

**REPORT OF THE  
CITY OF ALBANY  
COMMON COUNCIL  
COMMITTEE OF THE WHOLE  
INVESTIGATION INTO THE  
ISSUANCE OF NO FINE  
PARKING TICKETS**

Adopted by a majority vote on August 3, 2009

## **Introduction**

This report represents the culmination of over five months of Common Council activity related to the review of policy and procedure concerning the issuance and processing of parking violation tickets. Our investigation was prompted by public reports of unofficial mechanisms and other systems – whether “bull’s-eye” decals or VIP/Exempt listings – that were used to avoid the issuance of parking violation tickets. During this period, the Common Council took testimony under oath from twelve witnesses, engaged in extensive discussion and requested and reviewed several documents and reports.

Every aspect of the Common Council’s investigation, discussion and debate during this period has been entirely in public and has produced a voluminous record of written testimony, audio recordings and documents that far exceeds the pages in the report that follows.

The investigation began in February when the Common Council met to outline the issues, necessary documents and reports and procedure to move forward. Subsequent to that meeting, the Common Council convened itself as a “Committee of the Whole” for purposes of conducting the investigation and taking testimony under oath. From the beginning, the Common Council’s investigation was conducted in a professional and even-handed manner. As our investigation moved forward it was inevitable that the scope of review would broaden beyond the narrow focus of “Bull’s-Eye” decals and ghost tickets.

The report that follows reflects the Common Council’s findings and recommendations with regard to a range of issues related to policy and procedure surrounding the issuance and processing of parking violation tickets. The findings and recommendations in this report are based on the testimony before Common Council under oath and documents and reports which were received by the Common Council.

In addition to this report, the Office of State Comptroller, at the request of members of the Common Council, has undertaken an audit of practices within the City of Albany regarding the handling of parking violations. The Comptroller’s report and recommendations, when released, will complement this report.

In closing, I’d like to acknowledge and express my appreciation to my colleagues on the Common Council for their co-operation and contribution to this process. I would also like to acknowledge and extend the Council’s appreciation to the staff that assisted us: John Marsolais, City Clerk and Clerk to the Common Council; Cashawna Parker, Legislative Aide; and Patrick Jordan, Assistant Corporation Counsel. Particular acknowledgement is extended to Barbara Samel, Research Counsel to the Council for her guidance, advice and assistance in drafting this report.

Richard Conti  
Chair

**Witnesses appearing voluntarily under oath before the Common Council:**

PSO GRADE 4 SHELLY KIRTLEY (March 23)

PSO Kirtley has been employed as a PSO for fourteen years, starting in January of 1995. She is a member of the Communication Workers of America Local 1118.

PSO SUPERVISOR MINDY PEREZ (March 23)

Supervisor Perez has been the PSO supervisor since June of 2008 and prior to that was employed as a PSO for eight years. She is a member of the Communication Workers of America Local 1118.

COMMANDER AARON FLANGER, Commander of Special Operations (March 23)

Commander Flanger joined the Albany Police Department in 1992. He is not a member of the Albany Police Officers Union.

POLICE CHIEF JAMES TUFFEY (March 30)

Chief Tuffey was appointed a patrol officer in September 1975. He was union president from 1980 to 1994, except for a ten-month period. In August of 1994 he left the department on union leave and worked for Council 82, where the city was reimbursed for his salary by the union. He returned to the Albany Police Department in March 1995 and ultimately retired in October of 1995. He returned to the Albany Police Department in December of 2005 as Chief of Police. He is currently not a member of any union.

CITY TREASURER BETTY BARNETTE (March 30)

Treasurer Barnette has been City Treasurer since August of 1991. The Office of Treasurer is charged with the collection and care and receipt of all monies coming into the city through any means. The Parking Violations Bureau is under the auspices of the treasurer as well as payroll and data processing.

ANDREW STERLING (March 30)

Systems specialist from the data processing department.

JAMES VAN APELDORN (March 30)

Director of the Parking Violations Bureau.

DEPUTY POLICE CHIEF STEPHEN REILLY (May 28)

FORMER COMMANDER LEONARD CROUCH (May 28)

**Witnesses appearing by the issuance of a subpoena of the Common Council:**

CHRISTIAN MESLEY, Range Master (April 27)

Officer Mesley has been employed by the department since August of 1992. For the first two years he was assigned to the South Station. From 1994-2002 he was assigned as a beat officer and a bike patrol officer in Arbor Hill. He currently serves as range master for the City of Albany Police Department. He became Albany Police Officers Union President in October of 2004. He was elected statewide union president in September of 2008.

JOSEPH MCDADE, Police officer (May 28)

DANIEL CONDON, Police officer (May 28)

### **BULL'S-EYE STICKERS**

#### ***A synopsis of testimony and documents received.***

Both PSOs Kirtley and Perez testified that during their on the job training they were told about the bull's-eye stickers. PSO's are trained for two weeks by shadowing another PSO. There are no written training materials or classes. Their training would have occurred in 1995 and 2000, respectively. They were told that if a vehicle had a bull's-eye sticker and it was parked around the courthouse that it was the vehicle of a police officer testifying in court and the vehicle was to be given a warning ticket. It was made clear that this was only to occur around the courthouses and if the vehicle was illegally parked in another part of the city, they issued regular tickets with a fine. Both PSO's testified that they were unaware of who issued the bull's-eye stickers. The sticker with the three numbers was being used in 2000 when PSO Perez was hired.

PSO Kirtley was not given a specific list of streets or blocks that the bull's-eye sticker applied to, but believed the area to be around Eagle Street, Pine Street, Lodge Street, Steuben Street, Columbia Street, and State Street near the courthouses. The location where warning tickets were to be issued was decided on their own by the PSOs, but was supposed to be in proximity of a courthouse. If a PSO was working downtown, they could write 25 to 30 warning tickets to cars with bull's-eye stickers per day.

