

IN THE SUPREME COURT OF OHIO

KELLY MENDENHALL, et al., )  
)  
Petitioners, ) Case No. 06-2265  
)  
v. ) On Question Certified by the United  
) States District Court for the Northern  
) District of Ohio, Case Numbers  
THE CITY OF AKRON, et al., ) 5:06 CV 0139 and 5:06 CV 0154  
)  
Respondents. )

BRIEF OF PETITIONER KELLY MENDENHALL

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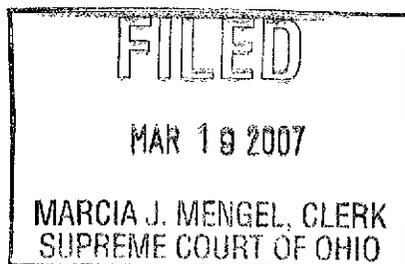
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## STATEMENT OF THE FACTS

This is one of those cases in which good intentions paved an insoluble conflict between Ohio's traffic laws and ordinances in Akron, Cleveland, Girard, Springfield, Steubenville, Toledo, and a host of other cities around the state.

Central to this case is Akron's "automated mobile speed enforcement system," although the Certified Question also addresses "red light cameras" such as those in operation in Cleveland. By any name, these programs generally use automated camera systems to photograph vehicles while they are operated in violation of one or more traffic laws, and issue violation notices to the vehicle owners. Of particular concern in this case are systems that impose civil penalties – in the form of monetary fines – for the offenses of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under Ohio law.

Akron City Council passed Ordinance No. 461-2005 as an emergency measure on its only reading on September 12, 2005, for the stated purpose of reducing the danger to Akron's schoolchildren from speeding motorists, after the hit-and-run slaying of a youngster in a school crosswalk.<sup>1</sup> (See Appendix A, p. 5; Supplement A, p. 1-4.) Akron's mayor signed the ordinance on September 19, 2005; it was immediately effective, and was codified as Akron City Code § 79.01. (See App. D, pp. 78-79; Supp. A, pp. 1-4.) Akron subsequently entered into a contract with Nestor Traffic Systems, Inc., on October 6, 2005, for Nestor Systems to supply Akron with

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<sup>1</sup> To date, the child's killer has not been identified.

the necessary equipment and software and to operate the system; in exchange, Akron would pay Nestor Systems a portion of each civil fine.<sup>2</sup> (See App. A, pp. 6, 13.)

The “automated mobile speed enforcement system”<sup>3</sup> created by the Akron ordinance photographs vehicles being driven faster than the posted speed limits in various school zones. (See App. A, p. 6.) The school zones targeted for enforcement change from day to day; one of the features of Akron’s program is that the equipment is mobile, and is not permanently installed at any fixed location.

The Akron program imposes fines upon the vehicle owner, regardless of the identity of the driver.<sup>4</sup> (See App. A, p. 6.) From October 28, 2005, through December 12, 2005, these fines were \$150 for vehicles exceeding the speed limit by up to 15 miles per hour, and \$250 for vehicles traveling 15 or more miles per hour above the speed limit. (See App. A, p. 13.) On December 12, 2005, Akron City Council passed Ordinance No. 646-2005 to amend Akron City Code § 79.01. (See Supp. B., p. 5.) Section 1 of that ordinance authorizes the mayor to waive all but \$35 of the civil penalties, but does not amend the language of Akron City Code § 79.01.<sup>5</sup> (Id.) Nevertheless, under this Section, the City set the fines at \$35 from December 12, 2005, through September 12, 2006, and increased it to \$100 thereafter. (See App. A, p. 13.)

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<sup>2</sup> Nestor Systems was, therefore, named as a secondary defendant with the City of Akron in Petitioner Mendenhall’s civil action, and was the first-named defendant in the case brought by Petitioners Sipe, Lattur and Burger.

<sup>3</sup> Hereinafter “traffic camera” or “traffic camera program” for brevity.

<sup>4</sup> The program issues a “notice of liability” to the vehicle owner that displays photographs of the vehicle. The image of the entire windshield is obliterated in each photograph by a large black box; it is therefore impossible to discern the identity of the driver.

<sup>5</sup> The Ordinance does, however, amend Akron City Code § 79.01, Section 3, to add a paragraph stating how the fines Akron collects from the program will be allocated. The version of the Akron City Code that appears on its official publisher’s website still does not include this language. (See App. D; Supp. B, p. 4.)

None of the “notices of liability” issued by the program are processed through the Akron Municipal Court system, nor are any of the fines. (See App. A, p. 6.) The “offender” is not issued a criminal traffic citation by a police officer, nothing is reported to the Ohio Bureau of Motor Vehicles, and no points are assessed against either the driver’s or the owner’s driving record. (Id.) The ordinance creates a “prima facie” presumption that the owner was driving at the time of the offense, but does not permit an owner to challenge a notice of liability on the grounds that the owner was not the operator; instead, he or she<sup>6</sup> must challenge the notice to an administrative hearing officer, and only on the grounds that 1) he or she reported the vehicle stolen before it was photographed, or 2) he or she had leased the vehicle to someone else for six months or more. (App. D, p. 78.) The hearing officer is not attached to any preexisting City of Akron department or affiliated with the Akron Municipal Court, but is appointed by the mayor. (App. A, p. 7; App. D, p. 78.)

Cleveland’s program – which includes speed enforcement and traffic signal enforcement cameras at fixed, published locations around that city – also creates a civil liability system in lieu of criminal enforcement, and includes a “prima facie” presumption that a vehicle owner was operating the vehicle at the time of the photographed offense. (See App. E, Cleveland Codified Ordinance § 413.031, pp. 80-84.) That city’s program, however, explicitly states that a vehicle owner is liable for a driver’s offense, provides owners the ability to avoid liability by proving they were not driving at the time of the offense; it also coordinates its administrative hearing process in conjunction with its Parking Violations Bureau through a process established by the Cleveland Municipal Court. (App. E, pp. 82-84.)

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<sup>6</sup> This assumes that the vehicle in question is registered to a single owner, and not jointly to a husband and wife. No provision is made in Akron City Code § 79.01 for joint ownership of a vehicle.

Petitioner Mendenhall received one of Akron's traffic camera violation notices in November 2005 when a vehicle registered in her name was photographed traveling 39 miles per hour in a 25-mile-per-hour speed zone near Erie Island Elementary School on Copley Road in Akron. (App. A, p. 8.) She requested an administrative hearing, and the hearing officer dismissed her violation after ascertaining that the sign marking the beginning of the 25-mile-per-hour zone was missing. (Id.) While it is not clear from the record, Mendenhall's hearing occurred after she filed her lawsuit challenging Akron's traffic camera program in Summit County Common Pleas Court in December 2005. (App. A, pp. 8-9.) The complaint named the City of Akron, the individual members of Akron City Council, and Nestor Traffic Systems as defendants. (Id.)

Petitioners Sipe, Lattur and Burger filed their complaint against Nestor Traffic Systems, the City of Akron and various others in Summit County Common Pleas Court on December 9, 2005. (App. A, p. 15.) The Defendants removed Mendenhall's case to the United States District Court for the Northern District of Ohio on January 19, 2006, where it was assigned to District Judge David Dowd. (Supp. C, p. 15.) When the Defendants removed the Sipe petitioners' case as well, it was also assigned to Judge Dowd. The cases have not been consolidated, but have been considered concurrently.

The Federal court initially dismissed the challenges both sets of Petitioners brought against Akron's program on Home Rule grounds on May 17, 2006. (Supp. C, pp. 18-19.) On July 6, 2006, Trumbull County Common Pleas Judge James M. Stuard issued his decision invalidating Girard's analogous program in the case of *Daniel Moadus, Jr., et al. v. City of Girard, et al.* (July 6, 2006), unreported, Trumbull County Common Pleas Case No. 05-CV-1927. (App. F, pp. 85-91.) Petitioner Mendenhall submitted a copy of the *Moadus* decision to

the Federal court as supplemental authority on November 2, 2006, and on November 30, 2006, the Federal court withdrew its previous ruling and certified the question we have in this case today. (Supp. C, pp. 20-21; App. A.)

## ARGUMENT

### QUESTION CERTIFIED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

**Whether a municipality has the power under home rule to enact civil penalties for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code.**

Petitioner Mendenhall urges this Court to answer the Certified Question in the negative. It has been her consistent position that Akron, Cleveland, Girard and other cities unconstitutionally exceed their home rule power when they seek to convert traffic offenses that the General Assembly has designated as criminal offenses into civil offenses.

#### **I. Home Rule, Generally**

Ohio's Constitution was amended in September 1912 to allow municipal corporations local police power over matters of local self-government. See, e.g., *Village of Struthers v. Sokol* (1923), 108 Ohio St. 263, 266, 140 N.E. 519. This power is broad, but it is not unlimited. Ohio Constitution Article XVIII, Section 3, states, "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." (App. B, p. 23.) All municipal power – even the power to frame a municipal charter – is subject to that restriction. See Ohio Const. Art. XVIII, Section 7 (App. B, p. 24.).

This court has consistently held that "[p]olice and similar regulations under the powers of local self-government \*\*\* must yield to general laws of statewide scope and application, and statutory enactments representing the general exercise of police power by the state prevail over police and similar regulations in the exercise by a municipality of the powers of local self-government." *Klapp v. Dayton Power & Light Co.* (1967), 10 Ohio St.2d 14, syllabus paragraph

1, 39 Ohio Op.2d 9, 225 N.E.2d 230; see also *Canton v. Whitman* (1975), 44 Ohio St.2d 62, 65-66, 73 Ohio Op.2d 285, 337 N.E.2d 766; *State ex rel. McElroy v. Akron* (1962), 173 Ohio St. 189, 194, 19 Ohio Op.2d 3, 181 N.E.2d 26.

## **II. Preemption – the *Canton v. State* test**

In general, the application of a three-part test determines whether a municipal ordinance conflicts with a general law and exceeds the municipality's Home Rule Amendment authority. Under the test, a municipal ordinance is preempted by a state law when 1) the challenged ordinance seeks to exercise a power of local self-government or constitutes a police regulation; 2) the state law involved is a general or special provision; and 3) a conflict exists between the state and local provisions. See *City of Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, ¶¶ 9-10, 859 N.E.2d 514, quoting *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, ¶ 9, 766 N.E.2d 963; *Ohio Assn. of Private Detective Agencies, Inc. v. North Olmsted*, 65 Ohio St.3d 242, 244-245, 1992-Ohio-65, 602 N.E.2d 1147; *Auxter v. Toledo* (1962), 173 Ohio St. 444, 20 Ohio Op.2d 71, 183 N.E.2d 920; see also *Beacon Journal Publ'g Co. v. Akron* (1965), 3 Ohio St.2d 191, 195, 32 Ohio Op.2d 183, 209 N.E.2d 399.

### **A. Local self-government or police regulations**

#### **1. Police powers**

There has been no dispute that Akron City Code § 79.01 is an exercise of Akron's police powers. Nevertheless, as stated in *Am. Financial Servs. Assn. v. Cleveland*, “[t]he first step in a home-rule analysis is to determine ‘whether the matter in question involves an exercise of local self-government or an exercise of local police power.’” *Am. Financial Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, at ¶ 23, 858 N.E.2d 776, quoting *Twinsburg v. State Emp. Relations Bd.* (1988), 39 Ohio St.3d 266, 288, 530 N.E.2d 26, overruled on other grounds, *Rocky*

*River v. State Emp. Relations Bd.* (1989), 43 Ohio St.1, 20, 539 N.E.2d 103. If a city ordinance is only concerned with self-government, it is constitutional; if, however, it “pertains to concurrent police power rather than the right to self-government, the ordinance that is in conflict must yield in the face of a general state law.” *Am. Financial Servs.* at id.

In general, a municipality exercises its police powers through ordinances that bear a substantial relation to general health, safety, welfare or morals. See *West Jefferson v. Robinson* (1965), 1 Ohio St.2d 113, syllabus para. 4, 30 Ohio Op.2d 474, 205 N.E.2d 382; *The Payphone Assn. of Ohio v. Cleveland* (2001), 146 Ohio App.3d 319, 325, 766 N.E.2d 167; *Akron Cellular Tel. Co. v. Hudson Village* (1996), 115 Ohio App.3d 93, 99, 684 N.E.2d 734. There is no question that R.C. Chap. 4511’s regulation of motor vehicle traffic, especially for the purpose of public safety, falls under the aegis of governmental police powers.

## **2. Statewide concern doctrine**

Municipalities are permitted some latitude to exercise their police powers, but they may not infringe on matters of general and statewide concern, and the Home Rule Amendment retained exclusive power for the General Assembly in areas requiring state dominance, such as where a comprehensive, statewide statutory plan is necessary to protect the safety and welfare of all Ohio citizens evenly, regardless of their location. See *Am. Financial Servs.*, 112 Ohio St.3d 170, ¶¶ 27-30. Furthermore, “[a] statement by the General Assembly of its intent to preempt a field of legislation is a statement of legislative intent and may be considered to determine whether a matter presents an issue of statewide concern, but does not trump the constitutional

authority of municipalities to enact legislation pursuant to the Home Rule Amendment, provided that the local legislation is not in conflict with general laws.” *Id.* at ¶ 31.<sup>7</sup>

In this case, the Ohio General Assembly stated in R.C. § 4511.06 its intention to preempt the field of regulating motor vehicle traffic. It states:

Sections 4511.01 to 4511.78, 4511.99,<sup>8</sup> and 4513.01 to 4513.37<sup>9</sup> of the Revised Code shall be applicable and uniform throughout this state and in all political subdivisions and municipal corporations of this state. No local authority shall enact or enforce any rule in conflict with such sections, except that this section does not prevent local authorities from exercising the rights granted them by Chapter 4521<sup>10</sup> of the Revised Code and does not limit the effect or application of the provisions of that chapter.

R.C. § 4511.06; see also App. C, p. 50. Not only has the Ohio General Assembly already addressed speeding, but the General Assembly has explicitly stated in R.C. §§ 4511.06 and 4511.07 which aspects of local traffic control it will allow local governments to control, and permits only one to be enforced through civil penalties: parking, through R.C. §§ 4511.07 and 4521.02.<sup>11</sup> This, then, mitigates in favor of a finding that Akron City Code § 79.01 and Cleveland Codified Ordinance § 413.031 are examples of Akron’s and Cleveland’s exercise of their police power in an area of statewide concern, and they are therefore not ordinances solely concerned with those cities’ self-governance.

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<sup>7</sup> The Court has held the following areas of legislation were not pre-empted by the General Assembly: trailer park licensing, *Stary v. City of Brooklyn* (1954), 162 Ohio St. 120, syllabus paragraph 1, 54 Ohio Op. 56, 121 N.E.2d 11; certain local environmental laws, *Fondessy Enterp. v. Oregon* (1986), 23 Ohio St.3d 213, 492 N.E.2d 797.

<sup>8</sup> Traffic Laws – Operation of Motor Vehicles.

<sup>9</sup> Traffic Laws – Equipment; Loads.

<sup>10</sup> Granting municipalities authority to enact their own parking regulations and enforce them with civil penalties.

<sup>11</sup> “Equipment violations” are actually minor misdemeanors under R.C. §§ 4513.02 and 4513.99.

## **B. General laws**

The second step in the analysis is to determine whether the state law said to conflict with a city ordinance is a “general law,” and for that, the decision in *Canton v. State* outlined a four-part test: 1) the law must be part of a statewide and comprehensive legislative enactment; 2) it must apply to all parts of the state alike and operate uniformly throughout the state; 3) it must set forth police, sanitary, or similar regulations, rather than simply grant or restrict municipalities’ legislative authority to make their own police, sanitary or similar regulations; and 4) it must prescribe a rule of conduct upon citizens generally. See *Am. Financial Servs.*, 112 Ohio St.3d 170, ¶ 32; *Baskin*, 112 Ohio St.3d 279 at ¶ 13; *Canton*, 95 Ohio St.3d 149, syllabus. See also *Niles v. Howard* (1984), 12 Ohio St.3d 162, 164, 466 N.E.2d 539; *Clermont Environmental Reclamation Co. v. Wiederhold* (1982), 2 Ohio St.3d 44, 48, 442 N.E.2d 1278; *McElroy*, 173 Ohio St. at 194.

There has not been any dispute in this case that that Ohio’s traffic laws are general laws. They are comprehensive in nature, they regulate the conduct of ordinary citizens statewide pursuant to the state’s police powers, and as stated earlier, the General Assembly has specifically stated its intent that they do so uniformly throughout Ohio. Furthermore, on this point there is controlling precedent: *Schneiderman v. Sesanstein* (1929), 121 Ohio St. 80, 7 Ohio Law Abs. 349, 167 N.E. 158.

## **C. Conflict**

The central question in this case is whether Akron City Code § 79.01, and with it, Cleveland Codified Ordinance 413.031 and other ordinances like them, impermissibly conflict with Ohio’s traffic laws. It is important to note that this case stems from Akron’s use of a traffic camera program; however, the Certified Question addresses any potential conversion of a

criminal traffic offense into a civil violation by a city, regardless of whether the violation was recorded by a live police officer, an automated traffic camera system, or any other method.

After an examination of the caselaw to date, at least three analytical methods emerge from an examination of this Court's majority decisions, and a fourth – express preemption – emerges from Justice O'Connor's concurring opinion in *Am. Financial Servs.*, 112 Ohio App.3d 170, O'Connor concurring, ¶¶ 50-76. Under any analytical method, a city's conversion of a criminal traffic offense into a civil violation impermissibly conflicts with established state law, and cannot be permitted. First, Petitioner Mendenhall will outline the tests, and will then follow with an analysis showing that Akron's and Cleveland's programs fail under each test.

**1. Tests**

**a. The *Sokol* test**

In general, a municipal law conflicts with a general law of the state when either the ordinance permits something that the state law prohibits, or vice versa, regardless of how extensively the state may regulate the subject. See *Sokol*, 108 Ohio St. at 268; *Baskin*, 112 Ohio St.3d 279, ¶¶ 19-20, citing *Sokol*, *Cincinnati v. Hoffman* (1972), 31 Ohio St.2d 163, 169, 60 Ohio Op.2d 117, 285 N.E.2d 714, and *State ex rel. King v. Summit Cty. Council*, 99 Ohio St.3d 172, 2003-Ohio-3050, ¶ 39, 789 N.E.2d 1108; *Am. Financial Servs.*, 112 Ohio St.3d 170, ¶ 40.

**b. Conflict by implication**

In *Am. Financial Servs.*, this Court also reached back to the *Schneiderman* case and several other decisions to reiterate a conflict-by-implication test. *Am. Financial Servs.*, 112 Ohio St.3d 170 at ¶¶ 41-46.

*Schneiderman* is particularly instructive in this case because it held in 1929 that the following Akron ordinance was invalid because it conflicted with general Ohio laws:

Section 154-49. Upon approaching within two hundred (200) feet of or in passing a school on school days between the hours of eight (8) o'clock in the morning and four (4) o'clock in the afternoon, or upon approaching within two hundred (200) feet of or in passing any public playground between the hours of eight (8) o'clock A.M. and seven (7) o'clock P.M. on any day during which such playground is open and in use, the person operating any vehicle shall not proceed nor shall the owner of any such vehicle thereon or therein cause or permit the same to proceed at a rate of speed greater than fifteen (15) miles per hour.

*Schneiderman v. Sesanstein* (1929), 121 Ohio St. 80, 7 Ohio Law Abs. 349, 167 N.E. 158.

In *Schneiderman*, 10-year-old Goldie Schneiderman and her parents sued Barbara Sesanstein in Summit County Common Pleas Court for Goldie's injuries after she was struck in a school zone by Sesanstein, who was allegedly driving her car faster than 15 miles per hour at the time. At Sesanstein's trial, the Schneidermans wanted to introduce the Akron ordinance reproduced above, but the trial judge excluded it.

In determining whether the Akron ordinance established Sesanstein's liability and should have been admitted, this Court first decided that Ohio's motor vehicle speed laws were general laws of the state, with which municipal ordinances cannot conflict. *Schneiderman*, 121 Ohio St. at 84.<sup>12</sup> It then found that Akron's ordinance conflicted with those statutes and was invalid for three reasons. First, by reducing the allowable speed in a school zone from the statewide "reasonable speed" or 20 miles per hour to a flat 15 miles per hour in Akron, the ordinance criminalized what Ohio declined to criminalize. See *Schneiderman*, 121 Ohio St. at 86. Second, Ohio's speed laws focus upon barring people from driving at "unreasonable" speeds, but Akron's ordinance arbitrarily fixed that speed at 15 miles per hour. See *Schneiderman*, 121 Ohio St. at 87

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<sup>12</sup> See also R.C. § 4511.06.

("When the law of the state provides that a rate of speed greater than a rate therein specified shall be unlawful, it is equivalent to stating that driving at a less[er] rate of speed shall not be a violation of law; and therefore an ordinance of a municipality which attempts to make unlawful a rate of speed which the state by general law has stamped as lawful would be in conflict therewith.").

Third, Akron's ordinance had removed from the equation one of Ohio's critical components: the jury, which has the duty to determine whether the speed traveled is unreasonable and unsafe. *Schneiderman*, 121 Ohio St. at 90. "The effect of a local ordinance is to foreclose the question of the reasonableness of the speed, and to substitute the judgment of the local legislative body for the judgment of a jury. It is evidence that the two plans [state and local speed regulations] are in direct conflict and that the conflict is a very material one."

*Schneiderman*, 121 Ohio St. at 90, citation omitted.<sup>13</sup>

**c. Changing the nature of a criminal offense – the *Betts* test**

This Court has also held that a municipal ordinance fatally conflicts with general law when the ordinance contravenes the state's expressed policy with respect to crimes by deliberately changing the character<sup>14</sup> of the offense, such a from a misdemeanor to a felony or

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<sup>13</sup> Other ordinances held to be in conflict with and preempted by state law include: a prevailing wage law, *State ex rel. Evans v. Moore* (1982), 69 Ohio St.2d 88, 23 Ohio Op.3d 145, 432 N.E.2d 311; regulations requiring additional licensing of private investigators, *North Olmsted*, 65 Ohio St.3d 242, supra; local hazardous waste regulations, *Clermont Environmental*, supra; bingo regulations, *Tomasic*, supra; municipal water fluoridation, *Whitman*, supra; electricity transmission regulations, *Cleveland Electric Illum. v. Painesville* (1968), 15 Ohio St.2d 125, 44 Ohio Op.2d 121, 239 N.E.2d 75; regulation of liquor storage, *City of Cleveland v. Raffa* (1968), 13 Ohio St.2d 112; a fee for inspection of school construction plans, *Niehaus v. State ex rel. Board of Educ. Of Dayton* (1924), 111 Ohio St. 47, syllabus, 2 Ohio Law Abs. 423, 144 N.E. 433.

<sup>14</sup> Ohio's courts have traditionally allowed municipalities to increase or decrease the penalties for a particular offense, so long as they do not differ with the Ohio General Assembly's dictates

vice versa. In *Cleveland v. Betts* (1957), 168 Ohio St. 386, 389, 7 Ohio Op.2d 151, 154 N.E.2d 917, this Court declared that a Cleveland ordinance that made the offense of carrying a concealed weapon a misdemeanor, while Ohio's statutes made the same offense a felony, was invalid as conflicting with Ohio's general criminal code.

The Ninth District Court of Appeals had already reached the same conclusion in *Hicks v. Akron* (1961), 87 Ohio Law Abs. 530, 181 N.E.2d 279, when it held that Akron's ordinance prohibiting anyone (except a licensed physician or pharmacist) from distributing contraceptives or face misdemeanor charges was invalidly in conflict with Ohio criminal statutes that made the same act a felony offense. A city's act of converting a civil violation to a criminal violation has also been held to be impermissible. See *State v. Rosa* (1998), 128 Ohio App.3d 556, 561, 716 N.E.2d 216.

**d. Express Preemption**

Finally, it is important to note Justice O'Connor's express preemption test from her concurrence in *Am. Financial Servs.* Noting that the framers of the Ohio Constitution recognized that a comprehensive statutory plan is often necessary to promote public safety and the public welfare uniformly statewide, and that such plans should not be permitted to be picked apart at a city-by-city level, Justice O'Connor has proposed invalidating any municipal ordinance on the same subject as a state law when the following criteria are met: 1) a need for uniform regulation exists; 2) any local regulation of the matter would have extraterritorial effects, such as when it creates a patchwork quilt of traffic law enforcement patterns across the state; and 3) the General

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regarding the *nature* of the offense. Municipalities may, for example, lawfully declare that an offense the state considers a minor misdemeanor will be a different degree of misdemeanor within the city's limits. See, e.g., *Am. Financial Servs. v. Cleveland*, 159 Ohio App.3d 489, 498, 2004-Ohio-6416, 824 N.E.2d 553; *Niles*, 12 Ohio St.3d at 165.

