

## **CHAPTER 317**

### **Officer-Operated Handheld Traffic Law Enforcement Devices**

#### **317.01 DEFINITIONS.**

(a) "Designated party" means the person whom the registered owner of a motor vehicle, upon receipt of a ticket based upon images recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device that indicates a traffic law violation occurred, identifies as the person who was operating the vehicle of the registered owner at the time of the violation.

(b) "Hearing officer" means any person appointed by the Mayor or Village Council to conduct administrative hearings on violations images recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device, other than a person who is employed by a law enforcement agency as defined in Ohio Revised Code Section 109.573.

(c) "Law enforcement officer" mean a Chief, Lieutenant, Sergeant or police officer who is employed by the Village Police Department.

(d) "Local Authority" means the Village of Newburgh Heights.

(e) "Motor vehicle leasing dealer" has the same meaning as in Ohio Revised Code Section 4517.01.

(f) "Motor vehicle renting dealer" has the same meaning as in Ohio Revised Code Section 4549.65.

(g) "Recorded images" means any of the following images recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device that show, on at least one image or on a portion of the videotape, the letters and numerals on the front or rear license plate of the vehicle:

(1) Two or more photographs, microphotographs, electronic images, or digital images;

(2) Videotape.

(h) "Registered owner" means any or all of the following:

(1) Any person or entity identified by the Bureau of Motor Vehicles or any other state motor vehicle registration bureau, department, or office 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.

(i) "System location" means the approach to an intersection or area of roadway toward which an Officer-Operated Handheld Traffic Law Enforcement Device is directed and is in operation.

(j) "Ticket" means any traffic ticket, citation, summons, or other ticket issued in response to an alleged traffic violation detected by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device, that represents a civil violation.

(k) "Traffic law violation" means a violation of Ohio Revised Code Section 4511.21 or 4511.211 or a substantially equivalent municipal ordinance due to failure to observe the applicable speed limit.

(l) "Officer enforced traffic law system violations" means tickets for civil violations issued by a Village police officer using an Officer-Operated Handheld Traffic Law Enforcement Device.

(m) "Officer-Operated Handheld Traffic Law Enforcement Device" means a portable, handheld electronic device that contains laser speed measurement and photographic imaging components that can determine the speed of a moving vehicle only upon manual activation by a person who senses the presence of a motor vehicle and activates the device. Such devices do not have a means of sensing the presence of a motor vehicle that automatically produces recorded images.

(Ord. 2015-41. Passed 6-16-15.)

### **317.02 GENERAL.**

(a) Notwithstanding any other provision of the traffic code ordinances of the Village, the Village hereby adopts a civil enforcement program for officer-enforced traffic law system violations as outlined in this chapter. This program imposes monetary liability on the owner of a vehicle for failure of an operator thereof to strictly comply with the posted speed limit on streets or highways within the Village. The imposition of a 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 officer-enforced traffic law system.

(c) A traffic law violation for which a civil penalty is imposed under this chapter is not a moving violation and points shall not be assessed against a person's driver's license. In no case shall such a violation be reported to the Bureau of Motor Vehicles or motor vehicle registration bureau, department, 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.

(d) The Village may utilize an Officer-Operated Handheld Traffic Law Enforcement Device for the purpose of detecting traffic law violations. Village Council may adopt such resolutions as may be necessary to enable the Village to utilize Officer-Operated Handheld Traffic Law Enforcement Devices.

(Ord. 2015-41. Passed 6-16-15.)

### **317.03 PREREQUISITES FOR USE OF OFFICER-OPERATED HANDHELD TRAFFIC LAW ENFORCEMENT DEVICE.**

(a) Before the Village Police Department uses Officer-Operated Handheld Traffic Law Enforcement Devices for the first time, it must do all of the following:

(1) Conduct a safety study of intersections or locations for the use of Officer-Operated Handheld Traffic Law Enforcement Devices. The study shall include an accounting of incidents that have occurred in the designated area over the previous three-year period and shall be made available to the public upon request.

(2) Publish at least one notice in a local newspaper of general circulation that announces the Village's intent to allow law enforcement officers to use Officer-Operated Handheld Traffic Law Enforcement Devices, informs motor vehicle operators about the Village's intent to allow law enforcement officers to use Officer-Operated Handheld Traffic Devices, advises of the general areas where law enforcement officers will use Officer-Operated Handheld Traffic Law Enforcement Devices, if known, and that date on which law enforcement officers will use the first Officer-Operated Handheld Traffic Law Enforcement Devices.

(Ord. 2015-41. Passed 6-16-15.)

#### **317.04 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 these Codified Ordinances or Ohio Revised Code Section 4511.21 as each may be amended from time to time.