Commander Flanger was issued a bull's-eye sticker in 1992 or 1993 at South Station. His senior officer gave him the sticker which was yellow and blue with no numbers on it. His senior officer told him to put it on his personal vehicle and it was to be used only when attending court proceedings downtown, and that it would prevent the issuance of a parking ticket. It was clear to him that it was only to be used when he was in court. He was never issued a warning

ticket when parked downtown. While it was given by an officer in the Police Department, he later became aware that they were printed by the union and had always been handled by the union. He had no idea that the sticker program was not sanctioned by the city. He had this same decal until he became a sergeant in 1997. Chief Tuffey was president of the union when Commander Flanger received his yellow and blue sticker in 1992 or 1993. Deputy Chief Reilly had a similar account to Commander Flanger, having received his blue and gold sticker at South Station in 1994. He was given his sticker by a union shop steward or union official and understood at the time it was a union administered program. Later, as union president from 2002 to 2003, he was aware of the stickers but was not personally involved in purchasing or distributing them.

Commander Flanger was never told to remove the sticker when his personal vehicle was sold or transferred. He believed it would be common sense to remove the sticker if no longer using the vehicle. Chief Tuffey also indicated that no one was ever told to remove the sticker when the vehicle was sold but hopes that officers would do so prior to sale or transfer. Officer Mesley was issued a bull's-eye sticker in 1992 or 1993 at South Station. The sticker was yellow and blue with no numbers on it and he does not remember who gave it to him. It was his understanding that it was to be used only when attending court proceedings downtown, and that it would prevent the issuance of a parking ticket. At that time, supervisors and police officers were in the same union. In the mid to late 1990's he recalls that at a union meeting, bull's-eye stickers were discussed and a decision was made to change to a different color and to add numbers.

Chief Tuffey testified that while he was not aware of bull's-eye stickers with numbers and the circles on it, there was a gold and blue union membership sticker that had been in existence from sometime in the late 1980's until about 1994. He does not recall these gold and blue stickers being handled by the department in any way. They were printed by the union. Prior to the gold and blue stickers and even while they were used, officers would leave their patch or business card to try and avoid getting ticketed while in court. Chief Tuffey explained that prior to 1994, he doesn't remember there being meters or no-fine tickets issued based on the gold and blue stickers. Handheld computers were not in use yet. To his knowledge, the bull's-eye stickers with the numbers on it were not being used prior to his leaving the department. The gold and blue bull's-eye stickers were not originally intended to be used for parking but to

denote union membership. He does recognize that they did evolve to be used for parking, but did not specifically order that they be used in such fashion. Former Commander Leonard Crouch also confirmed this history of events. He remembered that the bull's-eye was purchased as opposed to the union stickers used by other area municipal police departments that included the name of the union or department and were used for fundraising. They were to denote union membership but not sold for fundraising.

Both Officers McDade and Condon received bull's-eye stickers near the time that they were hired and understood the stickers were to be used to avoid parking tickets while in court. Officer Daniel Condon testified that in 1999 he asked for an additional bull's-eye decal from Deputy Chief Krokoff, who was union treasurer at the time, to be used by his father to avoid parking tickets. He believed that Deputy Chief Krokoff knew it was for his father and not his personal vehicle. He also believed that during this time period, many people beyond union members had been given the bull's-eye decals. Former Commander Crouch believed that the stickers were instituted for union members only and does not believe the union ever authorized distribution to non-union members. Treasurer Barnette testified that she had no knowledge of bull's-eye stickers being used by police officers or that PSO's could issue warning tickets to vehicles.

Absent the bull's-eye system, an officer who received a ticket while in court, would then have to file an interdepartmental request stating that he or she was at court, at which time the paperwork would be forwarded to James Van Apeldorn and excused on that basis. Commander Flanger believes there to be dozens of officers, up to 40 or 50, required to be at court each and every day.

There was also some initial concern that the niece of Chief Tuffey had a bull's-eye sticker on her personal vehicle and that she was not ticketed in a property damage accident because of this sticker. Officer Daniel Condon testified that while he does remember a bull's-eye sticker on the vehicle, that was not the reason he declined to issue a summons. Chief Tuffey's sister also appeared before the Council during a regularly scheduled meeting stating that the vehicle did not have a bull's-eye sticker on it.

### ***Findings.***

Based on the evidence presented to date the following conclusions can be made. Sometime during the late 1980's the Albany Police Officers Union issued blue and gold

membership stickers. The look of the sticker changed over the years, as did their purpose and procedure for issuance. Chief Tuffey was president of the union at the time these stickers were issued and they were initially issued to denote union membership. In November of 2008, it became clear that a system, which may have started for the right reasons, was being abused by members of the police department or union officials. There has been no testimony received that offers clear proof that the system was created primarily to avoid the issuance of parking tickets. It does seem to have evolved into this after the department stopped transporting officers to the courthouses for testimony.

By 1992, the practice evolved that police officers started to use these stickers as a way of avoiding receiving a parking ticket while in court and PSOs began to recognize these stickers as representing a police officer's vehicle. Police officers had been using different items such as business cards or police patches to avoid receiving a parking ticket when using their private vehicles for official city business. As Chief Tuffey explained, at this early time, there were no handheld computers and perhaps no meters in many of these locations. It is likely that there was no such thing as a warning ticket at that time. Commander Crouch confirmed that prior to handhelds either no ticket was issued or the ticket was excused after a memo was written. At this time, prior to the purchase of handhelds in 1999, individuals who received parking tickets were questioning why cars parked next to them were not. This is why, he believes, that no fine tickets started to be issued when the handhelds were put into use. The police vehicle parking crisis really started when meters were installed downtown and the police department stopped providing transportation to court. According to Commander Crouch, the practice of using the bull's-eye sticker to avoid parking tickets was not officially sanctioned by the administration because of the poor relationship and lack of cooperation between the administration and the police.

Commander Crouch acknowledged that when he was president of the union in 1994, the union secretary did keep records of the union representatives that received a lot of bull's-eye stickers and then the union representative was supposed to keep a list of the individuals that received them. He did not know if this system was maintained in later years.

