

**AN ORDINANCE**

Amending Title 12 of The Philadelphia Code, entitled “Traffic Code,” including Section 12-102 (“Definitions”) Section 12-201 (“Duties of the Police Department”), Section 12-203 (“Emergency and Trial Regulations”) and Section 12-1401(Traffic Violation Notices; Parking Violation Notices”) to establish policies regarding the noticing requirements by the Police Department for certain Commonwealth Vehicle Code violations, all under certain terms and conditions.

Proposed additions in *Italics*

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Title 12 of the Philadelphia Code is hereby amended to read as follows:

TITLE 12. TRAFFIC CODE

CHAPTER 12-100. GENERAL PROVISIONS

\* \* \*

**§ 12-102. Definitions.**

In this Title the following definitions apply:

\* \* \*

*(15.1) Public Safety Risk: an imminent and articulable risk of bodily injury to a specific person or damage to private or public property or actual bodily injury to a specific person or damage to public or private property. An imminent and articulable risk of injury or damage to property contemplates a risk that is immediate and actual and not a speculative or potential risk that could occur in the future. Articulable means the risk must be capable of specific explanation as to what would have been damaged or who would have been injured as a result of the conduct.*

\* \* \*

(17) Stop. Complete cessation of movement.

(18) Stop, Stopping or Standing. Any stopping or standing of a vehicle whether occupied or not, except where necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device.

\* \* \*

(22) The Vehicle Code. The Vehicle Code of the Commonwealth of Pennsylvania, as amended.

\* \* \*

*(24.1) Wanton and Willful Disregard for the Actual Safety of People or Property. Wanton and willful conduct in operating a motor vehicle is that which grossly deviates from ordinary prudence and creates a substantial risk that property damage or personal injury resulting from the driver's conscious disregard for the danger created. This definition is meant to comport with the standard of conduct required for reckless driving, 75 C.S.A. § 3736, as delineated in Com. v. Greenberg, 885 A.2d 1025 (Pa. Super. 2005); Com. v. Bullick, 830 A.2d 998 (Pa. Super. 2003). The conduct in this standard has two elements: the actus reus of driving and the mens rea of wanton and willful, the culpability for which is a 'conscious disregard' of a substantial and unjustifiable risk, in conformity with the standard of recklessness in 18 Pa. C.S.A. 18 Pa. C.S.A. § 302(b)(3). This is distinguished from 'imminent risk' in the public safety definition, as an imminent risk contemplates no mens rea.*

\* \* \*

## **§ 12-201. Duties of Police Department.**

(1) The Police Department shall:

(a) *Subject to the provisions of subsection 12-201(2), enforce the provisions of this Title and of The Vehicle Code applicable to street traffic in this City, investigate accidents, cooperate with the Department and other City departments and agencies in the administration of the traffic laws and develop ways and means to improve traffic conditions;*

(b) Cooperate with the Department in conducting studies of highway accident locations and determining remedial measures;

(c) Maintain a suitable system of filing traffic accident reports. A record of each accident shall be filed alphabetically by location, and shall be available solely for the use and information of the Police Department and the Department;

(d) Maintain a record, filed alphabetically under the name of the operator concerned, of all traffic accidents, which shall be available solely for the use and information of the Police Department and the Department.

(e) *Collect and store data on the race, ethnicity, and gender of people subjected to Motor Vehicle Code stops and Motor Vehicle Code and Title 12 traffic tickets, citations or warnings; the make, model, and year of the vehicle involved; officer name; officer badge number; police service area (PSA); police district; time; date; location; type of offense; and the number of motor vehicle stops conducted pursuant to 12-202 (2) disaggregated by violation alleged, category of exception, and police service area; and, if vehicle was stopped, a description of circumstances justifying the stop, whether the license plate was obscured or absent, the outcome*

*of the stop, including whether a ticket, citation or warning was issued, if body worn camera (BWC) exists, and whether a 75-48A was created.*

