

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

EXAMINATION REPORT
OF
CITY OF SEYMOUR
JACKSON COUNTY, INDIANA
January 1, 2008 to December 31, 2008



FILED
02/24/2010

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OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk-Treasurer	Fred D. Lewis	01-01-08 to 12-31-11
Mayor	Craig Luedeman	01-01-08 to 12-31-11
President of the Common Council	Michael T. Jordan	01-01-08 to 12-31-10
President of the Board of Public Works and Safety	Craig Luedeman	01-01-08 to 12-31-10



STATE OF INDIANA
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INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE CITY OF SEYMOUR, JACKSON COUNTY, INDIANA

We have examined the financial information presented herein of the City of Seymour (City), for the period of January 1, 2008 to December 31, 2008. The City's management is responsible for the financial information presented herein. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the financial information presented herein and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the financial information referred to above presents fairly, in all material respects, the financial information of the City for the year ended December 31, 2008, based on the criteria set forth in the uniform compliance guidelines established by the Indiana State Board of Accounts.

The Schedule of Capital Assets and Schedule of Long-Term Debt, as listed in the Table of Contents, are presented for additional analysis and are not required parts of the basic financial information. They have not been subjected to the examination procedures applied to the basic financial information and, accordingly, we express no opinion on them.

STATE BOARD OF ACCOUNTS

January 25, 2010

CITY OF SEYMOUR
SCHEDULE OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES
ALL GOVERNMENTAL, PROPRIETARY, AND FIDUCIARY FUND TYPES
As Of And For The Year Ended December 31, 2008

	Cash and Investments 01-01-08	Receipts	Disbursements	Cash and Investments 12-31-08
Governmental Funds:				
General	\$ 23,640	\$ 13,726,110	\$ 13,060,960	\$ 688,790
Electrical Licensing	20,576	3,370	10,276	13,670
Cumulative Capital Improvement	49,590	122,443	99,458	72,575
Rainy Day Fund	-	323,179	24,021	299,158
Cumulative Fire Equipment	252,631	38,108	24,845	265,894
Fire Department - Hazardous Waste	16,038	2,532	692	17,878
Recycling Fund	80,202	244,729	242,540	82,391
Thoroughfare	224,915	-	99,906	125,009
Local Road and Street	119,515	121,128	68,946	171,697
Police Soft Drink Nonreverting	936	2,461	2,782	615
Motor Vehicle Highway	591,231	705,571	844,411	452,391
Fire Department - Educational Nonreverting	39,262	3,607	13,416	29,453
City of Seymour Housing Rehabilitation	11,952	-	28	11,924
Cumulative Capital Development	608,379	381,097	512,619	476,857
EDIT Tax Fund	486,805	669,157	844,050	311,912
Landfill Cost Nonreverting	97,818	350,441	328,441	119,818
City Department of Public Works	2,439	9,456	7,148	4,747
Economic Development	10,494	-	90	10,404
Grant Holding Fund	99,832	485,888	479,143	106,577
Park and Recreation Fund	275,004	928,350	1,034,824	168,530
Park and Recreation Activity Nonreverting	71,184	23,371	21,675	72,880
Region XI	1,860	15,876	8,557	9,179
Seymour Community Center	12,189	4,732	5,646	11,275
Park and Recreation League Nonreverting	42,300	33,414	26,966	48,748
Police Alcohol and Drug	6,778	2,160	4,651	4,287
Law Enforcement Training	33,537	19,606	31,826	21,317
Police Seizure Fund	57,778	147,778	100,850	104,706
D.A.R.E. Police Fund	249	2,393	924	1,718
Seymour Microloan Fund	9,831	-	-	9,831
98 Construction Bond Interest	40,540	383,133	422,201	1,472
Proprietary Funds:				
Wastewater Utility - Operating	8,873,907	8,529,698	8,203,991	9,199,614
Wastewater Utility - Improvement	66,944	1,256	-	68,200
Wastewater Utility - Bond and Interest	29,127	394,529	395,892	27,764
Wastewater Utility - Debt Service Reserve	366,540	11,686	8,531	369,695
Fiduciary Funds:				
Police Officers' Pension	353,837	397,550	473,195	278,192
Firefighters' Pension	659,835	261,432	514,351	406,916
Payroll	130,334	9,785,066	9,830,904	84,496
Totals	<u>\$ 13,768,029</u>	<u>\$ 38,131,307</u>	<u>\$ 37,748,756</u>	<u>\$ 14,150,580</u>

The accompanying notes are an integral part of the financial information.

CITY OF SEYMOUR
NOTES TO FINANCIAL INFORMATION

Note 1. Introduction

The City was established under the laws of the State of Indiana. The City provides the following services: public safety (police and fire), highways and streets, culture and recreation, public improvements, planning and zoning, urban development, wastewater, and general administrative services.

Note 2. Fund Accounting

The City uses funds to report on its cash and investments and the results of its operations on a cash basis. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain governmental functions or activities.

Note 3. Budgets

The operating budget is initially prepared and approved at the local level. In addition, funds for which property taxes are levied or highway use taxes are received are subject to final approval by the Indiana Department of Local Government Finance.

Note 4. Property Taxes

Property taxes levied are collected by the County Treasurer and are distributed to the City in June and December. State statute (IC 6-1.1-17-16) requires the Indiana Department of Local Government Finance to establish property tax rates and levies by February 15. These rates were based upon the preceding year's March 1 (lien date) assessed valuations adjusted for various tax credits. Taxable property is assessed at 100% of the true tax value (determined in accordance with rules and regulations adopted by the Indiana Department of Local Government Finance). Taxes may be paid in two equal installments which become delinquent if not paid by May 10 and November 10, respectively. All property taxes collected by the County Treasurer and available for distribution were distributed to the City on or prior to December 31 of the year collected.

Note 5. Deposits and Investments

Deposits, made in accordance with Indiana Code 5-13, with financial institutions in the State of Indiana at year end were entirely insured by the Federal Depository Insurance Corporation or by the Indiana Public Deposit Insurance Fund. This includes any deposit accounts issued or offered by a qualifying financial institution.

State statute (IC 5-13-9) authorizes the City to invest in securities including, but not limited to, federal government securities, repurchase agreements, and certain money market mutual funds. Certain other statutory restrictions apply to all investments made by local governmental units.

CITY OF SEYMOUR
NOTES TO FINANCIAL INFORMATION
(Continued)

Note 6. Pension Plans

A. Agent Multiple – Employer and Single-Employer Defined Benefit Pensions Plans

1. Public Employees' Retirement Fund

Plan Description

The City contributes to the Indiana Public Employees' Retirement Fund (PERF), a defined benefit pension plan. PERF is an agent multiple-employer public employee retirement system, which provides retirement benefits to plan members and beneficiaries. All full-time employees are eligible to participate in this defined benefit plan. State statutes (IC 5-10.2 and 5-10.3) govern, through the PERF Board, most requirements of the system, and give the City authority to contribute to the plan. The PERF retirement benefit consists of the pension provided by employer contributions plus an annuity provided by the member's annuity savings account. The annuity savings account consists of members' contributions, set by state statute at 3% of compensation, plus the interest credited to the member's account. The employer may elect to make the contributions on behalf of the member.

PERF administers the plan and issues a publicly available financial report that includes financial statements and required supplementary information for the plan as a whole and for its participants. That report may be obtained by contacting:

Public Employees' Retirement Fund
Harrison Building, Room 800
143 West Market Street
Indianapolis, IN 46204
Ph. (317) 233-4162

Funding Policy and Annual Pension Cost

The contribution requirements of the plan members for PERF are established by the Board of Trustees of PERF.

2. 1925 Police Officer's Pension Plan

Plan Description

The primary government contributes to the 1925 Police Officers' Pension Plan, which is a single-employer defined benefit pension plan. The plan is administered by the local pension board as authorized by state statute (IC 36-8-6). The plan provides retirement, disability, and death benefits to plan members and beneficiaries. The plan was established by the plan administrator, as provided by state statute. The plan administrator does not issue a publicly available financial report that includes financial statements and required supplementary information of the plan.

Funding Policy and Annual Pension Cost

The contribution requirements of plan members for the 1925 Police Officers' Pension Plan are established by state statute. The primary government's annual pension cost and related information as provided by the actuary, is presented in this note.

CITY OF SEYMOUR
NOTES TO FINANCIAL INFORMATION
(Continued)

The use of the pay-as-you-go actuarial cost method by the primary government results in significant underfunding of the plan. Therefore, the Net Pension Obligation (NPO) is not reflected in the financial statements of the pension trust funds.

3. 1937 Firefighters' Pension Plan

Plan Description

The primary government contributes to the 1937 Firefighters' Pension Plan, which is a single-employer defined benefit pension plan. The plan is administered by the local pension board as authorized by state statute (IC 36-8-7). The plan provides retirement, disability, and death benefits to plan members and beneficiaries. The plan was established by the plan administrator, as provided by state statute. The plan administrator does not issue a publicly available financial report that includes financial statements and required supplementary information of the plan.

Funding Policy and Annual Pension Cost

The contribution requirements of plan members for the 1937 Firefighters' Pension Plan are established by state statute. The primary government's annual pension cost and related information, as provided by the actuary, is presented in this note.

B. Cost-Sharing Multiple Employer Defined Benefit Pension Plan

1977 Police Officers' and Firefighters' Pension and Disability Fund

Plan Description

The primary government contributes to the 1977 Police Officers' and Firefighters' Pension and Disability Fund, a cost-sharing multiple-employer defined benefit pension plan administered by the Indiana Public Employees' Retirement Plan (PERF) for all police officers and firefighters hired after April 30, 1977.

State statute (IC 36-8-8) regulates the operations of the system, including benefits, vesting and requirements for contributions by employers and by employees. Covered employees may retire at age fifty-five with twenty years of service. An employee with twenty years of service may leave service, but will not receive benefits until reaching age fifty-five. The plan also provides for death and disability benefits.

PERF issues a publicly available financial report that includes financial statements and required supplementary information for the plan as a whole and for its participants. That report may be obtained by contacting:

Public Employees' Retirement Fund
Harrison Building, Room 800
143 West Market Street
Indianapolis, IN 46204
Ph. (317) 233-4162

CITY OF SEYMOUR
NOTES TO FINANCIAL INFORMATION
(Continued)

Funding Policy and Annual Pension Costs

Plan members are required to contribute 6% of the first-class police officers' and firefighters' salary and the primary government is to contribute at an actuarially determined rate. The current rate, which has not changed since the inception of the plan, is 21% of the first-class police officers' and firefighters' salary. The contribution requirements of plan members and the primary government are established by the Board of Trustees of PERF. The primary government's contributions to the plan for the years ending December 31, 2008, 2007, and 2006, were \$789,800, \$759,130, and \$725,763, respectively, equal to the required contributions for each year.

Note 7. Subsequent Events

The City has entered into three additional financing agreements in 2009. The City entered into loan agreements for Police Computers, \$118,880, and for Automated Trash Service Equipment, \$1,040,835. The City drew down \$272,575 in State Revolving Fund Loans for the Eastside Industrial Park Sewer Expansion Project.

CITY OF SEYMOUR
 SUPPLEMENTARY INFORMATION
 SCHEDULE OF CAPITAL ASSETS
 For The Year Ended December 31, 2008

Capital assets are reported at actual or estimated historical cost based on appraisals or deflated current replacement cost. Contributed or donated assets are reported at estimated fair value at the time received.

<u>Primary Government</u>	<u>Ending Balance</u>
Governmental activities:	
Capital assets, not being depreciated:	
Land	\$ 632,950
Buildings	8,549,412
Improvements other than buildings	3,255,118
Machinery and equipment	<u>8,377,749</u>
 Total governmental activities, capital assets not being depreciated	 <u>\$ 20,815,229</u>
 Business-type activity:	
Wastewater Utility:	
Capital assets, not being depreciated:	
Land	\$ 112,575
Buildings	28,468,712
Improvements other than buildings	5,840,742
Machinery and equipment	<u>2,023,374</u>
 Total business-type activity capital assets	 <u>\$ 36,445,403</u>

CITY OF SEYMOUR
 SUPPLEMENTARY INFORMATION
 SCHEDULE OF LONG-TERM DEBT
 December 31, 2008

The City has entered into the following debt:

Description of Debt	Ending Principal Balance	Principal and Interest Due Within One Year
Governmental activities:		
Capital leases:		
Police station lease/rental	\$ 4,235,000	\$ 431,175
Bonds payable:		
General obligation bonds:		
1998 EDIT general obligation bond	<u>2,140,000</u>	<u>202,133</u>
Total governmental activities debt	<u>\$ 6,375,000</u>	<u>\$ 633,308</u>
Business-type activities:		
Wastewater Utility:		
Revenue bonds:		
1998 Sewage works refunding revenue bond	\$ 370,000	\$ 382,603
Notes and loans payable:		
State revolving fund loan	<u>17,270,178</u>	<u>754,726</u>
Total business-type activities debt	<u>\$ 17,640,178</u>	<u>\$ 1,137,329</u>

CITY OF SEYMOUR
EXAMINATION RESULTS AND COMMENTS

COLLECTION OF FINES FOR MOVING TRAFFIC VIOLATIONS

The City is collecting fines for ordinance violations through an Ordinance Violations Bureau established in accordance with IC 33-36. If a citizen forgoes their right to a trial, the City collects the fine. There were numerous instances where the City collected fines for moving traffic violations through the Ordinance Violations Bureau.

IC 36-1-6-3 states:

"(a) Certain ordinances may be enforced by a municipal corporation without proceeding in court through:

- (1) an admission of violation before the violations clerk under IC 33-36; or
- (2) administrative enforcement under subsection 9 of this chapter.

(b) Except as provided in the subsection (a), a proceeding to enforce an ordinance must be brought in accordance with IC 34-28-5, section 4 or this chapter, or both. (c) An ordinance defining a moving traffic violation may not be enforced under IC 33-36 and must be enforced in accordance with IC 34-28-5."

CREDIT CARDS

As noted in the prior exam report, some instances were noted where employees of the City are being allowed to use "City" credit cards to purchase items without an approved credit card policy.

The State Board of Accounts will not take exception to the use of credit cards by a governmental unit provided the following criteria are observed:

- (1) The governing board must authorize credit card use through an ordinance or resolution, which has been approved in the minutes.
- (2) Issuance and use should be handled by an official or employee designated by the board.
- (3) The purposes for which the credit card may be used must be specifically stated in the ordinance or resolution.

CITY OF SEYMOUR
EXAMINATION RESULTS AND COMMENTS
(Continued)

- (4) When the purpose for which the credit card has been issued has been accomplished, the card should be returned to the custody of the responsible person.
- (5) The designated responsible official or employee should maintain an accounting system or log which would include the names of individuals requesting usage of the cards, their position, estimated amounts to be charged, fund and account numbers to be charged, date the card is issued and returned, etc.
- (6) Credit cards should not be used to bypass the accounting system. One reason that purchase orders are issued is to provide the fiscal officer with the means to encumber and track appropriations to provide the governing board and other officials with timely and accurate accounting information and monitoring of the accounting system.
- (7) Payment should not be made on the basis of a statement or a credit card slip only. Procedures for payments should be no different than for any other claim. Supporting documents such as paid bills and receipts must be available. Additionally, any interest or penalty incurred due to late filing or furnishing of documentation by an officer or employee should be the responsibility of that officer or employee.
- (8) If properly authorized, an annual fee may be paid.

(Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

TRAVEL CLAIMS

The City has a travel policy that states, "itemized receipts will be required along with the claim voucher." However, in some instances, employees were allowed to use city credit cards and did not provide itemized receipts as supporting documentation.

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for audit to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Each governmental unit is responsible for complying with the ordinances, resolutions, and policies it adopts. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

CITY OF SEYMOUR
EXIT CONFERENCE

The contents of this report were discussed on January 25, 2010, with Fred D. Lewis, Clerk-Treasurer; Craig Luedeman, Mayor; and Michael T. Jordan, President of the Common Council. The official response has been made a part of this report and may be found on pages 14 through 25.



City of Seymour

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Mayor
CRAIG LUEDEMAN

Clerk-Treasurer
FRED D LEWIS

City Council Members
JOHN J. REINHART

DEXTER L. STEELE

ANDREW J. HAGEDORN

JAMES W. REBBER

MICHAEL T. JORDAN

LLOYD G. HUDSON

JIM LUCAS

January 27, 2010

State Board of Accounts
302 West Washington St.
Room E418
Indianapolis, Indiana 46204-2765

Re: Collection of Fees for moving and traffic violations

The City does issue citations and collects fees for ordinance violations, including moving violations.

The ordinance violation system that the City employs is based on Indiana Statutes, as explained in an opinion letter dated November 28, 2005 that was written by former City Attorney, Jeffrey J. Lorenzo. A copy of Mr. Lorenzo's opinion letter is attached hereto and incorporated herein by reference.

Sincerely,

Craig Luedeman, Mayor
City of Seymour, Indiana

Enclosure

cc: Rodney E. Farrow
Fred D Lewis

LORENZO LAW OFFICE

208 West Second Street
Seymour, Indiana 47274

Jeffrey J. Lorenzo
Attorney at Law

Telephone 812.524.9000
Facsimile 812.524.9001
Email jlorenzo@jefflorenzo.com

To: Mayor Bullard and Chief Hayes
From: Jeff Lorenzo
Date: November 28, 2005
Re: Enforcement of Local Traffic Ordinances

Issue: Whether moving traffic violations can be "enforced" under local ordinances.

Conclusion: No. Moving traffic violations cannot be "enforced" under local ordinances. However, this does not mean that city police officers cannot issue citations for violation of speed limits, stop signal, and other moving traffic violations under our local ordinances. Nor does it preclude an offender from admitting the violation and paying the penalty to the ordinance violations bureau. I reach this conclusion because "enforcement" within the meaning of the relevant statutes applies to court proceedings.

Research: This issue turns on a close reading of the applicable statutes, as well as the interpretation of the term "proceeding to enforce ordinance" a set out in IC 36-1-6-3. The statute reads as follows:

IC 36-1-6-3. Proceeding to enforce ordinance; law applicable. Sec. 3. (a) Certain ordinances may be enforced by a municipal corporation without proceeding in court through: (1) an admission of violation before the violations clerk under IC 33-36; or (2) administrative enforcement under section 9 of this chapter. (b) Except as provided in subsection (a), a proceeding to enforce an ordinance must be brought in accordance with IC 34-28-5, section 4 of this chapter, or both. (c) An ordinance defining a moving traffic violation may not be enforced under IC 33-36 and must be enforced in accordance with IC 34-28-5. *As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.108, SEC.39; P.L.177-1988, SEC.8; P.L.130-1991, SEC.35; P.L.1-1998, SEC.202; P.L.98-2004, SEC.159.*

Before I begin my interpretation of the statute, let me also set out the relevant provisions of another statute that defines enforcement proceedings of local moving violation ordinances:

IC 34-28-5-1. Prosecution in name of state or municipality; rules; limitations; burden of proof; deferral programs; agreement for community restitution or service. Sec. 1. (a) An action to enforce a statute defining an infraction shall be brought in the name of the State of Indiana by the prosecuting attorney for the judicial circuit in which the infraction allegedly took place. However, if the infraction allegedly took place on a public highway (as defined in IC 9-25-2-4) that runs on and along a common boundary shared by two (2) or

more judicial circuits, a prosecuting attorney for any judicial circuit sharing the common boundary may bring the action. (b) An action to enforce an ordinance shall be brought in the name of the municipal corporation. The municipal corporation need not prove that it or the ordinance is valid unless validity is controverted by affidavit. (c) Actions under this chapter (or IC 34-4-32 before its repeal): (1) shall be conducted in accordance with the Indiana Rules of Trial Procedure; and (2) must be brought within two (2) years after the alleged conduct or violation occurred. (d) The plaintiff in an action under this chapter must prove the commission of an infraction or ordinance violation by a preponderance of the evidence. (e) The complaint and summons described in IC 9-30-3-6 may be used for any infraction or ordinance violation.

IC 34-28-5-2. Moving traffic violation; pleadings. Sec. 2. In an action for a moving traffic violation, the pleadings are as follows: (1) A summons and complaint. (2) Entry by a defendant of: (A) an admission to the violation; (B) a denial of the violation; or (C) a declaration of nolo contendere in which the defendant consents to entry of judgment for the state without admitting to the violation. *As added by P.L. 1-1998, SEC.24.*

It is clear from both IC 36-1-6-3 and IC 34-28-5 that an action to enforce moving traffic violations must be brought under IC 34-28-5.

IC 36-1-6-3 is entitled "Proceeding to Enforce Ordinance". This means that it is drafted to reflect the manner in which a city attorney would approach a court proceeding for ordinance enforcement. It then references IC 34-28-5-1, another statute that addresses *enforcement proceedings*.

IC 34-28-5-1 states that actions to prosecute ordinance violations must be brought in the name of the City of Seymour. Again, the statute is talking about court proceedings. The statutes do not appear to be speaking of voluntary payment of moving traffic violations to the ordinance violations bureau.

In fact, IC 36-1-6-3 states that certain ordinances may be enforced by a municipal corporation without proceeding in court through an admission of violation before the violations clerk under IC 33-36; or administrative enforcement. It further states that except as provided in subsection (a), which deals with admission of a violation, *a proceeding to enforce an ordinance* must be brought in accordance with IC 34-28-5.

The statute is clearly referencing a court *proceeding*. It is not referencing a voluntary admission. I believe this means that an offender may pay a moving traffic violation directly to the ordinance violations bureau, because it is in the nature of an admission.

However, when we are talking about an enforcement action, the proceeding must be brought in the name of the municipal corporation and must be brought as set out in IC 34-28-5. The statute is clearly talking about court proceedings. It speaks of "actions to enforce". Indiana cases have deferred to Black's Law Dictionary for definitions of these basic terms.

"An action is a civil or criminal judicial proceeding. Also termed action at law.
"An action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

But in some sense this definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree."

... " 'Action,' in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined."

... "An action at law. A civil suit stating a legal cause of action and seeking only a legal remedy."

Ordinance violations are, by their statutory definition, civil actions. Again, Black's Law Dictionary states that a civil action is an action brought to enforce, redress, or protect a private or civil right; a non-criminal litigation."

An ordinance violation is not a "criminal action" which is an action instituted by the government to punish offenses against the public. However, it is in the nature of a penal action: ... "a civil proceeding in which either the state or a common informer sues to recover a penalty from a defendant who has violated a statute. Although civil in nature, a penal action resembles a criminal proceeding because the result of a successful action is a monetary penalty intended, like a fine, to punish the defendant."

Summary: Based upon my review of the statutes, I come to the following conclusion: *enforcement proceedings* for a moving traffic violations cannot be conducted under local ordinances. However, this does not preclude city police officers from issuance of citations for violation of speed limits, stop signal, and other moving traffic violations under our local ordinances. Nor does it preclude the ordinance violations bureau from collecting civil penalties for moving traffic violations, but only if they are paid as an admission of the violation. The ordinance violations bureau cannot assess or collect court costs. That is exclusively the province of the State of Indiana.

If an individual denies the allegation made by the police officer, he/she in effect requests a trial. At that point, I believe we have two alternatives: (1) proceed to prosecute the ordinance violation in the name of the City of Seymour, in accordance with IC 34-28-5; or (2), dismiss the ordinance violation and refile under the appropriate Indiana Code traffic provision. In either case, the proceeding must be brought in a State court, court costs paid to the State of Indiana, and adherence to the rules of trial procedure governing ordinance violations or infractions.

Please note that our ordinances adopt the Indiana Traffic Code by reference (§70.01), as well as reference prosecution of traffic violations in a manner consistent with IC 34-28-5 (§70.99).

I have attached copies of the relevant statutes and ordinance provisions for your review. I also suggest you run this by the State Board of Accounts before implementation.

Jeff

Jeffrey J. Lorenzo
LORENZO LAW OFFICE
208 West Second Street
Seymour, IN 47274
(812) 524-9000

IC 33-36-3 Chapter 3. Schedule of Ordinance and Code Provisions; Violations

IC 33-36-3-1. Schedule of ordinance and code provisions; civil penalties. Sec. 1. (a) Upon the appointment or designation of the violations clerk as provided by IC 33-36-2-1, the legislative body shall designate, by ordinance or code, a schedule of ordinance and code provisions of the municipal corporation that are subject to admission of violation before the violations clerk and the amount of civil penalty to be assessed to a violator who elects to admit a violation under this chapter. (b) Civil penalties shall be paid to, receipted by, and accounted for by the clerk under procedures provided for by the state board of accounts. Payment of civil penalties under this chapter may be made in person, by mail, or to an agent or agents designated by the legislative body. *As added by P.L.98-2004, SEC.15.*

IC 33-36-3-2. Right to trial. Sec. 2. A person charged with an ordinance or a code violation is entitled to a trial before a court as provided by law, unless the person waives the right to trial and enters an admission of the violation with the violations clerk. Upon an admission, the clerk shall assess and receive from the violator the amount prescribed by the schedule of civil penalties established under section 1 of this chapter. *As added by P.L.98-2004, SEC.15.*

IC 33-36-3-5. Failure to appear or to satisfy assessed civil penalty. Sec. 5. (a) If a person: (1) denies an ordinance or code violation under this article; (2) fails to satisfy a civil penalty assessed by the violations clerk after having entered an admission of violation; or (3) fails to deny or admit the violation under this article; the clerk shall report this fact to the official having the responsibility to prosecute ordinance violation cases for the municipal corporation. (b) Proceedings in court against the person shall then be initiated for the alleged ordinance violation. *As added by P.L.98-2004, SEC.15.*

IC 33-36-3-6. Court costs fee; admitted ordinance violations. Sec. 6. (a) An ordinance violation admitted under this article does not constitute a judgment for the purposes of IC 33-37. An ordinance violation costs fee may not be collected from the defendant under IC 33-37-4. (b) An ordinance violation processed under this chapter may not be considered for the purposes of IC 33-37-7-5 or IC 33-37-7-6 when determining the percentage of ordinance violations prosecuted in certain courts. *As added by P.L.98-2004, SEC.15.*

IC 33-36-3-7. Disposition of civil penalties and costs collected. Sec. 7. All sums collected by the violations clerk as civil penalties for ordinance violations shall be accounted for and paid to the municipal corporation as provided by law. *As added by P.L.98-2004, SEC.15.*

**IC 34-28-5. Chapter 5. Infraction and Ordinance Violation
Enforcement Proceedings**

IC 34-28-5-1. Prosecution in name of state or municipality; rules; limitations; burden of proof; deferral programs; agreement for community restitution or service. Sec. 1. (a) An action to enforce a statute defining an infraction shall be brought in the name of the state of Indiana by the prosecuting attorney for the judicial circuit in which the infraction allegedly took place. However, if the infraction allegedly took place on a public highway (as defined in IC 9-25-2-4) that runs on and along a common boundary shared by two (2) or more judicial circuits, a prosecuting attorney for any judicial circuit sharing the common boundary may bring the action. (b) An action to enforce an ordinance shall be brought in the name of the municipal corporation. The municipal corporation need not prove that it or the ordinance is valid unless validity is controverted by affidavit. (c) Actions under this chapter (or IC 34-4-32 before its repeal): (1) shall be conducted in accordance with the Indiana Rules of Trial Procedure; and (2) must be brought within two (2) years after the alleged conduct or violation occurred. (d) The plaintiff in an action under this chapter must prove the commission of an infraction or ordinance violation by a preponderance of the evidence. (e) The complaint and summons described in IC 9-30-3-6 may be used for any infraction or ordinance violation. (f) This subsection does not apply to an offense or violation under IC 9-24-6 involving the operation of a commercial motor vehicle. The prosecuting attorney or the attorney for a municipal corporation may establish a deferral program for deferring actions brought under this section. Actions may be deferred under this section if: (1) the defendant in the action agrees to conditions of a deferral program offered by the prosecuting attorney or the attorney for a municipal corporation; (2) the defendant in the action agrees to pay to the clerk of the court an initial user's fee and monthly user's fee set by the prosecuting attorney or the attorney for the municipal corporation in accordance with IC 33-37-4-2(e); (3) the terms of the agreement are recorded in an instrument signed by the defendant and the prosecuting attorney or the attorney for the municipal corporation; (4) the defendant in the action agrees to pay a fee of seventy dollars (\$70) to the clerk of court if the action involves a moving traffic offense (as defined in IC 9-13-2-110); (5) the agreement is filed in the court in which the action is brought; and (6) if the deferral program is offered by the prosecuting attorney, the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council. When a defendant complies with the terms of an agreement filed under this subsection (or IC 34-4-32-1(f) before its repeal), the prosecuting attorney or the attorney for the municipal corporation shall request the court to dismiss the action. Upon receipt of a request to dismiss an action under this subsection, the court shall dismiss the action. An action dismissed under this subsection (or IC 34-4-32-1(f) before its repeal) may not be refiled. (g) If a judgment is entered against a defendant in an action to enforce an ordinance, the defendant may perform community restitution or service (as defined in IC 35-41-1-4.6) instead of paying a monetary judgment for the ordinance violation as described in section 4(e) of this chapter if: (1) the: (A) defendant; and (B) attorney for the municipal corporation; agree to the defendant's performance of community restitution or service instead of the payment of a monetary judgment; (2) the terms of the agreement described in subdivision (1): (A) include the amount of the judgment the municipal corporation requests that the defendant pay under section 4(e) of this chapter for the ordinance violation if the defendant fails to perform the community restitution or service provided for in the agreement as approved by the court; and (B) are recorded in a written instrument signed by the defendant and the attorney for the municipal corporation; (3) the agreement is filed in the court where the judgment was entered; and (4) the court approves the agreement. If a defendant fails to comply with an agreement approved by a court under this subsection, the court shall require the defendant to pay up to the amount of the judgment

requested in the action under section 4(e) of this chapter as if the defendant had not entered into an agreement under this subsection. *As added by P.L.1-1998, SEC.24. Amended by P.L.98-2000, SEC.12; P.L.98-2004, SEC.123; P.L.176-2005, SEC.24; P.L.200-2005, SEC.1.*

IC 34-28-5-2. Moving traffic violation; pleadings. Sec. 2. In an action for a moving traffic violation, the pleadings are as follows: (1) A summons and complaint. (2) Entry by a defendant of: (A) an admission to the violation; (B) a denial of the violation; or (C) a declaration of nolo contendere in which the defendant consents to entry of judgment for the state without admitting to the violation. *As added by P.L.1-1998, SEC.24.*

IC 34-28-5-4. Maximum judgments. Sec. 4. (a) A judgment of up to ten thousand dollars (\$10,000) may be entered for a violation constituting a Class A infraction. (b) A judgment of up to one thousand dollars (\$1,000) may be entered for a violation constituting a Class B infraction. (c) A judgment of up to five hundred dollars (\$500) may be entered for a violation constituting a Class C infraction. (d) A judgment of up to twenty-five dollars (\$25) may be entered for a violation constituting a Class D infraction. (e) Subject to section 1(g) of this chapter, a judgment: (1) up to the amount requested in the complaint; and (2) not exceeding any limitation under IC 36-1-3-8; may be entered for an ordinance violation. *As added by P.L.1-1998, SEC.24. Amended by P.L.200-2005, SEC.2.*

IC 34-28-5-5. Costs; deposit of funds; findings required for judgment. Sec. 5. (a) A defendant against whom a judgment is entered is liable for costs. Costs are part of the judgment and may not be suspended except under IC 9-30-3-12. Whenever a judgment is entered against a person for the commission of two (2) or more civil violations (infractions or ordinance violations), the court may waive the person's liability for costs for all but one (1) of the violations. This subsection does not apply to judgments entered for violations constituting: (1) Class D infractions; or (2) Class C infractions for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8. (b) If a judgment is entered (1) for a violation constituting: (A) a Class D infraction; or (B) a Class C infraction for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8; or (2) in favor of the defendant in any case; the defendant is not liable for costs. (c) Except for costs, the funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund. (d) A judgment may be entered against a defendant under this section or section 4 of this chapter upon a finding by the court that the defendant: (1) violated: (A) a statute defining an infraction; or (B) an ordinance; or (2) consents to entry of judgment for the plaintiff upon a pleading of nolo contendere for a moving traffic violation. *As added by P.L.1-1998, SEC.24.*

IC 34-28-5-6. Suspension of driver's license. Sec. 6. If a defendant fails to satisfy a judgment entered against the defendant for the violation of a traffic ordinance or for a traffic infraction by a date fixed by the court, the court may suspend the defendant's drivers license. When a court suspends a person's drivers license under this section, the court shall forward notice of the suspension to the bureau of motor vehicles. *As added by P.L.1-1998, SEC.24.*

§ 70.01. STATE LAW ADOPTED.

The Uniform Act Regulating Traffic on Highways, being I.C. 9-21-1-1 *et seq.*, as heretofore adopted by the General Assembly of the state, and as now or hereafter amended, is declared to be the basic traffic code in and for the city, and all drivers, operators, or owners of any motor vehicles, and all pedestrians, where applicable, shall obey the provisions thereof, the same as if each and every provision of the Uniform Act, being 9-21-1-1 *et seq.*, as aforementioned, was incorporated, in detail, in this code, it being intended that the following provisions of this title shall only implement the Uniform Act, being I.C. 9-21-1-1 *et seq.*, and where this code conflicts with the Uniform Act, being I.C. 9-21-1-1 *et seq.*, as aforementioned, the Uniform Act, being I.C. 9-21-1-1 *et seq.* shall control. (1987 Code, § 8-1) (Ord. 1556, passed 11-24-1969)

§70.02. TITLE.

This title shall be known, and may be designated and cited as, the city "traffic code." The codification has been made in one ordinance under appropriate titles, chapters, subchapters, and sections by authority of the laws of the state. (1987 Code, § 8-3) (Ord. 1556, passed 11-24-1969)

§70.03 INTERPRETATION.

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this title as those governing the interpretation of the Acts of the General Assembly of the state. (1987 Code, § 8-4) (Ord. 1556, passed 11-24-1969)

§ 70.99. PENALTY.

Violations of any provision of this title may be enforced by an action brought in accordance with I.C. 34-28-5 and judgment sought against any violator for a fine. (1987 Code, §§ 8-215, 8-231) (Ord. 24, 1984, passed 10-8-1984; Ord. 26, 1984, passed 10-8-1984) Penalty, see § 10.99.

ORDINANCE NO. 21

COUNCIL BILL NO. 40

(2005)

"An ordinance establishing fines for violations of traffic and other regulations of the City of Seymour, Indiana, pursuant to §34.04 of the Seymour, Indiana Code of Ordinances.

**NOW BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF SEYMOUR, INDIANA:**

The Common Council of the City of Seymour, Indiana adopts the following fines, fees and late charges related to traffic and other violations of the Seymour, Indiana Code of Ordinances.

- Section 1:** See Exhibit "A" attached hereto, made a part hereof, and incorporated herein as if set out in full.
- Section 2:** In the event that the City of Seymour, Indiana prevails at the trial of a matter described in Exhibit "A", the City shall also be awarded attorney fees, as well as the fines, fees, late charges, and penalties set out herein.
- Section 3:** The governing entity for the setting of fines, fees, late charges, and penalties for traffic and other regulations shall henceforth be the (*Common Council*) or (*Board of Public Works and Safety*) of the City of Seymour, Indiana.
- Section 4:** The Clerk-Treasurer of the City of Seymour, Indiana shall be responsible for collecting all fees, fines, late charges, and penalties set forth in this ordinance.
- Section 5:** The fines, fees, late charges, and penalties collected pursuant to this ordinance shall be deposited in the General Fund and used for the purposes allowed by ordinance for that fund.
- Section 6:** All prior ordinances or parts thereof inconsistent with any provision of this ordinance are hereby repealed. Specifically, Chapter 34 of the Code of Ordinances is hereby amended to be consistent with the fines, fees, late charges, and penalties set out in Exhibit "A".
- Section 7:** This ordinance shall be in full force and effect from and after its passage, approval by the Mayor, and publication, all as by law provided.

**Clerk-Treasurer of the City of Seymour, Indiana
301 North Chestnut Street
Seymour, Indiana 47274**

WAIVER

NO PERSONAL CHECKS ACCEPTED

Monday-Friday

Hours: 8:00-4:30

1. **THE DATE AT THE BOTTOM OF THE CITATION IS NOT A TRIAL DATE.**
You should either pay the citation or notify the Clerk-Treasurer of your intention to plead not guilty, by the date shown.
2. **IF YOU WISH TO ADMIT THE CHARGE:**
 - a. Complete the reverse side of this form and
 - b. **MAIL THE FORM AND A MONEY ORDER, PAYABLE TO: CITY OF SEYMOUR, INDIANA,** at the above address.
 - c. **PERSONAL CHECKS AND FOREIGN MONEY ORDERS WILL NOT BE ACCEPTED.**
3. **IF YOU WISH TO DENY THE CHARGE:**
 - a. Complete the reverse side of this form and
 - b. Mail it to the Clerk-Treasurer at the address above.
4. If you deny the charge, your case will be set for trial, the citation will be dismissed from the Clerk-Treasurer's Ordinance Violation Bureau and re-filed with the Jackson County Prosecutor's Office. If you fail to appear at your trial, a judgment will then be entered against you.
5. The Clerk-Treasurer may assess a late fee of \$25.00 for tickets not paid by the due date.

SCHEDULE OF PENALTIES

A.	Parking or U-turn (city street)	\$ 50.00
B.	Parking (handicap)	\$ 75.00
C.	Parking (other)	\$ 50.00
D.	Parking (fire lane)	\$ 95.00
E.	Speeding: 15 MPH and under	\$ 75.00
	16-19	\$ 85.00
	20-24	\$ 95.00
	25-29	\$105.00
	30-34	\$115.00
	35 and over	\$125.00
	No speeds listed	\$ 75.00
	School zone	\$ 95.00
F.	Improper Passing	\$ 95.00
G.	Offense resulting in accident	\$125.00
H.	Expired or no driver's license (in possession)	\$ 75.00
I.	Seat-belt	\$ 25.00
J.	Registration violation/expired plate	\$ 75.00
K.	Failure to yield to emergency vehicle	\$125.00
L.	Disregard stop signal/sign	\$ 95.00
M.	Littering	\$ 25.00 (1 st) \$ 50.00 (2 nd) \$ 75.00
N.	Failure to yield	\$ 75.00
O.	Animal at large/Non-immunized dog	\$ 75.00
P.	Unsafe vehicle (brake, lights, etc.)	\$ 75.00

Q.	Driving while suspended/driving with no insurance		\$125.00
R.	Illegal left turn/U-turn		\$ 75.00
S.	Open container		\$125.00
T.	Following too closely		\$ 75.00
U.	Railroad violation		\$105.00
V.	Unsafe lane movement		\$ 75.00
W.	Learners permit violation		\$ 75.00
X.	Passing school bus		\$125.00
Y.	Moped violations		\$ 75.00
Z.	Tobacco (underage)		\$ 75.00
AA.	Loitering	\$ 25.00 (1 st) \$ 50.00 (2 nd)	\$ 75.00
BB.	Curfew Violation	\$ 25.00 (1 st) \$ 50.00 (2 nd)	\$ 75.00
CC.	Wrong way on a one-way street		\$ 75.00
DD.	Open burning violation		\$ 75.00
EE.	Additional fine for any offense in construction or work site zone		\$ 25.00

Clerk-Treasurer of the City of Seymour, Indiana
301 North Chestnut Street
Seymour, Indiana 47274

WAIVER

NO PERSONAL CHECKS ACCEPTED

PLEASE CHECK EITHER A OR B BELOW

Citation No. _____

I, the undersigned, do hereby enter my appearance on the charge contained in Uniform Traffic Citation, a copy of which is attached. I answer the charge as follows:

A. _____ **I Plead Guilty to the charge and enclose payment of the Judgment and Costs in the amount of: _____**

IF YOU WISH A COPY OF THE RECEIPT, YOU MUST ENCLOSE A SELF-ADDRESSED/STAMPED ENVELOPE.

B. _____ **I Deny the truth of the charge and request the case be set for trial.**

IF YOU DENY THE CHARGE, YOUR CASE WILL BE SET FOR TRIAL, THE CITATION WILL BE DISMISSED FROM THE CLERK-TREASURER'S ORDINANCE VIOLATION BUREAU AND RE-FILED WITH THE JACKSON COUNTY PROSECUTOR'S OFFICE. IF YOU FAIL TO APPEAR AT YOUR TRIAL, A JUDGMENT WILL THEN BE ENTERED AGAINST YOU.

Date: _____

Signature

Print Driver's Name

Street Address

City, State, & Zip Code