

612

COVER SHEET

IN THE SUPREME COURT OF THE STATE OF OHIO

KELLY MENDENHALL, et al,)	CASE NO. 2006-2265
)	
v.)	
)	
THE CITY OF AKRON, et al.)	

CERTIFIED QUESTION OF STATE LAW

AMICUS BRIEF OF DAN MOADUS et al, IN SUPPORT OF KELLY MENDENHALL, et al

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TABLE OF CONTENTS

INTRODUCTION..... 1

LAW AND ARGUMENT..... 4

 I. THE CAMERA ORDINANCES VIOLATE ARTICLE XVIII SECTION
 3 OF THE CONSTITUTION OF THE STATE OF OHIO, BY BEING
 IN CONFLICT WITH THE GENERAL LAWS OF OHIO GOVERNING
 TRAFFIC IN TITLE 45 OF THE OHIO REVISED CODE.....4

 II. THE ORDINANCE VIOLATES PROCEDURAL DUE PROCESS
 GUARANTEED UNDER THE OHIO AND U.S. CONSTITUTIONS,
 AND IS THEREFORE UNCONSTITUTIONAL ON ITS FACE AND
 IN ITS ENFORCEMENT..... 15

CERTIFICATE OF SERVICE..... 21

TABLE OF CASES..... 22

APPENDIX

 A. *DAN MOADUS ET AL V. THE CITY OF GIRARD, TRUMBULL
 COUNTY COURT OF COMMON PLEAS, CASE NO. 05-CV1927*

 B. JOINT STIPULATIONS OF FACT

 C. GIRARD SPEED CAMERA ORDINANCE

IN THE SUPREME COURT OF THE STATE OF OHIO

)	CASE NO. 2006-2265
Kelly Mendenhall, et al,)	
)	<u>Certified Question of State Law</u>
v.)	
)	<u>AMICUS BRIEF OF DAN MOADUS</u>
The City of Akron, et al.)	<u>et al. IN SUPPORT OF KELLY</u>
)	<u>MENDENHALL, et al</u>
)	
)	

INTRODUCTION

Dan Moadus et al are the Plaintiffs in *Dan Moadus et al v The City of Girard*, Trumbull County Court of Common Pleas, case no. 05-CV-1927. Plaintiffs were granted class certification by the Court, and the case was decided in Plaintiffs’ favor on July 6, 2006 (copy attached as appendix “A”). Also attached, as appendix “B”, are the Joint Stipulations of Fact in the Trumbull County case, and at Appendix “C”, Girard Ordinance 7404-5. That Court ruled that the speeding statutes of the State of Ohio contained in Title 45 of the Ohio Revised code are “general laws” within the meaning of the term as used in Article XVIII, Section 3, of the Ohio Constitution, and that the Girard Speed Camera Ordinance conflicts with these laws.

As a matter of introduction, counsel will state briefly the essence and motivation of the Plaintiffs’ challenge to Girard City Ordinance 7404-05 and the reasons for their support of the position of the Plaintiffs in this case.

Our country has long been a beacon of freedom, having been founded on the philosophy and principals originally discovered and described by the ancient Greeks during their golden age, 550 B. C. to 300 B. C. Even these early proponents of freedom realized that there are different types of freedom: political and personal.

Political freedom deals with issues such as electing our representatives, freedom of religion, speech, assembly, that is, the ways in which we as citizens can influence our government. Personal freedom, on the other hand, deals more with the freedom that we enjoy in our day-to-day lives, such as freedom of privacy, freedom of movement, freedom of choice, the right to own property, etc. It is a natural freedom, and it existed only in certain situations prior to the Greeks, when rudimentary political organization permitted it by default, I.E., there was no strong government in existence to take it away.

However, under the Greeks, political and personal freedom co-existed, based on written law, tradition, and philosophy. There, for a time, political and personal freedom were conjoined, and exercised by a large number of citizens for the first time in history. Herodotus recognized that political and personal freedom are the elements that make a society strong and able to survive, calling that freedom a "...noble thing"..., for "...while they [The Athenians] were oppressed under a despotic government, they had no better success at war than any of their neighbors, yet, once the yoke was flung off, they proved the finest fighters in the world." (See Greek Ways, by Bruce Thornton, P. 166 [From Herodotus 5.78, translation-de selincourt]). In essence, political freedom can and should protect personal freedom, for without personal freedom, political freedom becomes meaningless. The speed camera scheme at issue in this case strikes at the heart of both our political and personal freedoms. The rule of law, as set out in our constitutions, statutes, and common law, should not be ignored or subverted for expediency and for fiscal purposes.

Our political freedom, and therefore our personal freedom, are protected by our institutions, the Courts being of vital importance in this regard.

Today, with the advent of modern electronic technology, combined with the financial problems faced by local governments, our personal freedom is taking a beating.

Rather than deal with fiscal and budgetary problems by more conventional methods such as tax increases or economic development, some municipalities have resorted to the easy solution: schemes that generate revenue by exploiting human nature, such as the speed camera and red light camera ordinances instituted by municipalities such as Girard, Akron, and others.

These schemes have been adopted because the cities' budgets do not have sufficient funds to keep police officers on duty for serious law enforcement. Therefore, fewer police officers, less law enforcement, more revenue, and less freedom become the order of the day. Less freedom, because the nature of these speed and red light camera ordinances is to short-cut due process and the state criminal statutes, and create instead an administrative "hearing" process, outside the duly constituted courts, a "hearing" process devoid of the concepts of reasonable doubt, burden of proof, and the right of confrontation.

Some of today's other high-tech and non-high tech infringements on our personal freedom include widespread video surveillance, "locator" computer chips (in cell phones and vehicles), the massive DNA databases that are being accumulated, tracking/memory chips in personal computers, random airport searches, metal detectors, loading personal information into magnetic strips, the proposed national I.D. card, computer-read bar codes embedded in everything, the extensive credit record dossiers kept on most citizens, and the burgeoning bureaucratic/administrative apparatus which, through inertia if not intent, is slowly replacing our democratic institutions.

Of course, most of these do not run directly afoul of the law, although most people would agree that their cumulative effect is detrimental to our personal and political freedom.

The subject Speed Camera and Red Light Camera Ordinances, in addition to being repugnant to personal freedom do in fact run afoul of the law, in several respects:

- (1) They violate Article XVIII and 3 of the Constitution of the State of Ohio;
- (2) They violate the due process rights of alleged violators;

ARGUMENT

1. THE CAMERA ORDINANCES VIOLATE ARTICLE XVIII SECTION 3 OF THE CONSTITUTION OF THE STATE OF OHIO, BY BEING IN CONFLICT WITH THE GENERAL LAWS OF OHIO GOVERNING TRAFFIC IN TITLE 45 OF THE OHIO REVISED CODE.

ARTICLE XVIII SECTION 3 OF THE OHIO CONSTITUTION READS AS FOLLOWS:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

A point that is both obvious, and overlooked much of the time, is that this section is a grant of authority originating from the State of Ohio, to municipalities. Without such a grant, municipalities would have no authority whatsoever to exercise any powers.