*(.1) When collecting and storing data on the race, ethnicity, and gender of people subjected to Motor Vehicle Code stops and Motor Vehicle Code and Title 12 traffic tickets, citations or warnings, the Department shall develop procedures and policies that provide a reasonable assurance that the data is complete and accurate.*

*(.2) When recording data as to the people subjected to Motor Vehicle Code stops and Motor Vehicle Code and Title 12 traffic tickets, citations or warnings the police or other authorized law enforcement officer shall report the reasons justifying the stop or issuance of the ticket, citation or warning in the following priority:*

*(.a) Exceptions under subsection 3; then*

*(.b) Exclusions under subsection 4(b); then*

*(.c) Circumstances under subsection 5; then*

*(.d) Conduct that presented a public safety risk.*

*(f) Publicly publish the aggregate data as it becomes available, at a minimum monthly, and issue publicly available quarterly reports.*

*(g) In cooperation with community stakeholders, develop and implement a strategic plan to eliminate racial disparities in the enforcement of provisions of this Title and the Motor Vehicle Code.*

*(2) A police or other authorized law enforcement officer shall not initiate a motor vehicle stop for a suspected violation of any provision of this Title or the Motor Vehicle Code unless the violation presents an imminent public safety risk as defined by 12-102(15.1) or is an exception delineated in subsection (3), (4)(b) or (5) of this section.*

*(a) Scope: Nothing in this section shall limit a police or other authorized law enforcement officer from stopping a vehicle when there is reasonable suspicion or probable cause to believe the vehicle, driver, or passenger is engaged, or is about to engage, in an offense defined as a misdemeanor or felony under Title 18 or an offense under the Controlled Substances Act unrelated to a motor vehicle violation.*

*(b) Procedure: The police or other authorized law enforcement agencies shall promulgate rules, regulations, and guidelines to implement this section which shall be posted publicly on its website. These must include the following minimum protections:*

*(.1) In lieu of a motor vehicle stop, police or other authorized law enforcement officer shall issue a warning or notice of violation to the owner of the vehicle observed to be in violation of this Title or the Motor Vehicle Code.*

*(.2) The notice of violation or warning shall be sent by first class mail to the owner of the motor vehicle at the address appearing on the registry of a state department of motor vehicles.*

*(.3) The notice of violation or warning shall be sent as soon as practicable, but no more than 30 days after the alleged infraction.*

*(.4) The notice of violation or warning shall inform the owner of:*

*(.a) the violation charged;*

*(.b) the time and date of the violation;*

*(.c) the fines, costs and additional fees that shall become due if the notice of violation is not answered within the period prescribed;*

*(.d) the defenses available;*

*(.e) the right to contest a violation at a hearing in person, or on written testimony and other evidence submitted by mail or by electronic submission, including but not limited to, email, website, or facsimile transmissions;*

*(.f) that a civil action may be commenced against the violator for failure to contest or pay the amount due; and,*

*(.g) such other penalties as may be authorized by statute, ordinance or regulation.*

*(.5) The race, ethnicity, and gender of the driver, if able to be ascertained, shall be noted on any warning or notice of violation issued and if unknown, it shall be noted as 'unknown' on the warning or notice of violation.*

*(.6) The circumstances, if applicable, in support of a finding of imminent risk of or actual bodily injury or property damage shall be stated with particularity on the warning or notice of violation.*

*(.7) The circumstances if applicable, in support of a finding of wanton or willful disregard for the actual safety of people or property shall be state with particularity on the warning or notice of violation.*

*(c) Defenses: Nothing in this subsection shall be viewed to limit the rights of a recipient of the violation to raise any defense to the alleged violation. To clarify the burden of persuasion, the following may apply:*

*(.1) Operator Non-Compliance:*

*(.a) It shall be a defense to any moving violation alleging operator non-compliance that the person named in the notice of the violation was not operating the vehicle at the time of the violation.*

*(.b) When raising the defense that the owner was not the operator at the time of the infraction, the owner may be required to submit evidence that the owner was not the driver at the time of the alleged violation but shall not be required*

