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Project: Prescott Valley Photo Enforcement Program Review
Project Start Date: December 10, 2012

**Photo Enforcement Program Review
Report**

March 1, 2013

PROJECT INITIATION

This Photo Enforcement Program Review was initiated by the Prescott Valley Town Manager, Larry Tarkowski, in response to an anonymous allegation that photo enforcement citations were being dismissed by the police department for officers and their families. During my initial meeting on December 10, 2012, with Town Manager Tarkowski, Deputy Town Attorney Steven Zraick and Paralegal Cindy Corcoran, the project focused on a review of the photo enforcement program, including the anonymous allegation as one aspect.

Mr. Zraick served as the direct contact; he was briefed orally at the end of each of my workdays in Prescott Valley, and was involved in all telephone conversations with me about the project.

ESTABLISHING A WORK PLAN

I began work immediately by setting out a series of tasks to gather information on various aspects of the program:

- Initial focus was to be on determining the scope of the alleged “dismissing” citations issued to Prescott Valley police officers and their families. Two subtasks were set:
 - 1) Review Redflex SmartOps system data base involving approval or rejection of “incidents” for issuance of a citation or Notice of Violation for vehicles registered to Prescott Valley police officers.
 - 2) Interview command officers, the Traffic Sergeant who does much of the work and oversees the day-to-day photo enforcement program, and police officers who review incidents in SmartOps to find out what they know about “dismissing” citations for operators driving a vehicle registered to a Prescott Valley police officer.

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- Review documents provided to me by Ms. Corcoran including:
 - The Prescott Valley PD photo enforcement order issued by the previous Chief of Police Chief, Jim Maxon, Special Order # PE 10-01, effective date 10/15/10.
 - A draft of a proposed change to the Police General Orders: Special Order 12-13, Department General Order, Volume 4, Section 340.10 titled Photo Enforcement Internal Review.
 - An example photo enforcement order from the Gurnee Police Department effective 11 June 2009 that had been obtained to look at topics and procedures in use elsewhere.
 - Program Guidelines for the Town of Prescott Valley jointly adopted by the Town and Redflex in early March 2010. This document provides the overview and details for the operation of the processes used, and is periodically updated to show changes in Arizona law as well as mutually agreed upon process changes.
- Interview key officials involved in the broad photo enforcement program, from the Chief to officers who review “incidents” in SmartOps; Ms. Corcoran and Mr. Zraick in the Town Attorney’s Office; and Prescott Valley Municipal Court Judge Keith Carson. The purpose of this task was to elicit the facts on the day-to-day functioning of the photo enforcement program in order to identify problems and areas where improvement might be recommended.
- Write a report covering the Prescott Valley photo enforcement program, with findings and recommendations for improvements if any.

I. GENERAL FINDINGS

The Prescott Valley Photo Enforcement Program is operated in a fair, transparent manner that effectively increases traffic safety within the municipality, with minor areas for improvement. Everyone I interviewed in the Police Department, Town Attorney’s Office and Municipal Court was fully committed to a fair, effective, efficient system that would continue to hold the confidence of Prescott Valley staff, Mayor and Town Council, and community at large. Everyone interviewed was exceptionally open on every aspect of the program – no defensiveness was noted in any interview.

In my review of the Prescott Valley photo enforcement program, I found only three issues to be more significant, and thus the recommendations are more important:

- Lack of comprehensive guidance for officers involved in photo enforcement when processing incidents involving vehicles registered to police employees. Practices that represent a real or perceived conflict of interest had become accepted; the initial

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response to this problem, an oral directive by the Chief, had effectively ended this practice by requiring the incident be referred to appropriate level within the chain of command.

- Lack of clear criteria for Police Department recommendations to dismiss citations issued by mail and filed electronically with the court, so that cases most appropriately decided by the Judge do in fact come to him as individual cases in open court or in batch filings of Motions for Dismissal.
- Non-collection of the \$26 process service fee, when officers electronically request dismissal of a citation that has been process served.

There are several other, less significant issues, for which recommendations are made that improve the efficiency of the Prescott Valley Photo Enforcement Program, or for which internal policy discussions would be fruitful.

II. TERMINOLOGY USED

For the purposes of this report, the following terminology is used throughout without describing each time the meaning of the word:

- “Incident” refers to the detection of a violation by a photo enforcement system, either a fixed system at an intersection that detects both red light and speed violations, or a van that detects speed violations. An incident may or not result in issuance of a citation, or multiple citations, or a Notice of Violation. Incident in this context is a synonym for the term “capture” which relates to the recording of photographic images of a violation, along with other data related to time, date, location and direction of travel, etc.
- “Nomination” refers to a Notice of Violation, or citation, returned to the Police Department by the registered owner or other person, listing the name and other information of the actual driver of the vehicle when the violation occurred.
- “Citation” refers to a documents mailed to violators (and process served if not responded to in a timely manner), and electronically filed in the Prescott Valley Municipal Court, listing the person for whom probable cause exists to believe he or she committed the violation, address, details of the violation (time, date, location, speed if applicable) as well as instructions on responding to the citation.
- “Notice of Violation”, abbreviated “NOV”, refers to a document mailed to the registered owner of a vehicle that has been detected in violation of either speed or red light laws. A NOV has some similarities to an actual citation, but has clear language that it is not a citation. Examples of situations in which a NOV, rather than a citation, is issued include when the gender of the driver does not match that of the registered owner, when there

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is a clear mismatch between age of the driver and that of the registered owner, and when the vehicle is registered to a business (including rental cars) or a trust or other legal entity. Recipients of a NOV are under no legal obligation to fill in the name and other information of the actual driver, if they know it, and this is clearly stated on the NOV.

