

AN ORDINANCE 2015-504

**CREATING A CIVIL PENALTY; AND PROVIDING
FOR A CIVIL FINE AND PENALTIES.**

WHEREAS, Section 545.066 of the Texas Transportation Code creates a criminal offense for passing a stopped school bus that is operating certain visual signals required by Section 547.701 of the Texas Transportation Code (including red flashing lights and extended stop arms) while loading and unloading students; and

WHEREAS, studies have shown that motor vehicles frequently unlawfully pass stopped school buses that are operating visual signals while loading and unloading students; and

WHEREAS, the City Council finds that unlawfully passing a stopped school bus while operating a moving motor vehicle is a traffic hazard, a danger to the public and creates a particular danger or probability of danger in the City of Anthony; and

WHEREAS, the City Council believes that creating a civil penalty for unlawfully passing a stopped school bus would further and protect the public health, safety, and welfare; and

WHEREAS, the City Council wishes to establish such a program pursuant to its general law authority and the authority granted under Section 542.202 of the Texas Transportation Code, which allows a city to provide for civil enforcement of certain traffic regulations within its jurisdiction and in the reasonable exercise of its police power;

NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANTHONY:

1. DEFINITIONS

- A. **ADMINISTRATOR** means the governmental entity designated by the City Council to administer and enforce the Ordinance.
- B. **SCHOOL BUS SAFETY/STOP ARM ENFORCEMENT PROGRAM** means the installation of Photographic School Bus Safety/Stop Arm Enforcement Program Systems on School Buses operated within the city for the purpose of reducing School Bus Safety/Stop Arm Violations and injuries to students citywide.
- C. **CAMERA-ENFORCED SCHOOL BUS** means a School Bus equipped with a Photographic School Bus Safety/Stop Arm Enforcement Program System.
- D. **DATE OF ISSUANCE** means the date that Notice of Violation is approved and mailed by a Law Enforcement Officer in accordance with this article.

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- E. DEPARTMENT means the department or departments of the city designated to enforce and administer this article, or the Department's designated representative.
- F. DIRECTOR means the Director of the Department or the Director's authorized representative.
- G. HEARING OFFICER means an individual designated by the Director to administratively adjudicate all School Bus Safety/Stop Arm Violations for which a Notice of Violation has been issued.
- H. LAW ENFORCEMENT OFFICER means an individual licensed as a Law Enforcement Officer by the Texas Commission on Law Enforcement Officers, including a peace officer, as defined under Article 2.12, Texas Statutes, Code of Criminal Procedure.
- I. MAIL DATE means the date that a Notice of Violation is mailed in accordance with this article.
- J. PHOTOGRAPHIC SCHOOL BUS SAFETY/STOP ARM ENFORCEMENT PROGRAM SYSTEM ("SYSTEM") means a system that:
 - i. consists of cameras installed on the exterior of a School Bus that work in conjunction with an automatic stop arm on the School Bus, which stop arm, along with flashing warning lights and other equipment required by Section 547.701(c) of the Texas Transportation Code, as amended, warns drivers that the School Bus is stopped for the purpose of loading or unloading students; and
 - ii. is capable of producing a recorded image depicting the license plate attached to the front or the rear of a motor vehicle that passes the School Bus in violation of the Ordinance.
- K. RECORDED IMAGE means a photographic or digital image recorded by a System that depicts the front or the rear of a motor vehicle.
- L. SCHOOL BUS has the meaning given that term in Section 541.201 of the Texas Transportation Code, as amended.
- M. SCHOOL BUS SAFETY/STOP ARM NOTICE OF VIOLATION ("NOTICE OF VIOLATION") means a notice of a School Bus Safety/Stop Arm Violation issued under the Ordinance.
- N. SCHOOL BUS SAFETY/STOP ARM VIOLATION ("VIOLATION") means a violation of the Ordinance.
- O. VEHICLE OWNER means:

- i. the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country;
- ii. the person named under Section 6 of these Procedures as the lessee of the motor vehicle at the time of a Violation; or
- iii. the person named under Section 6 of these Procedures as holding legal title to the motor vehicle at the time of a Violation.

