

ORDINANCE NO. 2010-3

AN ORDINANCE OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA AMENDING ARTICLE IV “DANGEROUS INTERSECTION SAFETY” OF CHAPTER 26 “TRAFFIC AND VEHICLES” OF THE VILLAGE OF KEY BISCAIYNE CODE OF ORDINANCES; PROVIDING FOR RECORDED IMAGE MONITORING AND ENFORCEMENT OF RED LIGHT TRAFFIC CONTROL SIGNALS CONSISTENT WITH GENERAL LAW AS PROVIDED BY CHAPTER 2010-80, LAWS OF FLORIDA (2010); PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR RESERVATION OF RIGHTS; PROVIDING FOR AN EFFECTIVE DATE OF JULY 1, 2010.

WHEREAS, the Florida Legislature passed CS/CS/HB325 during the 2010 Legislative Session authorizing the use of traffic infraction detectors to enforce certain provisions of Chapter 316 of the Florida Statutes; and

WHEREAS, the Governor of the State of Florida signed CS/CS/HB325 into law on May 13, 2010, resulting in the creation of Chapter 2010-80, Laws of Florida (2010) (the “Mark Wandall Traffic Safety Act” or the “Act”) taking effect on July 1, 2010; and

WHEREAS, the running of red lights continues to be a safety hazard affecting every citizen and traveler in the Village of Key Biscayne; and

WHEREAS, the Village wishes to further reduce the running of red lights by amending its Code of Ordinances to implement the Act; and

WHEREAS, the Village Council finds that the provisions of Article IV “Dangerous Intersection Safety” of Chapter 26 of the Village Code, which were previously authorized by the Village’s Home Rule authority and by Sec. 316.08 (1)(w), Florida Statutes, will be as of July 1, 2010, preempted to the State as provided by Section 3 of the Act; and

WHEREAS, the Village Council desires to amend Article IV of Chapter 26 of the Village Code so as to conform with and implement the Act.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That the recitals set forth above are hereby adopted and confirmed.

Section 2. Dangerous Intersection Safety. That Article IV “Dangerous Intersection Safety” of Chapter 26 “Traffic and Vehicles” of the Village of Key Biscayne Code is hereby amended to read as follows:¹

Sec. 26-44. Intent.

The purpose of this article is to authorize the use of ~~an unmanned cameras/monitoring system~~ traffic infraction detectors to promote compliance with red light signal directives ~~as proscribed by this article~~, and to adopt a civil enforcement system for red light signal violations, all in accord with general law, including Chapter 2010-80, Laws of Florida (2010) (the “Mark Wandall Traffic Safety Act” or the “Act”). This article will also supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement officers from issuing a ~~Notice~~ citation for a red light signal violation in accordance with other routine statutory traffic enforcement techniques.

Sec. 26-45. Use of Image Capture Technologies.

The Village shall utilize ~~image capture technologies~~ traffic infraction detectors ~~as a supplemental~~ pursuant to general law as a means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This section shall not supersede, infringe, curtail or impinge upon state or county laws related to red light signal violations or conflict with such laws. Nothing herein shall conflict with the primary jurisdiction of Miami-Dade County to install and maintain traffic signal devices. This article shall serve to enable the Village to provide enhanced enforcement and respect for authorized traffic signal devices pursuant to Florida Statutes, Sections 316.008 and 316.0083 (2010). The Village may utilize ~~image capture technologies~~ traffic infraction detectors as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations. ~~Notices of infractions issued pursuant to this article shall be addressed using the Village’s own Board of Special Magistrates and not through uniform traffic citations or county courts. This shall not bar the use of uniform traffic citations and the county courts when Village police personnel decide not to rely on this article as the enforcement mechanism for a specific violation.~~

Sec. 26-46. Definitions.

¹ Additions to existing Village code text are shown by underline; deletions from existing Village code text are shown by ~~strikethrough~~.

The following definitions shall apply to this article.

~~*Board of special magistrates.* The Village's Code Enforcement Board of Special Magistrates as described in Article III of Chapter 2 of this Code.~~

* * *

Owner/vehicle owner. The person or entity identified by the Florida Department of Motor Vehicles, or other state vehicle registration office, as the registered owner of a vehicle. ~~Such term shall also mean a lessee of a motor vehicle pursuant to a lease of six months or more.~~

Recorded images. Images recorded by a ~~traffic control signal monitoring system/device~~ traffic infraction detector which is operated in accordance with the Act.

