

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

4-B-2

Meeting Date: June 04, 2013 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department:
Submitted By: Engineering & Public Works
Submitted For: Traffic Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on Tuesday, June 18, 2013 at 9:30 AM: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Palm Beach County Code Chapter 19, Article IV, Red Light Cameras (Ordinance 2010-040), relating to the use of unmanned cameras at traffic signals to promote traffic safety; providing for adherence to red light traffic control signals; providing for notice of violation; providing for procedures for a hearing; providing for issuance of a traffic citation; providing for owners defenses; providing for consistency with state law; providing for applicability; providing for repeal of laws in conflict; providing for severability; providing for inclusion: in the code of laws and ordinances; providing for captions; providing for savings, ratifications and reservation of rights; and providing for effective date.

SUMMARY: On September 14, 2010, the Board of County Commissioners adopted Ordinance 2010-040 authorizing the use of unmanned camera/monitoring systems to promote compliance with red lights at traffic signals. During the 2013 legislative session, the Florida Legislature amended Chapter 316, the State Uniform Traffic Code, requiring local governments to establish a hearing process for red light violations. This amendment is necessary to comply with the legislation.

Countywide (MRE)

Background and Policy Issues: Under the existing State Uniform Traffic Code, a notice of violation is sent to the vehicle owner. If the owner does not pay the violation within 30 days, a uniform traffic citation is issued. Currently, the uniform traffic citation can be challenged in the County Traffic Court. During the 2013 legislative session, the Florida Legislature passed CS/CS/HB7125, allowing a challenge of a notice of violation using a local hearing process. There will be an administrative fee added to \$158 fine if the vehicle owner's challenge is not successful.

Attachments:

- 1. Proposed Ordinance Amendment: Strike-through/underlined version
- 2. Proposed Ordinance Amendment: Clean Version

Recommended By: Don Neuberg 05/24/13 WLL
Division Director Date

Approved By: A. T. Williams 5/29/13
County Engineer Date

ORDINANCE NO. 2013-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE CHAPTER 19, ARTICLE IV, RED LIGHT CAMERAS (ORDINANCE 2010-040), RELATING TO THE USE OF UNMANNED CAMERAS AT TRAFFIC SIGNALS TO PROMOTE TRAFFIC SAFETY; PROVIDING FOR ADHERENCE TO RED LIGHT TRAFFIC CONTROL SIGNALS; PROVIDING FOR NOTICE OF VIOLATION; PROVIDING FOR PROCEDURES FOR A HEARING; PROVIDING FOR ISSUANCE OF A TRAFFIC CITATION; PROVIDING FOR OWNERS DEFENSES; PROVIDING FOR CONSISTENCY WITH STATE LAW; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF LAW IN CONFLICT; PROVIDING FOR SEVERABILITY ; PROVIDING FOR INCLUSIONS IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; PROVIDING FOR SAVINGS, RATIFICATIONS AND RESERVATION OF RIGHTS; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Palm Beach County is located in a high density traffic area and regularly experiences traffic incidents related to the failure of motorists to obey duly erected traffic control devices, which exposes its citizens and visitors to the dangers of personal injury and property damage; and

WHEREAS, the Board of County Commissioners determined that the use of unmanned cameras would be effective in enforcing laws requiring vehicles to stop for red lights, thereby freeing law enforcement officers to respond to other, often more significant incidents and crimes; and

WHEREAS, on September 14, 2010 the Board of County Commissioners enacted ordinance 2010-040, in accordance with Chapter 2010-080, Laws of Florida, to promote compliance with red light directives and use traffic infraction detectors to establish red light violations; and

WHEREAS, the Florida Legislature passed CS/CS/HB7125 during the 2013 legislative session providing for hearings related to notices of violations connected with the use of red light cameras as traffic infraction detectors to enforce Chapter 316, the State of Florida Uniform Traffic Code; and

WHEREAS, the Governor of the State of Florida signed CS/CS/HB7125 into law on _____ 2013, resulting in Chapter 2013-_____, laws of Florida taking effect July 1, 2013; and

WHEREAS, The use of a local hearing officer promotes home rule and allows citizens of Palm Beach County to have a local method of contesting notices of violation separate from the traffic court process; and

WHEREAS, the Board of County Commissioners will appoint local hearing officers and a clerk for them.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, That

Section 1.

The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of the Ordinance

Section 2.

Chapter 19 (Motor Vehicle and Traffic) Article IV (red Light Cameras) of the Palm beach County Code is hereby amended as follows:

Sec. 19-111. - Title and purpose.

This article shall be known as the "red light camera safety article" (article). The purpose of this article is to authorize the use of traffic infraction detectors, in accordance with general law, including Chapter 20103-80XX, Laws of Florida (20130), the "Mark Wandall Traffic Safety Act" or "Act" within the county's jurisdiction and to promote compliance with red light signals as proscribed by this article.

