

## **CITY OF NORTON ORDINANCE NO. 72-2018**

### **AN ORDINANCE ADOPTING A TRAFFIC LAW PHOTO-MONITORING PROGRAM AND ESTABLISHING CIVIL PENALTIES FOR AUTOMATED SPEED VIOLATIONS.**

WHEREAS, the City Council has determined that a significant speeding problem exists in the construction zones for the I-76 Widening Project in the City that threatens the safety of its residents; and

WHEREAS, the Norton Police Department has determined a significant increase in vehicular accidents has occurred in the I-76 construction zone and excessive speed was determined to be a major contributing factor to those accidents

WHEREAS, the ongoing problem of motorists disobeying speed limits threatens the safety of the residents of the City of Norton; and

WHEREAS, the City of Norton seeks to increase compliance with speed limits and thereby decrease the potential for motor vehicle crashes on I-76 that are caused by such failures to comply; and

WHEREAS, because of lane narrowing and exit and entrance ramp constrictions, the Norton Police Department is not currently able to effectively monitor and enforce speed limits on I-76; and

WHEREAS, since the commencement of the I-76 widening project, the Norton Police Department has had two vehicles involved in major accidents while responding to incidents on I-76; and

WHEREAS, an automated speed enforcement program will assist the City of Norton in increasing compliance with speed limits without jeopardizing the safety of the Norton Police Department's officers; and

WHEREAS, the Ohio Legislature recently passed Senate Bill 342 adopting Ohio Revised Code §4511.092 et seq., authorizing the use of traffic law photo-monitoring devices;

NOW, THEREFORE, the City Council of the City of Norton, Ohio, hereby adopts the following Ordinance to implement Ohio Revised Code §4511.092 et seq. within the City.

#### **Section 1. Title, Purpose, and Objectives.**

As used in this Ordinance, words and phrases are defined as follows:

- a) “Automated speed enforcement program” is a program intended to increase compliance with speed limits using an automated speed enforcement system.
- b) “Automated speed enforcement system” is a system with one or more sensors working in conjunction with a traffic law photo-monitoring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.
- c) “Designated party” has the same meaning as in section 4511.092(A) of the Ohio Revised Code.
- d) “Hearing officer” has the same meaning as in section 4511.092(B) of the Ohio Revised Code.
- e) “Law enforcement officer” has the same meaning as in section 4511.092(C) of the Ohio Revised Code.
- f) “Local authority” has the same meaning as in section 4511.092(D) of the Ohio Revised Code, and specifically the City of Norton, Ohio.
- g) “Motor vehicle leasing dealer” has the same meaning as in section 4511.092(E) of the Ohio Revised Code.
- h) “Motor vehicle renting dealer” has the same meaning as in section 4511.092(F) of the Ohio Revised Code.
- i) “Motor vehicle” has the same definition as in section 4511.01(B) of the Ohio Revised Code.
- j) “Recorded images” has the same meaning as in section 4511.092(G) of the Ohio Revised Code.
- k) “Registered owner” has the same meaning as in section 4511.092(H) of the Ohio Revised Code.
- l) “System Location” has the same meaning as in section 4511.092(I) of the Ohio Revised Code.
- m) “Ticket” has the same meaning as in section 4511.092(J) of the Ohio Revised Code.
- n) “Traffic law photo-monitoring device” has the same meaning as in section 4511.092(K) of the Ohio Revised Code.
- o) “Traffic law violation” has the same meaning as in section 4511.092(L) of the Ohio Revised Code.

Section 2. General.

The City hereby adopts an automated speed enforcement program utilizing automated speed enforcement systems to record traffic law violations and impose a civil penalty on the registered owner of a vehicle for failure of an operator thereof to comply with the posted speed limit on highways within the City as permitted by law. The imposition of a civil penalty under this section shall not be deemed a conviction for any purpose and shall not be made part of the vehicle operating record of any person upon whom the liability is imposed.

The Chief of Police shall be responsible for administering the automated speed enforcement program. The Chief of Police shall be empowered to take the actions necessary to create and operate the automated speed enforcement system within the City in accordance with law, including complying with the prerequisites to implementing a traffic law photo-monitoring system set forth in Ohio Revised Code §4511.094 and §4511.095.

The City Police Officers may utilize a traffic law photo-monitoring device for the purpose of detecting traffic law violations. The Police Officer shall be present at the location of the device at all times during the operation of the device.

The automated speed enforcement program shall be in effect only during the term of the I-76 widening project and shall be utilized only within construction areas in the I-76 widening project. The intent of the automated speed enforcement program is to enhance vehicular safety within the I-76 widening project construction zone.

Section 3. Offense.

If a traffic law photo-monitoring device records a traffic law violation, and a law enforcement officer was present at the location of the traffic law photo-monitoring device at the time of the violation, the Norton Police Department may issue a ticket for a civil violation in accordance with sections 4511.092 to 4511.0912 of the Ohio Revised Code.

The vehicle owner shall be issued a ticket for a civil penalty if a traffic law photo monitoring device records a traffic law violation showing that a vehicle is operated at a speed in excess of those set forth in section 4511.21 or 4511.211 of the Revised Code, provided that:

- 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 City shall not issue a violation using an automated speed enforcement system unless the vehicle involved in the violation is traveling at least six miles per hour over the posted speed limit.
- b) For a system location that is located within any other location than those described in Section 3(b)(1) above, the City shall not issue a violation

using an automated speed enforcement system unless the vehicle involved in the violation is traveling at least ten miles per hour over the posted speed limit.

A City of Norton Police Officer shall examine evidence of alleged traffic law violations recorded by the device to determine whether such a violation has occurred. If the image recorded by the traffic law photo-monitoring 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.

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

Within thirty days of the traffic law violation, the City of Norton Police Department 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 4511.097 of the Revised Code.

A certified copy of the ticket alleging a traffic law violation, sworn to or affirmed by a City of Norton Police Officer, including by electronic means, and the recorded images produced by the traffic law photo-monitoring device, is *prima facie* evidence of the facts contained therein and is admissible in a proceeding for review of the ticket issued.

Section 4. Ticket.

The ticket shall be processed by the City or its designee and shall be served by ordinary mail to the vehicle owner's address as given on the motor vehicle registration from the Bureau of Motor Vehicles, or its equivalent of the state in which it is registered. The ticket shall include:

- a) The name and address of the registered owner;
- b) The letters and numerals appearing on the license plate issued to the motor vehicle;
- c) The traffic law violation charged;
- d) The system location;
- e) The date and time of the violation;
- f) A copy of the recorded image(s);

- g) The name and badge number of the law enforcement officer who was present at the system location at the time of the traffic law violation;
- h) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and the address to which payment is to be sent;
- i) A statement signed by a law enforcement officer employed by City 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;
- j) Information advising the person or entity alleged to be liable of the options prescribed in Ohio Revised Code Section 4511.098, 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 any of those sections;
- k) A warning that failure to exercise one of the options prescribed in Ohio Revised Code Section 4511.098 is deemed to be an admission of liability and waiver of the opportunity to contest the violation.
- l) The date of issuance of the ticket;

A ticket issued under this Ordinance shall be mailed no later than thirty (30) calendar days after the alleged traffic law violation.

A person or entity who receives a ticket shall elect to do one of the following:

- a) In accordance with the instructions on the ticket, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the traffic law violation;
- b) Within thirty days after receipt of the ticket, provide the City of Norton Police Department 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; or
  - ii. An affidavit by the vehicle owner stating that at the time of the violation, the motor vehicle or the license plates of the motor vehicle involved were stolen or were in the care, custody, and control of some person who did not have the owner's permission to use the motor vehicle, or that the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and

were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen before the violation occurred and were not under the control or possession of the vehicle owner at the time of the violation, the vehicle owner must submit proof that a police report, incident report/general offense report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.

A registered owner is not responsible for a traffic law violation if, within thirty days after the date of mailing of the ticket, the registered owner furnishes an affidavit specified in to the City in a form established by the City and the following conditions are met:

- a) If the registered owner submits an affidavit as specified in Section 4(c)(2)(a) 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 days or is determined liable in an administrative hearing;
- b) If the registered owner submits an affidavit as specified in Section 4(c)(2)(b) of this section, the affidavit is supported by a stolen vehicle or stolen license plate report as required in that division;
- c) If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the City of Norton Police Department 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 traffic law photo-monitoring 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 or ticket and subsequently attempt to collect a fee or assess the lessee or renter a charge for any payment of such a ticket made on behalf of the Lessee or renter;
- d) 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 City of Norton Police Department 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;
- e) 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 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.