(1) ~~On:~~

- ~~a. Two or more photographs;~~
- ~~b. Two or more electronic images;~~
- ~~c. Two or more digital images;~~
- ~~d. Digital or video movies; or~~
- ~~e. Any other medium that can display a violation; and~~

(2) ~~Showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.~~

Red zone infraction. A traffic offense whereby a ~~traffic control signal monitoring system~~ traffic infraction detector indicates a violation of Section 26-47. ~~established that a vehicle entered an intersection controlled by a duly erected traffic control device at a time when the traffic control signal for such vehicle's direction of travel was emitting a steady red signal.~~

Traffic ~~Control~~ Infraction Enforcement Review Officer. The Village employee designated, pursuant to subsection 26-50 herein, to review recorded images and issue red zone infractions based upon those images.

* * *

~~*Traffic control signal monitoring system/device.* An electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still camera and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication.~~

Traffic infraction detector. A vehicle sensor(s) installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only

the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light.

Sec. 26-47. Adherence to Red Light Traffic Control Signals.

Pursuant to general law, Mmotor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an 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 vehicle which is approaching ~~stopped at~~ a clearly marked stop line, but if none, is approaching ~~before entering~~ the crosswalk on the near side of the intersection or, if none, then is approaching ~~at~~ the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right turn in a careful and prudent manner (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield right-of-way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection.

Sec. 26-48. Violation.

A violation of this article, known as a red zone infraction, shall occur when a motor vehicle does not comply with the requirements of section 26-47. Violations shall be enforced pursuant to ~~section 26-50~~ F.S. § 316.0083.

~~Sec. 26-49. Ninety-day notice; introductory period.~~

~~The Police Chief shall notify the Village Manager when the red light camera system is operating correctly at the initial location established. For the 90 days following said notification, unless the driver of a vehicle received a citation from a Police Officer at the time of a red zone infraction in accordance with routine traffic enforcement techniques, the vehicle owner shall receive a warning in the form of a courtesy notice of the violation. Commencing ninety-one days after the above referenced notification, the vehicle owner is subject to the enforcement provisions as provided herein and no warning shall be given pursuant to this article.~~

Sec. 26-49. Implementation of General Law.

Within the Village, the Village Manager is authorized to implement the provisions and requirements of Chapter 2010-80, Laws of Florida (2010), as may be amended from time to time, and may take any action which is necessary for such purpose.

Sec. 26-50. Review of recorded images.

(a) The owner of the vehicle which is observed by recorded images committing a red zone infraction, shall be issued a notice of violation (hereinafter also known as a "Notice") no later than thirty (30) days after the red zone infraction occurs. The recorded image shall be sufficient grounds to issue a Notice.

(b) The Village's Chief of Police shall designate one or more ~~a Traffic-Control~~ Infraction Enforcement-Review Officers, who shall be ~~a police officers~~ of the Village ~~or and~~ who shall meet the qualifications set forth in F.S. § 316.640(5)(A), or any other relevant statute. The Traffic ~~Control~~ Infraction Enforcement-Review Officer shall review recorded images prior to the issuance of a Notice to ensure the accuracy and integrity of the recorded images. Once the Traffic ~~Control~~ Infraction Enforcement-Review Officer has verified the accuracy of the recorded images, he or she shall complete a report, and a Notice shall be sent to the vehicle owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles or the address on record with the appropriate agency having such information in another state.

(c) If a vehicle owner receiving a notice fails to pay the penalty imposed by F.S. § 316.0083 or to provide an affidavit that complies with the provisions of F.S. § 316.0083 within thirty (30) days of the date the notice is issued, then a Uniform Traffic Citation shall be issued to the vehicle owner as provided by general law. The Uniform Traffic Citation shall be issued no later than sixty (60) days after the red zone infraction occurs.

Sec. 26-51. Notice of violation.

