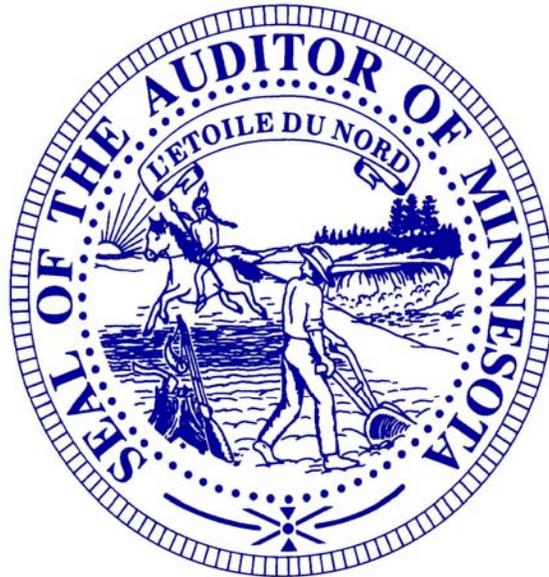


# STATE OF MINNESOTA

Office of the State Auditor



**Rebecca Otto**  
State Auditor

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## **Special Study**

Administrative Penalty Programs

## **Description of the Office of the State Auditor**

The mission of the Office of the State Auditor is to oversee local government finances for Minnesota taxpayers by helping to ensure financial integrity and accountability in local governmental financial activities.

Through financial, compliance, and special audits, the State Auditor oversees and ensures that local government funds are used for the purposes intended by law and that local governments hold themselves to the highest standards of financial accountability.

The State Auditor performs approximately 160 financial and compliance audits per year and has oversight responsibilities for over 3,300 local units of government throughout the state. The office currently maintains five divisions:

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**Government Information** - collects and analyzes financial information for cities, towns, counties, and special districts;

**Legal/Special Investigations** - provides legal analysis and counsel to the Office and responds to outside inquiries about Minnesota local government law; as well as investigates allegations of misfeasance, malfeasance, and nonfeasance in local government;

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The State Auditor serves on the State Executive Council, State Board of Investment, Land Exchange Board, Public Employees Retirement Association Board, Minnesota Housing Finance Agency, and the Rural Finance Authority Board.

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# Special Study

## *Administrative Penalty Programs*



February 13, 2008

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## Executive Summary

- Some local governments have implemented administrative penalty programs to enforce traffic laws. Although differences exist in their operation, the following are common characteristics of these programs:
  - All of the revenue collected is retained by the local government.
  - The monetary fines are often less than the fines associated with State traffic tickets.
  - Administrative penalties are not reported to other government entities and do not affect an individual's driving record or insurance.
  - Administrative penalty programs are described as voluntary because violators have the option of accepting a State traffic ticket.
- In the responses identifying why programs were implemented, five common themes emerged: 1) belief that the distribution of fine revenues from the State traffic ticket between the State and the local entity is inequitable; 2) need to generate revenue to replace LGA; 3) need to decrease court congestion; 4) desire to increase enforcement by giving law enforcement a cost-effective alternative to State traffic tickets; and 5) desire to lessen the burden for the cited individuals.
- Administrative penalties for traffic law violations do not appear to provide a significant source of revenue for cities or counties. The revenue from these programs could be significant if viewed as support for a specific fund or department, such as a Department of Public Safety.
- Twelve of the 30 local governments with administrative penalty programs for traffic law violations (40 percent) state that they designate the revenue for specific purposes. The most commonly designated fund, or stated purpose, for the revenue associated with administrative penalties for traffic law violations is to support law enforcement operations.

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## **Scope and Methodology**

This report is in response to a request by Senate Committee Chairs that the Office of the State Auditor (OSA) conduct a survey and prepare a report on administrative penalty program use in local government. The survey consisted of 29 questions about administrative penalty programs for quality of life issues and traffic law violations.

Over 900 surveys were sent to Minnesota cities and counties on November 28, 2007 with a December 21, 2007 deadline for completion. Two-hundred forty-eight entities responded. Few entities responded to all questions in the survey. None of the responses were verified and the numbers provided were self-reported.

Due to the low response rate, the OSA also conducted a brief review of news articles, and city and county websites to gather supplementary information on administrative penalty programs. Results of the review are included in this report and can be found after the survey findings.

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## Introduction

Administrative penalty programs enforce local ordinances through an administrative system that is separate and distinct from the court system. The Minnesota Attorney General (AG) describes these procedures as “intended to provide informal, cost-effective and expeditious alternatives to traditional prosecutions for certain minor violations.”<sup>1</sup> Beyond these basics, administrative penalty programs are difficult to define or describe because the programs vary among local government entities.

Administrative penalty programs exist to enforce laws and ordinances related to quality of life issues including: zoning and building codes, noise and curfew ordinances, and parking restrictions.

Some local governments have implemented administrative penalty programs to enforce traffic laws. Although differences exist in their operation, the following are common characteristics of these programs:

1. All of the revenue collected is retained by the local government.
2. The monetary fines are often less than the fines associated with State traffic tickets.
3. Administrative penalties are not reported to other government entities and do not affect an individual’s driving record or insurance.
4. Administrative penalty programs are described as voluntary because violators have the option of accepting a State traffic ticket.

Alternatively, violations of State traffic laws that result in issuance of a State traffic ticket go on individual driving records and the associated fine revenue is distributed among local government units, the State and the county law library.

The legal status of administrative penalty programs for traffic law violations differs from the status of quality of life programs in at least in one significant way: administrative penalty programs for traffic law violations have been expressly preempted by State law. In December 2003, the Minnesota AG concluded that, with the enactment of Minnesota Statute, chapter 169, the State had pre-empted the field of certain traffic laws. The Minnesota AG relied on the provision outlined in Minn. Stat. § 169.022, which stipulates the uniform application of traffic rules and regulations. In addition, section 169.99 requires the use of a uniform traffic ticket for the enforcement of traffic laws throughout Minnesota.

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<sup>1</sup> See Letter from Mike Hatch, Minnesota Att’y Gen. to Steve Smith, Rep., Dec. 1, 2003, (Appendix 4, at p. 85).

In December 2004, the OSA issued a Statement of Position on Administrative Penalties for Traffic Law Offenses that agrees with the Minnesota AG’s reasoning. The Statement of Position concludes “that administrative civil penalty traffic tickets for State traffic offenses are not in compliance with Minn. Stat. ch. 169.” The Statement of Position was updated in 2007 and revised in 2008. The conclusion that administrative civil penalty traffic tickets are not in compliance with Minnesota law remains unchanged.<sup>2</sup>

The Minnesota Legislature considered the issue of administrative penalty programs for traffic law violations in the past. During the last legislative session, two bills were proposed: one bill explicitly allowed the use of administrative penalty programs by local governments, and the other bill explicitly prohibited the use of these programs by local governments.<sup>3</sup> Neither of the bills became law.

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<sup>2</sup> Office of the State Auditor Statement of Position on Administrative Penalties for Traffic Offenses (Dec. 2004) (at Appendix 2, at p. 73) (relying on Minnesota Attorney General Opinion, 2003) (Appendix 4, at p. 85). For comparison, the current Statement of Position is included in Appendix 1.

<sup>3</sup> See S.F. No. 155, 85<sup>th</sup> Leg. Sess. (2007-2008). See S.F. No. 1008, 85<sup>th</sup> Leg. Sess. (2007-2008) (Appendix 3, at p. 77).

## Administrative Penalty Survey Responses

The survey was sent to more than 900 cities and counties, with 248 (27 percent) responding. Survey questions are provided below, followed by a summary of responses.

Cities accounted for approximately 82 percent of the responses, with 203 of the 854 cities in the State participating. Counties accounted for approximately 17 percent of the survey responses, with 41 of the 87 counties in Minnesota participating in the survey. A total of 3 respondents did not identify their type of local government.

**Q: Please indicate the type of local government that you represent?**

Type	Total	Quality of Life Programs	Traffic Law Programs
County (statutory)	41	7	2
County (charter)	0	0	0
County (no answer)	0	0	1
City (charter)	29	19	9
City (statutory)	126	49	14
City (no answer)	49	8	4
No Answer	3	1	0
<b>Total</b>	<b>248</b>	<b>84</b>	<b>30</b>

**Q: Does the City/County have an administrative penalty program for quality of life issues?**

A total of 84 of the 248 participating cities and counties indicated they had an administrative penalty program for quality of life issues. Out of these 84, a total of 76 identified as a city and 7 as a county. One respondent did not select a type of local government.

**Q: Does the City/County have an administrative penalty program for traffic law violations?**

A total of 30 of the 248 participating cities and counties indicated they had an administrative penalty program for traffic law violations. Cities accounted for 27 of the 30 responses. Three of the 30 of these responses were counties.

## Administrative Penalty Programs for Quality of Life Issues

**Q: Administrative penalties are issued for which quality of life law/ordinance violations?**

The most common quality of life ordinances enforced through administrative penalties are parking restrictions, and animal and noise ordinances.

Table 2 is a list of the types of ordinances covered under administrative programs for quality of life issues identified by the respondents.

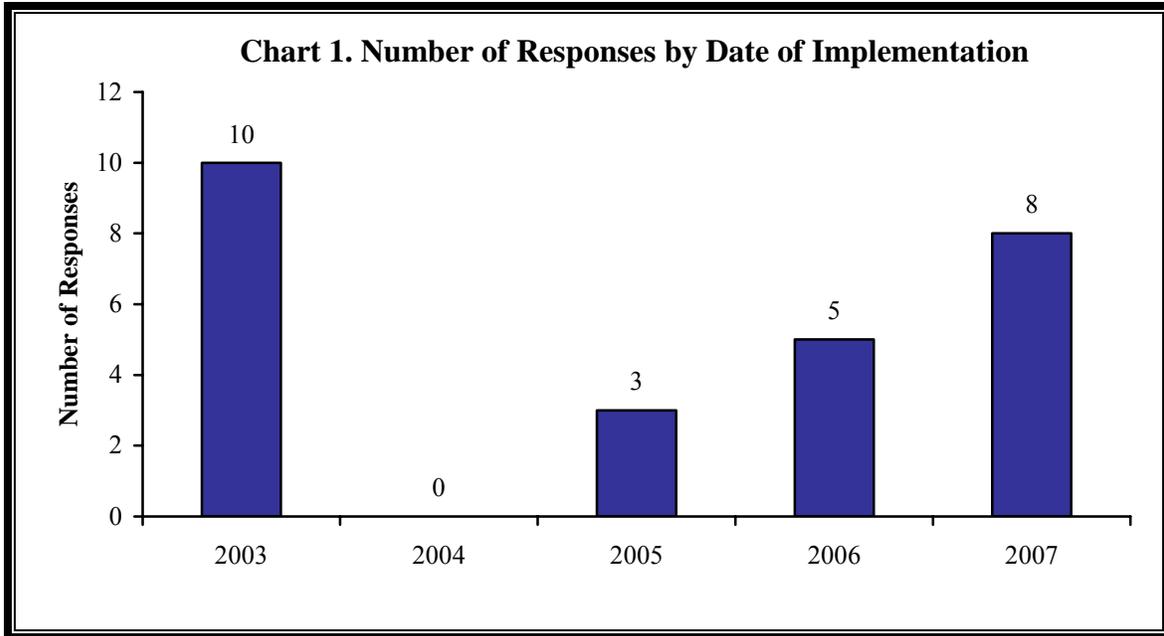
<b>Table 2. Types of Ordinances for Quality of Life Issues</b>	
<b>Parking</b>	
Handicap Zone	Stand-in-Traffic Lane
Fire Lane	Yellow Zone
Snowbird	Double Park
Parking Time Limit	Parking Permit
<b>Animal</b>	
Animal-at-Large	Vicious Animal
Barking Dog	Animal Impound
License	Animal Cruelty
<b>Public Nuisance</b>	
Noise	Disorderly Conduct
Weeds and Vegetation	Begging
Rodent and Vermin Control	Public Urination
Abandon/Junk Vehicles	Disturbing the Peace
Illegal Dumping	Loitering
<b>General Health and Welfare</b>	
Curfew	Littering
ATV Violations	Recreational Vehicles
Trespassing	Solicitors
Firearm Discharge	Use of Motor Vehicles on Lakes
Drug Paraphernalia	Failure to Shovel
Park Rules	Bicycling and Skateboarding
Hazardous Materials	
<b>Fire</b>	
Fire Code	Open Burning
Burning Permit	Fires in Parks
<b>Alcohol and Tobacco</b>	
Licenses and Permits	Consumption of Alcohol in Public
Minor Consumption	Public Drunkenness
<b>Buildings, Construction and Property</b>	
Licenses and Permits	Building Codes
Zoning Codes	Health Codes
Land Use	Property Maintenance
Dumping and Disposal	Rental Property Violations
Inspections	Water/Sewer Use
Lawn Maintenance	

## Administrative Penalty Programs for Traffic Law Violations

### Implementation Date and Process

**Q: Does the City/County have an administrative penalty program for traffic law violations? If yes, when was the program implemented?**

Chart 1 shows the year in which the administrative penalty programs for traffic law violations were implemented in the sample population.<sup>4</sup>



The earliest year of implementation in the survey responses is 2003. The pattern of implementation in the responses coincides with cuts to Local Government Aid (LGA) in 2003. In addition to LGA cuts, the State increased its fees which increased the amount of the fine imposed by State traffic tickets. Further, the release of the Minnesota AG opinion in late 2003 and the OSA Statement of Position issued in late 2004 may have suppressed the spread of administrative penalty programs for traffic law violations.

**Q: Who gave authorization to implement an administrative penalty program for traffic law violations?**

The survey responses indicate that a variety of individuals have been involved with authorizing implementation of these programs including: city councils, county boards, city attorneys, county attorneys and chiefs of police.

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<sup>4</sup> Four of the 30 respondents with administrative penalty programs for traffic law violations did not provide the date of implementation.

## Reasons for Implementation

In the responses identifying why programs were implemented, five common themes emerged: 1) belief that the distribution of fine revenues from the State traffic ticket between the State and the local entity is inequitable; 2) need to generate revenue to replace LGA; 3) need to decrease court congestion; 4) desire to increase enforcement by giving law enforcement a cost-effective alternative to State traffic tickets; and 5) desire to lessen the burden for the cited individuals.

**Q: If the City/County has an administrative penalty program for traffic law violations, what was the reason the program was implemented?**

<b>Table 3. Reasons for Implementation (summarized)<sup>5</sup></b>
<ul style="list-style-type: none"><li>· To promote increased traffic enforcement.</li><li>· To lessen the burden of State traffic tickets, seen as an excessive cost for a first time offender or minor violation.</li><li>· To create a more expeditious alternative to processing tickets.</li><li>· To decrease court congestion and associated legal costs of processing State tickets.</li><li>· To increase revenue needed to deal with LGA cuts.</li><li>· To address the unfairness seen in the current distribution of statutory fine revenues where the locals process the violation, but the State gets the biggest share of the revenue.</li><li>· To achieve greater "local control."</li><li>· To benefit the violator by preventing traffic offenses from impacting insurance costs.</li></ul>

## Traffic Law Violations

**Q: Administrative penalties are issued for which traffic law violations?**

The survey responses indicate that administrative penalty programs operated by cities and counties in Minnesota cover minor traffic law violations.

Table 4 provides a list of the traffic laws covered by administrative penalty programs. The list is limited to those traffic laws identified by local governments participating in the survey.

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<sup>5</sup> For individual responses, see case studies.

