ORIGINAL

IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. SC12-644

RICHARD MASONE,

Petitioner,

-vs-

CITY OF AVENTURA,

Respondent.
_____/

BRIEF OF PETITIONER ON JURISDICTION

On appeal from the Third District Court of Appeal of the State of Florida

THE TICKET CRICKET
1001N. Federal Highway, Ste. 106
Hallandale, FL 33009
and
BURLINGTON & ROCKENBACH, P.A.
Courthouse Commons/Suite 430
444 West Railroad Avenue
West Palm Beach, FL 33401
(561) 721-0400
(561) 721-0465 (fax)
Attorneys for Petitioner
aah@FLAppellateLaw.com

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PREFACE

This is Petitioner Richard Masone's request for discretionary review of a decision of the Third District Court of Appeal November 30, 2011, reversing an Order denying the City of Aventura's Motion for Summary Judgment, which resulted in a Final Judgment invalidating the City of Aventura's unmanned traffic camera ordinance.

Petitioner, Richard Masone, will be referred to as "Petitioner" or "Masone." Respondent, City of Aventura, will be referred to as "Respondent," or "the City."

STATEMENT OF THE CASE AND FACTS

This case is straightforward as to its facts. The City, like many jurisdictions across the state, enacted an Ordinance to authorize the use of image capture technologies for "monitoring and enforcing laws relating to traffic control signals" (A2). Images taken of vehicles who failed to stop at red lights is reviewed by a City-appointed traffic control review officer (A3, 10-11). A vehicle owner is issued a Notice of Violation (A2).

If an owner contested the Violation, the Ordinance held that the person could request an "administrative hearing for purposes of appeal" before a "Special Master" (A14-15). An aggrieved party could then appeal the Special Master's Final Order to the circuit court (A15).

Masone was issued violation notices in January 2009, for allegedly failing to stop at an intersection monitored by the City's automated cameras (A2). Masone filed a Complaint for Declaratory Relief contending the cameras were an invalid exercise of municipal authority (A2).

The circuit court granted Masone's Motion for Summary Judgment (A3). It reasoned that the Ordinance was an invalid exercise of municipal authority in the absence of express authority from the Legislature to legislate this subject (A3). The Ordinance conflicted with state law, and the City lacked the authority to utilize cameras as the "sole basis" for citations (A3, 5).

In a 2-1 decision, the Third District reversed. The court held that the Ordinance was neither preempted by nor did it conflict with state law (A4-16). The dissenting judge concluded that the Ordinance was both preempted by and in conflict with Florida law (A18-29).

SUMMARY OF ARGUMENT

The Third District upheld the City's Ordinance erecting automated red-light cameras, to cite, adjudicate and punish vehicle owners, all the while outside of the circuit court's jurisdiction, in the City's own administrative proceeding. The decision expressly and directly conflicts with decisions from this Court and another district court of appeal. The Third District misapplied the principles of preemption and conflict, and state law prohibited the City's Ordinance.

As technologies continue to expand, the use of those technologies presents novel legal issues. Multiple state supreme courts in other jurisdictions have recently examined municipal authority regarding these automated, unmanned cameras, and this Court should also do so. The Fifth District held Oral Argument on this exact issue in City of Orlando v. Udowychenko, Case No. 5D11-720 (held April 17, 2012), a reflection that this issue is of statewide importance.

ARGUMENT

THE THIRD DISTRICT COURT OF APPEAL'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM THIS COURT AND ANOTHER DISTRICT COURT OF APPEAL.

This case addresses the intersection of municipal and legislative powers in an area of the law that is rapidly changing with modern technology. Multiple state supreme courts have examined the constitutionality and legality of automated cameras as a means of traffic regulation, adjudication and punishment. See, e.g., City of Davenport v. Seymour, 755 N.W.2d 533 (Iowa. 2008) and Mendenhall v. City of Akron, 881 N.E.2d 255 (Ohio 2008) (upholding ordinances); and State v. Kuhlman, 729 N.W.2d 577 (Minn. 2007) (invalidating ordinance).

This Court should join the Minnesota Supreme Court in invalidating the City's Ordinance. The Legislature may have allowed municipalities to, in isolation, **utilize** automated cameras. There was no authority to utilize these cameras in so many ways that depart from Florida's Uniform Traffic Control Act. The Third District's Opinion conflicts with decisions from this Court and another District Court of Appeal on the principles of both preemption and conflict.

The Legislature enacted Chapter 316 to address two abuses arising from the municipal court system of handling traffic infractions -- the "history of inconsistency of penalties imposed" by the municipal courts and the inconsistency of traffic laws in municipalities around the state. Miller v. City of Indian Harbour Beach, 453 So.2d 107, 112 (Fla. 5th DCA 1984); see also Preamble to Chapter 71-135, where the Legislature identified the problems with the municipal court system that Chapter 316 was designed to address (A18).

Consistent with these concerns, the Legislature adopted two sections which expressly limit the power of a municipality to legislate traffic matters, §316.002, Fla. Stat. (2008), and §316.007, Fla. Stat., so as "to create a **uniform, statewide traffic control system.**" State v. Smith, 584 So.2d 145, 147 (Fla. 2d DCA 1991) (emphasis added). Further consistent with this intent, Chapter 316 was to be known as the "Florida Uniform Traffic Control Law." §316.001, Fla. Stat.

Section 316.002 identifies the purpose of Chapter 316 "to make uniform traffic laws to apply throughout the state . . . and uniform traffic ordinances to apply in all municipalities." See Maddox v. State, 923 So.2d 442, 446 (Fla. 2006). Section 316.002 makes it "unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter." Consistent with that provision, §316.007, like a constitutional provision over traffic matters, declares the principle of uniformity and the supremacy of Chapter 316:

> The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized.

The Legislature has given its authority in limited, enumerated areas, pursuant to §316.008, Fla. Stat.:

> (1) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:

> (w) Regulating, restricting, or monitoring traffic by security devices or personnel on public streets and highways. . . .

