

MEMORANDUM OF LAW

DATE: February 5, 1987

TO: Conny Jamison, City Treasurer  
FROM: City Attorney  
SUBJECT: Forgiveness of Late Penalties for Parking  
Citation Fees

Your memorandum of November 25, 1986 asked whether the Treasurer's Office, the City Attorney or the issuing agency has the authority to waive late penalties for parking citations and, if so, what the basis for that authority is. The problem you present involves late payment by the offender of the original face amount of the ticket without adding penalties for late payment. The failure to pay the late penalty often results in the placement of registration holds at the Department of Motor Vehicles or the filing of a complaint with the Municipal Court.

We conclude that there is no existing authority for waiving late parking penalties. However, because the collection thereof is often rendered impractical, our review suggests that a revision to the Municipal Code may be appropriate and that reappraisal of the fee amount may be in order. We therefore expanded the scope of inquiry beyond those issues presented by your question to address other related aspects.

We first note that after the parking citation is issued, the issuing agency is involved only to the extent that it determines whether an error in law or fact was made to justify voiding the citation. The issuing agencies do not make recommendations on the fine. See, for example, section V of Police Department Instruction 7.6, (Policy and Procedure for Requesting Voiding or Dismissal of Traffic Citations) which deals with parking citations.

Similarly, the City Attorney is not ordinarily involved with the fine until a complaint is filed in court; up to that point, the processing and collection of parking violation fees is an administrative matter. See *City of San Diego v. Municipal Court*, 102 Cal.App.3d 775 (1980).

Fees for parking violations are established in San Diego Municipal Code section 82.07. The basic fee doubles after the 31st day; an additional ten dollars is added after the 61st day. However, the section fails to specify when a payment is delinquent before penalties attach. The effective penalty date is set forth on the parking citation or on the courtesy notices sent out by the Treasurer's Office.

Neither section 82.07 nor other sections of the San Diego Municipal Code address waivers of parking penalties or responsibility for the administration of the parking citation program. San Diego Municipal Code section 22.1705 provides that the Treasurer shall collect all fines and forfeitures owed to the City. Section 22.1706 authorizes the Treasurer to refund monies paid through a mistake of law or fact to the City for which the payee has received no consideration. The only penalties the Treasurer is authorized to waive are for delinquent business taxes or to compromise disputed amounts thereof by section 31.0142. Absent such delineation of power, the Treasurer as a public officer does not have the express authority to waive or compromise other monies owed to the City except as is prescribed by the Charter or the City Council. McQuillan Mun. Corp. .12.126 (3rd Ed.).

Although the Treasurer does not have the express power to waive parking penalties, the Treasurer has the implied power and duty to determine when payment is timely. Since San Diego Municipal Code section 82.07 does not expressly state that payment of fees is required within a certain time period before penalties attach, there is ambiguity governing the time frame within which the duty of the Treasurer is operative. Notwithstanding that the Treasurer's office has interpreted that section as requiring payment at the Treasurer's office within thirty one (31) days, it would not be in derogation of the Municipal Code were the Treasurer to treat late payment as being an issue of timeliness rather than as being an issue of waiver. This approach could be presently justified since the Municipal Court judges, by practice, do not impose a fine greater than the original bail schedule regardless of lateness if the only reason for filing the complaint is to collect the additional penalty over the objection of the offender. While this practice defeats the purpose of filing a complaint, it should also be recognized that once parking fines exceed fines for moving traffic violations, the courts are reluctant to impose a penalty that is not viewed as reasonable. Lastly, while the purpose of imposing parking fines is to promote traffic safety and circulation, the penalties for late payment are associated with an incentive for payment on time.

Given this background, it may be prudent to consider a different approach which will guarantee court enforcement and yet provide an incentive for prompt payment. Fines for parking violations should be set at specific amounts without late penalties, depending upon the relative gravity of the violation, and the offender be allowed to deduct a fixed amount, stated as

either a percentage or a set figure, for payment prior to the due date. Then there is no longer the appearance of a potentially disproportionate and judicially uncollectible penalty and the courts would have to impose the prescribed bail as a fine rather than as an additional penalty. This will also avoid the problems associated with whether or not a citation was timely paid.

As part of our review, we also note that the procedures of the Treasurer's office are often regulatory and affect the public in ways other than just the collection of money. As you are also aware, the public will frequently challenge this authority unless it is expressly authorized, particularly when it includes an interface between your office and the Municipal Courts. Should you elect to go forward with an amendment to the Municipal Code, we would suggest that any revision to San Diego Municipal Code section 82.07 address or clarify the following:

1. Provide for the authority of the City Treasurer for the administration of the parking citation program, the collection and administration of bail and the promulgation of rules in connection therewith;
2. The authority of the City Treasurer to accept partial payments and waive penalties when it is in the City's best interests and specify the time limits during which the schedule of penalty fees shall apply; or, revise the fee schedule to adopt single rates with credit for early payment being a permissible deduction.

As a separate matter, we note that most of the parking citations are written by parking controllers and not by police officers, yet section 82.07 does not address the authority of the non-police officer. There are a number of departments other than the police which also issue parking citations. Therefore, any revision should also provide for the authority of regularly salaried and detailed City employees to issue parking tickets.

We shall be pleased to discuss this further should you have any questions.

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By

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cc Sue Heath

Nina Deane  
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