

000653

COMMITTEE ACTION SHEET

52
01/06

COUNCIL DOCKET OF _____

Supplemental Adoption Consent Unanimous Consent Rules Committee Consultant Review

R -

O -

Proposed Ordinance Regulating the Sales Of Vehicles In the Public Right-Of-Way

Reviewed Initiated By PS&NS On 4/28/04 Item No. 2

RECOMMENDATION TO:

Approve the City Manager's recommendation pending the City Council's Budget deliberations.

VOTED YEA: Maienschein, Zucchet, Atkins, Lewis, Frye

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

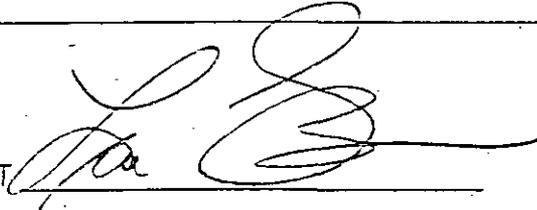
CITY MANAGER'S REPORT NO. 04-085

INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Pilot Program Locations

COUNCIL COMMITTEE CONSULTANT 

000655



52
01/06

THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: April 23, 2004 REPORT NO. 04-085

ATTENTION: Public Safety and Neighborhood Services Committee
Docket of April 28, 2004

SUBJECT: Proposed Ordinance Regulating the Sales of Vehicles in the Public
Right-of-Way

REFERENCE: None

SUMMARY

Issues

1. Should the City Council prohibit the sales of vehicles in certain areas within the public right-of-way?
2. Should the Governmental Relations Department pursue legislation that allows the issuance of citations to vehicles that display "For Sale" signs in areas prohibiting such action?

Manager's Recommendations -

1. Approve the prohibition of sales of vehicles in certain areas within the public right-of-way.
2. Pursue legislation to issue citations to vehicles who display "For Sale" signs in areas prohibiting such action. The Rules Committee authorized this action for the City's 2004 Legislative Program.

Other Recommendations - None

Fiscal Impact - This action requires the installation of signs at the locations on attachment #4 at an initial cost of \$65,900 and modifications to the existing parking ticket tracking system at a cost of \$2,500. A funding source has not been identified. If the Council adopts this action, this item will be referred to the FY05 Unfunded Need List.

BACKGROUND

For the last several years, a number of residents from various communities throughout San Diego have expressed concerns about specific streets in their neighborhoods that have become used car sales areas. Oftentimes where the activity occurs are main entrance streets to the community that have high traffic volume and visibility. The Transportation Department's Parking Management Division and the Police Department's Abandoned Vehicle Abatement (AVA) Unit enforce the 72-hour parking violation ordinance in order to keep these "parked until they are sold" cars moving. However, this ordinance is only effective for vehicles parked in the exact same location for over 72 hours. Some of these linear sales have become so popular that on the weekends the owners remain with the vehicles where interest and sales conversations are taking place. The residents driving the streets experience traffic congestion and have concerns about traffic safety for pedestrians and motorists alike.

According to the Department of Motor Vehicles, as staffing allows, they currently take enforcement action against unpermitted "dealers" as outlined in California Vehicle Code Section 11700. These enforcement actions are effective against prospective sellers who bring their cars to known car sales areas and then negotiate with an unauthorized street "dealer" to sell their vehicles. This Vehicle Code section would not, however, address the conditions where prospective sellers simply bring their own vehicles to known sales areas, park them there for display purposes, and then return less than 72 hours later to move their car. The actual sales transaction may not take place until later, and not on the street. According to residents, the "for sale" cars take valuable parking spaces, cause congestion, and bring safety hazards associated with people stopping in the street to window shop.

The City of San Diego had adopted an ordinance, City Municipal Code Section 86.23(a) that regulated the size and type of signs that could be used on vehicles for private sale (Attachment #1). The ordinance is seldom enforced and has not been effective for deterring the type of activity described at the above locations. In addition, a court challenge disclosed that such an ordinance was not consistent with state and federal laws. Subsequently, the City Council amended this section to comply with the court decision.

On March 26, 2003, the Public Safety and Neighborhood Services Committee directed staff to:

1. Draft an Ordinance that would designate certain streets as being off limits for car sales.
2. Get input on the draft ordinance from the Community Planners Committee (CPC) and other interested community stakeholders.
3. Compile a list of the designated off-limit streets for Committee consideration.

4. Request that the Governmental Relations Department pursue legislation changing State law to allow City regulation of "For Sale" signs on parked vehicles.

DISCUSSION

The Neighborhood Code Compliance Department held several meetings with residents from 12 different neighborhoods, staff representatives from the Neighborhood Code Compliance Department, Parking Management Division and the AVA Unit. The represented communities were: Carmel Mountain Ranch, City Heights, Clairemont, Linda Vista, Navajo, Pacific Beach, Rancho Bernardo, Rolando, Rolando Park, Serra Mesa, Tierrasanta, and University Heights. The group met over a period of seven months. After months of discussion with residents, it became apparent that finding a solution to the issue of on-street car sales that fit every community, and did not impact already limited parking, would be very difficult.

Community Planners Committee (CPC)

On May 27, 2003 staff attended the Community Planners Committee (CPC) and presented a draft ordinance designed to prohibit sales of vehicles at specific locations. Staff solicited comments from the CPC as well as a list of locations where the parking restrictions should apply.

The comments at the CPC acknowledged that such activity is undesirable within our communities, and in general supported the concept that some sort of action should be taken. The CPC directed that the individual community planning groups submit locations to be taken into consideration directly to Neighborhood Code Compliance. Attachment #4 lists the locations that were compiled during this process.

Changes to the California Vehicle Code

The Public Safety and Neighborhood Services Committee also requested that staff, through the Governmental Relations Department (GR), consider proposing changes to the CVC regarding the sale of vehicles in the public right-of-way. On January 13, 2004, Council adopted the City's 2004 legislative priorities authorizing GR to pursue changes to the CVC that would allow the issuance of citations to vehicles that display "For Sale" signs in areas prohibiting such activity. Staff will support GR regarding legislative action at the State level.

Proposed Ordinance

Currently, any ordinance that is enacted for the purpose of controlling this type of activity must be based on the California Vehicle Code (CVC). The only section in the CVC that regulates this type of activity is CVC Section 22651.9 (Attachment #2). This section specifically describes the process for establishment of these regulations and the methods for enforcement.

The Ordinance that staff has proposed adheres to CVC Section 22651.9 and it can be legally enforced following the processes outlined in that CVC Section. Staff believes that CVC Section 22651.9 is viable; however it is cumbersome for enforcement. The following will be our procedures to prohibit vehicles for sale activity:

- a) An Ordinance will designate the streets that have a prohibition for vehicle sales;
- b) Signs will be posted on the designated streets prohibiting sales of vehicles;
- c) Violators will be given a warning, and a list of other designated streets where the vehicle cannot be parked for sale;
- d) If the vehicle is found in violation within 30 days after the notice, but not less than 24 hours, the vehicle will be impounded.

This is the most expeditious response to the problem under the current CVC.

The advantage of our proposed ordinance is that it targets problem areas without affecting other areas. There are however, some disadvantages. It may cause the problem to be shifted to adjacent streets or neighborhoods. In addition, a database, available 24 hours a day, must be established to track vehicles that are warned. This is a criteria established by the vehicle code prior to the vehicle being impounded. The warning must include a list of all streets where there is parking prohibition for sale of vehicles. It requires extensive signage at each location. Enforcement must be targeted for specific locations and because this is primarily a weekend problem, enforcement would require the resources of the Police Department. In addition, when new locations have been identified, an ordinance will have to be approved by the City Council and signage will be required before enforcement can occur. The warnings will also have to be updated to include the addition of new prohibited streets.

SUMMARY

Staff was directed by the Public Safety and Neighborhood Services Committee to draft an ordinance that would designate certain streets as being off limits for car sales and to seek legislative changes regarding the sale of vehicles. Input was received from the Community Planners Committee, community planning groups, Community Service Centers, and the Police Department. Governmental Relations will pursue legislative action at the State level in order to facilitate local enforcement of this type of vehicle for sale activity on the public right of way. Attached to this report is a draft ordinance which is based in the current state law (Attachment #3). It contains a list of the selected streets for prohibition of vehicles for sale within the public right-of-way. (Attachment #4).

ALTERNATIVES

1. Create a citywide ordinance that would prohibit the sale of vehicles within the public right-of-way.

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2. Residents to continue to work with staff from the Transportation Engineering Division to implement solutions that work for their respective communities on a case-by-case basis. Several examples of possible actions are:
 - a) Red curb designations to prohibit parking for all vehicles on popular streets;
 - b) Installation of time limit parking;
 - c) Installation of parking meters;
 - d) Create a Residential Parking Permit District in combination with time limit parking.

3. Continue responding to this issue with currently available remedies on a case by case basis until the CVC has been modified to allow the issuance of citations for such actions.

Respectfully submitted,

Approved by,

Frank Belock, Director
Engineering and Capital Projects

George I. Loveland
Assistant City Manager

LOVELAND/FB/DVW

Attachments:

1. Municipal Code Section 86.23 (Revised May 26, 2003)
2. California Vehicle Code Section 22651.9
3. Proposed Ordinance
4. List of streets selected for prohibition of vehicle sales

psms 4/28/04 #4

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VEHICLES FOR SALE IN THE PUBLIC RIGHT-OF-WAY

Pilot Program Locations

Location	Beginning Limit	Ending Limit	Council District	Cost
Via De La Valle	Interstate 5	San Andres Drive	1	\$2,400
Midway Drive	Barnett Avenue	Sports Arena Boulevard	2	\$3,950
Home Avenue	Interstate 805	Home Avenue (East Limit)	3&4	\$6,700
Rancho Bernardo Road	Bernardo Center Dr.	Acena Drive	5	\$2,250
Clairemont Avenue	Interstate 5	Denver Street	6	\$1,200
National Avenue	35 th Street	36 th Street	8	<u>\$ 600</u>
		Installation Cost		\$17,100
		Software Cost		<u>\$ 2,500</u>
		Total Pilot Project Cost		\$19,600

Selection Criteria

- Geographic Distribution Throughout the City of San Diego
- Observations by Staff
- Potential Traffic Safety Issues
- Community Feedback
- Police Department and Parking Management Feedback

COUNCIL DOCKET OF _____

Supplemental Adoption Consent Unanimous Consent Rules Committee Consultant Review

R -

O -

City's Regulations of "For Sale" Signs on Parked Vehicles

Reviewed Initiated By PS&NS On 3/26/03 Item No. 3

RECOMMENDATION TO:

