

**ORDINANCE RECORD****VILLAGE OF NEWBURGH HEIGHTS, OHIO****ORDINANCE NO. 2022-22**

INTRODUCED BY: Mayor Trevor Elkins

**AN ORDINANCE AMENDING CODIFIED ORDINANCE CHAPTER 315 ENTITLED  
“AUTOMATED SPEED AND TRAFFIC ENFORCEMENT PROGRAM” AND  
DECLARING AN EMERGENCY.**

WHEREAS, during the course of operating its automated speed and traffic law enforcement program, the Village has encountered factual scenarios that it wishes to address more directly through its ordinances;

WHEREAS, the Village is in compliance with the due process requirements of the holding in *State ex rel. Magsig v. Toledo* (2020), 160 Ohio St.3d 342, 2020-Ohio-3416 and wishes to have the language in its ordinances reflect said holding;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL FOR THE VILLAGE OF NEWBURGH HEIGHTS, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1. Council hereby amends Codified Ordinance Chapter 315 entitled “Automated Speed and Traffic Enforcement Program,” which amendments shall be in the form attached hereto as Exhibit A, and which exhibit is incorporated herein by reference as if fully rewritten.

Section 2. Codified Ordinance Chapter 315 in existence immediately prior to the passage of this ordinance is hereby repealed.

Section 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in such formal action occurred in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of public peace, health and safety of the inhabitants of the Village of Newburgh Heights, such emergency being the need to update, clarify and improved the provisions of said chapter of ordinances; wherefore, provided it receives the affirmative vote of four (4) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

PASSED: March 1, 2022



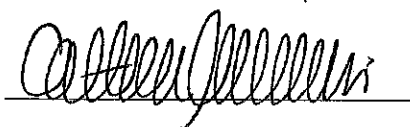
Trevor Elkins, Mayor

Village of Newburgh Heights, Ohio

Approved as to Form



Solicitor



Cathleen Nagorski, Fiscal Officer

Village of Newburgh Heights, Ohio

1<sup>ST</sup> Reading: 3/1/2022  
2<sup>ND</sup> Reading: 3/1/2022  
3<sup>RD</sup> Reading: 3/1/2022

## CHAPTER 315

## Automated Speed and Traffic Enforcement Program

- 315.01 Definitions.
- 315.02 General provisions.
- 315.03 Civil Offense.
- 315.04 Notice of liability.
- 315.05 Rights of those ticketed.
- ~~315.06~~ Civil penalties.
- ~~315.06~~ Collection of civil penalty.
- ~~315.07~~ Administrative appeal hearing process Contesting tickets.
- 315.08 Calibration.
- 315.09 Signs.
- 315.10 Collection of Civil Penalty.

As used in this Chapter, words and phrases are defined as follows:

(a) "Automated speed enforcement program" is a program intended to reduce speeding violations using an automated speed enforcement system.

(b) "Automated speed enforcement system" is a system with one or more sensors working in conjunction with a traffic law photo-monitoring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.

(c) "Prosecuting Attorney" means the person appointed by the Village Mayor to litigate cases in the Garfield Heights Municipal Court. ~~"Hearing Officer" is the independent third party hearing officer appointed by the Mayor and who is an active, registered attorney in good standing with the Ohio Supreme Court, other than a person who is employed by a law enforcement agency as defined in Section 109.573 of the Ohio Revised Code. The Hearing Officer is appointed to conduct administrative hearings on violations recorded by traffic law photo-monitoring devices.~~

(d) "Vehicle Owner" shall mean a "registered owner as such term is hereafter defined in this Section 315.01.

(e) "Motor ~~v~~Vehicle" has the same definition as in Village of Newburgh Heights Codified Ordinance Section 301.20, as amended from time to time.

(f) "Motor Vehicle Lleasing Ddealer" has the same meaning as in Section 4517.01 of the Ohio Revised Code.

(g) "Motor Vehicle Renting Ddealer" has the same meaning as in Section 4549.65 of the Ohio Revised Code.

(h) "Recorded Images" means images recorded by an automated speed enforcement system traffic law photo-monitoring device that show, on at least one image or on a portion of the videotape, the rear of a motor vehicle and the letters and numerals on the rear license plate of the vehicle, on any of the following:

- (1) Two or more photographs; or

- (2) Two or more microphotographs; or
- (3) Two or more electronic images; or
- (4) Two or more digital images; or
- (5) Videotape or video recording.

(i) "Date of issuance of notice of liability" shall be the date printed on the notice of liability immediately prior to its mailing.

(j) "Traffic Law Photo-monitoring Device" means an electronic system consisting of photographic, video or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces recorded images.

(k) "Traffic Law Violation" means either of the following:

(1) A violation of Section 4511.12 of the Revised Code based on the failure to comply with Section 4511.13 of the Revised Code or a substantially equivalent municipal ordinance that occurs at an intersection due to failure to obey a traffic signal;

(2) A violation of Section 4511.21 or 4511.211 of the Revised Code or Village of Newburgh Heights Codified Ordinance Section 333.03 due to failure to observe the applicable speed limit.

(l) "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 months or longer;

(3) The renter of a motor vehicle pursuant to a written rental agreement with a motor vehicle renting dealer.

(m) "System Location" means the approach to an intersection or area of roadway toward which a traffic law photo-monitoring device is directed and is in operation.

(n) "Law Enforcement Officer" means a sheriff, marshal, deputy marshal, police officer of a police department of any municipal corporation, police constable of any township, or police officer of a township or joint police district, who is employed or an auxiliary of the Village of Newburgh Heights Police Department.

(o) "Ticket" or "notice of liability" means any traffic ticket, citation, summons, or other ticket issued in response to an alleged traffic law violation detected by a traffic law photo monitoring device, that represents a civil violation.

(p) "Chapter" refers to Chapter 315 of the Codified Ordinances of the Village of Newburgh Heights and includes and encompasses each of the codified ordinances set forth therein as amended.

### 315.02 GENERAL PROVISIONS.

(a) Notwithstanding any other provision of the traffic code ordinances of the Village of Newburgh Heights, the Village hereby adopts a civil enforcement program for automated speed enforcement system violations as outlined in this Chapter. This program imposes monetary liability on the registered owner of a vehicle for failure of an operator thereof to strictly comply with the posted speed limit in school zones or streets or highways within the Village of Newburgh

Heights. The imposition of liability under this Chapter shall not be deemed a conviction for any purpose and shall not be made part of the operating record of any person upon whom the liability is imposed.

(b) The Chief of Police shall be responsible for administering the automated speed enforcement program. Specifically, the Chief of Police shall be empowered to deploy and operate the automated speed enforcement system within the Village of Newburgh Heights.

(c) Any citation for an automated speed system violation pursuant to this section, known as a "notice of liability" shall:

(1) Be approved by a law enforcement officer of the Village of Newburgh Heights Police Department who shall (a) examine evidence of an alleged violation recorded by the automated speed enforcement system to determine whether a speeding infraction has occurred, and (b) determine whether the recorded images in connection with an alleged violation shows an infraction, contains a date and time of the alleged violation, shows the letters and numerals on the vehicle's license plate and shows the state in which the license plate was issued.

(2) Be forwarded by first-class mail or personal service to the registered owner's address as given on the state's motor vehicle registration.

(3) Clearly state the manner in which the violation may be appealed.

(4) Comply with the applicable requirements of state law.

### 315.03 CIVIL OFFENSE.

(a) The vehicle owner shall be liable for a penalty imposed pursuant to this section if such vehicle is operated at a speed in excess of those set forth in Section 333.03 of the Codified Ordinances of the Village of Newburgh Heights, Ohio or Ohio Revised Section 4511.21, as each may be amended from time to time. ~~(Ord. 2017-31. Passed 8-7-17.)~~

(1) For a system location that is located within a school zone or within the boundaries of a state or local park or recreation area, the Village shall not issue a violation as described in this Chapter using an automated speed enforcement system unless the vehicle involved in the violation is traveling at least six miles per hour over the posted speed limit.

(2) For a system location that is located within any other location than those described in Section 315.03(a)(1) above, the Village shall not issue a violation as described in this Chapter using an automated speed enforcement system unless the vehicle involved in the violation is traveling at least ten miles per hour over the posted speed limit.

~~—(b)~~

~~A person or entity who receives a notice of liability or ticket for a civil violation shall elect to do one of the following:~~

~~—(1) In accordance with the instructions on the notice of liability, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the violation;~~

~~—(2) (i) Within thirty days after receipt of the notice of liability, provide the Village of Newburgh Heights Police Department with either of the following affidavits:~~

~~—— (A) 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 held liable for the violation, and containing at a minimum the name and address of the designated party; or~~

~~—— (B) An affidavit by the vehicle owner stating that at the time of the violation, the motor vehicle or the license plates of the motor vehicle involved were stolen or were in the care, custody, and control of some person who did not have the owner's permission to use the motor vehicle, or that the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen before the violation occurred and were not under the control or possession of the vehicle owner at the time of the violation, the vehicle owner must submit proof that a police report, incident report/general offense report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.~~

~~—— (ii) A registered owner is not responsible for a traffic law violation if, within thirty days after the date of mailing of the notice of liability, the registered owner furnishes an affidavit specified in Section 315.03(b)(2)(i)(A) or (B) to the Village in a form established by the Village and the following conditions are met:~~

~~—— (A) If the registered owner submits an affidavit as specified in Section 315.03(b)(2)(i)(A) 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 days or is determined liable in an administrative hearing;~~

~~—— (B) If the registered owner submits an affidavit as specified in section 315.03(b)(2)(i)(B) of this section, the affidavit is supported by a stolen vehicle or stolen license plate report as required in that division;~~

~~—— (C) If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the Village of Newburgh Heights Police Department of 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 ticket for an alleged traffic law violation detected by a traffic law photo-monitoring device is not liable for a ticket 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 ticket or notice of liability and subsequently attempt to collect a fee or assess the lessee or renter a charge for any payment of such a ticket made on behalf of the lessee or renter.~~

~~—— (D) 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, provide to the Village of Newburgh Heights Police Department an affidavit, sworn to or affirmed by an agent of the corporate entity, that 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.~~

~~—— (E) Contest the ticket 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 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 violation and notice of liability, and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation.~~

~~—(c) In the event that the Village and/or the Village of Newburgh Heights Police Department receives from a registered owner an affidavit described in Section 315.03(b)(2)(i)(A) or (B) or a notice described in Section 315.03(b)(2)(i)(D) hereof, the Village may proceed to send a notice of liability that conforms with Section 315.04 to the designated party. The Village shall send the notice of liability to the designated party not later than twenty-one days after receipt of the affidavit or notification.~~

~~—(d) A certified copy of the notice of liability alleging the violation of this chapter occurred, sworn to or affirmed by a law enforcement officer of the Village of Newburgh Heights Police Department, with the recorded images produced by an automated speed enforcement system photographic system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this chapter.~~

(be) 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 emergency or call for emergency service.

(Ord. 2014-66. Passed 12-30-14.)

#### 315.04 NOTICE OF LIABILITY.

(a) The Village or its designee shall process such a Ticket for a civil violation and shall send the Ticket by ordinary mail to any Registered Owner of the motor vehicle that is the subject of the Traffic Law Violation. The Village or its designee shall ensure that the Ticket contains all of the following:

(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 date, time, and location of the Traffic Law Violation;

(5) A copy of the images recorded by the Law Enforcement Officer who used the Traffic Law Enforcement Device to record the violation;

(6) The name and badge number of the Law Enforcement Officer who approved the Traffic Law Enforcement Device to record the violation;

(7) 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 and/or other means of payment;

(8) A statement signed by a Law Enforcement Officer indicating that, based on an inspection of Recorded Images, the motor vehicle was involved in a Traffic Law Violation, and that the Recorded Images are prima facie evidence of that Traffic Law Violation, the statement may be signed electronically;

(9) Information advising of the options prescribed in Section 315.05, specifically to include the time, place, and manner to contest a violation and any necessary forms to do so, and the procedure for disclaiming liability by submitting an affidavit as prescribed in Section 315.05; and

(10) A warning that failure to exercise one of the options prescribed in Section 315.05 is deemed to be an admission of liability and waiver of the opportunity to contest the violation.

(d) The Village or its designee shall send the Ticket by ordinary mail not later than thirty (30) days after the date of the alleged Traffic Law Violation.

(e) The Village or its designee may elect to send, by ordinary mail not later than thirty (30) days after the date of the alleged Traffic Law Violation, a warning notice in lieu of a Ticket under this Chapter.

(f) Except as provided under Section 315.05 of this Chapter, the Village of Newburgh Heights or its designee may not mail a notice of liability to a person who is not the registered owner.

(g) It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other applicable state vehicle registration office) was operating the vehicle at the time of the offense set out in Section 315.03 of this Chapter. This evidence and presumption may be rebutted in accordance with Section 315.03(b) or 315.07 of this Chapter of the Codified Ordinances of the Village of Newburgh Heights.

(h) Nothing in this Section shall be construed to limit the liability of an owner of a vehicle for any violation of Section 315.03.

~~(a) The notice of liability shall be processed by the Village of Newburgh Heights or its designee and shall be served by ordinary mail to the owner's address as given on the motor vehicle registration from the Bureau of Motor Vehicles, or its equivalent, of the state in which it is registered. 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 system location;~~

~~— (5) The date and time of the violation;~~

~~— (6) A copy of the recorded image(s);~~

~~— (7) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and the address to which payment is to be sent;~~

~~— (8) Information advising the person alleged to be liable of the options as provided in Section 315.03(b);~~

~~— (9) Information advising the person or entity alleged to be liable of the options prescribed in Ohio Revised Code Section 4511.098 and Village of Newburgh Heights Codified Ordinances Sections 315.03 and 315.07, specifically 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 any of those sections;;~~

~~— (10) The date of issuance of the notice of liability;~~

~~— (11) A statement signed by a law enforcement officer employed by the Village of Newburgh Heights 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;~~



~~—(12)—A warning that failure to exercise one of the options prescribed in Ohio Revised Code Section 4511.098 or Village of Newburgh Heights Codified Ordinances Sections 315.03 or 315.07 is deemed to be an admission of liability and waiver of the opportunity to contest the violation.~~

~~—(Ord. 2017-31. Passed 8-7-17.)~~

~~—(b)—A notice of liability issued under this chapter shall be mailed no later than thirty (30) calendar days after the alleged violation.~~

~~—(c)—Except as provided under Section 315.03(b) of this chapter, the Village of Newburgh Heights or its designee may not mail a notice of liability to a person who is not the registered owner.~~

~~—(d)—It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other applicable state vehicle registration office) was operating the vehicle at the time of the offense set out in Section 315.03(a) of this chapter. This evidence and presumption may be rebutted in accordance with Section 315.03(b) or 315.07 of this Chapter of the Codified Ordinances of the Village of Newburgh Heights.~~

~~—(e)—Nothing in this Section shall be construed to limit the liability of an owner of a vehicle for any violation of Section 315.03. (Ord. 2014-66. Passed 12-30-14.)~~

### 315.05 RIGHTS OF THOSE TICKETED.

(a) A person or entity who receives a Ticket for a Traffic Law Violation sent in compliance with this Chapter shall elect to do one of the following within thirty (30) days of the mailing date of the Ticket:

(1) In accordance with instructions on the Ticket, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the violation; or

(2) Contest liability for the Ticket in accordance with this Section 315.05; or

(3) The Registered Owner may provide the Village Police Department with one of the following affidavits or requisite notification:

(A) 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 shall be held liable for the violation, and containing at a minimum the name and address of the Designated Party; or

(B) An affidavit executed by the Registered Owner stating that at the time of the violation, the motor vehicle or the license plates issued 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 Traffic Law Violation or within forty-eight (48) hours after the Traffic Law Violation occurred; or

(C) If the Registered Owner is a corporate entity, an affidavit, sworn to or affirmed by an agent of the corporate entity, that provides the name and address of the employee who was operating the motor vehicle at the time of the Traffic Law Violation and who is the Designated Party; or

(D) If the Registered Owner is a Motor Vehicle Leasing Dealer or a Motor Vehicle Renting Dealer, written notification of the name and address of the lessee or renter of the motor vehicle at the time of the Traffic Law Violation and who is the Designated Party. Neither the Motor Vehicle Leasing Dealer nor the Motor Vehicle Renting Dealer shall pay such a Ticket and subsequently attempt to collect a fee or assess the lessee or renter for any payment of such a Ticket made on behalf of the lessee or renter.

(b) When the Village Police Department receives an affidavit or notification described in this Section 315.05 from a Registered Owner, the Village or its designee may proceed to send a Ticket that conforms with the requirements set forth in Section 315.04 to the Designated Party. The Village or its designee shall send the Ticket to the Designated Party by ordinary mail not later than twenty-one (21) days after receipt of the affidavit or notification.

(c) A Registered Owner shall not be responsible for a Traffic Law Violation if, within thirty (30) days after the date of mailing of the Ticket, the Registered Owner furnishes either an affidavit or the notification specified in subsection (b) above, to the Village Police Department and one of the following conditions is met:

(1) Under this Section 315.05, within thirty (30) days after the date of mailing of a Ticket to the Designated Party, the Designated Party either accepts liability for the Traffic Law Violation by paying the civil penalty or fails to contest liability for the Ticket in accordance with Section 315.05;

(2) Under Section 315.05, the Registered Owner submits an affidavit that is supported by a stolen vehicle or stolen license plate report filed with an appropriate law enforcement agency.

(3) Under Section 315.05, if it is determined that a valid Motor Vehicle Leasing Dealer or Motor Vehicle Renting Dealer received a Ticket for an alleged Traffic Law Violation detected by a Law Enforcement Officer using an Officer-Operated Handheld Traffic Law Enforcement Device, neither will be held liable for a Ticket 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.

### 315.06 CIVIL PENALTIES.

(a) 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 Section 315.053(d) applies, the registered owner or designated party for the motor vehicle 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.

(b) The civil penalty under this Chapter shall be in accordance with the following schedule:

(1) Penalties for traffic law violations occurring within any other location than those described in Section 315.03(a)(1) shall be assessed as follows, according to the degree of the traffic law violation:

Miles Per Hour Over Speed Limit	Amount of Penalty
1-19	\$150.00
20-29	\$200.00
30 or more	\$300.00
within a school zone or within the boundaries of a state or local park or recreation area	
1-19	\$150.00
20-29	\$200.00
30 or more	\$300.00

(2) If the civil penalty is paid more than thirty (30) calendar days, but within forty five (45) calendar days after date of issuance of the notice of liability, an additional late fee of twenty-five dollars (\$25.00) shall be added to the amount of the civil penalty;

(3) If the civil penalty is paid more than forty five (45) calendar days of the date of issuance of the notice of liability, an additional late fee of eighty dollars (\$80.00) shall be added to the amount of the civil penalty;

(4) In addition to any civil penalty and any additional late fee, any and all costs or expenses incurred by the Village in connection with the placement of a traffic law violation ticket or notice of liability issued hereunder with outside counsel for litigation or collection thereof shall be assessed against the person or entity found to be liable hereunder.

(5) In addition to any civil penalty and any additional late fee, any and all costs or expenses incurred by the Village in collecting any amount owed hereunder shall be assessed against the person or entity found to be liable hereunder. Amounts owed hereunder may be referred to a collection agency or other service provider for collection. In the event that the Village makes a referral to any such collection agency or service provider for collection of the civil penalty and any additional amounts owed hereunder, the costs or expenses incurred by the Village in collecting said amounts will be thirty five percent (35%) of the amount due and owing. Said thirty five percent (35%) collection fee shall not preclude any other charge, expense or fee allocable under this chapter to a registered owner of designated party of a motor vehicle.

(Ord. 2016-66. Passed 11-15-16.)

(6) The failure to respond to a notice of liability in a timely fashion as set forth in this ordinance shall constitute a waiver of the right to contest liability for the violation under Section 315.03(b) of this Chapter.