The Third District has misapplied this Court's prior rulings, and has only selected certain language from this Court's prior rulings to lead to its conclusion. The court has taken the phrases "regulate[e]" and "restrict," and inserted the phrase "enforce" into their meaning. Moreover, even as to "enforce," the Third District has now given municipalities the license to create their own form of adjudication and punishment with automated cameras, removed from the circuit court. This cannot be supported by this Court's prior opinions.

As to preemption, the Third District stated (A12):

> In order "[t]o find a subject matter expressly preempted to the state, the express preemption language must be a specific statement; express preemption cannot be implied or inferred." Hillsborough Cnty. v. Fla. Restaurant Ass'n, 603 So.2d 587, 590 (Fla. 2d DCA 1992) (citing Bd. of Trs. v. Dulje, 453 So.2d 177 (Fla. 2d DCA 1984)).

This is an incomplete statement of the framework established by this Court. For example, in City of Hollywood v. Mulligan, 934 So.2d 1238, 1243 (Fla. 2006), while this Court **first** noted that express preemption cannot be implied, this Court then **also** emphasized that "[t]he preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject." Id.

(quoting Barragan v. City of Miami, 545 So.2d 252, 254 (Fla.1989) (citing Tribune Co. v. Cannella, 458 So.2d 1075 (Fla.1984)).[1]

The Third District's incomplete statement is an inaccurate statement that misapplied the law. The Third District's analysis of express preemption is one sentence long; the Court simply stated that "[n]either the language in section 316.002 nor section 316.007 demonstrates express preemption by the state" (A12).

The Third District did not address all statutory provisions, and did not examine whether "it is clear that the legislature has clearly preempted local regulation of the subject." The statutory framework makes clear that the Legislature has preempted on many aspects of **how** drivers are ticketed, and **how** they are adjudicated. Section 316.007 requires there to be "express authorization" for any intervention into any area.

Nothing in Chapter 316 -- anywhere -- has given the City the express authority to deviate from Chapter 316 in such a broad manner. As the dissent pointed out, there were four different points of preemption: Chapter 316 addresses the "specific punishment or penalties" for traffic light infractions, as a statutory offense; §316.155, Fla. Stat. (and §318.18, Fla. Stat.), address the punishment of

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[1] In Mulligan, this Court held that the ordinance was not preempted by state law. 934 So.2d at 145. This Court held that state law addressing the forfeiture of contraband for **felonies** did not preclude local legislature as to **misdemeanors**. Id. at 145. In the instant case, the City's Ordinance targets the identical conduct as under state law, and adjudicates and punishes in far different ways.

"all traffic infractions"; §318.14(a), Fla. Stat. (2008), identifies the "burden of proof" that "must be applied" for determining guilt for a red light infraction; and Chapter 318 establishes the "procedure" that must be followed, including the qualifications of the person hearing the matter (A26-27).

The Third District has also misapplied the law of implied preemption. The Third District reasoned that, "[d]etermining implied preemption requires that the 'legislative scheme must be **so pervasive** that it **completely occupies the field**, thereby requiring a finding that an ordinance which attempts to intrude upon **that field** is null and void.'" (A12) (all emphases added) quoting Hillsborough County v. Florida Restaurant Ass'n., 603 So.2d 587, 591 (Fla. 2d DCA 1992) (citing Cannella, 458 So.2d at 1077).

The Second District did not provide a citation for its implied preemption definition 20 years ago. The Petitioner has not located a case from this or another District Court with such a (strict) definition. It would make it nearly impossible for a challenging party to ever show implied preemption.

In fact, this Court has reasoned that implied preemption is established where "the state legislative scheme of regulation is pervasive and the local legislation would **present the danger of** conflict with that pervasive regulatory scheme." Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So.3d 880, 886 (Fla. 2010) (emphasis added).

This is a distinction with a dramatic difference. On one hand, a challenging party has to show pervasiveness and the potential for danger; on the other hand the Second and now Third District requires challenging parties to show this extreme pervasiveness and a complete occupation of a field. As laid out in the dissent, there is a danger of conflict in the City's Ordinance in a plethora of mechanisms.

The City's Ordinance also conflicts with state law. The Majority reasoned that the Ordinance was "consistent, and does not conflict, with any provision" found in Chapter 316, and that the Ordinance "supplements law enforcement personnel in the enforcement of red light infractions. . . ." (A8, 10).

This reasoning conflicts with a recent decision from the Fourth District. See Hoesch v. Broward County, 53 So.3d 1177 (Fla. 4th DCA 2011). In Hoesch, the Fourth District concluded that an ordinance authorizing the destruction of a dog that has killed a single animal "has vitiated the framework for dealing with dog attacks on other domestic animals that is set forth in Chapter 767." Id. at 1181. The County had "regulate[d] an area that is **covered by** state law." Id. (emphasis added). Conflict existed because state law did not merely allow for the destruction of a dog for killing one animal, but had other necessary thresholds.

The "framework" for the punishment and adjudication of drivers running through red lights is also set forth in Chapters 316 and 318. The City has regulated -- in the sense of who can be charged, the basis for charging, and matters of

adjudication and punishment -- in areas covered under state law. Just as the Legislature has established the criteria for when dogs are euthanized, the Legislature has established mandatory criteria for these areas. Under the reasoning of the Third District in the instant case, if the City had enacted an Ordinance defining how dogs are declared dangerous and can be euthanized, but deemed this a code violation, and adjudicated outside of circuit court, there would be no conflict.

The dissent pointed out how the City has vitiated the framework of the Uniform Traffic Control Act, to wit: (1) the City's Ordinance punishes vehicle owners (unless the owner comes forward under the specified conditions), while §316.075, Fla. Stat., only punishes drivers; (2) the Ordinance allows a traffic enforcement officer to review recorded images, while §316.640(5)(a), Fla. Stat., requires personal observation of the traffic infraction; (3) the City punishes according to its own, increased fine schedule, while §316.655, Fla. Stat., provides for a lower, uniform fine; (4) the Ordinance has no burden of proof, while §318.14(6), Fla. Stat., requires infractions to be proven beyond a reasonable doubt; (5) the City utilizes an appointed Special Master, while state law gives an accuser the right to a judicial determination; and (6) the qualifications are far more relaxed under the City's Ordinance for who presides over administrative hearings and determines guilt (A27-28).