In the event that the City of Norton and/or Norton Police Department receives from a registered owner an affidavit described in Section 4(c)(2)(a) or (b) or a notice described in Section 4(c)(4) hereof, the City may proceed to send a ticket to the designated party. The City shall send the ticket to the designated party not later than twenty-one days after receipt of the affidavit or notification.

A certified copy of the ticket alleging the violation of this Ordinance occurred, sworn to or affirmed by a law enforcement officer of the City of Norton Police Department, with the recorded images produced by an automated speed enforcement system shall be *prima facie* evidence of the facts contained therein and shall be admissible in a proceeding alleging a traffic law violation under this Ordinance.

Exception for emergency or public safety vehicles:

- a) The provisions of this Ordinance shall not apply to emergency vehicles or public safety vehicles when those vehicles are responding to emergency or call for emergency service.

## Section 5. Civil Penalties.

Unless the driver of the motor vehicle received a citation from a police officer at the time of the violation, or unless the exception or defense to liability set forth in Section 3(d) applies, the registered owner or designated party for the motor vehicle is subject to a civil penalty if the motor vehicle is recorded by an automated speed enforcement system while being operated in violation of this Ordinance.

The civil penalty imposed shall be in accordance with the following schedule:

- a) If the civil penalty is paid within thirty (30) calendar days of the date of issuance of the ticket - one hundred fifty dollars (\$150.00). If the offense occurs in a marked construction zone, the civil penalty shall be two hundred dollars (\$200.00);
- b) If the civil penalty is paid more than thirty (30) calendar days, but within forty five (45) calendar days after date of issuance of the ticket a late fee of twenty-five dollars (\$25.00) shall be added to the amount of the civil penalty;
- c) If the civil penalty is paid more than forty five (45) calendar days of the date of issuance of the ticket - a late fee of fifty dollars (\$50.00) shall be added to the amount of the civil penalty;

In addition to any civil penalty and any additional late fee, any and all costs or expenses incurred by the City in connection with the placement of a ticket issued hereunder with outside counsel for litigation or collection thereof shall be assessed against the person or entity found to be liable hereunder;

The failure to respond to a ticket in a timely fashion as set forth in this Ordinance shall constitute a waiver of the right to contest liability for the violation.

Persons who choose to pay the civil penalty without appearing before a Hearing Officer may do so in the manner indicated on the ticket.

A traffic law violation for which a civil penalty is imposed under this Ordinance is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4510.036 and may not be recorded on the driving record of the owner or operator of the motor vehicle and shall not be reported to the Bureau of Motor Vehicles, nor shall such a violation be recorded on the driving record of the owner or operator of the vehicle involved in the violation.

Section 6. Collection of Civil Penalty.

If the civil penalty is not paid, the civil penalty imposed under the provisions of this Ordinance shall be collectable, together with any late fees, placement fee, interest and penalties thereon, in any manner authorized by law including but not limited to civil suit. In addition to any other fees or charges authorized by this Ordinance in relation to the commission of a violation of this Ordinance, a person liable for the penalties established under this Ordinance will be assessed fees under this Ordinance in an amount equal to the costs of collection of the debt with outside counsel hired or retained by the Ordinance for litigation or collection of any citation or debt hereunder, as set forth in Section 5 hereof.

Section 7. Administrative Appeal Hearing Process.

A registered owner or designated party may contest the ticket by filing a written request for an administrative hearing to review the ticket with the City Police Department or its designee. A written notice of request for an administrative hearing must be received by the Norton Police Department, or its designee, within thirty (30) calendar days after the date of issuance of the ticket. The failure to give notice of request for an administrative hearing within this time period shall constitute a waiver of the right to contest the ticket. A hearing officer shall conduct administrative hearings. Administrative hearings shall be held within forty-five (45) business days of the date that timely request for a hearing is received by the City Police Department or its designee, but not sooner than twenty-one (21) days from receipt by the City Police Department of such request; this time may be extended upon a reasonable written request for additional time or upon reasonable notification of the hearing officer or City with notice to all parties. The administrative hearing shall be open to the public, and a hearing schedule shall be posted in a conspicuous place near the entrance to the hearing

room that shall identify, by alleged violator, the administrative hearings scheduled for that day and the time of each hearing. More than one hearing may be scheduled for the same time to allow for such things as non-appearances or admissions of liability.

- a) The hearing officer shall determine whether a preponderance of evidence establishes that a traffic law violation occurred and the person requesting the administrative hearing is the party operating the vehicle at the time of the traffic law violation. The hearing officer shall advise the person or entity on the day of the hearing of the hearing officer's decision.
  - i. 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 civil penalty for the violation upon the individual or entity and submit it to the City or its designee and the person or entity named in the ticket;
  - ii. 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 City or its designee and the person or entity named in the ticket;
  - iii. 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 local authority or its designee and the person or entity named in the ticket.

If the registered owner or designated party chooses to contest the ticket, the hearing officer may consider any of the following as an affirmative defense to a violation upon the defense being established by a preponderance of the evidence by the registered owner or designated party:

- a) That the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under control or possession of the registered owner at the time of the traffic law violation. In order to demonstrate that the motor vehicle or license plates were stolen before the traffic law violation occurred and were not under the control or possession of the registered owner at the time of the traffic law violation, the owner

must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the traffic law violation or within 48 hours after the traffic law violation occurred.

- b) That the motor vehicle was under the custody and/or control of another person at the time of the violation. In order to establish this, the owner or responsible person must provide the name and address of the person who had custody and/or control of the motor vehicle at the time of the traffic law violation.
- c) That this section is unenforceable because the photo traffic enforcement system was not operating properly or the automated traffic enforcement system was not in proper position, or that the image that served as the basis for the notice of liability is not legible enough to show letters and numbers or the state that issued the license plate number on the vehicle.
- d) Evidence, other than that adduced pursuant to Section 7(b)(1) of this Ordinance, that the registered owner or person named in the ticket was not operating the motor vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the ticket shall provide to the hearing officer evidence showing the identity of the person who was operating the motor vehicle at the time of the traffic law violation, including, but not limited to, the operator's name and current address, and any other evidence the hearing officer deems pertinent.
- e) That the notice of liability was issued and sent more than Thirty (30) days after the date of the violation recorded by the photo traffic enforcement system.
- f) That the driver of the vehicle passed through the location or had increased speed in order to yield the right of way to an emergency vehicle, in accordance with O.R.C. 4511.45 or to a funeral procession, in accordance with O.R.C. 4511.451.
- g) That under consideration of the totality of the circumstances the person or entity named in the ticket is not liable. The hearing officer may dismiss the ticket when he or she deems that a dismissal is fair and equitable or warranted based upon his or her sole discretion.

If the hearing officer finds that the person or entity named in the ticket was not operating the motor vehicle at the time of the violation or receives evidence under Section 7(b)(4) identifying the designated party, the hearing officer shall provide it to the City of Norton or its designee within five (5) calendar days, along with a copy of any evidence substantiating who was operating the motor vehicle at the time of the traffic law violation.

- a) Upon receipt of evidence of the designated party pursuant to this Section, the City or its designee may issue a ticket, with the name and address of the designated party and the information required by Section 4 of this Ordinance, to the person that the evidence indicates was operating the motor vehicle at the time of the violation.
- b) A ticket issued under this Section 7(c), shall be sent by the City of Norton or its designee by ordinary mail no later than twenty-one (21) business days after the receipt of the evidence from the hearing officer.
- c) If a designated party who was issued a ticket under Section 7(c) hereof contests the ticket by filing a written request for an administrative hearing to review the ticket not later than thirty (30) days after receipt of the ticket, the City shall require the registered owner of the motor vehicle also to attend the hearing. If at the hearing involving the designated hearing officer determines the designated party was not 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 City 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.

A person who is named in a ticket for a civil violation may assert a testimonial privilege in accordance with division (D) of Section 2317.02 of the Ohio Revised Code.

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

A person or entity may appeal a written decision rendered by a hearing officer under this section to the court with jurisdiction over the location where the violation occurred.

Section 8: Calibration.