(7) Persons who choose to pay the civil penalty without appearing before the Garfield Heights Municipal Court a Hearing Examiner as set forth in Codified Ordinance Section 315.07 may do so in the manner indicated on the notice of liability.

(8) A violation for which a civil penalty is imposed under this chapter is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4507.021 for minor misdemeanor moving traffic offenses and may not be recorded on the driving record of the owner or operator of the motor vehicle and shall not be reported to Bureau of Motor Vehicles, nor shall such a violation be recorded on the driving record of the owner or operator of the vehicle involved in the violation.

#### 315.06 COLLECTION OF CIVIL PENALTY.

~~If the civil penalty is not paid, the civil penalty imposed under the provisions of this chapter shall be collectable, together with any placement fee, interest and penalties thereon, in any manner authorized by law including but not limited to administrative hearings or civil suit. In addition to any other fees or charges authorized by this chapter in relation to the commission of a violation of this chapter, a person liable for the penalties established under this chapter will be assessed fees under this chapter in an amount equal to the costs of collection of the debt and/or the costs of placement with any such citation or case with outside counsel hired or retained by the Village for litigation or collection of any citation or debt hereunder, as set forth in Section 315.05 hereof.~~

#### 315.07 CONTESTING TICKETS.

- (a) When a person or entity named in a Ticket for a civil violation elects to contest a Ticket, the person or entity shall request a hearing in the Garfield Heights Municipal Court by completing and filing the form provided under Section 315.03 above, in the time frame required.
- (b) The Garfield Heights Municipal Court shall set the matter for a hearing not sooner than twenty-one (21) days, but not later than forty-five (45), after the filing of the request for hearing. The Prosecuting Attorney shall litigate the case to a conclusion. The Court may extend the time period in which a hearing must be conducted upon its own motion, or either a request for additional time or waiver of time limits by the person or entity who requested the hearing. Notice of the hearing shall be provided by the Garfield Heights Municipal Court. The Garfield Heights Municipal Court shall determine whether a preponderance of the evidence establishes that a Traffic Law Violation alleged in the Ticket did in fact occur and that the person or entity requesting the hearing is the person who was operating the vehicle at the time of the Traffic Law Violation.
- (c) (1) If the Garfield Heights Municipal Court finds that the person or entity named in the Ticket was not the person who was operating the vehicle at the time of the violation or receives evidence identifying a Designated Party, the Court shall provide to Village 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, Village or its designee may issue a Ticket to the Designated Party. The Village shall ensure that a Ticket issued under this section conforms with Section 315.04. The Village or its designee shall send

the Ticket by ordinary mail not later than twenty-one (21) days after receipt of the evidence from the Court of the identity of the Designated Party.

- (d) If a Designated Party, who is issued a Ticket under Section 315.04, contests the Ticket by filing a written request for a hearing and does so not later than thirty (30) days after the mailing date of the Ticket, the Village shall require the Registered Owner of the motor vehicle to also attend the hearing. If at the hearing involving the Designated Party the Garfield Heights Municipal Court cannot determine the identity of the operator of the vehicle at the time of the violation, the Registered Owner shall be liable for the violation. The Garfield Heights Municipal Court shall then issue a written decision imposing liability for the violation on the Registered Owner and submit it to Village 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 to the vehicle.

#### 315.07 ADMINISTRATIVE APPEAL HEARING PROCESS.

~~—(a) A registered owner or designated party may contest the notice of liability by filing a written request for an administrative hearing to review the notice of liability with the Village police department or its designee. A written notice of request for an administrative hearing must be received by the Village police department, or its designee, within thirty (30) calendar days after the date of issuance of the notice of liability. The failure to give notice of request for an administrative hearing within this time period shall constitute a waiver of the right to contest the notice of liability. A hearing officer shall conduct administrative hearings. Administrative hearings shall be held within forty-five (45) business days of the date that timely request for a hearing is received by the Village or its designee, but not sooner than twenty-one days from receipt by the Village of such request; this time may be extended upon a reasonable written request for additional time or upon reasonable notification of the hearing officer or Village with notice to all parties. The administrative hearing shall be open to the public, and a hearing schedule shall be posted in a conspicuous place near the entrance to the hearing room that shall identify, by alleged violator, the administrative hearings scheduled for that day and the time of each hearing. More than one hearing may be scheduled for the same time to allow for such things as non-appearances or admissions of liability.~~

(c) (1) The Hearing Officer-Garfield Heights Municipal Court shall determine whether a preponderance of evidence establishes that a traffic law violation occurred and the person requesting the administrative hearing is the party operating the vehicle at the time of the violation. The Garfield Heights Municipal Court hearing officer shall advise the person or entity on the day of the hearing of the Hearing Officer's it's decision.

