Missouri Department of Transportation

Highway Safety & Traffic Division

Automated Enforcement Survey

February, 2018

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Overview

Per the requirements of 23 CFR §1300.13 the Missouri Department of Transportation, Highway Safety and Traffic Division, developed an automated survey enforcement form that was sent electronically to all law enforcement contacts in the State of Missouri on December 26, 2017. The survey form was sent to 1,171 contacts among 511 law enforcement agencies. There were 258 responses to the survey, with only one city surveyed that reported it has automated enforcement.

It should be noted that Missouri did have several municipalities that conducted automated speed and/or red light enforcement up until August of 2015. On August 18, 2015, the Missouri Supreme Court issued opinions on two separate court cases regarding automated enforcement cameras. The two opinions resulted in the finding that speed and red-light cameras, at least as authorized by the local ordinances in these two cases, were unconstitutional. Both opinions are included as part of this report.

Despite the Supreme Court decisions, one city in Missouri has red-light cameras because their ordinance, as written, was not affected by the decisions. The City of Hannibal currently has four intersections with automated red light camera enforcement. Annual Red Light Camera Enforcement Statistics obtained from the Hannibal Police Department for the years 2010 – 2017 are included at the end of this report.

Charts from each MoDOT District are included that indicate where automated enforcement systems are installed throughout Missouri and whether or not they are operational.

Code of Federal Regulations

§1300.13 Special funding conditions for Section 402 Grants.

The State's highway safety program under Section 402 shall be subject to the following conditions, and approval under §1300.14 of this part shall be deemed to incorporate these conditions:

(a) Planning and administration costs. (1) Federal participation in P&A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P&A activities shall not exceed 13 percent of the total funds the State receives under Section 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian Country, as defined by 23 U.S.C. 402(h), is exempt from the provisions of P&A requirements. NHTSA funds shall be used only to fund P&A activities attributable to NHTSA programs. Determinations of P&A shall be in accordance with the provisions of Appendix D.

(2) P&A tasks and related costs shall be described in the P&A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P&A costs in the module.

(b) Prohibition on use of grant funds to check for helmet usage. Grant funds under this part shall not be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

(c) Prohibition on use of grant funds for automated traffic enforcement systems. The State may not expend funds apportioned to the State under Section 402 to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. The term “automated traffic enforcement system” includes any camera that captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a traffic citation, or other enforcement action at the time of the violation.

(d) Biennial survey of State automated traffic enforcement systems requirement. (1) Beginning with fiscal year 2018 highway safety plans and biennially thereafter, the State must either—

(i) Certify, as provided in Appendix A, that automated traffic enforcement systems are not used on any public road in the State; or

(ii)(A) Conduct a survey during the fiscal year of the grant meeting the requirements of paragraph (d)(2) of this section and provide assurances, as provided in Appendix A, that it will do so; and

(B) Submit the survey results to the NHTSA Regional office no later than March 1 of the fiscal year of the grant.

(2) Survey contents. The survey shall include information about all automated traffic enforcement systems installed in the State, including systems installed in political subdivisions. The survey shall include:

(i) List of automated traffic enforcement systems in the State;

(ii) Adequate data to measure the transparency, accountability, and safety attributes of each automated traffic enforcement system; and

(iii) Comparison of each automated traffic enforcement system with—

(A) “Speed Enforcement Camera Systems Operational Guidelines” (DOT HS 810 916), as updated; and

(B) “Red Light Camera Systems Operational Guidelines” (FHWA-SA-05-002), as updated.

Category:950 Automated Traffic Enforcement

From Engineering Policy Guide

In January 2011, the Missouri Highways and Transportation Commission adopted policy to regulate the use of any automated enforcement equipment on state right of way. Procedures for complying with the policy are outlined below. Applications of automated enforcement that were in place prior to January 2011 are subject to the new policy as described in EPG 950.1.6 Conditions for Intersections with Automated Red-Light Violation Enforcement Equipment Installed After January 2011.

Request for the use of automated traffic enforcement systems will be made by the city and/or county desiring to use them, with the exception of work zones. This includes permission to conduct violation studies.

Contents

950.1 Automated Traffic Enforcement at Signalized Intersections

950.1.1 Automated Enforcement of Red-Light Violations

Severe crashes at signalized intersections are usually a result of non-compliance with a traffic signal. Automated enforcement, when used correctly, is an effective tool for reducing severe angle crashes at signalized intersections. The objective of using the cameras is to improve intersection safety. However, not all intersections are candidates for automated enforcement.

Report Template

Annual Report for Automated Enforcement of Red-Light Violations

To ensure red-light violations are mitigated as completely and as feasibly possible, state highway intersections requested for installation of automated red-light violation enforcement equipment will undergo an engineering review that includes a site evaluation, a crash study, and, if necessary, a violation study prior to the installation of automated red-light violation enforcement equipment. MoDOT will conduct the site evaluation and the requesting city and/or county will provide the crash study and, if necessary, the violation study. The crash study and violation study shall be reviewed by MoDOT.

950.1.2 Engineering Review

Prior to approving a site for red-light cameras, the site should be evaluated to ensure other measures have already been considered or implemented to improve safety at the intersection. Site evaluation includes a review of the intersection to ensure components of the signal are visible and conspicuous (signal heads, signs, the intersection itself) and that the timing is appropriate for the conditions (change interval, green interval, dilemma zone). The site evaluation should also consider how the addition of red-light cameras might impact the overall operation of the signal.

Crash data will be used to determine the collision types and, if possible, the contributing causes for crashes at each approach of the intersection. Specifically, collision types (right angle, left-turn right angle, right-turn right angle) and contributing causes (failure to yield, inattention, violation of the signal, etc.) that are expected to be improved by the installation of automated enforcement should be considered.

The crash study shall be compiled by the requesting city or county and submitted to MoDOT for review. In addition to simple crash data for the intersection, the study should consider how any crashes, particularly right angle crashes, may have been the result of a red-light violation. The study should clearly show whether the specified crash warrants are met (see EPG 950.1.3 Crash Warrant for Installation) and which intersection approaches are recommended for the installation of red-light cameras. MoDOT shall review the study and verify the submitted crash data to ensure the local agency's crash records align with MoDOT's crash report database. At the discretion of MoDOT's District Traffic Engineer, the crash study may be completed by MoDOT if the city or county demonstrates they cannot provide the necessary data or if the submitted information is deemed inaccurate.

After reviewing the site evaluation and the submitted crash study, engineers should identify and select the appropriate countermeasures, if any, that could reduce the violations. Possible countermeasures include improving the visibility of the signalized intersection, improving the visibility and conspicuity of the signal indications and signs, revising the timing of the signal phases and signal system, adding red-light cameras, etc.. If major modifications are recommended (installing signal mast arms, adding interactive warning signs, etc.), negotiations with the city on the cost of the improvements may be necessary.

950.1.3 Crash Warrant for Installation

Cameras may be installed if an intersection (all approaches included) has at least one severe crash (fatal or disabling injury) related to red-light running in the previous 10 years AND has more than 10 red-light running crashes in the previous 5 years. Red-light running crash types are identified as right angle, left-turn right angle, right-turn right angle, and crashes involving pedestrians. Engineering judgment may be used to discard individual crashes of the types above if it can be determined that the crash was unrelated to any violation of the signal. Any crash data used to meet the warrant above shall be verifiable in MoDOT's crash report database.

Automated enforcement is not recommended for crash types other than those listed above. If the crash warrant is met, a determination should be made as to which approaches are most likely to experience a safety benefit with the addition of cameras. If a determination cannot be made or if a request is made for cameras on an approach not deemed a good candidate based on the crash data, a violation study should be conducted to help identify the approaches on which cameras should be installed. In addition, if the crash warrant is not met and the city and/or county still wants to proceed with the installation of cameras, a violation study shall be conducted and the request be sent to the State Highway Safety and Traffic Engineer for further review.

950.1.4 Violation Study

When conducting a violation study, all approaches shall be evaluated to determine if one approach or all approaches are experiencing similar rates of red-light violations (ratio of violations to the approach volume). A violation study will be completed for each approach of the intersection and will be conducted for a duration of at least 12 consecutive hours between the hours of 6:00 am and 6:30 pm or as directed by the engineer. The start time of the violation study may vary between 6:00 am or 6:30 am depending on traffic conditions of the area and should be a representative sample of traffic volume for that specific location. Violation information shall be provided by the city and/or county. The information shall be reviewed by MoDOT and engineering judgment shall be used to determine if the violation study, in conjunction with the crash data, warrants the use of automated enforcement.

950.1.5 Approach Selection

If by reviewing the crash reports it can be determined which approaches are violating the red signal indication, cameras may be installed on those approaches. If any other approach is chosen for the installation of cameras and/or the crashes do not indicate which approach is violating the red signal indication, then a violation study is to be conducted in accordance with EPG 950.1.3 Crash Warrant for Installation.

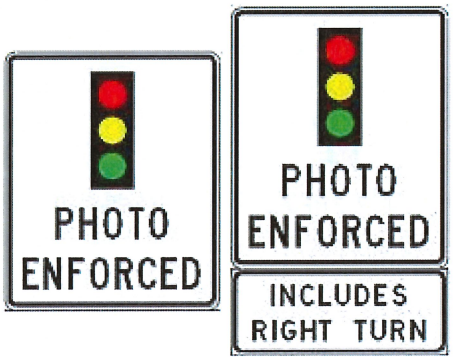
950.1.6 Conditions for Intersections with Automated Red-Light Violation Enforcement Equipment Installed After January 2011

If automated red-light violation enforcement equipment is approved for installation, the following conditions must be met:

1. If any one approach is selected to be monitored, then any other approach at the intersection with a similar or higher rate of crashes or violations should also be enforced (ratio of crashes or violations to the approach volume).

2. A duly sworn, Peace Officer Standards and Training (POST) certified law enforcement officer shall review and make the determination of any violation.

3. Advance signing will be required on each intersection approach with automated enforcement as shown below. MoDOT will install the signs on state right of way and provide the signs to the city and/or county for installations on city and/or county right of way.



The PHOTO ENFORCED sign will be used for approaches where a YIELD sign is used for the right turns. The PHOTO ENFORCED INCLUDES RIGHT TURN sign will be used for approaches where no YEILD sign is present for the right turns.

4. The city and/or county shall conduct a public awareness campaign at least 30 days prior to issuing citations.

5. The city and/or county will be required to submit an annual report to MoDOT for each state highway intersection in such city and/or county which has automated red-light enforcement equipment. The report will be due January 31 and include the following information from the previous year:

a. Safety performance

i. Number of crashes
ii. Severity of crashes; number of fatal, disabling injury, minor injury, and property damage only, if able.

b. Number of citations

i. Total number and
ii. Citations by maneuver (i.e. left turn, thru or right turn), if able

6. The city and/or county must enter into a contract (TR43) with the Missouri Highways and Transportation Commission (MHTC) for the use of an automated red-light violation enforcement equipment system on state-maintained highways. Part of the contract will require an ordinance allowing the use and issuance of citations using automated red-light violation enforcement equipment. Once a contract is executed and a Permit to Work on Right of Way

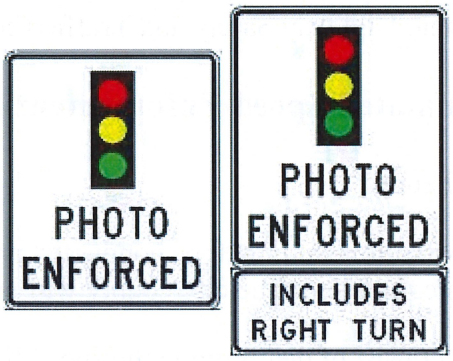
(http://modot.mo.gov/asp/intentToWork.shtml) is issued, the city and/or county may proceed with the installation of the equipment.

950.1.7 Conditions for Intersections with Automated Red-Light Violation Enforcement Equipment Installed Prior to January 2011

The conditions for locations installed prior to January 2011 will be as follows:

1. Engineering or violation studies are not required.

2. A duly sworn, Peace Officer Standards and Training (POST) certified law enforcement officer shall review and make the determination of any violation.
3. Advance signing will be required on each approach with automated enforcement as shown below. MoDOT will install the signs on state right of way and provide the signs to the city and/or county for installations on city and/or county right of way.



The PHOTO ENFORCED sign will be used for approaches where a YIELD sign is used for the right turns. The PHOTO ENFORCED INCLUDES RIGHT TURN sign will be used for approaches where no YEILD sign is present for the right turns.

4. The city and/or county will be required to submit an annual report to MoDOT for each state highway intersection in such city and/or county which has automated red-light enforcement equipment. The report will be due January 31 and include the following information from the previous year:

a. Safety performance

i. Number of crashes
ii. Severity of crashes; number of fatal, disabling injury and property damage only, if able.

b. Number of citations

i. Total number and
ii. Citations by maneuver (i.e. left turn, thru or right turn), if able.

5. Execute a new agreement (TR43) stating the new conditions of the installation.

These conditions are for approaches with automated enforcement equipment present. If there are any additions or changes to which approach is enforced, then the installation is considered a new installation and will follow the guidance in EPG 950.1.6 Conditions for Intersections with Automated Red-Light Violation Enforcement Equipment Installed After January 2011.

950.2 Automated Enforcement of Speed Violations

Cameras may be used to assist with enforcement of state speed limit laws in school zones, work zones and Travel Safe Zones on the state highway system. Use of automated speed enforcement equipment in any other location is not allowed, except as described below in EPG 950.2.2 Automated Speed Enforcement by a Law Enforcement Officer. All requests for the use of automated speed enforcement must be approved by the State Highway Safety and Traffic Engineer. District staff should complete the Checklist for Automated Speed Enforcement and submit the information to the State Highway Safety and Traffic Engineer prior to approval.

Helpful Checklist

Checklist for Automated Speed Enforcement

This checklist will help ensure a submitted application complies with MoDOT policy.

950.2.1 Applications for Automated Speed Enforcement

For school zones, the following will apply:

1. An engineering study and violation study will be conducted prior to the installation of automated speed enforcement equipment. The city/county will provide the violation study.

2. The engineering study will consist of determining the speed limit for the school zone and shall be established based on EPG 903.19.6 Lettering and EPG 949.2.2 (http://epg.modot.org/index.php?title=949.2_Speed_Limit_Guidelines#949.2.2_Prevailing_Speed_Determination) .

3. Where school speed limit signing is installed, flashers shall be installed with the signing. The flashers are only activated at times when the school speed limit applies. The speed limit should only be active during times when children are likely to be present. See EPG 902.12.4 Speed Limit Sign Beacon for additional information.

4. Automated speed enforcement equipment will not be allowed in school zones without a reduced speed limit or flashers.

5. Installations may be either permanent or mobile equipment. For mobile installations, device must either be placed where it is unreachable by vehicles, NCHRP 350 compliant or protected from vehicular impact. Vendor must supply letter from FHWA of NCHRP compliance.

6. For permanent installations, MoDOT will provide and install the signs. For mobile installations, city/county is responsible for providing the signs and having signs present when conducting automated enforcement of speed. Signs must be crashworthy.

7. Permit will be required to allow the city to place equipment and signs on right of way.

For work zones, the following will apply:

1. Use of automated speed enforcement equipment in work zones will be reserved for those work zones that

a. Have a duration of at least 4 hours

b. Reduced speed limits are in effect

c. Normal posted speed limit is 60 mph of greater

d. Within a municipal boundary

2. MoDOT will initiate the request for the use of automated enforcement of speed in work zones.

3. Work zones must be marked by a ROAD WORK AHEAD and END ROAD WORK signs.

4. The speed limit for the work zone shall be established based on EPG 616.12 Work Zone Speed Limits.

5. Automated speed enforcement shall only occur when workers are present and allowed only for the duration of the work zone.

6. One automated speed enforcement equipment installation per work zone, even when boundaries of the work zone cross several jurisdictions. Installation is allowed to be moved to different areas within the work zone.

7. Installations shall be mobile equipment and city/county is responsible for providing the signs and having signs present when conducting automated speed enforcement.

8. For mobile installations, device must either be placed where it is unreachable by vehicles, NCHRP 350 Test Level 3 compliant or protected from vehicular impact. Vendor must supply letter of acceptance from FHWA of NCHRP compliance.

9. Permit will be required to allow the city to place equipment and signs on right of way.

For Travel Safe Zones, the following will apply:

1. Travel safe zones shall be established in accordance with RsMo 304.590 (http://www.moga.mo.gov/statutes/C300-399/3040000590.HTM) and the guidance in EPG 907.3 Travel Safe Zones. Automated speed enforcement should be noted as a strategy in the work plan and approved by the State Highway Safety and Traffic Engineer.

2. Automated speed enforcement can only be used during the duration of the Travel Safe Zone. Once the Travel Safe Zone has expired, so will the use of automated speed enforcement.

3. Installations may be either permanent or mobile equipment. For mobile installations, device must either be placed where it is unreachable by vehicles, NCHRP 350 compliant or protected from vehicular impact. Vendor must supply letter from FHWA of NCHRP compliance.

4. For permanent installations, MoDOT will provide and install the signs. For mobile installations, city/county is responsible for providing the signs and having signs present when conducting automated enforcement of speed.

