

Fayetteville, NC's Illegal Red Light Camera Practice



1. Illegal Citations

The legal option exists for vehicle owners to not pay citations when they were not driving. The owners do not have to rat out the driver. The [City ordinance](#) allows nondisclosure. But [Fayetteville's own affidavit](#) and citation omit the option and thus extort money.

Note the word "or" between c1 and c2 in the city ordinance:

City of Fayetteville Code of Ordinance Chapter 16, Article VI, Sec. 16-153. Offense.

- a. It shall be unlawful for a vehicle to cross the stop line at a system location when the traffic signal for that vehicle's direction of travel is emitting a steady red light, or for a vehicle to violate any other traffic regulation specified in [G.S. 20-158](#).
- b. The owner of a vehicle shall be responsible for a violation under this section, except when he can provide evidence that the vehicle was in the care, custody, or control of another person at the time of the violation, as described in subsection (c) of this section.
- c. Notwithstanding subsection (b) of this section, the owner of the vehicle shall not be responsible for the violation if, within 30 days after notification of the violation, he furnishes the officials or agents of the city:
 1. The name and address of the person or entity who leased, rented, or otherwise had the care, custody, and control of the vehicle at the time of the violation; **or**
 2. **An affidavit by him stating that, at the time of the violation, the vehicle involved was stolen or was in the care, custody, or control of some person who did not have his permission to use the vehicle.**

(Code 1961, § 20-52. Amended by: Ord. No. S2015-003, §2, 3-23-2015.)

The omission also violates the [State enabling statute Session Law 2014-84](#) which requires Fayetteville to disclose the option:

Section I. (3) The owner of the vehicle shall be issued a citation which **shall clearly state** when the penalty is due and the **manner in which the violation may be challenged**.

One can mail in an affidavit saying, "The vehicle involved was in the control of some person who did not have my permission to use the vehicle." This is sufficient to get the vehicle owner off the hook. You do not have to identify the driver.



2. Illegal Penalty Fee

The word “additional” \$100 in the Fayetteville Code of Ordinances oversteps the [State enabling statute Session Law 2014-84](#): The State enabling statute caps the fee to \$100.00. It does not allow an *additional* penalty. The City of Fayetteville added that word to make more money.

City of Fayetteville Code of Ordinance Chapter 16, Article VI, Sec. 16-154. Penalty.

Any violation of subsection [16-153\(a\)](#) shall be deemed a noncriminal violation for which a civil penalty of \$100.00 shall be assessed, and for which no points authorized by [G.S. 20-16\(c\)](#) shall be assigned to the owner or driver of the vehicle, nor insurance points as authorized by [G.S. 58-36-65](#). Failure to pay the civil penalty or file an appeal within 30 days after notification of the violation shall result in an **additional** penalty of \$100.00. The city may establish procedures for the collection of the civil penalties and may enforce the penalties by a civil action in the nature of a debt.

(Code 1961, § 20-53. Amended by: Ord. No. S2015-003, §3, 3-23-2015.)

[State enabling statute Session Law 2014-84](#):

[Section 1 \(3\)](#). The owner of the vehicle shall be issued a citation which shall clearly state when the penalty is due and the manner in which the violation may be challenged. The owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. **If the owner fails to pay the civil penalty** or to respond to the citation within 30 days after the date the citation is served or mailed, the owner shall have waived the right to contest responsibility for the violation, **and shall be subject to a civil penalty not to exceed one hundred dollars (\$100.00)**. The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

The statute, especially in context, caps the civil penalty to \$100.00. The fine of the citation paid on-time was \$75. If the \$75 was not paid on time, only Fayetteville could charge a *total* of \$100.00. That would be \$75 original fine + \$25 penalty fee. Fayetteville increased the fine to \$100.00 but did not increase the total. When there is any doubt to the meaning, the law favors the accused.

4. The [State Enabling Statute Session Law 2014-84](#) Violates the federal Fair Credit Report Act

The [Statute](#) makes the threat that your citation will go to collections by treating it in the nature of a “debt.”

[Section 1 \(3\).](#) . . . municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the **nature of debt**.

