

ORDINANCE 2013-____

AN ORDINANCE OF THE CITY OF PALM COAST, FLORIDA AMENDING THE CITY CODE BY AMENDING CHAPTER 44, TRAFFIC AND VEHICLES, ARTICLE V, TRAFFIC LIGHT SAFETY, TO IMPLEMENT CHAPTER 2013-XX, LAWS OF FLORIDA; PROVIDING FOR LOCAL HEARING OFFICERS CONSISTENT WITH GENERAL LAW; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Legislature passed CS/CS/HB 7125 during the 2013 Legislative Session authorizing local hearings for notices of violations connected with the use of red light cameras as traffic infraction detectors to enforce Chapter 316, the State of Florida Uniform Traffic Code; and

WHEREAS, the Governor of the State of Florida signed CS/CS/HB 7125 into law on June ____, 2013, resulting in the Chapter 2013-XX, Laws of Florida, taking effect on July 1, 2013; and

WHEREAS, the use of a Local Hearing Officer allows citizens of the City of Palm Coast to have a process for contesting notices of violation issued related to red light violations separate from the traffic court process; and

WHEREAS, the City Council wishes to utilize its existing code enforcement system to implement the local hearing process; and

WHEREAS, the City Council wishes to amend its Code of Ordinances to implement Chapter 2013-XX, Laws of Florida.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1: **Recitals Adopted.** The forgoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2: **Amendment of Section 44-201.** Chapter 44, Article V, Section 44-201 “Purpose,” of the City Code of the City of Palm Coast is hereby amended as follows:

Sec. 44-201. **Purpose.**

The purpose of this article is to authorize the use of traffic infraction detectors to promote compliance with red light signal directives as set forth in this article, and to adopt a civil

enforcement system for red light signal violations, ~~all~~ in accord with general law, including Chapter 2010-80, Laws of Florida (2010) (the “Mark Wandall Traffic Safety Act” or “Act”) and the amendments to the Act, set forth in Chapter 2013-XX. This article will supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement from issuing a citation for a red light signal violation in accordance with normal statutory traffic enforcement techniques.

SECTION 3: **Amendment of Section 44-203.** Chapter 44, Article V, Section 44-203 “Definitions,” is hereby amended as follows:

Local Hearing Officer means the person, designated by resolution of the City Council, who is authorized to conduct hearings related to a notice of violation issued pursuant to F.S. § 316.0083. Alternatively, the City Council may designate the code enforcement board or special magistrate as Local Hearing Officer, or the City may enter into an interlocal agreement to use the Local Hearing Officer of another county or municipality, as provided in F.S. § 316.003(91).

SECTION 4: **Amendment of Section 44-204.** Chapter 44, Article V, Section 44-203 “Adherence to red light traffic control signals,” is hereby amended as follows:

Sec. 44-204. **Adherence to red light traffic control signals.**

(a) Pursuant to general law, a motor vehicle facing a traffic control signal’s steady red light indication shall stop before entering the crosswalk on the near side of an intersection or, if none, then before entering the intersection, and shall remain standing until a green indication is shown on the traffic control signal; provided, however, the driver of a motor vehicle which is approaching the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersection roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right hand turn in a careful and prudent manner (unless such turn is otherwise prohibited by posted sign or other traffic control device), but shall yield the right of way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection. A notice of violation and a traffic citation may not be issued under this section if the driver of the vehicle came to a complete stop after crossing the stop line and before turning right if permissible at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required.

SECTION 5: **Amendment of Section 44-206.** Chapter 44, Article V, Section 44-206 “Implementation of general law,” is hereby retitled “Implementation of general law and designation of Local Hearing Officer,” and amended as follows:

Sec. 44-206. **Implementation of general law and designation of Local Hearing Officer.**

Within the City, the City Manager is authorized to implement the provisions and requirements of Chapter 2010-80, Laws of Florida (2010), as may be amended from time to time, and may take any action which is necessary for such purpose. In accordance with the provisions of the Mark Wandall Traffic Safety Act as of the effective date of this ordinance or July 1, 2013, whichever occurs later, the City Manager is authorized to implement the provisions and requirements of Chapters 2010-80 and 2013-XX, Laws of Florida, except that the City Council by resolution shall appoint a Local Hearing Officer, as provided by Section 44-203, and shall set the amount of the City’s administrative costs, in accordance with the provisions of the Mark Wandall Traffic Safety Act.

SECTION 6: **Amendment of Section 44-208.** Chapter 44, Article V, Section 44-208 “Notice of violation,” is hereby amended as follows:

Sec. 44-208. **Notice of Violation.**

Within 30 days after a violation, notification must be sent to the registered owner of the motor vehicle involved in the violation specifying the remedies available under F.S. § 318.14, and that the violator must pay the penalty of \$158.00 to the City, elect a hearing before the Local Hearing Officer, or furnish an affidavit supporting an exemption that complies with F.S. § 316.0083 in accordance with paragraph (11) below within 3060 days following the date of the notification in order to avoid court fees, costs, and the issuance of a traffic citation.

(11) A statement that the owner must pay a penalty of \$158.00 to the City, elect a hearing before the Local Hearing Officer, or provide an affidavit that complies with F.S. § 316.0083 within 3060 days of the date the notice is issued in order to avoid court fees, costs, and the issuance of a uniform traffic citation.

SECTION 7: **Amendment of Section 44-209.** Chapter 44, Article V, Section 44-209 “Uniform traffic citation,” is hereby amended as follows:

Sec. 44-209. **Uniform Traffic Citation.**

If an owner receives a notice and fails to pay the penalty imposed by F.S. § 316.0083, to elect a hearing before the Local Hearing Officer, or to provide an affidavit supporting an exemption that complies with the provisions of F.S. § 316.0083 within 3060 days of the date that the notice is issued, then a uniform traffic citation shall be issued to the owner as provided by general law. ~~The uniform traffic citation shall be issued no later than 60 days after the date the red zone violation infraction occurs.~~ The owner shall be responsible and liable for paying the uniform traffic citation unless the owner furnishes to the City, within 30 days after the date of issuance of the uniform traffic citation, an affidavit supporting an exemption that complies with F.S. § 316.0083. Upon receipt of an affidavit, the person designated as having care, custody, and control of the motor vehicle at the time of the violation may be issued a uniform traffic citation notice of violation, pursuant to Section 44-208, under this article, and shall be responsible and liable for paying the citation complying with the requirements of Section 44-208. Notification under Section 44-208 must be sent to the person identified on the affidavit within 30 days after receipt of the affidavit. The submission of a false affidavit is a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or § 775.083.

SECTION 8: **Creation of Section 44-212.** Chapter 44, Article V, Section 44-212 “Procedures for hearing,” is hereby created as follows:

Sec. 44-212. **Procedures for hearing.**

The following provisions apply to hearings before a Local Hearing Officer:

- (a) The City Council shall designate by resolution existing staff to serve as the clerk to the Local Hearing Officer.
- (b) If a hearing is requested, the traffic infraction enforcement officer shall provide a replica of the traffic notice of violation data to the clerk for the Local Hearing Officer having jurisdiction over the alleged offense within 14 days of receipt of the request for hearing.
- (c) Any person, herein referred to as the “petitioner,” who elects to request a hearing under Section 44-208 shall be scheduled for hearing by the clerk to the Local Hearing Officer to appear before the Local Hearing Officer with notice to be sent by first class mail. Upon receipt of the notice, the petitioner may reschedule the hearing once by submitting a written request to reschedule to the clerk to the Local Hearing Officer, at least 5 calendar days before the day of the originally scheduled hearing. The petitioner may cancel his or her appearance before the Local Hearing Officer by paying the penalty assessed under Section 44-208, plus \$50 dollars in administrative costs, before the start of the hearing.

- (d) All testimony at the hearing shall be under oath and shall be recorded. The Local Hearing Officer shall take testimony from a traffic infraction enforcement officer and the petitioner, and may take testimony from others. The Local Hearing Officer shall review the photographic or electronic images or the streaming video made available under Section 44-208(7). Formal rules of evidence do not apply, but due process shall be observed and govern the proceedings.
- (e) At the conclusion of the hearing, the Local Hearing Officer shall determine whether a violation occurred, in which case the hearing officer shall uphold or dismiss the violation. The Local Hearing Officer shall issue a final administrative order including the determination and, if the notice of violation is upheld, require the petitioner to pay the penalty previously assessed under Section 44-208, and may also require the petitioner to pay costs as set by resolution of the City Council, which costs shall not exceed \$250. The final administrative order shall be mailed to the petitioner by first-class mail.
- (f) An aggrieved party may appeal a final administrative order consistent with the process provided under F.S. § 162.11.

SECTION 9:

Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 10:

Inclusion in the Code. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Palm Coast, that the sections of this Ordinance may be renumbered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

SECTION 11: **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

Approved on first reading this 18th day of June 2013.

Adopted on the second reading this 2nd day of July 2013, after due public notice and hearing.

CITY OF PALM COAST, FLORIDA

ATTEST:

Jon Netts, Mayor

Virginia A. Smith, City Clerk

Approved as to form and legality

William E. Reischmann, Jr., Esq.
City Attorney