

LOCAL LAW NO.5-2020

BY COUNCIL PRESIDENT KHADER, MAJORITY LEADER PINEDA-ISAAC, MINORITY LEADER BREEN, COUNCILMEMBERS WILLIAMS, DIAZ, RUBBO AND MERANTE:

A LOCAL LAW AMENDING CHAPTER 109 OF THE CODE OF THE CITY OF YONKERS, ENTITLED "VEHICLES AND TRAFFIC" IN REGARD TO AUTHORIZING AND EMPOWERING THE CITY OF YONKERS TO ESTABLISH A PROGRAM IMPOSING MONETARY LIABILITY FOR FAILURE OF A VEHICLE OPERATOR TO STOP FOR A SCHOOL BUS DISPLAYING A RED VISUAL SIGNAL AND STOP-ARM

The City of Yonkers, in City Council convened, does hereby ordain and enact:

Section 1. Chapter 109 of the Code of the City of Yonkers entitled "Vehicles and Traffic" is hereby amended in part by adding a new §109-46 to Article V entitled "Parking Violations Office" to read as follows:

Chapter 109. VEHICLES AND TRAFFIC

Article V. Parking Violations Office

§109-46. Owner Liability for Failure of Vehicle Operator to Stop For a School Bus Displaying a Red Visual Signal and Stop-Arm.

A. Purpose and Intent; Establishment of Program.

Pursuant to §1174-a of the New York State Vehicle and Traffic Law ("VTL"), the City of Yonkers (hereinafter "City") hereby establishes a demonstration program imposing monetary liability on the owner of a vehicle for failure to comply with §1174 of the VTL, which requires vehicle operators to stop for school buses that have halted to receive or discharge passengers. Through the implementation of this section, the City, in collaboration with the Yonkers City School District (hereinafter "District"), is empowered to install and use photo violation monitoring equipment on school buses to capture the violators of this law.

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B. Definitions.

As used in this section, all words shall have their plain meaning, except for the following words, which shall have the following meanings:

DATA shall mean any photographs, microphotographs, videotapes, or other recorded images and data produced by the School Bus Photo Violation Monitoring System.

DEMONSTRATION PROGRAM shall mean the use of photo violation monitoring equipment placed on School Buses throughout the City of Yonkers to impose monetary liability on the owner of a vehicle for failure to comply with §1174 of the VTL.

MUTCD shall mean the manual and specifications for a uniform system of traffic control devices maintained by the commissioner of transportation pursuant to §1680 of the VTL.

OWNER shall mean any person, corporation, partnership, firm, agency, association, lessor, or organization who at the time of the issuance of a notice of violation in which a vehicle is operated: (a) is the beneficial or equitable owner of such vehicle; or (b) has title to such vehicle; or (c) is the registrant or co-registrant of such vehicle which is registered with the Department of Motor Vehicles of the State of New York or any other state, territory, district, province, nation or other jurisdiction; or (d) uses such vehicle in its vehicle-renting and/or leasing business; or (e) as defined by §128 or §2101 of the VTL.

SCHOOL BUS shall mean a passenger vehicle having a seating capacity of more than seven passengers, used primarily to transport pupils, teachers, and other person acting in a supervisory capacity to and from school or school activities, as provided in subdivisions 20 and 21-c of §375 of the VTL.

SCHOOL BUS COMPANY shall mean school buses owned and operated by the Yonkers City School District, or owned and operated by private company or companies under contract with the Yonkers City School District.

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SCHOOL BUS PHOTO VIOLATION MONITORING SYSTEM (hereinafter "System") shall mean a device or system of devices that is capable of operating independently of an enforcement officer, which is installed to work in conjunction with a school bus stop-arm and which automatically produces two or more photographs, microphotographs, a videotape or other recorded images of a vehicle at the time it is used or operated in violation of §1174(a) of the VTL.

C. Agreements and Authorizations Necessary

1. The City shall enter into an agreement with the District for the maintenance, installation and use of the System on School Buses and for the proper handling and custody of Data produced by such monitoring system. The agreement shall also include the forwarding of such Data produced by the System to the City.

