[Cite as *Rocky River v. Landers*, 2023-Ohio-2962.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF ROCKY RIVER,	:	
Plaintiff-Appellant,	:	No. 112422
v.	:	
ROBERT LANDERS,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 24, 2023

Criminal Appeal from the Rocky River Municipal Court
Case No. 21-TRD-2551

Appearances:

A. Steven Dever, Prosecuting Attorney for Rocky River, *for appellant*.

Cullen Sweeney, Cuyahoga County Public Defender, and John T. Martin, Assistant Public Defender, *for appellee*.

EILEEN A. GALLAGHER, P.J.:

{¶ 1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc.App.R. 11.1. Plaintiff-appellant, the city of Rocky River, appeals the trial court's dismissal of its case against defendant-appellee, Robert Landers. Landers had been charged with violating Rocky River Codified Ordinances 335.12(a)

("R.R.C.O. 335.12(a)") after he allegedly left the scene of a motor vehicle accident before contacting police. The trial court dismissed the case after determining that R.R.C.O. 335.12(a) conflicted with R.C. 4549.02(A)(1). The city contends that the ordinance and the statute do not conflict and that the trial court, therefore, erred in granting Landers' motion to dismiss.

{¶ 2} For the reasons that follow, we affirm.

Factual Background and Procedural History

{¶ 3} Landers was charged with "stopping after accident upon streets" in violation of R.R.C.O. 335.12(a) after the vehicle he was driving and a vehicle driven by Janice Ribar were involved in a minor motor vehicle accident the morning of June 29, 2021 at the intersection of Hilliard Boulevard and Westway Drive in Rocky River, Ohio. Landers pled not guilty to the charge.

{¶ 4} The traffic crash report for the incident indicates that Ribar's vehicle and Landers' vehicle were both traveling westbound on Hilliard Boulevard at the intersection of Hilliard Boulevard and Westway Drive, turning left onto Hilliard Boulevard, when the accident occurred. Ribar's vehicle was in the curb lane and Landers' vehicle was in the lane to the left of Ribar's vehicle. As the vehicles made the left turn, "they came into contact with one another." According to the traffic crash report, it was "underdetermined which unit [was] at fault for exiting their lane of travel [and] striking the other unit." The report further indicates that "no injuries were reported" and that only "minor cosmetic damages to both units [were] reported." Although there is little evidence in the record, there appears to be no

dispute that, following the accident, both drivers pulled over and that Landers gave Ribar his telephone number and allowed Ribar to copy his driver's license — but that Landers did not contact police or wait for police to arrive — before he left the scene of the accident. The city claims that Landers' actions in (1) failing to contact the police following a motor vehicle accident, (2) failing to wait on scene until police arrived and (3) failing to give his name and address to police upon their arrival, violated R.R.C.O. 335.12(a).

{¶ 5} On April 14, 2022, Landers filed a motion to dismiss the charge against him. Landers argued that R.R.C.O. 335.12(a) conflicted with R.C. 4549.02(A)(1) and, therefore, "[ran] afoul" of the Ohio Constitution's "Home Rule Amendment" because it "creat[ed] additional obligations" for motor vehicle operators beyond what was required under state law. As such, Landers contended, R.R.C.O. 335.12(a) should "be invalidated." The city opposed the motion, asserting that R.R.C.O. 335.12(a) did not conflict with R.C. 4549.02(A)(1) because "there cannot be a conflict just because an ordinance disallows what the state law implicitly permits" and that R.R.C.O. 335.12(a) merely imposed "additional requirements" "above and beyond the minimum standards set forth in state law."

{¶ 6} On September 1, 2022, after considering the parties' briefs,[1] the magistrate issued his decision, granting the motion to dismiss. The city filed a

[1] The magistrate's findings of fact and conclusions of law states that the magistrate's decision was "[b]ased upon the facts adduced at the oral hearing and the applicable law." There is, however, nothing in the record to indicate than an "oral hearing" was held on the motion. In its objection to the magistrate's decision, the city states: "The magistrate's report incorrectly states than an oral hearing occurred. This case

motion requesting that the magistrate's decision be supported by findings of fact and conclusions of law. On October 12, 2022, the magistrate issued his findings of fact and conclusions of law. The city filed objections to the magistrate's decision, arguing that R.R.C.O. 335.12(a) did not conflict with R.C. 4549.02(A)(1) and that, therefore, the charge against Landers should not be dismissed. Landers filed a response, in large part reiterating the arguments he made in his motion to dismiss.