But the NC statute violates the Credit Reporting Act (CRA).

A debt arises only when you sign an agreement for a service or product. You did not sign any agreement with the City of Fayetteville or the red light camera company to pay such a ticket. Therefore a red light camera citation is not a debt. Therefore the credit reporting agencies will not regard the “tickets” as debt. They will not hit your credit record. Here is the [official legal statement from credit reporting agencies](#):

Part IV. E(1)c: The CRAs shall **prohibit** Collection Furnishers from reporting debt that did not arise from any contract or agreement to pay (**including, but not limited to, certain fines, tickets, and other assessments**)

5. Illegal Collection Costs

Red light camera companies such as American Traffic Solutions (ATS) hires lawyers to collect debt. From #4, we know that red light camera tickets are not debt. This does not stop ATS. ATS uses [Linebarger Goggan Blair & Sampson, LLP.](#), a “professional collection service” company in San Antonio, Texas. Linebarger will send a letter [demanding a \\$400 payment](#) for a \$100 citation. But North Carolina only allows Linebarger to charge \$120.00 total according to North Carolina [State Enabling Statute Session Law 2014-84](#). A collection agency can only add “twenty percent” of \$100 which is \$20, not \$380.00 demanded by Linebarger.

Section 1 c(6): The municipality may assess a collection assistance fee against the owner and, if necessary, driver of the vehicle under the conditions in this subdivision. Amounts collected must be credited first to the payment of the civil penalty and then to collection assistance fee. The conditions are as follows:

- a. The civil penalty has not been paid within 30 days after the personal service or first-class mailing of a second notice that the penalty is due. The second notice must be served or mailed no sooner than 30 days after the day the first notice was served or mailed and must contain a notice stating that a collection assistance fee will be assessed if the penalty is not paid within 30 days after the service or mailing of the second notice, the date when the collection assistance fee will be assessed, and the amount of the collection assistance fee. **The collection assistance fee shall not exceed twenty percent (20%) of the civil penalty assessed pursuant to subdivision (2) of this subsection.**



6. Illegal Agreement Between the City of Fayetteville and the Cumberland Board of Education

The lower law, [SL 2014-84](#) violates [NC Constitution Article IX Section 6](#) prohibits cost-sharing. Gross penal fines must go exclusively to the schools:

[State enabling statute Session Law 2014-84](#):

SECTION 3. The City of Fayetteville and the Cumberland County Board of Education may enter into an interlocal agreement necessary and proper to effectuate the purpose and intent of G.S. 160A-300.1 and this act. Any agreement entered into pursuant to this section may include provisions **on cost-sharing and reimbursement that the Cumberland County Board of Education** and the City of Fayetteville freely and voluntarily.

IN CONFLICT WITH . . .

[The NC Constitution Article IX Section 7](#):

Sec. 7. County school fund; State fund for certain moneys. (a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of **all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.**



7. Engineering Malpractice

Problems 1 through 6 would not exist had traffic engineers properly applied physics to the timing of the yellow signal light. As it stands and has stood since 1965, traffic engineers set the yellow light to half the time it takes a driver to stop his car. The heart of the equation is this: $Y = v/2a$. This makes everyone run red lights. The correct physics equation is $Y = v/a$ which is simply one of Newton's laws. By adding in the "2" in the denominator, engineers *misapply* physics, that misapplication being the definition of engineering malpractice according to 23 CFR 655 [[MUTCD 4D.26 \(3\)](#)] and [NCGS 89-C \(3\)6a](#). According to the data from the Town of Cary, NC, exactly 90% of all red light running is caused by this one engineering mistake. Most of the remaining 10% is caused by other traffic engineer defects or limitations.



8. City of Fayetteville, Cumberland Board of Education, American Traffic Solutions and Linebarger Goggan Blair & Sampson, LLP., violate the federal RICO Act.

By the government creating a problem with the engineering malpractice of its licensed professional traffic engineers, then the government and its business partners profiting from the problem, these entities engage in racketeering. The City of Fayetteville and American Traffic Solutions know about the defect in the yellow light and in spite of prior warning, willfully exploit the problem.