The Notice shall be served in the form ~~as provided for in Sec. 2-39 of this code~~ via first class mail ~~but and shall also~~ include:

- (1) The name and address of the vehicle owner;
- (2) The license plate number and registration number of the vehicle;
- (3) The make, model, and year of the vehicle;
- (4) Notice that the infraction charged is pursuant to this article;
- (5) The date and time of the infraction;
- ~~(5-6)~~ The location of the intersection where the infraction occurred;
- ~~(67) Notice that there are recorded images relating to the vehicle and a statement that~~

~~the recorded images are evidence of a red zone infraction;~~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 observed;

(7-8) Images depicting the infraction;

(9) Instructions on all methods of payment of the penalty;

(10) A statement specifying the remedies available under F.S. § 318.14;

(11) A statement that the owner must pay a penalty of \$158 to the Village or provide an affidavit that complies with F.S. § 316.0083 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;

(8-12) A signed statement by the Traffic ~~Control~~Infraction Enforcement Review Officer that, based on inspection of recorded images, the vehicle was involved in and was utilized to commit a red zone infraction.

Sec. 26-60. Signage.

~~The Village shall, to the extent practicable, at the primary motor vehicle entry points to the Village, cause to be erected and maintained signs, which substantially meet the design specifications indicated in Exhibit "A", providing notice of this article. Failure to erect, maintain or create these signs shall not invalidate or impair any enforcement of this article.~~

Exhibit "A"

NOTICE OF TRAFFIC MONITORING

~~ALL PERSONS ARE HEREBY ADVISED THAT CERTAIN INTERSECTIONS WITHIN THE VILLAGE ARE SUBJECT TO RED LIGHT TRAFFIC SIGNAL ENFORCEMENT BY PHOTOGRAPHIC MEANS AND THAT NOTICES OF VIOLATION MAY BE ISSUED TO VEHICLE OWNERS AND/OR OPERATORS FOR THE VIOLATION OF TRAFFIC SIGNALS, PURSUANT TO THE VILLAGE(S) CODE ENFORCEMENT SYSTEM.~~

KEY BISCAYNE POLICE DEPARTMENT

~~Signage shall be readily observed from the adjacent roadways.~~

When the Village installs a traffic infraction detector at an intersection, it shall erect signage at the intersection sufficient to notify the public that a traffic infraction detector may be in use at the intersection and shall include specific notification of

intersection safety camera enforcement of violations concerning right turns. Such signage shall meet the specifications for uniform signals and devices adopted by the Department of Transportation pursuant to F.S. § 316.0745.

Section 3. Repeal. That Sections 26-52 through and including 26-59 of Article IV of Chapter 26 of the Village Code, as created by Ordinance 2007-7, a copy of which repealed sections are set forth in Exhibit “A” attached hereto and incorporated herein for convenience of reference, are hereby repealed.

Section 4. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. That it is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Village of Key Biscayne Code of Ordinances, that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 6. Reservation of Rights.

That Village hereby preserves and reserves each and every right, power, authority, benefit and exemption bestowed upon Village and Village’s Dangerous Intersection Safety Program (the “Program”) pursuant to CS/HB 325 as enacted by Chapter 2010-80, Laws of Florida (2010), including but not limited to any right, power, authority, benefit and/or exemption vested in Village or Village’s Program as having been established prior to July 1, 2010 or before other deadlines established by the Act..

Section 7. Effective Date. That following adoption of this Ordinance on second reading, this Ordinance shall be in full force and effect retroactively from and after July 1, 2010.

PASSED AND ADOPTED on first reading this 22nd day of June, 2010.

PASSED AND ADOPTED on second reading this 31st day of August, 2010.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

EXHIBIT "A"

(Note: Village Code Sections 26-52 – 26-59, inclusive, which are set forth in this Exhibit "A", are hereby repealed pursuant to Section 3 of the above Ordinance.)

Sec. 26-52. Vehicle owner responsibilities.

- (a) A vehicle owner receiving a Notice may:
 - (1) Pay the assessed civil penalty pursuant to instructions on the Notice; or
 - (2) Appear before the Board of Special Magistrates to contest the Notice.
 - (b) The failure to pay the assessed civil penalty and failure to appear before the Board of Special Magistrates to contest the Notice will be considered an admission of liability and in such case an order may be entered against the violator for an amount up to the maximum civil penalty, plus any administrative costs.
- (Ord. No. 2007-7, § 2, 10-9-07)

Sec. 26-53. Hearing before the Special Master.

- (a) The Village's code enforcement Board of Special Magistrates is authorized to hold hearings related to the enforcement of this article. A hearing shall be scheduled for all Notices for which the vehicle owner timely requests an administrative hearing.
 - (b) Upon receipt of the named violator's timely request for an administrative hearing, the Village shall schedule a hearing before the Board of Special Magistrates pursuant to section 2-41 of this Code. Notice of hearing shall be provided to the vehicle owner pursuant to the notice provisions contained in Article III of Chapter 2 of this Code.
 - (c) The hearing shall be held pursuant to the procedures set forth in Article III of Chapter 2 of this Code. The Traffic Control Infraction Review Officer may testify at the hearing. The vehicle owner may present testimony and evidence.
 - (d) Recorded images indicating a red zone infraction, verified by the Traffic Control Infraction Review Officer, are admissible in any proceeding before the Village's Board of Special Magistrates to enforce the provisions of this article, and shall constitute prima facie evidence of the violation.
 - (e) Unless an affidavit is provided pursuant to section 26-54, it is presumed the person registered as the vehicle owner with the Florida Department of Motor Vehicles or any other state vehicle registration office, or an individual having the owner's consent, was operating the vehicle at the time of a red zone infraction.
- (Ord. No. 2007-7, § 2, 10-9-07)

Sec. 26-54. Vehicle owner affidavit of non-responsibility.

- (a) In order for the vehicle owner to establish that the motor vehicle was, at the time of the red zone infraction: (1) in the care, custody, or control of another person without the consent of the registered owner or (2) was subject to a short term (less than six months) car rental agreement entered into between a car rental agency, which is licensed as required by applicable law and is authorized to conduct business in the State of Florida, and the operator of the vehicle, the vehicle owner is required, within 20 days from the date listed on the notice, to furnish to the Village, an affidavit setting forth

the circumstances demonstrating either: (1) that the motor vehicle was not in the vehicle owner's care, custody, or control, and was not in the care, custody or control of another person with the vehicle owner's consent or (2) that the motor vehicle was subject to a short term (less than six months) rental agreement between the car rental agency receiving the notice and the vehicle operator and provide a true and correct copy of the short term car rental agreement, as applicable. The affidavit must be executed in the presence of a notary, and include:

(1) If known to the vehicle owner, the name, address, and the driver's license number of the person who had care, custody, or control of the motor vehicle, without the vehicle owner's consent, at the time of the alleged red zone infraction; or

(2) The name, address and driver's license number of the person who rented the motor vehicle from the car rental agency which has received the notice, at the time of the alleged red zone infraction; or

(3) If the vehicle was stolen, the police report indicating the vehicle was stolen at the time of the alleged red zone infraction; and

(4) The following language immediately above the signature line: "Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true."

(b) Upon timely receipt of a sufficient affidavit pursuant to this section, any prosecution of the Notice issued to the vehicle owner shall be terminated. Proceedings may be commenced by the Village against the responsible person identified in the affidavit, and in such event, the responsible person shall be subject to the same process and procedures which are applicable to vehicle owners.

(Ord. No. 2007-7, § 2, 10-9-07)

Sec. 26-55. Administrative charges.

In addition to the penalty pursuant to section 26-58 herein, administrative charges may be assessed pursuant to Article III of Chapter 2 of this Code in the event of a hearing and/or the necessity to institute collection procedures arises.

(Ord. No. 2007-7, § 2, 10-9-07)

Sec. 26-56. Collection of fines.

Collection of fines shall be accomplished pursuant to Article III of Chapter 2 of this Code.

(Ord. No. 2007-7, § 2, 10-9-07)

Sec. 26-57. Exceptions.

This article shall not apply to red zone infractions involving vehicle collisions or to any authorized emergency vehicle responding to a bona fide emergency; nor shall a Notice be issued in any case where the operator of the vehicle was issued a citation for violating the state statute regarding the failure to stop at a red light indication for the same event or incident.

(Ord. No. 2007-7, § 2, 10-9-07)

Sec. 26-58. Penalty.

A violation of this article shall be deemed a non-criminal, non-moving violation for which a civil penalty, as proscribed in Article III of Chapter 2 of this Code, shall be assessed. As the violation relates to this article and not to the Florida statutes, no points as otherwise provided in F.S. § 322.27, shall be recorded on the driving record of the vehicle owner or responsible party.

(Ord. No. 2007-7, § 2, 10-9-07)

Sec. 26-59. Enforcement.

This article may be enforced by any other means available to the Village.

(Ord. No. 2007-7, § 2, 10-9-07)