HOUSE DOCKET, NO. 816 FILED ON: 1/15/2013

HOUSE . . . . . No. 1237

[LOCAL APPROVAL RECEIVED.]

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act permitting the use of traffic control signal violation monitoring system devices as a means of promoting traffic safety in the city of New Bedford.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F. D. Cabral	*13th Bristol*

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HOUSE . . . . . No. 1237

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 1237) of Antonio F. D. Cabral (with the approval of the mayor and city council) for legislation to permit the use of traffic control signal violation monitoring system devices as a means of promoting traffic safety in the city of New Bedford. The Judiciary. [Local Approval Received.]

The Commonwealth of Massachusetts

An Act permitting the use of traffic control signal violation monitoring system devices as a means of promoting traffic safety in the city of New Bedford.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Notwithstanding the provisions of any general or special law to the contrary, the City of New Bedford may employ a traffic violation monitoring system which may be either mobile or fixed along any portion of any ways within its control, and such City may promulgate local measures imposing a penalty on the owner of a motor vehicle for failure by the operator thereof to comply with the laws, codes, regulations, ordinances, rules and/or other forms of legislation governing the traffic control signals in said City at which a traffic violation monitoring system is located.

(a) As used in this Act, the following words shall, unless the content clearly indicates otherwise, have the following meanings:

"Local measure", shall mean the ordinances, rules and regulations adopted by the City of New Bedford establishing a schedule of fines imposed on the owner of a motor vehicle for failure by the operator thereof to comply with the laws, codes, regulations, ordinances, rules and/or other forms of legislation governing the traffic control signals or other traffic regulations in said City at which a traffic violation monitoring system is located;

"Motor vehicle", shall have the meaning provided in Section 1 of Chapter 90 of the General Laws;

"Operator", shall have the meaning provided in Section 1 of Chapter 90 of the General Laws;

"Owner", shall have the meaning provided in Section 1 of Chapter 90 of the General Laws;

21 “Traffic violation monitoring system”, shall mean an automated motor vehicle sensor and
22 camera device which produces two or more digital photographs and/or videos of each motor
23 vehicle at the time it is used or operated in a manner that is in violation of the traffic control
24 signal at which the automated monitoring system is located. The photographs, must, at a
25 minimum, record the rear of the motor vehicle, with at least one of the images clearly recording
26 the motor vehicle behind the stop bar immediately prior to the violation of the traffic control
27 signal, and at least one image recording the motor vehicle passing through the intersection in
28 violation of the traffic control signal. Additionally, at least one of the images must clearly
29 identify the license/registration plate of the motor vehicle,

30 “Violation”, shall mean the failure of an operator of a motor vehicle to comply with the
31 laws, codes, regulations, ordinances, rules and/or other forms of legislation governing the traffic
32 control signals or the rate of speed at which a vehicle enters the intersection or other enforced
33 zone.

34 (b) No traffic control signal violation monitoring system shall be utilized in such a
35 manner as to take a frontal view photograph of the motor vehicle that is in violation of the traffic
36 control signal.

37 (c) A certificate, electronic certificate or a facsimile thereof, based upon inspection of
38 photographs produced by a traffic violation monitoring system, and sworn to or electronically
39 affirmed to by a police officer authorized to issue citations for violations of traffic signals at the
40 subject intersection or other enforcement zone, shall be prima facie evidence of the facts
41 contained therein. No photographs taken in conformance with this Act shall be discoverable in
42 any judicial or administrative proceeding other than a proceeding held pursuant to this Act
43 without a court order; and no photograph taken in conformance with this Act shall be admissible
44 in any judicial or administrative proceeding other than in a proceeding to adjudicate liability for
45 such violation of this Act without a court order.

46 (d) For each violation pursuant to this Act, the owner or owners of a vehicle shall be
47 liable for the penalty imposed by a local measure; provided, however, that no owner of a vehicle
48 shall be liable for a penalty imposed pursuant to this Act where the operator of such vehicle has
49 been convicted of the underlying violation pursuant to a citation issued in accordance with
50 Section 2 of Chapter 90C of the General Laws, and provided, further, that the maximum penalty
51 that may be imposed pursuant this Act shall be One Hundred Dollars ($100.00) for each
52 violation, excluding delinquent collection fees.

53 (e) A penalty imposed by a local measure may, if so provided in the local measure,
54 be increased by up to 33 1/3% if said fine remains unpaid in excess of 30 days after a notice of
55 violation has been issued consistent with the procedures established in Section 20A ½ of Chapter
56 90 of the General Laws.

57 (f) A penalty imposed by a local measure for a violation pursuant to this Act shall not
58 be deemed a criminal conviction and shall not be made part of the operating record of the person
59 upon whom such liability is imposed, nor shall such imposition of a penalty be subject to merit
60 rating for insurance purposes, no points shall be assessed against the driver's license of the
61 owner or driver of the vehicle, and no surcharge points shall be imposed in the provision of
62 motor vehicle insurance coverage.

63 SECTION 2

64 (a) The compensation paid to the manufacturer or vendor of the traffic monitoring
65 system shall not be based upon the number of traffic citations issued or a percentage of the fine
66 generated by such citations. The compensation paid to such manufacturer or vendor of the
67 equipment may be based upon the value of such equipment (including its maintenance and
68 installation), fees and overhead costs incurred in delivering the program, and the services
69 provided or rendered in support of the traffic violation monitoring system.

70 (b) Other than for purposes of enforcement of a violation of this Act or for purposes
71 of an owner defending a violation of this Act, no private entity or individual may obtain
72 photographs or records taken pursuant to this Act without a court order.

73 SECTION 3

74 (a) The parking clerk designated or appointed by the City of New Bedford shall
75 supervise and coordinate the administration of violations issued pursuant to Section 1. The
76 parking clerk shall have the authority to hire and designate such personnel as may be necessary
77 or contract for such services to implement the provisions of this section.

78 (b) It shall be the duty of the parking clerk of the City of New Bedford to cause the
79 notice of violation to be sent to the registered owner or owners of any motor vehicle identified in
80 any photographs produced by such device as evidence of a violation pursuant to this Act. Such
81 notice shall contain but not be limited to the following information: a copy of the aforementioned
82 recorded photographic images showing the vehicle in violation of the traffic signal (if
83 applicable); the registration number and state of issuance of said registration number of the
84 vehicle; the date, time and intersection or relevant location of the violation; the specific violation
85 charged; a schedule of fines for such violation as established by the City of New Bedford;
86 instructions for the return of the notice; and text as follows: "This notice may be returned
87 personally, by mail, or by an agent authorized in writing. A hearing may be obtained upon the
88 written request of the registered owner in writing. Failure to obey this notice within 30 days of
89 issuance of this notice will result in the non-renewal or suspension of the license to drive and the
90 certificate of registration of the registered owner."

91 (c) In the case of a violation involving a motor vehicle registered under the laws of
92 the Commonwealth, such notice of violation shall be mailed within 14 days of the violation or

93 determination of the identity of the registered owner whichever is later, exclusive of Sundays and
94 holidays, to the address of the registered owner or owners as listed in the records of the registrar
95 of motor vehicles or other more current source. In the case of any motor vehicle registered under
96 the laws of another State or Country, such notice of violation shall be mailed within 21 days of
97 the violation or determination of the identity of the registered owner whichever is later, exclusive
98 Sundays and holidays, to the address of the registered owner or owners as listed in the records of
99 the official in such State or Country having charge of the registration of such motor vehicle or
100 other more current source. If said address is unavailable, it shall be sufficient for the parking
101 clerk to mail notice of violation to the official in such State or Country having charge of the
102 registration of such motor vehicle.

103 (d) Notice of violation shall be sent by first class mail in accordance with subsection
104 (c) and shall include an affidavit form approved by the parking clerk for the purpose of
105 complying with subsection (g). A manual or automatic record of mailing processed by or on
106 behalf of the parking clerk in the ordinary course of business shall be prima facie evidence
107 thereof, and shall be admitted as evidence in any judicial or administrative proceeding, as to the
108 facts contained therein and that such were received by the owner of the vehicle.

109 (e) Any motor vehicle owner to whom notice of violation has been issued pursuant to
110 this Act may admit responsibility for such violation and pay the fine provided therein. Payment
111 shall be made either via the internet, or personally or through a duly authorized agent, or by
112 appearing before the parking clerk during normal office hours, or by mailing both payment and
113 notice of the violation to the address designated on the violation notice. Payment by mail shall be
114 made only by money order, credit card or check made out to the parking clerk. Payment of the
115 established fine and any applicable penalties shall operate as a final disposition of the case.
116 Payment of the fine by one motor vehicle owner shall be satisfaction of the fine as to all other
117 motor vehicle owners of the same motor vehicle for the same violation.

118 (f) Any owner to whom a notice of violation has been issued may, within 15 days of
119 the mailing of said notice by the parking clerk, request a hearing to contest the liability alleged in
120 said notice. A hearing request shall be made either personally, by phone, via the internet or
121 through a duly authorized agent by appearing before the parking clerk during regular business
122 hours or by mailing a request in writing to the parking clerk. Upon receipt of a hearing request,
123 the parking clerk shall forthwith schedule or cause to be scheduled, the matter before a person
124 hereafter referred to as a hearing officer, said hearing officer to be the parking clerk of the City
125 wherein the violation occurred or such other person or persons as the parking clerk may
126 designate. Written notice of the date, time and place of said hearing shall be sent by first class
127 mail or emailed to each registered owner. Said hearing shall be informal, the rules of evidence
128 shall not apply, and the decision of the hearing officer shall be final subject to judicial review as
129 outlined by Section 14 of Chapter 30A of the General Laws. Within twenty-one days of the
130 hearing, the parking clerk or the hearing officer should send by first class mail or email to the

registered owner or owners the decision of the hearing officer, including the reasons for the outcome.

(g) Any owner to whom a notice of violation has been issued shall not be liable for a violation under the provisions of this Act (1) if the violation was necessary to allow the passage of an emergency vehicle as evidenced by the accompanying violation video and/or violation photographs; (2) if the violation was incurred while participating in a funeral procession as evidenced by the accompanying violation video and/or violation photographs; (3) was not the driver of the vehicle; (4) if the violation was incurred during a period of time in which the motor vehicle was reported to the Police Department of any State, City or Town as having been stolen and had not been recovered prior to the time the violation occurred; (5) if the operator of the motor vehicle was operating the motor vehicle under a rental or lease agreement and the owner of the motor vehicle is a rental or leasing company and has complied with the provisions of section 20E of Chapter 90 of the General Laws in which case the citation shall be issued to the person to whom the vehicle was leased or rented at the time of the violation, provided that this information is provided to the City within 14 days of receipt of the notification of violation by the leasing or rental business, (6) if the operator of the motor vehicle was convicted of the underlying violation pursuant to a citation issued in accordance with Section 2 of Chapter 90 C of the General Laws; or (7) if the violation was necessary to comply with any other law or regulation governing the operation of a motor vehicle at the intersection as evidenced by the accompanying violation video and/or violation photographs. An owner disputing a violation under this section shall, within 15 days, provide the parking clerk with a signed affidavit in a form approved by the parking clerk, as provided for in subsection (d), stating (i) the reason for disputing the violation; (ii) the full legal name and address of the owner of the motor vehicle; (iii) the full legal name and address of the operator of the motor vehicle at the time the violation occurred if claiming exemption under subparagraph (3) of this subsection, in which case the City shall reissue or cause to be reissued the notice of violation to the person designated; if no person exists or if said person denies driving the vehicle at the time of the violation, then the violation shall revert to the owner of the vehicle who will then be without further opportunity to reassign liability.

(h) If an owner to whom notice of violation has been issued either fails to pay the fine provided for in said notice in accordance with subsection (e), or fails to receive a favorable adjudication of said notice from a hearing officer in accordance with Subsection (f), the parking clerk shall notify the registrar of motor vehicles who shall place the matter on record. Upon notification to the registrar from the parking clerk of either City or State authorities or agencies, the registrar shall not issue or renew or may suspend such owner's license to operate a motor vehicle or motor vehicle registration until after notification from the parking clerk of the City of New Bedford that all fines, taxes and penalties owed by such owner pursuant to either this section, or arising out of the parking or usage of such owner's motor vehicles, have been disposed of in accordance with law. Upon such notification to the registrar, an additional charge

170 of $20 payable to the registrar but collected by the City of New Bedford, and an additional
171 charge of $20 payable to and collected by the City of New Bedford shall be assessed against the
172 registered owner of said motor vehicle. It shall be the duty of the parking clerk to notify the
173 registrar forthwith that such case has been so disposed; provided, however, that certified receipt
174 of full and final payment from the parking clerk of the City or State agency or authority issuing
175 such violation shall also serve as legal notice to the registrar that said violation has been disposed
176 of in accordance with law. The certified receipt shall be printed in such form as the registrar of
177 motor vehicles may approve.

178 (i) Upon the accumulation by an owner of two or more outstanding notices under this
179 Act and/or Sections 20A and 20A ½ of Chapter 90 of the General Laws on account of violations
180 of any statute, ordinance, order, rule or regulation relating to the operation, control or parking of
181 motor vehicles in a particular City, notwithstanding any notification to the registrar, the parking
182 clerk of such City may notify the Chief of Police or Director of Traffic and parking of such City
183 that the vehicle bearing the registration to which said notices have been issued shall be removed
184 and stored or otherwise immobilized by a mechanical device at the expense of the registered
185 owner of such vehicle until such time as all fines, taxes and penalties owed by such owner
186 pursuant to either this section, or arising out of the parking or usage of such owner's motor
187 vehicle have been disposed of in accordance with law. No vehicle shall be removed, stored, or
188 otherwise immobilized until and unless the owner of such motor vehicle shall have received 5
189 days notification by mail that such motor vehicle may be removed, stored, or immobilized
190 without further notification. It shall be sufficient for the parking clerk to mail, postage prepaid,
191 said notification to the last known address of the registered owner. It shall be sufficient for the
192 parking clerk, in the case of a motor vehicle registered in another State or Country, to mail
193 notification to the official in such State or Country having charge of the registration of such
194 motor vehicle.

195 (j) Photographic and other recorded evidence obtained through the use of automated
196 enforcement devices deployed as a means of promoting traffic safety authorized herein shall be
197 destroyed within 1 year of final disposition of any recorded event.

198 (k) The administrator of the traffic control signal monitoring system within the City
199 of New Bedford shall submit an annual report regarding the use and operation of the traffic
200 violation monitoring system to the Massachusetts Department of Transportation.

201 (l) The City of New Bedford shall comply with any regulations, standards or
202 guidelines promulgated by the Massachusetts Department of Transportation regarding minimum
203 yellow light change times for traffic control devices. In the absence of such regulation or
204 guidelines, the City of New Bedford may adopt minimum yellow light change interval time
205 standards in accordance with nationally recognized engineering standards set forth in the
206 Institute of Transportation Engineers Traffic Engineering Handbook, and any such established
207 time may be not less than such recognized national standard. The burden shall be upon the

alleged violator to overcome the presumption that the yellow light change interval is in accordance with the minimum standards. A notice of violation shall not be issued if any part of the automobile was in the intersection when the light was yellow, regardless of whether or not the light turned red while the automobile was in the intersection.

(m) The City of New Bedford shall install at each intersection at which a traffic infraction detector is in use a sign notifying the public that a traffic infraction device is in use at such intersection. Such signage must specifically include notification of camera enforcement of violations for right turns at that intersection if so enforced.

(n) The City of New Bedford shall make a public announcement and conduct a public awareness campaign of the proposed use of traffic infraction detectors at least 30 days before commencing the enforcement program.

(o) The Act shall allow for the City to install, maintain and operate traffic infraction detectors on right of way within its City limits on which the traffic infraction detector is to be installed in accordance with established permitting standards.

SECTION 4

This Act shall take effect upon its passage.