Forward the City Attorney's recommendation regarding repeal of the Municipal Code Section pertaining to the City's regulation of "for sale" signs on parked vehicles to the City Council:

VOTE: 5-0; Maienschein-yea; Zucchet-yea; Atkins-yea; Lewis-yea; Frye-yea

Develop an ordinance to address "for sale" signs on parked vehicles targeting specific streets identified by community groups and doing appropriate signing on those streets as a deterrent. Provide community planning groups an opportunity to review the draft ordinance prior to bringing it to the Public Safety and Neighborhood Services Committee. Request Governmental Relations Department include, as part of its legislative agenda, changing State law to allow City regulations of "for sale" signs on parked vehicles:

VOTE: 5-0; Maienschein-yea; Zucchet-yea; Atkins-yea; Lewis-yea; Frye-yea

VOTED YEA: (See votes above)

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

CITY MANAGER'S REPORT NO.

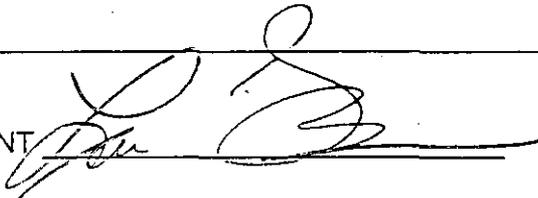
INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Ordinance No. O-2003-102; City Attorney's January 14, 2003, memorandum

COUNCIL COMMITTEE CONSULTANT



000665

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

CASEY GWINN
CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4199
TELEPHONE (619) 236-6220
FAX (619) 236-7215

January 14, 2003

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

CONSTITUTIONALITY OF THE CITY'S REGULATION OF "FOR SALE" SIGNS ON
PARKED VEHICLES

INTRODUCTION

In 1978, the California Appellate Court, Alameda County, 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." *People v. Moon*, 89 Cal. App. 3d Supp. 1 (1978).

The Court stated in *People v. Moon* that "Berkeley could achieve its interest by restricting the size, quantity, and nature of the communication media without prohibiting all attempts to communicate the message." At the time, the City of San Diego's [City] regulation of "for sale" signs on parked vehicles was similar to the one that was struck down by the court in the *Moon* case. Following the *Moon* decision, the City amended its regulation, Municipal Code section 86.23(a), to allow private owners to advertise automobiles for sale by displaying a sign no greater than eight and one-half inches by eleven inches. The City's amendment limiting the size of the sign was designed to preserve a valid city aesthetic interest within the interpretation of *People v. Moon*.

Later cases have held the regulation of parking to be preempted by state law, with local regulation permitted only to the extent it is expressly delegated to local authorities. *Rumford v. City of Berkeley*, 31 Cal. 3d 545 (1982). This report discusses the effect of the *Rumford* case and First Amendment concerns on the enforceability of the City's existing regulation of "for sale" signs on parked vehicles and recommends its repeal.

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DISCUSSION

Commercial speech is a constitutionally protected First Amendment right. *Linmark Associates, Inc. v Willingboro*, 431 U.S. 85 (1977). In *Linmark*, a Willingboro, New Jersey ordinance prohibited the posting of "for sale" signs on real estate. The government justification was that the signs would help stem "white flight" from the community. However, the Supreme Court found the regulation to be content based, and not even the stated rationale was sufficient to overcome the First Amendment protection provided to commercial information.

At issue in *Moon* was a Berkeley ordinance prohibiting anyone from parking on a city street for the principal purpose of displaying the vehicle for sale. In finding the ordinance an unconstitutional restriction on commercial speech, the court applied a three-step test for constitutionality (the *Linmark* test) by first assessing the importance of the governmental objective. The stated reasons for the ordinance, aesthetics and traffic management, were found to be significant municipal interests. Having established the importance of the governmental objective, the court moved on to the second step, determining whether the ordinance was necessary to meet the objective. The court found that prohibiting all for sale signs on vehicles was not necessary to meet the objectives of aesthetics or traffic management, and suggested that Berkeley could instead achieve its interest by restricting the size, quantity, and nature of the communication. The court found that the third step, balancing the governmental interests against the appellant's First Amendment rights, would not conclude in Berkeley's favor either, as its interests in aesthetics and traffic management were not nearly as significant as the objective claimed by the City of Willingboro, which was racial integration.

In response to the decision in *Moon*, the City amended the Municipal Code in 1980 to meet the "necessary" requirements of the *Linmark* test by restricting the size, quantity, and nature of the for sale sign, without prohibiting all attempts to communicate that the car was for sale. Currently, a sign on a car communicating that the car is for sale cannot be greater than eight and a half inches by eleven inches, and the sign must be on a side window in such a way as to not block the driver's view. Since the decision in *Moon*, the regulation of traffic, including parking, has been held to be preempted by state law, and local regulation is permitted only to the extent it is expressly delegated. *Rumford v. City of Berkeley*, 31 Cal. 3d at 550; 73 Op. Cal. Att'y Gen. 13 (1990). None of the express grants of authority to regulate parking would provide for a prohibition of "for sale" signs.

Applying a First Amendment analysis to the City's current regulation, governmental objectives of aesthetics and traffic management are important, but the ordinance would fail the second part of the test because the ordinance is not necessary to meet the objective. For example, the ordinance does not limit the use of other types of signs or parking for other reasons.

