



Office of the City Manager

ACTION CALENDAR
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager
Farimah Faiz Brown, City Attorney

Submitted by: Bren Darrow, Assistant City Attorney

Subject: An Ordinance Repealing Chapter 12.76 of the Berkeley Municipal Code and Repealing Ordinance 7643-NS.

RECOMMENDATION

Adopt first reading of an ordinance repealing Chapter 12.76 of the Berkeley Municipal Code and repealing Ordinance 7643-NS.

FISCAL IMPACTS OF RECOMMENDATION

There are no identifiable fiscal impacts associated with this recommendation.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has two ordinances that prohibit the use of motor vehicles for shelter. Neither has been enforced in recent years. First, the House Cars Ordinance (BMC Chapter 12.76), enacted in 1970, prohibits anyone from residing in a vehicle within the City limits. This ordinance has not been enforced in Berkeley since 2014, when a similar ordinance was invalidated in the City of Los Angeles.

Second, the City's oversize vehicle overnight parking ban (BMC 14.40.120) was amended in 2019 to prohibit overnight parking of RVs or campers. Prior to 2019, the OSV ban applied only to heavy duty commercial vehicles, such as semi-tractor trailers and other vehicles with more than two axles. This amendment has never been enforced, because upon its adoption (Ordinance 7643-NS, March 26, 2019) Council directed the City Manager not to enforce it until a citywide overnight RV parking permit process has been established.

On November 4, 2021, a lawsuit (*Dominguez et al. v. City of Berkeley*, United States District Court Case No. 3:21-cv-08599-SI) was filed by a group of people using vehicles as shelter in the Harrison Corridor. Among other claims, the plaintiffs sought to invalidate the vehicle shelter ordinances discussed above.

If this proposed ordinance is enacted, Chapter 12.76 (House Cars) would be completely repealed and stricken from the Berkeley Municipal Code. Ordinance 7643-NS would be

repealed and BMC section 14.40.120 would read as it did prior to March 26, 2019, as shown in strikethrough below:

14.40.120

A. It is unlawful for any person to park any ~~oversize or~~ heavy duty commercial vehicle on any street between the hours of two a.m. and five a.m. for a greater length of time than one hour.

B. For the purpose of this section, ~~oversize or~~ heavy duty commercial vehicle shall mean a single vehicle or combination of vehicles having more than two axles, a single vehicle or combination of vehicles 20 feet or more in length, or a single vehicle or combination of vehicles six feet six inches or more in width, and shall include, but shall not be limited to dump trucks, moving vans, tractors, pole or pipe dollies, ~~recreational vehicles (RVs), campers.~~

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report. Further, it has been determined that there are no opportunities to reduce greenhouse gas emissions or advance a just transition away from fossil fuels for this project.

RATIONALE FOR RECOMMENDATION

The vehicle shelter ordinances that would be repealed by this proposed ordinance have not been implemented since 2014 and 2019, respectively. The United States Constitution grants certain rights to people experiencing homelessness. See, e.g., *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019). The repeal of the vehicle shelter ordinances would not enlarge those rights or otherwise authorize the use of vehicles as shelter in a manner that violates other laws. The repeal of the vehicle shelter ordinances would not immunize people who reside in vehicles from the enforcement of generally applicable laws, including parking and traffic laws.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Paul Buddenhagen, Deputy City Manager, (510) 981-7000

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

REPEALING CHAPTER 12.76 OF THE BERKELEY MUNICIPAL CODE, REPEALING ORDINANCE 7643-NS, AND AMENDING SECTION 14.40.120

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 12.76 is hereby repealed.

Section 2. That Ordinance 7,643-NS is hereby repealed, and Berkeley Municipal Code Section 14.40.120 is amended to read as follows:

14.40.120

A. It is unlawful for any person to park any ~~oversize or~~ heavy duty commercial vehicle on any street between the hours of two a.m. and five a.m. for a greater length of time than one hour.

B. For the purpose of this section, ~~oversize or~~ heavy duty commercial vehicle shall mean a single vehicle or combination of vehicles having more than two axles, a single vehicle or combination of vehicles 20 feet or more in length, or a single vehicle or combination of vehicles six feet six inches or more in width, and shall include, but shall not be limited to dump trucks, moving vans, tractors, pole or pipe dollies, ~~recreational vehicles (RVs), campers.~~

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

