



City of Grand Island

Tuesday, June 9, 2015

Council Session

Item F-1

#9539 – Consideration of Amending Chapter 22 of the Grand Island City Code Relative to Window Stickers

Staff Contact: Robert Sivick

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: June 9, 2015

Subject: Consideration of Amending Grand Island City Code §22-25(3) Regarding Stickers on Motor Vehicle Glass

Item #'s: F-1

Presenter(s): Robert J. Sivick, City Attorney

Background

This matter originated when Councilmember Roger G. Steele requested the City of Grand Island (City) Legal Department review a discrepancy between Nebraska State and City law regarding stickers placed on motor vehicle glass. In addition, Councilmember Steele requested the Legal Department draft legislation so the language of City law mirrors the comparable State statute. Councilmember Steele's request originated from a letter he received from local criminal defense attorney Mark T. Porto. Mr. Porto represented Grant Gregory in a case in Hall County (*State v. Gregory* – Hall Cty. Dist. Ct. CR14-627). On March 4, 2015 the Honorable Teresa K. Luther of the Hall County District Court overruled Mr. Gregory's Motion to Suppress Evidence in the aforementioned case. The crux of Judge Luther's ruling was there was probable cause for a Grand Island police officer to stop Mr. Gregory's vehicle due to stickers affixed to the extreme corners of the back windshield. That stop led to the discovery of marijuana in Mr. Gregory's vehicle which resulted in his arrest and prosecution. Judge Luther ruled the legal justification for the stop was Grand Island City Code §22-25(3) which prohibits any stickers on motor vehicle glass.

Discussion

Neb. Rev. Stat. §60-6,256(1) states in part,

It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon the motor vehicle, except required or permitted equipment of the motor vehicle, in such a manner as to significantly and materially obstruct or interfere with the view of the operator through the windshield or to prevent the operator from having a clear and full view of the road and condition of traffic behind the motor vehicle.

Neb. Rev. Stat. §16-246 states in part,

A city of the first class may make all such ordinances, bylaws, rules, regulations, and resolutions not inconsistent with the general laws of the state as may be necessary or expedient, in addition to the special powers otherwise granted by law, for maintaining the peace, good government, and welfare of the city and its trade, commerce, and manufactures, for preserving order and securing persons or property from violence, danger, and destruction, for protecting public and private property, and for promoting the public health, safety, convenience, comfort, and morals and the general interests and welfare of the inhabitants of the city.

Grand Island City Code (Code) §22-25(3) states,

All vehicle glass shall be clear of stickers, signs, or any other material other than that required by law, and no glass shall be broken, cracked, discolored or obscured to such an extent that the visibility of the operator is impaired.

The Legal Department agrees with Judge Luther's analysis Code §22-25(3) prohibits any stickers on motor vehicle glass regardless of whether it impairs the vision of the operator.

The Legal Department believes Code §22-25(3) is in compliance with Neb. Rev. Stat. §16-246 in that it is not "inconsistent with the general laws of the state". Generally speaking, unless specifically permitted or prohibited by State statute, cities may enact laws more strict but not less strict than comparable State statutes. Although Neb. Rev. Stat. §60-6,256(1) permits motor vehicle window stickers as long as they do not "materially obstruct or interfere with the view of the operator" City Code §22-25(3) is more strict by prohibiting all stickers. Such action is a legally permissible exercise of the City's police powers. In contrast, the City may not specifically permit motor vehicle window stickers that "materially obstruct or interfere with the view of the operator" as such action would negate State law in that portion of Nebraska within the Grand Island city limits.

Research by the Legal Department indicates versions of Neb. Rev. Stat. §60-6,256 have existed since 1959 and Code §22-25 since 1962. The Legal Department was unable to determine why the City Council originally enacted a law more strict than comparable State law regarding stickers on motor vehicle glass.

Alternatives

It appears the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve.
2. Refer the issue to a Committee.

3. Postpone the issue to future date.
4. Take no action on the issue.

Recommendation

The City Administration has no recommendation.

Sample Motion

Move to approve.

James I. Shamberg (1921-2010)
John A. Wolf
John B. McDermott
Ronald S. Depué
Mark T. Porto
Alfred E. Corey III
J.D. Sabott

SHAMBERG, WOLF,
McDERMOTT & DEPUÉ

Since 1885
ATTORNEYS AT LAW

308 North Locust Street, Suite 501
P.O. Box 460
Grand Island, NE 68802-0460
308/384-1635
Fax 308/384-1759

March 31, 2015

COPY

Mr. Roger Steele
Attorney at Law
P.O. Box 5104
Grand Island, NE 68802

RE: Grand Island City Code Section 22-25(3)

Dear Roger:

As per our telephone conversation, enclosed herein is a copy of the Nebraska State Statute regarding obstructions to vehicle windshields. As you can see in Neb. Rev. Stat. §60-6,254, state law allows stickers and other minor obstructions on a back windshield provided that it does not "significantly and materially obstruct or interfere with the view of the operator." The relevant Grand Island City Code Section arguably prohibits any stickers on the back windshield of a vehicle regardless of whether or not there is an impact on the vision of the operator.

In addition to the state statute, I have enclosed a copy of Judge Luther's opinion from a motion to suppress I filed in which the sole basis of the stop was the relevant Grand Island City Code. Judge Luther interpreted this section to prohibit any stickers in the back windshield of a vehicle, regardless of whether or not there was an impact to the operator of the vehicle. Obviously, this would render a large percentage of vehicles operating on the Grand Island highways in violation of the City Code and, perhaps more concerning, provides an easy pretext for law enforcement stops that would otherwise not be available due to a lack of probable cause that a traffic violation has occurred. As the case involving my client shows, this is not merely a hypothetical concern as it has been my experience that law enforcement is well-aware of this Code provision and is using it as a way to stop vehicles which they otherwise do not have a legal basis to stop. Undoubtedly, Judge Luther's opinion will only embolden this behavior.

Ultimately, I have a concern with any law that is regularly and routinely disregarded by an extremely large portion of the community (including the schools which oftentimes sell these stickers) as a law that nobody follows would seem to be a law that is unnecessary. Given this fact, coupled with law enforcement's selective enforcement, I believe this City Code provision should be changed so as to mirror the state statute which prohibits only those obstructions which materially impact the operator's vision.

Roger Steele
March 31, 2015
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Please feel free to call if you have any other questions or concerns. I appreciate your assistance in this matter.

Sincerely,

SHAMBERG, WOLF, McDERMOTT & DEPUE



Mark Porto

MP:jo

Enclosures

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IN THE DISTRICT COURT OF HALL COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

FILED

Case No. CR 14-627

vs.

MAR 05 2015

JOURNAL ENTRY

GRANT GREGORY,

VALORIE BENDIXEN
CLERK OF DISTRICT COURT

15 CR 5 2 14

Defendant.

ON January 29, 2015, this matter came on for hearing on defendant's Motion to Suppress. The State appeared by and through Jon Hendricks, Deputy County Attorney. The defendant appeared by and through Mark Porto, Attorney at Law. Evidence was adduced, arguments presented, and the following briefing schedule set: Simultaneous briefs by February 20, 2015; Simultaneous reply briefs by February 27, 2015. Evidence was adduced and the matter was taken under advisement.

NOW ON THIS 4th day of March, 2015, this matter comes on for decision. After consideration of the evidence, arguments of counsel, briefs, and applicable law, the court finds and orders as follows:

1. On September 27, 2014, Defendant was traveling westbound on Faidley St. in Grand Island when he was stopped by Officer Lyon of the Grand Island Police Department. At the hearing on the motion to suppress, the evidence established that law enforcement was provided with an anonymous tip that an alleged drug transaction had occurred in the parking lot of the Ampride gas station on Old Potash and Webb Rd. in Grand Island, NE. Notably, there was no evidence that law enforcement was aware who



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it was that placed the 911 call; what exactly that person witnessed; or any other factual basis behind the assertion in the call that a white vehicle was allegedly involved in what was characterized as a drug transaction. While there was extensive testimony at the hearing about the speed of the vehicle such testimony is irrelevant to the ultimate issue because the officer testified that the vehicle was stopped for a violation of the Grand Island city code prohibiting stickers on the glass of the vehicle. Officer Lyon testified that he saw stickers in the rear window of the vehicle and that he believed the stickers were prohibited by city code.

Subsequent to the stop of Defendant's vehicle, officers observed marijuana located within the vehicle and, thereafter, performed a search. Defendant concedes that probable cause existed to search the interior of the vehicle after the stop was conducted and marijuana was observed by the officer on the scene. Defendant's sole contention is that the evidence seized from within the vehicle should nevertheless be suppressed because of the illegality of the underlying stop.

2. Defendant argues that the anonymous 911 call was insufficient to constitute a lawful basis to perform the initial arrest. Defendant further argues that the speeding violation is not valid. However, the reason for the stop as articulated by the officer was a city code violation, not a speeding violation. The success of the motion to suppress, by the Defendant's own admission in his brief, depends on the validity of the stop. The applicable city code section relied on by the officer who stopped the vehicle is 22-25. That section provides in part:

Every motor vehicle operated upon the streets, highways, or alleys of the City shall meet the following requirements, to wit:

(3) *Glass*. All vehicle glass shall be clear of stickers, signs, or any other material other than that required by law, and no glass shall be broken, cracked, discolored or obscured to such an extent that the visibility of the operator is impaired.

Defendant concedes that there were stickers affixed to his back windshield. The evidence shows that the stickers were affixed and placed in the extreme corners of the windshield and did not obstruct the visibility of anyone driving the vehicle. Ultimately, the essence of this issue is whether the portion of § 22-25(3) stating, "to such an extent that the visibility of the operator is impaired" relates only to the portion of the code regarding "broken, cracked, discolored, or obscured" glass or in the alternative, whether it applies to the entire ordinance, including the first part of the sentence regarding stickers.

Both the State and Defendant cite *State v. Knutson*, 288 Neb. 823 (2014) for direction on statutory construction. Absent a statutory indication to the contrary the words in a statute must be given their ordinary meaning and, if ambiguous, any ambiguity should be resolved in Defendant's favor. In the instant case, the word "and" separates two parts of the sentence. The first part of the sentence states that the glass shall be free of stickers except those required by law. The second part of the sentence provides that no glass shall be broken, cracked, discolored, or obscured to such an extent that visibility of the driver is impaired. The issue is whether "to such an extent that visibility of the driver is impaired" also applies to the first part of the sentence. It would take a tortured reading

to connect the two phrases—All vehicle glass shall be clear of any stickers, signs, or any other material other than that required by law to such an extent that visibility of the driver is impaired. A plain reading of the code section sets forth an absolute prohibition against having stickers in the window (except as required by law) and also prohibits having windows that are colored or broken to such an extent that the driver's vision is impaired.

The Nebraska Supreme Court in *State v. Prescott*, 280 Neb. 96 (2010), stated that "In determining whether the government's intrusion into a motorist's Fourth Amendment interests was reasonable, the question is not whether the State ultimately proved that violation. Instead, an officer's stop of a vehicle is objectively reasonable when the officer has probable cause to believe that a traffic violation has occurred." In *State v. Ball*, 271 Neb. 140 (2006), the Court clarified that probable cause merely requires that the facts available to the officer would cause a reasonably cautious person to believe that the suspect has committed an offense; it does not demand any showing that this belief be correct or more likely true than false. In this case the officer testified he saw stickers in the rear window and believed this to be a violation of the city code. This is sufficient probable cause to initiate the traffic stop and does not constitute an unreasonable intrusion into Defendant's Fourth Amendment rights. Defendant's Motion to Suppress should be overruled.

3. IT IS THEREFORE THE ORDER OF THIS COURT that Defendant's Motion to Suppress should be and hereby is overruled. Pretrial Conference is scheduled

for March 5, 2015, at 9:00 a.m. Trial is scheduled for the jury term beginning April 13,
2015 at 9:00 a.m.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Teresa K. Luther", written over a horizontal line.

**TERESA K. LUTHER
DISTRICT JUDGE**

pc: County Attorney's Office
Mark Porto

ORDINANCE NO. 9539

WHEREAS, it is in the best interests of the City of Grand Island that the provision of the Grand Island City Code regarding stickers, signs or any other material placed on motor vehicle window glass be amended to conform with the language in the applicable provision of the Nebraska Revised Statutes,

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

I. That §22-25 of the Grand Island City Code be amended to read as follows:

§22-25. Vehicles Operated Upon Streets

Every motor vehicle operated upon the streets, highways, or alleys of the City shall meet the following requirements, to wit:

(1) *Windshield Wipers*. All vehicles shall be equipped with a windshield wiper in good working condition that will wipe off moisture uniformly over the entire sweep of the wiper.

(2) *Rear View Mirror*. All vehicles shall be equipped with a rear view mirror, sufficiently large and in good reflective condition, so located, fastened and adjusted as to reflect to the driver at all times a clear view of the highway for a distance of at least two hundred (200) feet to the rear of such vehicle.

(3) *Glass*. ~~It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon the motor vehicle, except required or permitted equipment of the motor vehicle, in such a manner as to significantly and materially obstruct or interfere with the view of the operator through the windshield or to prevent the operator from having a clear and full view of the road and condition of traffic behind the motor vehicle. Any sticker or identification authorized or required by the Federal Government or any agency thereof or the State of Nebraska or any political subdivision thereof may be placed upon the windshield of the motor vehicle without violating this section.~~ All vehicle glass shall be clear of stickers, signs, or any other material other than that required by law, and no glass shall be ~~It shall be unlawful for any person to operate a motor vehicle with glass that is~~ broken, cracked, discolored, or obscured to such an extent that the visibility of the operator is impaired.

(4) *Tires*. All vehicle tires shall be in a safe condition. A tire shall be considered unsafe if the outer tread is worn down to the breaker strip, or if such tire is not free from bulges or breaks caused by broken fabric.

(5) *Wheel Alignment*. Wheels shall be aligned so that side slippage due to error in alignment as indicated by an alignment indicator shall not exceed 30 feet per mile.

(6) *Steering Equipment*. All steering equipment on vehicles shall be in good condition and wheel play shall not exceed twenty-five degrees.

(7) *Muffler*. All motor vehicles shall be equipped with a muffler in good working condition and in constant operation to prevent excessive or unusual noise and annoying smoke. No "muffler cut-out" shall be used on any vehicle.

(8) *Height*. No vehicle unladen or with load shall exceed a height of 13 feet, 6 inches; provided, however, the owners, lessees, and operators, jointly and severally, of vehicles exceeding 12 feet, 6 inches, in height shall assume the risk of loss to the vehicle or its load, and shall be liable for any damages that result to overhead obstructions from operation of a vehicle exceeding 12 feet, six inches, in height.

II. Any Ordinances or parts of Ordinances in conflict are hereby repealed.

III. This ordinance shall be in full force and will take effect from and after its passage and

Approved as to Form	▣ _____
June 5, 2015	▣ City Attorney

ORDINANCE NO. 9539 (Cont.)

publication pursuant to law.

Enacted: June 9, 2015.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk