

ORIGINAL

IN THE SUPREME COURT OHIO

13-1277

Bradley Walker,  
Plaintiff-Appellee,

v.

City of Toledo

and,

Redflex Traffic Systems, Inc

Defendants-Appellants.

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Supreme Court Case No. \_\_\_\_\_

On Appeal from the Lucas  
County Court of Appeals,  
Sixth Appellate District  
(Case No. L-12-1056)

NOTICE OF APPEAL OF APPELLANT CITY OF TOLEDO

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BRADLEY WALKER

FILED  
AUG 09 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF  
DEFENDANT-APPELLANT, CITY OF TOLEDO**

Defendant-Appellant, City of Toledo, hereby gives notice of its appeal to the Supreme Court of Ohio from the Decision and Judgment Entry of the Lucas County Court of Appeals, Sixth Appellate District, in Case No. L-12-1056, 2013-Ohio-2809, announced and journalized on June 28, 2013. This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

ADAM LOUKX, LAW DIRECTOR



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Adam Loukx, Director of Law  
Counsel for Appellant City of Toledo

**CERTIFICATION**

This is to certify that a copy of the foregoing Notice was mailed by regular U.S. mail to  
this 9th day of August, 2013 to the following:

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Adam Loukx, Director of Law

FILED  
COURT OF APPEALS

2013 JUN 28 AM 8 02

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Bradley L. Walker

Court of Appeals No. L-12-1056

Appellant

Trial Court No. CI0201101922

v.

City of Toledo, et al.

**DECISION AND JUDGMENT**

Appellees

Decided:

JUN 28 2013

\*\*\*\*\*

Andrew R. Mayle, Jeremiah S. Ray, Ronald J. Mayle and  
John T. Murray, for appellant.

Adam W. Loukx, Director of Law, and Eileen M. Granata,  
Senior Attorney, for appellee City of Toledo.

Quintin F. Lindsmith, Sommer L. Sheely and James P. Schuck,  
for appellee RedFlex Traffic Systems, Inc.

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**SINGER, P.J.**

{¶ 1} Appellant appeals a judgment of the Lucas County Court of Common Pleas  
dismissing a putative class action unjust enrichment suit against a city and traffic

**E-JOURNALIZED**

JUN 28 2013

enforcement camera company. Because we conclude the trial court's dismissal of the suit improper, we reverse and remand for further proceedings.

{¶ 2} In 2003, appellee city of Toledo ("city") instituted an automated red light enforcement system. Appellee RedFlex Traffic Systems, Inc. ("RedFlex") provided a camera system that synchronized with traffic signals to take pictures of automobiles that entered an intersection after the traffic light turned red. Speed measuring devices were later added. RedFlex installed, maintains and monitors the cameras. Appellees allegedly share the revenues generated from auto owners that are sent a civil "notice of liability" after having been photographed during a red light or speed violation.

{¶ 3} Appellant, Bradley L. Walker, was one of those who received such a notice and paid a \$120 "civil penalty." On February 24, 2011, appellant brought suit on behalf of himself and those similarly situated to recover the "civil penalty" he, and the others, paid. Appellant did not contest the validity of red light cameras. He concedes they are legal. Rather he asserted that the legal structure by which such penalties were extracted violated the Ohio Constitution, making the penalties collected unlawful. Appellant sought return of such money taken under the doctrine of unjust enrichment.

{¶ 4} Appellant advanced three theories as a basis for recovery. First, he maintained that by enacting the ordinance governing red light cameras, Toledo Municipal Code 313.12, the city unconstitutionally usurped the jurisdiction of the Toledo Municipal Court by diverting challenges to the violation notices to an administrative hearing officer set up within the police department. Second, appellant suggested the ordinance is

unconstitutionally vague because it delegates adjudicatory authority to the Toledo Police without articulating intelligible governance principles. Finally, appellant alleged, the Toledo Police failed to establish any administrative procedures by which a violation notice could be challenged, denying due process to those who received such notices.

{¶ 5} Both appellees filed a motion to dismiss appellant's complaint for failure to state a claim for which relief can be granted, pursuant to Civ.R. 12(B)(6). After briefing, the trial court granted appellees' motion and dismissed appellant's complaint.

{¶ 6} From this judgment, appellant brings this appeal. Appellant sets forth a single assignment of error:

The trial court erred in ruling that Mr. Walker failed to state a claim upon which relief can be granted.

{¶ 7} Review of a judgment granting a Civ.R. 12(B)(6) motion is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. When ruling on a motion to dismiss for a failure to state a claim upon which relief can be granted, a court must presume the truth of the factual allegations in the complaint and must make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). It must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him or her to recover. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. For these reasons, motions to dismiss for failure to

state a claim are rarely successful. *Tri-State Computer Exchange v. Burt*, 1st Dist. No. C-020345, 2003-Ohio-3197, ¶ 12.