Sec. 19-112. - Use of Traffic Infraction Detectors.

Palm Beach County exercises its option under s.316.008, Florida Statutes, to use traffic infraction detectors within its jurisdiction to enforce s.316.074(1) or s.316.075(1)(c)(1), Florida Statutes and to utilize traffic infraction detectors as a supplemental means of assisting law enforcement personnel in the enforcement and monitoring of laws related to traffic control signals as permitted and provided for by state laws that are designed to protect and improve the public health, safety and welfare of the community and thereby reduce accidents, injuries and disruption of traffic when a driver fails to stop at a traffic signal on streets and highways under the county's jurisdiction.

Sec. 19-113. - Adherence to Red Light Traffic Control Signals.

Pursuant to general law, a motor vehicle facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown on the traffic control signal. However, the driver of a motor vehicle may not receive a notice of violation or traffic citation for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner where right-hand turns are permissible. A notice of violation and a traffic citation may not be issued under this section if the driver of the vehicle came to a complete stop after crossing the stop line and before turning right if permissible at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required.

Sec. 19-114. - Violation.

A violation of this article, known as a red zone violation, shall occur when a motor vehicle does not comply with the requirements of section 19-113. This article supplements enforcement of s.316.074(1) or s.316.075(1)(c)(1), Florida Statutes by law enforcement officers, and shall not prohibit law enforcement personnel from issuing a

citation for a red light signal violation in accordance with normal statutory enforcement techniques.

Sec. 19-115. - Signs at Monitored Intersections.

At each intersection which has a traffic infraction detector installed, the county shall notify the public that a traffic infraction detector may be in use at the intersection. Such signage shall meet the specifications for uniform signals and devices adopted by the department of transportation.

Sec. 19-116. - Review of Recorded Images.

The owner of a motor vehicle that is shown by photographs or electronic images or streaming video, (recorded images) to have committed a violation shall be issued a notice of infraction no later than thirty (30) days after the violation occurs. The recorded image shall be sufficient grounds to issue a notice of infraction.

One (1) or more, traffic infraction enforcement officer(s) shall be designated who meet the qualifications set forth in the Act or any other relevant statute. A traffic infraction enforcement officer(s) shall review recorded images prior to the issuance of a notice of infraction to ensure accuracy and the integrity of the recorded images. Once the traffic infraction enforcement officer has verified the accuracy and integrity of the recorded images and determined that a violation occurred, he or she shall complete a review of the violation and authorize enforcement action, and a notice of the violation shall be sent to the owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles or any other state's vehicle registration office.

Sec. 19-117. - Notice of Violation.

- (1) A violation shall occur when a motor vehicle does not comply with the requirements of section 19-113 of this Code.
- (2) Within thirty (30) days after a violation, notification must be sent to the registered owner of the motor vehicle involved in the violation specifying the remedies available under § 318.14, Florida Statutes, and that the violator must pay the penalty of one hundred fifty-eight dollars (\$158.00) to Palm Beach County or furnish an affidavit supporting an exemption that complies with § 316.0083 in accordance with section 19-120, or request a hearing within thirty (~~60~~30) days following the date of the notification in order to avoid court fees, costs, and the issuance of a traffic citation. The notification must~~shall~~ be sent by first-class mail and shall include:
 - (a) The name and address of the vehicle owner.
 - (b) The license plate number and registration number of the motor vehicle.
 - (c) The make, model, year and color of the motor vehicle.

- (d) Notice that the violation is pursuant to s.316.074 (1) or s.316.075 (1) (c) (1), Florida Statutes as codified in this article.
- (e) The location of the intersection where the violation occurred.
- (f) The date and time of the violation.
- (g) A statement that the owner has the right to review the recorded images that constitute a rebuttable presumption against the owner, together with a statement of the time and place or internet location where the evidence may be examined.
- (h) A statement that the owner must pay a penalty of one hundred fifty-eighty dollars (\$158.00) to the county or provide an affidavit within thirty (30) days of the date the notice is issued in order to avoid court fees, costs, and the issuance of a uniform traffic citation.
- (i) Instructions on all methods of the procedures for payment of the penalty.

(3) The mailing of the notice of violation constitutes notification.

~~(1)~~(4) Included in the notification to the registered owner of the motor vehicle involved in the infraction must be a notice that the owner has the right to review the photographic or electronic images or the streaming video evidence that constitutes a rebuttable presumption against the owner of the vehicle.