Chief Tuffey testified that when he left the department in 1995, the "newer" version of the bull's-eye sticker was not yet in use. This version was a different color and had a three-digit serial number on it. This is consistent with the testimony of PSOs Kirtley and Perez who both

indicated that the newer version was not in use until sometime after 1995. It seems clear that the union, once again, issued the second set of stickers. At this point in time, the stickers had become through common usage, clearly used to avoid parking tickets. Some type of official department recognition took place between 1995 and 2000, as handhelds were purchased and the PSOs were officially trained to issue warning tickets to vehicles which had a bull's-eye sticker. Officer Mesley questioned the truthfulness of Chief Tuffey's testimony. A careful reading of his testimony finds that he was not referring to the Chief's knowledge about the "new" bull's-eye stickers or the fact that prior to his departure in 1995 or return in 2005 that he officially sanctioned the stickers, but that the Chief originally stated that he didn't know about any type of stickers being issued and later revealed that he was union president when the blue and gold membership stickers were issued. A fact Chief Tuffey had already testified to on March 30, 2009.

It is not unusual for a police department to issue some type of placard or sticker to police officers to avoid parking tickets while testifying in court. What is unusual in this case is that the department did not issue the sticker, a private union did. The union conferred a city benefit to employees in contravention of the local parking laws. Providing free parking to police officers using their personal vehicles while testifying in court is appropriate. However, a system to provide this benefit should have been developed and authorized by the department. It is unclear how this process became officially recognized by the police department. The departmental supervisors and chiefs that have served from 1995-2000 are to a large degree retired and out of the reach of the Common Council subpoena. However, even if the Common Council were to continue interviews for the next several months to determine at what point the bull's-eye was officially recognized and by whom, the bigger issue is that individuals abused the system amounting to a loss of revenue for the city.<sup>1</sup>

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<sup>1</sup> Both PSOs Kirtley and Perez testified that even if a vehicle had a bull's-eye, placard, or came up exempt, they would still issue a fine ticket if there was a serious violation such as parking in front of a hydrant or in a handicapped spot. PSO Perez stated that she was trained to issue these tickets by her trainer. In one bright spot in this investigation, it appears that vehicles that received special treatment did not receive that special treatment in handicapped parking spots or in front of fire hydrants.

At some point after the “new” stickers were issued, they ended up in the hands of individuals who were not Albany police officers and these individuals may have used these “free parking” stickers for their own personal use. It is unclear whether the union distributed them to non-city employees or whether individual officers gave away their extra sticker that they received as it was noted that officers were given two stickers to cover all vehicles in the household. There is also a strong possibility that the stickers were left on the vehicle when sold or transferred to a family member or friend, and the astute individual realized that they got more than just a car. Unfortunately, any union officials involved in the distribution of the stickers have refused to provide any information on what they consider union activities and it would be impossible to interview the hundreds of rank and file police officers who use these stickers and may have knowledge of how they were misused. Absent any past or present union officials stepping forward voluntarily with information, the Common Council’s investigatory authority does not reach as far as necessary to find this answer.

There are two other important questions that cannot be answered. The first is, how many unauthorized people had the bull’s-eye stickers on their vehicles? Even if a distribution list was kept, it may be unlikely that it would list the unauthorized users and would not cover situations where the officer gave away the sticker or the vehicle was sold. The second question is, how often were the unauthorized users using the sticker to park downtown near the courthouses? Without being able to distinguish between warning tickets given for bull’s-eye stickers and those given for vehicles with placards or an exempt license plate and also knowing exactly which license plates illegally had the stickers, the Council is unable to obtain an answer for bull’s-eye only violations.

## **VIPS/EXEMPT LISTING**

### ***A synopsis of testimony and documents received.***

The handheld computers used by the PSOs allowed the city to input license plate numbers which, once the plate was entered into the handheld, would automatically label the vehicle as “VIP” or “Exempt.” As with the bull’s-eye stickers, what was a useful tool for appropriate city officers or officials to avoid being issued a ticket, became subject to abuse absent any appropriate internal controls. Commander Crouch stated that at the time the new handheld system was set up, Traffic Safety realized that there was the ability to input license

plates as VIP. A PSO supervisor did add all city vehicles and unmarked police vehicles into this list. When he was at Traffic Safety, he did remove vehicles that were no longer in service but does not believe this was done after he left.

PSO Kirtley testified that when a license plate was input into the handheld, the screen would say "VIP" and the handheld would issue a warning ticket. They were programmed this way when she started 14 years ago. Originally the term used was "VIP" and then about two years into service, the term on the handheld became "exempt." The PSO could manually override the handheld and give a ticket with a fine attached as stated in the testimony of PSOs Kirtley and Perez. According to PSOs Kirtley and Perez, VIP warning tickets were given out across the whole city, and were not specific to a geographic area like the bull's-eye stickers or placards. It didn't matter where the vehicle was parked because it could belong to an undercover officer. PSO Kirtley stated that, to her knowledge, the commanders would tell the PSO supervisor to put license plates in as VIP. The desktop computer at Traffic Safety is password protected, just the Supervisor and PSO Kirtley had the password. Now, only Mindy Perez has the password. No police officer has ever had access to the desktop computer as long as Commander Flanger can remember.

Commander Flanger learned about the VIP list when his unmarked police car was given a warning ticket. He was told by his supervisor that vehicles on city business or law enforcement business were placed on the list. In 2006, Lieutenant Marcello mentioned to him that the personal vehicles of downtown business improvement district employees were getting numerous tickets at city events and planning meetings. He was asked by Lieutenant Marcello to place the vehicles on the VIP list and Commander Flanger personally authorized the personal vehicles of the BID director and the operations director be placed on the VIP list. Chief Tuffey also asked him to put one plate on the list. Chief Tuffey concurred that he had asked that a plate be put on the list. It was the plate for the Director of the State Liquor Authority who was working with the city on some of the new processes to close some of the establishments that were serving underage kids. Commander Flanger testified that no one from the Mayor's office ever asked Commander Flanger to put a plate on the list.

Chief Tuffey said that he was not aware of the VIP list until 2006 when he received a parking ticket out in front of City Hall, and questioned Commander Flanger on it. Commander Flanger told him that his vehicle had been put in the system and that he would always be issued a

warning ticket as a VIP or exempt plate. Commander Flanger and Chief Tuffey acknowledged that there were no policies written or otherwise as to how vehicles got on the VIP list and the list was not periodically reviewed to see if vehicles should remain on it. Commander Flanger did state that in 2006 the Police Department did realize that the VIP list was too open ended and had to be replaced. Therefore, no new plates were added since 2006.

The Common Council did receive copies of no fine tickets issued to vehicles since January 2003. These parking summonses were provided to the Common Council and amounted to 3515 pages. The summonses are separated by license plate number and the 3515 pages represent no-fine tickets issued to 165 different vehicles. Some vehicles have very large numbers of summonses while others have only one. The vehicles are not identified by owner, but only by license plate number. The summonses also list the street and do not list any cross streets so it is impossible to say whether the vehicle was involved in official business although many of the tickets do seem to be in the area of city hall and the courts.

The Council was given a copy of the exempt list including registered owners. There were 275 vehicles total on this list. While this list does contain redacted license plates, the Council was told these plates represent undercover police vehicles, state police vehicles and other law enforcement. There are twenty City of Albany owned vehicles and 150 APD vehicles. The list does not indicate whether the APD vehicles these are officer's private vehicles or city police vehicles. The accounting for vehicles on this list remains incomplete.<sup>2</sup>

### ***Findings.***

The Common Council does not question the need for undercover police vehicles to be able to park anywhere at any time throughout the city. It does seem a security issue however for an undercover officer's vehicle to be identified as a VIP both on the handheld and on the printed ticket. As far as the remaining 223 license plates on the list, no conclusions can be drawn without knowing the owner's names. Only then can it be determined whether the vehicle was validly placed on the list. If the name was not validly on the list, then questions must be answered as to who requested that they be put on the list and how many warning tickets did they generate. Although, even the determination of whether a license plate was validly a VIP plate

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<sup>2</sup> This list is maintained on a separate desktop computer at Traffic Safety and Chief Tuffey did testify that he would maintain this desktop until the investigation is completed.

may be difficult because the Police Department never established a definition or criteria to be placed on the list.

Another question that has not yet been answered is: did anyone actually authorize the use of the exempt list for vehicles that were not city owned? VIP vehicles cannot be recognized absent the computerized handheld system. Commander Flanger did testify that, to his knowledge, the software was prepackaged and was not specifically programmed to provide VIP status. Commander Crouch did testify that when the handhelds were purchased he did realize there was a VIP listing and he did authorize a PSO supervisor to input all city vehicles and undercover cars. The Council received the entire list as it currently exists. Other individuals testified that they were asked to put one or two vehicles on the list. It is unclear how other vehicles were placed on the list.

Certain conclusions are certain. There were no controls in place over any part of this system. There were no criteria to determine which license plates were entered. The list was never reviewed to insure that the vehicle was still worthy of being in the system after Commander Crouch left the department. There was no clear mandate as to who was authorized that plates be entered.

## **PLACARDS**

### ***A synopsis of testimony and documents received.***

PSOs Kirtley and Perez testified that there were several types of placards recognized by PSOs including city, state, court officers, sheriffs, state police, Alcohol, Tobacco and Firearms, and the Common Council. PSOs were under the same understanding that vehicles with placards were given warning tickets around the courthouse area. If a vehicle with a placard was parked outside of the downtown court area, they were given a ticket with a fine. Commander Flanger confirmed that the PSOs recognized vehicle placards. There was no official list of what placards to recognize and the PSOs were in a position where they had to make a decision on the street. If the placard didn't look legitimate, they were to issue a ticket and let the owner approach the Parking Violations Bureau.

Treasurer Barnette stated that if someone received a ticket with a fine and they appeared at the Parking Violations Bureau, the staff would copy the placard and take a written explanation. The staff would then decide whether or not to reduce or forgive the ticket.

Treasurer Barnette also stated that she had no knowledge that no fine warning tickets were issued to people with placards.

***Findings.***

The Common Council did not find evidence of any widespread abuse of the placard system. While there should be a written list of what placards are recognized and where in the city they can be used, there was no evidence that the placards were distributed or used by individuals without authority to use such placards.

**BACKGROUND ON THE CURRENT HANDHELD SYSTEM**

***A synopsis of testimony and documents received.***

The PSOs testified that they go back to Traffic Safety at end of each day and put their handheld computers in a port to download. PSO Kirtley believed that all warning tickets issued would be recorded on the handheld and then downloaded into the desktop computer. PSO Supervisor Perez said that as supervisor, she was responsible for downloading from the handhelds onto the computer at Traffic Safety. The next morning a “query” is run and the results are emailed to James Van Apeldorn at the Parking Violations Bureau. To her knowledge, everything that is dumped onto the computer is sent to the PVB and no information is removed before sending to Parking Violations. She has never opened up the report sent to PVB to see if it contains everything that was input into the handhelds.

There was a discrepancy in the amount of time the tickets are held onto before they are sent to the PVB. While PSO Perez said that it was done daily, James Van Apeldorn stated that the information is received weekly and sometimes 10 to 15 days later. Andrew Sterling stated that he gets the information every week on Friday. Chief Tuffey clarified matters a bit by saying that since November of 2008 the information is sent every day. Prior to that it was sent weekly.

The current system currently goes to a desktop, not a mainframe computer. The e-mail of tickets is sent to the City Hall's AS400, which is a mainframe. The information used to be sent by disc to City Hall and sometime in 2008, they started emailing the ticket information. Commander Flanger never opened up any emails or looked at any discs to see what was contained.

Andrew Sterling stated that he receives an email file from Traffic Safety. The program that is in use at City Hall checks the violation on the ticket, puts in the correct fine amount in and

then posts it to the PVB. It will put in a fine for all violations regardless of what was sent from Traffic Safety. He has never seen a ticket that does not have a monetary fine attached. He does not know if all of the information from traffic handhelds is submitted.