Our federal system is a combination of fifty independent State governments, bound together by the Constitution of the United States, i.e., the several states created the United States. The U.S. Constitution does not grant or recognize any independent status or authority of any local government, whether municipal, county, or township. In Ohio, for example, these local entities only exist as creations of the Ohio Constitution and

Legislature, and what authority they have is not inherent, but granted by the state. Articles 10, 18, and 8 of the Ohio Constitution make this clear. In other words, the “home rule” powers held by municipal governments in Ohio only exist by virtue of a grant from the State of Ohio.

The Ohio Legislature has created a system of uniform traffic laws for application throughout the state; initially under the General Code, and currently under Ohio Revised Code Title 45. These state statutes are general laws, as the term is used in Ohio Constitution Article XVIII, section 3.

In *Limdale v. State*, 85 O.S. 3rd 52 (1999), the Court said the following in its discussion as to what constitutes a “general law”:

General laws are those enacted by the General Assembly to safeguard the peace, health, morals, and safety and to protect the property of the people of the state. *Schneiderman v. Sesantein* (1929), 121 Ohio St. 80, 82-83, 167 N.E. 158, 159. General laws “apply to all parts of the state alike.” *Id.* at 83, 167 N.E. at 159. This court held in *W. Jefferson v. Robinson* (1965), 1 Ohio St.2d 113, 30 O.O.2d 474, 205 N.E.2d 382, paragraph three of the syllabus, that “[t]he words ‘general laws’ as set forth in Section 3 of Article XVIII of the Ohio Constitution means [sic] statutes setting forth police, sanitary or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations.” (Emphasis added.) This court also defined general laws as those operating uniformly throughout the state, prescribing a rule of conduct on citizens generally, and operating with general uniform application throughout the state under the same circumstances and conditions. *Garcia v. Siffrin Residential Assn.* (1980), 63 Ohio St.2d 259, 271, 17 O.O.3d 167, 174, 407 N.E.2d 1369, 1377-1378 (citing *Schneiderman, supra*). “ ‘Once a matter has become of such general interest that it is necessary to make it subject to statewide control so as to require uniform statewide regulation, the municipality can no longer legislate in the field so as to conflict with the state.’ ” *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted* (1992), 65 Ohio St.3d 242, 244, 602 N.E.2d 1147, 1149, quoting *State ex rel. McElroy v. Akron* (1962), 173 Ohio St. 189, 194, 19 O.O.2d 3, 6, 181 N.E.2d 26, 30.

In City of Niles v. Howard, 12 O. St. 3rd 162 (1984), the Supreme Court of Ohio ruled that the drug statutes in Ohio Revised Code Title 2925 et. seq., were general laws, stating on page 164 of its opinion: “The drug laws of the State of Ohio are, therefore, ‘General Laws’.

That case involved a Niles City Ordinance which made possession of small amounts of marijuana a first degree misdemeanor, punishable by up to six months in jail. The Ohio Statute for the same violation was deemed a minor misdemeanor, under title 29, the Ohio Criminal Code, with no possible jail sentence.

The question for the Howard Court became, therefore, whether the Niles Ordinance, enacted under the home rule authority granted in Article XVIII 8, was in conflict with the general drug law in the state statute. The Howard Court found that the Ordinance was not in conflict, and upheld it, citing Struthers v. Sokol, 108 O. St. 263 (1923).

The Court in Sokol used the following test in reaching its determination that the Struthers Ordinance was not in conflict with state law: “In determining whether an Ordinance is in ‘conflict’ with general laws, the test is whether the Ordinance permits or licenses that which the statute forbids, and vice versa.”

A newer test is two part (found in Canton v. State, 98 O. St. 3rd. 149), the first part is to determine if a state statute is indeed a “general law”, and to be a “general law”, it must:

- (1) be part of a statewide and comprehensive legislative enactment,
- (2) apply to all parts of the state alike and operate uniformly throughout the state,
- (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations;

(4) prescribe a rule of conduct upon citizens generally;

The second part of the new test is to determine if a state statute takes precedence over the local ordinance, which occurs if:

- (1) the ordinance is in conflict with the statute,
- (2) the ordinance is an exercise of the police power, rather than of local self-government, and
- (3) the statute is a general law.

This Court has ruled that there is more to an analysis of the conflict issue than the simple *Sokol* test. In *Cleveland v. Betts*, 168 O. St. 386 (1958), in a **unanimous** decision written by Justice Zimmerman (at page 22), the Court stated:

From what has been said, it would seem obvious that the offense of carrying concealed weapons is a felony under the [State] statute relating to that subject, and an ordinance which makes the same offense a misdemeanor, punishable only as such, conflicts with the statute and is invalid.

Also, exactly on point, Justice Zimmerman continues:

If by ordinance a municipality can make the felony of carrying concealed weapons a misdemeanor, what is there to prevent it from treating armed robbery, arson, rape, burglary, [*390] grand larceny or even murder in the same way, and finally dispose of such offenses in the Municipal Court.

Justice Zimmerman and his six colleagues ruled in *Betts* that Cleveland ordinance 11.2314 conflicted with the general state statute, O.R.C. Section 2923.01, by making the state felony into a misdemeanor, **even though the conduct in question was prohibited by both the statute and the ordinance.**

In the present case, a misdemeanor speed offense, jailable on a second offense within 1 year, is transformed into a civil matter under Girard ordinance 7404-5. To once again paraphrase Justice Zimmerman, what is there to prevent it (Girard or any other Ohio "home rule" subdivision) from making DUI, assault, or domestic violence into a civil matter if these camera ordinances are allowed to stand?

Three years after Betts, the Ohio Supreme Court decided Toledo vs. Best, 172 O. St. 371 (1961). The sole question before the Court was whether a Toledo ordinance on DUI conflicted with the state law banning the same conduct.

The Court, in another unanimous (6 Justices) decision (including Justices Zimmerman, Taft, Weygandt, Matthias, and Bell, who all concurred in Cleveland v. Betts above), this time found no conflict with the state law, because the ordinance was identical to the state law in all respects, including conduct prohibited, degree of offense, and punishment.

In distinguishing Betts, the Court in Toledo v. Best stated:

We feel that the pronouncement of this court in the case of City of Cleveland v. Betts, 168 Ohio St., 386, has no application to the cause or factual situation we are now considering. In Betts case there was no question about the conflict. It was obvious and apparent. In the instant case, there is no conflict, especially in view of the two aforementioned sections of Title XXIX of the [***8] Revised Code, and the final clinching argument is the result reached in the Municipal Court. The sentence imposed by the Municipal Court was imprisonment for three days, assessment of the costs of \$ 81 and suspension of driving rights. Had the defendant been charged under the state statute in its present form, he could have received the identical sentence imposed by the Municipal Court under the municipal ordinance.

Clearly, in the present case, the camers ordinances, by transforming criminal state laws into a civil matters, fit directly into the facts of Cleveland v. Betts, and it is “obvious and apparent” that these ordinances are in direct conflict with the State Statutes, which are “general laws”, and should be ruled invalid.

Both Sokol and Howard involved ordinances (Sokol-liquor, Howard-drugs) which provided for different penalties than the state statute; in Howard, more severe, in Sokol, some conduct was prohibited by the City Ordinance that was not prohibited by the state

statute. Neither the Sokol Court or Howard Court found a conflict with the general laws, and the City Ordinances were upheld.

These two cases are easily distinguished from the present case regarding the Girard Traffic Camera Ordinance. Here, the Ordinances convert a criminal matter to civil matters. The burden of proof on the state to prove an offender guilty beyond a reasonable doubt magically disappears, as does the right of confrontation.

Traffic points assessments which take bad drivers off the road by suspending their driving privileges after 12 points are accumulated within 24 months also magically disappears; This point assessment for traffic violations is found in Ohio Revised Code Section 4510.036, which reads in relevant portion:

(C) A Court shall assess the following points for an offense based on the following formula:

(11) A violation of any law or Ordinance pertaining to speed:

(a) ... when the speed exceeds the lawful speed limit by thirty miles per hour or more 4 points.

(c) When the speed exceeds the lawful speed limit of less than fifty-five miles per hour by more than five miles per hour 2 points.

Dangerous repeat offenders may continue to drive, no matter how many speed and red light camera citations they receive. Also disappearing from the process is the duly constituted Court. The Court system is bypassed completely under these Ordinances.

Also radically altered by this attempt to convert a state criminal statues city civil matters, is the enhancement under state law from a minor misdemeanor to a fourth degree misdemeanor upon a second moving violation within a 12 month period: This law, duly

enacted by the Ohio legislature and signed by the governor, as all the statutes cited herein, is Ohio Revised Code Section 4511.99 (B), which makes most moving traffic violations minor misdemeanors, except:

(B) If, within one year of the offense, the offender previously has been convicted of or plead guilty to one predicate motor vehicle or traffic offense, a misdemeanor of the fourth degree.

This penalty enhancement of course also magically disappears for speeders and red light violators within city limits of the subject cities. Offenders may receive as many camera violations as they please, and never face the prospect of jail, points, or license suspension.

These types of radical alterations of state statutory law did not exist in Sokol or Howard. In those cases, acts deemed criminal under state statutory law remained criminal under respective City Ordinances, and in fact in some instances, the penalties for the same prohibited conduct were enhanced.

In the present case, conduct that was once criminal under statute becomes civil; penalties designed and intended by the legislature (points, jail on subsequent offense) to make our roads safer, disappear altogether, along with the right of an alleged offender to require the state to prove guilt beyond a reasonable doubt in a duly constituted Court.

These differences create an obvious and direct conflict with Title 45 of the Ohio Revised Code, specifically, but not necessarily limited to conflicts with the following:

Section 4511.21 - Speed

Section 4511.12 - Traffic Control Devices

Section 4511.06 - Uniform Application of Traffic Laws

Section 4511.07 - Local Traffic Regulations

Section 4511.036 - Point System

Section 4511.99 - Penalties

In addition, under these various Civil Ordinances, there is no way for an alleged offender to attack the accuracy or certification of a camera. These cameras fit the definition of a “traffic control device”, in Ohio Revised Code Section 4511.01(QQ):

Traffic control devices mean all... ..devices ...for the purpose of regulating... ..traffic,...

Ohio Revised Code Sections 4511.09 and 4511.11 establish a uniform manual and uniform certification system for such devices Code Section 4511.11(F) specifically states:

No local authority shall purchase or manufacture any traffic control device that does not conform to the state manual and specifications...

The alleged “offender” of a speed or red light camera violation has no opportunity to investigate or challenge city compliance with these sections vis-a-vis the camera in hearing schemes, since no right of subpoena or confrontation exists in the various administrative hearing scenarios.

These statutes in Title 45 are all “general laws” as defined out in *Howard* and *Sokol*, within the meaning of the term as used in article XVIII section 3 of the Ohio Constitution.

In *State v. Rosa*, 128 O. App. 3rd 556, (1998), out of the 7th Appellate district, the Court ruled as an unconstitutional violation of Article XVIII section 3, A Youngstown City Ordinance which attempted to convert a civil offense under state law, to a criminal offense under the ordinance. This Court stated, on page 561: “Comparatively, if changing a misdemeanor offense to a felony, or vice versa, is in conflict with general

state law, changing the classification of an act from a civil to a criminal violation would also be in conflict.”

The *Rosa* Court refers to *Toledo v. Best*, 172 06 St. 371 (1961), where the syllabus stated the following on the “conflict” issue:

Where the only distinction between a state statute and a municipal ordinance, proscribing certain conduct and providing punishment therefor, is as to the *Penalty* only but not to the *Degree* (Misdemeanor or Felony) of the offense, the ordinance is not in conflict with the general laws of the state.” (Syllabus Page 24) (Emphasis Added).

Also cited by the *Rosa* Court is *Cleveland vs. Betts*, 168 O. St. 386 (1958), in which a Cleveland City Ordinance was found to be unconstitutional because it conflicted with the State of Ohio Statute (O.R.C. Section 2923.01) governing the same conduct of carrying a concealed weapon.

The Cleveland ordinance created a misdemeanor offense for carrying a concealed weapon, while O.R.C. 2923.01 created a felony for the same conduct. Even though the Cleveland ordinance did not permit what the state statute prohibited, the Court in *Betts* found that it created an unconstitutional conflict with article XVIII section 3, and struck the ordinance down.

Nearly identical are the facts in the present case. “It is therefore, apparent that a police regulation in a municipal ordinance may not validly contravene a statutory enactment of general application throughout the state ...” (*Betts* Page 21). The statutes cited above under O.R.C. 45 are contravened by City of Girard ordinance 7404-5, by creating a civil offense for conduct which is a criminal misdemeanor under the state general law.

This Girard ordinance and Akron ordinance do much more than change the penalty: They change the degree and type of offense, and in fact, make it a non-offense, eliminate the burden proof, and eliminate the possibility of jail and license suspension, and eliminate the level of the constitutional due process protections alleged offenders are entitled to in criminal speeding and red light cases.

Head note four in *Betts* states as follows:

***Constitutional Law > Procedural Due Process > Grand Jury Requirement
Criminal Law & Procedure > Sentencing > Imposition > Factors***

A presentment or indictment by a grand jury is essential in the prosecution of an "infamous crime," and a prosecution in any other manner is authorized and a nullity for want of jurisdiction. Ohio Rev. Code Ann. 1901.20 gives a municipal court jurisdiction to hear felony cases committed within its territory and to discharge, recognize, or commit the accused. The offense of carrying concealed weapons is a felony under the statute relating to that subject, and an ordinance which makes the same offense a misdemeanor, punishable only as such, conflicts with the statute and is invalid. In determining whether a conflict exists between a statutory enactment and a municipal ordinance the test is whether the ordinance permits or licenses that which the statute forbids and prohibits and vice versa. ***But this test is not exclusive. Conviction of a misdemeanor entails relatively minor consequences, whereas the commission of a felony carries with it penalties of a severe and lasting character.*** (Emphasis Added)

The same degree of difference exists in the present case, except that instead of attempting to replace a felony with a misdemeanor, Girard attempts to replace a crime with a civil offense.

The *Betts* case is cited and followed by the Court of Appeals of the Second District, in *State v. Barr*, 153 O. App. 3rd. 193 (2003). In *Barr*, an Urbana ordinance made the act of assisting a minor in a curfew violation a minor misdemeanor, in contrast

to Ohio Revised Code Section 2919.24 (A)(1), which makes the same act a first degree misdemeanor. The Barr Court, on page 196 & 197, stated the following:

We agree with the state that the principle espoused in *State v. Volpe*, supra, is applicable to conflicts between different provisions of the Ohio Revised Code, but not to conflicts between general provisions in the Ohio Revised Code and provisions in municipal ordinances. The latter conflicts are controlled by *Cleveland v. Betts* (1958), 168 Ohio St. 386, 7 O.O.2d 151, 154 N.E.2d 917, in which it is held that "Section 3, Article XVIII of the Constitution of Ohio, authorizes municipalities to adopt and enforce within their limits only such local police regulations as are not in conflict with general laws." Id. At syllabus.

In the case before us, by contrast, the Urbana ordinance purports to make the act of assisting a minor in a curfew violation a minor misdemeanor, punishable at most by \$100 fine, while the statute makes the identical conduct a first-degree misdemeanor, punishable by imprisonment for up to six months. This is a significant conflict. We agree with the state that, pursuant to *Cleveland v. Betts*, supra, the statute prevails over the ordinance.

In distinguishing a contrary ruling in *Toledo vs. Best*, 172 O. ST. 371 (1958), the Barr Court stated on pages 196 and 197:

To be sure, the holding in *Cleveland v. Betts*, supra, has been modified by the holding in *Toledo v. Best* (1961), 172 Ohio St. 371, 16 O.O.2d 220, 176 N.E.2d 520. However, we conclude that the holding in the latter case was based upon the fact that the difference between the ordinance and the statute in that case was slight, pertaining as it did to whether the first three days of any sentence imposed could be suspended, and the fact that the sentence actually imposed in violation of the ordinance was one that could have been imposed for a violation of the statute. Under those circumstances, the Supreme Court, which was evidently somewhat critical of the statute, held that: "In the present case, although the city of Toledo has remained constant and the General Assembly has vacillated, we feel this vacillation is not to a degree which causes a conflict between the statute and ordinance herein involved." *Toledo v. Best*, 172 Ohio St. at 375, 16 O.O.2d 220, 176 N.E.2d 520.

In other words, there was not a sufficient conflict between the Toledo ordinance, and the "general law" (In that case, Ohio revised code section 4511.19, the DUI statute. The Toledo ordinance and the state statute were nearly identical, and the same result was

reached after conviction under the ordinance in the case being reviewed.

**2. THE ORDINANCE VIOLATES PROCEDUAL DUE PROCESS
GUARANTEED UNDER THE OHIO AND U.S. CONSTITUTIONS, AND
IS THEREFORE UNCONSTITUTIONAL ON ITS FACE AND IN ITS
ENFORCEMENT.**

The due process protections for citizens of the State of Ohio are found in the Constitution of the State of Ohio, Article I Section 10 (reproduced here in part):

In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witness face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; No person shall be compelled, in any criminal case, to be a witness against himself.

Also, in the Constitution of the State of Ohio, Article I Section 16, Ohio citizens are accorded the right to redress in Courts:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

The due process rights of Citizens of these United States, applicable of course to the citizens of Ohio, are found in Amendments V, VI, and XIV, restated here in part:

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property,

without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT XIV

...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The only "hearing" provided by the Automated Traffic Enforcement ordinance is conducted by a hearing officer, who in the Girard case, works for the City that issued the citation, who earns \$7.00 per hour. His decision is final, and there is no right to further review on substance issues. Due process of law is violated when there is no provision for judicial review of a decision made by an administrative body affecting the rights of persons or property. *Stanton v. Tax Commissioner* (1926), 114 Ohio St. 658.

A municipal ordinance which gives the employees of city regulatory department the right to both investigate and adjudicate whether the ordinance was violated, with no further right of review by a court of law, violates due process. *Burke v. Fought* (1978), 64 Ohio App. 2d 50. In *Burke*, a Toledo ordinance purported to give the Toledo Consumer Protection Agency both investigatory and enforcement powers over disputes between consumers and suppliers. *Id.* at 54. The ordinance was based upon the

Consumer Sales Practices Act, which vests investigatory power with the Director of Commerce and enforcement power with the Attorney General. Id. It is the consolidation of those two powers that violated due process in *Burke* and violates due process in the matter *sub judice*.

The Ordinance and their enforcement violate the confrontation clause in Article I, Section Ten of the Ohio Constitution. The alleged speeding and red light violations are not witnessed by law enforcement officer and the ordinance does not require that a law enforcement officer testify in order to establish that a defendant was operating the vehicle and that said operation was in violation of the posted speed limit. "Any abrogation of the defendant's right to a full and complete cross-examination of such witnesses is a denial of a fundamental right essential to a fair trial." *State v. Hannah* (1978), 54 Ohio St.2d 84, 88. The camera cannot be brought before the court and asked to testify. Recipients of speeding citations cannot cross-examine the camera concerning the violation. As a result, the right to confront one's accuser is violated. There are no procedures in place to challenge the calibration of the machine or to view its calibration or repair logs, subpoenas are not permitted as stated above. In the absence of law enforcement officer observing the offense and being available to testify, the Ordinance impermissibly places the burden of proof on the alleged violators to prove they are not guilty of the offense. This denial of our right to face our accusers in court is contrary to the principals of our entire criminal justice system; The municipalities cannot be permitted to eliminate these protections by attempting to convert the offenses to a civil matters.

At the moment the camera takes a picture, those accused are presumed guilty. The Ordinances require that the accused prove their innocence. It is up to the owner of

the vehicle to prove he wasn't driving when the ticket was issued. To avoid responsibility for a violation under the Ordinances, the owner of the vehicle is required in the Girard scheme, to furnish the hearing officer an affidavit stating the name and address of the person who had the care, custody, and control of the vehicle at the time of the violation. The Girard Ordinance also states: "It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles....was operating the vehicle at the time of the offense". This shifting of the burden of proof violates the due process requirements of U.S. Constitutional Amendment Fourteen, Section 1, which states: "...nor shall any State deprive any person of life, liberty, or property, without due process of law". The presumption of innocence is one of the cornerstones of our criminal justice system. The Ordinance and the use of traffic cameras violate this important principle.

The U.S. Supreme Court has recognized that it is not constitutionally permissible to allow a hearing procedure in which the factfinder has an "incentive to convict." Ward v. City of Monroeville (1972), 409 U.S. 57. In Ward, the Court held that a "situation in which an official performs two practically and seriously inconsistent positions, one partisan and the other judicial," is a denial of due process. *Id.* At 60. Headnote 1 of Ward reads as follows:

Constitutional Law > Procedural Due Process > Scope of Protection

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Fair Trial

[HN1] It certainly violates U.S. Const. amend. IV, [Sic?] and deprives a defendant in a criminal case of due process of law, to subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case.

Even in an administrative proceeding, due process still requires a fair opportunity to be heard, and a fair hearing includes the right to produce testimony, the right to cross examine witnesses and the right to be informed of the evidentiary facts on which the tribunal bases its decision. Cicerella, Inc. v. Jerusalem Township Board of Zoning Appeals (1978), 59 Ohio App. 2d 31 at 38. These ordinances, however, provide none of these basic safeguards. The police do not have to produce any evidence other than a photograph, and no witness is required to authenticate what that photograph purports to show. No evidence is required to establish that the camera or other device was properly calibrated, or even that the device is reliable or accurate. A photograph cannot authenticate itself. One cannot effectively cross-examine a machine. While an administrative tribunal may not have to follow particular rules of evidence, it still has to hear evidence. Fundamental due process requires that a decision be based on facts, not conjecture. A speed reading obtained from a metal box, or a red light violation photo cannot be competent evidence without proof that the device can accurately measure speed and photograph a red light violation.

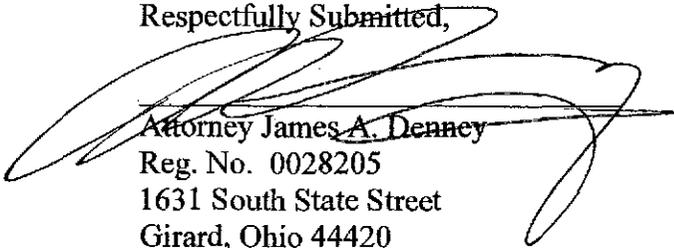
In Ohio, the construction and accuracy of a new radar device must be established by expert testimony at least once, in some evidentiary form, somewhere, before other tribunals can take judicial notice of its accuracy. Cincinnati v. Levine (2004), 158 Ohio App.3d 657. The reliability and accuracy of the radar device used by Traffipax in the Girard case has never been addressed by expert testimony in any tribunal.

The due process defects these ordinances are strikingly clear when compared to the procedures required for prosecuting civil parking offenses under O.R.C. Chapter 4521. Hearings for parking violations must be conducted by an administrative body

established by a court having territorial jurisdiction. O.R.C. 4521.04(A(1)). The hearing officer must be either an attorney or a former law enforcement officer. O.R.C. 4521.05(A). All testimony must be under oath; the city has the burden of proving the violation; and the person charged with the violation has the right to demand the appearance of the law enforcement officer who issued the parking ticket. O.R.C. 4521.08(A). Finally, the hearing officer's decision can be appealed to the municipal court. O.R.C. 4521.08(D). All of these procedural safeguards helped to save a Columbus parking ordinance from a due process challenge in *Gardner v. Columbus*, 841 F.2d 1272 (6th Cir. 1988). None of these protections exist under the Girard ordinance.

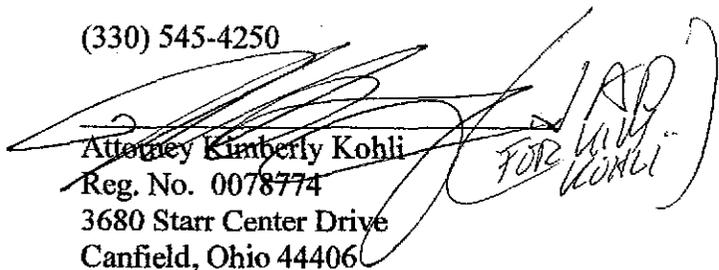
These ordinances fail to provide any of the safeguards afforded to persons cited for parking violations. It strains reason to conclude that the due process requirements for nonmoving violations would be greater than that necessary to properly and fairly adjudicate a moving violation such as a speeding or red light violation. At the heart of every due process argument is the ability to be heard and to contest the allegations. These ordinances simply fail to provide any meaningful opportunity to contest the tickets because there is no right of cross-examination and the hearing is conducted by a person who possesses both investigatory and enforcement powers. Our system of justice cannot tolerate such an unjust system.

Respectfully Submitted,



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CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing has been served upon Tony Dalayanis, 12 E. Exchange Street, Exchange Building, 5th Floor, Akron, Ohio 44308-1541, Warner Mendenhall, 190 North Union Street, Suite 201, Akron, Ohio 44304, Jacquenette S. Corgan, 190 North Union Street, Suite 201, Akron, Ohio 44304, Richard Sandler Gurbst, 4900 Key Tower, 127 Public Square, Cleveland, Ohio 44114-1304, Donald Willaim Herbe, 4900 Key Tower, 127 Public Square, Cleveland, Ohio 44114, Heather Lynn Tonsing, 4900 Public square, 127 Public Square, Cleveland, Ohio 44114-1304, Stephen Alan Fallis, 161 South High Street, Suite 202, Akron, Ohio 44308-1655, Michael John Defibaugh, 217 South High Street, Akron, Ohio 44308, Richard Sandler Gurbst, 4900 Key Tower, 127 Public Square, Cleveland, Ohio 44114-1304, this _____ day of _____, 2006.

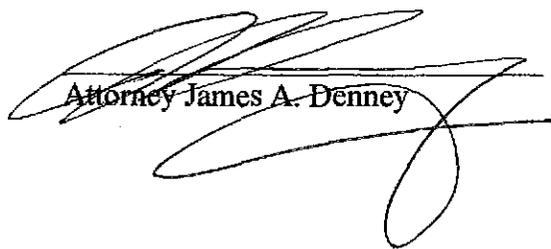

Attorney James A. Denney

TABLE OF CASES

<u>Burke v. Fought</u> (1978), 64 Ohio App. 2d 50.....	17
<u>Canton v. State</u> , 98 O. St. 3 rd . 149 (2002).....	6
<u>Cicerella, Inc. v. Jerusalem Township Board of Zoning Appeals</u> (1978), 59 Ohio App. 2d 31 at 38.....	19
<u>Cincinnati v. Levine</u> (2004), 158 Ohio App.3d 657.....	19
<u>City of Niles v. Howard</u> , 12 O. St. 3 rd 162 (1984).....	6, 9, 10, 11
<u>Cleveland v. Betts</u> , 168 O. St. 386 (1958).....	7, 8, 12, 13, 14
<u>Gardner v. Columbus</u> , 841 F.2d 1272 (6 th Cir. 1988).....	20
<u>Linndale v. State</u> , 85 O.S. 3 rd 52 (1999).....	5
<u>State v. Barr</u> , 153 O. App. 3 rd . 193 (2003).....	14
<u>State v. Hannah</u> (1978), 54 Ohio St.2d 84, 88.....	17
<u>State v. Rosa</u> , 128 O. App. 3 rd 556 (1998).....	12
<u>Stanton v. Tax Commissioner</u> (1926) 114 Ohio St. 658.....	16
<u>Struthers v. Sokol</u> , 108 O. St. 263 (1923).....	6, 9, 10, 11
<u>Toledo v. Best</u> , 172 O. St. 371 (1961).....	8, 12, 14
<u>Ward v. City of Monroeville</u> (1972), 409 U.S. 57.....	18

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
CASE NO. 05-CV-1927

DANIEL MOARDS, JR., et al.,)

Plaintiff(s))

va.)

JUDGMENT ENTRY

CITY OF GIRARD, et al.,)

Defendant(s))

This matter is before the Court on Plaintiffs' claims for Declaratory and Permanent Injunctive Relief against Defendant, City of Girard, Ohio, with respect to Girard Ordinance No. 7404-05 (the "Ordinance"), which created a civil enforcement system for speeding violations within the City utilizing a camera and radar device. For the reasons set forth herein, the Court concludes that the Ordinance violates Article XVIII, section 3 of the Ohio Constitution and that Plaintiffs are therefore entitled to the declaratory and injunctive relief requested.

The Court has allowed a class action under Civil Rule 23. Those included in the class are all parties not seeking exclusion who have been cited under the traffic camera system, and who have failed to pay the fines assessed against them under the notice provision of the Ordinance.

The pertinent facts are set forth in the Joint Statement of Facts submitted by the parties, a copy of which is attached hereto as Appendix A.

Although the parties have briefed various issues, the Court finds the first argument raised by Plaintiffs dispositive of the claims now before it, and therefore limits its discussion to that particular issue. Specifically, Plaintiffs contend that the Ordinance violates Article XVIII, Section 3 of the Constitution of the State of Ohio by being in conflict with general laws of the state governing traffic in Title 45 of the Ohio Revised Code. The constitutional provision at issue reads as follows:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with the general laws.

In Canton v. State, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, the Ohio Supreme Court set forth the three part test for determining whether a provision of a state statute takes precedence over a municipal ordinance as follows:

A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute; (2) the ordinance is an exercise of the police power, rather than of local self government; and (3) the statute is a general law.

Addressing the third prong of the test first, the Court rejects Defendants' claim that the various speeding-related statutes cited by Plaintiffs, and in particular R.C. Section 4511.21, 4510.036 and 4511.99, are not "general laws." In Canton, the Court cited with approval its decision in Schneiderman v. Sesanstein (1929), 121 Ohio St.80, 167 N.E. 158, in which it held that a statute setting speed limits throughout Ohio was a general law. As is particularly significant here, the Canton Court stated:

We have noted in the past that statutes regulating matters such as speed limits and hazardous waste facilities are regulations "for the protection of the lives of the people of the whole state" and have "no special relation to any of the political subdivisions of the state." Schneiderman, 121 Ohio St. 84, 167 N.E. 158 (speed limits), quoting Froelich v. Cleveland (1919), 99 Ohio St. 376, 386, 124 N.E. 212; Clermont (Environmental Reclamation Co. v. Wiederhold (1982)), 2 Ohio St. 44, 2 OBR 587, 442 N.E. 1278 (hazardous waste facility). Thus, those statutes were deemed to be "general laws."

Additionally, and in contrast to the approach advocated here by Defendants, the Canton Court noted that among the "steadfast parameters" it had established for determining when a law is a general law was that statutory schemes should be viewed "in their entirety, rather than a single statute in isolation," with an eye toward determining whether the statutes in question promoted "statewide uniformity." Canton

at paragraphs 12, 18. The foregoing reasoning strikes this court as abundantly sound. Moreover, none of the above-mentioned statutes can be viewed as placing limitations upon law making by municipal legislative bodies; rather, these statutes quite plainly apply to citizens generally, and not to municipal legislative bodies. See Canton at paragraphs 34-36, and cases cited therein.

As to the second prong of the three-part test set forth in Canton, Defendants essentially acknowledge that the Ordinance represents an exercise of the police power. Further, Defendants cursory assertion that the Ordinance also represents an exercise of self-government, i.e., "The City enacted the Ordinance to govern how the city treats traffic offenses," represents little more than wordplay and the Court finds no difficulty in concluding that the second part of the test has been met here.

Finally, as to the first prong of the three-part test, the Court concludes that the Ordinance is plainly in conflict with various general laws of the state regulating speeding, and in particular, with R.C. Sections 4510.036, 4511.21(G), 4511.21(P), and 4511.99. The most basic conflict is that the ordinance purports to decriminalize a type of conduct (driving in excess of the applicable speed limit) that the State has,

through R.C. Sections 4511.21(P) and 4511.99, defined as criminal in nature. In City of Cleveland v. Betts (1958), 168 Oh. St. 386, 154 N.E. 2d 917, 7 O.O. 2d 115, the Ohio Supreme Court invalidated a city ordinance making carrying a concealed weapon a misdemeanor because it conflicted with the general state law which made the offense a felony. Noting that the conflict seemed "obvious," the Court stated as follows:

We are aware that in the case of Village of Struthers vs. Sokol, 108 Oh. St. 263, 149 N.E. 519, followed in other later cases decided by this court, it was declared that in determining whether a conflict exists between a statutory enactment and a municipal ordinance 'the test is whether the ordinance permits or licenses that which the statute forbids and prohibits and vice versa.' but surely this test is not exclusive. Although the ordinance in issue does not permit what the statute prohibits, and vice versa, it does contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law into a misdemeanor, and this creates the kind of conflict contemplated by the constitution. Conviction of a misdemeanor entails relatively minor consequences, whereas the commission of a felony carries concealed weapons a misdemeanor, what is there to prevent it from treating armed robbery, rape, burglary, grand larceny or even murder in the same way, and finally dispose of such offenses in the Municipal Court.

Here the conflict is arguably even more extreme than that at issue in Betts, as the Ordinance purports to transform what the State has defined as criminal conduct into merely a civil wrong. In City of Niles v. Howard (1994), 12 Oh.St. 3d 162, 466 N.E. 2d 539, the Court drew a clear distinction

between ordinances which impose a greater penalty than that imposed by a corresponding state criminal statute, and ordinances which change the "degree" of the crime, i.e., felony or misdemeanor, to something other than provided for by the state statute. Howard, at 165. The Court held that the former type of ordinances are valid, while the latter impermissibly conflict with general laws. Here, the Ordinance purports to not simply change the degree of the crime, but to redefine the conduct at issue as non-criminal. Defendant has failed to cite any persuasive authority which would support this.

Similarly, the Ordinance purports to simply override R.C. Sections 4510.036 and 4511.21(G) with respect to the point system. There is a public policy the State Legislature has implemented through the point system to take careless or reckless drivers off the roads. The Niles Ordinance has no sanctions other than the civil penalty of paying a fine.

Defendant in its Supplement to its Trial Memorandum cites an interlocutory opinion by the United District Court, North Eastern District of Ohio, Eastern Division in Case No. 5:06CV139. This case is not binding law on this Court, but the opinion uses the statutory scheme adopted by the Ohio Legislature under O.R.C. Chapter 4521. Under this statutory

scheme, the Legislature has authorized civil, non-criminal penalties to be set by municipalities for parking tickets. There has been no legislative action by the State to allow the extension of this concept to speeding.

For the reasons stated, this court holds the Girard Ohio Ordinance under question to be in violation of Article XVIII, Section 3 of the Ohio Constitution and that Plaintiffs are entitled to the declaratory and injunctive relief requested.