SESSION LAW 2014-84

State Enabling Statute

Fayetteville Red Light Camera Law

A city cannot enact a local ordinance which punishes citizens in excess of the punishment of the enabling statute.

A state cannot enact an enabling statute which punishes citizens in excess of the punishment of the federal laws.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2014-84
HOUSE BILL 1151**

**AN ACT TO MAKE CHANGES TO THE LAW GOVERNING RED LIGHT CAMERAS IN
FAYETTEVILLE.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-300.1(c), as amended by S.L. 2007-341, reads as rewritten:

"(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

- (1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 30 days after the date of personal service or mailing of notification of the violation, furnishes the officials or agents of the municipality which issued the citation either of the following:
 - a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.
 - b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.
- (1a) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for the violation, if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.
- (2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of seventy-five dollars (\$75.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.
- (3) The owner of the vehicle shall be issued a citation which shall clearly state when the penalty is due and the manner in which the violation may be challenged. The owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within 30 days after the date the citation is served or mailed, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars (\$100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.



- (4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.
- (4a) A municipality enacting an ordinance implementing a traffic control photographic system may enter into a contract with a contractor for the lease, lease-purchase, or purchase of the system. The municipality may enter into only one contract for the lease, lease-purchase, or purchase of the system, and the duration of the contract may be for no more than 60 months. After the period specified in the contract has expired, the system shall either be the property of the municipality, or the system shall be removed and returned to the contractor.
- (5) The clear proceeds from the citations issued pursuant to an ordinance authorized by this section shall be paid to the local school board. For the purposes of determining the clear proceeds derived from the citations, the following expenses, not to exceed ten percent (10%) of the civil penalty assessed pursuant to subdivision (2) of this subsection, are authorized to be deducted from each civil penalty assessed pursuant to the provisions of subdivision (2) of this subsection:
- a. The cost of materials and postage directly related to the printing and mailing of the first and second notices sent to the owner and, if necessary, the driver of the vehicle.
 - b. The cost of computer services directly related to the production and mailing of the notices described in sub-subdivision a. of this subdivision.
- (6) The municipality may assess a collection assistance fee against the owner and, if necessary, driver of the vehicle under the conditions in this subdivision. Amounts collected must be credited first to the payment of the civil penalty and then to collection assistance fee. The conditions are as follows:
- a. The civil penalty has not been paid within 30 days after the personal service or first-class mailing of a second notice that the penalty is due. The second notice must be served or mailed no sooner than 30 days after the day the first notice was served or mailed and must contain a notice stating that a collection assistance fee will be assessed if the penalty is not paid within 30 days after the service or mailing of the second notice, the date when the collection assistance fee will be assessed, and the amount of the collection assistance fee. The collection assistance fee shall not exceed twenty percent (20%) of the civil penalty assessed pursuant to subdivision (2) of this subsection.
 - b. Collection assistance fees shall be placed in a separate fund that may be used only for the purpose of paying for the costs of collection expended to collect civil penalties that remain unpaid 30 days after the service or mailing of the second notice required pursuant to sub-subdivision a. of this subdivision."

SECTION 2. G.S. 160A-300.1(c)(2), as amended by S.L. 2007-341 and by Section 1 of this act, reads as rewritten:

- "(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of ~~seventy-five dollars (\$75.00)~~ one hundred dollars (\$100.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65."

SECTION 3. The City of Fayetteville and the Cumberland County Board of Education may enter into an interlocal agreement necessary and proper to effectuate the purpose and intent of G.S. 160A-300.1 and this act. Any agreement entered into pursuant to this section may include provisions on cost-sharing and reimbursement that the Cumberland County Board of Education and the City of Fayetteville freely and voluntarily agree to for the purpose of effectuating the provisions of G.S. 160A-300.1 and this act.

SECTION 4. This act applies only to the City of Fayetteville and the Cumberland County Board of Education.

SECTION 5. Sections 1, 3, 4, and 5 of this act become effective July 1, 2014. Section 2 of this act becomes effective July 1, 2015.

In the General Assembly read three times and ratified this the 25th day of July, 2014.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives