

CUSTER COUNTY ORDINANCE NO. 24-01

**AN ORDINANCE TO ESTABLISH
AN AUTOMATED VEHICLE IDENTIFICATION SYSTEM**

Whereas, pursuant to Section 30-11-101 (2), C.R.S., Custer County, through its Board of County Commissioners, has the authority to adopt and enforce all ordinances regarding health, safety and welfare issues; and

Whereas, Section 42-4-110.5 (2) provides that a county may adopt an ordinance authorizing the use of an automated vehicle identification system; and

Whereas, Custer County Sheriff has advised that such a system would be beneficial to protecting the safety of the citizens of Custer County and its visitors; and

Whereas, the Board of County Commissioners has determined that adoption of an ordinance authorizing the use of an automated vehicle identification system described herein is in the interests of the citizens of Custer County;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, COLORADO, AS FOLLOWS:

Section 1. Definitions:

As used within this Ordinance, the following word and terms shall have the following meanings except where otherwise specified:

- A. *Automated Vehicle Identification System* includes a system to detect traffic violations imposed by traffic signals or traffic signs. The term includes a system whereby:
 - a. A machine is used to automatically detect a violation of a traffic regulation and simultaneously record a photograph of the vehicle, the operator of the vehicle, and the license plate of the vehicle; and,
 - b. A notice of violation or civil penalty assessment may be issued to the registered owner of the motor vehicle.
- B. *Notice of Violation* shall mean a notice mailed via first-class mail or personally served to a registered owner of a vehicle involved in any traffic violation detected by an automated vehicle identification system advising that the violation has been detected, or a similar notice mailed to the operator of the vehicle identified by a registered owner of said vehicle.

- C. *Civil Penalty Assessment Notice* shall mean a notice mailed via first-class mail or personally served to a registered owner of a vehicle involved in any traffic violation that has previously received a notice of violation.
- D. *Residential Neighborhood* means any block on which a majority of improvements along both sides of the street are residential dwellings and the speed limit is 35 miles per hour or less.

Section 2. Notices of Violation – In General:

- A. If the County detects any alleged violation of a county or municipal traffic regulation or traffic violation under state law through the use of an automated vehicle identification system, then the County shall issue, or cause its vendor to issue, to the registered owner of the motor vehicle involved in the alleged violation, by first-class mail or personal service, a Notice of Violation.
- B. The County may only issue a Notice of Violation for violations that occur:
 - a. Within a school zone;
 - b. Within a Residential Neighborhood;
 - c. Within a maintenance, construction, or repair zone designated pursuant to C.R.S. § 42-4-614;
 - d. Along a street or road, or portions of a street or road, which the County designates as an automated vehicle identification system corridor as set forth herein, or as may hereafter be designated by separate resolution of the Board of County Commissioners.
- C. The Notice of Violation must be served:
 - a. Within 30 days after the alleged violation if the motor vehicle involved in the alleged violation is registered in the State of Colorado; or,
 - b. Within 60 days after the alleged violation if the motor vehicle in the alleged violation is registered outside the State of Colorado.
- D. The Notice of Violation must contain:
 - a. The name and address of the registered owner of the motor vehicle involved in the alleged violation;
 - b. The license plate number of the motor vehicle involved in the alleged violation;
 - c. The date, time, and location of the alleged violation;
 - d. The amount of the civil penalty prescribed for the alleged violation;

- e. The deadline for payment of the prescribed civil penalty and for disputing the alleged violation; and
 - f. Information on how the registered owner may either dispute the alleged violation at a hearing or pay the prescribed penalty.
- E. To protest a Notice of Violation, the registered owner must request, in writing, a hearing to dispute the alleged violation. The deadline to request a hearing to dispute the Notice of Violation must be at least 45 days after the date of the Notice of Violation.
- a. A hearing will be scheduled upon receipt of a request for hearing under this section.
 - b. The hearing officer for a hearing held under this section shall be the Undersheriff; or, in the absence of the Undersheriff, the Sheriff. The hearing officer shall determine the process for such hearings, which shall be generally uniform. Such hearings may be held in person or virtually.
 - c. At the hearing the County may not require the registered owner to disclose the identity of the driver of the vehicle who is detected through the use of the automated vehicle identification system but may require the registered owner to submit evidence that the owner was not the driver at the time of the alleged violation.

Section 3. Speeding:

A. Violations.

- a. For a speeding violation of less than ten (10) miles per hour over the reasonable and prudent speed under a county or municipal traffic regulation or under state law through the use of an automated vehicle identification system, the violation shall be cited as follows:
 - i. For the registered owner's first offense, a written warning with no penalty or surcharge; and
 - ii. For the registered owner's second or subsequent offense, a Notice of Violation.
 - b. For a speeding violation of more than ten (10) miles per hour over the reasonable and prudent speed under a county or municipal traffic regulation or under state law through the use of an automated vehicle identification system, the County shall issue the registered owner a Notice of Violation.
- B. *Civil Penalty.* The maximum civil penalty for a speeding violation under this Section, including any surcharge, is forty dollars (\$40.00), unless the violation is within a school zone, in which case the maximum penalty shall be eighty dollars (\$80.00). A violation

that occurs within a maintenance, construction, or repair zone designated pursuant to C.R.S. § 42-4-614 may also be subject to a civil penalty of eighty dollars (\$80.00).

- C. *Signage.* The County shall place an appropriate temporary or permanent sign in a conspicuous place not fewer than 300 feet before the area in which the automated vehicle identification system is to be used to notify the public that an automated vehicle identification system is in use immediately ahead.

Section 4. Disobedience to a Traffic Control Signal:

- A. If the County detects a traffic violation under state law for disobedience to a traffic control signal through the use of an automated vehicle identification system, the maximum penalty, including any surcharge, is seventy-five dollars (\$75.00).
- B. The County shall not use an automated vehicle identification system designed to detect disobedience to a traffic control signal unless the County posts a sign notifying the public that an automated vehicle identification system is in use immediately ahead. Such sign shall:
 - a. Be placed in a conspicuous location not less than 200 feet and not more than 500 feet before the automated vehicle identification system; and
 - b. Use lettering that is at least four (4) inches high for upper case letters and two and nine-tenths (2.9) inches high for lower case letters.

Section 5. Automated Vehicle Identification System Corridors:

- A. Pursuant to C.R.S. § 42-4-110.5 (2) (g) (I), the County identifies the following corridors as automated vehicle identification system corridors:
 - a. Colorado State Highway 69 South of the municipal boundaries of Westcliffe
 - b. Colorado State Highway 69 North of the municipal boundaries of Westcliffe
 - c. Rosita Road
 - d. Copper Gulch Road
 - e. Oak Creek Grade Road
 - f. Colorado State Highway 96
 - g. Colorado State Highway 165
- B. Prior to using an automated vehicle identification system on an automated vehicle identification system corridor, the County shall post a permanent sign not fewer than 300 feet before the beginning of such corridor and a permanent sign not fewer than 300 feet before each camera within the corridor or a temporary sign fewer than 300 feet before any mobile camera.

- C. The County shall illustrate, through data collected within the past five (5) years, incidents of crashes, speeding, reckless driving, or community complaints on the streets or roads designated as an automated vehicle identification system corridor.
- D. The County will coordinate with the Colorado Department of Transportation and the Colorado State Patrol in designated corridors.
- E. The County will publish a report on its website disclosing the number of citations and revenue generated by the automated vehicle identification system corridor.
- F. The County shall not locate an automated vehicle identification system corridor on any highway that is part of the federal interstate highway system.

Section 6. Civil Penalty Assessment Notices:

- A. If the County has not received the prescribed civil penalty or written notice requesting a hearing to dispute the alleged violation by the deadline provided in the Notice of Hearing, then the County shall issue, or cause its vendor to issue, a Civil Penalty Assessment Notice to be served on the registered owner either by first-class mail or personal service.
- B. The Civil Penalty Assessment Notice shall contain:
 - a. The name and address of the registered owner of the motor vehicle involved in the alleged violation;
 - b. The license plate of the motor vehicle involved in the alleged violation;
 - c. The date, time, and location of the alleged violation;
 - d. The amount of the civil penalty prescribed for the alleged violation;
 - e. The deadline for payment of the prescribed civil penalty; and
 - f. Information on how to pay the prescribed civil penalty.
- C. If the registered owner fails to pay the full prescribed civil penalty by the deadline stated in the Civil Penalty Assessment Notice, a final order of liability shall be entered against the registered owner of the vehicle. The final order must be personally served to the registered owner prior to any collection action. Final orders of liability may be appealed as to matters of law and fact to the Custer County Court.
- D. The County may initiate or pursue a collection action against the registered owner of a motor vehicle for debt resulting from the final order of liability.
- E. The County shall not report to the Colorado Department of Transportation any conviction or entry of judgment against a defendant for a traffic violation under state law if the violation was detected through the use of an automated vehicle identification system.

