

Item 50
6/4/19

ORDINANCE NUMBER O- 21072 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 06 2019

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 6,
DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 86.0137, RELATING TO USING A
VEHICLE FOR HABITATION.

WHEREAS, in 1983, the San Diego City Council (Council) enacted San Diego Municipal Code section 86.0137(f) (Vehicle Habitation Ordinance) pursuant to San Diego Ordinance O-16022 (Aug. 15, 1983) prohibiting using a vehicle as a place of habitation while it is parked or standing on any street; and

WHEREAS, the Vehicle Habitation Ordinance was the subject of a federal legal challenge in *Bloom, et al. vs. City of San Diego*, 17-cv-2324-AJB-NLS; and

WHEREAS, on August 21, 2018, the United States District Court for the Southern District of California issued a preliminary injunction prohibiting citywide enforcement of the Vehicle Habitation Ordinance; and

WHEREAS, the Southern District Court, in its preliminary injunction in *Bloom*, and the Court of Appeals, in its ruling in *Desertrain v. City of Los Angeles*, 754 F.3d 1147 (9th Cir. 2014) on a similar vehicle habitation ordinance, raised concerns about the ordinances being vague, including criticizing the use of the phrases “overnight” and “day-by-day”; and

WHEREAS, on March 7, 2019, in response to the Southern District Court’s preliminary injunction, the Council repealed the Vehicle Habitation Ordinance; and

WHEREAS, since the repeal, the City of San Diego (City) has witnessed a significant increase in, and has received numerous reports of, individuals living in vehicles; and

WHEREAS, this increase in vehicle habitation significantly impacts the quality of life of all City residents, including businesses and visitors, and detracts from a healthy and safe environment by deteriorating environmental quality, safety, tranquility, safe passage, and other similar values; and

WHEREAS, individuals residing in vehicles often lack access to safe and sanitary restrooms and trash receptacles, resulting in unsanitary conditions from improper disposal of human waste and trash; and

WHEREAS, the improper disposal of human waste threatens the health and safety of the public by increasing exposure to disease, including the Hepatitis A virus that spread through San Diego County in 2017; and

WHEREAS, since repeal of the Vehicle Habitation Ordinance, the City has received numerous reports of improper waste disposal and litter from vehicles, recreational vehicles, and oversized vehicles; and

WHEREAS, this conduct impacts the City's storm drains and threatens the environment and the City's ability to adequately protect its storm water management system and comply with applicable state and local law; and

WHEREAS, since the repeal of the Vehicle Habitation Ordinance, the City has received several reports of vehicles, including oversized vehicles and recreational vehicles, offered for rent to individuals for temporary habitation on City streets through online shared vacation rental platforms; and

WHEREAS, public property is not generally designed or intended for overnight use in the same way as a recreational camp site; and

WHEREAS, many individuals, who may have the means, choose not to avail themselves of available recreational camp sites and instead park on public property, not specifically designed or intended for overnight use; and

WHEREAS, the use of vehicles for habitation reduces on- and off-street parking in City neighborhoods with insufficient parking to accommodate residential parking needs; and

WHEREAS, many of these individuals use numerous parking stalls and public streets, for both parking and setting up furniture and cooking equipment nearby the vehicles, that prevent residents and visitors from accessing public parks, beaches, and other City facilities; and

WHEREAS, this use further interferes with lawful business activity on commercial property by reducing available parking for business customers and clients; and

WHEREAS, nothing in this emergency Ordinance is intended to interfere with lawful and ordinary uses of public property or to prosecute or regulate homelessness; and

WHEREAS, in addition to several privately operated shelters and support services available in the City, the City has opened three temporary bridge shelters and two safe parking lots available to individuals experiencing homelessness and who have resorted to their vehicles; and

WHEREAS, the City's bridge shelters and safe parking lots are operated by service providers that connect individuals experiencing homelessness with basic hygiene, services, access to medical care, means to build their income, housing opportunities, and other means for stabilization; and

WHEREAS, the City is diligently working to offer additional safe parking lots for vehicle habitation by individuals experiencing homelessness as an alternative to public property not specifically designed or intended for the purpose of overnight use; and

WHEREAS, the City is further working on outreach to educate the public about the Ordinance and the availability of safe parking for those in need of this resource; and

WHEREAS, nothing in this Ordinance is intended to interfere with an individual's ability to park or stay in one of the City's safe parking lots for vehicle habitation; and

WHEREAS, the City has an interest in balancing the needs of those individuals who inhabit their vehicles and the needs of all City residents, businesses, and visitors for clean, healthy, and safe public areas; and

WHEREAS, the Ordinance may be enforced as a misdemeanor or infraction pursuant to Chapter 1 of the San Diego Municipal Code and offenders may be eligible for referral to a diversion program, when appropriate; and

WHEREAS, the Council now desires to adopt an Ordinance prohibiting vehicle habitation; NOW, THEREFORE;

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 8, Article 6, Division 1 of the San Diego Municipal Code is amended by amending section 86.0137, to read as follows:

§86.0137 Prohibition of Use of Streets for Storage, Service or Sale of Vehicles or For Habitation

(a) through (e) [No change in text.]

(f) It is unlawful for any *person* to use a vehicle for human habitation on any street or public property, unless the street or public property is specifically authorized for such use by the City Manager, as follows:

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

- (2) at any time, within 500 feet of a residence, meaning a building used for living, including a house, condominium, apartment unit, or other similar dwelling unit affixed to real property; and
- (3) at any time, within 500 feet of a school that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. School for purposes of this section 86.0137(f) does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.
- (4) For purposes of this section 86.0137(f), evidence of human habitation may include observations, considering all the circumstances, that a *person* is using a vehicle for: sleeping; bathing; preparing or cooking meals; possessing or storing items that are not associated with ordinary vehicle use, such as a sleeping bag, bedroll, blanket, sheet, pillow, used bedding, kitchen utensils, cookware, cooking equipment, camping gear, food, water, personal grooming items, or containers of feces or urine. Evidence of human habitation also may include observations, considering all the circumstances, that: a *person* has obscured some or all of the vehicle's windows; there is litter, rubbish, or waste in or around the vehicle; there is furniture set up in or around the vehicle, such as chairs, tables, umbrellas, or portable cooking equipment; or

there is evidence of human urination or defecation around the
vehicle.

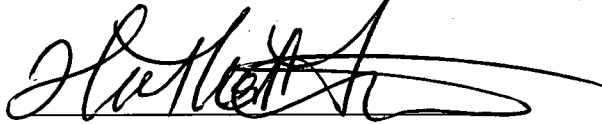
(g) through (i) [No change in text.]

Section 2. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Heather M. Ferbert
Deputy City Attorney

HMF:als
05/02/2019
05/15/2019 Rev. Copy
Or.Dept: Office of the Mayor
Doc. No.: 1956695_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUN 04 2019.

ELIZABETH S. MALAND
City Clerk

By Conni Patterson
Deputy City Clerk

Approved: 6/6/19
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

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Vehicles or For Habitation**

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

(2) at any time, within 500 feet of a residence, meaning a building used for living, including a house, condominium, apartment unit, or other similar dwelling unit affixed to real property; and

(3) at any time, within 500 feet of a school that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. School for purposes of this section 86.0137(f) does not include a vocational or professional institution of higher

education, including a community or junior college, college, or university.

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(g) through (i) [No change in text.]

HMF:als
05/02/2019
05/15/2019 Rev. Copy
Or.Dept: Office of the Mayor
Doc. No.: 1956693_2

Passed by the Council of The City of San Diego on JUN 04 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 06 2019.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By *Connie* for Connie, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on MAY 14 2019, and on JUN 06 2019.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By *Connie* for Connie, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 21072