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REPORT TO LAND USE & HOUSING COMMITTEE

LEGAL ISSUES REGARDING NEIGHBORHOOD PARKING PROTECTION AND PUBLIC SAFETY PROPOSAL

INTRODUCTION

At the Land Use & Housing Committee meeting on November 28, 2012, this Office was directed to address a number of legal issues regarding the proposed Neighborhood Parking Protection & Public Safety Ordinance, formerly known as the Oversized Vehicle Ordinance. The Committee members requested that we address the following questions.

QUESTIONS PRESENTED

1. May the City restrict the parking of non-motorized vehicles?

2. What is the City's authority to tow oversized and non-motorized vehicles?

3. Have there been any legal challenges regarding oversized vehicle ordinances in other jurisdictions since 2008?

SHORT ANSWERS

1. Yes, the City has authority under the California Vehicle Code to prohibit or restrict the parking of non-motorized vehicles on its streets.

2. The City may tow oversized and non-motorized vehicles if the vehicle has been cited with five or more notices of parking violations and the owner has not responded to the citations within 21 calendar days; or the City may tow a vehicle where parking is prohibited as indicated by posted signs.

3. There have been a few lawsuits filed on constitutional grounds regarding a jurisdiction's oversized vehicle ordinance which have focused primarily on discrimination against the homeless.

ANALYSIS

I. Restricting the Parking of Non-Motorized Vehicles

The California Vehicle Code (Vehicle Code) grants the City the authority to prohibit or restrict parking of vehicles on City streets. Cal. Veh. Code § 22507. We look to the Vehicle Code for guidance on whether the City may also restrict the parking of non-motorized vehicles. A "trailer" is defined as "a vehicle designed for carrying persons or property on its own structure and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon any other vehicle." Cal. Veh. Code § 630. A "trailer bus" is defined as "a trailer or semitrailer designed, used, or maintained for the transportation of more than 15 persons, including the driver, and includes a connected towing motor vehicle that is a motor truck, truck tractor, or bus." Cal. Veh. Code § 636. A "trailer" and a "trailer bus" are both defined as vehicles per the Vehicle Code. Therefore, because the City has authority to restrict parking of vehicles on City streets, the City may also prohibit or restrict the parking of non-motorized vehicles on its streets.

II. The City's Towing Authority

The Vehicle Code grants the City's peace officers authority to remove a vehicle from City streets. Cal. Veh. Code § 22651. Vehicle Code sections 22651-22711 establish when law enforcement personnel are authorized to conduct tows. It is unlawful for any peace officer or any unauthorized person to remove any vehicle from a highway unless authorized by the Vehicle Code.[1] Cal. Veh. Code § 22650. The relevant authority for peace officers to tow vehicles for parking in restricted areas are set forth in Vehicle Code sections 22651(i)(1) and (n).

The Vehicle Code provides two towing options to the City. A peace officer may remove and impound a vehicle when a vehicle has been issued five or more notices of parking violations and the owner of the vehicle has not responded to the citations within 21 calendar days. Cal. Veh. Code § 22651(i)(1). In addition, a peace officer may remove and impound a vehicle where the City, by resolution or ordinance, has prohibited the parking and authorized the removal of a vehicle in a designated area. Cal. Veh. Code § 22651(n). The vehicle can only be removed if a sign is posted providing notice of the parking restriction within that designated area. *Id.*

III. Legal Challenges Regarding Oversized Vehicle Ordinances in Other Jurisdictions Since 2008

A lawsuit was filed against the City of Los Angeles' oversized vehicle ordinance on constitutional grounds. The Legal Aid Foundation of Los Angeles (LAFLA) filed a federal lawsuit against the City of Los Angeles in late 2010 after the city adopted an oversized vehicle ordinance in Venice Beach. LAFLA alleged that the city adopted the ordinance in an effort to bar homeless people from illegally living in campers, trailers, etc. on the streets of Venice's neighborhood. The district court entered an order granting, in full, the defendants' motion for summary judgment, ruling that there was no legal merit to LAFLA's constitutional claims. LAFLA filed an appeal with the Ninth Circuit and the case is slowly making its way through the appeals process.

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[1] Vehicle Code section 360 defines "highway" as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street."

CONCLUSION

The City has authority to restrict the parking of both oversized and non-motorized vehicles. The City may tow vehicles that are parked in violation of the proposed ordinance if the vehicle has been issued five or more parking citations to which the owner has not responded within 21 days, or if the street is posted with signs notifying the public that vehicles will be towed.

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