{¶ 7} On January 31, 2023, the trial court issued a judgment entry overruling the city's objections and adopting the magistrate's recommendation. The trial court concluded that R.R.C.O. 335.12(a) conflicted with R.C. 4549.02(A)(1) under the Home Rule Amendment test. The trial court noted that, under the statute, "there is no duty to call the police after every motor vehicle accident, i.e., that the statute "permits a motor involved in an accident to leave after the motorist has shared his information with the others involved." It held that the ordinance conflicted with the statute because it "criminalizes that same behavior of leaving an accident without calling the police" and "prohibits a motorist involved in an accident from * * * leaving the scene after giving the required information to the other driver" and, instead, "places additional requirements on the motorist to contact, await and communicate with police in every accident."[2]

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was briefed on written motions only. No testimony was presented other than the police report."

[2] It is not entirely clear from the limited record before us whether Ribar called police before she left the scene. Although the parties apparently gave statements to the police, copies of those statements are not in the appellate record. In his findings of fact, the magistrate stated that Ribar "reported the accident at the police department" and that

{¶ 8} The city appealed, raising a sole assignment of error for review:

> The Trial Court erred in granting the Appellee's motion to dismiss the case.

Law and Analysis

{¶ 9} Landers was charged with violating R.R.C.O. 335.12(a). That provision states, in relevant part:

> In case of accident to or collision with persons or property anywhere within the City, due to the driving or operation thereon of any motor vehicle, * * * the person driving or operating the motor vehicle * * * shall immediately stop the motor vehicle * * * at the scene of the accident or collision, and shall immediately engage in all reasonable processes to contact and summon the nearest police authority to the scene. The driver or operator shall then remain at the scene of the accident or collision until (1) a police officer arrives and (2) the driver or operator has given the driver's or operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to the police and to any person injured in the

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"both left before any police were at the scene." The city did not challenge any of the magistrate's factual findings. In its judgment entry overruling the city's objections and adopting the magistrate's recommendation, the trial court states:

> Ribar stated she suggested they call the Rocky River Police Department, but defendant stated he had to go to his son's football game. Ribar then reported the accident to the police department. After receiving her report, Rocky River Police called the defendant. He went to the station and gave a statement. He stated that he "asked her to call the police a couple of times but she had told me she had to be somewhere and pulled off before me." The defendant said Ribar did not tell him she was going to report this to the Rocky River Police. * * * [T]he Court finds the totality of circumstances shows that defendant was involved in a motor vehicle accident with Ribar. They both stopped and defendant gave Ribar his phone number and address, but both left the scene before any police were notified and before any police arrived at the scene. * * * Defendant met the requirements of the applicable ORC statute.

The parties have not challenged these findings. It does not appear from the record that Ribar was charged in connection with the accident.

accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision.[3]

{¶ 10} R.C. 4549.02(A)(1) states:

> In the case of a motor vehicle accident or collision with persons or property on a public road or highway, the operator of the motor vehicle, having knowledge of the accident or collision, immediately shall stop the operator's motor vehicle at the scene of the accident or collision. The operator shall remain at the scene of the accident or collision until the operator has given the operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to all the following:
>
> (a) Any person injured in the accident or collision;
>
> (b) The operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision;
>
> (c) The police officer at the scene of the accident or collision.

{¶ 11} In *State v. Bryant*, 2020-Ohio-1041, 154 N.E.3d 31, the Ohio Supreme Court considered "the statutory duties incumbent upon a driver who has been involved in an automobile accident." *Id.* at ¶ 1. The court indicated that "there is no duty" under R.C. 4549.02(A)(1) "to call the police after every motor-vehicle accident." *Id.* at ¶ 20. The court further explained, in interpreting R.C. 4549.02(A)(1):

> [A] police officer will not always respond to the scene of a motor-vehicle accident. If there is "no police officer at the scene," an operator does not violate R.C. 4549.02(A)(1) by failing to provide the specified information to a police officer.

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[3] There is no claim in this case that Landers failed to provide all the information required under R.R.C.O. 335.12(a) and R.C. 4549.02(A)(1) to Ribar before he left the scene of the accident.

* * *

> [T]he plain, unambiguous language of R.C. 4549.02(A)(1) does not require an operator of a motor vehicle who has been involved in an accident or collision to remain at the scene until a police officer arrives when that operator has provided the information required by R.C. 4549.02(A)(1) to the other persons involved in the accident or collision under R.C. 4549.02(A)(1)(a) and (b) and when that operator is unaware that the police have been or will be summoned.

Id. at ¶ 20, 23. The court did "not decide the contours of [an operator's] duty" where the operator knew that another party to the accident had called, or had indicated that he or she was going to call, the police. *Id.* at ¶ 21.

{¶ 12} On appeal, the city challenges the trial court's determination that R.R.C.O. 335.12(a) violates the Home Rule Amendment in Article XVIII, Section 3 of the Ohio Constitution.

{¶ 13} Article XVIII, Section 3 of the Ohio Constitution states: "[M]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." The Ohio Supreme Court has established a three-part test for determining whether a provision of a state statute displaces a municipal ordinance. "'A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.'" *Wesolowski v. Broadview Heights Planning Comm.*, 158 Ohio St.3d 58, 2019-Ohio-3713, 140 N.E.3d 545, ¶ 17, quoting *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9. The city

concedes that the second and third requirements have been met in this case. Accordingly, at issue here is whether R.R.C.O. 335.12(a) conflicts with R.C. 4549.02(A)(1). This is a question of law we review de novo. *Ohioans for Concealed Carry, Inc. v. Cleveland*, 2017-Ohio-1560, 90 N.E.3d 80, ¶ 9 (8th Dist.).

{¶ 14} A conflict exists where "'the ordinance permits or licenses that which the statute forbids * * *, and vice versa.'" *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 26, quoting *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923), paragraph two of the syllabus. A conflict between a statute and an ordinance can be a direct conflict or a "conflict by implication," i.e., where an "'ordinance will indirectly prohibit what a state statute permits or vice versa.'" *South Euclid v. Datillo*, 2020-Ohio-4999, 160 N.E.3d 813, ¶ 15 (8th Dist.), quoting *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 31; *see also Ohioans for Concealed Carry*, 2017-Ohio-1560, 90 N.E.3d 80, at ¶ 10 ("Courts also have applied a 'conflict-by-implication' test and held that local ordinances that attempt to impose restrictions beyond what the general state law permits are invalid."), citing *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 46 (concluding that "any local ordinances that seek to prohibit conduct that the state has authorized are in conflict with the state statutes and are therefore unconstitutional").

{¶ 15} R.R.C.O. 335.12(a) expands an operator's duty following an accident, subjecting an operator to a different standard of conduct than the operator has under R.C. 4549.02(A)(1). R.C. 4549.02(A)(1) states that an operator, with

knowledge of an accident, "immediately shall stop the operator's motor vehicle at the scene of the accident" and "shall remain at the scene of the accident or collision until the operator has given" the specified information to any person injured in the accident, the operator, occupant, owner or attendant of any motor vehicle damaged in the accident and the police officer (if any) at the scene of the accident.

{¶ 16} R.R.C.O. 335.12(a) states that an operator "shall immediately stop the motor vehicle * * * at the scene of the accident," "shall immediately engage in all reasonable processes to contact and summon the nearest police authority to the scene" and "shall * * * remain at the scene of the accident * * * until (1) a police officer arrives and (2) the * * * operator has given" the specified information to the police and any person injured in the accident or the operator, occupant, owner or attendant of any motor vehicle damaged in the accident.

{¶ 17} The city argues that there is no conflict between the statute and the ordinance because the ordinance "does not change" the statute but "merely adds to it," "adding on requirements" with respect to a motorist's "duty to report an accident." We disagree.

{¶ 18} In support of its argument, the city cites in *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, 859 N.E.2d 514. In *Baskin*, the Ohio Supreme Court considered whether a Cincinnati ordinance barring the possession of any semiautomatic rifle with a capacity of more than 10 rounds conflicted with a state statute barring the possession of any semiautomatic firearm capable of firing more

than 31 rounds. *Id.* at ¶ 1-3, 6. In determining that there was no conflict between the ordinance and the statute, the court reasoned:

> Cincinnati has not undertaken to regulate or prohibit any conduct that the state has authorized. The relevant state statutes * * * prohibit the possession of semiautomatic firearms that are designed or adapted to fire more than 31 cartridges without reloading. They do not, however, permit or authorize the possession of semiautomatic firearms that are capable of firing 31 or fewer cartridges without reloading. There is nothing in the weapons-control measures in the criminal code that manifests an intent to prevent municipalities from regulating the possession of semiautomatic firearms that hold fewer than 32 rounds. There is no provision in the statute declaring or otherwise suggesting that the limitation upon firing capacity fixed therein is the only limitation controlling the possession of a semiautomatic firearm, that the limitation shall not be diminished or altered by municipal regulation, or that municipalities may not prohibit the possession of lower-capacity firearms than are prohibited by the statute. * * *
>
> In the absence of any limiting provision or declaration to the contrary, we conclude that the General Assembly intended to allow municipalities to regulate the possession of lower-capacity semiautomatic firearms in accordance with local conditions, requiring only that under no condition shall municipalities allow the possession of any semiautomatic firearm that is capable of firing more than 31 cartridges without reloading. Thus, the ordinance does not prohibit what the statute permits.

