

RESOLUTION No. 2019-

***RELATIVE TO ADDING CHAPTER 747 OF THE CODIFIED ORDINANCES
ENTITLED "OWNER LIABILITY FOR FAILURE OF VEHICLE OPERATOR TO STOP
FOR A SCHOOL BUS DISPLAYING A RED VISUAL SIGNAL AND STOP-ARM"***

BY:

Council Chairman Andrew Touma
Council Member William Kennedy
Council Member Christopher Voccio

BE IT RESOLVED, by the City Council of the City of Niagara Falls, New York that Chapter 747 of the Codified Ordinances entitled "Owner Liability For Failure Of Vehicle Operator To Stop For A School Bus Displaying A Red Visual Signal And Stop-Arm" is hereby added to read as follows:

747.01 PURPOSE.

The purpose of this chapter is to impose monetary liability on the owner of a motor vehicle under circumstances where the operator of that motor vehicle fails to stop for a school bus displaying a red visual signal and stop-arm. It is a well known fact that vehicle operators often fail to stop for a school bus displaying a red visual signal and stop-arm, thus creating a hazardous and dangerous condition for passengers, especially children, who depart from a stopped school bus. The intent of this chapter involves the installation of cameras on the school bus stop-arm to increase safety for passengers departing the school bus by imposing financial liability on the owner of the vehicle which will serve as a deterrent.

747.02 DEFINITIONS.

As used in this chapter, the following words shall have the following respective meanings:

- (a) "Person" means one or more individuals, a partnership, company, association, corporation, trust, trustee or receiver or limited liability company.
- (b) "Owner" means the registered owner of a motor vehicle.
- (c) "City" means the City of Niagara Falls, New York.
- (d) "School District" means the City School District of the City of Niagara Falls, New York.

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747.03 DEMONSTRATION PROGRAM IMPOSING MONETARY LIABILITY

Pursuant to Section 1174-a of the New York State Vehicle and Traffic Law, the City hereby establishes a demonstration program imposing monetary liability on the owner of a motor vehicle for the failure of an operator thereof to comply with Section 1174 of the New York State Vehicle and Traffic Law when meeting a school bus marked and equipped as provided in subdivisions 20 and 21-(1)-(c) of Section 375 of the New York State Vehicle and Traffic Law and operated in the City.

This demonstration program empowers the City to install and operate, or to cause to be installed and operated, school bus photo violation monitoring systems which may be stationary or mobile. Such school bus photo violation monitoring systems may be installed on school buses owned and operated by the School District, or on school buses privately owned and operated for compensation under contract with the School District provided that no such stationary school bus photo violation monitoring system shall be installed and operated, or caused to be installed and operated by the City, except on roadways under the jurisdiction of the City and further provided no such mobile school bus photo violation monitoring system shall be installed or operated on school buses unless the City and the School District enter into an agreement for such installation and operation.

747.04 HANDLING AND CUSTODY OF PHOTOGRAPHS

As part of the demonstration program, the City will create procedures for the proper handling and custody of photographs, micro photographs, video tapes and other recorded images and data produced by such mobile school bus photo violation monitoring systems in place on school buses and for the forwarding of such photographs, micro photographs, video tapes and other recorded images and data to the City. Any such agreement entered into between the City and the School District must be approved by majority vote of the Niagara Falls City Council and also by Resolution of the Board of the School District.

747.05 PRIVACY ISSUES

As part of the demonstration program, the City shall adopt and enforce measures to protect the privacy of drivers, passengers, pedestrians and cyclists whose identity and identifying information may be captured by a school bus photo violation monitoring device. Such measures shall include:

- (a) Utilization of necessary technologies to ensure, to the extent practicable, that photographs produced by such school bus photo violation monitoring devices shall not include images that identify the driver, the passengers, the contents of the motor vehicle, pedestrians and cyclists; provided, however, that no Notice of Liability issued pursuant to this section shall be dismissed

solely because a photograph or photographs allow for the identification of the contents of a motor vehicle, provided that such City has made a reasonable effort to comply with the provisions contained herein.

