

**VILLAGE OF NEW MIAMI, OHIO
COUNCIL ORDINANCE 1991**

**AN ORDINANCE AMENDING ORDINANCE 1917, AN AUTOMATED
SPEED ENFORCEMENT PROGRAM AND ESTABLISHING CIVIL
PENALTIES FOR AUTOMATED SPEED VIOLATIONS, SUPPLEMENTING
THE CODIFIED ORDINANCES OF THE VILLAGE OF NEW MIAMI, OHIO
BY ADDING THERETO AMENDED CHAPTER 77 TO PROVIDE FOR THE
RESUMPTION OF SAID PROGRAM.**

WHEREAS, the Butler County Court of Common Pleas on or about February 25, 2014, enjoined the Village of New Miami, Ohio from operating its Automated Speed Enforcement Program;

WHEREAS, Senate Bill 342 codified as R. C. §4511.0910-4511.099 became effective on March 23, 2015 and regulates the use of automated speed enforcement systems;

WHEREAS, the Village of New Miami, Ohio previously enacted Ordinance 1917, it now wishes to amend that Ordinance in order to comply with the provisions of R. C. §4511.0910-4511.099 and to act in conformity with the decisions of the Ohio Supreme Court in *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270 and *Walker v. Toledo*, 2014-Ohio-5461.;

WHEREAS, the ongoing problems of motorists disobeying speed limit control devices has contributed to a significant number of motor vehicle crashes in the Village of New Miami, which have resulted in death, serious personal injury, and/or substantial property damage; and

WHEREAS, the Village of New Miami seeks to increase compliance with traffic control devices, particularly speed limits, and thereby decrease the number of

motor vehicle crashes and pedestrian injuries that are caused by such failure to comply; and

WHEREAS, the resumption of an Automated Speed Enforcement Program will assist the Village in increasing compliance with traffic control devices without the disadvantages attendant to conventional traffic enforcement, such as disruptions in the flow of traffic at heavily-traveled intersections, and expenses associated with increased police manpower; and

WHEREAS, it is now necessary to amend previously adopted Ordinance 1917 and to establish a new civil penalty for violations and a method by which persons can take appeals of the civil violations;

WHEREAS, it is also recommended that a vehicle owner be eligible to appeal said actions to a hearing officer in an administrative hearing if:

- (1) the registered owner was not the driver at the time of the incident;
- (2) the vehicle or its license plates had been reported stolen prior to the violation or within forty-eight hours after the violation occurred;
- (3) the vehicle is a commercial or rental vehicle and the owner was not the person having custody or control of the vehicle at the time of the violation; and

WHEREAS, in order to enact these amended provisions it is necessary to supplement the Village's Codified Ordinances by adding thereto amended Chapter 77

to provide for the resumption of an Automated Speed Enforcement Program and for the administrative enforcement of automated speed violations.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF NEW MIAMI THAT:

SECTION 1: The Codified Ordinances of the Village of New Miami, Ohio are hereby amended by adding thereto Amended Chapter 77, Relative to the resumption of an Automated Speed Enforcement Program for the administrative enforcement of automated speed violations, which shall be and read substantially in the form of Exhibit A attached hereto and incorporated herein by reference and made a part of.

SECTION 2: This Ordinance is hereby declared an emergency measure necessary for the immediate preservation of the public health, safety, and welfare of the Village of New Miami, Ohio and its residents and shall become effective immediately upon its passage.

SECTION 3: It is found and determined that all formal actions of this Council concerning or relating to the adoption of this resolution were adopted in an open meeting of the Council and any of its committees that resulted in such formal actions, said meetings were open to the public, and in compliance with the legal requirements, including § 121 of the Ohio Revised Code.

SECTION 4: Said Ordinance shall become effective immediately upon its passage subject to any injunction issued by the Butler County Common Pleas Court or any other Court of competent jurisdiction.