<b>Table 4. Traffic Law Violations Covered by Administrative Penalty Programs (compilation)<sup>6</sup></b>	
<b>Speed and Conduct</b>	
Speeding, 10 mph over the speed limit and under	Seatbelt Restraint
Speeding, 10 mph over the speed limit and over	Child Restraint
Exhibition Driving	Pedestrian Crosswalk Violation
Unreasonable Acceleration	Obstructing Driver’s View
Ditch Driving	
<b>Signs and Signals</b>	
General Sign/Signal violations	Stop Sign Violation
Failure to Yield Right-of-Way	Wrong Way on One-Way Street
<b>Vehicles, Equipment and Load</b>	
Vehicle Equipment/Safety Restrictions	Invalid License Plate
Headlight Out	Truck Travel Restricted
Driving Without Headlights	Load Restrictions
Improper Lights	Exhaust or Muffler Violations
<b>Lanes and Passing</b>	
Improper Lane Use	Follow to Close
Illegal Turns	Illegal or Unsafe Passing
Over Centerline	
<b>Licensure and Insurance</b>	
Driving With a Suspended or Revoked License	Expired Registration
Driving Without a License	No Proof of Insurance
Permit Violations	

**Non-Monetary Penalties**

**Q: Are administrative penalties, other than fines, issued for traffic law violations? (Example: A program that allows cited individuals to participate in a safe driving course in lieu of a fine.)**

In total, 4 survey respondents answered “yes” when asked if programs issue administrative penalties other than fines.

<sup>6</sup> For individual responses, see case studies.

## Records and Repeat Violators

The survey asked respondents several questions pertaining to record-keeping processes and penalties for repeat violations. Table 5 provides the tabulated responses to the questions.

<b>Table 5. Records and Repeat Violations</b>	
<b>Records</b>	
<b>Q: Are administrative penalties for traffic law violations recorded and tracked for individuals receiving tickets?</b>	
Yes = 25 No = 4 No Answer = 1	
<b>Q: If yes, what department and positions maintains these records?</b>	
Law Enforcement Department = 23 Clerk's Office = 2 Administration = 2 Accounts Receivable = 1 Records Office = 1 City Hall = 1	
<b>Repeat Violations</b>	
<b>Q: Is there a penalty to individuals for exceeding a certain number of administrative penalties for traffic law violations?</b>	
Yes = 9 No = 19 No Answer = 2	
<b>Q: If yes, is the penalty based on a time limit?</b>	
Yes = 7 No = 6 No Answer = 17	

## Revenue from Traffic Law Violations

The survey asked local government respondents to provide the following for years 2002 through 2007:

- Total number of State traffic tickets issued
- Total number of administrative penalties for traffic law violations issued
- Total revenue from administrative penalties for traffic law violations
- Total Governmental Fund Revenues
- Total Fines and Forfeitures<sup>7</sup>

<sup>7</sup> See survey questions 13, 14, 15, 21, 22, 23, 24. (Appendix 5, at p. 95).

Fewer than 7 respondents provided the requested data. The case studies found later in this report provide the data made available to the OSA.

The OSA cannot determine from other sources the total revenue obtained from administrative penalty programs because cities and counties are not required to report the revenue from administrative penalties separately from Total Fines and Forfeitures.

Table 6 shows Total Fines and Forfeitures as a percent of Total Governmental Fund Revenues for cities and counties for the years 2003 through 2005.<sup>8</sup> Total Fines and Forfeitures have accounted for 1 percent of Total Governmental Fund Revenues in cities and an average of 0.3 percent in counties from 2003 through 2005. This data appears to refute the claim that administrative penalties for traffic law violations provide a significant source of revenue for cities or counties.

	<b>2003</b>	<b>2004</b>	<b>2005</b>
Cities	1.0%	1.0%	1.0%
Counties	0.4%	0.3%	0.2%

However, the revenue from these programs could be significant if viewed as support for a specific fund or department, such as a Department of Public Safety.<sup>9</sup>

**Q: Has the revenue from administrative penalties for traffic law violations been designated for specific purposes? If yes, state the fund(s) and the purpose(s) for which this revenue has been designated?**

Twelve of the 30 local governments with administrative penalty programs for traffic law violations (40 percent) state that they designate the revenue for specific purposes. The most commonly designated fund, or stated purpose, for the revenue is to support law enforcement operations.

<sup>8</sup> Data provided in this table can be found in the annual city and county finance reports published by the Office of the State Auditor and available on the website at: <http://www.osa.state.mn.us/list.aspx?get=4> and <http://www.osa.state.mn.us/list.aspx?get=8>

<sup>9</sup> For information on specific funds or departments, see case studies.

## **Additional Information**

Due to the low response rate in the survey, the OSA conducted a brief review of administrative penalty programs. Specifically, news articles, audits, and local government websites were reviewed. Out of 294 city websites that contained city codes in their entirety, 69 cities (23%) had code provisions expressly allowing administrative penalty programs. However, in many instances the OSA could not determine whether the administrative penalty provision addressed quality of life issues and/or traffic law violations.<sup>10</sup> Also, in many cases the public information available was insufficient to determine whether the administrative penalty authority was actually being used.

Thirty cities and 12 counties were identified as having administrative penalty programs for traffic law violations other than parking. Some give violators the option of participating in a safe driving or driver awareness course as an alternative to a State traffic ticket that would be processed through the State court system. Several brochures and website postings refer to these courses as “diversion programs” that offer citizens the following benefits:

- No fines;
- No impact on driving record or insurance;
- No court appearance;
- Support of local government programs;
- Improved driving habits.

The review identified some local governments with hearing processes in place for violators of administrative ordinances. Minnesota law once provided for ordinance violation and traffic law violation bureaus.<sup>11</sup> However, the statutes authorizing these bureaus were repealed in 1983, likely in part because Municipal Courts were abolished in Minnesota in 1971.<sup>12</sup>

## **Rationale for Administrative Penalty Programs**

The language used by a city to describe the rationale for a program is often nearly identical to language used by other cities. Although not all government entities use “boiler plate” language, the following are two common “boiler plates” used in city code:

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<sup>10</sup> Many cities and counties have administrative penalty programs for quality of life issues, such as programs related to tobacco, alcohol and zoning, which generally appear to be lawful.

<sup>11</sup> Minn. Stat. ch. 492 (1982) (repealed 1983) (“The council of any city, however organized, by ordinance authorize the court in that municipality having jurisdiction over traffic violation to establish a traffic law violations bureau to assist the court in disposing of violations of traffic law or ordinances); Minn. Stat. ch. 493 (1982) (“The council of any city, however, organized, may by ordinance authorize the court or courts in that municipality to establish an ordinance violations bureau to assist the court in disposing of violations of ordinances relating to building construction, operation, or maintenance; fire and fire prevention; public health and sanitation; and zoning.”).

<sup>12</sup> See 1983 Minn. Laws ch. 20.

- Administrative offenses procedures established pursuant to this section are intended to provide the public and the city with an informal, cost effective and expeditious alternative to traditional criminal charges for violations of certain ordinance provisions. The procedures are intended to be voluntary on the part of those who have been charged with administrative offenses.
- The City Council determines that there is a need for alternative methods of enforcing the City Code. While criminal fines and penalties have been the most frequent mechanism, there are certain negative consequences for the City and the accused. The delay in the criminal justice system does not ensure prompt resolution, citizens resent being labeled as criminals for violating administrative regulations, the high burden of proof and potential incarceration are not appropriate for many Code violations, and the criminal process does not always regard City Code violations as important. As a result, the City Council finds the use of administrative citations and imposition of civil penalties is a legitimate and necessary alternative enforcement method, which will be in addition to any other legal remedy that may be pursued for Code violations.

## **Fine Schedules**

One of the rationales used for establishing the administrative penalty programs is the expense of State traffic tickets. During its website review, the OSA found fine schedules listing administrative fines for traffic law violations ranging from \$25 to \$100 for first time violations.<sup>13</sup> Administrative fines set specifically for speeding 15 mph over the speed limit and under have been found as low as \$40 and as high as \$100.

How the amount of an administrative fine is determined varies between government entities. Table 7 identifies the three most common varieties of fines.<sup>14</sup>

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<sup>13</sup> The OSA also found fine schedules listing administrative penalties for quality of life issues ranging from \$5 to \$150 for first time violations.

<sup>14</sup> No attempt was made to identify all types of fines used by administrative penalty programs in Minnesota.

**Table 7. Common Administrative Penalty Fines**

1. **Fixed Fine:** In some instances, administrative fines for both quality of life issues and traffic law violations are set at a fixed amount.

*Example:* The administrative fine for both a noise violation and a seatbelt violation is \$50, regardless of the number of previous violations.

2. **Variety of Fines:** Many local governments set administrative fines specific to the ordinance violation. Some of these programs add a specified amount for subsequent administrative ordinance violations or charge a larger fine for repeat violations.

*Example 1:* \$25 fine for noise violation and \$50 for minor speeding.

*Example 2:* Noise violation = \$25 fine for first offense and \$35 fine for second offense noise violation. Minor speeding violation = \$50 for first offense, \$75 for second offense.

3. **Repeat Violations:** Some local governments add a specified amount for subsequent administrative ordinance violations or charge a larger fine for repeat violations.

*Example 1:* \$10 added to the administrative fine for a repeat violation.

*Example 2:* \$50 for first offense, \$75 for second offense and \$100 for third offense for administrative ordinance violations.

**Case Studies:  
Local Governments with  
Administrative Penalty Programs for  
Traffic Law Violations**

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## CASE STUDY 1: Charter City in Greater Minnesota Area

### Quality of Life Program

Ticketed Offenses: Parking, Building codes, Noise violations, Animal violations, Disturbing the peace, Curfew violations, Zoning code violations, Garbage & Refuse violations, Abandon motor vehicle violation.

### Traffic Law Program

Date of Implementation: January 2003

Process: City Council and City Attorney approval

Ticketed Offenses: Seatbelt restraint, Speeding 10 mph over the speed limit and under, 1<sup>st</sup> Offense inattentive driving, Window tint, Unreasonable acceleration.

- Records on administrative penalties are kept by the Police Department and the Clerk.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### Revenue Analysis and Scope

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2002	n/a	n/a	344
2003	37	\$1,490	304
2004	21	\$495	335
2005	116	\$4,315	408
2006	54	\$1,830	335
2007	188	\$6,831	358

- Between 2002 and 2007, Total Fines and Forfeitures averaged 0.6 percent of Total Governmental Fund Revenues.

### Reason for Implementation

“In some cases the administrative fines were for city violations. For State violations we found that the overall fine amount was so high that officers were not writing tickets, and we wanted to give the officers a second option.”

**Cited Authority**

“The City Attorney has given us the option that they are allowed.”

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## CASE STUDY 2: Statutory City in Greater Minnesota Area

### Quality of Life Program

Ticketed Offenses: Parking violations, Noise violations, ATV violations, Snowmobile violations, Loitering, Disorderly conduct, Animal violations, Public urination, Prohibited bicycling or skateboarding, Curfew violations.

### Traffic Law Program

Date of Implementation: February 2003

Process: City Council approval, ordinance

Administrative penalties for traffic law violations: Seatbelt restraint, Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Vehicle equipment/safety restrictions, Sign/signal violations, Permit violations, Bicycle/motorized bicycle violations.

- Records on administrative penalties for traffic law violations are kept by the Police Department Chief.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.
- Revenues from administrative penalties for traffic law violations are designated for the Police Fund.

### Revenue Analysis and Scope

Year	<u>Administrative Penalties for Traffic Law Violations</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2003	39	\$2,500	20
2004	20	\$1,475	74
2005	34	\$2,437	288
2006	27	\$1,345	431

Year	<u>Administrative Penalties for Traffic Law Violations as a Percent of Total Governmental Fund Revenue</u>
2003	0.4%
2004	0.2%
2005	0.4%
2006	0.2%

### **Reason for Implementation**

“Lack of return from regular tickets. Once State, county and everyone else got theirs.. what remained was very little.... Caused a cut in officers on the force. We had two full time officers - we went down to one full time (Chief) and a part-time 20hrs a week.....”

“Revenue to defer the cost of full time Chief, and one part-time officer.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues:

“We don’t have any.”

Statutory basis for operating administrative penalty program for traffic law violations:  
cited city ordinance.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

### **CASE STUDY 3: Statutory City in Greater Minnesota Area**

#### **Quality of Life Program**

Ticketed Offenses: Parking violations, Building code violations, Health code violations, Noise violations, Disorderly conduct, Animal violations, Curfew violations, Dog barking, Dog-at-large, Maltreatment of pets, Disorderly conduct, Rental property regulations, Loud exhaust.

#### **Traffic Law Program**

Date of Implementation: June 2003

Process: City Council, ordinance

Ticketed Offenses: Seatbelt restraint, Speeding 10 mph over the speed limit and under, Speeding over 10 mph above the speed limit, Sign/signal violations, Child restraint, Vehicle equipment/safety restrictions, Stop sign, Exhibition driving, Loud exhaust, Obstructing driver’s view, Inattentive driving.

- Records on administrative penalties kept by the Police Department, specifically, the Chief of Police.
- A penalty exists for exceeding a set number of administrative penalties for traffic law violations. The penalty is not based on a time limit.

#### **Revenue Analysis and Scope**

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2003	27	\$1,475	144
2004	54	\$2,650	136
2005	35	\$1,725	124
2006	23	\$1,075	168
2007	20	\$1,275	218

- Between 2003 and 2006, average annual total revenue from administrative penalties for traffic law violations accounted for 0.06 percent of Total Governmental Fund Revenues.
- Between 2003 and 2007, total revenue from administrative penalties for traffic law violations accounted for 42 percent of average Total Fines and Forfeitures.

- Revenue from administrative penalty programs for traffic law violations goes to General Fund line items for fines and forfeitures. Revenue from administrative penalties is designated to support Police Department expenses.

### **Reason for Implementation**

“Administrative offense procedures established pursuant to [local ordinance section] are intended to provide the public and the City with an informal, cost effective, and expeditious alternative to traditional criminal charges for violations of certain City Code provisions. The procedures are entirely voluntary on the part of those who have been charged with administrative offenses. At any time prior to the payment of the administrative penalty as is provided for thereafter, the individual may withdraw from participation in the procedures, in which event the City may bring criminal charges in accordance with law. Likewise, the City, in its discretion, may choose not to initiate an administrative offense and may bring criminal charges in the first instance. In the event a party participates in the administrative offense procedures, but does not pay the monetary penalty before the seven (7) day deadline, the administrative offense agreement becomes null and void and the citation will be forwarded to Court Administration to be processed through the traditional methods.”

Police Chief response: “We believe this process helps to alleviate the often full dockets of cases in the local courts. Also, it seems as though the fine schedule has become so expensive that the average person can't afford to pay them. Plus, many people's insurance premiums go up after they receive a moving violation. This is especially true if the violator is a juvenile. The parents who pay the insurance are the ones who truly suffer. With administrative tickets, the juvenile has to pay a \$50.00 fine and the family's insurance premiums don't go up. Everyone wins.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: local ordinance.

Police Chief on the statutory basis for operating administrative penalty program for traffic law violations: “I consulted the Chiefs of Police Association as well as several local prosecutors before we implemented the program. My sources said the law was subject to interpretation but all felt it was legal.”

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 4: Charter City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Building code violations, Noise violations, Animal violations, Disturbing the peace.

### **Traffic Law Program**

Date of Implementation: July 2003

Process: City Council approval

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Vehicle equipment/safety restrictions, Sign/signal violations, Invalid license plate.

- Records on administrative penalties are kept by County Records Office.
- A penalty exists for exceeding a set number of administrative penalties for traffic law violations. The penalty is based on a time limit.
- Revenue from administrative penalties for traffic law violations has been designated for specific purposes, however, the specific purposes were not provided in the response.