- a. The City shall bear the total cost of the installation, maintenance, and use of the System.
- b. The City may enter into an agreement with a provider for the installation and maintenance of the System.
- c. On or before September 1 of each year, the District shall determine and certify to the City the total cost to the District for the maintenance, installation, and use of the System, as well as the cost for the proper handling and custody of the Data and the forwarding of the Data to the City.
- d. On or before December 1 of each year, the District shall provide to the City, all certified costs related to this Demonstration Program for that same year. No later than twenty (20) days after such payment is submitted or is due, whichever one is first, the District shall submit to the Commissioner of Finance and the Chairperson of the Budget and Finance Committee of the Yonkers City Council a report showing the amount of costs and the amount of payments received. If the City fails to make the required payments to the District by the twentieth (20th) day after the date such payment was due: (1) the District shall notify the Commissioner of Finance and the Chairperson of the Budget and Finance Committee of the City of Yonkers of such occurrence within twenty-four (24) hours of such day, and (2) the Demonstration Program shall be suspended within the City until such time as the City makes the payment required to the District. The

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District shall notify the Commissioner of Finance and the Chairperson of the Budget and Finance Committee of the Yonkers City Council of such payment within seven (7) business days of its receipt, provided, however, that any notice of liability issued prior to the suspension of the program shall be valid.

2. Any contract and/or agreement entered into for the Demonstration Program between the City and the District under this Code must be approved by a majority vote of the City Council of the City and by resolution of the District. Both the City and District shall have the ability to withdraw from such agreement on twenty (20) days' written notice to the other signatories of the agreement. The contract/agreement between the City and the District shall provide that any image or images captured by the System shall be inadmissible in any disciplinary proceeding convened by the District or any school bus contractor thereof, and any proceeding initiated by the New York State Department of Transportation involving licensure privileges of school bus operators. Any school bus photo violation monitoring device mounted on a school bus shall be directed outwardly from such school bus to capture images of vehicles operated in violation of §1174 of this chapter, and images produced by such device shall not be used for any other purpose.

3. The purchase and/or lease of equipment for the Demonstration Program by the City shall be subject to §103 of the New York State General Municipal Law.

D. Restriction on Use.

1. The System shall be mounted on a School Bus, and shall be directed outwardly from such school bus to capture images of vehicles operated in violation of §1174 of the VTL; images produced by such devices shall not be used for any other purpose.
2. The District shall be prohibited from accessing any Data from the System, but shall provide for the proper handling and custody of such Data to the City for the purpose of determining whether a motor vehicle was operated in violation of §1174(a) of the VTL, and imposing monetary liability on the owner of the motor vehicle.

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3. Data produced by the System shall be destroyed:
 - a. Ninety (90) days after the date of the alleged imposition of liability if a notice of liability is not issued for such alleged imposition of liability pursuant to §1174-a of the VTL, or
 - b. Upon the final disposition of a notice of liability issued pursuant to §1174-a of the VTL.

E. Privacy and Citizen Notification.

1. The City, District, and any School Bus Company shall enforce measures to protect the privacy of information captured by the System, including the identity of the passengers and the contents of the vehicle. The Parking Violations Office shall establish regulations in accordance with §1174-a(a)(4) of the VTL to ensure privacy protections for drivers, passengers, pedestrians, and cyclists. 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 systems shall not include images that identify the driver, the passengers, the contents of the 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 vehicle, provided that such county, city, town or village has made a reasonable effort to comply with the provisions of this paragraph;
 - b. A prohibition on the use or dissemination of vehicles' license plate information and other information and images captured by school bus photo violation monitoring systems except: (i) as required to establish liability under this section or collect payment of penalties; (ii) as required by court order; or (iii) as otherwise required by law;
 - c. The installation of signage in conformance with standards established in the MUTCD at each roadway entrance of the jurisdictional boundaries of the City giving notice that school bus photo violation monitoring systems are used to enforce restrictions on vehicles violating §1174 of the VTL; and

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- d. Oversight procedures to ensure compliance with the aforementioned privacy protection measures.

