

O-2024-25

AN ORDINANCE

ADOPTING TITLE 10, CHAPTER 46, OF THE LAKEWOOD MUNICIPAL CODE REGARDING THE ESTABLISHMENT OF AN AUTOMATED VEHICLE IDENTIFICATION SYSTEM.

WHEREAS, the City of Lakewood ("Lakewood" or "City") is a home rule municipality organized under Article XX of the Colorado Constitution and the authority of the Home Rule Charter for the City of Lakewood (Charter);

WHEREAS, Sections 1.2 and 2.1 of the Charter vests all municipal legislative powers in the City Council, and authorizes the City Council to establish those laws necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof;

WHEREAS, the City of Lakewood desires to conform to the requirements of C.R.S. 42-4-110.5 (2024) regarding the establishment of automated vehicle identification systems to allow for the enforcement of traffic laws via camera systems;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Adoption of Title 10, Chapter 46. Title 10, Chapter 46 of the Lakewood Municipal Code shall be adopted as follows:

10.46.010 Purpose.

The Automated Vehicle Identification System Code is a two year pilot program enacted for the purpose of promoting the health, safety, and welfare of the citizens of the City of Lakewood by allowing for civil traffic enforcement through the use of Automated Vehicle Identification Systems (AVIS) and the issuance of corresponding notices of traffic speed and traffic control device violations. This system may not be used for other purposes including enforcement of other code violations, criminal violations or civil acts. This pilot program will be reviewed by the City Council no later than twenty four months from its effective date unless further action is taken by the City Council to extend this pilot program or adopt it as a permanent program.

10.46.020 Definitions.

As used in this chapter, unless the context otherwise requires, the following words and terms shall be defined as follows:

- a) *Automated vehicle identification system (AVIS)* – shall mean a system whereby:
- (A) A machine is used to automatically detect a violation of a traffic regulation and simultaneously record a photograph or video of the vehicle, the operator, and/or the license plate of the vehicle; and
- (B) A notice of violation and civil penalty assessment may be issued to the registered owner of the motor vehicle, or alternatively to the operator of the vehicle if later identified.
- b) *AVIS corridor* means a roadway designated by Resolution of the City Council upon which the City may enforce ~~traffic~~ speed control laws and disobedience to traffic control devices via an AVIS system, such Resolution containing data collected within the past five years describing incidents of crashes, speeding, or reckless driving, ~~or community complaints on such roadway unless the automated vehicle identification system will be used exclusively to detect unauthorized usage of one or more transit-only lanes.~~
- c) *Civil Penalty Assessment* shall mean a notice mailed via first class mail or personally served to a registered owner of a vehicle or identified vehicle operator involved in any traffic violation that has previously received a Notice of Violation.
- d) *Deadline for Payment* shall mean a date included within a Notice or Civil Penalty Assessment that is not less than forty-five days after the issuance date of such Notice.
- e) *Deadline to Request a Hearing* shall mean a date included within a Notice that is not less than forty-five days after the issuance date of such Notice.
- f) *Enforcement Officer* shall mean a peace officer, designated civilian employee, vendor or contractor for the City designated by the Chief of Police to enforce the provisions of this Code.
- g) Enforcement Zone shall mean any site, approved by the City Council by Resolution, at which an AVIS system is operating within the City.
- h) *Issuance Date of the Notice* shall mean the day such Notice was mailed to the responsible party via First Class mail.
- i) *Notice of Violation (Notice)* shall mean a notice mailed via first class mail to a registered owner of a vehicle involved in any traffic violation detected by an AVIS advising such owner that a violation has been detected, or a similar notice mailed to the operator of a vehicle, as later identified, advising such operator that they were identified as the operator of a vehicle detected to have committed a violation.
- j) *Personal service* shall mean an owner or operator has failed to respond to a Notice served via first class mail and such failure is understood to be a decision by the owner or operator to not waive in-person service and to accept the costs of personal service. Personal service can be effected upon the owner or operator of the vehicle identified by an AVIS and pursued at the discretion of a Lakewood enforcement officer. The costs of personal service shall be due and payable along with payment of the penalty assessed for the violation.

- k) *Residential neighborhood* shall mean 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 miles per hour or less.
- l) *Traffic Control Device shall mean stop lights (red lights) operating within the City for the purpose of mandating that a vehicle come to a complete stop.*
- m) *Traffic Violation shall mean disobedience to any speed control laws or to traffic control device laws.*
- n) *Vendor* shall mean an entity operating pursuant to a contract with the City to perform any element of the City's Automated Vehicle Identification System in accordance with applicable provisions of C.R.S. § 42-4-110.5.