### **Reason for Implementation**

“The excessive cost of a minor offense. State surcharges and fees have become larger than the fines. Of a typical \$127 fine, the City would receive only \$27. Why should families, particularly families of low income, have to pay an additional \$100 to the State and a law library fee for a violation that does not require intent? We constantly hear that our court systems are congested and its pretty clear the administrative citations have had a positive impact in that regard.”

### **Cited Authority**

Statutory basis for operating administrative penalty programs for quality of life issues:

“We are not aware that it is specifically prohibited by statute for our community.”

Statutory basis for operating administrative penalty programs for traffic law violations: same as for quality of life issues.

- No response to the question asking whether the City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 5: Statutory City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Minor consumption of alcohol, Noise violations, Disorderly conduct, Animal violations, Trespassing, Garbage.

### **Traffic Law Program**

Date of Implementation: August 2003

Process: City Council approval

Ticketed Offenses: Seatbelt restraint, Child restraint, Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Sign/signal violations, Driving with a suspended/revoked license, Driving without a license, Driving without headlights.

- There is no penalty in place for individuals exceeding a certain number of administrative penalties for traffic law violations.

### **Revenue Analysis and Scope**

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2003	38	\$2,630	12
2004	196	\$13,160	14
2005	203	\$13,816	14
2006	188	\$12,896	13
2007	135	\$9,300	12

### **Reason for Implementation**

“Due to severe Local Government Aid Cuts, our City needed revenue to help fund the basic needs of our citizens, such as the police and fire departments, without increasing our levies by double digits every year.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

## Special Study – Administrative Penalty Programs

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 6: Statutory City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Minor consumption violations, Noise violations, ATV violations, Snowmobile violations, Littering, Disorderly conduct, Animal violations, Disturbing the peace, Curfew violations.

### **Traffic Law Program**

Date of Implementation: August 2003

Process: City Council

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Vehicle equipment/safety restrictions, Sign/signal violations, Invalid license plate, Driving without headlights.

- Records on administrative penalties for traffic law violations are kept by the Police Department Chief.

### **Reason for implementation**

“Cost effective alternative.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 7: Charter City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking, Minor consumption of alcohol, Noise violations, ATV violations, Snowmobile violations, Animal violations, Public urination, Disturbing the peace.

### **Traffic Law Program**

Date of Implementation: September 2003

Process: City Council approval

Ticketed Offenses: Seatbelt restraint, Child restraint, Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Sign/signal violations, Driving with a suspended/revoked license, Driving without a license.

- Administrative penalties for traffic law violations are not recorded and tracked for individuals receiving tickets.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### **Reason for Implementation**

No reason given.

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues:  
“Minn. Stat. § 169.609.84.343 [sic]”

Statutory basis for operating administrative penalty programs for traffic law violations:  
Minnesota Statute chapter 169

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 8: Statutory City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations including: Fire hydrant, Handicapped, Yellow zone, Double parking, Fire lane, Stand-in traffic lane, Health codes, Noise violations, Begging, Disorderly conduct, Animal violations, Prohibited bicycling or skateboarding, Curfew violations, Consumption of alcohol in public.

### **Traffic Law Program**

Date of Implementation: September, 2003

Process: City Council

Ticketed Offenses: Seatbelt restraint, Speeding, 10 mph over the speed limit and under, Sign/signal violations, Driving without a license, Invalid license plate, Bicycle/motorized bicycle violations, Driving without headlights, Improper lights, Driving with out a license, Failure to yield right-of-way, Failure to yield at yield sign [sic], Improper name and address, Violating restricted license, Stop-Stand-Park in traffic lane, Illegal U-turns, Passing on the right.

### **Revenue Analysis and Scope**

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2004	100	106
2005	200	112
2006	650	150

- Records are not kept for individuals receiving administrative penalties.
- Revenue from administrative penalty programs for traffic law violations designated for the Community Police Fund to “purchase equipment etc. for public safety such as cameras etc.”
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### **Reason for Implementation**

“Because the cost of State violations exceed a reasonable amount for first time offenders.”

“Generate funds for community enhancement and quality of life.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues:  
“Since the city has the duty to make sure the quality of life issues are adhered to and have to do all the foot work, paperwork and follow-up or follow thru, it only makes sense that the city receives the money.”

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 9: City in Greater Minnesota Area<sup>15</sup>**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Health code violations, Minor consumption of alcohol, Noise violations, ATV violations, Snowmobile violations, Animal violations, Disturbing the peace, Curfew violations.

### **Traffic Law Program**

Date of Implementation: September 2003

Process: City Council and City and County Attorney approval

Ticketed Offenses: Seatbelt restraint, Speeding, over 10 mph above the speed limit, Sign/signal violations.

- Records on administrative penalties for traffic law violations would be kept by the Police Department; however, no administrative penalties for traffic law violations have been issued.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### **Reason for Implementation**

No reason given.

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: “Violator is given written notice to comply to the ordinance. If not an administrative citation is issued. If the citation is not paid and the ordinance not complied with, a summons is issued with a court date.”

Statutory basis for operating administrative penalty program for traffic law violations: ”Do not currently issue administrative penalties for traffic law offenses.”

“I have traffic administrative penalties program but have never issued or offered a violator one these citations. When the city attorney sent us a program to look at these for non-traffic related the traffic offense was in the program.”

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

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<sup>15</sup> How the city is organized is unknown.

## CASE STUDY 10: Statutory City in Greater Minnesota Area

### Quality of Life Program

Ticketed Offenses: Parking violations, Noise violations, ATV violations, Snowmobile violations, Loitering, Animal violations, Public urination, Prohibited bicycling or skateboarding, Curfew violations, Crossing double yellow lines, Tobacco violations, Bicycle trail use.

### Traffic Law Program

Date of Implementation: September 2003

Process: City Council and City Attorney approval

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Sign/signal violations.

### Revenue Analysis and Scope

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2003	59	\$3,845	132
2004	149	\$9,755	92
2005	146	\$9,485	90
2006	144	\$9,931	86
2007	104, 10 months	\$6760, 10 months	66, as of 10/07

- Records are kept on administrative penalty programs for traffic law violations by the Police Department, specifically by the data entry clerk.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### Reason for Implementation

“Increase in State fines with only a small amount being returned to the local government unit, when the local government incurs all of the cost. Hardship for violators for unintentional violations such as speeding violations. Many State fines have reached a point where some officers are no longer issuing citations at all and are instead providing a verbal warning which are not tracked at all. MS 169.14 S2 A3 allows for a person traveling at a speed of 10 miles per hour or less over the limit on a 55 mph highway and not have the violation recorded on the driver license record. Therefore these violations are not tracked either. In a salesperson's theology, the lower the price the more you sell.

State violations create issues where the city attorney needs to go to court for defendants who plead not guilty creating additional expense for the local government. These cases also create additional expense when the officer must appear in court due to salaries being paid out and travel time involved. For our particular department court is held 45 minutes away from the jurisdiction and this is a minimum of 1 1/2 hours of overtime. Court time creates fuel expenses along with scheduling issues. Some violations appear to be petty in nature and create a burden on the court system such as speeding tickets, tobacco violations, parking violations etc. Other concerns that were raised was the fact that the State has become a record keeping system for the insurance companies and the insurance companies are reaping the benefits off from the State by obtaining driver license information.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: same as the basis for operating a program for traffic law violations.

Statutory basis for operating administrative penalty program for traffic law violations: “State law does not clarify the official use of the Administrative Penalty Program. An ordinance was created within our city to provide for the use of the Administrative Penalty Program.”

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## CASE STUDY 11: Charter City in Greater Minnesota Area

### Quality of Life Program

Ticketed Offenses: Parking violations, Public Nuisance.

### Traffic Law Program

Date of Implementation: December, 2003

Process: City Council approval

Ticketed Offenses: Seatbelt restraint, Speeding, over 10 mph above the speed limit, Stop Sign Violation, Illegal U-Turn, Ditch Driving, Pedestrian Crosswalk Violation.

### Revenue Analysis and Scope

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>
2004	n/a	n/a
2005	73	\$3,957
2006	106	\$5,988
2007	71	\$5,050

- In 2006 and 2007, total revenue from administrative penalty programs for traffic law violations accounted for 0.3 percent of Total Governmental Fund Revenues and over 95 percent of Total Fines and Forfeitures in both years.
- Records on administrative penalty programs for traffic law violations are kept by the County Sheriff.
- Revenue for administrative penalty programs is used for public safety, specifically the revenue is spent on supporting additional patrol time by the Police Department.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### Reason for Implementation

“Allow more local control & ensure enforcement. Have never seen Highway Patrol squad in our community on patrol.”

**Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: city ordinance for public nuisance listed as statutory basis for administrative penalty programs for quality of life issues.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- No response to the question asking whether the City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 12: Charter City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Building code violations, Minor consumption of alcohol, Noise violations, Begging, ATV violations, Snowmobile violations, Littering, Loitering, Disorderly conduct, Animal violations, Public urination, Prohibited bicycling or skateboarding, Disturbing the peace, Shoplifting, Curfew violations, Graffiti.

### **Traffic Law Program**

Date of Implementation: January 2005

Process: City Council and City Attorney approval

Ticketed Offenses: Seatbelt restraint, Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Sign/signal violations, Permit violations, Invalid license plate, Bicycle/motorized bicycle violations, Driving without headlights.

### **Scope**

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>
2005	6,000 [sic]
2006	5,000 [sic]
2007	7,000 [sic]

- Records on administrative penalties for traffic law violations are kept by City Clerk.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### **Reason for Implementation**

“Implementation was based on regaining lost revenue and decreasing court and legal congestion at the county level.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

## Special Study – Administrative Penalty Programs

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## CASE STUDY 13: Statutory City in Greater Minnesota Area

### Quality of Life Program

Ticketed Offenses: Parking violations, Building code violations, Noise violations, Disorderly conduct, Animal violations, Disturbing the peace, Curfew violations.

### Traffic Law Program

Date of Implementation: January 2005

Process: City Council approval

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Vehicle equipment/safety restrictions, Sign/signal violations, Driving without headlights, Improper lights.

### Revenue Analysis and Scope

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2005	54	\$2,720	10
2006	20	\$1,450	9
2007	16	\$1,285	6

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations as a Percent of Total Governmental Fund Revenue</u>
2005	0.9%
2006	0.4%
2007	0.4%

- Administrative penalties are tracked and recorded for individuals receiving tickets by the Administration, specifically, Administrative Assistance.
- Revenue from administrative penalty programs for traffic law violations is designated for the Police Fund for purchase of equipment.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

**Reason for Implementation**

“Generate additional revenue.”

**Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: city ordinance.

Statutory basis for operating administrative penalty program for traffic law violations: city ordinance.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 14: Charter City in Greater Minnesota Area**

### **Quality Life Program**

Ticketed Offenses: Parking violations, Health code violations, Minor consumption of alcohol, Noise violations, ATV violations, Snowmobile violations, Drug paraphernalia, Animal violations, Prohibited bicycling or skateboarding, Disturbing the peace.

### **Traffic Law Program**

Date of Implementation: April 2005

Process: City Council, City Attorney and Chief of Police approval

Ticketed Offenses: Seatbelt restraint, Speeding, 10 mph over the speed limit and under, Vehicle equipment/safety restrictions, Sign/signal violations, Driving with a suspended/revoked license, Driving without a license, Driving without headlights, Improper lights.

- Records are kept on administrative penalty programs for traffic law violations by the Police Department, specifically the Administrative Assistant.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### **Reason for Implementation**

“Increased fines resulted in reluctance of officers to issue statutory citations. In the belief of many, fines were excessive for the violations involved and the administrative penalty program provided an additional tool for officers to use in appropriate circumstances.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- No response to the question asking whether the City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 15: Statutory City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Noise violations.

### **Traffic Law Program**

Date of Implementation: January 2006

Process: City Council approval

Ticketed Offenses: Seatbelt restraint, Speeding, over 10 mph above the speed limit, Vehicle equipment/safety restrictions.

- Records on administrative penalties for traffic law violations are kept by Accounts Receivable, Clerk.
- A penalty exists for exceeding a set number of administrative penalties for traffic law violations. The penalty is based on a time limit (example: 3 administrative penalties for traffic law violations in 1 year = penalty).

### **Reason for Implementation**

“In order to create a source of revenue for our city.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City states it is unaware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## CASE STUDY 16: Statutory City in Greater Minnesota Area

### Quality of Life Program

Ticketed Offenses: Parking violations, Building code violations, Health code violations, Noise violations, Begging, ATV violations, Snowmobile violations, Littering, Loitering, Disorderly conduct, Animal violations, Public urination, Disturbing the peace, Curfew violations, Graffiti, Open burning, Alternative transportation, Solicitors, Tree ordinances, Firearms discharge, Junk vehicles.

### Traffic Law Program

Date of Implementation: May 2006

Process of Implementation: City Council resolution/ordinance

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Vehicle equipment/safety restrictions, Sign/signal violations, Invalid license plate, Over centerline, Passing on the right, Illegal muffler, Window tint, Unreasonable acceleration.

- Records on administrative penalties for traffic law violations are kept by the Police Department Chief.
- A penalty exists for exceeding a set number of administrative penalties for traffic law violations. The penalty is based on a time limit (example: 3 administrative penalties for traffic law violations in 1 year = penalty).

### Revenue Analysis and Scope

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2002	n/a	n/a	111
2003	n/a	n/a	193
2004	n/a	n/a	172
2005	n/a	n/a	148
2006	428	\$21,037	170
2007	328	\$20,920	82

- In 2006, total revenue from administrative penalties for traffic law violations accounted for 4.5 percent of Total Governmental Fund Revenues and 75.2 percent of Total Fines and Forfeitures.

- In 2007, total revenue from administrative penalties for traffic law violations accounted for 5.5 percent of Total Governmental Fund Revenues and 80.7 percent of Total Fines and Forfeitures.

### **Reasons for Implementation**

“City Police, not State or County law enforcement, are stopping the violators of these traffic laws. The first time offenders are given an option of a State citation or an administrative fine. Most violators choose the administrative fine since it is lower than a State citation and no court is involved.”

“To lower the financial burdens of the City.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: ordinances.

Statutory basis for operating administrative penalty program for quality of life issues: resolution.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 17: Statutory City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Minor consumption of alcohol, Noise violations, ATV violations, Snowmobile violations, Drug paraphernalia, Disorderly conduct, Animal violations, Public urination, Curfew violations, Graffiti.

### **Traffic Law Program**

Date of Implementation: June 2006

Process: City Council approval

Ticketed Offenses: Seatbelt restraint, Child restraint, Speeding, 10 mph over the speed limit and under, Sign/signal violations, Unsafe passing.

- Records on administrative penalties for traffic law violations are recorded and tracked by the Police Department for administrative penalty programs for traffic law violations, specifically the Office Manager.
- Revenue from administrative penalty programs for traffic law violations is designated for community policing fund.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### **Reason for Implementation**

“This program was implemented for several reasons. We thought that the fine amounts that were in place for ‘minor offenses’ were way too high. We also felt that if the fines were lower then officers would be more inclined to do more traffic enforcement, which has turned out to be the case. With more traffic stops being made, more DWI's have been made (over twice the amount) and of course much safer roadways because of the increased traffic stops etc. The fine monies collected all go towards ‘community policing efforts’ which include paying for part-time officers’ wages, developing and maintaining a Police Reserve Program. Monies go to community enhancement efforts, graffiti clean up efforts, paying for guest speakers to come in to the schools and speak to the kids about all sorts of topics ranging from drug use to character building etc. Monies are also spent on educational programs for the schools such as [program name] which is a character building program for kids K-12. We also use monies from this program for youth events such as ATV training, snowmobile training, boat safety courses etc. All of the monies that come in to the community policing program from administrative fines are used strictly to better our community. They are NOT used to offset our existing budget. I have always felt that if the State wanted to get involved in this movement they should take the approach that all the monies generated should go towards positive community enhancement programs such as we are doing here. This program has been very positive

all the way around. The violators like it because the fines are much smaller than the State tickets. It does not affect their driving record and insurance issues. The officers like it as it is much easier to hand a violator a ticket for \$60 than a State ticket that would be roughly \$130 for the same offense. We do NOT issue these tickets for habitual violators or for those that speed well in excess of the speed limit. This is for minor offenses only and for non repeat offenders. Plus the dollars that my small dept saves each year for officers NOT having to go to court for minor traffic offenses has been substantial. I can imagine that the courts have also saved a large amount of money as well. If you look at the State statutes already, there is a program called ‘dimler’ that allows officers to write down speeding tickets in a 55 zone down to 65 or less. This offense does not go on driver's licenses etc, and many, many tickets are issued by officers all over the State for several reasons...easier sell for the officer, less of a fine, no court time etc. Again, I would say that the administrative fine program for cities and counties is a benefit from all points of view. If the State wants to get involved and have a say, then they should only regulate what the monies are spent on and make sure that it is strictly for ‘community enhancement programs.’”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues:  
“We felt that since the State Auditor at the time had an opinion, it was just that, an opinion. The State Attorney General's office had one as well that allowed such a program. Since there was no law against it we felt that it was a good program for our city and the monies generated could help enhance our city much better then any efforts that the State was making.”

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## CASE STUDY 18: Charter City in Greater Minnesota Area

### Quality of Life Program

Ticketed Offenses: Parking violations, Building code violations, Health code violations, Noise violations, Littering, Loitering, Disorderly conduct, Animal violations, Public urination, Prohibited bicycling or skateboarding, Disturbing the peace, Illegal Dumping.

### Traffic Law Program

Date of Implementation: July 2006

Process: City Council approval

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Vehicle equipment/safety restrictions, Wrong way on a one-way street, Illegal U-Turn, Left-Turn prohibited, Truck travel restricted, Dynamic engine brake violations, Unreasonable acceleration.

### Revenue Analysis and Scope

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2005	n/a	n/a	493
2006	222	\$8,730	626
2007	252 (YTD)	\$11,442 (YTD)	283 (YTD)

- Revenue from administrative penalties for traffic law violations accounted for 47.2 percent of Total Fines and Forfeitures in 2006 and 82.5 percent of Total Fines and Forfeitures in 2007.
- Revenue from administrative penalties for traffic law violations is designated to the General Fund for Public Safety.
- Records on administrative penalties for traffic law violations are kept by the Police Department, specifically the Administrative Assistant.
- A penalty exists for exceeding a set number of administrative penalties for traffic law violations. The penalty is based on a time limit (example: 3 administrative penalties for traffic law violations in 1 year = penalty).

### Reason for Implementation

“Cost effectiveness, easing of court calendars, less officer time in court, more local control of violation enforcement. The use of Administrative Penalties more readily

accepted by officers and violators. Overall fines and surcharges imposed are never equally distributed and occasionally judges waive the base fine and instead impose the surcharge only to violator. City receives only 12-13% of base fine when fines are imposed.”

**Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## CASE STUDY 19: City in Greater Minnesota Area<sup>16</sup>

### Quality of Life Program

Ticketed Offenses: Parking violations, Minor consumption of alcohol, Noise violations, ATV violations, Littering, Animal violations, Public nuisance, trespassing, Grass and rank vegetation.

### Traffic Law Program

Date of Implementation: August 2006

Process: City Council approval

Ticketed Offenses: Seatbelt restraint, Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Sign/signal violations, Exhibition driving, Loud exhaust.

- Records are kept on administrative penalty programs by City Hall/County Police.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### Revenue Analysis and Scope

<u>Year</u>	<u>Total Revenue from Administrative Penalties for Traffic Law Violations</u>	<u>State Traffic Tickets Issued</u>
2006	\$320	168
2007	\$560	218

### Reason for Implementation

“Surrounding entities utilizing administrative penalty program for traffic violations.”

### Cited Authority

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

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<sup>16</sup> How the city is organized is unknown.

## Special Study – Administrative Penalty Programs

- The City states it is unaware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## CASE STUDY 20: Charter City in the Metro Area

### Quality of Life Program

Ticketed Offenses: Noise violations, ATV violations, Snowmobile violations, Animal violations.

### Traffic Law Program

Date of Implementation: February 2007

Process: City Council and “City Attorney approved the process and encouraged its use as an alternative.”

Ticketed Offenses: Seatbelt restraint, Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Vehicle equipment/safety restrictions, Sign/signal violations, Driving without a license, Invalid license plate, Driving without headlights, Improper lights.

### Revenue Analysis and Scope

Year	Administrative Penalties for <u>Traffic Law Violations</u>	State Traffic <u>Tickets Issued</u>
2005	n/a	520
2006	n/a	980
2007	950	550

- Records on administrative penalty programs for traffic law violations are kept by the Police Department, specifically the Clerk.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### Reason for Implementation

“Alternative to enforcement with a positive impact for minor offenses. Officers are allowed another tool to use to help reduce motor vehicle accidents and deaths. The alternative is more positive to the offender. Lower fines and less impact to insurance cost benefit the violator. Currently there is an uneven distribution of statutory violation fine revenues. The cities need to find an alternative to adequately compensate for its enforcement effort. Currently the revenue generated through county citations does not meet the current expectations.”

## **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: “Alternative to enforcement, relative to the community’s ‘quality of life.’ Typically, the State legislature has not passed laws dealing with uniquely local issues such as junk cars, barking dogs, and parking violations, etc.”

Statutory basis cited for operating administrative penalty programs for traffic law violations: “This is based partially on how the system is set up in Hennepin County. Rules of criminal procedure specifically allows prosecutors to divert criminal and traffic charges such that, one effect is that the conviction does not appear on the driving record. Rule 15 allows a prosecutor to allow pleas to lesser or different charges and rule 27.05 allows diversion which generally means that the party will waive his right to a trial, pay prosecution cost (all of which go to the city and none to the county) and observe certain conditions i.e. no further crimes or offenses. The Hennepin County district court, in an effort to streamline its burgeoning case load, has required prosecutors to give hearing officers written authority to resolve cases without conviction and upon payment of prosecution costs and observance of certain conditions. For example, they allow hearing officers to suspend prosecution and continue for dismissal petty misdemeanors, traffic tickets upon payment of prosecution cost and a condition of no moving violations. They also allow continuance of tickets such as Driving After Suspension if this is a first offense, upon the same conditions. Our city allows for due process of the law which is the constitutional right to have a hearing, with rights to defend oneself, prior to any loss of liberty or property. If a violator wishes to contest a city issued tag they can waive the right and ask to be issued a county citation and appear in court. This in turn allows the violator the right to challenge the citation in a court of law. The argument the State Auditor’s Office has made in the past states that city citations is an attempt to increase revenue but so does the county citation. Not all current traffic offenses are addressed by State law. Cities have traditional prohibited unreasonable acceleration, exhibition driving, cruising, drag racing etc. Which the State does not permit nor prohibit. Our city does not use city citations for alcohol related offenses, or DUI violations.”

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 21: Statutory City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Building code violations, Noise violations, Littering, Drug paraphernalia, Disorderly conduct, Animal violations.

### **Traffic Law Program**

Date of Implementation: May 2007

Process: City Council approval

Ticketed Offenses: Seatbelt restraint, Child restraint, Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Driving without headlights.

### **Scope**

- Three-hundred fifteen administrative penalties in the form of fines for traffic law violations were issued in 2007, with associated revenue totaling \$17,957 for the year.
- A penalty exists for exceeding a set number of administrative penalties for traffic law violations. The penalty is based on a time limit (example: 3 administrative penalties for traffic law violations in 1 year = penalty).
- Records on administrative penalties for traffic law violations are kept by the City Clerk's Office.
- Revenue from administrative penalty programs for traffic law violations is designated for the Police Fund, specifically for equipment and training.

### **Reason for Implementation**

“To generate revenue for the City.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

## Special Study – Administrative Penalty Programs

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 22: Charter City in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Noise violations, Snowmobile violations, Littering, Drug paraphernalia, Animal violations, Prohibited bicycling or skateboarding, Disturbing the peace, Shoplifting, Curfew violations.

### **Traffic Law Program**

Date of Implementation: May 2007

Process: City Council approval

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Vehicle equipment/safety restrictions, Sign/signal violations, Invalid license plate, Improper lights, most minor traffic violations.

### **Scope**

- Ninety administrative penalties in the form of fines for traffic law violations were issued in 2007, with associated revenue totaling \$9,187 for the year.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.
- Records on administrative penalty programs for traffic law violations are kept by the Police Department.

### **Reason for Implementation**

“High State fines”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues:

“You’ll have to ask our City Att.”

Statutory basis for operating administrative penalty program for traffic law violations:

“Contact City Att.”

- The City states it is unaware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 23: Statutory County in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, ATV violations, Snowmobile violations, Littering, Disorderly conduct, Disturbing the peace.

### **Traffic Law Program**

Date of Implementation: August 2007

Process: County Board approval

Ticketed Offenses: Seatbelt restraint, Child restraint, Speeding, over 10 mph above the speed limit, Vehicle equipment/safety restrictions, Sign/signal violations.

- Records are kept on administrative penalty programs for traffic law violations by the Sheriff's Department.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### **Reason for Implementation**

“With all the State cuts and additional mandates I believe the county board went with them to get slight relief for the county. To give deputies another tool in the tool box.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: county ordinance.

- The County is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 24: Statutory County in Greater Minnesota Area**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Noise violations, ATV violations, Snowmobile violations, Littering, Dumping garbage, Burning, Conduct in parks and on lakes.

### **Traffic Law Program**

Date of Implementation: November 2007

Process: County Board approval

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Speeding, over 10 mph above the speed limit, Child restraint, Vehicle equipment/safety restrictions, Sign/signal violations, Failure to obey signals, Improper lane use or turn, Failure to yield, Faulty equipment, Passenger restraints/seat belts, Loud exhaust, Exhibition driving, Motorcycles violations, Expired registration.

#### Specific Fines

Improper Lane Use: \$70

Improper Turns: \$70

Failure to Yield Right of Way: \$70

Stopping or Parking on a Roadway: \$70

Other Parking Violations: \$70

Littering: \$100

Equipment Violations: \$70

Unlawful Deposit of Garbage: \$100

Loud Exhaust: \$70

Exhibition Driving: \$70

Off-Road Vehicle Violations: \$70

Snowmobile Violations: \$70

Regulating the Use of Motor Vehicles and Ice Boats on Lake: \$50

- Records are kept by Sheriff's office on administrative penalties.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

**Reason for Implementation**

“Desire for greater local control over penalties for violations involved as well as revenue.”

**Cited Authority**

Statutory basis for operating administrative penalty programs for quality of life issues: MS 169.022 and MS 375.51-375.55.

Statutory basis for operating administrative penalty programs for traffic law violations: MS 169.022 and MS 375.51-375.55.

- The County states it is unaware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 25: City in Greater Minnesota Area<sup>17</sup>**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Building code violations, Health code violations, Noise violations, Begging, ATV violations, Snowmobile violations, Littering, Animal violations, Public urination, Prohibited bicycling or skateboarding, Disturbing the peace, Curfew violations.

### **Traffic Law Program**

Date of Implementation: November 2007

Process: City Council and City Attorney

Ticketed Offenses: Speeding, 10 mph over the speed limit and under.

- Records are kept on administrative penalty programs for traffic law violations by the Police Department.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### **Reason for Implementation**

No reason given.

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

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<sup>17</sup> How the city is organized is unknown.

## CASE STUDY 26: Statutory City Greater Minnesota Area

### Quality of Life Program

Ticketed Offenses: Parking violations, Noise violations, Begging, ATV violations, Snowmobile violations, Littering, Loitering, Disorderly conduct, Animal violations, Public urination, Prohibited bicycling or skateboarding, Disturbing the peace, Curfew violations.

### Traffic Law Program

Date of Implementation: December 2007

“We have some city ordinances that deal with traffic moving violations under basic driving conditions and State traffic statutes are not currently enforced with the use of administrative citing.”

### Scope

<u>Year</u>	<u>Administrative Penalties for Traffic Law Violations</u>	<u>State traffic tickets Issued</u>
2003	n/a	312
2004	2	194
2005	37	227
2006	47	n/a
2007	51	n/a

- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### Reason for Implementation

“We need a monetary penalty for the first time traffic violators that is not excessive. Law enforcement administrators look at this as another tool for enforcement without extreme fines with surcharges in the District Courts for petty traffic violations. The patrol officers write more citations which greatly increase the effectiveness of the patrol function.”

“Our City has adopted the administrative program of city ordinances at this time. This is a voluntary option for the violator. If the violator fails to pay the administrative fine or does not wish to participate with this process; the city has the option to withdraw the administrative citation and issue a citation through the court systems.”

**Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- No response to the question asking whether The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 27: City in Greater Minnesota Area<sup>18</sup>**

### **Quality of Life Program**

Ticketed Offenses: Parking violations, Building code violations, Health code violations, Noise violations, ATV violations, Snowmobile violations, Animal violations, Prohibited bicycling or skateboarding, Curfew violations, Graffiti.

### **Traffic Law Program**

Date of Implementation: December 2007

Process: City Council and City Attorney approval

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Sign/signal violations, Bicycle/motorized bicycle violations.

- Records are kept on administrative penalty programs for traffic law violations by the Police Chief.
- Revenue from administrative penalty programs for traffic law violations is designated for a vehicle fund, specifically to buy and repair vehicles.
- There is no penalty in place for individuals exceeding a certain number of administrative penalties.

### **Reason for Implementation**

“The city uses the program for many of the city ordinances that are city code. If a violation is made on a barking dog for instance, why should the State claim all of the money if the city is the one that has paid the officers to go to the home many times? If the police write a Minnesota State citation we will get \$12.00 from the fine. The fine will cost the owner \$130.00. The State will have no time or money into the citation.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: city code.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

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<sup>18</sup> How the city is organized is unknown.

## **CASE STUDY 28: Statutory City in Greater Minnesota Area**

### **Quality of Life Program**

- No program for administrative penalties dealing with quality of life issues.
- Currently in the process of creating an administrative penalty program for traffic law violations.

### **Traffic Law Program**

Process: City Council and City Attorney approval

### **Reason for Implementation**

“We are currently drafting an ordinance and our main concern is the extreme cost of a State citation. In addition, it would allow the city to retain more of the fees thereby relieving the expense to operate the department.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 29: Statutory City in the Metro Area**

- Records are kept on administrative penalty programs for traffic law violations by the Sheriff's Department.
- A penalty exists for exceeding a set number of administrative penalties for traffic law violations. The penalty is based on a time limit.

### **Reason for Implementation**

No reason given.

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: no answer given.

Statutory basis for operating administrative penalty program for traffic law violations: no answer given.

- The City states being unaware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

## **CASE STUDY 30: County in Greater Minnesota Area<sup>19</sup>**

### **Quality of Life Program**

Ticketed Offenses: Planning & Zoning.

### **Traffic Law Program**

Date of Implementation: No Answer

Process: County Attorney approval

Ticketed Offenses: Speeding, 10 mph over the speed limit and under, Vehicle equipment/safety restrictions.