*to disclose the identity of the operator of the vehicle at the time of the violation.*

*(.c) It shall be a defense to a violation alleging operator noncompliance that the vehicle had been reported to a police department as stolen and not recovered prior to the time the violation occurred.*

*(.2) Vehicle Defects, Maintenance, Registration and Inspection:*

*(.a) It shall be a defense to any non-moving violation alleging paperwork, parking, or equipment infractions that the vehicle had been reported to a police department as stolen and not recovered prior to the time the violation occurred.*

*(.b) It shall be a defense to any non-moving violation alleging paperwork, parking or equipment infractions that the person receiving the notice of violation was not the owner of the vehicle at the time of the offense.*

*(.c) Proof of subsequent repair, replacement, or remedy within 30 days of receipt of the notice of violation shall be a defense to any alleged equipment, registration, or inspection violation under Title 12 or the Motor Vehicle Code.*

*(3) Exceptions: Police or another authorized law enforcement officers may initiate a motor vehicle stop when their personal observations sufficiently establish reasonable suspicion or probable cause of a violation of one or more of the following sections of state or city motor vehicle code:*

*(a) Title 75 § 1543(b) Driving While Operating Privilege is Suspended or Revoked*

*(b) Title 75 § 49 Relating to Size, Weight, Load*

*(c) Title 75 § 3308(b). Driving on a one-way roadway*

*(d) Title 75 § 3315. Passing and overtaking streetcars*

*(e) Title 75 § 3325. Duty of driver on approach of emergency vehicle*

*(f) Title 75 § 3326. Duty of driver in construction and maintenance areas or on highway safety corridors.*

*(g) Title 75 § 3327. Duty of driver in emergency response areas*

*(h) Title 75 § 3329. Duty of driver in litter enforcement corridors*

*(i) Title 75 § 3341. Obedience to signal indicating approach of train*

- (j) Title 75 § 3342. Vehicles required to stop at railroad crossings.*
- (k) Title 75 § 3343. Moving heavy equipment at railroad grade crossings*
- (l) Title 75 § 3345. Meeting or overtaking school bus*
- (m) Title 75 § 3345.1. Enforcement of failure to stop for school bus with flashing red lights*
- (n) Title 75 § 3346. Emergency vehicles entering or leaving official garage*
- (o) Title 75 § 3352. Removal of vehicle by or at direction of police*
- (p) Title 75 § 3353(a)(1)(v)(vi)(vii)(viii)(ix). Prohibitions in specified places*
- (q) Title 75 § 3353(a)(2)(ii),(v),(vi), (ix). Prohibitions in specified places*
- (r) Title 75 § 3354(d)(1). Additional parking regulations Obstructing movement*
- (s) Title 75 § 3354(e). Additional parking regulations*
- (t) Title 75 § 3526. Lighted lamp requirements for motorcycles*
- (u) Title 75 § 3701.1. Leaving an unattended child in a motor vehicle*
- (v) Title 75 § 3718(a). Youth Operating While Under the Influence*
- (w) Title § 3719. Passengers in Open Trucks*
- (x) Title 75 § 3732.1(a). Aggravated Assault by Auto*
- (y) Title 75 § 3733(a). Fleeing or Attempting to Elude Police Officer*
- (z) Title 75 § 3735(a). Homicide by Vehicle While Driving Under the Influence*
- (aa) Title 75 § 3735.1(a). Aggravated Assault by Vehicle While Under the Influence*
- (bb) Title 75 § 3736(a). Reckless Driving*
- (cc) Title 75 § 3742(a). Accidents Involving death or personal injury*
- (dd) Title 75 § 3742.1(a). Accidents Involving death or personal injury when not properly licensed*

