

ORIGINAL

IN THE SUPREME COURT OF OHIO

BRADLEY WALKER,	*	Supreme Court Case No. 2013-1277
Plaintiff-Appellee,	*	On Appeal from the Lucas
vs.	*	County Court of Appeals,
	*	Sixth Appellate District
CITY OF TOLEDO, et al.,	*	(Case No. L-12-1056)
Defendants-Appellants	*	

MERIT BRIEF OF APPELLANT CITY OF TOLEDO

Adam W. Loukx (0062158)
Counsel of Record
 Eileen M. Granata (0016745)
 City of Toledo
 One Government Center, Suite 2250
 Toledo, Ohio 43604
 Tel: (419)245-1020
 Fax: 419-245-1090
adam.loukx@toledo.oh.gov
eileen.granata@toledo.oh.gov

Andy Douglas (0000006)
 Larry H. James (0021773)
 Jeffrey D. Houser (0076803)
 Crabbe, Brown & James LLP
 500 South Front Street, Suite 1200
 Columbus, OH 43215
 Tel: (614) 228-5511
 Fax: (614) 229-4559
adouglas@cbjlawyers.com
ljames@cbjlawyers.com
jhouser@cbjlawyers.com

Counsel for Appellant City of Toledo

John T. Murray (008793)
 Murray & Murray Co., LPA
 111 E. Shoreline Drive
 Sandusky, Ohio 44870
 Tel: (419) 624-3125
jotm@murrayandmurray.com

Andrew R. Mayle (0075622)
Counsel of Record
 Jeremiah S. Ray (0074655)
 Ronald J. Mayle (0030820)
 Mayle, Ray & Mayle LLC
 210 Front Street
 Fremont, Ohio 43420
 Tel: 419-334-8377
amayle@mayleraymayle.com
jray@mayleraymayle.com
rmayle@mayleraymayle.com

Counsel for Appellee Bradley Walker

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 SUPREME COURT OF OHIO

Quintin F. Lindsmith (0018327)
Counsel of Record
James P. Schuck (0072356)
Sommer L. Sheely (0076071)
Brickler & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
Tel: 614-227-2300
qlindsmith@bricker.com
jschuck@bricker.com
ssheely@bricker.com

Counsel for Appellant Redflex Traffic Systems, Inc.

Joseph A. Castrodale (0018494)
John M. Alten (0071580)
Laura C. McBride (0080059)
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113

Christopher R. Heekin (0042032)
Heekin & Heekin
817 Main Street, Suite 200
Cincinnati, Ohio 45202

Counsel for Amicus Curiae Optotrafic, LLC

Phillip K. Hartmann (0059413)
(Counsel of Record)
Yazan S. Ashrawi (0089565)
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215

John Gotherman (0000504)
Ohio Municipal League
175 S. Third Street, #510
Columbus, Ohio 43215-7100

Jennifer S. Gams (0063704)
City of Columbus Law Department
Assistant City Attorney
77 North Front Street, 4th Floor
Columbus, Ohio 43215

Stephen J. Smith (0001344)
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215

John C. Musto (0071512)
City of Dayton Law Department
101 W. Third Street
P.O. Box 22
Dayton, Ohio 45401

Counsel for Amicus Curiae The Ohio Municipal League, City of Columbus and City of Dayton

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I. STATEMENT OF THE FACTS

Factual History

This appeal follows a grant of a Civil Rule 12(B)(6) motion by the trial court below. Accordingly there is a limited factual record outside the allegations of the complaint and the plain text of the challenged city ordinance.

In his “Class Action Complaint for Restitution”, Appellee Walker (“Walker”) alleged that he received a “Notice of Liability” issued pursuant to Toledo Municipal Code (“TMC”) § 313.12. Complaint ¶ 2.¹ Walker paid the \$120.00 civil penalty. Complaint ¶ 2. Walker does not allege that he attempted to avail himself of any administrative appeal process or seek judicial review. Walker does concede, however, that an administrative appeal of the “Notice of Liability” was set forth in the Ordinance. Complaint ¶ 23. Likewise, Walker admitted that an Ohio city may permissibly create an automated traffic photo-enforcement program that imposes civil liability. Complaint ¶ 26. However, Walker alleged that the procedures set by Toledo were facially deficient and, perhaps more importantly, Walker claimed Toledo’s process ran afoul of the Ohio Constitution by depriving the municipal court exclusive jurisdiction over municipal ordinance violations.

Appellant City of Toledo (“Toledo”) enacted TMC § 313.12, “Civil penalties for automated red light system violations” (the “Ordinance”). Complaint ¶ 5. The Ordinance established a civil enforcement system for red light and speeding camera system violations. The Ordinance provides that the City of Toledo Division of Transportation, the Toledo Police Department, and the Department of Law had responsibility for administering the Automated Red Light and Speeding System.

¹ A copy of TMC § 313.12 is attached as Appendix. A.

The Ordinance sets forth the elements and nature of the offense, circumstances which provide an exception for any responsibility or liability for a vehicle owner receiving a citation, and the process by which he or she may assert such exception. TMC § 313.12(C)(2); Complaint ¶ 9.

The Ordinance further provides for the processing and service of notices for speeding system violations. Complaint ¶¶ 15-16. The Ordinance requires that the notices, known as “Notice of Liability,” clearly state the manner in which the violation may be appealed. Complaint ¶ 23. Per The Ordinance the recipient of a “Notice of Liability” may: 1) pay the administrative fine directed on the Notice of Liability, as Walker did in this case, 2) submit evidence of one of the exceptions to liability listed in the code section, or 3) request a hearing within 21 days of the date listed on the Notice of Liability. TMC § 313.12

The Ordinance sets forth the amount of the civil penalty, and describes administrative appeal and enforcement provisions. Specifically, TMC § 313.12 (d)(4) provides that “[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.” The Ordinance does not preclude a recipient of a “Notice of Liability” from seeking judicial review of the citation.

Procedural History

As set forth above, Walker received a “Notice of Liability” after a vehicle titled in his name was recorded committing a civil speeding violation in Toledo in November 2009. Complaint ¶ 2. Walker did not seek to appeal the notice of violation and, rather, paid the civil penalty of \$120.00. Complaint ¶ 2. In February 2011, some fifteen months after paying the violation without dispute, Walker brought a suit on his behalf as well as those “similarly situated.” Walker never moved to certify a class. The lawsuit named Toledo and co-Appellant Redflex Traffic Systems, Inc. (“RedFlex”) as defendants. Walker attacked the Toledo ordinance by advancing three separate theories: (1) that, on its face, the ordinance was unconstitutionally vague (Complaint ¶ 30); (2) that Toledo denied Walker due process by failing to institute procedures beyond those set forth in the Ordinance (Complaint ¶¶ 31-35); and, (3) that, on its face, the ordinance was unconstitutional as it usurped the jurisdiction of the municipal court as set by statute. Complaint ¶¶ 53-64. Walker sought to represent a class of all people who ever paid fines under the Ordinance and obtain restitution of all fines ever paid by anyone under the Ordinance. Complaint ¶¶ 3-4.

Neither defendant answered the complaint. Instead, both Toledo and Redflex submitted motions to dismiss the claims against them pursuant to Civil Rule 12(B)(6). On February 1, 2012 the trial court issued an Opinion and Judgment Entry that granted the motions to dismiss. See Appendix. B. The trial court rejected Walker’s argument that Toledo Municipal Code § 313.12 was unconstitutionally vague or that such process violated due process or equal protection under the United States and State of Ohio’s Constitutions. The trial court also held

that Ohio Revised Code does not give the Toledo Municipal Court exclusive jurisdiction over violations issued pursuant to the Ordinance.

Walker appealed to the Court of Appeals for the Sixth District. In a Decision and Judgment dated June 28, 2013 the Court of Appeals in a split decision reversed. See Appendix C. Two judges of the Court of Appeals held that the Toledo Ordinance deprived the municipal court of jurisdiction as, according to the majority, Ohio Revised Code § 1901.20 conferred original and exclusive jurisdiction over any violation of a municipal ordinance within the court's territory. *Walker v. City of Toledo*, 2013-Ohio-2809, 994 N.E.2d 467 (6th Dist.) at ¶ 36. According to the majority, a home rule city could not have an administrative process unless specifically authorized by the General Assembly. *Id.* at ¶¶ 35-36. Therefore, concluded the majority, “[t]he plain language of the ordinance also reveals that the 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.” *Id.* at ¶ 36. Without much analysis, the majority further reversed the trial court on Walker’s due process claim, “[s]ince at minimum, due process of law requires notice and a meaningful opportunity to be heard [internal cite omitted], it would seem that the absence of any process would be problematic.” *Id.* at ¶ 39. However, the majority agreed with the trial court in holding that Toledo’s ordinance was not unconstitutionally vague. *Id.* at ¶ 38.

The third judge on the panel below issued a lengthy dissenting opinion wherein he indicated that he would have affirmed the trial court’s dismissal of Walker’s case. *Walker* at ¶ 61, Yarbrough, J., dissenting. The dissent faulted the majority’s logic and indicated the majority’s conclusion seemed to run counter to this Court’s decision in *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. *Id.* at ¶ 43-44, Yarbrough, J., dissenting,

citing *Mendenhall* at ¶ 42. Moreover, the dissent criticized the majority's evaluation of R.C. § 1901.20 and accused the majority of "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." *Id.* at ¶ 48. By misreading the statute, claimed the dissent, "[t]he majority has improvidently accepted Walker's invitation to 'imagine' that the first sentence of the statute reads other than it does." *Id.* at ¶ 50.

Toledo and RedFlex timely appealed to this Court. Jurisdiction was accepted by this Court on December 3, 2013. The record below was filed with this Court on December 18, 2013.

II. ARGUMENT

Summary of Argument.

The majority below erred when it found that the Ordinance was constitutionally flawed. If not corrected the precedent created as a result of the Court of Appeals' error will have a profound detrimental impact upon well-established legal principles and will significantly undermine Ohio cities' home rule powers established under Article XVIII, §§ 3 and 7 of the Ohio Constitution.

