

CEDAR RAPIDS ATE PROGRAM

APRIL 16, 2015

WRITTEN EXPLANATION OF ISSUES UNDERLYING APPEAL OF AGENCY ACTION IN DEPARTMENT OF TRANSPORTATION'S MARCH 17, 2015 "EVALUATION OF CEDAR RAPIDS AUTOMATED TRAFFIC ENFORCEMENT REPORT- PRIMARY HIGHWAY SYSTEM"

I. INTRODUCTION

This Written Explanation of Issues is submitted as part of an appeal by the City of Cedar Rapids ("the City") pursuant to Rule 761-144.9 of the Iowa Administrative Code, concerning regulations of Automated Traffic Enforcement ("ATE") on the Primary Roadway System by the Iowa Department of Transportation ("DOT"). Also pursuant to that same rule, the City is submitting simultaneously herewith Supporting Information. In summary, the appeal by the City seeks a determination by the DOT Director rescinding those aspects of the May 17, 2015 "Evaluation of the Cedar Rapids Automated Traffic Enforcement Report- Primary Highway System" ("the Evaluation") which direct the City to make changes to the ATE program as originally designed and currently operated pursuant to DOT permit.

The City's May 2014 Report to Iowa Department of Transportation titled "City of Cedar Rapids Automated Traffic Enforcement on Primary Roadway 2013" (sometimes referred to hereinafter as the "Annual Report") is the subject of the Evaluation. Therefore, the contents of the Annual Report, the documents to which it refers internally, and the attachments to it are incorporated by reference into this Written Explanation.

At the outset, the City of Cedar Rapids acknowledges that public safety is the paramount goal of DOT. The City too regards public safety as its paramount goal, and toward that end, implemented its ATE program after lengthy discussions and cooperation with DOT. Unequivocally, Cedar Rapids' ATE program has been proven to be, and remains, the single most effective and safest means for limiting vehicle speed on the portion of Interstate 380 which cuts through the central core of Cedar Rapids. That portion, often referred to as the S Curve, presents unique facts and circumstances and constitutes a high risk area by any definition of that term. It is the local component of The Avenue of the Saints, the primary north-south connection between the Minneapolis/St. Paul metro area and St. Louis.¹ The area around the S-curve presents critical safety and economic interests which the City must protect against serious accidents, and higher speeds lead to more serious accidents. The location of First Avenue and 10th Street East is also a location at which there is high volume of traffic, with significant pedestrian traffic at risk from vehicles that exceed the posted limit. According to the Insurance Institute for Highway Safety, the risk of death to pedestrians increases sharply with increased vehicle speed. See page 1. of "Statement before the Colorado House Transportation Energy Committee [on] Automated Traffic Enforcement Research" included with the City's Supporting Information).

¹ This thoroughfare opened in 2008, resulting in a significantly higher traffic count than existed prior thereto.

Of particular significance to DOT's decisions regarding I-380 is the fact the City determined neither the speed limits on I-380, nor the points at which any given speed zone would begin or end. DOT made those determinations. Also, the City has no control over the uniquely sharp curves in the stretch of I-380 that goes through the heart of downtown Cedar Rapids. Finally in this regard, DOT directed placement of the ATE speed detection equipment at the very locations the City is appealing to maintain.

DOT's Evaluation requires removal of the ATE equipment at two locations on I-380, those which monitor traffic as it exits the S-curve in either direction, to the north or the south. The removal of the ATE equipment at what one might term "outbound" locations, however, will make this stretch of I-380 less safe. This is because the ATE equipment at outbound locations works in concert with the equipment at "inbound" locations, those monitoring traffic as it enters the S Curve. The system of paired locations keeps vehicle speed down throughout the S Curve. If equipment at the outbound locations is removed and only the equipment at inbound locations is left, motorists who are motivated to observe traffic laws by the presence of an enforcement mechanism will lack an incentive to maintain a reduced speed once they have passed the inbound location. That means the speed will tend to increase while entering or while in the S-curve. According to the National Highway Traffic Safety Administration's "Automated Enforcement: A Compendium of Worldwide Evaluations of Results (2007)," there is a real possibility that drivers will adjust their speed at the location of the equipment, then increase their speed to "make up time." It is important to note, however, that the City's pairing of inbound and outbound equipment does not result in two citations being generated for any given vehicle that is captured exceeding the posted limit at both locations. Instead, a citation is generated only for the higher of the two speeds.