5. Permit will be required to allow the city to place equipment and signs on right of way.

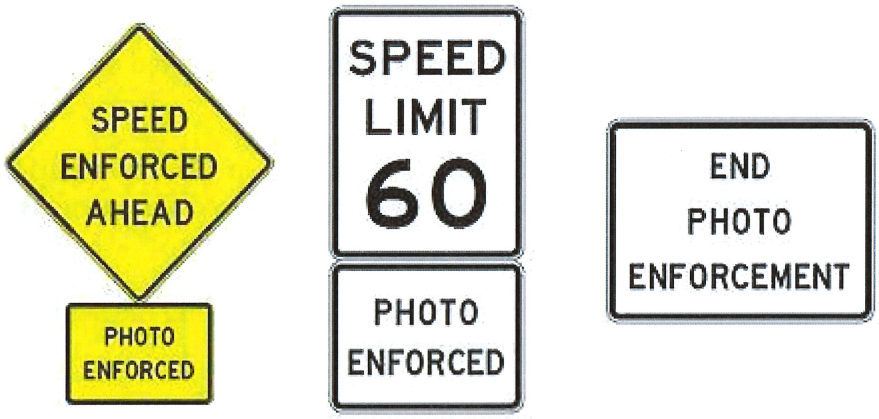
Conditions for Installation

If automated speed enforcement equipment is approved for installation, the following conditions must be met:

1. A duly sworn, Peace Officer Standards and Training (POST) certified law enforcement officer shall review and make the determination of any violation.

2. A city/county shall conduct a public awareness campaign at least 30 days prior to issuing citations.

3. For any automated speed enforcement location, advanced signing warning of the automated enforcement is required and shall be of the type below.



For mobile installations, the SPEED ENFORCED AHEAD assembly shall be used and provided by the city/county and present during times of enforcing the speed limit with automated enforcement equipment. These will probably be roll-up or portable type signs. For permanent installations, the SPEED LIMIT XX PHOTO ENFORCED assembly and END PHOTO ENFORCEMENT sign shall be used and installed by MoDOT. The downstream end of a photo enforced speed limit zone shall be identified with an END PHOTO ENFORCEMENT sign.

4. The city/county will be required to submit an annual report to MoDOT for each state highway corridor in such city/county which has automated speed enforcement equipment. The report will be due January 31 and include the following information from the previous year:

a. Safety performance

i. Number of crashes

ii. Severity of crashes; number of fatal, disabling injury and property damage only, if able.

b. Number of citations

5. Enter into a contract (TR36) with the Missouri Highways and Transportation Commission (MHTC) for the use of an automated speed enforcement system on state-maintained highways.

Part of the contract will require an ordinance allowing the use and issuance of citations using automated speed enforcement equipment. Once a contract is executed and a Permit to Work on Right of Way is issued, the city/county may proceed with the installation of the equipment.

950.2.2 Automated Speed Enforcement by a Law Enforcement Officer

In some areas of the state, local municipalities have elected to use automated speed enforcement outside of the circumstances noted above in EPG 950.2.1 Applications for Automated Speed Enforcement. If a law enforcement officer has elected to utilize such equipment to fulfill their civic duty, then the provisions of EPG 950.2.1 shall not apply if the officer is continuously present with the equipment when in use. To meet this requirement, the officer should remain in the immediate vicinity of the equipment at all times (not across the street, not down the road, etc.). Any equipment left unattended may be treated as abandoned property on state right of way and, subsequently, removed.

- This page was last modified on 10 August 2017, at 08:10.

SUPREME COURT OF MISSOURI
en banc

SARAH TUPPER, *et al.*,	)	
	)	
Respondents/Cross-Appellants,	)	
	)	
v.	)	No. SC94212
	)	
CITY OF ST. LOUIS, *et al.*,	)	
	)	
Appellants/Cross-Respondents.	)	

APPEAL FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
The Honorable Steven R. Ohmer, Judge

Opinion issued August 18, 2015

After Sarah K. Tupper and Sandra L. Thurmond each received notices that she had violated ordinance 66868, the City of St. Louis's red light camera ordinance, they filed suit challenging the validity of the ordinance. They named as defendants the city, city officials, American Traffic Solutions, Inc. (ATS), Linebarger Goggan Blair & Samponson, LLC (law firm), and the Missouri director of revenue challenging the validity of the ordinance. In the suit, Ms. Tupper and Ms. Thurmon sought a declaratory judgment that ordinance 66868 is invalid and an injunction prohibiting its enforcement.

After a bench trial, the circuit court found that Ms. Tupper and Ms. Thurmond do not have an adequate remedy at law. The circuit court also found that the enforcement of the red light camera ordinance is an issue of general public interest and there is a reasonable expectation that the city will continue enforcing ordinance 66868 even though

it dismissed the tickets against Ms. Tupper and Ms. Thurmond to avoid issuance of an injunction in this matter. The circuit court then found that ordinance 66868 is invalid because it was found to be void in *Smith v. City of St. Louis*, 409 S.W.3d 404 (Mo. App. 2013), the city had not fixed the notice deficiencies at issue in *Smith*, and ordinance 66868 contains a rebuttable presumption that the owner of the motor vehicle was driving the vehicle. The court enjoined the city from enforcing the ordinance but denied Ms. Tupper and Ms. Thurmond's petition as to the rest of the defendants. The circuit court also denied Ms. Tupper and Ms. Thurmond's request for attorney's fees.

The city, Ms. Tupper, Ms. Thurmond, and the director of revenue all appeal. This Court affirms the circuit court's finding that Ms. Tupper and Ms. Thurmond could maintain their action for a declaratory judgment and injunctive relief because, after the city dismissed the prosecutions for the ordinance violations, they no longer had an adequate legal remedy. Further, this Court finds ordinance 66868 is constitutionally invalid because it creates a rebuttable presumption that shifts the burden of persuasion onto the defendant to prove that the defendant was not operating the motor vehicle at the time of the violation. Nonetheless, the city's prior enforcement of the ordinance was not intentional misconduct sufficient to justify an award of attorney's fees; therefore, the circuit court did not abuse its discretion in not awarding attorney's fees. Lastly, the director of revenue lacks standing to appeal the circuit court's judgment because the court denied the relief Ms. Tupper and Ms. Thurmond requested with respect to all defendants except the city. Accordingly, this Court affirms the circuit court's judgment.

Factual and Procedural Background

In 2005, the city enacted ordinance 66868, codified at section 17.07.010 of the city's code, to authorize the creation and operation of a red light camera enforcement system. Section four of ordinance 66868 permits the red light camera enforcement system to be used in prosecuting violations of the city's traffic code, stating:

> In a prosecution for a violation of the traffic Code Ordinance as codified in Section 17 et seq. of the Revised Code of the City of St. Louis based on an Automated Traffic Control System Record:
>
> A. If the City proves: 1) that a motor vehicle was being operated or used; 2) that the operation or use of the motor vehicle was in violation of the Traffic Code Ordinance as codified [in] Section 17 et seq. of the Revised Code and 3) that the defendant is the Owner of the motor vehicle in question, then:
>
> B. A rebuttable presumption exists that such Owner of the motor vehicle operated or used in violation of the Traffic Code Ordinance as codified in Section 17 et seq. of the Revised Code was the operator of the vehicle at the time and place the violation was captured by the Automated Traffic Control System Record.

The city and ATS entered into a contract under which ATS employees watch videos of motor vehicles driving through the intersections with red light cameras and identify possible red light violations. When a possible violation is observed, the ATS employee will use the department of revenue license plate records to identify the owner of the offending motor vehicle and will forward the video and identity of the owner of the motor vehicle to the city's police department. A police officer will then review the video and determine whether there is probable cause to issue a notice of violation. A notice of violation is then sent to the owner stating that the owner's vehicle was captured failing to

stop at a red light by a red light camera and the fine for the violation is $100.[1] The notice also includes a photograph of the rear of the motor vehicle that committed the violation.[2]

Between March 2012 and September 2013, Ms. Tupper and Ms. Thurmond each received two notices of violations stating there was probable cause to believe they violated ordinance 66868 by failing to stop at a red light. Each notice stated that the fine for the violation was $100. The notices stated that the recipient could pay the fine in person, by mail, or online or could dispute the notice without appearing in court by filling out an "affidavit of non-responsibility" stating why the recipient is not responsible for the violation or naming the individual who was operating the motor vehicle at the time of the violation. The notices further provided that failure to respond would result in service of summons and a required court appearance, at which time the recipient could enter a plea of not guilty and request a trial.

Upon receiving her first notice of violation, Ms. Tupper did not pay the fine but appeared at her court appearance and certified the case to the circuit court. Ms. Tupper was found guilty by the circuit court, but she filed a renewed motion for acquittal based on recent court of appeals decisions invalidating other red light camera ordinances. The circuit court granted the motion and acquitted Ms. Tupper.[3]

[1] Neither ordinance 66868 nor the ordinance prohibiting running a red light provide a penalty or fine. By municipal order, a judge of the municipal division of the 22nd Judicial Circuit set a $100 fine for red light violations issued pursuant to the camera enforce system ordinance.

[2] The parties stipulated that the rear of the vehicle is photographed and that the driver of the vehicle is not.

[3] The city appealed the order acquitting Ms. Tupper but voluntarily dismissed the appeal during the pendency of this case.

Ms. Tupper did not, however, respond to the second notice of violation, and Ms. Thurmond did not respond to either of her two notices. They received summonses to appear, but neither Ms. Tupper nor Ms. Thurmond appeared on the scheduled dates. Ms. Tupper and Ms. Thurmond subsequently received letters from the law firm informing them that they owed the city the $100 fine for each violation. Ms. Tupper and Ms. Thurmond admit that red light violations occurred in each case and that they were the owners of record for the respective motor vehicles involved in the violations.

On November 25, 2013, Ms. Tupper and Ms. Thurmond filed suit in the circuit court of St. Louis City against the city, the city's mayor, the police chief of the city's police department, the director of revenue, ATS, and the law firm. Ms. Tupper and Ms. Thurmond sought a temporary restraining order, preliminary injunction, and a permanent injunction to enjoin the defendants from prosecuting violations of ordinance 66868 and sought declaratory relief finding the ordinance and unenforceable. In their petition, Ms. Tupper and Ms. Thurmon asserted ordinance 66868 was unlawful because the ordinance: (1) conflicts with state law by failing to assess points for a moving violation; (2) relies on a charge code for red light camera tickets that was created by an improper rulemaking process; (3) uses an inadequate form of notice that violates Rule 37.33 and their due process rights; (4) contains an unconstitutional presumption that the owner of the motor vehicle was driving the vehicle at the time and place of the violation; and (5) contains a "rat out provision" that unconstitutionally shifts the city's burden of proof. Ms. Tupper and Ms. Thurmond also sought attorney's fees.

A hearing on the motion for a temporary restraining order was held on November 27, 2013. On that date, the city dismissed the pending prosecutions against Ms. Tupper and Ms. Thurmond. The circuit court then continued Ms. Tupper and Ms. Thurmond's declaratory judgment action. The defendants each moved to dismiss. The city, the mayor, the police chief, ATS, and the law firm alleged the matter was moot, there was no justiciable controversy, Ms. Tupper and Ms. Thurmond lacked standing, Ms. Tupper and Ms. Thurmond were estopped from raising constitutional claims not asserted in the municipal division, and the petition impermissibly sought class-wide relief without utilizing the procedure for certifying a class.[4] The director of revenue moved to dismiss on the basis that there was no relief sought from him and that the claims should be adjudicated without him.

A bench trial was held on January 13, 2014. In discussing preliminary matters, counsel for Ms. Tupper and Ms. Thurmond stated that they were "going to drop" the issue in the petition relating to the form of notice, stating that the current form of notice is lawful. Counsel also stated that Ms. Tupper and Ms. Thurmond were dropping the issue regarding the charge code because counsel had been assured that the code was created properly. The parties filed joint stipulations of fact for trial along with stipulated exhibits,[5] and the court heard testimony from both sides relating to the reasonableness of the presumption that a motor vehicle's owner was the driver at the time of the violation.

[4] ATS filed a motion to dismiss; the city and its official collectively filed a motion to dismiss, and the law firm filed a motion to dismiss.

[5] The director of revenue filed a joint stipulation of facts separate from the one filed on behalf of the other defendants.

The circuit court entered its order and judgment on February 11, 2014. The court first addressed the defendants' motions to dismiss, finding: (1) the case is not moot because it falls within the "general public interest" exception to the mootness doctrine and the "voluntary cessation" doctrine; (2) Ms. Tupper and Ms. Thurmond do not have an adequate remedy at law because the ordinance subjects them to a multiplicity of suits and because the municipal division lacks jurisdiction over prosecution of a void ordinance; (3) Ms. Tupper and Ms. Thurmond have standing because they have been affected by ordinance 66868; (4) the constitutional claims were not waived because Ms. Tupper and Ms. Thurmond presented their claims at the first reasonable opportunity; (5) Ms. Tupper and Ms. Thurmond are not seeking relief for a class; and (6) the director of revenue is a proper party because his role in promulgating and applying the charge codes related to ordinance 66868 could be affected by a declaration of invalidity of the ordinance. Accordingly, the court overruled the motions to dismiss.

The circuit court then found Ms. Tupper and Ms. Thurmond were entitled to an injunction because ordinance 66868 was void. The court relied on *Smith*, in which the court of appeals found ordinance 66868 "void for failure to comply with the Supreme Court rules." *See* 409 S.W.3d at 427. The circuit court found that subsequent changes to the notice of violation to comply with the rules irrelevant when the court of appeals already found ordinance 66868 void, which the court interpreted as meaning that the city never had authority to create the ordinance. The court further found the defendants failed to show the notice had been revised to comply with the rules. The court also relied on court of appeals decisions finding other red light camera ordinances invalid for

containing a "rebuttable presumption."[6] The court, therefore, declared ordinance 66868 invalid. The court found that an injunction was warranted to prevent the multiplicity of actions or proceedings for violation of ordinance 66868 because the city continues to enforce the ordinance. Accordingly, the court granted an injunction prohibiting the city from attempting to the enforce the ordinance, sending out notice of violations and summons for violating the red light ordinance as detected by cameras, processing payments for such alleged violations, and sending collection letters relating to red light camera tickets.

Ms. Tupper and Ms. Thurmond moved to correct and amend the judgment to enjoin defendants other than the city from taking action. The circuit court declined to enjoin the other parties from taking action because the "other parties lack the power or authority to take the actions prohibited by the order and judgment." The court amended its judgment to deny Ms. Tupper and Ms. Thurmond's petition with respect to the other defendants. Ms. Tupper and Ms. Thurmond also filed a motion for attorney's fees, which the court overruled.

The city, Ms. Tupper and Ms. Thurmond, and the director of revenue appealed the circuit court's judgment to the court of appeals. The court of appeals consolidated the three appeals. This Court granted transfer prior to opinion. Mo. Const. art. V, sec. 10.

[6] The circuit court relied on *Brunner v. City of Arnold*, 427 S.W.3d 201, 231-33 (Mo. App. 2013); *Damon v. City of Kansas City*, 419 S.W.3d 162, 190-91 (Mo. App. 2013); and *Unverferth v. City of Florissant*, 419 S.W.3d 76, 109 (Mo. App. 2013) (Mooney, J., dissenting).

City's Appeal

On appeal, the city asserts the circuit court erred in declaring ordinance 66868 invalid and enjoining enforcement of the ordinance because Ms. Tupper and Ms. Thurmond have an adequate remedy at law. The city further asserts the circuit court erred in finding ordinance 66868 invalid because: (1) the rebuttable presumption does not violate due process; (2) the circuit court misapplied the court of appeals' holding in *Smith*; (3) the revised notice of violation form complies with Rule 37.33; and (4) ordinance 66868 does not conflict with state law requiring the assessment of points for a moving violation.

The standard of review for a declaratory judgment is the same as for court-tried cases. *Guyer v. City of Kirkwood*, 38 S.W.3d 412, 413 (Mo. banc 2001). "[T]he trial court's decision should be affirmed unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Id.*

A. No Adequate Legal Remedy

The city maintains that Ms. Tupper and Ms. Thurmond were not entitled to a declaratory judgment action because they had an adequate remedy at law in that they could have challenged ordinance 66868 in their municipal proceedings. A declaratory judgment action has been found to be a proper action to challenge the constitutional validity of a criminal statute or ordinance. *State ex rel. Eagleton v. McQueen*, 378 S.W.2d 449, 452 (Mo. banc 1964); *Sta-Whip Sales Co. v. City of St. Louis*, 307 S.W.2d 495, 498 (Mo. 1957). To maintain a declaratory judgment action, there must exist:

> (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law.

Missouri Soybean Ass'n v. Missouri Clean Water Comm'n, 102 S.W.3d 10, 25 (Mo. banc 2003) (internal quotation omitted). Similarly, "[a]n injunction is an extraordinary and harsh remedy and should not be employed where there is an adequate remedy at law." *Farm Bureau Town and Country Ins. Co. of Missouri v. Angoff*, 909 S.W.3d 348, 354 (Mo. banc 1995).

The city argues that Ms. Tupper and Ms. Thurmond were not entitled to a declaratory judgment or an injunction because they could have challenged ordinance 66868 in the municipal proceedings. In response, Ms. Tupper and Ms. Thurmond rely on *Brunner v. City of Arnold*, in which the court of appeals held a pending prosecution for violation of an ordinance is not an adequate opportunity to challenge the ordinance when the ordinance is found to be void because the municipal division lacks subject matter jurisdiction over the proceedings. 427 S.W.3d 201, 217-18 (Mo. App. 2013).

