

## CITY OF APOPKA

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**Minutes of the special City Council meeting held on January 14, 2013, at 2:00 p.m., in the City of Apopka Council Chambers, at the request of Judge Robert Webster.**

**PRESENT:** Mayor John H. Land  
Commissioner Bill Arrowsmith  
Commissioner Billie Dean  
Commissioner Marilyn U. McQueen  
Commissioner Joe Kilsheimer

City Attorney Frank C. Kruppenbacher  
Attorney Scott Pendley - Representing City of Apopka

**PRESS PRESENT:** John Peery - The Apopka Chief

**CALL TO ORDER** - Mayor Land called the meeting to Order at 2:00 p.m.

**INVOCATION AND PLEDGE OF ALLEGIANCE** – Mayor Land gave the Invocation. He asked that everyone remember those who serve in the Armed Forces throughout the World, and reflect on their great sacrifice while serving our Nation, as he led in the Pledge of Allegiance.

Mayor Land welcomed everyone to the special meeting of the City Council on Monday, January 14<sup>th</sup>, 2:00 p.m., at Apopka City Hall. He gave a stated reason for the meeting, as follows: The purpose of the meeting is to discuss the Red Light Camera Enforcement Program, at the request of Judge Robert Webster. Official action of the City Council may be taken.

In response to Mayor Land's inquiry regarding the meeting booklets, City Clerk Goebel said copies were distributed to the City Council, the Attorneys, CAO Anderson, and one on the press table.

Mayor Land said the booklet gives a review of the minutes for over a year in discussion on the red lights with Judge Webster at regular City Council meetings.

**DISCUSSION - Red Light Camera Enforcement Program** - Mayor Land asked Judge Webster to come to the podium and give the Council exactly what he wanted them to undertake and take into consideration.

Robert N. Webster, 237 W Ponkan Road, Apopka FL 32703, referenced information he had distributed prior to the meeting, a copy of which is attached hereto and made a part of the meeting minutes. He referenced Florida Statutes, Chapter 168, Police Power of Municipalities Sections 168.01 through 168.18, and stated he referred the Council to sections that were Tabled, Repealed and Transferred sections in 1973. Next, he referenced the 2011 version of F.S. 316, and he read a portion of F.S. 316.0083, as follows: "For purposes of administering this section, the department, a county, or a municipality may authorize a traffic infraction officer under 316.640 to issue a traffic citation for a violation of 316.074. A notice of violation and a traffic citation

may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible.” He said this paragraph does not prohibit a review of information.

Mayor Land questioned if he was referring to F.S. 316.640, to which Mr. Webster responded affirmatively.

Mr. Webster referenced Ordinance No. 2174, reading from the ordinance. He further read Sec. 78-82 through “... the city shall utilize traffic infraction detectors as an ancillary deterrent to control traffic.” He stated that some of the verbiage is unnecessary. He stated the City created this ordinance, but it is in conflict with State law; therefore it is inappropriate and asked why this section of the ordinance was not used on the citations. He further stated that he just wanted Apopka to comply with the law, which specifically prohibits anybody giving a citation for a right turn if they do so cautiously and avoid any problems.

Commissioner Kilsheimer inquired what specifically in the ordinance conflicts with State law.

Mr. Webster stated that the ordinance states you “shall stop before making a right turn and the State law says that you don’t have to stop.”

City Attorney Frank Kruppenbacher said many local governments began with red light cameras using ordinances as the authority and hearings through their Code Enforcement process. In 2010, the Florida Legislature enacted the Mark Wandall Traffic Safety Program (The Florida Statute No. 316.0083 which is referenced throughout the meeting), authorizing local governments to utilize red light cameras. The City utilizes our Law Enforcement Officers who are experts in traffic to administer the Act. He explained the complete process taken, to include: When someone runs through a red light and the photo is taken, then (1) ATS reviews the video and determines there may be a violation of the law, submitting it to the City; (2) a City of Apopka Law Enforcement Officer reviews that video, and decides whether there was a violation of F.S. 316.0083, and in so doing they determine, in this case, whether or not the person was making a right-turn in a careful and prudent manner.

City Attorney Kruppenbacher continued to explain that when the law was passed, the State preempted the ordinance and the State was controlling the process. Staff then amended the ordinance and if reading the totality of the ordinance, it references the amended statute and everything being done in accordance with that. The City does not issue citations under this ordinance, but upon the State Statute. He advised there was actually another State Statute that talks about actually having to stop. He declared the City is currently applying, administering, and following §316.0083 in dealing with red light camera infractions. He said once issued, the person can pay the citation, or they can choose to exercise their rights and proceed to challenge the matter through the court system. The ordinance to the extent of being argued to be in conflict of §316.0083 would not then be applicable as §316.0083 preempted it and controls. The bottom line is that the Apopka Police Department is not administering the ordinance, they are administering the Statute because the Florida Legislature said, “Here’s how it is to be done.”