(5) Notwithstanding any other provision of law, a person who receives a notice of violation under this section may request a hearing within sixty (60) days following the notification of violation or pay the penalty pursuant to the notice of violation, but a payment or fee may not be required before the hearing requested by the person. The notice of violation must be accompanied by, or direct the person to a website that provides, information on the person's right to request a hearing and on all court costs related thereto and a form to request a hearing. As used in this paragraph, the term "person" includes a natural person, registered owner or co-owner of a motor vehicle, or person identified on an affidavit as

having care, custody, or control of the motor vehicle at the time of the violation.

- (6) If the registered owner or co-owner of the motor vehicle, or the person designated as having care, custody, or control of the motor vehicle at the time of the violation, or an authorized representative of the owner, co-owner, or designated person, initiates a proceeding to challenge the violation pursuant to this paragraph, such person waives any challenge or dispute as to the delivery of the notice of violation.

Sec. 19-118. – Procedures for a Hearing.

- (1) The Board of County Commissioners shall appoint Local Hearing Officers who are authorized to conduct hearings related to a notice of violation issued pursuant to s.316.0083.
- (2) The Board of County Commissioners shall designate by resolution existing staff to serve as the clerk to the local hearing officer.
- (3) Any person, herein referred to as the "petitioner," who elects to request a hearing under section 19-117 (2) shall be scheduled for a hearing by the clerk to the local hearing officer to appear before a local hearing officer with notice to be sent by first-class mail. Upon receipt of the notice, the petitioner may reschedule the hearing once by submitting a written request to reschedule to the clerk to the local hearing officer, at least five (5) calendar days before the day of the originally scheduled hearing. The petitioner may cancel his or her appearance before the local hearing officer by paying the penalty assessed under Section 19-117 (2), plus \$50 in administrative costs, before the start of the hearing.
- (4) If a person who is mailed a notice of violation for a violation of s.316.074(1) or s.316.075(1)(c)1., as enforced by a traffic infraction enforcement officer under s.316.0083, presents documentation from the appropriate governmental entity that the notice of violation was in error, the clerk to the local hearing officer may dismiss the case. The clerk to the local hearing officer may not charge for this service.
- (5) If a hearing is requested, the traffic infraction enforcement officer shall provide a replica of the traffic notice of violation data to the clerk for the local hearing officer having jurisdiction over the alleged offence within 14 days.

- (6) All testimony at the hearing shall be under oath and shall be recorded. The local hearing officer shall take testimony from a traffic infraction enforcement officer and the petitioner, and may take testimony from others. The local hearing officer shall review the photographic or electronic images or the streaming video made available under Section 19.117(4). Formal rules of evidence do not apply, but due process shall be observed and govern the proceedings. At the conclusion of the hearing, the local hearing officer shall determine whether a violation under this section has occurred, in which case the hearing officer shall uphold or dismiss the violation. The local hearing officer shall issue a final administrative order including the determination and, if the notice of violation is upheld, require the petitioner to pay the penalty previously assessed under section 19-117 (2), and may also require the petitioner to pay county or municipal costs, not to exceed \$250. The final administrative order shall be mailed to the petitioner by first-class mail.
- (7) An aggrieved party may appeal a final administrative order consistent with the process provided under s. § 162.11.

Sec. 19-118119. - Issuance of a traffic citation.

- (1) When-if payment has not been made within ~~thirty~~ sixty (630) days after notification under section 19-117(2), or if the registered owner has not requested a hearing as authorized in Section 19-117(4), or if the registered owner has not submitted an affidavit under Section 119 a traffic citation issued under this section shall be issued by mailing the traffic citation by certified mail to the address of the registered owner of the motor vehicle involved in the violation.
- (2) Delivery of the traffic citation constitutes notification under this section. If the registered owner or co-owner of the motor vehicle, or the person designated as having care, custody, or control of the motor vehicle at the time of the violation, or a duly authorized representative of the owner, co-owner, or designated person, initiates a proceeding to challenge the citation pursuant to this section, such person waives any challenge or dispute as to the delivery of the traffic citation.
- (3) In the case of joint ownership of a motor vehicle, the traffic citation shall be mailed to the first name appearing on the registration, unless the first name appearing on the registration is a business organization, in which case the second name appearing on the registration may be used.

~~The traffic citation shall be mailed to the registered owner of the motor vehicle involved in the violation no later than sixty (60) days after the date of the violation.~~

- (4) Included with the notification to the registered owner of the motor vehicle involved in the infraction, shall be a notice that the owner has the right to review, either in person or remotely, the photographic or electronic images or the streaming video evidence that constitutes a rebuttable presumption against the owner of the vehicle. The notice must state the time and place or internet location where the evidence may be examined and observed.
- (5) If a traffic citation is issued under s.316.0083, Florida Statutes, and this section, the traffic infraction enforcement officer shall provide by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within five (5) days after the date of issuance of the traffic citation to the violator.

Sec. 19-119120. - Owners Defenses.

- (1) The owner of the motor vehicle involved in the violation is responsible and liable for paying the violation and traffic citation issued for a violation of s.316.074 (1) or s.316.075(1)(c)1, Florida Statutes, when the driver failed to stop at a traffic signal, unless the owner can establish that:
 - (a) The motor vehicle was, at the time of the violation, in the care, custody, or control of another person.
 - (b) A uniform traffic citation was issued by a law enforcement officer to the driver of the motor vehicle for the alleged violation of s.316.074 (1) or s.316.075 (1) (c) 1, Florida Statutes.
 - (c) The motor vehicle passed through the intersection in order to yield right-of-way to an emergency vehicle or as part of a funeral procession.
 - (d) The motor vehicle passed through the intersection at the direction of a law enforcement officer.
- (2) In order to establish facts to support his/her defense as provided above, the owner of the motor vehicle shall, within thirty (30) days after the date of issuance of the notice of violation or traffic citation, furnish to the appropriate governmental entity an affidavit setting

forth detailed information supporting an exemption as provided in this paragraph.

- (a) An affidavit supporting an exemption under subsection (1)(a) above must include the name, address, date of birth, and if known, the driver's license number of the person who leased, rented, or otherwise had care, custody, or control of the motor vehicle at the time of the alleged violation. If the vehicle was stolen at the time of the alleged offence, the affidavit must include the police report indicating that the vehicle was stolen.
- (b) If a traffic citation for a violation of s.316.074(1) or s.316.075(1)(c)1, Florida Statutes, was issued at the location of the violation by a law enforcement officer, the affidavit must include the serial number of the uniform traffic citation.
- (c) Upon receipt of an affidavit, the person designated as having care, custody, ~~and~~ control of the motor vehicle at the time of the violation may be issued a notice of violation ~~traffic citation~~ for a violation of s.316.074(1) or s.316.075(1)(c)1, Florida Statutes, when the driver failed to stop at a traffic signal. The affidavit is admissible in a proceeding pursuant to this section for the purpose of providing proof that the person identified in the affidavit was in actual care, custody, and control of the motor vehicle. The owner of a leased vehicle for which a traffic citation is issued for a violation of s.316.074(1) or s.316.075(1)(c)1, Florida Statutes, when the driver failed to stop at a traffic signal is not responsible for paying the traffic citation and is not required to submit an affidavit as specified in this subsection if the motor vehicle involved in the violation is registered in the name of the lessee of such motor vehicle. The notice of violation must be sent to the identified on the affidavit within thirty (30) days after receipt of an affidavit.
- (d) The submission of a false affidavit is a misdemeanor of the second degree, punishable as provided in s.775.082 or s.775.083, Florida Statutes.

Sec. 19-1201. - Penalties.

Penalties to be assessed by the county for a violation of this Article shall be in the amount of one hundred fifty-eight dollars (\$158.00) when a driver has failed to stop at a traffic signal if enforcement is by a county traffic infraction enforcement officer.

No points shall be imposed for a violation of s.316.074 (1) or s.316.075 (1)(c)1, Florida Statutes, when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, when a driver has failed to stop at a traffic signal in violation of s.316.074(1) or s.316.075(1)(c)1, Florida Statutes, and when enforced by a traffic infraction enforcement officer, the violation may not be used for purposes of setting motor vehicle insurance rates.

Sec. 19-121122. - Administrative Costs; No Commissions.

An individual may not receive a commission or per ticket fee from any revenue collected from violations detected through the use of a traffic infraction detector. A manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.

Sec. 19-122123. - Accounting for Program Revenues and Expenditures.

- (1) Penalties assessed and collected by the county for a violation of this Article is one hundred fifty eight dollars (\$158.00) when a driver has failed to stop at a traffic signal if enforcement is by a county traffic infraction enforcement officer. Seventy dollars (\$70.00) shall be remitted by the county to the department of revenue for deposit into the general revenue fund, ten dollars (\$10.00) shall be remitted to the department of revenue for deposit into the department of health administrative trust fund, three dollars (\$3.00) shall be remitted to the department of revenue for deposit into the brain and spinal cord injury trust fund, and seventy-five dollars (\$75.00) shall be retained by the county pursuant to law.
- (2) Penalties assessed and collected by the county less the amount retained by the county pursuant to this section shall be paid to the state department of revenue weekly by electronic funds transfers. In addition to the payment, summary detail of the penalties remitted shall be reported to the department of revenue.
- (3) If a person who is cited for a violation of § 316.074(1) or § 316.075(1)(c)1, Florida Statutes, as enforced by a traffic infraction enforcement officer under § 316.0083, Florida Statutes, presents documentation from the appropriate governmental entity that the traffic citation was in error, the clerk of court may dismiss the case. Pursuant to § 318.18(5), Florida Statutes, the clerk of court may not charge for this service.

