

City of Iowa City  
**MEMORANDUM**

06-04-13

12

Date: May 29, 2013

To: City Council

From: Eleanor M. Dilkes, City Attorney



Re: Ordinance repealing the City's Automatic Traffic Enforcement (ATE) enabling ordinance and adopting a measure that is Similar in Substance to the Proposed Initiative Measure Restricting the Use of Traffic Enforcement Cameras and Drones, Automatic License-Plate Recognition Systems, and Other Kinds of Traffic Surveillance Systems"

The above-referenced ordinance is on your agenda for first reading on June 4. In my opinion it is "similar in substance" to the proposed initiative ordinance restricting the use of traffic enforcement cameras and drones, automatic license plate recognition systems and other kinds of traffic surveillance systems. The "whereas" clauses of the ordinance detail the ambiguities in the proposed initiative and the reasons why the changes being made are "similar in substance". The changes to the text of the initiative ordinance are highlighted. To summarize, the ordinance on your agenda differs from the proposed measure in two respects:

1. The ordinance clarifies that parking violations are traffic violations and that parking enforcement attendants as well as peace officers write parking tickets.
2. The ordinance clarifies the definition of "automatic traffic surveillance system or device" so it does not encompass every camera that "can" be used to identify the ownership of a vehicle, its operator or occupants, but rather, consistent with the remainder of the proposed measure, prohibits the use of devices designed for the purpose of producing an image that is used to establish the identity of the owner, operator or occupants.

**RECOMMENDATION:** I recommend that Council give first reading to the ordinance on June 4 and collapse the second and third readings on June 18 in order to adopt the ordinance within the 60 day period required by the City Charter. My office is in the process of working with the Director of Transportation Services to develop a policy on the use of automatic license plate readers for parking enforcement. We are confident that the system can be configured to comply with the ordinance. We intend to review that policy with Council on June 18 and receive Council approval prior to implementation of the system.

Cc: Rita Bettis, ACLU w/cc of ordinance  
Petitioners  
Marian Karr, City Clerk  
Tom Markus, City Manager  
Geoff Fruin, Assistant to the City Manager  
Sue Dulek, Assistant City Attorney

ORDINANCE NO. \_\_\_\_\_

**ORDINANCE AMENDING TITLE 9, ENTITLED "MOTOR VEHICLES AND TRAFFIC," OF THE CITY CODE BY ADOPTING AN ORDINANCE SIMILAR IN SUBSTANCE TO THE PROPOSED INITIATIVE ON TRAFFIC ENFORCEMENT CAMERAS AND DRONES, AUTOMATIC LICENSE PLATE RECOGNITION SYSTEMS AND OTHER KINDS OF TRAFFIC SURVEILLANCE SYSTEMS, AND BY REPEALING ORDINANCE NO. 12-4466 THAT ENABLED AUTOMATIC TRAFFIC ENFORCEMENT.**

WHEREAS, Title VII of the City Charter provides for initiative and referendum under certain circumstances; and

WHEREAS, on October 5, 2012, petitioners Aleksey Gurtovoy and Martha Hampel filed with the City Clerk an affidavit to commence an initiative on the use of traffic enforcement cameras and drones, automatic license plate recognition systems and other kinds of traffic surveillance systems; and

WHEREAS, the City Clerk certified the petition as sufficient on May 9, 2013; and

WHEREAS, if, within 60 days from May 9, 2013, Council does not adopt either the proposed initiative measure or an ordinance similar in substance, the proposed initiative must be submitted to the voters; and

WHEREAS, on February 1, 2012 the Council adopted Ordinance No. 12-4466 which enabled an automated traffic enforcement (ATE) system to allow for red light automated traffic enforcement; and

WHEREAS, Petitioners failed to meet the deadlines set forth in Section 7.03(E) of the City Charter for the filing of a referendum petition with respect to Ordinance No. 12-4466; and

WHEREAS, nevertheless Council chooses to repeal Ordinance No. 12-4466 because the City's use of ATE has been delayed due to the Iowa State Department of Transportation's rule-making process for the use of ATE on state routes, which, within Iowa City, are the high collision intersections at which ATE would be most useful; and

WHEREAS, there are ambiguities in the proposed initiative measure; and

WHEREAS, while the proposed initiative measure is directed at traffic surveillance devices, it defines "automatic traffic surveillance system or device" to include all cameras that "can be used" to identify a vehicle or occupant, and therefore can be interpreted to prohibit the use of all cameras by the City; and

WHEREAS, City staff routinely use cameras for a wide variety of reasons unrelated to traffic enforcement, such as nuisance property violations, Housing Code inspections, crime scene investigations, and cable television shows; and

WHEREAS, as detailed below, it is not clear whether the initiative pertains to parking violations; and

WHEREAS, the initiative's definition of "qualified traffic law violation" does not expressly include parking violations and the "databases" or "hotlists" which are a part of the definition of "automatic license plate recognition systems" are those generated by "law enforcement agencies;" and

WHEREAS, in some instances in the Iowa Code and the City Code "traffic" includes "parking," and in others "parking" is distinct from "traffic"; and

WHEREAS, the initiative proposes an amendment to Title 9 of the City Code, and parking regulations are contained in Chapters 4 and 5 of Title 9; and

WHEREAS, the initiative and Section 9-1-1 of the City Code do not define traffic, and Section 321.1(84) of the Iowa Code does not specifically include parking in its definition of traffic; and

WHEREAS, Section 9-1-1 of the City Code defines "Department" to include the Transportation Services Department as well as the Police Department; and

WHEREAS, Section 9-1-1 of the City Code and Section 321.1(50) of the Iowa Code define "peace officer" to include anyone authorized to "direct or regulate traffic;" and

WHEREAS, Section 321.236(1)(a) of the Iowa Code states that contested municipal "parking violations" shall proceed in the same manner as "other traffic violations;" and

WHEREAS, Section 9-1-3A(10-15, 17-19) of the City Code authorizes the City Manager or designee to install traffic control devices, including those regulating parking; and

WHEREAS, "ticket" is defined broadly in the initiative to include any "notice of liability," and a "notice of fine" that the City issues for parking violations is a "notice of liability," and

WHEREAS, City parking attendants as well as police officers issue notices of fine for parking violations;  
and

WHEREAS, the substance of the initiative is to prohibit the use of traffic surveillance systems in the enforcement of traffic violations unless a ticket is issued in person at the scene, and to prohibit the storage of data from those systems unless the data pertains to a traffic violation or other criminal violation for which a ticket, citation or arrest was issued or made at the scene; and

WHEREAS, an ordinance that adds language to clarify that parking attendants may use cameras to enforce parking laws if they are present to witness the parking violation is similar in substance to the initiative; and

WHEREAS, an ordinance that adds language to clarify that the proposal does not regulate the use of cameras by City staff for reasons other than identifying a vehicle for traffic and parking enforcement purposes is similar in substance to the initiative; and

WHEREAS, it is in the City's best interests that its ordinances be clear and unambiguous; and,

WHEREAS, it is in the City's best interest to adopt an ordinance similar in substance to the proposed initiative measure and to repeal Ordinance No. 12-4466.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CITY, IOWA:

SECTION I. AMENDMENTS.

1. Ordinance No. 12-4466 is hereby repealed.

2. Title 9, entitled "Motor Vehicles and Traffic," is amended by adding the following new Chapter 11, entitled "Traffic Cameras, Drones, and License Plate Recognition Systems":

General: The City shall not:

A. Use any automatic traffic surveillance system or device, automatic license plate recognition system or device, or domestic drone system or device for the enforcement of a qualified traffic law violation, unless a peace officer or Parking Enforcement Attendant is present at the scene, witnesses the event, and personally issues the ticket to the alleged violator at the time and location of the violation; nor

B. Store, archive, transmit, share, publish, grant access to, sell, index, cross - reference, or otherwise aggregate, distribute, analyze, or process any data obtained through automatic traffic surveillance system or device, automatic license plate recognition system or device, or domestic drone system or device unless the data directly pertains to a qualified traffic law violation or other criminal law violation for which a ticket, citation, or arrest was issued or made by a peace officer or Parking Enforcement Attendant who was present at the scene.

Definitions: As used in this chapter:

A. "Qualified traffic law violation" means a violation of any of the following:

(1) any state or local law relating to compliance with a traffic control signal or railroad crossing sign or signal;

(2) any state or local law limiting the speed of a motor vehicle; or

(3) any state or local law regulating motor vehicle parking.

B. "Ticket" means any traffic ticket, citation, summons, or other notice of liability, whether civil, criminal, or administrative, issued in response to an alleged qualified traffic law violation detected or recorded by a traffic surveillance system or device.

C. "Automatic traffic surveillance system or device" means a device or devices including but not limited to a camera system(s) that uses any electronic, photographic, video, digital, or computer system designed for the purpose of producing a photograph, microphotograph, videotape, digital video, or other recorded image or digital record of a vehicle and /or its operator and/or its occupants that is used to establish identity or ownership of a vehicle and /or identify its operator, owner, or occupants.

D. "Automatic license plate recognition system" means a computer-based system(s) that captures an image of a license plate(s) and converts it to a data file to be compared with databases or hot lists generated by various law enforcement agencies, and which produces an alert when there is a match between the collected license plate data and those databases.

E. "Domestic drone," "drone," or "unmanned aerial vehicle" means an aerial vehicle that does not carry a human operator that can fly autonomously or be piloted remotely that is equipped with one or more on-board cameras or other sensors for registering, observing, or recording persons, objects, or events or for transmitting such information as it is occurring or thereafter.

F. "Parking Enforcement Attendant" means agents or employees designated to enforce the parking ordinances of the City.

SECTION II. REPEALER. All ordinances and parts of ordinances in conflict with the provision of this Ordinance are hereby repealed.

SECTION III. SEVERABILITY. If any section, provision or part of the Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION IV. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MAYOR

ATTEST: \_\_\_\_\_  
CITY CLERK

Approved by

  
\_\_\_\_\_  
City Attorney's Office 5-29-13