

REPORT OF THE CHIEF LEGISLATIVE ANALYST

July 22, 2011

To: Honorable Members of the Budget and Finance Committee
Honorable Members of the Audits and Governmental Efficiency Committee

From: Gerry F. Miller *G. Miller for*
Chief Legislative Analyst

Council File: 11-1015
Assignment No.: 11-07-0651

PHOTO RED LIGHT PROGRAM

SUMMARY

On June 22, 2011, Council considered a Cardenas-Parks Motion (C.F. 11-1015) to extend the contract with American Traffic Solutions (ATS), on a month-to-month basis up to one year, pending completion of reviews on traffic safety and revenue issues. The matter was referred to Budget and Finance and Audits and Governmental Efficiency Committees for evaluation of the financial impact of the photo red light program; status of amending the California Vehicle Code to strengthen enforcement for failure to appear in court or pay the fine; results of discussion with the Los Angeles Superior Court regarding enforcement issues; feasibility of the City to take enforcement action rather than the Superior Court; and whether ATS would comply with the Arizona policy if it established a subsidiary in California. This Office was instructed to prepare an informational report on these issues.

Financial Impact of Photo Red Light Program (PRLP)

Revenues

The current fine for a Photo Red Light citation is \$480 of which \$157.19 is disbursed to the City, \$245.78 to the State and \$77.03 to the County. Approximately 45,000 citations are issued annually; the collection rate is approximately 60 percent. Reports provided by the Los Angeles Superior Court of estimated and unadjusted photo red light revenues shows the following for calendar years 2008 through 2010, and January through May 2011.

Calendar Year	2008	2009	2010	2011 (Jan.-May)
Est. Revenue	\$2,800,000	\$3,700,000	\$4,400,000	\$1,990,000

The FY 2011-12 Budget assumed that continuation of the Photo Red Light Program (PRLP) would generate net revenue of approximately \$3.6 million based on the following calculation, which includes an adjustment retained by the Los Angeles Superior Court for the Court Reporter Salary Fund in accordance with Government Code Section §72712.

\$4,400,000 (2010 estimated PRL payments to Superior Court)
(792,000) (Estimated 18% adjustment for Court Reporter Salary Fund)
\$3,608,000 (Revenue remitted to City)

The estimated photo red light revenues from January through May 2011 average approximately \$398,000 per month. If this monthly average is sustained through December 2011, the revenues for the calendar year would total approximately \$4,776,000. Using this updated amount, approximately \$3.9 million would be generated if the PRLP is maintained in FY 2011-12:

\$4,776,000 (2011 estimated PRLP payments to Superior Court)
(859,680) (Estimated 18% adjustment for Court Reporter Salary Fund)
 \$3,916,320 (Revenue remitted to City)

If the PRLP is terminated effective August 1, 2011, however, the City could continue to generate revenue through the end of the fiscal year. The LAPD indicates that payments on photo red light citations can lag up to a year and even longer. The Notice of Violation gives the violator about two months before the respond date, which can be extended. A court date set for trial provides a further extension. Delinquent citations pursued by the Superior Court through its collection contractor also results in later payments.

Currently, 65,000 PRLP citations are outstanding, of which approximately 35,000 were issued between January 2010 and May 2011. Assuming a very conservative collection rate of 30 percent (half of the current collection rate of 60 percent) would generate the following net revenue during FY 2011-12:

65,000 citations x 30 % = 19,500 x \$157.19 City share = \$3,065,205
 \$3,065,205 (Estimated PRLP payments to Superior Court)
(551,737) (Estimated 18% adjustment to Court Reporter Salary Fund)
 \$2,513,468 (Revenue remitted to City)

In FY 2012-13, if 15 percent of the remaining 45,500 citations are paid, the net revenue generated would be as follows:

45,500 citations x 15 % = 6,825 x \$157.19 City share = \$1,072,822
 \$1,072,822 (Estimated PRLP payments to Superior Court)
(193,108) (Estimated 18% adjustment to Court Reporter Salary Fund)
 \$ 879,714 (Revenue remitted to City)

Sixty percent of PRLP revenue is deposited into the General Fund and 40 percent is deposited into the Traffic Safety Fund. The below table shows the breakdown based on the FY 2011-12 Budget, and for FY 2011-12 and FY 2012-13 if the PRLP is terminated, provided pending citations in the queue are processed.

