

Exhibit A

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Civil Traffic Arraignments | Civil Traffic Hearings | Civil Traffic Fines | Civil Traffic Appeals

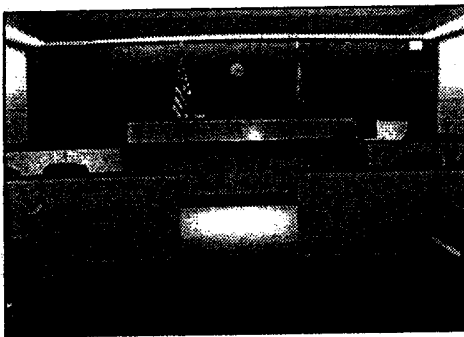
Gilbert Municipal Court
55 E Civic Center Drive
Gilbert, AZ 85296
Main (480) 635-7800
En Español (480) 635-8840
Jury Line (480) 635-7990

Fax
Criminal Case
(480) 635-7820
Civil Traffic
(480) 635-7815
Restraining Orders
(480) 635-7815

Court Hours
Monday - Friday
8:00am - 5:00pm
The Court is closed on
weekends and on all
public holidays.

For Hearing Impaired
Text:
gilbertmunicipalcourt
@gilbertaz.gov

...providing justice to
the towns of Gilbert and
Queen Creek, Arizona



The Gilbert Municipal Court has jurisdiction over civil traffic violations committed within the Town of Gilbert. Most civil violations carry a possible maximum fine of \$250.00. No jail time or probation can be imposed for a civil traffic violation.

The following information is intended to provide a brief description of the options available to you when you receive a civil traffic citation, including your rights and duties.

If you receive a civil traffic citation, you have the following options:

Attend Defensive Driving School: If you have been charged with a moving violation and have not been to defensive driving school in the past two years, you may attend Defensive Driving School before your arraignment date, and the charge will then be dismissed; or

Pay the fine in full: You may pay the amount of the fine listed on the bond card for your charge(s) before your arraignment date. If paid in full, the conviction will be reported to MVD and the case will be closed.

- **Appear on your arraignment date:** If neither of the above options applies, you must appear in the Gilbert Municipal Court on the arraignment date indicated on your citation. If you fail to appear for your arraignment date, a default judgment may be entered against you in the amount of the fine and your driving privileges may be suspended until the judgment is paid in full. If you must request a postponement of your civil traffic court date, click here for instructions.

At the civil traffic arraignment date:

On your arraignment date, the Judge will

- confirm your true name and address
- advise you of the civil violation(s) that you are facing
- tell you the fine amount you could face for the charge(s)
- ask you how you would like to plead to the charge(s)

On the arraignment date, the Judge will not be able to hear testimony from you or your witnesses on this date. If you present proof of insurance or registration for the violation, the Judge may dismiss such charges at this time, but the Judge will not have the authority to dismiss other types of violations at the arraignment date.

How should I plead at my arraignment date?

Not Responsible - This means that you are informing the court that you deny guilt and that the state must prove that you committed the civil traffic violation(s). If you enter a plea of not responsible on your arraignment date, the Judge will set your case for a Civil Traffic Hearing on a future court date.

Plea of Responsible - You admit that you committed the violation, that the act is prohibited by law and that you have no legal defense for your act. A plea of responsible will result in the civil traffic conviction being reported to MVD, where other consequences may be imposed. Once you plead responsible, the judge will determine your civil traffic sanction and due date. Fines that cannot be paid in full on the date they are imposed are subject to a statewide \$20.00 time payment fee.

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What happens at a Civil Traffic Hearing?

At a civil traffic hearing, the State's witness(es), usually the officer who cited you, will attempt to prove that you committed the civil traffic violation on your citation. The State must prove a civil traffic violation by a preponderance of the evidence. The State may also present diagrams, photographs, or other evidence at the hearing.

At the hearing, you are entitled to hear all of the testimony the State presents against you. You have the right to question any of the witnesses who testify against you. You also have the right to testify on your own behalf if you want to, but if you choose not to testify, your refusal cannot be used against you in determining your guilt or innocence. You may call witnesses of your own to testify on your behalf. You may ask the Judge to issue subpoenas that require the witnesses to appear and testify on the trial date. You may also present diagrams, photographs and other forms of evidence if you wish. You do not have the right to have a public defender represent you at a civil traffic hearing, but you may be represented by a private attorney of your choice if you wish.

If you are found responsible after the hearing, the hearing Judge will then determine your civil traffic sanction.

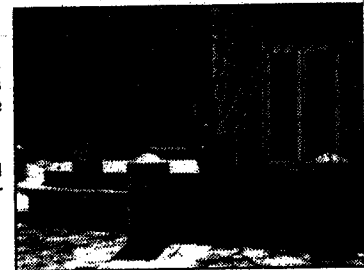
You have the right to appeal your civil traffic conviction after a hearing.

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Civil Traffic Fines

If you plead responsible to, or are found responsible for, a civil traffic violation, the Judge may impose a fine. In most cases, civil traffic fines may not exceed \$250.00 plus surcharges. However, fines for certain offenses where there are prior convictions can be much higher than that. If you cannot pay your fine in full on the date it is imposed, the Judge will add a \$20.00 time payment fee to the total and give you additional instructions in writing.

The current civil traffic violation fine schedule tells you the standard fine for most civil traffic offenses. If you wish to plead responsible and simply pay the fine, refer to this schedule for the amount to pay and send the payment in full by mail or our on-line payment system.



Civil Traffic Appeals

If you were found responsible at a civil traffic hearing, you have the right to appeal your conviction to a higher court. For a guidebook on how to appeal a civil traffic conviction go to the Arizona Judicial Branch official site.

The Judge will inform you after your hearing that you have fourteen days to file a Notice of Appeal with the Gilbert Municipal Court, otherwise you will lose the right to appeal. After your notice is filed, the Judge will mail you additional instructions and deadlines. Your fines, if any, will be collected and held as an appeal bond pending the outcome of the appeal.

Exhibit B

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IN THE TEMPE MUNICIPAL COURT
COUNTY OF MARICOPA, STATE OF ARIZONA

STATE OF ARIZONA,

Plaintiff,

VS.

DANIEL ARTHUR GUTENKAUF,

Defendant.

NO. 08-1572704

TRANSCRIPT OF RECORDED TRAFFIC HEARING

February 17, 2009
Tempe, Arizona

Prepared for:

Mr. Daniel Arthur Gutenkauf

(Copy)

Transcribed by: Sherie Thorn
Phone: (602) 363-8647

1 opportunity to ask her questions. Please ask your
2 questions.

3 MR. GUTENKAUF: Thank you.

4 THE COURT: And give her an opportunity to
5 respond.

6 MR. GUTENKAUF: Thank you, ma'am.

7
8 **CROSS-EXAMINATION**

9 BY MR. GUTENKAUF:

10 Q. Officer Gallego, do you have a copy of the
11 original Complaint with you?

12 A. I do.

13 Q. Okay. Officer Gallego, your name is not on the
14 original complaint certifying reasonable cause for a
15 violation; is that correct?

16 A. Correct.

17 Q. Okay. Officer Gallego, what is the name of the
18 officer whose computerized signature appears on the
19 Complaint?

20 A. Aaron Colombe.

21 Q. Okay. And Aaron Colombe is not present today to
22 give testimony; is that correct?

23 A. Correct.

24 Q. Okay. Officer Gallego, can you explain why
25 Officer Aaron Colombe, whose computerized signature

9
1 appears on the Complaint is not here as a witness today?

2 A. He is a DUI motor officer, works nights, and he
3 will never appear on -- on behalf of the State for one of
4 these citations that he has issued.

5 Q. Okay. So he will never be -- never appear for
6 these photo radar violations?

7 A. No. At the time that he approved this he was on
8 light duty, he has since returned to full duty. And due
9 to budget concerns, overtime is not approved to attend
10 this type of hearing, considering that me and another co-
11 worker do these types of hearings.

12 Q. Okay. My next question kind of follows that.
13 Isn't it standard procedure for the police officer who
14 certified the ticket to be the same witness who appears to
15 give testimony?

16 A. No.

17 Q. It's not standard procedure?

18 A. No.

19 Q. Okay. So there's no standard policy that the
20 officer that wrote the ticket -- issued the ticket appears
21 to testify?

22 A. For these types of cases, no.

23 Q. Okay. Officer Gallego, do all photo radar
24 complaints issued by the City of Tempe contain the
25 computerized signature of Tempe Officer Aaron Colombe?

1 A. No.

2 Q. Okay. Officer Gallego, has Officer Aaron
3 Colombe previously appeared and testified for the State of
4 Arizona at any photo radar hearings?

5 A. I -- I don't remember if he had an opportunity
6 to attend before he went back to full duty. I don't know.

7 Q. Okay. Officer Gallego, are the photo radar
8 traffic complaints which are sent to the Defendant
9 actually issued by the City of Tempe, or by Redflex?

10 A. They're issued by the City of Tempe.

11 Q. Okay. And Officer Gallego, have you given
12 information and testimony as a substitute for Officer
13 Colombe, who was the original Complainant on the traffic
14 ticket? Or just now you've given information and
15 testimony; is that correct?

16 A. Correct.

17 Q. As a substitute for Officer Colombe, who issued
18 the ticket?

19 A. Well that's not -- he -- what he would say is --
20 may not be the same thing that I would say. This is what
21 I say on my cases when I have a hearing for this.

22 Q. Okay. Officer Gallego, you testified earlier to
23 evidence such as the Scattergram and photographs, which
24 were gathered by Redflex employees; is that correct?

25 A. Correct. Well the -- the information was

1 gathered by the -- by the system, it was just the
2 documents were produced by an employee of -- of Redflex.

3 Q. Okay. So the docu -- documents were prepared by
4 employees of Redflex; is that correct?

5 A. Correct.

6 Q. Okay. And the information was gathered from the
7 system?

8 A. Correct.

9 Q. Okay. Officer Gallego, are you a competent fact
10 witness in this case?

11 A. Yes.

12 Q. Do you have personal, first-hand knowledge of the
13 facts in this case?

14 A. Ye -- well other than -- from what this
15 information -- I was not there at the time of the
16 violation, I'm simply interpreting what this -- what the
17 information is.

18 Q. So you were -- you were not present at the time
19 of the alleged violation on -- at approximately 12:10 p.m.
20 on August the 19th, 2008; is that correct?

21 A. Correct.

22 Q. Okay. So you did not personally observe the
23 occurrence of the alleged violation; is that correct?

24 A. No.

25 Q. So it -- is that correct that you did not

1 observe it?

2 A. I did not observe --

3 Q. Yes. Okay.

4 A. I was not there at the time of the violation.

5 Q. So -- so it's correct that you did not observe
6 that?

7 A. Right.

8 Q. Yes. Thank you. Officer Gallego, was Police
9 Officer Aaron Colombe present at the location of 200 South
10 Rural --

11 A. No.

12 Q. -- on the date? Okay. So Officer Colombe did
13 not personally observe the occurrence of the alleged
14 violation on August 19th, 2008; is that correct?

15 A. Correct.

16 Q. So neither you nor Office Colombe have any
17 first-hand knowledge of the alleged event on August the
18 19th, 2008; is that correct?

19 A. Correct.

20 Q. Okay. Officer Gallego, did you play any role in
21 the inspection of the Redflex photo radar equipment used
22 to gather evidence in this case?

23 A. This is -- does not use photo radar, so I --
24 that needs to be made very clear, this is not a photo
25 radar machine -- machine. And no, I did not inspect the

1 Q. So you didn't make any comparison. Officer
2 Gallego, is it -- I have a copy of the traffic ticket and
3 complaint, which was issued on September the 2nd, 2008,
4 and you indicated you have a copy of that as well?

5 A. Correct.

6 Q. Okay. If we look on the -- the first page of
7 the ticket, Officer Gallego, is it true that there's no
8 information on the ticket regarding, sex, weight, height,
9 eye color, hair color, origin, date of birth,
10 restrictions, and telephone?

11 A. Correct.

12 Q. Okay. So without the identifying personal
13 information, how did you or Officer Colombe make the
14 determination that Daniel Arthur Gutenkauf was the person
15 pictured in the photograph of the automobile alleged to
16 have committed the violation on August the 19th, 2008?

17 A. It was just a gender match.

18 Q. So simply a gender match?

19 A. Correct.

20 Q. Okay. Officer Gallego, is it possible that
21 someone other than the registered owner of the automobile
22 in question was actually driving the Chevy van on August
23 the 19th, 2008?

24 A. I think that's a question for yourself to answer
25 and not --

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss

3 BE IT KNOWN that the foregoing transcript was
4 transcribed by me, SHERIE THORN; that the foregoing 95
5 pages constitute a true and accurate transcript from the
6 electronic sound recording of the proceedings in the
7 above-entitled matter, and all done to the best of my
8 ability.

9 I FURTHER CERTIFY that I am in no way related to
10 any of the parties hereto, nor am I in any way interested
11 in the outcome hereof.

12 Dated at Phoenix, Arizona, this 30th day of
13 April, 2009.

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SHERIE THORN
Transcriber

Exhibit C

*** Electronically Filed ***
07/05/2007 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2007-000160-001 DT

07/03/2007

HONORABLE BRUCE R. COHEN

CLERK OF THE COURT
S. Bindenagel
Deputy

STATE OF ARIZONA

JOHN M. PQMBIER

v.

A MELVIN MCDONALD (001)

A MELVIN MCDONALD JR.

MESA CITY COURT
REMAND DESK-LCA-CCC
HON J MATIAS TAFOYA
PRESIDING JUDGE
MESA MUNI COURT
245 W 2ND STREET
MESA AZ 85201
PAUL THOMAS
COURT ADMIN
MESA MUNI COURT
245 W 2ND STREET
MESA AZ 85201

RECORD APPEAL REVERSAL / REMAND

Lower Court Case No. 2006042175

After a trial to the court was conducted on November 21, 2006, Appellant A. Melvyn McDonald was found responsible for a red light violation pursuant to A.R.S. Section 28-645(A)(3)(A). Thereafter, Appellant filed a *Motion To Set Aside Finding Of Responsible* on December 1, 2006, which was later denied by the trial court. Appellant then filed a timely appeal.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2007-000160-001 DT

07/03/2007

The Superior Court has jurisdiction over this civil appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). The court has considered the record of the proceedings from the trial court, exhibits made of record, and the Opening Brief filed by Appellant.

On appeal, the Superior Court views the facts in the light most favorable to sustaining the trial court's judgment. *State v. Guerra*, 61 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180 (1984).

One issue raised by Appellant relates to evidentiary matters.¹ It is noted that he did not raise these objections in the trial court and, ordinarily, may not raise them for the first time on appeal. *See State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980) (absent fundamental error, lack of timely objection operates as a waiver on appeal.); *State v. Thomas*, 130 Ariz. 432, 636 P.2d 1214 (1981). This is further supported by *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991) which provided:

Our adversarial system properly and necessarily precludes injection of new issues on appeal. The reason for this well-recognized rule is simplicity itself—without the rule, the system won't work. In extremely limited circumstances, we recognize that some issues may be so important that overriding considerations concerning the integrity of the system will excuse a party's failure to raise the issue in the trial court. This limited exception is known as the doctrine of "fundamental error."

Central to the adversarial process is the right for a party to confront the evidence presented against that party. There is nothing more fundamental than this right and it is questionable, at best, for a substitute person to testify as to information and evidence gathered by another.² For there also to be a lack of disclosure of the fact that the testifying person lacked personal knowledge must be deemed fundamental error since it goes to the heart of "the integrity of the system."

¹ At trial, Appellant asked two questions of the testifying officer. In response to the first question regarding another vehicle, the officer testified: "I cannot answer that, Sir. I only have information of yours, but it's very possible." (Transcript of Proceedings, page 5, lines 12-20). Appellant did not press the issue thereafter as to the information that this officer had regarding this violation.

² Appellant alleges that after the conclusion of the trial court proceeding, the testifying officer disclosed that she "played no role in the inspection of the equipment or in the determination of the validity of the citation. She explained to McDonald that the officer directly involved in the investigation was ill and that she had covered for that person. She was merely reiterating what she believed the sick officer would have testified to had that officer been well on the date of trial." (Opening Brief, page 3, lines 5-9). This information is part of the record of the trial proceeding as it was the subject of the *Motion To Set Aside* filed by Appellant.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2007-000160-001 DT

07/03/2007

Appellant has raised other grounds for his appeal. Those need not be addressed further as the foregoing issue fully disposes of this matter.

IT IS THEREFORE ORDERED remanding this matter to the Mesa City Court with instructions to set aside the finding of responsibility and for entry of an order dismissing the citation against Appellant. Further, any fines, sanctions or penalties paid by Appellant shall be refunded to him.

Exhibit D

CIVIL PROCEEDINGS**Title 12****ic examination, children**

ric examination of sex-crime
nder age of ten, should have
re she was allowed to testify
discretion of the trial court.
979) 121 Ariz. 420, 590 P.2d

victim's testimony was cor-
y by defendant's confession
f several neighborhood chil-
tency was not challenged, it
iscretion to find unnecessary
ination of victim, who was
: occurred and eight when
State v. Jerousek (1979) 121
1366.

retion in determining compe-
nder age of ten is practically
v. Jerousek (1979) 121 Ariz.

al started, judge, prosecutor,
ney questioned victim, who
ld at time of sex crime and
ame to trial, concerning her
her ability to tell truth, and
necessity to do so, and court
was qualified to testify with-
amination and that it would
y to evaluate her credibility,
to testify was not abuse of
v. Jerousek (1979) 121 Ariz.

lucting examination out of
to determine competency of
ten-year-old victim of alleged
is a witness, victim was ques-
e knew difference between
od, whether he would tell
he knew that failure to do so
ences of punishment, and he
estions testing his ability to
ssion of the facts relating to
unined, permitting victim to
use of discretion. State v.
Ariz. 41, 481 P.2d 504.

questions, children

t's discretion to allow leading
direct examination of minor
v. Jerousek (1979) 121 Ariz.

ions

1 claim for workmen's com-
for stepchildren, industrial
privileged to weigh testimony
mother, who were interested
ld not reject their testimony

WITNESSES**Ch. 13**

solely by reason of their interest. Fish v. Indus-
trial Commission (App. Div.1 1970) 12 Ariz.App.
486, 472 P.2d 97.

10. Review

The question of competency of witness is mat-
ter resulting in sound discretion of trial court,
and its ruling will not be disturbed except for
abuse of such discretion. United Producers &
Consumers Co-op., Inc. v. O'Malley (1968) 103
Ariz. 26, 436 P.2d 575.

Trial judge's ruling on introduction of testi-
mony of child under ten will not be disturbed
except for clear abuse of discretion. Davis v.
Weber (1963) 93 Ariz. 312, 380 P.2d 608.

Appellate court whose members neither heard
nor saw witnesses nor were impregnated with
atmosphere of trial should not supersede trial
judge's responsibility to determine whether wit-
ness under age of ten should be permitted to
testify, except under most unusual circum-
stances. Davis v. Weber (1963) 93 Ariz. 312,
380 P.2d 608.

ARTICLE 2. DUTIES AND PRIVILEGES OF WITNESSES**§ 12-2211. Attendance of witnesses; punishment for failure to appear or testify**

A. A witness summoned in an action shall attend the court from day to day until discharged by the court or, with the court's permission, by the party summoning him.

B. A witness summoned who fails to appear may be punished for contempt of court, and a warrant for the arrest of such witness may be issued to compel his attendance.

C. A witness summoned or otherwise in attendance who refuses to testify may be committed to the county jail until he consents to testify or until discharged as provided by law.

D. No punishment for contempt shall be imposed upon a witness, nor shall a warrant for his arrest be issued until it appears that the lawful fees have been paid or tendered to the witness.

Historical and Statutory Notes**Source:**

Civ.Code 1901, §§ 2501, 2502.

Civ.Code 1913, §§ 1685, 1686.
Rev.Code 1928, § 4419.
Code 1939, § 21-935.

Forms

See West's Arizona Legal Forms, Domestic Relations.

Cross References

Criminal cases, attendance of witnesses, see § 13-4071 et seq.

Fees and mileage of witnesses, see § 12-303.

Interfering with judicial proceedings, see §§ 12-861 et seq., 13-2810.

Legislature, witnesses, contempt, see § 41-1155.

Uniform act to secure attendance of witnesses outside of state, see § 13-4091 et seq.

Library References

Arizona Practice 1, Law of Evidence, Liver-
more et al.
Witnesses ¶3, 20 to 22.

Westlaw Topic No. 410.
C.J.S. Wills §§ 2, 7, 9 to 13, 53 to 56, 59 to
64, 69.

§ 12-2211**COURTS AND CIVIL PROCEEDINGS**
Title 12**Notes of Decisions****Bench warrant 1****1. Bench warrant**

Where bench warrant was issued but never executed, and procedure used by state was authorized by this section, trial court did not err

or prejudice defendant by allowing state to produce its chief witness in court by means of bench warrant on grounds that procedure used was illegal and its effects disturbing upon witness, a 15-year-old boy, and thereby, made boy's truthfulness suspect. State v. Garcia (1982) 133 Ariz. 522, 652 P.2d 1045.

§ 12-2212. Subpoena by public officer; contempt

A. When a public officer is authorized by law to take evidence, he may issue subpoenas, compel attendance of witnesses and production of documentary evidence, administer oaths to witnesses, and cause depositions to be taken, in like manner as in civil actions in the superior court.

B. If a witness fails to appear at the time and place designated in the subpoena, or fails to answer questions relating to the matter about which the officer is authorized to take testimony, or fails to produce a document, the officer may, by affidavit setting forth the facts, apply to the superior court of the county where the hearing is held, and the court shall thereupon proceed as though such failure had occurred in an action pending before it.

Historical and Statutory Notes**Source:**

Rev.Code 1928, § 4470.
Code 1939, § 23-318.

Cross References

Administrative procedures, discovery in adjudicative proceedings, see § 41-1062.
Appeals from director, see § 4-210.02.
Contractors, investigation, proceeding or hearing, see § 32-1106.
Depositions and discovery, see A.R.S. Rules Civ. Proc., Rule 26(a) et seq.
License suspension, revocation and termination, hearing, see § 3-1206.
Mobile and manufactured housing standards, investigations and hearings, see § 41-2193.
Real estate commissioner, see § 32-2158.
State personnel board, see § 41-785.

Administrative Code References

Water Quality Appeals Board, duties during a hearing, see A.A.C. R2-17-113.

Library References

Witnesses Ⓒ7, 20 TO410K22.
Westlaw Topic No. 410.
C.J.S. Wills §§ 2, 20 to 22, 25, 322 to 324.

Notes of Decisions**Student expulsion or suspension 1****Tax appeals 2****1. Student expulsion or suspension**

The governing board of a school district may issue subpoenas in matters relating to expulsion

WITNESSES
Ch. 13

or suspension of students
182-133.

§ 12-2213. Privilege

A witness shall be
breach of the peace,
returning therefrom,
of abode.

Source:

Civ.Code 1901, § 2503.

Arizona Practice 1, Law
more et al.
Arrest Ⓒ9, 60.

§ 12-2214. Requirement

A. A subpoena for
mentary evidence iss
person engaged in ga
casting news to the
activities, shall have a
in the matters sought

1. Each item of d
person subpoenaed.

2. That the affiant
information from all
has been unable to ob

3. The identity of
tive has attempted to

4. That the inform
of action or defense.

5. That the inform

6. That the subpoe
editing, publishing, b
protected by the fir
article II, section 6, C

B. A subpoena se
required affidavit att

C. If the affidavit
protective order is

Exhibit E

The Judicial Branch of Arizona, Maricopa County

Justice Courts > Courts And Sections > Traffic Violations

Your Rights as a Traffic Defendant

Civil Traffic Defendants

You also have the following rights:

- The right to have a civil traffic hearing before a justice of the peace or a civil traffic hearing officer.
- The right to be represented by counsel at the hearing. If you choose to be represented by counsel you must notify the court in writing at least 10 calendar days prior to the hearing date, otherwise you waive your right to be represented by an attorney. The court does not appoint attorneys for civil traffic violations.
- • The right to question witnesses testifying against you and cross-examine them as to the truthfulness of their testimony.
- • The right to present evidence on your behalf and the right to have subpoenas issued by the court at no cost to you to compel the attendance of witnesses.
- The right to appeal the outcome of the civil traffic hearing. There is however, no right to appeal a judgment entered by default as a result of your failure to appear.

[Click here for more information on Civil Traffic violation cases.](#)

Defendants with Misdemeanor or Criminal Traffic violations

You also have the following rights:

- The right to a trial before a justice of the peace, and in some cases, before a jury.
- The right to be represented by an attorney at all stages of the case. In some cases, if you are unable to pay for an attorney, the court may appoint an attorney for you. You will have to provide evidence that you are indigent or are unable to afford an attorney. The court may require that you contribute a reasonable amount towards attorney fees.
- The right to confront witnesses and cross-examine them as to the truthfulness of their testimony.
- The right to have subpoenas issued by the court at no cost to you to compel the attendance of witnesses.
- The right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.
- The right to appeal. There is no right to appeal a guilty plea.

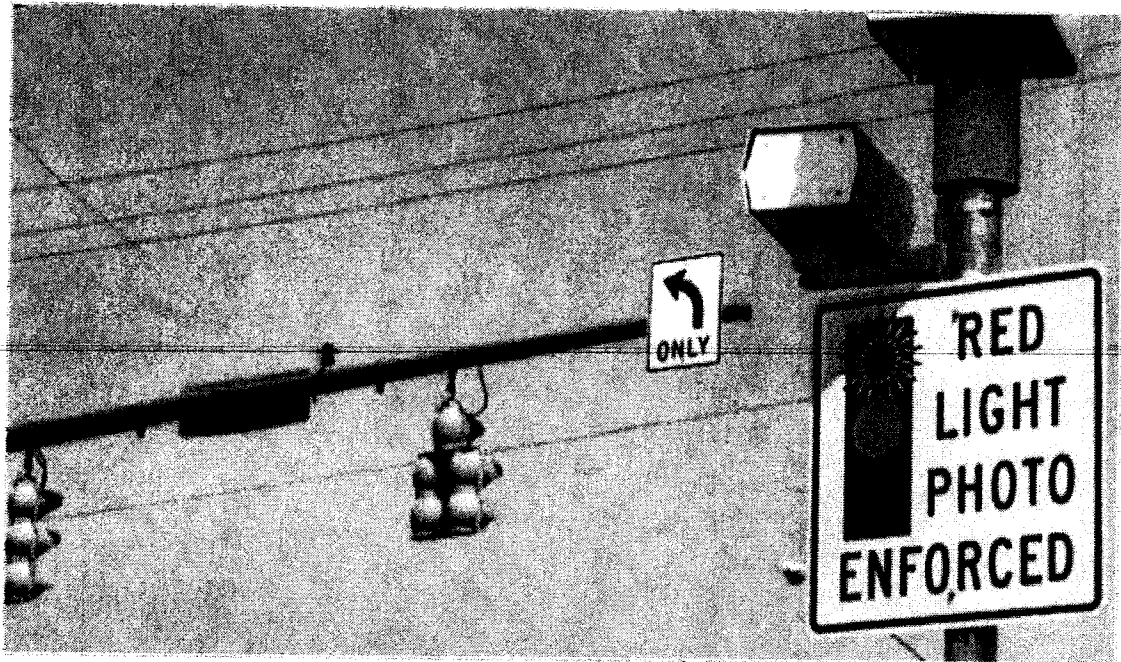
[Click here for more information on Misdemeanor or Criminal Traffic violation cases.](#)

Exhibit F



California: Another Judge Discards Red Light Camera Evidence

By Edward Niedermeyer on August 19, 2010



A San Diego, California Superior Court judge on Monday found elements of typical red light camera court evidence packages to be inadmissible hearsay. Eight consolidated cases were dismissed by Commissioner Karen A. Riley after she considered a motion to exclude evidence generated by automated ticketing vendor American Traffic Solutions (ATS). In light of the recent Melendez-Diaz v. Massachusetts ruling by the US Supreme Court (view ruling), Riley found the accused had a right to confront ATS witnesses.

The city of San Diego argued that the ticket evidence falls within standard business and official record exceptions to the hearsay rule and no such testimony was needed. Defense attorney Mitchell Mehdy countered that the evidence package prepared by ATS is hearsay because the company's employees never appear in court and a police officer merely reads off a sheet of paper on the witness stand having no direct knowledge of the incident described.

"The information regarding the alleged violation is purposefully created in anticipation of litigation, packaged neatly for an officer, and then used to convict a person who never had the opportunity to properly confront anyone other than the officer who can only recite what he has on the papers in front of him," Mehdy wrote in a brief to the court.

The court did find that elements of the ATS package are admissible insofar as an ATS employee states under penalty of perjury the conditions under which materials in the evidence envelope were "obtained or generated, or captured, transmitted and stored in the ATS database in Scottsdale, Arizona." Other portions of the document however were found to be improperly testimonial in nature. For example, the ATS records custodian describes the training and experience of employees and the habits of technicians responsible for reporting the data. The document also speaks about how employees "enlarge and enhance" ticket photos "without altering the content" and how the company's systems use "advanced encryption" to prevent tampering.

"The prosecution appears to contend that the affidavit is admissible for *all* purposes because each affidavit itself falls within the business records or official records hearsay exceptions; but this contention is unsupported," Riley found. "Instead of recording an act, condition or event as part of a business record, the affidavit of custodian of records describes in some detail various aspects of the overall photo red light process at ATS.... Since the affidavits contain largely 'testimonial statements' and the custodian is attempting to testify as a 'witness' for purposes of the Sixth Amendment... the defendants here are entitled to be confronted with the testifying witness at trial."


The court found the photographs themselves to be admissible because they essentially speak for themselves, but that the data imprinted on the photo showing the time of day and how long the light was red would only be accepted after showing both the camera system and the Arizona computer network was functioning properly. Merely producing inspection logs is insufficient in the court's view to establish reliability.

"There is *no* evidence or mention (indeed to date there is never evidence by the city) that the internal camera computer or its connected counterpart in Arizona, or the computers' date and specific time settings, the local or remote measurements of the exact signal phase times, the speed calculations, the Arizona computer connection with each of the intersection camera systems, etc. were or are ever checked for proper functioning," Riley wrote. "According to the inspection logs, technicians only check the intersection equipment, with no mention of the computer at the intersection or in Arizona... They do not indicate that they check the accuracy of the settings and measurements being made by the system..."

The court set a high burden for ATS to meet should it wish to prosecute a case successfully in the future.

"The court points out that it is not ruling against the red light camera system as a whole," Riley concluded. "Rather it is a ruling that sufficient foundation and evidence must be presented and appropriate witnesses must be present at trial to testify and be subject to cross-examination by the defendants. In the absence of the excluded evidence and appropriate witnesses with personal knowledge as discussed herein, the court finds that the people would be unable to prove the within eight cases beyond a reasonable doubt. Therefore, the within matters are dismissed."

A copy of the decision is available in a 1mb PDF file at the source link below.

Source:  In Re: 8 Photo Red Light Cases (Superior Court of California, San Diego County, 8/16/2010)

[Courtesy:Thenewspaper.com]

Posted in Crime & Punishment, Government, Law and Order, News Blog, Traffic
Tagged as Crime & Punishment, Government, Law, Red Light Cameras, Traffic

[Back to Top](#) [End of Comments](#)

Exhibit G

TRANSPORTATION

Title 28

CRIMINAL VIOLATIONS & COMPLAINTS

Ch. 5

§ 28-1553

cles §§ 1318, 1440, 1460,

s option to either issue a
arrest for motor vehicle
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pursuant to former § 28-
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-1031(F), 28-1053, individ-
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signed complaint or cita-
p. Atty. Gen. No. 66-38-L.

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1997. Renumbered as
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years of age or older."

-220.

Library References

Automobiles ⇨350; Courts ⇨472.6, 472.7; C.J.S. Motor Vehicles §§ 1320, 1363, 1395 to
Criminal Law ⇨88, 90(5). 1396, 1442, 1507, 1531.
Westlaw Topic Nos. 48A, 106, 110.

Notes of Decisions

Jurisdiction 1

1. Jurisdiction

Superior court had concurrent jurisdiction
with justice court over prosecution of trucking

company for operating vehicles on the highways
with loads in excess of 80,000 pounds. State v.
C.B. Johnson, Inc. (App. Div.2 1988) 157 Ariz.
502, 759 P.2d 648. Criminal Law ⇨ 86

§ 28-1553. Hearing officers; civil traffic violations

A. Subject to funding by the governing body and within their jurisdictions, justice courts may appoint hearing officers to preside over civil traffic violation cases. The appointments are subject to the concurrence of the presiding judge of the superior court in the county in which the justice court is located.

B. A city or town may appoint hearing officers to preside over civil traffic violation cases. These appointments shall be made in a manner provided by ordinance of the city or town.

C. Hearing officers may hear and dispose of civil traffic violation cases under the supervision of the court. The judgment of the hearing officer constitutes the judgment of the court that may be appealed to the superior court pursuant to title 22, chapter 2, article 4.¹

Added as § 28-3753 by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Renumbered as § 28-1553 by Laws 1996, Ch. 76, § 6, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 1, § 116, eff. Oct. 1, 1997.

¹ Section 22-261 et seq.

Historical and Statutory Notes

Source:

Code 1939, Supp.1952, § 66-186e.
Laws 1950, 1st S.S., Ch. 3, § 173.1.
A.R.S. former § 28-1055.
Laws 1959, Ch. 21, § 1.
Laws 1983, Ch. 271, § 44.

The 1997 amendment of this section by Ch. 1
explicitly amended this section as renumbered
by Laws 1996, Ch. 76, § 6.

Cross References

Jury trial, right to demand, inapplicable to civil traffic violations, see § 22-220.

Library References

Automobiles ⇨350; Courts ⇨55; Criminal
Law ⇨86.
Westlaw Topic Nos. 48A, 106, 110.

C.J.S. Courts §§ 107 to 109.
C.J.S. Motor Vehicles §§ 1320, 1363, 1395 to
1396, 1442, 1507, 1531.

Exhibit H

9

Chapter Nine Personal Liability of Councilmembers

The liability of city governments for torts has been an accepted doctrine in Texas since the passage in 1969 of the Tort Claims Act (Chapter 101 of the Civil Practice and Remedies Code). A "tort" is a wrongful act that results in injury to persons or property. A tort can result from negligence in the proper performance of a public servant's duty, or from such intentional acts as libel, false arrest, or slander.

