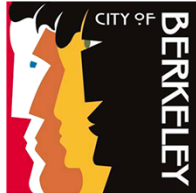


Internal



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR
 January 31, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Kate Harrison (Co-Sponsor), Councilmember Ben Bartlett (Co-Sponsor), and Councilmember Sophie Hahn (Co-Sponsor)

Subject: Parking/Towing Fines & Fees Reform

RECOMMENDATION

1. Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
2. Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows:
 - a. Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets.
 - b. Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.
3. Refer to the City Manager to:
 - a. Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows.
 - b. Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income.
 - c. Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits.
 - d. Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection.

- e. Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits.
4. Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.

POLICY COMMITTEE RECOMMENDATION

On December 12, 2022, the Health, Life Enrichment, Equity, & Community Policy Committee adopted the following action: M/S/C (Taplin/Hahn) to forward the item to Council with a positive recommendation that the City Council approve the item with the Author's substitute recommendations as follows:

- (1) Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
- (2) Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows:
 - a) Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets.
 - b) Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.
- (3) Refer to the City Manager to:
 - a) Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows.
 - b) Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income (if at 30% AMI, pay 30% of fee, if at 50%, pay 50% of fee, etc.)
 - c) Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits.
 - d) Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection.
 - e) Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits
- (4) Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.

Vote: All Ayes.

BACKGROUND

The fines and fees reform movement is growing across cities in the United States, including here in the Bay Area. Punitive fines and fees levied by governments — and the enforcement actions taken when they go unpaid — can create a cycle of economic hardship for the most vulnerable. In addition to the monetary consequences, the towing of a car or the loss of a license or vehicle registration can upend one's life. This drives economic inequality and facilitates a breakdown of trust between community and government.

Instead of punishing people for being unable to pay their parking tickets, the City should look at expanding payment options, identifying alternative budget strategies to replace unnecessarily punitive fees, and moving away from enforcement strategies that disproportionately impact low-income people.

These reforms align with the direction given by the Reimagining Public Safety Taskforce. In their report presented to Council in March 2022, the Taskforce recommends a “review of transportation laws, fines and fees to promote safety and equity.” The relevant section reads:

“Another issue is the matter of how Berkeley approaches fines and fees for violations issued. One example relates to our penalties for parking tickets, which can be devastatingly expensive to those experiencing poverty. While the city does offer an Indigent Payment Plan for Parking Citations where late fees are waived and payments can be spread over time, there are substantial administrative hurdles to jump through to apply to this program and there are still fees to be paid. In instances in which a vehicle is towed, the spiraling fines and fees could lead to the loss of a car or license, and this loss of mobility can further lead to loss of access to employment, education, or medical care. Ensuring that cars are parked properly often does have an important public safety component, but not always, and punitive fines and fees certainly do not improve public safety.”¹

The City Manager's report, presented to Council in April 2022, echoes the Taskforce and recommends that the City “review Berkeley Municipal Code for proposed changes to increase equity and racial justice in the City's existing transportation fines and fees, especially related to parking. Involve the Transportation Commission in the recommendation of such changes to Council.”² Through the subsequent FY 2023-2024 budget process, Council allocated \$150,000 to conduct a fines and fees analysis.

¹ https://berkeley-rps.org/wp-content/uploads/2022/03/BerkeleyReport_032422FNL.pdf

² <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-04-21%20Agenda%20Packet%20-%20Council.pdf>

This item should align with and complement the upcoming assessment of fines and fees. Both will build off Council's past referrals related to fines and fees reform, including amendments to the indigent payment plan,³ a referral to the Disability Commission to examine the impacts that the parking citation system may have on people with low income and disabilities,⁴ and a referral expanding the community service in lieu of parking penalties program to non-residents.⁵

RPP for Vehicles with Outstanding Parking Tickets

The City's Residential Parking Permits (RPP) program allows Berkeley residents living in designated zones to purchase an annual parking permit for \$66. Under current policy, if a resident has any outstanding parking violations older than 21 days, they are ineligible to purchase an RPP permit.⁶

This policy can create a cycle of debt for residents who do not have the funds to pay off tickets, yet have no choice but to continue to park their car on City streets, either for work or because their apartment unit does not come with a parking space. For an individual experiencing financial hardship, a \$66 permit may be within financial reach even if paying off several hundreds of dollars in tickets all at once is not. If they are not allowed to obtain a permit, they may continue getting more and more citations for unpermitted parking with no way out of the situation. Combined with late fees, this racks up fines and fees and punishes people who are trying to come into compliance by purchasing a permit.

The City should be encouraging compliance, not prohibiting it. Amending the BMC to allow residents making below 50% of Area Median Income to purchase Residential Parking Permits even if they have outstanding parking tickets would enable them to stop the ongoing citations and focus on paying off their existing tickets.