- (ee) Title 75 § 3743(a). Accidents Involving Damage to Attended Vehicle or Property*
- (ff) Title 75 § 3745(a). Accidents Involving Damage to Unattended Vehicle of Property*
- (gg) Title 75 § 3745.1 (a)(c). Accident Scene Clearance*
- (hh) Title 75 § 3756(c). Investigation by Police of Reported Accident*
- (ii) Title 75 § 3361. Driving Vehicle at a Safe Speed*
- (jj) Title 75 § 3362(a). Maximum Speed Limits*
- (kk) Title 75 § 3364(a)(b). Minimum Speed Regulation*
- (ll) Title 75 § 3365(a)(b)(c)(c.1). Special Speed Limitations*
- (mm) Title 75 § 3367(b). Racing on Highways*
- (nn) Title 75 § 3714(a)(b)(c). Careless Driving*
- (oo) Title 75 § 3802(a)(b)(c)(d)(e)(f). Driving Under the Influence of Alcohol of Controlled Dangerous Substance*
- (pp) Title 75 § 3308(b). Driving on a one-way roadway*
- (qq) Title 75 § 3809. Restriction on alcoholic beverages*
- (rr) Title 75 § 3303(a). Overtaking vehicle on the left*
- (ss) Title 75 § 3304(a)(b). Overtaking vehicle on the right*
- (tt) Title 75 § 4302. Periods for Requiring Lighted Lamps, where the operator is driving without any head lights and / or tail lights*
- (uu) Title 75 § 7721. Operation on streets and highways*
- (vv) Title 75 § 7724. Operation on private or State property*
- (ww) Title 75 § 7725. Operation by persons under age sixteen.*
- (xx) Title 75 § 7726. Operation in safe manner*

- (yy) *Title 75 § 7727. Additional limitations on operation*
- (zz) *Title 75 § 7728. Accidents and accident reports*
- (aaa) *City Code § 12-602. Operating on One Way Street*
- (bbb) *City Code § 12-901(1) (a)(b)(c)(d). Stopping, Standing or Parking Prohibited at Certain Places (bridge, tunnel, underpass, designated bus stop, school property, or create hazardous conditions or delay traffic)*
- (ccc) *City Code § 12-901(2). Stopping, Standing or Parking Prohibited at Certain Places (moving or pushing a car prohibited area or far from curb)*
- (ddd) *City Code § 12-913. Prohibitions in Specified Places*
- (eee) *City Code § 12-915 (1). Unattended Motor Vehicle*
- (fff) *City Code § 12-1117. Physically Handicapped and Disabled or Severely Disabled Veteran Parking*
- (ggg) *City Code § 12-1133. All-Terrain Vehicles.*
- (hhh) *City Code § 12-1601 through and including §12-1604. Commercial Vehicles*
- (iii) *City Code § 12-1607. Snowmobiles and Minibikes*

*(4) Exclusions: Motor Vehicle Stop Restrictions*

*(a) Police or other authorized law enforcement officers shall not initiate a motor vehicle stop for violation of one or more of the following sections of state or city motor vehicle code:*

- (.1) Title 75 § 1301. Registration of vehicles*
- (.2) Title 75 § 4302. Lighting Equipment Does Not Illuminate where the violation consists of a single brake light, head light, running light, single bulb in a larger light of the same, or any other vehicle light enumerated in Title 75 § 43.*
- (.3) Title 75 § 4524(e). Sun screening and other materials prohibited.*
- (.4) Title 75 § 4703. Operation of vehicle without official certificate of inspection.*

*(b) Unless the totality of the circumstances present a wanton or willful disregard for the actual safety of people or property police or other authorized law enforcement officers*

*shall not initiate a motor vehicle stop for violation of one or more of the following sections of state or city motor vehicle code:*

*(.1) Title 75 § 3111 through and including § 3115 related to Traffic Signals*

*(.2) Title 75 § 3323(b) Duties at Stops Signs*

*(.3) Title 75 §3334(a)(b) Turning Movements and Required Signals*

*(.4) City Code § 12-404. Duty to Stop at Stop Signs*

*(.5) City Code § 12-503. Obedience to No-Turn Signs*

*(.6) City Code § 12-1202. Obedience to Official Traffic-Control Devices*

*(5) A police or law enforcement officer may initiate a motor vehicle stop following an observed infraction of Title 75 § 1332 or §1372 when the vehicle's license plate is obscured, absent or not issued to the proper vehicle.*