(i) If the Garfield Heights Municipal Court hearing officer finds by a preponderance of the evidence that the alleged traffic law violation did in fact occur and that the person or entity named in the notice of liability is the person who was operating the vehicle at the time of the violation, the hearing officer shall issue a written decision/journal entry imposing liability for the violation

upon the individual or entity and submit it to the Village of Newburgh Heights or its designee and the person or entity named in the notice of liability.

(ii) If the Garfield Heights Municipal Court hearing officer finds by a preponderance of the 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 Garfield Heights Municipal Court hearing officer shall issue a written decision journal entry finding that the individual or entity is not liable for the violation and submit it to the Village of Newburgh Heights or its designee and the person or entity named in the notice of liability.

(iii) 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 Garfield Heights Municipal Court 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 journal entry imposing liability for the violation upon the individual or entity and submit it to the ~~local authority~~ Village of Newburgh Heights or its designee and the person or entity named in the notice of liability.

(fb) If the registered owner or designated party chooses to contest the notice of liability, the Garfield Heights Municipal Court Hearing Officer may consider any of the following as an affirmative defense to a violation upon the defense being established by a preponderance of the evidence by the registered owner or responsible party:

(1) That the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under control or possession of the registered owner at the time of the traffic law violation. In order to demonstrate that the motor vehicle or license plates were stolen before the traffic law violation occurred and were not under the control or possession of the registered owner at the time of the traffic law violation, the owner must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the traffic law violation or within 48 hours after the traffic law violation occurred.

(2) That the motor vehicle was under the custody and/or control of another person at the time of the violation. In order to establish this, the owner or responsible person must provide the name and address of the person who had custody and/or control of the motor vehicle at the time of the traffic law violation.

(3) That this section is unenforceable because the recorded image is not legible enough to determine the information needed.

(4) Evidence, other than that adduced pursuant to Section 315.07(~~eb~~)(1), that the registered owner or person named in the notice of liability was not operating the motor vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the notice of liability shall provide to the Garfield Heights Municipal Court Hearing Officer evidence showing the identity of the person who was operating the motor vehicle at the time of the traffic law violation, including, but not limited to, the operator's name and current address, and any other evidence the Garfield Heights Municipal Court Hearing Officer deems pertinent.

(5) That the motor vehicle operator was yielding the right-of-way to an emergency vehicle in accordance with Ohio law, or to a funeral procession.

(6) That the vehicle passed through the intersection in order to yield the right-of-way to either of the following: (i) a public safety vehicle or coroner's vehicle in accordance with section 4511.45 of the Ohio Revised Code; or (ii) a funeral procession in accordance with Section 4511.451 of the Ohio Revised Code.

(7) At the time and place of the alleged traffic law violation, the traffic control signal was not operating properly or the traffic law photo-monitoring device was not in proper position and the recorded image is not of sufficient legibility to enable an accurate determination of the information necessary to impose liability.

(8) That under consideration of the totality of the circumstances the person or entity named in the notice of liability is not liable.

(ge) If the Garfield Heights Municipal Court Hearing Officer finds that the person or entity named in the notice of liability was not operating the motor vehicle at the time of the violation or receives evidence under Section 315.07(eb)(4) identifying the designated party, the Garfield Heights Municipal Court Hearing Officer shall provide it to the Village of Newburgh Heights or its designee within five (5) calendar days, along with a copy of any evidence substantiating who was operating the motor vehicle at the time of the traffic law violation.

