

Ordinance No. 100588

An Ordinance of the City of Gainesville, Florida amending Chapter 26, Article II, Division of the Gainesville Code Ordinances, The Gainesville Traffic Safety Enhancement Act to comply with the “Mark Wandall Traffic Safety Act,” as codified in section 316.0083, Florida Statutes; authorizing the City of Gainesville to use Traffic Infraction Detectors to enforce violations of red light traffic control signals; amending Appendix A, Schedule of Fees, Rates and Charges, providing directions to the codifier; providing for severability; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the Florida Legislature passed CS/CS/HB 325, also known as the “Mark Wandall Traffic Safety Act”, during the 2010 Legislative Session authorizing the use of traffic infraction detectors to enforce red light traffic signal infractions pursuant to Chapter 316 of the Florida Statutes: and

WHEREAS, the Governor of the State of Florida signed CS/CS/HB into law on May 14, 2010, resulting in the creation of section 316.0083, Florida Statutes, which took effect on July 1, 2010; and

WHEREAS, City Ordinance 070268 entitled “The Gainesville Traffic Safety Enhancement Act” needs to be amended to comply with the Section 316.0083, Florida Statutes; and

WHEREAS, violation of red light traffic control signals continues to be a safety hazard affecting every citizen and traveler in the City of Gainesville; and

WHEREAS, the City of Gainesville desires to reduce the number of occurrences of red light traffic control signal violations by amending its Code of Ordinances to conform and implement the ”Mark Wandall Traffic Safety Act.”

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a

1 public hearing to be held in the City Commission Auditorium, City Hall, City of
2 Gainesville; and

3 **WHEREAS**, the Public Hearings were held pursuant to the published notice
4 described at which hearings the parties in interest and all others had an opportunity to be
5 and were, in fact, heard.

6 **NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION**
7 **OF THE CITY OF GAINESVILLE, FLORIDA;**

8 **Section 1.** Chapter 26 of the Gainesville Code of Ordinances, Article II, Division
9 2, The Gainesville Traffic Safety Enhancement Act, is hereby amended to read as
10 follows:

11 **ARTICLE II. OPERATION OF VEHICLES**

12 **Division 2. The Gainesville Traffic Safety Enhancement Act.**

13 **Sec. 26-31. Title, purpose and findings.**

14 (a) *Title.* This ordinance shall be known as the “The Gainesville Traffic Safety
15 Enhancement Act” (The Act).

16 (b) *Purpose.* The purpose of this Act is to authorize ~~the use of electronic~~
17 ~~camera/monitoring systems to promote compliance with red light directives as prescribed~~
18 ~~by this Act, and to adopt a municipal ordinance enforcement system for red light~~
19 ~~violations. This act will supplement law enforcement personnel in the enforcement of red~~
20 ~~light violations and shall not prohibit law enforcement officers from issuing a uniform~~
21 ~~traffic citation for a red light violation in accordance with statutory enforcement~~
22 ~~techniques. and implement the use of traffic infraction detectors within the City of~~
23 ~~Gainesville’s jurisdictional limits, in accordance with general law pursuant to section~~
24 ~~316.0083, Florida Statutes. This chapter will also supplement law enforcement personnel~~

1 in the enforcement of red light signal violations and shall not prohibit county, state or
2 local law enforcement officers from issuing a citation for a red light signal violation in
3 accordance with normal statutory traffic enforcement techniques.

4 (c) *Findings.* The City Commission finds that failing to stop at a red light constitutes
5 serious threats to the public health, safety, or welfare of the community and such
6 violations are irreparable or irreversible, and are itinerant and transient in nature.

7 **Sec. 26-32. Use of ~~Image Capture Technologies.~~ Traffic Infraction Detectors.**

8 ~~The City Manager is authorized to utilize image capture technologies as a~~
9 ~~supplemental means of monitoring traffic and motor vehicles that are operated in an~~
10 ~~unsafe and dangerous manner by failing to obey traffic control signals. This Act shall not~~
11 ~~supersede, infringe, curtail or impinge upon state laws related to red light violations, or~~
12 ~~conflict with such laws. The City Manager, or designee, may utilize image capture~~
13 ~~technologies as an ancillary deterrent to traffic control signal violations and thereby~~
14 ~~reduce accidents and injuries associated with such violations. The City of Gainesville is~~
15 authorized to utilize traffic infraction detectors within its jurisdiction pursuant to section
16 316.0083, Florida Statutes.