*(a) Police or other law enforcement agencies may not use an automated license plate reader (ALPR) to automate ticketing for this Title or the Vehicle Code; but, ALPRs may be used to identify vehicles wanted in connection with an offense defined as a misdemeanor or felony of Title 18 or an offense under the Controlled Substances Act, or previous violations of the following sections of Title 75:*

*(.1) Title 75 § 3718(a); Youth Operating While Under the Influence;*

*(.2) Title 75 § 3732.1(a): Aggravated Assault by Auto;*

*(.3) Title 75 § 3733(a): Fleeing or Attempting to Elude Police Officer;*

*(.4) Title 75 § 3735(a): Homicide by Vehicle While Driving Under the Influence;*

*(.5) Title 75§ 3735.1(a) Aggravated Assault by Vehicle While Under the Influence;*

*(.6) Title 75 § 3742(a): Accidents Involving death or personal injury;*

*(.7) Title 75 § 3742.1(a): Accidents Involving death or personal injury when not properly licensed;*

*(.8) Title 75 § 3743(a): Accidents Involving Damage to Attended Vehicle or Property;*

*(.9) Title 75 § 3745(a): Accidents Involving Damage to Unattended Vehicle of Property.*

*(.10) Title 75 § 3802(a)(b)(c)(d)(e)(f): Driving Under the Influence of Alcohol of Controlled Dangerous Substance.*

*(6) Police or other authorized law enforcement officers shall bear the burden of establishing by clear and convincing evidence that an exception to 12-202(2) justified the initiation of a motor vehicle stop.*

### **§12-203. Emergency and Trial Regulations.**

(1) The Police Department is empowered, *subject to the provisions of 12-202*, to enforce regulations necessary to make effective the provisions of this Title. In the event of fire, emergency or special events the Police Department is empowered to establish and enforce temporary traffic regulations.

(2) For the purpose of minimizing traffic hazards and traffic congestion and for the promotion of public safety, the Department is authorized to establish any traffic regulation for a trial period of eight months; provided that:

(a) Prior to the commencement of any trial period, a copy of the proposed regulation shall be sent by the Department to Council together with a statement of the reasons therefor;

(b) Such trial period shall begin upon the posting of signs or other appropriate notices to the public.

(3) If an ordinance embodying such regulation, or any part thereof, is not approved after the eight-month trial period, such regulation shall cease to be effective.

(4) The Department may test traffic-control devices under actual traffic conditions.

(5) Ordinances to control the direction of movement of traffic and the parking of vehicles on streets within the City shall be enacted pursuant to the authority of this Section.

### **§ 12-1401. Traffic Violation Notices; Parking Violation Notices.**

(1) *Subject to the provisions of §12-201(2)* notice of violation of any provision of this Title (other than any provision relating to parking) may be issued by any police officer by handing such notice to the offender or affixing the notice securely in a prominent place on the vehicle. Notices of violation shall be serially numbered, and shall include the license number and type of vehicle, the date, time, place and nature of the violation, and a space which can be filled out by the driver of such vehicle in the event he waives hearing of and acknowledges commission of the violation charged.

(2) The original and first copy of such notice of violation shall be transmitted to the Traffic Court, the second copy shall be retained by the Police Department, and the third copy shall be handed or mailed to the offender or affixed securely in a prominent place on the vehicle.

(3) Such traffic violation notice forms shall be in the form prescribed and approved by the Chief Magistrate.

(4) Parking violation notices and violation notices issued pursuant to § 12-3101 shall be prepared, issued and transmitted in accordance with the provisions of Chapter 12-2800 of this Title.

Introduced

By

Council Member Isaiah Thomas

October 29, 2020

Co Sponsors

Council Member Jones

Council Member Gilmore Richardson

Council Member Brooks

Council Member Gauthier