- “Officer” refers to any officer in the Traffic Bureau who is involved with photo enforcement through taking actions of any kind in the Redflex SmartOps system. The Traffic Lieutenant and Sergeant are included in this term, but may be listed separately when their duties involve supervision of the program, and specific actions that only they are authorized to take.
- “Redflex” refers to the photo enforcement vendor, Redflex Traffic Systems, Inc., and its employees.
- “SmartOps” refers to the Redflex proprietary, on-line information system for managing and acting on incidents. This system records information from the first “capture” of photographic images and related data, through an extensive initial and quality control review process by Redflex, through review by a Prescott Valley officer, through printing and mailing either a NOV or citation if approved by the Prescott Valley officer, through process service and other steps until the violation is adjudicated in the court or dismissed under the state-mandated timeline for processing violations. SmartOps also retains information, and performs technical tasks such as indicating the number of times the particular vehicle has been captured in a violation by the photo enforcement systems in Prescott Valley, transferring incidents from the Prescott Valley officer who conducted the initial review to Traffic Bureau supervisors, and many others. Due to the amount of computer server storage required for images, the images themselves are deleted a period after capture, while the other data is retained in SmartOps indefinitely.

III. SUMMARY OF PHOTO ENFORCEMENT PROCESSING

Criteria and parameters for the operation of the photo enforcement system are engineered and programmed by the vendor, and thus for the most part included in the vendor’s proposal which Prescott Valley accepted by entering into a contract. Specifics to each community are negotiated by the Town with the vendor, and result in published Program Guidelines which both the Town and the vendor sign off on.

There are many steps, some complex, involved in capturing a violation and processing it through final resolution. Processing by Redflex and Prescott Valley officers is premised on giving the benefit of any doubt to the suspected violator. Several key steps in the processing are:

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- A red light or speed violation is detected by sensors (in ground for fixed systems, and radar for the vans) linked to a computer that processes data from the sensors, and along with still and video images, and data such as time, date, location, specific lane and direction of travel, is transmitted electronically to the Redflex processing center in north Phoenix.
- An electronic file, indexed under the incident number, is automatically created and all actions related to the incident automatically logged with the name of the individual, date and time, action, etc.
- Redflex technicians review the images and violation date, rejecting any for which suitable images of the license plate and operator's face are not visible, and for which circumstances create uncertainty. The vehicle license plate information is manually viewed in enlarged form, and if readable, entered into SmartOps.
- When the license plate number and state is entered for an incident, Redflex electronically obtains the motor vehicle registration information from the applicable state, and associates this with the violation images and data.
- Redflex technicians review the motor vehicle registration and violation images for gender match between one of the registered owners (if more than one) and the incident images, as well as obvious age and other mismatches. IF:
 - The license plate and driver's face images are reasonably clear, and a registered owner's gender matches the face image, SmartOps shows that the Prescott Valley officer may approve issuance of a citation by mail, and filing the citation with the municipal court.
 - There is no gender match between a registered owner and the incident images, or the vehicle is registered to a rental car or leasing company, to a trust or corporate entity, etc., SmartOps indicates that a Notice of Violation may be issued.
- The incident receives one for more quality control checks, by different Redflex technicians, before it is released to the queue for review by a Prescott Valley officer.
- The incident appears on the SmartOps screen of the Prescott Valley officer doing the reviewing. He or she has discretion at this stage to reject an incident after viewing the images for clarity, matching the MVD information with the images, etc. This officer can also change a potential citation to a NOV, if the images are not clear or there are other circumstances from a law enforcement and fairness point of view that indicate the person listed in the entry is not the driver when the violation occurred. See "Terminology" earlier in this report, and the section above on Redflex review of MVD information and images, on whether a citation will be printed and mailed (and filed electronically with the municipal court), or a NOV printed and mailed.
- The citation or NOV, with detailed instructions to the recipient, is mailed.

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- If the recipient of a NOV, either an individual registered owner, or a corporation or trust, chooses to do so, the NOV is returned by mail or in person nominating (naming) the actual driver. The NOV recipient is not required to name the actual driver and to provide address, etc. – this is clearly stated on the NOV. A NOV is not filed with the court.
- If the recipient of a citation is not the driver, he or she may nominate the actual driver by filling out that portion of the citation, or may mail in a photocopy of his or her driver's license showing that he or she is not driver, or may appear at the Police Station in person to show that he or she is not the driver. A Prescott Valley police officer enters the name and address of the nominated driver, or that the person who received the citation is not the driver, in SmartOps. This causes the citation to be automatically entered on the SmartOps "Dismissal Request Report" which the municipal court judge prints and provides to the court clerk with instructions to dismiss the listed cases.
- If the recipient of a citation has not responded within 30 days, the citation is sent to the process service company contracted for by Redflex on behalf of the Town. A process server is provided with a copy of the citation, and an additional instruction sheet to provide to the person cited. Information on successful process service is entered in SmartOps.
- If the citation has not been responded to, or process served, within 60 days of the violation, it is dismissed.
- If the person named in the citation has not responded by requesting a hearing, indicating he or she will attend Traffic Safety School, or admitting responsibility by paying fine, or already dismissed for lack of response/process service within the initial 60 days, the citation is automatically dismissed after 120 days.

