



CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

November 17, 2014

The Honorable City Council
Palo Alto, California

Adoption of an Ordinance Repealing the Prohibition on Human Habitation of Vehicles (Ordinance No. 5206, Codified as Palo Alto Municipal Code Section 9.06.010)

Recommendation

Staff recommends that the Council adopt an ordinance repealing the prohibition on Vehicle Habitation (Ordinance No. 5206, codified at Palo Alto Municipal Code Section 9.06.010), enforcement of which has been continuously stayed since its adoption in August 2013, while continuing to monitor conditions and impacts on residents.

Executive Summary

In the fall of 2013, the City Council responded to complaints from City residents and adopted an ordinance prohibiting people from living in vehicles. The City Council initially delayed enforcement of the ordinance for a six month period to allow for education and outreach, and subsequently delayed enforcement further due to ongoing litigation regarding an ordinance on the same topic in Los Angeles. In June 2014, the U.S. Court of Appeals for the Ninth Circuit determined that the Los Angeles ordinance was unconstitutional.

City staff is recommending that the City Council repeal Palo Alto's ordinance, which has never been enforced. Homelessness and attendant issues will continue to be the focus of the Palo Alto Human Services staff, working in conjunction with Santa Clara County and non-governmental organizations.

Background

Over the past few years, City Staff have received a number of complaints from residents about persons living in vehicles around town, especially in and near residential neighborhoods. Beginning in 2011, City staff participated in numerous community meetings with a variety of interested people regarding these challenging and complex issues. Meeting participants explored a number of ideas and models, though consensus on solutions proved elusive. In the fall of 2013, the Council took two actions:

First, on August 5, 2013, the City Council passed on first reading an ordinance amending the Palo Alto Municipal Code, Chapter 9, to add Section 9.06.010, prohibiting the human habitation of vehicles. In conjunction with adopting the ordinance, the Council, by motion, directed City staff to stay enforcement of the ordinance for six months to allow for public education and outreach regarding the ordinance. The ordinance passed on second reading on August 19,

2013, and became effective September 19, 2013. At that time, City staff prepared for a period of education and outreach.

Second, Council allocated \$250,000 to enhance the efforts of Santa Clara County to address housing placement and social services for the unhoused.

Desertrain Case

In December 2013, Staff learned that a vehicle habitation ban in effect in Los Angeles was the subject of a legal challenge. The case of *Cheyenne Desertrain, et al. v. City of Los Angeles, et al.*, 754 F.3d 1147 (9th Cir. 2014), had been briefed, argued and submitted to the U.S. Court of Appeals for the Ninth Circuit, and a decision was pending. In light of the pending litigation, on December 16, 2013, Council passed a resolution extending the stay of enforcement of the ordinance from February 10, 2014 to a date in the future (either the end of calendar year 2014 or the conclusion of the *Desertrain* litigation) to allow for additional outreach and further clarification regarding legal requirements governing ordinances prohibiting vehicle habitation.

Further Developments

Since the Vehicle Habitation Ordinance was first enacted, there have been two developments. First, the City has engaged in social services outreach using \$250,000 appropriated by the City Council in the fall of 2013, together with funding provided by the County of Santa Clara for housing subsidies. In February 2014, the County went out to bid for intensive case management providers for projects based in South, Central and North County. The North County (Palo Alto) project received two proposals and in June of 2014 the contract was awarded to Peninsula Healthcare Connections (PHC), a Palo Alto-based non-profit. Existing PHC staff has started the initial work of outreach to homeless individuals identified by North County Alternative Services, a committee comprised of local service providers to the unhoused, the North County District Attorney, the North County Public Defender, the Probation Department, the Palo Alto Police Department and Palo Alto Human Services Staff, and approved for eligibility by the County. In August 2014, PHC hired an intensive case manager specifically for this project and he has continued outreaching to unhoused individuals in the community and working toward housing solutions.

Second, the U.S. Court of Appeals for the Ninth Circuit held that the Los Angeles vehicle habitation ordinance was unconstitutionally vague in violation of the First and Fourteenth Amendments. *Cheyenne Desertrain, et al. v. City of Los Angeles, et al.*, 754 F.3d 1147 (9th Cir. 2014). Plaintiffs who prevail in this type of litigation are authorized to seek reimbursement of their attorneys' fees from defendants. The plaintiffs in the *Desertrain* litigation have sought \$570,445 in attorney's fees and costs from the City of Los Angeles in connection with their successful challenge to the LA ordinance. The parties are currently litigating the amount of the fee award.