A court's subject matter jurisdiction is governed by the Missouri Constitution. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253-54 (Mo. banc 2009). Article V, section 14, of the Missouri Constitution states, "[t]he circuit courts shall have original jurisdiction over all cases and matters, civil and criminal." Additionally, article V, section 27(2)(d) states, "The jurisdiction of municipal courts shall be transferred to the circuit court . . . and, such courts shall become divisions of the circuit court."

While the constitution provides that municipal judges "shall hear and determine violations of municipal ordinances in one or more municipalities," Mo. Const. art. V, sec. 23, the subject matter jurisdiction of a municipal division of the circuit court is not dependent on whether an ordinance is invalid. Otherwise, a municipal judge would have to consider whether the ordinance on which a prosecution is based conflicts with any state law before proceeding with any case. Further, a lack of subject matter jurisdiction in the municipal division would limit the method for adjudicating claims that an ordinance conflicts with state law to declaratory judgment actions, which is not the case. *See Roeder v. City of St. Peters*, __ S.W.3d __ (Mo. banc 2015) (No. SC94379); *State ex rel. Sunshine Enterprises of Missouri, Inc. v. Bd. of Adjustment of City of St. Ann*, 64 S.W.3d 310 (Mo. banc 2002); *Kansas City v. LaRose*, 524 S.W.2d 112 (Mo. banc 1975).[7]

While the municipal division proceedings may have provided an adequate legal remedy sufficient to preclude a declaratory judgment, *see Schaefer v. Koster*, 342 S.W.3d 299, 300 (Mo. banc 2011), the city dismissed the pending prosecutions against Ms. Tupper and Ms. Thurmond before filing its motion to dismiss. Accordingly, Ms. Tupper and Ms. Thurmond no longer had an adequate legal remedy. The city provides no authority requiring the circuit court to dismiss Ms. Tupper and Ms. Thurmond's petition for declaratory judgment action due to an adequate legal remedy

[7] *Brunner*, 427 S.W.3d at 214-216, is overruled to the extent that it holds a municipal division lacks subject matter jurisdiction when an ordinance on which an ordinance violation is based is found to be invalid.

that they no longer have.[8] Therefore, the circuit court did not err in finding Ms. Tupper and Ms. Thurmond did not have an adequate legal remedy.

Ms. Tupper and Ms. Thurmond are not currently facing prosecution under ordinance 66868. Nevertheless, a pre-enforcement challenge to a law is sufficiently ripe to raise a justiciable controversy when: "(1) the facts necessary to adjudicate the underlying claims [are] fully developed and (2) the laws at issue [are] affecting the plaintiffs in a manner that [gives] rise to an immediate, concrete dispute." *Foster v. State*, 352 S.W.3d 357, 360 (Mo. banc 2011) (internal quotations omitted) (substitutions in original). "Cases presenting predominantly legal questions are particularly amenable to a conclusive determination in a pre-enforcement context, and generally require less factual development." *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 739 (Mo. banc 2007) (internal quotations omitted).

Ms. Tupper and Ms. Thurmond's claims regarding the validity of ordinance 66868 present predominately legal questions. In particular, their claim that the rebuttable presumption in ordinance 66868 is unconstitutional is a legal question that does not require further factual development. Additionally, ordinance 66868 has already affected

[8] The only case cited by the city in which an "adequate legal remedy" was no longer an option for the party seeking declaratory judgment is *State ex rel. Freeway Media, L.L.C. v. City of Kansas City*, 14 S.W.3d 169 (Mo. App. 2000). In *Freeway Media*, the plaintiffs were denied zoning permits and sought to obtain a declaratory action instead of appealing the board of zoning and adjustment's decision, which was the exclusive remedy. *Id.* at 173. *Freeway Media* is an example of the principle that a declaratory judgment action is not available when a party failed to exhaust available administrative remedies provided by statute. *See Missouri Ass'n of Nurse Anesthetists, Inc. v. State Bd. of Registration for Healing Arts*, 343 S.W.3d 348, 355 (Mo. banc 2011). The exhaustion of administrative remedies doctrine does not apply in this case.

Ms. Tupper and Ms. Thurmond in that they were previously subject to prosecutions under ordinance 66868, and Ms. Tupper and Ms. Thurmond are still subject to ordinance 66868 because the city is currently enforcing the ordinance. Accordingly, there exists a genuine disagreement among the parties regarding the validity of ordinance 66868 that presents a substantial controversy ripe for review.

B. Unconstitutional Rebuttable Presumption

The city next asserts the circuit court erred in finding 66868 is invalid for containing a rebuttable presumption that the owner of the motor vehicle was operating the vehicle at the time of the violation. The city maintains that the rebuttable presumption is lawful in that it is a reasonable and proper means of shifting the burden of production for prosecutions of red light camera ordinance violations.

Because the term "presumption" is used to describe different types of evidentiary devices used in criminal and civil cases, it is necessary to determine the nature of the presumption to assess it its validity. *See Cnty. Court. of Ulster Cnty., New York v. Allen*, 442 U.S. 140, 156 (1979). On one end of the spectrum is a permissive inference, "which allows – but does not require – the trier of fact to infer the elemental fact from proof by the prosecutor of the basic one and which places no burden of any kind on the defendant." *Id.* On the other end is a conclusory, or irrebuttable, presumption that establishes a fact such that it cannot be overcome by additional evidence or argument. Black's Law Dictionary 1377 (10th ed. 2014). In between the extremes is a mandatory but rebuttable presumption. *Francis v. Franklin*, 471 U.S. 307, 314 n.2 (1985). The amount of evidence that must be presented by the defendant to rebut the presumption

affects whether the presumption shifts only the burden of production or shifts the ultimate burden of persuasion.[9] *See Sandstrom v. Montana*, 442 U.S. 510, 518 (1979).

The presumption in this case is found in section four of ordinance 66868, which states, in pertinent part:

> A. If the City proves: 1) that a motor vehicle was being operated or used; 2) that the operation or use of the motor vehicle was in violation of the Traffic Code Ordinance as codified [in] Section 17 et seq. of the Revised Code and 3) that the defendant is the Owner of the motor vehicle in question, then:
>
> B. A rebuttable presumption exists that such Owner of the motor vehicle operated or used in violation of the Traffic Code Ordinance as codified in Section 17 et seq. of the Revised Code was the operator of the vehicle at the time and place the violation was captured by the Automated Traffic Control System Record.

The rules governing interpretation of a statute are employed when interpreting an ordinance. *State ex rel. Teefey v. Bd. of Zoning Adjustment of Kansas City*, 24 S.W.3d 681, 684 (Mo. banc 2000). Accordingly, the Court will "ascertain and give effect to the intent of the enacting legislative body" as reflected in the plain and ordinary meaning of the ordinance's language absent a definition in the ordinance. *Id.* Municipal ordinances are presumed valid, *McCollum v. Dir. of Revenue*, 906 S.W.2d 368, 369 (Mo. banc 1995), and will be construed in light of the presumption of validity, *see Reprod. Health Servs. of Planned Parenthood of St. Louis Region, Inc. v. Nixon*, 185 S.W.3d 685, 688 (Mo. banc 2006).

Ordinance 66868 does not define "rebuttable presumption." When an ordinance does not define a term but "uses words that have a definite and well-known meaning at

[9] The burden of proof is composed of the burden of production and the burden of persuasion. *White v. Dir. of Revenue*, 321 S.W.3d 298, 304 (Mo. banc 2010).

common law, it will be presumed that the terms are used in the sense in which they were understood at common law, and the words will be so construed unless it clearly appears that such a construction was not so intended." *Belcher v. State*, 299 S.W.3d 294, 296 (Mo. banc 2009). The term "rebuttable presumption" is understood at common law to be a mandatory presumption, rather than permissive inference, that requires the other party to produce sufficient evidence to rebut. *See Deck v. Teasley*, 322 S.W.3d 536, 549-50 (Mo. banc 2010); *State ex rel. Cook v. Saynes*, 713 S.W.2d 258, 261-62 (Mo. banc 1986); *Stafford v. Great S. Bank*, 417 S.W.3d 370, 376-77 (Mo. App. 2014); *Berra v. Danter*, 299 S.W.3d 690, 697 (Mo. App. 2009); *State ex rel. Heidelberg v. Holden*, 98 S.W.3d 116, 119 (Mo. App. 2003).

Rebuttable presumptions in civil cases are generally permitted. *See Deck*, 322 S.W.3d at 549-50; 2 Kenneth S. Broun, McCormicks on Evidence section 345 (7th ed. 2013). Prosecutions for municipal ordinance violations are civil proceedings with quasi-criminal aspects. *State ex rel. Kansas City v. Meyers*, 513 S.W.2d 414, 416 (Mo. banc 1974). The quasi-criminal aspect is apparent in the way Rule 37, which governs ordinance violations, mirrors the rules governing criminal proceedings. For example, the rules use the terms commonly associated with criminal cases, such as "prosecutor," "arraignment," and "plea." Rules 37.34, 37.48 and 37.58. The notice of violation must state facts supporting a finding of probable cause to believe the accused violated the ordinance. Rule 37.33. The accused has a right to counsel and, in some circumstances, the right to be appointed counsel. Rule 37.50. Moreover, because of the quasi-criminal nature of ordinance violations, the burden is on the city "to produce evidence of such a

convincing nature as to convince the trier of facts that defendant was guilty of the offense charged beyond a reasonable doubt." *City of Kansas City v. Oxley*, 579 S.W.2d 113, 114 (Mo. banc 1979) (internal quotations omitted); *City of Kansas City v. Tyson*, 169 S.W.3d 927, 928 (Mo. App. 2005).

This Court is further guided by its previous analysis of a parking ordinance in *City of Kansas City v. Hertz Corp.*, 499 S.W.2d 449 (Mo. 1973). In deciding whether a parking ordinance imposing strict liability on the owner violated due process,[10] this Court considered relevant that the maximum penalty was a "relatively small fine," that there was no potential incarceration, and that the penalty had no effect on the owner's driver's license or insurance cost. *Id.* at 453. Such factors are also relevant in determining whether criminal law regarding presumptions applies to a municipal ordinance. Specifically, the penalty for violating ordinance 66868 is $100. While the Court in *Hertz* did not identify what it considered a "relatively small fine," it relied on a case involving a $20 fine. For many, a $100 fine is not considered small. Further, a violation of ordinance 66868 will affect the owner's driver's license because running a red light is a moving violation that requires the assessment of two points. *See Roeder v. City of St. Peters*, __ S.W.3d __ (slip op. at 13). These factors, as well as the quasi-criminal nature

[10] The Court distinguished the parking ordinance from one like ordinance 66868 that imposes liability on the driver and contains a rebuttable presumption that the owner was the driver. *Hertz*, 499 S.W.2d 449 at 452.

of municipal ordinance proceedings, lead this Court to apply the law regarding presumptions in criminal cases.[11]

The rules regarding presumptions in criminal cases are more restrictive because an evidentiary device such as a presumption or inference "must not undermine the factfinder's responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt." *Allen*, 442 U.S. at 156. Specifically, in *Sandstrom v. Montana*, the United States Supreme Court held unconstitutional mandatory rebuttable presumptions that have the effect of shifting the burden of persuasion to the defendant on an element of the crime charged because it violates the accused's due process right to have the prosecution prove beyond a reasonable doubt every fact necessary to constitute the crime charged. 442 U.S. at 517-18.

In its brief, the city characterizes the rebuttable presumption in ordinance 66868 as shifting the burden of production, rather than the burden of persuasion. The Supreme Court has not expressly ruled whether a presumption shifting only the burden of

[11] In *City of St. Louis v. Cook*, this Court interpreted a parking ordinance under which the presence of a motor vehicle in a prohibited zone would constitute "prima facie evidence" that the registered owner of the vehicle parked the vehicle and found the ordinance merely shifted the burden of production onto the defendant. 221 S.W.2d 468, 468-69 (Mo. 1949). The Court found such a presumption was permissible so long as there was a rational connection between the fact proven and ultimate fact presumed. *Id.* at 470. In doing so, the Court relied on criminal and civil cases applying that standard. *Id.* (citing *Mobile, Jackson & Kansas City R.R. Co. v. Turnipseed*, 219 U.S. 35 (1910), and *Yee Hem v. United States*, 268 U.S. 178 (1925)). Because this Court ultimately finds ordinance 66868 shifts the burden of persuasion, *Cook* does not control, and it not necessary to determine whether criminal law regarding presumptions applies to a parking ordinance. Like in *Hertz*, however, the Court in *Cook* emphasized that the fee for the parking violation was nominal, whereas the fee imposed by ordinance 66868 is not. *See id.* at 468-69.

production is constitutional. In *Sandstrom*, however, the Supreme Court noted that the burden of production "is significantly different for the defendant and prosecution." *Id.* at 516 n.5. "When the prosecution fails to meet [the burden], a directed verdict in favor of the defense results. Such a consequence is not possible upon a defendant's failure, however, as verdicts may not be directed against defendants in criminal cases." *Id.*

In any event, the Court disagrees with the city's contention that the rebuttable presumption in ordinance 66868 operates to shift only the burden of production. The language of the provision containing the rebuttable presumption does not indicate what is sufficient to overcome the presumption, but this Court will consider other provisions in the ordinance to ascertain the meaning of the rebuttable presumption. *See Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 122 (Mo. banc 2014). Ordinance 66868 requires that a summons and violation notice be sent to the owner of the motor vehicle without any attempt to determine if the owner was the driver. The ordinance further dictates that the notice shall state:

> [I]f at the time and place of the violation, the motor vehicle was being operated by a person other than the Owner, or the vehicle or the license plate captured by the Automated Traffic Control System Record was stolen, the Owner may submit information to that effect by affidavit, on a form provided by the City, prior to the municipal court proceeding, or under oath at the municipal court proceeding. *If an Owner furnishes satisfactory evidence* pursuant to this paragraph, *the City Court* or City Counselor's office *may terminate the prosecution* of the citation issued to the Owner. . ..

(Emphasis added).

This provision of ordinance 66868 contemplates that the municipal division of the circuit court would terminate proceedings if the owner of the motor vehicle proves that

the owner was not the driver. It demonstrates the city's intent to enact an ordinance creating a rebuttable presumption that shifts the burden of persuasion, requiring the owner to prove to the factfinder – the municipal division in this case – that he or she was not operating the vehicle at the time of the violation. The presumption relieves the prosecution from proving an element of the violation charged beyond a reasonable doubt and is impermissible under *Sandstrom*, 442 U.S. at 517-18. Therefore, this Court finds ordinance 66868 is unconstitutional because it creates a mandatory rebuttable presumption that shifts the burden of persuasion onto the defendant.[12] *See also State v. Kuhlman*, 729 N.W.2d 577, 583-84 (Minn. 2007) (finding red light camera ordinance requiring owner to rebut presumption that he or she was the driver was unconstitutional). Because this Court affirms the circuit court's judgment on this basis, it need not consider the city's other points on appeal.

Ms. Tupper and Ms. Thurmond's Appeal

Ms. Tupper and Ms. Thurmond appeal the circuit court's judgment, asserting the court erred in overruling their motion for attorney's fees. "Where the award of attorneys' fees is not mandatory, the granting or refusal to grant attorneys' fees by the trial judge is primarily discretionary and will not be disturbed absent the showing of an abuse of discretion." *Lapponese v. Carts of Colorado, Inc.*, 422 S.W.3d 396, 401 (Mo. App. 2013) (internal quotations omitted).

[12] A rebuttable presumption like the one in ordinance 66868 is not required to enforce a red light camera ordinance. For instance, if the red light camera system took photographs of the driver, like the one at issue in *Roeder*, __S.W.3d__, the city could use the photographs to prove the identity of the driver.

Missouri follows the "American Rule" regarding attorney's fees, which provides that, absent statutory authorization or contractual agreement, each party bears the expense of his or her own attorney's fees. *David Ranken, Jr. Technical Institute v. Boykins*, 816 S.W.2d 189, 193 (Mo. banc 1991), *overruled on other grounds by Alumax Foils, Inc. v. City of St. Louis*, 939 S.W.2d 907 (Mo. banc 1997). An exception to this rule exists in cases involving "special circumstances," such as "[w]here the natural and proximate result of a wrong . . . is to involve the wronged party in collateral ligation." *Essex Contracting, Inc. v. Jefferson Cnty.*, 277 S.W.3d 647, 657 (Mo. banc 2009). Ms. Tupper and Ms. Thurmond assert that they had to incur reasonable attorney's fees in this declaratory judgment action to challenge the city's wrongful continued enforcement of ordinance 66868.

To the contrary, Ms. Tupper and Ms. Thurmond filed their petition in this case while the municipal division proceedings on the ordinance violation were pending. They could have raised these claims as defenses in that action, *see Roeder*, __S.W.3d__, without having to incur attorney's fees in a separate action.

Ms. Tupper and Ms. Thurmond also contend the city's continued enforcement of ordinance 66868 after decisions from the court of appeals invalidated similar ordinances constituted intentional misconduct. Intentional misconduct is a "special circumstance" that may justify an award of attorney's fees. *O'Riley v. U.S. Bank, N.A.*, 412 S.W.3d 400, 419 (Mo. App. 2013). Ms. Tupper and Ms. Thurmond, however, fail to show the city engaged in intentional misconduct to justify an award of attorney's fees.

By the time Ms. Tupper and Ms. Thurmond filed their petition in this case, the court of appeals had considered the validity of similar red light ordinances in *Smith*, 409 S.W.3d 404; *Unverferth v. City of Florissant*, 419 S.W.3d 76 (Mo. App. 2013); *Ballard v. City of Creve Coeur*, 419 S.W.3d 109 (Mo. App. 2013); and *Edwards v. City of Ellisville*. 426 S.W.3d 644 (Mo. App. 2013). In *Smith*, the court of appeals held the ordinance was invalid as applied because the notice of violation did not inform the recipient that he or she could respond by pleading not guilty and appearing at trial. 409 S.W.3d at 413. After *Smith* was decided, the city revised its notice of violation form to add language stating that the recipient may enter a plea of not guilty and request a trial, and the city dismissed all pending prosecutions for violations of ordinance 66868 involving the notice of violation at issue in *Smith*. The city again revised its notice of violation form to add a court date in the initial notice, rather than the supplemental notice.

In *Unverferth*, the court of appeals held that the trial court erred in dismissing a claim that Florissant's red light camera ordinance was not enacted with proper authority because the ordinance was part of a revenue-generating scheme and erred in dismissing due process claims regarding the notice. 419 S.W.3d at 84. While the court of appeals found the plaintiffs had pleaded sufficient facts to overcome a motion to dismiss on those two claims, it remanded the case for further discovery and fact-finding on those issues. *Id.* Similarly, the court of appeals in *Ballard* found sufficient facts pleaded to overcome a motion to dismiss a claim that Creve Coeur's red light camera ordinance was not properly enacted pursuant to its police power and remanded the case for further

proceedings. 419 S.W.3d at 113. Neither *Unverferth* nor *Ballard* held that the respective red light camera ordinances at issue were actually invalid.

Lastly, in *Edwards*, the court of appeals found the plaintiffs would be entitled to further discovery on their claim that Ellisville's red light camera ordinance was part of a revenue-generating scheme but did not remand for further discovery because it found the ordinance invalid for imposing strict liability on owners of motor vehicles when state law prohibiting running red lights regulates the conduct of only drivers and pedestrians. 426 S.W.3d at 650, 662-63. Without deciding whether *Edwards* was correctly decided, this Court finds the city could have properly distinguished ordinance 66868 from the one found to be invalid in *Edwards* because the ordinance in *Edwards* imposes strict liability on the owner of the motor vehicle, while ordinance 66868 places liability on the driver and contains a rebuttable presumption that the owner was the driver.

By revising its notice-of-violation form after *Smith*, the city did not engage in intentional misconduct, notwithstanding decisions of the court of appeals. Ms. Tupper and Ms. Thurmond fail to show they fall within an exception to the rule requiring each party pay his or her own attorney's fees, and the circuit court did not abuse its discretion in overruling Ms. Tupper and Ms. Thurmond's motion for attorney's fees.

Director of Revenue's Appeal

Lastly, the director of revenue appeals the circuit court's judgment, asserting the court erred in overruling the director of revenue's motion to dismiss on the basis that Ms. Tupper and Ms. Thurmond did not seek relief from or allege remediable injury caused by the director. "The right to appeal is purely statutory and, where a statute does

not give a right to appeal, no right exists." *Buemi v. Kerckhoff*, 359 S.W.3d 16, 20 (Mo. banc 2011) (internal quotations omitted). Section 512.020, RSMo Supp. 2013, provides a right to appeal a final judgment to "[a]ny party to a suit aggrieved by any judgment of any trial court in any civil cause from which an appeal is not prohibited by the constitution, nor clearly limited in special statutory proceedings." A party is aggrieved by a judgment when the judgment appealed will "operate directly and prejudicially on the party's personal or property rights or interests with immediate effect." *Lane v. Lensmeyer*, 158 S.W.3d 218, 224 n.10 (Mo. banc 2005) (internal quotations omitted).

In its initial judgment, the circuit court prohibited the city from enforcing ordinance 66868. The court subsequently amended its judgment to state that "the relief requested in the Petition, as amended, with respect to all named Respondents other than the City of St. Louis is hereby DENIED." While the circuit court overruled the director of revenue's motion to dismiss, it denied Ms. Tupper and Ms. Thurmond's claims against him. The director of revenue fails to show that he was aggrieved by the circuit court's judgment. Moreover, the director of revenue's argument that the Ms. Tupper and Ms. Thurmond sought no relief from the director of revenue seems to acknowledge that it is not adversely affected by the circuit court's judgment. Accordingly, the director of revenue does not have a right to appeal.

Conclusion

This Court finds Ms. Tupper and Ms. Thurmond could maintain their action for declaratory judgment and injunctive relief because, after the city dismissed the prosecutions against them for the ordinance violations, they no longer had an adequate

legal remedy. This Court further finds ordinance 66868 is unconstitutional because it creates a rebuttable presumption that improperly shifts the burden of persuasion onto the defendant to prove that he or she was not operating the motor vehicle at the time of the violation. Nonetheless, the city's prior enforcement of the ordinance was not intentional misconduct sufficient to justify an award of attorney's fees; therefore, the circuit court did not abuse its discretion in not awarding attorney's fees. Lastly, the director of revenue does not have standing to appeal the circuit court's judgment because the circuit court denied the relief Ms. Tupper and Ms. Thurmond requested with respect to all defendants except the city. Accordingly, this Court affirms the circuit court's judgment.

PATRICIA BRECKENRIDGE, CHIEF JUSTICE

Stith, Teitelman and Russell, JJ., and Prokes, Sp.J., concur; Draper, J., concurs in part and dissents in part in separate opinion filed; Stith, J., concurs in opinion of Draper, J.; Wilson, J., dissents in separate opinion filed. Fischer, J., not participating.

SUPREME COURT OF MISSOURI
en banc

SARAH TUPPER, *et al.*,	)	
	)	
Respondents/Cross-Appellants,	)	
	)	
v.	)	No. SC94212
	)	
CITY OF ST. LOUIS, *et al.*,	)	
	)	
Appellants/Cross-Respondents.	)	

OPINION CONCURRING IN PART AND DISSENTING IN PART

I concur with the principal opinion's holding, except to the extent footnote 12 assumes the validity of the red light camera ordinance in *City of St. Peters v. Bonnie A. Roeder*, -- S.W.3d -- (No. SC94379) (Mo. banc 2015). In *Roeder*, I wrote separately to express my belief that the ordinance therein contains an implied rebuttable presumption as applied, rendering the ordinance invalid on the same grounds as those expressed in the principal opinion here. Accordingly, I concur in part and dissent in part.

_____

GEORGE W. DRAPER III, JUDGE

SUPREME COURT OF MISSOURI
en banc

SARAH TUPPER, *et al.*,	)	
	)	
Respondents/Cross-Appellants,	)	
	)	
v.	)	No. SC94212
	)	
CITY OF ST. LOUIS, *et al.*,	)	
	)	
Appellants/Cross-Respondents.	)	

DISSENTING OPINION

Plaintiffs Sarah Tupper and Sandra Thurmond are not entitled to bring this declaratory judgment action. They each had an adequate remedy at law because they could have raised their claims in response to the City's prosecutions in the municipal division of the circuit court. *Schaefer v. Koster*, 342 S.W.3d 299, 300 (Mo. banc 2011). The principal opinion seeks to avoid the controlling effect of *Schaefer* by noting that the City dismissed Plaintiffs' prosecutions. I disagree.

It is true that, when the City dismissed those cases, Plaintiffs lost their adequate remedies at law. But the City's dismissals also removed any "justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation[.]" *Missouri Soybean Ass'n v. Missouri Clean Water Com'n*, 102 S.W.3d 10, 25 (Mo. banc 2003) (internal quotations omitted). If the City reinstitutes a prosecution against one or both

for these same violations, they will be entitled to assert their defenses there. If not, there is no "presently-existing controversy" between them and the City that requires (and is subject to) specific declaratory relief. Accordingly, Plaintiffs' petition for declaratory judgment should be dismissed.

Foster v. State, 352 S.W.3d 357, 360 (Mo. banc 2011), cited by the principal opinion, confirms this conclusion. There, this Court held that a pre-enforcement declaratory judgment action was not sufficiently factually developed and, therefore, not ripe for adjudication, where the plaintiff had not alleged that he would engage in conduct that could trigger enforcement of the act in the future. The same is true here: Tupper has alleged no plans to run red lights in the future and can claim no legal entitlement to do so. Like *Foster*, this case is not one in which "(1) 'the facts necessary to adjudicate the underlying claims [are] fully developed' and (2) 'the laws at issue [are] affecting the plaintiffs in a manner that [gives] rise to an immediate, concrete dispute.'" *Foster*, 352 S.W.3d at 360; Principal Opinion at 12.

To avoid application of this well-settled law, the principal opinion cites *State ex rel. Eagleton v. McQueen*, 378 S.W.2d 449, 452 (Mo. banc 1964), and *Sta-Whip Sales Co. v. City of St. Louis*, 307 S.W.2d 495, 498 (Mo. 1957). Neither is relevant here. *McQueen* involved an unconstitutional chilling effect on protected conduct. *McQueen*, 378 S.W.2d at 452. In *Sta-Whip*, too, the plaintiff needed declaratory relief because there was a "very real dispute going to the right of appellant to maintain its business as in the past[.]" *Sta-Whip*, 307 S.W.2d at 498. Plaintiffs do not claim a right to engage in traffic violations in the future. Instead, their claims relate solely to the City's ability to

prosecute their past violations. Such claims do not warrant declaratory judgment under *McQueen* or *Sta-Whip* and should be dismissed under *Schaefer*.

Plaintiffs will not be prejudiced by dismissal of this action. If the City prosecutes them for alleged violations in the past, Plaintiffs will be able to assert their claims in defense of those prosecutions. If the City foregoes further prosecution, Plaintiffs have no need for a declaratory judgment because they have no presently existing controversy with the City. Either way, they are not entitled to maintain this present action.

_____

Paul C. Wilson, Judge

SUPREME COURT OF MISSOURI
en banc

CITY OF ST. PETERS, MISSOURI,	)	
	)	
Appellant,	)	
	)	
v.	)	No. SC94379
	)	
BONNIE A. ROEDER,	)	
	)	
Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF ST. CHARLES COUNTY
The Honorable Ted House, Judge

Opinion issued August 18, 2015

The City of St. Peters appeals the trial court's dismissal of the city's prosecution of Bonnie A. Roeder for violating ordinance 4536 by failing to stop at a red light while that violation was detected by an automated enforcement system. After a jury found Ms. Roeder guilty of violating ordinance 4536, Ms. Roeder filed a second motion to dismiss, arguing (1) ordinance 4536 conflicts with state law by not assessing points against a violator's driving record; (2) the notice of violation does not contain the information required by Rule 37.33(b); and (3) ordinance 4536 is being applied in violation of her right to equal protection. The trial court sustained Ms. Roeder's motion and dismissed the charge against Ms. Roeder.

On appeal, the city asserts that the trial court erred in dismissing the prosecution because ordinance 4536 does not conflict with state law regarding the assessment of

points, any such conflict is not a viable defense to the city's prosecution, and any invalid provision can be severed from the rest of the ordinance.[1] This Court finds ordinance 4536 conflicts with section 302.302.1,[2] which requires the assessment of two points for a moving violation, because the ordinance creates a moving violation and states that no points will be assessed. The portion of ordinance 4536 that conflicts with state law can be severed from the valid portions, but such severance will be given effect prospectively only. Severance and enforcement of the remaining valid portion of ordinance 4536 against Ms. Roeder would violate due process by imposing a direct and negative consequence of her conviction when the ordinance affirmatively informed Ms. Roeder that a violation of the ordinance would not result in points. Accordingly, this Court affirms the trial court's judgment dismissing the charge for violating ordinance 4536.

Factual and Procedural Background

The city enacted ordinance 4536, codified in St. Peters City Code section 335.095, to authorize the installation and use of an automated red light enforcement system. Ordinance 4536 further creates an offense that occurs when a "person fails to comply with the City Traffic Code and the violation is detected through the automated red light enforcement system." As relevant to this case, the city's traffic code states, "The driver of any vehicle shall obey the instructions of any official traffic control device." St. Peters Code section 315.030.

[1] The city raises four points relied on, but the first two points both assert that the trial court erred in dismissing the prosecution because ordinance 4536 does not conflict with state law regarding points. Therefore, the first two points relied on will be considered together.

[2] All statutory references are to RSMo Supp. 2012, unless otherwise indicated.

The automated red light enforcement system consists of cameras and vehicle sensors capable of producing images recording a motor vehicle running a red light. The system produces images of an offending vehicle, the vehicle's license plate, the vehicle's operator, and the traffic control signal. These images are reviewed by an officer of the St. Peters police department. If it is determined that a violation occurred, "the officer may use any lawful means to identify the vehicle's owner." A summons will then be served on the vehicle's owner within 60 days of the violation. The ordinance classifies a violation as an infraction punishable by a fine no greater than $200 and states that "[i]n no case shall points be assessed against any person . . . for a conviction of a violation of the City Traffic Code detected through the automated red light enforcement system." *Id.*

On June 15, 2012, the city issued a notice of violation and summons to Bonnie Roeder. The notice was titled "City of St. Peters, MO Red Light Photo Enforcement Program" and stated that a vehicle registered to Ms. Roeder was in violation of ordinance 4536.[3] Specifically, it stated that a red light camera enforcement system captured her vehicle running a red light. The instructions attached to the notice provided Ms. Roeder three options: (1) pay a $110 fine; (2) submit an "Affidavit of Non-Responsibility" showing either that Ms. Roeder sold the vehicle prior to the violation date or that the vehicle or license plates were stolen at the time of the violation; or (3) appear in court on July 31, 2012, to have the matter reviewed by a municipal judge. The notice stated that the failure to either pay the fine on or before July 31, 2012, or appear in court on that date

[3] The notice specifically charged Ms. Roeder with violating city code sections 335.095 and 315.030.

may result in a warrant being issued for Ms. Roeder's arrest. The notice also stated that no points would be assessed to Ms. Roeder's driving record.

Ms. Roeder failed to complete any of the three options, and the matter was set for a municipal division hearing in September 2012. Ms. Roeder failed to appear, and the city charged her with an additional violation of failure to appear. By Ms. Roeder's request, the municipal division then certified the case for a jury trial in the circuit court of St. Charles County. Prior to trial, Ms. Roeder filed a motion to dismiss, asserting the notice of violation violated her due process rights by not providing statements showing probable cause to believe Ms. Roeder was operating the motor vehicle at the time of the violation, ordinance 4536 violated her due process rights by creating a rebuttable presumption that the owner of the motor vehicle was the operator, and ordinance 4536 conflicted with state law by not assessing points. She also asserted an "affirmative defense" of unlawful rulemaking, alleging the city and Missouri department of revenue "engaged in unlawful rulemaking by using Missouri Charge Code Manual No Points Charge for Red Light Cameras" because that charge code was created informally. The trial court overruled Ms. Roeder's motion to dismiss.

The jury trial occurred on September 5, 2013. During trial, the city presented four still photographs showing: (1) Ms. Roeder's motor vehicle traveling toward an intersection but not yet to the stop line; (2) Ms. Roeder's motor vehicle beyond the stop line and in the intersection after the traffic light turned red; (3) the front window of Ms. Roeder's motor vehicle through which Ms. Roeder's face can be seen; and (4) the rear of Ms. Roeder's motor vehicle, including the license plate. The city also played

video of the motor vehicle driving through the intersection after the light had turned red.[4] At the close of the evidence, the trial court acquitted Ms. Roeder of the failure to appear charge, and the jury found Ms. Roeder guilty of violating ordinance 4536 and assessed a $110 fine.

Following the court of appeal's ruling in *Unverferth v. City of Florissant*, 419 S.W.3d 76 (Mo. App. 2013), declaring a similar ordinance void, Ms. Roeder filed a renewed motion for acquittal. In her motion, Ms. Roeder asserted three arguments: (1) ordinance 4536 conflicts with state law in that it does not assess points against a violator's driving record; (2) the notice of violation does not contain the information required by Rule 37.33(b); and (3) ordinance 4536 is being applied in violation of her right to equal protection because operators of motor vehicles that they personally own are prosecuted when operators of motor vehicles owned by a trust, corporation, or company are not prosecuted.

The trial court treated the motion as a renewal of Ms. Roeder's motion to dismiss and relied on *Unverferth*, 419 S.W.3d 76, to find that the city's ordinance conflicted with state law by not assessing points against a violator's driving record. The court sustained the motion and dismissed the charge for violating ordinance 4536.

The city appeals. After an opinion by the court of appeals, the case was transferred to this Court. Mo. Const. art. V, sec. 10.

[4] On appeal, Ms. Roeder does not contest that this evidence shows she entered the intersection after the traffic light turned red.

Standard of Review

This Court will affirm a trial court's dismissal if the motion to dismiss can be sustained on any ground alleged in the motion. *Foster v. State*, 352 S.W.3d 357, 359 (Mo. banc 2011). Interpretation of municipal ordinances and determination of whether they conflict with state law are questions of law and reviewed *de novo*. *State ex rel. Sunshine Enters. of Missouri, Inc. v. Bd. of Adjustment of City of St. Ann*, 64 S.W.3d 310, 312-14 (Mo. banc 2002). The rules governing interpretation of a statute are employed when interpreting an ordinance. *State ex rel. Teefey v. Bd. of Zoning Adjustment of Kansas City*, 24 S.W.3d 681, 684 (Mo. banc 2000). Accordingly, the Court will ascertain the intent of the municipality, give effect to that intent, if possible, and consider the plain and ordinary meaning of the language used. *Id.*

Ordinance Conflicts with State Law

In her original and renewed motions to dismiss, Ms. Roeder claimed ordinance 4536 is void because it conflicts with state law by not assessing points against a violator's driving record. The trial court agreed, finding that a violation of ordinance 4536 is a "moving violation" and, therefore, that the ordinance conflicts with section 302.302.1(1), which provides that points must be assessed for "any moving violation" of a municipal ordinance.

On appeal, the city asserts the trial court erred in dismissing the charge against Ms. Roeder for violating ordinance 4536 because the ordinance does not conflict with state law. The city argues that section 302.302 permits the director of revenue to classify certain offenses as non-point offenses and that the director has exercised this discretion in

designating red light camera violations as non-point offenses. The city further maintains that the ordinance complies with state law because, under its authority pursuant to sections 43.505 and 43.512, RSMo 2000, the department of public safety published the Missouri charge code manual with a charge code for a red light camera violation that does not assess points and because the city is required to follow the charge code under section 43.512, RSMo 2000. Alternatively, the city argues that any purported conflict does not provide a defense to the charge against Ms. Roeder because the statutory obligation to impose points for a moving violation is not mandatory and that the trial court erred in not enforcing the ordinance's severability clause.

Courts will construe a municipal ordinance to uphold its validity "unless the ordinance is expressly inconsistent or in irreconcilable conflict with the general law of the state." *McCollum v. Dir. of Revenue*, 906 S.W.2d 368, 369 (Mo. banc 1995). When the ordinance conflicts with a statute, the ordinance is void. *Id.* Further, section 304.120 provides that "[n]o ordinance shall be valid which contains provisions contrary to or in conflict with this chapter, except as herein provided." "The test for determining if a conflict exists is whether the ordinance permits what the statute prohibits or prohibits what the statute permits." *Page W., Inc. v. Cmty. Fire Prot. Dist. of St. Louis Cnty.*, 636 S.W.2d 65, 67 (Mo. banc 1982) (internal quotations omitted). A municipal ordinance does not conflict with state law by making conduct that is a violation of state law also a violation of the ordinance. *See Strode v. Dir. of Revenue*, 724 S.W.2d 245, 247-28 (Mo. banc 1987). Additionally, municipalities are authorized to "[m]ake additional rules of the road or traffic regulations to meet their needs and traffic conditions." Section 304.120.

Section 302.302.1 sets out the system for the assessment of points and provides in pertinent part:

> The director of revenue shall put into effect a point system for the suspension and revocation of licenses. Points shall be assessed only after a conviction or forfeiture of collateral. The initial point value is as follows:
>
> (1) Any moving violation of a state law or county or municipal or federal traffic ordinance or regulation not listed in this section, other than a violation of vehicle equipment provisions or a court-ordered supervision as provided in section 302.303…….... 2 points

Hence, a conviction for a violation of a municipal ordinance that is a "moving violation" and not otherwise listed in section 302.302.1 requires the assessment of two points against the violator's driving record.

An offense is committed under ordinance 4536 when a "person fails to comply with the City Traffic Code and the violation is detected through the automated red light enforcement system." The city charged Ms. Roeder under ordinance 4536 for failing to comply with the city's traffic code section 315.030, which states that "[t]he driver of any vehicle shall obey the instructions of any official traffic control device." Specifically, the city charged Ms. Roeder with driving through the intersection when the light was red while that violation was detected by an automated enforcement system.

Running a red light, regardless of whether detected by an automated enforcement system, is not an offense specifically listed in section 302.302.1. Nonetheless, it is encompassed in the statute's catch-all category for moving violations not otherwise listed. A "moving violation" is defined as:

> [T]hat character of traffic violation where at the time of violation the motor vehicle involved is in motion, except that the term does not include the

> driving of a motor vehicle without a valid motor vehicle registration license, or violations of sections 304.170 to 304.240, inclusive, relating to sizes and weights of vehicles.

Section 302.010(13). Failing to obey a traffic control device, or running a red light, is a moving violation as defined by section 302.010 because the motor vehicle involved in the violation is in motion at the time the violation occurs. *See Brunner v. City of Arnold*, 427 S.W.3d 201, 229 (Mo. App. 2013); *Damon v. City of Kansas City*, 419 S.W.3d 162, 187 (Mo. App. 2013); *Edwards v. City of Ellisville*, 426 S.W.3d 644, 664-65 (Mo. App. 2013); *Unverferth*, 419 S.W.3d at 98 ("Common sense and collective experience suggest that a person cannot fail to stop at a red light without being in motion."). Accordingly, section 302.302.1(1) requires that a person found to violate ordinance 4356 by running a red light have two points assessed against his or her driving record. On the other hand, ordinance 4536 states that no points will be assessed. Ordinance 4536 conflicts with state law by prohibiting what state law permits – the assessment of two points for violating ordinance 4536. *See Page W.*, 636 S.W.2d at 67.

Rather than argue that a violation of section 4536 is not a moving violation, the city relies on the language in section 302.302.1 that gives the director of revenue the task of "put[ting] into effect a point system for the suspension and revocation of licenses." The city contends that this language provides the director with discretion to classify certain offenses as non-point offenses. The city ignores the part of the statute that states "[t]he initial point value is as follows" and establishes an initial point value for a number of offenses. If, as the city contends, the statute places the ultimate authority of determining whether points should be assessed with the director of revenue, then the

explicit assignment of point values in the statute would be superfluous. It is presumed that the legislature did not insert superfluous statutory language. *Bateman v. Rineheart*, 391 S.W.3d 441, 446 (Mo. banc 2013).

The city also argues that it was required, under sections 43.505 and 43.512, RSMo 2000, to not assess any points for a red light camera violation. Section 43.505, RSMo 2000, designates the department of public safety as "the central repository for the collection, maintenance, analysis and reporting of crime incident activity generated by law enforcement agencies in this state" and instructs the department to "develop and operate a uniform crime reporting system." As the central repository, the department must "publish and make available to criminal justice officials, a standard manual of codes for all offenses in Missouri." Section 43.512, RSMo 2000. "The manual of codes shall be known as the 'Missouri Charge Code Manual', and shall be used by all criminal justice agencies for reporting information required by sections 43.500 to 43.530." *Id.*

The "Missouri charge code" is "a unique number assigned by the office of state courts administrator to an offense for tracking and grouping offenses." Section 43.500(7). It "consist[s] of digits assigned by the office of state courts administrator, the two-digit national crime information center modifiers and a single digit designating attempt, accessory, or conspiracy." *Id.* The Missouri charge code manual for August 2012 to August 2013 contained charge code 9342799.0 for an offense described as "Public safety violation – red light camera (no points)" and indicates that the offense is not reportable to the department of revenue. The city reasons that, because the charge code manual contains a code specifically identifying a red light camera violation as a

non-point offense, the more general moving violation catch-all classification in section 302.302.1 must yield to the classification in the charge code.

The city's argument is premised on there being only one charge code applicable to violations of ordinance 4536. The record only contains a small portion of the charge code manual, and the city fails to show that there are no other charge codes applicable to red light violations. The record also does not include evidence of why the charge code on which the city relies contains a description identifying an offense as a non-point offense or why it indicates that an offense is not reportable to the department of revenue. A charge code is used for "tracking and grouping offenses." Section 43.500(7). It reports "information required by sections 43.500 to 43.530," *see* section 43.512, RSMo 2000, but the city fails to explain how those statutes require the reporting of the number of points assigned to an offense or whether an offense is reported to the department of revenue.

Even if the department of public safety was authorized under sections 43.500 to 43.530 to designate the number of points, if any, to be assessed for a particular violation,[5] the charge code manual cannot trump a statute. *See Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 125-26 (Mo. banc 2014) (holding that when a regulation conflicts with a statute, the statute prevails).[6] Section 302.302.1(1) states that "[p]oints shall be assessed

[5] The record does not include how the department of public safety determined that a red light camera violation is not assessed points. The city argues that the director of revenue has the authority to determine that no points will be assessed but fails to show that the department of revenue did in fact make such a determination or that the department of public safety obtains information from the director of revenue in compiling the information to be included in the charge code manual.

[6] The city maintains that in using the no-point charge code, it was acting under advice from the state courts administrator's office. Any advice from the state courts

. . . as follows: [a]ny moving violation of . . . a municipal . . . traffic ordinance . . . 2 points." Because a failure to stop at a red light, regardless of whether the violation is detected by an automated enforcement system, is a "moving violation," as defined by section 302.010(13), it requires the assessment of two points against a violator's driving record, and the charge code manual is not binding to the extent it states that a red light violation is a no-point offense.[7]

The city further attempts to avoid application of section 302.302.1(1) by arguing that the statutory language stating that the director "shall put into effect a point system" and setting out the point value for each offense is merely directory. Generally, the term "shall" prescribes a mandatory duty but has been interpreted to be directory when the

administrator's office does not override state law. Similarly, this Court approves pattern jury instructions to be submitted to juries but such approval does not preclude challenges to the validity of an instruction. When a party proves a pattern instruction does not correctly state the substantive law, submission of the instruction is error. *State v. Carson*, 941 S.W.2d 518, 520 (Mo. banc 1997).

[7] Additionally, the city fails to demonstrate that it is bound to follow the charge code manual in passing ordinances. Section 43.512, RSMo 2000, requires all "criminal justice agencies" to use the manual for reporting information. While the statute does not define "criminal justice agencies," section 43.500(1) defines "administration of criminal justice" as:

> [P]erformance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history information, including fingerprint searches, photographs, and other unique biometric identification.

Considering the activities that fall within the administration of criminal justice, it seems unlikely that the city's board of aldermen acts as a criminal justice agency when it passes a traffic ordinance.

statute does not provide what result will follow for failing to comply with its terms. *State v. Teer*, 275 S.W.3d 258, 261 (Mo. banc 2009). Section 302.302.1 does not state what results will follow if points are not assessed for an enumerated offense. The absence of a penalty provision, however, does not necessarily prove "shall" is directory. *See id.* Rather, this Court determines whether "shall" is mandatory or directory by considering the context and ascertaining the legislature's intent. *Id.*

The purpose of the point system established in section 302.302 is to protect the public. *Rudd v. David*, 444 S.W.2d 457, 459 (Mo. 1969). This purpose indicates a legislative intent to require the assessment of points for the enumerated offenses because, if the assessment of points were merely discretionary, the point system would do little to protect the public. *See also Edwards*, 426 S.W.3d at 664; *Unverferth*, 419 S.W.3d at 97. Therefore, this Court finds that the assessment of two points for moving violations under section 302.302.1(1) is mandatory. By classifying a moving violation as a non-point offense, ordinance 4536 prohibits what state law permits and is in conflict with state law. *See Page W.*, 636 S.W.2d at 67. *See also Brunner*, 427 S.W.3d at 229; *Edwards*, 426 S.W.3d at 664-65.

Severance

Notwithstanding the ordinance's conflict with state law, the city asserts that the trial court erred in dismissing the charge against Ms. Roeder for violating ordinance 4536 because the portion of the ordinance stating no points will be assessed can be severed from the remainder. When an ordinance's provision is found to be invalid, the Court will not declare the entire ordinance void unless it determines that the municipality would not

have enacted the ordinance without the invalid portion.[8] *Pearson v. City of Washington*, 439 S.W.2d 756, 762 (Mo. 1969). *See also State ex rel. City of St. Louis v. Mummert*, 875 S.W.2d 108, 109-10 (Mo. banc 1994); *Heidrich v. City of Lee's Summit*, 916 S.W.2d 242, 251 (Mo. App. 1995).

In the bill enacting ordinance 4536, the city's board of aldermen found that a vehicle running a red light "is a serious risk to the public by endangering vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic

[8] Section 1.140, RSMo 2000, states:

> The provisions of every statute are severable. If any provision of a statute is found . . . to be unconstitutional, the remaining provisions of the statute are valid unless the court finds the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Ms. Roeder argues that section 1.140 does not apply because the invalid portion is not unconstitutional but, rather, conflicts with state law. Nonetheless, even if the statute does not apply, it does not prevent this Court from using severance in this case. Section 1.140 was enacted in 1949, and, before that time, the common law doctrine of severability was applied, or at least recognized, in cases in which a provision of the ordinance was found to be in conflict with state law. *See State ex inf. McKittrick ex rel. City of Springfield v. Springfield City Water Co.*, 131 S.W.2d 525, 532 (Mo. banc 1939); *Ex parte Tarling*, 241 S.W. 929, 933 (Mo. banc 1922); *City of St. Louis v. St. Louis Transfer Co.*, 165 S.W. 1077, 1079 (Mo. 1914); *City of St. Louis v. Grafeman Dairy Co.*, 89 S.W. 617, 619 (Mo. 1905). The legislature's intent to preempt common law must be clear. *Overcast v. Billings Mutual Ins. Co.*, 11 S.W.3d 62, 69 (Mo. banc 2000). This Court has previously determined that the common law doctrine of severability, rather than section 1.140, applies when the procedure used in enacting a statute was unconstitutional. *See Missouri Roundtable for Life, Inc. v. State*, 396 S.W.3d 348, 353 (Mo. banc 2013). Section 1.140, does not demonstrate a clear intent to completely preempt the common law doctrine of severability to prevent its use when a provision of an ordinance is found to be invalid due to a conflict with state law.

flow efforts, and by increasing the number of serious accidents." The board further determined that use of an automated red light enforcement system had been "proven to significantly improve public safety by reducing the number of red light runners" and that use of such a system in the city was "in the interest of the public health, safety and welfare of the citizens of the City." The ordinance also contains a severability clause that states:

> If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions.

The board's findings demonstrate that the board's intent in passing ordinance 4356 was to authorize the installation and use of automated red light enforcement systems as a means to enforce its traffic law prohibiting the running of a red light. The portion of ordinance 4536 stating that no points shall be assessed for a conviction for violating the ordinance does not further that purpose, nor is it necessary to enforce the ordinance. Further, the presence of the severability clause weighs in favor of finding that the board would have passed the ordinance without the portion providing for no points. Because the Court cannot determine that the city would not have passed the ordinance without the portion stating no points will be assessed, the Court will not declare the entire ordinance invalid. *See Pearson*, 439 S.W.2d at 762.

After severing that portion of the ordinance, the ordinance is silent regarding the assessment of points, and two points will be assessed, as required by section 302.302.1.[9] At the time Ms. Roeder violated the ordinance, however, the ordinance was written to provide that a person violating the ordinance would not be subjected to the assessment of points. "Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996). This notion is partly enforced through the *ex post facto* prohibition in the United States and Missouri constitutions by preventing the legislature from passing a law that increases the penalty for crime beyond what the law provided when the crime occurred. *See State v. Harris*, 414 S.W.3d 447, 450 (Mo. banc 2013); *see also* U.S. Const. art. I, sect. 10 and Mo. Const. art. I, sec. 13. Similarly, Missouri's constitutional ban against civil laws retrospective in operation prohibits laws that "create[] a new obligation, impose[] a new duty, or attache[] a new disability with respect to transactions or considerations already past." *Doe v. Phillips*, 194 S.W.3d 833, 850 (Mo. banc 2006) (internal quotations omitted). Further, due process requires fair notice of a penalty such that a defendant must be charged with any fact that increases the maximum penalty for a crime.[10] *See Ring v. Arizona*, 536 U.S. 584, 600 (2002). Such

[9] It is not necessary for an ordinance to expressly address the assessment of points because the assessment of points is governed by section 302.302. For example, the state speeding statute, section 304.010, does not state that points will be assessed for a violation or contain a reference to section 302.302.

[10] While municipal ordinance violations are quasi-criminal, *see Strode*, 724 S.W.2d at 247, this Court is informed by these criminal cases.

notions of fairness dictate that this Court give effect to the severance and permit enforcement of the remaining valid provisions of ordinance 4536 prospectively only.

The city enacted an ordinance clearly conflicting with state law by providing no points would be assessed when the assessment of points is a direct consequence of a conviction under section 302.302. Though the Court does not find the entire ordinance should be invalidated because the invalid portion can be severed, giving effect to that severance and enforcing the valid provisions in this case would violate Ms. Roeder's right to fair notice of a direct consequence of her conviction. Severance would lead to Ms. Roeder's driver's license being assessed two points when, at the time Ms. Roeder committed the violation, ordinance 4536 expressly stated no points would be assessed. The assessment of two points against Ms. Roeder's driver's license creates a disability that is a direct result of her conviction. Because Ms. Roeder did not have fair notice that points would be assessed at the time of the violation, this Court will not give effect to severance and permit enforcement of the valid portions of ordinance 4536 in Ms. Roeder's case.[11] Without severing the portion of ordinance 4536 stating no points

[11] In his dissent, Judge Wilson asserts that this Court has previously found points are not a "punishment." Merely because points are not assessed primarily for punishment does not preclude this Court from finding that due process prohibits assessment of points, a direct and negative effect of a violation of ordinance 4536 when ordinance 4536 expressly notified Ms. Roeder that no points would be assessed. In *Barbieri v. Morris*, this Court found that a person's license may be suspended after being found to be a habitual violator of traffic laws based on convictions that occurred before the enactment of the statute defining "habitual violator." 315 S.W.2d 711, 714-15 (Mo. 1958). The Court noted that the statute was "not retrospective because it merely relate[d] to prior facts or transactions but [did] not change their legal effect." *Id.* at 714. Additionally, the Court found that the defendant was "charged with knowledge that if he were again adjudged guilty of a traffic violation . . . he would be a 'habitual violator of traffic laws.'"

will be assessed, the ordinance conflicts with section 302.302.1 and is void. *McCollum*, 906 S.W.2d at 369.[12]

Conclusion

Because ordinance 4536 creates a moving violation that requires the assessment of two points against the violator, *see* section 302.302.1., the portion of the ordinance stating no points will be assessed against a violator's driving record conflicts with state law. The invalid portion may be severed from the rest of the ordinance because the city would have enacted the ordinance without the invalid portion. Nevertheless, this Court will give effect to that severance and permit enforcement of the valid portions of ordinance 4536

Id. at 715. Here, the assessment of points is not a possible collateral consequence that will occur in the future but is a direct result of Ms. Roeder's conviction. Ms. Roeder was not simply uninformed that a violation of ordinance 4536 would have this effect; rather, the ordinance affirmatively stated that points would be not assessed. For this Court to give effect to the ordinance such that points would be assessed against Ms. Roeder's driving license under these circumstances would not comport with due process, regardless of whether the assessment of points is primarily for punishment.

[12] In her respondent's brief, Ms. Roeder raises other arguments that were in her motions to dismiss, including: (1) ordinance 4536 conflicts with state law by placing liability on the owner of motor vehicle; (2) the notice of violation creates an implied rebuttable presumption that the owner of the motor vehicle was operating the vehicle at the time of the violation; (3) the city's prosecution of violations of ordinance 4536 violates her right to equal protection under the law; and (4) the city's process of identifying the operator of the motor vehicle is impermissibly suggestive. The last argument was made in Ms. Roeder's motion to dismiss the failure to appear charge and not in either of her motions to dismiss the charge for violating ordinance 4536. Therefore, the issue is not before this Court. *See Travelers Prop. Cas. Co. of Am. v. Manitowoc Co.*, 389 S.W.3d 174, 176 (Mo. banc 2013). As to the other arguments, it is unnecessary for the Court to reach these issues because it is affirming the trial court's dismissal on other grounds.

prospectively only because severance in Ms. Roeder's case would violate constitutional notions of fair notice.[13] Therefore, this Court affirms the trial court's judgment.

PATRICIA BRECKENRIDGE, CHIEF JUSTICE

Teitleman and Russell, JJ., and Prokes, Sp.J., concur; Stith, J., concurs in part and in result and concurs in opinion of Draper, J., in separate opinion filed; Draper, J., dissents in separate opinion filed; Wilson, J., dissents in separate opinion filed. Fischer, J., not participating.

[13] In his dissent, Judge Draper opines that this Court should consider Ms. Roeder's rebuttable presumption argument because the presumption violates due process and would invalidate ordinance 4536. A rebuttable presumption is an evidentiary device and violates due process when it "undermine[s] the factfinder's responsibility *at trial*, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt." *Cnty. Ct. of Ulster Cnty., New York v. Allen*, 442 U.S. 140, 156 (1979) (emphasis added). Judge Draper's dissent accepts Ms. Roeder's mischaracterization of the notice of violation provisions as applying a rebuttable presumption. While the notice of violation appears not to comply with Rule 37.33 and indicates it is the owner's responsibility to show who committed the violation, nothing in the language of ordinance 4536 or the notice interferes with the factfinder's responsibility at trial, and Ms. Roeder fails to show such a presumption was applied at trial. Moreover, while Judge Stith is correct that the ordinance states that evidence of the recorded image will be submitted into evidence at trial, this evidence is as likely to exculpate as to inculpate the driver, and, therefore, does not create an implied presumption that the owner of the vehicle is the driver.

SUPREME COURT OF MISSOURI
en banc

CITY OF ST. PETERS, MISSOURI,	)	
	)	
Appellant,	)	
	)	
v.	)	**No. SC94379**
	)	
BONNIE A. ROEDER,	)	
	)	
Respondent.	)	

OPINION CONCURRING IN PART AND IN RESULT AND CONCURRING IN DISSENTING OPINION OF JUDGE DRAPER

I concur with the principal opinion's analysis in which it explains that the portion of St. Peters city ordinance 4536 that states that no points will be assessed for its violation conflicts with section 302.302.1, RSMo Supp. 2012, which requires that two points be assessed for moving violations. I also concur in the principal opinion's result. In fact, I concur in all of the principal opinion other than the *dicta* in its final footnote in which it disagrees with Judge Draper's dissenting opinion stating that St. Peters *sub silencio* creates a rebuttable presumption that the owner of the vehicle is the driver.

The principal opinion recognizes that the notice sent by the city expressly states that the burden is on the owner to prove that the owner was not the driver. But, the principal opinion says that this does not constitute a rebuttable presumption because it occurs in the notice and the ordinance itself does not expressly require a similar reversal

of the proper burden of proof *at trial.*

Certainly the principal opinion is correct that rules of evidence apply only at trial. But, if the ordinance creates a rebuttable presumption that will apply at trial to shift the burden of proof to the defendant, or reasonably can be read to do so, then to that extent it violates due process and is invalid. That is what I believe to be the case here. As the principal opinion itself notes, the ordinance makes it an offense if a person "fails to comply with the City Traffic Code and the violation is detected through the automated red light enforcement system," *St. Peters City Ordinance 4536*, and the city's traffic code states, "The driver of any vehicle shall obey the instructions of any official traffic control device." *St. Peters Code § 315.030*. To this point, the ordinance does not appear to shift the burden of proof. But, the ordinance nowhere provides that a notice of violation must be sent to the driver of the vehicle, or otherwise requires any effort by the officer or city to identify the driver. Instead, the ordinance provides that if the officer viewing the photograph of the violation finds that the photograph "shows a violation" then the officer "may use any lawful means to identify *the vehicle's owner*" and a summons will issue *to that owner*. *St. Peters City Ordinance 4536*. The ordinance requires the summons to be accompanied by "a copy of the violation notice … instructions and information regarding the viewing of the recorded image … a statement that the recorded image *will be submitted as evidence* in the Municipal Court proceeding for prosecution of the violation of the applicable Section of the City Traffic Code." *Id.* (Emphasis added).

By stating that the driver shall obey the city's traffic control device – the red light – and that failure to do so is a violation, and by then providing that notice of the violation

should be sent to the owner, the ordinance necessarily assumes and is premised on the owner being the driver. In fact, it nowhere provides a mechanism for summoning a non-owner driver. And, the ordinance provides that evidence of the violation will be presented against the owner at trial. While the ordinance does not state expressly that it is the owner's burden to prove that he or she is not the driver, that clearly is how the city reads the ordinance, for that is what the city's notice states. The notice provides that the owner must pay the fine unless the owner shows that he or she was not the driver and identifies the driver or shows he or she falls within the other identified exceptions to owner liability.

While the notice makes express what is only implicit in ordinance 4536, the lack of an express requirement in the ordinance that any summons or notice be sent to the driver, combined with the ordinance's provision that the photographic evidence will be presented against the owner at trial, create the impression that it is ownership that will create the basis for liability at trial. This is because it would be nonsensical to require that a notice be sent only to the owner, and to nowhere require that notice be given to the driver, were the owner not presumptively the driver under the ordinance. Whether or not the ordinance thereby technically includes an implicit rebuttable presumption comparable to the explicit rebuttable presumption invalidated in *Tupper v. City of St. Louis, -- S.W.3d -- (Mo. banc 2015) (No. SC94212)*, it is misleading to the citizens affected by it in that it creates the impression, if not the reality, that it is their burden to prove that they were not the driver and the ordinance should be invalidated on this basis also.

For these reasons, I concur in the dissenting opinion of Judge Draper on this issue.

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LAURA DENVIR STITH, JUDGE

SUPREME COURT OF MISSOURI
en banc

CITY OF ST. PETERS, MISSOURI,	)	
	)	
Appellant,	)	
	)	
v.	)	No. SC94379
	)	
BONNIE A. ROEDER,	)	
	)	
Respondent.	)	

DISSENTING OPINION

I respectfully dissent because I believe the validity of ordinance 4536 remains unsettled by the principal opinion's failure to address dispositive issues raised by Bonnie A. Roeder (hereinafter, "Roeder"). Specifically, the question of whether the ordinance is civil or criminal in nature and what effect that analysis has on the rebuttable presumption that arises when the ordinance is applied are crucial to resolve, despite the principal opinion's finding to the contrary. Although the principal opinion holds it need not address these issues because it affirms the circuit court's dismissal of Roeder's conviction on other grounds, this Court's disposition essentially upholds the ordinance's validity after severing the conflicting language regarding point assessment. I believe this Court should address Roeder's contentions, which would invalidate the ordinance. Accordingly, I would affirm the circuit court's judgment dismissing the city's prosecution of Roeder on other grounds and hold ordinance 4536 void.

In her motion to dismiss, Roeder claimed the ordinance contained a rebuttable presumption that the owner committed the violation, and this presumption impermissibly shifted the burden of proof away from the city. Roeder argues the presumption relieves the city of its burden of proving each element of the offense, particularly, the identity of the operator. Roeder claims this creates an affirmative burden on an owner to rebut the presumption and demonstrate his or her innocence by implicating another individual as the guilty operator. The city argues ordinance 4536 is not a strict liability ordinance that creates a rebuttable presumption by its express language. Rather, the city maintains ordinance 4536 requires the city to prove beyond a reasonable doubt that the person charged with violating the ordinance did indeed commit the violation. Further, the city contends only the vehicle's operator can be found guilty of violating the ordinance.

When compared with the language in the other traffic ordinances reviewed by this Court in *City of Moline Acres v. Charles W. Brennan*, -- S.W.3d -- (No. SC94085) (Mo. banc 2015) (a speed camera ordinance that provides, "A violation hereunder is based on ownership, without regard to whether the Owner was operating the motor vehicle at the time of the infraction ….") and *Sarah Tupper, et al. v. City of St. Louis, et al.*, -- S.W.3d -- (No. SC94212) (Mo. banc 2015) (a red light camera ordinance that provides, "A rebuttable presumption exists that such Owner of a motor vehicle operated or used in violation of [the ordinance] … was the operator of the vehicle at the time and place the violation was captured…."), the city is correct. However, ordinance 4536, as applied, creates an implied rebuttable presumption that belies the city's characterization.

Ordinance 4536 directs the police officer reviewing the recorded image to "use any lawful means to identify the vehicle's *owner*." Further, the "summons shall be served on the *owner* …." Only if the vehicle is registered to more than one person, then the summons shall be issued to *the registrant* who was "most likely depicted in the recorded image." (Emphasis added to all).

The notice of violation further demonstrates an implied rebuttable presumption exists. The notice informs the owner, "a vehicle *registered in your name* … appears to have run a red light." The notice also states, "Please note that recorded images constitute evidence of a violation of [ordinance 4536.]" The notice also makes clear, "As the *registered owner* of the vehicle described in this Notice, *you are responsible* for paying this fine or appearing in Court …." On the instruction page, the city reiterates that *a vehicle registered to the owner* who received the notice was photographed violating the ordinance. Moreover, the notice provides, "As *the registered owner* or identified driver of the vehicle … we have no choice but to hold you responsible for paying this fine …. Of course, if you were not the driver at the time of the violation, you may appear in Court to identify another driver." Finally, the instructions state, "It is sufficient evidence [under the ordinance], that *the person registered as the owner of the vehicle was operating the vehicle at the time of the violation*." (Emphasis added to all).

Roeder concedes the city's notice of violation and corresponding instructions do not track the language of ordinance 4536 regarding any rebuttable presumption. However, it is clear that, as applied, the city employs a rebuttable presumption that the registered owner committed the violation unless the vehicle happens to be registered to

more than one person. Otherwise, the registered owner is compelled to put forth evidence that the vehicle has been sold or stolen, or the owner must appear in court to identify another driver. I believe this rebuttable presumption is impermissible.

Law enforcement's use of technology to enforce traffic laws is not a new concept. Police began employing the "time-distance method" of speed measurement in 1902, by concealing themselves at particular distances and using stop watches to measure the time at which the motorist passed each concealed officer. This information was then telephoned to a third officer positioned further up the road, who could stop the speeding motorist. *See* Joel O. Christensen, *Wrong on Red: The Constitutional Case Against Red-Light Cameras*, 32 WASH. U. J.L. & POL'Y 443, 451-52 (2010). Speedometers were commonplace by 1917, and nascent radar technology was employed in the 1940s. *Id*. at 452. In 1959, Missouri courts recognized that "a radar speedmeter is a device which, within a reasonable engineering tolerance, and when properly functioning and properly operated, accurately measures speed in terms of miles per hour." *State v. Graham*, 322 S.W.2d 188, 195 (Mo. App. Spring. Dist. 1959). Red light cameras were introduced in Europe in the 1960s and 1970s and were imported to the United States in 1994 when New York City launched its red light camera program. *Wrong on Red*, 32 WASH. U. J. L. & POL'Y 443 at 454. Today, nearly half of all states use some form of automated traffic enforcement, which includes red light cameras, speed cameras, and speed cameras statewide in work zones. *See Communities Using Red Light and/or Speed Cameras*, INS. INST. FOR HIGHWAY SAFETY, http://www.iihs.org/iihs/topics/laws/printablelist?print-view (last visited August 12, 2015).

As law enforcement's detection technology evolves, so too should this Court's jurisprudence analyzing these advancements. Even in the context of a civil ordinance, I believe the rebuttable presumption analysis in *City of St. Louis v. Cook*, 221 S.W.2d 468 (Mo. 1949) should be confined to the facts under which *Cook* was decided and not be extended to the automated traffic enforcement mechanisms employed today. In *Cook*, this Court construed a parking ordinance that provided it shall be "*prima facie* evidence" that the person who is registered as the owner committed or authorized the parking violation. This Court held the ordinance did not change the burden of proof the city must carry in making its case. There is a "difference between *the burden of proof* which does not shift and the *burden of evidence*, which may shift to the defendant to produce, if he [or she] desires, evidence which, if believed, will meet a plaintiff's prima facie case." *Cook*, 221 S.W.2d at 469. This Court explained:

> From a practical standpoint it would be impossible for the police department of the City of St. Louis to keep a watch over all parked vehicles to ascertain who in fact operates them. In such a situation and in view of the purpose of City's traffic regulations, the City having shown the vehicle to have been parked in violation of the regulatory ordinance and having shown a defendant to be the person in whose name the vehicle is registered, it would seem an owner-registrant, a defendant, could not be said to be put to too great an inconvenience or to an unreasonable hardship in making an explanation if he desires. The connection between the registered owner of an automobile and its operation is a natural one. While there are no doubt instances where an owner's automobile is used without his authorization, yet it is not generally so. If, in fact, defendant's vehicle was parked at the time without any authorization from defendant, such fact was peculiarly within defendant's knowledge and, if defendant had desired, the fact could have been easily proved with such certainty as to almost entirely preclude a false conviction. In our opinion the inference authorized by the Ordinance No. 41240 is a reasonable one. The ordinance does not make any inferred fact conclusive. And the ordinance does not require that a defendant testify; nor does it deny him his right to make out his defense, or to testify.

Id. at 470-71.

Several lower court decisions have questioned *Cook*'s application to red light camera ordinances that contain a rebuttable presumption. In *Unverferth v. City of Florissant*, 419 S.W.3d 76 (Mo. App. E.D. 2013), the majority opinion applied *Cook* and upheld the city's use of the rebuttable presumption that the owner of the vehicle was the operator at the time the violation occurred. *Unverferth*, 419 S.W.3d at 99-100. However, the majority acknowledged, "While such a presumption does have a rational connection with the fact inferred, applying this presumption in 2013 is vastly different and significantly less compelling than in 1949 when *Cook* was decided." *Id*. at 109, n.7. The majority noted that *Cook* did not limit its holding to its facts, and therefore, the court was constrained by *Cook*'s rationale until this Court reconsidered the issue. *Id*. Further, the dissenting opinion in *Unverferth* maintained that, while *Cook*'s presumption was reasonable at the time it was decided, its holding should be confined to parking violations. *Id*. at 109 (Mooney, J., dissenting).

In *Damon v. City of Kansas City*, 419 S.W.3d 162 (Mo. App. W.D. 2013), the red light camera ordinance contained a rebuttable presumption that the owner of the vehicle captured by the camera was also the operator. The court held the challengers were entitled to develop further facts about whether the ordinance was civil or criminal in nature. *Damon*, 419 S.W.3d at 189. If the ordinance were criminal, then the rebuttable presumption contained in the ordinance would be unconstitutional because it would presume a fact that is an element of the offense, which runs afoul the presumption of innocence. *Id*. at 190-91. The court specifically rejected the city's "blanket argument

that the rebuttable presumption merely shifts the burden of evidence, not the burden of proof," as held in *Cook*. *Id*. at 189-90. The court also questioned *Cook*'s validity, finding the rationale "outdated" in light of the "substantial transportation developments over the past sixty-four years" and that it involved parking, rather than moving, violations. *Id*. at 191, n.21.

In *Brunner v. City of Arnold*, 427 S.W.3d 201 (Mo. App. E.D. 2013), the red light camera ordinance expressly prohibited photographing the operator committing the violation; instead, the ordinance contained a rebuttable presumption that the owner of the vehicle was the operator at the time and place the violation occurred. The notice of violation allowed the owner to transfer liability to the individual responsible for driving the vehicle at the time of the offense by completing an affidavit of non-responsibility, wherein the owner had to provide the name and address of the operator. *Brunner*, 427 S.W.3d at 206-07. The *Brunner* court elected not to extend *Cook*'s rebuttable presumption analysis beyond the prosecution of parking violations. *Id*. at 231. Further, the court found the red light camera ordinance was criminal in nature, rendering it unconstitutional in light of the impermissible rebuttable presumption. *Id*. at 232-33.

Finally, I believe this Court's analysis in *Tupper*, holding that the City of St. Louis' red light camera ordinance was constitutionally invalid because it created a rebuttable presumption that shifted the burden of persuasion onto the defendant to prove that he or she was not operating the vehicle at the time of the violation, should apply to invalidate ordinance 4536. *See Tupper*, --- S.W.3d --- (Slip op. at pages 14-18). Even though ordinance 4536 does not contain an explicit rebuttable presumption like *Tupper*,

ordinance 4536 operates just as the one in *Tupper*. In *Tupper*, the ordinance presumed the owner of the motor vehicle operated in violation of the ordinance was the operator of the vehicle at the time and place the violation was captured by the red light camera. The ordinance further provided the owner could offer a statement by affidavit or under oath at the municipal court proceeding that he or she was not the operator at the time the violation was captured. However, the city court or city counselor had to make a determination that the owner's offer of proof constituted "satisfactory evidence" prior to terminating the owner's prosecution, and if appropriate, the city could issue a citation to the individual clearly identified in the evidence as the operator of the motor vehicle at the time of the violation.

Likewise, ordinance 4536 as applied presumes the owner of the vehicle was the operator at the time of the offense. Ordinance 4536, as applied through its notice provision, states the city has no choice but to hold the registered owner responsible for paying the fine, unless the owner wishes to appear in court to identify another driver. Finally, the instructions state, "It is sufficient evidence [under the ordinance], that *the person registered as the owner of the vehicle was operating the vehicle at the time of the violation*." (Emphasis added). Just like *Tupper*, this scheme effectively "shifts the burden of persuasion, requiring the owner to prove to the fact-finder … that he or she was not operating the vehicle at the time of the violation." *Tupper*, --- S.W.3d --- (Slip op. at page 18). *Tupper* held this presumption was unconstitutional because "it relieves the prosecution from proving an element of the violation charged beyond a reasonable doubt and was impermissible under *Sandstrom v. Montana*, 442 U.S. 510, 517-18 (1979). *Id.*

I find the reasoning and analysis of these cases persuasive. In all three automated traffic enforcement cases decided today, each municipality sought to reap the monetary benefits of employing this advanced technology while holding on to the antiquated rebuttable presumption analysis from a 1949 parking ordinance challenge. Today's transportation landscape varies dramatically from the one contemplated in *Cook*, in which the connection between the vehicle's registered owner and its operation was a natural one, especially in instances in which "the head of a household titled the vehicle in his own name and drove the car most frequently." *Unverferth*, 419 S.W.3d at 109 (Mooney, J., dissenting).

It has been aptly noted that with respect to red light camera ordinances, they "explicitly presume that ownership of a vehicle is conflatable with driving the vehicle at a given time. Though rebuttable in name, this presumption is conclusive in practice." *Wrong on Red*, 32 WASH. U. J.L. & POL'Y at 463. This presumption forces vehicle owners to "reconstruct history and disprove the preordained conclusion that they are guilty of the cited offense." *Id*. As pointed out in *Unverferth*, *Damon*, and *Brunner*, multiple driver and vehicle households are commonplace, joint titling of vehicles is frequent, and one can posit several situations wherein the registered owner and the operator of the vehicle may not be the same person at any given time. Thus, the rebuttable presumption contained in the automated traffic enforcement ordinances is distinguishable from the one contemplated in *Cook* because unlike in *Cook*, these ordinances *do* make the inferred fact conclusive, and in order to avoid liability, the owner must submit evidence to prove otherwise. Accordingly, I would confine *Cook*'s

application to parking violations and find the rebuttable presumption in the instant case impermissible, rendering ordinance 4536 invalid. I would affirm the circuit court's judgment dismissing the city's prosecution of Roeder.

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GEORGE W. DRAPER III, JUDGE

SUPREME COURT OF MISSOURI
en banc

CITY OF ST. PETERS, MISSOURI,	)	
	)	
Appellant,	)	
	)	
v.	)	No. SC94379
	)	
BONNIE A. ROEDER,	)	
	)	
Respondent.	)	

DISSENTING OPINION

The St. Peters ordinance provides that in "no case shall points be assessed against any person, pursuant to section 302.302, RSMo, for a conviction of a violation of the City Traffic Code detected through the automated red light enforcement system." But running a red light is a "moving violation" whether it is proved by an automated camera or the proverbial station wagon full of unimpeachable eyewitnesses. As a result, the principal opinion is correct in holding that the "no points" provision of the City's ordinance is void because it conflicts with the requirement in section 302.302.1(1) that two points be assessed for any ordinance violation that qualifies as a "moving violation." I also agree (reluctantly) there is no basis in the record to hold that the City would not have enacted this ordinance if it had known the "no points" provision would be void. Accordingly, I agree with the principal opinion that the rest of the ordinance (aside from the "no points" provision) remains enforceable.

I am compelled to write separately, however, because the principal opinion refuses to abide by the sound conclusions it reaches. Even though the principal opinion concludes that the City's ordinance (aside from the "no points" provision) is enforceable, it refuses to enforce either the ordinance or section 302.302 in this case. Instead, it affirms the trial court's dismissal of Roeder's prosecution – not because of any defect in the ordinance – but because "notions of fairness" do not permit Roeder to be assessed points for her violation.

The question of whether to assess points for an ordinance violation is determined solely by section 302.302. This Court has no more authority to override that statute than does the City of St. Peters. If the City's ordinance is enforceable – and the principal opinion holds it is – the responsibility to assess points according to section 302.302 for violations of that ordinance rests solely with the director of the department of revenue. That function is both automatic and ministerial. *Rudd v. David*, 444 S.W.2d 457, 459 (Mo. 1969) (assessment of points under section 302.302 and revocations under section 302.304 are ministerial duties, and the director has no discretion to depart from these statutory mandates). Just as a municipality cannot compel the director to ignore the provisions of section 302.302 on an ordinance-by-ordinance basis, this Court cannot compel the director to do so on a case-by-case basis. Accordingly, I respectfully dissent.

There are two types of challenges to municipal ordinances. The first challenge is that the municipality had no authority to enact the ordinance, either because the municipality acted outside the scope of its delegated authority or because it exercised that authority in a manner prohibited by the state or federal constitution. *City of St. Louis v.*

Evraiff, 256 S.W. 489, 494 (Mo. banc 1923). Here, there is no doubt that the City has authority to enact this ordinance in the exercise of its police power. Similarly, the ordinance does not violate any substantive prohibition in the state or federal constitutions. Accordingly, the City's ordinance is not subject to the first type of challenge.

The second type of challenge is that a municipal ordinance conflicts with state law, i.e., that it permits what state law prohibits or prohibits what state law permits. *Vest v. Kansas City*, 194 S.W.2d 38, 39 (Mo. 1946). The conflicting municipal ordinance is valid in the sense that the municipality acted with authority and not in a manner prohibited by the state or federal constitution, but it is void because the "powers granted a municipality must be exercised in a manner not contrary to the public policy of the state and any provisions in conflict with prior or subsequent state statutes must yield." *Morrow v. City of Kansas City*, 788 S.W.2d 278, 281 (Mo. banc 1990). *See also McCollum v. Dir. of Revenue*, 906 S.W.2d 368, 369, 1995 WL 555644 (Mo. banc 1995) ("If, however, a municipal ordinance conflicts with a general law of the state, it is void.").

Here, the principal opinion holds that the "no points" provision of the City's ordinance conflicts with state law. I agree. Section 302.302 requires the director of revenue to assess two points for any ordinance violation that qualifies as a "moving violation" under section 302.010(13). The "no points" provision of the City's ordinance, on the other hand, purports to prohibit the director of revenue from assessing points for certain ordinance violations (including running a red light) if the violation is proved by an automatic camera. Because this conflict must be resolved in favor of state law, the "no

points" provision of the City's ordinance is "void and unenforceable *ab initio.*" *Armco Steel v. City of Kansas City*, 883 S.W.2d 3, 7 (Mo. banc 1994).

The only question remaining is whether the balance of the City's ordinance is enforceable even though the conflict between the "no points" provision of the ordinance and the "two points" provision of section 302.302 renders that part of the ordinance void. "The general rule is that where an ordinance consists of several distinct and independent parts, some of which are void because in contravention of a state statute, this does not affect the validity of other independent provisions of the ordinance." *State ex rel. Hart v. City of St. Louis*, 204 S.W.2d 234, 240 (Mo. banc 1947).[1] The remaining provisions of an ordinance will not be given effect, however, if this Court is convinced that the ordinance would not have been enacted without the conflicting provisions. *See Pearson v. City of Washington*, 439 S.W.2d 756, 762 (Mo. 1969) ("remainder of the ordinance should not be stricken down as 'void' unless it may be found judicially that the City Council would not have passed the entire enactment if it had known of such invalidity.").

As the principal opinion points out, the City's position on this question is stated in the ordinance itself:

> If any … provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law ….

[1] Section 1.140, by its own terms, has no bearing on the issue of whether a void provision of a municipal *ordinance* is sufficiently separable from the remainder of the ordinance to allow the other provisions to be enforced. *See* § 1.140 ("The provisions of every *statute* are severable") (emphasis added). The principle applied in *Hart* needs no such authority, however, as it has been applied by this Court nearly as long as this Court has been evaluating local ordinances. *See, e.g., City of St. Louis v. St. Louis R. Co.*, 1 S.W. 305, 306 (Mo. 1886).

Notwithstanding this boilerplate language, I suspect that the "no points" provision was essential to the realpolitik of this ordinance, i.e., to striking a balance between the desire to raise revenues and the risk of outraging its citizens. Suspicions aside, however, there is no evidence in this record to support a conclusion that the City would not have enacted this ordinance if it had known that the "no points" provision would be void *ab initio*. Accordingly, I agree with the principal opinion that the balance of the City's ordinance remains enforceable even without the "no points" provision that is rendered void by its conflict with section 302.302.

After reaching this conclusion, the disposition of the case should have been straightforward. The jury found Roeder guilty of running a red light. The trial court refused to give effect to that verdict solely because it believed the conflict between the "no points" provision of the ordinance and section 302.302 rendered the *entire* ordinance unenforceable. The principal opinion properly rejects that conclusion and holds that the remainder of the ordinance is enforceable. Accordingly, the principal opinion should have remanded the case to the trial court to enter judgment in accordance with the jury's verdict. It refuses to do so, however.

The principal opinion holds that – even though it is proper to separate the "no points" provision from the balance of the City's ordinance and enforce the latter even though the former is void – it will enforce the remainder of the City's ordinance only in

the future.[2] As to Roeder, the principal opinion affirms the dismissal of the charge against her on the ground that the void "no points" provision of the ordinance cannot be separated from the remainder and, therefore, the entire ordinance is unenforceable. There is no precedent for a prospective-only application of the principles of *Hart* and *Pearson*, and the stated reasons for the principal opinion's conclusion that the remainder of the City's ordinance is enforceable against some people but not others are not sufficient to justify that approach.

The principal opinion asserts that the ordinance provides a "lesser punishment" for a moving violation than is required by state law, and that Roeder lacked "fair notice" of this consequence at the time of her violation. This is incorrect. More than 40 years ago, this Court rejected the contention that assessing points for a traffic violation is a punishment imposed for that violation. "The point system here (Sec. 302.302) is a legislative evaluation of the *force and effect of convictions* for traffic violations[.]" *Rudd*, 444 S.W.2d at 459 (emphasis added) (citing *Jones v. Kirkman*, 138 So. 2d 513, 515 (Fla. 1962)) ("The so-called 'point system' is merely a legislative evaluation of convictions of

[2] The principal opinion's promise to enforce the remainder of the City's ordinance "prospectively" is a hollow one. The City's website states:

> The City of St. Peters has reached an agreement with Redflex, the red light camera vendor, to permanently terminate the City's contract effective July 1, 2015. City staff negotiated with the company to permanently terminate the contract, with the Board of Aldermen passing a resolution directing staff to negotiate to end the contract and the red light camera program in light of the wishes of voters in the November 2014 election.

See http://www.stpetersmo.net/red-light-cameras.aspx (last viewed August 13, 2015) (a copy has been placed in the Court file). The election referred to is the 2014 adoption of an amendment to the St. Charles County Charter banning the use of so-called "red light cameras" in all incorporated and unincorporated areas of the county. This ordinance is being challenged by some of the municipalities affected, including St. Peters.

traffic violations in terms of penalty points which, when accumulated in sufficient quantity during a stated period, lead to suspension of a driver's license."). Indeed, even the ultimate revocation or suspension for accumulated points is not considered "punishment" for the prior offenses: "Any penalty or hardship resulting from revocation or suspension of a driver's license is but incidental because the purpose of the statutes is the protection of the public *not primarily the punishment* of the offender." *Rudd*, 444 S.W.2d at 459 (emphasis added).[3]

In addition to *Rudd*, which rejects the argument that the assessment of points is part of the "punishment" imposed for a traffic violation, such an argument also is inconsistent with the statutory context of section 302.302. For example, if assessing points is part of the "punishment" imposed for a traffic violation, the director of revenue could not assess points for violations that occurred before section 302.302 was enacted. Section 302.308, however, plainly requires the director to do so. *See* § 302.308 (director to assess points based on violations occurring up to six months before date of enactment). S*ee also Barbieri v. Morris*, 315 S.W.2d 711, 714 (Mo. 1958) (finding, under a predecessor statute, that the Legislature intended director to suspend licenses based on convictions that occurred prior to enactment and rejecting the claim that this violated the constitutional ban on retrospective laws). By the same token, this state cannot impose "punishment" for violations that occur in other states, but section 302.160 plainly authorizes the director of revenue to assess points for such violations. Rather than adopt

[3] Notably, this Court's characterization of point as "incidental" answers due process and retrospectivity concerns, whether they are described as punishments or "direct consequences."

a construction that subjects sections 302.308 and 302.160 to considerable constitutional doubt, the Court should hold – as it did in *Rudd* – that the General Assembly intended the points system to be a regulatory evaluation of a driver's collective traffic violations and not a method of punishing any (or all) of those violations. *Rudd,* 444 S.W.2d at 459.

Shorn of the misperception that the director of revenue's obligation to assess two points under section 302.302 is part of the "punishment" imposed for violating the City's ordinance, there is no justification for the principal opinion's refusal to act in accordance with its conclusions. If, as the principal opinion holds: (a) the "no points" provision of the City's ordinance is void; but (b) the balance of the ordinance is enforceable, then there is no excuse for the Court not to enter judgment in accordance with the jury's verdict.[4]

Such a judgment would not result in any unfairness to Roeder. The jury found beyond a reasonable doubt that she ran this red light. She does not claim that she was relying on the "no points" provision of the ordinance – or on the identical (and identically erroneous) statement made to her in the notice – when she did so. Even if she had, this argument would fail because section 302.302 was in effect at the time of her violation, and she is presumed to have knowledge of it. Section 302.302's continuous applicability well in advance and throughout the events of this case soundly refutes the principal opinion's suggestion that assessing points would impose an *increased* penalty or a *new* obligation, duty, or disability with respect to Roeder's conduct, or that she lacked fair

[4] The alternative grounds for affirming the trial court asserted by Roeder in her brief (*see* Princ. Op. at p. 18, n.12), fall short of justifying dismissal of the charge against her.

notice of the consequences thereof. *See* Principal Opinion at 16. Moreover, if her violation had been observed by a police officer or other eyewitness (in addition to the automated system), Roeder could have been prosecuted under the regular traffic ordinance and there would be no question that such a violation would result in points against her license. Finally, it is not as though Roeder relied on the "no points" provision in the ordinance (or in her notice) in choosing to plead guilty. She chose to plead not guilty and did so on the basis that section 302.302 trumps the City's ordinance and requires that points be assessed.

Accordingly, there is no basis for dismissing Roeder's prosecution or otherwise failing to give effect to the jury's verdict that she violated the City's ordinance.[5] The case should be remanded for entry of judgment. When that judgment is entered, the director of revenue must assess the points required by section 302.302. The director has no discretion in the matter, and neither the City of St. Peters nor this Court has any authority to prevent the director from fulfilling this ministerial duty.

_____

Paul C. Wilson, Judge

[5] I am inclined to agree with Judge Stith that, to the extent the City construes the ordinance to contain a presumption that the owner of the car was the driver at the time the violation was photographed, such a presumption is unconstitutional. *See City of Moline Acres v. Brennan*, ___ S.W.3d ___ (Case No. SC94085) (Slip Op. at 10-17). However, an unconstitutional presumption is not a sufficient basis on which to affirm the dismissal of an information. *Id.* (Slip Op. at 16-17). The dismissal might have been affirmed on the alternative ground that the Notice to Roeder failed to state facts showing probable cause that she violated the ordinance, *id.* (Slip Op. at 19-21), but Roeder did not make this argument in the trial court or on appeal.

Missouri Automated Enforcment Installations
Kansas City District

Approach	Currently Enforced?
NB US-71 E @ E 55TH ST	No
SB US-71 @ E 55TH ST	No
NB US-71 E @ E 59TH ST	No
SB US-71 @ E 59TH ST	No
WB E 59TH ST NB SIDE @ US-71 N	No
EB E GREGORY BLVD @ US-71	No
WB E GREGORY BLVD @ US-71	No
SB N OAK TRAFFICWAY E SIDE @ NE VIVION RD	No
WB NE VIVION RD @ N OAK TRAFFICWAY	No
WB E WINNER RD @ I-435	No
EB E 23RD ST @ I-435 S OFF-RAMP	No
WB NW 68TH ST @ HWY 169 N OFF-RAMP	No
WB NE BARRY RD/MO-152 @ N FLINTLOCK RD	No
EB NE BARRY RD/MO-152 @ N FLINTLOCK RD	No
SB RT 71 S OFF-RAMP @ E RED BRIDGE RD	No
EB E RED BRIDGE RD @ RT 71 S OFF-RAMP	No
EB I-435 E OFF-RAMP @ WORNALL RD	No
WB I-435 W OFF-RAMP @ WORNALL RD	No
EB E BANNISTER RD @ RT 71 S OFF-RAMP	No
WB E 23RD ST @ I-435 N OFF-RAMP	No
SB N FLINTLOCK RD SB @ NE BARRY RD/MO-152	No
SB MO 291 at Courtney Rd	No
NB US 69 Hwy at McCleary Rd	No
SB US 69 Hwy at McCleary Rd	No
NB US 69 Hwy at Patsy Ln/Vintage Dr	No
SB US 69 Hwy at Patsy Ln/Vintage Dr	No

Missouri Automated Enforcment Installations
Northwest District

Approach	Currently Enforced?
NB US 169 @ MO 6	No
SB US 169 @ MO 6	No
EB US 169 @ MO 6	No
WB US 169 @ MO 6	No
NB US 169 @ Cook	No

Missouri Automated Enforcment Installations
Southeast District

Approach	Currently Enforced?
No current installations	

Missouri Automated Enforcment Installations
Northeast District

Approach	Currently Enforced?
NB US 61 @ MO 168/Diamond Blvd	Yes
SB US 61 @ MO 168/Diamond Blvd	Yes
NB US 61 @ W. Ely/Pleasant	Yes
SB US 61 @ W. Ely/Pleasant	Yes
NB US 61 @ Rt MM/James Rd	Yes
SB US 61 @ Rt. MM/James Rd	Yes
NB US 61 @ Paris Gravel Rd/Market	Yes
SB US 61 @ Paris Gravel Rd/Market	Yes

Missouri Automated Enforcment Installations
Southwest District

Approach	Currently Enforced?
No current installations	

Missouri Automated Enforcment Installations
St. Louis District

Approach	Currently Enforced?
EB MO 115 @ Kingshighway Blvd.	No
WB MO 115 @ Kingshighway Blvd.	No
NB Kingshighway Blvd. @ MO 115	No
SB Kingshighway Blvd. @ MO 115	No
NB Kingshighway Blvd. @ Rt. D	No
WB Rt. D @ Kingshighway Blvd.	No
SB Kingshighway Blvd. @ MO 100	No
EB MO 100 @ Kingshighway Blvd.	No
WB MO 100 @ Kingshighway Blvd.	No
SB Hampton Ave. @ MO 30	No
EB MO 30 @ Hampton Ave.	No
NB Union Blvd. @ MO 115	No
SB Union Blvd. @ MO 115	No
EB MO 115 @ Union Blvd.	No
NB Goodfellow Blvd. @ EB I-70	No
SB Goodfellow Blvd. @ WB I-70	No
NB Goodfellow Blvd. @ MO 115	No
SB Goodfellow Blvd. @ MO 115	No
EB MO 115 @ Goodfellow Blvd.	No
NB Grand Blvd. @ MO 100	No
SB Grand Blvd. @ MO 100	No
NB Jefferson Ave. @ EB I-44	No
SB Jefferson Ave. @ WB I-44	No
NB Grand Blvd. @ MO 115	No
NB W Florissant Ave. @ Bircher Blvd. (I-70 SOR)	No
NB Grand Blvd. @ EB I-44 (De Tonty)	No
EB I-44 (De Tonty) @ Grand Blvd.	No
SB Grand Blvd. @ WB I-44 (Lafayette)	No
EB Bircher Blvd (I-70 SOR) @ Union Blvd.	No

Missouri Automated Enforcment Installations
Central District

Approach	Currently Enforced?
No current installations	

Scott D. Jones

From: Scott D. Jones
Sent: Tuesday, December 26, 2017 11:33 AM
To: Bill Whitfield; Brenda Ahlers; Mandy A. Kliethermes; Michael W. Stapp; Scott M. Wilson
Cc: 'scott.jones@modot.mo.gov'
Subject: Urgent - Federally Required Enforcement Survey
Attachments: Automated Enforcement Survey 2017 Fillable Form.docx

Importance: High

To our Law Enforcement Partners:

Beginning in 2018, the Fixing America's Surface Transportation Act requires each state's Highway Safety Office to conduct a survey of automated traffic enforcement systems in their state.

In order to be in compliance with this requirement, the MoDOT Highway Safety and Traffic Division requests you to complete and return the attached survey to our office by January 15, 2018. Please complete and return the survey even if you do not have any automated traffic enforcement systems in your jurisdiction.

We appreciate your assistance in helping us complete this survey to document the automated traffic enforcement systems in Missouri.

If you have any questions regarding this survey please contact our office at 800-800-2358.

Thank you,

Bill Whitfield
Highway Safety Director

FIXING AMERICA'S SURFACE TRANSPORTATION (FAST)
US CODE Title 23; Public Law 114-94, Title IV - Highway Safety
§ 4002 - Special Funding Conditions for Section 402 Grants
Biennial Survey of State Automated Traffic Enforcement Systems

General

1. Name of Jurisdiction/Political Subdivision: _____
2. Type of Government Entity (city, state, etc.): _____
3. Population: _____
4. Type of automated enforcement system used:
   Red light camera ☐ Speed Enforcement Camera ☐ Both ☐
5. Did the jurisdiction/political subdivision refer to and follow federal DOT *"Speed Enforcement Camera Systems Operational Guidelines"* when implementing its automated enforcement system?
   Yes ☐ No ☐ Not Applicable (No Automated Speed Cameras) ☐ Don't Know ☐
6. Did the jurisdiction/political subdivision refer to and follow FHWA *"Red Light Camera Systems Operational Guidelines"* when implementing its automated enforcement system?
   Yes ☐ No ☐ Not Applicable (No Automated Red Light Cameras) ☐ Don't Know ☐
7. Ownership of system (camera & equipment):
   Speed Camera: Jurisdiction-owned ☐ Contracted/leased ☐
   Red Light Camera: Jurisdiction-owned ☐ Contracted/leased ☐

Transparency

1. Are placement locations of automated enforcement publicly available?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☐ No ☐
2. Is information regarding automated enforcement revenue publicly available?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☐ No ☐
3. Is information regarding the disbursement of this revenue publicly available?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☐ No ☐
4. Is the number of automated enforcement citations issued publicly available?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☐ No ☐
5. Upon deployment at a specific location, is there a warning period before citations are issued?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☐ No ☐

Accountability

1. Are citations reviewed and signed by a sworn law enforcement officer?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☐ No ☐
2. Is there a process in place for dispute resolution?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☐ No ☐
3. Is the automated enforcement program audited?
   Speed Camera: Yes ☐ No ☐ If yes, how often? _____
   Red Light Camera: Yes ☐ No ☐ If yes, how often? _____

Safety Attributes

1. Is traffic data (engineering & crash) utilized to determine placement of enforcement platforms?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☐ No ☐
2. Does the jurisdiction/political subdivision analyze traffic data to determine the impact of automated enforcement on safety elements (i.e. crashes, speed, etc.)?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☐ No ☐

Data recorded by: _____ _____
Name **Date**

Complete form and return by January 15, 2018 by:

Fax: **(573) 634-5977**
Scan/Email: **Scott.jones@modot.mo.gov**
Mail: **MoDOT Highway Safety & Traffic**
P.O. Box 270
Jefferson City, MO 65102

FIXING AMERICA'S SURFACE TRANSPORTATION (FAST)
US CODE Title 23; Public Law 114-94, Title IV - Highway Safety
§ 4002 - Special Funding Conditions for Section 402 Grants
Biennial Survey of State Automated Traffic Enforcement Systems

General

1. Name of Jurisdiction/Political Subdivision: City of Hannibal
2. Type of Government Entity (city, state, etc.): City
3. Population: 17,808
4. Type of automated enforcement system used:
   Red light camera ☒ Speed Enforcement Camera ☐ Both ☐
5. Did the jurisdiction/political subdivision refer to and follow federal DOT *"Speed Enforcement Camera Systems Operational Guidelines"* when implementing its automated enforcement system?
   Yes ☐ No ☐ Not Applicable (No Automated Speed Cameras) ☒ Don't Know ☐
6. Did the jurisdiction/political subdivision refer to and follow FHWA *"Red Light Camera Systems Operational Guidelines"* when implementing its automated enforcement system?
   Yes ☒ No ☐ Not Applicable (No Automated Red Light Cameras) ☐ Don't Know ☐
7. Ownership of system (camera & equipment):
   Speed Camera: Jurisdiction-owned ☐ Contracted/leased ☐
   Red Light Camera: Jurisdiction-owned ☐ Contracted/leased ☒

Transparency

1. Are placement locations of automated enforcement publicly available?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☒ No ☐
2. Is information regarding automated enforcement revenue publicly available?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☒ No ☐
3. Is information regarding the disbursement of this revenue publicly available?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☒ No ☐
4. Is the number of automated enforcement citations issued publicly available?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☒ No ☐
5. Upon deployment at a specific location, is there a warning period before citations are issued?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☒ No ☐

Accountability

1. Are citations reviewed and signed by a sworn law enforcement officer?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☒ No ☐
2. Is there a process in place for dispute resolution?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☒ No ☐
3. Is the automated enforcement program audited?
   Speed Camera: Yes ☐ No ☐ If yes, how often? Click here to enter text.
   Red Light Camera: Yes ☒ No ☐ If yes, how often? Annually

Safety Attributes

1. Is traffic data (engineering & crash) utilized to determine placement of enforcement platforms?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☒ No ☐
2. Does the jurisdiction/political subdivision analyze traffic data to determine the impact of automated enforcement on safety elements (i.e. crashes, speed, etc.)?
   Speed Camera: Yes ☐ No ☐ **Red Light Camera:** Yes ☒ No ☐

Data recorded by: Bianca Quinn (Name) 01/08/2018 (Date)

Complete form and return by January 15, 2018 by one of these ways:

Fax: (573) 634-5977
Scan/Email: Scott.jones@modot.mo.gov
Mail: MoDOT Highway Safety & Traffic
P.O. Box 270
Jefferson City, MO 65102

HANNIBAL POLICE DEPARTMENT

City of Hannibal
Red Light Camera Enforcement Stats: January 2010-December 2010

Red Light Camera Citation Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market*(NB/SB)
Number of Violations Detected	3946	4480	1760
Number of Citations Issued	1563	2091	810

* Cameras began operating on 9/28/10

Total Violations Detected (all)	10186

Total Citations Issued (all)	4464

Red Light Camera Safety Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)
Traffic Crashes By Cause			
Following Too Close	4	9	3
Failing to Yield	0	1	1
Running Red Light	2	0	0
Reckless Driving	0	1	0
Too Fast for Conditions	0	1	0
Other	1	3	0
Total Number of Accidents	7	15	4

* Highly congested intersection

HANNIBAL POLICE DEPARTMENT

City of Hannibal
Red Light Camera Enforcement Stats: January 2011-December 2011

Red Light Camera Citation Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM* (NB/SB)
Number of Violations Detected	2508	3953	5546	741
Number of Citations Issued	1049	1881	2497	185

(*Cameras began operating Nov 2011)

Total Violations Detected (all)	12748

Total Citations Issued (all)	5612
Right Turn on Red	247
Left Turn Lane	33
Straight- Through	5332

Red Light Camera Safety Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Traffic Crashes By Cause				
Following Too Close	1	3	0	3
Failing to Yield/Stop	0	1	0	1
Running Red Light	0	2	1	2
Reckless Driving	0	0	0	0
Too Fast for Conditions	0	0	0	0
Other**	0	1	1	0
Total Number of Accidents	1	7	2	6

**- (US 61/West Ely) Improper Turn- struck stop light pole
**- (US 61/ Market) Leave the Scene- struck stop light pole

HANNIBAL POLICE DEPARTMENT

City of Hannibal
Red Light Camera Enforcement Stats: Jan 2012 - Dec 2012

Red Light Camera Citation Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Number of Violations Detected	2975	* 2062	4532	5309
Number of Citations Issued	1470	* 1122	2315	1454

Total Violations Detected (all)	12816

Total Citations Issued (all)	5239
Right Turn on Red	22
Left Turn Lane	156
Straight- Through	5061

Red Light Camera Safety Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Traffic Crashes By Cause				
Following Too Close	3	1	1	8
Failing to Yield/Stop	2	1	2	3
Running Red Light	3	0	0	0
Reckless Driving	0	0	0	0
Too Fast for Conditions	0	0	0	0
Other**	0	3	2	1
Total Number of Accidents	8	5	5	12

* 61/West Ely down for construction and resulting easement issues July 2012 to December 2012.

**West Ely- bicyclist crossed intersection against lights- vehicle clipped bike/ mechanical failure/ fail to drive on right side

**Market- One vehicle motorcycle crash/ deer vs. vehicle

**Hwy MM- Improper lane usage

HANNIBAL POLICE DEPARTMENT

City of Hannibal
Red Light Camera Enforcement Stats: 2013

Red Light Camera Citation Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Number of Violations Detected	3133	1254	4616	4370
Number of Citations Issued	1101	619	2192	946

Total Violations Detected (all)	13373

Total Citations Issued (all)	4858
Right Turn on Red	20
Left Turn Lane	18
Straight- Through	4820

Red Light Camera Safety Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Traffic Crashes By Cause				
Following Too Close	0	1	5	4
Failing to Yield/Stop	0	0	0	6
Running Red Light	1	0	0	0
Reckless Driving	0	0	0	0
Too Fast for Conditions	0	0	0	0
Other**	1	0	0	2
Total Number of Accidents	2	1	5	12

* 61/West Ely back on line beginning 9/24/2013

HANNIBAL POLICE DEPARTMENT

City of Hannibal
Red Light Camera Enforcement Stats: 2014

Red Light Camera Citation Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Number of Violations Detected	4375	5396	3586	2938
Number of Citations Issued	1406	2522	1765	727

Total Violations Detected (all)	16295

Total Citations Issued (all)	6420
Right Turn on Red	98
Left Turn Lane	47
Straight- Through	6275

Red Light Camera Safety Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Traffic Crashes By Cause				
Following Too Close	5	9	4	8
Failing to Yield/Stop	1	6	0	5
Running Red Light	2	0	1	2
Reckless Driving	0	0	0	1
Too Fast for Conditions	3	1	0	1
Improper lane	0	3	1	1
Other**	2	2	4	3
Total Number of Accidents	13	21	10	21

HANNIBAL POLICE DEPARTMENT

City of Hannibal
Red Light Camera Enforcement Stats: 2015

Red Light Camera Citation Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Number of Violations Detected	892	3893	1613	1396
Number of Citations Issued	502	1933	823	347

Total Violations Detected (all)	7794

Total Citations Issued (all)	3605
Right Turn on Red	103
Left Turn Lane	23
Straight- Through	3479

Red Light Camera Safety Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Traffic Crashes By Cause				
Following Too Close	4	9	8	9
Failing to Yield/Stop	0	3	3	6
Running Red Light	0	0	0	0
Reckless Driving	0	0	0	0
Too Fast for Conditions	1	0	1	0
Improper lane	0	1	0	3
Other**	0	0	3	2
Total Number of Accidents	5	13	15	20

HANNIBAL POLICE DEPARTMENT

City of Hannibal
Red Light Camera Enforcement Stats: 2016

Red Light Camera Citation Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Number of Violations Detected	2061	4939	1538	1207
Number of Citations Issued	876	2689	782	310

Total Violations Detected (all)	9745

Total Citations Issued (all)	4657
Right Turn on Red	110
Left Turn Lane	101
Straight- Through	4446

Red Light Camera Safety Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Traffic Crashes By Cause				
Following Too Close	2	6	10	11
Failing to Yield/Stop	0	2	0	11
Running Red Light	3	1	1	0
Sideswipe	1	0	0	1
Too Fast for Conditions	1	0	1	0
Improper lane	1	2	1	0
Other**	2	2	2	1
Total Number of Accidents	10	13	15	24

HANNIBAL POLICE DEPARTMENT

Red Light Camera Enforcement Stats: 2017

Red Light Camera Citation Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Number of Violations Detected	2733	5713	1552	1931
Number of Citations Issued	1167	2580	646	271

Total Violations Detected (all)	11929

Total Citations Issued (all)	4664
Right Turn on Red	142
Left Turn Lane	185
Straight- Through	4337

Red Light Camera Safety Data	61/168 (NB/SB)	61/West Ely (NB/SB)	61/Market (NB/SB)	61/MM (NB/SB)
Traffic Crashes By Cause				
Run Red Light/Fail to Stop	**1**	**1**	**2**	0
Follow Too Close	**3**	**10**	**5**	**8**
Fail to Yield	0	0	**1**	**2**
Improper Turn	0	**3**	0	**2**
Improper Lane Usage	0	**1**	0	**1**
DWI	0	0	0	**1**
Struck guard rail	0	0	0	**1**
Too Fast for Conditions	0	0	**1**	0
Sideswipe	0	0	**1**	0
Fail to drive on right side	0	0	**1**	0
Slid off side of road	0	0	**1**	0
Fell asleep at wheel	0	0	**1**	0
Total Number of Accidents	4	15	13	15