Under the Tort Claims Act, city governments may be liable for limited damages resulting from the actions of councilmembers and other city officials. But what of the individual liability of mayors and councilmembers? Can these persons be held personally responsible for damages resulting from decisions they make (or refuse to make) in their official capacity as members of the city council?

Public Official Liability

City councils across the state each day make decisions that affect the lives and property of thousands of people. Using their best judgment to determine the "lowest and most responsible" bids on city contracts, the decisions of councilmembers can mean the difference between prosperity and insolvency for equipment dealers, office suppliers, and other businesses. Policies set by the council guide the actions of police officers who wield life and death powers. The list goes on and on. The point is that councilmembers make a variety of decisions that can benefit many persons and lead to irreparable harm to others.

Until recently, the federal courts generally held that councilmembers were not personally liable for torts resulting from their official actions, so long as those actions were made in good faith—that is, without willful or malicious intent to do harm. But that is no longer necessarily the case. There are indications now of an emerging concept of "public official malpractice" with serious implications for city officials, which is borne out by a significant increase in the number of lawsuits filed against councilmembers and other public officials.

These developments point to a situation calling for mayors and councilmembers to be aware of their potential liability problems and to have a basic understanding of the legal principles involved.

Liability Under State Law

Generally speaking, Texas courts have held that councilmembers are not personally liable for torts resulting from "discretionary acts" made within their authority and in "good faith"—that is, without intent to do harm.

"Discretionary acts" are those involving personal judgment. For a councilmember, typical discretionary acts include approving amendments to the city's zoning or subdivision ordinance or awarding bids. Each of these acts involves decisions, or choices, based on the councilmember's personal conclusions from all of the available facts.

There is little case law to look to with regard to personal liability of mayors and councilmembers for torts resulting from their discretionary acts. Among the handful of pertinent cases, one concerns a mayor who, acting by himself, initiated legal proceedings against a delinquent property taxpayer. The taxpayer then sued the mayor for damages, claiming the mayor had no individual legal power to order the city attorney to file suit, because state law requires the city council to authorize such suits. The court agreed, declared the mayor's act was "wholly without authority of law," and ruled that he was personally liable for damages.

Again, generally speaking, councilmembers are personally liable for torts resulting from their ministerial acts. "Ministerial" acts are those performed as a matter of duty and which the council must perform. Ministerial acts also include those performed in obedience to state or federal laws which are so plain and explicit as to leave nothing to discretion or judgment. Examples include adoption of the city budget and canvassing the results of city elections.

An improper ministerial act imperils the councilmember regardless of whether it was performed in good faith without intent to do harm. A ministerial act that is required by law, but is not performed at all, also leads to liability on the part of the councilmembers responsible for its performance. This means that a councilmember could be personally liable for paying damages to individuals injured because of the council's failure to properly perform a ministerial duty or its negligence in not performing it at all.

Personal liability of most city officials and employees is capped at \$100,000 for actions brought in state court. This limitation of liability applies if a city provides insurance, self-insurance, or indemnification for its officers and employees. The advice of the city attorney should be sought on any specific liability question in a given situation.

Liability Under Federal Law

During the 1950s and 1960s, the federal courts generally held that mayors and councilmembers enjoyed "qualified" immunity from liability for their tortious acts. In order to be eligible for immunity, a local official had to meet two qualifications: (1) he or she had to be acting in a ministerial capacity—that is, performing an act that he or she was legally required to perform; and (2) it had to be demonstrated that the act in question was made in good faith.

Beginning in the 1970s, the federal courts began to narrow the scope of a local official's immunity from personal liability for official acts. First, in 1974, the U.S. Supreme Court held that when a public official acts under state law in a manner that violates the U.S. Constitution, "he comes into conflict with the superior authority of that Constitution and is stripped of his official or representative character and subjected in his person to consequences of his individual conduct. . ." The Court thus held that a councilmember is personally liable for damages if he or she votes to have the city perform an act that has the effect of depriving citizens of their constitutional rights—even in cases where the councilmember and the city are required by state law to perform the particular act.

depending on the specific facts of the situation. An example of potential liability under Section 1983 would be the council's decision to deny a developer the right to use land by denying a rezoning or building permit to the developer because the construction plans are opposed by a vocal neighborhood group.

Another significant area of potential liability for councilmembers under Section 1983 relates to race discrimination and other violations of the Equal Protection Clause of the U.S. Constitution, such as sex-biased personnel policies and practices.

Civil Rights Liability

Civil rights represent another area in which local officials can be held personally liable for damages. Every councilmember needs to know the risks expressly contained in Section 1983, Title 42, of the United States Code:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured."

The literal language of Section 1983 makes all persons, councilmembers included, personally liable for damages if their acts result in depriving others of their civil rights, regardless of whether such acts were reasonable and made in good faith. Additionally, the U.S. Supreme Court has held that Section 1983 does not require proof that a defendant deliberately intended to deprive the plaintiff of his legal rights; the mere deprivation is itself a violation.

Liability under Section 1983 is not limited to the direct infliction of physical injuries to persons or property. Several types of policy decisions affecting city employees or citizens could render councilmembers liable under Section 1983,

Exhibit I

CITIES AND TOWNS**Title 9**

ance for town officers by
r.

Notes

e 1913, §§ 1834, 1835.
le 1928, § 376.
39, § 16-210.

ns

ases or decreases in compensation
term of office.

. Art. 4, Pt. 2, § 17.

municipal Corporations §§ 138, 150,
53, 355, 357, 359, 367, 419 to 421,
37.

ourt

Bishop v. Wood, 1976, 96 S.Ct. 2074,
41, 48 1.2d 684.

disincorporated, plaintiff had "color
office and he became a "de facto
titled to compensation for services
ntil disincorporation, even though he
resident and qualified elector of town
l by Const. Art. 7, § 15. Juliani v.
941) 58 Ariz. 296, 119 P.2d 565.
Corporations 162.3; Officers And
ployees 43; Officers And Public
95

nsation

men of town had no right under Civ.
§§ 1832, 1834, and 1889 (see, now,
and §§ 9-237 and 9-304) to fix own
ion. Terrell v. Town of Tempe (1929)
0, 274 P. 786.

nel board

l board of city of Scottsdale can do
an make recommendations for ap-
and removal of officers and employ-
city. Kendall v. Malcolm (1965) 98

FORM OF GOVERNMENT**Ch. 2**

Ariz. 329, 404 P.2d 414. Municipal Corpora-
tions 131; Municipal Corporations 155;
Municipal Corporations 217.1; Municipal
Corporations 218(1)

4. Group insurance

Municipalities and counties have implied
power to provide group insurance, and to con-
tribute to the cost thereof, for their employees,
subject only to caveat of compliance with state
budget laws and provision of Const. Art. 4, pt. 2,

§ 17, relating to compensation of public offi-
cers. Op.Atty.Gen. No. 59-119.

5. Liability of officer

A city police chief was not liable for injury
sustained by a person sought to be arrested by a
city policeman, where the policeman was not
appointed by the chief of police but was ap-
pointed by the city council and the police chief
did not direct or co-operate in the act of the
policeman. Russell v. Glasgow (1945) 63 Ariz.
310, 162 P.2d 129. Municipal Corporations 182

§ 9-240. General powers of common council

A. The common council shall have control of the finances and property of
the corporation.

B. The common council shall also have power within the limits of the town:

1. To erect, purchase or lease necessary buildings for the purposes of the
corporation.

2. To appropriate money and provide for the payment of its debts and
expenses.

3. (a) To exercise exclusive control over the streets, alleys, avenues and
sidewalks of the town and to give and change the names thereof.

(b) To prevent and punish for the encumbering thereof, and to abate and
remove all encumbrances and obstructions thereon.

(c) To widen, extend, straighten, regulate, grade, clean or otherwise improve
the same.

(d) To open, lay out and improve new streets, avenues and alleys.

(e) To vacate or abandon any street, avenue, alley, park, public place or
sidewalk in such town or to abolish them, provided that rights-of-way or
easements of existing sewer, gas, water or similar pipelines and appurtenances
and for canals, laterals or ditches and appurtenances, and for electric, tele-
phone, and similar lines and appurtenances shall continue as they existed prior
to the vacating, abandonment, or abolishment thereof.

(f) To protect the same from encroachment and injury.

4. To erect and maintain bridges, culverts, sidewalks and crossways, and
prevent and punish for injuries thereto or obstructions thereon.

5. (a) To construct and maintain sewers and drains, and prevent and punish
for any obstruction thereof, or thereto.

(b) To change the channels of natural watercourses, to wall the same and
cover them over, and regulate the same as sewers.

(c) To prevent and punish for the filling up, altering or changing of natural
watercourses by private persons.