Treasurer Barnette confirmed that the system would look at the violation code and then put in the appropriate dollar amount to coincide with that code. The particular system will not allow the acceptance of any violation that does not have a fine amount. The system cannot accept a zero-fine ticket. She clarified that the system would not allow the city to accept a zero receivable; her books would not balance. The system prints out a report of all the tickets that have been rejected because the ticket does not have a violation code. Mr. Van Apeldorn stated that this report of tickets rejected is more or less a worksheet and he corrects what he can and then throws out the report eventually. He has no idea how many get rejected each time. There is usually an error someplace whether it be a vehicle type or a state.

Supervisor Perez stated that there is no way of knowing when the warning tickets are issued, if it is because of VIP status or because it was a decal or placard unless the PSO wrote in the comment area. These comments would be in system. In addition, all PSO's can write no fine tickets at any time within their discretion.

Paper tickets that are not in the computer system are sorted by Supervisor Perez and mailed to city hall. They are not entered into the computer system at Traffic Safety. Police officers and PSOs without handhelds write paper tickets. A summary of the number of tickets is kept by Traffic Safety. The PVB inputs all handwritten tickets. The Police Supervisor goes through tickets at each police division, and tallies up their tickets. They then forward them to the PSO Supervisor who counts them up for productivity reports, bundles them, and then forwards them to the PVB. They are just counted for the number of tickets and no count is kept of what they are written for.

Commander Flanger indicated that each handwritten ticket has a serial number. There is no process in place for accounting for missed handwritten tickets. He said it would be impossible to try to sort handwritten tickets by serial number manually. Mr. Van Apeldorn said that the handwritten tickets come down to the Parking Violations Bureau up to ten to fifteen days after they are written, sometimes sooner. When they come down to the office, they are given out equally amongst the clerks in the office, and they post them on the system. He keeps a count on his computer of how many come down which has the total of the handheld and the written tickets

together. The clerk enters all that information into a database so there is a total record of the number of tickets written, the monetary fines, what the violations were for, et cetera.

Commander Flanger was notified by letter from T2 that the system was going to stop being supported as of the end of 2008; they were no longer going to sell the system and support would be ending. By the end of 2008, the department was down to 8 or 10 functional handhelds. Currently, the majority of tickets were being handwritten as the department was down to three functional handhelds. The Commander feels that it hasn't really impeded productivity but it just makes it more difficult to access productivity numbers or run any reports. He did note that the PSOs cannot find scofflaws using handwritten tickets and revenue is down on that.

Commander Flanger started examining new handheld systems in 2006 and set up a committee in the beginning of 2008. The committee consisted of Michael Klein from the Parking Authority, James Van Apeldorn, PSO Mindy Perez, Eric Link and Sean Palladino from the Parking Authority. They were just looking at ideas for a new system. Treasurer Barnette stated that she was not part of a committee to review handhelds. She was left off of a contact list for a meeting and she has a memo from Michael Klein, the executive director of the Albany Parking Authority, in which he was very apologetic for not inviting her to the meeting to begin review of the system. She did later meet with him alone and they spoke about using a vendor by the name of Complus to start upgrading the computer system. Likewise, Mr. Van Apeldorn did not consider himself part of the committee to review the handheld system. He attended a meeting in October 2008 not knowing that it had anything to do with them purchasing new handhelds. He stated that the committee asked him questions about what they should do and he informed them that he had "nothing to do with that" and that they had to go through the "proper channels." Treasurer Barnette had no knowledge of how many handhelds were available or what percentage of tickets are currently being handwritten.

No warning tickets have been issued since the end of November after the first newspaper article about ghost tickets. Until the conclusion of the investigation there is no procedure in place, everybody gets a ticket unless it's a marked police vehicle. All law enforcement personnel and other agencies have to submit an excuse in writing and request that the ticket be dismissed. Subsequent to start of the Common Council investigation, the Police Department queried agencies across the county, and every agency that was asked runs into the same problem with

officers going to court. They all handle it differently but all of them have the capability in their software packages of either a placarding system or an exempt listing.

***Findings.***

While investigating the issue of no fine tickets, the Common Council found a prime example of an inefficient government bureaucracy in regard to how the replacement of the computerized handheld system used by the PSOs was handled. This issue was not the original focus of the investigation but clearly has to be addressed.

The technology for a system that collects over \$3 million dollars in parking fines, boot charges and parking ticket surcharges, is, and has been, outdated for years. This raises concerns about the adequacy of security and backup of the APD computer system. The handhelds were downloaded to a desktop daily, not a mainframe computer. If the desktop crashed, the information would be lost. Up until the start of this investigation, the information was transmitted weekly (if not longer) to the Parking Violations Bureau by computer disc, a process that is out of sync with today's technology and inefficient.

Commander Flanger, PSO Supervisor Perez and PSO Kirtley all testified that everything from the handheld is downloaded and that no one at Traffic Safety intentionally removes any information before transmittal to the Parking Violations Bureau. Treasurer Barnette and Computer Specialist Sterling testified that the computer system used would not allow a no fine ticket to be entered into the system and they would not appear on the reports that are produced. These tickets are not accounted for in the transmission to the Treasurer, and it appears that they are either not transmitted by the system used by the APD or not received by the system used by the Treasurer. However, the records do exist on the APD desktop computer at Traffic Safety, since they were used by the APD to respond to the Common Council's request for copies of ghost tickets and the VIP list. The Common Council does not have access to either of the computer systems in question and has not received information from either department as to how this happened. One conclusion that could be drawn is that these documents are in fact "warning tickets" and therefore not recorded by the Treasurer's office since no revenue could be collected based on the ticket that was issued.

The Council is disturbed by the length of time it has taken to replace the current handheld system and having to revert to primarily handwritten tickets. The Police Department was given warning far in advance of the inability to repair or replace the current handhelds. While they

allege that this does not impair their ability to issue tickets, only time will tell whether this holds true. It certainly does impair their ability to catch parking scofflaws as well as adds hundreds of hours of time to the Parking Violation Bureau's staff time to input all of the handheld tickets. It is also discouraging to find that neither the Treasurer nor the Director of PVB has participated with the committee established to review new systems and write an RFP, even though the purchase of a new system could dramatically change the work of the PVB, the computer system used by the PVB and Computer Services, and the method and ease of collecting parking ticket revenue. Treasurer Barnette stated that her department was not involved with the selection of a new system despite being aware that a new system was being researched.