Id. at ¶ 23-24. This case is different.

{¶ 19} We believe this case is more akin to this court's decision in *Fairview Park v. Barefoot Grass Lawn Services*, 115 Ohio App.3d 306, 685 N.E. 2d 300 (8th Dist.). In *Barefoot Grass*, the defendant was charged with applying chemicals or pesticide on a residential property within the municipality without having given prior notice to an abutting property owner, in violation of Fairview Park Codified Ordinances 741.02. *Id.* at 307. The defendant filed a motion to dismiss the charge, arguing that the city ordinance was preempted by and conflicted with R.C. 921.23(C)

and regulations adopted pursuant to R.C. 921.16(C) regulating pesticide use. *Id.* Whereas the ordinance required lawn chemical applicators to provide preapplication notice to occupants of abutting property owners regardless of whether they requested such notice, the regulations adopted pursuant to statute required such notice only when requested in writing. *Id.* at 308-309, 311. The trial court denied the defendant's motion to dismiss. The defendant pled no contest to the charge, was found guilty and appealed. *Id.* at 307-308. On appeal, the city did not dispute that the ordinance involved the exercise of police powers or that the statute at issue was a general law establishing uniform statewide standards of conduct. *Id.* at 310-311. However, the city argued that the ordinance did not conflict with state law because the ordinance merely specified "a different manner of providing notice" or "permissible 'dual conditions.'" *Id.* at 311. This court disagreed. It found that the ordinance impermissibly conflicted with state law because the ordinance prohibited what state law permitted and was, therefore, invalid. *Id.* The court explained:

> There is a conflict between an ordinance and a statute if the ordinance prohibits what the state statute permits. In this case, the Revised Code permits state licensed pesticide applicators like Barefoot Grass to apply pesticides without giving notice to residents of abutting property who do not make a written request for such notice. Fairview Park's ordinance, on the other hand, prohibits the application of pesticides without giving prior notice to all occupants of abutting property, including those who make no request.
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> * * *
>
> In this case, * * * both state law and the challenged ordinance expressly govern "notice" requirements prior to the application of pesticides. The language of the state notice regulations, O.A.C. 901:5-

> 11-09(A)(1)(b), does not permit us to view the contradictory requirements of the ordinance section 741.02 as merely additional requirements or dual conditions. State law and the local ordinance clearly conflict on whether the occupants of abutting property have the burden of requesting notice prior to the application of pesticide on adjacent property.

(Emphasis deleted.) *Id.*; *see also Lima v. Stepleton*, 3d Dist. Allen No. 1-13-28, 2013-Ohio-5655, ¶ 30-32, 34-35 (city ordinance regulating "vicious dogs" was "in direct conflict" with state statute regulating "dangerous dogs" where the ordinance "proscribed conduct allowed" by statute and thereby subjected city residences to "different standards of conduct").

{¶ 20} Here, as in *Barefoot Grass*, the ordinance prohibits what the statute permits — i.e., leaving the scene of a noninjury accident without contacting police and waiting for police to arrive. Under R.C. 4549.02(A)(1), an operator of a motor vehicle involved in a noninjury accident is free to leave the scene of an accident after he or she provides the specified information to the operator, occupant, owner or attendant of any motor vehicle damaged in the accident. R.R.C.O. 335.12(a), on the other hand, requires the operator of a motor vehicle in a noninjury accident to (1) contact and summon the nearest police authority, (2) remain at the scene until police arrive and (3) provide the specified information to police and the operator, occupant, owner or attendant of any motor vehicle damaged in the accident.

{¶ 21} Thus, the ordinance conflicts with the statute. The ordinance is, therefore, invalid, and the trial court did not err in dismissing the charge against Landers. The city's assignment of error is overruled.

{¶ 22} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Rocky River Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EILEEN A. GALLAGHER, PRESIDING JUDGE

EMANUELLA D. GROVES, J., CONCURS;
LISA B. FORBES, J., DISSENTS (WITH SEPARATE OPINION)

LISA B. FORBES, J., DISSENTING WITH SEPARATE OPINION:

{¶ 23} I respectfully dissent from the majority's opinion finding that Rocky River Codified Ordinances 335.12(a) ("R.R.C.O. 335.12(a)") violates the Home Rule Amendment. I write separately because I would find no conflict between R.R.C.O. 335.12(a) and R.C. 4549.02(A)(1).