There are other steps, and variations, in the photo enforcement processing system, for specific situations. There are additional steps within the Municipal Court, which are not covered in this report.

IV. THREE MOST SIGNIFICANT ISSUES

- 1) **Issue: Officers rejecting incidents involving vehicles registered to police employees or their family members.**

Problem: It has been reported that officers are dismissing citations for fellow officers and for officer's family members.

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One of the factors that precipitated this Photo Enforcement Program Review was an anonymous allegation sent to various officials, among them at the Arizona Peace Officers Standards and Training (AZPOST) Board and the City of Prescott. The anonymous allegation contended that photo enforcement citations issued to Prescott Valley police officers and their families were being dismissed (unjustifiably) and that the Police Chief had knowledge of this practice.

I found no evidence that any actual citations, issued and mailed to police employees or members of their families, were dismissed. However, it is clear from interviews of the Traffic Lieutenant, Sergeant and Corporal that incidents for which a citation could not be legitimately issued and mailed, and filed with the court, by Redflex, were in fact being “rejected” at the first review or later in the process within the police department, on incidents involving vehicles registered to police employees.

During my initial interview with the Police Chief, he related that this allegation had been brought to his attention about three weeks before the initiation of the Photo Enforcement Program Review in conjunction with an unrelated matter under consideration within the Police Department. He further related that he had the key police staff in his office, including the Traffic Lieutenant and Sergeant, to discuss the issue. Both the Traffic Lieutenant and Sergeant confirmed to the Chief that they customarily electronically “rejected” incidents in SmartOps when they involved a vehicle registered to a Prescott Valley police officer in which the police officer was not driving. The Chief explained that at that meeting, the Traffic Lieutenant and Sergeant indicated that the determination to reject the incident (i.e., not have a citation issued and filed with the court, or not issue a NOV), was based on “officer discretion” similar to the discretion an officer would routinely exercise on the street in determining which violators to pursue when a violation was observed, and which violators would receive officer-issued citations and which would receive a written warning or other warning. The officer whose family member was driving when the incident was photographed would then be informally told of the violation, so the officer could take corrective action within his or her family. The Chief related that he immediately ordered that this practice be stopped, that it was henceforth prohibited for anyone with SmartOps access involved in reviewing incidents to reject a violation based on the fact that a family member of an officer was driving the officer’s vehicle. He directed the Traffic Lieutenant to draft an order formally prohibiting this practice. The order would require that anytime an incident involved a vehicle registered to an officer, the incident would be referred up the police chain of command to an officer senior to the officer whose vehicle was involved when there was any reason such as glare or other factor made the incident inappropriate for a citation or NOV to be issued.

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The Chief stated unequivocally that he had no knowledge that the practice of rejecting incidents involving vehicles registered to a Prescott Valley officer existed, and had he known he would have immediately put a stop to it.

In my interviews with the Traffic Lieutenant and Sergeant, and the two other officers who currently reviewed incidents in SmartOps, all stated that they had never been approached by the Chief or another senior officer about rejecting an incident or electronically dismissing a citation for themselves or a family member. I did not detect even the slightest indication any of the four involved in reviewing incidents or dismissing citations electronically were not being truthful; to the contrary, all four had been particularly open and relaxed during the entire interview. Thus, it is my professional opinion that the Chief had no knowledge of the practice of rejecting incidents when a vehicle registered to a Prescott Valley officer but driven by a family member was involved.

The anonymous allegation stated that the Traffic Sergeant had had eight citations involving vehicles registered to him, in which his wife was driving, rejected. The Chief indicated that both the Traffic Sergeant and Lieutenant freely acknowledged that these incidents were rejected in SmartOps, so no NOV was issued. There were no citations issued, and thus filed with the court, in any of these incidents; therefore, there is no evidence any actual citations were dismissed. The incident rejected represented actual violations, but due to gender mismatch of the registered owner versus the driver, only a NOV could have been issued. The officer or officer's family member could have simply ignored the NOV when received in the mail, as there is no requirement to "answer" it and in fact Arizona law that requires NOVs include specific language to this effect.

In my interview of the Traffic Lieutenant, he stated that the Traffic Sergeant electronically referred two of these incidents to the Lieutenant after telling the Lieutenant the circumstances, and that the Lieutenant subsequently rejected these two incidents. The Lieutenant also stated that the Sergeant may have approached the Lieutenant on other incidents involving the Sergeant's vehicle when it was driven by the Sergeant's wife, but the Lieutenant did not recall them specifically.

In my lengthy (two plus hours) interview of the Traffic Sergeant, he acknowledged that there were seven incidents involving his wife driving a vehicle registered to him. He also noted that he had asked the Traffic Lieutenant to reject two incidents involving the Sergeant's wife driving, and that he had rejected three more incidents after discussing them with the Lieutenant. He indicated knowledge that other officers who review incidents in SmartOps had rejected two

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additional incidents, as was the practice for not just the Traffic Sergeant's wife but for all Prescott Valley officers. He stated that besides police discretion as a reason all seven incidents were rejected, the main reason he rejected the incidents in which his wife was driving a vehicle registered to him is that had an NOV been issued, he would have declined to respond to it by nominating his own wife, as is the right of every registered owner who receives a NOV. Thus, he said, there was no purpose to having a NOV issued in any of the incidents. He was very frank and detailed in discussing the impact these violations had on his home life and his relationship with his wife, and acknowledged that word about his wife being caught by photo enforcement multiple times was professionally embarrassing to him.