Due to recent challenges to the City's regulation, we have examined the ordinance in light of the decision in *Rumford*. In our opinion, the City's current ordinance prohibiting "for sale" signs larger than a particular size on parked vehicles is preempted by state law. There is no express grant of authority that would allow local regulation of this type. Furthermore, the

THE HONORABLE
MAYOR AND CITY COUNCIL

January 14, 2003

Page 3

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ordinance would not likely withstand scrutiny of its restrictions on commercial speech. In December 2001, the Parking Management Division of the Transportation Department suspended enforcement of this ordinance.

CONCLUSION

In light of the decision in *Rumford v. City of Berkeley*, the City's regulation of "for sale" signs on parked vehicles is preempted by state law. Furthermore, a First Amendment analysis of the restriction on commercial speech leads to the conclusion that the ordinance likely violates the First Amendment. We recommend that this Municipal Code section be repealed. An ordinance repealing this section has been prepared for the Council's consideration. The Transportation, Neighborhood Code Compliance, and Police Departments, along with the Abandoned Vehicle Abatement Authority, have been working with volunteers in several communities in an effort to address the specific parking issues in those communities.

Respectfully submitted,

CASEY GWINN
City Attorney

SMT:jp:520.1(043.1)
RC-2003-

000669

CORRECTED COPY

(O-2003-102)
COR.COPY 2

ORDINANCE NUMBER O-19170 (NEW SERIES)

ADOPTED ON MAY 6, 2003

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 6, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 86.23 RELATING TO USE OF STREETS FOR STORAGE, SERVICE, OR SALE OF VEHICLES, OR FOR HABITATION IN VEHICLES.

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

Section 1. That Chapter 8, Article 6, of the San Diego Municipal Code is hereby amended by amending Section 86.23, to read as follows:

§86.23 Use Of Streets For Storage, Service, or Sale Of Vehicles, or For Habitation in Vehicles Prohibited

- (a) It is unlawful for any person to stand or park any vehicle upon any street while selling merchandise therefrom unless authorized by other provisions of this Code.
- (b) It is unlawful for any person to stand or park any vehicle upon any street for the purpose of servicing or repairing such vehicle, except in an emergency.
- (c) It is unlawful for any person to stand or park any vehicle upon any street in any business district or upon any through highway for the purpose of washing or polishing such vehicle.
- (d) It is unlawful for any person who deals in, or whose business involves the sale, lease, rental, or charter of vehicles to store, park, or stand any such vehicle upon any public street, except while such vehicle is under lease,

rental, or charter by a customer. Section 86.23(d) does not apply to vehicles regulated by Sections 75.0101 through (75.0603 of this Code.

- (e) It is unlawful for any person whose business involves the repair, servicing of vehicles or vehicle components to store, stand, or park any vehicle on any public street after that person has accepted custody of the vehicle from the customer.
- (f) It is unlawful for any person to use a vehicle while it is parked or standing on any street as either temporary or permanent living quarters, abode, or place of habitation either overnight or day by day.
- (g) It is unlawful for any person to store, or cause to be stored, any vehicle on any street. A vehicle shall be considered stored when it has been left standing on a street without having been moved more than one-tenth of a mile within a seventy-two consecutive hour period.
- (h) It is unlawful for any person to leave standing, or cause or allow to be left standing, any inoperable vehicle on any street for more than four consecutive hours. A vehicle is considered to be inoperable when it is wrecked, burned, dismantled, when it lacks a motor, transmission, or wheels, when it is on blocks, or when it is otherwise incapable of being driven upon the highways in conformity with the requirements of the California Vehicle Code.
- (i) It is unlawful for any person to park an unattached semitrailer or auxiliary dolly on any street except for the purpose of loading or unloading it. Camp trailers, utility trailers, and auxiliary dollies used in conjunction with a camp trailer or a utility trailer are exempt from Section 86.23(i).

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Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Mary T. Nuesca
Mary T. Nuesca
Deputy City Attorney

SMT:jp
01/03/03
01/30/03 COR.COPY
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Or.Dept: CityAttorney
O-2003-102
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000673

STRIKEOUT ORDINANCE

OLD LANGUAGE - STRUCK OUT
NEW LANGUAGE - REDLINED

(O-2003-102)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 6, OF THE
SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 86.23
RELATING TO USE OF STREETS FOR STORAGE, SERVICE, OR
SALE OF VEHICLES, OR FOR HABITATION IN VEHICLES.

**§86.23 Use Of Streets For Storage, Service, or Sale Of Vehicles, or For
Habitation in Vehicles Prohibited**

- (a) ~~No~~ It is unlawful for any person shall to 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. ~~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.~~
- (b) ~~No~~ It is unlawful for any person shall to stand or park any vehicle upon any street for the purpose of servicing or repairing such vehicle, except in an emergency.
- (c) ~~No~~ It is unlawful for any person shall to stand or park any vehicle upon any street in any business district or upon any through

highway for the purpose of washing or polishing such vehicle:

- (d) ~~No~~ It is unlawful for any person who deals in, or whose business involves, the sale, lease, rental, or charter of vehicles ~~shall~~ to store, park, or stand any such vehicle upon any public street, except while such vehicle is under lease, rental, or charter by a customer. ~~This~~ Section 86.23(d) ~~shall~~ does not apply to vehicles regulated by Sections 75.0101 through 75.0603 of this Code.
- (e) ~~No~~ It is unlawful for any person whose business involves the repair, ~~and/or~~ servicing of vehicles ~~and/or~~ vehicle components ~~shall~~ to store, stand, or park any vehicle upon any public street after that person has accepted custody of the vehicle from the customer.
- (f) ~~No~~ It is unlawful for any person ~~shall~~ to use a vehicle while it is parked or standing upon any street as either temporary or permanent living quarters, abode, or place of habitation either overnight or day by day.
- (g) ~~No~~ It is unlawful for any person ~~shall~~ to store, or cause to be stored, any vehicle upon any street. A vehicle shall be considered stored when it has been left standing on a street without having been moved more than one-tenth (~~1/10th~~) of a mile within a seventy-two (~~72~~) consecutive hour period.
- (h) ~~No~~ It is unlawful for any person ~~shall~~ to leave standing, or cause or allow to be left standing, any inoperable vehicle on any street for more than four (~~4~~) consecutive hours. A vehicle is considered to be

inoperable when it is wrecked, burned, dismantled, or when it lacks a motor, transmission, ~~or wheel~~ or wheels, or when it is on blocks, or is otherwise incapable of being driven upon the highways in conformity with the requirements of the California Vehicle Code:

- (i) No It is unlawful for any person ~~shall to~~ park an unattached semitrailer or auxiliary dolly upon any street except for the purpose of loading or unloading it. Camp trailers, utility trailers, and auxiliary dollies used in conjunction with a camp trailer or a utility trailer are exempt from ~~this provision~~ Section 83.26(i).

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01/03/03
Cr.Dept:CityAttorney
O-2003-102
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000677

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 52
N/A 01/06

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): Council District 5, Brian Maienschein

3. DATE: October 16, 2008

4. SUBJECT: Proposed Ordinance Regulating the Sales of Vehicles in Certain Areas Within the Public Right-of-Way

5. FOR INFORMATION, CONTACT (NAME & MAIL STA.): Courtney Smith, MS10A

6. TELEPHONE NO.: (619) 236-6655

7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION HAS BEEN COMPLETED ON PAGE 2:

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT				
JOB ORDER				
C.I.P. NUMBER				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:
FISCAL IMPACT: This action requires the installation of signs at the attached locations at an initial cost of \$56,700 and modifications to the existing parking ticket traffic system at a cost of \$2,500. Enforcement is cost reimbursable with citation.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	10/21/08	6	SDPD		
2	ECP	<i>[Signature]</i>	10/24/08	7	CITY ATTORNEY	<i>[Signature]</i>	11/13/08
3	LIAISON OFFICE ED PLANK	<i>[Signature]</i>	10/24/08	8	ORIGINATING DEPARTMENT		
4	AUDITOR	<i>[Signature]</i>	10/24		MGR. DOCKET COORD:		COUNCIL LIAISON
5	FM	<i>[Signature]</i>	11/18/08 ✓		COUNCIL PRESIDENT <i>[Signature]</i>	<input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> ADOPTION COUNCIL DATE 12/2/08

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

- Approve the prohibition of sales of vehicles in certain areas within the public right of way.
- Approved attached locations.
- Authorize the expenditure of an amount not to exceed \$58,920, for the installation of signs, contingent upon the Comptrollers office first certifying the funds are on deposit with the City Treasury. Each Council District will be responsible for their portion of the funding. Where the funding will originate from will be discussed at the City Council meeting

Adopt the Ordinance

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 2,3,4,5,6

COMMUNITY AREA(S): MIDWAY, PENNISULA-MIDWAY, NORMAL HEIGHTS, GREATER NORTH PARK, CITY HEIGHTS, CHOLLAS CREEK, LOMITA, MOUNTAIN VIEW, RANCHO BERNARDO, CARMEL MOUNTAIN RANCH, CLAIREMONT MESA, KEARNY MESA
000678

ENVIRONMENTAL IMPACT: This activity is exempt from CEQA pursuant to Section 15060 (c)(3) of the State CEQA Guidelines.

HOUSING IMPACT: None

000679

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: March 25, 2008
ATTENTION: City Attorney
ORIGINATING DEPARTMENT: Council District 5, Brian Maienschein
SUBJECT: Proposed Ordinance Regulating the Sales of Vehicles in
Certain Areas Within in the Public Right-of-way
COUNCIL DISTRICT(S): 2,3,4,5,6
CONTACT/PHONE NUMBER: Courtney Smith (619) 236-6655

REQUESTED ACTION:

Adopt the proposed ordinance regulating the sales of vehicles in certain areas within the Public Right-of-way.

STAFF RECOMMENDATION:

Adopt the Ordinance.

EXECUTIVE SUMMARY:

For the last several years, a number of residents from various communities throughout San Diego have expressed concerns about specific streets in their neighborhoods that have become used car sales areas. Oftentimes where the activity occurs are main entrance streets to the community that have high traffic volume and visibility. The Police Department's Abandoned Vehicle Abatement (AVA) Unit enforce the 72-hour parking violation ordinance in order to keep these "parked until they are sold" cars moving. However, this ordinance is only effective for vehicles parked in the exact same location for over 72 hours. Some of these linear sales have become so popular that on weekends the vehicles remain with the vehicles where interest and sales conversations are taking place. The residents driving the streets experience traffic congestion and have concerns about traffic safety for pedestrians and motorists alike.