(b) A traffic law violation for which a ticket is issued by the Village pursuant to Chapter **317** is a civil violation.

(c) 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 violation;

(5) A copy of the images recorded by the law enforcement officer who used the Officer-Operated Handheld Traffic Law Enforcement Device to record the violation;

(6) The name and badge number of the law enforcement officer who used the Officer-Operated Handheld 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;

(8) A statement signed by a law enforcement officer employed by the Village 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;

(9) Information advising the person or entity alleged to be liable of the options prescribed in Section **317.05**, 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 that section;

(10) A warning that failure to exercise one of the options prescribed in Section **317.05** 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 a ticket not later than 30 days after the date of the alleged traffic law violation.

(e) The Village or its designee may elect to send by ordinary mail a warning notice in lieu of a ticket under this section.

(Ord. 2015-41. Passed 6-16-15.)

### **317.05 RIGHTS OF THOSE TICKETED.**

(a) A person or entity who receives a ticket for a civil violation sent in compliance with this Section **317.05** shall elect to do one of the following:

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

(2) A. Within thirty (30) days after receipt of the ticket, provide the law enforcement agency of the Village 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 held liable for the violation, and containing at a minimum the name and address of the designated party;

(ii) 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 violation or within 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 ticket, the registered owner furnishes an affidavit specified in subsection (a)(2)(A)(i) or (ii) of this section to the Village in a form established by the Village and the following conditions are met:

(1) If the registered owner submits an affidavit as specified in subsection (a)(2)(A)(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 subsection (a)(2)(A)(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, notify the law enforcement agency of the Village 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 law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement 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 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.

(4) If the vehicle involved in the traffic law violation is a commercial motor vehicle and the ticket is issued to a corporate entity, provide to the law enforcement agency of the Village 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.

(5) Contest the ticket by filing a written request for an administrative hearing to review the ticket. The person or entity shall file the written request not later than thirty (30) days after receipt of the ticket. The failure to request a hearing within this time period constitutes a waiver of the right to contest the violation and ticket, and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation.

(b) When the Village receives an affidavit described in subsection (a)(2)(A)(i) or (a)(4) of this section of a notification under subsection (a)(3) of this section from a registered owner, it may proceed to send a ticket that conforms with the requirements set forth in Section **317.04** to the designated party. The Village shall send the ticket to the designated party by ordinary mail not later than 21 days after receipt of the affidavit or notification. (Ord. 2015-41. Passed 6-16-15.)

**317.06 CIVIL PENALTIES.**

(a) Unless the driver of a motor vehicle received a citation from a police officer at the time of the violation, or unless an exception or defense to liability set forth in Section [317.05](#) applies, the owner or responsible party for the motor vehicle is subject to a civil penalty of the motor vehicle is recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device while being operated in violation of this chapter.

(b) The civil penalty under this chapter shall be the following:

(1)

<b>Miles Per Hour Over Speed Limit</b>	<b>Amount of Penalty</b>
10-19	\$150.00
20-29	\$200.00
30 or more	\$300.00

or when within a construction zone, school zone or within the boundaries of a state or local park or recreation area as follows:

<b>Miles Per Hour Over Speed Limit</b>	<b>Amount of Penalty</b>
6-19	\$150.00
20-29	\$200.00
30 or more	\$300.00

(Ord. 2015-41. Passed 6-16-15.)

### **317.07 EXAMINATION OF EVIDENCE.**

(a) A law enforcement officer employed by the Village shall examine evidence of alleged traffic law violations recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device to determine whether such a violation has occurred. If the image recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device shows such a violation, contains the date and time of the violation, and shows the letter and 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.

(b) The fact that a person or entity is the registered owner of a motor vehicle is prima facie evidence that person or entity is the person who was operating the vehicle at the time of the traffic law violation.

(c) Within 30 days of the traffic law violation, the Village or its designee may issue and send by regular mail a ticket charging the registered owner with the violation. The ticket shall comply with Section [317.04](#).

(d) A certified copy of the ticket alleging a traffic law violation, sworn to or affirmed by a law enforcement officer employed by the Village, including the electronic means, and the recorded images produced by an Officer-Operated Handheld Traffic Law Enforcement Device used by a law enforcement officer at the date, time, and location where a violation occurred, is a prima facie evidence of the facts contained therein and is admissible in a proceeding for review of the ticket issued under this section.

(Ord. 2015-41. Passed 6-16-15.)

### **317.08 CONTESTING TICKETS.**

(a) When a person or entity named in a ticket for a civil violation elects to contest the ticket and completes the requirements prescribed in Section 317.05 of the Codified Ordinances in a timely manner, all of the following apply:

(1) A hearing officer appointed by the Village shall hear the case. The hearing officer shall conduct a hearing not sooner than 21 but not later than 45 days after the filing of a written request for the hearing. The hearing officer may extend the time period 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 respondent, 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 nonappearances 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 ticket did in fact occur and that 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 law violation did in fact occur and that the person or entity named in the ticket is the 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 or its designee and the person or entity named in the ticket.