In addition, leaving equipment in place at both the inbound and outbound locations on the S Curve would permit the City and DOT to develop system for averaging speed. By measuring the speed of a given vehicle at two points, and the amount time taken between those two points, the system can calculate the average speed of a given vehicle as it travels through the S Curve. Not only might this yield important data, it too could be used in lieu of or in addition to other enforcement measures to influence driver behavior.

There are no disadvantages to the current ATE program, other than displeasure among violators who receive Notices of Violation or those who do not take care to observe posted speed limits. But Cedar Rapids' current ATE system imposes no additional duties beyond those which are already imposed by law, namely, the obligation of drivers to observe traffic laws at all times and the responsibility of owners for the safe operation of their vehicles by anyone with access to them. It is beyond serious dispute that driver behavior is influenced by the perceived risk of being cited for violating traffic laws. See page 1. of "Statement before the Colorado House Transportation Energy Committee [on] Automated Traffic Enforcement Research" included with the City's Supporting Information) by the Insurance Institute for Highway Safety, observing that a "high likelihood of apprehension is what convinces motorists to comply with traffic laws" ATE provides the continuous deterrent which

traditional patrol cannot provide due to limited availability of squad cars and officers. If the City is forced to dismantle two of its four ATE installations on I-380, the benefit of continuous deterrence is lost.

As originally implemented and currently operated, the City's ATE program creates no more hazard or inconvenience to the motoring public than the use of patrol cars and more traditional traffic enforcement. In fact, ATE creates less hazard and inconvenience than a traditional traffic stop. Relative to traditional patrol, ATE also provides a less subjective (that is, more objective) means of enforcing traffic laws and is even less intrusive into the privacy of both driver and owner. Because the City's ATE system is a civil means of enforcement, an ATE Notice of Violation costs any given violator less than a traditional ticket and has no impact on driving or registration privileges which could result from a misdemeanor citation. ATE also allows CRPD to better allocate its police force, while enhancing enforcement and therefore safety in the most dangerous places. While perhaps not popular among those who view traffic laws as mere guidelines, the City's ATE system as currently designed allows for a greater emphasis on public safety than either a purely traditional means of enforcement at the locations in question or the system called for in DOT's Evaluation.

The City's ATE program has been operated as it was originally designed and in accordance with DOT permits, and it has demonstrably diminished both the number and severity of crashes in Cedar Rapids. As such, it enhances the safety of law enforcement, first responders and all of the motoring public who are placed at heightened risk once an accident occurs on the S-curve. Simply put, all data demonstrates a beneficial effect on public safety from the current ATE program.²

As more fully set forth below, the City respectfully requests the DOT grant this appeal and reverse its Evaluation to the extent it directs the City to modify its current ATE program.

II. BACKGROUND AND PROCEDURAL HISTORY

In February, 2009, the City passed its ATE ordinance, now codified at Cedar Rapids Municipal Code §61.138. Among other provisions, the ordinance includes a process for both an administrative hearing and judicial review in state court by means of a municipal infraction pursuant to Iowa Code §364.22. The ordinance also dictates that citations generated through the ATE program are civil violations, the penalties for which are lower fines than those associated with misdemeanor prosecution and no implications for driving or registration privileges with the DOT.

Prior to passage of the ATE Ordinance, between November 2008 and March 2009, the City and DOT worked closely together to examine issues of traffic safety in Cedar Rapids. This was part of a

² In addition to ATE for traffic enforcement, video footage obtained by ATE equipment at intersections has been used multiple times as evidence in court for citations issued due to traffic crashes. Also, Cedar Rapids' ATE equipment can be programmed for license plate recognition in response to Amber Alerts or other crimes. Having multiple locations on I-380 also aids in determining whether a sought-after vehicle has exited the interstate, thus permitting law enforcement to tailor its search.

broader effort on the part of DOT. The work resulted in multiple studies and reports, as well as recommendations which included the following: replace warning signs, replace delineators, install guidance markers on bridge rails, replace burned-out lights, upgrade all pavement markings, install median barrier, install additional curve warning signing on either side of S-curve, review safe operation speeds through the S-curve, consider appropriateness of posted speed and the possibility of lowering it to 45, install ice detection system on 5 in 1 bridge, and implement ATE. The work was compiled into a document titled "Road Safety Audit for I-380 Through Cedar Rapids and Hiawatha and Linn County, Iowa- Final Report-March 2009."

Based on its extensive consultations with DOT, the City applied for and received permits from DOT, beginning in March and continuing through December 2010. The permits allowed for installation and operation of all ATE equipment at locations identified in the Evaluation. During that same period in 2010, the equipment at each location was activated. Before any citations were generated, however, the City implemented a public warning period of thirty (30) days coupled with extensive public announcements and news releases, internet postings, education and other outreach about the forthcoming ATE program.

In June, 2012, DOT issued and distributed "Guidelines," formally titled Primary Highway System Automated Traffic Enforcement Guidelines, purporting to regulate ATE programs but specifying that they did not apply to existing ATE programs, as was the case for Cedar Rapids. Those Guidelines were revised in January 2013. Both Guidelines specified they were not applicable to existing ATE systems, which included Cedar Rapids' system. The Guidelines are in the Supporting Information submitted with this Explanation.

By letter dated April 3, 2013, DOT's District Engineer Jim Schoebelen notified Cedar Rapids Police Chief Wayne Jerman that DOT announced it would begin the formal rulemaking process for ATE systems on primary highways "[b]ecause the Iowa legislature has not moved forward with any automated traffic enforcement laws this session." That letter purported to require cities with ATE programs to submit a report on or before May 1, 2013 with information specified in the letter. It is included in the City's Supporting Information with this Appeal.

Although cities, including Cedar Rapids, objected to the Guidelines as binding on their ATE programs, the City sent DOT a letter dated May 1, 2013 (included in the Supporting Information), providing information as a matter of comity while reserving all rights under law to challenge any purported regulation pursuant to the Guidelines.

Later in 2013, DOT issued a Notice of Intended Action with proposed rules.³ Those rules did not include the provision often referred to as the 1,000 foot rule which is a purported basis for two Resulting Actions in the Evaluation. Following are key occurrences during DOT's Rulemaking process:

³ The Notice of Intended Action itself was undated, but it included notice of a public hearing October 30, 2013.

DOT held a public hearing October 30, 2013 at which officials from the City of Cedar Rapids and other cities with ATE testified about the rules as proposed, stating their objections thereto.

On or about December 10, 2013, a DOT Commission Order was issued changing the proposed rules by adding, among other matters, the so called 1000 foot rule. A copy of that DOT Commission Order is included with the City's Supporting Information for this Appeal. Also on December 10, 2013, the DOT Commission held a public meeting, but various representatives of municipalities interested in the rules were not allowed to be heard. At no time after the December 10, 2013 Commission Order was there any additional notice or comment about the change to the proposed rules.

On one or more occasions during the rulemaking process, DOT circulated an undated document entitled "Iowa Department of Transportation ATE Rulemaking Authority" to those attending the public hearings and legislators serving on the Administrative Rules Review Committee of the Iowa Legislature. A copy of that document is included with the Supporting Information submitted with this Written Explanation.

On or about May 1, 2014, the City submitted an Automated Traffic Enforcement Report (the "Report") to DOT as provided in Iowa Administrative Code 761—144.7(1). It is the City's understanding DOT's Evaluation is intended as an assessment of the City's Annual Report, followed by the Resulting Actions which direct the City to implement certain changes to its ATE program. The Annual Report included references to various other reports and studies by numerous agencies, along with citations to favorable findings specifically about Cedar Rapids and its ATE system in: the "Statewide Safety Improvement Candidate Location" (SICL) list published by DOT; the InTrans study "Evaluating the Effectiveness of Red Light Running Camera Enforcement in Cedar Rapids and Developing Guidelines for Selection and use of Red Light Running Countermeasures;" and the "America's Best Driver's Report." The City's Annual Report also set forth the engineering countermeasures implemented and, most importantly, pre- and post-ATE implementation data concerning the number, type and severity of crashes, as well as citation totals at all ATE locations. *To avoid unnecessary repetition, the information from the Annual Report will not be restated here. As part of this appeal, however, the City respectfully refers the Director back to the City's Annual Report included in the Supporting Information being submitted along with this Written Explanation.*

On or about September 8, 2014, the City responded to an August 22, 2014 e-mail from DOT's Steve Gent requesting additional information about the City's ATE program.

