

ORDINANCE NO. 24-_____

AN ORDINANCE AMENDING SECTION 101 (PENALTIES) AND REPEALING AND REORDAINING SECTION 115 (AUTOMATED VEHICLE IDENTIFICATION SYSTEM (AVIS)) BOTH OF PART 1 (GENERAL PROVISIONS), AMENDING SECTION 202 (DEFINITIONS) OF PART 2 (DEFINITIONS) OF ARTICLE 1 (ADMINISTRATION AND ENFORCEMENT), AMENDING SECTION 104 (EXCEEDING POSTED SPEED LIMIT) OF ARTICLE 5 (SPEED REGULATIONS), AND AMENDING SECTION 105 (TRAFFIC CONTROL SIGNAL LEGEND) OF ARTICLE 17 (OFFICIAL TRAFFIC CONTROL DEVICES) OF CHAPTER 10 (MOTOR VEHICLES AND TRAFFIC) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO AUTOMATED VEHICLE IDENTIFICATION SYSTEMS

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Section 101 (Penalties) of Part 1 (General Provisions) of Article 1 (Administration and Enforcement) of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

10.1.101: PENALTIES:

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B. Every person convicted of the violation of any provision of this chapter shall be punished as provided in section 1.1.201 of this Code; ~~except that any person convicted of a violation listed in section 11.4.104 of this Code shall not be imprisoned, but shall be subject only to a fine not to exceed five hundred dollars (\$500.00), or a sentence of probation, or by a combination of a fine and sentence of probation.~~ **unless a different penalty is provided in the specific section or subsection setting forth the violation, or elsewhere in this Code.**

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D. ~~The fine assessed, including any applicable surcharge, for a violation of subsection 10.5.104F, "Exceeding Posted Speed Limit: AVIS Violations", of this~~

~~chapter shall not exceed forty dollars (\$40.00), except for violations occurring within an active school zone in which case the fine assessed, including any applicable surcharge, for a violation of that section shall not exceed eighty dollars (\$80.00).~~

~~E. The fine assessed for a violation of subsection 10.17.105C5, "Traffic Control Signal Legend: AVIS Violations", of this chapter shall not exceed seventy five dollars (\$75.00), including any applicable surcharge.~~

Section 2. Section 115 (Automated Vehicle Identification System (AVIS)) of Part 1 (General Provisions) of Article 1 (Administration and Enforcement) of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reordained to read as follows:

10.1.115: AUTOMATED VEHICLE IDENTIFICATION SYSTEM (AVIS)

A. Authorization: The Police Department is hereby authorized to use automated vehicle identification systems within the City to detect violations of subsection 10.5.104F, "Exceeding Posted Speed Limit- AVIS Violations" and subsection 10.17.105C5 "Traffic Control Signal Legend- AVIS Violations," of this chapter.

1. Colorado Revised Statute section 42-4-110.5 "Automated Vehicle Identification Systems" contains uniform standards for the use of AVIS within the state, and this ordinance is to be read in coordination and in compliance therewith.

B. Procedure:

1. Notice of Violation: If a violation of a City traffic ordinance is detected through the use of an automated vehicle identification system the City shall issue, or cause its vendor to issue, to the registered owner of the motor vehicle involved in the alleged violation, by first-class mail, personal service, or by any mail delivery service offered by an entity other than the United States postal service that is equivalent to or superior to first-class mail with respect to delivery speed, reliability, and price, a Notice of Violation.

i. The Notice of Violation must be sent:

a. Within thirty (30) days after the alleged violation occurred if the motor vehicle involved in the alleged violation is registered in the state; or

b. Within sixty (60) days after the alleged violation occurred if the motor vehicle involved in the alleged violation is registered out of state.

ii. The Notice of Violation must contain:

a. The name and address of the registered owner of the motor vehicle involved in the alleged violation;

b. The license plate number of the motor vehicle involved in the alleged violation;

c. The date, time, and location of the alleged violation;

d. The amount of the civil penalty prescribed for the alleged violation;

e. The deadline for payment of the prescribed civil penalty and for disputing the alleged violation; and

f. Information on how the registered owner may either dispute the alleged violation in a hearing or pay the prescribed civil penalty.