City Attorney Kruppenbacher informed the Mayor and City Council that in his legal opinion, the City is currently in compliance with the State law. He indicated he will take steps to review Ordinance No. 2174 to determine if anything needed to be tweaked so not to have any confusion.

Mayor Land asked City Attorney Kruppenbacher to address the language on the citation, to which City Attorney Kruppenbacher responded that the citation states you are cited for a violation of §316.0083. You are not cited for a violation of City Ordinance No. 2174, because the State did not authorize the citation to say the violation was of a local ordinance, but authorized that there is a Florida Statute violated.

Mayor Land said that §316.0083 referencing §316.075(1)(c)(1) is where it says that you stop at the stop bar.

Police Captain Randy Fernandez pointed out the citation only quotes violations of State Statute, not City Ordinance.

Commissioner Kilsheimer clarified the only issue that concerns Mr. Webster is the right turn violation.

Mr. Webster said the Statute states they may not be issued for failure to stop at the red light if the driver was making a right-hand turn in a careful and prudent manner.

Commissioner Kilsheimer declared it goes on to say “this paragraph does not prohibit a review of information from a traffic infraction detector by an authorized employee or agent of the department, a county, or a municipality before issuance of the traffic citation by the traffic infraction enforcement officer.”

City Attorney Kruppenbacher pointed out they have the first page of F.S. 316.075, but the Statute goes on to say the municipal body has the right to actually prohibit any right turns. He further stated there were two tickets issued to this individual, one for the car going straight through a red light, the other for the right-hand turn that has been described. He said while he appreciates Mr. Webster’s position, he reiterated it was not the Council’s role under the Statute to make this decision. The officer makes the review and it has been contemplated by the law that they go through the process of having an independent third party, whether it be a judge or a hearing officer to review the judgment of the officer. He strongly recommended that legally the Council would be outside their realm to inject the Council into these tickets as this is not contemplated by the law.

Mayor Land said the City Attorney addressed this in his memorandum in April listing three avenues of opportunity if they disagree. He stated the appeal listed here from the law in 1971, and repealed in 1973 and stated the current law allows the city to issue these tickets.

City Attorney Kruppenbacher stated the argument at a previous meeting from Mr. Webster was that the City had no authority to have a police department doing this. He asked Mr. Webster if his position was that the City had no authority to have a police department.

Mr. Webster stated he believed they did not have the authority to operate outside the law.

City Attorney Kruppenbacher inquired what his belief was of how they were operating outside the law.

Mr. Webster said as he reads the law, it appears at one time under Chapter 168 they had the authority to enforce the ordinances, but in 1973 the Legislature repealed all of Chapter 168.

City Attorney Kruppenbacher referenced Chapter 165 that addresses the formation of local governments and the Legislatures laying out and empowering local governments to have home rule power, then there were Statutes that provide powers beyond that. He said throughout the Statutes they talk about law enforcement agencies of municipalities, county sheriff's departments, etc. He stated there was multiple legal basis both in case law and in Statutes that they do have the authority to have a municipal police department. He said that §166.049 specifically gave directions to law enforcement agencies of municipalities. He affirmed they have the authority and power to have law enforcement agencies.

Mayor Land clarified that with home rule and under §316.640 it provides for how the State allows local governments to give the tickets under the law.

City Attorney Kruppenbacher responded in the affirmative. He stated in reviewing everything, he did confer with the Florida Attorney General's office and their lead lawyer in this particular area, and in talking with him through these issues, they were in agreement and they are defending the Statute in multiple courts as people challenge the various aspects of red light cameras.

Mayor Land reiterated that the recommendation to the Council was not to make any changes at this time.

City Attorney Kruppenbacher said his recommendations would be that he will look back through the ordinance previously adopted and make any revisions necessary if there are any inconsistencies. He stated he would not recommend doing anything differently than they are currently doing as Chief Manley is running the Apopka Police Department very professionally and administering this particular red light Statute in compliance with the law.

City Attorney Kruppenbacher stated the State was defending these as valid, and we are defending them and will respect whatever the Court ultimately rules. He said he appreciates Mr. Webster's position, but as the City Attorney, he is responsible to make sure the City was doing what is legal, and as of right now, based upon all of the applicable law, the City is operating in this area correctly. He affirmed they will continue to monitor this. He informed Mr. Webster, who lives in the County, that Orange County is putting up an additional 100 red light cameras.

Mayor Land asked if the Council had any questions on the City Attorney's recommendation, and if not, he would entertain a motion to approve the City Attorney's recommendation, not to make any changes in what the City is currently doing. He reiterated the City Attorney will review the City of Apopka Traffic Light Safety Act and advise the Council of any conflicts of understanding.