{¶ 24} As recognized by the majority, the Home Rule Amendment to the Ohio Constitution authorizes municipalities to exercise "all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." OH Constitution, Section 3, Article XVIII. The intent of the Home Rule Amendment is

"to empower municipalities to establish different forms of local self-government, to implement local ordinances not in conflict with general laws of the state and to 'do those things * * * which are not forbidden by the lawmaking power of the state.'" (Citations omitted.) *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, ¶ 26.

{¶ 25} Courts use a three-part test to evaluate whether a municipality has exceeded its powers under the Home Rule Amendment: "A state statute takes precedence over a local ordinance when (1) the ordinance is an exercise of police power, rather than local self-government, (2) the statute is general law, (3) the ordinance is in conflict with the statute." *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, ¶ 17; s*ee also Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, ¶ 9 (establishing the test utilized in *Mendenhall*).

{¶ 26} I agree with the majority that the only question before this court concerns the third prong of the *Mendenhall* test: whether a conflict exists between R.R.C.O. 335.12(a) and R.C. 4549.02(A)(1). The Ohio Supreme Court established the controlling test for determining if a local ordinance conflicts with a state statute: "[T]he test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." *Struthers v. Sokol*, 108 Ohio St. 263, 268, 140 N.E. 519, syllabus; *see also Mendenhall*.

{¶ 27} I would find that the municipal ordinance and state statute at issue here are more akin to those addressed in *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, 859 N.E.2d 514, than to the ordinance and statute at issue in

Fairview Park v. Barefoot Grass Lawn Servs., 115 Ohio App.3d 306, 685 N.E.2d 300 (8th Dist.1996).

{¶ 28} In *Baskin*, the Ohio Supreme Court held that a Cincinnati ordinance barring the possession of any semiautomatic rifle with a capacity of more than ten rounds did not conflict with a state statute barring the possession of any semiautomatic firearm capable of firing more than 31 rounds. *Id.* at ¶ 1-3, 6. The *Baskin* court found that nothing in that state statute "manifests an intent to prevent municipalities from regulating the possession of semiautomatic firearms that hold fewer than 32 rounds. There is no provision in the statute declaring or otherwise suggesting that the limitation upon firing capacity fixed therein is the only limitation controlling the possession of a semiautomatic firearm." *Id.* at ¶ 23. Further, "[i]n the absence of any limiting provision or declaration to the contrary, we conclude that the General Assembly intended to allow municipalities to regulate the possession of lower-capacity semiautomatic firearms in accordance with local conditions * * *." *Id.* at ¶ 24.

{¶ 29} In *Barefoot Grass Lawn Servs.*, on the other hand, this court found a conflict between a statute and ordinance addressing notice requirements prior to pesticide application. The state statute required persons applying lawn chemicals to provide prior notice to abutting property owners only if they made a timely, written request for such notice. *Id.* at 308, 310-311. The ordinance required persons applying lawn chemicals on private properties to provide prior notice to abutting property owners, whether or not they requested it. Finding a conflict, this court

explained, "[p]esticides are comprehensively regulated by the state of Ohio in R.C. Chapter 921. R.C. 921.16(C)(1) specifically delegates authority to the Director of the Department of Agriculture to adopt rules establishing notice requirements for proposed applications of pesticides by state-licensed pesticide applicators." *Id.* at 308.

{¶ 30} In the case at hand, R.C. 4549.02(A)(1) does not require motorists to contact the police in the event of an accident in which no one is injured. R.R.C.O. 335.12(a), on the other hand, does require that the police be called. Like the statute in *Baskin*, R.C. 4549.02(A)(1) does not include any limiting provision or declaration prohibiting municipal regulation. Nor have the parties directed us to any part of the Ohio Revised Code demonstrating an intent on the part of the General Assembly to control traffic regulation generally to the exclusion of municipalities, particularly regarding what is required in the event of an accident. To the contrary, the Ohio Supreme Court specifically recognized that "a municipality may regulate in an area such as traffic whenever its regulation is not in conflict with the general laws of the state." *Linndale v. State*, 85 Ohio St.3d 52, 54, 706 N.E.2d 1227 (1999) (finding that a statute was not a general law, and thus impermissibly infringed on the right of affected municipalities to enact and enforce traffic regulations, in violation of the Home Rule Amendment).

{¶ 31} Accordingly, I would find no conflict between R.R.C.O. 335.12(a) and R.C. 4549.02(A)(1) and would reverse the trial court's dismissal of the case.