



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of October 8, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager  
Edwin Gato, Finance Director  
William Imboden, Police Chief  
Mike Roberts, Public Works Director  
Holly Smyth, Planning Director

**SUBJECT:** Update on Parking Enforcement

**RECOMMENDED ACTION:** Receive Report, Discuss, and Provide Direction, if any.

**FISCAL IMPACT OF RECOMMENDATION:** None as a result of this report. Parking enforcement does generate revenues to support the cost of parking enforcement.

**DISCUSSION:** Enforcement of parking laws and regulations continues to be a matter of community concern. This report is being provided to share information on the current status of the City's parking enforcement efforts, how parking enforcement works and is funded, our current priorities regarding parking enforcement, and opportunities to revise or enhance our parking enforcement efforts. In addition, there is some misunderstanding in the community as to how parking enforcement works and constraints associated with parking enforcement and these factors will be discussed in this report as well.

Given concerns about parking enforcement, the 2017/18 Budget included Decision Package 17-15 which was approved which funded a 20 hour per week Parking Enforcement Officer. The Decision Package as approved is set forth below:

**Decision Package # 17-15: Parking Enforcement Officer P/T** – The City currently relies on volunteers for parking enforcement. It is proposed to fund one part-time 20 hour per week parking Enforcement Officer to upgrade our parking enforcement activities. Increased revenues are expected to cover the increased costs. Revenue Increase: \$25,000; Expense Increase: \$19,750

The part-time Parking Enforcement Officer was designed to supplement the limited amount of parking enforcement undertaken by our Patrol Officers. Patrol Officers continue to a level of parking enforcement, with majority of parking enforcement being done by the part-time Parking Enforcement Officer. Since July, 2016, we have generally had the part-time parking Enforcement Officer position

filled, though there have been some periods where it has been vacant due to turnover. The position is currently filled.

|  | FY 13-14  | FY 14-15  | FY 15-16  | FY 16-17  | FY 17-18  | FY 18-19  |
|--|-----------|-----------|-----------|-----------|-----------|-----------|
| Parking Fines                              | 11,510.92 | 11,593.05 | 14,844.61 | 29,936.90 | 56,318.69 | 69,307.81 |
| Police Services/Towed Vehicle Release Fees | 46,354.13 | 39,967.93 | 33,311.16 | 28,148.82 | 29,395.30 | 24,990.84 |
| Total                                      | 57,865.05 | 51,290.98 | 48,155.77 | 58,085.72 | 85,731.99 | 94,298.65 |

As you can see, parking fine revenue has increased by more than the annual amount anticipated in DP #17-15. Tow revenues have declined over this same period, as discussed further below, though the net revenue between parking and tows is overall higher. Though annual cost for the Parking Enforcement Officer is now approximately \$31,000, net revenues have increased by more than the cost of the Parking Enforcement Officer.

The ability to tow vehicles and the reduction in tow revenues has been directly impacted by what is referred to as the Community Caretaker Doctrine, which rises out of the Fourth Amendment. The courts have ruled that towing a vehicle is a seizure under the Fourth Amendment and that absent a warrant or exigent circumstances, it is illegal to tow a vehicle in conjunction with an arrest. The exception is if towing the vehicle is in the best interest of the owner, to prevent it from being damaged or stolen, or the vehicle is in a position to create a danger to the public (e.g. parked/stopped in an unsafe manner on the side of the road). Towing the vehicle is deemed taking care of the community under this exception. If the driver stops in a legal parking area, and is parked safely, there are very few sections the vehicle can be towed for anymore. Simply arresting the driver is no longer a valid reason for towing the vehicle. The Community Caretaker Doctrine as delineated by the courts has been codified under California law with the passage of AB 2876, which went into effect January 1, 2019 and amends California Vehicle Code 22650 to limit the City's authority to tow vehicles except under limited circumstances consistent with the Community Caretaker Doctrine.

Given the enforcement and financial success of the part-time parking enforcement officer as provided in DP 17-15, in future budgets, we may want to consider adding a second part-time parking enforcement officer if warranted.

The existing part-time Parking Enforcement Officer works Monday through Friday, and does flex his hours to address specific parking issues and for targeted enforcement activities as necessary. However, he does not generally work weekends.

Unfortunately, given limited staffing and higher priorities, the Police Department does not track the types of the parking citations issued, except on a very gross basis.

|                 |             |           |             |
|-----------------|-------------|-----------|-------------|
| <b>FY 17/18</b> | Sworn: 1117 | PEO: 1130 | Total: 2247 |
| <b>FY 18/19</b> | Sworn: 904  | PEO: 1103 | Total: 2007 |

Parking enforcement priorities for the Police Department change and are often impacted by outside forces, so the first directive to the Parking Enforcement Officer is to be flexible. The Department

gives complaint driven enforcement the top priority, while also focusing on known or reported hot spots in town. The Parking Enforcement Officer's goal is to apply uniform enforcement throughout town, but everyone who is authorized to issue parking tickets has been given the directive to "enforce it if they see it". The expectation is that the Patrol Officers will issue parking citations if they see a violation and not rely on the Parking Enforcement Officer to handle it. The statistics for the prior two fiscal years bear out this commitment by Patrol.

The focus of the Parking Enforcement Officer has recently been west of San Pablo Ave, with lighter attention given to the older sections off Refugio Valley Road and Sycamore. In the last few weeks, he has been giving more attention to the Birds, the Trees, the Flowers, and the Gems in response to community concerns.

In addition, the Parking Enforcement Officer also undertakes additional duties of value to the Police Department including prison transport which allows Patrol Officers to remain on the streets to respond to calls and engage in pro-active patrol. He also responds to neighboring counties to pick up prisoners that have been arrested on our warrants, to bring them to our County Jail for prosecution. This can sometimes take his entire shift.

Parking enforcement on public streets, which is the role of our Parking Enforcement Officer and sworn Police Officers, is governed by two types of law. The California Vehicle Code is the main prescriber of parking regulations and rules. The main examples enforced here in Hercules are:

- Time Limits
- Parking in a Red, Yellow, or Blue Zone
- Parking on a corner
- Unregistered Vehicle
- Blocking the crosswalk
- Blocking a driveway

The City's Municipal Code is also a source of certain local parking restrictions. These include the following prohibitions:

- No parking on a public street for more than 72 hours HMC 3-4.1005
- No parking of vehicles being advertised for sale HMC 3-4.1006
- No parking vehicles in the streets for the purpose of repairing, greasing, or dismantling HMC 3-4.1007
- No parking of Recreational Vehicles, trailers, or boats, unless actively loading/unloading and then for no more than 3 hours HMC 3-4.1018
- No commercial vehicle parking on public streets HMC 3-4.1019

There are also limitations on when and how vehicles can be towed for parking related matters.

In addition to the restrictions applied through the Community Caretaker Doctrine, the Hercules Municipal Code also specifies when a parked vehicle can be towed for violations of the code. The most common is the *Abandoned Vehicle Abatement* section (HMC 3-4.1005), most commonly referred to as a "72 hour tow".

In order to meet the requirements of this towing authority, the vehicle has to be marked in such a way as to confirm it has not been moved when the officer returns in 72 hours. Officers mark vehicles which may be a problem, at that time. Additionally the vehicle has to have a warning tag placed on it each time the 72 hour clock is started, and it must be placed in a conspicuous manner to give the owner as much notice as possible regarding the violation. Many residents know this rule and once their vehicle has been tagged they move it just enough to avoid a ticket or they remove the markings.

The other more common towing authority for parked vehicles is found in the Vehicle Code under section 22651(o): Registration Expired over Six months. Any vehicle parked on public property is required to have current registration. If the registration is expired over 6 months the vehicle can be towed under this authority. However, because of inefficiencies in the DMV, the courts have established the following guideline for enforcing this law:

The vehicle cannot be towed until the registration is expired for 90 days past the first day of the next month after the registration expired. For example, if the registration expired February 20<sup>th</sup> the vehicle would not be eligible to be towed until November 29<sup>th</sup>. This is confusing as in reality a registration has to be expired for 9 months before it can be towed, but is enforceable.

There are also restrictions regarding parking of vehicles on private parking. These restrictions are not enforced by the City's Parking Enforcement Officer, and generally fall into the Code Compliance process. The City currently has a three-tier Code Compliance process in place, and which relies upon volunteers to identify and address issues, in addition to those complaints which are received from the public.

Examples of common parking restrictions found in the Municipal Code, and for which we get complaints include:

Inoperable or Unregistered Vehicles stored in front yards or driveways (vehicles are required to in the garage or behind a fence)  
Vehicles parked on front lawns/yards  
Trailers, boats, RV can only be stored on private property behind a fence

In addition, the formation of a Residential Preferential Parking District generates an additional set of regulations to be enforced. The City currently has one Parking District in place which is around the Aventine Building. This district has a combination of hour's restrictions and permit requirements. While the enabling law for the formation of these Districts is found in the Municipal Code, the enforcement of these restrictions does fall to the Parking Enforcement Officer or Patrol Officers since they apply on public streets. The Preferential Parking District has a far higher fine than regular parking tickets of \$100 for first offense, \$200 for second offense, and \$500 for the third offense and each offense thereafter. This is compared to the normal parking tickets fines of \$57.50, though some offenses are significantly higher.

Parking and parking enforcement is an issue of concern in most communities. The City's current approach has evolved based on changes which have taken place in the community and will continue

to evolve. The City Council has recently engaged in an outreach effort to address specific parking concerns in select neighborhoods, and this report may be of use as part of those efforts.

**ATTACHMENTS:**

| <i>Financial Impact</i>   |    |                |    |
|---|----|----------------|----|
| <b>Description:</b>   |    |                |    |
| <b>Funding Source:</b>  |    |                |    |
| <b>Budget Recap:</b>  |    |                |    |
| Total Estimated cost:   | \$ | New Revenue:   | \$ |
| Amount Budgeted:  | \$ | Lost Revenue:  | \$ |
| New funding required:   | \$ | New Personnel: | \$ |
| Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/> |    |                |    |