### **Toledo Municipal Code 313.12**

{¶ 8} With the enactment of Toledo Municipal Code 313.12, the city adopted what is characterized in the code as a “civil enforcement system for red light and speeding camera system violations.” The plan imposes “monetary liability” on the owner of a vehicle for failure to comply with traffic lights or posted speed limits. City transportation, police and law departments are charged with the administration of the system. Police and the transportation division are tasked with choosing the location of automated red light and speed monitoring devices and maintaining the devices once installed. Apparent violations are to be processed by city officials or its agents. When a violation is recorded, the registered owner of the offending vehicle is sent a “Notice of Liability,” Toledo Municipal Code 313.12(a), indicating that he or she is liable for a “civil penalty” of \$120. Toledo Municipal Code 313.12(d)(1)(2).

{¶ 9} The ordinance declares that the fact an individual is the registered owner of a vehicle is “prima-facie evidence” that he or she was operating the vehicle at the time of the offense. Toledo Municipal Code 313.12(c)(3). An owner of a vehicle may be absolved of such presumptive liability only if, within 21 days of the notice, he or she furnishes a hearing officer with an affidavit identifying the person operating the vehicle at the time of the offense (at which point, presumably, liability shifts to the person

informed upon) or a police report showing that the vehicle was reported stolen prior to the offense. Toledo Municipal Code 313.12(c)(4).

{¶ 10} Toledo Municipal Code 313.13(d)(4) describes an appeal process. The provision, in its entirety, provides:

A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the "Notice of Liability." The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the citation and will be considered an admission. Appeals shall be heard through an administrative process established by the City of Toledo Police Department. A decision in favor of the City of Toledo may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

{¶ 11} In their motion to dismiss, appellees maintained that the ordinance is constitutional. Moreover, appellee city argued that unjust enrichment claims cannot be maintained against a municipality, since appellant did not appeal his violation there could be no due process violation and appellant lacked standing to bring an action. Appellee RedFlex also asserted that appellant waived a challenge to the law because he paid his fine and did not appeal, and that a constitutional challenge does not apply to RedFlex because it is not a state actor.

## I. *Mendenhall v. Akron*

{¶ 12} Appellee city first sought dismissal on the ground that the Ohio Supreme Court has approved the use of speed and red light detection devices in a civil administrative liability context in *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. The trial court properly ruled *Mendenhall* not dispositive of this matter. The question certified to the court in *Mendenhall* was whether, under home rule, a municipality may enact civil penalties for acts deemed criminal offenses by the state. *Id.* at ¶ 2. The court ruled that, since Akron’s ordinance did not alter or supersede Ohio law, it was compatible with the city’s home rule powers. *Id.* at ¶ 43. The question of the constitutionality of the ordinance in other respects was not before the court.

{¶ 13} We note that the *Mendenhall* court issued a caveat to its decision when, at ¶ 40, the court stated, “[a]lthough there are due process questions regarding the operation of the Akron Ordinance and those similar to it, those questions are not appropriately before us at this time and will not be discussed here.” The trial court concluded that this remark was a “passing comment.” We view the statement rather as an express limitation on the scope of the *Mendenhall* decision.

## II. Standing—Immunities

{¶ 14} Appellee city suggested to the trial court that appellant lacked standing to bring the suit and that a municipality cannot be liable in quasi-contract. Appellee RedFlex argued appellant is barred from challenging the ordinance because he failed to exhaust administrative remedies. In any event, appellee RedFlex insisted, it could not be

held liable for constitutional infirmities because it is not a state actor. The trial court rejected all of these arguments, and properly so.

{¶ 15} A party who has been or will be adversely affected by the enforcement of an ordinance has standing to attack its constitutionality. *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 30. Appellant alleges that he has received a notice of civil liability for a red light violation and has paid the penalty. This monetary injury produces sufficient interest in the operation of the ordinance to challenge its constitutionality.

{¶ 16} With respect to a suit in unjust enrichment, the general rule is that “all governmental liability ex contractu must be express and must be entered into in the prescribed manner.” *Perrysburg Twp. v. City of Rossford*, 149 Ohio App.3d 645, 2002-Ohio-5498, 778 N.E.2d 619, ¶ 58 (6th Dist.), quoting *Kraft Constr. Co. v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio App.3d 33, 44, 713 N.E.2d 1075 (8th Dist.1998). Nevertheless, it has been held that a suit seeking the return of specific funds wrongfully collected or held by the state may be maintained in equity. *Santos v. Ohio Bur. of Workers’ Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, 801 N.E.2d 441, syllabus. *Accord Judy v. Ohio Bur. of Motor Veh.*, 100 Ohio St.3d 122, 2003-Ohio-5277, 797 N.E.2d 45; *Ohio Hosp. Assn. v. Ohio Dept. of Human Serv.*, 62 Ohio St.3d 97, 579 N.E.2d 695 (1991). *Santos* concerned money withheld in subrogation under a statute deemed unconstitutional. *Judy* and *Ohio Hospital Assn.* were about money wrongfully withheld under misinterpreted or unconstitutional regulations. The allegation of appellant is that

the city's collection of automated fines was wrongfully premised on an unconstitutional ordinance. This is in the nature of those actions held to be permitted.

{¶ 17} With respect to appellee RedFlex's assertion that it cannot be required to return money collected by an unconstitutional ordinance because it is not a state actor, appellant asserts no federal claims against RedFlex. He only maintains that RedFlex is in possession of funds it is not properly entitled to hold. Unjust enrichment exists when there is:

(1) a benefit conferred by a plaintiff upon a defendant;  
(2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment (i.e., the "unjust enrichment" element). Ohio law does not require that the benefitted party act improperly in some fashion before an unjust enrichment claim can be upheld; instead, unjust enrichment can result "from a failure to make restitution where it is equitable to do so. That may arise when a person has passively received a benefit which it would be unconscionable for him to retain" without paying compensation. (Citations omitted.) *Advantage Renovations, Inc. v. Maui Sands Resort, Co., L.L.C.*, 6th Dist. No. E-11-040, 2012-Ohio-1866, ¶ 33.

{¶ 18} A defendant in a suit seeking compensation for unjust enrichment need not be a state actor.

{¶ 19} With respect to exhaustion of administrative remedies, as the trial court noted, an administrative agency possesses no authority to determine the constitutionality of a statute or ordinance. *Herrick v. Kosydar*, 44 Ohio St.2d 128, 130, 339 N.E.2d 626 (1975). As a result, exhaustion of administrative remedies is unnecessary when the gravamen of the suit is a constitutional attack on an underlying ordinance.

{¶ 20} This leads us to the merits of appellant's allegations. Appellant argues that Toledo Municipal Code 313.12 is unconstitutional in three respects. If any of these assertions is correct, the trial court's judgment dismissing the case must be reversed and the matter remanded for further proceedings.

{¶ 21} Municipal ordinances, like other legislative enactments, are entitled to the presumption of constitutionality. *Hudson v. Albrecht*, 9 Ohio St.3d 69, 71, 458 N.E.2d 852 (1984). The burden is on the party challenging the ordinance to prove otherwise beyond a reasonable doubt. *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 17, *citing Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633, ¶ 4.

### **III. Municipal Court Jurisdictional Infringement**

{¶ 22} Appellant submits that Ohio Constitution, Article IV, Section 1, vests judicial power in this state to "a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." Municipal courts, and expressly the Toledo Municipal Court, have been established by the General Assembly in R.C. Chapter 1901.

Home rule municipalities have no power to regulate the jurisdiction of a municipal court. *Amer. Fin. Services Assn. v. Toledo*, 161 Ohio App.3d 477, 2005-Ohio-2943, 830 N.E.2d 1233, ¶ 76 (6th Dist.), citing *Cupps v. Toledo*, 170 Ohio St. 144, 163 N.E.2d 384 (1959), paragraph one of the syllabus.

{¶ 23} In R.C. 1901.20(A)(1), the legislature has defined the jurisdiction of a municipal court:

The municipal court has *jurisdiction of the violation of any ordinance of any municipal corporation within its territory*, unless the violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to [R.C. Chapter 4521], and of the violation of any misdemeanor committed within the limits of its territory. The municipal court has jurisdiction of the violation of a vehicle parking or standing resolution or regulation if a local authority, as defined in [R.C. 4521.01], has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to [R.C. Chapter 4521]. The municipal court, if it has a housing or environmental division, has jurisdiction of any criminal action over which the housing or environmental division is given jurisdiction by [R.C. 1901.181], provided that, except as specified in division (B) of that section, no judge of the court other than the

judge of the division shall hear or determine any action over which the division has jurisdiction. In all such prosecutions and cases, the court shall proceed to a final determination of the prosecution or case. (Emphasis added.)

{¶ 24} Appellant reasons that Toledo Municipal Code 313.12 is an ordinance of a municipal corporation within the territory encompassed by the Toledo Municipal Court and is not a parking violation; therefore, the violation of Toledo Municipal Code 313.12 is subject to the jurisdiction of the Toledo Municipal Court. Any attempt, in whole or in part, to divest the court of that jurisdiction violates the authority of the General Assembly to set the jurisdiction of the court, thus violating Ohio Constitution, Article IV, Section 1.

{¶ 25} Appellant insists that the effect of Toledo Municipal Code 313.12 is to divest the municipal court of jurisdiction by setting up a wholly extrajudicial scheme that grants to a hearing officer, chosen in an unspecified manner by the police department, the authority to adjudicate violations of the ordinance. Such usurpation of jurisdiction violates the Ohio Constitution and should be declared a nullity, appellant maintains. Appellant seeks the return to himself and others similarly situated of all monies collected by the city and RedFlex by virtue of this unconstitutional plan.

{¶ 26} RedFlex responds, characterizing appellant's argument as being that R.C. 1901.20 confers exclusive jurisdiction to municipal courts to the exclusion of all alternative means of enforcement. RedFlex then attacks this argument, suggesting that when the legislature bestows exclusive or original jurisdiction it must do so expressly and

unambiguously. Moreover, RedFlex maintains, appellant's argument is "fatally flawed" because R.C. 1901.20, titled "Criminal and traffic jurisdiction," applies only to criminal ordinances, not civil matters such as "civil penalties" like the one at issue.

{¶ 27} Appellee city concedes that home rule does not provide a municipality with the authority to alter the jurisdiction of a municipal court. Nevertheless, the city asserts, R.C. 1901.20 does not grant exclusive jurisdiction to the municipal court for all matters contained in the city code. R.C. 1901.20(A)(1) states that the municipal court has jurisdiction over the "violation of any ordinance." "Any," according to the city, "is not 'all.'" Had the legislature intended the municipal court to have exclusive jurisdiction over all municipal ordinances, appellee city argues, it could have easily have done so as it did with juvenile courts in R.C. 2151.23(A) or in providing for a building code appeal board in R.C. 3781.20(B). Indeed, the city suggests, if appellant's interpretation is correct, hearings before the Board of Zoning Appeals, Plan Commissions, Taxi Cab Review Boards, Tax Appeal Boards and Boards of Revision would have to be heard by municipal courts.

{¶ 28} The trial court, citing *State ex rel. Banc One Corp. v. Walker*, 86 Ohio St.3d 169, 712 N.E.2d 742 (1999), concluded that the legislature had not included the necessary express language in R.C. 1901.20 to vest exclusive jurisdiction over all municipal ordinances in the municipal court. "[T]his court does not interpret the use of the word 'any' to be an expression of 'all' or 'exclusive.'"

{¶ 29} In his brief to this court, appellant characterizes the question of whether R.C. 1901.20 confers exclusive jurisdiction on a municipal court a “red herring.” Even if the statute confers only concurrent jurisdiction on the municipal court, a municipality has no power whatsoever to place any regulation on the jurisdiction of the court. Moreover, appellant insists, for any local administrative body to have concurrent jurisdiction with the court, such jurisdiction must be conferred by the General Assembly. Since the legislature has provided no enabling legislation for a municipal traffic-camera agency, Toledo Municipal Code 313.12 is ultra vires and monies collected in reliance of the ordinance were wrongfully taken.

{¶ 30} It is a rule of statutory construction that, with exceptions inapplicable here, “Title, Chapter, and section headings \* \* \* do not constitute any part of the law as contained in the ‘Revised Code,’” R.C. 1.01, thus, consideration of a statute’s title in ascertaining its meaning is “unnecessary and improper.” *State v. Beener*, 54 Ohio App.2d 14, 16, 374 N.E.2d 435 (2d Dist.1977). We can attach no significance to the heading “Criminal and traffic jurisdiction” in R.C. 1901.20.

{¶ 31} It is also a rule of construction that words and phrases that have not been legislatively defined or acquired a technical meaning “shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.43. Common usage may be ascertained by reference to a dictionary. *See Cincinnati City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 122 Ohio St.3d 557, 2009-Ohio-3628, 913 N.E.2d 421, ¶ 15-16.

{¶ 32} “Any” means “every —used to indicate one selected without restriction” and “all —used to indicate a maximum or whole.” *Merriam-Webster Dictionary*, <http://www.merriam-webster.com/dictionary/any> (accessed Mar. 26, 2013.) Construing the language of the first sentence of R.C. 1901.20(A)(1) in context and according to common usage, the legislature has unambiguously granted to municipal courts jurisdiction over a violation of every and all municipal ordinances within its territory, unless, in certain circumstances, the offense is a parking violation.<sup>1</sup> The maxims of construction forbid the substitution of inferences or implications when the language of a statute is unequivocal. *Ashley Tri-County Mut. Tel. Co. v. New Ashley Tel. Co.*, 92 Ohio St. 336, 341, 110 N.E. 959 (1925), applying the maxim “expressum facit cessare tacitum.”

{¶ 33} With respect to the argument of appellees, as adopted by the trial court, that the legislature should have, but did not, confer “exclusive” jurisdiction on the court, appellees’ reliance on *State ex rel. Banc One Corp.*, 86 Ohio St.3d 169, 712 N.E.2d 742 (1999), is perplexing. The case was an appeal from the judgment of this court denying a petition for a writ of prohibition to prevent a common pleas court judge from continuing to hear a suit arising from a business dispute. Relators, defendants in a suit alleging interference with an insurance contract, believed the suit could not be resolved without

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<sup>1</sup> We note that, when the city of Cleveland enacted an automated camera ordinance, it directed that appeals of notices of liability be directed to the city’s Parking Violations Bureau. Cleveland Codified Ordinances 313.031(k).

administrative consideration. Relators claimed the common pleas court was divested of jurisdiction over the matter by the doctrine of primary jurisdiction.

{¶ 34} The Supreme Court of Ohio rejected this assertion. The court explained:

The doctrine of primary jurisdiction applies where a claim is originally cognizable in a court and enforcement of the claim requires the resolution of issues that have been placed within the special expertise of an administrative body. Under this doctrine, the judicial process is suspended pending referral of the issues to the administrative body for its views.