According to the Department of Motor Vehicles, as staffing allows, they currently take enforcement action against unpermitted "dealers" as outlined in California Vehicle Code Section 11700. These enforcement actions are effective against prospective sellers who bring their cars to known car sales areas and then negotiate with an unauthorized street "dealer" to sell their vehicles. This Vehicle Code section would not, however, address the conditions where prospective sellers simply bring their own vehicles to known sales areas, park them for display purposes, and then return less than 72 hours later to move their car. The actual sales transaction may not take place until later, and not on the street. According to residents, the "for sale" cars take valuable parking spaces, cause congestion, and bring safety hazards associated with people stopping in the street to window shop.

The City of San Diego had adopted an ordinance, City Municipal Code Section 86.23(a) that regulated the size and type of signs that could be used on vehicles for private sale. The ordinance is seldom enforced and has not been effective for deterring the type of activity described at the above locations. In addition, a court challenge disclosed that such an ordinance was not consistent with state and federal laws. Subsequently, the City Council amended this section to comply with the court decision.

PROPOSED Ordinance

Currently, any ordinance that is enacted for the purpose of controlling this type of activity must be based on the California Vehicle Code (CVC). The only section in the CVC that regulates this type of activity is CVC Section 21509. This section specifically describes the process for establishment of these regulations and the methods for enforcement.

The ordinance being proposed adheres to CVC Section 22651.9 and it can be legally enforced following the processes outlined in that CVC Section. The following will be the procedures to prohibit vehicles for sale activity:

000680

- a) An Ordinance will designate the streets that have a prohibition for vehicle sales;
- b) Signs will be posted on the designated streets prohibiting sales of vehicles;
- c) Violators will be warned by notice of a parking violation, and a list of other designated streets where the vehicle cannot be parked for sale;
- d) If the vehicle is found in violation within 30 days after the notice, but not less than 24 hours, the vehicle will be impounded.

This is the most expeditious response to the problem under the current CVC.

The advantage of this proposed ordinance is that it targets problem areas without affecting other areas. There are however, some disadvantages. It may cause the problem to be shifted to adjacent streets or neighborhoods. In addition, a database, available 24 hours a day, must be established to track vehicles that are warned. The warning must include a list of all streets where there is parking prohibition for sale of vehicles. It requires extensive signage at each location. Enforcement must be targeted for specific locations and because this is primarily a weekend problem, enforcement would require the resources of the Police Department. In addition, when new locations have been identified, a resolution will have to be approved by the City Council and signage will be required before enforcement can occur. The warnings will also have to be updated to include the addition of new prohibited streets.

FISCAL CONSIDERATIONS:

This action requires the installation of signs at the attached locations at an initial cost of \$56,700 and modifications to the existing parking ticket traffic system at a cost of \$2,500. Each District that wants to participate will be responsible for providing the funding for their district. The breakdown per district is:

District 2	67 signs = \$11,000
District 3	26 signs = \$4,200
District 4	52 signs = \$8,500
District 5	141 signs = \$23,000
District 6	<u>61 signs = \$10,000</u>
Total	347 signs \$56,700
<u>Traffic Ticket System</u>	<u>+ \$2,500</u> (District 5 will cover this cost)
Total	\$59,200

The cost of enforcement is recouped through citation revenue.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On March 26, 2003 PS&NS directed staff to:

1. Draft an Ordinance that would designate certain streets as being off limits for car sales.
2. Get input on the draft ordinance from Community Planners Committee and other interested community stakeholders.
3. Compile a list of the designated off-limit streets for Committee consideration.
4. Request that the Governmental Relations Department pursue legislation changing State law to allow City regulation of "For Sale" signs on parked vehicles.

On April 28, 2004 PS&NS voted 5-0 to approve the proposed ordinance.

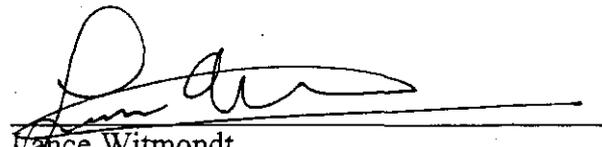
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Neighborhood Code Compliance Department held several meetings with residents from 12 different neighborhoods, staff representatives from the Neighborhood Code Compliance Department, Parking Management Division and the AVA Unit. The represented communities were: Carmel Mountain Ranch, City Heights, Clairemont, Lincoln Vista, Navajo, Pacific Beach, Rancho Bernardo, Rolando, Rolando Park, Serra Mesa, Tierrasanta, and University Heights. The group met over a period of seven months. After months of discussion with residents, it became apparent that finding a solution to the issue of on-street car sales that fit every community, and did not impact already limited parking, would be difficult.

000681

On May 27, 2003 staff attended the Community Planners Committee (CPC) and presented a draft ordinance designed to prohibit sales of vehicles at specific locations. Staff solicited comments from the CPC as well as a list of locations where the parking restrictions should apply. The comments at the CPC acknowledged that such activity is undesirable within our communities, and in general supported the concept that some sort of action should be taken.


Courtney Smith
Council Representative


Lance Witmond
Chief of Staff

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 8, ARTICLE 6, DIVISION 00 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 86.23.1, RELATING TO AUTHORITY TO REMOVE VEHICLES FOR SALE IN CERTAIN AREAS WITHIN THE PUBLIC RIGHT OF WAY.

This ordinance makes changes to Chapter 8, Article 6 of the City of San Diego Municipal Code relating to authority to remove vehicles for sale by adding section 86.23.1.

This new section will prohibit the display of vehicles for sale on its streets. This Section authorizes the Mayor to take various actions when the use of public streets for the private sale of vehicles adversely affects communities in the City of San Diego.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its passage, since a printed copy will be available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 8, ARTICLE 6, DIVISION 00 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 86.23.1, RELATING TO AUTHORITY TO REMOVE VEHICLES FOR SALE IN CERTAIN AREAS WITHIN THE PUBLIC RIGHT OF WAY.

WHEREAS, for the last several years, a number of residents from various communities throughout San Diego have expressed concerns that specific streets in their neighborhoods have become used car sales areas; and

WHEREAS, the prohibition of sales of vehicles in certain areas within the public right of way is permissible under state law; and

WHEREAS, the Council finds that it is in the public interest to prohibit the use of certain specified public streets for the parking of vehicles for the primary purpose of advertising those vehicles for sale; NOW, THEREFORE,

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

Section 1. That Chapter 8, Article 6, Division 00 of the San Diego Municipal Code is amended by adding section 86.23.1, to read as follows:

§86.23.1 Authority to Remove Vehicles for Sale

(a) Purpose. The Council of the City of San Diego finds that the display of vehicles for sale on its streets creates a distraction for drivers and pedestrians, thereby creating a hazard; creates a nuisance for the community; and decreases the parking available for businesses and residents. Council further finds that numerous methods are available and

000686

necessary to alleviate this problem in the method most appropriate for the affected community.

The purpose of this Section is to authorize and empower the City Manager to take various actions when the use of public streets for the private sale of vehicles adversely affects communities in the City of San Diego.

(b) Removal of Vehicles Displayed For Sale. The City Manager has the authority to order the removal of any vehicle from any designated street when, because of a sign or placard on the vehicle, it appears that the primary purpose of parking the vehicle at that location is to display to the public that the vehicle is for sale, and when the vehicle is known to have previously been issued a notice of parking violation under this section within the last 30 days, but not less than 24 hours. The notice of violation shall be accompanied by:

(1) a warning that an additional parking violation may result in the impoundment of the vehicle, even if the vehicle is moved to another street designated under this Section 86.23.1, so long as the sign or placard offering the vehicle for sale remains on the vehicle, and

(2) a list of the street(s) subject to this Section 86.23.1.

(c) The street(s) subject to this Section 86.23.1 shall be determined by resolution.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

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Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Michael P. Calabrese
Chief Deputy City Attorney

MPC:ca
11/12/08
Aud. Cert.: N/A
Or.Dept: Council Dist 5
O-2009-77

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~NEW LANGUAGE: Underlined

(O-2009-77)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 8, ARTICLE 6, DIVISION 00 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 86.23.1, RELATING TO AUTHORITY TO REMOVE VEHICLES FOR SALE IN CERTAIN AREAS WITHIN THE PUBLIC RIGHT OF WAY.

§86.23.1 Authority to Remove Vehicles for Sale

- (a) Purpose. The Council of the City of San Diego finds that the display of vehicles for sale on its streets creates a distraction for drivers and pedestrians, thereby creating a hazard; creates a nuisance for the community; and decreases the parking available for businesses and residents. Council further finds that numerous methods are available and necessary to alleviate this problem in the method most appropriate for the affected community. The purpose of this Section is to authorize and empower the City Manager to take various actions when the use of public streets for the private sale of vehicles adversely affects communities in the City of San Diego.
- (b) Removal of Vehicles Displayed For Sale. The City Manager has the authority to order the removal of any vehicle from any designated street when, because of a sign or placard on the vehicle, it appears that the primary purpose of parking the vehicle at that location is to display to the

000690

public that the vehicle is for sale, and when the vehicle is known to have previously been issued a notice of parking violation under this section within the last 30 days, but not less than 24 hours. The notice of violation shall be accompanied by:

(1) a warning that an additional parking violation may result in the impoundment of the vehicle, even if the vehicle is moved to another street designated under this Section 86.23.1, so long as the sign or placard offering the vehicle for sale remain on the vehicle,
and

(2) a list of the street(s) subject to this Section 86.23.1.

(c) The street(s) subject to this Section 86.23.1 shall be determined by resolution.

MPC:ca
11/12/08
Or.Dept.:Council District 5
O-2009-77

000691

**PROHIBITION OF VEHICLES FOR SALE
IN THE PUBLIC RIGHT-OF-WAY LOCATIONS**

Street	Beginning Limit	Block #	Ending Limit	Block #	Planning Area	CD
Midway Drive	Barnett Avenue	2300	Sports Arena Blvd.	3600	Midway	2
Rosecrans Street	Canon Street	1100	Camino del Rio West	3630	Pennisula-Midway	2
Sports Arens Blvd.	Pacific Hwy	2400	Midway Drive	3900	Midway	2
33 rd Street	Meade Avenue	4300	El Cajon Boulevard	4399	Normal Heights	3
Adams Avenue	Boundary Street	3100	West Mountain View	3159	Normal Heights	3
El Cajon Blvd.	Iowa Street	3150	33 rd Street	3299	Greater North Park	3
Home Avenue	Interstate 805	4200	Home Avenue (East Limit)	4699	City Heights	3&4
Meade Avenue	Boundary Avenue	3174	32 nd Street	3200	Greater North Park	3
University Avenue	43 rd Street	4300	44 th Street	4399	City Heights	3
Wightman Street	35 th Street	3500	40 th Street	3999	City Heights	3
Euclid Avenue	Elm Street	2000	54 th Street	2000	Chollas Creek	4
Cardiff	Jamacha	8400	San Felipe	8500	Lomita	4
Logan Avenue	35 th Street		36 th Street		Mountain View	4
Home Avenue	Fairmount	4400	45 th Street	4500	Chollas Creek	4
Bernardo Center Drive	Camino Crisalida	15500	West Bernardo Road	17749	Rancho Bernardo	5
Paseo Lucido	Bernardo Heights Pkwy (W)	11800	Bernardo Heights Pkwy (E)	12700	Rancho Bernardo	5
Rancho Bernardo Road	Bernardo Center Drive	11900	Acena Drive	12060	Rancho Bernardo	5
Stoney Peak Drive	Carmel Mountain Road	11700	World Trade Drive	11800	Carmel Mountain Ranch	5
Boyd Avenue	Acworth Avenue	3100	Genesee Avenue	3750	Clairemont Mesa	6
Clairemont Avenue (north side)	Interstate 5	2300	Denver Street	2600	Clairemont Mesa	6
Convoy Street	Ostrow Street	3800	Othello Avenue	4100	Kearny Mesa	6
Moraga Avenue (west side)	Balboa Avenue	3700	Cadden Drive	3800	Clairemont Mesa	6
Morena Blvd.	Avati Drive	4000	Jutland Street	4799	Clairemont Mesa	6

**SAN DIEGO POLICE DEPARTMENT
WARNING**

**YOU ARE IN VIOLATION OF SDMC § 86.23.1(b), PARKING A VEHICLE
ON A PUBLIC STREET THAT PROHIBITS VEHICLES FOR SALE**

- An additional parking violation may result in the impoundment of your vehicle.
- Your vehicle may be impounded pursuant to California Vehicle Code section 22651.9(a), even if the vehicle is moved to another street, so long as the signs or placards offering the vehicle for sale remain on the vehicle.
- Attached is a listing of the streets subject to SDMC § 86.23.1(b), that prohibits parking a vehicle to advertise to the public the private sale of your vehicle.

Street Location of Prohibited Parking	Beginning Limit	Ending Limit
Midway Drive	2300 Barnett Avenue	3600 Sports Arena Blvd.
Rosecrans Street	1100 Canon Street	3630 Camino del Rio West
Sports Arena Boulevard	2400 Pacific Hwy.	3900 Midway Drive
33 rd Street	4300 Meade Avenue	4399 El Cajon Boulevard
Adams Avenue	3100 Boundary Street	3159 West Mountain View
El Cajon Boulevard	3150 Iowa Street	3299 - 33 rd Street
Home Avenue	4200 - Interstate 805	4699 Home Avenue (East Limit)
Meade Avenue	3174 Boundary Avenue	3200 - 32 nd Street
University Avenue	4300 - 43 rd Street	4399 - 44 th Street
Wightman Street	3500 - 35 th Street	3999 - 40 th Street
Euclid Avenue	2000 Elm Street	2000 - 54 th Street
Cardiff	8400 Jamacha	8500 San Felipe
Logan Avenue	35 th Street	36 th Street
Home Avenue	4400 Fairmount	4500 - 45 th Street
Bernardo Center Drive	15500 Camino Crisalida	17749 West Bernardo Road
Paseo Lucido	11800 Bernardo Hghts Pkwy (W)	12700 Bernardo Hghts Pkwy (E)
Rancho Bernardo Road	11900 Bernardo Center Drive	12060 Acena Drive
Stoney Peak Drive	11700 Carmel Mountain Road	11800 World Trade Drive
Boyd Avenue	3100 Acworth Avenue	3750 Genesee Avenue
Clairemont Ave (north side)	2300 - Interstate 5	2600 Denver Street
Convoy Street	3800 Ostrow Street	4100 Othello Avenue
Moraga Avenue (west side)	3700 Balboa Avenue	3800 Cadden Drive
Morena Boulevard	4000 Avati Drive	4799 Jutland Street

000693

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION TO APPROVE THE PROHIBITION OF SALES OF VEHICLES IN CERTAIN AREAS WITHIN THE PUBLIC RIGHT OF WAY.

WHEREAS, the City Council has, contemporaneously with this resolution, adopted Ordinance O-2009-77, which authorizes the prohibition of the parking of cars for sale in certain areas that the Council may designate, pursuant to California Vehicle Code 22651.9; and

WHEREAS, the City Council has determined that the areas reflected in the attached list should be so designated; and

WHEREAS, this action requires the installation of signs at the attached locations at an initial cost of \$56,700 and modifications to the existing parking ticket traffic system at a cost of \$2,500; and

WHEREAS, enforcement is cost reimbursable with citation; NOW, THEREFORE,

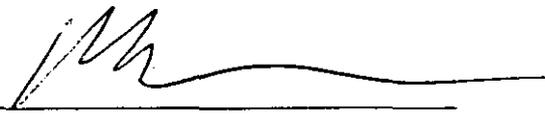
BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his designee is authorizes the expenditure of an amount not to exceed \$58,920, for the installation of signs, contingent upon the Comptroller first certifying funds are on deposit with the City Treasury.

BE IT FURTHER RESOLVED, each Council District will be responsible for their portion of the funding. The initial funding for the project will be discussed at the City Council meeting.

000694

BE IT FURTHER RESOLVED, that this activity is not a Project and is therefore exempt from California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines, Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Michael P. Calabrese
Chief Deputy City Attorney

MPC:ca
11/13/2008
Or.Dept:Council District 5
R-2009-650
Attachment

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor