



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** May 12, 2015

**TO:** Mayor and Councilmembers

**FROM:** City Attorney's Office

**SUBJECT:** Recreational Vehicle Parking And Temporary Recreational Vehicle Ordinances

**RECOMMENDATION:** That Council introduce and subsequently adopt, by reading of title only, the following ordinances recommended by the Ordinance Committee:

- A. An Ordinance of the Council of the City of Santa Barbara to Amend Section 10.44.205 of the Santa Barbara Municipal Code Pertaining to the Parking of Recreational Vehicles and the Definition of "Excessive" Numbers of Such Vehicles; and
- B. An Ordinance of the Council of the City of Santa Barbara to Amend Sections 15.16.060 and 15.16.080 of the Santa Barbara Municipal Code to Delete Temporary Recreational Vehicles from the Prohibition on Sleeping, Human Habitation or Camping in Recreational Vehicles in Certain Areas.

### **EXECUTIVE SUMMARY:**

The proposed ordinance revisions would define "excessive" RV parking as two or more RVs on a street or street block face. RV parking within 500 feet of a School or Educational Institute would be prohibited citywide with appropriate sign posting. The proposal would also repeal the current prohibition against camping in "temporary recreational vehicles" in order to meet constitutional standards.

### **DISCUSSION:**

In November 2014, the City Attorney's Office approached the Ordinance Committee with proposed amendments to the "No RV" parking ordinance and the prohibition against camping in "temporary recreational vehicles."

#### History of the "No RV" Parking Ordinances

Recreational vehicle parking regulation in Santa Barbara has a lengthy and recent history of at least three lawsuits, including a pending case brought by Homes on Wheels.

On November 19, 2002, the City Council adopted Ordinance No. 5263 to, among other things, prohibit overnight parking (2 a.m. to 6 a.m.) of RVs and certain other large vehicles and trailers. Thereafter, in *Homes on Wheels v. City of Santa Barbara* (2004) 119 Cal.App.4<sup>th</sup> 1173, the Court of Appeal upheld (against a preemption argument) Santa Barbara's power under Vehicle Code section 22507 to regulate overnight RV parking. But the Court of Appeal also ruled that the City had failed to provide adequate notice of the RV parking regulations because it had not posted each street where the regulations might be applicable, relying instead on posting just 33 locations that the City Attorney had deemed to be "entrances" to the City.

On January 11, 2007, the City and *Homes on Wheels* reached a settlement agreement under which the City agreed to amend its overnight RV parking ordinance by making it applicable only in a defined area of the City's waterfront, where "entrance-only" signage would be posted.<sup>1</sup> The City also agreed to expand the Recreational Vehicle Safe Parking Program which was previously set forth in Resolution No. 05-072, adopted August 2, 2005. That program allows supervised overnight RV parking and habitation in certain public and private parking lots.

The City's actions in furtherance of the settlement were reflected in Ordinance No. 5411, adopted on February 6, 2007, and in Resolution No. 07-026, adopted on April 24, 2007 (which repealed and superseded Resolution No. 05-072). Ordinance No. 5411 amended SBMC section 10.44.200 to remove RVs from the citywide 2 a.m. to 6 a.m. large vehicle and trailer parking prohibition. It also implemented the agreed-upon "waterfront" area RV parking restrictions. Resolution No. 07-026 authorized the City Administrator to retain a nonprofit social service organization (New Beginnings Counseling Center -- NBCC) to administer the Recreational Vehicle Accommodation Program (Safe RV Parking Program) and further designated certain public lots for "temporary transitional use for overnight Recreational Vehicle accommodations."

On June 10, 2008, the Council received an update from NBCC on the Safe RV Parking Program. As part of that update, City staff briefed the Council on efforts by the Police, Public Works and the City Attorney's Office to address RV issues in the community. The update noted that "No RV Parking" signs had been posted around Alice Keck Park, Alameda Park, and Ortega Park due to traffic safety concerns. The update concluded by alerting Council that these departments were working on broader solutions to address unwanted RV intrusion into neighborhoods.

On November 11, 2008, the Public Works and Police Departments approached the Ordinance Committee with a new RV parking ordinance. The report noted increasing and significant public nuisance problems associated with RVs, such as lack of proper sanitation or fire safety protection, littering, excessive noise, placement by RV owners of personal belongings outside of RVs, and illegal dumping. The report also noted that

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<sup>1</sup> The affected area is defined in SBMC 10.44.200 to be the area south of the U.S. 101 freeway and between Castillo Street and the eastern boundary of the City at the Andre Clark Bird Refuge and Coast Village Road.

there had been an increase in certain criminal activity in those areas outside the waterfront where overnight RV parking was no longer prohibited, while crime in the restricted waterfront areas had decreased. Staff proposed a new ordinance that would give the Public Works Director authority, upon consultation with the Police Chief, to “designate those streets (or portions thereof) as no parking for recreational vehicles where it is necessary to decrease parking by **excessive** numbers of such vehicles.” Despite the mention of “excessive” in the staff report, no objective locational or quantitative criteria for restrictions on RVs were proposed in the actual text of the ordinance. The Ordinance Committee generally approved of the concept, but asked to see additional objective criteria for limiting RV parking.

Staff returned to the Ordinance Committee on December 9, 2008, with a revised proposal that limited the Public Works Director’s authority to post no RV parking areas by prescribing that there must be an “excessive” number of RVs within 500 feet of certain sensitive land uses before no parking signs could be posted and enforced. The language allowed the Public Works Director, after “advice” from the Police Chief, to post no RV parking zones when there exists:

“an **excessive number** of such vehicles and to provide for the public health and safety, provided that the streets or street block faces so designated are located **within five hundred (500) feet** of at least one of the following land uses:

1. any School or Educational Institution;
2. any Child Care Center, Family Day Care Home, or Group Home;
3. any park, public library, or museum open to the public;
4. any community center or social service center, public or private;
5. any City or nonprofit recreational facility;
6. any Community Care Facility, Skilled Nursing Facility, health care facility, or hospital;
7. any homeless shelter;
8. any church or other religious facility;
9. any designated safe route to schools that would limit the locational and quantitative reach of the new ordinance.”

This language was approved by the Ordinance Committee and forwarded to the full Council. Council adopted the language as SBMC 10.44.205 (Ordinance No. 5475) on December 23, 2008. Since adoption, staff has used the ordinance extensively to post no RV parking zones in response to public complaints. In some instances where traffic safety needs warranted posting, staff have considered parking of a single RV to be “excessive.”

On August 4, 2011, Homes on Wheels again sued the City, this time alleging that the new (2008) ordinance reflected in SBMC 10.44.205 violated the equal protection, “travel,” and disability rights of certain named plaintiffs who wished to continue residing in RVs on City streets. The Santa Barbara Superior Court ultimately sustained the City’s demurrer to the Second Amended Complaint without leave to amend, thus ruling

in the City's favor. The Court flatly rejected the claim that the ordinance discriminated against the disabled; instead the Court found that the ordinance was neutral in its terms and applied equally to all RVs regardless of the disability status of the driver or occupants. The Court further rejected the notion that state or federal law created an obligation on the part of the City to create areas where disabled RV owners have an unqualified right to park. Homes on Wheels did not appeal the trial court's decision.

In mid-2014, the Mayor and the City Attorney's Office were approached by representatives of Homes on Wheels (HoW). The City Attorney met with HoW representatives on numerous occasions to discuss and attempt to resolve their concerns. They have expressed concern that SBMC 10.44.205 is being applied in areas where only a single RV had been deemed "excessive" by City staff. They also expressed concern that, particularly in the waterfront "No RV" zone, RVs bearing disabled placards were being prohibited from parking in blue curb zones. The City Attorney agreed to present a definition of "excessive" parking for consideration by the Ordinance Committee that would define "excessive" as three or more RVs. The City Attorney did not, however, agree that the City must allow disabled RV parking in on-street blue curb areas where all RVs are otherwise prohibited.

The Ordinance Committee reviewed these recommendations on November 18, 2014. The Ordinance Committee directed two changes in the amended RV parking ordinance. First, the Committee recommended that Council define "excessive" as two or more RVs rather than the three RVs proposed by the City Attorney. Second, the Committee recommended prohibiting RV parking citywide within 500 feet of any School or Educational Institution with appropriate signage.

#### Temporary RVs: New Case Law on Camping in Vehicles

Separate and apart from the issues raised by HoW, the City Attorney's Office is concerned about certain provisions of the SBMC relating to "temporary recreational vehicles." On June 19, 2014, the Ninth Circuit Court of Appeals struck down Los Angeles's ordinance prohibiting the use of vehicles as "living quarters." (*Desertrain v City of Los Angeles* (9<sup>th</sup> Cir. 2014) 754 F.3d 1147.) In that civil rights case, following a "Town Hall on Homelessness" meeting, the Los Angeles Police Department created a "Venice Homelessness Task Force" consisting of 19 officers tasked with citing and arresting homeless individuals who were using their cars as living quarters. The ordinance did not define the phrase "living quarters." On that basis, it was declared void for vagueness in that "men of common intelligence must necessarily guess at its meaning." 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.

Santa Barbara has an ordinance with language that might be problematic in view of the *Desertrain* case. SBMC 15.16.060 E. broadly defines “temporary recreational vehicle” as “any motor vehicle altered and equipped for sleeping or human habitation.” Next, SBMC 15.16.080 provides that:

“It is unlawful for any person to use any recreational vehicle or temporary recreational vehicle for sleeping, human habitation or camping purposes in any of the following areas except as otherwise provided for:

- A. Any public park;
- B. Any public street;
- C. Any public parking lot or public area, improved or unimproved;
- D. Any public beach.”

Quite literally, a sedan carrying a sleeping bag could be a temporary recreational vehicle because it might be construed by an officer as a “motor vehicle altered and equipped for sleeping or human habitation.” This expansive and relatively standardless definition appears susceptible to the same sort of vagueness challenge that Los Angeles faced in the *Desertrain* case.

#### **PROPOSED AMENDMENTS:**

With respect to the no RV parking ordinance, on a 2-1 vote (Rowse, Hotchkiss in favor and Murillo opposed) the Ordinance Committee recommends amending the term “excessive” to SBMC 10.44.205 as follows:

“The term “excessive” shall mean two or more vehicles.”

The Ordinance Committee also recommended prohibiting RV parking citywide within 500 feet of any School or Educational Institution with appropriate signage. The full text of the proposal is on Attachment 1.

The Ordinance Committee also recommended amending the language in SBMC 15.16.060 defining “temporary recreational vehicle,” as well as the reference to such vehicles in SBMC 15.16.080. The full text of the proposal is on Attachment 2.

**PREPARED BY:** Ariel Calonne, City Attorney

**SUBMITTED BY:** Ariel Calonne, City Attorney

**APPROVED BY:** City Administrator's Office