2. Civil Penalty Assessment: If the City does not receive the prescribed civil penalty or a written notice requesting a hearing to dispute the alleged violation by the deadline stated on the Notice of Violation, which deadline must not be less than forty-five (45) days after the issuance date on the Notice of Violation, the City shall issue, or cause its vendor to issue, by first-class mail, personal service, or by any mail delivery service offered by an entity other than the United States postal service that is equivalent to or superior to first-class mail with respect to delivery speed, reliability, and price, a Civil Penalty Assessment Notice for the alleged violation to the registered owner of the motor vehicle involved in the alleged violation.

i. The Civil Penalty Assessment must be sent no later than thirty (30) days after the deadline on the Notice of Violation.

ii. The Civil Penalty Assessment must contain:

- a. The name and address of the registered owner of the motor vehicle involved in the alleged violation;
- b. The license plate number of the motor vehicle involved in the alleged violation;
- c. The date, time, and location of the alleged violation;
- d. The amount of the civil penalty prescribed for the alleged violation;
- e. The deadline for payment of the prescribed civil penalty; and
- f. Information on how to pay the prescribed civil penalty.

3. Waiver of Right to Contest: If the registered owner of the motor vehicle fails to request a hearing to dispute the alleged violation by the deadline stated in the Notice of Violation, the registered owner waives any right to contest the violation or the amount of the prescribed civil penalty.

4. Final Order of Liability: If the registered owner of the motor vehicle fails to pay in full the prescribed civil penalty by the deadline stated in the Civil Penalty Assessment Notice, a Final Order of Liability shall be entered by the Municipal Court against the registered owner of the vehicle.

5. Appeals: Final Orders may be appealed as to matters of law and fact to the county court in the county where the alleged violation occurred or the municipal court. The registered owner of the motor vehicle may assert in an appeal that a Notice of Violation served by first-class mail or other mail delivery service was not actually delivered. The appeal shall be a de novo hearing.

6. Collections: The City shall not initiate or pursue a collection action against a registered owner of a motor vehicle for a debt resulting from an unpaid penalty assessed pursuant to this section unless the registered owner is personally served either the Notice of Violation or the Final Order of Liability.

C. Reporting of Conviction, Points:

1. The City shall not report to the department of revenue any conviction or entry of judgment against a defendant for violation of a traffic ordinance detected through the use of an automated vehicle identification system as detailed in this section.

2. No points shall be assessed against a license under C.R.S. section 42-2-127 for any violation detected through the use of an automated vehicle identification system as detailed in this section.

D. Signage Required; Warning Required:

1. Signage for Violation of Exceeding Posted Speed Limit- AVIS Violations: An automated vehicle identification system shall not be used to detect violations of Exceeding Posted Speed Limit pursuant to subsection 10.5.104F unless there is posted an appropriate temporary or permanent sign notifying the public that an AVIS is in use immediately ahead. The sign shall:

i. Be placed in a conspicuous place not fewer than three hundred (300) feet before the area in which the AVIS is to be used; and

ii. This requirement is not met by the posting of a permanent sign at the borders of the City, nor the relative area in which an AVIS is used.

2. Signage for Violation of Traffic Control Signal Legend- AVIS Violations: An automated vehicle identification system shall not be used to detect violations of Traffic Control Signal Legend pursuant to subsection 10.17.105C5 unless the City has conspicuously posted a sign notifying the public that an AVIS is in use immediately ahead. The sign shall:

i. Be placed in a conspicuous location not fewer than two hundred (200) feet nor more than five hundred (500) feet before the AVIS; and

ii. Use lettering that is at least four inches high for upper case letters and two and nine-tenths inches high for lower case letters.

3. Warnings Required:

i. If the City implements a new AVIS after July 1, 2023 that is not a replacement of a prior AVIS, the following is required:

a. The Police Department shall publicly announce the implementation of the system through its website for at least thirty (30) days prior to the use of the system; and

b. For the first thirty (30) days after the system is installed or deployed, only warnings may be issued for violations detected by the individual system.

E. Permissible Locations for Detecting Violation of Exceeding Posted Speed Limit- AVIS Violations:

1. The City shall not issue a Notice of Violation for a speeding violation detected by AVIS unless the violation occurred:

i. Within a school zone as defined by C.R.S. section 42-4-615;

ii. Within a residential neighborhood;

iii. Within a maintenance, construction, or repair zone as defined by C.R.S. section 42-4-614;

iv. Along a street that borders a municipal park; or

v. Along a street or portion of a street that has designated by ordinance as an "Automated Vehicle Identification Corridor."