(2) If the 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 ticket 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 or its designee and the person or entity named in the ticket.

(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 or its designee and the person or entity named in the ticket.

(4) The hearing officer shall render a decision on the day a hearing takes place.

(c) (1) In determining whether the person or entity named in the ticket is liable, the hearing officer may consider any of the following as an affirmative defense to traffic law violation:

(A) That the vehicle passed through the intersection in order to yield the right-of-way to either of the following:

(1) A public safety vehicle or coroner's vehicle in accordance with Ohio R.C. 4511.45 or a substantially equivalent municipal ordinance;

(2) A funeral procession in accordance with Ohio R.C. 4511.451 or a substantially equivalent municipal ordinance.

(B) That the motor vehicle or license plates of the motor vehicle 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. 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 48 hours after the traffic law violation occurred.

(C) At the time and place of the alleged traffic law violation, the traffic control signal was not operating properly or the Officer-Operated Handheld Traffic Law Enforcement 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.

(D) That the registered owner or person or entity named in the ticket was not the person operating the motor vehicle at the time of the violation. In order to meet the evidentiary burden imposed under this division (c)(1)(D) of this section, the registered owner or person or entity named in the ticket 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 also may consider the totality of the circumstances when determining whether to impose liability upon the person or entity named in the ticket.

(d) (1) If the hearing officer 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 the designated party, the hearing officer shall provide to the Village or its designee, within five 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 or its designee may issue a ticket to the designated party.

The Village shall ensure that a ticket issued under division (d)(2) of this section conforms with Section [317.04](#). The Village shall send the ticket by ordinary mail not later than 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 is issued a ticket under division (d)(2) of this section or Section [317.05](#)(b) of the Codified Ordinances contests the ticket by filing a written request for an administrative hearing review to review the ticket not later than 30 days after the receipt of the ticket, the Village 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 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.

(f) A person who is named in a ticket for a civil violation may assert a testimonial privilege in accordance with Ohio R.C. 2317.02(D).

(g) A person or entity may appeal a written decision rendered by a hearing officer under this section to the Garfield Heights Municipal Court within 30 days of the hearing officer's decision.

(h) No decision rendered under this section, and no admission of liability under this section or Section [317.05](#) is admissible as evidence in any other judicial proceeding in this state.

(Ord. 2015-41. Passed 6-16-15.)

### **317.09 COLLECTION OF CIVIL PENALTY.**

(a) If a judgment for a civil penalty under this Chapter **317** 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 violation thereof, a person liable for the penalties established under this chapter may be assessed any costs incurred by the Village in the collection of the debt, including but not limited to attorney's fees.

(b) In the event that the vehicle owner or responsible party fails to take any action set forth in Section **317.05**(a), or after the hearing officer issues a written decision imposing liability for a traffic law violation under Section **317.08** and the time to appeal such decision has passed without the filing of an appeal, the Village may initiate a civil enforcement action in the Garfield Heights Municipal Court.

(Ord. 2015-41. Passed 6-16-15.)

### **317.10 CALIBRATION; ISSUANCE OF CERTAIN TICKETS PROHIBITED.**

(a) Upon request, each manufacturer of an Officer-Operated Handheld Traffic Law Enforcement Device shall provide to the Village the maintenance record of any such device used in the Village.

(b) (1) Commencing January 2016, not later than the last day of January of each year, the manufacturer of any Officer-Operated Handheld Traffic Law Enforcement Device used by the Village shall provide to the Village a certificate of proper operation that attests to the accuracy of the device.

(2) The Village shall test the accuracy of each such Officer-Operated Handheld Traffic Law Enforcement Device with an independent, certified speed measuring device or some other commonly accepted method prior to its use at each system location.

(Ord. 2015-41. Passed 6-16-15.)

### **317.11 SPEEDING TICKETS PROHIBITED.**

The Village shall not issue a ticket for a violation of Ohio R.C. 4511.21 or 4511.211, Chapter **333** of the Codified Ordinances, or any other substantially equivalent municipal ordinance due to failure to observe the applicable speed limit based upon evidence recorded by a law enforcement officer using an Officer-Operated Handheld Traffic Law Enforcement Device unless one of the following applies:

(a) 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 vehicle involved in the violation is traveling at a speed that exceeds the posted speed limit by not less than six miles per hour.

(b) For a system location that is located at any other location, the vehicle involved in the violation is traveling at a speed that exceeds the posted speed limit by not less than ten miles per hour.

(Ord. 2015-41. Passed 6-16-15.)