

MEMORANDUM OF LAW

DATE: November 2, 1992

TO: Jack Sturak, Assistant City Treasurer

FROM: City Attorney

SUBJECT: Dismissal of Parking Citations Upon Change of
Vehicle Ownership

You requested an opinion as to the necessity of dismissing outstanding parking citations upon change of ownership of a vehicle. You are concerned because the City Treasurer is forced to dismiss outstanding parking citations and wants to know if there is recourse against previous registered owners of vehicles with outstanding parking penalties. You asked several questions that we will answer in order.

1. Upon change of vehicle ownership, must the Treasurer dismiss outstanding parking citations issued to the old owner prior to the date of ownership change?

The short answer is yes, at this time citations must be dismissed; contingent, however, upon certain conditions being met. California Vehicle Code (CVC) section 40215(a)(1) authorizes the processing agent (in this case the City Treasurer) to cancel a notice of parking violation and to make an adequate record of the reasons for cancellation if the Treasurer is satisfied that the violation did not occur or that the registered owner was not responsible for the violation. Absent cancellation of the notice of violation, the Treasurer shall set an arraignment or trial date and comply with local court rules for same. CVC section 40215(a)(2).

Pursuant to CVC section 5602:

An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession of the vehicle to a purchaser is not . . . the owner of the vehicle so as to be subject to civil liability or criminal liability for the parking, abandoning, or operation of the vehicle thereafter by another

Included in this exemption from liability is a requirement

that, after sale or transfer, the seller either makes proper endorsement and delivery of the certificate of ownership to the purchaser, or has delivered or mailed to the Department of Motor Vehicles (DMV) documents and fees for registration of the vehicle to the new owner.

Further, if a registered owner, having received a notice of delinquent parking violation, has submitted an affidavit of non-liability pursuant to CVC sections 40208 and 40209, and has also complied with the transfer requirements of CVC section 5602 that are listed below in the answer to question 3, the "processing agency shall cancel the notice of delinquent parking violation with respect to the registered owner." CVC section 40210(b).

2. What recourse, if any, does the Treasurer have against a previous owner for outstanding parking citations issued prior to the transfer of title or date of sale?

Our analysis cites several different California Vehicle Code sections that address this question:

(a) CVC section 40220(b) requires a processing agent to file an itemization of unpaid parking penalties with the DMV for collection with the registration of the vehicle pursuant to CVC section 4760.

(b) CVC section 4760 authorizes the DMV to refuse to renew the registration of any vehicle if the registered owner has been mailed a notice of delinquent parking violation, the processing agency has transmitted to the DMV an itemization of unpaid parking penalties, and such penalties have not been paid.

(c) CVC section 4751 authorizes the DMV to refuse renewal or transfer of registration of a vehicle for several reasons, one of which is a determination that a lien against the vehicle exists.

(d) Penalties for parking violation are categorized as liens on vehicles, pursuant to CVC section 9800.

(e) As you may be aware, CVC section 4764.1, added in 1988, addresses the problem of "loss of revenue to local governments due to the present inability of the department to collect unpaid parking violation penalties in cases where the ownership of a vehicle has been transferred." The statute calls for development of a "plan to establish a pilot program by which parking violation penalties and administrative fees may be collected without regard to whether a vehicle is transferred." However, there is no indication that such a pilot program is in progress or was ever implemented.

(f) CVC section 22851.1 refers to the situation where a vehicle has been impounded and on which a lien exists for non-payment of penalties. Subsection (b) specifically states that "it shall be a defense to the recovery of bail that the owner of

the vehicle at the time of impoundment was not the owner of the vehicle at the time of the parking offense." This statute is an additional obstacle to the City's ability to recover delinquent fees from a current owner when the violations occurred prior to ownership.

Other than the sections mentioned above, the CVC does not directly address the previous owner's responsibility for outstanding parking citations, nor does it provide direction for an agency to collect these outstanding debts.

3. What constitutes a legal "Bill of Sale"? What information is required to make the document binding? Can we refuse a bill of sale as proof of purchase for dismissing parking citations if the document is incomplete?

The CVC does not recognize a "Bill of Sale" as transfer of title of a vehicle. CVC section 5600 enumerates the two means for transfer of title to a vehicle: endorsement and delivery of certificate of ownership by transferor to transferee and delivery by transferee to the DMV; or delivery or mailing of the documents by transferor to the DMV. No transfer of title shall be effective without compliance with these requirements.

4. For the purposes of dismissing parking citations, does the date of possession of the vehicle supersede the date of sale or the date of title transfer if the Treasurer is aware the new owner had possession prior to sale or transfer?

Title is not considered transferred until the requirements of CVC section 5600 have been met, regardless of the date of possession. A new owner will be liable for violations incurred after the date of transfer.

5. What information is required on an affidavit of nonliability? Can the Treasurer require the name, and possibly the address, of the driver or previous owner? If the affidavit does not have all the required information, can the Treasurer refuse to accept it? If title and registration of the previous owner do not show in DMV records, does the Treasurer have any recourse against the previous owner?

CVC section 40208 requires that a notice of delinquent parking violation shall "contain, or be accompanied with, an affidavit of nonliability and information of what constitutes nonliability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the issuing agency," but does not require the inclusion of any specific information. A person contesting a violation has the responsibility to provide such an affidavit to avoid liability. The definition of an affidavit is simply "a written

declaration under oath, made without notice to the adverse party" (California Code of Civil Procedure section 2003); also "a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation." (Black's Law Dictionary (6th ed. 1990)). In the absence of specific language in the statute, the Treasurer may require that certain information be included and reject the affidavit if it is not complete. (A search of case law reveals that imposition of demands by a local agency has not been prohibited by the courts.) If the affidavit is in order and the Treasurer, as processing agent, is satisfied that the current registered owner is not responsible for the violation, the Treasurer shall cancel the citation and make an adequate record of the cancellation. If the Treasurer rejects the affidavit of nonliability, the person served may pay the bail and request a date for arraignment or trial.

Conclusion

The CVC does not provide a mechanism for pursuing a previous owner of a vehicle. If the Treasurer does not place a lien on the title and the DMV transfers title of the vehicle, the Treasurer does not have means to pursue collection of fees, nor will the DMV act as collection agent. CVC section 4764 holds that when a vehicle is transferred and the former registered owner owes a parking penalty, the DMV shall notify "each jurisdiction of that fact and is not required thereafter to attempt collection of the undeposited parking penalty and administrative fees." Further, CVC section 40222(b) states that, upon notification by DMV, a processing agent shall terminate proceedings on the notice of delinquent parking violation "if the notice of delinquent parking violation was returned to the processing agency pursuant to Section 4764 and five years have elapsed since the date of the violation."

Apparently, absent the pilot program referenced in CVC section 4764.1, the Treasurer is without statutory recourse to obtain outstanding parking fees from a former registered owner of a vehicle.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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