IT IS THE ORDER OF THIS COURT that the City of Girard, Ohio, will cease and desist in using cameras for enforcement of speeding laws unless done so under the general criminal laws of Ohio.

This Court further ORDERS the City of Girard to not attempt collection of any fines claimed by said city under the "civil" ordinance drafted by said city.

Costs to Defendants.

There is no just cause for delay of appeal of this matter.

7/6/06

John M. Stuard

DATE

JUDGE JOHN M. STUARD

TO THE CLERK OF COURTS: YOU ARE ADVISED TO SEND COPIES OF THIS JUDGMENT ON ALL COURSES OF RECORD AND UPON PARTIES WHO ARE IMMEDIATELY NOTIFIED WITH ALL DELAY THAT WILL BE NECESSARY.
John M. Stuard

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

DANIEL MOADUS, JR., et al.,

Plaintiffs,

v.

CITY OF GIRARD, et al.,

Defendants.

) Case No. 2005 CV 1927

) JUDGE STUARD

) JOINT STATEMENT OF FACTS

(1) On or about June, 2005, the City of Girard, Ohio ("City") passed ordinance 7404-05 ("Ordinance"), which utilizes a camera and radar device to measure the speed of, and photograph the rear of, passing motor vehicles. The Ordinance creates a civil enforcement system for speeding violations ("System"). A true and accurate copy of the Ordinance is attached hereto as Exhibit A. Under this System, the City is permitted to detect vehicles that exceed the legal speed limit and issue "notices of liability" for speeding violations. The City's rationale for adopting the Ordinance and creating the System is set forth in the testimony of Jerome F. Lambert taken in this matter on January 20, 2006.

(2) On or about June 29, 2005, the City of Girard and Traffipax Inc. entered into a contract ("Contract").

(3) The Ordinance and Contract established a procedure wherein Defendant Traffipax, Inc. would install and maintain radar speed control cameras in the City. The Contract provided that Traffipax would receive \$25.00 per notice of liability issued. As a result, revenues collected are divided in the following approximate proportions on an \$85.00 citation: City of Girard 71%, Traffipax Inc. 29%, except for "late fees," which are divided 50% - 50%.

(4) Over 3,000 "speed camera" notices of liability/speed violation citations have been issued since the inception of the System. As of January 2006, approximately 50% of these

notices of liability/speed violation citations had not been paid. Plaintiff Russel Hippo is a tax payer of the City and an individual who has not paid his notice of liability, and is representative of said class.

(5) The City issues notices of liability/speed violation citations under the Automated Speed Enforcement System which has civil penalties. The registered owners of motor vehicles, not the operators of said vehicles, receive a notice of liability/speed violation citation by regular U.S. mail containing a photograph of the rear of said vehicle, and an initial penalty in the amount of \$85.00; the amount payable increases if not paid in a "timely" basis. Some second notice citation documents sent out prior to the hearing on the Motion for Preliminary Injunction contained language indicating that the matter would be sent for "collection" if not paid. No citations were ever sent for "collection."

(6) After photographs are taken they are sent to Traffipax for initial processing. Then the photographs go electronically to the Girard Police Department for approval to be sent as notices of liability. The notices of liability/speed camera citations are sent by Traffipax, as the City's agent or designee, to the individual violators from the office of Traffipax in the state of Maryland. The sender is designated as the "Girard Police Department Automated Traffic Enforcement Division." Traffipax sends these notices of liability only with prior permission from the City.

(7) The toll free telephone number listed on the "citation" is (866) 358-3660, and is answered by an agent or employee of Defendant Traffipax, Inc. at a location outside the City of Girard, Ohio. Recipients of citations can also call the Girard Police Department for assistance.

(8) The notices of liability/speed violation citations contain language that the "citation" is not a traffic ticket, but is instead a "civil citation" and is not a "moving violation." A copy of a typical notice of violation is attached hereto as Exhibit B.

(9) The notices of liability/speed violation citations also include language indicating that the individual can contest the notice of liability/speed violation citation by signing the hearing request form on the "citation" and sending it to a Girard P.O. Box. Under the Ordinance, an additional \$20.00 can be charged if the violator is "found guilty" although to date no such charges have been imposed. The "hearing" consists of an appearance before a non-lawyer retired police officer hired by the City. An employee of Defendant Traffipax, Inc. assists in the hearing process by scheduling the hearings and, until January 20, 2006, by answering technical questions about the speed camera. Since January 20, 2006, no employee of Traffipax has attended the hearings. An alleged violator can present whatever evidence or discuss with the hearing officer anything he or she would like. No standard for burden of proof is set out by the Ordinance. To avoid responsibility for a citation, a person must satisfy Section I (C)(4) or otherwise establish non-liability. The evidence at the hearing includes a piece of paper with a photograph taken by a machine, and sworn to or affirmed by the police chief who did not witness the photograph being taken.

(10) The actual duly constituted court in the subject jurisdiction is the Girard Municipal Court. No notices of liability/speed camera citations have been processed by said court. No efforts have been made by the City to obtain a judgment arising out of a citation in that or any other court.

(11) The speed camera/radar device is set to capture photographs of vehicles traveling in excess of the posted speed limit, with a set cushion, for example 40 mph in a 25 mph zone, and 50 mph in a 35 mph zone.

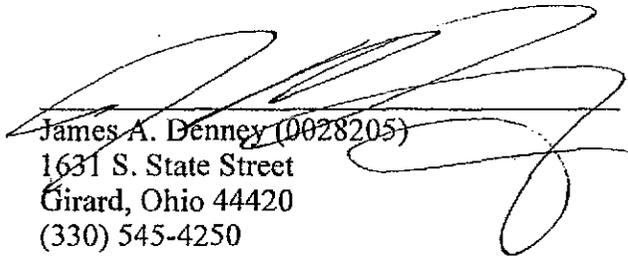
(12) Citations are issued also based on a set cushion, 40 mph in a 25 mph zone, and 50 mph in a 35 mph zone. The existence of the cushion has been made public by Defendant City of Girard, and publicized in the local media. This conforms with the general practice of police officers in the City of Girard.

(13) The cushion set out in 11 and 12 above is determined by the Mayor of the City, James Melfi.

(14) Speeding is a serious health and safety problem in the City. Many serious accidents have occurred in the City in recent years, particularly in the State Street corridor. It is unclear whether the number of serious accidents had increased within the three years prior to enactment of the Ordinance.

(15) The City employs 12 police officers, one police Chief, and three dispatchers. Generally, only 2 of these police officers are available for duty at any one shift.

Respectfully submitted,


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Attorneys for Defendants

ENACTING A NEW SECTION OF THE MUNICIPAL CODE ENTITLED, "CIVIL PENALTIES FOR AUTOMATED RED LIGHT AND SPEEDING VIOLATIONS"; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED by the Forty-Second Council of the City of Girard, Ohio:

SECTION 1: Civil penalties for automated red light and speeding system violations.

- (a) Automated red light and speeding system/civil violation - General.
- (1) Notwithstanding any other provision of the traffic code, the City of Girard hereby adopts a civil enforcement system for red light and speeding camera system violations as outlined in this Section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic control indications in the City of Girard in accordance with the provisions of this Section.
 - (2) The City of Girard Police Department, and the Law Director, shall be responsible for administering the Automated Red Light and Speeding System. Specifically, the Girard Police Department shall be empowered to install and operate red light and speeding camera systems within the City of Girard. The Girard Police Department shall maintain a list of system locations where red light and speeding camera systems are installed. Said department will make the determination as to which locations will be utilized.
 - (3) Any citation for an automated red light and speeding system violation pursuant to this Section, known as a "Notice of Liability" shall:
 - (A) Be processed by officials or agents of the City of Girard;
 - (B) Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration, and
 - (C) Clearly state the manner in which the violation may be appealed.
- (b) Definitions.
- (1) "Automated red light and speeding system" is the equivalent of "Traffic control signal monitoring device" or "Traffic control photographic system". Said system/device is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control.
 - (2) "In operation" means operating in good working condition.
 - (3) "System location" is the approach to an intersection or a street inward which a photographic, video, or electronic camera is directed and is in operation. It is the location where the automated camera system is installed to monitor offenses under this Section.
 - (4) "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle.
- (c) Offense.
- (1) The owner of a vehicle shall be liable for a penalty imposed pursuant to this Section if such vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for the vehicle's direction is emitting a steady red light.

... of a vehicle shall be liable for a penalty imposed pursuant to this Section if such vehicle is operated at a speed in excess of those set forth in Section

- (3) It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other State vehicle registration office) was operating the vehicle at the time of the offense set off in subsection (c)(1) above.
- (4) Notwithstanding subsection (c)(3) above, the owner of the vehicle shall not be responsible for the violation if, within twenty-one (21) days from the date listed on the "Notice of Liability," as set forth in subsection (d)(3) below, he furnishes the Hearing Officer:
 - (A) An affidavit by him, stating the name and address of the person or entity who leased, rented, or otherwise had the care, custody, and control of the vehicle at the time of the violation; OR
 - (B) A law enforcement incident report/general offense report from any state or local law enforcement agency/record bureau stating that the vehicle involved was reported as stolen before the time of the violation.
- (5) An imposition of liability under the Section shall not be deemed a conviction as an operator and shall not be made part of the operating record upon whom such liability is imposed.
- (6) Nothing in this Section shall be construed to limit the liability of an operator of a vehicle for any violation of subsection (c)(1) or (c)(2) herein.
- (7) This Section shall not apply to violations involving vehicle collisions.

(d) Penalty; Administrative Appeal

- (1) Any violation of subsection (c)(1) herein shall be deemed a noncriminal violation for which a civil penalty of \$85.00 shall be assessed and for which no points authorized by Ohio Revised Code 4507.021 ("point system for license suspension") shall be assigned to the owner or driver of the vehicle.
- (2) Any violation of subsection (c)(2) herein shall be deemed a noncriminal violation for which a civil penalty of \$85.00 shall be assessed and for which no points authorized by Ohio Revised Code 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.
- (3) The City of Girard, via its Police Department and Law Director, may establish procedures for the collection of the civil action in the nature of a debt.
- (4) A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the "Notice of Liability". The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the citation and will be considered an admission. Appeals shall be heard through an administrative process established by the City of Girard Police Department. A decision in favor of the City of Girard may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

SECTION 2: That this Ordinance hereby is declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of public peace, health, safety and property.

PASSED IN COUNCIL THIS

13th DAY OF June 2005

PRESIDENT OF COUNCIL

ATTEST:

ATTEST:

James J. Huff
MAYOR

Edward E. Slegel
CLERK OF COUNCIL

APPROVAL DATE: 6/13/05
FIRST READING: 4-11-05
SECOND READING: 4-25-05
THIRD READING: 6/13/05

MOTIONED BY: M. G. Lopez
SECONDED BY: T. Williams
DATE: 3/28/05

I hereby certify that the foregoing Ordinance was published in the Trumbull County Legal News on the dates herein below set forth and was posted on the Grand City Bulletin Board on the day herein below set forth.

DATES OF PUBLICATION:

POSTED:

21st DAY OF June, 2005
18th DAY OF June, 2005

14th DAY OF June, 2005

Edward E. Slegel
CLERK OF COUNCIL

THIS INSTRUMENT PREPARED BY:

Mark Standochar
MARK STANDOCHAR, LAW DIRECTOR

Amendments to ORD#, 42-119

) Add to Section 1, subparagraph (b), definition (5). "Hearing Officer" is an independent third party person, who is not an employee of the City of Girard, tasked with carrying out Section 1, subparagraph (d), number (4) of this ordinance.

) Amend Section 2 of this Ordinance to be Section 5 .

) Amend Section 1, subparagraph (b), number (2). Insert code section 333.03.

) Section 2 of this Ordinance shall read as follows. The "Hearing Officer" as defined in Section 1, subparagraph (b), definition (5), shall be paid the sum of \$7.00 (seven dollars) per hour, with a maximum of 2 (two) hours per week to perform duties as defined in Section 1, subparagraph (d), number (4) of this ordinance.

) Section 3 of this Ordinance shall read as follows. Any agreement with a company/service that provides automated traffic enforcement for the City of Girard shall be limited to a 1 (one) year renewable contract. Prior to entering into a contract to provide automated traffic enforcement for the City of Girard, the Safety/Service director shall review said contract with the Health and Safety committee of council, and the Chief of Police of the City of Girard.

) Section 4 of this Ordinance shall read as follows. Upon passage of this Ordinance, only the automated mobile speeding enforcement system shall be enacted. Automated red light/Traffic control signal monitoring device provisions of this Ordinance shall not be enacted, unless otherwise amended by council.

) Add to Section 1, subparagraph (d), number (2). Speeds of 25MPH or more over the speed limit, the penalty shall be \$170.00 (one hundred seventy dollars). Any violation of school or construction zone speed limit, the penalty shall be \$170.00 (one hundred seventy dollars).

) Add to Section 1, subparagraph (d), number (5). Late Penalties. For both offenses, if a penalty is not paid within 11 days from the date of mailing the ticket to the offender, an additional \$20.00 (twenty dollars) shall be imposed, and if not paid within 42 days from that date, another \$40.00 (forty dollars) shall be imposed, for an additional penalty in each case of \$60.00 (sixty dollars).

ATTEST:

James J. Inf
MAYOR

ATTEST:

Edward E. Seyler
CLERK OF COUNCIL

APPROVAL DATE: 6/13/05
FIRST READING: 4-11-05
SECOND READING: 4-25-05
THIRD READING: 6/13/05

MOTIONED BY: Migliozzi
SECONDED BY: L. Williams
DATE: 3/28/05

I hereby certify that the foregoing Ordinance was published in the Trumbull County Legal News on the dates herein below set forth and was posted on the Girard City Bulletin Board on the day herein below set forth.

DATES OF PUBLICATION:

POSTED:

21st DAY OF June, 2005
28th DAY OF June, 2005

14th DAY OF June, 2005

Edward E. Seyler
CLERK OF COUNCIL

THIS INSTRUMENT PREPARED BY:

Mark Standohar
MARK STANDOHAR, LAW DIRECTOR