Legislative enactments, including those made at the municipal level are afforded a presumption of constitutionality. While this presumption does not mean that an ordinance can never be invalidated as unconstitutional, a claimant has the burden of proving unconstitutionality with proof beyond a reasonable doubt. Moreover, a court should endeavor to interpret ordinances and statutes in a harmonious fashion wherever possible and only reluctantly find that a legislative action is unconstitutional. If an ordinance can be read in a manner that would not be unconstitutional, it should be so read. Here the Court of Appeals seemingly ignored these well-settled principles and struck down a presumptively valid ordinance based merely upon the

allegations of a complaint and a misapplication of Ohio law. Further, rather than reconcile the Ordinance and R.C. § 1901.20, the court of appeals majority strained to find a conflict between them.

The Court of Appeals also erred in its interpretation and application of the law of jurisdiction. In this case, the Court of Appeals confused the distinction between exclusive and concurrent jurisdiction. Additionally the majority ignored the concept of original jurisdiction completely. The majority below failed to understand that subject matter jurisdiction is a doctrine between courts rather than between courts and administrative bodies.

Here, it is clear that the Ordinance, on its face, does not divest any court of jurisdiction. Nor does the Ordinance deprive affected persons judicial review. Rather the Ordinance simply involves the creation of an administrative process and within the proper exercise of Toledo's home-rule power. In fact, this Court has held that civil photo enforcement programs like Toledo's can be established under a city's home rule power.

It is clear that Ohio law contemplated municipal administrative processes like the one set out in the Ordinance at issue. Moreover, the Revised Code contains an entire chapter dedicated to appeals from municipal administrative bodies to common pleas courts. If the majority below is correct, that chapter is of no use as, according to the majority, only the municipal court could hear matters arising from a violation of a local ordinance. There would be no municipal administrative decisions to appeal.

The majority also erred when it concluded that Walker stated a viable due process claim. The Ordinance, on its face, contains process that insures both notice and an opportunity to be heard. In fact, Walker's complaint acknowledges receipt of a notice and a procedure to be heard. The reversal of the trial court on the issue of procedural due process was in error as the pleadings

were insufficient to state a cause of action in light of the plain language of the ordinance and the presumptions of constitutionality the Ordinance enjoyed.

Proposition of Law No. 1

The Court of Appeals erred when it found that Toledo's presumptively valid photo-enforcement ordinance "attempted to divest the municipal court of some, or all, of its jurisdiction" because a home rule city does not divest a municipal court of jurisdiction by creating an administrative review process that does not otherwise conflict with State law.

A. The Court of Appeals failed to give proper deference to the Ordinance and the presumption of Constitutionality to which the Ordinance is entitled.

The Ordinance is entitled to a presumption of constitutionality. See *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, ¶4, 795 N.E.2d 633 (2003), citing *Arnold v. Cleveland*, 67 Ohio St.3d 35, 38, 616 N.E.2d 163 (1993), *Univ. Hts. v. O'Leary*, 68 Ohio St.2d 130, 135, 429 N.E.2d 148 (1981), *Hilton v. Toledo*, 62 Ohio St.2d 394, 396, 405 N.E.2d 1047 (1980). See also, *State of Ohio v. Collier*, 62 Ohio St.3d 267, 269, 581 N.E.2d 552 (1991), citing *State v. Anderson*, 57 Ohio St.3d 168, 566 N.E.2d 1224 (1991), *State v. Klinck*, 44 Ohio St.3d 108, 541 N.E.2d 590 (1989), *State v. Tanner*, 15 Ohio St.3d 1, 472 N.E.2d 689 (1984).

A person challenging the constitutionality of a properly enacted ordinance has the burden of proof to establish that the Ordinance is unconstitutional beyond a reasonable doubt. *Collier* at 269, see *Klein* ¶17. The courts in "weighing the appellant's constitutional challenge", "must of course adhere to the oft-stated rule that a court's power to invalidate a statute 'is a power to be exercised only with great caution and in the clearest of cases.'" *Buckley v Wilkins*, 105 Ohio St.3d 350, 2005-Ohio-2166, 826 N.E.2d 811 ¶18.

Where a legislative act is capable of more than one interpretation, one of which would render the act constitutional and the other one would render the act unconstitutional, the

constitutional interpretation is assumed. “The presumption in favor of the constitutionality of statutes leads to the conclusion that where the validity of an act is assailed, and there are two possible interpretations, one of which would render it valid, and the other invalid, the court should adopt the former, so as to bring the act into harmony with the Constitution.” *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 149, 128 N.E.2d 59, 64 (1955).² “It is true that when interpreting an ordinance this court will, where possible, give the ordinance ‘such construction as will permit it to operate lawfully and constitutionally’. *Schneider v. Laffoon* (1965), 4 Ohio St.2d 89, 97, 33 O.O.2d 468, 472, 212 N.E.2d 801, 806.” *Hausman v. Dayton*, 73 Ohio St.3d 671, 678, 653 N.E.2d 1190 (1995).

The majority below, rather than affording the Ordinance the presumption of constitutionality it was entitled to receive, seems to have made all possible effort to concoct a jurisdictional infringement where none exists. Despite the majority’s opinion, there is nothing in the plain language of the Ordinance that can be read to deprive the municipal court of jurisdiction. It is indisputable that the Ordinance provides for an administrative hearing process T.M.C. § 313.12 (d). Walker does not dispute this fact. It is also indisputable that Walker did not avail himself of the available process opting, instead, to simply pay the violation.³ Complaint ¶ 2. Nothing in the language of the presumptively valid Ordinance precluded an appeal to any court with jurisdiction. Nothing in the Complaint suggests that Walker tried unsuccessfully to appeal to any court. Both Walker and the majority below seem to have concluded that the

² The presumption of constitutionality applies equally to all municipal ordinances and state statutes. “A legislative act is presumed in law to be within the constitutional power of the body making it, whether that body be a municipal or a state legislative body.” *City of Xenia v. Schmidt*, 101 Ohio St. 437, 130 N.E. 24 (1920), paragraph one of the syllabus.

³ Toledo also submits that Walker’s claims were muted by waiver because Walker simply paid the civil penalty without contest. See, for instance, *City of Norwalk v. Murray*, 6th Dist. No. H-83-10, 1983 WL 6911 (Aug. 12, 1983).

Ordinance was not appealable. There is no basis for that assumption because, as will be discussed below, the right of appeal exists as a matter of law.

The majority's failure to afford the Ordinance any presumption of constitutionality is evident from the procedural status of the case when the majority below concluded that the Ordinance was a "nullity." Procedurally, the court had before it an appeal of a trial court grant of a motion to dismiss. Neither Toledo nor Redflex had even answered the complaint and, aside from the complaint, this issue of constitutionality was not even affirmatively raised by Walker, i.e. Walker had no dispositive motion pending. A court reviewing a Civ.R. 12(B)(6) motion to dismiss should treat a plaintiff's *factual allegations* as true for purposes of determining if the complaint should be dismissed. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975); ("it must appear beyond doubt from the complaint that the plaintiff can prove no set of *facts* entitling him to recovery." Syllabus [emphasis added]). In this case, however, the Court of Appeals treated Walker's *legal allegations* as conclusive for the purpose of granting Walker relief under the complaint.⁴ In so doing, the Court not only misread the Ordinance, it also failed to give it any presumption of constitutionality. The appeals court did not exercise "great caution" before striking down the Ordinance.⁵

⁴ As the trial court correctly ruled, Walker's dismissal was proper even assuming the factual allegations of the complaint were true. *Walker v. City of Toledo*, Lucas C.P. No. CI-11-1922 (2012), P.15.

⁵ Nor did the majority below provide any discussion as to whether the Ordinance, if indeed unconstitutional, could have been made constitutional by severing offending portions of the Ordinance. As this Court reiterated recently in *Cleveland v State*, 2014 Ohio 86, "...severing the provision that causes it to be unconstitutional may be appropriate." *Id.* at ¶ 18. Certainly, in its precedent the Sixth District has applied the remedy of severance. See *American Fin. Services Association v. Toledo*, 161 Ohio App.3d 477, 2005-Ohio-2943, 830 N.E. 2d 1233, overruled on other grounds, *Am. Financial Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776. While Toledo submits that no portion of the Ordinance is unconstitutional, the majority below could have addressed its concern simply by severing whatever portion of the Ordinance it believes divested a state court of jurisdiction. For instance, could not the Ordinance

B. The Ordinance was enacted as a proper exercise of Toledo's home rule authority.

It is well established that Toledo has broad home rule authority under the Ohio Constitution Article XVIII, Sections 3 and 7. *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. Pursuant to its constitutionally granted home rule authority, Toledo possesses significant legislative powers. *State ex rel. Gordon v. Rhodes*, 156 Ohio St. 81, 100 N.E.2d 225 (1951). Toledo's home rule authority extends to the authority to establish administrative boards, commissions, and hearings. See *Willoughby Hills v. C.C. Bar's Sahara*, 64 Ohio St.3d 24; 591 N.E.2d 1203 (1992). Toledo does not require the permission of the Ohio legislature in order to exercise its legislative powers. "The method for determining whether a particular power is within the authority of a political subdivision is completely different for a non-charter county than it is for a municipality. A county is presumed *not to have authority* to regulate in a particular area, unless a statute affirmatively authorizes the regulation. For a municipality, however, the presumption is *in favor of* the authority to regulate. No specific grant of authority from the General Assembly is necessary." *Geauga Cty. Bd. of Commrs. v. Munn Rd. Sand & Gravel*, 67 Ohio St.3d 579, 583, 621 N.E.2d 696, 699 (1993) [Emphasis original].