The City's all-encompassing legislative scheme shows that the Ordinance and state law cannot co-exist. The City's decision to implement its adjudication and punishment scheme outside of circuit court establishes a dangerous precedent for all citizens of this state, far outside this one area of driving.[2] The Third District has now given its approval to municipalities to expand their power into all areas of civil law via automated cameras, and for municipalities to decide whom to punish and how to do so. This could not have been the intent of Chapter 316 and the voters of this state, as the dissent also made clear when discussing the adoption of Article V in 1973 to ensure uniform courts, and a uniform traffic control law (A18-19). This Court should accept jurisdiction of this case.

As noted above, the Fifth District held oral argument on this issue two months ago. If the Fifth District rules in the challenging citizen's favor, that too would warrant this Court's review of this issue and these cases.

CONCLUSION

For the reasons stated above, Petitioner requests that this Court accept Jurisdiction.

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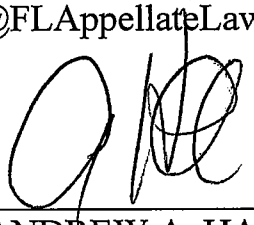
[2] The Majority stated that Masone could have requested an administrative hearing "for purposes of an appeal" (A14). People charged under state law do not "appeal" a charge; they only appeal an adjudication of guilt. The Majority also noted that Masone could appeal the Special Master's order to trial court (A15). Limited appellate review (of that appellate administrative proceeding, no less) circumvents the hearing citizens are entitled to in the first instance.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished EDWARD G. GUEDES, ESQ., 2525 Ponce de Leon Blvd., Ste. 700, Coral Gables, FL 33134, and SAMUEL J. SALARIO, JR., ESQ., JOSEPH HAGEDORN LANG, JR., ESQ., AMANDA ARNOLD SANSOME, ESQ., 4221 W. Boy Scout Blvd., Ste. 1000, Tampa, FL 33607, by mail, on May 23, 2012.

Bret Lusskin, Esq.
THE TICKET CRICKET
1001N. Federal Highway, Ste. 106
Hallandale, FL 33009
and
BURLINGTON & ROCKENBACH, P.A.
Courthouse Commons/Suite 430
444 West Railroad Avenue
West Palm Beach, FL 33401
(561) 721-0400
(561) 721-0465 (fax)
Attorneys for Petitioner
aah@FLAppellateLaw.com

By: 

ANDREW A. HARRIS
Florida Bar No. 10061

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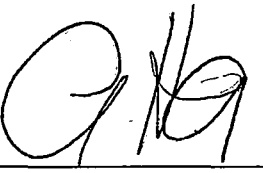

ANDREW A. HARRIS
Florida Bar No. 10061

Third District Court of Appeal

State of Florida, July Term, A.D. 2011

Opinion filed November 30, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-1094
Lower Tribunal No. 09-12736

City of Aventura, Florida,
Appellant,

vs.

Richard Masone,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jerald Bagley, Judge.

Weiss Serota Helfman Pastoriza Cole & Boniske and Edward G. Guedes and Michael S. Popok, for appellant.

Bret Lusskin (Hallandale); Burlington & Rockenbach and Bard D. Rockenbach and Andrew A. Harris, for appellee.

Carlton Fields and Samuel J. Salario, Jr., and Joseph Hagedorn Lang, Jr., and Amanda Arnold Sansone, as Amicus Curiae.

Before CORTIÑAS and ROTHENBERG,[1] JJ., and SCHWARTZ, Senior Judge.

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[1] Judge Rothenberg did not hear oral argument, but participated in the decision.

CORTIÑAS, J.

The City of Aventura (the "City") seeks review of the trial court's ruling that section 48-26 of the City's Code of Ordinances, allowing the use of image capture technologies for monitoring and enforcing laws relating to traffic control signals, is invalid and unenforceable. We reverse.

The City is a municipal corporation organized and existing under the laws of the State of Florida, and located in Miami-Dade County, Florida. On October 18, 2007, the City enacted Ordinance 2007-5, inclusive of section 48-26, which in pertinent part, authorized the City to use a monitoring system consisting of cameras at traffic lights to capture and record images of drivers who fail to stop at red lights ("red light infraction"), and issue notices of violation for such red light infractions after the images are reviewed for accuracy by a traffic control review officer appointed by the City. See Aventura, Fla., City Code, ch. 48, art. 3 & ch. 2, art. 5, § 2-348(b) (2007).

After allegedly failing to stop at an intersection monitored by automated cameras, Richard Masone ("Masone") was issued two (2) violation notices on January 9, 2009, and January 12, 2009, respectively. Masone filed a complaint for declaratory relief, contending that the two violation notices were invalid exercises of municipal authority, and seeking that 1) the Ordinance be declared invalid, 2) the Ordinance be declared invalid to the extent it applies to red light violations, and

3) that any municipal traffic citations issued under the Ordinance be declared to be of no legal effect.[2] Specifically, Masone argued that, in enacting the Ordinance, the City has legislated on a subject reserved exclusively for the Florida Legislature and, as such, the Ordinance is invalid because it is preempted by, and directly conflicts with, Florida law. In defending the Ordinance, the City asserted that, by adopting Chapter 316, Florida Statutes, the Legislature expressly authorized municipalities to supplement existing statewide traffic control laws by granting local municipal governments the right to regulate traffic on roadways throughout their respective boundaries through security devices such as the red light camera system adopted in the Ordinance. Further, the City argued that any penalties imposed were deemed non-criminal, non-moving violations for which a civil penalty was assessed, as authorized by the Florida Legislature for code infractions.