F. Liability.

1. The owner shall be liable for a penalty imposed pursuant to this section if such vehicle was used and/or operated with the permission of the owner, either express or implied, in violation of §1174(a) of the VTL, and such violation is evidenced by information obtained from the System.
 - a. No owner of a vehicle shall be liable for a penalty imposed pursuant to this section when the owner was not operating such vehicle, and the operator of such vehicle has been convicted of the underlying violation of §1174(a) of the VTL.
2. A certificate, sworn to or affirmed by a technician employed by the City, or a facsimile thereof, based upon the inspection of the Data, shall be prima facie evidence of the facts contained therein. Any Data evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation.
3. An owner that is found to be liable for a violation of §1174(a) of the VTL through §1174-a of the VTL, shall be liable for the following:
 - a. First offense within an eighteen (18) month period, two hundred fifty dollars and zero cents (\$250.00).
 - b. Second offense within an eighteen (18) month period, two hundred seventy-five dollars and zero cents (\$275.00).
 - c. Third or subsequent offense within an eighteen (18) month period, three hundred dollars and zero cents (\$300.00).
4. The City may impose an additional penalty, not in excess of twenty-five dollars and zero cents (\$25.00) for each violation for the failure to respond to a notice of liability within the prescribed time period.
5. An imposition of liability under this Code Section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom liability is imposed, nor shall it be used for insurance purposes.

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6. A notice of liability shall:

- a. Be prepared and mailed by the Parking Violations Office, and be sent by first class mail to each person alleged to be liable as an owner for a violation of §1174(a) of the VTL.
 - b. Contain the name and address of the person alleged to be liable as an owner for a violation of §1174(a). It shall also have the registration number of the vehicle, the location of the violation, the date and time of the violation, and the identification number of the camera that recorded the violation.
 - c. Contain information advising the person accused of liability of the manner and the time in which he or she may contest the liability alleged in the notice. Such notice of liability shall also contain a warning advising persons accused of said liability 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 against them.
7. The City may, during the first thirty (30) day period in which the System is in operation pursuant to state law and this Code Section, issue a written warning in lieu of a notice of liability for failure of operators to comply with §1174 of the VTL when meeting a school bus marked and equipped as provided in subdivisions 20 and 21-c of §375 of such law.

G. Adjudication of Liability.

1. The Parking Violations Office shall have the authority to adjudicate violations of §1174(a) of the VTL pursuant to §1174-a(h) of the VTL and this Code, in accordance with the requirements of this Code Section and Article V of the Charter of the City of Yonkers.
2. If an owner charged with a violation of §1174(a) of the VTL through §1174-a of the VTL and contests such allegation of liability, the Parking Violations Office shall advise such person by first class mail the date on which they must appear to answer the charge at a hearing.

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3. The form and content of such notice shall be proscribed by the Director of the Parking Violations Office, and shall contain a warning to advise the person to appear on the date designated; adjourn the date if needed; and that failure to do one or the other shall be deemed an admission of liability and default judgment may be entered thereon.
4. Every hearing for the adjudication of liability brought under §1174 pursuant to §1174-a of the VTL shall be held before an Administrative Law Judge in accordance with the rules and regulations promulgated by the Parking Violations Office. The following rules shall also apply:
 - a. A record shall be made of a hearing at which liability is being contested under §1174-a of the VTL.
 - b. The Administrative Law Judge shall make a determination on the charges either sustaining them or dismissing them.
 - c. Final determinations sustaining or dismissing liability shall be entered on a final determination roll maintained by the Parking Violations Office together with records showing payment and nonpayment of penalties.
 - d. When an operator or owner fails to contest an allegation of liability in accordance with §1174-a of the VTL, fails to appear on a designated hearing date or subsequent adjourned date, or fails after a hearing to comply with the determination of the Administrative Law Judge, such failure to contest, appear or comply shall be deemed, for all purposes, an admission of liability and shall be grounds for rendering and entering a default judgment in an amount provided by the rules and regulations of the Parking Violations Office.
 - i. However, after the expiration of the original date prescribed for entering a plea and before a default judgment may be rendered, the Parking Violations Office shall, pursuant to applicable provisions of law, notify such operator or owner by first class mail of the following: (1) of the liability alleged in accordance with §1174-a of the VTL, (2) of the impending default judgment, (3) that judgment will be entered the Civil Court of the City, and (4) that a default may be avoided by contesting an allegation of liability in accordance with §1174-a of the VTL, or by appearing within thirty (30) days of the sending of such notice. Allegations contested during the aforementioned period shall be in the manner prescribed in the notice and not subject to an additional penalty or fee. Notice of impending default judgment shall not be required prior to the rendering of judgments

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against non-residents of New York State. When a person has demanded a hearing, no fine or penalty shall be imposed for any reason, prior to the holding of the hearing. If the Administrative Law Judge shall make a determination on the allegation of liability, sustaining them, he or she shall impose no greater penalty than those upon which the person was originally charged.

5. In no case shall a default judgment be rendered, or where required, a notice of impending default judgment be sent, more than two (2) years after the expiration of the time prescribed for contesting an allegation of liability.

H. Defenses from Liability.

1. If an owner receives a notice of liability for any time period which the vehicle was reported to the police as having been stolen, it shall be a valid defense to an allegation of liability for a violation of §1174(a) of the VTL, during the time that the vehicle had been reported to the police as stolen through the time it had been recovered. For purposes of asserting the aforementioned defense, it shall be sufficient to show a certified copy of the police report on the stolen vehicle sent by first class mail to the Parking Violations Office.
2. It shall also be a defense to any prosecution for a violation of §1174(a) of the VTL that such school bus stop-arms were malfunctioning at the time of the alleged violation.
3. An owner who is a lessor of a vehicle to which notice of liability was issued pursuant to § 1174-a of the VTL, shall not be liable for the violation of §1174(a) of the VTL provided that he or she sends to the Parking Violations Office a copy of the rental, lease, or other such contract document covering such 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 Parking Violations Office of the date and time of such violation, together with the other information contained in the original notice of liability. Failure to send the information listed above within the thirty-seven (37) day period shall render the owner liable for the penalty prescribed in this Code Section. Where the lessor complies with this section, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for the purpose of this Code Section, the lessee shall be subject to liability pursuant to §1174-a of the

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VTL, and the lessee shall be sent a notice of liability pursuant to §1174-a of the VTL.

4. There shall be a presumption of an owner's authorization of an operator's use of such vehicle at the time the operator failed to comply with §1174 of the VTL. However, if the owner that is liable for a violation of §1174(a) of the VTL was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator. Notwithstanding any contrary provision, no owner of a vehicle shall be subject to a monetary fine imposed pursuant to this Code if the operator of such vehicle was operating such vehicle without the consent of the owner.

I. City Reporting Requirements.

1. The City shall prepare and submit an annual report on the results of the use of the System to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly on or before June 1 of each year in which the demonstration program is operable. A copy of such report shall be provided to the Commissioner of the Yonkers Police Department as well.
2. The report shall include, but is not limited to:
 - a. The number of buses and a description of the routes where they were stationed;
 - b. The aggregate number and severity of accidents reported where the System is used for the year preceding the installation of such system, if such records exist;
 - c. The aggregate number, type and severity of accidents reported at locations where the System is used, to the extent the information is maintained by the City or the Department of Motor Vehicles;
 - d. The number of violations recorded at each location and the aggregate number of violations on a daily, weekly, and monthly basis;
 - e. The number of convictions for violations of §1174(a) of the VTL recorded by the System, to the extent that information is tracked by the Department of Motor Vehicles;

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- f. The total number of notice of liability issues for violations recorded by such systems;
- g. The number of fines and total amount of fines paid after the first notice of liability issued for violations recorded by such systems;
- h. The number of violations adjudicated and results of such adjudication including breakdowns of dispositions made for violations recorded by such systems which shall be provided at least annually to such City by the Parking Violations Office;
- i. The total amount of revenue realized by the City from the program;
- j. The expenses incurred by the City in connection with the program;
- k. The quality of the adjudication process and the results, including the total number of hearings scheduled, rescheduled, and held; the total number of cases where fines were paid on or before the hearing date, and the total number of default judgments entered. Such information shall be provided annually from the Parking Violations Office to the City; and
- l. A description of the public education activities conducted to warn motorists of the dangers of overtaking and passing stopped school buses.

Section 2. This Local Law shall take effect upon compliance with §C4-6 of the Charter of the City of Yonkers and the provisions of the Municipal Home Rule Law of the State of New York.

THIS LOCAL LAW WAS ADOPTED BY THE CITY COUNCIL AT A STATED MEETING HELD ON TUESDAY, OCTOBER 13, 2020 BY A VOTE OF 7-0.

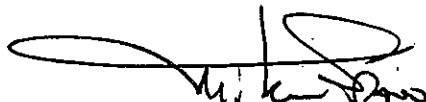


COUNCIL PRESIDENT

10/19/20
DATE

SENT TO MAYOR


10/19/20
DATE



MAYOR

APPROVED 10.29.20
DATE

ATTEST



CITY CLERK

10/30/20
DATE