The manufacturer or operator of the automated speed enforcement system used by the City, or an independent calibration laboratory, shall calibrate said device before it is used by the City. The manufacturer or operator of the automated speed enforcement system shall certify to the accuracy of each traffic law photo-monitoring device in accordance with applicable federal law, if any. For each traffic law photo-monitoring device that is considered mobile or portable, meaning it is attached to a trailer, vehicle, or other apparatus that is easily transported to different automated speed enforcement system locations, the automated speed enforcement system shall perform a system self-test and calibration verification of said traffic law photo-monitoring device in accordance with the manufacturer's specifications prior to its use at each the automated speed enforcement system location. For each device that is considered mobile or

portable, meaning it is attached to a trailer, vehicle or other apparatus that is easily transported to different system locations, the City or its designee shall clearly and conspicuously mark on the outside of the trailer, vehicle, or apparatus that contains the traffic law photo-monitoring device that the device is the property or under the control of the City.

Section 9: Signs.

The City Street Department shall erect signs on every highway, which is not a freeway, that is part of the state highway system and that enters into the City and at each fixed system location. The signs shall inform inbound traffic that the City utilizes traffic law photo-monitoring devices to enforce traffic laws. The signs shall be erected within the first three hundred feet of the boundary of the City and any fixed system location or, if the signs cannot be located within the first three hundred feet of the boundary of the City or a fixed system location, as close to that distance as possible, in accordance with Ohio Revised Code Section 4511.094.

Section 10: Allocation of Civil Penalties.

The civil penalties collected pursuant to this Ordinance shall be allocated as in the following order and priority:

- (a) first, \$250,000 per year to Fund 001 but solely for the purposes of paying the costs of police officers administering the photo speed enforcement program and to fund the City's portion of the costs of any school resource officers placed within the Norton City School District;
- (b) second, \$200,000 per year to be deposited to Fund 140;
- (c) third, 60% to Fund 170 up to \$600,000 per year, 20% to Fund 198 up to \$200,000 per year and 20% to Fund 199, up to \$200,000 per year; and
- (d) fourth, 60% to Fund 170, 30% to Fund 001 to fund capital projects for the Norton Police Department and 10% to Fund 198.

Section 11: Full Force and Effect.

If any section, subsection, paragraph, clause or provision or any part thereof of this Ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Ordinance shall be unaffected by such adjudication and all the remaining provisions of this Ordinance shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

Section 12: All formal actions of this Council related to this Ordinance and all deliberations of the Council and of any of its Committees that resulted in such formal action

were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 13: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation for the public peace, health and safety of the City of Norton and the inhabitants thereof for the reason (1) that a significant problem of motorists disobeying speed limits exists within the City that threatens the safety of the residents of the City of Norton; (2) that the City Council seeks to increase compliance with speed limits within the limits of the I-76 widening project as soon as possible and thereby decrease the potential for motor vehicle that are caused by such speeding with an automated speed enforcement program to assist the City of Norton in increasing compliance with speed limits without the disadvantages attendant to conventional traffic law enforcement; and (3) that time is of the essence in order for the City to negotiate the necessary contracts for the implementation of this Ordinance as well as conducting the preliminary requirements of Ohio Revised Code Section 4511.095, and provided it receives the approval of two-thirds of the members of Council, this Ordinance shall take effect and be in full force and effect immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest period allowed by law.

Vote: 7 Yeas 0 Nays

Date passed: 7-9-18

  
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Scott Pelot, President of Council

Date submitted to the Mayor 7-11-18

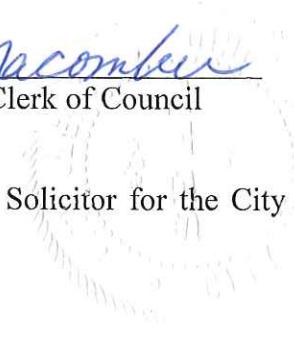
Attest: Kerry Macomber  
Kerry Macomber, Clerk of Council

  
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Mike Zita, Mayor

Date approved by the Mayor 7-11-18

I, Kerry Macomber, Clerk of Council for the City of Norton, Summit and Wayne Counties, Ohio do hereby certify that the foregoing **Ord. # 72-2018** was duly and regularly passed by the Council of the City of Norton, Summit and Wayne Counties, Ohio at a meeting held on July 9, 2018.

That this legislation was posted according to law on July 12, 2018 and will become effective on July 11, 2018.

  
Kerry Macomber  
Kerry Macomber, Clerk of Council

Prepared and approved as to legal form by Justin P. Markey, Solicitor for the City of Norton, Ohio, on May 30, 2018.

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