



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Introduce an Ordinance to Repeal Chapter 9.54 (Human Habitation of Vehicles) of Title 9 (Public Health, Safety and Welfare) and Amend Section 10.16.140 (Parking for Certain Purposes Prohibited) of Chapter 10.16 (Parking Regulations) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code

#### **BACKGROUND**

To align the Sunnyvale Municipal Code (SMC) with case law addressing certain constitutional issues, staff recommends that Council introduce an ordinance to repeal SMC Chapter 9.54, related to human habitation of vehicles, and amend SMC section 10.16.140 to remove the prohibition on parking on roadways for the purpose of displaying a vehicle for sale.

#### **Chapter 9.54- Human Habitation of Vehicles**

SMC Chapter 9.54 was adopted in 1994 and prohibits the use or occupancy of any vehicle for human habitation on or in any street, park, alley, public parking lot or other public way. On June 19, 2014, the Ninth Circuit Court of Appeals struck down a Los Angeles ordinance prohibiting the use of vehicles as “living quarters” (*Desertrain v City of Los Angeles* (9th Cir. 2014) 754 F.3d 1147). The court declared the ordinance constitutionally void for vagueness because it did not define the phrase “living quarters.” For example, the Court pointed out that one could not determine whether keeping even a sleeping bag in a car might convert the vehicle into living quarters. The Court also ruled that the ordinance promoted arbitrary enforcement that targets the homeless because it gave no limits on the discretion an officer might use to determine whether a car was being used as living quarters.

SMC Chapter 9.54 contains a similarly broad definition, prohibiting “human habitation” of vehicles, defined as “the use of a vehicle for a dwelling place.” This definition appears susceptible to the same sort of vagueness challenge that Los Angeles faced in the *Desertrain* case.

#### **SMC Section 10.16.140- Display of Vehicles for Sale**

SMC Section 10.16.140 was adopted in 1993 and prohibits parking a vehicle upon any roadway for the purpose of “displaying such vehicle for sale, washing, greasing or repairing such vehicle, except repairing necessitated by an emergency.” In *Burkow v. City of Los Angeles* (2000) 119 F.Supp.2d 1076, a federal district court held that a prohibition on parked cars, based exclusively on the display of a “for sale” sign, was unconstitutional because it was not narrowly tailored to the City’s interest.

#### **EXISTING POLICY**

Like many cities, Sunnyvale largely stopped enforcing both ordinances after the *Desertrain* and *Burkow* decisions. However, the provisions were never formally repealed from the SMC.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” with the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378 (b) (5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

### **DISCUSSION**

To ensure alignment with case law, staff recommends repealing Chapter 9.54 in its entirety, and amending Section 10.16.140 to eliminate the reference to for-sale signs on vehicles.

Although neighboring Cities have had a higher amount of activity with residents sleeping in their cars, Sunnyvale has had only sporadic experience with this issue and staff has responded with installing certain no-parking signs on streets with higher activity levels.

Should either issue become a problem in the future, staff can develop alternative approaches or return with ordinances for Council consideration that meet constitutional standards.

### **FISCAL IMPACT**

There is no fiscal impact related to eliminating these provisions from the municipal code.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

1. Introduce an Ordinance to Repeal Chapter 9.54 (Human Habitation of Vehicles) of Title 9 (Public Health, Safety and Welfare) and Amend Section 10.16.140 (Parking for Certain Purposes Prohibited) of Chapter 10.16 (Parking Regulations) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code.
2. Do not repeal Chapter 9.54 (Human Habitation of Vehicles) of Title 9 (Public Health, Safety and Welfare) and Amend Section 10.16.140 (Parking for Certain Purposes Prohibited) of Chapter 10.16 (Parking Regulations) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code.

### **STAFF RECOMMENDATION**

Alternative 1: Introduce an Ordinance (presented as Attachment 1 to this report) to Repeal Chapter 9.54 (Human Habitation of Vehicles) of Title 9 (Public Health, Safety and Welfare) and Amend Section 10.16.140 (Parking for Certain Purposes Prohibited) of Chapter 10.16 (Parking Regulations) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code.

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Reviewed by: Walter C. Rossmann, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENT**

1. Ordinance to Repeal Chapter 9.54 (Human Habitation of Vehicles) of Title 9 (Public Health, Safety

and Welfare) and Amend Section 10.16.140 (Parking for Certain Purposes Prohibited) of Chapter 10.16 (Parking Regulations) of Title 10 (Vehicles and Traffic) of the Sunnyvale Municipal Code