- Records are kept on administrative penalty programs for traffic law violations by the County Sheriff's Department.
- A penalty exists for exceeding a set number of administrative penalties for traffic law violations. The penalty is based on a time limit.

### **Reason for Implementation**

“The administrative penalty program is a diversion program. The law recognizes that a prosecutor has prosecutorial discretion. In several places in statute County attorneys are mandated to have a diversion programs. Diversion programs are natural outgrowths of the concept of prosecutorial discretion.”

### **Cited Authority**

Statutory basis for operating administrative penalty program for quality of life issues: “general statutory authority to adopt ordinances and State statute that makes an ordinance violation a misdemeanor.”

Statutory basis for operating administrative penalty program for traffic law violations: see reason for implementation.

- The County is aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties.

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<sup>19</sup> How the county is organized is unknown.

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**Appendix 1:**  
Office of the State Auditor, Statement of Position;  
Administrative Penalties for Traffic Offenses,  
February 2008

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REBECCA OTTO  
STATE AUDITOR

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### Statement of Position Administrative Penalties for Traffic Offenses

Minnesota law regulates traffic enforcement in Minnesota Statutes chapter 169. Some Minnesota cities and counties have implemented their own administrative system of traffic enforcement. The position of the Office of the State Auditor on this issue is that local administrative civil penalty traffic tickets do not comply with current Minnesota law.

In a December 2003 letter, the Minnesota Attorney General addressed the issue of cities using “administrative penalties” for state traffic offenses. The Minnesota Attorney General quoted Minn. Stat. § 169.022:

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 rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may adopt traffic regulations which are not in conflict with the provisions of this chapter; provided, that when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance shall be identical with the penalty provided for in this chapter for the same offense.

Cities have only the authority expressly given to them in statute or in a city charter, or necessarily implied by the express authority given to them.<sup>1</sup> Counties are subordinate agencies of the State. It is a function of counties to implement State policy.<sup>2</sup>

A local regulation cannot conflict with state law.<sup>3</sup> Moreover, in some situations, a state law may “preempt” a local regulation. In other words, a state law may so fully occupy a particular field that there is no room for local regulation.<sup>4</sup>

The Minnesota Attorney General concluded that, by enacting chapter 169, the State preempted the field with respect to these traffic offenses. Consequently, neither cities nor

<sup>1</sup> *Mangold Midwest Co. v. Village of Richfield*, 143 N.W. 2d 813, 819-20 (Minn. 1966).

<sup>2</sup> *Kasch v. Clearwater County*, 289 N.W.2d 148, 151 (Minn. 1980).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

counties are authorized to change the nature of penalties for traffic offenses specified by chapter 169.

In addition, the adoption of administrative civil penalty tickets for State traffic offenses may be a violation of state law. The administrative ticket process allows violators of state traffic laws to pay a smaller fine than state law prescribes, and allows the city or county to retain all of the revenue without forwarding any portion to the State. State traffic violations handled through the administrative ticket process are kept off the State's driving records, leaving the violations unknown to insurance companies, law enforcement officers in other agencies, and the Minnesota Department of Public Safety.

Further, Minn. Stat. § 169.99 prescribes a uniform ticket to be used for "violations of this chapter and ordinances in conformity thereto."<sup>5</sup> The administrative tickets we have seen used by cities and counties do not appear to comply with this statute. The use of administrative tickets for chapter 169 traffic offenses may violate the express requirements of Minn. Stat. § 169.99.

Until Minnesota law is changed, the Office of the State Auditor will continue to follow the Minnesota Attorney General's opinion. We view the use of local administrative penalty traffic tickets as a legal compliance issue.

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<sup>5</sup> Minn. Stat. § 169.99, subd. 1(a).

**Appendix 2:**  
Office of the State Auditor, Statement of Position;  
Administrative Penalties for Traffic Offenses,  
December 2004

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PATRICIA ANDERSON  
STATE AUDITOR

# STATE OF MINNESOTA

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### **Statement of Position**

#### **Administrative Penalties for Traffic Offenses**

December 2004

Minnesota law regulates traffic enforcement in Minn. Stat. ch. 169. Some Minnesota cities and counties have attempted to implement their own administrative system of traffic enforcement. We believe that local administrative civil penalty traffic tickets are not in compliance with Minnesota law.

In December 2003, the Minnesota Attorney General addressed the issue of cities using “administrative fines” for State traffic offenses. The Minnesota Attorney General quoted Minn. Stat. § 169.022:

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 rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may adopt traffic regulations which are not in conflict with the provisions of this chapter; provided, that when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance shall be identical with the penalty provided for in this chapter for the same offense.

The Minnesota Attorney General went on to comment that law enforcement officers should make law enforcement decisions based on culpability and evidence, not on “the offender’s willingness to make a payment directly to the city.” The Minnesota Attorney General concluded that, by enacting Minn. Stat. ch. 169, the State has pre-empted the field with respect to these traffic offenses. The Minnesota Attorney General stated, “It is not consistent with state public policy for a public official to direct or urge that city police officers not enforce the law of the state to the best of their judgment and ability.” Consequently, cities are not authorized to change the nature of penalties for criminal offenses specified by chapter 169.

Further, Minn. Stat. § 169.99 prescribes a uniform ticket to be used for “violations of this chapter and ordinances in conformity thereto.” The administrative tickets we have seen used by cities and counties do not comply with this statute. Therefore, the use of administrative tickets for Minn. Stat. ch. 169 traffic offenses violates the express requirements of Minn. Stat. § 169.99.

Counties are subordinate agencies of the State. It is a function of counties to implement State policy. They do not exist exclusively for the benefit of their citizens. *Kasch v. Clearwater County*, 289 N.W.2d 148, 151 (Minn. 1980). Cities have only the authority expressly given to them in statute or in a city charter, or necessarily implied by the express authority given to them. *Mangold Midwest Co. v. Village of Richfield*, 143 N.W. 2d 813, 819-820 (1966). A state law may fully occupy a particular field so that there is no room for local regulation; nor may a local regulation conflict with state law. *Id.*

The adoption of administrative civil penalty tickets for State traffic offenses represents, not only failure on the part of the cities and counties to fulfill their function and duty of enforcing and upholding State law, but also an intentional violation of State law. The administrative ticket process allows violators of State traffic laws to pay a lower fine than State law prescribes, and allows the city or county to retain all of the revenue without forwarding any portion to the State. In addition, State traffic violations handled through the administrative ticket process are kept off the State's driving records, leaving the violations unknown to insurance companies, law enforcement officers in other agencies, and the Minnesota Department of Public Safety.

Until Minnesota law is changed, we will continue to follow the Minnesota Attorney General's opinion. We believe that administrative civil penalty tickets for State traffic offenses are not in compliance with Minn. Stat. ch. 169. Cities and counties should immediately discontinue any practice of providing "voluntary" administrative tickets for traffic violations that are different than those provided by State law. Tickets used by cities and counties for State traffic violations must be in the form prescribed by law. Administrative offense procedures and ordinances adopted by cities and counties must be consistent with statutory provisions. Cities and counties that have implemented administrative civil penalty tickets for State traffic offenses should notify and work with the Minnesota Department of Finance to determine what amounts are owed to the State for fines collected.

**Appendix 3:**  
Legislative bills related to administrative penalties

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1.1 A bill for an act

1.2 relating to traffic regulations; authorizing counties and cities to impose  
1.3 administrative penalties for certain traffic violations; amending Minnesota  
1.4 Statutes 2006, sections 169.022; 169.99, subdivision 3; proposing coding for new  
1.5 law in Minnesota Statutes, chapter 471.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2006, section 169.022, is amended to read:

1.8 **169.022 UNIFORM APPLICATION.**

1.9 The provisions of this chapter shall be applicable and uniform throughout this state  
1.10 and in all political subdivisions and municipalities therein, and no local authority shall  
1.11 enact or enforce any rule or regulation in conflict with the provisions of this chapter unless  
1.12 expressly authorized herein. Local authorities may adopt traffic regulations which are not  
1.13 in conflict with the provisions of this chapter; provided, that when any local ordinance  
1.14 regulating traffic covers the same subject for which a penalty is provided for in this  
1.15 chapter, then the penalty provided for violation of said local ordinance shall be identical  
1.16 with the penalty provided for in this chapter for the same offense, except as provided  
1.17 in section 471.984.

1.18 Sec. 2. Minnesota Statutes 2006, section 169.99, subdivision 3, is amended to read:

1.19 Subd. 3. **Alteration by local government.** (a) Any city of the first class, through  
1.20 its governing body, may alter by deletion or addition the uniform traffic ticket in such  
1.21 manner as it deems advisable for use in such city, provided that it includes the notice  
1.22 required by subdivision 1, paragraph (b).

**S.F. No. 1008, as introduced - 85th Legislative Session (2007-2008)**

2.1           **(b)** In respect to any public corporation organized and existing pursuant to sections  
2.2 473.601 to 473.679, whose ordinances and regulations for the control of traffic are  
2.3 enforced through prosecution in the district court having jurisdiction in one or the other  
2.4 of the cities of the first class included within such public corporation, the traffic ticket  
2.5 used in such enforcement shall conform to that used by the city of the first class in the  
2.6 district court having jurisdiction where its ordinances and regulations are enforced, except  
2.7 as to color and as to information uniquely applying to such public corporation and to its  
2.8 ordinances and regulations.

2.9           **(c)** Any county or home rule charter or statutory city that has adopted an ordinance  
2.10 under section 471.984 shall alter by deletion or addition the uniform traffic ticket as it  
2.11 deems advisable, including, but not limited to, incorporating information concerning the  
2.12 administrative violation, response by the alleged violator, and consequence of failure to  
2.13 respond.

2.14           **Sec. 3. [471.984] IMPOSITION OF PENALTY FOR SPEEDING OFFENSE.**

2.15           Subdivision 1. **Authority.** Notwithstanding section 169.022, the county board  
2.16 of any county or the city council of any home rule charter or statutory city may adopt  
2.17 ordinances to set administrative penalties and impose them when a person:

2.18           (1) violates section 169.14 and the person's speed was no more than ten miles per  
2.19 hour greater than the lawful speed limit;

2.20           (2) fails to obey a traffic control device in violation of section 169.06; or

2.21           (3) fails to have properly functioning vehicle lights in violation of any provision of  
2.22 chapter 169. The ordinance adopted by a county board does not apply in any city that has  
2.23 adopted an ordinance under this subdivision.

2.24           Subd. 2. **Right to contest penalty.** An ordinance adopted under this subdivision  
2.25 must allow the alleged violator to contest the administrative penalty and elect to be  
2.26 charged under state law with adjudication of the charge in district court.

2.27           Subd. 3. **Disposition of penalties.** The ordinance may provide that penalties  
2.28 collected be paid to the treasurer of the government unit and be deposited in the city  
2.29 or county's general fund.

1.1 A bill for an act

1.2 relating to traffic regulations; limiting local authorities from enforcing traffic  
1.3 regulations with administrative penalties; amending Minnesota Statutes 2006,  
1.4 sections 169.022; 169.985; 169.99, subdivision 3; proposing coding for new  
1.5 law in Minnesota Statutes, chapter 471.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2006, section 169.022, is amended to read:

1.8 **169.022 UNIFORM APPLICATION.**

1.9 The provisions of this chapter shall be applicable and uniform throughout this state  
1.10 and in all political subdivisions and municipalities therein, and no local authority shall  
1.11 enact or enforce any rule or regulation in conflict with the provisions of this chapter unless  
1.12 expressly authorized herein. Local authorities may adopt traffic regulations which are not  
1.13 in conflict with the provisions of this chapter; provided, that when any local ordinance  
1.14 regulating traffic covers the same subject for which a penalty is provided for in this  
1.15 chapter, then the penalty provided for violation of said local ordinance shall be identical  
1.16 with the penalty provided for in this chapter for the same offense, except as provided  
1.17 in section 471.984.

1.18 Sec. 2. Minnesota Statutes 2006, section 169.985, is amended to read:

1.19 **169.985 TRAFFIC CITATION QUOTA PROHIBITED.**

1.20 A law enforcement agency may not order, mandate, require, or suggest to a peace  
1.21 officer a quota for the issuance of traffic citations or administrative penalties under section  
1.22 471.984 on a daily, weekly, monthly, quarterly, or yearly basis.

2.1 Sec. 3. Minnesota Statutes 2006, section 169.99, subdivision 3, is amended to read:

2.2 Subd. 3. **Alteration by local government.** (a) Any city of the first class, through  
2.3 its governing body, may alter by deletion or addition the uniform traffic ticket in such  
2.4 manner as it deems advisable for use in such city, provided that it includes the notice  
2.5 required by subdivision 1, paragraph (b).

2.6 (b) In respect to any public corporation organized and existing pursuant to sections  
2.7 473.601 to 473.679, whose ordinances and regulations for the control of traffic are  
2.8 enforced through prosecution in the district court having jurisdiction in one or the other  
2.9 of the cities of the first class included within such public corporation, the traffic ticket  
2.10 used in such enforcement shall conform to that used by the city of the first class in the  
2.11 district court having jurisdiction where its ordinances and regulations are enforced, except  
2.12 as to color and as to information uniquely applying to such public corporation and to its  
2.13 ordinances and regulations.

2.14 (c) Any county or home rule charter or statutory city that has adopted an ordinance  
2.15 under section 471.984 shall alter by deletion or addition the uniform traffic ticket as it  
2.16 deems advisable, including, but not limited to, incorporating information concerning the  
2.17 administrative penalty, response by the alleged violator, and consequence of failure to  
2.18 respond.

2.19 Sec. 4. **[471.984] IMPOSITION OF PENALTY FOR MINOR TRAFFIC**  
2.20 **OFFENSE.**

2.21 Subdivision 1. **Authority.** Notwithstanding section 169.02, the county board of any  
2.22 county or the city council of any home rule charter or statutory city may adopt ordinances  
2.23 to establish administrative penalties that may be imposed on a vehicle operator who:

2.24 (1) violates section 169.14, and the violation consists of a speed no more than ten  
2.25 miles per hour in excess of the lawful speed limit;

2.26 (2) fails to obey a traffic control device in violation of section 169.06 or a stop line  
2.27 in violation of section 169.30; or

2.28 (3) operates a vehicle that is not equipped with or does not display vehicle lighting  
2.29 required by chapter 169.

2.30 Subd. 2. **Officer's authority.** An officer may not be required by ordinance to issue a  
2.31 citation under this section instead of a citation under state law.

2.32 Subd. 3. **Right to contest penalty.** An ordinance adopted under this subdivision  
2.33 must allow the alleged violator to contest the administrative penalty and elect to be  
2.34 charged under state law with adjudication of the charge in district court.

**S.F. No. 155, 1st Engrossment - 85th Legislative Session (2007-2008)**

3.1            Subd. 4. **Penalties.** (a) An ordinance may provide that penalties collected must be  
3.2 transferred to the treasurer of the government unit and deposited in the city or county's  
3.3 general fund.

3.4            (b) An administrative penalty may not exceed the maximum state fine for the offense.

3.5            Subd. 5. **Exception.** A holder of a commercial driver's license may not be issued a  
3.6 citation under this section or under an ordinance adopted under this section.

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**Appendix 4:**  
Minnesota Attorney General:  
Opinion on Administrative Penalties,  
December 2003

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**MIKE HATCH**  
ATTORNEY GENERAL

# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

December 1, 2003

SUITE 1800  
445 MINNESOTA STREET  
ST. PAUL, MN 55101-2134  
TELEPHONE: (651) 297-2040

The Honorable Steve Smith  
State Representative  
Minnesota House of Representatives  
2710 Clare Lane  
Mound, MN 55364

Dear Representative Smith:

Thank you for your correspondence of October 30, 2003 concerning the legality of certain municipal programs which impose administrative penalties upon persons violating state laws and local ordinances.

## FACTS AND BACKGROUND

You provided with your letter examples of city ordinances and explanatory materials from both home-rule and statutory cities describing "administrative offense" procedures established by those cities.

Most of the procedures are similar in several respects:

1. They are intended to provide an "informal, cost-effective and expeditious alternatives" to traditional prosecutions for certain minor offenses.
2. The covered offenses include violations of the state traffic code (Minn. Stat. Ch. 169) and conforming local ordinances, other statutory offenses such as illegal fireworks (Minn. Stat. Ch. 524), disturbing the peace (Minn. Stat. § 609.72) and shoplifting (Minn. Stat. § 609.52), and conduct regulated solely by local ordinances such as curfew violations, failure to mow lawns and alcohol consumption in public parks.
3. They purport to be "voluntary" in that persons charged can elect to be prosecuted under the normal misdemeanor or petty misdemeanor process instead.
4. They include a schedule of monetary penalties for specified offenses. The penalties are often lower than those normally imposed by courts for similar offenses.
5. All money collected as administrative penalties is retained by the city.

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6. None apparently provide for reporting any information to other governmental agencies concerning persons "convicted" of, or admitting, violations.
7. Failure to pay the city's administrative penalty results in the city's pursuing a normal misdemeanor or petty misdemeanor prosecution in the courts.

Some of the programs provide alleged offenders a means to challenge the imposition of administrative penalties by way of a hearing conducted by a local official or appointed panel. Others provide that a challenge to the civil penalty will result in the filing of the pertinent misdemeanor or petty misdemeanor charge in court.

You also enclosed information concerning a diversion program employed by one city whereby local peace officers have the option of "holding" citations for certain traffic offenses to give violators an opportunity to complete an eight-hour traffic safety course for which the violator must pay \$75. If the violator completes the course within 21 days, the citation is "torn up."

Cities have cited the need for increased revenues, along with frustration over the time and resources required for court prosecutions, and the results achieved thereby, as reasons for creating their own enforcement programs. You note that the State Auditor has recently expressed her views questioning the authority of cities to adopt such procedures.

Based upon this information, you ask the following questions.

1. Is it permissible for a local governmental unit to issue, for an act that would be the equivalent of a misdemeanor, gross misdemeanor, or felony under state law, an administrative citation that provides a penalty substantially below that which would be imposed for a violation of the comparable statute?
2. Does state law preempt county or statutory or home rule charter city ordinances or policies that allow local law enforcement to assess administrative sanctions in lieu of, in addition to, or as an alternative to a citation for a state traffic law violation?
3. Do local administrative procedures and sanctions conflict with state laws intended to punish repeat traffic violators such as Minn. Stat. § 169.89, subd. 1, and § 171.18 (2002)?
4. Does state law preempt county ordinances, statutory city ordinances, or home-rule city ordinances that allow traffic offenders to attend a driver-safety diversion program in lieu of being charged with a petty misdemeanor traffic citation? Are such ordinances or policies in conflict with state law?

5. Do local administrative hearing procedures deny alleged ordinance violators any of their constitutionally protected due process or equal protection rights?
6. Do local administrative hearing procedures violate the principle of separation of powers between the executive branch and the judicial branch by infringing on the district court's original jurisdiction?

Our analysis of these issues is set forth below.

#### LAW AND ANALYSIS

As a preliminary matter, this Office does not render opinions on hypothetical questions, conduct general reviews of local enactments or proposals to identify possible legal issues or evaluate the constitutionality of legislative enactments. See Op. Atty. Gen. 629a, May 9, 1975. Consequently, we are unable to render definitive opinions that fully address the complete range of issues implicit in your questions. We can, however, offer the following comments which we hope will be helpful to the committee in its deliberations.

First, as you probably know, cities, as subdivisions of the state, have only those powers that are expressly granted by statute or charter, or are reasonable and necessary to implementation of such express powers. See, e.g., *County Joe, Inc. v. City of Eagan*, 560 N.W.2d 681 (Minn. 1997).

Second, in the exercise of their general express or implied powers, cities may not establish programs or procedures that are incompatible with state statutes or address areas of the law that have been preempted by state law either expressly or by implication. See, e.g., *LaCrescent Twp v. City of LaCrescent*, 515 N.W.2d 608 (Minn. Ct. app. 1994); *Northwest Residence v. City of Brooklyn Park*, 352 N.W.2d 764 (Minn. Ct. App. 1984). This principle applies notwithstanding the broad powers of self-government generally exercised under home-rule charters. As noted by the Court in *State ex rel. Town of Lowell v. City of Crookston*, 202 Minn. 526, 91 N.W.2d 81 (1958):

The power conferred upon cities to frame and adopt home rule charters is limited by the provisions that such charter shall always be in harmony with and subject to the constitution and laws of the state.

*Id.* at 528, 91 N.W.2d at 83.

In general, (a) direct conflict occurs when "the ordinance and the statute contain express or implied terms that are irreconcilable;" (b) more specifically, an ordinance conflicts with state law if it "permits what the statute forbids;" (c) similarly, there is conflict if the ordinance "forbids what the statute expressly permits;" and (d) "no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute."

The Honorable Steve Smith

December 1, 2003

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*Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 352, 143 N.W.2d 813, 816-17 (1966) (citations omitted).

In evaluating whether an area of law has been preempted by the legislature, the courts will consider: (1) the subject matter regulated; (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern; (3) whether any partial legislation on the subject matter evinces an intent to treat the subject matter as being solely a state concern; and (4) whether the nature of the subject matter is such that local regulation will have an adverse effect on the general state population. See *Mangold Midwest* at 358, 243 N.W.2d 813, 820.

Third, both statutory and charter cities have substantial authority to enact regulatory ordinances, see, e.g., Minn. Stat. § 412.221 (2002), and to fix penalties for violations. See, e.g., Minn. Stat. § 412.231 (2002), which provides:

The council shall have the power to declare that the violation of any ordinance shall be a penal offense and to prescribe penalties therefore. No such penalty shall exceed a fine of \$700 or imprisonment in a city or county jail for a period of 90 days, or both, but in either case the costs of prosecution may be added.

Fourth, the legislature has, however, prescribed in detail the procedures for prosecution of penal offenses. For example, Minn. Stat. § 487.25, subd. 1 (2002) states:

Subdivision 1. General. Except as otherwise provided in sections 487.01 to 487.38 but subject to the provisions of section 480.059 [Supreme Court authorized to promulgate rules governing criminal procedure], pleading, practice, procedure, and forms in actions or proceedings charging violation of a criminal law or a municipal ordinance, charter provision, or rule are governed by the rules of criminal procedure.

(Emphasis added). Subdivision 10 of that section allocates the authority and responsibility for prosecution of various offenses. In general, city ordinance violations, petty misdemeanors, and misdemeanors occurring within a city must be prosecuted by city attorneys, while felonies and most gross misdemeanors must be prosecuted by county attorneys. Minn. Stat. § 487.25, subd. 10 (2002).

With the above principles in mind, we turn your specific questions.

1. Given the extent and detail of legislation addressing statutory criminal offenses and prosecution procedures set forth in Minn. Stat. chs. 169 and 609 through 634, it is clear that the state has preempted the field with respect to the offenses and procedures defined in those statutes. Consequently, while cities are empowered to regulate conduct in areas of local interest and to supplement statutory regulations in many areas, cf., *Hannan v. City of Minneapolis*, 623 N.W.2d 281 (Minn. Ct. App. 2001), they may not, in our view, redefine the nature or level of

criminal offenses as specified by statute or modify statutory procedures for enforcement or penalties for an offense.

Further, as you know, city councils are not normally authorized to direct the conduct of county or state law enforcement officers. It is not consistent with state public policy for a public official to direct or urge that city peace officers not enforce the law of the state to the best of their judgment and ability. In addition, while law enforcement officials and prosecutors exercise substantial discretion in making arrest and charging decisions, those decisions should be made on a case-by-case basis in terms of factors pertaining to the evidence, the culpability of the offender and the nature of the offense rather than, for example, the offender's willingness to make a payment directly to the city.

2. In the specific case of traffic offenses, the legislature has plainly preempted the field of enforcement. Minn. Stat. § 169.022 (2002) 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 rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may adopt traffic regulations which are not in conflict with the provisions of this chapter; provided, that when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance shall be identical with the penalty provided for in this chapter for the same offense.

In *State v. Hoben*, 256 Minn. 436, 98 N.W.2d 813 (1959), the court affirmed the preemptive nature of state statutes in this area follows:

The fact that the municipality is given authority to adopt such an ordinance does not change the nature and quality of the offense. As we interpret § 169.03, it was the intention of the legislature that the application of its provisions should be uniform throughout the state both as to penalties and procedures, and requires a municipality to utilize state criminal procedure in the prosecution of the act covered by § 169.03. It would be a strange anomaly for the legislature to define a crime, specify punishment therefore, provide that its application shall be uniform throughout the state, and then permit a municipality to prosecute that crime as a civil offense.

*Id.* at 444, 98 N.W.2d at 819. See also Minn. Stat. §§ 169.91 and 169.99 (2002) which specify the procedures to be followed by peace officers in connection with arrest of traffic violators, and the uniform form of traffic ticket, having the effect of a summons and complaint, which must be used by all peace officers. Consequently, while cities are granted specific authority to exercise

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certain regulatory control of streets and roads within their boundaries, they are plainly precluded from creating their own enforcement systems inconsistent with those prescribed by statute.

3. Given our response to the second question, it is unnecessary to address whether local administrative enforcement systems conflict with state laws in the particular matter of providing for keeping records of traffic violations. It is likely, however, that the need for uniform and consistent implementation of such programs is one reason for the strong legislative assertion of state preemption in the area of traffic regulation.

4. A number of Minnesota statutes and criminal procedure rules make a provision for pre-trial, or presentencing, "diversion" programs. See, e.g. Minn. Stat. §§ 388.24, 401.065 (2002), 628.69, 30.03, Minn. R. Crim. Proc. Rule 27.05. In particular, in the case of a traffic violation, Minn. Stat. § 169.89, subd. 5 authorizes a trial court to require, as part of or in lieu of other penalties, that convicted persons attend a driver improvement clinic. All such programs, however, require that a trial court make the determination as to whether attendance at such a clinic is appropriate. We are aware of no express authority for local officials to create a pretrial diversion program.

5. For the reasons set forth in Op. Atty. Gen. 629a, May 9, 1975, the Attorney General's Office does not generally address the constitutionality of statutes or governmentally established procedures. Thus, we are unable to determine the constitutional validity of various administrative "hearing procedures" that might be established by cities.

I note, however, based on the materials you submitted, the majority of the local administrative penalty provisions do not appear to provide for any administrative hearing process at all. Rather, they state that persons who contest their liability or refuse to pay the assessed penalty or complete the required training will be charged through the normal judicial channels. It appears that all the programs to which you refer are entirely voluntary in that the accused may withdraw from the process at any time prior to payment of the city penalty. Given the elective nature of these processes, it is likely that the due process rights of the accused are not jeopardized.

6. Likewise, a completely voluntary process would not appear to offend the separation of powers principles embodied in the constitution or to encroach upon the judicial function. In *Holmberg v. Holmberg*, 588 N.W.2d 720 (Minn. 1999), the court indicated that evaluation of administrative hearing schemes under the separation of powers doctrine involves consideration of, *inter alia* existence of adequate judicial checks, appealability and voluntariness of entry into the administrative process. *Id.* at 725. Furthermore, as the court pointed out in concluding that the role of the administrative board was not judicial in nature in *Meath v. Harmful Substance Compensation Board*, 550 N.W.2d 275 (1996):

The Honorable Steve Smith  
December 1, 2003  
Page 7

The claimant makes no election of remedies by bringing a claim to the board; the only purpose of the board's investigation or hearing is to provide the claimant the opportunity to prove eligibility for an award. The board's decision is not only unenforceable but, in fact, decides nothing except whether to make the claimant an offer of compensation. If the board makes no offer or if the claimant considers the offer inadequate, the claimant has the option of turning his or her back on the board's treatment of the claim. The claimant, unencumbered by the board's response, which is inadmissible in a civil action, can then commence a civil action against the person or persons alleged to be responsible for the claimant's injury.

*Id.* So long as a citizen is not legally bound by the city's action until he or she accepts the city's "offer" by payment of the specified penalty, the procedures described would not likely be found to impermissibility encroach upon judicial functions.

I hope these comments are helpful to you and to the Committee.

Very truly yours,



KENNETH E. RASCHKE, JR.  
Assistant Attorney General

(651) 297-1141 (Voice)  
(651) 297-1235 (Fax)

AG: #945560-v1

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**Appendix 5:**  
Administrative Penalties Survey

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# ADMINISTRATIVE PENALTIES SURVEY



REBECCA OTTO  
STATE AUDITOR

## STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

SUITE 500  
525 PARK STREET  
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)  
(651) 296-4755 (Fax)  
state.auditor@state.mn.us (E-mail)  
1-800-627-3529 (Relay Service)

1. Please indicate the type of local government that you represent:  
Please check both a) and b).

a) County \_\_\_\_\_ or City \_\_\_\_\_

b) Statutory \_\_\_\_\_ or Charter \_\_\_\_\_

2. Please indicate the location of the County/City that you represent:

Twin Cities Metro Area \_\_\_\_\_ or Greater Minnesota \_\_\_\_\_

3. Does the County/City have an administrative penalty program for quality of life issues?

Yes \_\_\_\_\_

No \_\_\_\_\_

4. If yes, administrative penalties are issued for which law/ordinance (quality of life) violations?  
Please check all that apply.

\_\_ Parking

\_\_ Snowmobile violations

\_\_ Prohibited bicycling or  
skateboarding

\_\_ Building codes

\_\_ Littering

\_\_ Disturbing the peace

\_\_ Health codes

\_\_ Drug paraphernalia

\_\_ Shoplifting

\_\_ Minor consumption

\_\_ Loitering

\_\_ Curfew

\_\_ Noise violations

\_\_ Disorderly Conduct

\_\_ Graffiti

\_\_ Begging

\_\_ Animal violations

\_\_ Other:

\_\_ ATV violations

\_\_ Public urination

5. Does the County/City have an administrative penalty program for traffic law violations?

Yes \_\_\_\_\_

No \_\_\_\_\_

# ADMINISTRATIVE PENALTIES SURVEY

6. If yes, when was the program implemented? (mm/dd/yyyy)

Date: \_\_\_\_\_

7. Administrative penalties are issued for which traffic law violations?

Please check all that apply.

- |  |   |
|--|---|
| <input type="checkbox"/> Seatbelt restraint                              | <input type="checkbox"/> Permit violations                    |
| <input type="checkbox"/> Child restraint                                 | <input type="checkbox"/> Driving without a license            |
| <input type="checkbox"/> Speeding, 10 mph over the speed limit and under | <input type="checkbox"/> Proof of insurance                   |
| <input type="checkbox"/> Speeding, over 10 mph above the speed limit     | <input type="checkbox"/> Invalid license plate                |
| <input type="checkbox"/> Vehicle equipment/safety restrictions           | <input type="checkbox"/> Bicycle/motorized bicycle violations |
| <input type="checkbox"/> Sign/signal violations                          | <input type="checkbox"/> Driving without headlights           |
| <input type="checkbox"/> Impaired driving                                | <input type="checkbox"/> Improper lights                      |
| <input type="checkbox"/> Driving with suspended/revoked license          | <input type="checkbox"/> Illegal use of carpool lane          |
|  | <input type="checkbox"/> Other:                               |

8. If no, has your County/City ever discussed the desire to implement an administrative penalty program for traffic law violations if such a program were to be approved by the State Legislature?

Yes \_\_\_\_\_

No \_\_\_\_\_

9. Has your County/City ever discussed the desire to implement an administrative penalty program for traffic law violations without a program being approved by the State Legislature?

Yes \_\_\_\_\_

No \_\_\_\_\_

10. If your County/City has an administrative penalty program for traffic law violations, what was the reason the program was created?

# ADMINISTRATIVE PENALTIES SURVEY

11. Who gave authorization to implement administrative penalty programs for traffic law violations?  
Check all that apply.

- City Council/County Board
- City Attorney/County Attorney
- Other: \_\_\_\_\_

12. Are administrative penalties, other than fines, issued for traffic law violations?  
(Example: A program that allows cited individuals to participate in a safe driving course in lieu of a fine.)

Yes \_\_\_\_\_

No \_\_\_\_\_

13. How many administrative penalties in the form of fines for traffic law violations were issued in the following years?

### FINES

2002 \_\_\_\_\_

2003 \_\_\_\_\_

2004 \_\_\_\_\_

2005 \_\_\_\_\_

2006 \_\_\_\_\_

2007 \_\_\_\_\_

14. How many administrative penalties in the form of non-monetary penalties for traffic law violations were issued in the following years? (Example: Safe driving course in lieu of a fine.)

### NON-MONETARY PENALTIES

2002 \_\_\_\_\_

2003 \_\_\_\_\_

2004 \_\_\_\_\_

2005 \_\_\_\_\_

2006 \_\_\_\_\_

2007 \_\_\_\_\_

# ADMINISTRATIVE PENALTIES SURVEY

15. Please indicate the number of State traffic tickets issued in the following years:

NUMBER OF TICKETS

2002 \_\_\_\_\_

2003 \_\_\_\_\_

2004 \_\_\_\_\_

2005 \_\_\_\_\_

2006 \_\_\_\_\_

2007 \_\_\_\_\_

16. Please indicate the following for State traffic tickets issued:

TOTAL REVENUE COLLECTED

(Prior to distribution among government entities.)

2002 \$ \_\_\_\_\_

2003 \$ \_\_\_\_\_

2004 \$ \_\_\_\_\_

2005 \$ \_\_\_\_\_

2006 \$ \_\_\_\_\_

2007 \$ \_\_\_\_\_

17. Are administrative penalties for traffic law violations recorded and tracked for individuals receiving tickets?

Yes \_\_\_\_\_

No \_\_\_\_\_

18. If yes, what department and position maintains these records?

Department \_\_\_\_\_

Position \_\_\_\_\_

## ADMINISTRATIVE PENALTIES SURVEY

19. Is there a penalty to individuals for exceeding a certain number of administrative penalties for traffic law violations?

Yes \_\_\_\_\_

No \_\_\_\_\_

20. If yes, is the penalty based on a time limit?

(Example: 3 administrative penalties for traffic law violations in 1 year = penalty.)

Yes \_\_\_\_\_

No \_\_\_\_\_

21. Please indicate the following:

### TOTAL GOVERNMENTAL FUND REVENUES

2002 \$ \_\_\_\_\_

2003 \$ \_\_\_\_\_

2004 \$ \_\_\_\_\_

2005 \$ \_\_\_\_\_

2006 \$ \_\_\_\_\_

2007 \$ \_\_\_\_\_

22. Please indicate the following:

### TOTAL FINES AND FORFEITURES (GOVERNMENTAL FUNDS)

2002 \$ \_\_\_\_\_

2003 \$ \_\_\_\_\_

2004 \$ \_\_\_\_\_

2005 \$ \_\_\_\_\_

2006 \$ \_\_\_\_\_

2007 \$ \_\_\_\_\_

## ADMINISTRATIVE PENALTIES SURVEY

23. Total revenue collected in administrative penalties in the form of fines for traffic law violations:

### CITATION FINES

2002 \$ \_\_\_\_\_

2003 \$ \_\_\_\_\_

2004 \$ \_\_\_\_\_

2005 \$ \_\_\_\_\_

2006 \$ \_\_\_\_\_

2007 \$ \_\_\_\_\_

24. Total revenue collected in administrative penalties in the form of other fees for traffic law violations:

(Example: Fees associated with safe driving classes.)

### OTHER FEES

2002 \$ \_\_\_\_\_

2003 \$ \_\_\_\_\_

2004 \$ \_\_\_\_\_

2005 \$ \_\_\_\_\_

2006 \$ \_\_\_\_\_

2007 \$ \_\_\_\_\_

25. Has the revenue from administrative penalties for traffic law violations been designated for specific purposes?

Yes \_\_\_\_\_

No \_\_\_\_\_

26. If yes, state the fund(s) and the purpose(s) for which this revenue has been designated:

Name of Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_

## ADMINISTRATIVE PENALTIES SURVEY

27. Is your County/City aware of the Statement of Position from the Office of the State Auditor regarding administrative penalties?

Yes \_\_\_\_\_

No \_\_\_\_\_

28. If your County/City has an administrative penalty program for quality of life issues, what is the statutory basis for operating the program?

29. If your County/City has an administrative penalty program for traffic law violations, what is the statutory basis for operating the program?

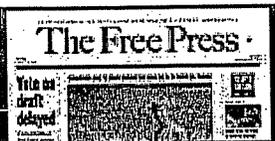
Please return the survey to: Government Information Division, Office of the State Auditor, Suite 500, 525 Park Street, St. Paul, MN 55103

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**Appendix 6:**

News articles pertaining to administrative penalty programs

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## Cornish, cities disagree on fees vs. fines

**Mark Fischenich**  
Free Press Staff Writer

— State Rep. Tony Cornish said it's probably illegal and definitely cheats the state out of revenue while letting some unsafe drivers off the hook. And Cornish is pushing legislation to put an end to it. Dozens of Minnesota cities, including a couple in south-central Minnesota, think it's good for cities, good for local cops, good for drivers and might even be good for public safety. They're supporting a bill to make it clearly legal.

The debate is over administrative fees in lieu of traditional fines for everything from illegal parking to speeding to failing to yield. An uncertain number of counties and cities, including Mapleton and Waseca, have added the civil penalties as an option that officers can offer some violators when they're caught violating the law.

If the violator accepts the administrative fee option, they typically pay a smaller penalty that goes entirely to the city. And no mention of the violation goes on their state driving record, leaving insurance companies unaware of it.

"So bad drivers are rewarded by this," said Cornish, a former town cop and sheriff's deputy. "They can have a number of violations, and it doesn't go on their record, it doesn't go to the insurance company."

That's not an accurate picture of the impact of administrative fees, according to supporters of the option. They say the state has become gluttonous for revenue from traffic violations, tacking endless surcharges on to fines. A typical ticket for a moving violation now brings \$72 in surcharges that go to the state's general fund, said Anne Finn, a lobbyist for the League of Minnesota Cities. On top of that is \$40 that is split evenly between the state, the court system and the local city or county that employs the law officer issuing the ticket.

With a state fine approaching \$120, many officers are reluctant to issue a ticket for a relatively minor violation. They also know the high fine makes it more likely the violator will challenge the ticket in court, driving up costs for the court system, for prosecutors and for police departments that see more days where officers are spending hours in a courthouse waiting to testify about a traffic stop.

"So they're giving warnings," Finn said. "And they're not really comfortable with that either."

The administrative fee, which is typically closer to \$50 or \$75, represents a middle ground between a warning and a state ticket, Finn said. And it reduces the amount of local property tax revenue needed to prosecute a traditional moving violation where the offender is fighting the large state ticket.

Cornish, R-Vernon Center, wonders if the cities' motivation has more to do with coveting the revenue that previously went to the state. More police departments seemed to make the switch to administrative fees earlier this decade after the state, facing budget deficits and attempting to avoid tax increases, cut Local Government Aid to cities.

"I can even sympathize with them on the LGA and other things, but they can't go around the barn and come in the back door like this," Cornish said. "Administrative penalties circumvents the whole system and lets the city keep all the money."

That hurts more than the state general fund, Cornish said. It also diverts money from the Peace Officers Standards and Training Board and a fund for law libraries. And it creates a mish-mash of penalties around the state.

"So it really skews the whole system that we set up at the Legislature," he said.

Mapleton City Administrator Patty Woodruff said revenue was one motivation for her city making the shift to administrative fees.

"After LGA cuts, it was one way to raise a few dollars," Woodruff said.

But the amount is relatively minor. In 2006, the fees brought in \$2,470 to Mapleton city coffers. By comparison, the LGA cuts in 2003 were \$56,000.

Last month, Cornish saw his bill to prohibit administrative penalties set aside by a House committee that instead adopted a bill making the practice clearly legal. So far, the Senate hasn't acted on either bill, and Cornish believes lawmakers won't resolve the dispute this session.

If that's the case, the legality of the practice will continue to be a bit hazy. Former State Auditor Pat Anderson issued a report in 2003 that suggested cities don't have the legal authority to do it. Former Attorney General Mike Hatch essentially agreed.

There's also the possibility the federal government might react to the practice as well, said Pat McCormick, the director of the state Division of Driver and Vehicle Services. Federal law prohibits states from "masking" traffic violations by commercial drivers on driving records, and federal officials could determine that's what's happening with administrative penalties.

If the feds decide the state is sanctioning the practice, they could impose financial penalties as high as \$1 million in the first year and higher amounts in ensuing years, McCormick said.

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#### Photos



The Free Press

## **Mankato Free Press**

### **CORRECTION**

A story in Sunday's Free Press about North Mankato considering implementing administrative penalties in lieu of state traffic fines reversed the figures for the fine and surcharges on a typical moving violation under state law. The fine is \$40 and the surcharges are \$72.

In addition, while revenue from the fine is used for courthouse law libraries and prosecution expenses, the state court system does not get a share.

## Police chief update

From time to time I hear people say, "If only the police would write more parking tickets, the city would not have any financial problems."

Even though parking tickets can now cost over \$20, only about three or four dollars of the fine amount comes back to the city.

The overwhelming majority of the revenue from parking fines goes to the State of Minnesota and the court system. Governor Pawlenty raised the amount of money collected from parking tickets several years ago by \$4; St. Louis County Attorney Allen Mitchell raised the

**Police Chief  
Gordon  
Ramsay**

law library fee assessed to parking tickets by \$2.

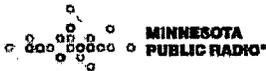
As a result of these increases, Duluth officials have felt pressure not to raise our portion of the parking ticket allotment.

Some Minnesota cities have successfully raised significant amounts of money using administrative fines to skirt the issue of having to share the fine amount with the state, court system and other government entities. There have been attempts by the some member of the legislature to completely legitimize administrative fines, but they have been unsuccessful.

The Attorney General and State Auditor have taken the stance that administrative citations are not legal given current laws. Several cities have continued to use administrative citations despite warnings from the state and are hoping to settle the issue once and for all in court.

If Duluth were to begin using administrative fines for select violations it would raise a lot of revenue. But there are still legal issues and other internal hurdles that must be straightened out before we can move forward with administrative fines.

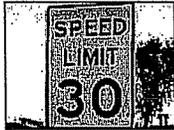
**(bold)**In other news,**(end bold)** our citizen patrol throughout the city is as active as ever. The Lincoln Park Citizen's Patrol has grown from 10 volunteers earlier this year to over 50 as of September! They have been very helpful in helping us identify problem properties and have undoubtedly impacted the crime reduction efforts in Lincoln Park.



**Fine fight**

by Dan Gunderson, Minnesota Public Radio  
July 21, 2003

**Many Minnesota cities are changing the way they handle speeding tickets, and other minor traffic violations. City officials say they're saving money and making the system more efficient. But a Minnesota Department of Public Safety official sees a troubling trend.**



Moorhead, Minn. — Police don't often complain about the penalty for a crime being too harsh. But that's how Fergus Falls police chief John Wagner feels about some speeding tickets.

Let's say a motorist is stopped for speeding in Ottertail county, going ten miles per hour over the speed limit. Police write a ticket, and the district court imposes a fine of \$40. But the speeding ticket costs the driver \$110. That's because \$70 in state surcharges are added to the ticket. Those surcharges nearly doubled this year.

*Minnesota communities reduce traffic fines.*

The tickets are too expensive for people in rural Minnesota according to John Wagner.

"It's not in line with the wage scale in greater Minnesota, I can assure you of that," said Wagner. Not for the working people that occupy this part of the state."

Wagner found many patrol officers felt the fines were so unfair they would hesitate to write tickets for minor traffic infractions.

**The state is doing nothing and they're getting over a third of the fine revenue.**

- Dassel City Administrator Dan Buchholz

"When you have to address the traffic safety issues in your community, (if) officers feel very much as I do that the working people out here can't afford that kind of a cost, probably we're going to look the other way," said Wagner. "That's not right either, but that's the reality of it."

Wagner asked the Fergus Falls city council to give officers another option. Now they hand out administrative penalties instead of traffic tickets for minor traffic violations.

State law gives cities the option of using administrative penalties instead of traffic tickets. In Fergus Falls, the penalty for going ten miles per hour over the limit is \$45 dollars. All of the money goes to the city. The state gets nothing. No one goes to court, and the violation does not go on the drivers record.

Police in Columbia Heights are also using administrative penalties. Columbia Heights Police Chief Tom Johnson also heads the Minnesota Chiefs of Police Association. He doubts traffic fines will solve city budget problems.

But Johnson believes administrative penalties save time and money because they keep violators out of the court system. They simply pay the penalty.

Johnson estimates the administrative penalties will generate about \$24,000 in Columbia Heights.

**If this continued to become an issue this person would never be held accountable for their driving behavior.**

- Minnesota Assistant Public Safety Commissioner Tim Leslie

"I don't see it as a huge windfall but yet I do see it as a positive thing for our residents in that they can deal locally with these issues and they don't have to have a permanent mark (on their driving record) simply because they made a mistake," said Johnson. When police officers write traffic tickets as much as two-thirds of the total cost might be state surcharges. Some of that money is earmarked for law enforcement training.

But Tom Johnson says more than \$13 million was collected last year. But he says less than half of that money was used for law enforcement training. The rest went to the state general fund. State officials say administrative penalties are a way for cities to get revenue that would otherwise go to the state.

Dassel City Administrator Dan Buchholz agrees the administrative penalties may generate a little revenue for his city. But the real reason is to save money, Buchholz said. Dassel can no longer afford the cost of prosecuting traffic tickets.

"If the state doesn't feel this is a workable system the cities are moving towards then they need to reform the ticket process so that the prosecution costs aren't entirely born by the city," said Buchholz. "The state is doing nothing and they're getting over a third of the fine revenue."

Buchholz argues many people keep speeding tickets off their records or get fines reduced by going to court. Administrative penalties are more efficient for police, the courts and drivers, he said.

There's no way to know how many cities are turning to administrative penalties, according to Minnesota Assistant Public Safety Commissioner Tim Leslie. But Leslie says if the practice is widespread it could significantly reduce revenue the state gets from traffic tickets.

"The state plans budgets based on certain revenue and if we don't get that revenue, the budgets for some programs will be affected," said Leslie. "We'll have to cross that bridge when we get to it."

But for Leslie there's a much greater concern than money. He thinks administrative penalties eliminate driver accountability.

Traffic tickets typically show up on a drivers record. Too many tickets in a specific period of time, and a drivers' license is revoked by the state. But there's no way for the state to track administrative penalties, said Leslie, because the information is not given to the state.

"For example, a person in a town that's passed this kind of ordinance gets a speeding violation. There's no way for the state to put that information on their driving record," said Leslie. "If this continued to become an issue this person would never be held accountable for their driving behavior."

Some communities track administrative penalties internally. For example, the White Bear Lake Police Department limits drivers to one administrative

## MPR: Fine fight

penalty a year. If a driver is stopped a second time they'll automatically get a ticket.

But other cities don't have such restrictions, and there is no system for sharing information about administrative penalties with the state or among cities. So a driver could be stopped for speeding in several cities without any of the violations showing up on their driving record.

That makes the system unfair and unsafe, according to an auto insurance industry spokesman.

Knowing a driver's record is an important part of setting insurance rates, according to Insurance Federation of Minnesota Executive Vice President Bob Johnson.

"Good drivers are paying more than they should, bad drivers are paying less than they should," argues Johnson. "That's a very simple description of it but frankly that's really what this is. There's a number of risk factors that are directly involved, (in setting insurance rates) but the driving of the individual is one of the core ones."

If the insurance industry can't count on state driver records to be accurate, said Johnson, it's very difficult separate safe drivers from those who are at greater risk of having an accident. The Department of Public Safety may ask the legislature to require statewide reporting of administrative penalties.

*Story originally printed in the Winona Daily News or online at [www.winonadailynews.com](http://www.winonadailynews.com)*

**Published - Wednesday, January 05, 2005**

## **City to bypass state fines**

*By Chris Hubbuch | Winona Daily News*

Watch your speed. Winona drivers will no longer get a pass for going 35 mph in a 30 mph zone. Don't worry about your driving record, though. While the ticket will cost you \$40, it won't be reported to the state.

Police will be issuing more speeding tickets in Winona under a new procedure whereby the city will take responsibility for enforcing some misdemeanor-level state laws.

Speeding — under 40 mph — is now considered an administrative offense for which the city can issue a fine without initiating any criminal procedures. The same will happen for taking a dip in the Windom Park Fountain, littering, crossing a fire hose, shoveling snow onto the street and about 70 other petty offenses.

Building, fire and street code violations also are now classified as administrative offenses.

Unlike citations for violating state statutes, administrative ordinances carry only a fine: Pay it and it goes away — the violation won't appear on your criminal or driving record.

The city council adopted the change Monday at the suggestion of Police Chief Frank Pomeroy.

Pomeroy said the intent of the change was not to generate revenue but to make it easier for officers to enforce city laws.

Of the more than 700 traffic accidents each year in Winona, the majority happen in marked, signaled intersections, Pomeroy said, usually the result of people driving too fast.

"The most effective thing we can do is slow them down," he said.

The city has not done any calculations about the potential revenue increases from the program, said City Manager Eric Sorensen. "I'm not interested in looking at it from a budgeting standpoint yet," he said.

Winona is hardly the first city to use this tool. About 60 Minnesota cities began using administrative offense codes after the 2003 Legislature increased the surcharge on statutory citations to \$60 in an effort to boost revenue, said Anne Finn, a lobbyist for the League of Minnesota Cities.

With statutory citations, cities generally receive between \$13 and \$20, Finn said. Some of the money is allocated to the county, while the majority goes to the state in the form of surcharges and other fees.

By imposing administrative fees, cities can impose lower fines and keep more money by cutting out the state.

In doing so they are overstepping their legal rights and circumventing state authority, according to the state attorney general and auditor.

"While cities are empowered to regulate conduct in areas of local interest and to supplement statutory regulations in many areas ... they may not, in our view, redefine the nature or level of criminal offenses as specified by statute or modify statutory procedures for enforcement or penalties for an offense," assistant attorney general Kenneth Raschke wrote in a Dec. 1, 2003, letter to a state legislator.

Cities that issue their own tickets appear to be circumventing state law, according to State Auditor Patricia Anderson.

She does recognize that charter cities — such as Winona — might have additional authority to impose administrative penalties for violations other than speeding; but they may only do so with permission from the Legislature.

Neither office's opinion is binding.

The League of Minnesota Cities, which represents the state's 853 cities, supports the use of administrative fines to enforce regulations such as building, zoning and health codes as well as public nuisance ordinances. It also supports their use for low level speeding — less than 10 mph over the limit — but not for more serious criminal violations such as DWI, Finn said.

Proponents of the system say it allows the city to set fines at more reasonable — and enforceable — rates. Parking on a front lawn used to carry a fine of \$225; now it is \$25.

Under the statutory system police were hesitant to issue citations because the fine was so stiff, Pomeroy said. With more reasonable fines, his officers will be more willing to write a ticket.

The same goes for speeding. Under state statute driving up to 10 mph over the posted limit carries a fine of \$105. Under Winona's new administrative offense code, the fine is \$40.

In the past, officers have not ticketed drivers going less than 10 mph over the limit because of the difficulty of getting those cases prosecuted in the courts, Pomeroy said.

The administrative offense system does allow for appeals. People receiving an administrative fine can choose not to pay it and receive a statutory citation they can contest in court.

*Reporter Chris Hubbuch can be reached at (507) 453-3511 or [chubbuch@winonadailynews.com](mailto:chubbuch@winonadailynews.com).*

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Sunday, May 9, 2004



## **Bill gives ticket revenues to city**

**An administrative tickets proposal for Oahu is already in use in Minnesota for traffic laws**

By Crystal Kua  
[ckua@starbulletin.com](mailto:ckua@starbulletin.com)

If your car is parked illegally at an expired meter in Columbia Heights, Minn., you will likely find what looks like a ticket on your windshield.

But it's not quite the same. Columbia Heights and other Minnesota cities are using what's called administrative tickets -- with civil penalties -- to enforce traffic laws.

And if the City Council has its way, Honolulu could be next.

Proponents in Minnesota say motorists get a break because the fines are less than those tied to tickets issued by the state. They also say a violation doesn't get on the driver's record, which means insurance rates won't be affected.

But a big difference is that all revenue from the tickets goes to the city. In Minnesota, the state traditionally controls the revenue from traffic fines.

"We're using them for our ordinance violations, parking violations and junk vehicles," said Columbia Heights Police Chief Tom Johnson. "I think for the most part, people in our community really appreciated it."

The state of Minnesota is lodging the loudest complaint, saying cities that use them don't have the authority to do it. The insurance industry is also not happy that the administrative violations don't make it on driver abstracts so there's no record of bad driving habits, officials say.

Similar questions hang over a bill that the Honolulu City Council will take up Wednesday. It would establish an administrative traffic ticket program on Oahu.

The Harris administration, which has lobbied the Hawaii Legislature year after year for the traffic fines revenue, and the police union support the bill. A union representative told a City Council committee that rank-and-file officers think it's not fair that the state keeps all the traffic fine revenues.

## **Another tool for police**

Columbia Heights, a suburb of Minneapolis with a population of about 18,500 and a police department of 22 officers, like other small towns, has latched on to administrative traffic citations especially after the Minnesota Legislature last year increased the surcharge on traffic tickets to \$60 from \$35 -- seen by some in rural areas as a hardship -- while lawmakers were trying to balance the budget.

A speeding ticket with a \$40 fine, for example, could actually cost the driver \$100 because of the state surcharges. And most of the money goes to state.

The state was also cutting back on aid to cities.

So Johnson and the city attorney wrote the law and went to their City Council with a list of over four dozen violations -- both traffic and nontraffic offenses -- and suggested civil fines.

The fines for offenses are a few dollars less than what's in state statutes.

"Basically what we were trying to do was to get the corrected behavior but not to ding the person as hard financially," Johnson said.

He said that the idea was well-received by the community. "I think our citizens appreciate it and I think the proof there is by the percentage that were paying the fines," Johnson said, estimating that figure at 80 percent.

Johnson estimates that the administrative tickets bring in \$24,000 a year to his city.

Once a citation is issued to an illegally parked car, for example, the motorist can either pay it or contest it.

If the ticket isn't challenged, the fine is paid directly to the city. If a motorist fights the ticket or doesn't pay it within 30 days, the administrative ticket is voided and a traditional citation -- which goes through the courts -- is sent to the motorist. "Then they would be able to go before a judge and get their due process," Johnson said.

## **Legal cloud?**

In December, Columbia Heights stopped issuing administrative citations for moving violations after the state auditor and attorney general gave opinions that cities didn't have the authority to issue citations for traffic offenses because that was a function of the state government.

"Until the Legislature gives cities and counties that authority, cities and counties cannot replace the court system with their own local penalty bureaus, or use police officers as uniformed revenue collectors," Minnesota state auditor Patricia Awada said in a statement.

Minnesota's Attorney General's Office has also said that the Legislature has pre-empted cities from

using the administrative penalties to enforce traffic laws.

But many Minnesota cities continued with their administrative fines programs.

Minneapolis police said they are not using administrative tickets for traffic offenses because of the legal cloud over whether cities have the authority to issue administrative tickets for traffic offenses.

### **Millions at stake**

Sponsor Charles Djou said his bill, which would become effective next year if approved, is intended to push the issue with the state Legislature over giving the counties some of the revenues from traffic fines.

Officials estimate that what's at stake could be between \$4 million and \$11 million a year in revenues.

Lawmakers are concerned about the bill's financial impact on the state budget and the operations of the Traffic Violations Bureau, although the exact impact isn't yet known.

City Councilwoman Ann Kobayashi and others are also concerned about a preliminary sign by city attorneys that -- like Minnesota -- the city may not have the authority to do this.

But Djou, an attorney, disagrees with that legal interpretation. "The law isn't clear," he said. "I don't think an opinion should stop us from moving forward with this legislation."

His bill makes traffic tickets \$10 less than offenses in the state traffic code. Djou said besides the cheaper tickets, the impact on the average driver will be minimal.

The counties at one time ran the district courts, which includes the Traffic Violations Bureau, and they also received the revenue from traffic tickets fines.

But in 1965, the Legislature transferred the responsibility of several functions to the state from the counties, including the responsibility of the district courts. But along with that transfer of responsibility went the traffic fine revenue.

The switch came about because then Gov. John Burns wanted to end the formula for excise tax revenue sharing between the state and counties and instead wanted the counties to rely more on property taxes for revenue.

But the city didn't want to give up the tax revenue unless the state would assume some services for which the counties were responsible at the time. So the state took over areas where responsibility had either been divided or was overlapping, such as school construction and maintenance, the hospitals and the courts.

# Hearing set for tickets

Lake of the Woods County is looking to follow in Roseau County's footsteps for giving out traffic tickets. Roseau County recently went to administrative tickets instead of traditional tickets, which generate income for the state.

The Minnesota Attorney General made a statement that the adoption of administrative civil penalty tickets for state traffic offenses is a violation of state law. However, several cities and counties have made the change and the state has not taken any action against them.

Interim county attorney Michelle Moren said there could be repercussions from the state auditor, but

no one knows what the repercussions would be.

Switching to administrative tickets requires the county to adopt an ordinance, which requires a public hearing. The county board members set a public hearing for Tuesday, Dec. 11 at 1:30 p.m. on the issue.

The purpose for switching to administrative tickets is to provide the public and the county with an informal, cost effective and expeditious alternative to traditional criminal charges. Moren said the cost of tickets would go down and that the change was well received in Roseau County.

Tickets are for primarily driving; traffic signals, speeding, lane use, turns, parking, seat belts, exhibition driving and others. Non-driving offenses include littering, trespass, disorderly conduct, public nuisance, off-road violations and snowmobile violations.

# Cost of some minor citations in Mound may get a bit cheaper

**By Amanda Schwarze,  
Staff Writer**

(Created: Friday, November 30, 2007 3:45 PM CST)

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The fines attached to some tickets for even relatively minor traffic and nuisance offenses can seem unreasonable, not only to people receiving the ticket but also to the police officers who issue the citations. Soon, some of those fines in Mound will substantially decrease.

At the Nov. 27 meeting of the Mound City Council, councilors unanimously approved an ordinance that will create an administrative citation program for the city. Under the measure, fines for some minor traffic violations and nuisance offenses, such as expired registration, failure to license an animal, discharge of fireworks and parking violations will cost half of those levied by Hennepin County.

Mound Police Chief Jim Kurtz said that he has been looking into administrative citations since January when the city council asked him to investigate the issue. He said there were several reasons for adopting the citation program.

Kurtz said that surcharges added on to state violations create fines that are unreasonable to residents and that some officers feel "torn" between writing a ticket that could substantially impact a person's finances or issuing a warning that carries no consequences.

With administrative citations, officers can keep the community safe "and not put undo hardship on residents," Kurtz said. "Times are tough," he added.

Another reason for the citations, Kurtz noted, is an inequitable system for distributing fine money among cities, the county and the state. He said that in 2004 Mound received \$13, about 13 percent, of a \$103 traffic fine. Since administrative citations are civil citations, all of the money from the fines will go straight to the city.

Mayor Mark Hanus said the city incurs a lot of the expense of a traffic violation. He said not only are the officers spending time issuing tickets, but if someone contests the ticket the city sends the officer to court to testify. He estimated that for every ticket written the city spends between \$50 to \$100 and only about 13 percent of the fine comes back to Mound.

Councilor Dave Osmek also noted that an administrative citation would not show up on a resident's driving record and would not affect their insurance since it's a civil citation. Councilor Mike Specht said that alone would save residents a lot of money.

Kurtz also said that with the increase in traffic fines more residents are going to court to contest tickets and the city is incurring higher prosecution costs and more officers are getting overtime to go to court.

Kurtz spoke with the Hennepin County Criminal Court Operations Manager who said the courts are currently being overtaxed and administrative citations will keep low-level violations out of the system. However, he added, residents will still have a chance to contest an administrative citation.

While administrative citations will be used in Mound, they will not be exclusively used. Kurtz said that violations related to drug and alcohol use will not be subject to administrative citations.

Hanus asked how often an individual could receive an administrative citation rather than a more expensive ticket. Kurtz said that while that decision will be left to an officer's discretion, he does not foresee a person receiving more than two administrative citations.

While the city council expressed enthusiasm with the new program, administrative citations with traffic violations are a controversial issue, especially with the state. Since all of the fines go directly to the city and none of the money is shared with the county or state, some state officials say that traffic administrative citations are negatively impacting the state's general fund. Some officials also object to the fact that such citations do not appear on an individual's driving record.

About two years ago, State Auditor Patricia Anderson wrote to the city of Winona where administrative citations for traffic offenses are used and threatened to audit the city for issuing those citations. In the letter, she wrote that it was her opinion that such citations "are not in compliance with state law."

However, Kurtz noted that cities around the state have been using administrative citations for decades and their use has never been challenged in court.

Along with detractors, administrative citations have a fair share of champions in the state as well. Kurtz spoke with Winona Police Chief Frank Pomerey about the letter from Anderson and the effectiveness of the citations in Winona.

Pomerey described the letter as "a scare tactic."

"We have been using administrative citations for four years and we will continue their use," He said.

Pomerey also said that there is a 99 percent compliance rate with the citations. Last year, he added, accident in Winona dropped from 1,300 to 800.

Right before the Mound City Council cast their unanimous vote to start the administrative citation program, Hanus said that the city was trying to help residents and not add another revenue source.

He said the point of the program was to be "fairer to the people, simpler to the people and not have other agencies gouge you."

The administrative offense system does allow for appeals. People receiving an administrative fine can choose not to pay it and receive a statutory citation they can contest in court.

*Reporter Chris Hubbuch can be reached at (507) 453-3511 or [chubbuch@winonadailynews.com](mailto:chubbuch@winonadailynews.com).*

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