From the SmartOps data base, the following facts related to the incidents involving the Traffic Sergeant's wife driving a vehicle registered to him:

- The speeds detected on the seven incidents over 10 miles per hour above the posted speed limit were 12 mph, 14 mph, 11 mph, 12 mph, 12 mph, 11 mph and 12 mph. The average number of miles over the speed limit for these seven incidents is slightly above 12, and the most common violation speed is 12 mph over the posted speed limit. None of these speeds are egregious or represent a clear danger to the driver of the vehicle or other motorists.
- The incidents occurred over a four year period, an average of fewer than two incidents per year. There was a gap of 15 months prior to the most recent violation in February 2012, and no incidents since then.

These statistics do not indicate that the Traffic Sergeant's wife could be considered a menace on the highways, nor that she is a regular scofflaw. Individually, they appear to be typical of the usual violation caused by lack of close attention to the speed limit; it is the fact that there were seven of them that is noteworthy.

In my interview with the Traffic Corporal who does the incident review in SmartOps when an officer assigned to light duty is not available to do the reviews, he acknowledged that the practice was to reject the incident in SmartOps when a vehicle registered to a Prescott Valley officer was driven by someone other than the officer. The Traffic Corporal stated that no one had instructed him to do this, and he did not recall when he learned that this was the practice but that he had been doing it since he was assigned to review incidents in SmartOps.

In my interview with the officer on light duty currently assigned to review incidents in SmartOps, he said that he was not aware of this practice, that no one had given him much instruction and guidance on many things related to reviewing incidents including anything

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about rejecting incidents involving vehicles registered to Prescott Valley officers, and that in any case he would not have rejected these incidents if they met the criteria for issuing a citation or NOV. He further stated that he does not look at the name of the registered owner on the SmartOps screen when he reviews an incident and very likely would not even have noticed that the vehicle is registered to a Prescott Valley officer. He related an incident in which he saw the photograph of an elected official he knows personally, and verified that it was this elected official's name on the SmartOps screen as the registered owner. He approved the incident, so that a citation would be issued. He notified the Traffic Sergeant, so that this information could be passed up the chain of command if appropriate, in case that elected official called someone in the Traffic Bureau, the officer would be aware of the nature of the call. The officer stated that to his knowledge, there never was any contact made by the elected official with anyone in the Traffic Bureau.

Based on my interviews and other information, it is clear to me that there has been a practice of rejecting photo enforcement incidents involving family members of Prescott Valley officers. It is also clear that the officers involved in this practice believed that by informing the officer of the incident in which a family member went through a red light or exceeded the speed limit by eleven or more miles per hour, they were acting in a manner that would result in the officer taking action to stop future violations, without the need to have a NOV issued. They believed that what they were doing was in the interest of traffic safety. It is also clear to me based on my interviews that they did not consider public perceptions of this practice, that many outside the police department would regard this practice as inappropriate and unfair, and thus potentially have an effect on public support for the photo enforcement program in Prescott Valley.

I found nothing to indicate that anything illegal had been done, nor that the officers involved believed that this practice was unethical or would be considered unethical.

In order to assess the scope of this practice I reviewed records in SmartOps incident history of those with the same last name as the Chief, both Commanders, both Lieutenants, all Sergeants, half of the Corporals (plus the Traffic Corporal), and a sample of officers. Of the officers I selected to check photo enforcement incidents involving vehicles registered to someone with their last names, I excluded the nine officers who had very recently graduated from the academy, as their traffic violation record had almost certainly been checked as part of the background investigation prior to their employment and assignment to the academy, and their names were not well known by the Traffic Bureau officers. I focused on a small number of the most senior Prescott Valley officers, as they had been on the force since the inception of the photo enforcement program and they would be most widely known by Traffic Bureau officers.

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The review went all the way back to the beginning of the photo enforcement program in the fall of 2007, 6+ years. This review had some limitations:

- Some of the more common last names had a dozen or more pages of photo enforcement incidents listed in SmartOps, and it was impossible without spending significant time with each officer reviewing the listing to determine which of them are family members.
- If an officer's spouse has a different last name and the vehicle was registered to the spouse, there was no way to identify these.
- Although officer's spouses, siblings, parents, children, aunts and uncles, cousins, sisters-in-law, etc., might have the same last name and thus come up in the SmartOps query for the last name, there are also equally closely related family members with a different last name.
- In one case, the violator, who received a citation, is a long estranged adult step child of the Police Chief. It was approved upon initial review for a notice to be printed and issued in early January, 2009, for the December 22, 2008, incident. A query of the Public Access to Court Information data base came back with no record of the resolution of this incident.
- When separate queries were run in SmartOps for the same last name, the queries sometimes resulted in more or fewer incidents than the previous query on the same last name. There was no way to explain this difference without extensive, case-by-case research by Redflex, which would not have added any significant level of confidence in results of the queries.
- Matching names found in SmartOps with the Public Access to Court Information data base sometimes resulted in the same problem – some names/citations in SmartOps that showed a fine was paid did not come up in the court system, and vice versa.

This review found that there is no pattern of repeated violations by the same family member of an officer (except for the Traffic Sergeant's wife as described above), that most officers (except those with common last names) do not have any incidents involving a registered owner with the same last name, and in a substantial number of those do have incidents the address of the registered owner is out of the Prescott Valley region and often out-of-state. Some specifics:

- Speeds of the 22 incidents likely, or possibly, involving a family member of a Prescott Valley Officer average slightly over 12 mph over the posted limit. The two most common speeds were 11 and 12 mph over the posted limit (eight of each), followed by three each that were 13 and 14 miles over the posted speed limit. Of the 22 incidents, none were more than 14 miles over the posted speed limit.
- Many involved incidents in which a NOV or citation was actually issued.

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In summary, the number of incidents identified during this review as involving or possibly involving a family member of a Prescott Valley officer is infinitely small compared to the 300,000 photo enforcement incidents since the fall of 2006. And, many of these incidents were approved for a NOV (or citation) to be issued. Many of those incidents which were rejected upon initial review in SmartOps or at a later stage were rejected or dismissed for purely technical problems involving the photographic image.

Recommendation #1: Complete and promulgate the Police Department General Order directing that all rejections of incidents involving vehicles registered to Police Department employees or family members be elevated to the appropriate level within the chain of command to preclude as much as possible public perception that officers are inappropriately rejecting incidents in which their family members are driving.

2) Issue: Criteria for Police Department recommendations to dismiss citations

Problem: Police officers are recommending dismissal of citations mailed to violators and filed with the court in situations that should be the decision of the Judge.

In the first 60 days after issuance, police officers have the capability of requesting dismissal of citations and routinely do so. There is no disagreement that those citations for which the registered owner nominates another person as the actual driver who is then issued a citation, and those in which the registered owner is unequivocally not the driver, should be recommended for dismissal in this manner.

Information made available to me indicates that when Prescott Valley first adopted photo enforcement, the Redflex SmartOps system was set up to enable officers receiving information, by mail or in person, on citations issued by mail and electronically filed with the court to electronically place those citations on a Dismissal Request Report. Some of the citation recipients come to the Court in person, and are referred to the Police Department to present information that they are not the driver. Some go directly to the Police Department. In an unknown percentage of these cases, the citation recipient is motivated to take action on the citation because he or she was process served (also see Recommendation 3 related to collection of process service fees).

There are two instances when the Traffic Sergeant or Lieutenant may dismiss a citation electronically via SmartOps, the Redflex database system. Based on the Officer's input, SmartOps then generates a "Request for Dismissal Report", which is electronically delivered to

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judge, who then reviews and prints the Report, and directs court staff to dismiss the citations in the Court's AZTEC System data base:

- Nominations: when a registered owner mails in the portion of the citation provided to name the actual driver of the vehicle, along with other identifying information resulting in a new citation being issued to the identified violator.
- "Dismissal requested - Not the driver": the Traffic Sergeant or Lieutenant make the determination to electronically mark a citation "not the driver" in three circumstances:
 - When the registered owner who receives the citation comes to the court and is sent to the Police Department, or goes directly to the Police Department, to provide evidence that he/she is not the driver. Only the Traffic Lieutenant and Sergeant handle these cases – other officers in the Traffic Bureau reported that they told the person to come back on the next day either the Traffic Sergeant or Lieutenant were scheduled to be on duty. If the Traffic Sergeant or Lieutenant looks at the individual and compares the face with the SmartOps image. If the Traffic Sergeant or Lieutenant agrees that the individual present is not the driver, then the Traffic Sergeant or Lieutenant electronically marks the citation for dismissal, and it is automatically entered on the Request to Dismiss Report. (See also Recommendation #3 related to collection of process service fees).
 - When the registered owner who receives the citation mails in a photocopy of his or her Motor Vehicle license with the citation, indicating that he/she is not the driver, but does not name ("nominate") the actual driver on the citation form, then the officer compares the two photos and makes the determination whether the registered owner who received the citation is in fact the driver. There are two issues related looking at the individual in person, or the photo copy of the MV license, one related the officer's discretion vs. the Judge's desire to deal with all cases that are not clear cut (where judgment, or police discretion, must be exercised), and one related to the officer's ability to efficiently view the MVD photograph directly without having to request a staff member in another office at the Police Department to look up and print the drivers license photo. (See also Recommendation #6). When the officer determines that the person who received the citation is not the driver, and enters this in SmartOps the citation automatically is listed on the Dismissal Request Report. (See also Recommendation #3 related to collection of process service fees).

There are other categories that occasionally appear on the Dismissal Request Report.

- One example appears on December 10, 2012, report. It is the first violation listed, and is under the unusual heading of "Citation Issued in Error", but there is no explanation available, without what may be extensive research, to find out why this citation appears

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on the report under this heading, which is not a pull-down menu choice the officer can make in SmartOps.

- Another example appears on the November 28, 2012, Dismissal Request Report. This is a citation under a different heading, "Police Dismissal Requested". The Traffic Sergeant stated that he met with the registered owner who received the citation. The registered owner told the Traffic Sergeant that both he and his brother, who are similar in age and appearance, drive the pickup truck depicted. The Traffic Sergeant stated that he went to high school with the brother, and is familiar with the brother's appearance. The Traffic Sergeant looked at the photo of the driver in the vehicle, noted the windshield glare, and marked the citation for dismissal in SmartOps based on his determination that he could not testify in court that the individual depicted behind the wheel of the pickup truck was either the registered owner or his brother. (Also see NOTE immediately below for additional factors).

The Traffic Sergeant printed the image of the driver for me, and I showed it to the Judge during the interview with him. The Judge stated that he believed he could tell if the person depicted was the person who received the citation, by looking at the person who received the citation in court and by questioning him. The Judge stated that in some cases the close-up photo of the driver is not as good as the image of the entire scene, even though the driver's face would be considerably smaller in the photo of the entire scene. The Judge further stated that in cases like these, where the person who received the citation was not absolutely ruled out as the driver, it is the Judge's role to make this determination because the citation was already filed with the court, not a police officer's discretion. On the explanation that the officer could not testify that the person depicted in the vehicle is the same as the person who received the citation, the Judge said "the officer isn't the prosecutor" and should state in court that he couldn't testify that the driver depicted on the citation is the person present in court. The Judge would then take this into account, and might well agree with the officer. However the Judge might also question the person in court, and elicit information from the person in court that would cause the Judge to rule, using the standard for civil cases (commonly called the "51 percent or more likely" or the "more likely than not" rule in common parlance). The Judge would be in the position to assess the credibility of the person who appears before him, if the person denies being the driver.

(NOTE: the situation involving this citation is further complicated because it was not process served per Redflex although it had been placed on the list for process service September 13. Because the violation occurred on July 27, and the registered owner did not come to the Police Department until November 27, it was not only too late to have the citation reissued as a nomination [limited to within 60 days of the violation occurrence] but was also at the 120-day

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limit when all civil citations not actively being handled by the Court are automatically dismissed per Arizona law. The Traffic Sergeant related that since the citation would have been automatically dismissed, and he could not testify the person who received the citation was actually the driver, he decided that marking it in SmartOps for dismissal was the practical thing to do. The 120-day factor may be why the dismissal of this particular citation appeared on the Dismissal Request Report for November 28 is listed under the unusual heading of "Police Dismissal Requested" rather than "Dismissal requested – Not the driver").

One of issues that came up repeatedly during interviews with Traffic Bureau officers relates to documenting decisions for rejecting incidents and in a few cases for requesting dismissal of citations. They reported that there is no method to enter brief reasons for rejecting an incident beyond the broad categories on the pull down menus. Thus, once the images of the incident are deleted from the SmartOps data base, there is no way to determine specific details on why the "incident" was rejected. Redflex provided the information that notes such as this are easily entered in SmartOps into a box labeled in the lower left of the "super screen" view. Notes entered here are available to all SmartOps users, including officers, Town Attorney personnel (read only access), court personnel and Redflex employees. There is also a place where notes that will be visible only to officers may be entered.

The Traffic Sergeant's actions to foster community support by ensuring that individual violators perceive that they were treated fairly, is commendable. One example involves an elderly woman who received seven citations for speed during a short period. When she appeared in court on the violations, the Traffic Sergeant met with her in the courtroom before the hearing opened. As he does with all violators before the Judge opens the hearing on their case, the Traffic Sergeant explained her options to her, answered questions, and in general ascertained that she understood the charges and the process. This occurred during the regular photo radar court day for that week, Friday, December 16, 2011. Realizing that she would receive enough points on the seven citations to have her driver's license suspended, and the severe effect this would have on her ability to function, the Traffic Sergeant arranged to have her case heard last (to spare her some embarrassment as well as to wait until the courtroom was clear for other reasons related to other cases on the docket). The Traffic Sergeant also proposed to the Judge that she plead "responsible" on three of the citations (and pay the fines for those violations) and be permitted to go to Traffic School on one violation for which she would receive no points, and that the remaining two citations be dismissed. The Judge accepted this "deal" as reasonable and in the interest of justice.

The discussion above relates only to citations mailed to registered owners and filed with the court. However, similar issues arise when a NOV is involved. If the recipient of the NOV

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appears at the Police Department or mails in a photocopy of his or her MV license, then the officer has wide discretion on whether to “approve” it since no citation has been filed with the court. The Judge stated that prior to issuance of a citation and filing it with the Court, he has no jurisdiction, and no direct interest in how these are handled other than a general interest in the fairness of the process. When a NOV is involved, the officer should continue to be expected to exercise the same degree of discretion he or she would exercise in deciding whether to pursue a violator on the street, or if the violator is pursued whether to issue a warning or a citation on one or all of the violations detected.

Recommendation #2: Establish clear criteria for Police Department dismissal of citations issued by mail and filed electronically with the court, so that cases most appropriately decided by the Judge in fact come to him as individual cases in open court or in batch filings of Motions for Dismissal. This criteria should be delineated in detail in the Police Department General Order.

I recommend that the Police Department General Order include:

- In any case where the officer making the determination whether the person depicted in the SmartOps images of the violation is not absolutely clear, allow these citations to remain in the system for the Judge to make the decision on whether the person who appears is “responsible” for the violation.
- If the officer, in his or her best judgment, does not believe the person in court is guilty of the violation, or the violation should be dismissed by the Judge out of fairness due to extenuating circumstances, the officer should be specifically encouraged in the order to either:
 - State to the Judge at the appropriate point in the hearing that in the officer’s professional judgment the officer does not believe the person in court is guilty of the violation, or the violation should be dismissed by the judge out of fairness, and explain his/her reasons for such a statement if permitted or directed by the Judge to do so; or,
 - Fill out a Motion to Dismiss form and provide it to the Prosecutor (specifically to the Paralegal who handles photo enforcement matters), stating the rationale for dismissing the citation and attaching a short statement laying out the facts and pertinent documents if any. These Motion to Dismiss forms were regularly submitted to the Paralegal by the Traffic Bureau until about a year ago, according to her, when they were no longer being sent to her by the Traffic Bureau for photo enforcement citations.
- When an officer makes a decision to “reject” an incident for which the pull down menu reasons do not adequately describe the reason for the rejection, or when a citation is to

be dismissed as “Dismissal requested – Not the driver”, brief notes be entered on the SmartOps “super screen” page.