10.46.030 Automated Vehicle Identification System – Notices of Violation – General.

- a) **Responsible Party.** When an enforcement officer, based on evidence obtained in whole or in part by means of an AVIS, has probable cause to believe that a traffic violation has been committed, the enforcement officer may issue a Notice to the registered owner of the vehicle based upon a license plate, or any other identification of the vehicle, as the party responsible for the violation of the applicable law. If the vehicle is registered in more than one person's name, the Notice may either be issued to the first named registrant or to the registrant whom the enforcement officer determines, under all the facts and circumstances, was the person most likely operating the vehicle.
- b) **Identified vehicle operator.** A person designated in writing by the owner of the vehicle as being the operator of the vehicle at the time the violation occurred may be served a subsequent Notice of Violation. Any Notice of Violation served to an identified vehicle operator shall include all information set forth in subsection (e) below as well as information showing the registered owner has certified in writing such individual to have been the operator of the vehicle at the time of the alleged violation. The City 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 an AVIS. However, the registered owner may be required to submit evidence that the owner was not the driver at the time of the alleged violation if such registered owner is challenging identification at the time of the AVIS violation.
- c) **Rental Vehicles.** If the registered owner of a motor vehicle involved in a traffic violation is engaged in the business of leasing or renting motor vehicles, the registered owner remains liable for payment of the civil penalty even if the registered owner was not driving the motor vehicle but payment from the lessor or renter of the motor vehicle received by the City will satisfy any penalty resulting from a notice of violation.
- d) **Issuance of a Notice.** A Notice issued as part of an AVIS program shall be mailed by first class mail to the responsible party, as identified in subsection (a) above, within thirty (30) days following such violation having occurred or within sixty (60)

days if the vehicle is registered outside of the State. If the responsible party identifies another individual to have been the vehicle operator at the time of the violation the Notice shall be issued to such identified vehicle operator within thirty (30) days of the City, or its vendor, having received such notification in writing.

e) **Contents of a Notice.** A Notice shall contain:

1. The date the notice was issued, which shall be the date such notice was mailed in accordance with this code;
2. The name and address of the registered owner of the motor vehicle involved in the alleged violation, or alternatively, the name and address of the identified vehicle operator;
3. The license plate number of the vehicle involved;
4. A citation of the State, county or municipal law alleged to have been violated;
5. A brief description of the alleged violation;
6. The date and location of the alleged violation;
7. The amount of any civil penalty prescribed for the alleged violation; and
8. Information on how the registered owner or identified operator may either dispute the alleged violation at a hearing or satisfy the prescribed penalty.

10.546.040 Enforcement Zones.

- a) The City may issue a Notice of Violation for speed offenses and disobedience to traffic control devices identified through its AVIS system of violations established by a county, city and county, municipal traffic ordinance or a traffic violation under State statute that occur in an enforcement zone approved by the City Council by Resolution, such enforcement zones identified as:
1. Within a school zone;
 2. Within a Residential Neighborhood;
 3. Within a maintenance, construction, or repair zone designated pursuant to C.R.S.§ 42-4-614;
 4. Along a street that borders a City park; or
 5. Along a street, or portions of a street, which the City Council has designated by Resolution as an AVIS corridor.
- b) Prior to utilizing an AVIS to enforce a local speed ordinance the City will post an appropriate temporary or permanent sign in a conspicuous place not fewer than two three hundred feet before the area in which the AVIS is to be used notifying the public that an AVIS is in use immediately ahead.
- c) Prior to utilizing an AVIS to detect disobedience to a traffic control device the City will post a sign notifying the public that an AVIS is in use immediately ahead. The sign shall:

1. Be placed in a conspicuous location not fewer than two hundred feet nor more than five hundred feet before the AVIS; and
 2. Use lettering that is at least four inches high for upper case letters and two and nine-tenths inches high for lower case letters.
- d) Prior to utilizing an AVIS to enforce an AVIS corridor the City will post permanent signage in compliance with C.R.S. § 42-4-110.5(2)(g)(1.7).
- e) Prior to designating a State highway or county road an AVIS corridor the City shall comply with the provisions of C.R.S. § 42-4-110.5(2)(g)(1.6).

10.46.050 Traffic Offenses.

When an enforcement officer, based on evidence obtained in whole or in part by means of an AVIS, has probable cause to believe that a vehicle was traveling 25 miles per hour or more in excess of the posted speed limit, the violation will be investigated as a traffic offense. The traffic offense is subject to referral to sworn police personnel for investigation.

10.46.060 Payment of automated vehicle identification system penalty assessment notices.

A prescribed civil fine or penalty specified in the AVIS Notice may be paid on or before the penalty due date through the United States Postal Service by first class mail to an address specified on the Notice of Violation, or through a website portal. Payment of the prescribed penalty and costs to the City through one of the methods specified on the Notice shall be deemed a judgment and satisfaction of the judgment for the violation.

10.46.70. Protest of a Notice.

To contest a Notice the responsible party must request, in writing, a hearing to dispute the alleged violation prior to the deadline to request a hearing specified within the Notice. The Notice shall direct the responsible party to a website portal where, prior to the deadline for requesting a hearing, the responsible party may complete the form to request a virtual hearing before a judge of the Lakewood Municipal Court.

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 stated within the Civil Penalty Assessment.

10.46.080 Civil Penalty Assessment.

- a) 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, 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 party that received the corresponding Notice of Violation. Such Civil Penalty Assessment shall be issued no later than thirty days after the deadline on the Notice of Violation.

- b) Such Civil Penalty Assessment shall contain the following information:
1. The date the notice was issued, which shall be the date such notice was mailed in accordance with this code;
 2. The name and address of the registered owner of the motor vehicle involved in the alleged violation;
 3. The license plate number of the vehicle involved;
 4. A citation of the law alleged to have been violated;
 5. A brief description of the alleged violation;
 6. The date and approximate place of the alleged violation;
 7. The amount of any civil penalty prescribed for the alleged violation.
- c) 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 against the registered owner of the vehicle.
- d) Final orders of liability may be sent to a collection agency by the City or a vendor contracting with the City, and additional costs and fees may be associated with a final order of liability sent to a collection agency.
- e) Final orders may be appealed as to matters of law and fact to the Jefferson County Court. Any appeal shall be pursuant to applicable Colorado law.

10.46.090 Hearings for AVIS Notices.

- a) In the event the responsible party disputes the allegations in a Notice issued pursuant to this Code and requests a hearing prior to the entry of a default judgment, a hearing pursuant to this Code shall be held.
- b) The hearing shall be before a judge of the Lakewood Municipal Court. The hearing will be virtual unless the responsible party requests, in writing, an in-person hearing. At the hearing, the City will not require the registered owner to disclose the identity of the driver of the vehicle who was detected through the use of the AVIS but if the identity of the operator is at issue the City may require the registered owner to submit evidence that the owner was not the driver at the time of the alleged violation.
- c) If the responsible party is found guilty or fails to appear at such hearing, judgment shall be entered and a penalty assessed with any applicable fees and costs as provided by this Code, and any Resolution adopted pursuant to this Code setting forth fees and costs.

10.46.100 Presumption in reference to Automated Vehicle Identification System Notice.

In any proceeding alleging a traffic violation, proof through the use of an automated vehicle identification system that the particular vehicle described in the Notice used to carry out such violation, together with proof that the person named in the Notice was at the time of the violation the registered owner of the vehicle or the designated operator of the vehicle, shall constitute prima facie evidence that the registered owner of the vehicle

was the person who was committing the violation at the point where, and for the time during which, the violation occurred. This presumption may be rebutted if the finder of fact determines by a preponderance of the evidence that the registered owner of the vehicle or the operator designated by the registered owner of the vehicle was not operating the vehicle at the time the violation was committed.

10.46.110 Penalty/Consequences.

- a) The possible penalties set forth in L.M.C. Title 10 shall not apply to any traffic violation detected by the use of any AVIS.
- b) Any violations detected by the use of an AVIS shall be subject to penalties and costs established pursuant to Resolution passed by the City Council establishing such penalties and costs.
- c) Penalties and costs shall be imposed upon entry of judgment against the responsible party.
- d) Regardless of the nature of the violation, the hearing officer is authorized to impose additional costs in conformance C.R.S. 42-4-110.5(4)(b)(I), not to exceed \$40.00, for service of process upon any responsible party to obtain personal jurisdiction over the responsible party who did not waive service of process.
- e) The City shall not report to the State Department of Motor Vehicles any conviction or entry of judgment against a responsible party if the violation for which they were convicted was detected through the use of an AVIS.
- f) 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 the notice of violation or the final order of liability.

10.46.120 Pilot Program Report.

Thirty days prior to the mandatory review of this pilot program a program report shall be generated containing all relevant information pertaining to the operation and effectiveness of this program, including but not limited to:

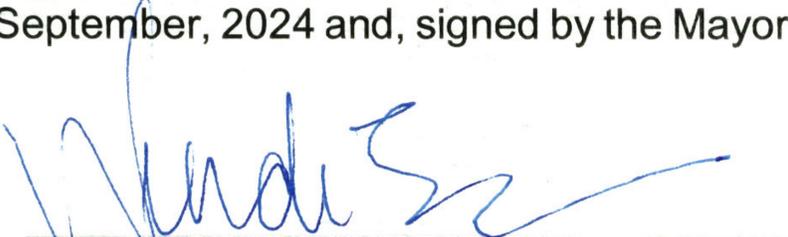
- a) the number of citations issues through the system,
- b) the percentage of individuals who paid the citation fee following an initial notice letter,
- c) the percentage of individuals who paid the citation fee following a second letter,
- d) the percentage of citations dismissed for failure to identify the vehicle operator,
- e) the percentage of individuals who requested a trial,
- f) the amount of staff time associated with enforcing these citations by the municipal court, the municipal prosecutors' office, and the police department,
- g) the costs of the program,
- h) the revenue generated by the program, and

- i) any demographic data available regarding either vehicle operators or vehicle owners.

SECTION 2. This ordinance shall take effect thirty (30) days after final publication.

SECTION 3. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the 9th day of September, 2024; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 12th day of September, 2024; set for public hearing to be held on the 23rd day of September, 2024, read, finally passed and adopted by the City Council on the 23rd day of September, 2024 and, signed by the Mayor on the _____ day of September, 2024.



Wendi Strom, Mayor

ATTEST:



Jay Robb, City Clerk



APPROVED AS TO FORM:



Alison McKenney Brown, City Attorney