

# City of Brisbane

## Agenda Report

To: Mayor Liu and Members of the Brisbane City Council

From: Michael H. Roush, City Attorney

Date: City Council Meeting of January 5, 2017

**SUBJECT: Resolution No. 2017-02 adopting Cost Recovery Provisions When Parking Citations are not Paid Timely**

### **BACKGROUND**

The Brisbane Municipal Code in Chapter 10 identifies a number of situations in which vehicles may be cited for “parking” violations. For example, a vehicle may be cited for parking in a red zone. In addition, there are various California Vehicle Code sections for which a vehicle may be cited. For example, a vehicle parked in a space reserved and signed for a disabled person without displaying a disabled person’s placard may be cited for violating Vehicle Code section 22597.8a. For these (and other parking related violations), the City Council has adopted a “bail” or fine schedule for these violations, ranging from \$15 to \$325.

Because typically the person who has parked the car in violation of the ordinance is not present when the officer observes the violation, the citation does not reflect a person to whom the citation is issued. Rather, the top of the citation sets forth the date, time, and location of the violation, the description of the vehicle (make, model, body style, etc.), the license plate and vehicle identification numbers, the name of the issuing officer and any comments, the code section that has been violated and the amount of the “bail” for the violation in question.

The bottom of the citation has important information when the parking penalty must be paid or contested (21 days), to whom and where the payment is to be made (an envelope is provided with the citation), and the means of contesting the citation. The citation also provides that if the “penalty”, i.e., the amount of the bail, is not paid or contested within the 21 day window, it “may result in additional penalties”.

Currently, the City, along with other cities in San Mateo County, contracts with Turbodata Services to handle the City’s parking citations. For a monthly fee, Turbodata processes these payments. From time to time, however, the penalties for parking citations are not paid. When that happens, Turbodata will ascertain the registered owner of the vehicle from DMV records and send that owner a reminder/demand letter regarding the unpaid penalty. If Turbodata then receives payment, it retains 25% of the payment and remits the difference to the City.

In addition, when a parking penalty has not been paid, state law allows a company, such as Turbodata, acting on the City's behalf, to contact the Franchise Tax Board (FTB) which is authorized to withhold from the registered owner of a vehicle for which a parking citation has been issued the amount of the unpaid fine, plus any applicable penalties. Under the City's contract with Turbodata, for these services, Turbodata charges the City 30% of the recovery. In addition, the FTB charges a \$2 fee for this service.

Accordingly, if there were an unpaid fine in the amount of \$100, Turbodata would send a demand letter and, assuming payment was not received, also would put the FTB on notice of the unpaid penalty. If the FTB were able to collect that amount from the registered owner, for example, by deducting the \$100 from a state income tax refund, the City would only net \$68 [\$100 - \$30 (to Turbodata) and - \$ 2 (to the FTB) = \$68].

State law, however, authorizes a City to establish late payment penalties and indeed references to such penalties are set forth on the citation. The City, however, has not adopted late payment penalties. If the City were to establish such penalties, then in the example above where Turbodata sends the demand letter, it would demand \$125; in the example where Turbodata involves the FTB, the transmittal letter to the FTB would be \$132. If the fine plus the penalty were then paid, under either example the City would still net the original amount of the citation, \$100.

#### **DISCUSSION**

Although neither the number of parking citations the City issues nor the number of citations that go unpaid past the due date is significant, the City should not suffer financially because an individual fails to pay his or her citation on time requiring additional collection efforts on behalf of Turbodata and the FTB. By adopting a resolution establishing "cost recovery provisions", the City will receive exactly what it would have received had the individual made the payment on time.

#### **FISCAL IMPACT**

Adoption of the attached resolution will enable the City to recover not only the original amount of the fine for a parking citation but also the costs associated for recovering the fine when the payment is not made timely.



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Michael H. Roush  
City Attorney



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Clay Holstine  
City Manager

## RESOLUTION NO. 2017-02

WHEREAS, the Brisbane Municipal Code in Chapter 10 identifies a number of situations in which vehicles may be cited for “parking” violations; and

WHEREAS, the City Council has adopted a “bail” or fine schedule for these violations, ranging from \$15 to \$325; and

WHEREAS, typically the person who has parked the car in violation of the ordinance is not present when the officer observes the violation, the citation does not reflect a person to whom the citation is issued but the citation sets forth the date, time, and location of the violation, the description of the vehicle (make, model, body style, etc.), the license plate and vehicle identification numbers, the name of the issuing officer and any comments, the code section that has been violated and the amount of the “bail” for the violation in question; and

WHEREAS, the bottom of the citation has important information when the parking fine must be paid or contested (21 days), to whom and where the payment is to be made (an envelope is provided with the citation), and the means of contesting the citation; and

WHEREAS, the citation also provides that if the “penalty”, i.e., the amount of the bail, is not paid or contested within the 21 day window, it “may result in additional penalties”; and

WHEREAS, the City Council has not adopted a resolution establishing these “additional penalties” for late payments; and

WHEREAS, the City’s contract with Turbodata Services provides that when parking citations are not paid timely, Turbodata pursues collection of the unpaid amount but, if such collection is successful, Turbodata retains a percentage of the amount collected, resulting in the City’s receiving less than the amount of the original fine; and

WHEREAS, State law authorizes a City to establish late payment penalties such that the penalties are collected along with the amount of the original fine when the fine is paid late; and

WHEREAS, by establishing late payment penalties, the City will remain revenue neutral concerning the late payment of parking citations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE AS FOLLOWS:

Section 1. The City of Brisbane imposes and establishes late payment penalties when the bail for parking violations are not paid timely and the amount of those penalties are the recovery costs resulting from collection efforts by third parties, such as Turbodata Services or the Franchise Tax Board.

Section 2. Demand letters and other documentation seeking the payment of unpaid parking fines shall include the amount of the recovery costs such that if the collection efforts are successful, the City will receive the full amount of the parking fine, as if the fine had been paid timely.

Section 3. This resolution shall be in effect immediately upon its adoption.

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Lori Liu, Mayor

This resolution was adopted by the City Council of the City of Brisbane at its regular meeting on January 5, 2017 by the following vote:

AYES;  
NOES;  
ABSENT:  
ABSTAIN:

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

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City Attorney