



SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

Agenda Item Summary

Meeting Date: February 15, 2017

Purpose: Report Only Recognition Discussion/ Possible Action

Presenter(s): Ruperto Becerra Jr., Interim Chief Financial Officer
Jesse X. Berlanga, Transportation Director
Slater Swartwood, Bus Guard

Item Title:

Discussion and possible action to approve the South San Antonio ISD School Bus Safety/Stop Arm Enforcement Program and the Procedures for the Administrative Adjudication of Appeals for Stop Arm Violations.

Description:

South San Antonio ISD School Board must approve and adopt procedures as described in Exhibit A, for the adjudication of civil violations issued under the School Bus Safety/Stop Arm Enforcement Program.

District Goal:

Goal 6 We will promote and ensure a safe and secure learning environment for all students.

Funding Budget Code and Amount:

CFO Approval

N/A

APPROVAL ROUTE
Principal/Director:
Executive Director:
Chief Administrator:
Superintendent:

SIGNATURE

[Handwritten Signature]

DATE

2/2/17

Exhibit A
South San Antonio Independent School District's
Administrative Adjudication Procedures for
Stop Arm Violations

I. Definitions

- 1.01 *School Bus Safety/Stop Arm Enforcement Program.* The installation and implementation of photographic school bus stop arm enforcement systems on District school buses operated within the full purpose limits of the City of San Antonio to reduce school bus stop arm violations and injuries to students citywide.
- 1.02 *Camera-enforced school bus.* A District school bus equipped with a photographic school bus stop arm enforcement system.
- 1.03 *Owner.* A person accused, in a notice of violation, of owning a vehicle that committed a stop arm violation, or that person's representative.
- 1.04 *District.* The South San Antonio Independent School District or its designated agent to administer the School Bus Safety/Stop Arm Enforcement Program.
- 1.05 *Independent Hearing Examiner.* An attorney licensed by the State of Texas and employed by an entity designated by the District's Board of Trustees to independently and impartially adjudicate appeals of stop arm violations for which a notice of violation has been issued and an appeal hearing scheduled. Independent Hearing Examiners may not be affiliated with the entity that owns or installed the District's photographic school bus stop arm enforcement system.
- 1.06 *Reviewing Person.* An independent and impartial law enforcement officer employed by an entity designated by the District's Board of Trustees, who is not affiliated with the entity that owns or installed the District's photographic school bus stop arm enforcement system.
- 1.07 *Photographic school bus stop arm enforcement system.* A system that:
- (a) Consists of cameras installed on the exterior of a school bus that work in conjunction with an automated stop arm on the school bus, which stop arm, along with flashing warning lights and other equipment required by Texas Transportation Code Title 7, Sections 547.701 and 547.7015, Texas Education Code 34.002, and Texas Administrative Code, Title 37, Part 1, Chapter 14, warns drivers that the school bus is stopped for the purpose of loading or unloading students; and
 - (b) Is capable of producing a recorded image depicting the license plate attached to the front or the rear of a motor vehicle that passes the school

bus in violation of Chapter 19, Article XVIII of the San Antonio City Code.

- 1.08 *Recorded image.* A photographic or digital image recorded by a photographic school bus stop arm enforcement system that depicts the front or the rear of a motor vehicle.
- 1.09 *School bus.* Has the meaning given that term in Section 541.201 of the Texas Transportation Code, as amended.
- 1.10 *Notice of violation.* The notice of a stop arm violation issued pursuant to procedures set forth herein.
- 1.11 *Stop arm violation.* A violation of Chapter 19, Article XVIII of the San Antonio City Code.
- 1.12 *Superintendent.* South San Antonio Independent School District's Superintendent or his/her designee.
- 1.13 *Administrative Appeal.* An administrative adjudication hearing conducted by an Independent Hearing Examiner concerning a notice of violation that is scheduled for hearing upon an owner's timely request for same.
- 1.14 *"Not affiliated with the entity that owns or installed the District's photographic school bus stop arm enforcement system."* Neither a Reviewing Person nor an Independent Hearing Examiner may receive compensation based on the number of, or whether, notices of violations are issued or upheld. They may, however, be compensated from the proceeds of the School Bus Safety/Stop Arm Enforcement Program, and the District's designated agent may disburse compensation to them on the District's behalf from the District's proceeds.

II. Reviewing Person: Powers, Duties and Functions

- 2.01 The Reviewing Person must review the video of the violation and decide whether to proceed with issuance of a notice of violation.
- 2.02 The Reviewing Person's decision as to whether to proceed with issuance of a notice of violation must *not* impact the Reviewing Person financially, nor any entity for whom the Reviewing Person works or has any ownership or other financial interest in.
- 2.03 The Reviewing Person must make a written finding that there is probable cause to believe that the motor vehicle passed a school bus when the stop arm was activated. When making such a finding, the Reviewing Person must consider whether the vehicle had sufficient time to stop after the stop arm was activated, and considering the driver's duty to:

- a. drive at a speed *not* greater than is reasonable and prudent under the conditions and having regard for actual and potential hazards then existing;
- b. drive at an appropriate reduced speed if a special hazard exists with regard to traffic, including pedestrians, or weather or highway conditions; and
- c. drive past a flashing yellow signal *only with caution*.

The Reviewing Person's issuance of a notice of violation is *prima facie* evidence of the findings required herein based upon the considerations required herein.

- 2.04 The Reviewing Person must establish written proof of the ownership of the motor vehicle.
- 2.05 The Reviewing Person must mail the notice of violation to the owner not later than the 30th day after the date the stop arm violation is alleged to have occurred.

III. Independent Hearing Examiners; Powers; Duties; and Functions

- 3.01 Independent Hearing Examiners exercise the municipal judicial authority delegated to the District to adjudicate administrative appeals of stop arm violations for which an appeal hearing has been timely requested and scheduled.
- 3.02 Independent Hearing Examiners must be competent to understand the issues and render decisions.
- 3.03 An Independent Hearing Examiner's decision to find a person liable or not liable must have no financial impact upon the Independent Hearing Examiner or any entity for whom the Independent Hearing Examiner works or has any ownership or other financial interest in.
- 3.04 Independent Hearing officers are hereby delegated the following powers, duties, and functions:
 - (a) To administer oaths.
 - (b) To determine admissibility of evidence.
 - (c) To hear testimony under oath and consider evidence pertaining to a notice of violation, including testimony and evidence produced by the owner and the owner's witnesses.
 - (d) Upon a showing of good cause, extend the deadline for an owner to request an administrative appeal of a notice of violation.
 - (e) To hear and determine administrative appeals of stop arm violations by rendering a determination of "Liable" or "Not Liable." Determinations of "Liable" must be based upon findings, by a preponderance of the evidence, that the correct owner was cited, the violation occurred and

there are no facts or circumstances establishing any reasonable justifications or excuses for any violation (e.g. none of the defenses in Section IV below were established by a preponderance of the evidence). When considering other alleged justifications or excuses for a violation, the Independent Hearing Examiner must consider the driver's duty to:

- a. drive at a speed no greater than is reasonable and prudent under the conditions and having regard for actual and potential hazards then existing;
 - b. drive at an appropriate reduced speed if a special hazard exists with regard to traffic, including pedestrians, or weather or highway conditions; and
 - c. drive past a flashing yellow signal only with caution.
- (f) To assess civil fines, penalties, and other costs for stop arm violations in accordance with articles IX and X herein.
- (g) To waive penalties assessed for a stop arm violation in accordance with section 10.04 herein.

IV. Violations as Civil Offenses; Defenses; Presumptions

- 4.01 In accordance with and pursuant to Chapter 19, Article XVIII of the San Antonio City Code, the owner of a motor vehicle that is operated within the full purpose limits of the City of San Antonio, in violation of section 545.066 of the Texas Transportation Code, as amended, by passing a stopped camera-enforced school bus displaying the visual signals required by Texas Transportation Code Title 7, Sections 547.701 and 547.7015, Texas Education Code 34.002, and Texas Administrative Code, Title 37, Part 1, Chapter 14, commits a civil offense and is liable for a civil fine.
- 4.02 The Independent Hearing Examiner and/or Reviewing Person may consider the following defenses to a notice of violation. It is the owner's burden to prove by a preponderance of the evidence that a defense applies.
- (a) The vehicle was sold prior to the date of the notice of violation;
 - (b) The vehicle was stolen;
 - (c) The vehicle was rented or leased;
 - (d) The registered owner is deceased;
 - (e) Texas Department of Motor Vehicles error;
 - (f) The school bus was not operating the visual signals required by Texas Transportation Code Title 7, Sections 547.701 and 547.7015, Education Code 34.002, and Texas Administrative Code, Title 37, Part 1, Chapter 14;

- (g) The school bus had not stopped to load or unload students;
- (h) The operator of the motor vehicle was acting in compliance with the lawful order or direction of a law enforcement officer;
- (i) The operator of the motor vehicle passed the stopped school bus so as to yield the right-of-way to an immediately approaching authorized emergency vehicle;
- (j) The motor vehicle was being operated as an authorized emergency vehicle under chapter 546 of the Texas Transportation Code, as amended, and the operator was acting in compliance with that chapter; or
- (k) Any other valid and applicable defense to Texas Transportation Code Section 545.066.

4.03 It is presumed that an owner of the vehicle depicted in the recorded image of a stop arm violation for which a notice of violation is issued is the vehicle owner who committed the stop arm violation. Proof of ownership may be made by a computer-generated record of the registration of the vehicle with the Texas Department of Motor Vehicles showing the name of the vehicle owner to whom state license plates were issued. This proof is *prima facie* evidence of the ownership of the vehicle by the vehicle owner to whom the certificate of registration was issued.

4.04 A vehicle owner who is in the business of selling, renting, or leasing vehicles will not be liable for stop arm violation fines, penalties, and costs imposed on a vehicle for sale or a rented or leased vehicle if the vehicle owner presents evidence establishing that the vehicle depicted in the recorded image was at the time of the alleged violation being rented, leased, or test driven by another person. Evidence sufficient to establish that the vehicle was being rented, leased, or test driven includes:

- (a) The true name, address, and driver's license number and state of issuance of the person renting, leasing, or test driving the vehicle at the time the recorded image of the stop arm violation was taken; or
- (b) A true copy of the lease or rental agreement in effect at the time the recorded image of the stop arm violation was taken.

4.05 Evidence presented under section 4.04 must be presented by affidavit under penalty of perjury within the deadlines established elsewhere in this document.

4.06 If the owner presents evidence under sections 4.04 and 4.05 establishing that the vehicle depicted in the recorded image was being rented, leased, or test driven at the time of the stop arm violation, the owner may not be held liable for stop arm

violation fines, penalties, and costs. An owner who fails to comply with sections 4.04 and 4.05 will be treated as any other owner and will be liable for the stop arm violation.

- 4.07 An alleged owner named in a notice of violation who did not hold legal title to the motor vehicle at the time of a stop arm violation may not be liable for the stop arm violation fines, penalties, and costs on that vehicle if the alleged owner presents evidence establishing that another owner held legal title to the vehicle at the time the recorded image of the stop arm violation was taken. Evidence sufficient to establish that the vehicle was owned by another owner at the time of the stop arm violation includes:
- (a) The true name, address, and driver's license number and state of issuance of the vehicle owner who held legal title to the vehicle at the time the recorded image of the stop arm violation was taken; or
 - (b) A true copy of any purchase or sale documentation (including proof of transfer of title) showing the name of the vehicle owner who held title to the vehicle at the time the recorded image of the stop arm violation was taken (that vehicle owner's address must also be provided if not contained in the documentation).
- 4.08 Evidence presented under section 4.07 must be presented by affidavit under penalty of perjury within the deadlines established elsewhere in this document.
- 4.09 If the registered alleged owner named in the notice of violation complies with sections 4.07 and 4.08, the alleged owner may not be held liable for stop arm fines, penalties, and costs, and a Reviewing Person law shall send a notice of violation to the true owner who held legal title to the vehicle at the time the recorded image of the stop arm violation was taken. An alleged owner named in a notice of violation who fails to timely comply with sections 4.07 and 4.08 will be treated as any other vehicle owner and will be liable for the stop arm violation.

V. Notice of Violation

- 5.01 A notice of violation serves as the summons and complaint for purposes of these procedures.
- 5.02 A notice of violation is presumed to have been received by the owner on the fifth day after the date of mailing of the notice of violation. The owner is deemed to have received actual notice of the notice of violation sent by U.S. Mail upon certification by the District that the correspondence was not returned by the U.S. Postal Service as undeliverable.
- 5.03 The notice of violation must be on a form prescribed by the District and must include the following information:
- (a) The name and address of the owner of the vehicle involved in the violation.

- (b) A description of the violation alleged.
- (c) The date and time of the violation, the number of the school bus and the location where the violation occurred.
- (d) The date of issuance of the notice of violation which is also deemed the date of mailing of the notice of violation.
- (e) The registration number displayed on the license plate of the vehicle involved in the violation.
- (f) A copy of a recorded image of the violation that includes a depiction of the registration number displayed on the license plate of the vehicle involved in the violation.
- (g) The amount of the civil fine for which the owner is liable.
- (h) The date by which the owner must pay the civil fine or deliver a request for an administrative appeal.
- (i) A statement that, in lieu of requesting an administrative appeal, the owner may pay the civil fine online, by phone or by mail at the address for payments designated on the front of the notice of violation.
- (j) A notification that the owner has the right to contest the imposition of the civil fine in an administrative appeal by delivering a written request for same within 35 calendar days after the date of issuance of the notice of violation to the address for contesting a violation shown on the notice of violation.
- (k) A notification that failure to timely pay the civil fine or timely request an administrative appeal is an admission of liability for the stop arm violation, a waiver of the owner's right to appeal the imposition of the civil fine, and an automatic assessment of the appropriate civil fines, penalties, and costs.
- (l) A statement that the owner will incur a late payment penalty if the owner fails to pay the civil fine or deliver a written request for an administrative appeal within 35 calendar days after the date of issuance of the notice of violation.
- (m) A notification that an arrest warrant may not be issued for failure to timely pay the civil fines, penalties, and costs and that the imposition of the civil penalty may not be recorded on the owner's driving record.

5.04 The original or a copy of a notice of violation is a record kept in the ordinary course of District business and is *prima facie* evidence of the facts contained in the notice of violation unless it has been dismissed or a determination of non-liability has been rendered.

VI. Service of Notice of Violation

- 6.01 In order to impose a civil fine under these procedures, a Reviewing Person shall cause a notice of violation to be mailed to the owner of the motor vehicle involved in the stop arm violation not later than the 30th calendar day after the date the violation is alleged to have occurred. The notice of violation must be mailed, by United States mail, to:
- (a) The owner's address as shown on the registration records of the Texas Department of Motor Vehicles;
 - (b) If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Texas Department of Motor Vehicles;
 - (c) If the owner presents evidence or information that the vehicle was being rented, leased, or test driven at the time of the stop arm violation, the address provided by the seller, lessor or potential buyer; or
 - (d) If the registered owner presents evidence that another person had legal title to the vehicle at the time of the stop arm violation, the address provided for the other person having legal title.

VII. Answering a Notice of Violation

- 7.01 An owner who has been issued a notice of violation shall, either personally or through a representative, answer the charge of the stop arm violation by the date shown on the notice of violation, which date may not be earlier than the 35th day after the date the notice of violation was mailed. An answer may be made in any of the following ways:
- (a) Payment of the applicable civil fine, and any applicable penalties and costs by the due date on the front of the notice of violation.
 - (b) A request to schedule an administrative appeal to either deny liability or admit liability with an explanation before an Independent Hearing Examiner. This request must be received at the address shown on the notice of violation for contesting a violation by the due date shown on the notice of violation.
 - (c) A denial of liability accompanied by an affidavit under penalty of perjury presenting evidence that the vehicle depicted in the recorded image was at the time of the stop arm violation being rented, leased, or test driven. This information must be received at the address shown on the notice of violation for contesting a violation by the due date shown on the notice of violation.

(d) A denial of liability accompanied by an affidavit under penalty of perjury presenting evidence that the person named in the notice of violation was not the owner of the vehicle depicted in the recorded image at the time of the violation. This information must be received at the address shown on the notice of violation for contesting a violation by the due date shown on the notice of violation.

7.02 Payment of the civil fine and any additional penalties and costs may be made by mailing the notice of violation to the address for payments shown on the notice of violation, accompanied by payment of the amount shown on the notice of violation. Payment by mail may be made only by credit card, money order or check. Payment may also be made online or by telephone for an additional fee. Payment of the civil fine and all penalties and costs assessed under this resolution operates as a final disposition of the stop arm violation.

VIII. Hearings for Disposition of Notice of Violation; Notice of Violation and Photographic Recorded Images as Prima Facie Evidence; Limitations on Independent Hearing Examiners

8.01 The District shall notify, by mail, the owner requesting an administrative appeal of the date, time, and location of the hearing.

8.02 For good cause, an owner may make a request to reschedule an administrative appeal. A scheduled administrative appeal may not be rescheduled more than once.

8.03 At an administrative appeal, the notice of violation and the recorded image produced by the photographic school bus stop arm enforcement system are *prima facie* proof of the school bus stop arm violation, and the Reviewing Person who issued the notice of violation is not required to be present unless requested by the Independent Hearing Examiner.

8.04 At a hearing, the reliability of the photographic school bus stop arm enforcement system used to produce the recorded image of the stop arm violation may be attested to by affidavit of a person who is responsible for inspecting and maintaining the system. An affidavit of a person, who alleges a stop arm violation based on an inspection of the pertinent recorded image, is admissible in a proceeding under this resolution, is evidence of the facts contained in the affidavit, and is *prima facie* evidence of the violation alleged in the notice of violation.

8.05 Notwithstanding the presumptions and prima facie evidence established herein, an Independent Hearing Examiner may not hold an owner liable if substantial evidence exists that:

(a) The vehicle came to a complete stop before passing a fully extended stop arm and waited until the stop arm was fully retracted before moving past the bus.

(b) The vehicle passed through the bus's flashing amber lights, *only with caution*, but it was nonetheless unsafe for the vehicle to stop before the stop arm was fully extended.

(c) The operator of the vehicle was arrested or was issued a criminal citation by a peace officer under Section 545.066 of the Texas Transportation Code, as amended, for the stop arm violation recorded by the photographic school bus stop arm enforcement system.

(d) The vehicle stopped beside the school bus as soon as was practicable and safe.

8.06 At an administrative appeal, the Independent Hearing Examiner shall hear and consider evidence presented by the District and by the owner. The formal rules of evidence do not apply to an administrative appeal under this resolution, and the independent hearing examiner shall make a decision based upon a preponderance of the evidence presented, after giving due weight to the evidence; all presumptions and limitations established herein; and other applicable law.

8.07 At the conclusion of the administrative appeal, the Independent Hearing Examiner shall immediately render a determination, either by:

(a) Finding the owner "liable" for the stop arm violation, assessing the applicable civil fine and any penalties and other costs in accordance with this resolution; or

(b) Finding the owner "not liable" for the stop arm violation.

8.08 The decision of an Independent Hearing Examiner must be in writing, dated and filed with the District in a separate index and file. The decision may be recorded using computer printouts, microfilm, microfiche, or similar data processing techniques.

IX. Failure to Answer Notice of Violation or Failure to Appear at a Hearing

9.01 The failure of an owner charged with a stop arm violation to answer the charge within 35 calendar days after the mail date or to appear at any administrative appeal when required to appear is an admission of liability for the stop arm violation, and the Independent Hearing Examiner shall issue a determination of "Liable" and assess against the owner the appropriate civil fine, penalties, and other costs.

9.02 Within five calendar days after filing a determination of liability issued under these procedures, the District or its designee shall mail notice of the determination to the owner. The notice must be sent by United States mail to the address required for service of a notice of violation or to the address of the owner last known to the District or its designee. The notice must include a statement of the amount of the civil fine, penalties, and costs assessed.

- 9.03 Regardless of any other provision of this resolution, an owner who receives a notice of violation and who fails to timely pay the civil fine or timely request an administrative appeal may still receive a hearing if:
- (a) The owner provides a written request for a hearing and evidence from the U.S. Postal Service evidencing the date on which the notice of violation was delivered to the owner; and
 - (b) The owner's written request and evidence from the U.S. Postal Service are received at the address shown on the notice of violation within 30 calendar days after the date the owner actually received the notice of violation.

X. Civil Fines for Violations; Penalties; and other Costs.

- 10.01 If a civil fine is assessed, it must be in accordance with these procedures. A fine may not be waived or modified by an Independent Hearing Examiner when an owner is found liable for a stop arm violation, except that additional penalties and other costs may be added or waived in accordance herewith.
- 10.02 The owner of a motor vehicle liable for a stop arm violation shall pay a civil fine of \$300.00 for each violation.
- 10.03 An additional \$25.00 late payment penalty will be assessed if the owner fails to:
- (a) Answer a stop arm notice of violation within 35 calendar days after its date of issuance; or
 - (b) After being found liable, pay all civil fines, penalties, fees, and costs assessed for a stop arm violation within the time designated by the independent hearing examiner.
- 10.04 A \$25 filing fee is required to be submitted with the request for an administrative appeal in order for the request to be processed. The filing fee will be refunded if the violation is dismissed.
- 10.05 Failure to appear at a scheduled administrative appeal to adjudicate a stop arm violation charge will result in the assessment of a \$50 failure to appear penalty and the forfeiture of the \$25 hearing filing fee.
- 10.06 A penalty assessed under section 10.03(a) may be waived by an Independent Hearing Examiner if the owner can establish by a preponderance of the evidence that:
- (a) Through no fault of the owner:
 - (1) No notice of the stop arm violation was received as required by this article;

- (2) No notice of the independent hearing examiner's order was received as required by this article;
- (3) Payment of the civil fine assessed for the stop arm violation was not posted in a timely manner; or
- (4) The penalty was assessed in error.

XI. Finality of the Administrative Appeal.

11.01 The Independent Hearing Examiner's decision is final and binding.

XII. Effect of Liability; Exclusion of Civil Remedy; Enforcement

12.01 The imposition of a civil fine under this article is not a conviction or criminal offense and may not be considered a conviction or criminal offense for any purpose. Failure to timely pay a civil fine may not result in an arrest warrant being issued for the vehicle owner and may not be recorded on the vehicle owner's driving record.

12.02 A civil fine may not be imposed on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a criminal citation by a law enforcement officer under section 545.066 of the Texas Transportation Code, as amended, for the stop arm violation recorded by the photographic school bus stop arm enforcement system.

12.03 An owner's unpaid civil fine, penalty or costs may not be reported to a credit bureau.

12.04 The District, on behalf of the City of San Antonio, is authorized to file suit or take other action not prohibited herein to collect any civil fines, penalties, late fees and costs assessed in accordance herewith.

XIII. Disposition of Civil Fines, Penalties, and Costs Assessed for Violations

13.01 Civil fines, penalties, and costs assessed must be used by the District to fund the School Bus Safety/Stop Arm Enforcement Program and for any other lawful purpose.