

ORDINANCE 39 - 24

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, ENACTING ARTICLE XVI – “SCHOOL ZONE SPEED ENFORCEMENT” – CHAPTER 12 OF THE CAPE CORAL CODE OF ORDINANCES; ESTABLISHING A SCHOOL ZONE SPEED ENFORCEMENT PROGRAM AND AUTHORIZING THE USE OF SPEED DETECTION SYSTEMS WITHIN THE IDENTIFIED SCHOOL ZONES IN THE CITY OF CAPE CORAL; PROVIDING FOR PROGRAM IMPLEMENTATION REQUIREMENTS; PROVIDING FOR DESIGNATION OF SCHOOL ZONES; PROVIDING FOR ENFORCEMENT AND ADMINISTRATIVE PROCEDURES; PROVIDING FOR COLLECTION OF EVIDENCE, PUBLIC RECORDS, AND RETENTION REQUIREMENTS; PROVIDING FOR ANNUAL REPORTING REQUIREMENTS; PROVIDING FOR THE REMITTANCE OF COLLECTED FINES AND COSTS; RESOLUTION OF CONFLICTING LAWS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Chapter 166 of the Florida Statutes and Article VIII of the Florida Constitution authorizes the legislative body of each municipality to enact ordinances to protect the health, safety, and welfare of its residents; and

WHEREAS, on July 1, 2023, House Bill 657 (“HB 657”), as codified under Chapter 2023-174 of the Laws of Florida, went into effect, authorizing municipalities to use speed detection systems in accordance with certain technical specifications established by the Florida Department of Transportation to enforce the speed limit in a school zone at specified periods; and

WHEREAS, prior to utilizing speed detection systems to enforce eligible school zone speeding violations within its jurisdiction, municipalities are required to adopt an ordinance authorizing the placement and installation of speed detection systems and creating administrative and enforcement procedures for the use of speed detection systems at designated school zones; and

WHEREAS, prior to utilization of the speed detection systems in any particular school zone, HB 657 also requires the governing body of the municipality to first determine whether a school zone constitutes a heightened safety risk that warrants additional traffic enforcement measures based on traffic data or other evidence supporting the installation and operation of each proposed school zone speed detection system; and

WHEREAS, HB 657 provides that a municipality may issue notices of violation and may authorize a law enforcement officer or traffic infraction enforcement officer to issue uniform traffic citations for violations of sections 316.1895 and 316.183, Florida Statutes, that are captured by speed detection systems during specified time periods and further provides for notice to the registered owner of the subject vehicle, and administrative procedures, including hearing procedures, appellate remedies, and the assessment and remittance of civil penalties and costs; and

WHEREAS, HB 657 requires municipalities that elect to operate school zone speed detection systems to implement a public awareness campaign at least 30 days before commencing with the enforcement of violations and to annually report information about the program to both the public and the Florida Department of Highway Safety and Motor Vehicles; and

WHEREAS, HB 657 restricts the location and use of speed detection systems to school zones that the municipality determines constitute a heightened safety risk warranting additional enforcement measures based on data or other evidence presented at a public hearing; and

WHEREAS, the City of Cape Coral, Florida, (the “City”) wishes to deter drivers from speeding through school zones and provide a supplemental means for the enforcement of unlawful speed violations by enacting an ordinance to implement a school zone speed enforcement program; and

WHEREAS, HB 657 requires that before the City contracts or renews a contract with a vendor to place or install speed detection systems, the City must approve the contract or contract renewal at a regular or special commission meeting; the vendor contract may not be considered as part of the consent agenda as public input must be allowed; and

WHEREAS, at the time of adoption, the City has considered the relevant traffic data, including the “School Zone Speed Study for the City of Cape Coral, Florida,” completed by Kisinger Campo & Associates, attached as Exhibit 1, and other evidence presented, incorporated by reference and submitted to the City Clerk as supplemental information to this Ordinance at the time of adoption, supporting the installation and operation of speed detection systems for certain school zones within City limits; and

WHEREAS, based upon the relevant traffic data and other evidence presented, the City has determined that each school zone where a speed detection system is to be placed or installed constitutes a heightened safety risk that warrants additional enforcement measures; and

WHEREAS, the City finds that motor vehicles speeding on a roadway maintained as a school zone during specified periods is an unacceptable hazard that threatens the health, safety, and welfare of students and pedestrians in the City, and that enforcement of applicable speed limits in school zones during specified periods through the use of a speed detection system may reduce safety risks in school zones, which warrants implementation of school zone speed detection enforcement pursuant to the rules and regulations of Chapter 2023-174, Laws of Florida, and other applicable state law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated by reference and are approved.

SECTION 2. Chapter 12, Cape Coral Code of Ordinances, is hereby amended by adding Article XVI – “School Zone Speed Enforcement,” to read in its entirety as follows:

ARTICLE XVI – SCHOOL ZONE SPEED ENFORCEMENT

§ 12-131. – Purpose and Intent.

The purpose and intent of this Article is to protect the health, safety, and welfare of City residents by authorizing the placement or installation and use of speed detection systems on roadways maintained as a school zone as authorized under section 316.008, Florida Statutes, pursuant to section 316.1895, Florida Statutes, within the jurisdiction of the City, to promote compliance with speed limits in school zones, and to adopt a quasi-judicial system to enforce violations. This Article provides a supplemental means of enforcing unlawful speed violations in school zones and shall not prohibit a law enforcement officer from issuing a uniform traffic citation for a traffic violation in accordance with Chapter 316, Florida Statutes.

§ 12-132. – Definitions.

For the purposes of this Article, the following terms shall have the meanings given below:

- (a) HEARING PROCEDURES shall mean the procedures set forth under section 316.1896, Florida Statutes, governing noticing, scheduling, and conducting hearings before a Local Hearing Officer.
- (b) LAW ENFORCEMENT OFFICER shall mean, as defined by section 943.10(1), Florida Statutes, any person who is elected, appointed, or employed full time by a municipality or the state or any political subdivision thereof, who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.
- (c) LOCAL HEARING OFFICER shall mean the Special Magistrate(s), as codified in Chapter 2, §2-83, Cape Coral Code of Ordinances, or other City appointee as permitted by law and as established by the City Council through a resolution.
- (d) MOTOR VEHICLE shall mean, as defined by section 316.003, Florida Statutes, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped.

- (e) NOTICE OF VIOLATION shall mean the written notification sent to the registered owner of a vehicle after a school zone speed infraction by that vehicle has been captured by a speed detection system and thereafter reviewed and approved by a law enforcement officer or traffic infraction enforcement officer. A notice of violation must be in the form and include the contents prescribed by section 316.1896, Florida Statutes, as it may be amended.
- (f) SCHOOL ZONE shall mean that portion of a street or highway established as a school zone pursuant to section 316.1895, Florida Statutes, as it may be amended.
- (g) SCHOOL ZONE SPEED ENFORCEMENT PROGRAM shall mean the regulations and procedures governing the use of speed detection systems on roadways maintained as a school zone within the jurisdiction of the City, as provided for by applicable law and established by this Ordinance.
- (h) SCHOOL ZONE SPEED INFRACTION shall mean a violation of section 316.183 or 316.1895, Florida Statutes, captured by a speed detection system on a roadway maintained as a school zone during the hours provided for by applicable law and set forth in this Ordinance.
- (i) SCHOOL ZONE SPEED LIMIT shall mean the regularly posted or reduced posted speed limit within a school zone pursuant to section 316.1895, Florida Statutes.
- (j) SPEED DETECTION SYSTEM shall mean a portable or fixed automated system used to detect a motor vehicle's speed using radar or LiDAR and to capture a photograph or video of the rear of a motor vehicle that exceeds the speed limit in force at the time of the violation. This term is synonymous with the term "Speed Detection System" defined in section 316.003(83), Florida Statutes, as it may be amended.
- (k) TRAFFIC INFRACTION ENFORCEMENT OFFICER shall mean a person who meets the qualifications established by section 316.640, Florida Statutes, as it may be amended.
- (l) UNIFORM TRAFFIC CITATION shall mean the citation issued to the registered owner of a vehicle for a school zone speed infraction, in the form and including the contents prescribed by sections 316.1896 and 316.650, Florida Statutes, as it may be amended.

§ 12-133. – Program Administration

- (a) The City Manager or City Manager's designee, in cooperation with the Cape Coral Police Department and any necessary City staff as determined by the City Manager or City Manager's designee, and any approved vendor and its employees and agents, are empowered to administer and assist with the City's school zone speed enforcement program, consistent with the provisions of Chapter 2023-174, Laws of Florida, subject to any other applicable state law, this Article, and all corresponding City Council resolutions. This Article shall further enable the City to enter into agreements with one or more vendors to place or install speed detection systems and carry out services consistent with the implementation and enforcement of the provisions of Chapter 2023-174, Laws of Florida.
- (b) As permitted and defined by applicable law and corresponding resolution adopted by the City Council, the City may designate its Special Magistrate(s), or other City appointee, as its Local Hearing Officer, who shall have jurisdiction to conduct proceedings in accordance with Chapter 2023-174, Laws of Florida, and section 316.1896, Florida Statutes, as such may be amended from time to time.
- (c) In accordance with Chapter 2023-174, Laws of Florida, and section 316.1896, Florida Statutes, as may be amended, the City Council shall designate by resolution existing City staff to serve as the clerk to the Local Hearing Officer.

§ 12-134. – Program Implementation Requirements

- (a) *Vendor Contract.* Pursuant to section 316.0776, Florida Statutes, before the City contracts or renews a contract to place or install a speed detection system in a school zone, the contract or contract renewal must be approved by the City Council at a regular or special City Council

meeting. The contract or contract renewal may not be heard on the consent agenda and the public must be allowed to comment pursuant to the City's public comment policies.

- (b) *Installation and Operation of Speed Detection Systems.* Pursuant to sections 316.008 and 316.0776, Florida Statutes, speed detection systems may be installed and operated only in the school zones designated by this Ordinance, or subsequent amendments thereto.
- (c) *Signage Requirements.* The installation and operation of speed detection systems, including required signage, shall be in accordance with Chapter 316, Florida Statutes, all applicable regulations of the Florida Department of Transportation and the Florida Department of Highway Safety and Motor Vehicles, and the terms of any Memorandum of Understanding or other written agreement that may be entered into between Cape Coral Police Department and/or the City and its vendor(s).
- (d) *Public Awareness.* Pursuant to section 316.0776, Florida Statutes, before notices of violation for school zone speed infractions may be issued, a public announcement and 30-day public awareness campaign of the initial proposed use of speed detection systems must be conducted. During the 30-day public awareness campaign, only a warning may be issued to the registered owner for a school speed zone infraction and a fine shall not be imposed.

§ 12-135. – *Designation of School Zones*

Having considered evidence at a public hearing supporting the installation and operation of speed detection systems on certain roadways maintained as school zones within the jurisdiction of the City, the school zones on the roadways surrounding the following schools constitute a heightened safety risk that warrants additional enforcement measures by installation or placement of speed detection systems pursuant to section 316.008, Florida Statutes. Subsequent speed detection systems may be approved for inclusion or removal via amendment to this Ordinance in accordance with applicable law.

Ida S. Baker High School
3500 Agualinda Blvd.

Challenger Middle School
624 Trafalgar Pkwy.

Diplomat Middle School
1039 NE 16th Ter.

Mariner Middle School
425 Chiquita Blvd. N.

Trafalgar Middle School
2120 Trafalgar Pkwy.

Cape Elementary School
4519 Vincennes Blvd.

Diplomat Elementary School
1115 NE 16th Ter.

Gulf Elementary School
3400 SW 17th Pl.

Oasis Charter Elementary School (North)
2817 SW 3rd Ln.

Patriot Elementary School
711 SW 18th St.

Pelican Elementary School
3525 SW 3rd Ave.

Skyline Elementary School
620 SW 19th St.

Trafalgar Elementary School
1850 SW 20th Ave.

Heritage Charter Academy of Cape Coral
2107 Santa Barbara Blvd.

St. Andrews Catholic School
1509 SE 27th St.

Nicaea Academy of Cape Coral
3221 Chiquita Blvd. S.

Cape Coral Christian School
811 Santa Barbara Blvd.

§ 12-136. – *Enforcement Procedures*

- (a) *General Powers.* The Cape Coral Police Department shall be authorized to enforce the applicable speed limit on a roadway properly maintained as a school zone pursuant to Chapter 2023-174, Laws of Florida, for violations of sections 316.183 and 316.1895, Florida Statutes, through the use of a speed detection system for the detection of speed and capturing of photographs or videos for violations in excess of 10 miles per hour over the speed limit in force at the time of the violation. The Cape Coral Police Department Chief of Police or designee is responsible for establishing the business rules of procedure between the vendor and the City necessary for implementing this Article.
- (b) *Review of Speed Detection System Information.* Pursuant to section 316.1896, Florida Statutes, as may be amended, information captured by a speed detection system shall be reviewed by a law enforcement officer or traffic infraction enforcement officer.
- (c) *School Zone Speed Detection System Violations.* The applicable speed limit on a roadway properly maintained as a school zone may be enforced through the capturing of a violation by a speed detection system as follows:
 - (i) For a violation of section 316.1895, Florida Statutes, in excess of 10 miles per hour over the school zone speed limit which occurs within 30 minutes before through 30 minutes after the start of a regularly scheduled breakfast program.
 - (ii) For a violation of section 316.1895, Florida Statutes, in excess of 10 miles per hour over the school zone speed limit which occurs within 30 minutes before through 30 minutes after the start of a regularly scheduled school session.
 - (iii) For a violation of section 316.183, Florida Statutes, in excess of 10 miles per hour over the posted speed limit during the entirety of a regularly scheduled school session.
 - (iv) For a violation of section 316.1895, Florida Statutes, in excess of 10 miles per hour over the school zone speed limit which occurs within 30 minutes before through 30 minutes after the end of a regularly scheduled school session.
- (d) *Notice of Violation.* Within 30 days after a violation of this Article, a notice of violation must be sent to the registered owner of the motor vehicle involved in the violation as provided under section 316.1896, Florida Statutes.
- (e) *Hearing Procedures and Appeals.* Hearings to contest notices of violations shall be held in accordance with the requirements of Chapter 2023-174, Laws of Florida, and sections

316.0083(5) and 316.1896, Florida Statutes. An aggrieved party may appeal a final administrative order of the Local Hearing Officer in accordance with section 316.1896(14)(f), Florida Statutes.

- (f) *Defenses, Penalties and Costs.* The enforcement of school zone speed infractions including the issuance of notices of violation and uniform traffic citations, the processing of affidavits to assert an exception to liability, and the assessment of fines and costs must comply with section 316.1896, Florida Statutes.

In accordance with sections 316.1896(14)(e) and 316.0083(5)(e), Florida Statutes, the Local Hearing Officer shall determine whether a violation under this Article has occurred, in which case the Local 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 municipal costs not to exceed \$250 per violation. The final administrative order shall be mailed to the petitioner by first-class mail. A registered owner who receives a notice of violation may, within 30 days:

- (i) Pay the fine of \$100.00, as fixed by section 318.18(3)(d), Florida Statutes, as it may be amended; or
 - (ii) Submit an affidavit establishing an exception to liability pursuant to section 316.1896(8), Florida Statutes, as it may be amended; or
 - (iii) Request a hearing.
- (g) *Issuance of a uniform traffic citation.* A law enforcement officer or traffic infraction enforcement officer shall be authorized, pursuant to section 316.1896, Florida Statutes, to issue a uniform traffic citation for violations of sections 316.1895 or 316.183 as authorized by section 316.008(9), Florida Statutes. If the registered owner of a vehicle does not timely pay the fine reflected on the notice of violation, submit a sufficient affidavit, or request a hearing, a uniform traffic citation must be issued by a law enforcement officer or a traffic infraction enforcement officer to the registered owner and transmitted to the Lee County Clerk of the Court for disposition by the county court.

§ 12-137. – Collection of Evidence, Public Records, and Retention Requirements

In accordance with section 316.1896(15), Florida Statutes, a speed detection system in a school zone may not be used for remote surveillance. The collection of evidence by a speed detection system to enforce violations of sections 316.1895 and 316.183, Florida Statutes, pursuant to this Article, or user-controlled pan or tilt adjustments of speed detection components, do not constitute remote surveillance. Recorded video or photographs collected as part of a speed detection system in a school zone may only be used to document violations of sections 316.1895 and 316.183, Florida Statutes, and for purposes of determining criminal or civil liability for incidents captured by the speed detection system incidental to the permissible use of the speed detection system, pursuant to section 316.1896, Florida Statutes. Any recorded video or photograph obtained via a speed detection system must be destroyed within 90 days after the final disposition of the recorded event, pursuant to section 316.1896, Florida Statutes. Written notice that such records have been destroyed must be provided by December 31st of each year to the City by its speed detection system vendor. All public records related to the administration of this Article must be maintained in accordance with Florida law and all requests for such records must be addressed in accordance with Chapter 119, Florida Statutes, and any other applicable state law. In order to provide fair and even enforcement of school zone speeds, the City elects to utilize video-based enforcement over “still-photograph” enforcement for the dual purposes of reducing camera obstructions and for the benefit of having lane-specific video, which may be used for determining civil or criminal liability for incidents captured incidental to speed enforcement, in accordance with section 316.1896(15)(a), Florida Statutes.

§ 12-138. – Annual Reporting Requirements

The City, with the assistance of the Cape Coral Police Department and/or the vendor, will annually report on the City’s school zone speed enforcement program to the public and to the Florida Department of Highway Safety and Motor Vehicles in accordance with sections 316.0776(3)(c) and 316.1896, Florida Statutes, as they may be amended.

Pursuant to section 316.0776 (3)(c), the compliance or sufficiency of compliance with this requirement may not be raised in a proceeding challenging a notice of violation for a school zone speed infraction.

§ 12-139. – *Collected Fines and Costs*

All fines and costs collected pursuant to this Article must be remitted in accordance with sections 316.1896 and 318.18, Florida Statutes, and any other relevant state law.

§ 12-140. – *School Crossing Guard Recruitment and Retention Program*

Pursuant to section 316.1894, Florida Statutes, as may be amended, the law enforcement agency having jurisdiction over a municipality conducting a school zone speed detection system program authorized by section 316.008(9), Florida Statutes, must use funds generated pursuant to section 316.1896(5)(e), Florida Statutes, from the school zone speed detection system program to administer the School Crossing Guard Recruitment and Retention Program. Such program may provide recruitment and retention stipends to crossing guards at K-12 public schools, including charter schools, or stipends to third parties for the recruitment of new crossing guards. The School Crossing Guard Recruitment and Retention Program must be designed and managed at the discretion of the law enforcement agency. The Chief of Police, or his or her designee, shall administer the School Crossing Guard Recruitment and Retention Program.

SECTION 3. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 5th DAY OF June, 2024.


JOHN GUNTER MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

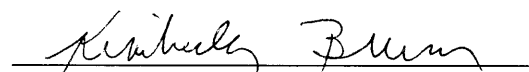
GUNTER
STEINKE
SHEPPARD
HAYDEN

aye
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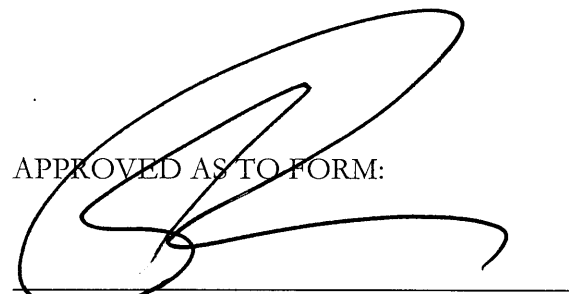
CARR
WELSH
LONG
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aye
aye
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aye

ATTESTED TO AND FILED IN MY OFFICE THIS 12th DAY OF June, 2024.


KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:


ALEKSANDR BOKSNER
CITY ATTORNEY
ord/School Zone Speed Enforcement