2. For subsection (E), the following definitions apply:

i. A school zone is an area that is designated by sign as a school zone and has appropriate signs posted indicating that the penalties and surcharges will be doubled.

ii. A residential neighborhood is defined as any block on which a majority of the improvements along both sides of the street are residential dwellings and the speed limit is thirty-five (35) miles per hour or less.

iii. A maintenance, construction or repair zone is an area where maintenance, repair or construction activities are occurring or will occur within four hours, and has been designated by the placing of appropriate signs in conspicuous places before and after the maintenance, repair or construction zone starts and ends, that indicates that increased penalties are in effect.

3. An "Automated Vehicle Identification Corridor" is a street or portion of a street that is designated by ordinance as an area where AVIS can be

used outside of other acceptable locations. Such areas are subject to the following requirements and limitations:

- i. AVIS corridors may not be located on any highway that is a part of a federal interstate highway system.
- ii. Prior to the designation and operation of an AVIS corridor, which must be done through the passage of an ordinance, there must be:
 - a. Illustration, through data collected within the past five years, of incidents of crashes, speeding, reckless driving, or community complaints on the specific street(s);
 - b. Properly posted permanent signage in a conspicuous place not fewer than three hundred (300) feet before the beginning of the corridor and a permanent sign no fewer than three hundred (300) feet before each permanent camera within the corridor thereafter, or a temporary sign not fewer than three hundred (300) feet before any mobile camera; and
 - c. Coordination between the local jurisdiction, the Department of Transportation, and the Colorado State Patrol.
- iii. After implementing an AVIS Corridor, the City must publish a report on its website disclosing the number of citations and revenue generated by the AVIS Corridor.

F. Penalties:

1. Exceeding Posted Speed Limit- AVIS Violation: When the City detects a violation of section 10.5.104F through the use of AVIS:
 - i. If the speeding violation is less than ten miles per hour over the posted speed limit and the violation is the first violation by the registered owner, then the City may mail a warning regarding the violation but shall not impose any penalty or surcharge for such first violation.
 - a. If a second or subsequent speeding violation of less than ten miles per hour is detected, then the maximum penalty, including any surcharge, shall be forty dollars (\$40.00).

ii. If the speeding violation is ten miles per hour or more over the posted speed limit, the maximum civil penalty that may be imposed, including any surcharge, is forty dollars (\$40.00).

iii. If the speeding violation occurs within a school zone, the maximum civil penalty shall be doubled and shall be eighty dollars (\$80.00).

iv. If the speeding violation occurs within a maintenance, construction, or repair zone, the maximum civil penalty shall be doubled and shall be eighty dollars (\$80.00).

2. Traffic Control Signal Legend- AVIS Violations: If the City detects a violation of section 10.17.105C5 through the use of AVIS, the maximum civil penalty, including any surcharge, that may be assessed is seventy-five dollars (\$75.00).

3. If a registered owner fails to pay a penalty imposed through the AVIS program, the City shall not attempt to enforce such a penalty by immobilizing the registered owner's vehicle.

4. Municipal court judges shall have no authority to alter or reduce the penalty for AVIS violations.

G. Additional Requirements:

1. No portion of any fine collected through the use of the AVIS system may be paid to the vendor or manufacturer of the AVIS equipment. The compensation paid by the City for such equipment shall be based on the value of the equipment and services to the City, and may not be based upon the number of traffic citations issued or the revenue generated by such equipment services.

2. The City and any contracted AVIS vendor shall:

i. Program the AVIS to retain data only when a violation of a county or municipal traffic regulation or traffic violation under state law occurs;

ii. Treat all photographs and video collected by the AVIS as confidential and exempt from disclosure and inspection pursuant to the "Colorado Open Records Act," part 2 of article 72 of title 24 of the Colorado Revised Statutes.

iii. Not use, disclose, sell or permit access to photographs, video, or personal identifiable data collected by the AVIS except to the

extent necessary to operate the program, including for purposes of processing violations, for other law enforcement purposes, for transferring data to a new vendor or operating system, or, pursuant to a court order, for use in unrelated legal proceedings;

iv. Destroy any photographs and video of a violation collected by the AVIS within three years after the final disposition of the violation unless the photographs or video are maintained in a separate system for other purposes allowed by law; and

v. Shall not require a registered owner of a vehicle to disclose the identity of a driver of the vehicle who is detected through the use of AVIS. However, a registered owner may be required to submit evidence that the owner was not the driver at the time of the alleged violation.