Council member **Dennis Rapier** made a motion that the Ordinance be declared an emergency and be adopted as an emergency measure to be effective immediately which is necessary for the reasons set forth in the Ordinance. Council member **Christine Reichert** seconded the motion, and a call of the roll on the question of declaring an emergency. The following vote resulted:

Ayes	<u>4</u>	Nays	<u>0</u>
Absent	<u>1</u>		

Council member **Dennis Rapier** made a motion that the Ordinance be adopted. Council member **Christine Reichert** seconded the motion, and upon a call of the roll in the question of its adoption. The vote therein resulted as follows:


Ayes 4

Nays 0

Absent 1

COUNCIL MEMBER	VOTE
Ken Flick	Absent
Dennis Rapiet	Yes
Vacant	----
Christine Reichert	Yes
Barbara Schick	Yes
Anna Jarvis	Yes

ADOPTED: May 21, 2015


Robert L. Henley, Acting Mayor

Attests Belinda Ricketts, Fiscal Officer

I, Belinda Ricketts, Fiscal Officer for the Village of New Miami, Butler County Ohio, do hereby certify that Ordinance No. 1991 will be posted in accordance with New Miami Ordinance No. 1691 by this 29 day of May, 2015.


Belinda Ricketts, Fiscal Officer

Section 77.03 – OFFENSE.

(A) A person or entity as the registered owner, who receives a Notice of Liability for a civil violation sent pursuant to New Miami Amended Ordinance Section 77.02(E) shall elect to do one of the following:

1. In accordance with instructions on the Notice of Liability, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the Notice of Liability.
2. Within thirty (30) days after receipt of the Notice of Liability, provide the Village of New Miami Police Department with either of the following Affidavits:
 - (i) an affidavit executed by the registered owner stating that another person was operating the vehicle of the registered owner at the time of the violation, identifying that person as a designated party who may be liable for the violation, and containing the name and address of the designated party;
 - (ii) an affidavit executed by the registered owner stating at the time of the violation, the motor vehicle or the license plates to the motor vehicle were stolen and therefore were in the care, custody, or control of some person or entity to whom the registered owner did not grant permission to use the motor vehicle. In order to demonstrate that the motor vehicle or the license plates were stolen prior to the traffic law violation and therefore were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the violation or within forty-eight (48) hours after the violation occurred.

(B) A registered owner is not responsible for a traffic law violation if, within thirty (30) days after the date of mailing of the Notice of Liability, the registered owner furnishes an affidavit specified in division (A)2(i) and/or (ii) of this Section to the Village of New Miami Police Department which complies with 77.03(E) and provided the following conditions are satisfied:

1. If the registered owner submits an affidavit as specified in division (A)(2)(i) of this Section, the designated party either accepts liability

for the violation by paying the civil penalty or failing to request an administrative hearing within thirty (30) days or is determined liable in an administrative hearing;

2. If the registered owner submits an affidavit as specified in division (A)2(ii) of this Section, the affidavit is supported by a stolen vehicle or stolen license plate report as required in that division.
 3. If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, provides the Village of New Miami Police Department with the name and address of the lessee or renter of the motor vehicle at the time of the traffic law violation. A motor vehicle leasing dealer or motor vehicle renting dealer who receives a Notice of Liability for an alleged traffic law violation detected by an ASES device is not liable for a Notice of Liability issued for a motor vehicle that was in the care, custody, or control of a lessee or renter at the time of the alleged violation. The dealer shall not pay such a Notice of Liability and subsequently attempt to collect a fee or assess the lessee or renter a charge for any payment of such Notice of Liability made on behalf of the lessee or renter.
 4. If the vehicle involved in the traffic law violation is a commercial motor vehicle and the Notice of Liability is issued to a corporate entity, provides to the Village of New Miami Police Department an affidavit sworn to or affirmed by an agent of the corporate entity and provides the name and address of the employee who was operating the motor vehicle at the time of the alleged violation and who is the designated party.
 5. Contest the Notice of Liability by filing a written request for an administrative hearing to review the Notice of Liability. The person or entity shall file the written request not later than thirty (30) days after receipt of the Notice of Liability. The failure to request a hearing within this time period constitutes a waiver of the right to contest the Notice of Liability and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation.
- (C) If the Village of New Miami Police Department receives an affidavit described in division (A)2(i) or (A)2(ii), or a notification under (B)(3) or (B)(4) from a registered owner, it may proceed to send a Notice of Liability that conforms with Section 77.04 of the Amended Ordinance to the designated party. The Village of New Miami Police Department shall send the Notice of Liability to the designated

party by ordinary mail not later than twenty-one (21) days after receipt of the affidavit or notification.

(D) Exception for emergency or public safety vehicles:

The provisions of this chapter shall not apply to emergency vehicles or public safety vehicles when those vehicles are responding to an emergency or call for emergency service.

Exception for vehicles which are the property of the Village of New Miami:

The provision of this chapter relating to owner liability shall not apply to a vehicle owned by the Village of New Miami which is being driven by a Village employee at the time of the violation. In such circumstances, the employee and not the Village shall be liable for the civil penalty to be incurred as a result of the violation(s).

Section 77.04 – NOTICE OF LIABILITY.

- (A) The Village of New Miami, Ohio or its designee shall process the Notice of Liability for a civil violation and shall send the Notice of Liability by ordinary mail to any registered owner of the motor vehicle that is subject to the traffic law violation. The Notice of Liability shall include:
1. The name and address of the registered owner;
 2. The letters and numerals appearing on the license plate issued to the motor vehicle;
 3. The traffic law violation charged;
 4. The location of the automated speed enforcement device;
 5. The date and time of the violation;
 6. A copy of the recorded images;
 7. The name and badge number of the law enforcement officer who was present at the system location at the time of the violation;
 8. The amount of the civil penalty imposed, the date by which the civil penalty is required to be paid, and the address to which the payment is to be sent;
 9. A statement signed by a law enforcement officer employed by the Village of New Miami, Ohio, indicating that based on an inspection of recorded images, the motor vehicle was involved in a traffic law violation, and a statement indicating that the recorded images are prima facie evidence of that traffic law violation both of which may be signed electronically;
 10. Information advising the person or entity alleged to be liable of the options prescribed in Section 77.03, to include the time, place, and manner in which an administrative appeal may be initiated and the procedure for disclaiming liability by submitting an affidavit as prescribed in that Section;
 11. A warning that failure to exercise one of the options prescribed in §77.03 is deemed to be an admission of liability and waiver of the opportunity to contest the violation.

Section 77.05 – CIVIL PENALTIES

- (a) The owner or designated party for the motor vehicle who receives a Notice of Liability is subject to a civil penalty if the motor vehicle is recorded by an automated speed enforcement system while being operated in violation of this Chapter, unless the driver of the motor vehicle received a citation from a police officer at the time of the violation or unless the exception or defense to liability set forth in 77.03(A)(2)(i) and (ii) of this Amended Ordinance applies.
- (b) The civil penalty under this Chapter shall be:
1. The civil penalty for a violation shall be \$95.00 provided the Notice of Liability is paid within thirty (30) calendar days of the date of issuance of the Notice of Liability;
 2. If the civil penalty is paid more than thirty (30) calendar days, but within sixty (60) calendar days after date of issuance of the notice of liability the civil penalty shall be \$125.00;
 3. If the civil penalty is paid more than sixty (60) calendar days of the date of issuance of the notice of liability the civil penalty shall be \$180.00;
 4. The owner or designated party for the motor vehicle who receives a Notice of Liability shall remit payment as provided for on the Notice of Liability.
 5. A traffic law violation which a civil penalty is imposed under this Ordinance is not a moving violation and points shall not be assessed against the recipient's driver's license.
 6. A traffic law violation under this Section shall not be reported to the Bureau of Motor Vehicles, the Motor Vehicle Registration Bureau, or office of any other state nor shall such a violation be recorded on the driving record of the owner or operator of the vehicle involved in the violation.

Section 77.06 – COLLECTION OF CIVIL PENALTIES

If the civil penalty assessed pursuant to the Notice of Liability is not paid within thirty (30) days from the date of issuance, the civil penalty imposed under the provisions of this Ordinance shall be collectible, together with any interest and penalties thereon, in any manner authorized by law, including but not limited to a civil suit.

Section 77.07 – ADMINISTRATIVE APPEAL

- (A) Where the recipient of a Notice of Liability for a civil violation under 77.04 of this Amended Ordinance, chooses to contest the Notice of Liability and completes the requirements prescribed in 77.03(B)(5) in a timely manner, all of the following apply:
1. A hearing officer appointed by the Village of New Miami shall hear the case. The hearing officer shall conduct a hearing not sooner than twenty-one (21) but not later than forty-five (45) days after the filing of a request for the hearing. The hearing officer may extend the time by which a hearing must be conducted upon a request for additional time by the person or entity who requested the hearing.
 2. The hearing officer shall ensure that the hearing is open to the public. The hearing officer shall post a docket in a conspicuous place near the entrance to the hearing room. The hearing officer shall identify on the docket, by recipient of Notice of Liability, the hearings scheduled for that day and the time of each hearing. The hearing officer may schedule multiple hearings for the same time to allow for occurrences such as non-appearances or admissions of liability.
 3. The person who requested the administrative hearing or a representative of the entity that requested the hearing shall appear for the hearing and may present evidence at the hearing.
 4. The hearing officer shall determine whether a preponderance of the evidence establishes that the violation alleged in the Notice of Liability did in fact occur and that the person or entity requesting the review is the person who was operating the vehicle at the time of the violation.
- (B)
1. If the hearing officer finds by a preponderance of the evidence that the alleged traffic violation did in fact occur and that the person or entity named in the Notice of Liability is a person who was operating the vehicle at the time of the violation, the hearing officer shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the Village of New Miami or its designee and the person or entity named in the Notice of Liability.

2. If the hearing officer finds by a preponderance of evidence that the alleged traffic law violation did not occur or did in fact occur but the person or entity named in the Notice of Liability is not the person who was operating the vehicle at the time of the violation, the hearing officer shall issue a written decision finding that the individual or entity is not liable for the violation and submit it to the Village of New Miami or its designee and the person or entity named in the Notice of Liability.
 3. If the person who requested the administrative hearing or a representative of the entity that requested the hearing fails to appear at the hearing, the hearing officer shall determine that the person or entity is liable for the violation. In such a case, the hearing officer shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the Village of New Miami or its designee and the person or entity named in the Notice of Liability.
 4. The hearing officer shall render a decision on the day the hearing takes place.
- (C) 1. In determining whether the person or entity named in the Notice of Liability is liable, the hearing officer may consider any of the following as an affirmative defense to the traffic law violation:
- a. That the motor vehicle or license plates of the motor vehicle was stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the traffic law violation or within forty-eight (48) hours after the traffic law violation occurred.
 - b. That the registered owner or person or entity named in the Notice of Liability was not the person operating the motor vehicle at the time of the violation. In order to meet the evidentiary burden imposed under 77.03(A)2(i) of this Section, the registered owner or person or entity named in the Notice of Liability shall provide to the hearing officer the identity of the designated party, that person's

name and current address, and any other evidence that the hearing officer determines to be pertinent.

2. A hearing officer may also consider the totality of the circumstances when determining whether to impose liability upon the person or entity named in the Notice of Liability.
- (D)
1. If the hearing officer finds that the person or entity named in the Notice of Liability was not the person who was operating the vehicle at the time of the violation or receives evidence identifying the designated party, the hearing officer shall provide to the Village of New Miami or its designee, within five (5) days of the hearing, a copy of any evidence substantiating the identity of the designated party.
 2. Upon receipt of evidence of the identity of the designated party, the Village of New Miami or its designee may issue a Notice of Liability to the designated party. The Village of New Miami shall ensure that the Notice of Liability issued under Section (D)(2) of this Section conforms with 77.04(A)(1)-(11). The Village of New Miami shall send the Notice of Liability by ordinary mail not later than twenty-one (21) days after receipt of the evidence from the hearing officer or the registered owner of the identity of the designated party.
- (E)
- If a designated party who was issued a Notice of Liability under 77.03(A) contests the Notice of Liability by filing a written request for an administrative hearing to review the Notice of Liability not later than thirty (30) days after receipt of the Notice of Liability, the Village of New Miami shall require the registered owner of the motor vehicle also to attend the hearing. If at the hearing involving the designated party, the hearing officer cannot determine the identity of the operator of the vehicle at the time of the violation, the registered owner is liable for the violation. The hearing officer then shall issue a written decision imposing liability for the violation of the registered owner and submit it to the Village of New Miami or its designee and to the registered owner. If the designated party also is a registered owner of the vehicle, liability for the violation shall follow the order of registered owners as listed on the title of the vehicle.
- (F)
- A person who is named in a Notice of Liability for a civil violation may assert a testimonial privilege in accordance with division (D) of Section 2317.02 of the Ohio Revised Code.
- (G)
- A person or entity may appeal a written decision rendered by a hearing officer under this section to the Hamilton Municipal Court with jurisdiction over the location where the violation occurred.

- (H) No decision rendered under this Section and no admission of liability under this Section is admissible as evidence in any other judicial proceeding in this state.

GENERAL PROVISIONS

Section 77.01 – DEFINITIONS

- (A) "Automated Speed Enforcement Program" ("ASEP") is a program designed to reduce speeding violations using an automated speed enforcement system.
- (B) "Automated Speed Enforcement System" ("ASES") is a system with one or more sensors working in conjunction with a speed measuring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.
- (C) "Hearing Officer" means any person appointed by the Village Mayor to conduct administrative hearings on violations recorded by the ASES, other than a person who is employed by a law enforcement agency as defined in Section 109.573 of the Revised Code.
- (D) "Registered Owner" means all of the following:
 - (1) Any person or entity identified by the Ohio Bureau of Motor Vehicles or any other state motor vehicle registration bureau, department, or office as the owner of a motor vehicle;
 - (2) The lessee of a motor vehicle under a lease of six (6) months or longer;
 - (3) The renter of a motor vehicle pursuant to a written rental agreement with a motor vehicle renting dealer.
- (E) "Motor Vehicle" has the same definition as in Section 70.01 of the Codified Ordinances of the Village of New Miami, Ohio.
- (F) "Recorded Images" means any of the following images recorded by an Automated Speed Enforcement System that show, on at least one image or on a portion of a videotape, the rear of a motor vehicle and the letters and/or numerals on the rear license plate of the vehicle:
 - (1) Two or more photographs, microphotographs, electronic images or digital images;
 - (2) Videotape.
- (G) * "Date of Issuance of Notice of Liability" shall be the date printed on the Notice of Liability immediately prior to its mailing.

AMENDED ORDINANCE NO. 1917

Chapter 77: Civil Penalties for Automated Speed Enforcement Violations

GENERAL PROVISIONS:

77.01 – Definitions

77.02 – General

77.03 – Offenses

77.04 – Notice of Liability

77.05 – Civil Penalty

77.06 – Collection of Civil Penalty

77.07 – Administrative Appeal

- (H) "Designated Party" means the person whom the registered owner of a motor vehicle, upon receipt of a Notice of Liability based upon images recorded by a traffic law photo monitoring device that indicated a traffic law violation, identifies as the person who was operating the vehicle of the registered owner at the time of the violation.

- (I) "Law Enforcement Officer" means a police officer of the Village of New Miami who is employed on a permanent, full-time basis by the Village of New Miami and assigns such law enforcement officer to the location of a traffic law photo monitoring device.

Section 77.02 – GENERAL

- (A) The Village of New Miami hereby amends its civil enforcement program for Automated Speed Enforcement System ("ASES") violations in order to comply with Senate Bill 342 and codified as Ohio Revised Code Sections 4511.0910-4511.099 and the Supreme Court of Ohio decisions in *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270 and *Walker v. City of Toledo*, 2014-Ohio-5461. ASES imposes a civil penalty resulting in monetary liability on the owner of a vehicle for the failure of an operator thereof to strictly comply with the posted speed limit in school zones or within the boundaries of a state or local park or recreation area where the speed of the vehicle exceeds the posted speed limit by at least 6 m.p.h. or any other location within the Village of New Miami where the speed of the vehicle exceeds the posted speed limit by at least 10 m.p.h.
- (B) The New Miami Police Department shall be responsible for administering the ASES. The New Miami Police Department shall be empowered to install and operate the ASES within the Village of New Miami using trained technicians who may or may not be police officers, police department employees, or other trained technicians who are not employees of the New Miami Police Department.
- (C) A law enforcement officer employed by the New Miami Police Department shall examine evidence of alleged traffic law violations recorded by the ASES to determine whether such a violation has occurred. If the image recorded by the ASES shows such a violation, contains the date and time of the violation, and shows the letters and/or numerals on the license plate of the vehicle involved as well as the state that issued the license plate, the officer may use any lawful means to identify the registered owner.
- (D) The fact that a person or entity is the registered owner of a motor vehicle is prima facie evidence that the person or entity is the person who was operating the vehicle at the time of the speed violation.
- (E) Within thirty (30) days of the speed violation, the Village of New Miami or its designee may issue and send by regular mail a Notice of Liability charging the registered owner with the violation. The Notice of Liability shall comply with Section 4511.097 of the Revised Code.
- (F) A certified copy of the Notice of Liability alleging a traffic law violation, sworn to or affirmed by a law enforcement officer employed by the Village of New Miami, including by electronic means, and the recorded images produced by the ASES, is prima facie evidence of the facts contained therein and is admissible in a proceeding for review of the Notice of Liability issued under this section.