17 **Sec. 26-33. Definitions.**

18 The following definitions shall apply to this Act:

19 (a) ~~Emergency Vehicle means an ambulances and any vehicle operated by a fire~~
20 ~~rescue or law enforcement agency responding to an emergency.~~

21 (b) ~~Intersection means:~~

22 (1) ~~The area embraced within the prolongation or connection of the lateral~~
23 ~~curb line; or, if none, then the lateral boundary lines of the roadways of two roads~~
24 ~~that join or intersect one another at, or approximately at, right angles; or the area~~

1 ~~within which vehicles traveling upon different roads joining at any other angle~~
2 ~~may come in conflict.~~

3 ~~(2) — Where a highway includes two roadways thirty feet or more apart, then~~
4 ~~each crossing of the roadway of such divided highway by an intersecting highway~~
5 ~~is a separate intersection. If such intersecting highway also includes two~~
6 ~~roadways thirty feet or more apart, then each crossing of two roadways of such~~
7 ~~highways is a separate intersection.~~

8 ~~(c) — *Motor vehicle* means any self propelled vehicle not operated upon rails or~~
9 ~~guideway, but does not include any bicycle, or electric personal assistive mobility device~~
10 ~~designed for disabled persons. For purposes of this Act, authorized emergency vehicles~~
11 ~~are excluded from the definition of “motor vehicle.”~~

12 ~~(d) — *Notice of Infraction* means a citation issued for a violation of Section 26-34~~
13 ~~below.~~

14 ~~(e) — *Owner/Vehicle Owner* means the person or entity identified by the Florida~~
15 ~~Department of Motor Vehicles, or other state vehicle registration office, as the registered~~
16 ~~owner of a vehicle. Such term shall also mean a lessee of a motor vehicle pursuant to a~~
17 ~~lease of six months or longer.~~

18 ~~(f) — *Recorded Images* means images recorded by a traffic control signal monitoring~~
19 ~~system presented on:~~

- 20 ~~(1) — Two or more photographs; or~~
- 21 ~~(2) — Two or more electronic images; or~~
- 22 ~~(3) — Two or more digital images; or~~
- 23 ~~(4) — A video recording~~

24 ~~which shows the motor vehicle, the time sequence of the vehicle entering the intersection,~~

1 and, on at least one image, the identification of the license tag of the vehicle.

2 (g) — ~~Red Light Infraction~~ occurs when a traffic control signal monitoring system
3 shows that a motor vehicle enters an intersection that is regulated and controlled by a
4 duly erected traffic control signal while the signal for such vehicle's direction is emitting
5 a steady red signal.

6 (h) — ~~Special magistrate~~ means a person appointed by the City Attorney to hold
7 administrative hearings under this Act. ~~Special magistrates must be members of The~~
8 ~~Florida Bar in good standing.~~

9 (i) — ~~Traffic Control Signal~~ means any device that shows green, yellow and red lights
10 or colored lighted arrows, successively one at a time or in combination by which traffic is
11 directed to stop and permitted to proceed.

12 (j) — ~~Traffic Control Signal Monitoring System~~ means an electronic system consisting
13 of one or more vehicle sensors, working in conjunction with a traffic control signal,
14 camera and video recording device, to capture and produce recorded images of motor
15 vehicles entering an intersection against a steady red light signal.

16 (k) — ~~Violation~~, also known as an infraction, shall mean noncompliance with the
17 requirements of this Act.

18 **Sec. 26-33. Implementation of General Law**

19 The City Manager, or his/her designee, is authorized to implement a system
20 utilizing traffic infraction detectors pursuant to the provisions and requirements of section
21 316.0083, Florida Statutes, as may be amended from time to time, and may take any
22 action which is necessary for such purpose.

23 **~~Sec. 26-34. Adherence to Red Light Traffic Control Signals.~~**

24 ~~Any motor vehicle that approaches an intersection at which a steady red traffic~~

1 ~~control signal is displayed shall stop before entering the crosswalk on the near side of an~~
2 ~~intersection or, if none, then before entering the intersection, and shall remain stationary~~
3 ~~until a green indication is shown on the traffic control signal. After the motor vehicle has~~
4 ~~stopped, the vehicle may make a right turn in accordance with the uniform traffic laws of~~
5 ~~this state.~~

6 **~~Sec. 26-35. Warning Signs at Monitored Intersections.~~**

7 ~~Each intersection that has a Traffic Control Signal Monitoring System installed may be~~
8 ~~identified as a “Monitored Intersection” by appropriate signage to be posted no less than~~
9 ~~300 feet before the intersection, unless conditions exist that necessitate placement of the~~
10 ~~signs closer to the intersection. The warning signs shall indicate that the operation of the~~
11 ~~Traffic Control Signal Monitoring System may be in use at the intersection.~~

12 **~~Sec. 26-36 Notice of Infraction.~~**

13 ~~(a) — The owner of a vehicle which is shown by recorded images to have been operated~~
14 ~~so as to have committed a red light infraction shall be issued a notice of infraction. The~~
15 ~~recorded image shall be sufficient grounds to issue a notice of infraction.~~

16 ~~(b) — The chief of police shall designate one or more traffic infraction review officers,~~
17 ~~who shall meet the qualifications provided in section 316.640(5)(a), Florida Statutes.~~

18 ~~(c) — A traffic infraction review officer shall review recorded images prior to the~~
19 ~~issuance of a notice of infraction to ensure accuracy, the integrity of the recorded images~~
20 ~~and that the images conform to the requirements of this Act.~~

21 ~~(d) — Once a traffic infraction review officer has verified the accuracy of the recorded~~
22 ~~images, including identification of the motor vehicle, and determined that a red light~~
23 ~~infraction occurred, the officer shall approve the notice of infraction and cause it to be~~
24 ~~sent via certified U.S. mail, return receipt requested, to the registered owner of the~~

1 ~~vehicle not later than 14 days after the date of the violation, at the address on record with~~
 2 ~~the Florida Department of Highway Safety and Motor Vehicles or the vehicle registration~~
 3 ~~office of another state, as applicable. If the certified mail is returned as unclaimed or~~
 4 ~~refused, notice may be provided by first class mail directed to the registered owner at the~~
 5 ~~same address hereinabove referenced with a properly executed proof of mailing or~~
 6 ~~affidavit confirming the first class mailing. In addition to providing notice as set forth~~
 7 ~~above, notice may also be served by publication as provided in section 162.12(2), Florida~~
 8 ~~Statutes.~~

9 (e) ~~The notice of infraction shall include at a minimum:~~

- 10 ~~—— (1) The name and address of the vehicle owner;~~
- 11 ~~—— (2) The license tag and registration number of the vehicle involved in the~~
 12 ~~infraction;~~
- 13 ~~—— (3) The make, model and year of the vehicle;~~
- 14 ~~—— (4) Notice of the violation;~~
- 15 ~~—— (5) The location of the intersection or roadway where the violation occurred;~~
- 16 ~~—— (6) The date and time of the infraction;~~
- 17 ~~—— (7) Recorded images depicting the violation, or a link to a website with~~
 18 ~~photographs and/or moving images of the violation;~~
- 19 ~~—— (8) A signed statement by the traffic infraction review officer that, based on~~
 20 ~~inspection of the recorded images, the vehicle of the owner committed a~~
 21 ~~red light infraction in violation of this Act;~~
- 22 ~~—— (9) The fine and the date by which it must be paid;~~
- 23 ~~—— (10) The procedures for payment of the fine;~~
- 24 ~~—— (11) Information advising the vehicle owner of the manner and time in which~~

1 the notice of infraction may be contested;
2 ~~—— (12) —~~ A conspicuous statement that a failure to pay the fine or to contest the
3 notice of infraction in a timely manner is considered a waiver of his or her
4 right to contest the violation, is deemed an admission of the violation and
5 to liability, and will result in the entry of a default judgment against the
6 violator.

7 **~~Sec. 26-37. Vehicle Owner Responsibilities.~~**

8 A vehicle owner receiving a notice of infraction shall, within twenty (20) days of the date
9 of the notice of infraction either:

- 10 (a) ~~——~~ Pay the assessed fine pursuant to instructions on the notice; or
- 11 (b) ~~——~~ Contest the infraction as provided in section 26-38 of this Act.

12 Any owner who does not comply with the provisions of this section, or fails to appear at
13 the hearing to contest the infraction, shall be deemed to have waived the right to contest
14 the notice of infraction and a default judgment may be entered against the violator for an
15 amount up to the maximum fine.

16 **~~Sec. 26-38. Contesting the violation~~**

17 (a) ~~——~~ The special magistrate is authorized to hear and decide violations of this Act.
18 Within twenty (20) days of the date of the service of the notice of infraction, the vehicle
19 owner may file a notice to contest the violation with the city pursuant to the directions in
20 the notice of infraction. The notice may also include a notarized statement explaining the
21 grounds for the hearing and any supporting papers the owner desires, as provided in
22 section 26-39 below.

23 (b) ~~——~~ If the infraction is not dismissed based upon receipt and consideration of the
24 owner's notarized statement and supporting papers, then the city shall schedule a hearing

1 before the special magistrate to occur not later than sixty (60) days after the City's receipt
2 of the notice to contest the violation. Notice of the hearing shall be provided to the
3 vehicle owner no less than fifteen (15) days prior to the hearing, and shall be provided by
4 U.S. mail to the same address to which the notice of infraction was sent unless the owner
5 has provided a different address.

6 (e) — The following shall be permissible grounds to contest the notice of infraction:

7 — (1) — The motor vehicle was stolen at the time of the alleged violation;

8 — (2) — The motor vehicle driver was issued a uniform traffic citation by a City of
9 Gainesville law enforcement officer, a law enforcement officer of another agency
10 with inherent jurisdiction within the city, or a law enforcement officer of another
11 agency acting pursuant to the provisions of a mutual aid agreement between the
12 City of Gainesville and that law enforcement agency, which citation was separate
13 and distinct from the citation issued under this Act for violating the steady red
14 traffic control signal;

15 — (3) — The motor vehicle violated the steady red traffic control signal at the
16 direction of a law enforcement officer;

17 — (4) — The motor vehicle violated the steady red traffic control signal in order to
18 reasonably protect the property or person of another;

19 — (5) — The steady red traffic control signal was inoperable or malfunctioning;

20 — (6) — The motor vehicle passed through the intersection in order to yield the
21 right of way to an emergency vehicle, or the motor vehicle was part of a funeral
22 procession;

23 — (7) — Any other good cause the special magistrate deems sufficient, excluding
24 the ground that someone other than the registered owner of the motor vehicle was

1 driving the vehicle at the time of the violation.

2 ~~(d) — The traffic infraction review officer who reviewed the recorded images shall~~
3 ~~testify at the hearing. The vehicle owner, or his or her duly authorized representative,~~
4 ~~may also present evidence and testimony.~~

5 ~~(e) — Recorded images indicating a red light infraction, verified by a traffic infraction~~
6 ~~review officer, are admissible in any proceeding before the special magistrate to enforce~~
7 ~~the provisions of this Act, and shall constitute prima facie evidence of the violation.~~

8 ~~(f) — Formal rules of evidence shall not apply and any relevant evidence may be~~
9 ~~admitted. Hearsay evidence may be admitted, but shall not form the sole basis upon~~
10 ~~which the special magistrate's decision is made. Irrelevant and unduly repetitious~~
11 ~~evidence may be excluded. The hearing shall be conducted in a manner to ensure that~~
12 ~~procedural and substantive due process is afforded the owner.~~

13 ~~(g) — The special magistrate shall issue a final order. If the special magistrate finds in~~
14 ~~favor of the city, the special magistrate may assess actual costs against the owner~~
15 ~~incurred by the city in conducting the hearing.~~

16 **~~Sec. 26-39. Vehicle Owner Affidavit of Non-responsibility.~~**

17 ~~The registered owner of the motor vehicle may, within (20) days after receipt of the~~
18 ~~notice of infraction, furnish to the city an affidavit that sets forth detailed information~~
19 ~~supporting a dismissal as provided in section 26-38. The affidavit must set forth that the~~
20 ~~vehicle was stolen and be accompanied by a copy of the police report indicating that the~~
21 ~~vehicle was stolen at the time of the alleged violation. For a dismissal under section 26-~~
22 ~~38, the affidavit must set forth that a uniform traffic citation was issued by a City of~~
23 ~~Gainesville law enforcement officer, a law enforcement officer of another agency with~~
24 ~~inherent jurisdiction within the city or a law enforcement officer of another agency acting~~

1 pursuant to the provisions of a mutual aid agreement between the City of Gainesville and
 2 that law enforcement agency, and be accompanied by a copy of the uniform traffic
 3 citation indicating the time of the alleged violation and the location of the intersection
 4 where it occurred. The affidavit must be executed in the presence of a notary and include
 5 the following language immediately above the signature line: "Under penalty of perjury, I
 6 declare that I have read the foregoing affidavit and that the facts stated in it are true and
 7 correct."

8 Upon receipt of a complete and *bona fide* affidavit meeting the criteria set forth herein,
 9 that is accepted as true and complete, any prosecution of the notice of infraction issued to
 10 the vehicle owner shall be dismissed.

11 **Sec. 26-40. Penalties.**

12 A red light infraction in violation of this Act shall be deemed a municipal ordinance
 13 violation for which a fine is assessed against the owner of the motor vehicle in the
 14 amount set forth in Appendix A of the Gainesville Code of Ordinances.

15 **Sec. 26-41. Collection of penalties and costs.**

16 The City Attorney is authorized to institute collection proceedings against the owner of a
 17 motor vehicle to enforce the payment of penalties and costs not paid within the time
 18 limits provided in this Act or within the time permitted by the special magistrate.

19 **Sec. 26-42. Appeals.**

20 An aggrieved party may appeal a final administrative order of the special magistrate to
 21 the court as provided in section 162.11, Florida Statutes.

22 **Section 2.** Paragraphs (5) and (8) in Appendix A under the title "Traffic and
 23 Motor Vehicles" of the Gainesville Code of Ordinances are amended to read as follow:

24 TRAFFIC AND MOTOR VEHICLES:

1 (5) In addition to any other fee, charge or cost required under
2 subsection (1), (2), (3) and (4) above ~~and (8) below~~, \$2.00 shall be
3 assessed as court costs for each infraction to fund criminal justice
4 education degree programs and training courses, including basic
5 recruit training.

6 ~~(8) Red light infractions (Chapter 26, Article II, Division 2):~~
7 ~~a. First and second infraction \$125.00~~
8 ~~b. Third and subsequent infraction within a three year period \$175.00~~
9

10 **Section 3.** It is the intention that Sections 1 and 2 of this Ordinance shall become
11 and be made a part of the Code of Ordinances, of the City of Gainesville, Florida, and
12 that the sections and paragraphs of this ordinance may be renumbered or re-lettered in
13 order to accomplish such intentions.

14 **Section 4.** If any word, phrase, clause, paragraph, section or provision of this
15 ordinance or the application hereof to any person or circumstance is held invalid or
16 unconstitutional, such finding shall not affect the other provisions or applications of the
17 ordinance which can be given effect without the valid or unconstitutional provisions or
18 application, and to this end the provisions of this ordinance are declared severable.

19 **Section 5.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
20 such conflict hereby repealed.

21 **Section 6.** This ordinance shall become effective immediately on adoption.

22 **PASSED AND ADOPTED** this ____ day of _____, 2011.

23 _____
24 CRAIG LOWE
25 MAYOR

26
27 ATTEST APPROVED AS TO FORM AND LEGALITY

28
29 _____
30 KURT M. LANNON MARION J. RADSON
31 CLERK OF THE COMMISSION CITY ATTORNEY

32
33 This Ordinance passed on first reading this ____ day of _____, 2011.

34 This Ordinance passed on second reading this ____ day of _____, 2011.