Section 3. Section 202 (Definitions) of Part 2 (Definitions) of Article 1 (Administration and Enforcement) of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

10.1.202: DEFINITIONS:

* * *

AUTOMATED VEHICLE IDENTIFICATION SYSTEM (OR AVIS): A system whereby a machine is used to automatically detect a violation of a traffic regulation and simultaneously record a photograph of the vehicle, the operator of the vehicle, and the license plate of the vehicle, and a **notice of violation or civil penalty assessment notice may be issued** ~~penalty assessment notice or summons and complaint is generated and issued~~ to the registered owner of the motor vehicle. **AVIS includes a system used to detect violations of speed ordinances, or violations of ordinances imposing restrictions on actions at official traffic control devices/signals.**

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CIVIL PENALTY ASSESSMENT: A written notice issued by the City or its AVIS vendor to the registered owner of a motor vehicle after failure to timely pay the civil penalty or request a hearing on a violation of an AVIS ordinance, as detailed in a Notice of Violation.

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FINAL ORDER OF LIABILITY: Order entered by the Municipal Court against the registered owner of a motor vehicle after failure to comply with a Civil Penalty Assessment in cases involving AVIS violations.

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NOTICE OF VIOLATION: A written notice issued by the City or its AVIS vendor to the registered owner of a motor vehicle alleging a violation of an AVIS ordinance.

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~~PENALTY ASSESSMENT NOTICE: A notice mailed to a registered owner of a vehicle involved in any traffic violation detected by an AVIS advising that a violation has been detected~~

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REGISTERED OWNER: Any owner(s) of a vehicle who registers the vehicle with the Department of Revenue as required by state law.

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Section 4. Section 104 (Exceeding Posted Speed Limit) of Article 5 (Speed Regulations) of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

10.5.104: EXCEEDING POSTED SPEED LIMIT:

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F. * * *

1. No person shall be convicted of a violation of this subsection unless **Section 10.1.115 Automated Vehicle Identification Systems (AVIS), which governs violations detected by AVIS, is complied with.**

~~a. The roadway monitored is: within a school zone; within a residential neighborhood; within a maintenance, construction, or repair zone; or along a street that borders a municipal park. For purposes of this section, unless the context otherwise requires, "residential neighborhood" means any block on which a majority of~~

~~the improvements along both sides of the street are residential dwellings and the speed limit is thirty five (35) miles per hour or less.~~

~~b. At the time the violation is alleged to have occurred, an officer or employee of the City was present during the operation of the AVIS.~~

~~c. If the violation involves an alleged speed of between five (5) to nine (9) miles per hour above the posted speed limit in an area which is monitored by AVIS, the defendant previously received a written warning.~~

~~2. Admitted evidence produced by an AVIS showing the date, time and location at which it was generated, and showing the identity of the operator of the motor vehicle, the identity of the motor vehicle, and showing the speed of the motor vehicle to be five (5) to twenty four (24) miles per hour above the posted speed limit shall constitute prima facie evidence of a violation of this subsection.~~

Section 5. Section 105 (Traffic Control Signal Legend) of Article 17 (Official Traffic Control Devices) of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

10.17.105: TRAFFIC CONTROL SIGNAL LEGEND:

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C. * * *

5. * * *

a. **No person shall be convicted of a violation of this subsection unless section 10.1.115 Automated Vehicle Identification Systems (AVIS), which governs violations detected by AVIS, is complied with.** ~~Admitted evidence produced by an AVIS showing the date, time and location at which it was captured, showing the identity of the operator of the motor vehicle, showing the identity of the motor vehicle, and showing the approximate location and course of travel of the vehicle in violation of the restrictions set forth in this section, shall constitute prima facie evidence of a violation of this section.~~

* * *

Section 6. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 7. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2024.

Finally passed: _____

Randy Helms, Council President

Mayor's Action:

- ☐ Approved on _____.
- ☐ Disapproved on _____, based on the following objections:

Blessing A. Mobolade, Mayor

Council Action After Disapproval:

- ☐ Council did not act to override the Mayor's veto.
- ☐ Finally adopted on a vote of _____, on _____.
- ☐ Council action on _____ failed to override the Mayor's veto.

Randy Helms, Council President

ATTEST:

Sarah B. Johnson, City Clerk