- (b) A prohibition on the use or dissemination of motor vehicles' license plate information and other information and images captured by such school bus photo violation monitoring systems, except: (1) as required to establish liability under this chapter or collect payment of penalties; (2) as required by court order; or (3) as otherwise required by law and oversight procedures to ensure compliance with the aforescribed privacy protection measures.
- (c) The City shall the install signage in conformance with standards established in the Manual and Specifications for a Uniformed System of Traffic Control Devices ("MUTCD") maintained by the Commission of Transportation, at each roadway entrance of the City boundaries giving notice that school bus photo violation monitoring systems are used to enforce restrictions on motor vehicles violating Section 1174 of the New York State Vehicle and Traffic Law. For purposes of this chapter, the term "roadway" shall not include State Expressway Routes or State Interstate Routes but shall include controlled access highway exit ramps that enter the City boundaries of the City.

747.06 **VEHICLE OWNER LIABILITY**

The owner of a motor vehicle shall be liable for a monetary penalty imposed pursuant to this chapter if such vehicle was used or operated with the permission of the owner, expressed or implied, in violation of Section 1174 of the New York State Vehicle and Traffic Law if such violation is evidenced by information obtained from a school bus photo violation monitoring system; provided, however, that no owner of a motor vehicle shall be liable for a monetary penalty imposed pursuant to this chapter where the operator of such motor vehicle has been convicted of the underlying violation of Section 1174 of the Vehicle and Traffic Law.

747.07 **OWNER LIABILITY FOR MONETARY PENALTIES**

- (a) An owner of a motor vehicle liable for a violation of subsection (a) of Section 1174 of the New York State Vehicle and Traffic Law shall be liable for monetary penalties as provided herein. The liability of the owner pursuant to this chapter shall be \$250.00 for a first violation; \$275.00 for a second violation; provided the first and second were committed within a period of

eighteen (18) months, and; \$300.00 for a third, or subsequent violation, provided that all of which were committed within a period of eighteen (18) months. An additional penalty in the amount of \$25.00 for each violation shall be due and payable resulting from the failure of the owner to respond to a Notice of Liability within the prescribed time period.

- (b) An imposition of liability pursuant to this chapter 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 the provision of motor vehicle insurance coverage.

747.08 NOTICE OF LIABILITY

- (a) A Notice of Liability shall be sent by first-class mail to each person alleged to be liable as an owner for a violation of subdivision (a) of Section 1174 of the New York State Vehicle and Traffic Law pursuant to this chapter. Personal delivery on the owner shall not be required; a manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the facts contained therein.
- (b) The Notice of Liability shall contain the name and address of the person alleged to be liable as an owner for a violation of subdivision (a) of Section 1174 of the New York State Vehicle and Traffic Law pursuant to this chapter, the registration number of the vehicle involved in such violation, the location of where such violation took place, the date and time of such violation and the identification number of the camera which recorded the violation or other document locator number.
- (c) The Notice of Liability shall include information advising the person charged of the manner and the time in which he or she may contest the liability alleged in the Notice of Liability. Such Notice of Liability shall also contain a warning to advise the persons charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.
- (d) The Notice of Liability shall be prepared and mailed by the City or by such other entity authorized by the City to prepare and mail such Notice of Liability and recover any such monetary penalty.
- (e) Adjudication of the liability imposed upon owners by this chapter shall be made by the City Court of the City of Niagara Falls, NY.