	FY 2011-12 (Budgeted)	FY 2011-12 (PRLP Termination)	FY 2012-13 (PRLP Termination)
General Fund	\$2.16 M	\$1.5M	\$527,828
Traffic Safety Fund	\$1.44M	\$1.0M	\$351,886
Total	\$3.60M	\$2.5M	\$879,714

Terminating the PRLP will result in reductions to the FY 2011-12 Budget of \$660,000 to the General Fund and \$440,000 to the Traffic Safety Fund. However, these reductions will be offset by the contract cost avoidance of \$2,504,062 in the LAPD discussed below.

Contract Cost

The current contract with ATS provides a flat monthly rate of \$8,125 for each of the 32 intersections with at least an 80 percent Citation Issuance Rate (CIR). This means that of all the violations captured that would be potentially citable, at least 80% of them must be of sufficient quality that they

reasonably could be used in court (i.e., sufficiently clear picture of driver and license plate). Payment is reduced by one percent for each percentage point under that level. For example, if an intersection showed a 70 percent CIR for a given month, the fee for that intersection would be \$7,313 (90 percent of \$8,125). If an intersection falls below a 50 percent CIR for that month, no payment is due for that intersection. If all 32 intersections achieve the 80% CIR, the vendor is paid the maximum monthly rate of \$255,938 (31 intersections have two approaches; one intersection is a one-way street so the vendor payments actually are for 31.5 intersections). If the 80 percent CIR is achieved for the entire year, the maximum payment is \$3,071,250.

The annual payments provided to the vendors under the current contract have been as follows:

<u>Fiscal Year</u>	<u>Vendor</u>	<u>Amount</u>
2005-06	Nestor	\$ 165,344
2006-07	Nestor	643,233
2007-08	Nestor	1,941,242
2008-09	Nestor	2,999,421
2009-10	ATS*	2,723,094
2010-11	ATS	2,723,094**

* American Traffic Solutions (ATS) acquired Nestor and assumed contract in September 2009

** May and June 2011 invoices totaling \$511,875 pending payment

The FY 2011-12 Budget includes \$2,760,000 in the LAPD Contractual Services Account for the PRLP. If the PRLP is terminated effective August 1, 2011, payments amounting to \$2,504,062 would be avoided assuming the vendor is paid the maximum monthly rate of \$255,928 for services rendered in July.

Staff Costs

The staffing levels and costs to manage the PRLP have fluctuated. The October 11, 2007 CAO report (C.F. 07-1202) stated, "On an ongoing basis, the Police Department has dedicated a total of five staff to this program: one Sergeant I and four Police Officer III positions. These positions have an annual cost of approximately \$460,000." The Controller's Audit Report of the PRLP dated September 29, 2010 indicated that the LAPD and DOT staff dedicated to the PRLP included six LAPD full-time sworn and two part-time civilian positions, and one DOT position that spends approximately 10 percent of its time to PLRP activities. The salary and fringe benefit staff costs totaled \$841,380.

The LAPD indicates that the current staffing level of four full-time LAPD sworn positions is sufficient to meet the PRLP workload. DOT has one part-time position devoting 10% of its time to the PRLP. The costs of these positions are shown below.

Department	Position	Salary Cost	Indirect Cost	Total
Police	(1) Sgt. II	\$113,161	\$56,815	\$169,976
	(2) PO III	192,489	100,409	292,898
	(1) PO II	83,203	45,107	128,310
	Subtotal	\$388,853	\$202,331	\$591,184
DOT	(1) 10% Sr. Transp. Engineer	\$12,900	\$1,413	\$14,313
	TOTAL COSTS	\$401,753	\$203,744	\$605,497

When the PLRP was implemented, the LAPD positions were redeployed from other assignments, and the engineering activities were added to an existing Senior Transportation Engineer position. If the PRLP is terminated, the cost to the General Fund for these positions will not be eliminated. The sworn staff will be redeployed to other assignments, and the Senior Transportation Engineer will continue with its current duties given that only 10 percent of its time is devoted to PRLP.

Financial Impact Summary (Continuing versus Terminating PRLP)

It should be noted that the Controller's Audit Report provided the following annual cost figures for implementation:

Contract Costs	\$3,071,250
Labor Costs (LAPD/DOT)	841,380
Infrastructure (DOT)	<u>392,500</u>
	\$4,305,130

DOT was budgeted \$1.57 million in FY 2005-06 for infrastructure improvements to install the PRL equipment at the 32 intersections. The annual amount of \$392,500 represented a 4-year amortization of the \$1.57 million infrastructure costs. Under that assumption, the \$392,500 annual cost was applicable in calculating City costs for the PRLP between 2006 and 2009. For that reason, the cost for infrastructure improvements was excluded from our calculation of potential financial impact of the PRLP summarized below for FY 2011-12.

➤ **Continuing PRLP**

Provided below are potential financial impacts if the PRLP is continued in FY 2011-12. Scenario 1 is based on the FY 2011-12 Budget assumptions; Scenario 2 is based on updated revenue and Citation Issuance Rate information which increases the contract cost; and Scenario 3 provides a more conservative estimate by averaging the revenues of Scenarios 1 and 2, assumes the maximum payment to the vendor, but maintains current LAPD and DOT staffing levels to administer the PRLP.

	<u>Scenario 1</u>	<u>Scenario 2</u>	<u>Scenario 3</u>
Est. 2011 PRLP payments to the Court	\$4,400,000	\$4,776,000	\$4,588,000
18% to Court Reporter Salary Fund	<u>(792,000)</u>	<u>(859,680)</u>	<u>(825,840)</u>
Est. PRLP receipts remitted to City	\$3,608,000	\$3,916,320	\$3,762,160
Contract Cost	<u>(2,760,000)</u>	<u>(3,071,250)</u>	<u>(3,071,250)</u>
Net Revenue	\$ 848,000	\$ 845,070	\$ 690,910
LAPD/DOT Staff Costs	<u>(605,497)</u>	<u>(605,497)</u>	<u>(605,497)</u>
Adjusted Net Revenue	\$ 242,503	\$ 239,573	\$ 85,413

➤ **Terminating PRLP**

If the PRLP is terminated, the City will incur equipment removal costs by DOT and transition costs by LAPD as discussed below.

Department of Transportation

The contract provides that the PRLP equipment (e.g. cameras, strobe lights, controllers, cabinets, accessories, etc.) must be returned to ATS, which includes the poles upon which the cameras and related equipment were installed at the 32 intersections. The poles are affixed into the sidewalk and were part of the infrastructure improvements completed by DOT. The Department indicates that because it is so severely short-staffed, diverting personnel from their current assignments to remove the poles, repair the sidewalks and perform other tasks to conclude the PRLP would be detrimental to the high priority projects (including ARRA-funded projects) that are underway. For that reason, DOT

requests that this work be done on cash overtime, estimated at \$155,000, rather than compensating the staff with time off.

Los Angeles Police Department

Upon termination of the ATS contract, LAPD indicates that it must assume the following functions for the approximately 65,000 outstanding citations:

- Developing and maintaining storage database of video and document files
- Preparing and compiling evidence for court appearances
- Processing and filing *Affidavits of Non-Liability* to the court

As of the writing of this report, this Office had not discussed in detail with LAPD on the effectiveness of continuing the PRLP if all of the above functions are not performed. Of concern is the potentially significant cost to meet the technology requirements (e.g., developing and maintaining the storage database; developing a means to retrieve the videos and other data). Because of the short timeframe before the ATS contract may be terminated, options for Council consideration could include:

- (1) Instruct the LAPD, with assistance of the CAO and CLA, to assess the costs and feasibility of meeting the technology requirements, including staff time, equipment and expenses. While this analysis occurs, retaining ATS on contract would be necessary to avoid disruption of PRL operations.
- (2) Immediately conclude and terminate all PRLP operations as of August 1, 2011. This would mean, however, that LAPD would be unable to defend the outstanding citations in court because the evidence currently contained in ATS' database would be inaccessible.

Although the transition costs for the LAPD are currently unknown, provided below is a calculation of the potential financial impact to the City budget in FY 2011-12 and FY 2012-13 if the PRLP is terminated on August 1, 2011 based on the assumptions described above in Revenues:

	<u>FY 2011-12</u>	<u>FY 2012-13</u>
Est. PRL payments to Superior Court	\$3,065,205	\$1,072,822
18% to Court Reporter Salary Fund	<u>(551,737)</u>	<u>(193,108)</u>
<i>Est. PRLP receipts remitted to City</i>	\$2,513,468	\$ 879,714
Contract Cost	(255,938)	---
DOT Equipment Removal	<u>(155,000)</u>	<u>---</u>
Net Revenue	\$2,102,530	\$ 879,714
LAPD/DOT Staff Costs	<u>(605,497)</u>	<u>(605,497)</u>
Adjusted Net Revenue	\$1,497,033 *	\$ 274,217 *

* Subject to reduction due to LAPD costs to phase out PRLP; amount currently unknown

If the PRLP is completely concluded as of August 1, 2011 with no phase-out, then the budget impact would be:

	<u>FY 2011-12</u>
Est. PRL payments to Superior Court	\$1,000,000
18% to Court Reporter Salary Fund	<u>(180,000)</u>
<i>Est. PRLP receipts remitted to City</i>	\$ 820,000
Contract Cost	(255,938)
DOT Equipment Removal	<u>(155,000)</u>
Net Revenue	\$ 409,062
LAPD/DOT Staff Costs	<u>(605,497)</u>
Adjusted Net Revenue	(\$ 196,435)

Strengthening Enforcement

On July 13, 2011, Council adopted a Resolution to support SB 29, which would modify current state law regarding automated photo red light programs, if the bill is amended to also modify California Vehicle Code (CVC) §40509 to require that courts (“shall”) notify the state if the registered owner (R/O) or violator cited for a photo red light violation fails to take proper action, such as appear in court or pay the fine. Currently, CVC §40509 provides discretion to each county court system (“may”) to notify the state. SB 29 has been referred to the Appropriations Committee “suspense file” which is a holding place for bills with negative fiscal impacts. The Appropriations Committee analysis indicates that the additional requirements imposed on public agencies by SB 29 to administer photo red light programs would result in increased costs.

Unlike other moving violations in which citations are issued by an officer to the driver of the vehicle, photo red light citations are sent to the registered owner (R/O) based on the license plate information captured in the photograph. If the violator appears in court and is convicted but fails to pay the fine, the DMV is notified resulting in possible suspension of his/her driver’s license and withhold on license renewal. The citation is also referred to a collection agency. If the R/O fails to respond to the Notice of Violation and appear in court to prove (s)he was not the operator of the vehicle when the violation occurred, the Los Angeles Superior Court refers the citation to collections but does not notify the DMV.

A representative of the Los Angeles Superior Court indicated to this Office that notifying the DMV potentially creates an unfair result given that the R/O’s driver’s license may be suspended, and renewal withheld, although (s)he may not have been the driver of the vehicle captured in the red light photo. Further, without anyone appearing in court on these photo red light citations, there is no way for the Court to know who actually committed the offense. The Court wants to be sure it is not unfairly punishing an innocent person by placing a potential license suspension on his/her driving record at the DMV.

This Office was instructed by Council to explore the feasibility of the City, rather than the court, taking enforcement action by notifying the DMV and pursuing collections when a registered owner or violator has failed to pay the Photo Red Light fine. CVC §40509 (a) states, in pertinent part, “...the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code...”. Subsection (b) states, in pertinent part, “If any person has willfully failed to pay a lawfully imposed fine within the time authorized by the court...the magistrate or clerk of the court may give notice...to the department...” The City Attorney has confirmed that the statute establishes that these matters are under the jurisdiction and authority of the court, and a local agency cannot pursue enforcement actions including efforts to collect outstanding fines owed.

Compliance with Arizona Policy

On April 23, 2010, SB 1070 was signed into law by the Governor of Arizona. The law is intended to “discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.” On May 12, 2010, based on concerns that the law encourages racial profiling, discrimination, and harassment, Council adopted a Resolution stating opposition to SB 1070 and any federal funds that would support the implementation of SB 1070 (C.F. 10-0002-S36). In addition, Council instructed that: (1) All City travel to the State of Arizona be suspended; (2) To the extent practicable, and in instances where there is no significant additional cost to the City nor conflict with the law, refrain from entering into any new or amended contracts from any company that is headquartered in Arizona; and (3) Exemptions from these instructions must be approved by Council.

On June 17, 2011, the City Attorney transmitted to Council the draft ordinance regarding contracting with businesses based in or headquartered in Arizona. The consideration of the draft ordinance is pending.

Because ATS is headquartered in Arizona, Council approved two exemptions from the above policy on the following dates:

- June 23, 2010 for a 10-month contract extension through April 30, 2011 to allow the PRLP to continue pending release and completion of a Request for Proposals (RFP) for a new contractor.
- May 26, 2011 for a month-to-month contract extension effective May 1, 2011, to not exceed 90 days (through July 31, 2011), to complete the RFP selection process for a new contractor.

Council requested that the City Attorney opine as to whether Lasercraft dba ATSCalifornia located in Burbank, California would comply with the Arizona policy. When ATS purchased Nestor in 2009, ATS subcontracted with Lasercraft (a Georgia corporation) to manage all activities related to the City's Photo Red Light contract. In 2010, ATS purchased Lasercraft, retained it as a separate corporation although its activities would be directed by the shareholders. ATS is its sole shareholder.

The City Attorney has opined that the fact that ATS provides service to the City through a company called LaserCraft, doing business as ATSCalifornia, has no bearing on the determination that the City's policy applies to ATS because it is the sole shareholder of LaserCraft dba ATSCalifornia. Under the LaserCraft bylaws, its shareholder(s) elects its board of directors and the board manages the business affairs of the company. Therefore, ATS is in direct control of the business affairs of LaserCraft even though it is a corporation in its own right. Past practice with regard to implementing the City's social policies and ordinances has been to look to the true ownership and management of the company with whom the City is considering doing business to evaluate whether the contractor is in compliance with the City policy or ordinance. Here, ATS is the contractor and ATS is headquartered in Arizona; therefore, the evaluation need not proceed farther, except to the extent that Council may find facts sufficient to grant ATS an exemption under the policy.

CONCLUSIONS

1. Using different assumptions on revenue and contract cost, and assuming current LAPD/DOT staff levels to administer the PRLP, it is likely the Program would be at least cost neutral if it continues during FY 2011-12; would have a positive financial impact if phased-out; and result in a negative financial impact if it is completely terminated with no phase-out.
2. If the PRLP is terminated effective August 1, 2011, the City could continue to generate revenue through FY 2011-12 and FY 2012-13, although the technology costs to transition the data from the vendor to LAPD is currently unknown. These costs would reduce the revenue estimates as the PRLP phases out. An option Council could consider is to immediately conclude and terminate all PRLP activities as of August 1, 2011. However, LAPD indicates that doing so would negatively affect its ability to defend the outstanding citations in court because the evidence contained in the vendor's databases would be inaccessible.
3. Strengthening enforcement of delinquent photo red light citations will require an amendment to California Vehicle Code (CVC) §40509 to make it mandatory for the court to notify the Department of Motor Vehicles of registered owners and violators who are cited and fail to take

proper action, such as appear in court or pay the fine. The City cannot pursue enforcement actions, including efforts to collect outstanding fines owed, because the statute establishes that these matters are under the jurisdiction and authority of the court.

4. Although Lasercraft dba ATSCalifornia is a separate corporation, its sole shareholder is ATS and therefore in direct control of the business affairs of Lasercraft. ATS is the current City contractor, with headquarters in Arizona. Council would have to grant an exemption from the Arizona policy in order to extend the ATS contract.

FISCAL IMPACT

The FY 2011-12 Budget assumed that the City would receive revenue from the Photo Red Light Program (PRLP) of \$3.6 million and assumed contract expenditures of \$2.76 million resulting in net revenue of \$848,000. Factoring in the approximately \$600,000 LAPD/DOT staff costs results in a positive budget impact of approximately \$245,000. It is estimated that terminating the PRLP as of August 1, 2011 could result in the City receiving revenue amounting to \$2.5 million because of the lag time to process photo red light citations and payments made by violators. Contract payments of \$2.5 million would be avoided. Expenditures would total approximately \$400,000 (one month contract payment of \$256,000 + Department of Transportation overtime staff costs of \$155,000 to remove PRL equipment) resulting in net revenue of \$2.1 million, and a FY 2011-12 Budget positive impact of \$1.5 million factoring in the LAPD/DOT staff costs. Net revenue would decrease, however, with expenditures for technology costs to transition the data from the vendor to LAPD; that amount is currently unknown. With PRLP termination, it is likely that revenue would phase out in FY 2012-13 with the City potentially receiving approximately \$880,000, and a positive budget impact of \$274,000 factoring in LAPD/DOT staff costs. If the PRLP is completely terminated with no phase-out, the FY 2011-12 Budget would result in a negative impact of approximately (\$200,000). LAPD/DOT staff costs of \$600,000 to administer the PRLP are on-going General Fund expenditures as these positions will continue in other assignments if the Program is concluded.

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