

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

MONIQUE D. RHODEN, on behalf of )  
herself and all others similarly situated, ) FILED 1-2-07 1:45PM  
)  
Plaintiff, )  
) No. 106960  
vs. )  
) ORDER  
CITY OF DAVENPORT, IOWA, )  
)  
Defendant. )

On December 15, 2006, this matter came before the Court for a contested hearing with oral argument on the motion to dismiss filed October 31, 2006; the motion for summary judgment filed November 3, 2006; and the cross-motion for summary judgment filed November 22, 2006. Also before the Court is the motion to amend the petition filed December 12, 2006. The determination of the latter motion is dependent on the Court's determination of the issues raised by the other motions. The plaintiff appeared by Richard A. Davidson and Catherine Z. Cartee. The defendant appeared by Chris Jackson. The Court, having reviewed the file, having heard the arguments of counsel, and being fully advised in the circumstances, finds as follows.

An amended petition was filed in this action on October 17, 2006. The amended petition claims that Davenport Municipal Code Section 10.16.070 violates provisions of Chapter 321, Iowa Code (2006). Alternatively, the petition asserts that Section 10.16.070 of the Davenport Municipal Code is an illegal tax or revenue measure. The defendant disputes those claims.

Section 10.16.070 of the Davenport Municipal Code provides:

- A. General. The city of Davenport, in accordance with the police powers authorized it by the state of Iowa for governing safe traffic flow, may deploy, erect or cause to have erected an automated traffic enforcement system for making video images of vehicles that fail to obey red light traffic signals at intersections designated by the city administrator or his designee or fail to

obey speed regulations at other locations in the city. The system may be managed by the private contractor that owns and operates the requisite equipment with supervisory control vested in the city's police department. Video images shall be provided to the police department by the contractor for review. The police department will determine which vehicle owners are in violation of the city's traffic control ordinances and are to receive a notice of violation for the offense.

**B. Definitions.**

1. "Automated traffic enforcement system" shall mean an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic controller or police department employee to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control device or speed restriction.
2. "Vehicle owner" shall mean the person or entity identified by the Iowa Department of Transportation or registered with any other state vehicle registration office, as the registered owner of a vehicle.

**C. Offense.**

1. The vehicle owner shall be liable for a fine as imposed below if such vehicle crosses a marked stop line or intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light or red arrow.
2. The vehicle owner shall be liable for a fine as imposed below if such vehicle travels at a speed above the posted speed limit.
3. The violation may be rebutted by a showing that a stolen vehicle report was made on the vehicle encompassing the time period in question.
4. The citation will in no event be sent or reported to the Iowa Department of Transportation or similar department of any other state for the purpose of being added to the vehicle owner's driving record.

**D. Penalty and Appeal.**

1. Any violation of subsection C,1 above shall be considered a notice of violation for which a civil fine of sixty-five dollars shall be imposed, payable to the city of Davenport at the city's finance department.
2. Any violation of subsection C,2 above shall be considered a notice of violation for which a civil fine as listed in the table below shall be imposed, payable to the city of Davenport at the city's finance department.

<b>Speed over limit</b>	<b>Civil fine</b>
1 through 7 mph	\$5
8 through 11 mph	\$45
12 through 20 mph	\$65
21 through 25 mph	\$85
26 through 30 mph	\$95
31 through 35 mph	\$110
36 through 40 mph	\$125
over 40 mph	\$150

3. A recipient of an automated traffic citation may dispute the citation by requesting an issuance of a municipal infraction citation by the police department. Such request will result in a required court appearance by the recipient and in the scheduling of a trial before a judge or magistrate at the Scott County Courthouse. The issuance of a municipal infraction citation will cause the imposition of state mandated court costs to be added to the amount of the violation in the event of a guilty finding by the court.
4. If a recipient of an automated traffic citation does not pay the fine by the stated due date or request a trial before a judge or magistrate, a municipal infraction citation will be issued to the recipient by certified mail from the police department. Said municipal infraction citation will result in a mandatory court appearance by the recipient as well as imposition as state mandated court costs if a finding of guilty is made by the court. (Ord. 2005-361: Ord. 2004-35.).

The plaintiff received a civil violation notice as the registered owner of a 2000 Cadillac bearing Illinois license plate number 615 5653. The notice asserts that the vehicle was recorded traveling eastbound on Kimberly Road at the intersection with Brady Street at forty-six miles per hour in a thirty-five mile per hour speed zone. The notice assessed a penalty of \$45.00 if paid by June 22, 2006. The notice also informed the plaintiff that "PAYMENT OF THE PENALTY AMOUNT FOR THE VIOLATION WILL NOT GO ON YOUR DRIVING RECORD NOR BE USED TO INCREASE YOUR INSURANCE RATES." The notice further informed the plaintiff that failure to respond to the notice would result in the issuance of a civil infraction citation for which a court appearance would be required and warned that a court appearance would subject the plaintiff to a maximum penalty of \$130.00 (including court costs). The plaintiff paid the \$45.00 assessment set forth in the notice.

