

January 8, 1990

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REPORT TO THE COMMITTEE ON TRANSPORTATION AND LAND USE
CARS PARKED FOR SALE ON PUBLIC STREETS

By memorandum dated September 26, 1989, Councilmember Ron Roberts, Chairman of the Transportation and Land Use Committee, forwarded to the Assistant City Manager and Assistant City Attorney for review and report to the Committee at its first January 1990 meeting, a communication item relating to a Newport Beach ordinance on displaying cars-for-sale on public streets. By separate memorandum dated October 31, 1989, Mr. Paul Grasso, forwarded a second communication item relating to a Thousand Oaks ordinance on displaying cars-for-sale for similar review and report. Both communication items were initiated by the Rancho Bernardo Community Council, Inc.

The City Attorney's office has reviewed San Diego Municipal Code section 86.23, applicable case law, and both the Newport Beach and Thousand Oaks ordinances. A previous report by the City Attorney to the Committee on Transportation and Land Use dated July 25, 1986, dealing with the issue of cars parked "for sale" on public streets was also reviewed and is enclosed as Attachment A. As its conclusions are still valid, the report provides an indication of the options and the problems associated with regulating in this complex area. This report will focus on the San Diego Municipal Code section 86.23 and the issues raised in the two communication items.

San Diego Municipal Code Section 86.23

The use of streets for storage, service or sale of vehicles or habitation is restricted by the provisions of San Diego Municipal Code section 86.23, a copy of which is enclosed as Attachment B.

The first communication item describes Bernardo Center Drive in paragraph two as follows:

Our particular situation has worsened significantly over the last year with a growing number of dealer-owned vehicles being

displayed for sale. Both the bike lanes and red-curbings prevent the use of street parking by business owners who wish to provide customer and employee parking. Timed parking on a seven day a week basis presents the same drawbacks.

The mere storing, parking, or standing of dealer-owned

vehicles on Bernardo Center Drive is presently prohibited by San Diego Municipal Code section 86.23(d) which provides as follows: "(d) No person who deals in or whose business involves the sale, lease, rental or charter of vehicles shall store, park or stand any such vehicle upon any public street except while such vehicle is under lease, rental or charter by a customer"

Prior to its revision in 1980, San Diego Municipal Code section 86.23(a) provided as follows: "No person shall stand or park any vehicle upon any street while displaying such vehicle for sale or while selling merchandise therefrom unless authorized by other provisions of this Code."

By ordinance number O-15255 dated May 5, 1980, section 86.23(a) was amended by adding a sentence as follows:

A vehicle shall not be considered to be displayed for sale when it is parked on a public street if the vehicle contains a for sale sign not greater than eight and one-half inches (8 1/2") by eleven inches (11") and the sign is placed on a side window and presents no impediment to the view of the driver when the vehicle is in operation.

The purpose of the 1980 amendment to section 86.23 (a) was to allow private owners to advertise automobiles for sale by displaying a sign no greater than eight and one-half inches (8 1/2") by eleven inches (11"). Such legislative action was in response to the decision in *People v. Moon*, 89 Cal. App. 3d Supp.1 (1978), which held unconstitutional a Berkeley ordinance prohibiting the operator of any vehicle from parking upon any city street "for the principal purpose of demonstrating it or displaying it for sale, unless authorized by resolution of the Council."

Analysis of *People v. Moon*

In *People v. Moon*, a three-step test was applied to the challenged Berkeley ordinance. First, the Appellate Court assessed the importance of the governmental objectives. It

agreed that Berkeley had two important interests in prohibiting the advertising of automobiles on public streets. Such interests were the aesthetic interest in "prohibiting the use of such streets for used-car-for-sale lots" and the interest in "reserving the streets for their primary purpose of facilitating traffic movement and limited parking." *People v. Moon*, 89 Cal. App. 3d Supp. 5. Second, the Appellate Court assessed whether the Berkeley ordinance was necessary to achieve those city interest of aesthetics and traffic management. In deciding the ordinance was not necessary to protect aesthetics the Court

stated in *People v. Moon*, 89 Cal. App. 3d Supp. 5 - Supp. 6 as follows:

We hold that the ordinance is not necessary to any aesthetic interest which Berkeley may wish to protect. Barring all vehicles upon which there are "For Sale" signs is a meatcleaver approach where a scalpel is required. Certainly a vehicle which is festooned with large multi-colored flags and garishly painted signs may be aesthetic blight, but Berkeley could achieve its interest by restricting the size, quantity, and nature of the communication media without prohibiting all attempts to communicate the message. The Berkeley ordinance, then, is not necessary to an achievement of the goal of aesthetically pleasing streets and must thus be considered over-broad in banning even those "For Sale" signs which are in no way a threat to municipal charm. (Emphasis added).

The 1980 amendment to San Diego Municipal Code section 86.23(a) limiting signs advertising automobiles to eight and one-half inches (8 1/2") by eleven inches (11") was designed as a "scalpel" approach to preserve a valid city aesthetic interest.

Newport Beach Ordinance

The Newport Beach ordinance on displaying vehicles for sale provides as follows:

12.40.060 Parking for Certain Purposes
Prohibited.

No person shall park a vehicle:

(a) Upon a public or private street, parking lot or any public or private property

for the purpose of displaying such vehicle thereon for sale, hire or rental, unless the property is duly licensed and zoned by the City to transact the type of business at that location.

(b) Subsection (a) of this Section shall not prohibit persons from parking vehicles on private residential property belonging to the owner of the vehicle nor on the public street immediately adjacent to said private residential property.

It differs from the Berkeley ordinance analyzed in *People v. Moon* only to the extent that it permits display of a vehicle for

sale in front of an owner's residence.

The Newport City Attorney advised informally that owners are allowed to advertise a vehicle for sale so long as sale is not the primary purpose for which the vehicle is parked. Criteria considered by Newport Beach in enforcement include the length of time the vehicle is parked, the location of the "For Sale" sign, the amount of vehicular traffic in the area, the number of legitimate businesses in the area the vehicle owner may be patronizing and the extent to which the area has in the past been used to display vehicles for sale. Proof of actual sales activity would also aid in a successful prosecution.

Vigorous enforcement given the Newport Beach criteria would be a formidable task. Even if the enforcement burden could be managed, the Newport Beach ordinance would still not meet the constitutional test set out in *People v. Moon*.

The Thousand Oaks Ordinance

The Thousand Oaks ordinance regulates the parking of vehicles for sale within certain designated areas of the City. Pursuant to the ordinance, the City Council by resolution directs the City Engineer to post certain specified areas as restricted zones. Each zone so restricted will be designated only upon certain findings by the City Council. The Thousand Oaks ordinance, the City Traffic Engineer's memorandum of January 18, 1989, and the Director of Public Works memorandum of April 11, 1989, are enclosed as Attachments C, D and E, respectively.

The Thousand Oaks ordinance was narrowly drafted to address specific serious traffic problems identified by City Traffic Engineer studies. Such an ordinance would apply only to those areas or zones which demonstrated serious traffic problems. Bernardo Center Drive would not benefit from such an ordinance

because of the need for findings of serious traffic problems based on traffic engineering studies. City traffic engineers in several prior reports found no traffic safety problems at Bernardo Center Drive.

Summary

San Diego Municipal Code section 86.23(d) prohibits commercial dealers from storing, parking or standing their vehicles on any public street except when they are under lease, rental or charter by a customer. Dealers who merely store, park or stand their cars on Bernardo Center Drive would be in violation of this section.

The San Diego Municipal Code section 86.23(a) prohibits the display of cars for sale but exempts vehicles posting signs no greater than eight and one-half inches by eleven inches (8 1/2" x 11"). The exemption was designed to protect the city's aesthetic

interests as indicated in *People v. Moon*.

The Newport Beach ordinance completely bans the display of cars where the primary purpose is for sale. Since the Newport Beach ordinance is substantially the same as the Berkeley ordinance which was held unconstitutional in *People v. Moon*, it is not considered a viable option.

The Thousand Oaks ordinance offers an optional alternative to our San Diego Municipal Code section 86.23(a). However, such an ordinance requires several City Council findings before a restricted zone is established. Bernardo Center Drive would not benefit from such an ordinance because of the need for findings of serious traffic problems based on traffic engineering studies. City traffic engineers in several prior reports found no traffic safety problems at Bernardo Center Drive.

This report should be considered as complementary to the previous City Attorney Report marked as Attachment A.

If more specific questions arise, this office stands ready and willing to respond.

Respectfully submitted,
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City Attorney

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Attachments

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