



PASSED FOR
PUBLICATION
& CONTINUED
TO August 10, 1999

1.15

DEPARTMENT OF
POLICE

ARTURO VENEGAS, JR.
CHIEF OF POLICE

CITY OF SACRAMENTO
CALIFORNIA

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July 20, 1999

City Council
Sacramento, California

Honorable Members in Session:

**SUBJECT: ADOPTION OF VEHICLE SEIZURE ORDINANCE TO ABATE
PROSTITUTION AND NARCOTIC ACTIVITIES**

LOCATION AND COUNCIL DISTRICT: City Wide

STAFF RECOMMENDATION:

Staff recommends that the item be passed for publication of title, pursuant to City Charter Title 25, and continued to August 10, 1999.

CONTACT PERSON:

Captain Ted Mandalla - 264-7500
Alan Grimm, Administrative Analyst II - 264-8181

FOR COUNCIL MEETING OF: July 27, 1999

SUMMARY:

This report recommends that the City Council approve the passage of the attached ordinance into the Sacramento City Code. This ordinance would provide a means to abate a nuisance in a neighborhood by the seizure and forfeiture of vehicles used to purchase drugs or solicit prostitution. It is also designed to address the blight created by the widespread use of vehicles conducting quick drive-by purchases of drugs or solicitation acts of prostitution in areas known for high crime. These activities seriously degrade the quality of life for residents of the affected neighborhoods.

The ordinance declares any vehicle used to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance, a nuisance. The ordinance permits the abatement of the nuisance by seizure and forfeiture of such vehicle. The forfeiture provisions are for the purpose of discouraging the conduct that creates the blight, namely the use of vehicles as a means to conduct illegal transactions.

The purpose of the proposed ordinance is to target the nuisance and blight created when persons drive into certain neighborhoods. The ordinance is narrowly circumscribed to focus on abating the nuisance. The proposed City of Sacramento ordinance has been based largely on the ordinance in place in the City of Oakland.

On June 1, 1999, the Law and Legislation Committee requested a survey of other cities, a review of alternatives, including the misdemeanor jail and a legal opinion on progressive sanctions, namely impoundment for a first offense. The staffing report addresses these concerns and with the direction of the Law and Legislation Committee is sending this proposed ordinance to the City Council for consideration.

Respectfully submitted,


ARTURO VENEGAS, JR.
Chief of Police

RECOMMENDATION APPROVED:


ROBERT P. THOMAS
City Manager

AV:arg

Ref: 7-17

Attachments: Proposed Ordinance

DRAFT

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE ADDING CHAPTER 61.19¹ TO TITLE 61 OF THE SACRAMENTO CITY CODE, ESTABLISHING THAT ANY VEHICLE USED TO SOLICIT AN ACT OF PROSTITUTION OR TO ACQUIRE OR ATTEMPT TO ACQUIRE A CONTROLLED SUBSTANCE IS A NUISANCE SUBJECT TO SEIZURE AND FORFEITURE.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 61.19 is hereby added to Title 61-- Nuisance Code of the Sacramento City Code, to read as follows:

61.19.1901 Findings and Purpose

The Sacramento City Council hereby finds and declares:

- (a) The citizens of Sacramento have complained about the nuisance created in their neighborhoods by persons driving vehicles into their neighborhoods in order to acquire or attempt to acquire controlled substances or to solicit acts of prostitution; and
- (b) Persons who operate vehicles and use them to acquire or attempt to acquire controlled substances or to solicit acts of prostitution bring crime and decay into the neighborhoods; and
- (c) The seizure and forfeiture of vehicles used by persons to acquire or attempt to acquire controlled substances or to solicit acts of prostitution will serve to

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abate the nuisance caused by such activity, in that these persons will be deterred from using a vehicle as an instrumentality of their illegal activity.

61.19.1902 Definitions.

- (a) Controlled substance - a drug, substance, or immediate precursor which is listed in any schedule in California Health & Safety Code Section 11054, 11055, 11056, 11057, or 11058.
- (b) Driver - the person who drives or is in actual physical control of a vehicle.
- (c) Prostitution - engaging in lewd or sexual conduct for money, or other consideration.
- (d) Vehicle - any transportation device which requires the driver to have in his or her immediate possession a valid driver's license for the appropriate class of vehicle being driven.

61.19.1903 Nuisance Subject To Abatement By Seizure and Forfeiture of Vehicle.

- (a) Any vehicle used to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance, is declared a nuisance and the vehicle shall be enjoined and abated by seizure and forfeiture, as provided for in this Chapter.
- (b) Any person or his or her servant, agent, or employee who owns leases, conducts or maintains any vehicle used for any of the purposes or acts set forth in this section is guilty of creating a public nuisance.

61.19.1904 Seizure of Vehicle

- (a) A peace officer may seize a vehicle subject to forfeiture under this Chapter upon the issuance of an order by a court having jurisdiction over the vehicle. Seizure without court order may be made if any of the following situations exist:
 - (i) There is probable cause to believe that the vehicle was used in violation of this chapter; or
 - (ii) The seizure is incident to an arrest or a search under a search warrant.

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- (b) Receipts for vehicles seized pursuant to this chapter shall be delivered to any person from whose possession such vehicle was seized, in accordance with section 1412 of the Penal Code.
- (c) An immediate investigation shall be made by the Sacramento Police Department as to any claimant to a vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles or other state or federal agency. If the Sacramento Police Department finds that any person, other than the person from whom the vehicle was seized, is the legal owner thereof, and such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, it shall within 48 hours of the vehicle's seizure, send a Notice of Seizure to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or other state or federal agency.
- (d) The Notice of Seizure sent pursuant to the requirements of subsection (c) shall set forth the time in which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.

69.19.1905 Forfeiture and Notice of Intended Forfeiture of Vehicle

- (a) The District Attorney or City Attorney may, pursuant to this section, order the forfeiture of vehicles seized under this Chapter.
- (b) If the District Attorney or City Attorney determines that the factual circumstances warrant the forfeiture of a vehicle described in section 61.19.1903, the District Attorney or City Attorney shall serve a Notice of Intended Forfeiture upon any person who has an interest in the seized vehicle. Such notice shall be served as soon as practicable, but in any event within 90 days of the seizure of the vehicle subject to forfeiture.
- (c) The Notice of Intended Forfeiture shall be served by personal delivery or certified mail, return receipt requested, upon any person who has an interest in the seized vehicle as determined pursuant to 69.19.1904(c).
- (d) A Notice of Intended Forfeiture shall include:
 - (i) A description of the vehicle.
 - (ii) The date and place of the vehicle's seizure.

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- (iii) The violation of law alleged with respect to the intended forfeiture of the vehicle.
- (iv) A claim form as described in section 69.19.1906.
- (v) Instructions for filing and serving a claim, and the time limits for filing such a claim.

61.19.1906 Claims and Court Proceedings

- (a) Any person claiming an interest in a vehicle seized pursuant to this Chapter must, not later than **10 days** from the date of the Notice of Intended Forfeiture, file a claim with the Superior Court of Sacramento, verified in accordance with section 446 of the Code of Civil Procedure, stating his or her interest in the vehicle. An endorsed copy of the claim shall be served by the claimant on the District Attorney or City Attorney within 10 days of the filing of the claim.
- (b) If a verified claim is timely filed, the District Attorney or City Attorney shall institute a forfeiture proceeding by filing a petition for forfeiture with the Superior Court of Sacramento County within 30 days of the receipt of the claim, and by setting the matter for a hearing on a day not less than 30 days therefrom.
- (c) The hearing shall be before the Superior Court of Sacramento County.
- (d) The provisions of the Code of Civil Procedure shall apply to proceedings under this Ordinance unless otherwise inconsistent with the provisions or procedures set forth in this Chapter. However, in proceedings under this Chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this Chapter.
- (e) With respect to vehicles described in Section 61.19.1903 for which forfeiture is sought and as to which forfeiture is contested, the City of Sacramento shall have the burden of proving by a preponderance of the evidence that the vehicle was used as set forth in Section 61.19.1903. Trial shall be before the Court. The presiding judge of the Superior Court shall assign the action brought pursuant to this Chapter for trial.

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- (f) Upon proof that the vehicle was used for any of the purposes set forth in section 61.19.1903, the Court shall declare the vehicle a nuisance and order the vehicle sold and the proceeds distributed as set forth in section 61.19.1907.
- (g) If no claims are timely filed in response to the notice issued pursuant to subsection (b), the District Attorney or the City Attorney shall prepare a written declaration of forfeiture of the vehicle to the City and dispose of the property in accordance with Section 61.19.1907. A written declaration of forfeiture signed by the District Attorney or City Attorney under this section shall be deemed to provide good and sufficient title to the forfeited property. The District Attorney or City Attorney ordering forfeiture pursuant to this subsection shall provide a copy of the declaration of forfeiture to any person who received notice of the intended forfeiture proceedings.