2. SCHOOL BUS SAFETY/STOP ARM VIOLATIONS AS CIVIL OFFENSES

- A. The owner of a motor vehicle that is operated in violation of Section 545.066 of the Texas Transportation Code, as amended, by passing a stopped school bus displaying the visual signals required by Section 547.701(c) of the Texas Transportation Code, as amended, commits a civil offense and is liable for a civil fine per violation.
- B. The City Council may contract with another local government(s) in accordance with Chapter 791 of the Texas Government Code to enforce and administer this section (“Administrator”). The City or Administrator shall implement and enforce this section and may establish such rules or regulations, not inconsistent with this section, as are necessary to effect this section.

3. SCHOOL BUS SAFETY/STOP ARM VIOLATIONS AS CIVIL OFFENSES; DEFENSES; PRESUMPTIONS

- A. The Ordinance provides that the owner of a motor vehicle that is operated in violation of Section 545.066 of the Texas Transportation Code, as amended, by passing a stopped Camera-Enforced School Bus displaying the visual signals required by Section 547.701(c) of the Texas Transportation Code, as amended, commits a civil offense and is liable for a civil fine assessed under Section 2 of the Ordinance.
- B. It is a defense to a charge of a Violation under this section:
 - i. the School Bus was not operating the visual signals required by Section 547.701(c) of the Texas Transportation Code, as amended;
 - ii. the operator of the motor vehicle was acting in compliance with the lawful order or direction of a Law Enforcement Officer;
 - iii. the operator of the motor vehicle was in the process of passing the School Bus before the School Bus operated a visual signal described by Section 547.701(c) of the Texas Transportation Code, as amended;

- iv. the operator of the motor vehicle passed the stopped School Bus so as to yield the right of way to an immediately approaching authorized emergency vehicle;
 - v. the motor vehicle was being operated as an authorized emergency vehicle under Chapter 546 of the Texas Transportation Code, as amended, and the operator was acting in compliance with that chapter;
 - vi. the motor vehicle was a stolen vehicle being operated by a person other than the Vehicle's Owner without the consent of the Vehicle Owner and proof is submitted to the Hearing Officer that the theft of the motor vehicle had been timely reported to the appropriate law enforcement agency;
 - vii. the license plate depicted in the recorded image of the Violation was a stolen plate being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued and proof is submitted to the Hearing Officer that the theft of the license plate had been timely reported to the appropriate law enforcement agency; or
 - viii. the presence of ice, snow, unusual amounts of rain, or other unusually hazardous road conditions existed that would have made compliance with this section more dangerous under the circumstances than non-compliance.
- C. It is presumed that the registered owner of the vehicle depicted in the recorded image of a Violation for which a Notice of Violation is issued is the Vehicle Owner who committed the Violation. Proof of ownership may be made by a computer-generated record of the registration of the vehicle with the Texas Department of Transportation showing the name of the Vehicle Owner to whom state license plates were issued. This proof is prima facie evidence of the ownership of the vehicle by the Vehicle Owner to whom the certificate of registration was issued.
- D. A Vehicle Owner who is in the business of selling, renting, or leasing vehicles will not be liable for the civil School Bus Safety/Stop Arm Enforcement Program fines, penalties, and costs imposed by the city on a vehicle for sale or a rented or leased vehicle if the Vehicle Owner presents evidence establishing that the vehicle depicted in the recorded image was at the time of the alleged violation being rented, leased, or test driven by another person. Evidence sufficient to establish that the vehicle was being rented, leased, or test driven includes:
- i. the true name, address, and driver's license number and state of issuance of the person renting, leasing, or test driving the vehicle at the time the recorded image of the Violation was taken; or
 - ii. a true copy of the lease or rental agreement in effect at the time the recorded image of the Violation was taken.

- E. Evidence presented under Subsection (d) of this section must be presented through oral testimony or by affidavit under penalty of perjury. Evidence through oral testimony must be presented at the administrative adjudication hearing. Evidence by affidavit under penalty of perjury may be presented by mail.
- F. If the owner of a vehicle presents evidence under Subsections (d) and (e) of this section establishing that the vehicle depicted in the recorded image was being rented, leased, or test driven at the time of the Violation, the Vehicle Owner may not be held liable for civil School Bus Safety/Stop Arm Enforcement Program fines, penalties, and costs, and the Law Enforcement Officer shall send the Notice of Violation to the test driver or lessee who is presumed to have committed the Violation. An owner of a vehicle who fails to comply with Subsections (d) or (e) of this section will be treated as any other Vehicle Owner and will be liable for the Violation.
- G. If, at the time the recorded image of the Violation was taken, the vehicle depicted in the recorded image was owned by a person in the business of renting or leasing motor vehicles and the vehicle was being rented or leased to an individual, the Vehicle Owner shall, within thirty (30) calendar days after the date the Notice of Violation is received, provide to the Administrator the name and address of the individual who was renting or leasing the motor vehicle depicted in the recorded image and a statement of the period during which that individual was renting or leasing the vehicle. This information must be provided regardless of whether the Vehicle Owner provides evidence under Subsections (d) and (e) of this section that the vehicle was being rented, leased, or test driven at the time of the Violation.
- H. A registered Vehicle Owner named in the Notice of Violation who did not hold legal title to the motor vehicle at the time of a Violation will not be liable for the civil School Bus Safety/Stop Arm Enforcement Program fines, penalties, and costs imposed by the city on that vehicle if the registered Vehicle Owner presents evidence establishing that another Vehicle Owner held legal title to the vehicle at the time the recorded image of the Violation was taken. Evidence sufficient to establish that the vehicle was owned by another Vehicle Owner at the time of the Violation includes:
- i. the true name, address, and driver's license number and state of issuance of the Vehicle Owner who held legal title to the vehicle at the time the recorded image of the Violation was taken; or
 - ii. a true copy of any purchase or sale documentation (including proof of transfer of title) showing the name of the Vehicle Owner who held title to the vehicle at the time the recorded image of the Violation was taken (that Vehicle Owner's address must also be provided if not contained in the documentation).

- I. Evidence presented under Subsection (h) of this section must be presented through oral testimony or by affidavit under penalty of perjury. Evidence through oral testimony must be presented at the administrative adjudication hearing. Evidence by affidavit under penalty of perjury may be presented by mail.
- J. If the registered Vehicle Owner named in the Notice of Violation complies with Subsections (h) and (i) of this section, the registered Vehicle Owner may not be held liable for civil S School Bus Safety/Stop Arm Enforcement Program fines, penalties, and costs, and Law Enforcement Officer shall send the Notice of Violation to the Vehicle Owner who held legal title to the vehicle at the time the recorded image of the Violation was taken. A registered Vehicle Owner named in the Notice of Violation who fails to comply with Subsections (h) and (i) of this section will be treated as any other Vehicle Owner and will be liable for the Violation.

4. Fines, Costs and Fees

That the following schedule of cumulative fines, costs and fees are adopted and shall be assessed:

| FINES, COSTS AND FEES | |
|---|----------|
| SCHOOL BUS SAFETY/STOP ARM VIOLATION FINE | \$300.00 |
| 30 DAY LATE PAYMENT PENALTY | \$50.00 |
| 60 DAY LATE PAYMENT PENALTY | \$100.00 |
| NON-SUFFICIENT FUNDS – RETURNED CHECK FEE | \$35.00 |
| FAILURE TO APPEAR PENALTY | \$50.00 |
| ADMINISTRATIVE ADJUDICATION HEARING FILING FEE | \$25.00 |
| MUNICIPAL OR JP COURT APPEAL HEARING FILING FEE | \$20.00 |
| HEARING RESCHEDULING FEE | \$20.00 |

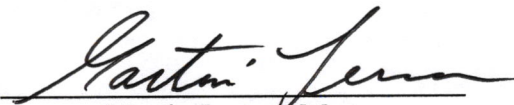
* Delinquent accounts over 60 days past due may be turned over to a collection agency and may be charged a collection charge in an amount of 30% of the total amount due.

- 5. That the attached “Procedures for Administration of the City of Anthony School Bus Safety/Stop Arm Enforcement Program Ordinance” shall take effect and remain in effect unless and until revised by the City or Administrator.
- 6. Should any article, section, part, paragraph, sentence, phrase, clause, or word of this Ordinance, for any reason, be held illegal, inoperative, or invalid, or if any exception to

or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

7. The publishers of the City Code of Anthony, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing Code.
8. This Ordinance shall take effect upon publication in accordance with Section 9 above.

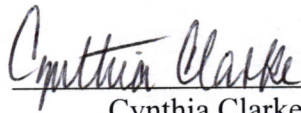
PASSED AND APPROVED this 11th day of August, 2015.



Martin Lerma, Mayor

ATTEST:

APPROVED AS TO FORM:



Cynthia Clarke, Town Clerk

Richard Contreras, City Attorney