(Citations omitted.) *Id.* at 171.

The court explained that this process did not divest a court of general jurisdiction from hearing the case and added that this was because the legislature had not vested exclusive jurisdiction of the issue to an administrative agency. *Id.* The court went on to say that a legislative intent to confer exclusive jurisdiction to an agency or special court must be done “patently and unambiguously,” which was not the case with the Department of Insurance. *Id.* at 172.

{¶ 35} If anything, *State ex rel. Banc One Corp.* favors appellant’s argument that if the legislature intended to divest municipal courts of jurisdiction over some municipal ordinance, it would have enacted legislation to that effect. Appellant also gains support from appellee city’s argument that, if appellant’s position is correct, then the municipal court would need to preside over numerous municipal boards. In fact, most of the board appellee city enumerates are the creations of express legislation. Boards of Zoning

Appeals are the creation of R.C. 713.11, Plan Commissions are provided for in R.C. 713.01, Tax Appeal Boards by R.C. 718.11. These administrative bodies derive their authority from the General Assembly through enabling acts that patently carve out exceptions to municipal court review. We must admit, we found no legislative enabling provision for a Taxi Cab Review Board.

{¶ 36} It is clear that the legislature has vested the municipal court with the jurisdiction to adjudicate the violation of any municipal ordinance, including Toledo Municipal Code 313.12. The plain language of the ordinance also reveals that appellee city has attempted to divest the municipal court of some, or all, of its jurisdiction by establishing an administrative alternative without the express approval of the legislature. Such usurpation of jurisdiction violates Ohio Constitution, Article IV, Section 1, and is therefore a nullity.

#### **IV. Void for Vagueness/Due Process Violations**

{¶ 37} Appellant claims the delegation of authority to the police department stating that “[a]ppeals shall be heard through an administrative process established by the City of Toledo Police Department” is not a proper delegation of administrative authority. Neither does it provide to the police any fixed standards for such delegation, nor does it provide a mechanism for a review of the police decision.

It is the function of the legislative body to determine policy and to fix the legal principles which are to govern in given cases. However, it is not possible for the legislature to design a rule to fit every potential

circumstance. As such, legislation may be general in nature, and discretion may be given to an administrative body to make subordinate rules, as well as to ascertain the facts to which the legislative policy applies. In order to be valid, however, the legislative enactment must set forth sufficient criteria to guide the administrative body in the exercise of its discretion. (Citations omitted.) *Hudson v. Albrecht, Inc.*, 9 Ohio St.3d 69, 73-64, 458 N.E.2d 852 (1984).

{¶ 38} Appellant's view of the delegation of administrative authority may be too circumspect. The definition of the offense itself found in Toledo Municipal Code 313.12(c) creates a presumption that the owner of the vehicle was its operator and defines two narrow exceptions to the presumption. The proceeding is expressly non-criminal. While there appears to be, at least inferentially, an irrefutable presumption as to the accuracy of these devices, this is not a facial defect and does not affect the delegation of authority. The delegation of authority is extremely Spartan,<sup>2</sup> but does not, in our view, rise to the level of constitutional vagueness.

{¶ 39} Finally, appellant complains that the trial court's finding that he had conceded the existence of an administrative process was both unsupported in the record and beyond the breadth of what may be considered in contemplation of a Civ.R. 12(B)(6) motion. The complaint alleges that Toledo police never established an administrative

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<sup>2</sup> Compare Columbus Code of Ordinances 2115.04(D) which expressly enumerates six affirmative defenses, including that the recording device was not operating properly.

appeal process. This is an allegation in the complaint and must be considered as true on a motion to dismiss for failure to state a claim. *Johnson v. Microsoft Corp.*, 106 Ohio St.3d 278, 2005-Ohio-4985, 834 N.E.2d 791, ¶ 6. Since at a minimum, due process of law requires notice and a meaningful opportunity to be heard, *Ohio Assn. of Pub. School Emp. v. Lakewood Cty. School Dist.*, 68 Ohio St.3d 175, 177, 624 N.E.2d 1043 (1994), it would seem the absence of any process would be problematic. Thus, this branch of appellant's constitutional argument does not warrant dismissal.

{¶ 40} Accordingly, appellant's sole assignment of error is well-taken.

{¶ 41} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is reversed. This matter is remanded to said court for further proceedings. Appellees are ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist. Loc. App.R. 4.

Arlene Singer, P.J.

Thomas J. Osowik, J.  
CONCUR.

Stephen A. Yarbrough, J.  
DISSENTS AND WRITES SEPARATELY.