(1) Upon receipt of evidence of the responsible party pursuant to this Section or pursuant to Section 315.03(b), the Village of Newburgh Heights or its designee may issue a notice of liability, with the name and address of the designated party and the information required by Section 315.04 of this Chapter, to the person that the evidence indicates was operating the motor vehicle at the time of the violation.

(2) A notice of liability issued under this Section 315.07(ge), shall be sent by the Village of Newburgh Heights or its designee by ordinary mail no later than twenty-one (21) business days after the receipt of the evidence from the Garfield Heights Municipal Court Hearing Officer. The content of a notice of liability issued under this subsection shall be the same as set forth in division (a) of Section 315.04 of this Chapter.

(3) If a designated party who was issued a notice of liability under Section 315.07(ee) hereof contests the ticket by filing a written request for an administrative hearing to review the notice of liability not later than thirty days after receipt of the notice of liability, the Village of Newburgh Heights 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 on the registered owner and submit it to the local authority 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 to the vehicle.

(hd) 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~~315.02 of the Ohio Revised Code.

—(e)

(i) A person or entity found liable for a Ticket may appeal the decision rendered by the Garfield Heights Municipal Court in accordance with Ohio law.

- (j) No decision rendered under this Section, and no admission of liability under this Chapter is admissible as evidence in any other judicial proceeding in this state, except as is provided in Section 315.10 hereinbelow.

~~A person or entity may appeal a written decision rendered by a hearing officer under this section to the municipal court or county court with jurisdiction over the location where the violation occurred. (Ord. 2014-66. Passed 12-30-14.)~~

### 315.08 CALIBRATION.

The manufacturer or operator of the automated speed enforcement system used by the Village, or an independent calibration laboratory, shall calibrate said device before it is used by the Village. The manufacturer or operator of the automated speed enforcement system shall certify to the accuracy of each traffic law photo-monitoring device in accordance with applicable federal law, if any. For each traffic law photo-monitoring device that is considered mobile or portable, meaning it is attached to a trailer, vehicle, or other apparatus that is easily transported to different system locations, the Village shall perform or cause to be performed a system self-test and calibration verification of said traffic law photo-monitoring device in accordance with the manufacturer's specifications prior to its use at each system location. For each device that is considered mobile or portable, meaning it is attached to a trailer, vehicle or other apparatus that is easily transported to different system locations, the Village police department or its designee shall clearly and conspicuously mark on the outside of the trailer, vehicle, or apparatus that contains the traffic law photo-monitoring device that the device is the property or under the control of the Village. ~~(Ord. 2014-66. Passed 12-30-14.)~~

### 315.09 SIGNS.

The Village Service Department shall erect signs on every highway, which is not a freeway, that is part of the state highway system and that enters into the Village and at each fixed system location. The signs shall inform inbound traffic that the Village utilizes traffic law photo-monitoring devices to enforce traffic laws. The signs shall be erected within the first three hundred feet of the boundary of the Village and any fixed system location or, if the signs cannot be located within the first three hundred feet of the boundary of the Village or a fixed system location, as close to that distance as possible, in accordance with Ohio Revised Code Chapter 4511.094.

~~(Ord. 2014-66. Passed 12-30-14.)~~

### a.10 COLLECTION OF CIVIL PENALTY.

- (a) In the event that the Registered Owner or Designated Party fails to take any action set forth in Section 315.05 or fails to satisfy any liability determined by the Garfield Heights Municipal Court for the penalties established under this Chapter and the time to appeal such decision has passed without the filing of an appeal, the Village may seek to collect the amount due and owing and/or may initiate a civil enforcement action in a court of competent jurisdiction to obtain a judgment for the civil penalty and any late fees, costs and attorney's fees that may be imposed under this Chapter and by the Garfield Heights Municipal Court.
- (b) If a judgment for a civil penalty under this Chapter is not satisfied, the Village may seek payment on the judgment amount, together with any applicable interest and cost thereon, in any manner authorized by law. In addition to any other fees or charges authorized by this Chapter in relation to the commission of a Traffic Law Violation



thereof, a person liable for the penalties established under this Chapter may be assessed any costs incurred by the Village and the Garfield Heights Municipal Court in the collection of the debt, including but not limited to attorney's fees.