Eligibility for Indigent Payment Plan

AB 503 (2017) established that low-income individuals are eligible for a payment plan for unpaid parking citations.⁷ The City's program allows individuals to pay off their balance monthly over the course of 24 months or less, up to a limit of \$500.⁸

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<https://records.cityofberkeley.info/PublicAccess/api/Document/AQOQRceMCzTaULeVOAA2odBETJ8DÁw cGNV911ÁdF8ZjqW2IEoRntIzlwfDSYIPb5u3gX4RBHOuzWVWoWBiaUcEc%3D/>

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<https://records.cityofberkeley.info/PublicAccess/api/Document/AanANYizYnm9EVOkiYEpn1CRI60Sdf9vU 3UY3hzKBDUqngFpplÉsjT5za7N5EjkH69KILhA5ÉucrfpQPlqWAWc%3D/>

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<https://records.cityofberkeley.info/PublicAccess/api/Document/ASÁplwGjflaUÁsb382hHTJR7BdOvBCibrp 2fGalYCIJTwp7PkiTMctUFRlbZvMGjfPTj4Mccz5wXn4500yCd7U4%3D/>

⁶ <https://berkeley.municipal.codes/BMC/14.72.080>

⁷ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=40220.&lawCode=VEH

⁸ <https://berkeleyca.gov/city-services/parking/parking-tickets>

Candidates may qualify based on income or proof of public benefits, as follows:

- Supplemental Security Income (SSI) or State Supplementary Payment (SSP)
- California Work Opportunity and Responsibility to Kids Act (CalWORKs) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program
- Supplemental Nutrition Assistance Program (SNAP) or the California Food Assistance Program (CFAP)
- County Relief, General Relief (GR) or General Assistance (GA)
- Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI)
- In-Home Support Services (IHSS)
- Medi-Cal

Current vs. Suggested Income Caps to be Eligible for the Indigent Payment Plan

Household Size	Current Annual Income Cap (Federal Poverty Guidelines)	Suggested Annual Income Cap (Alameda County 50% AMI)
1	\$13,590	\$47,950
2	\$18,310	\$54,800
3	\$23,030	\$61,650
4	\$27,750	\$68,500
5	\$32,470	\$74,000
6	\$37,190	\$79,500
7	\$41,190	\$84,950
8	\$46,630	\$90,450

AB 503 establishes minimum requirements for indigent payment plan programs but does not prohibit municipalities from expanding eligibility. Federal poverty guidelines do not reflect the high cost of living in the City of Berkeley and the larger Bay Area. The federal caps fall well below 30% AMI, which is classified as extremely low income.⁹ Acknowledging this reality, the City recently expanded eligibility for low-income commissioner stipends using 50% AMI for a household size of 3.¹⁰

⁹ <https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf>

¹⁰ <https://berkeleyca.gov/sites/default/files/city-council-meetings/03-09-Annotated-Agenda.pdf>

While an individual does not have to meet the income guidelines if they are receiving any of the public benefits listed above, our current restrictions may not adequately serve undocumented immigrants, who are ineligible for many government programs.

Giving more people the option to enroll in an indigent payment plan will also shield low-income residents from the broader consequences of delinquent parking tickets. For example, the California Department of Motor Vehicles is required to refuse renewal of vehicle registration until all outstanding parking tickets have been paid, unless the individual is enrolled in a payment plan. Expired vehicle registration puts the vehicle at risk of being towed, which results in additional financial hardship and potential loss of wages for the vehicle's owner if they are not able to get to work without their car. Furthermore, barring vehicle owners from registering their vehicles is antithetical to public safety, since it serves the general public to ensure that drivers are insured and vehicles are regularly smog checked.

Scofflaw Vehicle Enforcement/I-Tows

California Vehicle Code Section 22651 grants local governments the authority to remove and impound scofflaw vehicles, or vehicles with five or more notices of parking violations where payment is delinquent.¹¹ This practice is also known as an I-Tow. AB 2876 (2018) placed certain limits on this authority, revising the CVC to read:

“Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.”¹²

In San Francisco, vehicles towed for unpaid parking tickets made up only 9% of all vehicles towed but 55% of lien sales. Half of all the vehicles towed for parking ticket debt were sold, suggesting that this practice targets people who are simply unable to pay and is not a particularly effective strategy for collecting debt.¹³ The staff and transportation costs associated with towing and lien sales often do not justify the small amounts of debt that are able to be collected in the end.

In 2019, Assemblymember David Chiu introduced AB 516, which would have ended the practice commonly referred to as a “poverty tow” but died in Senate Appropriations.¹⁴ In

¹¹ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22651&lawCode=VEH

¹² https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2876

¹³ <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>

¹⁴ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB516

February 2022, the City of Los Angeles temporarily suspended the towing of scofflaw vehicles in response to a federal court ruling against the City.¹⁵

The Berkeley Police Department does not currently conduct scofflaw enforcement due to both the “community caretaking” clause of AB 2876 and the impacts of the COVID-19 pandemic. Parking enforcement performs a critical public safety function by enforcing against cars that are unsafely parked or otherwise pose a risk to the general public. However, scofflaw vehicles that are legally parked are towed solely for the crime of poverty, which does not fall under “community caretaking.” In the interest of transparency and clarity, the City should formalize the current practice of not booting or towing scofflaw vehicles by updating relevant public-facing policy documents and internal employee manuals.

Vehicle Release Fee Waivers

When a vehicle is towed in the City of Berkeley, the vehicle’s owner must pay a release fee of \$75 to the City for certain infractions, in addition to towing fees and daily storage fees. If the vehicle was towed for unpaid parking citations, the owner must also pay off all outstanding parking fines and fees before they can obtain a vehicle release.

In the State of California, vehicle owners owe an average of \$499 in tow, storage, and administrative fees just three days after a tow.¹⁶ This is in addition to the parking or registration fees that must be paid off. If they do not have the money to retrieve the vehicle, it can be sold at a lien sale after 30 days, resulting in a permanent loss of mobility and potentially jeopardizing their employment and access to other essential services such as school and health care.

These towing practices disproportionately burden low-income people due to the exorbitant fees and the time required to resolve a tow. An individual must first go to the City’s Customer Service Center or the DMV to pay outstanding parking and registration fines and fees, then to the Police Department to obtain a vehicle release, and finally to the tow yard to retrieve their car. If someone is not able to take time off work or school to do so on short notice, the daily storage fees accumulate quickly.

As part of San Francisco’s Financial Justice Project, the City and County of San Francisco implemented a tow waiver program for people experiencing homelessness or low income, as well as a fee reduction for first-time tows.¹⁷ For low-income people, the \$325 administrative fee is waived and the tow fee is reduced from \$268 to \$100. For unhoused people, both the administrative and tow fees are waived. For first-time tows, the administrative fee is reduced to \$275.

¹⁵ <https://www.latimes.com/california/story/2022-02-08/los-angeles-stops-impounding-cars-for-unpaid-tickets>

¹⁶ <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>

¹⁷ <https://www.sfmta.com/getting-around/drive-park/towed-vehicles/reduced-fees-first-time-tow-and-low-income-individuals>

San Francisco is a larger and more well-resourced jurisdiction that handles their own towing, as opposed to contracting it out to tow companies like the City of Berkeley does. While the case study of San Francisco cannot be directly applied to Berkeley, we should look to San Francisco's program as a model and offer waivers for fees that fall under the City's control.

ALTERNATIVES CONSIDERED

The City could reduce the tow and storage fees imposed on vehicle owners by amending our tow contracts at the next available opportunity. However, this would make it infeasible for any tow companies to operate in Berkeley without significant subsidies. The City could also consider municipalization of towing operations.

FINANCIAL IMPLICATIONS

Staff time and \$383,512 in ongoing annual funding for 2 Associate Management Analyst FTEs.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable negative environmental impacts associated with this action.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Angie Chen, Legislative Assistant

Attachments:

- 1: Ordinance

ORDINANCE NO. -N.S.

ORDINANCE AMENDING THE MUNICIPAL CODE TO ALLOW ISSUANCE OF RESIDENTIAL PARKING PERMITS FOR VEHICLES WITH OUTSTANDING PARKING TICKETS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 14.72.080 is amended to read as follows:

14.72.080 Issuance of permits.

A. Residential, local business and neighborhood-serving community facility parking permits shall be issued by the Department of Finance in accordance with requirements set forth in this chapter. Each such permit shall be designed to state or reflect thereon the identification of the particular residential, local business or neighborhood-serving community facility permit parking area for which it is issued. No more than one residential or local business parking permit shall be issued to each motor vehicle for which application is made.

B. When issuing local business and neighborhood-serving community facility permits, the Department of Finance in consultation with the traffic engineering division shall issue permits such that they will not unduly be concentrated on a specific block front in any given residential permit parking area.

C.

1. No permits shall be issued to residents in newly constructed residential units. The Current Planning division shall provide a listing of newly-constructed housing units to the Department of Finance.
2. No permits shall be issued to residents of Group Living Accommodations as defined in Chapter [23F.04](#) that are approved after January 1, 2012, unless the Zoning Adjustments Board specified otherwise when it approved the GLA. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.
3. In the R-2 and R-2A zoning districts, no permits shall be issued to residents of dwelling units with more than 5 bedrooms to which new bedrooms have been added subsequent to January 1, 2012. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.
4. This subdivision shall not prevent issuance of permits to residents of permitted and legal nonconforming sororities, fraternities and student cooperatives who are not otherwise prohibited from obtaining them.

D. The Department of Finance and the Public Works Transportation Division are authorized to issue such rules and regulations necessary to implement this chapter, and are not inconsistent with it.

E. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation, except for vehicles belonging to individuals eligible for the City's Indigent Payment Plan.

~~E. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.