



City of San Diego

Councilmember Christopher Ward, Third District  
Councilmember Monica Montgomery, Fourth District  
Councilmember Scott Sherman, Seventh District

**MEMORANDUM**

DATE: April 25, 2019

TO: Council President Georgette Gómez  
City Attorney Mara Elliott

FROM: Councilmember Christopher Ward

Councilmember Monica Montgomery

Councilmember Scott Sherman

RE: Vehicle Habitation Ordinance

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The City of San Diego has an obligation to provide clean, healthy and safe neighborhoods without criminalizing individuals and families living out of their cars due to a lack of available housing options. In light of the Ninth Circuit Court's decision in *Desertrain* and the Southern District Court's August 21, 2018 injunction of San Diego Municipal code 86.0137(f), a new constitutional legal framework must be created to regulate vehicular habitation.

Expanding safe parking programs, combined with a constitutional and enforceable vehicular habitation ordinance, will allow a pathway for those who are truly in need to access services and work towards permanent housing, while discouraging those who take advantage of our public resources and create a public nuisance.

Any person unable to enroll in a safe parking program due to the lack of space should be able to safely stay in their vehicle without risk of citation.

In light of the discussion on this item at the April 17 meeting of the Public Safety and Livable Neighborhoods Committee, we offer the following priorities for a more comprehensive system to address the issue of vehicular habitation.

## **Safe Parking**

In addition to the recent safe parking expansion announced by Mayor Faulconer, we propose the following:

- Each council district without an operational safe parking lot shall identify at least one mile of industrial or commercial zoned area(s) that will allow homeless San Diegans to use their vehicles for dwelling.
- A permit system shall be developed and implemented to allow individuals to safely be in their vehicle in the designated zones. Permits will be obtained and regularly renewed through a network of service providers throughout the City. The permit application will serve as a touch-point into our regional homeless information system and establish opportunities to help the applicants resolve their homelessness.
- The development of the permit system and implementation process shall be done with the input of those experiencing homelessness and/or with lived experience.
- The use permit will not be visible on the vehicle or to the public, but rather connected to the system via the vehicle's license plate or unique identifying feature. This will help protect against inappropriate citations and preserve the anonymity of the individuals.
- Resource maps shall be available online, at libraries, and via coordinated outreach to provide information on permissible areas and compliance with the permit process. Included in the resource maps should be information for 24-hour restroom facilities, food bank sites, and related services.
- After enrolling in a safe parking program or permit process, and regardless of current housing status, any related parking infractions incurred by the individual within the prior year shall be expunged.

## **Implementation & Review**

Administrative regulations and implementation guidelines should reflect the goals of the Council not to criminalize individuals and families experiencing homelessness who are working towards permanent housing, and account for the legal constraints identified in the relevant court decisions. Therefore, Council should receive regular updates on enforcement data to better understand the population living in vehicles, performance of the safe parking programs, and hear from individuals experiencing homelessness and other community members regarding the impacts of the new ordinance.

We ask that the City Attorney provide updates to Council to remain abreast of any pending litigation and the constitutional status of the City's (and other jurisdictions') ordinances and guidelines, as this issue evolves further in future court decisions.

## **Enforcement**

We appreciate the commitment made by the Police Department at the April 17 meeting of the Public Safety and Livable Neighborhoods Committee to utilize an approach of progressive enforcement that first seeks to educate and connect people with safe parking programs.

It is our strong desire not to enter a counterproductive cycle of issuing tickets, impounding, and jailing people who have no ability to comply. Financial penalties are appropriate in circumstances where individuals do have the ability to comply with the law and choose not to. Prosecutorial discretion is likely the best tool for making this determination, therefore we request the following amendment to the vehicle habitation ordinance:

- [\(f\)\(5\) Violators shall be eligible for referral to a prosecutorial led diversion program.](#)

Additionally, we believe the timeframe for enforcement should be amended as follows:

- (f)(1) between the hours of ~~6~~9:00 p.m. and 6:00 a.m.; and

Although described in the staff report, it is unclear how individuals offering the sale, lease, rental, or charter of vehicles for vehicular habitation on public streets would held responsible. The final ordinance should contain language ensuring that the city has a mechanism for fining the host, not the customer, in such a transaction.

### **Conclusion**

We look forward to working with you to achieve the above goals.

Finally, the residents of the City of San Diego bear disproportionate costs, both fiscal and to the public health and welfare, as a result of being the only municipality in a region of 19 local governments to have been the subject of litigation and a court order from enforcement of a prohibition on vehicular habitation. We therefore request the Mayor's office of Government Affairs pursue strategies with our regional cities, the County, and the Regional Task Force on the Homeless to increase capacity for safe parking throughout the region and create complementary enforcement mechanisms for standardization. We ask the Mayor to consult with the County Public Health Officer and the California Department of Public Health to identify what aspects of vehicular camping in public right of ways pose the greatest risks to public health and safety, identify mitigation strategies, and pursue legislation or regulatory changes as necessary to implement solutions to preserve public health. We will separately engage with the Regional Task Force on the Homeless' Board of Directors to adopt a resolution for the 17 other cities and the County formally requesting their cooperation in a comprehensive regional legal framework to address vehicular habitation in public right of ways.

Cc: Aimee Faucett, Chief of Staff, Mayor Kevin Faulconer  
Robert Vacchi, Deputy Chief Operating Officer, Neighborhood Services  
Keely Halsey, Chief of Homelessness Strategies & Housing  
Jessica Lawrence, Director of Finance Policy & Council Affairs