(d) To regulate the bridging of all millraces, irrigating and other ditches at
the crossings of public highways, by the owners of such millraces and ditches,

§ 9-240**CITIES AND TOWNS**
Title 9

and after such bridge or ford is built according to the street commissioner's instructions, the crossing shall thereafter be a public charge.

6. To provide the town with water, to construct public wells, cisterns and reservoirs in the streets and other public and private places within the town, or beyond the limits thereof, and to supply the same with pumps and conducting pipes or ditches.

7. (a) To provide regulations for the prevention and extinguishment of fires.

(b) To prevent the erection of wooden buildings within prescribed limits.

(c) To regulate the construction of chimneys, furnaces and fireplaces.

(d) To regulate the storage of explosives, tar, pitch, resin and other combustible or inflammable materials, and to prescribe the places and manner of storing the same.

8. To provide for lighting the streets and other public places of the town, and to exclusively regulate and control the laying and repairing of gas pipes and other appurtenances therein.

9. To provide for enclosing, improving and protecting the public grounds and cemeteries of the town, and to direct and regulate the planting of ornamental and shade trees therein and in the streets of the town.

10. To establish markets and marketplaces for the town and to regulate the same.

11. (a) To establish and maintain necessary cemeteries and burial places for the town beyond the limits thereof.

(b) To regulate the burial of the dead.

(c) To require a registration of the deaths and births, and to impose penalties upon physicians and surgeons for any default in the premises.

→ 12. To establish and regulate the police of the town, to appoint watchmen and policemen, and to remove them, and to prescribe their powers and duties.

13. To prevent, suppress and punish any riot, rout, affray, disorderly noise or disturbance in any public or private place within the town.

14. To prevent, suppress and punish racing or immoderate riding or driving through the streets.

15. (a) To prohibit and punish any amusements or practice tending to annoy or obstruct persons passing upon the streets or sidewalks, or frighten horses or other animals being ridden or driven thereon.

(b) To restrain and punish the ringing of bells, blowing of horns, crying of goods or other noises, performances and practices tending to cause the collection of persons upon the streets or sidewalks and the obstruction thereof.

16. (a) To prohibit the roaming at large of animals within the town.

(b) To authorize the impounding and summary sale thereof when found roaming at large contrary to ordinance.

FORM OF GOVERNMENT
Ch. 2

(c) To impose penalties for violation of ordinance in relation to the same.

(d) To regulate, control and authorize their duties within the town, and to impose penalties for violation of ordinance in relation to the same.

17. (a) To suppress and punish any riot, rout, affray, disorderly course and to punish the same.

(b) To suppress and punish any riot, rout, affray, disorderly course and to punish the same.

(c) To suppress and punish any riot, rout, affray, disorderly course and to punish the same.

18. To fix the amount of the corporation or association, calling, profession, payment of the same, failure to comply shall be construed as license or fee on levying such a license.

19. To authorize and registering the same granted for more than five thousand dollars.

20. (a) To prohibit contagious, loathsome and offensive.

(b) To make a quarantine two miles thereof.

21. (a) To prohibit and punish any riot, rout, affray, disorderly course and to punish the same.

(b) To compel the grounds, stable and other.

(c) To prohibit and punish any riot, rout, affray, disorderly course and to punish the same.

22. To perform necessary or expedient.

23. To establish regulations for the same thereof.

24. To authorize and disorderly course and to punish the same.

CITIES AND TOWNS**Title 9****FORM OF GOVERNMENT****2****§ 9-240**

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(c) To impose penalties upon the owners thereof for a violation of any ordinance in relation thereto.

(d) To regulate, restrain and prohibit the running at large of dogs and to authorize their destruction when at large contrary to any ordinance of the town, and to impose penalties upon the owners thereof.

17. (a) To suppress and prohibit prostitution and unlawful sexual intercourse and to punish persons guilty thereof.

(b) To suppress and prohibit the operation of disorderly houses and to punish the owners, managers, lessees, agents, keepers and inmates thereof.

(c) To suppress and prohibit gambling and the operating of gambling houses and to punish the owners, managers and employees thereof and players at such games.

18. To fix the amount of license taxes to be paid by any person, firm, corporation or association for carrying on any business, game or amusement, calling, profession or occupation, and prescribe the method of collection or payment of the same, for a stated period in advance, and fix penalties for failure to comply by fine or imprisonment, or both. Nothing in this article shall be construed as authorizing any town or city to levy an occupational license or fee on any activity when the general law of the state precludes levying such a license or fee.

19. To authorize the clerk to issue licenses, to direct the manner of issuing and registering the same, and the fees of the clerk therefor. No license shall be granted for more than one year, and not less than ten dollars nor more than five thousand dollars shall be charged for any license so issued.

20. (a) To provide regulations to prevent the introduction or spread of contagious, loathsome or infectious diseases within the town.

(b) To make quarantine laws and enforce them within the town and within two miles thereof, and to provide pest houses and hospitals necessary therefor.

21. (a) To define, abate and remove nuisances, and punish persons committing nuisances.

(b) To compel the owner or any occupant of any house or premises to clean the grounds, stables, alleys, streets and walks appurtenant and adjacent thereto.

(c) To prohibit within the town and within two miles beyond the limits thereof slaughterhouses, tanneries, soap factories, establishments for the steaming or rendering of tallow, lard or offal, and all other establishments and places where any nauseous, offensive or unwholesome business may be carried on.

22. To perform other acts, and prescribe other regulations, which may be necessary or expedient for the prevention or suppression of disease.

23. To establish and maintain a workhouse or houses of correction, to make regulations for the government thereof and to appoint the officers and keepers thereof.

24. To authorize the arrest and punishment of vagrants, stragglers and idle and disorderly persons found loitering or strolling about in public places,

§ 9-240**CITIES AND TOWNS****Title 9**

leading an immoral or profligate life, and to authorize the confinement of any such person, and persons who fail to pay any fine, in the workhouse or house of correction for a period not exceeding three months.

25. (a) To direct and control the laying and construction of railroad tracks, bridges, switches and sidetracks in the streets, alleys and other public places of the town.

(b) To require the same to be so laid and constructed as to interfere as little as possible with the ordinary travel and use of the streets, and other public places.

(c) To authorize the construction of tramways, electric, steam or cable roads and railways in the town, and to regulate the operation thereof, and the fares to be charged thereon and to require the owners thereof to keep in repair the streets wherein the same may be laid, and to construct and keep in repair all bridges, culverts, crossways, ditches and sewers.

(d) To regulate the speed of locomotives.

26. To levy taxes as hereinafter mentioned in this article.

27. To apply any surplus money in the treasury of the town to the extinguishment of the debt of the town, or to provide a sinking fund for that purpose.

28. (a) To make, amend or repeal all ordinances necessary or proper for the carrying into effect of the powers vested in the corporation, or any department or officer thereof.

(b) To enforce the observance of such ordinances, and to punish violations thereof by fine or imprisonment, or both, and by confinement at hard labor, in the discretion of the magistrate or court before whom a conviction may be had, but no fine shall be imposed exceeding two thousand five hundred dollars, nor imprisonment or confinement at hard labor exceeding six months.

(c) Unless specifically prohibited by statute, to classify ordinance violations as criminal or civil offenses.

29. To adopt ordinances for the government of the corporation, its officers and persons within its corporate limits needful for the good government and order of the municipalities, and to provide the manner of prosecution and define the punishment for the violation of such ordinance.

Amended by Laws 1968, Ch. 120, § 1; Laws 1980, Ch. 229, § 1, eff. April 23, 1980; Laws 1989, Ch. 87, § 1; Laws 1995, Ch. 57, § 1; Laws 1999, Ch. 175, § 1.

Historical and Statutory Notes**Source:**

Civ.Code 1901, §§ 545, 590.
Civ.Code 1913, §§ 1831, 1874.
Laws 1921, Ch. 147, §§ 1, 2.
Laws 1927, Ch. 38, § 1.
Rev.Code 1928, §§ 373, 382.
Code 1939, § 16-216.
Laws 1949, Ch. 111, § 1.
Code 1939, Supp.1952, § 16-207.

Laws 1975, H.R. 2004 recommends that anyone who left the United States to avoid service to this nation in the Vietnam conflict or who deserted from the armed forces during such conflict be refused employment in Arizona in positions supported by tax money.

See Historical and Statutory Notes following § 38-201.

FORM OF GOVERNMENT**Ch. 2****Reviser's Notes:**

The second sentence of § 216, C. '39) provided for t

Bribery of public servant or
Fireworks control, see § 36
Food producers, municipal
Gas appliances, safety mea
Initiative and referendum i
Powers,
Board of city or town t
Cities and towns gener
Public parks, acquisition a

Living conditions and
local jails and prisons.
351.

Loitering and vagrancy
doctrine. 17 Ariz.L.Rev. 6
Public regulation of priv
R. Schroeder, Law & So

Municipal Corporations
Westlaw Topic No. 268.

ALR Library

16 ALR 6th 289, Valid
Application Of School
Or Ordinances.
2003 ALR 5th 17, Valid
Application Of School
Or Ordinances.

See WESTLAW Electro

Freedom of speech, or
mit for door-to-door can
or Bible and Tract Socie
Village of Stratton, 200
U.S. 150, 153 L.Ed.2d 2
Appx. 772, 2002 WL 185

Hair length regulation
of police force, see Kelle
1976, 96 S.Ct. 1440, 42
708, on remand 543 F.2d

Adult entertainment 9
Air raid shelters 10

STATE OF ARIZONA

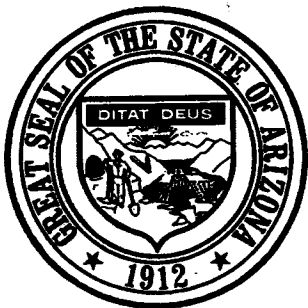
Department Of State

UNITED STATES OF AMERICA
STATE OF ARIZONA

SS.

I, JANICE K. BREWER, Secretary of State, do hereby certify that the text of the laws contained in this volume of ARIZONA REVISED STATUTES, Annotated Edition, is a true and correct copy of Title 9, §§ 9-101 to 9-End, of the Arizona Revised Statutes, as amended and supplemented by the general and permanent laws enacted to the end of the First Regular Session (2007) of the Forty-Eighth Legislature, and the original or engrossed copies of which are on file and a matter of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Arizona. Done at Phoenix, the capital, this 1st day of April A.D., 2008.



Janice K. Brewer

JANICE K. BREWER
SECRETARY OF STATE

Mat #40577266

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ARIZONA REVISED STATUTES

ANNOTATED

*Prepared Under Legislative Authority
Laws 1956, Chapter 129*

Volume 2B

Title 9

Cities and Towns

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Brewer

JANICE K. BREWER
SECRETARY OF STATE

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THOMSON
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Mat #40577266

Exhibit J



City Code

find: [City Code Home](#) [Text Menu](#)[Residents](#) [Visitors](#) [Business](#) [Government](#)

In Tempe it is Monday, April 04, 2011 10:24:41 PM

Tempe City Code

Web version:

[Charter](#)
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- [3-Advertising and Signs](#)
- [4-Alcoholic Beverages](#)
- [5-Amusement](#)
- [6-Animals & Fowl](#)
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[International Energy Conservation Code](#)
[International Existing Bldg Code](#)
[International Fuel Gas Code](#)
[International Mechanical Code](#)
[International Residential Code](#)
[International Plumbing Code](#)
[National Electrical Code](#)
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Because the code book is rather large, we supply it in searchable form below, in web readable chapters on the left, or in [Microsoft Office XP Word versions](#).

You can find key words within the web readable code using the form below.

Find in Tempe
City Code:

Chapter 2

ADMINISTRATION^[1]

- Art. I. In General, §§ 2-1—2-15**
- Art. II. Officers and Employees, §§ 2-16—2-130**
 - Div. 1. Generally, §§ 2-16—2-25
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- Art. III. Departments, §§ 2-131—2-145**
- Art. IV. Financial Affairs, §§ 2-146—2-180**
 - Div. 1. Procurement, §§ 2-146—2-160
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- Art. V. Boards, Commissions, Etc., §§ 2-181—2-364**
 - Div. 1. Generally, §§ 2-181—2-190
 - Div. 2. Historical Museum Advisory Board, §§ 2-191—2-199
 - Div. 3. Municipal Arts Commission, §§ 2-200—2-204
 - Div. 4. Sponsorship Review Committee, §§ 2-205—2-214
 - Div. 5. Aviation Commission, §§ 2-215—2-224
 - Div. 6. Human Relations Commission, §§ 2-225—2-234
 - Div. 7. Parks, Recreation and Golf Advisory Board, §§ 2-235—2-244
 - Div. 8. Transportation Commission, §§ 2-245—2-254
 - Div. 9. Mayor's Youth Advisory Commission, §§ 2-255—2-264
 - Div. 10. Commission on Disability Concerns, §§ 2-265—2-274
 - Div. 11. Rio Salado Citizen Advisory Commission, §§ 2-275—2-284
(Repealed)
 - Div. 12. Tempe Citizens' Panel for Review of Police Complaints and Use of Force, §§ 2-285—2-294
 - Div. 13. Double Butte Cemetery Advisory Committee, §§ 2-295—2-304
 - Div. 14. Neighborhood Advisory Commission, §§ 2-305—2-314
 - Div. 15. Redevelopment Review Commission, §§ 2-315—2-324 (Repealed)
 - Div. 16. Tardeada Advisory Board, §§ 2-325—2-334
 - Div. 17. Parks and Recreation Board, §§ 2-335—2-344 (Repealed)
 - Div. 18. Library Advisory Board, §§ 2-345—2-354
 - Div. 19. Housing Trust Fund Advisory Board, §§ 2-355—2-364
- Art. VI. Employer, Employee Relations Meeting and Conferring, §§ 2-400—2-474**
 - Div. 1. In General, §§ 2-400—2-424
 - Div. 2. Meeting and Conferring, §§ 2-425—2-474

ARTICLE I. IN GENERAL**Sec. 2-1. Compliance by city with applicable laws.**

The city and its officers and employees shall comply with all applicable state and federal laws.

Sec. 2-2. City manager may execute contracts.

The city manager is hereby authorized to execute all contracts and other documents or instruments in the name of the city during the absence or disability of the mayor and vice mayor. (Ord. No. 92.32, 7-30-92)

Sec. 2-3. Receipt and review of criminal history information.

(a) That the city council may examine criminal history information including non-conviction information concerning any employee or candidate for appointment to an employee position for which it is charged with the duty of administering under the charter of the city.

(b) That the safety officer and risk management personnel may examine criminal history information including non-conviction information concerning any incident which will involve any potential or actual liability, criminal or civil, on the part of the city or any incident which may give rise to a claim on behalf of the city and may furnish said information to the appropriate insurance or legal personnel charged with the responsibility of disposing of and collecting claims involving the city.

(c) That the finance and technology director, city manager and city council, when acting as a licensing authority, may examine criminal history information including non-conviction information concerning any applicant for a license or permit required under this code or any other public law.

(d) That the human resources director or designee may examine criminal history information including non-conviction information concerning any employee or candidate for appointment to a city position.

(Ord. No. 636.10, 4-13-78; Ord. No. 2002.56, 1-16-03; Ord. No. 2010.02, 2-4-10)

Secs. 2-4—2-15. Reserved.

ARTICLE II. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Sec. 2-16. Superintendent of streets.

(a) There is hereby established the office of superintendent of streets with all powers and duties as may be permitted by law for such office.

(b) The superintendent of streets shall automatically be the person appointed to hold the office of public works director and any appointment to the office of public works director shall also carry with it the appointment to the office of superintendent of streets.
(Code 1967, § 2-1; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Cross reference—Streets and sidewalks, Ch. 29.

Sec. 2-17. Repealed.

(Ord. No. 2000.41, 9-21-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02)

Sec. 2-18. Assistant city manager.

(a) There is hereby established the office of assistant city manager working directly under and for the city manager. The obligations and duties of the assistant city manager include the establishment and maintenance of a receptive, supportive environment which encourages visionary, innovative and service driven leadership to city customers and staff; evaluates proposed actions for potential positive benefits and unforeseen consequences to the city and its citizens; participates in complex and sensitive negotiations and special projects for the city manager; provides strong visionary and innovative management leadership in accordance with the city's mission and values; and provides highly responsible and complex administrative support to the city manager. The assistant city manager will manage such divisions, departments and offices as the city manager directs from time to time.

(b) The following offices shall report to the assistant city manager, unless and until the city manager directs otherwise:

- (1) *Community relations.* The community relations office is responsible for the government relations, public information and media services, and neighborhood services functions of the city as well as for providing administrative support to the mayor and council;
- (2) *Diversity.* The diversity office is responsible for facilitating a fair and equitable work environment for city employees; coordinates the city's response to the diversity audit, functions as an ombudsman for city employees, provides administrative support to the human relations commission and coordinates community special events; participates in the investigation of administrative guidelines and human resource policies and participates in the investigation and

resolution of internal and external harassment and discrimination complaints; and serves as a resource for employees for issues relating to diversity and organizational effectiveness and works with city departments to develop and improve diversity programs and efforts; and

- (3) *Internal audit.* The internal audit office provides independent appraisal of city programs, policies and functions in order to help management perform more efficiently and effectively; examines financial reports, various records and procedures to determine compliance with applicable ordinances, regulations, policies and contractual provisions; evaluates the city's internal control structure and recommends improvements that will help to safeguard the city's assets; and performs the duties of the taxpayer problem resolution officer, as outlined in § 16-515 of this code.

(Ord. No. 2000.41, 9-21-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.13, 3-28-02; Ord. No. 2010.02, 2-4-10)

~~Sec. 2-19. City manager.~~

The city manager, pursuant and in addition to the duties and obligations set forth in the city charter, is hereby authorized to establish such working groups and divisions under his direct supervision as he may deem appropriate from time to time. The city manager directly supervises and oversees support staff, divisions and departments which are not otherwise assigned to an assistant city manager.

(Ord. No. 2000.41, 9-21-00; Ord. No. 2001.17, 7-26-01; Ord. No. 2008.06, 2-21-08)

Secs. 2-20—2-25. Reserved.

DIVISION 2. CITY COURT JUDGES AND HEARING OFFICERS^[2]

Sec. 2-26. Appointment and qualification of judges.

- (a) All judges of the city court of the city must meet the minimum following qualifications:
 - (1) Possess a law degree from an accredited law school and be a member of the State Bar of Arizona in good standing for a minimum period of five (5) years; and
 - (2) Have sufficient experience and temperament to preside over the city court and continue to meet all qualifications as may be established by the Arizona Supreme Court or as required by law for such judges.

(b) The presiding judge of the city court and such other judges as deemed necessary shall be appointed by the city council. The length of term of office for such judges shall be a minimum of two (2) years as determined by the city council.
(Ord. No. 1145, § I, 2-12, 5-16-85, in part; Ord. No. 94.14, 6-30-94)

Editor's note - Ord. No. 94.22, 7-14-94, expressed council approval of the appointment of all judges of the City Court, regular and pro tempore, to serve as juvenile hearing officers by the presiding judge of the Maricopa County Juvenile Court.

Sec. 2-27. Filling of vacancies.

In the event of the death, resignation, suspension or removal of a city court judge, such vacancy may be filled for the unexpired term of office. The city council may suspend or remove a judge:

- (1) For any reason authorized by law;
- (2) Whenever the judge is unable to perform the duties of the office; or
- (3) For failure to meet the minimum qualifications of the position.
(Ord. No. 1145, § I, 2-13, 5-16-85, in part; Ord. No. 94.14, 6-30-94)

Sec. 2-28. Temporary judges.

Notwithstanding anything to the contrary in this division, the presiding judge of the city court may appoint judges to serve on a temporary or "pro tempore" basis. Such judges shall be compensated on a contractual or hourly basis, shall not be eligible for any benefits as a full-time employee and shall be appointed for a term as set forth by the presiding judge of the city court.
(Ord. No. 1145, § I, 2-14, 5-16-85, in part; Ord. No. 94.14, 6-30-94)

Sec. 2-29. Appointment and qualifications of court hearing officers.

(a) The presiding judge of the city court may appoint court hearing officers who shall have the power to hear and adjudicate civil offenses. Court hearing officers appointed by the presiding judge must meet the following qualifications:

- (1) All qualifications as may be established, from time to time, by the Arizona Supreme Court or as may be required by statute for such officers; and
- (2) Possess a law degree from an accredited law school or a bachelor's degree with at least three (3) years of experience in the area of traffic law or a related field.

(b) Court hearing officers shall be appointed for a term of two (2) years and may be removed during the term by the presiding judge for cause and after a hearing. Court hearing officers shall comply with all personnel rules and regulations of the city as applicable and shall be nonclassified exempt employees.

→ (c) The presiding judge of the city court may appoint one or more court hearing officers to serve on a temporary or "pro tempore" basis as may be required by the city court, to serve under the authority of the presiding judge. Such hearing officers shall be compensated on a contractual or hourly basis, shall not be eligible for any benefits as a full time employee and shall be appointed for a term as set forth by the presiding judge of the city court.

(d) The powers and duties of the court hearing officers shall be those as may be established by statute or the rules of the Arizona Supreme Court or the presiding judge of the city court relating to such hearing officers.

(Ord. No. 94.14, 6-30-94)

Sec. 2-30. Establishment of court user charge and city court enhancement fund.

(a) A city court user charge of ten dollars (\$10) shall be imposed by the city court on all offenses processed by the court which result in an order or agreement to pay any fine, sanction, penalty or assessment or participate in any court authorized diversion program. The user charge shall not be imposed on civil parking violations. The court user charge shall be collected by the court for deposit into the city court enhancement fund.

(b) A city court enhancement fund is hereby established for the exclusive purpose of enhancing technology, operation and facilities of the city court. The fund shall be administered by the presiding judge. Monies in the fund shall supplement funds provided to the city court through the city budget process and shall be used for city court technology, operation and facilities. Interest earned on monies in this fund shall be credited to the court enhancement fund.

(Ord. No. 95.38, 11-9-95)

Sec. 2-31. Judicial advisory board—establishment; membership; powers and duties; operating procedures.

(a) There is hereby created a judicial advisory board, which shall have the purpose of recommending to the city council the best qualified persons to become city magistrate, and to evaluate the performance of and advise regarding the retention of current appointed magistrates. The board shall be composed of six (6) persons appointed by the mayor with the approval of the city council, as follows:

- (1) The presiding judge of the Tempe Municipal Court, who shall serve as a non-voting ex-officio member except for the reappointment of the presiding judge;
- (2) The presiding judge of the Maricopa County Superior Court, or designee who shall also be a judge of the Maricopa County Superior Court;
- (3) Two (2) active members in good standing of the State Bar of Arizona, who shall reside in the Tempe who shall be appointed by the mayor from among three (3) nominees recommended by the State Bar's Board of Governors. In no event shall either member hold or have held any contract for professional services with Tempe in the last five (5) years; and
- (4) Two (2) public members who are residents of Tempe. No public members shall have been a party to any matters pending before any division of the Tempe Municipal Court for the five (5) years preceding their appointment.

(b) The initial officers of the board shall be selected by the mayor with the approval of the city

council. Thereafter, the officers of the board shall be selected by the members at the first meeting following the 31st day of December of each year and shall serve from January 1 until the 31st day of December of the next succeeding year. No officer may serve in the same capacity for more than three (3) consecutive one-year terms. None of the members of the board shall be an employee of the City of Tempe. Members shall serve a term of three (3) years and shall be eligible for reappointment for one additional three (3) year term. The members shall serve without salary or compensation.

(c) The Board shall have the following powers and duties:

- (1) To seek out and encourage qualified individuals to apply for the office of city judge or presiding judge;
- (2) To conduct investigations into the background and qualifications of candidates for a new appointment to the office of city judge or presiding judge, including but not limited to the use of questionnaires, personal interviews, and contacting such individuals and institutions as it deems reasonable to obtain as much background information on the candidate as possible;
- (3) To get as much input as possible from litigants, lawyers, witnesses, victims, jurors and staff of the city court in any form practicable, including but not limited to surveys, and to hold public hearings designed to permit interested parties and groups to submit verbal or written comments on reappointments. Any mechanism chosen by the board to receive public input concerning appointments or reappointment must be designed to allow for confidential submissions to the board if so requested; and
- (4) To submit its recommendations for candidates for appointment or reappointment to the office of city judge or presiding judge, without regard for race, religion, political affiliation, gender or sexual orientation, to the mayor and city council.

(d) The meetings of the board shall be held as needed for the purpose of reviewing applications for appointment or to conduct a reappointment review. A call for a meeting shall issue promptly upon learning of the existence or anticipated existence of a vacancy in the office of city judge or presiding judge or prior to the end of an existing term of a city judge or presiding judge eligible for reappointment. (Ord. No. 2002.44, 10-24-02)

Exhibit K

Art. VI**CONSTITUTION OF THE UNITED STATES****ARTICLE VI**

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of Our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. IN WITNESS whereof We have hereunto subscribed our Names.

Go. WASHINGTON—*Presidt.*
and deputy from Virginia

Attest WILLIAM JACKSON *Secretary*

JOHN LANGDON

NATHANIEL GORHAM

WM. SAML. JOHNSON

ALEXANDER HAMILTON

WIL. LIVINGSTON

DAVID BREARLEY.

B FRANKLIN

THOMAS MIFFLIN

ROBT MORRIS

GEO. CLYMER

GEO. READ

GUNNING BEDFORD JUN

JOHN DICKINSON

JAMES MCHENRY

DAN OF ST THOS. JENIFER

New Hampshire

Massachusetts

Connecticut

New York

New Jersey

Pennsylvania

Delaware

Maryland

NICHOLAS GILMAN

RUFUS KING

ROGER SHERMAN

WM. PATERSON.

JONA. DAYTON

THOS. FITZSIMONS

JARED INGERSOLL

JAMES WILSON

GOUV MORRIS

RICHARD BASSETT

JACO. BROOM

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