose of detecting traffic law violations. City Council may adopt such resolutions as may be necessary to enable the City to utilize Officer-Operated Handheld Traffic Law Enforcement Devices.

315.03 CIVIL OFFENSE.

(a) 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 315.03 of these Codified Ordinances or Ohio Revised Code Section 4511.21 as each may be amended from time-to-time.

(b) A traffic law violation for which a ticket is issued by the City pursuant to Chapter 315 is a civil violation.

(c) The City or its designee shall process such a ticket for civil violation and shall send the ticket by ordinary mail to any registered owner of the motor vehicle that is the subject of the traffic law violation. The City or its designee shall ensure that the ticket contains all of the following:

- (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 traffic law violation charged;
- (4) The date, time and location of the violation;
- (5) A copy of the images recorded by the law enforcement officer who used the Officer-Operated Handheld Traffic Law Enforcement Device to record the violation;
- (6) The name and badge number of the law enforcement officer who used the Officer-Operated Handheld Traffic Law Enforcement Device to record the violation;
- (7) The amount of the civil penalty imposed, the date by which the civil penalty is required to be paid, and the address to which the payment is to be sent;
- (8) A statement signed by a law enforcement officer employed by the City indicating that, based on an inspection of recorded images, the motor vehicle was involved in a traffic law violation, and a statement indicating that the recorded images are *prima facie* evidence of that traffic law violation both of which may be signed electronically;
- (9) Information advising the person or entity alleged to be liable of the options prescribed in Section 315.04 specifically to include the time, place, and manner in which an administrative appeal may be initiated and the procedure for disclaiming liability by submitting an affidavit as prescribed in that section;
- (10) A warning that failure to exercise one of the options prescribed in Section 315.04 is deemed to be an admission of liability and waiver of the opportunity to contest the violation.

(d) The City or its designee shall send a ticket not later than 30 days after the date of the alleged traffic violation.

(e) The City or its designee may elect to send by ordinary mail a warning notice in lieu of a ticket under this section.

315.04 RIGHTS OF THOSE TICKETED.

(a) A person or entity who receives a ticket for a civil violation sent in compliance with this Section 315.04 shall elect to do one of the following:

- (1) In accordance with instructions on this ticket, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the violation or liability;

(2) A. Within thirty (30) days after receipt of the ticket, provide the law enforcement agency of the City with either of the following affidavits:

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

(ii) An affidavit executed by the registered owner stating that at the time of the violation, the motor vehicle or the license plates issued to the motor vehicle were stolen and therefore were in the care, custody, or control of some person or entity to whom the registered owner did not grant permission to use the motor vehicle. In order to demonstrate that the motor vehicle or the license plates were stolen prior to the traffic law violation and therefore were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the violation or within 48 hours after the violation occurred.

B. A registered owner is not responsible for a traffic law violation, if within thirty (30) days after the date of the mailing of the ticket, the registered owner furnishes an affidavit specified in subsection (a)(2)(A)(i) or (ii) of this Section to the Willoughby Municipal Court in a form established by the City and the following conditions are met:

(1) If the registered owner submits an affidavit as specified in subsection (a)(2)(A)(i) of this Section, the designated party either accepts liability for the violation by paying the civil penalty or failing to request an administrative hearing within thirty (30) days or is determined liable in an administrative hearing;

(2) If the registered owner submits an affidavit as specified in subsection (a)(2)(A)(ii) of this section, the affidavit is supported by a stolen vehicle or stolen license plate report as required in that division.

(3) If the registered owner is a motor vehicle leasing dealing or a motor vehicle renting dealer, notify the law enforcement agency of the City of the name and address of the lessee or renter of the motor vehicle at the time of the traffic law violation. A motor vehicle leasing dealer or motor vehicle renting dealer who receives a ticket for an alleged traffic law violation detected by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device is not liable for a ticket issued 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 a ticket and subsequently attempt to collect a fee or assess the lessee or renter for any payment of such a ticket made on behalf of the lessee or renter.

(4) If the vehicle involved in the traffic law violation is a commercial motor vehicle and the ticket is issued to a corporate entity, provide to the law enforcement agency of the City an affidavit, sworn to or affirmed by an agent of the corporate entity, that provides 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.

(5) Contest the ticket by filing a written request for an administrative hearing to review the ticket. The person or entity shall file the written request not later than thirty (30) days after receipt of the ticket. The failure to request a hearing within this time period constitutes a waiver of the right to contest the violation and ticket, and is deemed to constitute an addition of liability and waiver of the opportunity to contest the violation.

(b) When the Willoughby Municipal Court and the City receives an affidavit described in subsection (a)(2)(A)(i) or (a)(4) of this Section of a notification under subsection (a)(3) of this section from a registered owner, the City may proceed to send a ticket that conforms with the requirements set forth in Section 315.03 to the designated party. The City shall send the ticket to the designated party by ordinary mail not later than 21 days after receipt of the affidavit or notification.

315.05 CIVIL PENALTIES.

(a) Unless the driver of a motor vehicle received a citation from a police officer at the time of the violation, or unless an exception or defense to liability set forth in Section 315.04 applies, the owner or responsible party for the motor vehicle is subject to a civil penalty of the motor vehicle is recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device while being operated in violation of this Chapter.

(b) The civil penalty under this Chapter shall be following:

Miles Per Hour Over Speed Limit	Amount of Penalty
1-19	\$150.00
20-29	\$200.00
30 or more	\$300.00

or within a construction zone, school zone or within the boundaries of a state or local park or recreation area as follows:

Miles Per Hour Over the Speed Limit	Amount of Penalty
1-19	\$150.00
20-29	\$200.00
30 or more	\$300.00

315.06 EXAMINATION OF EVIDENCE.

(a) A law enforcement officer employed by the City shall examine evidence of alleged traffic law violations recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device to determine whether such a violation has occurred. If the image recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device shows such a violation, contains the date and time of the violation, and shows the letter and numerals on the license plate of the vehicle involved as well as the state that issued the license plate, the officer may use any lawful means to identify the registered owner.

(b) The fact that a person or entity is the registered owner of a motor vehicle is *prima facie* evidence that person or entity is the person who was operating the vehicle at the time of the traffic law violation.

(c) Within thirty (30) days of the traffic law violation, the City or its designee may issue and send by regular mail a ticket charging the registered owner with the violation. The ticket shall comply with Section 315.03.

(d) A certified copy of the ticket alleging a traffic law violation, sworn to or affirmed by a law enforcement officer employed by the City, including the electronic means and the recorded images produced by an Officer-Operated Handheld Traffic Law Enforcement Device used by a law enforcement officer at the date, time, and location where a violation occurred, is *prima facie* evidence of the facts contained therein and is admissible in a proceeding for review of the ticket issued under this Section.

315.07 CONTESTING TICKETS.

(a) When a person or entity named in a ticket for a civil violation elects to contest the ticket and completes the requirements prescribed in Section 315.04 of the Codified Ordinances in a timely manner, all of the following apply:

(1) The Prosecuting Attorney shall prosecute the case to a conclusion. The hearing shall be held within the time frame established by the Willoughby Municipal Court.

(2) The person who requested the administrative hearing or a representative of the entity that requested the hearing shall appear for the hearing and may present evidence at the hearing.

(3) The Willoughby Municipal Court shall determine whether a preponderance of the evidence establishes that the violation alleged in the ticket did in fact occur and that person or entity requesting the review is the person who was operating the vehicle at the time of the violation.

(b) (1) If the Willoughby Municipal Court finds by a preponderance of the evidence that the alleged traffic law violation did in fact occur and that the person or entity named in the ticket is the person who was operating the vehicle at the time of the violation, the Willoughby Municipal Court shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the City or its designee and the person or entity named in the ticket.

(2) If the Willoughby Municipal Court finds by a preponderance of the evidence that the alleged traffic law violation did not occur or did in fact occur but the person or entity named in the ticket is not the person who was operating the vehicle at the time of the violation, the Willoughby Municipal Court shall issue a judgment finding that the individual or entity is not liable for the violation and submit it to the City or its designee and the person or entity named in the ticket.

(3) If the person who requested the administrative hearing or a representative of the entity that requested the hearing fails to appear at the hearing, the Willoughby Municipal Court shall determine that the person or entity is liable for the violation. In such a case, the Willoughby Municipal Court shall issue a judgment imposing liability for the violation upon the individual or entity and submit it to the City or its designee and the person or entity named in the ticket.

(c) (1) In determining whether the person or entity named in the ticket is liable, the Willoughby Municipal Court may consider any of the following as an affirmative defense to the traffic law violation:

A. That the vehicle passed through the intersection in order to yield the right-of-way to either of the following:

1. A public safety vehicle or coroner's vehicle in accordance with Ohio R. C. 4511.45 or a substantially equivalent municipal ordinance;

2. A funeral procession in accordance with Ohio R.C. 4511.451 or a substantially equivalent municipal ordinance.

B. That the motor vehicle or license plates of the motor vehicle were stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the traffic law violation or within 48 hours after the traffic law violation occurred.

C. At the time and place of the alleged traffic law violation, the traffic control signal was not operating properly or the Officer-Operated Handheld Traffic Law Enforcement Device was not in proper position and the recorded image is not of sufficient legibility to enable an accurate determination of the information necessary to impose liability.

D. That the registered owner or person or entity named in the ticket was not the person operating the motor vehicle at the time of the violation. In order to meet the evidentiary burden imposed under this division (c)(1)D. of this section, the registered owner or person or entity named in the ticket shall provide to the hearing officer the identity of the designated party, that person's name and current address, and any other evidence that the hearing officer determines to be pertinent.

E. The Willoughby Municipal Court also may consider the totality of the circumstances when determining whether to impose liability upon the person or entity named in the ticket.

(d) (1) If the Willoughby Municipal Court finds that the person or entity named in the ticket was not the person who was operating the vehicle at the time of the violation or receives evidence identifying the designated party, the hearing officer shall provide to the City or its designee, within five (5) days of the hearing, a copy of any evidence substantiating the identity of the designated party.

(2) Upon receipt of evidence of the identity of the designated party, the City or its designee may issue a ticket to the designated party. The City shall ensure that a ticket issued under division (d)(2) of this section conforms with Section 315.04. The City shall send the ticket by ordinary mail not later than 21 days after receipt of the evidence from the hearing officer or the registered owner of the identity of the designated party.

(e) If a designated party who is issued a ticket under division (d)(2) of this section or Section 315.04(b) of the Codified Ordinances contests the ticket by filing a written request for an administrative hearing review to review the ticket not later than 30 days after the receipt of the ticket, the City shall require the registered owner of the motor vehicle to attend the hearing. If at the hearing involving the designated party, the Willoughby Municipal Court cannot determine the identity of the operator of the motor vehicle at the time of the violation, the registered owner is liable for the violation. The Willoughby Municipal Court shall then issue a written decision imposing liability for the violation on the registered owner and submit it to the City or its designee and to the registered owner. If the designated party also is a registered owner of the vehicle, liability for the violation shall follow the order of registered owners as listed on the title to the vehicle.

(f) A person who is named in a ticket for a civil violation may assert a testimonial privilege in accordance with Ohio R.C. 2317.02(D).

(g) A person or entity may appeal a written decision rendered by the Willoughby Municipal Court in accordance with Ohio law.

(h) No decision rendered under this Section, and no admission of liability under this Section or Section 315.05 is admissible as evidence in any other judicial proceeding in this state, except as is provided for in Section 317.08 below.

317.08 COLLECTION OF CIVIL PENALTY.

(a) If a judgment for a civil penalty under this Chapter 315 is not satisfied, the City may seek payment on the judgment amount, together with any applicable interest and cost thereon, in any manner prescribed by law. In addition to any other fees or charges authorized by this Chapter in relation to the commission of a violation thereof, a person liable for the penalties established under this Chapter may be assessed any costs incurred by the City in the collection of the debt, including but not limited to attorney's fees.

(b) In the event that the vehicle owner or responsible party fails to take any action set forth in Section 315.04(a), or after the Willoughby Municipal Court issues a written decision imposing liability for a traffic law violation under Section 315.07 and the time to appeal such decision has passed without the filing of an appeal, the City may initiate a civil enforcement action in a court of competent jurisdiction to collect same.

317.09 CALIBRATION; ISSUANCE OF CERTAIN TICKETS PROHIBITED.

(a) Upon request, each manufacture of an Officer-Operated Handheld Traffic Law Enforcement Device shall provide to the City the maintenance record of any such device used in the City.

(b) (1) Commencing January 2022, and thereafter not later than the last day of January of each year, the manufacturer of any Officer-Operated Handheld Traffic Law Enforcement Device used by the City shall provide to the City a certificate of proper operation that attests to the accuracy of the device.

(2) The City shall test the accuracy of each such Officer-Operated Handheld Traffic Law Enforcement Device with an independent, certified speed measuring device or some other commonly accepted method prior to its use at each system location.

SECTION 2. Any section of the City’s Codified Ordinances in conflict herewith are hereby and herein repealed. All other provisions of the City of Willoughby Hills Codified Ordinances not inconsistent herewith shall remain in full force and effect.

SECTION 3. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

PASSED: _____, 2022

Christopher Hallum
President of Council

Submitted to the Mayor for his approval
on this _____ day of _____, 2022

Approved by the Mayor
_____, 2022

ATTEST:

Karen Mehollin
Clerk of Council

G. Andrew Gardner
Mayor