Sec. 19-123124. - Consistency with State Law.

- (1) This article shall be interpreted and applied so that it is consistent with state law, specifically, the Mark Wandall Traffic Safety Act, (Chapter 2010-08, Laws of Florida).
- (2) Any amendment to an applicable state law shall automatically apply to the enforcement and application of this article, whether or not this article or any provision hereof has been amended to specifically address such amendment to state law. Without limitation, any future amendment regarding the amount of the penalty or the apportionment of the proceeds thereof shall be deemed applied in the enforcement of this article, even prior to a specific amendment to this article in order to make this article expressly consistent with such change in state law with respect to the amount of the penalty or the apportionment of proceeds thereof.

Sec. 19-124125. - Applicability.

This article shall apply to streets and highways under Palm Beach County jurisdiction pursuant to § 316.0083, Florida Statutes and in the unincorporated area of Palm Beach County. Municipalities may by interlocal agreement with the county and by ordinance or resolution, authorize the enforcement of this article within their municipality.

Section 3 Severability

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 4 Inclusion in the Code of Laws and Ordinances

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word ordinance may be changed to section, article, or other appropriate word.

Section 5 Captions

The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

Section 6 Savings, ratification and Reservation of Rights

Notwithstanding any other provision of this Ordinance, the provisions of the Chapter 19, Article IV, of the County Code, which existed immediately prior to July 1, 2010, shall remain in full force and effect to the extent necessary to give effect to the Contract by and between the County and ATS entered into July 21, 2009, R2009-1133 as amended (Contract) and to preserve and reserve each and every right, power, authority, benefit and exemption to which the

County is entitled relating to the right to contract, including those rights, powers, authority, benefits and exemptions established by the Contract.

Section 7 Effective Date

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the ____ day of _____, 20____.

**SHARON R. BOCK, CLERK &
COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____, 20____.

ORDINANCE NO. 2013-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE CHAPTER 19, ARTICLE IV, RED LIGHT CAMERAS (ORDINANCE 2010-040), RELATING TO THE USE OF UNMANNED CAMERAS AT TRAFFIC SIGNALS TO PROMOTE TRAFFIC SAFETY; PROVIDING FOR ADHERENCE TO RED LIGHT TRAFFIC CONTROL SIGNALS; PROVIDING FOR NOTICE OF VIOLATION; PROVIDING FOR PROCEDURES FOR A HEARING; PROVIDING FOR ISSUANCE OF A TRAFFIC CITATION; PROVIDING FOR OWNERS DEFENSES; PROVIDING FOR CONSISTENCY WITH STATE LAW; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF LAW IN CONFLICT; PROVIDING FOR SEVERABILITY ; PROVIDING FOR INCLUSIONS IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; PROVIDING FOR SAVINGS, RATIFICATIONS AND RESERVATION OF RIGHTS; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Palm Beach County is located in a high density traffic area and regularly experiences traffic incidents related to the failure of motorists to obey duly erected traffic control devices, which exposes its citizens and visitors to the dangers of personal injury and property damage; and

WHEREAS, the Board of County Commissioners determined that the use of unmanned cameras would be effective in enforcing laws requiring vehicles to stop for red lights, thereby freeing law enforcement officers to respond to other, often more significant incidents and crimes; and

WHEREAS, on September 14, 2010 the Board of County Commissioners enacted ordinance 2010-040, in accordance with Chapter 2010-080, Laws of Florida, to promote compliance with red light directives and use traffic infraction detectors to establish red light violations; and

WHEREAS, the Florida Legislature passed CS/CS/HB7125 during the 2013 legislative session providing for hearings related to notices of violations connected with the use of red light cameras as traffic infraction detectors to enforce Chapter 316, the State of Florida Uniform Traffic Code; and

WHEREAS, the Governor of the State of Florida signed CS/CS/HB7125 into law on _____ 2013, resulting in Chapter 2013-_____, laws of Florida taking effect July 1, 2013; and

WHEREAS, The use of a local hearing officer promotes home rule and allows citizens of Palm Beach County to have a local method of contesting notices of violation separate from the traffic court process; and

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Palm Beach County exercises its option under s.316.008, Florida Statutes, to use traffic infraction detectors within its jurisdiction to enforce s.316.074(1) or s.316.075(1)(c)(1), Florida Statutes and to utilize traffic infraction detectors as a supplemental means of assisting law enforcement personnel in the enforcement and monitoring of laws related to traffic control signals as permitted and provided for by state laws that are designed to protect and improve the public health, safety and welfare of the community and thereby reduce accidents, injuries and disruption of traffic when a driver fails to stop at a traffic signal on streets and highways under the county's jurisdiction.

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Sec. 19-114. - Violation.

A violation of this article, known as a red zone violation, shall occur when a motor vehicle does not comply with the requirements of section 19-113. This article supplements enforcement of s.316.074(1) or s.316.075(1)(c)(1), Florida Statutes by law enforcement officers, and shall not prohibit law enforcement personnel from issuing a

citation for a red light signal violation in accordance with normal statutory enforcement techniques.

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One (1) or more, traffic infraction enforcement officer(s) shall be designated who meet the qualifications set forth in the Act or any other relevant statute. A traffic infraction enforcement officer(s) shall review recorded images prior to the issuance of a notice of infraction to ensure accuracy and the integrity of the recorded images. Once the traffic infraction enforcement officer has verified the accuracy and integrity of the recorded images and determined that a violation occurred, he or she shall complete a review of the violation and authorize enforcement action, and a notice of the violation shall be sent to the owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles or any other state's vehicle registration office.

Sec. 19-117. - Notice of Violation.

- (1) A violation shall occur when a motor vehicle does not comply with the requirements of section 19-113 of this Code.
- (2) Within thirty (30) days after a violation, notification must be sent to the registered owner of the motor vehicle involved in the violation specifying the remedies available under § 318.14, Florida Statutes, and that the violator must pay the penalty of one hundred fifty-eight dollars (\$158.00) to Palm Beach County or furnish an affidavit supporting an exemption that complies with § 316.0083 in accordance with section 19-120, or request a hearing within thirty (60) days following the date of the notification in order to the issuance of a traffic citation. The notification must be sent by first-class mail and shall include:
 - (a) The name and address of the vehicle owner.
 - (b) The license plate number and registration number of the motor vehicle.
 - (c) The make, model, year and color of the motor vehicle.

- (d) Notice that the violation is pursuant to s.316.074 (1) or s.316.075 (1) (c) (1), Florida Statutes as codified in this article.
 - (e) The location of the intersection where the violation occurred.
 - (f) The date and time of the violation.
 - (g) A statement that the owner has the right to review the recorded images that constitute a rebuttable presumption against the owner, together with a statement of the time and place or internet location where the evidence may be examined.
 - (h) A statement that the owner must pay a penalty of one hundred fifty-eighty dollars (\$158.00) to the county or provide an affidavit within thirty (30) days of the date the notice is issued in order to avoid court fees, costs, and the issuance of a uniform traffic citation.
 - (i) Instructions on all methods of the procedures for payment of the penalty.
- (3) The mailing of the notice of violation constitutes notification.
- (4) Included in the notification to the registered owner of the motor vehicle involved in the infraction must be a notice that the owner has the right to review the photographic or electronic images or the streaming video evidence that constitutes a rebuttable presumption against the owner of the vehicle.
- (5) Notwithstanding any other provision of law, a person who receives a notice of violation under this section may request a hearing within sixty (60) days following the notification of violation or pay the penalty pursuant to the notice of violation, but a payment or fee may not be required before the hearing requested by the person. The notice of violation must be accompanied by, or direct the person to a website that provides, information on the person's right to request a hearing and on all court costs related thereto and a form to request a hearing. As used in this paragraph, the term "person" includes a natural person, registered owner or co-owner of a motor vehicle, or person identified on an affidavit as

having care, custody, or control of the motor vehicle at the time of the violation.

- (6) If the registered owner or co-owner of the motor vehicle, or the person designated as having care, custody, or control of the motor vehicle at the time of the violation, or an authorized representative of the owner, co-owner, or designated person, initiates a proceeding to challenge the violation pursuant to this paragraph, such person waives any challenge or dispute as to the delivery of the notice of violation.

Sec. 19-118. – Procedures for a Hearing.

- (1) The Board of County Commissioners shall appoint Local Hearing Officers who are authorized to conduct hearings related to a notice of violation issued pursuant to s.316.0083.
- (2) The Board of County Commissioners shall designate by resolution existing staff to serve as the clerk to the local hearing officer.
- (3) Any person, herein referred to as the "petitioner," who elects to request a hearing under section 19-117 (2) shall be scheduled for a hearing by the clerk to the local hearing officer to appear before a local hearing officer with notice to be sent by first-class mail. Upon receipt of the notice, the petitioner may reschedule the hearing once by submitting a written request to reschedule to the clerk to the local hearing officer, at least five (5) calendar days before the day of the originally scheduled hearing. The petitioner may cancel his or her appearance before the local hearing officer by paying the penalty assessed under Section 19-117 (2), plus \$50 in administrative costs, before the start of the hearing.
- (4) If a person who is mailed a notice of violation for a violation of s.316.074(1) or s.316.075(1)(c)1., as enforced by a traffic infraction enforcement officer under s.316.0083, presents documentation from the appropriate governmental entity that the notice of violation was in error, the clerk to the local hearing officer may dismiss the case. The clerk to the local hearing officer may not charge for this service.
- (5) If a hearing is requested, the traffic infraction enforcement officer shall provide a replica of the traffic notice of violation data to the clerk for the local hearing officer having jurisdiction over the alleged offence within 14 days.

