

INTRODUCTION

On August 31, 2018, the Iowa Supreme Court decided a trilogy of cases relating to ATE equipment which necessitate certain revisions to the City's ATE ordinance. See Weizberg v. City of Des Moines, City of Cedar Rapids v. Leaf, and Behm v. City of Cedar Rapids.

BACKGROUND

While the August 31, 2018 cases arose in the context of ATE equipment, the Supreme Court's opinions largely left the use of ATE equipment in Iowa undisturbed and focused, instead, on how cities can enforce city code violations.

In particular, the Court upended prior case law and held that ordinances which impose liability by default when an individual fails to timely pay, timely appeal, or timely request the issuance of a municipal infraction, are preempted by Iowa Code section 364.22. *See Behm v. City of Cedar Rapids*, ___ N.W.2d at ___.

Based on these holdings of the Court, cities can no longer find the recipient of an ATE citation liable for the citation because they have failed to pay, failed to appeal, or failed to request the issuance of a citation. If an individual does not voluntarily pay for and admit liability for the citation, cities must file a municipal infraction citation before it can commence collection efforts.

Unfortunately, the Court's new rulings will result in significant administrative cost increases to the City.

As a result, City Staff has coordinated with the City Attorney to draft a revised ATE ordinance which both complies with the new requirements established by the Iowa Supreme Court and also addresses the administrative cost increases necessitated by this compliance.

These cost increases appear in the form of increased service costs, court costs, staff time, and collection costs in the event that a municipal infraction is filed. City staff has reviewed the estimated costs to the City in each of these categories, and, given our estimation, recommends increasing the civil penalty as follows:

- A. Any violation of Subsection 7-5-3(A) shall be considered a notice of violation for which a civil fine of ~~seventy-five dollars (\$75.00)~~ one hundred forty dollars (\$140.00) shall be imposed, payable to the City of Muscatine.
- B. Any violation of Subsection 7-5-3(B) shall be considered a notice of violation for which a civil fine as listed in the tables below shall be imposed, payable to the City of Muscatine.

- 1. Standard ATE Mobile ATE Penalties.

Speed Over Limit	Civil Fine
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1 through 10 mph	\$ 0
11 through 20 mph	\$ 75 <u>140</u>
21 through 25 mph	\$ 100 <u>170</u>
26 through 30 mph	\$ 250 <u>360</u>
Over 30 mph	\$ 350 <u>490</u>

2. Mobile ATE Penalties in School or Construction Zones.

Speed Over Limit	Civil Fine
1 through 5 mph	\$ 0
6 through 10 mph	\$ 70 <u>130</u>
11 through 20 mph	\$ 75 <u>140</u>
21 through 25 mph	\$ 100 <u>170</u>
26 through 30 mph	\$ 250 <u>360</u>
Over 30 mph	\$ 350 <u>490</u>

As the administrative cost increases will only affect the City in those instances where the violators do not admit and pay the citation, and the City must file a municipal infraction, the proposed ordinance provides that the increased penalty shall not apply in the event that the recipient of the notice pays and admits the violation within thirty days of issuance of the citation. Thus, under this scenario, those who admit and pay the violation within thirty days of issuance will only be responsible for the same penalty amount as currently exists under City Code, and the increased penalty will only apply in circumstances where the City is required to incur the additional costs and file the municipal infraction.

RECOMMENDATION: Staff is recommending the passage of the attached Ordinance, Ordinance No _____, which has been amended to comply with new case law and provide for additional penalties sufficient to offset city's cost increases.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 7 VEHICLES AND TRAFFIC, CHAPTER 5
AUTOMATED TRAFFIC ENFORCEMENT**

WHEREAS, the City currently utilizes fixed and mobile Automated Traffic Enforcement (“ATE”) equipment, and

WHEREAS, On August 31, 2018 the Iowa Supreme Court issued three opinions relating to Automated Traffic Devices, and

WHEREAS, the City wishes to adapt its ATE ordinance(s) to comply with the Iowa Supreme Court’s recent opinions, and

WHEREAS, in response to these decisions, the City Council has reviewed its existing ordinance(s) and practice(s) regarding the use of ATE equipment and finds that utilizing National Law Enforcement Telecommunications System databases (“Nlets”) to identify a vehicle’s registered owner is the most cost-effective method for the City to enforce its ordinance, and

WHEREAS, the City Council has explored adding equipment which captures the front license plate of a vehicle to its ATE enforcement scheme. The City Council finds that, while this may result in a nominal increase to the number of vehicles which could be identified via Nlets and, therefore, cited for a violation of the City’s ordinance, front facing cameras would also be operationally more expensive to utilize in addition to rear facing cameras and, in addition, would significantly intrude upon the privacy of a vehicle’s occupants. The City Council finds that utilization of front facing cameras is not warranted in light of the nominal increase in vehicles identified when compared against the significant invasion of privacy that would result to vehicle occupants. The City Council further finds that the overall purpose and objective of the City’s ATE ordinance is not materially thwarted or impaired by the lack of front facing cameras, and that utilization of solely rear facing cameras is in the best interest of the public health, safety, and welfare.

WHEREAS, the Police Department has at least annually calibrated the ATE equipment internally since the enactment of the initial ATE ordinance. Consistent with past practice of the Department, the City Council wishes to codify the practice of the Police Department as it relates to calibration.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of Muscatine, Iowa as follows:

SECTION 1. AMENDMENT. TITLE 7 VEHICLES AND TRANSPORTATION, CHAPTER 5 AUTOMATED TRAFFIC ENFORCEMENT of the City Code of Muscatine Section 7-5-5 is amended by adding or ~~deleting~~ the following:

7-5-5 Penalty and Appeal.

- A. Subject to the provisions of 7-5-5(C), any violation of Subsection 7-5-3(A) shall be considered a notice of violation for which a civil fine of (\$140.00) shall be imposed, payable to the City of Muscatine.
- B. Subject to the provisions of 7-5-5(C), any violation of Subsection 7-5-3(B) shall be considered a notice of violation for which a civil fine as listed in the tables below shall be imposed, payable to the City of Muscatine.

1. Standard ATE Mobile ATE Penalties.

Speed Over Limit	Civil Fine
1 through 10 mph	\$ 0
11 through 20 mph	\$ 140
21 through 25 mph	\$ 170
26 through 30 mph	\$ 360
Over 30 mph	\$ 490

2. Mobile ATE Penalties in School or Construction Zones.

Speed Over Limit	Civil Fine
1 through 5 mph	\$ 0
6 through 10 mph	\$ 130
11 through 20 mph	\$ 140
21 through 25 mph	\$ 170
26 through 30 mph	\$ 360
Over 30 mph	\$ 490

- ~~C. A recipient of an automated traffic citation may contact the issuing officer and ask for an in-person review of the citation, the facts surrounding the issuance of the citation and to present any extenuating circumstances that pertain to that violation. Based on this review the issuing officer may sustain or void the citation.~~
- ~~D. A recipient of an automated traffic citation may dispute the citation by requesting the issuance of a municipal infraction citation by the Police Department within the first thirty (30) days after the violation notice was mailed. 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 Muscatine 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.~~
- ~~E. If a recipient of an automated traffic enforcement citation does not pay the fine by the stated due date or request a trial before a judge or magistrate within the thirty (30) days following the mailing of the notice, a second violation notice~~

~~shall be mailed with a thirty five dollar (\$35.00) late fee added to the civil fine. If at the end of the thirty (30) day period the recipient of the automated traffic enforcement citation does not pay the fine or request a trial before a judge or magistrate the recipient shall be deemed guilty of violation and held liable for the fine plus the late fee.~~

~~F. If the recipient of an automated traffic enforcement citation does not pay the fine and late fee by the stated due date on the second violation notice the civil penalties imposed under the provisions of this Ordinance shall be collectible, together with any interest and penalties thereon, by either a private agency on behalf of the City or by civil suit.~~

C. If the recipient of an automated traffic citation admits and pays the citation within thirty (30) days of issuance of the citation, such person shall be subject to the penalty set forth below, rather than the schedule of penalties set forth in subsection B, above.

1. If admitted and paid within thirty (30) days of issuance of the citation, any violation of Subsection 7-5-3(A) shall be punishable by a civil penalty of (\$75.00).
2. If admitted and paid within thirty (30) days of issuance of the citation, any violation of Subsection 7-5-3(B) shall be punishable by a civil fine as listed in the tables below:

i. Standard ATE Mobile ATE Penalties.

Speed Over Limit	Civil Fine
1 through 10 mph	\$ 0
11 through 20 mph	\$ 75
21 through 25 mph	\$ 100
26 through 30 mph	\$ 250
Over 30 mph	\$ 350

1. Mobile ATE Penalties in School or Construction Zones.

Speed Over Limit	Civil Fine
1 through 5 mph	\$ 0
6 through 10 mph	\$ 70
11 through 20 mph	\$ 75
21 through 25 mph	\$ 100
26 through 30 mph	\$ 250
Over 30 mph	\$ 350

Upon payment of the above penalty to the City Clerk or his or her designee within thirty days of issuance of the citation, the recipient of the citation shall not be further prosecuted or assessed any costs or other expenses for such violation, and the City shall retain all penalties collected pursuant to this section.

- D. Where an automated traffic citation charged upon a simple notice of violation pursuant to this section is not admitted and paid by the person charged within thirty days of issuance of the notice of violation, the City may file a civil municipal infraction citation, which shall be served and filed with the courts in the manner prescribed by the applicable provision(s) of this Code. In the event that a municipal infraction citation is filed, the municipal infraction citation shall be subject to the civil penalty set forth in subsection B above, in addition to other court costs, service costs, and other relief as may be permitted by law.
- E. A recipient of an automated traffic citation may contact the issuing officer and ask for an in-person review of the citation, the facts surrounding the issuance of the citation and to present any extenuating circumstances that pertain to that violation. Based on this review the issuing officer may sustain or void the citation.

SECTION 2. AMENDMENT. TITLE 7 VEHICLES AND TRANSPORTATION, CHAPTER 5 AUTOMATED TRAFFIC ENFORCEMENT of the City Code of Muscatine is amended by adding the following as Subsection 6:

7-5-6 Calibration.

The Police Chief or his or her designee shall calibrate the ATE equipment placed at intersections designated by the City to monitor compliance with speed regulations at least once annually. For purposes of this section, calibration shall mean the procedure by which ATE equipment is tested and verified to ensure its speed-measuring capabilities are functioning properly and accurately. Calibration shall be performed through the use of one or more external verification measures including but not limited to: laser speed determination device, radar, microcomputer device, satellite GPS device, or any other method approved by the Police Chief, which in his or her discretion, produces the same indicia of reliability.

SECTION 3. REPEALER. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 5. WHEN EFFECTIVE. This ordinance shall be effective from and after its final passage, approval and publication as provided by law.

Passed First Reading by the City Council of Muscatine, Iowa, 6 day of November, 2018.

Passed Second Reading by the City Council of Muscatine, Iowa, the ___ day of _____, 2018.

PASSED AND ENACTED by the City Council of Muscatine, Iowa, the ___ day of _____, 2018.

Diana Broderson, Mayor

ATTEST:

Gregg Mandsager, City Administrator

1st Reading –

Motion by Council Member Harvey, seconded by Council Member Brockert, first reading of Ordinance No. ____ (2018/2019).

AYES: Spread, Harvey, Brockert, Saucedo, Brackett, Fitzgerald, Malcolm

NAYS: _____

ABSENT: _____

2nd Reading –

Motion by Council Member _____, seconded Council Member _____, to approve the second reading of Ordinance No. ____ (2018/2019).

AYES: _____

NAYS: _____

ABSENT: _____

3rd Reading –

Motion by Council Member _____, seconded by Council Member _____, to approve the third reading of Ordinance No. ____ (2018/2019)

AYES: _____

NAYS: _____

ABSENT: _____

The Mayor declared Ordinance No. _____ (2018/2019) was passed on _____.

I certify that the foregoing was published as Ordinance No. ____ (2018/2019) on the ____ day of _____ 2018.

Gregg Mandsager, City Administrator