61.19.1907 Distribution of Proceeds

In all cases where a vehicle seized pursuant to this Chapter is forfeited to the City, the vehicle shall be sold and the proceeds of sale shall be distributed as follows:

- (a) To the bonafide or innocent purchaser, conditional sales vendor, mortgagee or lien holder of the property, if any, up to the amount of his or her interest in the property, when the Court, District Attorney or City Attorney declaring the forfeiture orders a distribution to that person.
- (b) To the District Attorney or City Attorney for all expenditures made or incurred by it in connection with the publication of the notices set forth in Section 61.19.1905, and the sale of the vehicle, including expenditures for any necessary repairs, storage, or transportation of any vehicle seized under this Chapter.
- (c) The remaining funds shall be distributed as follows:
 - (i) Fifty percent to the local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.
 - (ii) Fifty percent to the District Attorney or City Attorney.

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Chapter 61.19 is hereby added to Title 61-- Nuisance Code of the Sacramento City Code, to read as follows:

61.19.1901 Findings and Purpose

The Sacramento City Council hereby finds and declares:

- (a) The citizens of Sacramento have complained about the nuisance created in their neighborhoods by persons driving vehicles into their neighborhoods in order to acquire or attempt to acquire controlled substances or to solicit acts of prostitution; and
- (b) Persons who operate vehicles and use them to acquire or attempt to acquire controlled substances or to solicit acts of prostitution bring crime and decay into the neighborhoods; and
- (c) The seizure and forfeiture of vehicles used by persons to acquire or attempt to acquire controlled substances or to solicit acts of prostitution will serve to

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- (a) Any vehicle used to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance, is declared a nuisance and the vehicle shall be enjoined and abated by seizure and forfeiture, as provided for in this Chapter.
- (b) Any person or his or her servant, agent, or employee who owns leases, conducts or maintains any vehicle used for any of the purposes or acts set forth in this section is guilty of creating a public nuisance.

61.19.1904 Seizure of Vehicle

- (a) A peace officer may seize a vehicle subject to forfeiture under this Chapter upon the issuance of an order by a court having jurisdiction over the vehicle. Seizure without court order may be made if any of the following situations exist:
 - (i) There is probable cause to believe that the vehicle was used in violation of this chapter; or
 - (ii) The seizure is incident to an arrest or a search under a search warrant.

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- (b) Receipts for vehicles seized pursuant to this chapter shall be delivered to any person from whose possession such vehicle was seized, in accordance with section 1412 of the Penal Code.
- (c) An immediate investigation shall be made by the Sacramento Police Department as to any claimant to a vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles or other state or federal agency. If the Sacramento Police Department finds that any person, other than the person from whom the vehicle was seized, is the legal owner thereof, and such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, it shall within 48 hours of the vehicle's seizure, send a Notice of Seizure to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or other state or federal agency.
- (d) The Notice of Seizure sent pursuant to the requirements of subsection (c) shall set forth the time in which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.

69.19.1905 Forfeiture and Notice of Intended Forfeiture of Vehicle

- (a) The District Attorney or City Attorney may, pursuant to this section, order the forfeiture of vehicles seized under this Chapter.
- (b) If the District Attorney or City Attorney determines that the factual circumstances warrant the forfeiture of a vehicle described in section 61.19.1903, the District Attorney or City Attorney shall serve a Notice of Intended Forfeiture upon any person who has an interest in the seized vehicle. Such notice shall be served as soon as practicable, but in any event within 90 days of the seizure of the vehicle subject to forfeiture.
- (c) The Notice of Intended Forfeiture shall be served by personal delivery or certified mail, return receipt requested, upon any person who has an interest in the seized vehicle as determined pursuant to 69.19.1904(c).
- (d) A Notice of Intended Forfeiture shall include:
 - (i) A description of the vehicle.
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- (iii) The violation of law alleged with respect to the intended forfeiture of the vehicle.
- (iv) A claim form as described in section 69.19.1906.
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61.19.1906 Claims and Court Proceedings

- (a) Any person claiming an interest in a vehicle seized pursuant to this Chapter must, not later than **10 days** from the date of the Notice of Intended Forfeiture, file a claim with the Superior Court of Sacramento, verified in accordance with section 446 of the Code of Civil Procedure, stating his or her interest in the vehicle. An endorsed copy of the claim shall be served by the claimant on the District Attorney or City Attorney within 10 days of the filing of the claim.
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