3) Issue: Non-payment of the \$26 process service fee

Problem: An unknown percentage, possibly substantial, of process service fees that should be collected are not being collected.

During interviews related to the review of policies, process and other matters for the Prescott Valley, specifically e-mail discussions of some draft language for the Police Department Order, the issue of payment of fees by those whose citations were process served. Initially, I thought this was a larger problem than it may actually be. These are some of the factors that indicate that more of the process service fees are being paid when the citation is dismissed than initially thought:

- The handout that accompanies the citation being process served clearly states that the person on the citation must pay the \$26 fee, even if the citation is dismissed.
- When the Traffic Sergeant or Lieutenant talk to a person who has received a photo enforcement citation in the mail, either in person or by telephone, they ask the person if he or she has been process served, and if the individual has been process served, they emphasize to the person that they still must pay the \$26 fee.
- The Court notifies the violator who has been served but has not paid the \$26 fee that the \$26 fee still must be paid.

There are circumstances in which it is legitimate that the process service fee be waived. For example, if a person returns the citation with nomination information or comes to the Court and pays the fine, and is served before the citation is dismissed or entered in the court data base as paid, both the Police Department and the Court waive this fee. This situation occurs when the citation is already in the hands of the process server, who does not know that that the citation is resolved so process service is no longer needed.

Recommendation #3: Determine the extent of non-payment of the \$26 process service fee, explore methods to reduce this cost to the Town as well as foster fairness for all violators, and establish a process to collect those fees.

The process to determine the extent of non-payment of the \$26 process service fee should include:

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Obtain the actual dollar costs, as charged by Redflex, for citations that are processed served for the last fiscal year or other period, and the actual amount collected for process service fees for the same fiscal year or other period.

- Determine to the extent possible categories of circumstances in which the process service fees were, and were not collected.
- Prioritize the categories and the dollar value of each of them, by likelihood that the fees would be collected if efforts were made to do so.

To establish a process to collect these \$26 process service fees, a meeting with representatives of the Police Department and Town Attorney's office, and the Judge, should be convened. At that meeting, all three stakeholders could determine the most effective and efficient way to collect more of the \$26 process fees, and determine who should do it. The responsibility for this may fall to several individuals/offices, but the Court performs the final step and is in the best position to verify that the service fee has been collected. Efforts to send the person process served to the court to pay the \$26 fee might best be documented in the remarks area of the SmartOps "super screen" since everyone with SmartOps access could make a brief entry on steps taken.

There is a fairness issue involved here – the "good citizen" who makes the effort to pay the \$26 process service fee even though the citation has been dismissed should not in general be more burdened by the fee than those who actively avoid paying it.

V. Additional Recommendations

Recommendation #4: Prepare a three-ring binder of all applicable police department orders related to photo enforcement, the Redflex business rules, and other documents for each officer involved in processing photo enforcement violations.

Before any officer is granted access to SmartOps, this three-ring binder should be provided to him or her, and an experienced officer or supervisor should review each document with the officer to be granted SmartOps access to ensure he or she understands "the rules" for photo enforcement. Depending on the knowledge of photo enforcement the officer has, a more extensive one-on-one training program may be needed so that each officer involved has a good understanding of the whole process. Except for the Traffic Lieutenant, all officers interviewed indicated they definitely did not see the existing photo enforcement processing order, or they could not recall whether they had seen it or not.

Recommendation #5: Provide a printer to the Traffic Bureau office.

Currently, a Traffic Bureau officer must go down the hall to the report writing room each time a document is printed. This will increase efficiency and time available for other tasks.

Recommendation #6: Provide an additional work station to the Traffic Bureau with MVD access.

Currently, when a Traffic Bureau officer needs to obtain information from the MVD data base, or a clear copy of the drivers license photograph for comparison purposed, he or she must take the information to someone in the front police administrative office. The clerk with the MVD access terminal gives priority to Traffic Bureau officers when they make requests for something from the MVD data base, but is not always at her desk and sometimes is working on an urgent task assigned by her supervisor. The minute or two each way from the Traffic Bureau to the main administrative office, often making separate trips to drop off a document with the information of what is requested, and then to return to pick up the results, could be better used.

Recommendation #7: Calling on every member of the Traffic Bureau, Town Attorney's office and appropriate members of the Court staff, to work directly with Redflex, to request additional pull down menu items for various screens in order to properly code incident rejections and dismissals in SmartOps review, and at other stages of the process.

This, along with entering notes on the SmartOps super screen, will help document reasons why a specific incident has been rejected or a citation entered on the Dismissal Request Report.

Recommendation #8: Discuss both inside the Police Department, and with others, whether traffic safety is best fostered by having signs before drivers approach the photo radar van notifying them that mobile automated photo speed enforcement is being conducted ahead.

This was once the practice in Prescott Valley, but the decision was made at some point to eliminate them and have only the state-mandated warning signs prior to fixed red light/speed enforcement camera systems. In other Arizona municipalities, some use the temporary signs

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and some do not; some, like Paradise Valley used the signs for the first few years, then did not use them for more than a decade, and now again uses the signs. This issue was raised by a Police Department command officer, in response to the question I asked in every interview: “What would you like to see changed in Prescott Valley’s photo enforcement program?”

Recommendation #9: Authorize only the Judge to “generate” Dismissal Request Reports, and he do it only once each business day, to preclude generating “blank” Dismissal Request Reports and risking missing a single violation requested for dismissal on a page.

All others, in the Court, Town Attorney’s office and Police Department, should use the “view” function to check Dismissal Request Reports, and from this page print copies if needed.

Recommendation #10: Continue to implement the current plan of assigning an additional officer to be the Primary Reviewing Officer in SmartOps, in place of the current practice of assigning a light duty officer temporarily to perform these duties.

This permanent assigned officer would be selected from among current officers with several years experience at the Prescott Valley Police Department who apply for this assignment, based on the applying officer’s commitment to the photo enforcement program as means of increasing safety of the Town’s streets and highways, knowledge of traffic law, ability to spend most working hours at a computer workstation, etc. This permanently assigned officer would not be spending hours on medical appointments, physical therapy, etc., that currently reduce the availability of the light duty officer assigned. It will also improve consistency and in-depth knowledge of SmartOps and the Prescott Valley photo enforcement program.

When this officer is assigned and trained, his or her daily review of citations in SmartOps will reduce the amount of time it takes for an incident to result in a NOV or citation when appropriate, and free up additional time for the Traffic Sergeant and Lieutenant to deal with members of the public on their individual cases as well as with the community at large, which they currently do in an exemplary manner.

Recommendation #11: The Town Manager respond in writing to the Arizona Peace Officer Standards and Training (AZPOST) Board informing the Board of the findings of this photo enforcement program review.

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The letter should state that in conducting a thorough review of the situation I:

- Found no evidence of any violation of law, Arizona Peace Officer Standards and Training Board rules, or police department orders by any person.
- Found no evidence whatsoever that the Chief of Police, or the Commander, had any knowledge, direct or indirect, that photo enforcement incidents involving vehicle registered to police employees were rejected for that reason alone.
- Found that the Chief of Police had taken firm, effective action prior to the anonymous complaint, based on information received in the course of an unrelated personnel matter, to prohibit rejecting incidents involving vehicles registered to police employees so that a NOV would not be issued.

VI. Conclusion

The Prescott Valley photo enforcement program is largely well run, and supported by members of the Police Department and others involved on the Town staff. Although there are recommendations in this report, most of the issues included have already been addressed or are in the process of being addressed.

There are several salient strengths to the Prescott Valley photo enforcement:

- Everyone involved in the Police Department, Town Attorney's Office and Court is committed to traffic safety, and to operating photo enforcement in a fair, effective, efficient and transparent fashion.
- Discretion vested in the officers who operate the photo enforcement system is generally properly applied, and with the formalizing of instructions and safeguards in the police department general order currently being drafted, officer discretion should be protected. Like Prescott Valley officers doing enforcement on the street, valuing officer discretion benefits everyone who comes in contact with the police in the vast majority of situations.
- Involving a police officer in reviewing citations and NOVs prior to issuance is an excellent means of dealing with the critics who maintain that Redflex, as the vendor, issues as many citations as possible in order to collect the fee for each violation. Officer review of citations and NOVs parallels traffic enforcement on the street by police officers, permits their training and experience to be applied where appropriate, and establishes that the Prescott Valley Police Department is in control of the program.

The three primary issues in the Prescott Valley Photo Enforcement Program, as identified in this report, are relatively easy to correct. There is no need for major changes in the program, nor

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for a change of organizational culture beyond what has already been accomplished, in these three areas:

- There has been in the recent past an inherent conflict of interest, and appearance of impropriety, in permitting first level officer to reject incidents that would normally result in issuance of a NOV to peers and especially to those of higher rank. This was clearly prohibited, by order of the Chief, prior to the initiation of this program review. Reinforcing and making this prohibition permanent in the Prescott Valley Police Department General Order is an effective, long term remedy.
- There are several benefits to involving police officers in the process of dismissing actual citations mailed to violators and filed with the court. First, this increases the interaction between registered owners and others who receive the citation, so that officers have the opportunity to provide further information and explanation to the recipient of the citation. Second, by vesting authority in officers to listen to an explanation by the recipient of the citation, and in some cases directly recommending dismissal of that citation, public perception of the fairness of photo enforcement is increased. However, when broad judgment on whether the recipient of the citation is responsible for (“guilty” of) the violation, the authority to make the decision should be the Judge’s. Specifically, in situations where the officer does not believe he or she has the evidence to testify that the individual cited is or is not in fact the driver, the case should proceed to the Court. There, the Judge has additional means, including questioning the person cited, to make the determination in a civil “preponderance of the evidence” situation. A clearer understanding on when officers may recommend dismissal of a citation, should be obtained through discussion between the Judge and the Police Department photo enforcement program managers and their supervisors. This discussion should occur now, and as needed in the future. The Prescott Valley Police Department General Order should clearly lay out the guidance to officers on this matter, and should be regularly reviewed to ensure that situations, as they arise in the future, are adequately addressed in the General Order.
- The issue of recovery of process service fees should be researched to determine the magnitude of the problem, and effective action to reduce non-payment. This is a revenue and expense issue for the Town of Prescott Valley. It is also a fairness issue in that the “good citizens” who follow instructions should not be the only ones to pay, leaving the “scofflaws” to avoid paying process service fees with impunity. Police guidelines for ensuring the collection of process fees for citations recommended electronically for dismissal should also be incorporated in the Prescott Valley Police Department General Order.