

CITY OF NAPA CITY COUNCIL  
AGENDA REPORT

ADMIN CALENDAR  
AGENDA ITEM <ITEM\_OUTLINE> 288  
Date: <MEETING\_DATE>

6-21-11

To: Honorable Mayor and Members of City Council  
From: Richard Melton, Police Chief  
Prepared by: Jeff Troendly, Captain  
Subject: Adopt Resolution Approving One Year Extension to Agreement with Redflex Traffic Systems, Inc., and Elimination of Cost Neutrality Clause

**ISSUE STATEMENT:**

Adopt a resolution approving a one year extension of the current agreement with Redflex Traffic Systems, Inc., (June 18, 2011 through June 17, 2012) and approving an amendment to the agreement to eliminate the cost neutrality clause.

**DISCUSSION:**

On June 3, 2008, the City Council approved an agreement with Redflex Traffic Systems, Inc., by which the City pays a fixed fee per intersection at which Redflex provides red light photo enforcement services. The Agreement provides for an initial term of three years, ending June 17, 2011, and it provides for the City to exercise options to extend the term for three additional consecutive one-year terms. The Agreement also includes a "cost neutrality" clause by which some limitations are placed on the City's obligation to pay fees to Redflex, based on the amount of revenue generated from red light violation citations at intersections with red light cameras. With this item, City staff recommends that the Council approve the first one-year extension of the Agreement term (through June 17, 2012), and that Council approve an amendment to the Agreement to eliminate the "cost neutrality" clause in response to recent legal challenges.

The Automated Photo Enforcement Camera Program became fully operational as of February 2010. The red light cameras are located at Jefferson St. and First St. (southbound approach), Trancas St. and Big Ranch Road/Soscol Avenue (eastbound approach), Soscol Ave. and Imola Ave (Northbound approach, and SR29 at SR12/121 (southbound approach). Since the inception of the Automated Photo Enforcement Program, the Police Department has recognized a significant reduction in the number of red light violations at these intersections, which indicates the Automated Enforcement Camera Program is working as intended. It stands to reason with fewer violations, there are fewer opportunities for collisions to occur. Furthering this reasoning is the fact that the overall number of collisions at red light controlled intersections is down from recent years. The reduction in red light violations also means the motoring public is changing its driving behavior related to stopping at a red light.

The Napa Police Department utilizes many strategies and tools to change poor driving habits in an effort to reduce non-injury, injury, alcohol related, and fatal traffic collisions in the City of Napa. One of the strategies and tools used is the Automated Photo Enforcement Program. As a result of utilizing these strategies and tools to change driving behaviors, the City of Napa has seen a significant reduction in injury accidents in 2010 compared to the previous five (5) years and just recently received its best collision ranking in 20 years by the Office of Traffic Safety (2009).

#### Injury Collisions

2005 - 453  
2006 - 412  
2007 - 535  
2008 - 521  
2009 - 408  
2010 - 249

During an Automated Photo Enforcement Program update presentation to the City Council in February 2011, there was concern by the City Council and the public about the number of violations and citations issued at the intersection of SR29 at SR12/121. Utilization of the red light camera system identified the number of violations which resulted in citations issued from March 2010 and part of 2011 (see Attachment 4).

Another concern regarding the red light cameras at SR29 at SR12/121 is that the Police Department is citing a large number of tourists, as opposed to citizens of Napa. Some citizens at the council meeting thought this would be unfair to those tourists who are unaware of the cameras, even though there are signs indicating cameras are in use. A study showed that 53% of citations issued were to people who lived outside the 94558 and 94559 zip codes. As indicated above, there has been a significant reduction in the number of violations at this intersection, which means both local and visiting drivers are becoming more aware of the cameras, and their driving habits are changing accordingly.

Right turn violations at SR29 and SR12/121 has become a concern to some members of the community due to the duration of the yellow light for southbound SR29 traffic turning westbound onto SR12/121. Caltrans has currently set the yellow light duration for the right turn at this intersection at 3.8 seconds, which is in accordance with state law. The City has determined, in its law enforcement discretion, to issue fewer citations for right turn violations than are captured by the red light camera system. Since December, 2010, citations have only been issued to violators who made a right turn violation 5.4 or more seconds after the yellow light engaged, thus conforming to the "straight through" yellow turn interval. Conforming to the 5.4 second interval ensures that only the most egregious violators will be cited. Statistics show that approximately 20% of right turn violations equate to the level of citation issuance, which means 80% of violations captured by the red light camera system are not issued citations.

Cost Neutrality. As noted above, the City's Agreement with Redflex includes a "cost neutrality" clause (Exhibit "B," Section 1.2). Although the overall structure of the City's

Agreement with Redflex requires the City to pay Redflex a fixed fee per intersection in return for the specified red light camera services provided by Redflex, the Agreement also includes a "cost neutrality" clause which provides some limitations on the amount of the City's payments to Redflex based on the amount of revenue received from red light violations at intersections with cameras. The Napa Superior Court has recently ruled that the City's cost neutrality clause is in conflict with California Vehicle Code Section 21455.5(g)(1), which provides: "A contract between [the City] and [Redflex] may not include provision for the payment or compensation to [Redflex] based on the number of citations generated, or as a percentage of the revenue generated, as a result of the use of the [red light camera] equipment..." It is the view of City staff that the City's agreement with Redflex is not in conflict with the requirements of the Vehicle Code, and staff intends to legally challenge the court's ruling. Since the City's legal challenge is pending in court it would not be appropriate to publicly debate the City's position related to the ruling (as it may be relevant to pending citations). However, in an effort to eliminate this legal controversy from future citations for red light violations, staff recommends that Council approve an amendment to the Agreement to eliminate the cost neutrality provision.

Given the overall success of its efforts at reducing collisions and changing driving behaviors, the Police Department would strongly encourage the Council to approve a one year extension to the term of the agreement with Redflex (subject to the elimination of the cost neutrality clause), which will extend the existing term through June 17, 2012. This would allow the Police Department to evaluate the effectiveness of Automated Photo Enforcement Program on an annual basis to determine if the program is continuing to reduce violations at intersection, which translates to less opportunity for collisions to occur.

#### **FINANCIAL IMPACTS:**

Under the Agreement, the City pays Redflex a fixed fee of Five Thousand Six Hundred and Seventy Dollars (\$5,670) per month for each designated intersection approach with up to two (2) contiguous lanes, and Six Thousand Dollars (\$6,000) per month for each designated intersection approach with up to three (3) or more contiguous lanes. The monthly fees to Redflex will be paid using red light citation fines paid to the City. Under the current revenue distribution formula for red light violations, an intersection that generates an average of two (2) prosecutable citations per day more than pays the monthly fee to Redflex.

On or about May 27, 2011, the City received an Opinion from the Superior Court for the State of California, County of Napa Appellate Division, Case No. CR 154602 (People of the State of California v. Daugherty), in which the court concludes that the City's "Cost Neutrality" provisions are in violation of California Vehicle Code Section 21455.5. While it is the view of both the City and the Contractor that the Agreement is not in conflict with the requirements of the California Vehicle Code, and the City intends to file an appropriate legal challenge to the court's opinion, the City desires to amend the Agreement to delete the "Cost Neutrality" provisions in order to eliminate this legal controversy from future citations for red light violations at designated intersection

approaches, and to delete the "Equitable Cost Recovery" provisions for termination without cause.

Under the terms of the Agreement, Redflex will provide red light camera services to the City for the agreed upon term of service extension of one (1) to three (3) years.

Any revenue realized through the Automated Photo Enforcement Program shall be designated to a Police Department Traffic Safety Fund to offset costs for traffic safety programs and traffic enforcement equipment.

There are indirect Police personnel costs relating to the review of violations, response to citizen inquiries and court appearances for contested citations. Staff is in the process of studying the average weekly time of existing staff and part-time employees dedicated to effectively manage and operate the Automated Photo Enforcement Program.

**CEQA:**

The Police Chief has determined that the Recommended Action described in this Agenda Report is not subject to CEQA, pursuant to CEQA guidelines Section 15060 (C).

**DOCUMENTS ATTACHED:**

1. Attachment 1: Resolution approving a one year extension of Agreement 9613 with Redflex Traffic Systems, Inc., and approving elimination of the cost neutrality clause.
2. Attachment 2: Copy of current Agreement with Redflex Traffic Systems, Inc. (City of Napa Agreement No. 9613)
3. Attachment 3 - SR29/SR121 (March 2010-May 2011)

**NOTIFICATION:**

None

**RECOMMENDED ACTION:**

Staff recommends that the City Council move, second and approve each of the actions set forth below, in the form of the following motion. Move to:

Adopt a resolution authorizing the Chief of Police to execute a one (1) year extension to Agreement 9613 with Redflex Traffic Systems, Inc., for Red Light Photo Enforcement Services, and approving an amendment to the Agreement to eliminate the cost neutrality clause.

# ATTACHMENT 1

## RESOLUTION R2011

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, APPROVING A ONE YEAR EXTENSION OF AGREEMENT 9613 WITH REDFLEX TRAFFIC SYSTEMS, INC., FOR RED LIGHT PHOTO ENFORCEMENT SERVICES, AND APPROVING AN AMENDMENT TO THE AGREEMENT TO ELIMINATE THE COST NEUTRALITY CLAUSE

WHEREAS, the Napa Police Department provides a full range of public safety programs and law enforcement services for the City; and

WHEREAS, traffic safety and accident reduction is among the Police Department's highest priority; and

WHEREAS, red light cameras help communities enforce traffic laws by photographing vehicles and drivers who run red lights 24 hours a day, 7 days a week; and

WHEREAS, California Vehicle Code 21455.5(c) allows government agencies, in cooperation with law enforcement agencies, to operate automated enforcement systems; and

WHEREAS, on July 18, 2006 the City Council directed that the Police Department and the Public Works Department move forward to identify and negotiate a contract with a red light photo enforcement vendor to implement a Red Light Photo Enforcement Program; and

WHEREAS, a Request for Proposal for red light photo enforcement was issued and Redflex Traffic System, Inc. was selected as the preferred vendor; and

WHEREAS, on June 3, 2008, the City Council approved an agreement with Redflex Traffic Systems, Inc., by which the City pays a monthly fixed fee of Five Thousand Six Hundred and Seventy (\$5,670) Dollars per month for each designated intersection approach with up to two (2) contiguous lanes, and a fixed fee of Six Thousand (\$6,000) Dollars per month for three (3) or more contiguous lanes; and

WHEREAS, the agreement with Redflex Traffic Systems, Inc. provides for an initial term of three years (ending June 17, 2011) with options for the City to extend in three consecutive one-year increments, and a cost neutrality clause by which limitations are imposed on the City's obligation to pay fees to Redflex based on the amount of revenue received from red light violations; and

WHEREAS, any revenues realized after the costs for the administration of the Red Light Photo Enforcement Program will be designated to the Police Department

Traffic Safety Fund to offset costs for traffic safety programs and traffic enforcement equipment; and

WHEREAS, the cost neutrality clause in the City's agreement has been the subject of a recent legal challenge, and the City desires to eliminate the cost neutrality clause in order to eliminate potential legal controversies over future citations, and approve a one-year extension of the Redflex Agreement subject to an elimination of the cost neutrality clause; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Napa, as follows:

1. The City Council hereby finds that the facts set forth in the recitals to this resolution are true and correct, and establish the factual basis for the City Council's adoption of this resolution.

2. The City Council hereby approves an amendment to Agreement No. 9613, between the City and Redflex Traffic Systems, Inc., for Automated Photo Enforcement Cameras, to delete the "cost neutrality" provisions (as set forth in Section 1.2 of Exhibit "B," labeled "Cost Neutrality). The City Council hereby authorizes and directs the Chief of Police to prepare and execute an amendment, in a form approved by the City Attorney, to implement this change,

3. The City Council hereby authorizes and directs the Chief of Police to extend the term of Agreement No. 9613, with Redflex Traffic Systems, Inc., for one year, ending June 17, 2012. The one year extension of Agreement No. 9613 is expressly subject to the amendment to delete the cost neutrality provisions, as set forth herein.

4. The City Manager is hereby authorized to increase future appropriations based on revenues from future red light camera installations.

5. This Resolution shall take effect immediately upon its adoption.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Napa at a public meeting of said City Council held on the 7th day of June, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_  
Dorothy Roberts  
City Clerk

Approved as to form:

\_\_\_\_\_  
Michael W. Barrett  
City Attorney

## ATTACHMENT 2

City of Napa  
Agreement No. 9613

### AGREEMENT BETWEEN THE CITY OF NAPA AND REDFLEX TRAFFIC SYSTEMS, INC. FOR AUTOMATED PHOTO ENFORCEMENT CAMERAS

This Agreement (this "Agreement") is dated this 13<sup>th</sup> day of June, 2008 by and between Redflex Traffic Systems, Inc., a Delaware corporation with offices at 15020 North 74<sup>th</sup> Street, Scottsdale, AZ. 85260 ("Redflex" or "Contractor"), and the City of Napa, a municipal corporation, with offices at 960 School Street, Napa, CA. 94559 ("City").

#### RECITALS

THIS AGREEMENT is entered into with reference to the following facts and circumstances:

WHEREAS, the City desires to engage Contractor to furnish all equipment, licenses, applications and back office processor related to the Redflex System, including digital traffic enforcement cameras and equipment for monitoring and enforcement of red light violations at up to ten (10) Intersections within the City of Napa; and

WHEREAS, the Contractor is qualified to provide such services to the City, and

WHEREAS, it is a mutual objective of both Redflex and the City to reduce the incidents of vehicle collisions at the traffic Intersections that will be monitored pursuant to the terms of this Agreement, and

WHEREAS, violations of Sections 21453(a) and 21453(c) of the California Vehicle Code, failing to stop for a red light or failing to stop for a red arrow, has been shown to pose a significant risk to life and property.

NOW, THEREFORE, said City and said Contractor for the considerations hereinafter set forth, mutually agree to the following terms and conditions:

1. **SCOPE OF SERVICES.** Redflex shall perform the services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
2. **COORDINATION.** Contractor shall initially assign Jack Weaver or such a person as Contractor shall designate by providing written notice thereof to the City from time to time, who shall personally participate in said project and to coordinate the activities of Contractor.



Prepared by NPD for 6-21-11 Napa Council meeting  
 Agenda item 28B

**ATTACHMENT 3**

**SR29/SR121  
 February 2010-May 2011**

During an Automated Photo Enforcement Program update presentation to the City Council in February 2011, there was concern by the City Council and the public about the number of violations and citations issued at the intersection of SR29 at SR12/121. Utilization of the red light camera system identified the following number of violations, which resulted in the following number of citations issued from March 2010 through May, 2011. Statistics from this intersection show there has been a significant reduction in violations over the past 15 months, which indicates there has been a positive change in driving behavior by the motoring public. With fewer violations occurring there is less opportunity for collisions to occur. When comparing March 2010 to March 2011, there has been a 68% reduction in violations.

<u>Month</u>	<u>Total Violations RTOR &amp; Straight Through</u>	<u>RTOR Violations</u>	<u>RTOR Reject.</u>	<u>RTOR Citation</u>	<u>% RTOR Cites</u>
Feb-10	80	78	0	55	-
Mar-10	2088	1978	1123	855	43%
Apr-10	1550	1432	1009	423	30%
May-10	1647	1582	635	947	60%
Jun-10	1223	1155	758	397	34%
Jul-10	1105	1016	654	362	36%
Aug-10	838	754	497	257	34%
Sep-10	726	635	454	181	29%
Oct-10	767	682	511	171	25%
Nov-10	901	828	565	263	32%
Dec-10	795	730	529	201	28%
Jan-11	718	656	517	139	21%
Feb-11	649	605	485	120	20%
Mar-11	670	602	484	118	20%
Apr-11	690	635	505	130	20%
May-11	761	707	558	149	21%

Avg. 91.5% Right Turn on Red (RTOR) Violations