The defendant asserts that the plaintiff lacks a justiciable interest due to what it characterizes as the plaintiff's voluntary payment of the fine assessed in the civil violation notice. "Voluntary" means "acting or done of one's own free will without valuable consideration or legal obligation." *Merriam-Webster's Online Dictionary*.

Clearly, the plaintiff's payment of the fine was not voluntary. The defendant also argues that the payment of the fine by the plaintiff precludes appellate review of the circumstances underlying the citation. *Cf., City of Dubuque v. McCloskey, 166 N.W.2d 923, 927 (Iowa 1969)* (Payment of a criminal fine divests a criminal defendant of the right to appeal imposition of the fine.). However, this action does not involve an appeal of any underlying court proceeding. This action seeks a judicial determination of the validity of a municipal ordinance by an individual who claims to have been aggrieved personally by the operation of the ordinance. The Court concludes that the plaintiff does have a justiciable interest entitling her to maintain this action.

In any event, and most certainly in response to the defendant's motion and argument, the plaintiff has moved to amend the petition to name an additional plaintiff who is alleged to have received a similar civil violation notice and who has not paid any such fine. The Court concludes that the motion to amend should be granted.

The defendant also seeks dismissal of the action for failure to state a claim on which any relief can be granted. The determination of that question depends on the legality of the city's ordinance previously set forth. That issue is at the heart of each party's motion for summary judgment. The Court concludes that this issue better is addressed in the framework of the motions for summary judgment. Therefore, the defendant's motion to dismiss should be denied.

"The legal principles surrounding summary judgment are well known. Summary judgment will not be granted unless it is shown that there is no genuine issue of material fact. This procedure is functionally akin to a directed verdict and every legitimate inference that reasonably can be deducted from the evidence should be afforded the nonmoving party; a fact issue is generated if reasonable minds can differ on how the

issues should be resolved. A court ruling on a summary judgment motion must examine the record in the light most favorable to the nonmoving party." *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986) (citations omitted).

The moving party has the burden to show the nonexistence of a material fact. *Farm Bureau Mutual Insurance Company v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). "An issue of fact is 'material' only when the dispute is over facts that might affect the outcome of the suit, given the applicable law." *Fees v. Mutual Fire & Auto Insurance Company*, 490 N.W.2d 55, 57 (Iowa 1992). If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Farm Bureau Mutual Insurance Company*, 424 N.W.2d at 423. "When a motion for summary judgment is made and supported . . . an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response . . . must set forth specific facts showing that there is a genuine issue for trial." *Iowa R.Civ.P. 1.981(5)*.

Municipal infractions are authorized by Section 364.22, Iowa Code (2005). "A municipal infraction is a civil offense punishable by a civil penalty of not more than seven hundred fifty dollars for each violation or if the infraction is a repeat offense, a civil penalty not to exceed one thousand dollars for each repeat offense." *Section 364.22(1), Iowa Code (2005)*. "A city by ordinance may provide that a violation of an ordinance is a municipal infraction." *Section 364.22(2), Iowa Code (2005)*. "A city shall not provide that a violation of an ordinance is a municipal infraction if the violation is a felony, an aggravated misdemeanor, or a serious misdemeanor under state law or if the violation is a simple misdemeanor under chapters 687 through 747." *Section 364.22(3), Iowa Code (2005)*.

The state's traffic laws are codified in Chapter 321, Iowa Code (2005). Section 321.256, Iowa Code (2005), prohibits disobedience of traffic control devices such as stop signs and traffic lights. Section 321.285, Iowa Code (2005), establishes various speed limits. Violations of Sections 321.256 and 321.285 are classified as simple misdemeanors under Section 321.482, Iowa Code (2005).

"Except as otherwise indicated, violations of sections of the Code specified in [section] 805.8A ... are scheduled violations, and the scheduled fine for each of those violations is as provided in [that section], whether the violation is of state law or of a county or city ordinance. The criminal penalty surcharge required by section 911.1 and county enforcement surcharge required by section 911.4, if applicable, shall be added to the scheduled fine." *Section 805.8(1), Iowa Code (2005)*. Speed violations are scheduled violations under Section 805.8A(5), Iowa Code (2005). Traffic sign and signal violations are scheduled violations under Section 805.8A(8), Iowa Code (2005).

"The provisions of [chapter 321] shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of [chapter 321] unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of [chapter 321]." *Section 321.235, Iowa Code (2005)*. "Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, [subject to certain identified exceptions.]" *Section 321.236, Iowa Code*

(2005). Among the specifically identified exceptions is "[r]egulating traffic by means of police officers or traffic-control signals." *Section 321.236(2), Iowa Code (2005)*.

The principal question that must be addressed is whether Section 10.16.070 of the Davenport Municipal Code is "in any way in conflict with, contrary to or inconsistent with the provisions of [chapter 321 of the Iowa Code]." *Section 321.236, Iowa Code (2005)*. To be "in conflict with" means to be in a state of antagonism or incompatibility. *Merriam-Webster Online Dictionary*. The term "contrary" describes a state of incompatibility or of standing in opposition. *Id.* Likewise, the term "inconsistent" refers to a lack of compatibility. *Id.*

The Iowa Supreme Court has addressed the issue of incompatibility between municipal ordinances and state statutes on a number of occasions. In *Pugh v. City of Des Moines*, 176 Iowa 593, 156 N.W. 892 (1916), the Court upheld a city ordinance that addressed parking on the street in a manner that was similar to a state statute on the subject. However, the ordinance had a fine structure that imposed lower fines than provided by the state statute. The Court invalidated a municipal ordinance governing the use of vehicles with traction engines for being in conflict with a state law on the subject in *Town of Randolph v. Gee*, 199 Iowa 181, 201 N.W. 567 (1925). City ordinances that criminalized negligent operation of a motor vehicle were invalidated for being inconsistent with state statutes in *City of Vinton v. Engledow*, 258 Iowa 861, 140 N.W.2d 857 (1966), and in *Central City v. Eddy*, 173 N.W.2d 582 (Iowa 1970).

The ordinance at issue in this case makes activity that is criminal under state statute (i.e., speeding and red light violations) a civil infraction and imposes responsibility therefor on the registered owner of the offending vehicle rather than on the operator of the vehicle. Such a scheme does not offend constitutional requirements

of substantive due process. *See, Iowa City v. Nolan, 239 N.W.2d 102 (Iowa 1976) (imposition of financial liability on owner of vehicle cited for parking violations held to be constitutionally permissible).* However, the ordinance still must be compatible with the provisions of chapter 321, Iowa Code.

Section 10.16.070(C)(4) of the ordinance provides, "The citation will in no event be sent or reported to the Iowa Department of Transportation or similar department of any other state for the purpose of being added to the vehicle owner's driving record." That provision is in direct contravention of Section 321.491, Iowa Code (2005), which requires, "Within ten days after the conviction ... of a person upon on a charge of violating any ... law regulating the operation of vehicles on highways every ... clerk of the district court ... in which the conviction occurred ... shall prepare and immediately forward to the department [of transportation] an abstract of the record of the case." The ordinance clearly is a "law regulating the operation of vehicles on highways". *See, Section 10.16.070(A), Davenport Municipal Code.*

Further, the ordinance creates a fine structure that is markedly different than the scheduled fine structure provided for violations of the state statutes regulating speeding and obedience to traffic signals. *Compare, Section 10.16.070(D)(1) & (2), with, Section 805.8A(5) & (8), Iowa Code (2005), as amended.* These provisions of the ordinance clearly conflict with the uniformity requirements of Sections 321.235 and 805.8(1), Iowa Code (2005).

Unlike the situation with parking violations, for which special provision is made (e.g. *Section 321.236(1), Iowa Code (2005)*), no specific exception exists in chapter 321 of the Iowa Code for a municipal ordinance like Section 10.16.070 of the Davenport Municipal Code. This Court is unable to conclude that the general exception contained

in Section 321.236(2), Iowa Code (2005), which authorizes municipal ordinances "[r]egulating traffic by means of police officers or traffic-control signals", constitutes authority for enactment or enforcement of Section 10.16.070.

This Court concludes that Section 10.16.070 of the Davenport Municipal Code is in conflict with, contrary to, and inconsistent with the provisions of chapter 321 and Sections 805.8 and 805.8A, Iowa Code (2005). *Accord, Goodell v. Humboldt County, 575 N.W.2d 486, 499-500 (Iowa 1998) (Chapter 321 preempts local traffic laws that lack uniformity with its provisions.)*. Therefore, the ordinance is of no force or effect pursuant Section 321.236, Iowa Code (2005). Based on the foregoing, the defendant's motion for summary judgment must be denied, and the plaintiff's motion for summary judgment should be granted.

The plaintiff also asserts that the ordinance is an illegal revenue measure. The defendant disputes that claim. Section 364.22(1), Iowa Code (2005), clearly authorizes imposition of fines for municipal infractions. The ordinance at issue does not impose an illegal tax and is not an unauthorized revenue measure.

IT IS THEREFORE ORDERED that the defendant's motion to dismiss is denied.

IT IS FURTHER ORDERED that the plaintiff's motion to amend is granted.

IT IS FURTHER ORDERED that the defendant's motion for summary judgment is denied.

IT IS FURTHER ORDERED that the plaintiff's motion for summary judgment is granted, and partial summary judgment is granted in favor of the plaintiff and against the defendant as provided herein.

Dated at Davenport, Iowa, this 2nd day of January, 2007.

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Gary D. McKenrick, Judge