

BEFORE THE IOWA DEPARTMENT OF TRANSPORTATION

<p>IN RE:</p> <p>EVALUATION OF THE CITY OF MUSCATINE'S AUTOMATED TRAFFIC ENFORCEMENT REPORT—PRIMARY HIGHWAY SYSTEM</p>	<p>CASE NO. _____</p> <p>APPEAL OF EVALUATION</p>
--	---

COMES NOW, the City of Muscatine, Iowa (“City”), by and through its attorney, and in support of its Appeal, respectfully states to the Iowa Department of Transportation (“IDOT”) as follows:

I. BACKGROUND FACTS

1. In 2010, by reviewing accident data and speed and red light surveys, the City identified eight (8) approaches and five (5) intersections within the City’s jurisdiction that presented safety concerns. The intersections identified are:

- Washington Street at Park Avenue (north and south approaches)
- Cleveland Street at Park Avenue (north and south approaches)
- Cedar Street at Houser Street (east and west approaches)
- University Drive at US Highway 61 (westbound approach)
- Mulberry Avenue at US Highway 61 (westbound approach)

(collectively, the “Intersections”).

2. The safety concerns were precipitated by the number drivers violating the law via speed and red light violations at the Intersections.

3. The City worked with Gatso USA (“Gatso”) (whom the City had contracted to provide automated traffic enforcement camera systems (“ATE’s”) and citation management solutions) and the IDOT to engineer construction plans and ensure that the construction of the ATE systems and placement of signs was completed in accordance with the IDOT’s wishes.

4. Each of the Intersections has speed limit signs and red light signs that clearly notify drivers that photo enforcement equipment is used at those intersections.

5. In addition, the City has put up “traffic laws photo enforced” signs on every corporate limit sign on roadways entering the City of Muscatine.

6. Prior to the implementation of the ATE equipment, the City held public meetings to ensure that the public was aware of the proposed deployment of automated traffic enforcement. In addition, informational pamphlets were distributed to the public, and information was disseminated via email and the internet.

7. On or about March 11, 2011, the ATE equipment was activated at the intersection of Cedar Street and Houser Street. On or about March 18, 2011, the ATE equipment was activated at the intersections of US Highway 61 and Mulberry Avenue, US Highway 61 and University Avenue, and Park Avenue and Cleveland Street. The intersection of Washington Street and Park Avenue was activated on or about May 21, 2011. Each intersection had a warning period of thirty (30) days in which warnings were mailed to violators, but citations were not issued.

8. It is City policy that a speed citation will not be issued unless the violating vehicle is traveling more than ten (10) miles per hour over the speed limit.

9. All such speed and red light citations are considered civil violations, which do not get reported on an individual’s driver’s license, and which are significantly lower in cost than a speed or red light citation received from a police officer.

10. During the approximately ten (10) months that the ATE equipment was active in 2011, there were a total of 19,748 citations issued—of those, 1,927 citations were for red light violations and 17,821 citations were for speed violations.

11. During 2012, there were a total of 15,462 citations issued—of those, 2,677 citations were issued for red light violations and 12,785 citations were for speed violations. By prorating the partial year in which ATE's were active in 2011, these figures represent a 32% decrease in violations from 2011 to 2012.

12. In March through December 2010 (prior to ATE implementation) there were thirty (30) motor vehicle crashes at the Intersections. In March through December 2011, there were twenty-one (21) motor vehicle crashes at the Intersections. This is a 30% decrease in crashes at the Intersections.

13. During 2013, there were a total of 13,369 citations issued—of those, 2,547 citations were issued for red light violations and 10,822 citations were for speed violations. Comparing this data to the violations issued in 2012, these figures represent a 14% decrease in violations from 2012 to 2013.

14. During 2013, there were nineteen (19) motor vehicle crashes at the Intersections. In comparison, there were twenty-six (26) motor vehicle crashes at these Intersections in 2012. These figures show a 27% decrease in motor vehicle crashes from 2012 to 2013.

15. Based on the deployment dates set forth in paragraph 7, the ATE figures used throughout this Appeal for comparative purposes are based on an approximately ten (10) month period in 2011 versus a full twelve (12) month period for all years thereafter. As such, the decreases in citations issued and motor vehicle accidents since 2011 are even more pronounced than the figures present.

16. The above data clearly shows that the ATE cameras are having a positive impact on the traffic safety issues and there has been a substantial reduction in speed and red light violations at the Intersections.

17. The ATE equipment found at each of the Intersections not only detects and documents red light and speed violations, but can also be set for license plate recognition in response to Amber Alerts or other crimes.

18. In addition, the video footage obtained by the ATE equipment has been used multiple times as evidence in court for citations issued due to traffic crashes in the area of the relevant intersection.

19. On or about April 29, 2014, the City submitted its annual Automated Traffic Enforcement Report (the “Report”) to the IDOT as required by Iowa Administrative Code 761—144.7(1). The Report set forth the citation and crash data presented above as evidence of the effectiveness of the City’s ATE units.

20. On or about March 17, 2015, the IDOT notified the City of its evaluation of the City’s Report (the “Evaluation”).

21. In the Evaluation, the IDOT ordered that the City permanently remove the ATE equipment at the University Drive at US Highway 61 (westbound approach) Intersection (“University Drive”) for the following reasons: (i) crashes have increased since the camera was installed, (ii) high number of speed violations, and (iii) camera is within 1,000 feet of a lower speed limit. The Evaluation approved the continued operation of ATE’s at the remaining Intersection locations.

22. When the City was initially considering where to place the ATE units, its focus for the University Drive intersection—a location leading into the City’s business district—was to reduce speed to secure greater safety for the higher volume of vehicles and pedestrians. During the approximately ten (10) months of 2011 in which the ATE unit was active at the University Drive intersection, there were 12,857 citations issued at this location. Since 2011, this number

has been reduced significantly to 8,018 citations per year in 2014 (which is based on a full twelve (12) month period). The one (1) additional motor vehicle crash at the University Drive intersection—10 before activation (total for 2009 and 2010); 11 after activation (total for 2012 and 2013)—that the IDOT uses to justify its position in the Evaluation does not paint an accurate picture of the progress that has been made at this site as the reduction of speed at the University Drive location was always the focus for the City, and the ATE camera has been extremely successful in this regard.

23. The Evaluation also indicates that the ATE unit at the University Drive location must be removed because it is located approximately 830 feet after a lower speed limit sign (55 mph to 45 mph) in violation of Iowa Administrative Code 761—144.6(1)(b)(10), which provides that automated enforcement should not be placed within the first 1,000 feet of a lower speed limit.

24. However, in 2011, the IDOT designed the sign layout at the University Drive intersection, and the IDOT even *installed* the University Drive signs in question. There are approximately ten (10) different signs warning of a speed reduction and ATE cameras, and eight (8) orange flags on four of those signs. At that time, the sign placement complied with the IDOT's relevant regulations.

25. On or about September 9, 2014, the City's Chief of Police, Brett Talkington, emailed Tim Crouch with the IDOT asking that the IDOT relocate the speed limit signs—which they had designed and installed—to meet the new rules and regulations. *See* September 9, 2014 email, attached hereto. On or about December 4, 2014, after hearing no response to his September 9th correspondence, Chief Talkington followed up with Tim Crouch and asked that the IDOT either move the speed limit signs or consider the signs “grandfathered in.” *See* attached

December 4, 2014 email, attached hereto. To date, there has been no response to either correspondence.

II. GROUNDS FOR APPEAL

A. Regulation and Enforcement at the Intersections is the Responsibility of the City.

26. Paragraphs 1-25 are incorporated herein.

27. In Iowa, cities are given the power of self-government. Specifically, Iowa Code §364.1 provides that a city may “exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.”

28. In addition, the City of Muscatine is a special charter city—which grants them more legislative independence than typical cities. Specifically, Iowa Code §420.41 provides that “no state law shall be deemed to impair, alter or affect the provisions of any such special charter or any existing amendment thereto in any of the following respects...b. In respect of authority to license, tax and regulate various persons, occupations, amusements, places and objects, as said general subjects of licensing, taxing and regulation are more specifically set forth in the respective charters of such cities.”

29. To that end, the City identified certain Intersections within its jurisdiction that presented safety concerns due to the number of speed and red light violations at those locations. These Intersections happen to be along roadways that are the main arteries of the City and contain the highest traffic counts.

30. The City clearly has a vested interest in the safety and well being of its citizens and its law enforcement officers at these Intersections.

31. However, the City has limited resources concerning the amount of sworn officers it has at its discretion. The implementation of ATEs actually acts as a force multiplier for the police department, in that it allows the sworn officers to focus on additional community safety concerns instead of stationing a permanent officer at each of the Intersections. In addition, the ATE's pose a much lower safety risk to the City's police officers, first responders and other members of the traveling public.

32. In researching alternative options to help address these safety concerns, the City found that ATEs could enhance the City's ability to "exercise" its power in protecting its citizens and officers, as authorized by Iowa Code §364.1.

33. Subsequently, there have been traffic studies conducted by the Iowa State University Institute for Transportation's Center for Transportation Research and Education ("CTRE"), which also support this methodology. These studies were funded by the IDOT. Late in 2013, the CTRE released the latest study that supported the use of ATEs—which found that 55-56.4% of those surveyed supported the use of ATE equipment for speed enforcement and that 70% supported the use for red light detection and ticketing.

34. Iowa Code does not grant the IDOT the discretion to dictate the method or means in which the municipality or its police officers enforce the laws upon the roads within the municipality. Rather, the Iowa Code gives the IDOT the authority to establish, construct, alter, vacate, improve, operate and maintain primary roadways, but not dictate what means local governments may employ to enforce traffic laws.

35. The City has found that the implementation of ATE cameras at the Intersections has caused an approximately 31% decrease in speed and red light violation citations since 2011. In addition—and more importantly—there has been a 27% reduction in motor vehicle crashes at

these Intersections, with a 78% reduction in personal injury crashes. It is clear that the implementation of ATE cameras has improved the safety, health, and welfare of its citizens.

36. With regard to the contested University Drive intersection, the implementation of an ATE camera has been successful in reducing speed—which was the City’s main concern at this area—as evidenced by the reduced number of citations at this location from approximately 13,000 citations per year (which number is based on only ten (10) months of data from 2011) to approximately 8,000 citations per year (which is based on a full twelve (12) month period). The reduction of speed at the University Drive intersection, also helps the City curb speed violations at the Mulberry Avenue at US Highway 61 intersection.

37. Traffic enforcement and regulation at these Intersections is a public safety issue, and the City, pursuant to its authority in Iowa Code §364.1, has found ATEs to be an effective tool to supplement the City’s regulation.

WHEREFORE, the City appeals the IDOT’s order to remove the ATE unit at the University Drive location, and respectfully requests that the IDOT reverse its decision and work with the City to relocate the speed signs at issue in this area.

B. The IDOT Does Not Have Authority to Regulate the Use of ATEs.

38. Paragraphs 1-37 are incorporated herein.

39. On or about February 12, 2014, the IDOT rules regulating the use of automated traffic enforcement on primary roadways (the “Rules”) became effective.

40. However, the Rules adopted by the IDOT clearly violate Iowa Code §306.4(4) whereupon the legislature directed that both the City and the IDOT shall exercise concurrent jurisdiction over the primary roads within the municipality.

41. In addition, the IDOT failed to follow proper procedural requirements when it implemented the Rules. Iowa Code §17A.3(2) provides that “No agency rule or other written statement of law or policy, or interpretation, order, decision, or opinion is valid or effective against any person or party, nor shall it be invoked by the agency for any purpose, until it has been made available for public inspection and indexed as required by subsection 1, paragraphs ‘d’ and ‘e’...”

42. The rulemaking process is to be construed broadly to effectuate its purposes. *See* Iowa Code §17A.23.

43. At the IDOT’s October 30, 2013 hearing on the Rules, individuals requested to provide statements and/or testimony with regard to the proposed Rules. Such requests were denied.

44. Then, after the October 30, 2013 hearing, the IDOT added additional terms to the Rules, including the “1,000-foot rule”, and there was no additional public hearing, nor was the public afforded the opportunity to comment on such revisions, prior to their implementation on February 12, 2014.

45. More importantly, the Iowa Legislature has yet to enact any legislation governing the use of ATEs. The Rules circumvent this legislative process by allowing the Department of Transportation to unlawfully legislate from the Administrative Branch of Iowa Government.

46. Iowa Code §17A.19(10) allows courts to reverse, modify, or grant other appropriate relief from agency action if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is, *inter alia*:

- Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law. *See* Iowa Code §17A.19(10)(b).

- Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency. *See* Iowa Code §17A.19(10)(c).

WHEREFORE, as the IDOT has no authority to regulate the City's use of ATE cameras within its jurisdiction, the City appeals the IDOT's order to remove the ATE unit at the University Drive location, and respectfully requests that the IDOT reverse its decision.

C. The IDOT Decision is Not Supported by Substantial Evidence and Negatively Impacts the Public Interest.

47. Paragraphs 1-46 are incorporated herein.

48. Iowa Code §17A.19(10) allows courts to reverse, modify, or grant other appropriate relief from agency action if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is, *inter alia*:

- Based upon a determination of fact...that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. *See* Iowa Code §17A.19(10)(f).
- Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy. *See* Iowa Code §17A.19(10)(k).
- Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency. *See* Iowa Code §17A.19(10)(m).
- Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See* Iowa Code §17A.19(10)(n).

49. "Substantial evidence" means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." *See* Iowa Code §17A.10(f)(1). "Evidence is 'substantial' if a

reasonable person would consider it sufficient to support the administrative agency's conclusions." See *South East Iowa Co-op Elec. Ass'n v. Iowa Utilities Bd.*, 633 N.W.2d 814, 818 (Iowa 2001). In determining whether the evidence supports the agency decision, the ultimate question is not whether evidence supports a different finding, but whether evidence supports the findings actually made. See *City of Hampton v. Iowa Civil Rights Com'n.*, 554 N.W.2d 532 (Iowa 1996). The court must consider all of the evidence, including that offered in opposition to the agency's findings. See *Burns v. Bd. of Nursing*, 495 N.W.2d 698 (Iowa 1993).

50. In this case, the IDOT ordered the City to remove the ATE camera at the University Drive location because: (i) crashes have increased since the camera was installed, (ii) there is a high number of speed violations, and (iii) the camera is within 1,000 feet of a lower speed limit.

51. As an initial matter, the City objects to the IDOT's use of the Rules retroactively to order removal of its ATE camera at the University Drive location. To be retroactive, the Rules would have had to expressly provide for retroactivity, and further, the cameras were placed according to permits issued (and never revoked) by the IDOT.

52. However, assuming retroactivity is allowed, the one (1) additional motor vehicle crash at the University Drive intersection—10 before activation (total for 2009 and 2010); 11 after activation (total for 2012 and 2013)—that the IDOT uses to justify its position in the Evaluation does not illustrate the progress that has been made at this site.

53. As detailed above, the City's focus in implementing the ATE camera at University Avenue was to reduce speed as citizens entered the City's business district. The ATE camera has been very successful on this front—as evidenced by the decrease in the number of citations at this location from approximately 13,000 citations per year (again, this figure reflects

only a ten (10) month time frame) to approximately 8,000 citations per year (which represents a full twelve (12) month figure).

54. This drastic reduction in citations per year also debunks the IDOT's argument about the "high number of speed violations" at the University Avenue location. It is clear that prior to implementation of the camera, speed violations were substantially higher than they currently are. Logic would hold that removing the camera would allow the number of speed to violations to increase over time (closer to pre-ATE numbers.)

55. Finally, with regard to the IDOT's argument that the ATE camera at the University Avenue location is within 1,000 feet of a lower speed limit, the City asserts that the IDOT was responsible for designing where those signs were located and even *installed* the signs at issue. As set forth above, the City has contacted the IDOT on at least two separate occasions inquiring about moving those signs. This correspondence has been ignored, however the City is willing to work with the IDOT to relocate these signs.

56. In addition, the application of the 1,000-foot rule is arbitrary and irrational in that there is no data or other reasonable basis for the rule in law or in fact. However, assuming there is proper basis, the difference between the City's sign placement at approximately 830 feet after a lower speed limit sign versus the required 1,000 feet is *de minimus*.

WHEREFORE, as, when viewing the record as a whole, the IDOT's decision is not based on substantial evidence and negatively impacts the public interest, the City appeals the IDOT's order to remove the ATE unit at the University Drive location, and respectfully requests that the IDOT reverse its decision. As such, the City will not be deactivating the ATE camera at University Avenue on April 17, 2015 as ordered in the Evaluation.

Original to:

Paul Trombino III
Director, IDOT
800 Lincoln Way
Ames, Iowa 50010
Paul.Trombino@dot.iowa.gov

Copy to :

Steve Gent
800 Lincoln Way
Ames, Iowa 50010
Steve.Gent@dot.iowa.gov

ATTORNEYS FOR IDOT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleading on April 15, 2015 by U.S. Mail.

Signature /s/Katherine Hanson

Respectfully Submitted by,

BRICK GENTRY P.C.



Matthew S. Brick (AT0001081)
Erin M. Clanton (AT0002592)
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266
Telephone: (515) 274-1450
Facsimile: (515) 274-1488
ATTORNEYS FOR THE CITY