**MOTION was made by Commissioner Arrowsmith, and seconded by Commissioner Dean, to approve the City Attorney's recommendation.**

City Attorney Kruppenbacher responded to Commissioner Arrowsmith's inquiry regarding the ordinance by stating he intended to bring back to the Council a simple ordinance that states they approve the use of red light cameras in conformance with Florida Law. He stated this would eliminate any confusion that may exist. He advised the citations are cited pursuant to the law.

Commissioner Arrowsmith asked Mr. Webster if he has had any interaction or discussions with Orange County.

Mr. Webster said he had not discussed this with the County.

Mayor Land afforded rebuttal time to Mr. Webster.

City Attorney Kruppenbacher reiterated he was going to review and revise Ordinance No. 2174 so there can be no misinterpretation as it relates to the Traffic Act. As it relates to the actual red light camera process, he recommended they continue with it as is, because as of right now it is his opinion they are legally operating within the law as it is currently written.

Mr. Webster said he appreciates the City Attorney's attempt to clarify it and if what he just said is what the motion was, then he very much opposed the motion because it was not decided where it says you shall not issue a citation.

Commissioner Arrowsmith affirmed Mr. Webster did not continue reading this, but rather stopped where it stated "you may not."

Mayor Land stated under §316.075(1) (c) (1)a - states "...a driver of a vehicle which is stopped." He said it goes on to describe how the driver can make a right-hand turn.

City Attorney Kruppenbacher advised that they agree §316 states "a notice of violation and a traffic citation may not be issued for failure to stop at a red light." However, it goes on to state "if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible." He declared somebody has to decide if that right-hand turn is in a careful and prudent manner at the intersection and that's what law enforcement does, based upon viewing the video of the turn. He went on to say if somebody disagrees with that, they then ask for the hearing in front of the judge. He reiterated they are operating under §316.083 and not issuing a ticket under the ordinance. He said this all started originally by an ordinance process and as the cities went along the State Legislature got involved and it is only pursuant to State Statute.

Mr. Webster inquired if he could talk about something else.

Mayor Land advised this meeting was called strictly for the red light camera enforcement program at the request of Judge Webster, therefore other items are not to be brought up for this meeting.

City Attorney Kruppenbacher stated, in reading the Statutes, they contemplate that the Council will authorize by Ordinance the red light cameras. He said it got wordy with this Ordinance, but that will be corrected.

Mr. Webster said the portion he thinks to be germane, and others may not, is if the Apopka Police Department doesn't exist, then they need to resolve that.

City Attorney Kruppenbacher explained that Article 8 of the Florida Constitution specifically talks about the establishment of municipalities and says "municipalities shall have governmental corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services and may exercise any power for municipal purposes, except as otherwise provided by law." He stated when the Charter was created, they contemplate the municipal services and they have always had a police department. This statute is very broadly interpreted by the Florida Supreme Court to give home rule powers. He affirmed the State Statutes have multiple references to the law enforcement agencies. There is an Apopka Police Department that lawfully exists.

Mr. Webster suggested giving this a week or two to allow the Council to study this over and the City Attorney to study it over and be as well prepared as he can be.

City Attorney Kruppenbacher stated he was well prepared now. He affirmed the City has legal right to have a police department and they have a legal right to have red light cameras. Once the City determined they wanted red light cameras, the police department is then obligated to administer the Mark Wandall Act. This is what they are doing in compliance with the law.

Commissioner Arrowsmith called the question.

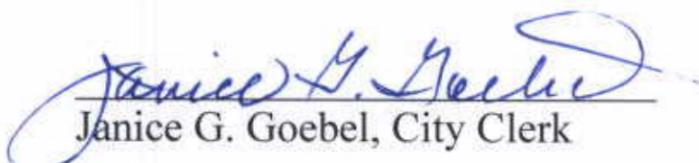
Mr. Webster said he disagreed with the City Attorney's opinion.

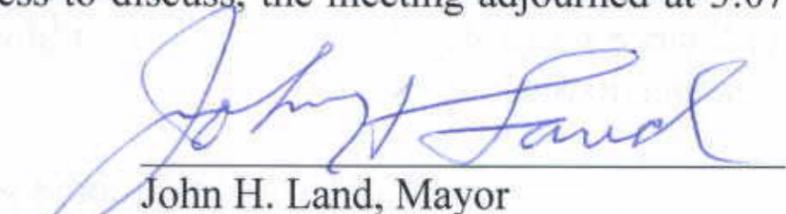
**MOTION carried unanimously with Mayor Land and Commissioners Arrowsmith, Dean, McQueen, and Kilsheimer voting aye.**

Mayor Land thanked everyone for coming to this special meeting to discuss red light cameras.

**ADJOURNMENT** - There being no further business to discuss, the meeting adjourned at 3:07 p.m.

ATTEST:

  
Janice G. Goebel, City Clerk

  
John H. Land, Mayor