



INSTITUTE FOR JUSTICE

November 27, 2023

Mayor Daniel R. Schneider, Jr.
Village Town Hall
1582 Main St.
Peninsula, OH 44265

Jay Nagy, Chief of Police
1582 Main St.
Peninsula, OH 44265

Members of Council
Richard Fisher Jr.
George T. Haramis, Jr.
John Krusinski
Daniel R. Schneider
Douglas Steidl
Jennifer L. Verbic
1582 Main St.
Peninsula, OH 44265

RE: Peninsula's Unconstitutional Court Fees for Contesting Traffic Camera Tickets

Dear Mr. Schnieder, Chief Nagy, and Council Members:

The Institute for Justice (“IJ”) is writing you concerning the Village of Peninsula’s new traffic camera photo enforcement system, which requires motorists to pay a \$100 fee to contest a ticket in municipal court. Because this court fee violates the constitutional rights of drivers and vehicle owners, and is contrary to Ohio state law, we strongly recommend that the Village of Peninsula reverse course and allow these tickets to be contested free of charge.

The Institute for Justice is a national nonprofit law firm that has been fighting to protect individuals’ constitutional rights for over 30 years. We have litigated our cases in the U.S. Supreme Court as well as in state and federal courts across the country. One of our areas of expertise is protecting individuals from unreasonable and unconstitutional fines and fees. IJ has sued dozens of local governments for infringing on citizens’ property rights through the collection of unreasonable fees, as well as through procedures that violate the constitutional right to due process of law. We are currently challenging



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excessive fees and due process violations in multiple cities, including Wilmington, Delaware, Chicago, Illinois, and New York City.¹

Our work challenging these types of fees led us to learn about the Village of Peninsula’s new traffic camera enforcement system. The citation does not mention any fee to request a hearing, nor does Peninsula Municipal Ordinance No. 14-203, which governs the officer-operated traffic law enforcement devices. However, the Stow Municipal Court website states that a “filing fee” of \$100.00 must be submitted with any application for a hearing. The fee will be returned only if the owner or driver prevails in the appeal. Essentially, this is a fee charged for the right to defend oneself in court.

At the outset, this fee is contrary to state law governing municipalities’ use of camera tickets. Specifically, Ohio Rev. Code §4511.099 states: “[T]he court shall require the local authority to provide an advance deposit for the filing of the civil action. The advance deposit shall consist of all applicable court costs and fees for the civil action. The court shall retain the advance deposit regardless of which party prevails in the civil action and *shall not charge to the registered owner or designated party any court costs and fees for the civil action.*” The Ohio Supreme Court has interpreted this provision as requiring municipalities to bear the cost of the increase in litigation created by use of photo enforcement systems, such as the one used in Peninsula. *Dayton v. State*, 203 N.E.3d 758, 767 (2022). The Ohio legislature did grant municipalities the authority to use traffic law photo monitoring devices and manage the court proceedings. However, what the Ohio state law does *not* do is permit the municipality to charge the vehicle owner for the court costs.

Further, this pre-hearing deprivation of property rights violates both the U.S. Constitution and Article I § 16 of the Ohio Constitution. Both the Ohio Constitution and the U.S. Constitution guarantee due process of law and access to courts. The U.S. Supreme Court has consistently said that some form of hearing is required before an individual is deprived of an interest in their property. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). The Supreme Court has also said that defendants enjoy a right of access to the courts and should not be faced with fees which may exclude them from the only forum empowered to settle their disputes. *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971). Charging a \$100 fee before a defendant can meaningfully contest a traffic ticket goes against this core principle.

Due process requires, at minimum, a meaningful opportunity to be heard before depriving a person of a property or liberty interest. *Thompson v. Ashe*, 250 F.3d 399, 407 (6th Cir. 2001). Generally, that meaningful opportunity to be heard requires an opportunity to present evidence *before* deprivation of property. *See Dubin v. County of Nassau*, 277 F. Supp. 3d. 366, 390 (E.D.N.Y. 2017). Peninsula offers vehicle owners and

¹ See <https://ij.org/case/wilmington-impound/>; <https://ij.org/case/chicago-impound/>; <https://ij.org/case/new-york-permit-fines/>.



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drivers none of that before they are required to pay the \$100 fee and are thus deprived of a property interest. Charging a filing fee to exercise a right or defend a protected interest violates due process. Compare *Worthy v. City of Phenix City*, 930 F.3d 1206, 1223 (11th Cir. 2019) (holding that scheme comports with due process when no fee is charged to contest citation), with *Crawford v. Blue*, 271 F. Supp. 3d 316, 327 (D. Mass. 2017) (holding a fee to challenge a ticket in municipal court violates due process). Because there is no hardship waiver for those who cannot afford the \$100 fee, Peninsula's scheme also deprives some individuals of any meaningful hearing at all. An opportunity to be heard is not meaningful if it is only available to those that can afford it.

Peninsula's ticket enforcement scheme creates an unacceptable risk that innocent people will be permanently deprived of their property. Because these tickets range from \$150-\$250 in penalties, the court fee practically doubles the cost of the ticket—all because a driver chooses to exercise their constitutional rights. A driver who believes herself to be innocent must weigh that risk when deciding whether to appeal: Some drivers may not be able to afford the chance that demanding process will double the amount of their ticket, and so they may agree to pay the underlying fine despite maintaining their innocence. Even people who can afford the \$100 may decide that it is irrational to risk effectively doubling the amount of a fine to present a defense. This creates a serious disincentive for drivers to challenge these violations, and, by assuring they will go uncontested, it leaves officers more incentivized to issue them. The right to due process is not meaningful if it exists behind a paywall.

The village has issued thousands of tickets through this unlawful program and is continuing to do so. Currently then, thousands of motorists do not have a meaningful opportunity to contest these tickets before they are deprived of their property interest in the form of this court fee. We urge the village to reconsider that course of action. Although public safety is an important goal, it cannot come at the expense of constitutional rights.

This continued violation of constitutional rights in a manner contrary to state law, and contrary to the state and federal constitutions is deeply concerning. The Institute for Justice is, however, willing to work with municipalities who pursue their public safety goals while protecting constitutional rights and would be willing to discuss this matter further.

Bobbi Taylor
Attorney
Institute for Justice