

DRAFT

AN ORDINANCE FOR CAMERA SPEED MONITORING AND ENFORCEMENT IN HIGHWAY WORK ZONES AND SCHOOL CROSSING ZONES TO AMEND CHAPTER 38, ARTICLE I, TO INCLUDE SECTION 38-8

WHEREAS, the Sheriff of Washington County, Virginia has requested the Code of Washington, County, Virginia, be amended to include camera speed monitoring and enforcement in highway work zones and school crossing zones.

WHEREAS, the Code of Virginia § 46.2-882.1 provides the use of photo speed monitoring devices in highway work zones, school crossing zones, and high-risk intersections and allows the use of civil penalty for infractions.

NOW, THEREFORE, be it resolved the Board of Supervisors of Washington County, Virginia, after notice and public hearing, as required by law, hereby adopts this Ordinance, which shall be incorporated into the Washington County Code (2002), to include Chapter 38, Article I, Section 38-8, camera speed monitoring and enforcement in highway work zones and school crossing zones.

1. That Chapter 38, Article I, Section 38-8, be added to the Code of Washington County, Virginia (2002), as set forth below.
2. That should any section or provision of this Ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this Ordinance or the Washington County Code (2022).
3. That this Ordinance shall become effective immediately upon its enactment.

Chapter 38 Article I: In General Section: 38-8 Camera Speed Monitoring and Enforcement

Definitions

Highway Work Zone means a construction or maintenance area that is located on or besides a highway and marked by appropriate warning signs and, for projects covered by contracts entered into on or after July 1, 2012, which attached flashing lights or other traffic control devices indicating that work is in progress.

Photo speed monitoring devices means equipment that uses radar or LIDAR based speed detection and produces one or more photographs, microphotographs, videotapes, or other recorded images of vehicles and license plates.

School crossing zone means an area located within the vicinity of a school or near a highway where the presence of children on such school property or going to and from school reasonably requires a special warning to motorists. Such zones are marked and operated in accordance with

DRAFT

Va Code 46.2-873, including appropriate warning signs or other traffic control devices indicating that a school crossing is in progress.

- a. Washington County Sheriff's Office may install and operate photo speed monitoring devices, within the boundaries of Washington County, Virginia, in school crossing zones, for the purposes of recording violations of the Code of Virginia, § 46.2-873, and in highway work zones for the purpose of recording violations of the Code of Virginia § 46.2-878.1.
- b. The operator of such vehicle shall be liable for a monetary civil penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a photo speed monitoring device, to be traveling at speeds of at least 10 miles per hour above the posted school crossing zone or highway work zone speed limit within school crossing zone or highway work zone, which such zone is active. Such civil penalties shall be \$100.00. Any prosecution under this section shall be instituted and conducted in the same manner as prosecution for traffic infractions. Civil penalties collected under this section shall be paid to Washington County, Virginia.
- c. If a photo speed monitoring device is used, proof of a vehicle speed violation shall be evidenced by information obtained from such device. A certificate of facsimile thereof, sworn to or affirmed by a law enforcement officer or a retired sworn law enforcement officer, based upon inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo speed monitoring device, shall be *prima facie* evidence of the facts contained therein. However, for any photo speed monitoring device placed in a school crossing zone, such sworn certificate or facsimile thereof shall not be *prima facie* evidence of the facts contained therein, unless such photographs, microphotographs, videotapes, or other recorded images, or documentation, depict or confirm a portable sign or tilt over sign that is in position or blinking sign that is activated, indicating the school crossing zone pursuant to § 46.2-873, at the time of such vehicle speed violation. Any photographs, microphotographs, videotapes, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such vehicle speed violation.
- d. In the prosecution for a vehicle speed violation in which a summons was issued by mail, *prima facie* evidence that the vehicle described in the summons issued pursuant to this section was operated in a manner constituting a vehicle speed violation, together with proof that the defendant was at the time of such violations, the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumptions that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the Clerk of the General District Court that he/she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person who was operating the vehicle at the time of the alleged violation. Such presumption shall be rebutted if a certified copy

DRAFT

of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged speed violation, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

- e. Imposition of a penalty pursuant to this section by mailing a summons shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in this provision of motor vehicle insurance coverage. However, if a law enforcement officer uses a photo speed monitoring device to record a vehicle speed violation and personally issues a summons at the time of violation, the conviction that results shall be made part of such driver's driving record and used for insurance purposes in the provision of motor vehicle insurance coverage.
- f. A summons for a vehicle speed violation of the Code of Virginia §§ 46.2-873 or 46.2-878.1, issued by mail pursuant to this section may be executed pursuant to Virginia Code § 19.2-76.2. Notwithstanding the provisions of Virginia Code § 19.2-76, a summons issued by mail pursuant to this section may be executed by mailing via first class mail, a copy thereof to the address of the owner, lessee, or renter of the vehicle. In the case of the vehicle owner, the copy shall be mailed to the address contained in the records of or accessible to the Department of Motor Vehicles. In the case of a vehicle lessee or renter, the copy shall be mailed to the address contained in the records of or accessible to the Department of Motor Vehicles. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he/she was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided above and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in the Code of Virginia § 19.2-76.3. No proceedings for contempt or arrest summoned by mailing shall be instituted for failure to appear on the return date of the summons. If the summons is issued to an owner, lessee, or renter of a vehicle with a registration outside the Commonwealth of Virginia, and such person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons will be eligible for all legal collection activities. Any summons executed pursuant to and for a violation of Code of Virginia §§ 46.2-873 or 46.2-878.1 issued pursuant to this section shall provide to the person summoned at least 30 days following the mailing of the summons to inspect information collected by a photo speed monitoring device in connection with the violation. If the Washington County Sheriff's Office does not execute a summons for a violation of the Code of Virginia, §§ 46.2-873 or 46.2-878.1 issued pursuant to this section with 30 days following the date of violation, all information collected pertaining to the suspected violation shall be purged within 60 days following the date of the suspected violation.
- g. A private vendor may enter into an agreement with the Washington County Sheriff's Office to be compensated for providing a photo speed monitoring device and all related support services, including consulting, operations and administration. However, only a law enforcement officer

DRAFT

may swear to or affirm the certificate required by this section. Any such agreement for compensation shall be based on the value of goods and service provided, not on the number of violations paid or monetary penalties imposed. Any private entity contracting with a law enforcement agency pursuant to this section may enter into an agreement with the Department of Motor Vehicles in accordance with the provisions of subdivision B 31 of Code of Virginia, §46.2-208, to obtain vehicle ownership information regarding the registered owners of vehicles that committed a violation of Code of Virginia §§ 46.2-873 or 46.2-878.1. Any such information provided to such private vendor shall be protected in a secure database.

- h. Information collected by a photo speed monitoring device operated pursuant to this section shall be limited exclusively to that information that is necessary for the enforcement of school crossing zone and highway work zone speeding violations. Information provided to the operator of photo speed monitoring device shall be protected in a secure database and only used for enforcement against individuals who violate this section or Code of Virginia §§ 46.2-873 or 46.2-878.1. Notwithstanding any other provision of law, all photographs, microphotographs, videotapes, or other personal information collected by a photo speed monitoring device shall be used exclusively for enforcing school crossing zones and highway work zone speed limits and shall not be (i) open to the public; (ii) sold or used for sales or solicitation, or marketing purposes; (iii) zone and highway work zone speed limits or to a vehicle owner or operator as part of a challenge to the violation; or (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of this section or Code of Virginia, §§ 46.2-8973 or 46.2-878.1, or such information is requested upon order from a court of competent jurisdiction. Information collected under this section pertaining to a specific violation shall be purged and not retained later than 60 days after the collection of any civil penalties. The Washington county Sheriff's Office shall annually certify compliance with this section and make all records pertaining to such system available for inspection and audit by the Commissioner of Highways or the Commissioner of the Department of Motor Vehicles or his designee. Any person who discloses personal information in violation of the provisions of this subsection shall be subject to a civil penalty of \$1,000.00 per disclosure. Any unauthorized use or disclosure of such personal information shall be grounds for termination of the agreement between the Department of Motor Vehicles and the private entity.
- i. Conspicuous signs shall be placed within 1,000 feet of any school crossing zone or highway work zone at which a photo speed monitoring device is used, indicating the use of the device. There shall be a rebuttable presumption that such sign was in place at the time of the commission of the speed limit violation.