Assembly has passed preemption language accompanying the statewide regulation. See *Am. Financial Servs.*, 112 Ohio St.3d 170, O'Connor concurring, at ¶¶ 55-56; see also *Baskin*, 112 Ohio St.3d 279, O'Connor concurring, at ¶ 44.

## **2. The conduct involved**

Under the *Sokol* and the conflict-by-implication test, defining the conduct the municipal ordinance seeks to either permit or punish is crucial. Under this Certified Question, there are two specific acts involved: operating a motor vehicle at a greater than reasonable rate of speed; and disobeying a traffic control signal. This is true even though the Akron and Cleveland traffic camera programs at the heart of this case issue notices of violation to the *owners* of the offending vehicles, not the drivers; both Akron City Code § 79.01(C)(2) and Cleveland Codified Ordinance § 413.031 contain language that creates a presumption that the registered owner<sup>15</sup> was driving the vehicle at the time of the traffic violation.<sup>16</sup> (App. D, p. 78; App. E.)

## **3. Application of the conflict tests**

By any of the tests outlined here, Akron's automated speed enforcement camera system and Cleveland's analogous automated camera speed and traffic signal enforcement system ordinances fatally conflict with Ohio law.

### **a. The *Sokol* test**

To understand how both ordinances conflict with state law under the *Sokol* test, one must examine how Ohio treats traffic offenses. Ohio's motor vehicle laws make the act of driving at

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<sup>15</sup> Again, Akron's ordinance makes no distinction or provision for vehicles that are jointly titled and jointly registered to co-owners.

<sup>16</sup> Regarding an argument that the conduct involved was the owner's act of entrusting his or her vehicle to a person who was subsequently photographed speeding or running a red light, that conduct, too, fatally conflicts with R.C. § 4511.203. See App. C, pp. 56-58.

an unreasonable rate of speed anywhere a misdemeanor offense, and driving at an unreasonable rate of speed in a school zone during restricted hours a misdemeanor offense punishable by fines of at least \$150 and court costs, or, if the driver is unable to pay, community service. See R.C. §§ 4511.21, 4511.99, 2929.28. Similar penalties attach to traffic signal light violations. See, e.g., R.C. § 4511.12.

Ohio law requires all courts to report traffic violations – even those levied under municipal ordinances – to the Ohio Bureau of Motor Vehicles, and for each offense, the BMV assesses the driver up to four “points” against his or her driver’s license; if a driver receives 12 or more “points” within a two-year period, his or her license will automatically be suspended. See R.C. §§ 4510.03 - 4510.038, 4510.05, 4510.07. Ohio law also prescribes the procedures under which a driver may reinstate his license, and penalties for driving with a suspended license. See R.C. §§ 4510.10, 4510.11. Conceivably, a driver who buzzes through school zones at 50 miles per hour three times in one year, earning four points each time, would pay at least \$450 in fines and costs and would find his license suspended, thereby taking him off the road. Analytically, Ohio treats speeding drivers almost the way it treats dogs: they are allowed only so many “free bites” before the statutes declare them dangerous and remove them from circulation.<sup>17</sup>

By contrast, Akron’s and Cleveland’s automated camera systems not only decriminalize the same act, but place a financial onus on someone other than the driver at fault; notices of violation are sent to the *owner* of the car photographed exceeding a certain speed, not the person

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<sup>17</sup> Speaking of “free bites,” *Akron v. Ross*, unreported, Summit App. No. 20338, 2001 WL 773235, attached as App. G, involved an Akron ordinance that imposed misdemeanor penalties upon dog owners for the dogs’ “first bite.” Ohio laws do not impose any penalty for a dog’s “first bite,” but the Ninth District Court of Appeals found that Akron’s ordinance did not conflict with Ohio law for two reasons: first, R.C. Chap. 955 was silent on dogs’ “first bites”; and second, “R.C. § 955.221 specifically provides for municipalities to adopt and enforce dog control ordinances.” *Ross* at \*11-13.

behind the wheel when the violation occurred. Akron Code § 79.01, see App. D; Cleveland Codified Ordinance § 413.031, see App. E. The Bureau of Motor Vehicles is not notified, and so no “points” are assessed. *Id.* No costs are charged.

Akron’s ordinance allows a driver to breeze with impunity through a school zone an unlimited number of times per day, be photographed by the speed enforcement system camera each time, and nevertheless maintain a clean driving record with the BMV, keep his license, and be allowed to drive a school bus. If he did so in a vehicle registered in someone else’s name – perhaps his unsuspecting brother-in-law’s car – he would altogether escape any financial liability for his acts. The same is true for a flagrant speeder or traffic signal flouter under Cleveland’s ordinance. So long as the vehicle owner can afford to pay for the notices of violation,<sup>18</sup> ordinances like Akron’s and Cleveland’s essentially provide drivers an expensive license to violate the law.

**b. Conflict by implication or *Schneiderman* test**

The *Schneiderman* case not only spoke to the conduct at issue but also the process guaranteed under by the state’s comprehensive legislative scheme; in doing so, the Court found that Akron’s ordinance impermissibly conflicted with state law, in part because it stripped from accused speeders a level of process provided by the General Assembly. See *Schneiderman*, 121 Ohio St. at 90; see also *Hoffman*, 31 Ohio St.2d at 170 (invalidating Cincinnati Code Section 901-r2).

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<sup>18</sup> Notably, Akron did not begin collection efforts against overdue notices of violation or set up any process by which overdue notices would be collected by March 17, 2006, when the parties submitted their last set of agreed stipulations to the Federal court. See Supp. C., p. 18.

*Hoffman* presented a vagueness challenge to Cincinnati's obstruction-of-justice statute, which the Court held was invalid for Home Rule purposes as follows:

The contrariety depicted by appellants concerns their view that one who unknowingly and willfully resists, obstructs or abuses an officer would be innocent under the state law, but guilty under the Cincinnati ordinance. Under such a concept, and standing alone, 901-r2 does not satisfy either the federal constitutional doctrine that "awareness of what one is doing is a prerequisite for the infliction of punishment" \*\*\* or comport with the principles underlying the "home rule" provision of the Ohio Constitution.

*Hoffman*, id, citation omitted.

In this aspect, too, the traffic camera programs challenged in this case fail. The *Sipe* petitioners amply address in their brief the aspects of due process that are missing from these programs. At a minimum, however, by decriminalizing speeding and traffic signal violations, the cities involved have scrapped the comprehensive statewide traffic enforcement system that the General Assembly painstakingly created for the protection of all the state's citizens, and it cannot be allowed. See *Moadus*, supra at \*6. This is consistent with the approach taken by appeals courts in Illinois and Minnesota, where traffic camera programs have also been challenged and invalidated as violations of those states' home rule provisions. See *People ex rel. Ryan v. Village of Hanover Park* (Ill. Ct. App. 1999), 311 Ill. App.3d 515, 724 N.E.2d 132; *Minnesota v. Kuhlman* (Minn. Ct. App. 2006), 722 N.W.2d 1.<sup>19</sup>

**c. The *Betts* test**

These ordinances also fail under the authority of *Betts*. Again, that case held that Cleveland could not transmogrify a felony offense into a misdemeanor; see *Betts*, 168 Ohio St. at 389. A local ordinance may only alter the penalty of an offense, but not the misdemeanor-versus-felony *character* of an offense. See *Niles*, 12 Ohio St.3d at 165. Other courts have held

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<sup>19</sup> *Kuhlman* is currently on appeal before the Minnesota Supreme Court as Case No. A06-568, and was to have oral argument on March 7, 2007.

that cities cannot similarly convert misdemeanors into felonies, or civil violations into crimes. See *Hicks*, 181 N.E.2d 279; *Rosa*, 128 Ohio App.3d at 561. It logically follows that a city cannot transmogrify an act that the General Assembly has deemed a criminal offense into a civil one.

**d. Express preemption test**

And finally, these ordinances fail under Justice O'Connor's proposed preemption test. As noted in *Schneiderman*, supra, the General Assembly passed speeding and other traffic regulations because there was, and is, a need for uniform regulation in this area, and any local regulation of the matter would have extraterritorial effects – such as by creating a hodgepodge of traffic enforcement methods that would destroy the statewide hegemony that the General Assembly intended. In addition, in R.C. §§ 4511.06 and 4511.07, the General Assembly has passed express preemption language declaring the state's intent to occupy all of the traffic regulation field except for very specific and narrow instances.

### III. CONCLUSION

Under any Home Rule analysis, a municipality's conversion of a criminal traffic offense into a "civil violation" fatally conflicts with Ohio's comprehensive statutory scheme of traffic regulations. Any ordinance that purports to do so must be held invalid. On these grounds, Petitioner Mendenhall respectfully asks the Court to answer the Certified Question in the negative.

Respectfully submitted,

  
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*Counsel for Petitioner Kelly Mendenhall*

**CERTIFICATE OF SERVICE**

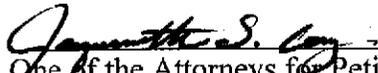
I hereby certify that a copy of the foregoing was served via regular U.S. Mail on 19

March, 2007, upon the following:

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\_\_\_\_\_  
One of the Attorneys for Petitioner  
Kelly Mendenhall

## APPENDIX

RECEIVED

DEC 08 2006

MARCIA J MENGEL, CLERK  
SUPREME COURT OF OHIO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

06-2265

Kelly Mendenhall,  
Plaintiff,

v.

The City of Akron, et al.,  
Defendants.

CASE NO. 5:06 CV 0139  
(Case 1)

Janice A. Sipe, et al.,  
Plaintiffs,

v.

Nestor Traffic Systems, Inc., et al.,  
Defendant(s).

CASE NO. 5:06 CV 0154  
(Case 2)

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

Witness: ~~Carl M. Smith, Clerk~~  
U.S. District Court  
Northern District of Ohio

By: *[Signature]*  
Deputy Clerk

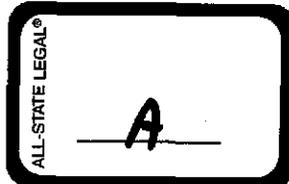
ORDER OF CERTIFICATION

Pursuant to Ohio Supreme Court Rule of Practice XVIII, the undersigned District Judge of the United States District Court for the Northern District of Ohio, Eastern Division, hereby certifies a question of state law to the Ohio Supreme Court.

No controlling precedent of the Ohio Supreme Court answers this question, which is potentially dispositive of the two above-captioned cases.

Pursuant to Rule XVIII, § 2(A), the names of the cases are stated in the caption above.

Pursuant to Rule XVIII, § 2(B), the nature of the cases, the circumstances from which the question of law arises, the question of law to be answered, and any other information the certifying court considers relevant to the question of law to be answered are:



FILED  
DEC 08 2006  
MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

(5:06 CV 0139; 5:06 CV 0154)

#### **Nature of the Cases**

These two cases are attacks by the plaintiffs on Akron Ordinance 481-2005, codified at Akron Municipal Code § 79.01, which authorizes implementation of an automated mobile speed enforcement system (using cameras in mobile units to identify violators) and assesses civil penalties for speeding violations in school zones.

Both suits are against the City of Akron and Nestor Traffic Systems, Inc. (a Rhode Island Corporation which has contracted to provide equipment, personnel, and services in connection with the installation, operation and maintenance of the system) by individuals on behalf of themselves and purported classes of similarly situated individuals who have all been assessed civil penalties under this system because vehicles registered in their names have allegedly exceeded the speed limit in school zones, as detected by the cameras. Plaintiffs assert that the City Ordinance converts speeding from a criminal to a civil violation akin to a parking ticket, thereby depriving citizens of the protections afforded in criminal proceedings.

#### **Circumstances From Which the Question of Law Arises**

In a Memorandum Opinion filed on May 17, 2006, the undersigned ruled in these two cases that the City of Akron has the power under Home Rule to adopt legislation calling for civil penalties for speeding violations detected by the Automated Mobile Speed Enforcement System because the challenged ordinance "neither permits or licenses that which the laws of the Ohio General Assembly either forbid or prohibit and vice versa." The undersigned concluded that

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“Akron City Ordinance 461-2005 is a proper exercise of the powers bestowed on the City of Akron by Article XVIII, Section 3 of the Ohio Constitution.”<sup>1</sup>

The undersigned has now been made aware of a contrary opinion by at least one Ohio court which has held that a similar municipal ordinance violates the Ohio Constitution. In Daniel Moadus, Jr., et al. v. City of Girard, et al., Case No. 05-CV-1927, the Court of Common Pleas of Trumbull County held that Girard Ordinance No. 7404-05, which created a civil enforcement system for speeding violations within the City utilizing a camera and radar device, violated Article XVIII, Section 3 of the Ohio Constitution because it “transform[ed] what the State has defined as criminal conduct into merely a civil wrong.” In so ruling, the Court of Common Pleas expressly rejected the undersigned’s prior ruling, which relied on Gardner v. City of Columbus, 841 F.2d 1272 (6th Cir. 1988) (a case involving civil penalties for parking violations), that there was no Ohio Constitutional violation. The Common Pleas Judge concluded that the statutory scheme in O.R.C. Chapter 4521, upon which Gardner relied, has never been extended from parking tickets to speeding. The Court of Common Pleas ordered the City of Girard to “cease and desist in using cameras for enforcement of speeding laws unless done so under the general criminal laws of Ohio” and further ordered the City “to not attempt collection of any fines claimed by said city under the ‘civil’ ordinance drafted by said city.”

The undersigned believes that a related original action in mandamus has been filed. See State of Ohio ex rel. Michael A. Bernard, Girard Municipal Court Judge v. James J. Melfi.

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<sup>1</sup> This May 17 ruling was interlocutory and, as such, was not a final appealable order. The undersigned has now, by separate order, vacated that ruling believing it may have been in error. See Case 1, Doc. No. 58; Case 2, Doc. No. 44.

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Mayor of Girard, City of Girard City Council, Sam Zirafi, Girard Auditor, and John Moliterno, Girard Treasurer, Case No. 2006-2157 (filed November 21, 2006).

The undersigned does not have access to the documents filed in the mandamus action; however, since it is highly probable that the question raised herein for certification may be addressed in the mandamus action, the undersigned is of the view that it should defer to the action of the Ohio Supreme Court.

The undersigned also takes note of the fact that there are similar lawsuits in different cities which have challenged automated traffic enforcement systems and which are in various stages of their respective proceedings. See, e.g., Michael McNamara v. City of Cleveland, et al., No. 06-582364 (Cuyahoga County, filed Jan. 20, 2006); Ann Lewicki v. City of Toledo, et al., No. G-4801-CI-200604524 (Lucas County, filed July 13, 2006); April Stern v. City of Steubenville, et al., No. 05CV524 (Jefferson County, filed Nov. 23, 2005). In the Stern case, Common Pleas Judge David Henderson invalidated all speeding tickets issued under Steubenville's ordinance because the defendants had failed to comply with the mandatory notice requirements in the ordinance. The judge declined to rule on the constitutionality of the ordinance.<sup>2</sup>

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<sup>2</sup> It does not appear that this ruling was ever appealed. However, a second lawsuit has been filed by the Steubenville Bakery and Louis Tripodi against the City of Steubenville challenging the constitutionality of the ordinance and claiming loss of business. See <http://www.wtov9.com/news/9418939/detail.html>.

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Finally, the undersigned notes that a bill has been introduced in the Ohio legislature which would establish conditions for the use of photo-monitoring devices such as the one at issue in these two cases. See Sub. H.B. 56 (2005).

In view of all of the above, the undersigned believes that the question certified below is a matter peculiarly within the province of the State courts.

#### **Question of Law to be Answered**

Question:

Whether a municipality has the power under home rule to enact civil penalties for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code.

#### **Other Information Relevant to the Question of Law to be Answered**

The parties to these two actions have filed two sets of jointly stipulated facts. Since these fact stipulations shed some light on the issues, they are incorporated herein in their entirety to assist the Ohio Supreme Court.

The first twenty fact stipulations, set forth below, apply to both cases:

1. After a hit and run accident resulting in the death of a child in a school cross walk, the Akron City Council passed Ordinance 461-2005 enacting Chapter 79 "Automated Mobile Speed Enforcement System" and Section 79.01 entitled "Civil Penalties for Automated Mobile Speed Enforcement System Violations" on September 12, 2005. Said ordinance having been approved and signed by the Mayor of the City of Akron on September 19, 2005.
2. The stated purpose of the legislation was that "it is desirable to reduce the danger from vehicle operators speeding in and around school zones;" and because "frequent incidents of speeding create a substantial risk to the safety of children in

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school zones and crosswalks;" and "an automated mobile speed enforcement system will assist the Akron Police Department by alleviating the need for conducting extensive conventional traffic enforcement in and around school zones."

3. The City of Akron and Nestor Traffic Systems, Inc. entered into a contract on October 6, 2005, wherein Nestor Traffic Systems, Inc. would install and assist the municipality in the administration and operation of a mobile speed violation detection system within the City of Akron.

4. The Akron ordinance provides for civil enforcement imposing monetary liability upon the owner of a vehicle for the vehicle's failure to comply with the posted speed limits in school zones and streets or highways within the City of Akron including crosswalks used by children going to or leaving school during recess and opening and closing hours.

5. The criminal justice system is not involved, the offender is not issued a criminal traffic citation by a police officer, the offender is not summoned to the traffic court in the Akron Municipal Court, nor are points assessed against the driver or owner's driving record by the Bureau of Motor Vehicles.

6. The Akron Ordinance, Section 79.01 entitled "Civil Penalties for Automated Mobile Speed Enforcement System Violations" did not change the speed limits set by the State of Ohio.

7. If a vehicle's rate of speed exceeds the posted speed limit, the owner of the vehicle is issued a "notice of liability." The notice includes photographs of the vehicle, the vehicle's license plate, the date, time, and location of the violation, the posted speed, the vehicle speed, and the amount of the civil penalty.

8. The violation is assigned a civil violation number and a notice of liability is issued to the owner of the vehicle via regular U.S. Mail. Also included is a remittance form stating the amount of the civil penalty and the address where the check or money order is to be mailed. The form also explains that the owner has three options: 1) to pay the amount due; 2) to sign an affidavit that the cited vehicle is leased or stolen; or 3) to exercise the right to an administrative appeal.

9. If the owner of the vehicle wishes to have an administrative appeal pursuant to Section 79.01(F) of the Code of Ordinances of the City of Akron, the owner is instructed to complete and mail the notice of appeal section of the violation form within 21 days of the date listed on the civil citation.

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10. The photographs of the vehicle and license plate are reviewed by technicians of Nestor Traffic Systems, Inc. for purposes of clarity and to make certain the automobile in the photograph is the same as the automobile registered to that license plate.

11. The photographs of the civil violation are also reviewed by a member of the Akron Police Department for clarity and to make certain that the automobile is the same as the automobile registered to that license plate.

12. If the vehicle and the license plate do not match, the civil violation is dismissed.

13. The ordinance provides that the Mayor of the City of Akron shall appoint a hearing officer as an independent third party to hear administrative appeals through an administrative process established by the City of Akron. On December 7, 2005, the Mayor appointed Pam Williams to hear the administrative appeals.

14. Pursuant to the ordinance, failure to give notice of appeal or failure to pay the civil penalty within 21 days constitutes a waiver of the right to contest the citation and is considered an admission of a violation of the ordinance.

15. If the civil penalty is not paid, the City must institute a separate civil action to collect the debt.

16. The vehicle owner is the person or entity identified by the Ohio Bureau of Motor Vehicles as the registered owner of the vehicle and is civilly liable for the penalty imposed for excessive speed. By the terms of the Ordinance, the owner of a vehicle shall not be responsible for the civil penalty if within 21 days from the date listed on the notice of liability the owner signs an affidavit stating the name and address of the person or entity who leased the vehicle in a lease of 6 months or more, or if the owner produces a law enforcement incident report from a state or local law enforcement agency or record bureau stating that the vehicle involved was reported stolen before the time of the violation.

17. If the vehicle owner requests an administrative appeal by mailing in the request for an administrative hearing, they are notified of a hearing date before the administrative hearing officer.

18. The following explains the administrative hearing process:

- the independent hearing officer tape records the entire proceeding to preserve the record;

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- an Akron Police officer is present to verify the information provided;
- the hearing officer explains the appeal process, indicating that the hearing is civil not a criminal or traffic trial and explains that there will be no traffic record or points on the driver's license, that the hearing officer's responsibility is to determine whether she can clearly identify the vehicle, license plate and to whom the license plate is issued, that she will determine whether a preponderance of the evidence establishes if a violation of Section 79.01 of the Codified Ordinances of City of Akron occurred and if the owner is liable;
- the computer generated recorded images of the vehicles, license plates of the vehicles, ownership of the vehicles, the date and speed of the vehicles are admissible in the administrative appeal process, are available for review by the appealing party, and are considered prima facie proof of the civil violation;
- any witness wishing to testify is sworn in by the hearing officer.

19. If the independent hearing officer sustains the appeal, the civil citation is dismissed and no civil penalty is assessed.

20. If the independent hearing officer denies the appeal, the civil fine is assessed.

The following agreed stipulations, Nos. 21 through 49, apply only to Case 1:

21. On November 2005, Plaintiff Kelly Mendenhall, resident of the City of Akron, Ohio, received an automated mobile speed enforcement citation for going 39 mph in a 25 mph speed zone on Copley Road in the City of Akron, Ohio near Erie Island Elementary School.

22. Plaintiff Mendenhall exercised her right to request an administrative hearing and appeared before the independent hearing officer with counsel, her husband, Attorney Warner Mendenhall.

23. Plaintiff Mendenhall's administrative appeal was sustained by the independent hearing officer based upon facts that in early November 2005, and on the date she received the civil speeding citation, the 25 mph speed sign was either vandalized or missing for east bound traffic and her civil speeding citation was dismissed. No civil penalty was assessed and the citation was dismissed.

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24. On December 13, 2005, Plaintiff Mendenhall filed a complaint and class action for declaratory judgment, injunctive relieve and for a money judgment against City of Akron and all of its City Council Members in their official capacity and Nestor Traffic Systems, Inc. of Providence, Rhode Island.

25. Defendant City of Akron and Nestor Traffic Systems, Inc. removed the case to the United States District Court for the Northern District of Ohio, Eastern Division.

26. Plaintiff subsequently dismissed the City Council Members.

27. Plaintiff Mendenhall claims the Akron ordinance is invalid. She claims it is in violation of her due process rights guaranteed by the Ohio and United States Constitutions; that the Akron ordinance violates Article XVIII Section 3 of the Ohio Constitution commonly referred to as the Home Rule Amendment in that she alleges Ohio Revised Code Section 4511.07 is a general law of the laws of the State of Ohio and that the Akron ordinance is in conflict therewith; that the Akron ordinance violates public policy of the State of Ohio regarding due process by implication of a conflict with Revised Code Sections 4521.02 through 4532.08; and that the Akron ordinance forces individuals challenging citations to waive their rights under the Fifth Amendment to the United States Constitution in order to defend themselves.

28. The City of Akron is a Charter municipality pursuant to Section 7 of Article XVIII of the Ohio Constitution.

29. Nestor contracts nationwide with government entities, referred to as "customers," to provide Automatic Traffic Enforcement Services ("Services"). These Services are intended to document speeding vehicles.

30. Nestor sets up its technology in areas designated by the customer and collects data, identifying potential cars speeding. Within Nestor, the potential speeding violation is referred to as an "event."

31. Nestor has its own internal coding and computer terminology which it uses to organize its data. Though necessary to organize data for a customer, the actual terminology is not necessarily customer driven.

32. Some of Nestor's other customers, however, specifically indicate that Nestor should not process certain categories of vehicles. For instance, some customers do not want Nestor to process emergency vehicles, funeral processions, or vehicles photographed where an officer is directing traffic. Nestor's computer

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language refers to these vehicles as "exempt." Thus, when an "exempt" vehicle is documented as an event, it is categorized in Nestor's computer system as a "discretionary discard" and Nestor does not process the event.

33. On October 6, 2005, Nestor and the City entered into a pilot program, a fixed term contract for the provision of Services designed to detect mobile speed violations within the City. The pilot program remained in effect through June 8, 2005.

34. Under the pilot program contract, Nestor "processed" events for the City by submitting the vehicle license plate information to the Bureau of Motor Vehicles ("BMV").

35. Some events, however, cannot be submitted to the BMV because of technical issues, for instance, the vehicle image is obstructed or blurry, the scene image is insufficiently illuminated or otherwise unclear, or there are multiple vehicles in one image. These events are "discarded."

36. After receiving the vehicle registration information from the BMV, Nestor verifies that the information is accurate by comparing the registration information against the actual photograph. If the information does not match, for instance, the event photograph depicts a 2002 Subaru Forester yet the registration information indicates that the registered vehicle is a 2003 Audi A4; Nestor will make sure that the vehicle plate information was correctly typed and will resubmit the request for information to the BMV.

37. The vehicle registration information received from the BMV is forwarded to the Akron Police Department where a police officer reviews the information and issues the citation by directing Nestor to mail the civil violation notice.

38. During the pilot program, Nestor documented 17,163 events. Some of these events were "discarded" because there was no violation, i.e. the vehicle was not speeding, Nestor was testing its system, or Nestor was unable to determine whether an actual violation occurred. The remaining 15,766 events were submitted to the BMV. Of those events, 11,740 citations were issued by the City.

39. There were 4,035 violations that were not issued citations. Nestor's internal software categorized the non-issued citations into the following three categories:

- a. The first category, is termed "discretionary" by Nestor's computer system. Nestor discarded events under this category in instances where the vehicle registration information was "not in

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file" with the BMV and the BMV did not return vehicle registration information to Nestor. This category was also used when Nestor was unable to obtain registration information for out-of-state vehicles. Although some states release vehicle registration information to Nestor, other states do not. There were a total of 72 "discretionary" discards: 59 were out-of-state vehicles; 11 were "not in file," which were either vehicles with a government plate, or an ambulance, fire/rescue or police cruiser; and 2 resulted from system testing. The BMV did, however, return information on one school bus, and other vehicles registered to public entities such as the University of Akron, the Akron Metropolitan Housing Authority, and the Akron Zoo. All of these public vehicles were issued citations and paid the civil violations.

b. The second category, termed "uncontrollable" by Nestor's computer system, totaled 2,288. Citations were not issued for these vehicles because of an obstruction in the photograph of the vehicle or license plate.

c. The third category, termed "controllable" by Nestor's computer system, totaled 1,666. Citations were not issued for these vehicles because of technical problems with the Nestor software, for instance, the Nestor camera was out of focus, the lighting was insufficient to secure an image, or the vehicle framing was improper, i.e. there was only a portion of the vehicle in the image.

40. The "discretionary discards" were not the result of any direction by the City of Akron. To the contrary, Lieutenant Hanley and Sergeant Garro, of the Akron Police Department, instructed Nestor to process all events without exception. The box "Current Status" uses the term "Discarded" to mean a citation was not issued. The box "Disposition Reason" uses the computer term "Exempt Vehicle." An exempt vehicle does not mean the City of Akron instructed Nestor to exclude any class of vehicle. The City's instruction was that all vehicles are to be treated the same and there were to be no exceptions. The use of the term "exempt vehicle" to describe the reason for a discretionary discard is Nestor's computer language that is used when the event was not forwarded by Nestor to the City because the Ohio BMV reported to Nestor that the vehicle was "not in file," or vehicle registration information was not available from another state, or an event was the result of system testing, or if it was a discretionary discard by the reviewing police officer as described in the example in paragraph #42 below.

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41. There were no exceptions for Nestor to process all events and forward whatever information they received from the BMV to the Akron Police Department. After the first review by Nestor, the Akron Police review the BMV registration information prior to authorizing the issuance of the citation. The police review requires the exercise of discretion in certain cases. For example, see NTS 0066 – “Citation Discarded by dgarro REASON: Exempt Vehicle – 21 March 2006.” In that instance, the event was processed by Nestor and the registration information was sent by the BMV indicating that the van was registered to American Medical Response, a private non-government ambulance service. Sergeant Garro, in reviewing the information and photo, could not discern whether or not the ambulance was on an emergency call and used his discretion not to issue the citation. This would be similar to a police officer in a cruiser stopping a motorist, and for good reason, using his or her discretion to issue a warning and not a citation. Although Nestor’s computer language refers to the status as “Discarded” and the reason as “Exempt Vehicle” (as is done with “not in file” government vehicles) this was actually a discretionary non-citation by the reviewing police sergeant.

42. As indicated in Agreed Stipulation [39(a)], in some instances, “discretionary discards” occurred because Nestor was unable to obtain the registration information from the BMV. In fact, the BMV is prohibited by the federal Driver’s Privacy Protection Act from disclosing information about certain government and police vehicles. Nestor only receives vehicle registration information from the BMV that the BMV is permitted to disclose. When Nestor submitted a request for information to the BMV for government vehicles, the BMV would return the requested information to Nestor with a notation that the vehicle registration information was “not in file.” These violations were therefore termed “discretionary discards” by Nestor in the “Current Status” box and as “Exempt Vehicle” in the “Disposition Reason” box. They were discarded by Nestor and not forwarded to the Akron Police Department for review. When Nestor was told by the BMV that a vehicle was “not in file,” Nestor had no registration information to forward to the City. The City was unaware of the “discretionary discards” until discovery commenced in this lawsuit.

43. Nestor processed and the City of Akron issued citations for all vehicles that were owned by rental car companies provided there was a clear picture of the vehicle and license plate, and provided the registration information was returned by the BMV. For instance, citations were issued and violations were paid by the following companies: a rental car company, “U Save It Auto Rental,” located at 449 West Avenue, Tallmadge, Ohio; a car leasing company, “Car Lease, Inc.,” located at 650 Holmes Ave., Akron, Ohio; a truck leasing company “Penske Truck Leasing, Co.,” located at 3000 Fortuna Drive, Akron, Ohio; Enterprise

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Capital (which may be Enterprise rental company); and a Ford dealership (which also may be a rental car). There were certainly other citations issued for rental vehicles but each of the 11,740 citations have not been reviewed for this disclosure. Other paid citations include the Boy Scouts of America, towing companies that contract with the City of Akron, United Disability, Waikem Motors (likely a lease), several Yellow Cabs, and the Visiting Nurse Service.

44. On August 16, 2006, Nestor and the City agreed to a letter of intent to enter into a new contract for the provision of Services. The Services will continue to focus on school zone speeding violations; Services under the new agreement began on August 30, 2006, coinciding with the commencement of the City of Akron's 2006-2007 school year.

45. Nestor and the City are in the process of finalizing the new contract, the written Policies and Procedures ("P&P"), and implementing the Services for the new contract. Under the new agreement, there are no exempt vehicles.

46. Under the pilot program contract, from October 28, 2005 through December 12, 2005, the amount of the civil violation was originally \$150.00 for vehicles exceeding the posted speed within 15 miles per hour, and \$250.00 for vehicles exceeding the posted speed by 15 or more miles per hour. On December 12, 2005, the civil violation for the pilot program was changed to \$35.00. The vehicle owners that were cited and paid prior to December 12, 2005 at the higher amounts each received a refund of all amounts paid in excess of \$35.00.

47. Under the pilot program contract, the City deposited \$418,960.02 in civil violations (having subtracted \$1,860 in NSF checks). From that amount, the City refunded \$122,872 to violators, and paid Nestor \$188,399. The balance remaining with the City was \$107,689.02. (These figures include all pilot program payments with the exception of one Nestor invoice for August not yet received and paid in the approximate amount of \$1,300.)

48. Under the new agreement, during the first two weeks of the school year (August 30, 2006 through September 12, 2006), the civil violation remained at the lower level of \$35.00 as a warning period. Civil violations occurring on or after September 13, 2006 are \$100.00 from which Nestor will be paid \$19 per paid citation.

49. The City has not yet instituted collection proceedings to recover any of the unpaid civil violations.

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The following agreed stipulations, Nos. 21a through 49a and 50 through 56, apply only to Case 2:

21a. It is the position of the Defendants that the right to appeal the decision of the independent hearing officer's decision to the Court of Common Pleas is governed by Chapter 2506 of the Ohio Revised Code. It is the position of the Plaintiffs that the right to appeal the decision of the independent hearing officer's decision to the Court of Common Pleas is not governed by Chapter 2506 of the Ohio Revised Code.

22a. Ohio Revised Code Chapter 2506: "Appeals From Orders Of Administrative Officers and Agencies" is the chapter of the Ohio Revised Code establishing the right to appeal every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department or other decision of any political subdivision of the state to be reviewed by the Court of Common Pleas of the county in which the principal office of political subdivision is located.

23a. [Not used]

24a. On November 18, 2005, Plaintiff Janice A. Sipe was issued a civil speeding violation for going 45 mph in a 35 mph zone on Newton Street.

25a. On November 4, 2005, Plaintiff Joanne L. Lattur was issued a civil speeding violation for going 30 mph in a 20 mph school zone on Fouse Street in the City of Akron, Ohio.

26a. On October 31, 2005, Plaintiff Wayne H. Burger was issued two civil speeding violations twenty minutes apart for going 29 mph in a 20 mph school zone and for going 31 mph in the same 20 mph school zone on Fouse Street in the City of Akron, Ohio.

27a. Plaintiff Janice A. Sipe did not exercise her right to request an administrative hearing within 21 days nor has she requested an administrative hearing at any time from the date of her civil citation to present nor has she paid the assessed civil fine.

28a. Plaintiff Joanne L. Lattur did not exercise her right to request an administrative hearing within 21 days nor has she requested an administrative hearing at any time from the date of her civil citation to present nor has she paid the assessed civil fine.

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29a. Plaintiff Wayne H. Burger exercised his right to request an administrative hearing on one of his violations. An administrative hearing was scheduled on December 29, 2005, and Plaintiff Wayne H. Burger was notified of the administrative hearing date, however, he failed to appear at the administrative hearing. Plaintiff Wayne H. Burger made no contact with the City of Akron, the Akron Police Department, or Nestor Traffic Systems, Inc. before or after the December 29, 2005 hearing date to reschedule the matter or request a new hearing date. The independent hearing officer denied the appeal based on his failure to appear at the hearing. Plaintiff Burger has not paid his assessed civil penalty for that violation. The City of Akron dismissed Burger's second violation as it did others who received two tickets in the same day at the beginning of the program.

30a. On December 9, 2005, Plaintiffs Sipe, Lattur and Burger filed an action in Summit County Common Pleas Court entitled "Class Action Complaint Verified For Injunctive Relief" naming as Defendants Nestor Traffic Systems, Inc. of Providence, Rhode Island, four officers of Nestor Traffic Systems, Inc. named individually, the City of Akron, Ohio and ten unnamed John Does. Plaintiffs requested that the Clerk of Courts withhold service on the Complaint.

31a. On December 12, 2005, Plaintiffs Sipe, Lattur, and Burger filed their First Amended Complaint. Said Complaint was served on the City of Akron on December 30, 2005, and served on Nestor Traffic Systems, Inc. on January 3, 2006. On December 13, 2005, Plaintiffs Sipe, Lattur, and Burger filed a Motion for Temporary Restraining Order and a Motion for Preliminary Injunction but they have not attempted service on any of the Defendants nor have the Defendants ever been served with these Motions. Defendants obtained a copy of the Motions from the Summit County Common Pleas Court website.

32a. On December 16, 2005, Plaintiffs Sipe, Lattur, and Burger filed a Second Amended Complaint, which has never been served upon any of the Defendants. Defendants obtained a copy of the Second Amended Complaint from the Summit County Common Pleas Court website.

33a. Defendants City of Akron and Nestor Traffic Systems, Inc. removed the case to the United States District Court for the Northern District of Ohio Eastern Division. The case was originally assigned to Judge James S. Gwinn [sic] and subsequently transferred to the docket of Judge David D. Dowd, Jr. pursuant to Local Rule 3.1(b)(3).

34a. Plaintiffs Sipe, Lattur, and Burger filed an eleven count, 121 paragraph Complaint alleging as follows: Count I – Fraud, Count II – Civil Conspiracy, Count III Common Plan/Design to Commit Fraud, Count IV – Negligence, Count

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V – Negligence Per Se, Count VI – Consumer Sales Practices Act, Count VII – Negligence/Nuisance, Count VIII – Conversion, Count IX – Invasion of Privacy, Count X – Injunctive Relief, Count XI – 42 U.S.C. Sections 1983 and 1988, and the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution/Abuse of Process.

35a. The City of Akron is a Charter municipality pursuant to Section 7 of Article XVIII of the Ohio Constitution in that Akron having established a Charter form of government may adopt an amended a Charter for its government and subject to the provisions of Section 3 of Article XVIII of the Ohio Constitution may exercise under the Charter all powers of local self government.

36a. Nestor contracts nationwide with government entities, referred to as “customers,” to provide Automatic Traffic Enforcement Services (“Services”). These Services are intended to document speeding vehicles.

37a. Nestor sets up its technology in areas designated by the customer and collects data, identifying potential cars speeding. Within Nestor, the potential speeding violation is referred to as an “event.”

38a. Nestor has its own internal coding and computer terminology which it uses to organize its data. Though necessary to organize data for a customer, the actual terminology is not necessarily customer driven.

39a. Some of Nestor’s other customers, however, specifically indicate that Nestor should not process certain categories of vehicles. For instance, some customers do not want Nestor to process emergency vehicles, funeral processions, or vehicles photographed where an officer is directing traffic. Nestor’s computer language refers to these vehicles as “exempt.” Thus, when an “exempt” vehicle is documented as an event, it is categorized in Nestor’s computer system as a “discretionary discard” and Nestor does not process the event.

40a. On October 6, 2005, Nestor and the City entered into a pilot program, a fixed term contract for the provision of Services designed to detect mobile speed violations within the City. The pilot program remained in effect through June 8, 2005.

41a. Under the pilot program contract, Nestor “processed” events for the City by submitting the vehicle license plate information to the Bureau of Motor Vehicles (“BMV”).

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42a. Some events, however, cannot be submitted to the BMV because of technical issues, for instance, the vehicle image is obstructed or blurry, the scene image is insufficiently illuminated or otherwise unclear, or there are multiple vehicles in one image. These events are "discarded."

43a. After receiving the vehicle registration information from the BMV, Nestor verifies that the information is accurate by comparing the registration information against the actual photograph. If the information does not match, for instance, the event photograph depicts a 2002 Subaru Forester yet the registration information indicates that the registered vehicle is a 2003 Audi A4, Nestor will make sure that the vehicle plate information was correctly typed and will resubmit the request for information to the BMV.

44a. The vehicle registration information received from the BMV is forwarded to the Akron Police Department where a police officer reviews the information and issues the citation by directing Nestor to mail the civil violation notice.

45a. During the pilot program, Nestor documented 17,163 events. Some of these events were "discarded" because there was no violation, i.e. the vehicle was not speeding, Nestor was testing its system, or Nestor was unable to determine whether an actual violation occurred. The remaining 15,766 events were submitted to the BMV. Of those events, 11,740 citations were issued by the City.

46a. There were 4,035 violations that were not issued citations. Nestor's internal software categorized the non-issued citations into the following three categories:

a. The first category, is termed "discretionary" by Nestor's computer system. Nestor discarded events under this category in instances where the vehicle registration information was "not in file" with the BMV and the BMV did not return vehicle registration information to Nestor. This category was also used when Nestor was unable to obtain registration information for out-of-state vehicles. Although some states release vehicle registration information to Nestor, other states do not. There were a total of 72 "discretionary" discards: 59 were out-of-state vehicles; 11 were "not in file," which were either vehicles with a government plate, or an ambulance, fire/rescue or police cruiser; and 2 resulted from system testing. The BMV did, however, return information on one school bus, and other vehicles registered to public entities such as the University of Akron, the Akron Metropolitan Housing Authority, and the Akron Zoo. All of these public vehicles were issued citations and paid the civil violations.

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b. The second category, termed "uncontrollable" by Nestor's computer system, totaled 2,288. Citations were not issued for these vehicles because of an obstruction in the photograph of the vehicle or license plate.

c. The third category, termed "controllable" by Nestor's computer system, totaled 1,666. Citations were not issued for these vehicles because of technical problems with the Nestor software, for instance, the Nestor camera was out of focus, the lighting was insufficient to secure an image, or the vehicle framing was improper, i.e. there was only a portion of the vehicle in the image.

47a. The "discretionary discards" were not the result of any direction by the City of Akron. To the contrary, Lieutenant Hanley and Sergeant Garro, of the Akron Police Department, instructed Nestor to process all events without exception. The box "Current Status" uses the term "Discarded" to mean a citation was not issued. The box "Disposition Reason" uses the computer term "Exempt Vehicle." An exempt vehicle does not mean the City of Akron instructed Nestor to exclude any class of vehicle. The City's instruction was that all vehicles are to be treated the same and there were to be no exceptions. The use of the term "exempt vehicle" to describe the reason for a discretionary discard is Nestor's computer language that is used when the event was not forwarded by Nestor to the City because the Ohio BMV reported to Nestor that the vehicle was "not in file," or vehicle registration information was not available from another state, or an event was the result of system testing, or if it was a discretionary discard by the reviewing police officer as described in the example in paragraph #[49a] below.

48a. There were no exceptions for Nestor to process all events and forward whatever information they received from the BMV to the Akron Police Department. After the first review by Nestor, the Akron Police review the BMV registration information prior to authorizing the issuance of the citation. The police review requires the exercise of discretion in certain cases. For example, see NTS 0066 - "Citation Discarded by dgarro REASON: Exempt Vehicle - 21 March 2006." In that instance, the event was processed by Nestor and the registration information was sent by the BMV indicating that the van was registered to American Medical Response, a private non-government ambulance service. Sergeant Garro, in reviewing the information and photo, could not discern whether or not the ambulance was on an emergency call and used his discretion not to issue the citation. This would be similar to a police officer in a cruiser stopping a motorist, and for good reason, using his or her discretion to issue a warning and not a citation. Although Nestor's computer language refers to the status as "Discarded" and the reason as "Exempt Vehicle" (as is done with "not in

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file" government vehicles) this was actually a discretionary non-citation by the reviewing police sergeant.

49a. As indicated in Agreed Stipulation [46a(a)], in some instances, "discretionary discards" occurred because Nestor was unable to obtain the registration information from the BMV. In fact, the BMV is prohibited by the federal Driver's Privacy Protection Act from disclosing information about certain government and police vehicles. Nestor only receives vehicle registration information from the BMV that the BMV is permitted to disclose. When Nestor submitted a request for information to the BMV for government vehicles, the BMV would return the requested information to Nestor with a notation that the vehicle registration information was "not in file." These violations were therefore termed "discretionary discards" by Nestor in the "Current Status" box and as "Exempt Vehicle" in the "Disposition Reason" box. They were discarded by Nestor and not forwarded to the Akron Police Department for review. When Nestor was told by the BMV that a vehicle was "not in file," Nestor had no registration information to forward to the City. The City was unaware of the "discretionary discards" until discovery commenced in this lawsuit.

50. Nestor processed and the City of Akron issued citations for all vehicles that were owned by rental car companies provided there was a clear picture of the vehicle and license plate, and provided the registration information was returned by the BMV. For instance, citations were issued and violations were paid by the following companies: a rental car company, "U Save It Auto Rental," located at 449 West Avenue, Tallmadge, Ohio; a car leasing company, "Car Lease, Inc.," located at 650 Holmes Ave., Akron, Ohio; a truck leasing company "Penske Truck Leasing, Co.," located at 3000 Fortuna Drive, Akron, Ohio; Enterprise Capital (which may be Enterprise rental company); and a Ford dealership (which also may be a rental car). There were certainly other citations issued for rental vehicles but each of the 11,740 citations have not been reviewed for this disclosure. Other paid citations include the Boy Scouts of America, towing companies that contract with the City of Akron, United Disability, Waikem Motors (likely a lease), several Yellow Cabs, and the Visiting Nurse Service.

51. On August 16, 2006, Nestor and the City agreed to a letter of intent to enter into a new contract for the provision of Services. The Services will continue to focus on school zone speeding violations; Services under the new agreement began on August 30, 2006, coinciding with the commencement of the City of Akron's 2006-2007 school year.

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52. Nestor and the City are in the process of finalizing the new contract, the written Policies and Procedures ("P&P"), and implementing the Services for the new contract. Under the new agreement, there are no exempt vehicles.

53. Under the pilot program contract, from October 28, 2005 through December 12, 2005, the amount of the civil violation was originally \$150.00 for vehicles exceeding the posted speed within 15 miles per hour, and \$250.00 for vehicles exceeding the posted speed by 15 or more miles per hour. On December 12, 2005, the civil violation for the pilot program was changed to \$35.00. The vehicle owners that were cited and paid prior to December 12, 2005 at the higher amounts each received a refund of all amounts paid in excess of \$35.00.

54. Under the pilot program contract, the City deposited \$418,960.02 in civil violations (having subtracted \$1,860 in NSF checks). From that amount, the City refunded \$122,872 to violators, and paid Nestor \$188,399. The balance remaining with the City was \$107,689.02. (These figures include all pilot program payments with the exception of one Nestor invoice for August not yet received and paid in the approximate amount of \$1,300.)

55. Under the new agreement, during the first two weeks of the school year (August 30, 2006 through September 12, 2006), the civil violation remained at the lower level of \$35.00 as a warning period. Civil violations occurring on or after September 13, 2006 are \$100.00 from which Nestor will be paid \$19 per paid citation.

56. The City has not yet instituted collection proceedings to recover any of the unpaid civil violations.

**Pursuant to Rule XVIII, § 2(C)**, the names of the parties are:

**In Case 1:**

Plaintiff: Kelly Mendenhall

**In Case 2:**

Plaintiffs: Janice A. Sipe  
Joanne L. Lattur  
Wayne H. Burger

**In Both Cases:**

Defendants: City of Akron, Ohio  
Nestor Traffic Systems, Inc.

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Pursuant to Rule XVIII, § 2(D), the names, addresses, and telephone numbers of  
counsel for each party are:

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JOANNE L. LATTUR AND WAYNE H.  
BURGER

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Fax: 216-479-8777  
Email: rgurbst@ssd.com

Pursuant to Rule XVIII, § 2(E), the party designated at the "moving party" is Kelly

Mendenhall.

Respectfully submitted,

November 29, 2006

Date

s/ David D. Dowd, Jr.

David D. Dowd, Jr.  
U.S. District Judge

§ 3

CONSTITUTION OF THE STATE OF OHIO

Article XVIII - Municipal Corporations

§ 3 Powers

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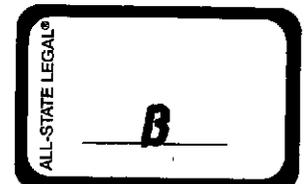
§ 3 Powers

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.

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§ 7

**CONSTITUTION OF THE STATE OF OHIO**

**Article XVIII - Municipal Corporations**

**§ 7 Home rule**

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**§ 7 Home rule**

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

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**§ 4510.01****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION****4510.01 License suspension definitions.****4510.01 License suspension definitions.**

As used in this title and in Title XXIX of the Revised Code:

(A) "Cancel" or "cancellation" means the annulment or termination by the bureau of motor vehicles of a driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege because it was obtained unlawfully, issued in error, altered, or willfully destroyed, or because the holder no longer is entitled to the license, permit, or privilege.

(B) "Drug abuse offense," "cocaine," and "L.S.D." have the same meanings as in section 2925.01 of the Revised Code.

(C) "Ignition interlock device" means a device approved by the director of public safety that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any person attempting to start that motor vehicle by using its ignition system, and that deters starting the motor vehicle by use of its ignition system unless the person attempting to start the vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight of alcohol in the person's breath is below a preset level.

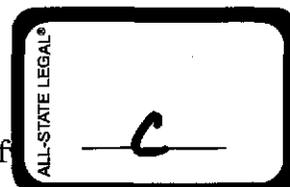
(D) "Immobilizing or disabling device" means a device approved by the director of public safety that may be ordered by a court to be used by an offender as a condition of limited driving privileges. "Immobilizing or disabling device" includes an ignition interlock device, and any prototype device that is used according to protocols designed to ensure efficient and effective monitoring of limited driving privileges granted by a court to an offender.

(E) "Moving violation" means any violation of any statute or ordinance that regulates the operation of vehicles, streetcars, or trackless trolleys on the highways or streets. "Moving violation" does not include a violation of section 4513.263 of the Revised Code or a substantially equivalent municipal ordinance, a violation of any statute or ordinance regulating pedestrians or the parking of vehicles, vehicle size or load limitations, vehicle fitness requirements, or vehicle registration.

(F) "Municipal OVI ordinance" and "municipal OVI offense" have the same meanings as in section 4511.181 of the Revised Code.

(G) "Prototype device" means any testing device to monitor limited driving privileges that has not yet been approved or disapproved by the director of public safety.

(H) "Suspend" or "suspension" means the permanent or temporary withdrawal, by action of a court or the bureau of motor vehicles, of a driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for the period of the suspension or the permanent or temporary withdrawal of the privilege to obtain a license, permit, or privilege of that type for the period of the suspension.



(I) "Controlled substance" and "marihuana" have the same meanings as in section 3719.01 of the Revised Code.

Effective Date: 01-01-2004; 08-17-2006

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**§ 4510.03****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION****4510.03 Court records and abstracts of traffic violations.**

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**4510.03 Court records and abstracts of traffic violations.**

(A) Every county court judge, mayor of a mayor's court, and clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of any provision of sections 4511.01 to 4511.771 or 4513.01 to 4513.36 of the Revised Code or of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets.

(B) If a person is convicted of or forfeits bail in relation to a violation of any section listed in ~~division (A)~~ (A) of this section or a violation of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets, the county court judge, mayor of a mayor's court, or clerk, within ten days after the conviction or bail forfeiture, shall prepare and immediately forward to the bureau of motor vehicles an abstract, certified by the preparer to be true and correct, of the court record covering the case in which the person was convicted or forfeited bail. Every court of record also shall forward to the bureau of motor vehicles an abstract of the court record as described in division (C) of this section upon the conviction of any person of aggravated vehicular homicide or vehicular homicide or of a felony in the commission of which a vehicle was used.

(C) Each abstract required by this section shall be made upon a form approved and furnished by the bureau and shall include the name and address of the person charged, the number of the person's driver's or commercial driver's license, probationary driver's license, or temporary instruction permit, the registration number of the vehicle involved, the nature of the offense, the date of the offense, the date of hearing, the plea, the judgment, or whether bail was forfeited, and the amount of the fine or forfeiture.

Effective Date: 01-01-2004

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Statutes & Session Law - 4510.030

**§ 4510.036**

**Statutes & Session Law**

**TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT**

**CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION**

**4510.036 Records of bureau of motor vehicles - points assessed.**

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**4510.036 Records of bureau of motor vehicles - points assessed.**

(A) The bureau of motor vehicles shall record within ten days, after receipt, and shall keep at its main office, all abstracts received under this section or section 4510.03, 4510.031, 4510.032, or 4510.034 of the Revised Code and shall maintain records of convictions and bond forfeitures for any violation of a state law or a municipal ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways and streets, except a violation related to parking a motor vehicle.

(B) Every court of record or mayor's court before which a person is charged with a violation for which points are chargeable by this section shall assess and transcribe to the abstract of conviction that is furnished by the bureau to the court the number of points chargeable by this section in the correct space assigned on the reporting form. A United States district court that has jurisdiction within this state and before which a person is charged with a violation for which points are chargeable by this section may assess and transcribe to the abstract of conviction report that is furnished by the bureau the number of points chargeable by this section in the correct space assigned on the reporting form. If the federal court so assesses and transcribes the points chargeable for the offense and furnishes the report to the bureau, the bureau shall record the points in the same manner as those assessed and transcribed by a court of record or mayor's court.

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

(1) Aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or vehicular assault when the offense involves the operation of a vehicle, streetcar, or trackless trolley on a highway or street ..... 6 points

(2) A violation of section 2921.331 of the Revised Code or any ordinance prohibiting the willful fleeing or eluding of a law enforcement officer ..... 6 points

(3) A violation of section 4549.02 or 4549.021 of the Revised Code or any ordinance requiring the driver of a vehicle to stop and disclose identity at the scene of an accident ..... 6 points

(4) A violation of section 4511.251 of the Revised Code or any ordinance prohibiting street racing ..... 6 points

(5) A violation of section 4510.11, 4510.14, 4510.16, or 4510.21 of the Revised Code or any ordinance prohibiting the operation of a motor vehicle while the driver's or commercial driver's license is under suspension ..... 6 points

(6) A violation of division (A) of section 4511.19 of the Revised Code, any ordinance prohibiting the operation of a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them, or any ordinance substantially equivalent to division (A) of section 4511.19 of the Revised Code prohibiting the operation of a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine ..... 6 points

(7) A violation of section 2913.03 of the Revised Code that does not involve an aircraft or motorboat or any ordinance prohibiting the operation of a vehicle without the consent of the owner ..... 6 points

(8) Any offense under the motor vehicle laws of this state that is a felony, or any other felony in the commission of which a motor vehicle was used ..... 6 points

(9) A violation of division (B) of section 4511.19 of the Revised Code or any ordinance substantially equivalent to that division prohibiting the operation of a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine ..... 4 points

(10) A violation of section 4511.20 of the Revised Code or any ordinance prohibiting the operation of a motor vehicle in willful or wanton disregard of the safety of persons or property ..... 4 points

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

(a) Notwithstanding divisions (C)(11)(b) and (c) of this section, when the speed exceeds the lawful speed limit by thirty miles per hour or more ..... 4 points

(b) When the speed exceeds the lawful speed limit of fifty-five miles per hour or more by more than ten miles per hour ..... 2 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

(d) When the speed does not exceed the amounts set forth in divisions (C)(11)(a), (b), or (c) of this section ..... 0 points

(12) Operating a motor vehicle in violation of a restriction imposed by the registrar ..... 2 points

(13) All other moving violations reported under this section ..... 2 points

(D) Upon receiving notification from the proper court, including a United States district court that has jurisdiction within this state, the bureau shall delete any points entered for a bond forfeiture if the driver is acquitted of the offense for which bond was posted.

(E) If a person is convicted of or forfeits bail for two or more offenses arising out of the same facts and points are chargeable for each of the offenses, points shall be charged for only the conviction or bond forfeiture for which the greater number of points is chargeable, and, if the number of points chargeable for each offense is equal, only one offense shall be recorded, and points shall be charged only for that offense.

Effective Date: 01-01-2004; 08-17-2006

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**§ 4510.037****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES – AERONAUTICS – WATERCRAFT****CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION****4510.037 Warning letter - notice of suspension - remedial driving course.****4510.037 Warning letter - notice of suspension - remedial driving course.**

(A) When the registrar of motor vehicles determines that the total points charged against any person under section 4510.036 of the Revised Code exceed five, the registrar shall send a warning letter to the person at the person's last known address by regular mail. The warning letter shall list the reported violations that are the basis of the points charged, list the number of points charged for each violation, and outline the suspension provisions of this section.

(B) When the registrar determines that the total points charged against any person under section 4510.036 of the Revised Code within any two-year period beginning on the date of the first conviction within the two-year period is equal to twelve or more, the registrar shall send a written notice to the person at the person's last known address by regular mail. The notice shall list the reported violations that are the basis of the points charged, list the number of points charged for each violation, and state that, because the total number of points charged against the person within the applicable two-year period is equal to twelve or more, the registrar is imposing a class D suspension of the person's driver's or commercial driver's license or permit or nonresident operating privileges for the period of time specified in division (B)(4) of section 4510.02 of the Revised Code. The notice also shall state that the suspension is effective on the twentieth day after the mailing of the notice, unless the person files a petition appealing the determination and suspension in the municipal court, county court, or, if the person is under the age of eighteen, the juvenile division of the court of common pleas in whose jurisdiction the person resides or, if the person is not a resident of this state, in the Franklin county municipal court or juvenile division of the Franklin county court of common pleas. By filing the appeal of the determination and suspension, the person agrees to pay the cost of the proceedings in the appeal of the determination and suspension and alleges that the person can show cause why the person's driver's or commercial driver's license or permit or nonresident operating privileges should not be suspended.

(C)(1) Any person against whom at least two but less than twelve points have been charged under section 4510.036 of the Revised Code may enroll in a course of remedial driving instruction that is approved by the director of public safety. Upon the person's completion of an approved course of remedial driving instruction, the person may apply to the registrar on a form prescribed by the registrar for a credit of two points on the person's driving record. Upon receipt of the application and proof of completion of the approved remedial driving course, the registrar shall approve the two-point credit. The registrar shall not approve any credits for a person who completes an approved course of remedial driving instruction pursuant to a judge's order under section 4510.02 of the Revised Code.

(2) In any three-year period, the registrar shall approve only one two-point credit on a person's driving record under division (C)(1) of this section. The registrar shall approve not more than five two-point credits on a person's driving record under division (C)(1) of this section during that person's lifetime.

(D) When a judge of a court of record suspends a person's driver's or commercial driver's license or permit or nonresident operating privilege and charges points against the person under section 4510.036 of the Revised Code for the offense that resulted in the suspension, the registrar shall credit that period of suspension against the time of any subsequent suspension imposed under this section for which those

points were used to impose the subsequent suspension. When a United States district court that has jurisdiction within this state suspends a person's driver's or commercial driver's license or permit or nonresident operating privileges pursuant to the "Assimilative Crimes Act," 102 Stat. 4381 (1988), 18 U.S.C.A. 13, as amended, the district court prepares an abstract pursuant to section 4510.031 of the Revised Code, and the district court charges points against the person under section 4510.036 of the Revised Code for the offense that resulted in the suspension, the registrar shall credit the period of suspension imposed by the district court against the time of any subsequent suspension imposed under this section for which the points were used to impose the subsequent suspension.

(E) The registrar, upon the written request of a licensee who files a petition under division (B) of this section, shall furnish the licensee a certified copy of the registrar's record of the convictions and bond forfeitures of the person. This record shall include the name, address, and date of birth of the licensee; the name of the court in which each conviction or bail forfeiture took place; the nature of the offense that was the basis of the conviction or bond forfeiture; and any other information that the registrar considers necessary. If the record indicates that twelve points or more have been charged against the person within a two-year period, it is prima-facie evidence that the person is a repeat traffic offender, and the registrar shall suspend the person's driver's or commercial driver's license or permit or nonresident operating privilege pursuant to division (B) of this section.

In hearing the petition and determining whether the person filing the petition has shown cause why the person's driver's or commercial driver's license or permit or nonresident operating privilege should not be suspended, the court shall decide the issue on the record certified by the registrar and any additional relevant, competent, and material evidence that either the registrar or the person whose license is sought to be suspended submits.

(F) If a petition is filed under division (B) of this section in a county court, the prosecuting attorney of the county in which the case is pending shall represent the registrar in the proceedings, except that, if the petitioner resides in a municipal corporation within the jurisdiction of the county court, the city director of law, village solicitor, or other chief legal officer of the municipal corporation shall represent the registrar in the proceedings. If a petition is filed under division (B) of this section in a municipal court, the registrar shall be represented in the resulting proceedings as provided in section 1901.34 of the Revised Code.

(G) If the court determines from the evidence submitted that a person who filed a petition under division (B) of this section has failed to show cause why the person's driver's or commercial driver's license or permit or nonresident operating privileges should not be suspended, the court shall assess against the person the cost of the proceedings in the appeal of the determination and suspension and shall impose the applicable suspension under this section or suspend all or a portion of the suspension and impose any conditions or probation upon the person that the court considers proper. If the court determines from the evidence submitted that a person who filed a petition under division (B) of this section has shown cause why the person's driver's or commercial driver's license or permit or nonresident operating privileges should not be suspended, the costs of the appeal proceeding shall be paid out of the county treasury of the county in which the proceedings were held.

(H) Any person whose driver's or commercial driver's license or permit or nonresident operating privileges are suspended under this section is not entitled to apply for or receive a new driver's or commercial driver's license or permit or to request or be granted nonresident operating privileges during the effective period of the suspension.

(I) Upon the termination of any suspension or other penalty imposed under this section involving the surrender of license or permit and upon the request of the person whose license or permit was suspended

or surrendered, the registrar shall return the license or permit to the person upon determining that the person has complied with all provisions of section 4510.038 of the Revised Code or, if the registrar destroyed the license or permit pursuant to section 4510.52 of the Revised Code, shall reissue the person's license or permit.

(J) Any person whose driver's or commercial driver's license or permit or nonresident operating privileges are suspended as a repeat traffic offender under this section and who, during the suspension, operates any motor vehicle upon any public roads and highways is guilty of a misdemeanor of the first degree, and the court shall sentence the offender to a minimum term of three days in jail. No court shall suspend the first three days of jail time imposed pursuant to this division.

(K) The registrar, in accordance with specific statutory authority, may suspend the privilege of driving a motor vehicle on the public roads and highways of this state that is granted to nonresidents by section 4507.04 of the Revised Code.

Effective Date: 01-01-2004

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**§ 4510.038****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION****4510.038 Conditions for reinstatement of driving privileges.**

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**4510.038 Conditions for reinstatement of driving privileges.**

Any person whose driver's or commercial driver's license or permit is suspended or who is granted limited driving privileges under section 4510.037, under division (H) of section 4511.19, or under section 4510.07 of the Revised Code for a violation of a municipal ordinance that is substantially equivalent to division (B) of section 4511.19 of the Revised Code is not eligible to retain the license, or to have the driving privileges reinstated, until each of the following has occurred:

(A) The person successfully completes a course of remedial driving instruction approved by the director of public safety. A minimum of twenty-five per cent of the number of hours of instruction included in the course shall be devoted to instruction on driver attitude.

The course also shall devote a number of hours to instruction in the area of alcohol and drugs and the operation of vehicles. The instruction shall include, but not be limited to, a review of the laws governing the operation of a vehicle while under the influence of alcohol, drugs, or a combination of them, the dangers of operating a vehicle while under the influence of alcohol, drugs, or a combination of them, and other information relating to the operation of vehicles and the consumption of alcoholic beverages and use of drugs. The director, in consultation with the director of alcohol and drug addiction services, shall prescribe the content of the instruction. The number of hours devoted to the area of alcohol and drugs and the operation of vehicles shall comprise a minimum of twenty-five per cent of the number of hours of instruction included in the course.

(B) The person is examined in the manner provided for in section 4507.20 of the Revised Code, and found by the registrar of motor vehicles to be qualified to operate a motor vehicle;

(C) The person gives and maintains proof of financial responsibility, in accordance with section 4509.45 of the Revised Code.

Effective Date: 01-01-2004

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**§ 4510.05****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION**

**4510.05 Suspension of driver's license for violation of municipal ordinance substantially similar to state statute.**

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**4510.05 Suspension of driver's license for violation of municipal ordinance substantially similar to state statute.**

Except as otherwise provided in section 4510.07 or in any other provision of the Revised Code, whenever an offender is convicted of or pleads guilty to a violation of a municipal ordinance that is substantially similar to a provision of the Revised Code, and a court is permitted or required to suspend a person's driver's or commercial driver's license or permit for a violation of that provision, a court, in addition to any other penalties authorized by law, may suspend the offender's driver's or commercial driver's license or permit or nonresident operating privileges for the period of time the court determines appropriate, but the period of suspension imposed for the violation of the municipal ordinance shall not exceed the period of suspension that is permitted or required to be imposed for the violation of the provision of the Revised Code to which the municipal ordinance is substantially similar.

Effective Date: 01-01-2004

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**§ 4510.07****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION****4510.07 Suspension of driver's license for violation of municipal ordinance substantially similar to certain criminal offenses.**

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**4510.07 Suspension of driver's license for violation of municipal ordinance substantially similar to certain criminal offenses.**

The court imposing a sentence upon an offender for any violation of a municipal ordinance that is substantially equivalent to a violation of section 2903.06 or 2907.24 of the Revised Code or for any violation of a municipal OVI ordinance also shall impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (B) of section 4510.02 of the Revised Code that is equivalent in length to the suspension required for a violation of section 2903.06 or 2907.24 or division (A) or (B) of section 4511.19 of the Revised Code under similar circumstances.

Effective Date: 01-01-2004

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**§ 4510.10****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION****4510.10 Reinstatement fees payment plan or payment extension plan.**

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**4510.10 Reinstatement fees payment plan or payment extension plan.**

(A) As used in this section, "reinstatement fees" means the fees that are required under section 4507.1612, 4507.45, 4509.101, 4509.81, 4511.191, 4511.951, or any other provision of the Revised Code, or under a schedule established by the bureau of motor vehicles, in order to reinstate a driver's or commercial driver's license or permit or nonresident operating privilege of an offender under a suspension.

(B) Reinstatement fees are those fees that compensate the bureau of motor vehicles for suspensions, cancellations, or disqualifications of a person's driving privileges and to compensate the bureau and other agencies in their administration of programs intended to reduce and eliminate threats to public safety through education, treatment, and other activities. The registrar of motor vehicles shall not reinstate a driver's or commercial driver's license or permit or nonresident operating privilege of a person until the person has paid all reinstatement fees and has complied with all conditions for each suspension, cancellation, or disqualification incurred by that person.

(C) When a municipal court or county court determines in a pending case involving an offender that the offender cannot reasonably pay reinstatement fees due and owing by the offender relative to a suspension that has been or that will be imposed in the case, then the court, by order, may undertake either of the following, in order of preference:

(1) Establish a reasonable payment plan of not less than fifty dollars per month, to be paid by the offender to the bureau of motor vehicles in all succeeding months until all reinstatement fees required of the offender are paid in full;

(2) If the offender, but for the payment of the reinstatement fees, otherwise would be entitled to operate a vehicle in this state or to obtain reinstatement of the offender's operating privileges, permit the offender to operate a motor vehicle, as authorized by the court, until a future date upon which date all reinstatement fees must be paid in full. A payment extension granted under this division shall not exceed one hundred eighty days, and any operating privileges granted under this division shall be solely for the purpose of permitting the offender occupational or "family necessity" privileges in order to enable the offender to reasonably acquire the delinquent reinstatement fees due and owing.

(D) If a municipal court or county court, by order, undertakes either activity described in division (C)(1) or (2) of this section, the court, at any time after the issuance of the order, may determine that a change of circumstances has occurred and may amend the order as justice requires, provided that the amended order also shall be an order that is permitted under division (C)(1) or (2) of this section.

(E) If a court enters an order of the type described in division (C)(1), (C)(2), or (D) of this section, during the pendency of the order, the offender in relation to whom it applies is not subject to prosecution for failing to pay the reinstatement fees covered by the order.

(F) Reinstatement fees are debts that may be discharged in bankruptcy.

Effective Date: 01-01-2004; 09-16-2004

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**§ 4510.11****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4510: DRIVER'S LICENSE SUSPENSION, CANCELLATION, REVOCATION****4510.11 Driving under suspension or in violation of license restriction.**

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**4510.11 Driving under suspension or in violation of license restriction.**

(A) No person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any provision of the Revised Code, other than Chapter 4509. of the Revised Code, or under any applicable law in any other jurisdiction in which the person's license or permit was issued shall operate any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within this state during the period of suspension unless the person is granted limited driving privileges and is operating the vehicle in accordance with the terms of the limited driving privileges.

(B) No person shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this state in violation of any restriction of the person's driver's or commercial driver's license or permit imposed under division (D) of section 4506.10 or under section 4507.14 of the Revised Code.

(C)(1) Whoever violates this section is guilty of driving under suspension or in violation of a license restriction, a misdemeanor of the first degree. The court shall impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code.

(2) Except as provided in division (C)(3) or (4) of this section, the court, in addition to any other penalty that it imposes on the offender and if the vehicle is registered in the offender's name, shall order the immobilization of the vehicle involved in the offense for thirty days in accordance with section 4503.233 of the Revised Code and the impoundment of that vehicle's license plates for thirty days.

(3) If the offender previously has been convicted of or pleaded guilty to one violation of this section or of a substantially similar municipal ordinance, the court, in addition to any other sentence that it imposes on the offender and if the vehicle is registered in the offender's name, shall order the immobilization of the vehicle involved in the offense for sixty days in accordance with section 4503.233 of the Revised Code and the impoundment of that vehicle's license plates for sixty days.

(4) If the offender previously has been convicted of or pleaded guilty to two or more violations of this section or of a substantially similar municipal ordinance, the court, in addition to any other sentence that it imposes on the offender and if the vehicle is registered in the offender's name, shall order the criminal forfeiture of the vehicle involved in the offense to the state.

(D) Any order for immobilization and impoundment under this section shall be issued and enforced under section 4503.233 of the Revised Code. The court shall not release a vehicle from immobilization ordered under this section unless the court is presented with current proof of financial responsibility with respect to that vehicle.

(E) Any order of criminal forfeiture under this section shall be issued and enforced under section 4503.234 of the Revised Code. Upon receipt of the copy of the order from the court, neither the registrar

of motor vehicles nor a deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial shall be five years after the date of the order, unless, during that period, the court having jurisdiction of the offense that led to the order terminates the forfeiture and notifies the registrar of the termination. The registrar then shall take necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer registration of the vehicle.

Effective Date: 01-01-2004

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**BROWSE****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS --  
WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES**

- 4511.01 Traffic laws - operation of motor vehicles definitions.
- 4511.011 Designating freeway, expressway, and thruway.
- 4511.02 Amended and Renumbered RC 2921.331.
- 4511.03 Emergency vehicles at red signal or stop sign.
- 4511.031 Portable preemption signal devices prohibited.
- 4511.04 Exception to traffic rules.
- 4511.041 Exceptions to traffic rules for emergency or public safety ...
- 4511.042 Exceptions to traffic rules for coroner's vehicles.
- 4511.05 Persons riding or driving animals upon roadways.
- 4511.051 Freeways - prohibited acts.
- 4511.06 Applicability and uniformity of traffic laws.
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**§ 4511.01****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES****4511.01 Traffic laws - operation of motor vehicles definitions.**

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**4511.01 Traffic laws - operation of motor vehicles definitions.**

As used in this chapter and in Chapter 4513. of the Revised Code:

(A) "Vehicle" means every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except that "vehicle" does not include any motorized wheelchair, any electric personal assistive mobility device, any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or any device, other than a bicycle, that is moved by human power.

(B) "Motor vehicle" means every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed of twenty-five miles per hour or less, threshing machinery, hay-baling machinery, agricultural tractors and machinery used in the production of horticultural, floricultural, agricultural, and vegetable products, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.

(C) "Motorcycle" means every motor vehicle, other than a tractor, having a saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground, including, but not limited to, motor vehicles known as "motor-driven cycle," "motor scooter," or "motorcycle" without regard to weight or brake horsepower.

(D) "Emergency vehicle" means emergency vehicles of municipal, township, or county departments or public utility corporations when identified as such as required by law, the director of public safety, or local authorities, and motor vehicles when commandeered by a police officer.

(E) "Public safety vehicle" means any of the following:

(1) Ambulances, including private ambulance companies under contract to a municipal corporation, township, or county, and private ambulances and nontransport vehicles bearing license plates issued under section 4503.49 of the Revised Code;

(2) Motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state;

(3) Any motor vehicle when properly identified as required by the director of public safety, when used in response to fire emergency calls or to provide emergency medical service to ill or injured persons, and when operated by a duly qualified person who is a member of a volunteer rescue service or a volunteer fire department, and who is on duty pursuant to the rules or directives of that service. The

state fire marshal shall be designated by the director of public safety as the certifying agency for all public safety vehicles described in division (E)(3) of this section.

(4) Vehicles used by fire departments, including motor vehicles when used by volunteer fire fighters responding to emergency calls in the fire department service when identified as required by the director of public safety.

Any vehicle used to transport or provide emergency medical service to an ill or injured person, when certified as a public safety vehicle, shall be considered a public safety vehicle when transporting an ill or injured person to a hospital regardless of whether such vehicle has already passed a hospital.

(5) Vehicles used by the motor carrier enforcement unit for the enforcement of orders and rules of the public utilities commission as specified in section 5503.34 of the Revised Code.

(F) "School bus" means every bus designed for carrying more than nine passengers that is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function, provided "school bus" does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous to such municipal corporation, nor a common passenger carrier certified by the public utilities commission unless such bus is devoted exclusively to the transportation of children to and from a school session or a school function, and "school bus" does not include a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care center or type A family day-care home to a school if the van or bus does not have more than fifteen children in the van or bus at any time.

(G) "Bicycle" means every device, other than a tricycle designed solely for use as a play vehicle by a child, propelled solely by human power upon which any person may ride having either two tandem wheels, or one wheel in the front and two wheels in the rear, any of which is more than fourteen inches in diameter.

(H) "Motorized bicycle" means any vehicle having either two tandem wheels or one wheel in the front and two wheels in the rear, that is capable of being pedaled and is equipped with a helper motor of not more than fifty cubic centimeters piston displacement that produces no more than one brake horsepower and is capable of propelling the vehicle at a speed of no greater than twenty miles per hour on a level surface.

(I) "Commercial tractor" means every motor vehicle having motive power designed or used for drawing other vehicles and not so constructed as to carry any load thereon, or designed or used for drawing other vehicles while carrying a portion of such other vehicles, or load thereon, or both.

(J) "Agricultural tractor" means every self-propelling vehicle designed or used for drawing other vehicles or wheeled machinery but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes.

(K) "Truck" means every motor vehicle, except trailers and semitrailers, designed and used to carry property.

(L) "Bus" means every motor vehicle designed for carrying more than nine passengers and used for the transportation of persons other than in a ridesharing arrangement, and every motor vehicle, automobile for hire, or funeral car, other than a taxicab or motor vehicle used in a ridesharing arrangement, designed and used for the transportation of persons for compensation.

(M) "Trailer" means every vehicle designed or used for carrying persons or property wholly on its own structure and for being drawn by a motor vehicle, including any such vehicle when formed by or operated as a combination of a "semitrailer" and a vehicle of the dolly type, such as that commonly known as a "trailer dolly," a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed greater than twenty-five miles per hour, and a vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of more than ten miles or at a speed of more than twenty-five miles per hour.

(N) "Semitrailer" means every vehicle designed or used for carrying persons or property with another and separate motor vehicle so that in operation a part of its own weight or that of its load, or both, rests upon and is carried by another vehicle.

(O) "Pole trailer" means every trailer or semitrailer attached to the towing vehicle by means of a reach, pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(P) "Railroad" means a carrier of persons or property operating upon rails placed principally on a private right-of-way.

(Q) "Railroad train" means a steam engine or an electric or other motor, with or without cars coupled thereto, operated by a railroad.

(R) "Streetcar" means a car, other than a railroad train, for transporting persons or property, operated upon rails principally within a street or highway.

(S) "Trackless trolley" means every car that collects its power from overhead electric trolley wires and that is not operated upon rails or tracks.

(T) "Explosives" means any chemical compound or mechanical mixture that is intended for the purpose of producing an explosion that contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by a detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb. Manufactured articles shall not be held to be explosives when the individual units contain explosives in such limited quantities, of such nature, or in such packing, that it is impossible to procure a simultaneous or a destructive explosion of such units, to the injury of life, limb, or property by fire, by friction, by concussion, by percussion, or by a detonator, such as fixed ammunition for small arms, firecrackers, or safety fuse matches.

(U) "Flammable liquid" means any liquid that has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed cup test device.

(V) "Gross weight" means the weight of a vehicle plus the weight of any load thereon.

(W) "Person" means every natural person, firm, co-partnership, association, or corporation.

(X) "Pedestrian" means any natural person afoot.

(Y) "Driver or operator" means every person who drives or is in actual physical control of a vehicle, trackless trolley, or streetcar.

(Z) "Police officer" means every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations.

(AA) "Local authorities" means every county, municipal, and other local board or body having authority to adopt police regulations under the constitution and laws of this state.

(BB) "Street" or "highway" means the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

(CC) "Controlled-access highway" means every street or highway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such street or highway.

(DD) "Private road or driveway" means every way or place in private ownership used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

(EE) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder. If a highway includes two or more separate roadways the term "roadway" means any such roadway separately but not all such roadways collectively.

(FF) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

(GG) "Laned highway" means a highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

(HH) "Through highway" means every street or highway as provided in section 4511.65 of the Revised Code.

(II) "State highway" means a highway under the jurisdiction of the department of transportation, outside the limits of municipal corporations, provided that the authority conferred upon the director of transportation in section 5511.01 of the Revised Code to erect state highway route markers and signs directing traffic shall not be modified by sections 4511.01 to 4511.79 and 4511.99 of the Revised Code.

(JJ) "State route" means every highway that is designated with an official state route number and so marked.

(KK) "Intersection" means:

(1) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If an intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(3) The junction of an alley with a street or highway, or with another alley, shall not constitute an intersection.

(LL) "Crosswalk" means:

(1) That part of a roadway at intersections ordinarily included within the real or projected prolongation of property lines and curb lines or, in the absence of curbs, the edges of the traversable roadway;

(2) Any portion of a roadway at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the surface;

(3) Notwithstanding divisions (LL)(1) and (2) of this section, there shall not be a crosswalk where local authorities have placed signs indicating no crossing.

(MM) "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and protected or marked or indicated by adequate signs as to be plainly visible at all times.

(NN) "Business district" means the territory fronting upon a street or highway, including the street or highway, between successive intersections within municipal corporations where fifty per cent or more of the frontage between such successive intersections is occupied by buildings in use for business, or within or outside municipal corporations where fifty per cent or more of the frontage for a distance of three hundred feet or more is occupied by buildings in use for business, and the character of such territory is indicated by official traffic control devices.

(OO) "Residence district" means the territory, not comprising a business district, fronting on a street or highway, including the street or highway, where, for a distance of three hundred feet or more, the frontage is improved with residences or residences and buildings in use for business.

(PP) "Urban district" means the territory contiguous to and including any street or highway which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred feet for a distance of a quarter of a mile or more, and the character of such territory is indicated by official traffic control devices.

(QQ) "Traffic control devices" means all flaggers, signs, signals, markings, and devices placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, including signs denoting names of streets and highways.

(RR) "Traffic control signal" means any device, whether manually, electrically, or mechanically

operated, by which traffic is alternately directed to stop, to proceed, to change direction, or not to change direction.

(SS) "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(TT) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, trackless trolleys, and other devices, either singly or together, while using any highway for purposes of travel.

(UU) "Right-of-way" means either of the following, as the context requires:

(1) The right of a vehicle, streetcar, trackless trolley, or pedestrian to proceed uninterruptedly in a lawful manner in the direction in which it or the individual is moving in preference to another vehicle, streetcar, trackless trolley, or pedestrian approaching from a different direction into its or the individual's path;

(2) A general term denoting land, property, or the interest therein, usually in the configuration of a strip, acquired for or devoted to transportation purposes. When used in this context, right-of-way includes the roadway, shoulders or berm, ditch, and slopes extending to the right-of-way limits under the control of the state or local authority.

(VV) "Rural mail delivery vehicle" means every vehicle used to deliver United States mail on a rural mail delivery route.

(WW) "Funeral escort vehicle" means any motor vehicle, including a funeral hearse, while used to facilitate the movement of a funeral procession.

(XX) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic, and includes any street or highway that has been declared an "alley" by the legislative authority of the municipal corporation in which such street or highway is located.

(YY) "Freeway" means a divided multi-lane highway for through traffic with all crossroads separated in grade and with full control of access.

(ZZ) "Expressway" means a divided arterial highway for through traffic with full or partial control of access with an excess of fifty per cent of all crossroads separated in grade.

(AAA) "Thruway" means a through highway whose entire roadway is reserved for through traffic and on which roadway parking is prohibited.

(BBB) "Stop intersection" means any intersection at one or more entrances of which stop signs are erected.

(CCC) "Arterial street" means any United States or state numbered route, controlled access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

(DDD) "Ridesharing arrangement" means the transportation of persons in a motor vehicle where

such transportation is incidental to another purpose of a volunteer driver and includes ridesharing arrangements known as carpools, vanpools, and buspools.

(EEE) "Motorized wheelchair" means any self-propelled vehicle designed for, and used by, a handicapped person and that is incapable of a speed in excess of eight miles per hour.

(FFF) "Child day-care center" and "type A family day-care home" have the same meanings as in section 5104.01 of the Revised Code.

(GGG) "Multi-wheel agricultural tractor" means a type of agricultural tractor that has two or more wheels or tires on each side of one axle at the rear of the tractor, is designed or used for drawing other vehicles or wheeled machinery, has no provision for carrying loads independently of the drawn vehicles or machinery, and is used principally for agricultural purposes.

(HHH) "Operate" means to cause or have caused movement of a vehicle, streetcar, or trackless trolley on any public or private property used by the public for purposes of vehicular travel or parking.

(III) "Predicate motor vehicle or traffic offense" means any of the following:

(1) A violation of section 4511.03, 4511.051, 4511.12, 4511.132, 4511.16, 4511.20, 4511.201, 4511.21, 4511.211, 4511.213, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.451, 4511.452, 4511.46, 4511.47, 4511.48, 4511.481, 4511.49, 4511.50, 4511.511, 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.66, 4511.661, 4511.68, 4511.70, 4511.701, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, 4511.73, 4511.763, 4511.771, 4511.78, or 4511.84 of the Revised Code;

(2) A violation of division (A)(2) of section 4511.17, divisions (A) to (D) of section 4511.51, or division (A) of section 4511.74 of the Revised Code;

(3) A violation of any provision of sections 4511.01 to 4511.76 of the Revised Code for which no penalty otherwise is provided in the section that contains the provision violated;

(4) A violation of a municipal ordinance that is substantially similar to any section or provision set forth or described in division (III)(1), (2), or (3) of this section.

Effective Date: 01-01-2004; 09-16-2004

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**§ 4511.06****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES****4511.06 Applicability and uniformity of traffic laws.**

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**4511.06 Applicability and uniformity of traffic laws.**

Sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code shall be applicable and uniform throughout this state and in all political subdivisions and municipal corporations of this state. No local authority shall enact or enforce any rule in conflict with such sections, except that this section does not prevent local authorities from exercising the rights granted them by Chapter 4521. of the Revised Code and does not limit the effect or application of the provisions of that chapter.

Effective Date: 01-01-1983

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**§ 4511.07****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES****4511.07 Local traffic regulations.****4511.07 Local traffic regulations.**

(A) Sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code do not prevent local authorities from carrying out the following activities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power:

- (1) Regulating the stopping, standing, or parking of vehicles, trackless trolleys, and streetcars;
- (2) Regulating traffic by means of police officers or traffic control devices;
- (3) Regulating or prohibiting processions or assemblages on the highways;
- (4) Designating particular highways as one-way highways and requiring that all vehicles, trackless trolleys, and streetcars on the one-way highways be moved in one specific direction;
- (5) Regulating the speed of vehicles, streetcars, and trackless trolleys in public parks;
- (6) Designating any highway as a through highway and requiring that all vehicles, trackless trolleys, and streetcars stop before entering or crossing a through highway, or designating any intersection as a stop intersection and requiring all vehicles, trackless trolleys, and streetcars to stop at one or more entrances to the intersection;
- (7) Regulating or prohibiting vehicles and trackless trolleys from passing to the left of safety zones;
- (8) Regulating the operation of bicycles ; provided that no such regulation shall be fundamentally inconsistent with the uniform rules of the road prescribed by this chapter and that no such regulation shall prohibit the use of bicycles on any public street or highway except as provided in section 4511.051 of the Revised Code;
- (9) Requiring the registration and licensing of bicycles, including the requirement of a registration fee for residents of the local authority;
- (10) Regulating the use of certain streets by vehicles, streetcars, or trackless trolleys.

(B) No ordinance or regulation enacted under division (A)(4), (5), (6), (7), (8), or (10) of this section shall be effective until signs giving notice of the local traffic regulations are posted upon or at the entrance to the highway or part of the highway affected, as may be most appropriate.

(C) Every ordinance, resolution, or regulation enacted under division (A)(1) of this section shall be enforced in compliance with section 4511.071 of the Revised Code, unless the local authority that enacted it also enacted an ordinance, resolution, or regulation pursuant to division (A) of section 4521.02 of the Revised Code that specifies that a violation of it shall not be considered a criminal offense, in which case the ordinance, resolution, or regulation shall be enforced in compliance with

Chapter 4521. of the Revised Code.

Effective Date: 01-01-1983; 09-21-2006

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**§ 4511.071****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT  
CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES  
4511.071 No liability for lessor under written lease.**

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**4511.071 No liability for lessor under written lease.**

(A) Except as provided in division (C) of this section, the owner of a vehicle shall be entitled to establish nonliability for prosecution for violation of an ordinance, resolution, or regulation enacted under division (A)(1) of section 4511.07 of the Revised Code by proving the vehicle was in the care, custody, or control of a person other than the owner at the time of the violation pursuant to a written rental or lease agreement or affidavit providing that except for such agreement, no other business relationship with respect to the vehicle in question exists between the operator and owner.

(B) Proof that the vehicle was in the care, custody, or control of a person other than the owner shall be established by sending a copy of such written rental or lease agreement or affidavit to the prosecuting authority within thirty days from the date of receipt by the owner of the notice of violation. The furnishing of a copy of a written rental or lease agreement or affidavit shall be prima-facie evidence that a vehicle was in the care, custody, or control of a person other than the owner.

(C) This section does not apply to a violation of an ordinance, resolution, or regulation enacted under division (A)(1) of section 4511.07 of the Revised Code if the ordinance, resolution, or regulation is one that is required to be enforced in compliance with Chapter 4521. of the Revised Code.

Effective Date: 01-01-1983; 09-21-2006

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**§ 4511.09****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES****4511.09 Manual and specifications for uniform system of traffic control devices.**

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**4511.09 Manual and specifications for uniform system of traffic control devices.**

The department of transportation shall adopt a manual and specifications for a uniform system of traffic control devices, including signs denoting names of streets and highways, for use upon highways within this state. Such uniform system shall correlate with, and so far as possible conform to, the system approved by the American Association of State Highway Officials.

Effective Date: 09-28-1973

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**§ 4511.091****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES****4511.091 Arrest or citation of driver based on radar, timing device or radio message from another officer.**

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**4511.091 Arrest or citation of driver based on radar, timing device or radio message from another officer.**

(A) The driver of any motor vehicle that has been checked by radar, or by any electrical or mechanical timing device to determine the speed of the motor vehicle over a measured distance of a highway or a measured distance of a private road or driveway, and found to be in violation of any of the provisions of section 4511.21 or 4511.211 of the Revised Code, may be arrested until a warrant can be obtained, provided the arresting officer has observed the recording of the speed of the motor vehicle by the radio microwaves, electrical or mechanical timing device, or has received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwaves, electrical or mechanical timing device; provided, in case of an arrest based on such a message, the radio message has been dispatched immediately after the speed of the motor vehicle was recorded and the arresting officer is furnished a description of the motor vehicle for proper identification and the recorded speed.

(B) If the driver of a motor vehicle being driven on a public street or highway of this state is observed violating any provision of this chapter other than section 4511.21 or 4511.211 of the Revised Code by a law enforcement officer situated at any location, including in any type of airborne aircraft or airship, that law enforcement officer may send a radio message to another law enforcement officer, and the other law enforcement officer may arrest the driver of the motor vehicle until a warrant can be obtained or may issue the driver a citation for the violation; provided, if an arrest or citation is based on such a message, the radio message is dispatched immediately after the violation is observed and the law enforcement officer who observes the violation furnishes to the law enforcement officer who makes the arrest or issues the citation a description of the alleged violation and the motor vehicle for proper identification.

Effective Date: 07-29-1998

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**§ 4511.203****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES****4511.203 Wrongful entrustment of motor vehicle.**

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**4511.203 Wrongful entrustment of motor vehicle.**

(A) No person shall permit a motor vehicle owned by the person or under the person's control to be driven by another if any of the following apply:

(1) The offender knows or has reasonable cause to believe that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges.

(2) The offender knows or has reasonable cause to believe that the other person's driver's or commercial driver's license or permit or nonresident operating privileges have been suspended or canceled under Chapter 4510. or any other provision of the Revised Code.

(3) The offender knows or has reasonable cause to believe that the other person's act of driving the motor vehicle would violate any prohibition contained in Chapter 4509. of the Revised Code.

(4) The offender knows or has reasonable cause to believe that the other person's act of driving would violate section 4511.19 of the Revised Code or any substantially equivalent municipal ordinance.

(B) Without limiting or precluding the consideration of any other evidence in determining whether a violation of division (A)(1), (2), (3), or (4) of this section has occurred, it shall be prima-facie evidence that the offender knows or has reasonable cause to believe that the operator of the motor vehicle owned by the offender or under the offender's control is in a category described in division (A)(1), (2), (3), or (4) of this section if any of the following applies:

(1) Regarding an operator allegedly in the category described in division (A)(1) or (3) of this section, the offender and the operator of the motor vehicle reside in the same household and are related by consanguinity or affinity.

(2) Regarding an operator allegedly in the category described in division (A)(2) of this section, the offender and the operator of the motor vehicle reside in the same household, and the offender knows or has reasonable cause to believe that the operator has been charged with or convicted of any violation of law or ordinance, or has committed any other act or omission, that would or could result in the suspension or cancellation of the operator's license, permit, or privilege.

(3) Regarding an operator allegedly in the category described in division (A)(4) of this section, the offender and the operator of the motor vehicle occupied the motor vehicle together at the time of the offense.

(C) Whoever violates this section is guilty of wrongful entrustment of a motor vehicle, a misdemeanor of the first degree. In addition to the penalties imposed under Chapter 2929. of the Revised Code, the court shall impose a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code, and, if the

vehicle involved in the offense is registered in the name of the offender, the court shall order one of the following:

(1) Except as otherwise provided in division (C)(2) or (3) of this section, the court shall order, for thirty days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates. The order shall be issued and enforced under section 4503.233 of the Revised Code.

(2) If the offender previously has been convicted of or pleaded guilty to one violation of this section or a substantially equivalent municipal ordinance, the court shall order, for sixty days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates. The order shall be issued and enforced under section 4503.233 of the Revised Code.

(3) If the offender previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially equivalent municipal ordinance, the court shall order the criminal forfeiture to the state of the vehicle involved in the offense. The order shall be issued and enforced under section 4503.234 of the Revised Code.

If title to a motor vehicle that is subject to an order for criminal forfeiture under this division is assigned or transferred and division (B)(2) or (3) of section 4503.234 of the Revised Code applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the national auto dealer's association. The proceeds from any fine imposed under this division shall be distributed in accordance with division (C)(2) of section 4503.234 of the Revised Code.

(D) If a court orders the immobilization of a vehicle under division (C) of this section, the court shall not release the vehicle from the immobilization before the termination of the period of immobilization ordered unless the court is presented with current proof of financial responsibility with respect to that vehicle.

(E) If a court orders the criminal forfeiture of a vehicle under division (C) of this section, upon receipt of the order from the court, neither the registrar of motor vehicles nor any deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the order. The period of denial shall be five years after the date the order is issued, unless, during that five-year period, the court with jurisdiction of the offense that resulted in the order terminates the forfeiture and notifies the registrar of the termination. If the court terminates the forfeiture and notifies the registrar, the registrar shall take all necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer the registration of the vehicle.

(F) This section does not apply to motor vehicle rental dealers or motor vehicle leasing dealers, as defined in section 4549.65 of the Revised Code.

(G) Evidence of a conviction of, plea of guilty to, or adjudication as a delinquent child for a violation of this section or a substantially similar municipal ordinance shall not be admissible as evidence in any civil action that involves the offender or delinquent child who is the subject of the conviction, plea, or adjudication and that arises from the wrongful entrustment of a motor vehicle.

(H) As used in this section, a vehicle is owned by a person if, at the time of a violation of this section, the vehicle is registered in the person's name.

Effective Date: 01-01-2004

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**§ 4511.21****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES****4511.21 Speed limits - assured clear distance.****4511.21 Speed limits - assured clear distance.**

(A) No person shall operate a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.

(B) It is prima-facie lawful, in the absence of a lower limit declared pursuant to this section by the director of transportation or local authorities, for the operator of a motor vehicle, trackless trolley, or streetcar to operate the same at a speed not exceeding the following:

(1)(a) Twenty miles per hour in school zones during school recess and while children are going to or leaving school during the opening or closing hours, and when twenty miles per hour school speed limit signs are erected; except that, on controlled-access highways and expressways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by division (B)(4) of this section and on freeways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by divisions (B)(9) and (10) of this section. The end of every school zone may be marked by a sign indicating the end of the zone. Nothing in this section or in the manual and specifications for a uniform system of traffic control devices shall be construed to require school zones to be indicated by signs equipped with flashing or other lights, or giving other special notice of the hours in which the school zone speed limit is in effect.

(b) As used in this section and in section 4511.212 of the Revised Code, "school" means any school chartered under section 3301.16 of the Revised Code and any nonchartered school that during the preceding year filed with the department of education in compliance with rule 3301-35-08 of the Ohio Administrative Code, a copy of the school's report for the parents of the school's pupils certifying that the school meets Ohio minimum standards for nonchartered, nontax-supported schools and presents evidence of this filing to the jurisdiction from which it is requesting the establishment of a school zone.

(c) As used in this section, "school zone" means that portion of a street or highway passing a school fronting upon the street or highway that is encompassed by projecting the school property lines to the fronting street or highway, and also includes that portion of a state highway. Upon request from local authorities for streets and highways under their jurisdiction and that portion of a state highway under the jurisdiction of the director of transportation, the director may extend the traditional school zone boundaries. The distances in divisions (B)(1)(c)(i), (ii), and (iii) of this section shall not exceed three hundred feet per approach per direction and are bounded by whichever of the following distances or combinations thereof the director approves as most appropriate:

(i) The distance encompassed by projecting the school building lines normal to the fronting highway and extending a distance of three hundred feet on each approach direction;

(ii) The distance encompassed by projecting the school property lines intersecting the fronting highway and extending a distance of three hundred feet on each approach direction;

(iii) The distance encompassed by the special marking of the pavement for a principal school pupil crosswalk plus a distance of three hundred feet on each approach direction of the highway.

Nothing in this section shall be construed to invalidate the director's initial action on August 9, 1976, establishing all school zones at the traditional school zone boundaries defined by projecting school property lines, except when those boundaries are extended as provided in divisions (B)(1)(a) and (c) of this section.

(d) As used in this division, "crosswalk" has the meaning given that term in division (LL)(2) of section 4511.01 of the Revised Code.

The director may, upon request by resolution of the legislative authority of a municipal corporation, the board of trustees of a township, or a county board of mental retardation and developmental disabilities created pursuant to Chapter 5126. of the Revised Code, and upon submission by the municipal corporation, township, or county board of such engineering, traffic, and other information as the director considers necessary, designate a school zone on any portion of a state route lying within the municipal corporation, lying within the unincorporated territory of the township, or lying adjacent to the property of a school that is operated by such county board, that includes a crosswalk customarily used by children going to or leaving a school during recess and opening and closing hours, whenever the distance, as measured in a straight line, from the school property line nearest the crosswalk to the nearest point of the crosswalk is no more than one thousand three hundred twenty feet. Such a school zone shall include the distance encompassed by the crosswalk and extending three hundred feet on each approach direction of the state route.

(2) Twenty-five miles per hour in all other portions of a municipal corporation, except on state routes outside business districts, through highways outside business districts, and alleys;

(3) Thirty-five miles per hour on all state routes or through highways within municipal corporations outside business districts, except as provided in divisions (B)(4) and (6) of this section;

(4) Fifty miles per hour on controlled-access highways and expressways within municipal corporations;

(5) Fifty-five miles per hour on highways outside municipal corporations, other than highways within island jurisdictions as provided in division (B)(8) of this section and freeways as provided in division (B)(13) of this section;

(6) Fifty miles per hour on state routes within municipal corporations outside urban districts unless a lower prima-facie speed is established as further provided in this section;

(7) Fifteen miles per hour on all alleys within the municipal corporation;

(8) Thirty-five miles per hour on highways outside municipal corporations that are within an island jurisdiction;

(9) Fifty-five miles per hour at all times on freeways with paved shoulders inside municipal corporations, other than freeways as provided in division (B)(13) of this section;

(10) Fifty-five miles per hour at all times on freeways outside municipal corporations, other than freeways as provided in division (B)(13) of this section;

(11) Fifty-five miles per hour at all times on all portions of freeways that are part of the interstate system and on all portions of freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system for operators of any motor vehicle weighing in excess of eight thousand pounds empty weight and any noncommercial bus;

(12) Fifty-five miles per hour for operators of any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus at all times on all portions of freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, unless a higher speed limit is established under division (L) of this section;

(13) Sixty-five miles per hour for operators of any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus at all times on all portions of the following:

(a) Freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995;

(b) Freeways that are part of the interstate system and freeways that are not part of the interstate system but are built to the standards and specifications that are applicable to freeways that are part of the interstate system, and that had such a speed limit established under division (L) of this section;

(c) Rural, divided, multi-lane highways that are designated as part of the national highway system under the "National Highway System Designation Act of 1995," 109 Stat. 568, 23 U.S.C.A. 103, and that had such a speed limit established under division (M) of this section.

(C) It is prima-facie unlawful for any person to exceed any of the speed limitations in divisions (B)(1)(a), (2), (3), (4), (6), (7), and (8) of this section, or any declared pursuant to this section by the director or local authorities and it is unlawful for any person to exceed any of the speed limitations in division (D) of this section. No person shall be convicted of more than one violation of this section for the same conduct, although violations of more than one provision of this section may be charged in the alternative in a single affidavit.

(D) No person shall operate a motor vehicle, trackless trolley, or streetcar upon a street or highway as follows:

(1) At a speed exceeding fifty-five miles per hour, except upon a freeway as provided in division (B)(13) of this section;

(2) At a speed exceeding sixty-five miles per hour upon a freeway as provided in division (B)(13) of this section except as otherwise provided in division (D)(3) of this section;

(3) If a motor vehicle weighing in excess of eight thousand pounds empty weight or a noncommercial bus as prescribed in division (B)(11) of this section, at a speed exceeding fifty-five miles per hour upon a freeway as provided in that division;

(4) At a speed exceeding the posted speed limit upon a freeway for which the director has

determined and declared a speed limit of not more than sixty-five miles per hour pursuant to division (L) (2) or (M) of this section;

(5) At a speed exceeding sixty-five miles per hour upon a freeway for which such a speed limit has been established through the operation of division (L)(3) of this section;

(6) At a speed exceeding the posted speed limit upon a freeway for which the director has determined and declared a speed limit pursuant to division (I)(2) of this section.

(E) In every charge of violation of this section the affidavit and warrant shall specify the time, place, and speed at which the defendant is alleged to have driven, and in charges made in reliance upon division (C) of this section also the speed which division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared pursuant to, this section declares is prima-facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit the person to bring the vehicle to a stop within the assured clear distance ahead the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.

(F) When a speed in excess of both a prima-facie limitation and a limitation in division (D)(1), (2), (3), (4), (5), or (6) of this section is alleged, the defendant shall be charged in a single affidavit, alleging a single act, with a violation indicated of both division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of this section, or of a limit declared pursuant to this section by the director or local authorities, and of the limitation in division (D)(1), (2), (3), (4), (5), or (6) of this section. If the court finds a violation of division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared pursuant to, this section has occurred, it shall enter a judgment of conviction under such division and dismiss the charge under division (D)(1), (2), (3), (4), (5), or (6) of this section. If it finds no violation of division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared pursuant to, this section, it shall then consider whether the evidence supports a conviction under division (D)(1), (2), (3), (4), (5), or (6) of this section.

(G) Points shall be assessed for violation of a limitation under division (D) of this section in accordance with section 4510.036 of the Revised Code.

(H) Whenever the director determines upon the basis of a geometric and traffic characteristic study that any speed limit set forth in divisions (B)(1)(a) to (D) of this section is greater or less than is reasonable or safe under the conditions found to exist at any portion of a street or highway under the jurisdiction of the director, the director shall determine and declare a reasonable and safe prima-facie speed limit, which shall be effective when appropriate signs giving notice of it are erected at the location.

(I)(1) Except as provided in divisions (I)(2) and (K) of this section, whenever local authorities determine upon the basis of an engineering and traffic investigation that the speed permitted by divisions (B)(1)(a) to (D) of this section, on any part of a highway under their jurisdiction, is greater than is reasonable and safe under the conditions found to exist at such location, the local authorities may by resolution request the director to determine and declare a reasonable and safe prima-facie speed limit. Upon receipt of such request the director may determine and declare a reasonable and safe prima-facie speed limit at such location, and if the director does so, then such declared speed limit shall become effective only when appropriate signs giving notice thereof are erected at such location by the local authorities. The director may withdraw the declaration of a prima-facie speed limit whenever in the director's opinion the altered prima-facie speed becomes unreasonable. Upon such withdrawal, the declared prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities.

(2) A local authority may determine on the basis of a geometric and traffic characteristic study that the speed limit of sixty-five miles per hour on a portion of a freeway under its jurisdiction that was established through the operation of division (L)(3) of this section is greater than is reasonable or safe under the conditions found to exist at that portion of the freeway. If the local authority makes such a determination, the local authority by resolution may request the director to determine and declare a reasonable and safe speed limit of not less than fifty-five miles per hour for that portion of the freeway. If the director takes such action, the declared speed limit becomes effective only when appropriate signs giving notice of it are erected at such location by the local authority.

(J) Local authorities in their respective jurisdictions may authorize by ordinance higher prima-facie speeds than those stated in this section upon through highways, or upon highways or portions thereof where there are no intersections, or between widely spaced intersections, provided signs are erected giving notice of the authorized speed, but local authorities shall not modify or alter the basic rule set forth in division (A) of this section or in any event authorize by ordinance a speed in excess of fifty miles per hour.

Alteration of prima-facie limits on state routes by local authorities shall not be effective until the alteration has been approved by the director. The director may withdraw approval of any altered prima-facie speed limits whenever in the director's opinion any altered prima-facie speed becomes unreasonable, and upon such withdrawal, the altered prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities.

(K)(1) As used in divisions (K)(1), (2), (3), and (4) of this section, "unimproved highway" means a highway consisting of any of the following:

- (a) Unimproved earth;
- (b) Unimproved graded and drained earth;
- (c) Gravel.

(2) Except as otherwise provided in divisions (K)(4) and (5) of this section, whenever a board of township trustees determines upon the basis of an engineering and traffic investigation that the speed permitted by division (B)(5) of this section on any part of an unimproved highway under its jurisdiction and in the unincorporated territory of the township is greater than is reasonable or safe under the conditions found to exist at the location, the board may by resolution declare a reasonable and safe prima-facie speed limit of fifty-five but not less than twenty-five miles per hour. An altered speed limit adopted by a board of township trustees under this division becomes effective when appropriate traffic control devices, as prescribed in section 4511.11 of the Revised Code, giving notice thereof are erected at the location, which shall be no sooner than sixty days after adoption of the resolution.

(3)(a) Whenever, in the opinion of a board of township trustees, any altered prima-facie speed limit established by the board under this division becomes unreasonable, the board may adopt a resolution withdrawing the altered prima-facie speed limit. Upon the adoption of such a resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(b) Whenever a highway ceases to be an unimproved highway and the board has adopted an altered prima-facie speed limit pursuant to division (K)(2) of this section, the board shall, by resolution, withdraw the altered prima-facie speed limit as soon as the highway ceases to be unimproved. Upon the

adoption of such a resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(4)(a) If the boundary of two townships rests on the centerline of an unimproved highway in unincorporated territory and both townships have jurisdiction over the highway, neither of the boards of township trustees of such townships may declare an altered prima-facie speed limit pursuant to division (K)(2) of this section on the part of the highway under their joint jurisdiction unless the boards of township trustees of both of the townships determine, upon the basis of an engineering and traffic investigation, that the speed permitted by division (B)(5) of this section is greater than is reasonable or safe under the conditions found to exist at the location and both boards agree upon a reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour for that location. If both boards so agree, each shall follow the procedure specified in division (K)(2) of this section for altering the prima-facie speed limit on the highway. Except as otherwise provided in division (K)(4)(b) of this section, no speed limit altered pursuant to division (K)(4)(a) of this section may be withdrawn unless the boards of township trustees of both townships determine that the altered prima-facie speed limit previously adopted becomes unreasonable and each board adopts a resolution withdrawing the altered prima-facie speed limit pursuant to the procedure specified in division (K)(3)(a) of this section.

(b) Whenever a highway described in division (K)(4)(a) of this section ceases to be an unimproved highway and two boards of township trustees have adopted an altered prima-facie speed limit pursuant to division (K)(4)(a) of this section, both boards shall, by resolution, withdraw the altered prima-facie speed limit as soon as the highway ceases to be unimproved. Upon the adoption of the resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(5) As used in division (K)(5) of this section:

(a) "Commercial subdivision" means any platted territory outside the limits of a municipal corporation and fronting a highway where, for a distance of three hundred feet or more, the frontage is improved with buildings in use for commercial purposes, or where the entire length of the highway is less than three hundred feet long and the frontage is improved with buildings in use for commercial purposes.

(b) "Residential subdivision" means any platted territory outside the limits of a municipal corporation and fronting a highway, where, for a distance of three hundred feet or more, the frontage is improved with residences or residences and buildings in use for business, or where the entire length of the highway is less than three hundred feet long and the frontage is improved with residences or residences and buildings in use for business.

Whenever a board of township trustees finds upon the basis of an engineering and traffic investigation that the prima-facie speed permitted by division (B)(5) of this section on any part of a highway under its jurisdiction that is located in a commercial or residential subdivision, except on highways or portions thereof at the entrances to which vehicular traffic from the majority of intersecting highways is required to yield the right-of-way to vehicles on such highways in obedience to stop or yield signs or traffic control signals, is greater than is reasonable and safe under the conditions found to exist at the location, the board may by resolution declare a reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour at the location. An altered speed limit adopted by a board of township trustees under this division shall become effective when appropriate signs giving notice thereof are erected at the location by the township. Whenever, in the opinion of a board of township trustees, any altered prima-facie speed limit established by it under this division becomes

unreasonable, it may adopt a resolution withdrawing the altered prima-facie speed, and upon such withdrawal, the altered prima-facie speed shall become ineffective, and the signs relating thereto shall be immediately removed by the township.

(L)(1) Within one hundred twenty days of February 29, 1996, the director of transportation, based upon a geometric and traffic characteristic study of a freeway that is part of the interstate system or that is not part of the interstate system, but is built to the standards and specifications that are applicable to freeways that are part of the interstate system, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over a portion of such freeway, may determine and declare that the speed limit of less than sixty-five miles per hour established on such freeway or portion of freeway either is reasonable and safe or is less than that which is reasonable and safe.

(2) If the established speed limit for such a freeway or portion of freeway is determined to be less than that which is reasonable and safe, the director of transportation, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over the portion of freeway, shall determine and declare a reasonable and safe speed limit of not more than sixty-five miles per hour for that freeway or portion of freeway.

The director of transportation or local authority having jurisdiction over the freeway or portion of freeway shall erect appropriate signs giving notice of the speed limit at such location within one hundred fifty days of February 29, 1996. Such speed limit becomes effective only when such signs are erected at the location.

(3) If, within one hundred twenty days of February 29, 1996, the director of transportation does not make a determination and declaration of a reasonable and safe speed limit for a freeway or portion of freeway that is part of the interstate system or that is not part of the interstate system, but is built to the standards and specifications that are applicable to freeways that are part of the interstate system and that has a speed limit of less than sixty-five miles per hour, the speed limit on that freeway or portion of a freeway shall be sixty-five miles per hour. The director of transportation or local authority having jurisdiction over the freeway or portion of the freeway shall erect appropriate signs giving notice of the speed limit of sixty-five miles per hour at such location within one hundred fifty days of February 29, 1996. Such speed limit becomes effective only when such signs are erected at the location. A speed limit established through the operation of division (L)(3) of this section is subject to reduction under division (I)(2) of this section.

(M) Within three hundred sixty days after February 29, 1996, the director of transportation, based upon a geometric and traffic characteristic study of a rural, divided, multi-lane highway that has been designated as part of the national highway system under the "National Highway System Designation Act of 1995," 109 Stat. 568, 23 U.S.C.A. 103, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over a portion of the highway, may determine and declare that the speed limit of less than sixty-five miles per hour established on the highway or portion of highway either is reasonable and safe or is less than that which is reasonable and safe.

If the established speed limit for the highway or portion of highway is determined to be less than that which is reasonable and safe, the director of transportation, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over the portion of highway, shall determine and declare a reasonable and safe speed limit of not more than sixty-five miles per hour for that highway or portion of highway. The director of transportation or local authority having jurisdiction over the highway or portion of highway shall erect appropriate signs giving notice of the speed limit at such location within three hundred ninety days after February 29, 1996. The speed limit becomes effective only when such signs are erected at the location.

(N)(1)(a) If the boundary of two local authorities rests on the centerline of a highway and both authorities have jurisdiction over the highway, the speed limit for the part of the highway within their joint jurisdiction shall be either one of the following as agreed to by both authorities:

- (i) Either prima-facie speed limit permitted by division (B) of this section;
- (ii) An altered speed limit determined and posted in accordance with this section.

(b) If the local authorities are unable to reach an agreement, the speed limit shall remain as established and posted under this section.

(2) Neither local authority may declare an altered prima-facie speed limit pursuant to this section on the part of the highway under their joint jurisdiction unless both of the local authorities determine, upon the basis of an engineering and traffic investigation, that the speed permitted by this section is greater than is reasonable or safe under the conditions found to exist at the location and both authorities agree upon a uniform reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour for that location. If both authorities so agree, each shall follow the procedure specified in this section for altering the prima-facie speed limit on the highway, and the speed limit for the part of the highway within their joint jurisdiction shall be uniformly altered. No altered speed limit may be withdrawn unless both local authorities determine that the altered prima-facie speed limit previously adopted becomes unreasonable and each adopts a resolution withdrawing the altered prima-facie speed limit pursuant to the procedure specified in this section.

(O) As used in this section:

(1) "Interstate system" has the same meaning as in 23 U.S.C.A. 101.

(2) "Commercial bus" means a motor vehicle designed for carrying more than nine passengers and used for the transportation of persons for compensation.

(3) "Noncommercial bus" includes but is not limited to a school bus or a motor vehicle operated solely for the transportation of persons associated with a charitable or nonprofit organization.

(P)(1) A violation of any provision of this section is one of the following:

(a) Except as otherwise provided in divisions (P)(1)(b), (1)(c), (2), and (3) of this section, a minor misdemeanor;

(b) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of any provision of this section or of any provision of a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the fourth degree;

(c) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of any provision of this section or of any provision of a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the third degree.

(2) If the offender has not previously been convicted of or pleaded guilty to a violation of any provision of this section or of any provision of a municipal ordinance that is substantially similar to this section and operated a motor vehicle faster than thirty-five miles an hour in a business district of a municipal corporation, faster than fifty miles an hour in other portions of a municipal corporation, or

faster than thirty-five miles an hour in a school zone during recess or while children are going to or leaving school during the school's opening or closing hours, a misdemeanor of the fourth degree.

(3) Notwithstanding division (P)(1) of this section, if the offender operated a motor vehicle in a construction zone where a sign was then posted in accordance with section 4511.98 of the Revised Code, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the usual amount imposed for the violation. No court shall impose a fine of two times the usual amount imposed for the violation upon an offender if the offender alleges, in an affidavit filed with the court prior to the offender's sentencing, that the offender is indigent and is unable to pay the fine imposed pursuant to this division and if the court determines that the offender is an indigent person and unable to pay the fine.

Effective Date: 01-01-2004; 03-29-2005; 06-15-2006

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**§ 4511.211****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES****4511.211 Establishing speed limit on private road or driveway.**

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**4511.211 Establishing speed limit on private road or driveway.**

(A) The owner of a private road or driveway located in a private residential area containing twenty or more dwelling units may establish a speed limit on the road or driveway by complying with all of the following requirements:

(1) The speed limit is not less than twenty-five miles per hour and is indicated by a sign that is in a proper position, is sufficiently legible to be seen by an ordinarily observant person, and meets the specifications for the basic speed limit sign included in the manual adopted by the department of transportation pursuant to section 4511.09 of the Revised Code;

(2) The owner has posted a sign at the entrance of the private road or driveway that is in plain view and clearly informs persons entering the road or driveway that they are entering private property, a speed limit has been established for the road or driveway, and the speed limit is enforceable by law enforcement officers under state law.

(B) No person shall operate a vehicle upon a private road or driveway as provided in division (A) of this section at a speed exceeding any speed limit established and posted pursuant to that division.

(C) When a speed limit is established and posted in accordance with division (A) of this section, any law enforcement officer may apprehend a person violating the speed limit of the residential area by utilizing any of the means described in section 4511.091 of the Revised Code or by any other accepted method of determining the speed of a motor vehicle and may stop and charge the person with exceeding the speed limit.

(D) Points shall be assessed for violation of a speed limit established and posted in accordance with division (A) of this section in accordance with section 4510.036 of the Revised Code.

(E) As used in this section:

(1) "Owner" includes but is not limited to a person who holds title to the real property in fee simple, a condominium owners' association, a property owner's association, the board of directors or trustees of a private community, and a nonprofit corporation governing a private community.

(2) "Private residential area containing twenty or more dwelling units" does not include a Chautauqua assembly as defined in section 4511.90 of the Revised Code.

(F) A violation of division (B) of this section is one of the following:

(1) Except as otherwise provided in divisions (F)(2) and (3) of this section, a minor misdemeanor;

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of division (B) of this section or of any municipal ordinance that is substantially

similar to division (B) of this section, a misdemeanor of the fourth degree;

(3) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of division (B) of this section or of any municipal ordinance that is substantially similar to division (B) of this section, a misdemeanor of the third degree.

Effective Date: 01-01-2004

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**§ 4511.212****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4511: TRAFFIC LAWS -- OPERATION OF MOTOR VEHICLES****4511.212 Complaint of noncompliance by local authority with school zone sign laws.**

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**4511.212 Complaint of noncompliance by local authority with school zone sign laws.**

(A) As used in this section, "local authority" means the legislative authority of a municipal corporation, the board of trustees of a township, or the board of county commissioners of a county.

(B) The board of education or the chief administrative officer operating or in charge of any school may submit a written complaint to the director of transportation alleging that a local authority is not complying with section 4511.11 or divisions (B)(1)(a) to (d) of section 4511.21 of the Revised Code with regard to school zones. Upon receipt of such a complaint, the director shall review or investigate the facts of the complaint and discuss the complaint with the local authority and the board of education or chief administrative officer submitting the complaint. If the director finds that the local authority is not complying with section 4511.11 or divisions (B)(1)(a) to (d) of section 4511.21 of the Revised Code with regard to school zones, the director shall issue a written order requiring the local authority to comply by a specified date and the local authority shall comply with the order. If the local authority fails to comply with the order, the director shall implement the order and charge the local authority for the cost of the implementation. Any local authority being so charged shall pay to the state the amount charged. Any amounts received under this section shall be deposited into the state treasury to the credit of the highway operating fund created by section 5735.291 of the Revised Code.

Effective Date: 08-19-1992

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**§ 4511.99****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES – AERONAUTICS – WATERCRAFT  
CHAPTER 4511: TRAFFIC LAWS – OPERATION OF MOTOR VEHICLES  
4511.99 Penalty.**

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**4511.99 Penalty.**

Whoever violates any provision of sections 4511.01 to 4511.76 of the Revised Code for which no penalty otherwise is provided in the section violated is guilty of one of the following:

- (A) Except as otherwise provided in division (B) or (C) of this section, a minor misdemeanor;
- (B) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, a misdemeanor of the fourth degree;
- (C) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more predicate motor vehicle or traffic offenses, a misdemeanor of the third degree.

Effective Date: 01-01-2004

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**Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS --  
WATERCRAFT****CHAPTER 4513: TRAFFIC LAWS -- EQUIPMENT; LOADS**

- 4513.01 Traffic laws - equipment - load definitions.
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- 4513.021 Bumper height - vehicle modifications.
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- 4513.60 Vehicle left on private residential or private agricultural ...
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- 4513.65 Willfully leaving junk motor vehicle.
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**§ 4521.01****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES – AERONAUTICS – WATERCRAFT****CHAPTER 4521: LOCAL, NONCRIMINAL PARKING INFRACTIONS****4521.01 Local, noncriminal parking infraction definitions.**

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**4521.01 Local, noncriminal parking infraction definitions.**

As used in this chapter:

(A) "Parking infraction" means a violation of any ordinance, resolution, or regulation enacted by a local authority that regulates the standing or parking of vehicles and that is authorized pursuant to section 505.17 or 4511.07 of the Revised Code, or a violation of any ordinance, resolution, or regulation enacted by a local authority as authorized by this chapter, if the local authority in either of these cases also has enacted an ordinance, resolution, or regulation of the type described in division (A) of section 4521.02 of the Revised Code in relation to the particular regulatory ordinance, resolution, or regulation.

(B) "Vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(C) "Court" means a municipal court, county court, juvenile court, or mayor's court, unless specifically identified as one of these courts, in which case it means the specifically identified court.

(D) "Local authority" means every county, municipal corporation, township, or other local board or body having authority to adopt police regulations pursuant to the constitution and laws of this state.

(E) "Disability parking space" means a motor vehicle parking location that is reserved for the exclusive standing or parking of a vehicle that is operated by or on behalf of a person with a disability that limits or impairs the ability to walk and displays a placard or license plates issued under section 4503.44 of the Revised Code.

(F) "Person with a disability that limits or impairs the ability to walk" has the same meaning as in section 4503.44 of the Revised Code.

Effective Date: 01-01-1983; 03-23-2005

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**§ 4521.02****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4521: LOCAL, NONCRIMINAL PARKING INFRACTIONS****4521.02 Creation of noncriminal parking violations.**

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**4521.02 Creation of noncriminal parking violations.**

(A) A local authority that enacts any ordinance, resolution, or regulation that regulates the standing or parking of vehicles and that is authorized pursuant to section 505.17 or 4511.07 of the Revised Code also by ordinance, resolution, or regulation may specify that a violation of the regulatory ordinance, resolution, or regulation shall not be considered a criminal offense for any purpose, that a person who commits the violation shall not be arrested as a result of the commission of the violation, and that the violation shall be handled pursuant to this chapter. If such a specification is made, the local authority also by ordinance, resolution, or regulation shall adopt a fine for a violation of the regulatory ordinance, resolution, or regulation and prescribe an additional penalty or penalties for failure to answer any charges of the violation in a timely manner. In no case shall any fine adopted or additional penalty prescribed pursuant to this division exceed the fine established by the municipal or county court having territorial jurisdiction over the entire or a majority of the political subdivision of the local authority, in its schedule of fines established pursuant to Traffic Rule 13(C), for a substantively comparable violation. Except as provided in this division, in no case shall any fine adopted or additional penalty prescribed pursuant to this division exceed one hundred dollars, plus costs and other administrative charges, per violation.

If a local authority chooses to adopt a specific fine for a violation of an ordinance, resolution, or regulation that regulates the standing or parking of a vehicle in a disability parking space, the fine the local authority establishes for such offense shall be an amount not less than two hundred fifty dollars but not more than five hundred dollars.

(B) A local authority that enacts an ordinance, resolution, or regulation pursuant to division (A) of this section also may enact an ordinance, resolution, or regulation that provides for the impoundment or immobilization of vehicles found standing or parked in violation of the regulatory ordinance, resolution, or regulation and the release of the vehicles to their owners. In no case shall an ordinance, resolution, or regulation require the owner of the vehicle to post bond or deposit cash in excess of one thousand dollars in order to obtain release of the vehicle.

(C) A local authority that enacts any ordinance, resolution, or regulation pursuant to division (A) of this section also shall enact an ordinance, resolution, or regulation that specifies the time within which a person who is issued a parking ticket must answer in relation to the parking infraction charged in the ticket.

Effective Date: 05-04-1983; 03-23-2005

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**§ 4521.09****Statutes & Session Law****TITLE [45] XLV MOTOR VEHICLES -- AERONAUTICS -- WATERCRAFT****CHAPTER 4521: LOCAL, NONCRIMINAL PARKING INFRACTIONS****4521.09 Liability of owner.**

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**4521.09 Liability of owner.**

(A) An owner of a vehicle is not jointly liable with an operator of the vehicle whose act or omission resulted in a parking infraction for the parking infraction or any fine, penalty, or processing fee arising out of the parking infraction under this chapter if either of the following apply:

(1) The owner answers the charge of the parking infraction under section 4521.06 or 4521.07 of the Revised Code, the answer denies that he committed the infraction and requests a hearing concerning the infraction, the owner additionally asserts and provides reasonable evidence at that time to prove that the vehicle, at the time of the commission of the parking infraction, was being used by the operator without the owner's express or implied consent, and the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, that has jurisdiction over the parking infraction determines that the vehicle was being used without the owner's express or implied consent at that time. If the bureau or juvenile court does not so determine, it shall conduct the hearing concerning the infraction according to section 4521.08 of the Revised Code.

(2) The owner answers the charge of the parking infraction under section 4521.06 or 4521.07 of the Revised Code, the answer denies that he committed the parking infraction, the owner additionally submits evidence at that time that proves that, at the time of the alleged commission of the infraction, the owner was engaged in the business of renting or leasing vehicles under written rental or lease agreements, and the owner additionally submits evidence that proves that, at the time of the alleged commission of the parking infraction, the vehicle in question was in the care, custody, or control of a person other than the owner pursuant to a written rental or lease agreement.

If the owner does not so prove, the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court, shall conduct a hearing relative to the infraction according to section 4521.08 of the Revised Code.

(3) The owner, at a hearing concerning the parking infraction conducted in accordance with section 4521.08 of the Revised Code, proves that the vehicle, at the time of the parking infraction, was being used by the operator without the owner's express or implied consent or proves the facts described in division (A)(2) of this section.

(B) An owner of a vehicle who is engaged in the business of renting or leasing vehicles under written rental or lease agreements, but who does not satisfy the additional requirements of division (A)(2) of this section is not liable for any penalties or processing fees arising out of a parking infraction involving the vehicle if at the time of the commission of the parking infraction, the vehicle was in the care, custody, or control of a person other than the owner pursuant to a written rental or lease agreement, and if the owner answers the charge of the parking infraction by denying that he committed the parking infraction or by paying the fine arising out of the parking infraction within thirty days after actual receipt of the parking ticket charging the infraction or, if the owner did not receive the parking ticket, within thirty days after receipt of the notification of infraction.

Proof that the vehicle was in the care, custody, or control of a person other than the owner pursuant

to a written rental or lease agreement at the time of the alleged parking infraction shall be established by sending a true copy of the rental or lease agreement or an affidavit to that effect to the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court that has jurisdiction over the alleged parking infraction within thirty days after the date of receipt by the owner of the parking ticket charging the infraction or, if the owner did not receive the parking ticket, within thirty days after receipt of the notification of infraction. The submission of a true copy of a written rental or lease agreement or affidavit shall be prima-facie evidence that a vehicle was in the care, custody, or control of a person other than the owner. The affidavit authorized by this section shall be accompanied by a postage-paid, self-addressed envelope, shall be in a form the registrar of motor vehicles shall prescribe, and shall include space for the parking violations bureau, joint parking violations bureau, or traffic violations bureau, or the juvenile court that has jurisdiction over the alleged parking infraction to indicate receipt of the affidavit. Within thirty days of receipt of the affidavit, the bureau or court shall return a receipted copy of the affidavit to the rental or lease company. In addition, any information required by division (A)(2) of this section may be provided on magnetic tape or another computer readable media in a format acceptable to the particular local authority.

Effective Date: 10-09-1989

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**CHAPTER 79 AUTOMATED MOBILE SPEED ENFORCEMENT SYSTEM**

79.01 Civil penalties for automated mobile speed enforcement system violations.

**79.01 Civil penalties for automated mobile speed enforcement system violations.**

**A. General.**

1. Notwithstanding any other provision of this traffic code, the City of Akron hereby adopts a civil enforcement system for automated mobile speed enforcement 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 strictly comply with the posted speed limit in school zones or streets or highways within the City of Akron that include crosswalks used by children going to or leaving a school during recess and opening and closing hours.
2. The Akron Police Department shall be responsible for administering the automated mobile speed enforcement system. Specifically, the Akron Police Department shall be empowered to install and operate the automated mobile speed enforcement system within the City of Akron using trained technicians who may be police officers, Police Department employees, or other trained technicians who are not employees of the Akron Police Department.
3. Any citation for an automated mobile speed system violation pursuant to this section, known as a "notice of liability" shall:
  - a. Be processed by officials or agents of the City of Akron; and
  - 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.**

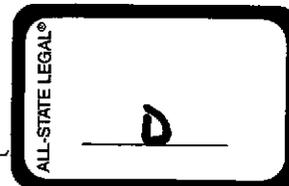
1. Automated mobile speed enforcement system is a system with one or more sensors working in conjunction with a speed measuring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.
2. "Hearing Officer" is the independent third party appointed by the Mayor.
3. "Vehicle 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 or a lessee of a motor vehicle under a lease of six months or more.

**C. Offense.**

1. The owner 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 73.20.
2. 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 out in subsection (C)(1).
3. Notwithstanding subsection (C)(2) above, the owner of the vehicle shall not be responsible for the violation if, within twenty-one days from the date listed on the "notice of liability," as set forth in subsection (D)(2) below, he furnishes the Hearing Officer:
  - a. An affidavit by the vehicle owner, stating the name and address of the person or entity who leased the vehicle in a lease of six months or more 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.
4. Nothing in this section shall be construed to limit the liability of an owner of a vehicle for any violation of subsection (C)(1) or (C)(2) herein.

**D. Civil Penalties.**

1. Unless the operator of the motor vehicle received a citation from a police officer at the time of the violation, the owner of the motor vehicle is subject to a civil penalty if the motor vehicle is recorded by an automated mobile speed enforcement system while being operated in violation of this ordinance.



2. Any violation of this section shall be deemed a noncriminal violation for which a civil penalty of one hundred fifty dollars shall be assessed to the owner for speed in excess of twenty miles per hour and less than thirty-five miles per hour in a school zone during restricted hours and a civil penalty of two hundred fifty dollars shall be assessed for speeds of thirty-five miles per hour or greater in a school zone during restricted hours. A civil penalty of one hundred fifty dollars shall be assessed for speeds in excess of the posted limits, but less than fifteen miles per hour over the posted limit, on streets and highways not in school zones that include crosswalks used by children going to or leaving school. A civil penalty of two hundred fifty dollars shall be assessed for speeds that exceed the posted speed limit by fifteen miles per hour or greater on streets and highways not in school zones that include crosswalks used by children going to or leaving school.

3. A 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 4507.021 for moving traffic offenses and may not be recorded on the driving record of the owner of the vehicle and shall not be reported to the Bureau of Motor Vehicles.

E. Collection of Civil Penalty. If the civil penalty is not paid, the civil penalty imposed under the provisions of this ordinance shall be collectible, together with any interest and penalties thereon, by civil suit pursuant to procedures established by the City of Akron for the collection of debts.

F. Administrative Appeal. A notice of appeal shall be filed within twenty-one days from the date listed on the "notice of liability" with the Hearing Officer appointed by the Mayor of the City of Akron. 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 of a violation of this section. Administrative appeals shall be heard through an administrative process established by the City of Akron. A decision in favor of the City of Akron may be enforced by means of a civil action or any other means provided by the Ohio Revised Code. (Ord. 461-2005)

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## CLEVELAND CODIFIED ORDINANCES

### 413.031 Use of Automated Cameras to Impose Civil Penalties upon Red Light and Speeding Violators

- (a) *Civil enforcement system established.* The City of Cleveland hereby adopts a civil enforcement system for red light and speeding offenders photographed by means of an "automated traffic enforcement camera system" as defined in division (m). This civil enforcement system imposes monetary liability on the owner of a vehicle for failure of an operator to stop at a traffic signal displaying a steady red light indication or for the failure of an operator to comply with a speed limitation.
- (b) *Red light offense - liability imposed.* The owner of a vehicle shall be liable for the penalty imposed under this section if the vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light.
- (c) *Speeding offense - liability imposed.* The owner of a vehicle shall be liable for the penalty imposed under this section if the vehicle is operated at a speed in excess of the limitations set forth in Section 433.03.
- (d) *Liability does not constitute a conviction.* The imposition of liability under this section shall not be deemed a conviction for any purpose and shall not be made part of the operating record of any person on whom the liability is imposed.
- (e) *Other offenses and penalties not abrogated.* Nothing in this section shall be construed as altering or limiting Sections 433.03 or 413.03 of these Codified Ordinances, the criminal penalties imposed by those sections, or the ability of a police officer to enforce those sections against any offender observed by the officer violating either of those sections. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of division (b) or (c) of this section.
- (f) *Selection of camera sites.* The selection of the sites where automated cameras are placed and the enforcement of this ordinance shall be made on the basis of sound professional traffic engineering and law enforcement judgments. Automated cameras shall not be placed at any site where the speed restrictions or the timing of the traffic signal fail to conform to sound professional traffic engineering principles.

(g) *Locations.* The following are the locations for the Automated Traffic Enforcement Camera System:

#### Locations

Shaker Boulevard at Shaker Square

Chester Avenue at Euclid Avenue



West Boulevard at North Marginal Road  
Shaker Boulevard at East 116th Street  
West Boulevard at I-90 Ramp  
Chester Avenue at East 71st Street  
East 55th Street at Carnegie Avenue  
East 131st Street at Harvard Avenue  
Carnegie Avenue at East 30th Street  
Cedar Avenue at Murray Hill Road  
Grayton Road at I-480 Ramp  
Euclid Avenue at Mayfield Road  
Warren Road at I-90 Ramp  
Prospect Avenue at East 40th Street  
East 116th Street at Union Avenue  
W. 117th Street at I-90 Ramp  
Pearl Road at Biddulph Road  
Carnegie Avenue at East 100th Street  
Carnegie Avenue at Martin Luther King Jr. Drive  
Memphis Avenue at Fulton Road  
Lakeshore Boulevard at East 159th Street  
St. Clair Avenue at London Road  
Clifton Boulevard between West 110th Street and West 104th Street  
Chester Avenue between East 55th Street and East 40th Street  
Woodland Avenue between East 66th Street and East 71st Street

West Boulevard between I-90 Ramp and Madison Avenue

Broadway between Harvard Avenue and Miles Avenue

Lee Road between Tarkington Avenue and I-480 Ramp

The Director of Public Safety shall cause the general public to be notified by means of a press release issued at least thirty days before any given camera is made fully-operational and is used to issue tickets to offenders. Before a given camera issues actual tickets, there shall be a period of at least two weeks, which may run concurrently with the 30-day public-notice period, during which only "warning" notices shall be issued.

At each site of a red light or fixed speed camera, the Director of Public Service shall cause signs to be posted to apprise ordinarily observant motorists that they are approaching an area where an automated camera is monitoring for red light or speed violators. Mobile speed units shall be plainly marked vehicles.

(h) *Notices of liability.* Any ticket for an automated red light or speeding system violation under this section shall:

- (1) Be reviewed by a Cleveland police officer;
- (2) 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
- (3) Clearly state the manner in which the violation may be appealed.

(i) *Penalties.* Any violation of division (b) or division (c) of this section shall be deemed a noncriminal violation for which a civil penalty shall be assessed and for which no points authorized by Section 4507.021 of the Revised Code ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(j) *Ticket evaluation, public service, and appeals.* The program shall include a fair and sound ticket-evaluation process that includes review by the vendor and a police officer, a strong customer-service commitment, and an appeals process that accords due process to the ticket respondent and that conforms to the requirements of the Ohio Revised Code.

(k) *Appeals.* A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the ticket. 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 ticket and shall be considered an admission.

Appeals shall be heard by the Parking Violations Bureau through an administrative process established by the Clerk of the Cleveland Municipal Court. At hearings, the strict rules of evidence applicable to courts of law shall not apply. The contents of the ticket shall constitute a prima facie evidence of the facts it contains. Liability may be found by the hearing examiner

based upon a preponderance of the evidence. If a finding of liability is appealed, the record of the case shall include the order of the Parking Violations Bureau, the Ticket, other evidence submitted by the respondent or the City of Cleveland, and a transcript or record of the hearing, in a written or electronic form acceptable to the court to which the case is appealed.

Liability shall not be found where the evidence shows that the automated camera captured an event is not an offense, including each of the following events and such others as may be established by rules and regulations issued by the Director of Public Safety under the authority of division (n) of this section:

- 1) The motorist stops in time to avoid violating a red light indication;
- 2) The motorist proceeds through a red light indication as part of funeral procession;
- 3) The motorist is operating a City-owned emergency vehicle with its emergency lights activated and proceeds through a red light indication or exceeds the posted speed limitation;
- 4) The motorist is directed by a police officer on the scene contrary to the traffic signal indication.

Liability shall also be excused if a vehicle is observed committing an offense where the vehicle was stolen prior to the offense and the owner has filed a police report;

The Director of Public Safety, in coordination with the Parking Violations Bureau, shall establish a process by which a vehicle owner who was not the driver at the time of the alleged offense may, by affidavit, name the person who the owner believes was driving the vehicle at the time. Upon receipt of such an affidavit timely submitted to the Parking Violations Bureau, the Bureau shall suspend further action against the owner of the vehicle and instead direct notices and collection efforts to the person identified in the affidavit. If the person named in the affidavit, when notified, denies being the driver or denies liability, then the Parking Violations Bureau shall resume the notice and collection process against the vehicle owner, the same as if no affidavit had been submitted, and if the violation is found to have been committed by a preponderance of evidence, the owner shall be liable for any penalties imposed for the offense.

A decision in favor of the City of Cleveland may be enforced by means of a civil action or any other means provided by the Revised Code.

(l) *Evidence of ownership.* 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 offenses set out in divisions (b) and (c) of this section.

(m) *Program oversight.* The Director of Public Safety shall oversee the program authorized by this Section. The Director of Public Service shall oversee the installation and maintenance of all automated cameras. An encroachment permit shall be authorized in the legislation in which locations are selected.

(n) *Rules and Regulations.* The Director of Public Safety may issue rules and regulations to carry out the provisions of these sections, which shall be effective thirty (30) days after publication in the City Record.

(o) *Establishment of Penalty.* The penalty imposed for a violation of division (b) or (c) of this section shall be follows:

*413.031(b)*

All violations	\$100.00
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*413.031(c)*

Up to 24 mph over the speed limit	\$100.00
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25 mph or more over the speed limit	\$200.00
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Any violation of a school or construction zone speed limit	\$200.00
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*Late penalties*

For both offenses, if the penalty is not paid within 20 days from the date of mailing of the ticket to the offender, an additional \$20.00 shall be imposed, and if not paid with 40 days from that date, another \$40.00 shall be imposed, for a total additional penalty in such a case of \$60.00.

(p) *Definitions.* As used in this section:

(1) "Automated traffic enforcement camera system" means 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 divisions (b) or (c).

(2) "System location" is the approach to an intersection or a street toward 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.

(3) "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. (Ord. No. 1183-05. Passed 6-6-05, eff. 6-15-05)

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

DANIEL MOADUS, JR., et al., )

Plaintiff(s) )

vs. )

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(F), 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, 140 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 (1984), 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 REQUESTED TO MAKE COPIES OF THIS JUDGMENT ON ALL COUNSEL BY REFERRING TO THE PARTIES WHO ARE UNDERSIGNED FOR THE SAME BY REGISTERED MAIL.

*John M. Stuard*

AGREE

Not Reported in N.E.2d  
Not Reported in N.E.2d, 2001 WL 773235 (Ohio App. 9 Dist.)  
(Cite as: Not Reported in N.E.2d)

**C**  
City of Akron v. Ross Ohio App. 9 Dist., 2001. Only the Westlaw citation is currently available.  
CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Ninth District, Summit County.  
CITY OF AKRON, Appellee,  
v.  
Heather ROSS, Appellant.  
No. 20338.

July 11, 2001.

Appeal from Judgment Entered in the Akron Municipal Court County of Summit, Ohio, Case No. 00 CRB 5504.

J. Dean Carro, Attorney at Law, Legal Clinic, University of Akron, School of Law, Akron, OH, for appellant.  
Joseph S. Kodish, Attorney at Law, Legal Defenders Office, Akron, OH, for appellant.  
Douglas J. Powley, City Prosecutor, Gerald Larson, and Elizabeth Williams, Assistant City Prosecutors, Akron, OH, for appellee.

*DECISION AND JOURNAL ENTRY*

BATCHELDER.

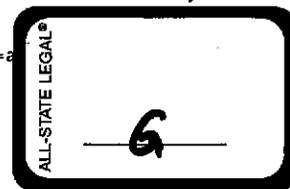
\*1 Appellant, Heather Ross, appeals her conviction in the Akron Municipal Court. We affirm.

I.

On May 7, 2000, Mr. Benjamin Allen returned from attending church with his family to their residence at 458 Adkins in Akron, Ohio. They changed clothes and Mr. Allen's wife asked one of their children, Michael to go into their backyard, which was enclosed by a fence, and retrieve their dog which was chained within the fenced enclosure. Mr. Allen stopped his son as he noticed another dog had entered their enclosed backyard and he was concerned for his son's safety. Both Mr. Allen's dog and the intruding dog appeared to be Chow dogs. Mr. Allen's dog, a female, apparently was in heat at that time. Mr. Allen entered his backyard to retrieve his dog. While attempting to reach his own dog to release it from its chain, the other dog leaped upon Mr. Allen, biting him several times on and about the face. His own dog, still chained, could not reach Mr. Allen or come to his aid. Mr. Allen's wife then retrieved a brick and gave it to Mr. Allen. After Mr. Allen struck the intruding dog repeatedly, it retreated to behind Mr. Allen's garage. Mr. Allen and his family retreated into their home and summoned the police.

After a twenty to thirty minute wait, two police officers and the local animal control officer arrived. The intruding dog was captured and taken away. Mr. Allen spoke to the police officers and then went to the hospital for treatment. Several months later, Mr. Allen's dog, a purebred Chow, gave birth to a litter of puppies some of which appeared to be of mixed bread. The intruding dog belonged to Ms. Ross.

On May 9, 2000, Ms. Ross was served with a complaint and summons charging her with failing to register her dog, in violation of Akron City Code 92.08, and owning, harboring, or otherwise possessing a dog which bit a person while "off the premises of the owner," in violation of Akron City Code 92.25(B)(4). On the same day, the officer who issued the complaint and summons filed a sworn complaint with the clerk of the Akron Municipal Court. Ms. Ross pleaded guilty to the charge of failing to license her dog on October 18, 2000. A jury trial commenced the same day on the remaining



charge. Apparently, the jury returned its verdict on the same day.<sup>FNI</sup> The jury's verdict was duly entered and journalized by the trial court on October 18, 2000. Ms. Ross was sentenced accordingly; the sentence was stayed pending the outcome of her appeal. This appeal followed.

FNI. The record before this court does not contain the jury verdict form signed by all the jurors, pursuant to Crim.R. 31(A). However, as this issue is not raised, we will not pass upon it.

## II.

Ms. Ross asserts nine assignments of error. We will address each in due course, consolidating her fifth and eighth, as well as her sixth and seventh assignments of error to facilitate review.

### CONSTITUTIONAL QUESTIONS

Our standard of review was articulated in Akron v. Parrish (Mar. 10, 1982), Summit App. No. 10385, unreported, at 2-3:

It is well settled that legislative enactments benefit from a strong presumption of constitutionality. In construing legislative enactments, the courts are bound to avoid an unconstitutional construction if it is reasonably possible to do so. Moreover, one who challenges the constitutionality of a legislative enactment bears the burden of proving its invalidity "beyond a reasonable doubt."

\*2 (Citations omitted.)

The Ohio Supreme Court extols the wisdom of not deciding constitutional issues unless absolutely necessary. See, e.g., In re Mental Illness of Boggs (1990), 50 Ohio St.3d 217, 221; Hall China Co. v. Pub. Util. Comm. (1977), 50 Ohio St.2d 206, 210. Accordingly,

[w]e limit our inquiry to the constitutionality of the statute as applied in this case pursuant to the prudential rule of judicial self-restraint established by the [United States] Supreme Court which requires [ ] courts to limit their constitutional scrutiny of statutes to the particular facts of each case. The Supreme Court characterizes this rule as an element of standing to raise constitutional questions. \* \* \* The prudential doctrine of juridical self-restraint which we apply here is "separability"-when possible, we must narrowly read a statute to be constitutional as applied to the facts of the case before us and cannot consider other arguably unconstitutional applications of the statute.

(Citations omitted.) United States v. Lemons (C.A.8, 1983), 697 F.2d 832, 834-35.

## A.

### First Assignment of Error

AKRON CITY CODE 92.25(B)(4) *CONTROL OF DOGS* IS IN CONFLICT WITH R.C. 955.221, R.C. 955.22, AND R.C. 955.99 AND IS INCONSISTENT WITH SECTION 3 ARTICLE XVII [*sic*] OF THE OHIO CONSTITUTION (HOME RULE AMENDMENT), AND THEREFORE VIOLATES STATUTORY AS WELL AS STATE AND FEDERAL CONSTITUTIONAL GUARANTEES.

Ms. Ross avers that Akron City Code 92.25(B)(4) impermissibly conflicts with R.C. 955.221, R.C. 955.22, and R.C. 955.99 under Section 3, Article XVIII of the Ohio Constitution, also known as the Home Rule Amendment. Essentially, Ms. Ross makes three arguments: (1) the Akron statute impermissibly conflicts in that a violation of it is a first degree misdemeanor, rather than, as the Revised Code provides, a minor misdemeanor; (2) the Akron statute impermissibly conflicts in that it makes criminal what the Revised Code allows, namely a **dog's** first bite when the **dog** is not classified as a vicious **dog**; (3) the Akron statute impermissibly conflicts as it imposes criminal liability for acts which would

result in only civil liability under the Revised Code. We disagree.

Section 3, Article XVIII of the Ohio Constitution, the Home Rule Amendment, provides that: "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 similar regulations, as are not in conflict with general laws."

The statute at issue here provides:

(B) Any person owning, keeping, possessing, harboring, maintaining, or having the care, custody, or control of a **dog** shall be strictly liable if such **dog** is found to:

(1) Be at large within the city unless securely attached upon a leash held in the hand of a person in a manner which continuously controls the **dog**.

(2) Snap at or attempt to bite or attempt to cause physical harm to any other person, domestic animal, or feline, while the **dog** is off the premises of the owner, or while on premises which are not exclusively controlled by the owner.

\*3 (3) Cause physical harm to the property of another while the **dog** is off the premises of the owner, or while on premises which are not exclusively controlled by the owner.

(4) Bite or otherwise cause physical harm to any person, domestic animal, or feline, while the **dog** is off the premises of the owner, or while on the premises which are not exclusively controlled by the owner.

(5) Bite or otherwise cause physical harm to mail carriers, utility workers, City of Akron employees, delivery persons, or any police or emergency persons while the **dog** is on the premises of the owner or the premises under the control of the owner.

(C) Defenses.

(1) It shall be an affirmative defense to a violation of § 92.25(B) that the **dog** was:

(a) Securely confined in an automobile or cage which was adequately ventilated.

(b) Being used for lawful hunting purposes.

(c) Being exhibited at a public **dog** show, zoo, museum, or public institution.

(d) Engaged in any activity expressly approved by the laws of the state.

(2) No public law enforcement agency or member thereof, or a licensed private law enforcement agency or member thereof, shall be convicted of any violation of this section where the **dog** is owned by the agency and being utilized for law enforcement purposes.

\* \* \*

(F) In order to prevent annoyance or injuries to the public health, safety, repose or comfort, divisions 92.25(B), (D), and (E) are strict liability offenses.

Akron City Code 92.25. "Whoever violates any provision of §§ 92.24, 92.25(B)(4), or 92.25(D) is guilty of a misdemeanor of the first degree." *Id.* at 92.99(G).

The Ohio Revised Code provides that "[a] municipal corporation may adopt and enforce ordinances to control **dogs** within the municipal corporation that are not otherwise in conflict with any other provision of the Revised Code." R.C. 955.221(B)(3). Further, one found guilty of a violation of "any resolution or ordinance adopted under this section," R.C. 955.211(C), "is guilty of a minor misdemeanor," R.C. 955.99(I). Ms. Ross first asserts that, as the Ohio Legislature classifies violations of city **dog** control ordinances as minor misdemeanors, a city may not classify such violations as first degree misdemeanors.

Our analysis is controlled by the Ohio Supreme Court's decision in Niles v. Howard (1984), 12 Ohio St.3d 162, 165: When a municipal ordinance varies in punishment with the state statute such ordinance is not in conflict with the statute when it only imposes a greater penalty. If the [city] ordinance had altered the degree of punishment to a felony rather than a misdemeanor it would have been unconstitutional. However, since the ordinance only increased the penalty from a lesser misdemeanor to a first degree misdemeanor, it is not in conflict with the general laws of Ohio.

The Revised Code provides that violations of municipal **dog** control ordinances are minor misdemeanors. R.C. 955.221(C) and 955.99(I). However, Akron City Code 92.25(B)(4) and 92.99(G) provide that a violation is a first degree misdemeanor. As the Ohio Supreme Court held in Niles, increasing the penalty of an offense from a lesser misdemeanor

to a first degree misdemeanor does not violate the Home Rule Amendment. Accordingly, we conclude that increasing the penalty from a minor misdemeanor to one of the first degree does not violate the Home Rule Amendment. See Cleveland Hts. v. Wood (1995), 107 Ohio App.3d 616, 619.

\*4 Next, Ms. Ross avers that Akron City Code 92.25(B)(4) conflicts with the general laws of Ohio in that it makes criminal that which is permissible under the R.C. 955.99(E), (F) and (G), namely the first bite of a **dog**, other than a vicious **dog**. However, we do not find this to be so as the Revised Code simply does not provide a penalty for the first bite of a **dog**; it does not permit or encourage it. "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 prohibits, and vice versa." Struthers v. Sokol (1923), 108 Ohio St. 263, paragraph three of the syllabus. Moreover, under R.C. 955.221(3), a municipal corporation is specifically authorized to adopt **dog** control ordinances which are not in conflict with "any other provision of the Revised Code." We can discern no conflict here <sup>FN2</sup> as the Revised Code simply does not speak to the issue of the first bite of a non-vicious **dog**; rather, this issue is left to be resolved by local enactment pursuant to R.C. 955.221.

<sup>FN2</sup>. We limit our analysis to the facts of this case and decline to pass upon whether this section of the Akron City Code may conflict with the Revised Code upon its application to other factual circumstances or where defenses enumerated in the Revised Code but omitted from the Akron City Code are raised.

Finally, Ms. Ross argues that Akron City Code 92.25(B)(4) is in conflict with R.C. 955.28(B), in that R.C. 955.22 provides for civil liability stemming from a **dog** bite while Akron City Code 92.25(B)(4) provides for criminal liability for the same type of action. To that end, Ms. Ross cites State v. Rosa (1998), 128 Ohio App.3d 556. In Rosa, the court applied Toledo v. Best (1961), 172 Ohio St. 371, syllabus, which holds that "[w]here the only distinction between a state statute and a municipal ordinance, proscribing certain conduct and providing punishment therefore, 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 law of the state." However, in Rosa, the appellate court's analysis did not include a specific grant of power to the municipality, while R.C. 955.221 specifically provides for municipalities to adopt and enforce **dog** control ordinances. Further, R.C. 955.28 applies in different circumstances than Akron City Code 92.25(B)(4). Liability under R.C. 955.28 is not limited to situations occurring off of the **dog** owner's property, as happened here. Moreover, as the conduct is different and arguably more culpable in the instant case, from the conduct upon which civil liability is predicated, we conclude that the Akron City Code does not conflict with the civil remedy but only adds a criminal penalty in certain circumstances. Hence, as the statutes apply in different circumstances, we conclude that the civil liability provided for in the Revised Code does not conflict with the criminal liability imposed in the Akron City Code. Accordingly, we find Ms. Ross's arguments unpersuasive, as Akron City Code 92.25(B)(4), as applied to Ms. Ross, does not conflict with the cited provisions of the Revised Code. Ms. Ross's first assignment of error is overruled.

## B.

### Second Assignment of Error

#### A.C.C. 92.25(B)(4) *CONTROL OF DOGS* IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD IN VIOLATION OF STATE AND FEDERAL DUE PROCESS GUARANTEES.

\*5 Ms. Ross argues that, in violation of her right to due process of law, Akron City Code 92.25(B)(4) is vague and overbroad. Hence, she avers that the statute is unconstitutional. We disagree.

"The doctrines of vagueness and overbreadth are not always distinguishable and often overlap." State v. Young (1980), 62 Ohio St.2d 370, 385. In differentiating the doctrines of vagueness and overbreadth, the Ohio Supreme Court, quoting the United States Supreme Court, has stated: "'[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined,' whereas, '[a] clear and precise enactment may nevertheless be overbroad, if in its reach it prohibits constitutionally protected conduct.'" (Citation omitted.) *Id.*

The void for vagueness doctrine, as enunciated by the United States Supreme Court and recited by the Ohio Supreme Court holds that

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. \* \* \* Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. \* \* \* Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it operates to inhibit the exercise of [those] freedoms.'"

(Alterations original and citation omitted.) Akron v. Rowland (1993), 67 Ohio St.3d 374, 381.

The definition of overbreadth utilized by the United States Supreme Court, as stated by the Ohio Supreme Court, is that "[a] clear and precise enactment may \* \* \* be 'overbroad' if in its reach it prohibits constitutionally protected conduct." (Second alteration original and citation omitted.) Id. at 387. When faced with a challenge to the constitutionality of a statute based upon overbreadth, the court must decide "whether the ordinance sweeps within its prohibitions what may not be punished under the First and Fourteen Amendments."

"Only a statute that is substantially overbroad may be invalidated on its face." In order to demonstrate facial overbreadth, the party challenging the enactment must show that its potential application reaches a significant amount of protected activity. Nevertheless, criminal statutes "that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application." A statute is substantially overbroad if it is "susceptible of regular application to protected expression."

(Citations omitted.) *Id.*

Ms. Ross avers that Akron City Code is void for vagueness because the prohibited conduct is not clear. She asserts that when a stray dog proceeds onto one's property, not invited or encouraged, one "possesses" the dog under the terms of Akron City Code 95.25(B)(4). Hence, if, after that point, the dog continues to travel and harms a person, domestic animal, or feline, the party across whose property the dog traveled would be guilty under this statute. Therefore, she asserts that the conduct prohibited under the statute is unclear. However, Ms. Ross's conviction does not rest upon such a factual predicate.

\*6 [O]ne who has received fair warning of the criminality of his own conduct from the statute in question is [not] entitled to attack it because the language would not give similar fair warning with respect to other conduct which might be within its broad and literal ambit. One to whose conduct a statute clearly applies may not successfully challenge it for vagueness.

Parker v. Levy (1974), 417 U.S. 733, 756, 41 L.Ed.2d 439, 458. Hence, as the statute is clear as to Ms. Ross's conduct, she may not challenge it on the basis of vagueness in regard to a hypothetical situation.

Next, Ms. Ross avers that Akron City Code is overbroad as " 'in its reach it prohibits constitutionally protected conduct.' " To that end, Ms. Ross notes the special relationship between humans and dogs. However, this court has previously held that "[a]lthough the relationship between an owner and man's best friend may indeed be a special one, this Court cannot find that ownership of a canine rises to the level of constitutional proportion to be declared a fundamental right." Cuyahoga Falls v. Vogel (Sept. 16, 1998), Summit App. No. 18826, unreported, at 6. Further, the statute does not prohibit owning dogs or having them in one's home; it prohibits allowing one's dog to roam free and provides an increased penalty if one's dog does harm while so roaming. Akron City Code 92.25(B). Hence, we cannot find that this statute prohibits constitutionally protected conduct, and therefore, is overbroad. Ms. Ross's second assignment of error is overruled. <sup>FN3</sup>

<sup>FN3</sup> Ms. Ross also appears to aver that the statute is violative of the due process clause for lack of notice pursuant to the analysis set forth by the Ohio Supreme Court in City of University Heights v. O'Leary (1981).

68 Ohio St.2d 130, 134. However, as was noted by the Ohio Supreme Court in *O'Leary*, 68 Ohio St.2d at 151, "[e]xcept under the unique circumstances of *Lambert* and *Mancuso*, decisions in which persons were required to register because of their status, knowledge of the law is not a requirement of due process." Accordingly, we find this argument unpersuasive.

C.

#### Third Assignment of Error

#### A.C.C. 92.25(B)(4) CONTROL OF DOGS AS WRITTEN AND AS APPLIED VIOLATES THE EIGHTH AMENDMENT PROSCRIPTION AGAINST CRUEL AND UNUSUAL PUNISHMENT.

Ms. Ross asserts that the punishment for violating Akron City Code 92.25(B)(4) is so disproportionate to the conduct it prohibits that it shocks the sense of justice of the community, and therefore, constitutes cruel and unusual punishment. Hence, she asserts that the statute is unconstitutional pursuant to the Eighth Amendment to the United States Constitution. We disagree.

As this court has previously held, "[t]o warrant constitutional intercession, 'the penalty must be so greatly disproportionate to the offense as to shock the sense of justice of the community.'" *State v. Framback* (1992), 81 Ohio App.3d 834, 842; accord *State v. Weitbrecht* (1999), 86 Ohio St.3d 368, 371; *State v. Barnes* (2000), 136 Ohio App.3d 430, 435 ("In light of *Harmelin*, the state of the law is that if a comparison of the 'gravity of the offense and the harshness of the penalty' under the first element of *Solem* does not give rise to an inference of gross disproportionality, then the 'comparative analysis with other sentences,' pursuant to the second and third elements of *Solem*, 'need not be performed.'"); *United States v. Kaluna* (C.A.9 1997), 192 F.3d 1188, 1199. ("In its most recent pronouncement on this subject, the [United States Supreme] Court held that 'the eighth amendment "forbids only extreme sentences that are grossly disproportionate to the crime."")

\*7 Apparently, the penalty for a first degree misdemeanor under the Akron City Code is a maximum fine of one thousand dollars and a maximum term of six months imprisonment.<sup>FN4</sup> See Akron City Code 70.99(B) and 130.99(C) and (D). We note that Ms. Ross did not receive the harshest penalty; rather, she received a fine of two hundred and fifty dollars. The trial court suspended the sentence of thirty days incarceration and one hundred and fifty dollars of the fine. On an initial offense, as the cause before us, the trial judge has discretion to impose fines and incarceration up to the maximum noted above. Allowing one's dog to roam free, which results in the dog causing harm, is of serious concern to the health, safety, and welfare of the citizens of Akron. Where such harm is caused, the crime is more serious, a fact which is not lessened by the lack of a required culpable mental state. See *Weitbrecht*, 86 Ohio St.3d at 373. Hence, we cannot conclude that such a penalty is so grossly disproportionate to the crime that it shocks the conscience or sense of justice of the community. Accordingly, Ms. Ross's third assignment of error is overruled.

<sup>FN4</sup>. As both parties aver that this is the maximum prison term and fine without citation to the Akron City Code, we take it to be so. Although we find penalty provisions in regard to traffic offenses, Akron City Code 70.99(B), and Title XIII of the Akron City Code, Akron City Code 130.99(C) and (D), we have been unable to locate the penalty for a first degree misdemeanor in regard to Akron City Code 92.25(B)(4). We note that other penalty provisions in the Akron City Code refer to a provision setting forth the applicable penalty. See Akron City Code 90.99(B) ("Penalty, see § 130.99"); Akron City Code 93.99(B) ("Penalty, see § 130.99"); Akron City Code 94.99 ("Penalty, see § 130.99"); Akron City Code 95.99 ("Penalty, see § 130.99"); Akron City Code 96.99 ("Penalty, see § 130.99"); Akron City Code 98.99 ("Penalty, see § 103.99"); Akron City Code 99.99 ("Penalty, see § 130.99"); Akron City Code 101.99 ("Penalty, see § 130.99").

D.

#### Fourth Assignment of Error

A.C.C. 92.25(B)(4) *CONTROL OF DOGS* VIOLATES CONSTITUTIONALLY GUARANTEED EQUAL PROTECTION BY DISCRIMINATING AGAINST INNOCENT DOG OWNERS.

Ms. Ross avers that the right of **dog** owners to equal protection of the law has been violated by Akron City Code 92.25(B)(4). She asserts that **dog** owners are a protected class and, as such, differentiating between them and owners of other types of property and different kinds of pets violates equal protection principles. We disagree.

"The limit placed upon governmental action by the Equal Protection Clauses of the Ohio and United States Constitutions are nearly identical." Sorrell v. Thevenir (1994), 69 Ohio St.3d 415, 424. "Unless a statute provokes 'strict judicial scrutiny' because it interferes with a 'fundamental right' or discriminates against a suspect class, it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose." Kadrmas v. Dickinson Pub. Schools (1988), 487 U.S. 450, 457-58, 101 L.Ed.2d 399, 409. Moreover,

"Simply stated, the test is that the unequal treatment of classes of persons by a state is valid only if the state can show that a rational basis exists for the inequality, unless the discrimination impairs the exercise of a fundamental right or establishes a suspect classification. See, e.g., McGowan v. Maryland (1961), 366 U.S. 420, for the traditional scrutiny test; see, e.g., Shapiro v. Thompson (1969), 394 U.S. 618; Harper v. Virginia Bd. of Elections (1966), 383 U.S. 663; Griswold v. Connecticut (1965), 381 U.S. 479, for a discussion of 'fundamental interest'; and see, e.g., Graham v. Richardson (1971), 403 U.S. 365; Loving v. Virginia (1967), 388 U.S. 1; Oyama v. California (1948), 322 U.S. 633. If the discrimination infringes upon a fundamental right, it becomes the subject of strict judicial scrutiny and will be upheld only upon a showing that it is justified by a compelling state interest. That is, once the existence of a fundamental right or a suspect class is shown to be involved, the state must assume the heavy burden of proving that the legislation is constitutional. See, e.g., Eisenstadt v. Baird (1972), 405 U.S. 438, 447, footnote 7; Dunn v. Blumstein (1972), 405 U.S. 330, 342; Memphis Am. Fed. Of Teachers, Local 2032 v. Bd. of Edn. (C.A.6, 1976), 534 F.2d 699; Tanner v. Weinberger (C.A.6, 1975), 525 F.2d 51, 54.

\* \* \* \*

Under the traditional test of equal protection, unequal treatment of classes of persons by a state is valid if the state can show that a rational basis exists for the inequity. Ordinarily, under the rational basis requirement, any classification based "upon a state of facts that reasonably can be conceived to constitute a distinction, or differences, in state policy \* \* \*" will be upheld. Allied Stores of Ohio v. Bowers (1959), 358 U.S. 522, 530."

Beatty v. Akron City Hospital (1981), 67 Ohio St.2d 483, 492-93, quoting Bd. of Edn. v. Walter (1979), 58 Ohio St.2d 368, 373, 376.

Hence, we will first determine whether this cause implicated a fundamental right or suspect classification and then proceed to apply the appropriate standard of review to the statute. As this court has previously noted, **dog** ownership is not a fundamental right. Vogel, supra, at 6. If the class has not, "[a]s a historical matter \* \* \* been subjected to discrimination," and does not "exhibit obvious, immutable, or distinguishing characteristics that define [it] as a discrete group," and is "not a minority or politically powerless," it is not a suspect or quasi-suspect class for constitutional purposes. Lyng v. Castillo (1986), 477 U.S. 635, 638, 91 L.Ed.2d 527, 533. There is no evidence that **dog** owners have been historically subjected to discrimination or are politically powerless or a minority. In fact, **dog** owners are numerous and, apparently, politically powerful as numerous past and present United States Presidents and members of the United States Congress are or were known **dog** owners. Further, **dog** ownership is not an immutable characteristic and its distinguishing feature—namely a **dog**—is often concealed from the general public in one's home. Hence, **dog** owners do not appear to be a discrete group that is easily identifiable. Accordingly, we conclude that **dog** owners are not a suspect class or a quasi-suspect class, and therefore, rational basis review of this statute is appropriate.

The distinction between **dog** owners and owners of other types of property is rationally related to a legitimate purpose. **Dogs**, in some cases, have been bred to assist with the defense of one's person and property and are more easily trained in that regard than other animals. Some **dogs** have a natural propensity to guard and defend. Further, **dogs** are generally

larger and, it may be rationally concluded, more dangerous than other pets such as cats and rabbits when they are allowed to roam free. Hence, such a distinction is rationally related to a legitimate governmental function, namely protecting the health, safety, and welfare of the citizens of Akron. Accordingly, we find this statute to withstand rational basis review and overrule Ms. Ross's assignment of error.

#### OTHER ISSUES OF LAW

##### E.

##### Fifth Assignment of Error

THE TRIAL COURT ERRED WHEN IT REFUSED TO GIVE THE JURY AN INSTRUCTION ON ASSUMPTION OF THE RISK.

##### Eighth Assignment of Error

THE TRIAL COURT ERRED WHEN IT REFUSED TO ADMIT APPELLANT'S SOLE EXHIBIT, A COPY OF THE INCIDENT REPORT FAXED TO APPELLANT'S TRIAL COUNSEL FROM THE CITY OF AKRON.

\*9 Ms. Ross asserts that the trial court erred in refusing to give the jury instruction requested by Ms. Ross on assumption of the risk and erred in refusing to admit a copy of the report completed by the police at the scene of the **dog** bite into evidence. We disagree.

We will first address Ms. Ross's argument in regard to the instruction and then address her argument in regard to the police report. "After arguments are completed, a trial court must fully and completely give the jury all instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duty as the fact finder." State v. Comen (1990), 50 Ohio St.3d 206, paragraph two of the syllabus. However, upon review of Akron City Code 92.25(B)(4), it is a strict liability offense and assumption of the risk is not among the enumerated defenses. Accordingly, we cannot conclude that the trial court erred in omitting such an instruction from the jury charge, as such an instruction would have been irrelevant and confusing.

We now turn to the police report, which Ms. Ross asserts was admissible to attack the credibility of Mr. Allen, the prosecution's main witness. She argues that the trial court erred in not allowing her to introduce the police report, which recounted that Mr. Allen had stated, shortly after the incident, that the **dogs** were mating when he entered the backyard to try to separate them, to impeach Mr. Allen's credibility at trial when he testified that the **dogs** were not mating.

"The admission or exclusion of relevant evidence rests within the sound discretion of the trial court." State v. Sage (1987), 31 Ohio St.3d 173, paragraph two of the syllabus. An abuse of discretion is more than an error of judgment, but instead demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619, 621. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Id.* Here, no defense to Akron City Code 92.25(B)(4) would be implicated by the **dogs** having been mating. Hence, the issue of whether the **dogs** were mating is irrelevant in this matter. Therefore, "under no circumstances would the defense be permitted to introduce extrinsic evidence, [as] \* \* \* 'a witness may not be impeached by evidence that merely contradicts his testimony on a matter that is collateral and not material to any issue in the trial.'" State v. Boggs (1992), 63 Ohio St.3d 418, 422, quoting Byomin v. Alvis (1959), 169 Ohio St. 395, 396. "[A] reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as a basis thereof." State ex rel. Carter v. Schotten (1994), 70 Ohio St.3d 89, 92. Accordingly, as this matter was irrelevant at trial, we cannot conclude that the trial court abused its discretion in excluding this evidence offered solely to impeach Mr. Allen on a collateral matter. Ms. Ross's fifth and eighth assignments of error are overruled.

## Sixth Assignment of Error

THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN THE CONVICTION AND THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTIONS FOR ACQUITTAL WHERE THERE WAS NO EVIDENCE THAT APPELLANT WAS "CAPABLE OF PERFORMING" ANY ACT OR DUTY REQUIRED BY LAW.

## Seventh Assignment of Error

THE CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

\*10 Ms. Ross avers that her conviction was against the manifest weight of the evidence and based upon insufficient evidence. We disagree.

"While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion." State v. Gulley (Mar. 15, 2000), Summit App. No. 19600, unreported, at 3, citing State v. Thompkins (1997), 78 Ohio St.3d 380, 390 (Cook, J., concurring). When a defendant asserts that his conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

State v. Otten (1986), 33 Ohio App.3d 339, 340. This discretionary power should be invoked only in extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant. *Id.* Because sufficiency is required to take a case to the jury, a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency. Thus, a determination that [a] conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency.

(Emphasis omitted.) State v. Roberts (Sept. 17, 1997), Lorain App. No. 96CA006462, unreported, at 4.

Akron City Code 92.25(B)(4) provides, as pertinent here, "[a]ny person owning \* \* \* a **dog** shall be strictly liable if such **dog** is found to \* \* \* [b]ite \* \* \* any person \* \* \* while the **dog** is off the premises of the owner [.]" Ms. Ross stipulated that she was the owner of the **dog** and that it was not on her property. Hence, the only remaining element is whether the **dog** bit Mr. Allen. Mr. Allen testified that the **dog** bit him repeatedly. Hence, we must conclude that Ms. Ross's conviction is not against the manifest weight of the evidence, nor is it based upon insufficient evidence. Ms. Ross, however, challenges her conviction due to the lack of evidence of some culpable mental state, which is not an element of the offense.

Akron City Code 92.25(B)(4) clearly provides that it is intended to be a strict liability offense. Akron City Code 92.25(B) and (F). Ms. Ross cites R.C. 2901.21(B), which provides that when an offense plainly indicates a purpose to impose strict liability, "culpability is not required for a person to be guilty of the offense." Akron City Code 130.07(B) is substantially similar, providing that "[w]hen the section defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in such section, then culpability is not required for a person to be guilty of the offense." Hence, we conclude that this is a strict liability offense and that the prosecution need not have shown any degree of culpability. See, generally, State v. Rife (June 13, 2000), Franklin App. No. 99AP-981, unreported, 2000 Ohio App. LEXIS 2500, at \*9 ("[T]he language of R.C. 955.22(D), and its statutory and policy considerations, lead us to conclude that the Ohio Legislature intended to impose strict criminal liability on owners who fail to restrain or confine their vicious or dangerous **dogs** as specified in the section.") Accordingly, Ms. Ross's sixth and seventh assignments of error are overruled.

## Ninth Assignment of Error

PROSECUTORIAL MISCONDUCT BY ARGUING TO THE JURY THAT THE MATTER WAS NOT A CRIMINAL CASE, COUPLED WITH THE COURT'S FAILURE TO TAKE ANY CURATIVE MEASURES, DENIED APPELLANT A FAIR TRIAL WHEN SHE WAS CHARGED WITH A FIRST DEGREE MISDEMEANOR CRIME.

\*11 Ms. Ross asserts that the prosecutor committed misconduct by stating in his closing argument that “[t]he state is not asking you to decide whether or not this defendant is a criminal.” She argues that this confused the jury as to whether the case was civil or criminal, thereby, prejudicing her. We disagree.

In reviewing allegations of prosecutorial misconduct, this court must bear in mind that the “ ‘touchstone of due-process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor.’ ” State v. Hill (1996), 75 Ohio St.3d 195, 203, quoting Smith v. Phillips (1982), 455 U.S. 209, 219, 71 L.Ed.2d 78, 87. Prosecutorial misconduct will not serve as grounds for reversal unless the defendant was denied a fair trial. State v. Maurer (1984), 15 Ohio St.3d 239, 266. The defendant must prove that the prosecutor's comments were improper and that they prejudicially affected his or her substantial rights. State v. Smith (1984), 14 Ohio St.3d 13, 14.

The prosecutor stated in closing arguments: “The state is not asking you to decide whether or not this defendant is a criminal. The state is asking you ... [.]” At that point, Ms. Ross's attorney objected. The trial court overruled the objection, and the prosecutor continued, “[t]he state is asking you to decide whether her **dog** bit Mr. Allen in the face, or bit him at all.” As the other elements of the crime charged were admitted by Ms. Ross, this was the only issue remaining for the jury. Further, Ms. Ross's attorney, in her closing argument, asserted not only that Mr. Allen was mistaken about which **dog** bit him, but also asked the jury to consider “[Ms. Ross] owns a **dog**. Does that make her a criminal? That's what I'm going to ask you to think about. The fact that she owns a **dog**, does that make her a criminal?” Essentially, she argued for jury nullification of the statute in question.

We cannot find prosecutorial misconduct here. The conduct at issue herein was made a crime by the duly elected Council and Mayor of the City of Akron; it was not the jury's province to decide whether such conduct was, or should be a crime; rather, the jury was to determine whether Ms. Ross committed the acts specified under the statute. See United States v. Moylan (1969), 417 F.2d 1002, 1006-7 (stating that although a jury may possess the power to nullify the law by acquitting despite undisputed guilt, such lawless behavior should not be encouraged, for it is for the judge to instruct on the law and for the jury to apply the facts as it finds them to the law as given). Accordingly, we find no prosecutorial misconduct or prejudice to Ms. Ross. Ms. Ross's ninth assignment of error is overruled.

## III.

Ms. Ross's assignments of error are overruled. The judgment of the Akron Municipal Court is affirmed.

*Judgment affirmed.*

The Court finds that there were reasonable grounds for this appeal.

\*12 We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

Costs taxed to Appellant.

Exceptions.

SLABY, J., concurs.

CARR, J., dissents saying:

I respectfully dissent. I would find Akron City Code 92.25(B)(4) to be void for vagueness. As the majority notes, "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. \* \* \* Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. \* \* \* Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of [those] freedoms.'"

(Alterations in original.) Akron v. Rowland (1993), 67 Ohio St.3d 374, 381. The Revised Code provides a clear standard for culpability. Namely, in R.C. 955.22 and 955.99, the Code provides for culpability if a **dog** escapes from its owner's premises only if the owner had not followed certain procedures in restraining his or her **dog**. For instance, if a dangerous or vicious **dog** is "off the premises of the owner" and "on a chain-link leash or tether that is not more than six feet in length" and muzzled, R.C. 955.22(D)(2), and the **dog** in some manner escapes and injures a person, no crime has been committed, R.C. 955.99(G). Further, for the owner of a non-vicious, non-dangerous **dog**, the **dog** must only be restrained on the premises of the owner "by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape," or be "under [the] reasonable control of some person." R. C. 955.22(C). Without such a predicate breach of care, the revised code provides no penalty. See R.C. 955.99. However, Akron City Code 92.25(B)(4) does not provide any standard which a **dog** owner may abide by in order to avoid criminal liability.

Akron City Code 92.25 is void for vagueness, "because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." (Citation omitted.) Rowland, 67 Ohio St.3d at 381. Akron City Code 92.25 provides no standard by which one may abide to avoid liability. In essence, any **dog** owner may be found criminally culpable no matter how securely the **dog** is confined or what precautions he or she takes if, by some chance occurrence or the acts of another, the **dog** leaves its master's premises and harms a person, domestic animal, or feline. Akron City Code 92.25(B)(4). Further, "if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them." (Citation omitted.) Rowland, 67 Ohio St.3d at 381. Akron City Code 92.25's vague and unclear prohibition provides no standard by which those who wish to conform to the law may abide. As such, prosecutors and local law enforcement personnel are left to adjudge who should be charged under its unclear prohibition, inviting discriminatory and arbitrary enforcement. Accordingly, I would find Akron City Code 92.25(B)(4) to be void for vagueness, and therefore, unconstitutional. For the forgoing reasons, I respectfully dissent.

Ohio App. 9 Dist., 2001.  
City of Akron v. Ross  
Not Reported in N.E.2d, 2001 WL 773235 (Ohio App. 9 Dist.)

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