  
JUDGE

  
JUDGE

**YARBROUGH, J., dissenting.**

{¶ 42} Because my reading of the statute at issue, R.C. 1901.20, differs from the interpretation adopted by majority, I respectfully dissent and would find Walker’s sole assigned error not well-taken.<sup>3</sup>

{¶ 43} In *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, the Ohio Supreme Court held that “[a]n Ohio municipality does not exceed its home-rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, *provided that the municipality does not alter statewide traffic violations.*” (Emphasis added.) *Id.* at syllabus. In upholding Akron’s creation of a civil infraction system to deal with traffic offenders, the court reasoned, in pertinent part:

Akron Ordinances 461-2005, which provides for implementation of an automated mobile speed-enforcement system, does not conflict with state law because it does not alter or supersede state law. *The Ordinances provides for a complementary system of civil enforcement that, rather than decriminalizing behavior, allows for the administrative citation of vehicle*

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<sup>3</sup> I agree with majority and the trial court that Walker has standing to challenge the constitutionality of Toledo Municipal Code 313.12.

*owners under specific circumstances.* Akron has acted within its home rule authority granted by the Constitution of Ohio. *Id.* at ¶ 42.

{¶ 44} Here, Toledo Municipal Code 313.12 creates a civil-infraction system for enforcing red-light and speed-limit ordinances by means of automated cameras. Per *Mendenhall*, enactment of the ordinance is fully within the city of Toledo's home rule authority as a chartered municipality and its provisions are presumptively constitutional. In working around this starting point, the majority first reads certain dicta to be "an express limitation on the scope of the *Mendenhall* decision." Yet the language which the majority cites for that statement<sup>4</sup> does not detract at all from the basic constitutionality of a *concurrent* administrative scheme that treats specified traffic violations as civil infractions. Nor does that language speak to Walker's claim that the civil-infraction system created by Toledo Municipal Code 313.12 "usurps" the jurisdiction of the municipal court, as set forth in R.C. 1901.20(A)(1), over "all red light ordinance violations."

{¶ 45} R.C. 1901.20 was formerly entitled "Criminal and traffic jurisdiction," but is now entitled, "Criminal jurisdiction." Subsection (A)(1) reads, in pertinent part:

The municipal court has *jurisdiction* of the *violation of any ordinance* of any municipal corporation within its territory, unless the

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<sup>4</sup> The majority quotes ¶ 40 of the *Mendenhall* opinion which states: "Although there are due process questions regarding the operation of the Akron Ordinance and those similar to it, those questions *are not appropriately before us* at this time and *will not be discussed here.*" (Emphasis added.)

violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521 of the Revised Code, *and of the violation of any misdemeanor* committed within the limits of its territory. (Emphasis added.)

{¶ 46} Initially the majority opinion incorrectly cites R.C. 1.01 as “a rule of statutory construction” in order to ignore the subject-matter that R.C. 1901.20 was intended to cover. *See State ex rel. Cunningham v. Industrial Comm.*, 30 Ohio St.3d 73, 76, 506 N.E.2d 1179 (1987) (“R.C. 1.01 is not an ‘ordinary rule of statutory construction.’ Rather, it is a law which, by its terms, applies specifically to statutes enacted as part of the Ohio Revised Code [and] only require[s] that the ‘title’ or ‘section heading’ \* \* \* be disregarded.”) While the title or heading of a statute forms no part of the statutory text, it can reveal the legislative purpose or scope of the statute and suggest some contextual insight into the subject-matter it was intended to address.

{¶ 47} R.C. 1901.20 was intended to establish the jurisdiction of the municipal court over criminal offenses (misdemeanors) and traffic code violations that carry criminal penalties. Had the General Assembly intended to vest an *exclusive* jurisdiction in the municipal court over criminal violations of traffic ordinances *and* any parallel scheme that would treat the same violations as civil infractions, it would have used that word—“exclusive”—as an adjectival modifier preceding the primary subject-noun of the sentence, “jurisdiction.” In grammatical parlance, the use of such an adjective is intended

to denote more specifically the quality, quantity, or extent of the noun it modifies, or to distinguish the noun from its unmodified sense.

{¶ 48} The majority then engages in rewriting the first sentence of R.C. 1901.20(A)(1) to find “exclusive” jurisdiction by interpreting the word “any” as if it somehow modified the word “jurisdiction,” which it does not. The majority opinion states:

“Any” means “every—used to indicate one selected without restriction” and “all—used to indicate a maximum or whole.” *Merriam-Webster Dictionary* \* \* \* [.] Construing the language of the first sentence of R.C. 1901.20(A)(1) in context and according to common usage, the legislature has unambiguously granted to municipal courts jurisdiction over a violation of every and all municipal ordinances within its territory, unless, in certain circumstances, the offense is a parking violation. The maxims of construction forbid the substitution of inferences or implications when the language of the statute is unequivocal.

{¶ 49} But the same maxims of construction forbid us, under the guise of construing or interpreting a statute, from interpolating a word not used, like “exclusive,” or expanding on the meaning of an existing word to accomplish the same thing, like “any,” in disregard of its placement in the sentence or of the context in which it is used. *See State v. Peters*, 9 Ohio App.2d 343, 344, 224 N.E.2d 916 (2d Dist.1965) (Rejecting defendant’s argument that the word, “any,” should be construed to mean “every” or “all”:

“Although the word, ‘any,’ is sometimes used to mean ‘every,’ this is not its preferred dictionary definition. Actually, *it is a general word* and may have a diversity of meanings *depending upon the context and subject-matter of the statute in which it is used.*” (Emphasis added.); see also *State v. Taniguchi*, 74 Ohio St.3d 154, 156, 656 N.E.2d 1286 (1995) (“A court should give effect to the words actually employed in a statute, and should not delete words used, *or insert words not used, in the guise of interpreting the statute.*” (Emphasis added.))

{¶ 50} Given how the word “any” is actually placed in R.C. 1901.20(A)(1), it modifies only the word “ordinance,” which is not the primary subject-noun of the sentence. Because “any” does not in any way modify the word “jurisdiction,” it cannot support a conclusion of exclusivity for the municipal court to adjudicate *all* violations of city traffic ordinances. The majority has improvidently accepted Walker’s invitation to “imagine” that the first sentence of the statute reads other than it does.<sup>5</sup>

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<sup>5</sup> In *Johns v. Univ. of Cincinnati Med. Assoc., Inc.*, 101 Ohio St.3d 234, 2004-Ohio-824, 804 N.E.2d 19 (2004), the Ohio Supreme Court rejected just this sort of interpretive slight-of-hand in “construing” a sentence in R.C. 2743.02(F), the jurisdictional statute for the court of claims, where “exclusive” *is* used as an adjectival modifier, the converse of the situation here. At that time R.C. 2743.02(F) stated, in pertinent part:

A civil action against an officer or employee [of the state] \* \* \* shall first be filed against the state in the court of claims, which has *exclusive, original* jurisdiction to determine, *initially*, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. (Emphasis added.)

{¶ 51} When the General Assembly intends to grant a court or agency exclusive jurisdiction over particular cases, claims or matters, “it provides it by appropriate statutory language.” *State ex rel. Banc One Corp. v. Walker*, 86 Ohio St.3d 169, 171-172, 712 N.E.2d 742 (1999). Such jurisdiction has long been signaled by the enabling statute’s use of the terms “exclusive,” “original,” or both, or by certain forms of absolutist language indicating exclusivity. *See, e.g., State ex rel. Sanguily v. Lucas Cty. Court of Common Pleas*, 60 Ohio St.3d 78, 80, 573 N.E.2d 606 (1991) (under R.C. 2743.02(F), court of claims has “exclusive original jurisdiction” to determine whether public employee is immune from suit); *State ex rel. Ohio Edison Co. v. Parrott*, 73 Ohio St.3d 705, 708-709, 654 N.E.2d 106 (1995) (under R.C. 4903.12, the language “no court

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The proponent had argued that the word “initially,” which appears in a non-modifying position in the sentence, recast the scope of the jurisdiction granted to the court of claims such that a common pleas court could also determine the employee’s immunity. The Supreme Court held:

Exclusive jurisdiction is “[a] court’s power to adjudicate an action or class of actions *to the exclusion of all other courts*.” Black’s Law Dictionary (7th Ed.1999) 856. Original jurisdiction is “[a] court’s power to hear and decide a matter *before* any other court can review the matter.” *Id.* Therefore, to interpret the word “initially” in R.C. 2743.02(F) to mean that a second determination of immunity can be made by a court of common pleas *would nullify the plain language of R.C. 2743.02(F), which bestows “exclusive jurisdiction” to determine immunity on the Court of Claims.* (Emphasis added.) *Id.* at ¶ 26.

That plain language made the court of claims “the *only* court with authority to determine whether a state employee is immune from personal liability under R.C. 9.86.” *Id.* at ¶ 30.

*other than the supreme court*” gave the Supreme Court exclusive jurisdiction to suspend or enjoin orders of the PUCO. (Emphasis added.)

{¶ 52} Thus, for example, R.C. 2151.23(A) states that the “juvenile court has *exclusive original* jurisdiction under the Revised Code as follows,” and then delineates sixteen categories of cases by subject-matter. Commenting on this statutory language in *Pula v. Pula-Branch*, 129 Ohio St.3d 196, 2011-Ohio-2896, 951 N.E.2d 72, the Ohio Supreme Court observed that grants of exclusive and non-exclusive jurisdiction over certain cases are easily distinguished, stating:

[C]ases brought pursuant to R.C. Chapter 3115 are explicitly excluded from the juvenile court’s exclusive jurisdiction. R.C. 2151.23(A)(11) grants *exclusive* jurisdiction to juvenile courts to “hear and determine a request for an order for the support of any child *if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation \* \* \* or an action for support brought under Chapter 3115 of the Revised Code.*” \* \* \* Thus, if the sought-after support order arises in a domestic relations case or an R.C. Chapter 3115 case, the juvenile court *does not have exclusive jurisdiction* over support orders. Since juvenile courts do not have exclusive jurisdiction under R.C. Chapter 3115 claims, *other courts may hear those cases.* (Emphasis added.) *Id.* at ¶ 7-8.

{¶ 53} R.C. 2101.24(A)(1) likewise directs that “except as otherwise provided by law, the probate court has *exclusive* jurisdiction” of certain cases and thereafter enumerates 32 species of actions for which such jurisdiction is granted. Notably, 2101.24(B)(1) expressly grants the probate court “*concurrent* jurisdiction” with the general division of the common pleas court for certain purposes.

{¶ 54} In the administrative context, the General Assembly has employed identical language in statutes creating a board or agency. R.C. 3781.20(B), pertaining to boards of building appeals, states that “[a] certified local board of building appeals has *exclusive* jurisdiction to hear and decide all adjudication hearings arising from rulings of the local chief enforcement official concerning the provisions of this chapter and Chapter 3791.” (Emphasis added.)

{¶ 55} Finally, the General Assembly’s use of these same terms—“exclusive” and “original”—in other sections of R.C. Chapter 19 only reinforces the conclusion that the “jurisdiction” of the municipal court specified in R.C.1901.20(A)(1) is non-exclusive.

{¶ 56} In pertinent part, R.C. 1901.181(A)(1) states:

[I]f a municipal court has a housing or environmental division, the division has *exclusive jurisdiction* within the territory of the court in any civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to premises used or intended for use as a place of human habitation, buildings, structures, or any other real property[.] (Emphasis added.)

{¶ 57} R.C. 1901.185(B) also states that the environmental division of a municipal court “shall \* \* \* exercise *exclusive original* jurisdiction to hear actions arising under section 3767.50 of the Revised Code \* \* \* pertaining to blighted parcels.” (Emphasis added.)

{¶ 58} In my view, R.C. 1901.20(A)(1) cannot reasonably be read as giving the municipal court “exclusive” jurisdiction over violations of particular traffic ordinances that Toledo has chosen to classify separately as civil infractions and to enforce as such. Absent that modifying term, the jurisdiction granted is *non-exclusive* and, hence, a *concurrent* civil enforcement scheme may be established under Toledo’s home rule authority. Second, the “violations” referenced in R.C. 1901.20(A)(1) pertain to the commission of *criminal* misdemeanors and to traffic offenses for which *criminal* or quasi-criminal penalties are imposed, such as incarceration, judicial suspension of the offender’s driver’s license, the assignment of “points” toward the offender’s license, the issuance of “warrant blocks” against an offender’s license or vehicle registration with the Ohio Bureau of Motor Vehicles, the authority to order a vehicle impounded, etc.<sup>6</sup>

{¶ 59} Toledo Municipal Code 313.12, on the other hand, explicitly classifies the violations it covers as “non-criminal.” The scheme created is purely *civil* in nature and imposes no sanction beyond the assessment of an administrative penalty—a \$120 fine.

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<sup>6</sup> The Supreme Court has expressly read R.C. 1901.20(A)(1) as conveying to municipal courts “subject-matter jurisdiction in *criminal* matters only when the *crime* was committed ‘within its territory’ or ‘within the limits of its territory.’” *Cheap Escape Co., Inc. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 18.

Toledo Municipal Code 313.12, therefore, has no operative effect on the jurisdiction of Toledo Municipal Court to adjudicate *criminal* violations of “any [traffic] ordinance.” It is, as the *Mendenhall* court phrased it, wholly a “complementary” enforcement process to that which would occur if a police officer were present, observed the same red light or speed violation, and acted on it. Indeed, *Mendenhall* rejected the claim, similar to the gambit Walker presently couches in jurisdictional garb, that Akron’s system of treating traffic violations as civil infractions “decriminalize[d] behavior that is criminal under state law.” *Id.* at ¶ 36. In describing Akron’s concurrent system, the Supreme Court observed:

After the enactment of the Akron ordinance, a person who speeds and is observed by a police officer remains subject to the usual traffic laws. *Only when no police officer is present and the automated camera captures the speed infraction does the Akron ordinance apply, not to invoke the criminal traffic law, but to impose an administrative penalty on the vehicle’s owner. The city ordinance and state law may target identical conduct - speeding - but the city ordinance does not replace traffic law. It merely supplements it.* Furthermore, a person cannot be subject to both criminal and civil liability under the ordinance. The ordinance states that if a violation is both recorded by the automated system and observed by a police officer, then the criminal violation takes precedence. The Akron ordinance *complements rather than conflicts* with state law. (Emphasis

added.) *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255,  
at ¶ 37.

{¶ 60} The same is true of the civil-enforcement scheme that Toledo created in Toledo Municipal Code 313.12. It exists independently of its criminal counterparts under municipal and state law. The ordinance does not prevent, interfere with, or usurp the ability of Toledo Municipal Court to deal with red-light and speed-limit violators in that forum, and therefore does not conflict with or abridge that court's criminal jurisdiction under R.C. 1901.20(A)(1).

{¶ 61} Finding no merit in Walker's assigned error, I would affirm the judgment of the trial court in all respects.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
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