### **INTERNAL CONTROLS OF THE TREASURER**

Initially and throughout the investigation, the Treasurer was not forthcoming with information requested by the Common Council which raised concerns about the internal controls of that office and the ability to track and report parking ticket information. When she did comply, she provided documents and reports, but not those actually requested by the Council. A full listing of the documents requested and received is provided in the document list at the end of this report.

The Treasurer stated in her testimony of March 30, "Until recently I had no knowledge of any bull's-eyes or placard system, ghost tickets, no-fine tickets or VIP list or an exempt system." On May 6, in a letter sent to the Times Union she stated, "The city's Corporation Counsel has advised me that there appears to have been seven "warning tickets" issued to my city vehicle since 2003." The Corporation Counsel made the Treasurer aware of these tickets during the course of responding to a Times Union FOIL request. It was also disturbing when revealed in a subsequent FOIL request that a vehicle registered to PVB Director Van Apeldorn's wife was issued seventy no fine tickets. This calls into question the accuracy of testimony given that evening.

#### ***The lack of any standard policy for the cancellation or forgiveness of tickets***

At the beginning of the investigation, the Common Council requested a copy of any written policies of the Treasurer or PVB relating to the reducing or forgiveness of tickets. The Council did receive a letter from the Treasurer on March 12 that indicated that no policy existed, formal or informal, on ticket forgiveness. The State Comptroller recommended after their 1997

audit<sup>3</sup> that, “The mayor and treasurer, each of whom oversee different aspects of the operations, should adopt a comprehensive written policy addressing parking ticket issuance, cancellation, collection and enforcement.” During her March 30 testimony, the Treasurer, corrected her earlier written statement, stating that there did exist a parking violations bureau manual or in her terminology, “a guideline” for the cancellation and collection of tickets. She did state that these “guidelines expressly set forth in writing “the standards for processing and adjudication of validly issued parking tickets.” In further testimony, she stated that written policies for forgiveness of tickets do not exist. In trying to clarify her answer, she stated that she believed that guidelines exist but not any written policies.

Treasurer Barnette also testified that she was never aware that the Times Union had made a FOIL request for policies relating to the dismissal or cancellation of tickets or that the Corporation Counsel had responded that such policies did not exist. In fact, she stated that she was rendered an opinion from the Corporation Counsel at some point in time that stated despite what the State Comptroller said in their 1997 audit and the later adopted recommendations of the Common Council, she did not need to put together a policy because unique situations could arise making it difficult to have an all encompassing policy. The Common Council still awaits a copy of said opinion.

The Treasurer later did submit what she considered to be the written guidelines for the City of Albany PVB. What was received was not a comprehensive policy or manual. What was received was excerpts from the NYS Vehicle and Traffic Safety Law and excerpts of written policies from Buffalo and Rochester.

Treasurer Barnette believes that the PVB handles each person who presents themselves at the parking violations bureau on a case-by-case basis. This is problematic as there are no written guidelines specifically adopted for use by the adjudication clerks.

Citing the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996, among other legal reasons, the Treasurer would not initially provide copies of tickets forgiven in 2008, for fear that privacy rights might be involved. The Council ultimately did receive a copy of all tickets forgiven with a written excuse in 2008. The Treasurer has claimed that it would be impossible to try and write a policy to guide ticket forgiveness. After a review of

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<sup>3</sup> City of Albany, Report of Examination 97M-60, Conducted by the Division of Municipal Affairs Bureau of Examinations.

the tickets for 2008, it seems fairly easy to divide the excuses into categories and draft general guidelines as the other major cities in the state have already done. This may not cover every single situation that could arise from now into the future, but the majority of requests for ticket forgiveness could be addressed so that the people of Albany could be insured that all requests are handled fairly.

### ***Handwritten tickets***

As stated by Mr. Van Apeldorn, the PVB has no process by which they reconcile the number of tickets written to the tickets received or the number of handwritten tickets given out. Treasurer Barnette stated that she believes this was the role of the City Comptroller. Mr. Van Apeldorn also stated that there is no accounting or internal controls to reconcile the number of tickets written versus the number of tickets processed. While Mr. Sterling stated that Computer Services could run a report that would show gaps in ticket numbers and the Common Council did request this in writing from Treasurer Barnette, the information received was given by year in the Notepad program without further explanation. In Notepad, there is no way to categorize information and there were thousands of tickets issued each year. There were very small portions in sequential order. The only logical conclusion after review of the computer file was that the Treasurer's Office does not use a computer program or other system that can put ticket numbers in sequential order per year. Therefore, it can be further concluded that there are no internal controls to compare the number of written tickets issued to the number of tickets presented for payment or forgiveness. This is especially of concern since most of the tickets at this point in time are being handwritten since the breakdown of the handheld system. There is no control over the number of tickets written and the number paid.

### ***Reporting on duties required under charter***

The Treasurer was unable to provide a report listing the value of parking fine tickets written per year, and the amount of fines collected, forgiven, reduced or dismissed and the amount remaining uncollected for each year for the year 2002 to date. This information was requested by the Council and while the Council did receive a rather confusing summary of tickets which contained none of this information, the Treasurer was unable to compile this type of basic report which is seen by the Council as a function of her office.

## **RECOMMENDATIONS**

### **Bull's-Eye Stickers**

The fundamental issue is that a designation authorized outside of the city structure was recognized by city personnel as being exempt from obeying local parking laws. Regardless of whether or not parking accommodations should be made for police officers required to appear in court, it is simply unacceptable for a non-governmental organization to devise a system to circumvent local laws. It is even more unacceptable that the system found its way into the training of Public Safety Officers, resulting in the “unofficial” designation becoming an “official” parking exemption.

- The APD should develop a clear policy directive that “unofficial” designations shall not be used for purposes of according vehicles parking privileges.
- The APD should develop clear written policies on recognition of official vehicle placards, including maintenance of a current listing of outside government agency placards that are accorded recognition. These policies should be submitted to the Common Council for review and comment.
- The APD should develop written standards for the issuance and use of City of Albany official vehicle placards which shall be for both short-term and long-term use. These standards should be submitted to the Common Council for review and comment.
- The APD should examine the feasibility of identifying dedicated parking in proximity to court facilities as a way to address parking needs of officers and other official personnel when required to make a court appearance.
- The APD should issue an annual report in January of every year to the Common Council on parking issues and concerns for the prior year, including information on PSOs, the handheld computer system along with statistical information on parking tickets issued.

### **VIPs/Exempt Listing**

There has yet to be presented a compelling reason for establishing a VIP list and it seems that any existing one would always be subject to abuse and personal privilege. Marked cars are easily identified and a policy can be developed and written that details the circumstances under which they are exempt. Drivers of city cars should be encouraged to park legally, or with a placard system if necessary that is tracked for usage. Official cars issued tickets should submit them to superiors who can verify that the drivers were on city business and the tickets can be forgiven. This provides for a paper trail and transparency.

- The APD should discontinue the use of a VIP/Exempting Listing System unless a compelling reason for maintaining such a system can be established.
- In the event that an exempt listing system is used, the APD should develop clear written policies with regard to the policy purpose of an exempt listing system which includes at a minimum:
  1. written standards for inclusion
  2. written pre-approval with justification;
  3. an automatic expunge date not to extend beyond one-year of initial entry;
  4. periodic review of policies and procedures.

### **PSO Training**

The lack of written standards for the training of Public Safety Officers and methods of enforcing parking violations is one of the factors that contributed to recognition of “unofficial” designations for purposes of parking enforcement.

- The APD should develop clear written policies for the training of PSOs with regard to parking enforcement issues.

### **Treasurers Office**

The Treasurer's office should report to the Common Council on the status of implementation of Section 90-3(C) of Chapter 90 of the Code of the City of Albany as added by Local Law L – 2008 which requires effective May 4, 2009:

- "... establish(ment) and adopt(ion) of comprehensive written policies and procedures to govern and direct the processing and enforcement of parking violations; such procedures shall include mechanisms to periodically reconcile issued parking tickets to tickets paid, dismissed, outstanding and voided."
- That the Parking Violations Bureau report to the Common Council on a quarterly basis "the number of parking tickets issued, paid, dismissed, outstanding and voided, and the value thereof, within each calendar quarter."

In addition:

- The Treasurer's office, in cooperation with the APD, should develop internal controls capable of identifying gaps in tickets not transmitted to the Treasurer's office and their status.
- An independent audit of parking tickets should be conducted each year to validate collection and enforcement practices within the Parking Violations Bureau; this requirement can be incorporated into the city's annual outside audit.
- The Treasurer's office with the APD should develop standard policies for the issuance, maintenance and transmission of handwritten tickets.

### **Handheld Replacement System**

It is disturbing that a replacement system for current handhelds is not in place. This contributes to an erosion of accountability and internal controls on issuance and tracking of parking violation tickets. It is imperative that a handheld replacement system be purchased and put into use.

- There needs to be adequate supervision, security and backup around the process by which the handhelds are downloaded and the information transmitted to the PVB.
- There needs to be agreement and cross training between the police department and the Treasurers office on the programming for the handhelds that provides for the appropriate control of tickets missing, tickets written, fines applied.
- All tickets issued from a handheld, with or without a fine designated, must be included in transferred information and must be accounted for by the PVB.
- All ticket information electronically transferred between agencies should be made through a secure system.
- An interagency work group which includes clear representation of the APD, Parking Authority and Treasurer's office should be established to monitor and review polices and procedures related to the existing system and the need and process for securing replacement systems in the future.

### **Processing of No Fine Tickets**

Like the exempt list, we have yet to hear a compelling reason for continuing no fine tickets. If no fine tickets are to be used, there needs to be clear standards.

- Written policies and procedures should be developed for determining their use.
- Systems should be programmed to ensure that all ticket information is forwarded from the police department to the parking violations bureau.
- A process by which all tickets are accounted for, including no fine tickets and those that, for some reason, never enter the system should be developed.

- There should be regularly generated report that details who received them, a description of the violation and a reason for the no-fine status.
- Establish reporting guidelines that facilitates identifying the vehicles issued no fine tickets and clearly states the number of no fine tickets a vehicle has been issued.

## DOCUMENTS REQUESTED– PARKING TICKET INVESTIGATION

*From the Treasurer's Office to date:*

**Any written policies, or any written or computerized information relating thereto, put in place after the 1997 State Comptroller's audit of City of Albany parking issues (Audit #97M-60), including policies on ticket forgiveness:** The Council President did receive a letter from the Treasurer which seemed to answer this question in the negative. No written policy was provided and it would appear that none was ever adopted based on the State Comptroller's recommendation that, "The mayor and treasurer, each of whom oversee different aspects of the operations, should adopt a comprehensive written policy addressing parking ticket issuance, cancellation, collection and enforcement." The City Treasurer did later say in her formal testimony that guidelines exist. These guidelines were submitted to the Common Council and are discussed in the above report.

**A report listing any and all procedures in place, formal or informal to prevent the chronic request by specific individuals for ticket forgiveness:** Again, the Treasurer's letter indicated that no policy exists, formal or informal, on chronic requests by specific individuals.

**Any existing written memorandum, or any written or computerized information relating thereto, on the financial impact and lost revenue of using bull's-eye stickers and VIP parking lists:** Both the Treasurer and the Comptroller's Office have stated that no such information exists.

**A serial number listing, in sequential order, of parking tickets received by the PVB by year for the year 2002 to date.** While information was received in response to this request, it was not in sequential order and could not be put in sequential order and therefore, considered unresponsive.

