

AUTOMATED RED LIGHT ENFORCEMENT
"MAKING RED MEAN STOP"

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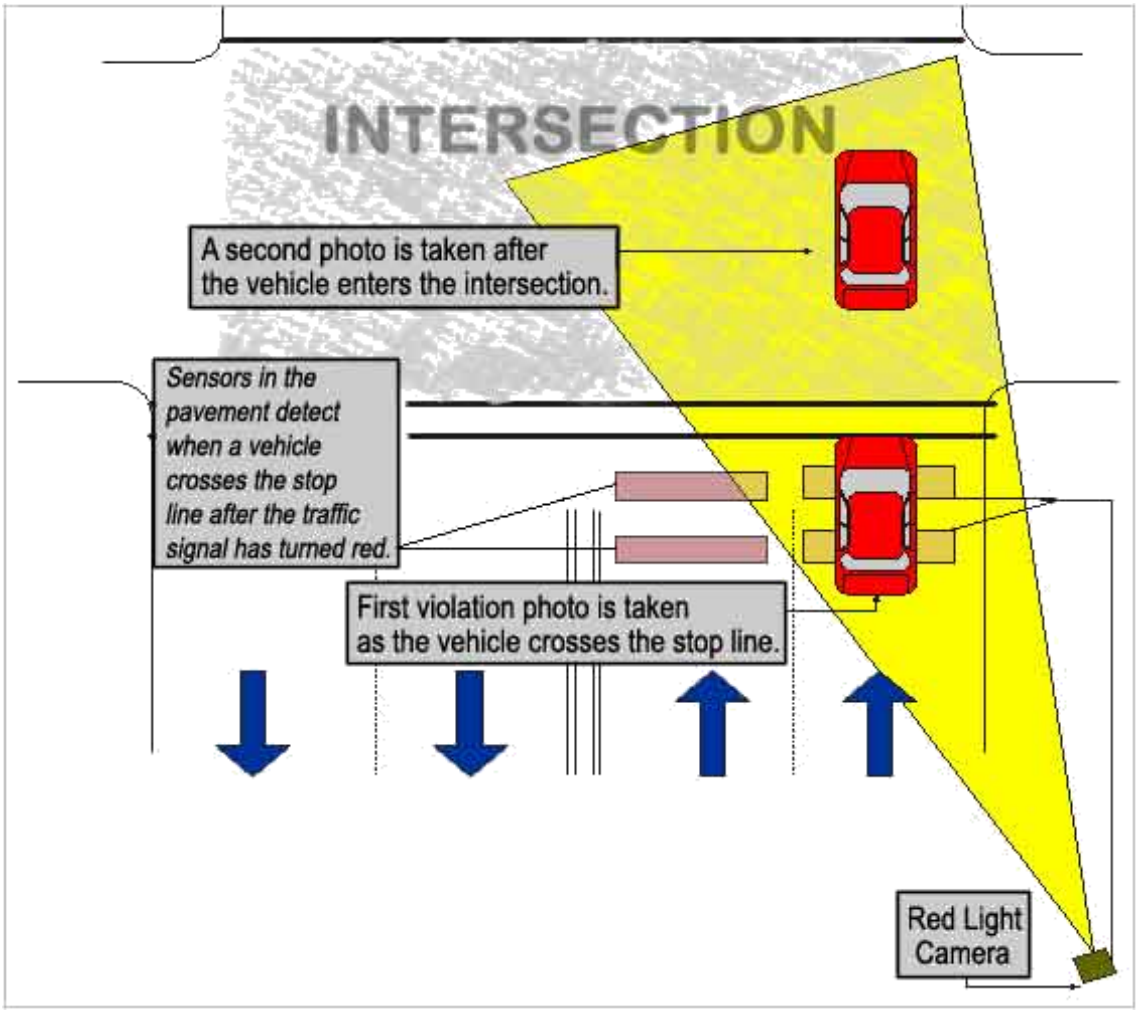
AUTOMATED RED LIGHT ENFORCEMENT
MAKING RED MEAN "STOP"
FREQUENTLY ASKED QUESTIONS

1. How does automated red light enforcement work?

There are a number of different systems available for detecting red light violations and capturing images of the violation. Garland uses a loop-based detection system imbedded in the pavement and tied to the signal controller. When the signal controller displays a red light, the detection system is armed. If a vehicle crosses the detection loops while the light is red, the system is triggered to take a photograph using a high resolution camera.



