

IN THE SUPREME COURT OF OHIO

KELLY MENDENHALL, et al.,)	CASE NO. 2006-2265
)	
Petitioners,)	
vs.)	On Certified Question of Law
)	From The United States District
)	Court for the Northern District
THE CITY OF AKRON, et al.)	of Ohio
)	
Respondents.)	

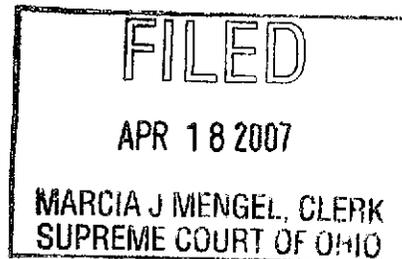
**BRIEF OF *AMICUS CURIAE* OF THE CITY OF CLEVELAND IN SUPPORT OF
RESPONDENTS THE CITY OF AKRON AND NESTOR TRAFFIC SYSTEMS
INC.**

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I. INTEREST OF AMICUS CURIAE

The City of Cleveland (“Cleveland”) has a significant interest in the certified question placed before the Court because of its enactment and continuing enforcement of Cleveland Codified Ordinance 413.031 (“Section 413.031”). This ordinance was enacted pursuant to the city’s Home Rule Authority under the Ohio Constitution and it authorizes the use of an automated traffic enforcement camera system to impose civil penalties for red light and speeding violations that are photographed by the automated camera system. As identified at page four of Judge Dowd’s “Order of Certification”, Cleveland is a defendant in *Michael McNamara v. City of Cleveland, et al.*, No. 06-582364 (Cuyahoga County, filed Jan. 20, 2006), an attempted class action wherein the constitutionality of Section 413.031 is being challenged.

Section 413.031 does not abrogate existing Ohio traffic laws and Cleveland’s use of advanced camera technology supplements the City’s continuing enforcement of criminal traffic statutes. Section 413.031 was enacted to better protect the health, safety, and welfare of the people of Cleveland. Section 413.031 and other similar local ordinances do not conflict with the general laws of Ohio, rather such ordinances exercise the inherent municipal police powers provided directly to municipalities by Section 3, Article XVIII of the Ohio Constitution. Cleveland seeks to have the certified question answered in the affirmative.

II. STATEMENT OF FACTS

The certified question placed before this Court by Judge David Dowd of the Northern District of Ohio asks:

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.

Cleveland believes that the answer to this question must be yes, where a supplemental automated traffic enforcement camera system has been adopted by ordinance that establishes the imposition of a civil penalty for those red light or speeding violations that are photographed by the automated camera system. Cleveland's automated camera ordinance does not abrogate, displace or limit the ongoing enforcement of existing criminal traffic laws and penalties. No provision of the Ohio Revised Code Ohio addresses the municipal use of automated cameras for traffic enforcement purposes.¹

A. Section 413.031 was enacted by City Council as a supplemental safety measure to better protect the citizens of Cleveland.

Cleveland City Council initially enacted Section 413.031 with Ordinance No. 176-A-05 "to supplement the Codified Ordinances". (Appx. 1). In the recitations preceding the codified language of Section 413.031, the City Council acknowledged that (1) the City of Cleveland has all powers of local self-government under Section 3, Article XVIII of the Ohio Constitution, (2) the City exercises its powers of local self-government through its Charter, and (3) that a fundamental purpose of local self-government is the protection of the health, safety, and welfare of its citizenry. (Appx. 1) The City Council

¹ State Representative James Raussen has submitted an *amicus* brief that identifies his interest as the author and sponsor of Sub. H.B. 56. The description of the bill contained in his interest statement has no standing in this matter as the bill was vetoed by former Governor Taft and did not become law.

acknowledged further that red light crashing and speeding cause needless serious injuries and death, and that “the incidence of red light running and speeding will be reduced through this program.” (Appx.1).

B. The civil penalties established by Section 413.031 for violations of existing red light and speed laws occur only when the violation is photographed by the automated traffic enforcement camera system.

Section 413.031 was subsequently amended, with the current language of the ordinance becoming effective on July 20, 2005. (Appx. 8). Section 413.031 makes it abundantly clear that the civil enforcement system established by the City is limited to those circumstances where the speeding and red light offenses at issue have been photographed by means of the “automated traffic enforcement camera system” authorized in the ordinance:

(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).² 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. (Appx. 4)

Civil liability under Section 413.031 does not constitute a criminal conviction and is deemed a noncriminal violation. (Appx. 4).

C. The civil penalties and camera enforcement system enacted by Section 413.031 do not abrogate existing criminal traffic laws.

Section 413.031(e) further establishes that the civil enforcement system associated with the automated traffic enforcement camera system does not abrogate, alter,

² “Automated traffic enforcement camera system” is actually defined in division (p)(1) of the ordinance. (appx. 8).

or limit (1) existing speed limits and red light laws, (2) criminal penalties associated with those laws, and (3) the ability of police officers to enforce existing criminal traffic laws:

(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.

While not implicated by the certified question, it is noted that Section 413.031 establishes a defined appeals process for those contesting liability, with liability findings by a hearing officer to be based on a preponderance of the evidence. (Appx. 6-7). Section 413.031(k) further establishes that liability will not be found where the event captured by the camera system is not an offense. (Appx. 7). The ordinance makes clear that a record is to be kept of the initial appeals hearing for use should the case be further appealed. (Appx. 7).

Cleveland enacted Section 413.031 as a supplemental public safety measure to reduce serious injuries and death. The ordinance assists in the regulation of traffic upon municipal roadways and was enacted pursuant to the police powers provided to municipalities by Section 3, Article XVIII of the Ohio Constitution.

III. ARGUMENT

A. A municipality's authority to regulate traffic by way of ordinance is an authorized police power under Section 3, Article XVIII of the Ohio Constitution

The Home Rule Amendment of the Ohio Constitution, Section 3, Article XVIII as enacted in 1912 provides that:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such police, sanitary

and other regulations, as are not in conflict with general laws.”

The Home Rule Amendment grants municipalities two separate types of authority. First, municipalities are empowered to regulate matters of local self-government. Second, municipalities have the right to adopt and enforce within their limits police regulations that do not conflict with the State’s general laws. *State Personnel Bd. of Review v. Bay Village Civil Serv. Comm’n* (1986), 28 Ohio St.3d 214, 217, 503 N.E.2d 518.

“The purpose of the Home Rule amendments was to put the conduct of municipal affairs in the hands of those who knew the needs of the community best, to-wit, the people of the city.” *Northern Ohio Patrolmen's Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375, 379, 402 N.E.2d 519, fn.1, citing *Goebel v. Cleveland Ry.* (1915), 17 Ohio N.P. (N.S.) 337, 343; *Billings v. Cleveland Ry.* (1915), 92 Ohio St. 478, 111 N.E. 155; *Froelich v. Cleveland* (1919), 99 Ohio St. 376, 385, 124 N.E. 212. The Home Rule Amendment was intended to allow municipalities “to solve their own problems and control their own affairs, independent of outside authority, whether the authority be a monarchy, an oligarchy or the people of a whole state.” *Fondessy Enterprises, Inc. v. City of Oregon* (1986), 23 Ohio St.3d 213, 219-220, 492 N.E.2d 797 (concurring opinion).

It is recognized that “a municipality’s authority to regulate traffic comes from the Ohio Constitution.” *State v. Parker* (1994), 68 Ohio St.3d 283, 285, 626 N.E.2d 106.

“The power...to fully control the use of [the public streets] is included within the term ‘powers of local self government’.” *Village of Perrysburg v. Ridgeway* (1923), 108 Ohio St. 245, 140 N.E. 595 (¶2 of Syllabus). “A municipality does not need a statutory grant of authority to regulate traffic.” *Geauga Cty. Bd. of Comm. v. Munn Road Sand & Gravel* (1993), 67 Ohio St.3d 579, 584, 621 N.E.2d 696. “Thus, a municipality may

regulate in an area such as traffic whenever its regulation is not in conflict with the general laws of the state.” *State ex rel Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923 at ¶19, quoting *Village of Linndale v. State of Ohio* (1999), 85 Ohio St.3d 52, 54, 706 N.E.2d 1227. “Section 413.031 represents Cleveland’s attempt to regulate on the subject of local traffic.” *Id.*

1. Section 413.031 and the civil penalty associated with adoption of the automated traffic enforcement camera system is presumed to be constitutional.

It is a fundamental principle of Ohio law that courts are required to presume the constitutionality of lawfully enacted legislation. *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 38, 616 N.E.2d 163, citing *University Heights v. O’Leary* (1981), 68 Ohio St.2d 130, 135, 429 N.E.2d 148 and *Hilton v. Toledo* (1980), 62 Ohio St.2d 394, 405 N.E.2d 1047, see also *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, at ¶20 (“Legislative enactments are presumed to be constitutional.”).

“*Ordinances-like Section 413.031-are afforded the same presumption.*” *State ex rel Scott v. City of Cleveland*, *supra*, 2006-Ohio-6573 at ¶18 (emphasis added). An ordinance that is challenged on constitutional grounds will not be invalidated unless it is established that the ordinance is unconstitutional beyond reasonable doubt. *Hale v. City of Columbus* (1990), 63 Ohio App.3d 368, 372, 578 N.E.2d 881.

As documented in Ord. No. 176-A-05, Cleveland enacted Section 413.031 for “the protection of the health, safety, and welfare of the citizenry.” (Appx. 1) Legislative concern for public safety is not only a proper police power objective—it is a mandate. *Arnold, supra*, 67 Ohio St.3d, at p. 47. The determination of whether Section 413.031 or any other traffic safety measure was reasonably necessary for the safety of the public is

left to the judgment and discretion of the municipality's legislative body. See, e.g. *Dayton v. S.S. Kresge Co.* (1926), 114 Ohio St. 624, 629, 151 N.E. 775. It is not the Court's function to pass judgment on the wisdom of an ordinance, as that is the task of the legislative body that enacted it. *Arnold*, supra, 67 Ohio St.3d, at 48. Additionally, "[u]nless there is a clear and palpable abuse of power, a court will not substitute its judgment for legislative discretion. Local authorities are presumed to be familiar with local conditions and to know the needs of the community." *Porter v. Oberlin* (1965), 1 Ohio St.2d 143, 149, 205 N.E.2d 363, quoting *Allion v. City of Toledo* (1919), 99 Ohio St. 416, 124 N.E. 237 (syllabus).

With an understanding of local conditions and community needs, Cleveland's City Council properly enacted Section 413.031 as a traffic regulatory measure with an acknowledgement that the automated traffic enforcement camera system being enacted would reduce needless serious injuries and death. (Appx. 1).

B. Section 431.031 does not conflict with Ohio general laws.

Under the Ohio Constitution, a municipality may enact laws regulating traffic as long as those laws do not conflict with the general laws of the state. A state statute would take precedence over a municipality's ordinance only when the (1) ordinance is in conflict with the statute; (2) the ordinance is an exercise of police power, rather than local self-government; and (3) the statute is a general law. *City of Canton v. State of Ohio*, 95 Ohio St.3d 149, 2002-Ohio-2005, 859 N.E.2d 923.

A municipal ordinance conflicts with a general law only if the ordinance permits something that the statute forbids or forbids something that the statute permits. *Fondessy Enters., Inc. v. Oregon* (1986), 23 Ohio St. 3d 213, 492 N.E.2d 797, (syllabus ¶ 2);

Village of Struthers v. Sokol (1923), 108 Ohio St. 263 (syllabus ¶ 2). Section 4131.031 does not abrogate existing traffic laws and the ordinance does not permit any actions that R.C. §§ 4511.13 (failure to obey traffic control devices) and 4511.21 (speed limits), prohibit, nor does it prohibit any conduct permitted by state law. Indeed, the State and the City are not in conflicting positions as both would agree that speeding and the failure to obey traffic signals are undesirable conduct that should be prohibited.

1. There can be no conflict in the absence of a state statute addressing camera enforcement issues.

In *Greenburg v. City of Cleveland* (1918), 98 Ohio St. 282, 120 N.E. 829 the Court was confronted with circumstances where the City had identified a non-violent criminal offense not recognized by any state statute. Appellants contended that the City had no authority to enact such an ordinance arguing that the prohibition of crimes and offenses were within the exclusive police powers of the State. The Court found no conflict and disposed of the matter in favor of the City finding that Section 3, Article XVIII of the Ohio Constitution contemplated that both the state and the municipalities of the state could exercise “the same police power.” *Id.* at p. 286. The Court reached its conclusion in favor of the City reasoning:

There is no statute of this state making it offense to attempt to steal and take from the person of another anything of value, otherwise than by force and violence and by putting in fear. That being true, of course this ordinance does not conflict with the general laws of the state, and, if there were a statute creating the same offense, it could not be exclusive, even if the General Assembly of Ohio in express terms prohibited the municipality from legislating upon the same subject matter. *Id.*

Notwithstanding Representative Raussen’s stated interest as an *amici* in favor of the petitioners, the State of Ohio has enacted no statute addressing “automated traffic enforcement camera systems” and the use of such camera systems by municipalities in

the reasonable exercise of their constitutional police powers. That being true there is no conflict presented.

2. Camera enforcement laws incorporating a civil penalty only where violations are documented by camera are not in conflict with the state traffic laws established in Chapter 4511 of the Revised Code.

The "conflict" argument being made basically comes down to the mistaken position that civil enforcement of speeding and red light violations when captured by way of an automated traffic enforcement camera system results in violation of general law because no criminal penalty arises. It should be clear that a municipality's use of a supplemental camera enforcement system in this regard and to better protect the public presents no conflict.

First, it has long been held that uniform application of Ohio's traffic laws as mandated by R.C. § 4511.06 of the Ohio Revised Code is not a general law.³ See *City of Columbus v. Molt* (1973), 36 Ohio St.2d 94, 304 N.E.2d 245; *Bailey v. City of Martins Ferry* (1976), 46 Ohio St.2d 95, 346 N.E.2d 317. There is no doubt that such holding occurs within the context of state/local general law conflict analysis:

Often referred to as the 'home rule amendment,' Section 3 of Article XVIII provides: '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.'

Appellees' contention that the ordinance conflicts with R.C. 4511.06 cannot be sustained. Under *Columbus v. Molt* (1973), 36 Ohio St.2d 94, 304 N.E.2d 245, R.C. 4511.06 is not part of the 'general laws,'

³ R.C. § 4511.06 states in pertinent part as follows:

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...

as that term is used in Section of Article XVIII, and, thus, does not provide a basis upon which a conflict may be asserted.
Bailey, 46 Ohio St.2d at 96-97. (Emphasis added).

In *City of Columbus v. Molt* the defendant had also argued that the municipal traffic ordinance at issue was invalid because it imposed a greater penalty for reckless operation of a motor vehicle than the penalty provided by R.C. 4511.99(F). The *Molt* Court rejected defendant's argument, holding that "R.C. § 4511.99(F) and 4511.06 are not general laws as that term is used in Section 3, Article XVIII of the Ohio Constitution." More recently in *State of Ohio v. Williams*, 7th Dist. No. 01 CA 221, 2002-Ohio 5022, the Court of Appeals, citing to *Molt*, again recognized that the penalty providing section is not general law as would be contemplated under a constitutional home rule analysis:

In *City of Columbus v. Molt* (1973), 36 Ohio St.2d 94, 304 N.E.2d 245, the Court was faced with a city ordinance that established a greater penalty for reckless operation than the state statute. The Court held that R.C. 4511.99, the penalty-providing section, was not a general law as contemplated by the constitution. *Id.* at 95, 304 N.E.2d 245, citing *Youngstown v. Evans* (1929), 121 Ohio St. 342, 168 N.E. 844. Hence, the Court found that the ordinance could not be in conflict with general laws. *Id.* at ¶ 25.

See also *Maple Heights v. Blackburn* (Oct. 24, 1974), 8th Dist. No. 33329 (The appellate court, citing *Molt*, rejected the defendant's argument that a local ordinance imposing a penalty in excess of ORC 4511.21 would be in conflict with a general law.)

The *Molt* and *Bailey* holdings are in accord with the recent *City of Canton v. State of Ohio* decision which defines "general law" as follows:

"[T]o constitute a general law for purposes of home-rule analysis, a statute must be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, *rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations*, and (4) prescribe a rule of conduct upon citizens generally." *Id.* at p. 153 (emphasis added).

A statute such as R.C. 4511.06 that attempts to limit the legislative power of a municipal corporation is simply not the general law in Ohio. See also *Village of Linndale, supra* 85 Ohio St.3d at 55. (The Court found a prohibitory traffic regulation statute, though clearly addressing an exercise of police power, unconstitutional because, among other deficiencies, it represented an improper attempt to limit local legislative powers.)

That no potential conflict exists between Cleveland's enactment of Section 413.031 and Chapter 4511 of the Revised Code is further supported by reference to R.C. § 4511.07 which provides in pertinent part that:

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:

(B) Regulating traffic by means of police officers or traffic control devices;

(I) Regulating the use of certain streets by vehicles, streetcars, or trackless trolleys. (emphasis added).

While *Geauga Cty. Bd. of Comm. v. Munn Road Sand & Gravel* makes clear that a municipality's authority to regulate traffic comes from the Ohio Constitution, and not from the Revised Code, the Court further recognized therein that:

When the scope of a *municipality's* powers is at issue, a provision that certain statutes "do not prevent" regulation is effectively the same as specifically providing that no conflict exists with general laws of the state when a municipality regulates in the enumerated areas. See *Shapiro v. Butts* (1951), 155 Ohio St. 407, 418-419, 44 O.O. 381, 386, 99 N.E.2d 173, 178.

Id. 67 Ohio St.3d at p. 584.

R.C. 4511.07's "do not prevent" language merely amplifies an understanding that Cleveland has authority under the Ohio Constitution's Home Rule Amendment to

regulate its municipal traffic by way of local ordinance – to include enactment of the camera enforcement system established with Section 413.031.

3. **Section 413.031 does not abrogate or limit criminal enforcement or criminal penalties established by state statute for red light and speed offenses and it does not change the degree of offense established by the state’s red light and speed statutes. The automated traffic camera enforcement system authorized by Section 413.031 is a supplemental law for which there is no state equivalent.**

Reliance on *City of Cleveland v. Betts* (1958), 168 Ohio St. 386, 154 N.E.2d 917, to argue that Section 413.031’s incorporation of a civil penalty conflicts with Ohio general law is misplaced.⁴ *Betts* involved circumstances where the municipality had changed a state mandated felony offense to a misdemeanor, and the Court expressed a clear concern because of the infamous nature of the felony crime at issue. The Court found a conflict under that circumstance and reasoned that:

Conviction of a misdemeanor entails relatively minor consequences whereas the commission of a felony carries with it penalties of a severe and lasting character. See 16 Ohio Jurisprudence (2d), 116, Section 750. If by ordinance a municipality can make the felony of carrying concealed weapons a misdemeanor, what is there to prevent it from treating armed robbery, arson, rape, burglary, grand larceny or even murder in the same way, and finally dispose of such offenses in the Municipal Court. *Betts*, supra at p. 390.

There are no similar policy concerns presented under the present circumstances. Most importantly, Section 413.031 does not alter or limit state created criminal penalties for statutory red light and speeding offenses already on the books, nor does the ordinance alter or limit police enforcement of the existing criminal speeding and red light laws. Rather, Section 413.031 serves as a supplement - to assist in controlling red light and speeding limits by employing an “automated traffic enforcement camera system.” Civil

⁴ Additionally, as noted above the Court’s post-*Betts* decision in *Columbus v. Molt* specifically holds that a traffic penalty as established in RC 4511.99 for reckless operation was not a “general law” as that term is used in Section 3, Article XVIII of the Ohio Constitution.

enforcement only occurs under authority of Section 413.031 where automated camera traffic enforcement system have documented a violation of the State's red light and speeding standards. In *Betts* the Court was concerned because the misdemeanor conviction entailed "relatively minor consequences" for what was classified as a felony by the State of Ohio. Such basic concern does not arise in the context of speed and red light laws as (1) no felony conduct is at issue and (2) the difference in actual consequences between the civil fine contemplated by the camera enforcement ordinance and the misdemeanor penalties authorized by Chapter 4511 are relatively inconsequential.⁵

The Court's holdings in *City of Niles v. Howard* (1984), 12 Ohio St.3d 162, 466 N.E.2d 539 and *City of Toledo v. Best* (1961), 172 Ohio St. 371, 176 N.E.2d 520 are not pertinent where a municipality has adopted a supplemental camera enforcement ordinance for which there is no equivalent state statute. The civil penalty authorized by Section 413.031 only occurs where a speeding or red light violation is documented by the automated traffic enforcement camera system established by the ordinance. Cleveland has not changed or otherwise abrogated any existing criminal traffic statutes or penalties through adoption of Section 413.031, nor limited ongoing criminal enforcement by its police of such laws – just the opposite.

4. Section 413.031 represents a valid exercise of Cleveland's police power.

⁵ For example, R.C. 2929.28(A)(2)(a)(v) allows a fine of not more than one hundred fifty dollars for a minor misdemeanor. Section 413.031(b) provides that the penalty for all red light violations and speeding violations up to 24 miles per hour over the speed limit is \$100.00. Speeding violations in excess of 25 miles per hour over the limit or occurring in a school or construction zone are \$200.00.

An ordinance such as Section 413.031 with its incorporation of a civil penalty for speeding and red light violations is a valid exercise of the municipality's police power as "[it] bears a real and substantial relation to the public health, safety, morals, and general welfare of the public, and is not unreasonable, arbitrary or capricious." *City of Cleveland v. Raffa* (1968), 13 Ohio St.2d 112, 116, 235 N.E.2d 138, citing *Matz v. J.L. Curtis Cartage Co.* (1937), 132 Ohio St. 272, 7 N.E.2d 220. The ordinance does not permit something that the statute forbids (violation of the state's speeding and red light laws) nor forbids something that the statute permits (driving in compliance with such laws). The proper determination that the supplementary camera enforcement scheme adopted in section 413.031 was reasonably necessary for the safety of the public is left to the judgment and discretion of Cleveland's City Council. The ordinance does not conflict with existing general law and its incorporation of civil liability for speeding and red light violations is fully authorized by the police powers vested in the City by Article 3, Section XVIII of the Ohio Constitution.

CONCLUSION

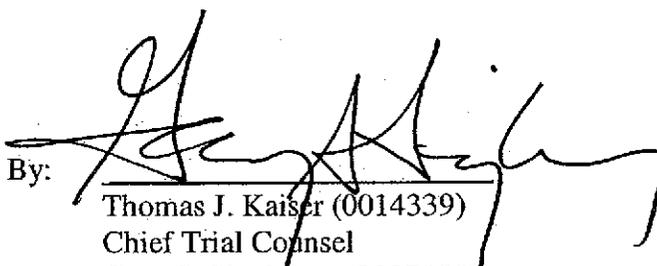
The City's enactment of Section 413.031 and the incorporation of a civil penalty when violations of the speeding and red light laws are documented by means of the automated traffic enforcement camera system established therein represents a valid exercise of the City's police powers under Article XVIII, Section 3 of the Ohio Constitution. The ordinance does not abrogate existing criminal laws and penalties and does not conflict with any other general laws of the state.

The certified question before the Court must be answered in the affirmative that 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, when such civil penalties are the result of violations documented by an automated traffic enforcement camera system such as those established by ordinance in the cities of Cleveland and Akron.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the "Brief of *Amicus Curiae* of the City of Cleveland in Support of the Respondents City of Akron and Nestor Traffic Systems, Inc." was served by regular U.S. Mail on this 18th day of April, 2007 to:

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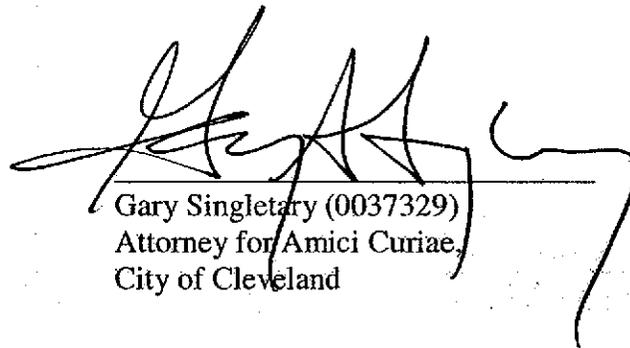
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APPENDIX

Southwesterly line of Parcel "C" of land conveyed to the City of Cleveland by deed recorded in Volume 4932, Page 287 of Cuyahoga County Deed Records;

Thence leaving said dock line Southeasterly along said Southwesterly line, South 31° 33' 47" East, 49.75 feet to a drillhole and cross set in concrete;

Thence South 43° 47' 18" East, 30.70 feet to a point at the Northwesterly corner of Parcel No. 1 of land conveyed to the Cleveland, Cincinnati, Chicago and St. Louis Railway Company by deed recorded in Volume 966, Page 380 of Cuyahoga County Deed Records;

Thence Northeasterly along the Northerly line of said Parcel No. 1, North 58° 26' 13" East, 4.50 feet to the Northeasterly corner thereof;

Thence Southeasterly along said Northeasterly line of Parcel No. 1, South 32° 19' 37" East, 150.00 feet to an iron pin set at an angle point therein;

Thence continuing Southeasterly along said Northeasterly line of Parcel No. 1, South 31° 33' 47" East, 94.00 feet to an iron pin set;

Thence continuing Southeasterly along said Northeasterly line of Parcel No. 1, South 30° 13' 50" East, 89.95 feet to the Principal Place of Beginning.

Containing 50,002 square feet or 1.1479 acres of land, more or less.

All iron pins set are 1/2" diameter and capped unless otherwise noted.

Bearings used are based on the Cleveland Regional Geodetic Coordinate System.

Section 2. That the term of the lease authorized by this ordinance shall not exceed twenty-five years, with one option to renew for an additional twenty-five years, upon mutual agreement of the parties.

Section 3. That the property described above shall be leased at a rental rate of \$1.00 and other valuable considerations, which is determined to be fair market value.

Section 4. That the lease may authorize the Lessee to make improvements to the leased premises subject to the approval of appropriate City agencies and officials.

Section 5. That the lease shall be prepared by the Director of Law. The terms of the lease shall be in accordance with those described in the executive summary for this legislation as amended by the Finance Committee of this Council and contained in File No. 127-05-A.

Section 6. That the Director of Parks, Recreation and Properties, the Director of Law, and other appropriate City officials are authorized to execute any documents and certificates, and take any other actions which may be necessary or appropriate to effect the lease authorized by this ordinance.

Section 7. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed April 25, 2005.
Effective April 29, 2005.

Ord. No. 176-A-05. (As a substitute for Ord. No. 176-05).

By Mayor Campbell.

An emergency ordinance to supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Section 413.031 relating to the use of automated cameras to impose civil penalties upon red light and speeding violators; and authorizing the Director of Public Safety to enter into one or more contracts with a consultant or consultants to install and maintain automated cameras.

Whereas, under Article 18, Sec. 3 of the Ohio Constitution, the City of Cleveland has all powers of local self-government; and

Whereas, the City of Cleveland exercises its powers of local self-government through its charter; and

Whereas, a fundamental purpose of local self-government is the protection of the health, safety, and welfare of the citizenry; and

Whereas, red light crashing and speeding cause needless serious injuries and death; and

Whereas, the incidence of red light running and speeding will be reduced through this program; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Section 413.031 to read as follows:

Section 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 483.03.

(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 483.03 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) *Site selection.* Each site of a red light camera or fixed speed camera shall be selected by ordinance of Council properly published in the City Record amending this section to include the sites.

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 a 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.

(h) Evidence of ownership. It is prima facie evidence that the person registered as the owner of the vehi-

cle 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 selection of the locations of automated cameras shall be made by ordinance of Council as specified in division (g), upon nomination of the Director of Public Safety, in consultation with the appropriate council members, the Director of Public Service, the Police Traffic Commissioner, and the Commissioner of Traffic Engineering. 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
413.031(c)	
Up to 24 mph over the speed limit	\$100.00
25 mph or more over the speed limit	\$200.00
Any violation of a school or construction zone speed limit	\$200.00

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.

Section 2. That the Director of Public Safety is authorized to enter into one or more contracts with a term not to exceed five years with a consultant or consultants to install

and maintain automated cameras to photograph red light and speeding violators, to send notices, and assist the Director in the implementation of this program. The Board of Control shall select the consultant or consultants and fix the compensation for services from a list of qualified vendors identified through canvass.

The contract must in all respects conform to the requirements of this ordinance. The Director of Law shall include in each contract strong provisions for cancellation in the event of default. The compensation paid to any consultant shall be on a flat fee basis and in no event shall the fee be contingent upon the number of tickets actually issued or paid.

Each contract shall provide that the consultant shall receive no payment for its services until the numbers of cameras under the 90-day plan, as described in File No. 175-A-05-A, are fully operational and the City has received funds from paid tickets that are equal to or greater than the fees owed to the consultant under the contract.

Section 3. That any fees collected from the tickets shall be deposited in the appropriate agency fund. Any fees, including those for the consultants and the Clerk of the Cleveland Municipal Court, shall be paid out of this fund. All remaining balances in the fund shall be paid to the general fund.

Section 4. That an amount fixed by the Board of Control, which amount shall not exceed \$10.00 per paid ticket, shall be paid to the office of the Clerk of the Cleveland Municipal Court and the Parking Violations Bureau for the costs incurred by them to conduct this program.

Section 5. That the Cleveland Municipal Court or the Clerk of the Cleveland Municipal Court, through their own resources or through contract with an outside vendor, may pursue the collection of any tickets that remain unpaid after the requisite notices have been sent to the liable party and all other pre-collection obligations of the consultant or consultants employed under the authority of Section 2 are completed. The \$40.00 late penalty established by division (o) of Section 413.031 if the penalty is not paid with 40 days from the date of mailing the ticket to the offender shall be paid to the vendor employed by the Cleveland Municipal Court or its Clerk for the collection of unpaid tickets.

Section 6. That unless authorized by further legislative action, the number of red light and speed cameras shall not exceed the following:

- 30 fixed red light cameras
- 6 fixed speed or green cameras
- 6 mobile speed units
- 6 fixed speed cameras

Section 7. That the request for proposals, the contract(s) when fully executed, and any memoranda that describe the reasons for selection of the vendor(s) shall be made part of the legislative record of this ordinance and placed in the file described above.

Section 8. That the Directors of Public Safety and Public Service shall report to the Public Safety and Public Service Committees of Coun-

on January 1 and July 1 of each year of this program, commenting in 2008. Each report shall describe the impact of the automated camera enforcement program on public safety and shall include a summary of the number of tickets issued, the number paid and that remain unpaid, and the number that were appealed and the results of those appeals.

Section 9. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed May 2, 2005.
Effective May 3, 2005.

Ord. No. 232-05.

By Council Members Gordon and Jackson (by departmental request).
An emergency ordinance authorizing the Director of Community Development to amend Contract No. 53649 with Otis Associates Limited Partnership to make modifications to the contract.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Director of Community Development is authorized to enter into an amendment to Contract No. 53646 and any security documents with Otis Associates Limited Partnership, to eliminate the low-income rent reimbursement program as described in Section 5.15 of the agreement. All other loan terms contained in the original loan agreement shall remain the same.

Section 2. That the amendment to the loan agreement authorized shall be prepared by the Director of Law.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed April 25, 2005.
Effective April 29, 2005.

Ord. No. 242-05.

By Council Member Coats.

An emergency ordinance to supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Section 501.031, relating to construction of private roads; and amending Section 501.99, as enacted by Ordinance No. 63410-A, passed September 22, 1924, relating to penalties.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Section 501.031 to read as follows:

Section 501.031 Construction of Private Roads

(a) *Definitions.* "Private Road" means a privately owned or controlled and maintained drive, street, road or lane, that provides the primary means of vehicular ingress and egress to two or more parking lots, unimproved parcels, or principal buildings, or three or more dwelling houses, whether that drive, street, road or lane is created by a private right-of-way, easement, or other device. A private road shall also include the following:

(1) an access road where two or more lots, or dwelling houses share a common access drive or device even if each lot has the required frontage on a public road.

(2) any and all extensions, additions, or branches of, or to a private road shall be considered part of the private road that abuts the public road, except those extensions, additions, or branches that access less than three dwelling houses, or less than two lots, parcels, or principal buildings.

(b) *Permit Required.* No person shall construct a private road or alter an existing private road without first obtaining a permit for the construction or alteration from the Department of Public Service. The periodic cleaning and re-surfacing of the road shall not be considered an alteration and shall not require a permit as long as the specifications under which the road was approved are not compromised.

(c) *Form of Permit.* Before a person may receive a permit the person shall file with the Director of Public Service an application on the form provided by the Director. This application shall include any information the Director deems necessary and shall be accompanied by road plans showing the proposed construction or alteration. The proposed construction shall comply, at a minimum, with all Rules and Regulations enacted by the Director. At the time of the application, applicant shall pay a non-refundable fee in accordance with a fee schedule fixed from time to time by the Board of Control.

(d) *Decision on Application.* The Director shall approve or deny the permit within thirty days of receiving a completed application. The Director may inform permittee that the construction plans do not conform to the City's Rules and Regulations. The permittee may change the construction plans and resubmit them.

If a permit is denied, permittee may appeal to the Board of Zoning Appeals within thirty days of the denial.

(e) *Other Regulations.* Any private road shall comply with all other applicable regulations, including the Zoning Code requirements for access and maintenance of off-street parking spaces.

(f) *Rules and Regulations.* The Director may enact Rules and Regulations concerning construction of private roads, including, but not limited to, standards and specifications for the private streets, and regulations for the construction process.

The Rules and Regulations shall require that, at a minimum, the roads meet City specifications for similar roads. The Rules and Regulations shall take effect thirty days after their publication in the City Record.

(g) *Periodic Inspections; Fee.* The Director may make periodic inspections of the road construction to ensure compliance with the construction plans as approved, and the applicable Rules and Regulations. At the completion of the construction, the Director shall make a final inspection of the road and issue a certificate of completion. The Permittee shall be required to make a deposit in an amount as determined by the Director of Public Service for periodic inspections of the road construction. Any amounts not used shall be refunded to the Permittee.

(h) No person shall construct or alter a private road without first obtaining the permit required in this section.

(i) No person shall construct or alter a private road except in accordance with the permit and approved plans.

The Director is authorized to charge fees at the time of any inspection according to an inspection fee schedule fixed from time to time by the Board of Control.

Section 2. That Section 501.99 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 63410-A, passed September 22, 1924, is amended to read as follows:

Section 501.99 Penalty

(a) Whoever violates Section 501.02 shall be fined not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00).

(b) Whoever violates division (h) or (i) of Section 501.031 shall be guilty of a misdemeanor of the first degree.

Section 3. That existing Section 501.99 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 63410-A, passed September 22, 1924, is repealed.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed April 25, 2005.
Effective April 29, 2005.

Ord. No. 273-05.

By Council Members Westbrook, Cimperman and Jackson (by departmental request).

An emergency ordinance authorizing the purchase by one or more requirement contracts of labor and materials necessary for painting and paint removal on roadways, runways and other paved surfaces, for the various divisions of the Department of Port Control.

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

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

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

I-90 and West 41st Street

I-90 and West 44th Street

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.

(1) *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.

(1) *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 \$100.00 413.031(c) Up to 24 mph over
the speed limit \$100.00 25 mph or more over
the speed limit \$200.00 Any violation of a school
or construction zone
speed limit \$200.00

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. 1284-05. Passed 7-13-05, eff. 7-20-05)