



**Request for City Council Committee Action
From the City Attorney's Office**

Date: August 25, 2004
To: Public Safety & Regulatory Services Committee
Referral to: N/A
Subject: Proposed Ordinance Governing an Automated Traffic Law Enforcement System

Recommendation: That the City Council receive and file this report and recommend that the City Council adopt the proposed ordinance.

Prepared by: Dana Banwer, Deputy City Attorney – Criminal Phone: 673-2014
Peter Ginder, Deputy City Attorney – Civil 673-2478
Mary Ellen Heng, Assistant City Attorney 673-2270

Approved by: _____
Jay M. Heffern
City Attorney

Presenters in Committee: Lt. Gregory Reinhardt and Mary Ellen Heng

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
 Action requires an appropriation increase to the Capital Budget
 Action requires an appropriation increase to the Operating Budget
 Action provides increased revenue for appropriation increase
 Action requires use of contingency or reserves
 Other financial impact (Explain): This action has no financial impact; however the City will incur costs to acquire, install and operate an automated traffic law enforcement system.
 Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

Neighborhood Notification: N/A
City Goals: Build communities where all people feel safe and trust the City's public safety professionals and system.
Comprehensive Plan: N/A
Zoning Code: N/A
Other: N/A

Background/Supporting Information See attached material.

Background

In July 2004, Council President Ostrow and Council Member Niziolek met with Deputy City Attorney Peter Ginder, Assistant City Attorney Mary Ellen Heng, and Chief William McManus to discuss enacting a city ordinance to implement automated traffic law enforcement for red light violations at certain intersections within the City of Minneapolis. Based on these meetings, Council President Ostrow and Council Member Niziolek requested that the Minneapolis City Attorney's Office research and draft an ordinance governing these violations. The proposed ordinance as well as potential issues to be considered are summarized below.

Summary of Potential Issues

1. Authority to enact a new ordinance

Minnesota Statute § 169.04(a)(2), permits local authorities, within the reasonable exercise of police power, to regulate traffic by means of police officers or traffic-control signals. This statute, along with the Minneapolis City Charter, would give the City of Minneapolis the authority to enact an ordinance allowing the issuance of criminal citations based on photographic evidence of red light violations. Even though the City would have this authority, there are several issues which need to be considered prior to the enactment of such an ordinance.

2. Certification of the offense to the driver's license

Minnesota Statute § 169.95(b) provides:

Within ten days after the conviction . . . of a person upon a charge of violating any provisions of any law or ordinance, regulating the operation of vehicles on highways, the court administrator of the court in which the conviction was had . . . **shall** immediately forward to the department of public safety an abstract of the record of the court covering the case in which the person was convicted . . . (emphasis added).

Minnesota Statute § 169.95(e) states that failure or refusal to comply with paragraph (b) shall constitute misconduct in the office. There have been discussions that the new ordinance governing photographic red light violations be designated as noncertifiable. Minnesota Statute § 169.95 mandates that any violation of a City Ordinance that regulates traffic be certifiable. Based on this statute, an ordinance creating a new criminal violation for photographic red light violations would be a certifiable offense.

3. Driver vs. Owner

Normally, citations for traffic violations are issued to the driver of the vehicle. However, there are some statutes that punish the vehicle's owner rather than the driver (see Minn.Stat. § 169.444 – failing to stop of a stopped school bus and Minn.Stat. § 169.20, subd. 5b(a) – failing to yield to an emergency vehicle). There have been discussions proposing issuing citations for photographic red light violations to the owner of the vehicle, rather than to the driver of the vehicle. The issuance of the citation to the owner is an issue that will likely be challenged; however based on precedent set by Minn.Stat. § 169.20, subd. 5b(a) and 169.444, a court may uphold the authority to issue citations to the owner. Because any conviction for such a violation will be certified to the owner's driving record, we anticipate that vehicle owners will contest these violations, resulting in numerous court trials.

4. Proof in court

In order to be successful in a criminal prosecution for this offense, the City of Minneapolis would be required to admit the photographic evidence of the red light violation into evidence. Before a photograph is admitted into evidence, the proper foundation must be laid. There are two methods for establishing the foundation of a photograph. One method is to call a witness who could testify at the court trial that the photograph is a fair and accurate representation of what occurred. No such eyewitness would exist in the prosecution of photographic red light violations. The other method is to call a traffic engineer to testify at each court trial that the camera was working properly both before and after the specific photograph in question was taken. If the proper foundation cannot be laid the photographs would be inadmissible and the City would not prevail at any court trial. At the court trial stage, the City of Minneapolis is assessed a \$15 dismissal fee for every citation set for court trial. This fee is imposed automatically for every citation set for a court trial, and is imposed regardless of whether a fine is collected on the offense. If a citation is issued and dismissed at the court trial stage, the City would be charged \$15 and collect no revenue on that citation. Finally, it would be advisable to consult with the Hennepin County bench prior to the enactment of such an ordinance in order to make the bench aware of the new ordinance and to ensure the bench's cooperation with the City Attorney's Office in scheduling these types of violations on the same day once or twice a month so the traffic engineer is not required to come to court trials every day.

5. Similar laws from other jurisdictions

Several jurisdictions throughout the country have enacted similar laws. California, Colorado, Delaware, Georgia, Maryland and Utah have statewide laws governing photographic red light enforcement. Some states, including Illinois, North Carolina, Oregon, Pennsylvania and Virginia allow photographic red light enforcement in only certain types of cities depending on population. Of the states which have statewide enforcement, all the states except Utah issue the citation to the registered owner of the vehicle. In each of these states except California, the offense is considered civil in nature. Nothing is reported against the owner's driver's license. The ordinance being proposed for Minneapolis would differ from laws in other jurisdictions in that it would apply only to the City of Minneapolis and would be considered a criminal offense that would be reported to the owner's driving record.

6. State Legislation

In 2004, the Minnesota legislature failed to act on two bills introduced during the legislative session, which would have made photographic red light enforcement possible statewide (see House File No. 508 and Senate File 439). The City Attorney's Office is recommending that the City pursue such legislation, or join in other jurisdictions' efforts to pursue statewide legislation in the 2005 legislative session.

ORDINANCE 2004-Or-____
By

**Amending Title 18, Chapter 474 of the Minneapolis Code of Ordinances relating to
Traffic Code: Vehicle Regulations.**

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Chapter 474 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 474.620 to read as follows:

474.620. Definitions:

- (a) "Agency" means the law enforcement agency primarily responsible for traffic control.
- (b) "Automated traffic law enforcement system" means an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control signal.
- (c) "Owner" means the person or entity identified by the Minnesota Department of Public Safety, or registered with any other State vehicle registration office, as the registered owner of a vehicle, or a lessee of a motor vehicle under a lease of 6 months or more.
- (d) "Recorded image" means images recorded by an automated traffic law enforcement system on:
 - (1) Two or more photographs;
 - (2) Two or more microphotographs;
 - (3) Two or more electronic images;
 - (4) Videotape; or
 - (5) Any other medium; andwhich show the rear of the motor vehicle and, on at least one image or portion of tape, clearly identify the registration plate number of the motor vehicle.

Section 2. That Chapter 474 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 474.630 to read as follows:

474.630. Traffic Control Signal. (a) Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used except for special pedestrian signals carrying a word legend or symbol. The lights shall indicate and apply to drivers of vehicles as follows:

- (1) Green indication:
 - a. Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left,

shall yield the right of way to other vehicles and pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

- b. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(2) Steady yellow indication:

- a. Vehicular traffic facing a circular yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection, except for the continued movement allowed by any green arrow simultaneously indicated.
- b. Vehicular traffic facing a steady yellow arrow signal is thereby warned that the protected vehicular movement permitted by the corresponding green arrow indication is being terminated.

(3) Steady red indication:

- a. Vehicular traffic facing a circular red signal alone shall stop at a clearly marked line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until a green indication is shown, except as follows:
 - 1. The driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection in obedience to a red or stop signal, and with the intention of making a right turn may make such right turn, after stopping, unless an official sign has been erected prohibiting such movement, but shall yield the right-of-way to pedestrians and other traffic lawfully proceeding as directed by the signal at said intersection; or
 - 2. The driver of a vehicle on a one-way street which intersects another one-way street on which traffic moves to the left shall stop in obedience to a red or stop signal and may then make a left turn into said one-way street, unless an official sign has been erected prohibiting the movement, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at said intersection.
- b. Vehicular traffic facing a steady red arrow signal, with the intention of making a movement indicated by the arrow, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until a permissive signal indication is displayed.

Section 3. That Chapter 474 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 474.640 to read as follows:

474.640. Violation. If a motor vehicle is operated in violation of section 474.630 and the violation is detected by a recorded image taken by an automated traffic law enforcement system, the owner of the vehicle or the lessee of the vehicle, is guilty of a petty misdemeanor. Notwithstanding any other law, a peace officer may issue a citation to the owner or lessee of the vehicle through the United States Mail.

Section 4. That Chapter 474 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 474.650 to read as follows:

474.650. Citation. When a violation, as set forth by section 474.640, is detected by an automated traffic law enforcement system, the agency shall, within 14 days of the violation, mail to the owner a citation, which shall include:

- (1) The name and address of the registered owner of the vehicle;
- (2) The registration number of the motor vehicle involved in the violation;
- (3) The violation charged;
- (4) The location where the violation occurred;
- (5) The date and time of the violation;
- (6) A copy of the recorded images;
- (7) The fine amount and the date by which the fine should be paid;
- (8) A signed statement by a technician employed by the agency that, based on inspection of recorded images, the motor vehicle was being operated in violation of a traffic control device;
- (9) Information advising the person alleged to be liable under the ordinance:
 - a. Of the manner, time, and place in which liability as alleged in the citation may be contested in the District Court; and
 - b. Warning that failure to pay the penalty or to contest liability in a timely manner may result in a suspension of the owner's driving privileges.

Section 5. That Chapter 474 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 474.660 to read as follows:

474.660. Evidence. (a) In the prosecution of a violation, as set forth by section 474.640, captured by an automated traffic law enforcement system, prima facie evidence that the vehicle described in the citation was operated in violation of this section, together with proof that the defendant was at the time of such violation the owner or lessee of the vehicle, shall constitute in evidence a rebuttable presumption that such owner or lessee was the person who committed the violation. The presumption shall be rebutted if the owner or lessee:

- (1) Provides a sworn affidavit delivered by United States Mail to the city or agency that he or she was not the owner or lessee of the vehicle at the time of the alleged violation and provides the name and current address of the person operating the motor vehicle at the time of the violation; or
 - (2) Submits a copy of a police report showing the vehicle had been reported as stolen in a timely manner before the date of the violation.
- (b) If the city or agency finds that the person named in the citation was not operating the vehicle at the time of the violation or receives evidence under paragraph (a)(1) of this section identifying the person driving the vehicle at the time of the

violation, the city or agency shall issue a citation to the identified driver through the United State Mail, no later than 14 days after receipt of this information.

Section 6. That Chapter 474 of the Minneapolis Code of Ordinances be amended by adding thereto a new Section 474.670 to read as follow:

474.670. Severance. If any section, sentence, clause or phrase of sections 474.620 to 474.660 is held invalid or unconstitutional by any court of competent jurisdiction it shall in no way affect the validity of any remaining portion of these sections.