On or about September 9, 2014, the City responded to a September 8, 2014 e-mail from DOT's Tim Crouch requesting additional information about the City's ATE program.

On or about September 12, 2014, City representatives conferred by phone with DOT representatives including Steve Gent and Director Paul Trombino. During the call, the parties explored their respective positions concerning the application of DOT's ATE Rules to the City's ATE program. In

follow up, Police Sergeant Michael Wallerstedt sent Steve Gent an e-mail dated September 15, 2014, setting out possible means by which the DOT could satisfy itself that the City's ATE program was properly placed and operated on the primary highway system pursuant to DOT permit. The City did not receive a response to that letter.⁴

On or about March 17, 2015, the IDOT notified the City of its Evaluation with Resulting Actions and specified a 30 day deadline to appeal or, alternatively, an April 17, 2015 deadline to implement the Resulting Actions.

III. SPECIFIC BASES FOR APPEAL OF RESULTING ACTIONS

A. DOT's ATE Rules Do Not Form a Proper Basis for the Resulting Actions in the Evaluation

1. DOT's Resulting Actions are Based on Improper Application of ATE rules

In arriving at the Resulting Actions, the Evaluation purports to apply DOT'S ATE rules retroactively to Cedar Rapids' ATE program. The Rules cannot be applied retroactively, however, because, first and foremost, they do not provide for retroactive effect. In fact, DOT's course of dealings with the City, as evidenced by both written and oral communications between the parties and an express statement in the predecessor Guidelines, establishes that the Rules were never intended to apply to ATE programs implemented prior to the adoption of the Rules. Application of the rules retroactively is plainly inconsistent with DOT's prior practice and precedent.

In addition, the Resulting Actions are an improper application of DOT's ATE Rules because they are inconsistent with DOT's application of its own requirements for placement of signs as set forth in the Chapter 2 of its Traffic and Safety Manual. At page 15 and in Table 2 of that Manual is the requirement that a Speed Reduction sign (one warning of a drop in the posted speed limit) is to be placed 800 feet in advance of the lower limit whenever the reduction is from a speed of 55 miles per hour or higher. DOT has never placed such a Speed Reduction sign for the drop from 60 to 55 for traffic headed into the S Curve from either the North or the South. It is inconsistent to require the City to observe the so called 1000 foot rule on the theory motorists are entitled to additional notice before ATE enforcement begins, yet not implement existing rules designed to provide warning of a reduction in speed.

2. DOT's ATE Rules are Ultra Vires and in Violation of the Separation of Powers Doctrine

DOT's authority is limited by the enabling legislation which creates DOT and grants powers to promulgate rules and take other actions regarding the following matters: obstructions of primary roadways; establishment, construction, improvement, operation, alteration, maintenance and abandonment of those primary roadways; and certain prohibited acts related to operation of a motor vehicle. During rulemaking for DOT's ATE rules, DOT distributed an undated document entitled "Iowa

⁴ Despite appealing the March 17, 2015 Evaluation, the City would welcome a response to its September 15, 2014 e-mail. Similarly, by appealing the Evaluation, the City does not waive any rights and privileges to pursue relief from DOT actions pursuant to other statutes, regulations and legal authority.

Department of Transportation ATE Rulemaking Authority” to those attending the public hearings and legislators serving on the Administrative Rules Review Committee of the Iowa Legislature. A copy of that document is included in the City’s Supporting Information. None of the provisions, however, enable DOT to promulgate the Rules which form the basis for the Resulting Actions.

Neither of the Rules cited in the Evaluation can be said to serve a legitimate regulatory purpose of DOT. For purposes of ATE programs, DOT’s authority over local enforcement of speed limits on the primary roads is limited to dictating that localities cannot adversely affect the condition of the roads themselves or otherwise impede the flow of traffic. Stated otherwise, localities are in fact permitted by the concurrent jurisdiction provision in Iowa Code §306.4 and home rule provisions in the Iowa Constitution and Code §364.1 to use whatever means of enforcement they choose, so long as those means do not create any obstruction of the roadways; constitute a traffic law violation in and of themselves; or otherwise run afoul of DOT rules concerning the establishment, construction, improvement, operation, alteration, maintenance and even abandonment of those primary roadways.

The enabling statutes do not vest in DOT either the duty or the power to dictate the means or methodology of enforcing traffic laws within a local jurisdiction. DOT does not, and has never attempted to, dictate whether localities use laser, radar or pacing to measure speed. Nor has DOT ever dictated whether the locality chooses to park a squad car in a permissible spot while patrolling traffic (as opposed to the squad car patrolling on the move). The particular methodology of enforcement has been left up to the local jurisdiction, and ATE equipment is simply another such methodology. Significantly, there is no showing of a high risk or high crash location required for a city to enforce traffic laws with more conventional means. There is no distinction between ATE equipment on the one hand, and more traditional enforcement mechanisms on the other hand, which would justify the particular additional showings required under DOT’s ATE rules. Neither does it make sense to require a showing that the installation of ATE equipment on the highway would not create any obstruction of the roadway, otherwise impede or impair highway traffic or constitute a traffic violation in and of itself. There is no such showing required of traditional patrol which is arguably more likely to create a hazard. Nonetheless, in the process of applying for and receiving DOT permits for all of its ATE locations on primary highways, it became clear that Cedar Rapids’ ATE equipment would not create a hazard or otherwise impede or impair highway traffic or constitute a traffic violation in and of itself. That fact remains the same.

It is beyond DOT’s authority to create an area (1000 feet or otherwise) in which the City may not enforce applicable traffic laws by means of ATE equipment. It is a fundamentally undisputed provision of law that the speed limit changes at the very spot where signs are posted. See Iowa Code §321.289. It is also undisputed the City may use traditional patrol within this 1000 foot area to enforce the laws by means of a misdemeanor (criminal) citation. DOT has no legitimate interest or lawful basis to prohibit civil enforcement by an ATE program in those 1000 feet. While DOT has no interest or authority to limit the City’s use of ATE programs, the City does have a compelling interest (that is, not merely a legitimate one) in ensuring that the enforcement is done in the most safe and efficient manner possible.

DOT's ATE Rules, particularly 761-144.4(1)(c), were and are premised on a notion that cities should not use ATE except in the most limited circumstances. While no valid rationale has ever been provided for so limiting the use of ATE programs, DOT has been vocal in public about its view that localities must prove to DOT's satisfaction that they are not using ATE programs to generate revenue. First and foremost, this view takes DOT authority far beyond the scope of matters entrusted to DOT by the Legislature. Additionally, the assertion makes little or no sense given that a driver who exceeds the speed limit faces significantly higher penalties if issued a citation by means of traditional patrol. Surely, the DOT is can't be suggesting speed limits should not be enforced, but the effect of DOT's ATE Rules as applied to Cedar Rapids is to reduce enforcement of speed limits. The ATE Rules are not only beyond the scope of DOT's enabling statutes, but also contrary to DOT's charge from the Legislature. DOT's primary reason for being is to enhance public safety on Iowa's roads.

DOT's own statements suggest how the Rules attempt to usurp a legislative function. In a May 1, 2013 letter to various municipalities, Steve Gent wrote that DOT has announced it would be starting the rulemaking process "because the Legislature did not act" to pass a law. To the extent the Legislature wishes to achieve such a result, it is for the Legislature to do. Otherwise, DOT's actions are in violation of Iowa's fundamental principle of separation of powers between the judiciary, executive and legislative branches.

3. DOT's ATE Rules are Improperly Promulgated

DOT failed to follow proper procedural requirements for review and public comment (Iowa Code §17A.4(1) and Administrative Rule 761- 10.2(5)). The so called 1000 foot rule was added after the comment period with no additional opportunity for public comment before the Commission approved and DOT adopted the Rules which took effect February 12, 2014. At the DOT Commission's December 10, 2013 hearing, individuals who asked to provide statements and/or testimony were not permitted to do so and no further comments were taken. Both DOT's rules and Iowa Code Chapter 17A expressly require notice and comment, and DOT rules go so far as to specify that only nonsubstantive amendments are exempted from requirements for notice and a comment period. Thus, the 1000 foot rule is not in substantial compliance with Section 17A.4 and is invalid according to Section 17A.4(5).

B. A Rational Analysis of Objective Facts Does Not Support the Resulting Actions in the Evaluation

Assuming without conceding the DOT's Rules on Automated Traffic Enforcement are valid, the application of those Rules to the City's ATE program does not support the conclusions, or Resulting Actions, which direct the City to modify its program.

1. There is No Factual Basis for the Resulting Actions

The section of the Evaluation titled "Introduction" consists of general information about ATE systems. Its usefulness is limited to generalizations about ATE around the country and the state, and it is of almost no value in evaluating the impact Cedar Rapids' ATE program has on traffic safety at the locations in question. Other than the information provided in the City's May 1, 2014 Report ("the Annual Report"), the Evaluation contains no data, engineering studies or other objective analysis specific

to Cedar Rapids. There is no basis for the position that Cedar Rapids' current ATE program is less effective than the one the DOT would have it implement by means of the Resulting Actions. Nor is there any basis for saying the current system is a detriment to public safety. As such, there is no support for the Resulting Actions.

In fact, the only evidence about the impact of Cedar Rapids' current ATE program is that which is set out in the Annual Report, and it clearly and fully supports continuation of the City's current ATE program, as originally designed and as operated pursuant to DOT permit. By DOT's own definition of those terms in Rule 761-144.3, the entire S Curve is a high crash and high risk area. While there are no valid comparisons to I-380 available for purposes of crash data,⁵ it is indisputable the area is a high risk location and that when crashes do occur, they are of higher severity relative to areas with lower speed limits. As discussed more fully in other parts of this appeal, the pairing of cameras along the S-curve is the most effective way currently available to encourage drivers to maintain a safe speed throughout the S-curve.⁶

2. The Evaluation is Arbitrary and Lacking in Rational Analysis

The Resulting Actions are impermissibly irrational and arbitrary because there is no supporting data or empirical basis for them in the Evaluation or elsewhere. Other than the introductory information about ATE generally, the only empirical information in the Evaluation pertinent to Cedar Rapids was provided by the City in its May 2014 Annual Report. That data reflects unequivocally that the City's ATE program, as originally designed with DOT and operated under DOT permit, has had a beneficial effect on traffic safety in terms of the number and severity of crashes. As discussed elsewhere in this Explanation, there is no empirical evidence for a contrary conclusion about safety implications of the program. Nor is there any empirical evidence to suggest that if the City implements the Resulting Actions, safety will be enhanced. In fact, given the undisputed data, logic dictates just the opposite—if the Resulting Actions are implemented, safety will suffer.

ATE equipment for northbound traffic on I-380 at Diagonal Dr. SW monitors traffic speed in all four lanes, which includes the exit ramp lane. The equipment is mounted on a truss 859.9 feet beyond the point at which the 55 mph speed limit begins (i.e., at the 55 mph speed limit sign). A vehicle will travel an additional 48.75 feet (15 meters per installation and calibration recommendations) past the truss before its speed is detected and recorded by radar and its image photographed. Therefore, the point at which enforcement action commences is more than 900 feet past the speed limit sign. It should be borne in mind that ATE equipment is programmed to record only those vehicles traveling 67 miles per hour or more in a 55 mph zone. The Resulting Actions disregard the fact that vehicles recorded by ATE equipment come to that point from a 60 mph zone which is three miles long. These vehicles, therefore, had been exceeding the posted 60 mph limit by the time they reach the 55 mph zone. If a vehicle is exceeding the posted limit for three miles, and is traveling 67 mph at the time it reaches a

⁶ According to some in the field, it would be still more effective to utilize speed averaging throughout the entire curve, which requires the paired cameras. Another option would be to install additional ATE equipment at locations toward the middle of the curve.

point 900 feet into the 55 mph speed zone, it doesn't seem that requiring ATE equipment to be 100 feet further to the north would resolve the problem. The stretch of roadway in question is one of the few places on I-380 where speed limit signs are mounted on both the right and left side of the roadway, with red warning flags attached to the top and "Photo Enforced" signs mounted on the same posts. Aside from being contrary to Iowa Code §321.289, it is irrational to conclude that those who disregard the earlier notices should be entitled to an additional 1000 feet to safely slow to the speed limit.

The same is true for ATE equipment for I-380 southbound at J Ave NE, which the Resulting Actions direct the City remove or disable. That equipment is mounted to trusses which are 896.1 feet beyond the posted 55 mph speed limit (i.e., where the 55 mph speed zone begins). Taking into account the additional distance a southbound vehicle must travel before activating an ATE camera and radar, the cited vehicle necessarily has been traveling 67 mph or faster for nearly 950 feet into the 55 mph zone. As with northbound traffic, the speed zone for southbound traffic changes north of Cedar Rapids city limits, from 70 mph to 60 mph. Any motorist causing the ATE equipment to activate has traveled through a 60 mph speed zone for four miles. Again, it is irrational to conclude that those who disregard the earlier notices should be entitled to an additional 1000 feet to safely slow to the speed limit. It is also contrary to law.

3. The Evaluation Relies on Incomplete Information or Disregards Information Provided

The Evaluation and Resulting Actions are a result of a decision-making process that did not consider relevant and important matters relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action. First, the decision-making process failed to take into account that siting and permitting process was completed pursuant to DOT direction.

Second, the decision-making process failed to take into account objective evidence with which it was presented. In its Annual Report (and in its May 1, 2013 letter to Steve Gent), the City provided citation numbers as well as crash data showing reductions in both incidence and severity. The Evaluation, however, disregards the data concerning severity. It addresses only citation numbers and total numbers of crashes. And, when referring to citation information, the Evaluation does not take into account the fact that there are more violations than there are citations. The citations understate the number of actual violations because as currently operated, the system only generates one citation for a vehicle which is captured speeding past two ATE locations (e.g., the two northbound or the two southbound). Although DOT has a public safety campaign called "Zero Fatalities," the fact there have been zero fatalities since the inception of ATE in Cedar Rapids is not even mentioned in the Evaluation.

Third, the decision-making process which yielded the Evaluation and Resulting Actions fails to take into account the unique need for paired cameras on the S Curve, as more fully discussed elsewhere in this Written Explanation. Instead, the Evaluation applies two rules, the validity of which the City does not concede, without reference to the unique facts and circumstances of the S Curve and Cedar Rapids ATE program, the indisputable empirical information and the underlying mission of DOT. Even if the ATE rules in question were valid, the application in such a manner is not required by law, and its negative

impact is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy. Indeed, the Resulting Actions actually have a negative impact on public interest.

IV. AUTHORITY FOR RELIEF UNDER IOWA LAW

As established in the preceding sections, the Resulting Actions are improper and they adversely affect substantial rights of the City. As the Evaluation constitutes agency action subject to Iowa Code Chapter 17A.10, the following sections entitle the City to relief from the agency action because it is:

1. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.
2. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
3. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process.
4. The product of decision making undertaken by persons who were improperly constituted as a decision-making body, were motivated by an improper purpose, or were subject to disqualification.
5. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole.
6. Action other than a rule that is inconsistent with a rule of the agency.
7. Action other than a rule that is inconsistent with the agency's prior practice or precedents.
8. The product of reasoning that is so illogical as to render it wholly irrational.
9. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.
10. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.
11. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

12. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

V. CONCLUSION

For the reasons set forth above, the City of Cedar Rapids, appeals the March 17, 2015 “Evaluation of the Cedar Rapids Automated Traffic Enforcement Report- Primary Highway System” and respectfully requests that the Resulting Actions which direct the City to modify its ATE program be reversed, rescinded or otherwise overturned.

The City of Cedar Rapids further requests an opportunity to present its appeal in person to the Director at such time and place as the Director shall specify, provided, however, the City receives adequate notice thereof.

Dated this 16th day of April, 2015

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