Appellant concedes that home rule has its limits. A home rule municipality cannot generally, for instance, exercise its police powers in a manner that conflicts with a general law of the state. *Cleveland v State*, 2014 Ohio 86 at ¶ 8. Nor can a home rule city create courts or limit a court's jurisdiction. See, *Cupps v. Toledo*, 170 Ohio St. 144, 163 N.E.2d 384 (1959), *State ex rel. Cherrington v Hutsinpillar*, 112 Ohio St. 468, 147 N.E. 647 (1925). The Ohio Constitution provides "[t]he judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as

have been cured of its alleged infirmities simply by eliminating the provisions for administrative appeal?

may from time to time be established by law.” See, Ohio Const. Article IV, § 1. The Ordinance does nothing to violate that provision.

However, the Court of Appeals majority concluded that the Ordinance violated Ohio Const. Article IV, § 1. The majority’s conclusion appears to have been based upon a misunderstanding of the precedents of this Court and upon a misconception of jurisdiction generally.

The Court below correctly notes that Toledo does not have the power to create courts or alter the jurisdiction of courts created pursuant to the Ohio Constitution. However, the majority below clearly reached the wrong conclusion when they concluded that the Ordinance deprived any court of jurisdiction. Moreover, Walker has never shown how the Ordinance divests the municipal court of any jurisdiction.

The fact that Ohio law clearly provides for appeal from decisions of municipal administrative hearings suggests that the Ordinance is not unconstitutional on the basis of usurpation of jurisdiction. R.C. § 2506.01 provides:

“Appeal from decisions of agency of political subdivisions.

(A) Except as otherwise provided in sections 2506.05 to 2506.08 of the Revised Code, and except as modified by this section and sections 2506.02 to 2506.04 of the Revised Code, *every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505. of the Revised Code.* [Emphasis added].

(B) The appeal provided in this section is in addition to any other remedy of appeal provided by law.

(C) As used in this chapter, "final order, adjudication, or decision" means an order, adjudication, or decision that determines rights, duties, privileges, benefits, or legal relationships of a person, but does not include any order, adjudication, or decision from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority if a right to a hearing on such appeal is provided, or any order, adjudication, or decision that is issued preliminary to or as a result of a criminal proceeding."

Revised Code Chapter 2506, by its plain language, provides for judicial review from municipal administrative processes like those created in the Ordinance. Nothing in Chapter 2506 limits the judicial review therein provided to administrative bodies sanctioned by the State. "The Legislature, in our opinion, recognized the need for an opportunity for review of the decisions of administrative agencies and broadened the right of review to include 'every final order, adjudication, or decision of any * * * board * * * of any political subdivision of the state.'" *Roper v. Bd. of Zoning Appeals, Richfield Twp., Summit Cnty.*, 173 Ohio St. 168, 173, 180 N.E.2d 591, 595 (1962).

The fact that Walker made no effort to appeal either administratively or to a court is not the same as proof that no review is available. "Quasi-judicial decisions and orders of administrative officers and agencies require review. However, failure of legislation to provide for judicial review does not bring the act into conflict with the due process clause of the constitution where the court in applying the guaranty of due process will supply judicial review to determine if the administrative authority has been exceeded." 2 Ohio Jurisprudence 3d, Administrative

Law, Section 75 (1998) “The fact that it is not provided in the ordinance that a hearing shall be had and a right of appeal provided, is not determinative of the question as to whether the ordinance is constitutional.” *Antonelli v. City of Youngstown*, 18 Ohio Law Abs. 542, 544, 1934 WL 2642 (7th Dist. 1934).

The case primarily relied upon by the majority below and by Walker does not support a conclusion that Toledo’s Ordinance impermissibly interferes with the municipal court’s jurisdiction. Both Walker and the majority below suggest that *Cupps v Toledo*, supra, supports their conclusion that the Ordinance is unconstitutional.⁶ However, the holding in *Cupps* stands for the completely different proposition that a home-rule charter cannot be used to prevent judicial review that is provided by statute. In *Cupps*, the Toledo Charter dictated that decisions of the Toledo Civil Service Commission, an administrative body of the City, were final and not subject to review. *Cupps* at 536. This Court held that the Charter could not prohibit an appeal to the common pleas court where such an appeal was authorized by statute. *Cupps* at 537. In the case now before the Court, any person that disagrees with the administrative hearing officer established by the Ordinance may appeal under R.C. Chapter 2506 and/or R.C. § 1901.20 as a matter of law.

B. This Court’s decision in *Mendenhall* upheld an administrative process similar to the process created by the Toledo Ordinance.

⁶ The majority below cited *American Fin. Services Association v. Toledo*, 161 Ohio App.3d 477, 2005-Ohio-2943, 830 N.E. 2d 1233, which referenced *Cupps*. *American Fin. Services Association*, which was overruled by this Court on other grounds, *Am. Financial Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, involved review of Toledo’s ordinance regulating predatory lending. In *American Fin. Services Association v. Toledo* the Court of Appeals upheld Toledo’s ordinance but struck a provision of the law that created a private cause of action in the court of common pleas on the basis that the city lacked the authority to expand the court’s jurisdiction. *Id.* at ¶ 76. Like *Cupps*, *American Fin. Services Association* is dissimilar to the case at bar.

This Court's previous decision in *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008 Ohio 270, 881 N.E. 2d 255, suggests that a city does not exceed its home rule authority when it enacts the type of administrative review process that Toledo enacted in this case.⁷

The Akron ordinance implicated in *Mendenhall* and the Toledo Ordinance underlying this case, appear to have much in common. The Court described the Akron ordinance as follows:

“Owners of vehicles receiving notices of civil liability have several options. They may pay the amount owed, sign an affidavit that the vehicle was stolen or leased to someone else, *or administratively appeal the violation*. Owners choosing to appeal have 21 days to complete and return the notice-of-appeal section of the notice-of-liability form.

Administrative appeals of notices of liability are overseen by a hearing officer, who is an independent third party appointed by the mayor of Akron. After administering the oath to any witnesses and reviewing all the evidence, the hearing officer determines whether a violation of Section 79.01 of the Codified Ordinances of the city of Akron is established by a preponderance of the evidence and whether the owner of the vehicle is liable for that violation. The images of the vehicles and their license plates, the ownership records of the vehicles, and the speed of the vehicles on the date in question are considered prima facie proof of a civil violation and are made available to the appealing party.” *Id.* at ¶¶ 7-8.

[Emphasis added].

⁷ Also, in *State ex rel. Scott v. Cleveland*, 112 Ohio St. 3d 324, 2006-Ohio-6573, 166 Ohio App.3d 293, this Court upheld a Cleveland photo enforcement ordinance that contained administrative review processes similar to those contained in the Ordinance.

In key provisions, the ordinances of Akron and Toledo are alike. For instance, both provide for notices of civil liability and a right to administrative appeal.

The key issue presented in *Mendenhall* was different than the issue here- *Mendenhall* did not involve a claim that Akron improperly infringed upon a municipal court's jurisdiction. The case nevertheless suggested, as the dissent below noted, that a home rule municipality could adopt an administrative process for civil violations:

“Enactment of Akron's ordinance is not an exercise of self-government but of concurrent police power. The statute governing speed limits is a general law because it is a comprehensive statewide enactment, setting forth police regulations that apply uniformly to all citizens throughout Ohio. *Akron Ordinance 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 ordinance provides for a complementary system of civil enforcement that, rather than decriminalizing behavior, allows for the administrative citation of vehicle owners under specific circumstances. Akron has acted within its home rule authority granted by the Constitution of Ohio.*” *Id.* at ¶ 42. [Emphasis added].

Mendenhall suggests that Ohio cities may properly enact civil administrative review processes that do not otherwise conflict with state law. If Akron has, as this court has acknowledged, the home rule power to create a “complementary system of civil enforcement that, rather than decriminalizing behavior, allows for the administrative citation of vehicle owners under specific circumstances,” Toledo does too.

The specific question of whether a city's photo enforcement administrative process interferes with the jurisdiction of municipal courts has been presented to this Court. See, *State ex rel Turner v. Brown*, 128 Ohio St. 3d 1479 (2011). *Turner* involved an original action in prohibition and mandamus that claimed enforcement of Columbus's photo enforcement program unconstitutionally violated Ohio Constitution Art. IV, § 1 for reasons similar to the reasons raised by Walker in this case. This Court dismissed the action without opinion.

Proposition of Law No. 2

The Court of Appeals erred when it determined that R.C. 1901.20, "Criminal and traffic jurisdiction," gave the municipal court exclusive jurisdiction over all violations of any municipal ordinance even if the ordinance was not criminal or traffic in nature.

- A. The Court of Appeals misread R.C. § 1901.20 when it concluded that only the municipal court has jurisdiction over violations of municipal ordinances in its territory.

Ohio law makes clear that "[w]hen the General Assembly intends to vest exclusive jurisdiction in a court or agency, it provides it by appropriate statutory language". *State ex Rel. Banc One v Walker*, 86 Ohio St. 3d 169, 171, 712 N.E.2d 742 (1999). "[E]xclusive jurisdiction' is a court's power to adjudicate an action or a class of actions to the exclusion of all other courts." *Johns v University of Cincinnati Medical Center*, 101 Ohio St.3d 234, 2004-Ohio-824, 804 N.E.2d 19 at ¶ 26. [Emphasis added.]

The majority below concluded that Ohio law has "vested" municipal courts with jurisdiction over any violation of a municipal ordinance within the court's territory. Accordingly, the Court reasoned that the Ordinance in this case could not divest the municipal court of jurisdiction through the creation of an "administrative alternative." *Walker v. City of*

Toledo, 994 N.E.2d 467, 2013-Ohio-2809 (6th Dist.) at ¶36. However, the Court erred in concluding that R.C. 1901.20 had such broad application.⁸

Revised Code §1901.20 provides, in part as follows:

“Criminal and traffic jurisdiction. (A)(1) 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 Chapter 4521 of the Revised Code, 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 division (D) of section 4521.01 of the Revised Code, 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 Chapter 4521. of the Revised Code. 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 section 1901.181 of the Revised Code, provided that, except as specified in division (B) of that section, no judge

⁸ As discussed above, the majority below also erred in assuming that the Ordinance divested the municipal court of jurisdiction as there is nothing in the plain language of the Ordinance to suggest that an aggrieved person was precluded from appealing a notice to any court with jurisdiction. Walker, moreover, does not even claim to have tried. In other words, the assumption by Walker, who has made a *facial* attack on the Ordinance's constitutionality, that he had no recourse in court is not supported by the plain language of the Ordinance. Nor should Walker be able attack the Ordinance as applied without at least alleging that he was prohibited from appealing the Notice of Liability to a court with jurisdiction. Most probably he did not do so because he was aware, or should have been aware, that he did have judicial recourse to, at the very least, the common pleas court.

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.”

As the dissent below correctly noted, the majority appears to have misread the first sentence of R.C. § 1901.20(A) to conclude that the word “any” before the word “ordinance” actually modifies the word “jurisdiction”. On this apparent basis, the majority seems to have concluded, as Walker urged, that the Statute should be read as giving the municipal court *exclusive* jurisdiction over any and all violations of ordinances. However, such an interpretation can not plausibly be made without rewriting the statute. Nothing in R.C. § 1901.20(A) indicates an intention by the General Assembly to give the municipal court exclusive jurisdiction.⁹ In fact, to the contrary, as discussed above, it is clear that the municipal court has, at most, concurrent jurisdiction over some matters.

R.C. § 2506.01, for instance, illustrates that the General Assembly intended that, also, common pleas courts have jurisdiction over appeals from municipal administrative proceedings. Thus, given that R.C. § 2506.01 recognizes that common pleas courts have jurisdiction over appeals arising from enactments of municipal legislative bodies, it follows that municipal courts do not have and cannot have exclusive jurisdiction to hear appeals arising from those administrative processes.

⁹ Apparently recent General Assemblies do not share the majority below’s opinion that that municipalities are not able to adopt civil enforcement processes, such as those provided in Toledo’s Ordinance, as it seems annually legislation is debated in the General Assembly on whether the state will regulate the programs. See, for example, Sub. H.B. 69, 130th General Assembly.

The majority below suggested, with no supporting authority, that R.C. Chapter 2506 appeals only arise from municipal administrative proceeding that have been enabled by the General Assembly. *Walker* at ¶ 35. The majority was wrong.

The majority below misread *State ex rel. Banc One Corp. v Walker*, 86 Ohio St. 3d 169, 712 N.E.2d 742 (1999) to create a non-existent requirement that municipal administrative law must be authorized by the General Assembly. *Walker*, 994 N.E.2d 467, 2013-Ohio-2809 (6th Dist.) at ¶ 35. *Banc One* had nothing to do with home-rule or even municipal law in general. Appellants had properly cited *Banc One* for the proposition that where the legislature wanted to create exclusive jurisdiction in a court or administrative body, it does so through express language *Banc One* at 171. The majority below, ignoring much of its own precedent, concluded municipal administrative bodies “derive their authority from the General Assembly through enabling acts that patently carve out exceptions to municipal court review.” *Walker* at ¶35. The majority then cited statutory examples of “express legislation” it believed “patently carve[d] out exceptions to municipal court review.” *Id* at ¶ 35. However, none of the cited statutes, R.C. §§ 713.11, 713.01 and 718.11, even mention R.C. 1901.20 or the municipal court’s putative exclusive jurisdiction much less “patently” carve out exceptions.

Further, nothing in case law or R.C. Chapter 2506 specifies that municipal administrative review is only available where the review arises from a body sanctioned by statute. To the contrary, the scope of R.C. Chapter 2506 extends to final decisions of “*any* officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state.” R.C. § 2506.01. [Emphasis added]. For whatever reason, the majority (nor even the dissent) in the court below never even addressed or visited R.C. § 2506.01 which, of course, is clearly on point and the crux of this case.

Pursuant to the Toledo's home rule authority, Toledo, *by ordinance*, has created various boards that hear administrative appeals. As the majority noted in its opinion, for instance, the City has many such administrative bodies, e.g. Boards of Zoning Appeals (BZA), Plan Commission, and Tax Appeal Board (CITE). The Court, however, incorrectly concluded that these administrative bodies are creatures of state law ("... are creations of express legislation."). *Walker* at ¶35. In fact, municipal administrative bodies in Toledo were all created by ordinance or charter pursuant to Toledo's home rule authority- Board of Zoning Appeals (TMC § 1112.02, Plan Commission (TMC § 145.01) Tax Appeal Board of Review (TMC §1905.13). Moreover, as the majority acknowledged, other city administrative appellate bodies are not referenced in the Revised Code- e.g. Taxi Cab Review Board (established by TMC §771.01).

The majority's analysis is flawed because it makes the Toledo's home rule power to create administrative processes conditional upon state legislative grant. Such a blanket limitation does not exist under Ohio law and is contrary to the authority given to Toledo by the Ohio Constitution at Article XVIII, Section 3. Under the Sixth District majority's view, home rule authority is dependent upon approval by the General Assembly. Clearly, this has never been the case.

As mentioned above, the reasoning of the majority below that Toledo can only adopt administrative processes where the state allows it, would call into question some of the Sixth Appellate Districts previous decisions. For instance, if a dance hall operator's license is revoked, under the current municipal code, that person could seek administrative review by the Dance Hall Board of Appeals. Toledo Municipal Code § 723.08. If the operator is dissatisfied with the decision of the Board of Appeals (a board not addressed in the Revised Code), the operator could appeal to the Common Pleas Court pursuant to R.C. Chapter 2506. See, *La Garza Ballroom, Inc.*

v. Toledo Bd. of Appeals, 2000 Ohio App. LEXIS 2877, 2000 WL 864450 (Ohio Ct. App., Lucas County June 30, 2000).

State ex rel. Nicholson v. City of Toledo, 2012 Ohio 4325, 2012 Ohio App. LEXIS 3793, 2012 WL 4338489 (Ohio Ct. App., Lucas County Sept. 17, 2012), and *Dixon v. City of Toledo*, 2006 Ohio 4133, 2006 Ohio App. LEXIS 4077 (Ohio Ct. App., Lucas County Aug. 11, 2006) are also illustrative of the Sixth District's prior recognition of the City's powers to create administrative appeals boards. In both cases this Court considered cases involving the City's Nuisance Abatement Housing Board (NAHAB) that was created by Toledo Municipal Code Chapter 1726. In *Dixon*, appellant was cited with a nuisance violation and appealed the notice of violation to the NAHAB. Dissatisfied with the outcome before NAHAB, the appellant brought an appeal to the Lucas County Court of Common Pleas pursuant to R.C. § 2506.01. The Common Pleas Court affirmed NAHAB and an appeal was made to the Sixth District, which affirmed.

In fact, the opinion of the majority below seems to directly contradict the Sixth District's prior decision in *City of Toledo Div. of Inspection v. Szutienko*, 6th Dist. No. L-90-136, 1991 WL 49989 (Apr. 5, 1991):

"The city of Toledo is a political subdivision of the state of Ohio. The procedures provided in Toledo Municipal Code Section 1353.04 are quasi-judicial in nature and, therefore, result in administrative decisions which are subject to review under R.C. 2506.01. *M.J. Kelley Co. v. Cleveland* (1972), 32 Ohio St.2d 150, paragraph one of the syllabus. Thus, *any decision of the Board must be appealed to the Lucas County Court of Common Pleas*. Accordingly, the Toledo Municipal Court lacked the subject matter jurisdiction to entertain appellants' appeal. In

seeking to amend the notice of appeal, appellants, in essence, asked the trial court to permit a separate cause of action in which that court would adjudicate the same issues involved in the administrative appeal. Appellants cannot seek to circumvent the administrative process in this manner. In this case, the exclusive remedy available for a review of the Board's order is by means of appeal through R.C. 2506.01. *Sutherland-Wagner v. Brook Park Civil Service Comm.* (1987), 32 Ohio St.3d 323, 324.” *Id.* [Emphasis added].

Szutienko involved an attempt by property owners to appeal an order of Toledo’s Nuisance Abatement Board of Appeals to the Toledo Municipal Court. The Sixth District upheld the municipal courts dismissal on the basis that the appeal should have been made to the common pleas court pursuant to R.C. Chapter 2506. *Id.*

To be certain, *La Garza*, *Nicholson*, *Dixon* and *Szutienko* are not factually identical to the instant case. They all, however, illustrate the long recognition that R.C. Chapter 2506 is available to review decisions by administrative bodies of the City regardless of whether the administrative body was a “creation[s] of express [state] legislation.” Moreover, the cases all suggest that municipal court jurisdiction is not exclusive.

Ohio Revised Code § 1901.20 does not grant exclusive jurisdiction to the Toledo Municipal Court. No words in the statute indicate that the General Assembly intended that every case involving a violation of a municipal law be both originally and exclusively filed in municipal court. It is clear that General Assembly has *enabled* but not *required* the municipal courts to be used as a forum for city code enforcement. Without such an enabling statute, arguably no municipal code violation could be prosecuted in the municipal court. After all, the municipality cannot require a state court to hear cases that the state has not enabled the court to

hear. *American Fin. Services Association v. Toledo, supra*, at ¶ 76. A contrary reading of R.C. § 1901.20, the reading urged by Walker and accepted by the majority below, would make no sense and would lead to unintended results.

For example, under the expansive interpretation of R.C. § 1901.20 afforded by the majority below, if an inspector for the City noticed that a homeowner's grass was over 8 inches tall in violation of TMC § 955.01, the inspector would not be able to issue an administrative "Notice to cut weeds" to the homeowner pursuant to current TMC § 955.02. Rather, under Walker's view, the unfortunate homeowner that under current law could have simply complied with the notice or sought an administrative appeal pursuant to TMC § 955.05, would instead have to be brought before a municipal court judge to answer for the violation. Such a result could hardly be in the homeowner's or the court's interest and could not have been intended by the General Assembly.

Nor is the majority's erroneous reading of R.C. § 1901.20 confined to administrative matters as according to the majority **any** matter that arises from **any** violation of an ordinance can **only** be heard in municipal court. Under Walker and the majority's expansive interpretation of R.C. § 1901.20 what happens when the City files a civil suit based upon a violation of its code?

For instance, Toledo, like many other large Ohio cities, has a tax code, TMC Title 19. Employers are generally required by Toledo's Code to withhold certain taxes and remit the amounts withheld to the City. TMC § 1905.06. Suppose ABC Co., a large, fictional, employer in Toledo, withholds \$120,000 on behalf of its employees but does remit the money to the City **in violation of the Code**. Can the City sue ABC Company, civilly, in common pleas court to recover the amount ABC wrongfully failed to remit in violation of the Code? Does municipal

court have jurisdiction because the claim is based upon a violation of an ordinance? If so, is the monetary jurisdiction of the municipal court established by R.C. § 1901.17 waived or is the City's recovery limited to \$15,000?

The majority was wrong when it read R.C. § 1901.20 so broadly as to give the municipal court sole jurisdiction over every violation of a municipal ordinance.¹⁰

But assume for a moment, *arguendo*, that the majority of the court below was correct in its determination of the verbiage "exclusive jurisdiction." Even if this concession were made, the court of appeals majority still had it wrong. Exclusive Jurisdiction is a proposition used as between courts, not, as in the case at bar, between a court and a local administrative body. Thus, in *Johns v University of Cincinnati Medical Center*, 101, Ohio St. 3d 234, 2004 Ohio 824, this Honorable Court found that "exclusive jurisdiction is a court's power to adjudicate an action or class of actions to the exclusion of all other courts." *Id.* at ¶ 26. [Emphasis added]. This is not unlike the exclusive jurisdiction provided to this Court and district courts of appeals in cases from the Board of Tax Appeals (see, R.C. § 5751.31) and/or to the Chief Justice in cases of statewide election contest matters (see, R.C. § 3515.08). Contrast this with the fact that a declaratory judgment action cannot be filed in the Supreme Court or a court of appeals. Such an action, to the exclusion of other courts, must generally be filed in a common pleas court.

B. R.C. § 1901.20 does not apply to civil violations of ordinances.

As the dissent noted, this Court has interpreted R.C. § 1901.20 as pertaining to jurisdiction over criminal violations. "Likewise, R.C. § 1901.20 provides that municipal courts have subject-matter jurisdiction in criminal matters only when the crime was committed 'within its territory' or 'within the limits of its territory.' R.C. § 1901.20(A)(1) and (B). We find no reason that the

¹⁰ One can only imagine what effect such an interpretation would have on the already burdened dockets of the municipal courts.

General Assembly would have granted municipal courts statewide subject-matter jurisdiction over civil matters but only territorial subject-matter jurisdiction over criminal matters. Further, the fact that the General Assembly used the words ‘within its territory’ in both sections suggests that the phrase should carry the same meaning in both.” *Cheap Escape Co., Inc. v. Haddox, LLC*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601.

Neither Walker nor the majority below cited any examples of cases involving a violation of a non-criminal, parking or traffic ordinance that was *originally* adjudicated in a municipal court. That is because, as this Court in *Mendenhall* observed, a city’s home rule authority is broad enough to allow for the creation of “complementary system of civil enforcement.” *Mendenhall* at ¶ 42.

Proposition of Law No. 3.

The Court of Appeals erred when it determined that Walker stated a claim that TMC § 313.12 failed to provide adequate procedural due process as the plain language of the presumptively valid Ordinance provides for notice and an opportunity to be heard.

Without much analysis, the majority below concluded that Walker had pleaded facts sufficient to proceed with his claim that the Ordinance deprived him of procedural due process. Again, the majority erred by failing to afford the Ordinance the presumption of constitutionality to which it was entitled.

The majority acknowledges that “at a minimum, due process of law requires notice and a meaningful opportunity to be heard***.” *Walker*, 994 N.E.2d 467, 2013-Ohio-2809 (6th Dist.) at ¶ 39. However, according to the majority, Walker had made sufficient allegations to survive a motion to dismiss. *Id.* The majority’s conclusion is perplexing because, amongst other things, it is contradicted by the majority’s opinion.

In its opinion the majority accurately summarized the provisions of the Ordinance:

“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).

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).

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."

Id. at ¶¶ 8-10.

In essence, the majority below simply ignored the plain language of the Ordinance. "Although the concept is flexible, at its core, procedural due process under both the Ohio and United States Constitutions requires, at a minimum, an opportunity to be heard when the state seeks to infringe a protected liberty or property right [cites omitted]" *Youngstown v. Traylor*, 123 Ohio St.3d 132, 2009-Ohio-4184, 914 N.E.2d 1026 at ¶8. On its face Ordinance it is clear that the Ordinance provided for both notice and an opportunity to be heard.¹¹ In addition, and perhaps most importantly, it does not, in any way, preclude judicial review.

¹¹ The majority noted Walker claims to have never conceded the fact that there was notice and an opportunity to be heard in his complaint. *Id.* ¶ 39. While it is true that Walker alleged that the Ordinance merely "hints" at an administrative process (Complaint ¶ 24), this bare allegation is not dispositive as to the question of whether the presumptively constitutional Ordinance provides notice and an opportunity to be heard. Clearly the Ordinance does. Walker's allegations acknowledge so as well. See, Complaint ¶¶ 2, 14, 15, 23. Nevertheless, even if Walker claimed the Ordinance did not state as it does, the trial court could properly consider the plain language of the Ordinance when considering a Civ. R. 12(B)(6) motion without converting the motion to a motion for summary judgment. *State ex rel. Neff v. Corrigan*, 75 Ohio St.3d 12, 16, 661 N.E.2d 170, 174 (1996).

CONCLUSION

This case is not really about “red light cameras.” Certainly, great controversy surrounds photo-enforcement programs - proponents praise them as necessary safety measures that discourage scofflaws and deter reckless driving habits while opponents say that the cameras are an Orwellian infringement upon rights designed solely to generate income. The debate as to the efficacy of the cameras plays out politically on an almost regular basis in the General Assembly and on various city councils. This ongoing debate is fitting because it is in these various legislative bodies where the future of photo enforcement programs should be decided rather than in court on the basis of a strained interpretation of jurisdiction.

This case is actually about fundamental principles of home rule, presumptions of legislative validity and jurisdiction. And the stakes in this case are high. While it is conceivable that in any given session the General Assembly may take action to curb the use of “red light cameras” on a statewide level, such an action would not do the damage to Toledo and other cities as allowing the erroneous decision of the majority below to stand. The Sixth District has abolished cities’ prerogatives to exercise home rule in a manner that would allow cities to establish and maintain administrative proceedings. A City could not, as many do, give non-criminal notices of violation to persons who created or maintained nuisances unless those notices were filed with the court. A person who let his grass grow too long would no longer be able to quietly fix the issue when given notice to do so without having to answer to a judge. If a person received a notice of violation of a local ordinance prohibiting tall grass and disagreed with the content of the notice, he would no longer be able to appeal to a non-formal administrative proceeding but, instead, would have to go to municipal court and unnecessarily endure lengthy, formal and costly

proceedings. Clearly, R.C. § 1901.20 was not written to produce this result. Nor can it be reasonably read to require it.

The presumptions of validity so long enjoyed by legislative acts would likewise be significantly eroded if the decision below is allowed to stand. Ordinances enacted by democratic processes made pursuant to Constitutional powers of home rule, could, as here, receive such little deference as to be invalidated by unsupported allegations of a complaint and unreasonably rigid misinterpretations of statutes. Courts could rely on the precedent of this case to justify doing the opposite of what this Court has so long required - in other words, courts would no longer feel compelled to make any attempt to harmonize legislative acts.

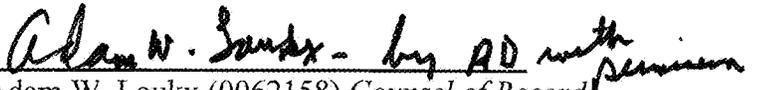
If allowed to stand, this case will actually undermine the jurisdictional principles that the majority below claims to have protected. By reading R.C. § 1901.20 as giving municipal courts exclusive jurisdiction over matters arising from violations of municipal ordinances, other courts will be deprived of jurisdiction and other statutes will be emasculated. If a city may not have administrative procedures, what purpose will be served by R.C. Chapter 2506?

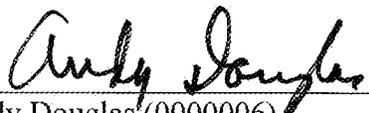
The truth is the majority below got it terribly wrong. The court erred in failing to afford the Ordinance the deference a legislative act properly enjoys. The court erred when it misread R.C. § 1901.20 in an expansive manner that is at odds with the statute's plain language. The court erred further when, instead of attempting to harmonize what it viewed as contrary legislative actions, it took pains to find them in conflict. The court erred when found that the Ordinance divested any court of jurisdiction. The court erred when it found, without any supporting precedent, that a city's ability to exercise constitutional rights of self government by establishing administrative procedures was dependent upon a grant of authority by the General Assembly. And just as importantly, the court of appeals erred by creating a doctrine of exclusive jurisdiction that

pertains to jurisdiction between a court and an administrative tribunal as opposed to jurisdiction between courts.

For the reasons set forth herein, the decision below should be reversed.

Respectfully submitted,


Adam W. Loukx (0062158) *Counsel of Record*^{permin}
Eileen Granata (0016745)
City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604
Telephone: (419)245-1020
Facsimile: 419-245-1090
adam.loukx@toledo.oh.gov
eileen.granata@toledo.oh.gov


Andy Douglas (0000006)
Larry H. James (0021773)
Jeffrey D. Houser (0076803)
Crabbe, Brown & James LLP
500 South Front Street, Suite 1200
Columbus, OH 43215
Tel: (614) 228-5511
Fax: (614) 229-4559
adouglas@cbjlawyers.com
ljames@cbjlawyers.com
jhouser@cbjlawyers.com

Counsel for Appellant City of Toledo

CERTIFICATE OF SERVICE

The undersigned certifies that on January 24, 2014, a copy of the foregoing *Merit Brief of Appellant City of Toledo* was served via electronic mail and/or U.S. mail, postage pre-paid to the following:

John T. Murray, Esq.
MURRAY & MURRAY CO., L.P.A.
111 E. Shoreline Drive
Sandusky, Ohio 44870

Andrew R. Mayle, Esq.
Jeremiah S. Ray, Esq.
Ronald J. Mayle, Esq.
MAYLE, RAY & MAYLE LLC
210 South Front Street
Fremont, Ohio 43420

Joseph A. Castrodale (0018494)
John M. Alten (0071580)
Laura C. McBride (0080059)
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113

Christopher R. Heekin (0042032)
Heekin & Heekin
817 Main Street, Suite 200
Cincinnati, Ohio 45202

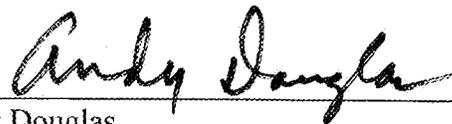
Stephen J. Smith (0001344)
Frost Brown Todd LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215

John C. Musto (0071512)
City of Dayton Law Department
101 W. Third Street
P.O. Box 22
Dayton, Ohio 45401

Phillip K. Hartmann (0059413)
(Counsel of Record)
Yazan S. Ashrawi (0089565)
Frost Brown Todd LL
10 West Broad Street, Suite 2300
Columbus, Ohio 43215

John Gotherman (0000504)
Ohio Municipal League
175 S. Third Street, #510
Columbus, Ohio 43215-7100

Jennifer S. Gams (0063704)
City of Columbus Law Department
Assistant City Attorney
77 North Front Street, 4th Floor
Columbus, Ohio 43215



Andy Douglas

APPENDIX A

Toledo Municipal Code

313.12. Civil penalties for automated red light system violations.

(a) Automated red light and speeding system/civil violation – General.

(1) Notwithstanding any other provision of this Traffic Code, the City of Toledo hereby adopts a civil enforcement system for red light and speeding camera system violations as outlined in this Section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic control indications in the City of Toledo in accordance with the provisions of this Section.

(2) The City of Toledo Division of Transportation, the Toledo Police Department, and the Toledo Department of Law shall be responsible for administering the Automated Red Light and Speeding System. Specifically, the Toledo Division of Transportation and the Toledo Police Department shall be empowered to install and operate red light and speeding camera systems within the city of Toledo. And, the Toledo Division of Transportation and the Toledo Police Department shall maintain a list of system locations where red light and speeding camera systems are installed. Said departments will make the determination as to which locations will be utilized.

(3) Any citation for an automated red light and speeding system violation pursuant to this Section, known as a "Notice of Liability" shall:

- A. Be processed by officials or agents of the City of Toledo;
- B. Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration, and
- C. Clearly state the manner in which the violation may be appealed.

(b) Definitions.

(1) "Automated red light and speeding system" is the equivalent of "Traffic control signal monitoring device" or "Traffic control photographic system." Said system/device is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control.

(2) "In operation" means operating in good working condition.

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

(4) "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle.

(5) "Responsible party" is the person or entity named per TMC Subsection (c) (4) A.

(c) Offense.

(1) The owner of a vehicle, or the party named per TMC Subsection 313.12 (c)(4)A, shall be liable for the penalty imposed pursuant to this Section if such vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light.

APPENDIX A

(2) The owner of a vehicle, or the party named per TMC Subsection 313.12 (c)(4)A, shall be liable for a penalty imposed pursuant to this Section if such vehicle is operated at a speed in excess of those set forth in TMC Section 333.03.

(3) It is prima-facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other State vehicle registration office) was operating the vehicle at the time of the offense set out in subsection (c)(1) or (c)(2) above.

(4) Notwithstanding subsection (c)(3) above, the owner of the vehicle shall not be responsible for the violation if, within twenty-one (21) days from the date listed on the "Notice of Liability", as set forth in subsection (d)(4) below, the owner of the vehicle furnishes the Hearing Officer:

A. An affidavit by him, stating the name and address of the person or entity who leased, rented, or otherwise had the care, custody and control of the vehicle at the time of the violation; OR

B. A law enforcement incident report/general offense report from any state or local law enforcement agency/record bureau stating that the vehicle involved was reported as stolen before the time of the violation.

(5) An imposition of liability under the Section shall not be deemed a conviction as an operator and shall not be made part of the operating record upon whom such liability is imposed.

(6) Nothing in this Section shall be construed to limit the liability of an operator of a vehicle for any violation of subsection (c)(1) or (c)(2) herein.

(7) This Section shall not apply to violations involving vehicle collisions.

(d) Penalty; Administrative Appeal.

(1) Any violation of subsection (c)(1) herein shall be deemed a noncriminal violation for which a civil penalty of \$120.00 shall be assessed and for which no points authorized by Ohio R. C. 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(2) Any violation of subsection (c)(2) herein shall be deemed a noncriminal violation for which a civil penalty of \$120.00 shall be assessed and for which no points authorized by Ohio R.C. 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(3) The City of Toledo, via its Division of Transportation, Police Department, Law Department and Municipal Court Clerk may establish procedures for the collection of the civil penalties imposed herein, and may enforce the penalties by a civil action in the nature of a debt.

(4) A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the "Notice of Liability." The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the citation and will be considered an admission. Appeals shall be heard through an administrative process established by the City of 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.

(5) The failure to respond to a Notice of Liability in a timely fashion as set forth in subsection (d)(4) of this section shall result in an additional penalty of twenty-five dollars (\$25.00).

APPENDIX A

(6) In lieu of assessing an additional penalty, pursuant to subsection (d)(5) above, the City of Toledo may (i) immobilize the vehicle by placing an immobilization device (e.g. a "boot") on the tires of the vehicle pending the owners compliance with the Notice of Liability, or (ii) impound the vehicle, pursuant to TMC Section 303.08(a)(12). Furthermore, the owner of the vehicle shall be responsible for any outstanding fines, the fee for removal of the immobilization device, and any costs associated with the impoundment of the vehicle. (Ord. 74-08. Passed 2-12-08; Ord. 67-10. Passed 3-2-10; Ord. 273-10. Passed 5-25-10.)

APPENDIX B

SCANNED

FILED
LUCAS COUNTY

2012 FEB -1 P 4: 07

THIS IS A FINAL APPEALABLE ORDER
JUDICIALS COURT
CLERK/CULTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Bradley L. Walker,

* Case No. CI 201101922

Plaintiff,

* Judge Ruth Ann Franks

-vs-

* OPINION AND JUDGMENT ENTRY

City of Toledo, et al.,

*

Defendants.

*

This cause is before the Court upon Defendants City of Toledo's and RedFlex Traffic Systems, Inc.'s Motion to Dismiss. Upon consideration of the pleadings, memoranda of counsel and applicable law, the Court finds the motions well taken and granted.

I. Facts

Plaintiff Bradley L. Walker ("Walker") has filed a complaint on behalf of himself and "those similarly situated" as against Defendants City of Toledo ("City") and RedFlex Traffic Systems, Inc. ("RedFlex"). Walker's complaint seeks the return of all monies that City and RedFlex have collected pursuant to City's traffic camera "enforcement system" which is codified at Toledo Municipal Code 313.12. Walker alleges that the provisions of the same are invalid,

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therefore City and RedFlex have been unjustly enriched by receipt of monies from the ordinance.

According to Walker's complaint, the City has adopted a civil enforcement system for red light and speeding camera system violations.¹ The enforcement system is composed of an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control.² This electronic system is provided by RedFlex, and the Toledo Municipal Code ("Code") provides that if RedFlex's equipment determines that a vehicle is speeding, the owner of the vehicle shall be liable for the associated penalty. Accordingly, if a RedFlex camera captures an alleged violation, RedFlex investigates the matter and refers it to the City.

Walker further alleges that, as part of this joint venture between RedFlex and the City, RedFlex compiles evidence, determines the name and address of the vehicle owner, and forwards this information to the City, who then reviews the information and issues a citation to the vehicle's owner. These violations are classified as "non-criminal," and carry a penalty of \$120. Walker alleges that RedFlex and the City "split" the proceeds of the penalty, with most of it going to the former party. If a penalty is not paid, the City claims authority to collect and enforce the citation via a civil action or any other means authorized by the Ohio Revised Code, including the immobilization or impounding of the vehicle.

Walker states that the Code allows a vehicle owner to appeal a RedFlex citation, provided

¹ Much of the Court's recitation of facts will be taken verbatim from Walker's complaint in order to accurately articulate his claims.

² Walker cites to Toledo Municipal Code 313.12(b)(1).

the same is done in a particular manner. Despite this appearance of an "administrative process," Walker alleges, the Code does not actually create the process. Instead, it delegates authority to the Toledo Police Department to establish the process. Walker alleges that this delegation was void on its face, and no administrative process was established until February 2011. Walker asserts three "problems" with the City's enforcement system: (1) no legislative body has given the enforcing agency (the police department) any guidelines or standards, and the police department is therefore unfettered in its discretion; (2) no administrative process was established before February 2011, even though the enforcement system was in place prior to that time; and (3) the enforcement program attempts to impermissibly strip the Toledo Municipal Court of its exclusive jurisdiction to preside over municipal ordinance violations as provided in the Ohio Revised Code.

Accordingly, Walker asserts that, first, the City's ordinance is invalid because it delegates power to the police without providing any rules or standards, in violation of due process and equal protection under the United States' and Ohio's Constitution. Further, the ordinance violates public policy because it fails to establish an administrative process of enforcement. Next, even if a legislative body, specifically the City Council, made a proper delegation of the administrative process, any fines received prior to its creation must be returned. Finally, even if the Code is not facially invalid and even if the police department established an unwritten administrative appeals process, the fines must be returned because the Code usurps the Toledo Municipal Court's jurisdiction over municipal ordinance violations. Therefore, the Defendants have been unjustly enriched through the collection of the fines.

Additionally, Walker alleges that "several thousand other vehicle owners" are similarly

situated and a class certification is appropriate in this action.