- (6) All testimony at the hearing shall be under oath and shall be recorded. The local hearing officer shall take testimony from a traffic infraction enforcement officer and the petitioner, and may take testimony from others. The local hearing officer shall review the photographic or electronic images or the streaming video made available under Section 19.117(4). Formal rules of evidence do not apply, but due process shall be observed and govern the proceedings. At the conclusion of the hearing, the local hearing officer shall determine whether a violation under this section has occurred, in which case the hearing officer shall uphold or dismiss the violation. The local hearing officer shall issue a final administrative order including the determination and, if the notice of violation is upheld, require the petitioner to pay the penalty previously assessed under section 19-117 (2), and may also require the petitioner to pay county or municipal costs, not to exceed \$250. The final administrative order shall be mailed to the petitioner by first-class mail.
- (7) An aggrieved party may appeal a final administrative order consistent with the process provided under s. § 162.11.

Sec. 19-119. - Issuance of a traffic citation.

- (1) If payment has not been made within sixty (60) days after notification under section 19-117(2), or if the registered owner has not requested a hearing as authorized in Section 19-117(4), or if the registered owner has not submitted an affidavit under Section 119 a traffic citation issued under this section shall be issued by mailing the traffic citation by certified mail to the address of the registered owner of the motor vehicle involved in the violation.
- (2) Delivery of the traffic citation constitutes notification under this section. If the registered owner or co-owner of the motor vehicle, or the person designated as having care, custody, or control of the motor vehicle at the time of the violation, or a duly authorized representative of the owner, co-owner, or designated person, initiates a proceeding to challenge the citation pursuant to this section, such person waives any challenge or dispute as to the delivery of the traffic citation.
- (3) In the case of joint ownership of a motor vehicle, the traffic citation shall be mailed to the first name appearing on the registration, unless the first name appearing on the registration is a business organization, in which case the second name appearing on the registration may be used.
- (4) Included with the notification to the registered owner of the motor vehicle involved in the infraction, shall be a notice that the owner

has the right to review, either in person or remotely, the photographic or electronic images or the streaming video evidence that constitutes a rebuttable presumption against the owner of the vehicle. The notice must state the time and place or internet location where the evidence may be examined and observed.

- (5) If a traffic citation is issued under s.316.0083, Florida Statutes, and this section, the traffic infraction enforcement officer shall provide by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within five (5) days after the date of issuance of the traffic citation to the violator.

Sec. 19-120. - Owners Defenses.

- (1) The owner of the motor vehicle involved in the violation is responsible and liable for paying the violation and traffic citation issued for a violation of s.316.074 (1) or s.316.075(1)(c)1, Florida Statutes, when the driver failed to stop at a traffic signal, unless the owner can establish that:
 - (a) The motor vehicle was, at the time of the violation, in the care, custody, or control of another person.
 - (b) A uniform traffic citation was issued by a law enforcement officer to the driver of the motor vehicle for the alleged violation of s.316.074 (1) or s.316.075 (1) (c) 1, Florida Statutes.
 - (c) The motor vehicle passed through the intersection in order to yield right-of-way to an emergency vehicle or as part of a funeral procession.
 - (d) The motor vehicle passed through the intersection at the direction of a law enforcement officer.
- (2) In order to establish facts to support his/her defense as provided above, the owner of the motor vehicle shall, within thirty (30) days after the date of issuance of the notice of violation or traffic citation, furnish to the appropriate governmental entity an affidavit setting forth detailed information supporting an exemption as provided in this paragraph.
 - (a) An affidavit supporting an exemption under subsection (1)(a) above must include the name, address, date of birth,

and if known, the driver's license number of the person who leased, rented, or otherwise had care, custody, or control of the motor vehicle at the time of the alleged violation. If the vehicle was stolen at the time of the alleged offence, the affidavit must include the police report indicating that the vehicle was stolen.

- (b) If a traffic citation for a violation of s.316.074(1) or s.316.075(1)(c)1, Florida Statutes, was issued at the location of the violation by a law enforcement officer, the affidavit must include the serial number of the uniform traffic citation.
- (c) Upon receipt of an affidavit, the person designated as having care, custody, or control of the motor vehicle at the time of the violation may be issued a notice of violation for a violation of s.316.074(1) or s.316.075(1)(c)1, Florida Statutes, when the driver failed to stop at a traffic signal. The affidavit is admissible in a proceeding pursuant to this section for the purpose of providing proof that the person identified in the affidavit was in actual care, custody, and control of the motor vehicle. The owner of a leased vehicle for which a traffic citation is issued for a violation of s.316.074(1) or s.316.075(1)(c)1, Florida Statutes, when the driver failed to stop at a traffic signal is not responsible for paying the traffic citation and is not required to submit an affidavit as specified in this subsection if the motor vehicle involved in the violation is registered in the name of the lessee of such motor vehicle. The notice of violation must be sent to the identified on the affidavit within thirty (30) days after receipt of an affidavit.
- (d) The submission of a false affidavit is a misdemeanor of the second degree, punishable as provided in s.775.082 or s.775.083, Florida Statutes.

Sec. 19-121. - Penalties.

Penalties to be assessed by the county for a violation of this Article shall be in the amount of one hundred fifty-eight dollars (\$158.00) when a driver has failed to stop at a traffic signal if enforcement is by a county traffic infraction enforcement officer.

No points shall be imposed for a violation of s.316.074 (1) or s.316.075 (1)(c)1, Florida Statutes, when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, when a driver has failed to stop at a traffic signal in violation of s.316.074(1) or s.316.075(1)(c)1, Florida Statutes, and when

enforced by a traffic infraction enforcement officer, the violation may not be used for purposes of setting motor vehicle insurance rates.

Sec. 19-122. - Administrative Costs; No Commissions.

An individual may not receive a commission or per ticket fee from any revenue collected from violations detected through the use of a traffic infraction detector. A manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.

Sec. 19-123. - Accounting for Program Revenues and Expenditures.

- (1) Penalties assessed and collected by the county for a violation of this Article is one hundred fifty eight dollars (\$158.00) when a driver has failed to stop at a traffic signal if enforcement is by a county traffic infraction enforcement officer. Seventy dollars (\$70.00) shall be remitted by the county to the department of revenue for deposit into the general revenue fund, ten dollars (\$10.00) shall be remitted to the department of revenue for deposit into the department of health administrative trust fund, three dollars (\$3.00) shall be remitted to the department of revenue for deposit into the brain and spinal cord injury trust fund, and seventy-five dollars (\$75.00) shall be retained by the county pursuant to law.
- (2) Penalties assessed and collected by the county less the amount retained by the county pursuant to this section shall be paid to the state department of revenue weekly by electronic funds transfers. In addition to the payment, summary detail of the penalties remitted shall be reported to the department of revenue.
- (3) If a person who is cited for a violation of § 316.074(1) or § 316.075(1)(c)1, Florida Statutes, as enforced by a traffic infraction enforcement officer under § 316.0083, Florida Statutes, presents documentation from the appropriate governmental entity that the traffic citation was in error, the clerk of court may dismiss the case. Pursuant to § 318.18(5), Florida Statutes, the clerk of court may not charge for this service.

Sec. 19-124. - Consistency with State Law.

- (1) This article shall be interpreted and applied so that it is consistent with state law, specifically, the Mark Wandall Traffic Safety Act, (Chapter 2010-08, Laws of Florida).
- (2) Any amendment to an applicable state law shall automatically apply to the enforcement and application of this article, whether or

not this article or any provision hereof has been amended to specifically address such amendment to state law. Without limitation, any future amendment regarding the amount of the penalty or the apportionment of the proceeds thereof shall be deemed applied in the enforcement of this article, even prior to a specific amendment to this article in order to make this article expressly consistent with such change in state law with respect to the amount of the penalty or the apportionment of proceeds thereof.

Sec. 19-125. - Applicability.

This article shall apply to streets and highways under Palm Beach County jurisdiction pursuant to § 316.0083, Florida Statutes and in the unincorporated area of Palm Beach County. Municipalities may by interlocal agreement with the county and by ordinance or resolution, authorize the enforcement of this article within their municipality.

Section 3 Severability

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 4 Inclusion in the Code of Laws and Ordinances

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word ordinance may be changed to section, article, or other appropriate word.

Section 5 Captions

The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

Section 6 Savings, ratification and Reservation of Rights

Notwithstanding any other provision of this Ordinance, the provisions of the Chapter 19, Article IV, of the County Code, which existed immediately prior to July 1, 2010, shall remain in full force and effect to the extent necessary to give effect to the Contract by and between the County and ATS entered into July 21, 2009, R2009-1133 as amended (Contract) and to preserve and reserve each and every right, power, authority, benefit and exemption to which the County is entitled relating to the right to contract, including those rights, powers, authority, benefits and exemptions established by the Contract.

Section 7 Effective Date

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the ____ day of _____, 20 ____.

**SHARON R. BOCK, CLERK &
COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Steven L. Abrams, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____, 20 ____.