PRESUMPTION OF OWNER LIABILITY; DEFENSES TO A NOTICE OF LIABILITY

- (a) For purposes of this chapter, there shall be a presumption that the operator of such motor vehicle was operating such vehicle with the consent of the owner at the time such operator failed to comply with Section 1174 of The New York State Vehicle and Traffic Law.
- (b) If an owner receives a Notice of Liability pursuant to this chapter for any time period during which the motor vehicle was reported to the police as having been stolen, it shall be a valid defense to the allegation of liability for a violation of subdivision (a) of Section 1174 of the New York State Vehicle and Traffic Law pursuant to this chapter that the motor vehicle had been reported to the police as stolen prior to the time the violation had occurred and had not been recovered by such time. For purposes of asserting a defense provided by this section, it shall be sufficient that a certified copy of the police report on the stolen motor vehicle be sent by First Class Mail to the City Court of the City of Niagara Falls, NY.
- (c) An owner who is a lessor of a vehicle to which Notice of Liability was issued shall not be liable for the violation of subdivision (a) of Section 1174 of the New York State Vehicle and Traffic Law provided he or she sends to the City Court of the City of Niagara Falls, NY a copy of the rental, lease or other such contract document covering such motor vehicle on the date of the violation with the name and address of the lessee clearly legible, within thirty-seven (37) days after receiving notice from the court of the date and time of such violation, together with such other and further information contained in the original Notice of Liability. Failure to send such information within such thirty-seven (37) day time period shall render the owner liable for the monetary penalty prescribed by this chapter. Where the lessor complies with the provisions of this paragraph, the lessee of such motor vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this chapter, shall be subject to liability for the violation of subdivision (a) of Section 1174 of the Vehicle and Traffic Law pursuant to this section and shall be sent a Notice of Liability pursuant to this chapter.

- (d) No owner of a motor vehicle shall be subject to a monetary penalty imposed pursuant to this Chapter if such owner can demonstrate by clear and convincing evidence that such school bus stop arms were malfunctioning at the time of the alleged violation.
- (e) No owner of a motor vehicle shall be subject to a monetary penalty imposed pursuant to this chapter if the operator of such motor vehicle was operating such motor vehicle without the consent of the owner at the time such operator failed to comply with Section 1174 of the New York State Vehicle and Traffic Law and the owner of the motor vehicle is able to demonstrate to the court by clear and convincing evidence that the motor vehicle was operated at the time of the violation without the consent of the owner.

747.10 REPORTING REQUIREMENTS

The demonstration program established by the City requires that it submit an annual report on the results of the use of a school bus photo violation monitoring system to the Governor, the President of the Senate and the Speaker of the Assembly on or before June 1, 2019 and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include, but not be limited to, the following:

- (a) The number of buses and a description of the routes where stationary and mobile school bus photo violation monitoring systems were used.
- (b) The aggregate number, type and severity of accidents reported at locations where a school bus photo violation monitoring system is used for the year preceding the installation of such system, to the extent the information is maintained by the New York State Department of Motor Vehicles
- (c) The number of violations recorded at each location where a school bus photo violation monitoring system is used and in the aggregate on a daily, weekly and monthly basis.
- (d) The number of convictions for violations of subdivision (a) of Section 1174 of the New York State Vehicle and Traffic Law recorded at each location where a school bus photo violation monitoring system is used on an annual basis, to the extent the information is maintained by the Department of Motor Vehicles of this state.

- (e) The total number of Notices of Liability issued for violations recorded by such systems.
- (f) The number of monetary penalties and total amount of monetary penalties paid after the first Notice of Liability issued for violations recorded by such systems.
- (g) The number of violations adjudicated and results of such adjudications including breakdowns of dispositions made for violations recorded by such systems which shall be provided at least annually to such City by the courts conducting such adjudications.
- (h) The total amount of revenue realized by the City.
- (i) The expenses incurred by the City in connection with the program.
- (j) The quality of the adjudication process and its results including the total number of hearings scheduled, re-scheduled, and held; the total number of persons scheduled for such hearings; the total number of cases where monetary penalties were paid on or before the hearing date; and the total number of default judgments entered. Such information shall be provided at least annually to the City by the court conducting such adjudications.
- (k) A description of public education activities conducted to warn motorists of the dangers of overtaking and passing stopped school buses.

747.11 EXPIRATION

This demonstration program shall expire on December 1, 2024 unless extended further by act of the New York State Legislature.

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