2. What is the difference between an "owner liability" automated enforcement program and a "driver" liability program?

Technologically speaking, the two programs are about the same. In practical terms, they are quite different. An owner liability program imposes a civil penalty on the owner of the vehicle that commits the red light violation, much like some cities impose civil penalties on the owners of

illegally parked vehicles. A driver liability program fines the driver who commits the violation just as if a police officer had witnessed the violation in real-time.

Owner liability programs are more effective in the sense that the whole point of the program is getting red light runners to change their bad driving habits. Driver liability programs reach far fewer red light runners because it is oftentimes difficult to identify the red light runner, match that driver with a valid address, and issue an effective criminal citation to the violator. Owner liability programs reach a far greater percentage of red light violators because a notice of violation (as opposed to a criminal citation) is mailed to the registered owner of the vehicle. Identifying the actual driver is not necessary. Automated enforcement is not the end-all of red light running. It is simply a tool - but an effective one. When red light runners realize that the absence of a squad car at an intersection does not give free reign to run the light, the incidence of red light running drops. Owner liability programs are far better at getting that message out to red light runners.

For example, the City of Plano has for several years engaged in a very concerted effort to reduce red light violations through traditional, police officer - issued red light citations. Plano police officers write about 6,000 - 6,500 tickets each year to red light runners. Those are excellent results. One would assume that at least 6,000 persons are now aware that red light running is a bad thing. In Garland, at just four intersections and over the course of just eight months, more than 24,000 notices of violation have been issued to the same sort of driver targeted by traditional red light enforcement programs.

3. Without a state enabling act, by what authority may a city implement an automated red light enforcement program?

A home-rule city possesses full powers of self-government and looks to the Legislature not for grants of power, but only for limitations on its powers. [1] Within its corporate boundaries, the powers of a home-rule municipality are quite broad. The home-rule amendmen, Article XI, §5 of the Texas Constitution, is said by the courts of this state to grant home-rule cities full and complete power of self-government, and with authority to do anything that the Legislature could have authorized them to do. [2] Just as the State possesses general police powers, cities may enact ordinances designed to promote the public safety and welfare of its citizens. [3] "Although it is impossible to define the exact parameters of the police power, it is useful to think of it as the power to anticipate and prevent dangers and to protect the inhabitants of a community . . . ." [4] Under Article XI, §5 of the Texas Constitution, the power of a home-rule city to act is as general and broad as is the power of the

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[1] *Dallas Merchant's and Concessionaire's Ass'n v. City of Dallas,* 852 S.W.2d 489, 491 (Tex. 1993).

[2] *White v. City of Dallas,* 517 S.W.2d 344, 347 (Tex.Civ.App.-Dallas 1974).

[3] *Texas River Barges v. City of San Antonio,* 21 S.W.3d 347, 355 (Tex. App.-San Antonio 2000).

[4] *Id.* [Citations and internal quotations marks omitted].

Legislature to act. [5]

4. Yes, but home-rule cities may not enact an ordinance that conflicts with state law. Didn't the Attorney General issue an opinion to the effect that cities can't implement automated red light enforcement programs?

While the Legislature may preempt home-rule regulation, the just because the Legislature has enacted a law addressing a subject does not make the entire subject matter exempt from municipal regulation. "Under article XI, section 5 of the Texas Constitution, home-rule cities have broad discretionary powers provided that no ordinance 'shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State....' Thus, the mere fact that the legislature has enacted a law addressing a subject does not mean that the subject matter is completely preempted. When there is no conflict between a state law and a city ordinance, the ordinance is not void." [6] A general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached. [7] If the Legislature chooses to preempt a subject matter usually encompassed by the broad powers of a home-rule city, it must do so with unmistakable clarity. [8]

The critical question then, is whether the implementing ordinance for an automated red light enforcement program clearly and unmistakably conflicts with state law. State law, of course, already contains a prohibition on red light running, Sec. 544.007(d) of the Texas Transportation Code. In Tex. Att'y Gen. Opin. JC-0460 (2002), the attorney general determined that an ordinance that attempted to "decriminalize" a violation of Sec. 544.007(d), that is, impose a civil penalty in lieu of criminal sanctions, conflicted with state law and was therefore invalid.

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[5] *LeGois v. State,* 80 Tex. Crim. 356, 190 S.W. 724, 725 (1916). By necessary implication, general law cities likely do not have the power to implement an automated red light enforcement program.

[6] *City of Richardson v. Responsible Dog Owners of Texas,* 794 S.W.2d 17, 19 (Tex. 1990).

[7] *City of Beaumont v. Fall,* 116 Tex. 314, 291 S.W. 202 (1927).

[8] *Dallas Merchant's and Concessionaire's Ass'n v. City of Dallas,* 852 S.W.2d 489, 491 (Tex. 1993).

As noted in that opinion, the Transportation Code itself contains an analogue to the constitutional prohibition of conflicts between state law and municipal ordinances:

TEXAS TRANSPORTATION CODE, CHAPTER 542

Section 542.201. General Rule of Uniformity

> This subtitle applies uniformly throughout this state. A local authority may not enact or enforce an ordinance or rule that conflicts with this subtitle unless expressly authorized by this subtitle. However, a local authority may regulate traffic in a manner that does not conflict with this subtitle.

What the Attorney General did not seem to grasp is that the Transportation Code itself provides no greater restraint on home rule authority than that already imposed by the Texas Constitution. The Attorney General apparently reads the Transportation Code as imposing a greater conflicts prohibition than the Constitution does. The Transportation Code itself contains specific authorization for traffic regulation by local governments [9], and yet the Attorney General still found the Richardson ordinance to be in conflict with state law. Moreover, while the opinion recognized that the Richardson ordinance differed from Section 544.007(d) in at least three significant respects, the opinion saw those differences as *creating* a conflict rather than as falling within the very sort of allowable overlay contemplated by *City of Richardson v. Responsible Dog Owners of Texas* and *Dallas Merchant's and Concessionaire's Ass'n v. City of Dallas.*

As far as the positive side of the opinion, it should be noted that the Attorney General found no general constitutional or statutory impediments to the use of automated enforcement equipment.

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TEXAS TRANSPORTATION CODE, CHAPTER 542

Section 542.202. Powers of Local Authorities

> (a) This subtitle does not prevent a local authority, with respect to a highway under its jurisdiction and in the reasonable exercise of the police power, from:
>
> (1) regulating traffic by police officers or traffic-control devices;
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> * * * * *

5. How, then, can a city implement a valid owner-liability automated red light enforcement program?

Apparently, the fatal flaw of the Richardson ordinance in the eyes of the Attorney General was its use of Sec. 544.007(d), TEX. TRANS. CODE as the predicate offense for civil penalty purposes. Even though a civil penalty may be imposed on conduct that also violates a criminal law, [10] the Attorney General reads the Transportation Code as prohibiting anything but a criminal sanction for a violation of its provisions. Thus, the key to avoiding the "conflict" recognized by the Attorney General lies in identifying just what conduct is being prohibited under state law and designing an automated enforcement ordinance that avoids that perceived conflict. So long as the ordinance supplements, rather than supplants, the Transportation Code version of a red light violation, *City of Richardson v. Responsible Dog Owners of Texas* and similar cases will condone any overlap. To do that, the Garland ordinance focuses on the real problem of red light running, that is, vehicle operators who drive through an intersection on a red light.

6. How is a violation under the Garland ordinance different from a violation of Sec. 544.007(d)?

This may come as a surprise, but state law does not actually prohibit red light running. It prohibits failing to stop at one of several prescribed points while facing a steady red light.

TEXAS TRANSPORTATION CODE, CHAPTER 544

Section 544.007. Traffic-Control Signals in General

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(d) An operator of a vehicle facing only a steady red signal shall stop at a clearly marked stop line. In the absence of a stop line, the operator shall stop before entering the crosswalk on the near side of the intersection. A vehicle that is not turning shall remain standing until an indication to proceed is shown. After stopping, standing until the intersection may be entered safely, and yielding right-of-way to pedestrians lawfully in an adjacent crosswalk and other traffic lawfully using the intersection, the operator may:

(1) turn right; or

(2) turn left, if the intersecting streets are both one-way streets and a left turn is permissible.

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[10] *See, Tharp v. State,* 935 S.W.2d 157, 163 (Tex. Crim. App. 1996)(administrative license suspension for drunk driving)

As far as stopping red light runners, Sec. 544.007(d) only works to a point. It is both underinclusive and overinclusive in its reach. On the one hand, a driver can violate Sec. 544.007(d) without ever "running" the red light by simply failing to stop at the stop line. On the other hand, at certain intersections, Sec. 544.007(d) may arguably not even apply, making those intersections virtually unenforceable for criminal enforcement purposes.

Most signalized intersections are marked with various pavement markings. Usually the stop line precedes the crosswalk by some distance, in theory so that vehicles will stop before - rather than in the midst of - the crosswalk. At those intersections, under Sec. 544.007(d), a vehicle operator commits an offense if the operator crosses the stop line on a red light and instead stops on the crosswalk - - without ever going through the red light. At the other end of the problem, many signalized intersections do not have a "clearly marked stop line" either because the pavement markings have degraded to the point that the stop line is no longer "clearly marked" or because a stop line was never installed. The fallback violation point then becomes the crosswalk. Again, painted crosswalks may not be present at a given intersection. In those circumstances the Transportation Code deems the crosswalk to be "the portion of a roadway at an intersection that is within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway". [11] The Transportation Code defines a sidewalk as "the portion of a street that is (A) between a curb or lateral line of a roadway and the adjacent property line; and (B) intended for pedestrian use." [12] What if an intersection has no pavement markings, no clearly marked stop line, no marked crosswalk, and no adjoining sidewalks? The argument would be that a "deemed" sidewalk exists by virtue of Sec. 541.302 (16), TEX. TRANS. CODE. But what if the area of the deemed sidewalk is not "intended for pedestrian use". Indeed, pedestrian use is often prohibited a major intersections. Does Sec. 544.007(d) give a green light to red light runners at those intersections? [13]

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[11] TEX. TRANS. CODE § 541.302 (2)(B).

[12] TEX. TRANS. CODE § 541.302 (16).

[13] This is not necessarily a rhetorical question. If anyone has the answer, please let me know.

The Garland ordinance does not use Sec. 544.007(d) as the predicate offense for purposes of levying a civil penalty for red light running. In fact, the ordinance specifically precludes the imposition of a criminal penalty under Sec. 544.007(d) and a civil penalty under the ordinance for the same violation. The Garland ordinance is intended to be remedial whereas the Transportation Code treatment of a red light violation is criminal and punitive. The particular conduct that the Garland ordinance addresses is that of actually entering the intersection while the light is red. Pavement markings, while still important for traffic control purposes, are not determinative of a violation under the Garland ordinance. [14] A civil violation under the Garland ordinance can occur even if the stop line is obscured or absent. The Garland ordinance does not apply to vehicles that fail to stop at a prescribed point without entering the intersection. And, by definition, a civil violation under the Garland ordinance can *only* occur at a "system location", thus precluding the application of a civil penalty to red light violations at non-monitored intersections.

GARLAND CODE OF ORDINANCES

> **Section 26.61. Imposition of civil penalty for creating dangerous intersections.**
>
> (A) The City Council finds and determines that a vehicle that proceeds into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal damages the public by endangering vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.
>
> (B) The owner of a motor vehicle is liable for a civil penalty if the vehicle proceeds into an intersection at a system location when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal.
>
> (C) The civil penalty for which the owner is liable is $75, provided that for a third or subsequent offense in any 12-month period, the amount of the penalty shall be $200.

7. Have there been any legislative changes that affect the Garland automated red light enforcement program?

As discussed above, the Transportation Code contains the following disclaimer of preemptive

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[14] Traditional red light enforcement encourages a sort of game playing on the part of violators in the sense that, almost without exception, the violator will insist that he or she crossed the stop line while the light was still yellow and thus was free to "legally exit the intersection" even though, due to the placement of most stop lines, the vehicle may have another 10 - 15 feet before it even enters the intersection.

effect:

> This subtitle does not prevent a local authority, with respect to a highway under its jurisdiction and in the reasonable exercise of the police power, from:
>
> (1) regulating traffic by police officers or traffic-control devices; . . .

TEX. TRANS. CODE §542.202

During its 2003 session, the Texas Legislature enacted H.B. 1184, which amended Sec. 542.202 by adding a definition of "regulating". "Regulating" now includes "criminal, civil, and administrative enforcement against a person, including the owner or operator of a motor vehicle, in accordance with a state law or a municipal ordinance." [15]

H.B. 1184 effectively overrules Tex. Att'y Gen. Opin. JC-0460 (2002). Texas cities are now specifically authorized to use civil and administrative enforcement tools in controlling traffic problems within their jurisdictions.

8. So, does automated red light enforcement work?

Red light running causes around 260,000 collisions and 240,000 injuries in this country very year. Each year, almost 100 people are killed by red light runners in Texas alone. The automated red light enforcement program in Washington, D.C. has reduced red light running by nearly 68%. Wilmington, Delaware has reduced red light running by 62% through its automated enforcement program.

The Garland program has already experienced a 13% reduction since its launch during National Red Light Awareness Week in September, 2003. The program is entirely violator- funded. Through careful use of program revenues and community outreach efforts like ads, school awareness programs, and similar promotions, Garland hopes to reduce red light running by at least 60%.

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[15] TEX. TRANS. CODE §542.202(c)(3).