Discussion

Staff recommends that Council adopt an ordinance (attached) repealing the Vehicle Habitation Ordinance, while continuing to monitor conditions and impacts to residents. The social services

outreach initiated by Council in August 2013 is underway at this time with the goal of enhancing services to the unhoused in Palo Alto. In addition, in light of the Ninth Circuit's recent decision in the *Desertrain* case, many cities' vehicle habitation ordinances are now subject to legal challenges on similar grounds to that of Los Angeles. While Palo Alto's ordinance is different from the Los Angeles ordinance and is consistent, in our view, with constitutional requirements, a decision to retain and enforce the ordinance will likely result in litigation that will be both resource intensive and expensive. Accordingly, staff recommends that the City direct its resources towards proactive solutions such as social services and outreach rather than litigation costs.

Resource Impact

The repeal of an ordinance that has been continually stayed since adoption will incur no additional resource impacts.

Environmental Review

The proposed ordinance would repeal an ordinance that has never been implemented, and thus would not result in physical environmental impacts requiring analysis under the California Environmental Quality Act (CEQA). See CEQA Guidelines Section 150612(b)(3).

ATTACHMENTS:

- Attachment A: Ordinance Repealing the Prohibition on Human Habitation of Vehicles (Ordinance No. 5206, codified as Palo Alto Municipal Code Section 9.06.010) (PDF)
- Emails From Public (PDF)

Department Head: Molly Stump, City Attorney

NOT YET APPROVED

Ordinance No. _____
Ordinance of the Council of the City of Palo Alto Repealing the Prohibition
on Human Habitation of Vehicles (Ordinance No. 5206, codified as Palo
Alto Municipal Code Section 9.06.010)

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

(a) On August 5, 2013, the City Council passed on first reading an ordinance amending the Palo Alto Municipal Code, Chapter 9, to add Section 9.06.010, prohibiting the human habitation of vehicles.

(b) In conjunction with adopting the ordinance, the Council, by motion, directed City staff to stay enforcement of the ordinance for six months to allow for public education and outreach regarding the ordinance. The ordinance passed on second reading on August 19, 2013, and became effective September 19, 2013. At that time, City staff prepared for a period of education and outreach. Enforcement of the ordinance was stayed through February 10, 2014.

(c) In June 2014, the U.S. Court of Appeals for the Ninth Circuit held that the Los Angeles vehicle habitation ordinance was unconstitutionally vague in violation of the First and Fourteenth Amendments. *Cheyenne Desertrain, et al. v. City of Los Angeles, et al.*, Case No. 11-56957 (9th Cir. June 19, 2014).

(d) Since initial passage of the ordinance, the City has engaged in social services outreach using \$250,000 appropriated by the City Council in the fall of 2013, together with funding provided by the County of Santa Clara for housing subsidies.

SECTION 2. Section 9.06.010 of Chapter 9.06 of Title 9 (Public Peace, Morals, and Safety) of the Palo Alto Municipal code is hereby repealed in its entirety.

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NOT YET APPROVED

SECTION 3. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

City Attorney

City Manager

Director of Administrative Services

Carnahan, David

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

14 NOV 12 AM 8:01

From: Bhushans@aol.com
Sent: Tuesday, November 11, 2014 10:23 PM
To: abjpd1@gmail.com; efilseth@gmail.com; VoteCoryWolbach@gmail.com; lydiakou@gmail.com; earwopa@yahoo.com; Kniss, Liz (internal); rnorse3@hotmail.com; dminkler@dminkler.com; jkfredrich@gmail.com; jrosen@da.sccgov.org; jay.boyersky@da.sccgov.org; Stump, Molly; molly.o'neal@pdo.sccgov.org; J.J.Kapp@pdo.sccgov.org; stb_discussion@googlegroups.com; Council, City; kenneth.dauber@gmail.com; tom.dubois@gmail.com; timothygray@sbcglobal.net; t.ciampi@hotmail.com; paloaltolife@gmail.com; Keene, James; Klein, Larry; dryan@scscourt.org; ppennypacker@scscourt.org; rpichon@scscourt.org; mgreenwood@scscourt.org; smanley@scscourt.org; gsaldivar@scscourt.org; dprice@padailypost.com; bkenny5678@gmail.com; bkerr@padailypost.com; aflint@scscourt.org; miguel.rodriguez@pdo.sccgov.org; jgreen@dailynewsgroup.com
Subject: Re: Mayor defends stance on public homeless feeding

Hello Aram, et al,

Looks like serving pizza to the homeless is NOT ILLEGAL, mostly because the pizza parlor that supplied the pizza had to have a commercial food license anyway, in light of the food being prepared by a commercial establishment, any charges against those who are giving food to the homeless will be dropped. I think one could also hand out fresh fruit, like apples, bananas and oranges without the threat of arrest.

On a more prosaic note, I have copied a Press Release about a local ACLU event where the featured speaker is journalist Chris Hedges. Hope you all will consider attending on Monday, Nov. 24, 2014 at 7 P.M. Topic is: the Loss of Constitutional Rights in America. See below:

PRESS RELEASE FOR IMMEDIATE RELEASE
FROM: ALICE SMITH – Mid-Peninsula Chapter of the ACLU
INQUIRIES: 650-283-2822

JOURNALIST CHRIS HEDGES TO SPEAK IN PALO ALTO
on LOSS OF CONSTITUTIONAL RIGHTS IN AMERICA

The distinguished journalist, Chris Hedges, will speak on November 24, 2014 at 7:00 pm at the First United Methodist Church, 625 Hamilton Avenue, Palo Alto, on the National Defense Authorization Act which concerns the indefinite detention of Americans without charge or trial and the loss of constitutional rights over which Hedges, Norm Chomsky and six other plaintiffs sued the Obama Administration.

Hedges' talk is hosted by the Mid-Peninsula Chapter of the ACLU of Northern California and co-sponsored by the Peninsula Peace and Justice Center and the California Chapter of the Council on American-Islamic Relations. The event is free and open to the public.

Chris Hedges was awarded the Pulitzer Prize for Journalism in 2002, as a member of the team of journalists for their global terrorism coverage. Hedges also received the Amnesty International Global Award for Human Rights that same year. He has authored 12 books including: *Death of the Liberal Class* (2010); *Days of Destruction, Days of Revolt* co-authored with cartoonist Joe Sacco (2012) ; *I Don't Believe in Atheists* (2008); *American Fascists: The Christian Right and the War in America* (2008). A collection of his Truthdig Columns, *The World As It is: Dispatches on the Myth of Human Progress* (2011) was published by Nation Books.

Truthdig has provided the following biographical information:

Hedges previously spent nearly two decades as a foreign correspondent in Central America, the Middle East, Africa and the Balkans. He has reported from more than 50 countries and has worked for The Christian Science Monitor, National Public Radio,

The Dallas Morning News and The New York Times, for which he was a foreign correspondent for 15 years.

Hedges was part of the team of reporters at The New York Times awarded a Pulitzer Prize in 2002 for the paper's coverage of global terrorism. He also received the Amnesty International Global Award for Human Rights Journalism in 2002. The Los Angeles Press Club honored Hedges' original columns in Truthdig by naming the author the Online Journalist of the Year in 2009 and again in 2011. The LAPC also granted him the Best Online Column award in 2010 for his Truthdig essay "One Day We'll All Be Terrorists".

Hedges is a senior fellow at The Nation Institute in New York City. He has taught at Columbia University, New York University, Princeton University and The University of Toronto. He currently teaches prisoners at a maximum-security prison in New Jersey.

Hedges began his career reporting on the Falkland War from Argentina for National Public Radio. He went on to cover the war in El Salvador and Nicaragua for five years, first for The Christian Science Monitor and National Public Radio and later The Dallas Morning News. Following six years in Latin America, he took time off to study Arabic and then went to Jerusalem and later Cairo. He spent seven years in the Middle East, most of them as the bureau chief there for The New York Times. He left the Middle East in 1995 for Sarajevo to cover the war in Bosnia and later reported the war in Kosovo. Afterward, he joined the Times' investigative team and was based in Paris to cover al-Qaida. He left the Times after being issued a formal reprimand for denouncing the Bush administration's invasion of Iraq.

Hedges holds a B.A. in English literature from Colgate University and a Master of Divinity degree from Harvard University. He was awarded an honorary doctorate from Starr King School for the Ministry in Berkeley, Calif. Hedges speaks Arabic, French and Spanish and studied classics, including ancient Greek and Latin, at Harvard. In addition to writing a weekly original column for Truthdig, he has written for Harper's Magazine, Le Monde, The New Statesman, The New York Review of Books, Adbusters, Granta, Foreign Affairs and other publications. He lives in Princeton, New Jersey

In a message dated 11/11/2014 8:17:37 P.M. Pacific Standard Time, abjpd1@gmail.com writes:

Hi Eric,
I hope you are doing well.

Now that you will be on our city council, starting in January 2015, and given your open support for Palo Alto's draconian, and arguably unconstitutional vehicle habitation ordinance, I am curious what you think about the below article (in today's Mercury News). Of course, it would be great if others jumped into this critical conversation as well. Will we continue to allow our politicians to demonize and marginalize the most vulnerable among us? All views welcome.
Aram

Follow the link below to view the article.

sanjosemercurynews.ca.newsmemory.com/publink.php?shareid=075e40045

Sent from my iPhone

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You received this message because you are subscribed to the Google Groups "Stop the Ban Discussion" group.
To unsubscribe from this group and stop receiving emails from it, send an email to STB_Discussion+unsubscribe@googlegroups.com.
For more options, visit <https://groups.google.com/d/optout>.

Carnahan, David

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

14 NOV 12 AM 8:01

From: Aram James <abjpd1@gmail.com>
Sent: Tuesday, November 11, 2014 8:18 PM
To: efilseth@gmail.com; VoteCory Wolbach; lydiakou@gmail.com; mark weiss; Kniss, Liz (internal); Robert; Doug Minkler; John Fredrich; jrosen@da.sccgov.org; jay.boyarsky@da.sccgov.org; Stump, Molly; molly.o'neal@pdo.sccgov.org; J.J Kapp; Stop the Ban Google Discussion Group; Council, City; Ken Dauber; Tom DuBois; Timothy Gray; Tony Ciampi; paloaltolife; Keene, James; Klein, Larry; Deborah Ryan; ppennypacker@scscourt.org; rpichon@scscourt.org; mgreenwood@scscourt.org; smanley@scscourt.org; gsaldivar@scscourt.org; dprice@padailypost.com; Bruce Kenyon; Breena Kerr; aflint@scscourt.org; miguel.rodriquez@pdo.sccgov.org; jgreen@dailynewsgroup.com
Subject: Re Mayor defends stance on public homeless feeding

Hi Eric,
I hope you are doing well.
Now that you will be on our city council, starting in January 2015, and given your open support for Palo Alto's draconian, and arguably unconstitutional vehicle habitation ordinance, I am curious what you think about the below article (in today's Mercury News). Of course, it would be great if others jumped into this critical conversation as well. Will we continue to allow our politicians to demonize and marginalize the most vulnerable among us? All views welcome.

Aram

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sanjosemercurynews.ca.newsmemory.com/publink.php?shareid=075e40045

Sent from my iPhone

Carnahan, David

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

From: Norman Beamer <nhbeamer@yahoo.com>
Sent: Monday, November 10, 2014 3:36 PM
To: City Mgr; Council, City
Cc: Sullivan, Jessica
Subject: No Overnight Parking On University Avenue

14 NOV 10 PM 3:52

I have received inquiries from residents along University Avenue about the No Overnight Parking program (NOP) on the segment of University between Lincoln and Crescent.

On October 6, the City Council approved a resolution extending the program to that segment of University, assuming the petition process provided for in that resolution is followed.

The City Manager's report supporting that resolution stated that "University Avenue in particular has experienced noticeable parking impacts in recent months" (p. 4).

However, apparently city staff is only considering implementing NOP on the North Side of University. If the program is so limited, the overnight parking problem on University will be exacerbated.

Please direct staff to implement the NOP in accord with the resolution, extending NOP to both sides of University

Norman H. Beamer

Carnahan, David

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

From: Keene, James
Sent: Monday, November 10, 2014 6:55 PM
To: Norman Beamer
Cc: Council, City; Sullivan, Jessica; Svendsen, Janice; Gitelman, Hillary; Rodriguez, Jaime
Subject: Re: No Overnight Parking On University Avenue

14 NOV 12 AM 8:03

Norm,
Will look into this and loop back. Jim

James Keene
City Manager
Palo Alto, California

Sent from my iPhone

On Nov 10, 2014, at 3:36 PM, Norman Beamer <nhbeamer@yahoo.com> wrote:

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Norman H. Beamer