The Defendants have responded to Walker's complaint with a motion to dismiss. Walker opposed the motions, and replies and a sur reply were filed. The matter is decisional.

II. Standard

A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is the proper remedy when a plaintiff has failed to attach an affidavit of merit to his complaint. Fletcher v. Univ. Hosp. of Cleveland, 172 Ohio App. 3d 153, 2007 Ohio 2778, 873 N.E.2d 365. A motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6) is procedural and tests the sufficiency of the complaint. Bratton v. Couch, 5th Dist. No. CA02-012, 2003-Ohio-3743, at ¶8, citing State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs., 65 Ohio St.3d 545, 605 N.E.2d 378 (1992). The Court is required to examine only the four corners of the complaint. Ferraro v. B.F. Goodrich Co., 149 Ohio App.3d 301, 777 N.E.2d 282 (2002), citing Thompson v. Cent. Ohio Cellular, 93 Ohio App.3d 530, 538, 639 N.E.2d 462 (1994).

III. Discussion

The City has moved for dismissal of Walker's complaint based on the authority of Mendenhall v City of Akron, 117 Ohio St.3d 33, 881 N.E.2d 255 (2008), in which the Ohio Supreme Court held that a municipality's ordinance that enforced speed and red light traffic violations was constitutional despite it being based within a civil administrative liability context. The City also asserts several other reasons Walker's complaint must fail, including that unjust enrichment claims cannot lie against a municipality, and Walker did not choose to appeal the violation therefore there was no violation of his due process. Finally, the City contends that the

Ohio Revised Code does not grant exclusive jurisdiction to the Toledo Municipal Court as argued by Walker, and Walker lacks standing to bring the within action.

RedFlex has also moved for dismissal of Walker's complaint, making the additional arguments that Walker waived his right to challenge the ordinance because he paid the fine and did not seek a hearing (which also render's Walker's claim moot), and that constitutional challenges are inapplicable to RedFlex because it is not a state actor, nor are there allegations that it is.³

The Court first turns to the issue of standing, and whether Walker has satisfied this requirement. "Before a court may decide the merits of a case, the party seeking relief must have standing to do so. 'A person has no standing to attack the constitutionality of an ordinance unless he has a direct interest in the ordinance of such a nature that his rights will be adversely affected by its enforcement'." State v Bloomer, 122 Ohio St. 3d 200, 2009 Ohio 2462, 909 N.E.2d 1254, citing Anderson v. Brown, 13 Ohio St.2d 53, 233 N.E.2d 584, (1968) paragraph one of the syllabus. "In order to have standing to attack the constitutionality of a legislative enactment, the private litigant must generally show that he or she has suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general, that the law in question has caused the injury, and that the relief requested will redress the injury." State ex rel. Ohio Acad. of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 715 N.E.2d 1062 (1999). "Unlike the federal courts, state courts are not bound by constitutional strictures on standing; with state courts standing is a self-imposed rule of restraint." Id. "State courts need not become enmeshed in the federal complexities and technicalities involving standing and are free

³ RedFlex also discusses many of the same points that the City asserts in its own motion to dismiss.

to reject procedural frustrations in favor of just and expeditious determination on the ultimate merits." Id.

Subjudice, Walker alleged that he paid the fine he was issued pursuant to the ordinance. Accordingly, his injury is monetary. While Defendants argue that Walker's payment of the fine actually renders his claim moot and bars any standing, the Court disagrees. Had Walker *not* paid the fine, it might be said that he did not avail himself of *any* of the avenues to deal with the notice of liability and therefore suffered no injury.⁴ Further, Walker's complaint alleges that there was actually no administrative appeals process in place at the time he received his notice of violation. Accepting this allegation as true for purposes of considering the motion to dismiss, and based on the four corners of the complaint, the Court cannot say at this time that Walker failed to avail himself of the processes available to him, if any, and as a result lacks standing.

Defendants further argue that Walker's failure to exhaust administrative remedies bars his claim. The Court disagrees under the present circumstances. R.C. 2721.03 allows for a suit to determine the validity of a municipal ordinance. South Euclid Fraternal Order of Police v D'Amico, 4 Ohio App. 3d 15, 446 N.E.2d 198 (8th Dist. 1982). The necessary case or controversy for a declaratory judgment exists when a plaintiff has alleged past or future harm. See, Id. Subjudice, Walker has alleged such harm. Further, the exhaustion of administrative remedies is not required when the constitutionality of an ordinance is being challenged.

⁴ See, e.g. Williams v RedFlex, E.D.Tenn. No. 3:06-cv-400, at *2, 2008 U.S. Dist. LEXIS 22723 (March 20, 2008) (because plaintiff who was challenging the red light system failed to pay the fine *or* pursue the appeals process, she lacked standing to challenge the sufficiency of the process). RedFlex cites to Williams for the proposition that the plaintiff's lack of standing was based on her failure to use the administrative appeal process, however, this Court's reading of Williams reveals that the court noted that the plaintiff additionally did not pay the fine and, therefore, availed herself of *no* process.

The Court also notes that RedFlex cites a string of cases to support its argument that payment of the fine resolved the dispute and Walker thereby waived his defenses. RedFlex then asserts "[c]ritically, this includes constitutional defects." RedFlex offers no legal support for this latter assertion, however.

Sandusky Marina Ltd. P'ship v Dept. of Natural Resources, 126 Ohio App.3d 256, 710 N.E.2d 302 (6th Dist. 1998), citing Johnson's Island v. Bd. of Twp. Trustees, 69 Ohio St. 2d 241, 248-249, 431 N.E.2d 672 (1982). This is because an administrative agency is without jurisdiction to determine the constitutional validity of a statute. Herrick v Kosydar, 44 Ohio St. 2d 128, 339 N.E.2d 626 (1975). Accordingly, because Walker is challenging the constitutionality of the ordinance, the Court will not dismiss his claim for his failure to exhaust his administrative remedies. See also, Lycan v City of Cleveland, 8th Dist. No. 94353, 2010 Ohio 6021, disc. appeal not allowed at 2011 Ohio 2420, 2011 Ohio LEXIS 1287 (Ohio, May 25, 2011) (court found that even though plaintiffs paid the fines from traffic cameras and declined an opportunity to challenge the same through administrative appeal, the existence of the opportunity "[did] not necessarily foreclose any right to equitable relief.")

The Court next turns to the City's argument that municipalities are immune from unjust enrichment claims. While the Court finds support for this argument, it comes in the form of precedent addressing contractual claims against municipalities in which it has been held that municipalities cannot be sued in quasi-contract or quantum meruit, for which unjust enrichment is a remedy. See, e.g., Perrysburg Township v City of Rossford, 149 Ohio App.3d 645, 2002 Ohio 5498, 778 N.E.2d 619 (6th Dist.); R&K Contractors v Lone Star Constr. Co., 11th Dist. No. 92-T-4809, 1994 Ohio App. LEXIS 1500 (April 8, 1994); City of Seven Hills v City of Cleveland, 47 Ohio App. 3d 159, 547 N.E.2d 1024 (8th Dist. 1988).

To the contrary, Walker points to Santos v Ohio Bureau of Workers Comp., 101 Ohio St. 3d 74, 2004 Ohio 28, 801 N.E.2d 441, to support his assertion that the Ohio Supreme Court "has made clear that a class representative may bring an unjust enrichment claim for the return of

specific funds collected under unconstitutional legislation."⁵ Santos concerned employees who sought restitution for subrogated amounts wrongfully collected from them before a workers compensation subrogation statute had been found unconstitutional. The actual question the Santos Court considered was jurisdictional in nature, and the court held that "a suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity. Thus, a court of common pleas may properly exercise jurisdiction over the matter as provided in R.C. 2743.03(A)(2)." Santos at syllabus.

Likewise, the Santos Court noted its review of Judy v Ohio Bur. of Motor Veh., 100 Ohio St.3d 122, 2003 Ohio 5277, 797 N.E.2d 45, which was a class action suit seeking injunctive relief and reimbursement from the BMV for its improper collection of double reinstatement fees based on the Bureau's erroneous interpretation of a statute. The Court commented that although the defendant in Judy did not appeal any jurisdictional issues, the Court did not recognize any because the suit was not for money "damages," but rather to correct the unjust enrichment BMV gained from the wrongful collection of fees. Accordingly, the suit was one brought in equity. While this Court acknowledges that Santos focused on the issue of jurisdiction, which is not the issue subjudice, it cannot be ignored that the Santos and Judy cases were indeed both entertained and their bases are analogous to the unjust enrichment claim before this Court. See also, Lycan (Ohio, May 25, 2011) (court denied defendant's motion for judgment on the pleadings as to plaintiff's claim of unjust enrichment against defendant's retention of red light camera fines). Based on the above, the Court does not find merit in the City's assertion that it enjoys immunity from Walker's unjust enrichment claim.

⁵ Walker's brief in Opposition, p. 2.

Since it has been determined that Walker has standing to bring the action and that the City is not immune from the suit, the Court now turns to the question of whether Walker has stated a claim upon which relief may be granted. Walker asserts that the ordinance is invalid because it gives exclusive jurisdiction over all TMC 313.12 violations to an agency, when R.C. 1901.20 actually confers exclusive jurisdiction of these violations to the Toledo Municipal Court. He further argues that nothing in R.C. 1901.20 gives a local police department exclusive jurisdiction over municipal ordinance violations concerning traffic cameras. Moreover, the authority granted to municipalities by the Ohio Constitution to exercise all powers of local self-government does not include the power to regulate the jurisdiction of courts.⁶ Walker acknowledges that municipal ordinances are presumed to be constitutional, and the burden is his to show otherwise. "It is fundamental that a court must 'presume the constitutionality of lawfully enacted legislation'." Klein v Leis, 99 Ohio St. 3d 537, 2003 Ohio 4779, 795 N.E.2d 633. "Legislation being challenged will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt." Hilton v. Toledo, 62 Ohio St.2d 394, 405 N.E.2d 1047 (1980); Klein.

TMC 313.12, in pertinent part, states:

(1) Notwithstanding any other provision of this Traffic Code, the City of Toledo hereby adopts a civil enforcement system for red light and speeding camera system violations as outlined in this Section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic control indications in the City of Toledo in accordance with the provisions of this Section.

⁶ This is taken nearly verbatim from Walker's brief in Opposition.

(2) The City of Toledo Division of Transportation, the Toledo Police Department, and the Toledo Department of Law shall be responsible for administering the Automated Red Light and Speeding System. Specifically, the Toledo Division of Transportation and the Toledo Police Department shall be empowered to install and operate red light and speeding camera systems within the city of Toledo. And, the Toledo Division of Transportation and the Toledo Police Department shall maintain a list of system locations where red light and speeding camera systems are installed. Said departments will make the determination as to which locations will be utilized.

The ordinance further provides that any violation of this section is deemed civil in nature, carrying only a monetary fine, and no "points" under the point system for license suspension. A violation may be administratively appealed, with a further appeal to the common pleas court available pursuant to R.C. 2506.

In Mendenhall v City of 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 regulations." Mendendall at syllabus. The Court did a Home Rule analysis of Akron's ordinance instituting this form of enforcement and noted that the ordinance was an exercise of police power that relates to the public health, safety, and welfare of the general public; the traffic statute was a general law; and the ordinance was not in conflict with the statute. The Court also rejected a preemption argument that the state has intended to completely occupy the field of traffic regulation, thus municipalities could not take such action. It further declined any consideration of

"motivation" issues with respect to its analysis.⁷ Subjudice, Walker points to the Mendenhall Court's observation that "although there are due process questions regarding the operation of the Akron Ordinance and those similar to it, those questions are not appropriately before [the court] at this time and will not be discussed here." Mendenhall at 42.⁸ Hence, under Mendenhall, the City subjudice was within its authority to establish this system for the enforcement of traffic violations.

The Court rejects Walker's argument, however, that the Ohio Revised Code gives the Toledo Municipal Court exclusive jurisdiction over violations issued pursuant to TMC 313.12. "Exclusive jurisdiction" is a court's power to adjudicate an action or class of actions to the exclusion of all other courts. Johns v. University of Cincinnati Medical Center (2004), 101 Ohio St.3d 234, 239, 804 N.E.2d 19. R.C. 1901.20(A), titled "criminal and traffic jurisdiction," states:

(A) (1) 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 Chapter 4521. of the Revised Code, 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 division (D) of section 4521.01 of the Revised Code, 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 Chapter 4521. of the Revised Code. The municipal court, if it has a housing or environmental division, has jurisdiction of any criminal action over

⁷ Is the city's motivation behind automated camera enforcement actually public-safety related or is it simply for purposes of increasing revenue?

⁸ Despite the Mendenhall court's passing comment in this respect, this Court declines to read anything into the Mendenhall decision that is not articulated.

which the housing or environmental division is given jurisdiction by section 1901.181 [1901.18.1] of the Revised Code, 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.

Walker relies on the use of the word "any" in the first sentence above to indicate that the Toledo Municipal Court has exclusive jurisdictions for violations of TMC 313.12 such as his. Walker asserts that, with R.C. 1901.20, "the General Assembly made the statewide determination that municipal ordinance violations must be adjudicated in courts." While Walker does not directly address the appeal to the court of common pleas that would have been available to him R.C. 2506.01, he opines that a municipality's ability to fashion the enforcement of ordinance violations in an administrative nature will lead to a burdened common pleas docket. The Court is not persuaded by this argument, as Walker and those similarly situated clearly have the benefit of an appeal before a judicial body. Moreover, a reading of R.C. 1901.20 demonstrates that it does not confer *exclusive* jurisdiction to the Toledo Municipal Court over these violations. "When the General Assembly intends to vest exclusive jurisdiction in a court or agency, it provides it by appropriate statutory language." State ex Rel. Banc One v. Walker, 86 Ohio St. 3d 169, 1999 Ohio 151, 712 N.E.2d 742. The statute within uses no such unambiguous terms to indicate exclusive jurisdiction, and this Court does not interpret the use of the word "any" to be an expression of "all" or "exclusive." In this respect, Walker's complaint does not state a cause of action relative to the unconstitutionality of the ordinance in this respect.

Walker also asserts that the City's ordinance is invalid because it delegates power to the

police without providing any rules or standards, which is in violation of due process and equal protection under the United States' and Ohio's Constitution; that the ordinance violates public policy because it fails to establish an administrative process of enforcement. He further argues that even if a legislative body, specifically the City Council, made a proper delegation of the administrative process, any fines received prior to its creation must be returned. The Court disagrees that these assertions state a cause of action. First, TMC 313.12 indicates that appeals may be had through a "hearing officer," and Walker's complaint concedes that there is an administrative appeals process in conjunction with an automated camera ticket. Walker's criticism, however, is that the ordinance does not explicitly state the rules or standards to be followed by the police department when it conducts the appeals process. Specifically, Walker states that it is unknown whether parties may bring attorneys, whether there is subpoena power, the right to call witnesses and the right of cross examination, whether evidentiary rules apply, whether discovery may be had, or whether parties may give opening and closing statements.

Presuming for purposes of the motion to dismiss that these allegations are all true, and this information is not provided in written form, Walker's complaint still does not suggest that the ordinance is invalid beyond a reasonable doubt. Walker conceded that the administrative appeal process was available to him. Had Walker been displeased with the outcome of the administrative appeal, Ohio law provides that he could have commenced an appeal of the administrative decision pursuant to R.C. 2506 in the common pleas court. See, e.g., City of Cleveland Parking Violations Bureau v Barnes, 8th Dist. No. 94502, 2010 Ohio 6164. As a part of that process, R.C. 2506.03 provides that "[t]he common pleas court considers the 'whole record,' including any *new or additional evidence* admitted under R.C. 2506.03, and determines

whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence. . ."

(emphasis added). Barnes, quoting Henley v. Youngstown Bd. of Zoning Appeals, 90 Ohio St.3d 142, 2000 Ohio 493, 735 N.E.2d 433 (2000).

This same issue was considered in Posner v City of Cleveland, 188 Ohio App. 3d 421, 2010 Ohio 3091, 935 N.E.2d 882 (2010). Posner had appealed an automated camera ticket administratively but was unsuccessful, so he appealed to the common pleas court. His arguments included the facial unconstitutionality of the ordinance, as well as its application to him. The Posner court explained:

A statute's constitutionality can be challenged on its face or on the particular set of facts to which the statute has been applied. When a statute is challenged on its face, the challenger must demonstrate that no set of circumstances exist under which the statute would be valid. The fact that the statute could operate unconstitutionally under some given set of facts or circumstances is insufficient to render it wholly invalid. Posner at 426 (internal citations omitted).

While the Posner court declined to entertain Posner's facial constitutional challenge to the ordinance because the same was inappropriate during an administrative appeal, the court remanded the matter to the trial court to analyze Posner's "as applied" constitutional challenge. See, Posner v City of Cleveland, 8th Dist. No. 95997, 2011 Ohio 3071. The subsequent Posner court found that Posner's due process rights were not violated because even if he had been precluded from presenting witnesses and evidence during the administrative appeal, "the language of R.C. 2506.03(B) allows, even mandates, that [he] be allowed to supplement the record with such testimony." Posner, 2011 Ohio 3071 at ¶15. See also, City of Cleveland v Cord,

8th Dist. 96312, 2011 Ohio 4262, disc. appeal not allowed at 2012 Ohio 136. ("Appellant's due process rights were not frustrated because R.C. 2506.03 left an avenue open for him to call witnesses and present additional evidence that he was prevented from utilizing during the [administrative] hearing").

Subjudice, Walker brings a facial challenge to the ordinance, so he must demonstrate that no set of circumstances exist under which the statute would be valid. Even presuming all of his allegations as true, Walker cannot do this. As discussed in the Posner and Cord cases, R.C. 2506 provides a route by which due process is guaranteed to those seeking an appeal from a TMC 313.12 violation. Hence, even if the procedural administrative process is not explicitly spelled out in the ordinance, the basic tenets of Ohio law with respect to administrative hearings are in place⁹ with respect to the administrative reviewing body, as are the procedural safeguards built into R.C. 2506. In this respect, it cannot be said that the Toledo Police have "unfettered" authority with respect to administrative appeals of TMC 313.12 violations. Consequently, Walker's complaint fails to state a cause of action, and his complaint is dismissed.

JUDGMENT ENTRY

⁹ "The Ohio Supreme Court has held that administrative agencies are not bound by the rules of evidence applied in court." Cord citing Simon v. Lake Geauga Printing Co., 69 Ohio St.2d 41, 44, 430 N.E.2d 468 (1982). "Evidence that is admissible in administrative hearings is defined as follows: '(1) "Reliable" evidence is dependable, that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight; it must have importance and value.'" Cord citing Our Place, Inc. v. Ohio Liquor Control Comm., 63 Ohio St.3d 570, 571, 589 N.E.2d 1303 (1992). "Furthermore, hearsay is admissible in administrative proceedings." Cord citing Simon, 69 Ohio St.2d at 44, 430 N.E.2d 468. While the Court subjudice notes that the Our Place case is one concerning liquor permits, the Court agrees with Cord's use of this proposition of law relative to other administrative hearing cases.

SCANNED

It is therefore ORDERED, ADJUDGED, and DECREED that Defendant City of Toledo's and Defendant RedFlex's Motions to Dismiss are well taken and granted.

February 1, 2012



Ruth Ann Franks, Judge

cc: Andrew R. Mayle, Esq.
John T. Murray, Esq.
Adam W. Loukx, Esq.
Quintin F. Lindsmith, Esq.

APPENDIX C

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.

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.¹ 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

¹ 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,² 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

² 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.³

{¶ 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*

³ 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 statement⁴ 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

⁴ 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.⁵

⁵ 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. Sanquily 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

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.⁶

{¶ 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.

⁶ 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.

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