Ultimately, the trial court granted Masone's motion for summary judgment, reasoning that section 48-26 was an invalid exercise of municipal power without express authority from the Florida Legislature allowing the City to legislate the subject. Specifically, the trial court stated that "the problem exists with the provision of Section 48-26 which allows such cameras to be used as the sole basis for issuing citations against drivers who disobey an official traffic device. . . .

[2] Masone argues that he filed a declaratory action because he had no adequate remedy at law and the sole defensive option provided under the Ordinance is a hearing before a special master, who does not have authority to make pronouncements regarding the validity of municipal ordinances under state law.

Section 316.640(5)(a), Florida Statutes, requires that citations be issued when an officer 'observes the commission of a traffic infraction.'" Based upon these reasons, the trial court concluded that section 48-26 is in direct conflict with section 316.007, Florida Statutes. We disagree.

It is well established that Florida law grants municipalities broad home rule and police powers. The Florida Constitution provides for such municipal powers, by stating that

> Municipalities shall have governmental, corporate and propriety powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

Art. VIII, § 2(b), Fla. Const. This principle of broad municipal home rule powers is codified in chapter 166, Florida Statutes. For example, section 166.021(3)(c), Florida Statutes states:

> The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:
>
> . . .
>
> (c) Any subject expressly preempted to the state or county government by the constitution or by general law . . . .

§ 166.021(3)(c), Fla. Stat. (2008). The plain language therefore grants a municipal government the authority, under broad home rule powers, to enact local ordinances, which are not inconsistent with general law.

In furtherance of a municipal government's broad home rule powers, "[a] regularly enacted ordinance will be presumed to be valid until the contrary is shown, and a party who seeks to overthrow such an ordinance has the burden of establishing its invalidity." Lowe v. Broward Cnty., 766 So. 2d 1199, 1203 (Fla. 4th DCA 2000) (quoting State ex rel. Office Realty Co. v. Ehinger, 46 So. 2d 601, 602 (Fla.1950)). Also, it is clear that "[w]here there is no direct conflict between the two, appellate courts should indulge every reasonable presumption in favor of an ordinance's constitutionality." City of Kissimmee v. Fla. Retail Fed'n Inc., 915 So. 2d 205, 209 (citation omitted.); see also Lowe, 755 So. 2d at 1203 ("An appellate court will 'indulge every reasonable presumption in favor of an ordinance's constitutionality.'") (quoting City of Pompano Beach v. Capalbo, 455 So.2d 468, 469 (Fla. 4th DCA 1984)).

Florida's Uniform Traffic Control Law, embodied in chapter 316, Florida Statutes, provides for uniform traffic laws throughout the state, counties, and local municipalities. §§ 316.001, 316.002, Fla. Stat. (2008). Entitled "Provisions uniform throughout state," section 316.007, Florida Statues, provides, in pertinent part, that

> [t]he provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized.

§ 316.007, Fla. Stat. (2008). Notably, however, the Uniform Traffic Control Law also expressly recognizes the power of municipalities to pass traffic ordinances for the regulation of municipal traffic in their respective jurisdictions. § 316.002, Fla. Stat. (2008). Enumerating certain "powers of local authorities," section 316.008, Florida Statutes, specifies that:

> (1) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:
>
> (a) Regulating or prohibiting stopping, standing, or parking.
>
> (b) Regulating traffic by means of police officers or official traffic control devices.
>
> . . .
>
> (w) Regulating, restricting, or monitoring traffic by security devices or personnel on public streets and highways, whether by public or private parties and providing for the construction and maintenance of such streets and highways.

§ 316.008, Fla. Stat. (2008).

Thus, the plain text of the Uniform Traffic Control Law expressly confers authority to a municipal government to regulate traffic within its municipal boundaries as a reasonable exercise of its police power where such regulation does not conflict, but supplements the laws found therein. See §§ 316.002, 316.008(1)(w), Fla. Stat. (2008). Here, the Ordinance was enacted by the City, under its broad home rule powers in response to concerns that drivers at dangerous

intersections within the municipal boundaries were failing to heed existing traffic control signals, resulting in a high incidence of serious, life-threatening accidents. As set forth in section 316.002, "[t]he Legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities." § 316.002, Fla. Stat. While chapter 316 creates traffic laws which are applicable throughout the entire state, municipalities have the power to pass certain ordinances that regulate municipal traffic within their borders. The City is in a unique position to identify dangerous intersections within in its boundaries and implement additional safeguards to prevent accidents at such intersections. Accordingly, the City's enactment of the Ordinance to regulate traffic through the use of cameras was a proper exercise of the granted authority to regulate, control, and monitor traffic movement.[3]

The trial court found that the Ordinance conflicts with the Uniform Traffic Control Law. In order for this Court to find that there is conflict between the Uniform Traffic Control Law, and the Ordinance, both "must contradict each other in the sense that both the legislative provisions (the ordinance and the statute) cannot co-exist." F.Y.I. Adventures, Inc. v. City of Ocala, 698 So. 2d 583, 584

[3] The Ordinance specifically states: "This section shall not supersede, infringe, curtail or impinge upon state or county laws related to red light signal violations or conflict with such laws."

(Fla. 5th DCA 1997). In other words, "[t]hey are in 'conflict' if, in order to comply with one, a violation of the other is required." Id. Because municipalities enjoy broad home rule powers, the regulation of vehicular traffic is a well-established legitimate exercise of municipal police power. See City of Miami v. Aronovitz, 114 So. 2d 784, 788 (Fla. 1959) ("Giving recognition to our established judicial viewpoint that an automobile is a dangerous instrumentality, we must concluded [sic] that any procedure lawfully directed toward the effective prevention of the negligent operation of the automobile and the imposition of requirements of competency on the part of the driver thereof, should meet with judicial approbation.").