- F. If the registered owner fails to pay the full prescribed civil penalty, the County shall not attempt to enforce the penalty by immobilizing the registered owner's vehicle.

Section 7. Vendors:

- A. No portion of any fine collected through the use of an automated vehicle identification system may be paid to the manufacturer or vendor of the automatic vehicle identification system equipment. The compensation to such vendor by the County shall be based on the value of such equipment and the value of any services provided and may not be based on the number of traffic citations issued or the revenue generated by such equipment or services.

Section 8. Data Retention:

- A. The County shall:
 - a. Program the automated vehicle identification system to retain data only when a violation of a county or municipal traffic regulation or traffic violation under state law occurs;
 - b. Treat all photographs and video collected by the automated vehicle identification system as confidential and exempt from disclosure and inspection pursuant to the "Colorado Open Records Act," part 2, Article 72, Title 24, C.R.S.
 - c. Not use, disclose, sell, or permit access to photographs, video, or personal identifiable data collected by the automated vehicle identification system except to the extent necessary to operate the program, including for purposes of processing violations, for other law enforcement purposes, for transferring data to a new vendor or operating system, or, pursuant to a court order, for use in unrelated legal proceedings; and
 - d. Destroy any photographs and video of a violation collected by the automated vehicle identification system within three (3) years after the final disposition of the violation unless the photographs or video are maintained in a separate system for other purposes allowed by law.

Section 9. Administration and Implementation:

- A. This Ordinance shall be administered by the Custer County Sheriff's Office, which is hereby designated as the "agency responsible for the automated vehicle identification system" pursuant to law. Enforcement and collection shall be handled through internal procedures established by the Custer County Sheriff's Office. Unless otherwise specified herein, where this Ordinance references the "County," such reference shall include on a primary level the Custer County Sheriff's Office. Funds collected by the County through this program shall be placed in a fund to be designated by the Board of County Commissioners, which designation may change by a vote of the Board of County Commissioners without the need for adoption of an amendment to this Ordinance.

- B. The Custer County Sheriff's Office shall publicly announce the implementation of the system through its website for at least thirty (30) days prior to the use of the system.
- C. For the first thirty days after the system is installed or deployed, only warnings may be issued for violations of a county or municipal traffic regulation or traffic violation under state law detected by the system.
- D. To the extent that any municipality within Custer County for which the Custer County Sheriff's Office provides law enforcement through an intergovernmental agreement authorizes the use of an automated vehicle identification system within the boundaries of such municipality, such use shall be governed by the terms of this Ordinance, and such authorization by the municipality should incorporate this Ordinance by reference. If a municipality authorizes the use of an automated vehicle identification system without this provision, the Custer County Sheriff's Office may decline to enforce or implement such system within the municipality.

Section 10. Severability:

If any article, section, paragraph, sentence, clause or phrase of this Ordinance, or the standards adopted herein is held to be unconstitutional or invalid for any reason, such decision will not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of County Commissioners hereby declares that it would have passed this Ordinance and each part hereof irrespective of the fact that any one part or parts are declared unconstitutional or invalid.

Section 11. Effective Date:

Because this ordinance is necessary for the immediate preservation of the public health and safety for the reasons contained herein, this ordinance shall take effect upon adoption and publication by title.

FIRST READING, OCTOBER 16, 2024 AT WETMORE, COLORADO.

Published in the *Wet Mountain Tribune* on October 31, 2024.

APPROVED AND ADOPTED ON SECOND READING THIS 13th DAY OF NOVEMBER 2024 AT WESTCLIFFE, COLORADO.

Re-Published by title only in the *Wet Mountain Tribune* following adoption by the Board of County Commissioners on Nov. 21, 2024.

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Kevin V. Day
Kevin V. Day, Chairman

William R. Canda
William R. Canda, Vice-Chairman

Lucas D. Epp
Lucas D. Epp, Commissioner

Attest:

Kelley S. Camper
Kelley S. Camper, Clerk to the
Board