**Copies of forgiven parking tickets, with the accompanying written explanation, for calendar year 2008:** Boxes of information were received representing the tickets forgiven with a written explanation for calendar year 2008.

*From the Police Department to date:*

**Copies of no fine tickets in the form of duplicate parking summons issued to vehicles since January 2003:** (In essence, the information made available to the Times Union): These parking summonses were provided to the Common Council and amount to 3515 pages. The summonses are separated by license plate number and the 3515 pages represent no-fine tickets issued to 165 different vehicles. Some vehicles have very large numbers of summonses while others have only one. The vehicles are not identified by owner, but only license plate number. In addition, there is no way to tell from the summonses why the no-fine ticket was given – because the vehicle was on the exempt list, had a bull’s-eye sticker, or for some other reason. The summonses also list street and do not list any cross streets so it is impossible to say whether the vehicle was involved in official business although many of the tickets do seem to be in the area of city hall and the courts.

**The entire unredacted VIP parking list annotated with why each individual was on the list and how long they were on the list:** The Council was given a copy of the exempt list and the same exempt list including registered owners. The first list is meaningless on its own as it only lists license plate numbers. The second list with owner names is more relevant. There are 275 vehicles on this list. While this list does contain redacted license plates, there are only 52 redacted plates, which the Council was told represents undercover police vehicles, state police vehicles and other law enforcement. There are twenty City of Albany owned vehicles and 150 APD vehicles. The list does not indicate whether these are private vehicles or city police vehicles. The remaining vehicles belong to private individuals or companies or state agencies. There is no indication why these owners were on the list or how long any of these vehicles had been on the list.

**APD Civilian Employee Orientation Manual, job descriptions for PSO and job postings, PSO zone descriptions and map:** These additional documents were submitted by the Police Department and were not requested by the Council. At this point, the documents do not contain anything relevant to the investigation.

*Documents requested from the Treasurer's Office and the Police Department and not yet received:*

**Any written memorandum, or any written or computerized information relating thereto, directing Public Safety Officers or other individuals issuing tickets on the procedures for issuing no fine tickets or warnings. If no written information exists, please prepare a report detailing the informal policies in place.** Various individuals have testified that no written information exists and none has been created in response to this request.

**Contracts with vendors, specifications and programming instructions related to the T2 RADIX Handhelds or any other handhelds utilized by the PSO's.** These documents have not yet been received.

**Any written information or informal policies describing how bull's-eye stickers were issued or how names were added to the exempt parking list. How were these lists were maintained.** All departments have maintained that no written or informal policies existed.

*Documents requested from the Treasurer's Office and not yet received:*

**A report listing the value of parking fine tickets written per year, and separately stated for each such year the amount of fines collected, forgiven, reduced or dismissed and the amount remaining uncollected for each year for the year 2002 to date.**

*Documents requested from the Police Department and not yet received:*

**All written training materials provided to Public Safety Officers.** Individuals from the Police Department have testified that no written training materials exist for public safety officers other than the APD Civilian Employee Orientation Manual.

**Provide a written report on the number of no-fine tickets issued since 2003, include the violation, the location where the ticket was issued and the reason no fine was given.**

**APPENDIX  
RELEVANT DOCUMENTS**

Letter dated January 14, 2009 to Mark Pattison, Executive Deputy Comptroller for the State of New York from the City of Albany Common Council

Letter dated February 2, 2009 to James Lyman and Christian Mesley from President Pro Tempore Conti on behalf of the Common Council.

Exempt listing No. 1.

Exempt listing No. 2.

Letter dated February 24, 2009 from the Acting City Comptroller Bennett.

February 25, 2009 response from the State Comptroller.

Letter dated March 2, 2009 from the Treasurer Barnette.

Letters dated March 6, 2009 to James Lyman and Christian Mesley from President Pro Tempore Conti on behalf of the Common Council.

Letter and accompanying documents dated April 2, 2009 from Treasurer Barnette's attorney. City of Albany Parking Violations Bureau Guidelines Foreword. This document was lengthy and the attached documents were included in it. All of the documents provided are available for review.

A local law authorizing the Traffic Court of the City of Albany to establish a Parking Violations Bureau.

Method to fill out parking summons with a plea of guilty or not guilty and how to pay parking fines.

Method for obtaining pre-trial conference with Corporation Counsel on plea of not guilty.

Method for trial judge to make determination or render default judgment.

Method to appeal a judgment to the Albany County Court from the Albany City Court.

Listing of notices for non-payment sent out.

Sample notice of unpaid parking fine (4).

NYS Vehicle and Traffic Law Section 241 –Statute of Limitations (2).

Immobilization or tow of Vehicles.

Traffic Court Appearance Letter for vehicle towed or booted.

Article X City Code of Albany, Towing, Storage and Immobilization of Vehicles.

Article XI City Code of Albany, Payment of Parking Fines by Credit Card.

Form letter for review of Parking Violation inquiry.

Form letter for returned check.

Parking Ticket complaint form.

Form letter scheduling pre-trial conference with Corporation Counsel.

Form letter scheduling trial.  
Form letter to officer setting trial date.  
Form letter for non-appearance in trial court.  
Albany Police Department parking ticket review form.  
List of parking regulations.  
NYS Department of Motor Vehicles Parking Scofflaw and Suspension Program.  
City of Rochester Guidelines for Adjudication Clerks.

Common Council subpoena issued April 6, 2009.

Letter dated April 9, 2009 to Treasurer Barnette from President Pro Tempore Conti on behalf of the Common Council.

Letter and accompanying documents dated April 20, 2009 from Treasurer Barnette's attorney.

Sample pages from disc provided. The disc contained several hundred pages of information.

Reports from 2007, 2008 and to date 2009.

Letter dated April 29, 2009 from Treasurer Barnette's attorney. Accompanying documents are voluminous and therefore, not attached.

Letter dated May 5, 2009 to Treasurer Barnette's attorney from President Pro Tempore Conti on behalf of the Common Council.

Letter dated May 6, 2009 from Treasurer Barnette regarding warning tickets issued to her city vehicle.

Common Council subpoenas issued May 18, 2009.