Here, the Ordinance is consistent, and does not conflict, with any provision found within the Uniform Traffic Control Law as mandated by section 316.007, Florida Statutes. Local authorities are explicitly granted the right to enact laws or ordinances within their home rule power, supplemental to existing state laws, to regulate, control, and monitor traffic movement. Because there is no provision in the Uniform Traffic Control Law that expressly preempts or conflicts with the Ordinance necessary to overcome the City's exercise of its broad home rule powers, we find the Ordinance valid under Florida law.

The trial court found that the Ordinance was in conflict with section 316.640(5)(a), Florida Statutes, in so far as the subsection "requires that citations

be issued when an officer 'observes the commission of a traffic infraction.'" However, upon complete review, we find that section 316.640(5)(a), Florida Statutes, is applicable only to "traffic infraction enforcement officers" as employed by a municipality to issue citations for traffic or parking infractions under the Uniform Traffic Control Law. In whole, the subsection provides:

> (5)(a) Any sheriff's department or police department of a municipality may employ, as a traffic infraction enforcement officer, any individual who successfully completes instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, but who does not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under s. 943.13. Any such traffic infraction enforcement officer who observes the commission of a traffic infraction or, in the case of a parking infraction, who observes an illegally parked vehicle may issue a traffic citation for the infraction when, based upon personal investigation, he or she has reasonable and probable grounds to believe that an offense has been committed which constitutes a noncriminal traffic infraction as defined in s. 318.14.

§ 316.640(5)(a), Fla. Stat. (2008). The plain language mandates that a traffic infraction enforcement officer may issue a traffic citation after the observation of the commission of either a traffic or parking infraction for which he or she has reasonable and probable grounds to believe that a noncriminal traffic infraction

was committed under section 318.14, Florida Statutes. Thus, the subsection is limited in scope to specific traffic infraction enforcement officers operating solely under the Uniform Traffic Control Law.

In contrast, the Ordinance allows for a traffic control infraction review officer, who although sharing the qualifications of the type of officer referenced in section 316.640(5)(a), is instead appointed by the City pursuant to the Ordinance and for the distinct purposes of viewing recorded images and issuing corresponding citations in accordance with the Ordinance. Essentially, the Ordinance supplements law enforcement personnel in the enforcement of red light infractions, by issuing a notice of violation under the City's Code of Ordinances, deemed a non-criminal, non-moving violation, for which a civil penalty shall be assessed. The Ordinance does not prohibit law enforcement officers from issuing a citation in accordance with the Uniform Traffic Control Law, nor does it "supersede, infringe, curtail or impinge upon state or county laws related to red light signal violations." Aventura, Fla., City Code, ch. 48, art. 3 § 48-26 (2007). Rather, the Ordinance's utilization of image capture technologies is meant to serve as an ancillary deterrent to red light infractions. Id.

Furthermore, while section 48-26 allows the City to utilize cameras under the Ordinance, all alleged red light infractions are recorded and reviewed by a Traffic Control Infraction Review Officer, who verifies the accuracy of the

recording before issuing a notice of violation.[4] See Aventura, Fla., City Code, ch. 48, art. 3 §§ 48-26, 48-27, 48-29, 48-31. The Ordinance mandates that the Traffic Control Infraction Review Officer review and verify the recorded images prior to the issuance of a notice of violation which parallels the requirement that a traffic infraction enforcement officer under the Uniform Traffic Control Law observe the traffic violation and, does not conflict with the requirements of subsection 316.640(5)(a), Florida Statutes. Accordingly, we find the trial court erred in its determination that section 48-26 allowed the cameras to serve as the sole basis for issuing a notice of violation in direct conflict with section 316.007, Florida Statutes.

Contrary to our dissenting colleague's assertions, the Ordinance is also not preempted, either expressly or impliedly, by state law. The dissent points to the language of sections 316.002 and 316.007 as being demonstrative of state preemption. More specifically, the dissent highlights the language in section 316.002, which makes it "unlawful for a local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter." Section 316.007 provides:

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[4] More specifically, "[t]he City's Chief of Police shall designate a Traffic Control Infraction Review Officer, who shall be a police officer of the City or who shall meet the qualifications set forth in section 316.640(5)(A), or any other relevant statute." Aventura, Fla., City Code, ch. 48, art. 3 § 48-31 (B).

> The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, **and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized.** However, this section shall not prevent any local authority from enacting an ordinance when such enactment is necessary to vest jurisdiction of violation of this chapter in the local court.

§ 316.007, Fla. Stat. (emphasis added).

In order "[t]o find a subject matter expressly preempted to the state, the express preemption language must be a specific statement; express preemption cannot be implied or inferred." Hillsborough Cnty. v. Fla. Restaurant Ass'n, 603 So. 2d 587, 590 (Fla. 2d DCA 1992) (citing Bd. of Trs. v. Dulje, 452 So. 2d 177 (Fla. 2d DCA 1984)). Neither the language in section 316.002 nor section 316.007 demonstrates express preemption by the state. Determining implied preemption requires that the "legislative scheme must be so pervasive that it completely occupies the field, thereby requiring a finding that an ordinance which attempts to intrude upon that field is null and void." Id. at 591 (citing Tribune Co. v. Cannella, 458 So. 2d 1075, 1077 (Fla. 1984)); see also Phantom of Clearwater, Inc. v. Pinellas Cnty., 894 So. 2d 1011, 1019) (Fla. 2d DCA 2005) ("[C]ourts imply preemption only when 'the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.'") (quoting

Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc., 681 So. 2d 826, 831 (Fla. 1st DCA 1996)). Chapter 316 cannot be classified as being "so pervasive that it completely occupies the field." On the contrary, section 316.008 specifies that no provision of chapter 316 prevents local authorities, within the reasonable exercise of their police power from "[r]egulating, restricting, or monitoring traffic by security devices." § 316.008(1)(w), Fla. Stat. This is precisely what the City has done. The City, via image capture technologies, monitors intersections it has determined to be of particular concern for traffic accidents, and regulates and restricts red light infractions at those intersections through the issuance of its notices of violation. Doing so is well within the City's exercise of its broad home rule power and falls squarely within the specific authority carved out in section 316.008(1)(w) by the Florida legislature.

Moreover, a complete examination of the exceptions carved out under section 316.008 demonstrates that local authorities, such as the City, in accordance with their home rule powers are not prevented from

> (h) Regulating the operation of bicycles.
>
> (i) Regulating or prohibiting the turning of vehicles or specified types of vehicles.

. . . .

> (r) Regulating pedestrian crossings at unmarked crosswalks.

(s) Regulating persons upon skates, coasters, and other toy vehicles.

§ 316.008 (1)(h)-(i), (r)-(s). A local authority can accomplish these regulations through duly enacted ordinances such as the one at issue. Section 316.008 allows the local authorities to use their home rule powers to effectuate certain restrictions and regulations but does not specify the means or the schemes for implementing such restrictions or regulations. Through the Ordinance, the City has simply developed a procedure for carrying out its power to regulate, restrict or monitor traffic.

The dissent also states that when a notice of violation is contested, "a quasi-judicial adjudication on the merits is made by a procedure established by the City in violation of article V of the Florida Constitution and chapters 316 and 318 of the Florida Statutes." It is undisputed that the City has broad home rule powers as set forth in section 166.021, Florida Statutes and Article VIII, section 2(b) of the Florida Constitution. Consistent with these broad powers, the City's Code provides for the appointment of Special Masters and further provides that a person served with a notice of a violation of the City's Code may request an administrative hearing for purposes of appeal. See Aventura, Fla., City Code, ch. 2, art. V §§ 2-334, 2-335, 2-341. The City is not creating a new "court" to address red light infractions under its Code, but is instead simply utilizing an already

existing mechanism, consistent with its home rule powers, to resolve issues arising from notices of code violations. The Ordinance specifies that

> Notices of infractions issued pursuant to this article shall be addressed using the [C]ity's own Special Masters pursuant to Article V, Chapter 2 of the City Code and not through uniform traffic citations or county courts. This shall not bar the use of uniform traffic citations and the country courts when city police personnel decide not to rely on this article as the enforcement mechanism for a specific violation.

Aventura, Fla., City Code, ch. 48, art. 3 § 48-26 (2007). Contrary to the dissent's assertion, even though the matter is initially appealed before a Special Master, "[a]n aggrieved party, including the City, may appeal a final order of a Special Master to the circuit court." Aventura, Fla., City Code, ch. 2, art. V § 2-345. Florida courts routinely address cases involving appeals to the circuit court from the decisions of special masters or hearing officers as to local government code violations, and, in doing so, recognize the use of such administrative mechanisms for the resolution of code violations. See Hardin v. Monroe Cnty., 64 So. 3d 707, 709-10 (Fla. 3d DCA 2011); City of Palm Bay v. Palm Bay Greens, LLC, 969 So. 2d 1187 (Fla. 5th DCA 2007); Miami-Dade Cnty. v. Brown, 814 So. 2d 518 (Fla. 3d DCA 2002). We find no distinction between the administrative resolution mechanisms in such cases and in the City utilizing a Special Master, under the facts of this case, to resolve initial disputes of notices of violation. We, therefore,

find no conflict between state law and the procedure for contesting notices of violation set forth in the Ordinance.

We also note the Florida Legislature's recent enactment of the "Mark Wandall Traffic Safety Act" (the "Act") within the Uniform Traffic Control Law. Laws of Fla., ch. 2010-80, §§ 6 & 7 (2010). The Act implements a statewide red light signal enforcement scheme regulating the use of any traffic infraction detector on state, county, and local municipal roads. The plain language makes clear the Legislature is aware of municipal programs like the Ordinance, and in turn, has created a statutory scheme for statewide regulation which in no way invalidates such existing programs.[5] Importantly, the Act does not invalidate existing municipal traffic monitoring systems, such as red light cameras, but now expressly regulates any such programs and thus, now expressly preempts municipal

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[5] For example, section 316.07456, Florida Statutes, provides that any traffic infraction detector

> [a]cquired by purchase, lease, or other arrangement entered into by a county or municipality on or before July 1, 2011, or equipment used to enforce an ordinance enacted by a county or municipality on or before July 1, 2011, is not required to need the specifications established by the Department of Transportation until July 1, 2011.

Laws of Fla., ch. 2010-80, § 7 (2010).

regulation under the Uniform Traffic Control Law to conform to adopted specifications of the Department of Transportation. Id.[6]

Based upon the foregoing, we find the trial court erred in determining section 48-26 of the Ordinance invalid and unenforceable and, accordingly, we reverse.

Reversed and remanded.

SCHWARTZ, Senior Judge, concurs.

[6] Although the City has since amended the Ordinance to comply with the language of the Act, the amendment of the Ordinance does not affect our decision and our holding is limited to those cases involving notices of violation issued prior to the amendment of the Ordinance.

ROTHENBERG, J. (dissenting).

The trial court concluded that section 48-26 of the City of Aventura's Code of Ordinances, the photo enforcement red light violation ordinance, is preempted by and in conflict with Florida law, and is, therefore, invalid. Because I agree with the trial court, I respectfully dissent from the majority opinion concluding otherwise.

Due to the inconsistency of penalties imposed by the municipal courts and the inconsistency of traffic laws in municipalities around the state, article V, section 20(d)(4) of the Florida Constitution was enacted to abolish all of the municipal courts, and the Florida Legislature created chapter 316 to provide a uniform statewide traffic control system. Prior to the adoption of article V, there were sixteen different courts in Florida, which the chairman of the House Judiciary Committee characterized as "a hodgepodge of different courts which vary from county to county." Amends. to the Fla. R. of Appellate Procedure, 696 So. 2d 1103, 1111 n.9 (Fla. 1996) (Anstead, J., specially concurring). The chairman further explained that the passage of article V would consolidate the sixteen different courts into "four uniform levels of courts: supreme court, district court of appeal, circuit court and county court."

Article V, section 1 was enacted to vest the judicial power "in a supreme court, district courts of appeal, circuit courts and county courts." Further, article V, section 1, specifies that "**[n]o other courts may be established by the state, any political subdivision or municipality.**" (emphasis added).

Chapter 316, Florida's Uniform Traffic Control Law, took effect on "January 1, 1972 throughout the state and in all municipalities of the state." Ch. 71-135, § 6, at 552, Laws of Fla. The Legislature's intent in adopting the Florida Uniform Traffic Control Law was "to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities." § 316.002, Fla. Stat. (2008).

Section 316.002 also makes it "unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter." Additionally, section 316.007, Florida Statutes (2008), specifically provides:

> The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and **no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized**. . . .

Despite the proscriptions of sections 316.002 and 316.007, the City of Aventura ("the City") enacted section 48-26 to enforce and punish red light violations, a matter already covered by chapter 316, without express authorization

by the Legislature, and in a manner that is in direct conflict with chapter 316 and Florida jurisprudence. Further, when a violation is contested, a quasi-judicial adjudication on the merits is made by a procedure established by the City, in violation of article V of the Florida Constitution and chapters 316 and 318, Florida Statutes (2008).

THE CITY'S HOME RULE POWER

The City, as a Florida municipality, indisputably is granted broad home rule and police powers. Article VIII, section 2(b) of the Florida Constitution provides: "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes **except as otherwise provided by law**. . . ." (emphasis added). That power, however, is not without limitation. A municipality may not enact legislation concerning a subject expressly preempted by state or county law or Florida's Constitution, or which is in conflict or inconsistent with general law. For example, section 166.021(3)(c), Florida Statutes (2008), states:

> The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:
>
> . . . .

> (c) Any subject expressly preempted to the state or county government by the constitution or by general law[.]

The issue in this appeal is, therefore, whether section 48-26, the City's unmanned photo enforcement red light ordinance, is expressly preempted by or is in conflict with Florida law. It is both.

THE CITY'S ORDINANCE IS EXPRESSLY PREEMPTED BY STATE LAW

Contrary to the majority's finding that "Neither the language in section 316.002 nor section 316.007 demonstrates express preemption by the state," the Florida Legislature has expressly preempted to the state the area of traffic control and enforcement except in certain limited circumstances. Section 316.002 of the Florida Uniform Traffic Control Law specifies:

> **It is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities. . . . It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter.**

(Emphasis added).

In recognition of its stated purpose, section 316.007 of the Florida Uniform Traffic Control Law provides: "The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and **no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized. . .**

." (Emphasis added). Thus, pursuant to its stated purpose of providing for uniform traffic control and enforcement of traffic laws throughout the state, the Legislature expressly preempted the enactment and enforcement of any ordinance **on a matter covered by chapter 316 unless expressly authorized**, and further limited local governmental home rule and police powers by precluding enforcement of any local ordinance that **conflicts** with the provisions of chapter 316.

Sections 316.002 and 316.008 identify precisely under what conditions chapter 316 expressly authorizes municipalities to **regulate** and **control** traffic within their jurisdictions. Section 316.002 provides, in part:

> The Legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in **regulation** of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities. Section 316.008 enumerates the area within which municipalities may **control certain traffic movement or parking** in their respective jurisdictions. This section shall be supplemental to the other laws or ordinances of this chapter and not in conflict therewith. It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter.

(Emphasis added).

The City and the majority rely on subsection (1)(w) of section 316.008 in arguing that chapter 316 expressly grants the City the authority to enact an ordinance to **enforce** and **punish** violations of section 316.075, Florida Statutes (2008). Florida's traffic light statute, subsection (1)(w), provides:

> (1) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:
> (w) Regulating, restricting, or monitoring traffic by security devices or personnel on public streets and highways, whether by public or private parties and providing for the construction and maintenance of such streets and highways.

§ 316.008(1)(w), Fla. Stat. (2008).

The City and the majority's reliance on section 316.008(1)(w) as the statute's express grant of authority is, however, misplaced. The City's unmanned cameras placed at various intersections do not **regulate** nor **restrict** traffic, and Masone does not allege that the use of cameras to **monitor** traffic is preempted by or in conflict with Florida law. What Masone correctly argues is that section 316.008(1)(w) does not expressly grant municipalities the authority to: (1) **enforce** by ordinance, violations of traffic infractions, including red light violations, already being enforced under Florida's uniform traffic laws; (2) **punish** alleged violators on an adjudication on the merits in a "court" unauthorized by the Florida Constitution or state statute; (3) create a different standard of proof and liability for red light violations than that which has been approved by the Legislature; and (4) establish penalties not authorized by chapters 316 or 318.

As will be addressed in greater detail in the following section titled "THE CITY'S ORDINANCE CONFLICTS WITH STATE LAW," section 316.008(1)(w) does not grant municipalities the authority to enforce the state's

uniform traffic laws by a totally separate, very different, unapproved method, and the method of enforcement established by the City is in direct conflict with Florida law.

Additionally, section 316.008(1)(w) must be read in *pari materia* with sections 316.002, 316.075, and 318.18, Florida Statutes (2008). Section 316.002 specifies the legislative intent for uniform statewide traffic laws. Section 316.007 prohibits municipalities from enacting or enforcing any ordinance on any matter covered by chapter 316. Section 316.075(4) provides that a violation of section 316.075, the traffic light statute, is a noncriminal traffic infraction, punishable pursuant to chapter 318 as a moving violation when the infraction results from the operation of a vehicle. Section 318.18(3)(a) provides for the specific penalties that may be imposed for all moving violations not requiring a mandatory appearance, which would include a red light violation.

When section 316.008(1)(w) is read in *pari materia* with sections 316.002, 316.007, 316.075, and 318.18, it is clear that the **enforcement** and **punishment** of red light violations are matters already covered by chapters 316 and 318, and therefore, specifically preempted by chapters 316 and 318. Thus, the City's ordinance, section 48-26, is in violation of section 166.021(3)(c) which provides that municipalities may not legislate on any subject expressly preempted by state law.

THE CITY'S ORDINANCE CONFLICTS WITH STATE LAW

Contrary to the majority's finding, the City's red light violation ordinance is in direct conflict with article V, section 1 of the Florida Constitution, and chapters 316 and 318 of the Florida Statutes. Thus, pursuant to the clear mandate of section 316.002, which makes "[i]t unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter," the ordinance is an invalid exercise of the City's home rule and police powers.

As previously stated in this dissent, article V, section 20(d)(4) of the Florida Constitution abolished all of the municipal courts. Further, article V, section 1 vests the judicial power in this state in a supreme court, district courts, circuit courts, and county courts, and specifically provides that "[n]o other courts may be established by the state, any political subdivision or municipality," and further provides that "[t]he **legislature** may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions." Art. V, § 1, Fla. Const. (emphasis added). Despite article V's clear language, the City's red light violation ordinance provides for hearings before Special Masters appointed by the City to hear civil traffic infractions committed in violation of the City's ordinance, section 48-46. § 48-26, Aventura Fla., City Code ("Notices of infractions issued pursuant to this article shall be addressed using the city's own Special Masters . . . and not through uniform traffic citations or county courts. . . ."). These hearings

are not conducted in a court of law established by the Florida Constitution, and findings of guilt are made by Special Masters, not judicial officers or **hearing officers established by the Legislature.** The City's red light violation ordinance therefore conflicts with Florida's Constitution.

The City's red light violation ordinance also conflicts with state statutes. Section 316.007 states that "no local authority shall enact or enforce any ordinance **on a matter covered by this chapter** unless expressly authorized." The following is a non-exclusive list of matters covered by chapters 316 and 318 which are covered by the City's ordinance, not authorized by section 316.008, and which are in conflict with chapters 316 and 318:

Expressly Preempted By:

(1) Section 316.075 provides for specific punishment or penalties for traffic light infractions. Punishment for those who commit a traffic light infraction is, therefore, "a matter covered by this chapter" and thus expressly preempted by state law.

(2) Section 316.655 provides that **all traffic infractions** be punished under the provisions of chapter 318, and section 318.18 identifies the specific punishment for a red light infraction. Thus the penalties which may be imposed for a red light infraction is "a matter covered by this chapter" and expressly preempted by state law.

(3) Section 318.14 (a) identifies the burden of proof that must be applied to the enforcement and punishment of all traffic infractions, including red light infractions. Thus, the legal standards in determining guilt for a red light infraction, is "a matter covered by this chapter" and therefore expressly preempted by state law.

(4) Chapter 318 also establishes the procedure that must be followed; the rights of the accused; and the qualifications of the individual hearing the matter. Thus, the procedure, rights, and qualifications are "matters covered by this chapter" and therefore expressly preempted by state law.

In Conflict With:

(1) Whereas section 316.075 punishes **drivers** who commit traffic light infractions, the City's ordinance punishes **the owner of the vehicle** which is observed committing a red light traffic infraction unless the owner submits an affidavit stating that at the time the infraction was being committed, his/her vehicle was being driven without his/her consent. The affidavit must include the identity of the person who had care, custody or control of the vehicle, if known, or include a police report if the vehicle was stolen.

(2) Whereas section 316.640(5)(a) requires the traffic enforcement officer to **personally observe** the commission of the traffic infraction, the City's ordinance only requires that a traffic enforcement officer **review the recorded images** taken by a camera installed by the City at the subject intersection.

(3) Whereas section 316.655 provides that **all traffic infractions be punished under the provisions of chapter 318**, and section 318.18 provides for a $60 fine for a red light infraction, the City's ordinance imposes a fine of $125 for the first violation, $250 for a second violation, and $500 for each subsequent violation.

(4) Whereas a traffic infraction, including red light infractions must be proven beyond a reasonable doubt, see § 318.14(6), there is no such requirement under the City's ordinance.

(5) Whereas the accused violator under Florida's uniform traffic infraction system has the absolute right to a judicial determination (as opposed to a hearing officer), see §

318.32(3) (providing that "[u]pon request of the defendant contained in a Notice of Appearance or a written plea, the case shall be assigned to a county court judge regularly assigned to hear traffic matters"), under the City's ordinance, red light infractions are heard only by Special Masters appointed by the City.

(6) Whereas civil infraction hearing officers have been authorized by section 318.30, and they are authorized to accept pleas and determine guilt, see § 318.32, unless the accused requests that the matter be heard by a judge, the hearing officer must be a member in good standing of The Florida Bar, have completed a forty-hour training course approved by the Florida Supreme Court, and be subject to The Florida Bar Code of Professional Responsibility, the City's ordinance only provides for the appointment of Special Masters, who are not required to meet any of the requirements under chapter 318.

Thus, contrary to the majority's conclusion that "there is no provision in the Uniform Traffic Control Law that expressly preempts or conflicts with the Ordinance," there are numerous examples of both express preemption and of conflicts between the City's ordinance and Florida's Uniform Traffic Control Law.

CONCLUSION

The City is essentially utilizing the state's uniform traffic control devices (traffic lights), approved and regulated by the state for enforcement of the state's uniform traffic control laws, to punish violators through the City's own enforcement program and to pocket the revenues it collects for its own benefit. This is exactly the sort of inconsistent application of traffic laws and traffic

penalties the people and legislature of this state sought to preclude by abolishing all of the municipal courts and enacting a uniform statewide traffic control system.

While the Legislature granted municipalities the authority to regulate, restrict, or monitor traffic within their jurisdictions, the Legislature did not expressly grant municipalities the authority to enforce the same traffic infractions identified and already regulated in chapter 316 through their own "system of justice." If that were the case, there would be no uniformity–only confusion. I would, therefore, affirm the trial court's order concluding that section 48-26 of the City's Code is preempted by and in conflict with Florida law, and affirm the trial court's order.