

SETTLEMENT AGREEMENT

This settlement agreement (“Agreement”) is made and entered into by and between Plaintiffs Stephen Chatzky, Tony Diaz, Valerie Grischy, Penny Helms, Benjamin Hernandez, Doug Higgins, Suzonne Keith, Gerald Stark and Anna Stark, (hereinafter “Plaintiffs”), and members of the certified class (hereinafter “Class Members”) through their attorneys and class representatives, and the City of San Diego (“Defendant” or “City”) (together, “Parties”).

RECITALS

A. Plaintiffs filed a class action on November 15, 2017, against the City of San Diego (“the City”) on behalf of people whose only shelter is their vehicles. The operative complaint contains constitutional and statutory claims challenging the language and enforcement of the current Vehicle Habitation Ordinance (“VHO”), the Oversized Vehicle Ordinance (its provisions prohibiting parking from 2 a.m. to 6 a.m.) (“OVO”). The City has denied and continues to deny these allegations.

B. On June 8, 2021, the Court granted in part Plaintiffs’ Motion for Class Certification, certifying a Rule 23(b)(2) Class defined as follows: “All persons in the City of San Diego who used, use, or will use and RV or other vehicle as their only form of shelter, anywhere, at any time after November 15, 2017.” (Doc. 180).

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration for the mutual promises, covenants, and conditions contained herein, the Parties hereby agree as follows:

1. Effective Date and Termination Date

The Effective Date of this Agreement shall be upon approval by the court after the last party executes the agreement, and the agreement will terminate three (3) years therefrom.

2. Relinquishment of claims for outstanding Fines and Penalties

Upon receipt of written request from a class member or based upon a verified list of class members with their license plate numbers, the City shall promptly forgive all unpaid OVO tickets for parking oversized vehicles between 2 a.m. and 6 a.m. and for violation of signage referring to VHO, or OVO requirements during nighttime hours received by class members between November 15, 2017, and the Effective Date and permanently relinquish any claim for payment of any outstanding fines, fees, and penalties associated with these tickets. Upon the conclusion of a feasibility study to occur in a reasonable time frame following final approval of the Settlement, based on an adequate sample of the class members’ unpaid tickets information, the City, if feasible, will promptly forgive all unpaid parking tickets and other debts related to unpaid parking tickets that the City has the legal ability to relinquish for the class members upon written request from a class member or from a verified list of class members with their license plate numbers. Upon forgiveness of tickets, the City will inform the DMV that the fines, fees, and penalties are no longer due and payable.

The City will provide written confirmation to Plaintiffs' counsel that the City's claims for the outstanding fines, fees, and penalties referenced in this paragraph have been waived and that the City's actions have been duly reported to the DMV.

The City agrees that it does not want to tow vehicles that provide the sole means of shelter to individuals or families who are experiencing involuntary homelessness. Upon execution of this agreement, the City's intent would be to forgive all OVO and former VHO citations, citations for violation of signage referring to VHO, or to OVO requirements during nighttime hours, and possibility other citations and allow time for DMV to clear any liens. The City will make reasonable efforts to prevent towing occupied vehicles while ticket forgiveness and re-registration of vehicles is in the process. It will be determined, as there are contractual towing agreements and the City needs internal consistency, if City's safe parking providers would be able to assist class members in the recovery of vehicles if vehicles are towed.

3. Changes to VHO Training Bulletin and Enforcement

The City agrees to adopt an amended VHO Training Bulletin, which is attached to this Agreement as **Exhibit A**. As of the Effective Date and while this Agreement is in effect, the City agrees to take all reasonable steps necessary to enforce VHO against Plaintiffs and class members in a manner that is consistent with the progressive enforcement and all other guidelines in **Exhibit A**, the amended VHO Training Bulletin. The Parties agree that the amended VHO Training Bulletin is intended to avoid VHO enforcement for vehicle habitation against Plaintiffs and class members who are sheltering in, resting in, sleeping in, and/or storing property in their vehicles while being otherwise law-abiding, i.e., without committing a criminal law violation *other than the VHO*. Parking violation(s) alone will not trigger enforcement of the VHO pursuant to the progressive enforcement protocol, unless the person is first given the opportunity to cure the parking violation at issue and refuses to do so.

The Parties also agree that the VHO Training Bulletin is intended to avoid VHO and related vehicle habitation enforcement while Plaintiffs and Class members are using their vehicle for transportation purposes and temporarily parking within the city in pursuit of those purposes, even though the same vehicle is also used as shelter.

The VHO shall not be enforced based on the 9:00 p.m. to 6:00 a.m. restriction when legal parking options, including safe parking lots in the City of San Diego, are full, closed, or are not reasonably available to involuntarily homeless individuals sheltering in vehicles at the time of the law enforcement contact. To determine whether a safe parking lot is reasonably available to an involuntarily homeless person sheltering in their vehicle, Officers should consider the totality of the circumstances, including the type of vehicle, the distance to the safe parking lot, and whether there is adequate space for the vehicle in the safe parking lot.

The City agrees to provide in-person training of police officers on the amended VHO Training Bulletin that would begin on a rolling basis as soon as possible with the goal of completing training no later than three months of the Effective Date.

4. Safe Parking Program

The City agrees to expand their Safe Parking Program that will grant Plaintiffs and Class members, including those with RVs or other oversized vehicles, the ability to lawfully park in various library parking lots and/or other parking lots, which may include parking at religious facilities and other vacant parking lots in various Council districts during the nighttime hours.

A. Nighttime Hours. The Safe Parking nighttime hours will depend on the specific parking lot. For example, library hours shift during the year and may allow earlier safe parking when libraries close earlier; additional lots currently under consideration may vary in hours depending on the daytime use. The City's intent is to provide safe parking during nighttime hours that OVO and VHO would be enforced. The City would not ticket or enforce the OVO or VHO during the nighttime hours if a class member relocates to an available safe parking lot. If there is no safe parking available as defined in paragraph 3 above, the City will not enforce the nighttime provisions of the OVO or VHO at that time. If safe parking is available and accepted by an individual class member, the class member will be given a reasonable opportunity to relocate to the safe parking and the City should not enforce or cite the class for OVO or VHO violations.

B. Oversized Vehicles. The City understands accessibility issues for oversized vehicles related to accessing the sites and will identify safe parking lots that can be navigated by oversized vehicles. On-site staff can assist with navigating individual access to the lot. Additionally, the lots identified in the Comprehensive Shelter Plan are generally flat and don't contain physical conditions that would preclude access for oversized vehicles. In selecting the safe lots, the City is committed to considering accessibility for oversized vehicles. The City, if feasible, will make a reasonable, good faith effort to secure mobile pumping services for oversized vehicles at the lots that are accessible to oversized vehicles.

C. Safe Parking Lot Locations. Safe parking lot locations have been identified in the City's Comprehensive Shelter Plan found on the City's website at <https://www.sandiego.gov/sites/default/files/hssd-comprehensive-shelter-strategy.pdf>. The City will continue to explore additional safe parking lot locations and is willing to engage in continued conversation about locations of safe parking as additional lots are identified. The City is committed to identifying additional locations and making available safe lots that best meet the needs of the class members upon consideration of utilization, location, access to other services, budget, and other relevant factors.

D. Bathrooms, Sanitary Services, and Security. Each safe parking lot will have safe, accessible bathrooms, security and/or personnel on-site. Security will not specifically staff the bathrooms. Bathrooms at library parking lots will be locked during daytime hours to encourage library patrons to use bathrooms in the library.

E. Eligibility. Enrollment in the Homeless Management Information System (HMIS) program with the provider is mandatory. Program participation also includes meeting with case manager or housing navigator. Federal law protects the confidentiality of all personal data provided to enroll in the program. Data shared in the program is not subject to FOIA or CPRA request. Law enforcement does not have access to any data in this program. Participants must comply with the hours of operation, which includes leaving the safe parking lot when the lot is closed for safe

overnight parking and their vehicle must be operable. Additionally, participants must follow the safe parking lot operator's program guidelines. Participants may not operate a vehicle under the influence. Pre-enrollment is preferred but not required.

F. Rules of Conduct. In general, participants are only asked to leave the safe parking lot for violating the operator's rules of conduct or program guidelines, which may include, significant violations of quiet hours, driving under influence, illegal drug use onsite with an intent to drive, or illegal discharge of waste or trash. The City and its operators attempt to resolve any neighbor conflicts amicably without resorting to asking an individual to leave the safe lot.

G. Disputes. The City will provide a fair and expedited appeal process for individuals asked to leave a safe parking lot.

H. Rotating Locations. The City will open or close its safe parking lots based on usage, funding, and need. The City does not intend to operate safe parking lots on a daily or weekly rotation and is committed to communicating openings and closings with at least 72-hours' notice, in non-emergency cases, at the safe parking lot and posted on the City's website.

I. Notice to Occupants of Openings and Closings and Notice of Availability of Spaces at Safe Lots. Occupants of the safe lot will be notified with as much notice as possible by the provider of changes in Safe Lot locations. Emergency circumstances may necessitate less notice for temporary relocation. The City will also provide information about how to directly contact City-provided safe parking providers through flyers posted at public restrooms, the City's website, and access to all safe parking providers through 2-1-1 and outreach workers. Vacant spots in Safe Lots will be made available to the public on the City's website, including whether spaces may be suitable for oversized vehicles, on at least a nightly basis.

J. Adequate Space Between Parked Vehicles. The amount of space between each vehicle will be determined on a case-by-case basis but will comply with Fire Marshal guidance on maintaining safe distance and ingress/egress for each lot. The City is committed to considering input provided by class members and understanding the needs of the class members regarding appropriate spacing between vehicles. The Safe Parking Program is not intended to be a permanent solution to involuntary homelessness. The goal of the Safe Parking Program is for the City and its service providers to help people and families who are involuntarily homeless secure long-term housing.

K. Funding for Fiscal Year 2024. The City agrees to require that the allocation of up to \$850,000 for the fiscal year of 2024 must be used for the safe parking program.

5. Parking Program at Mission Valley Location. The City agrees to operate the Mission Valley lot, or other comparable lot, on a 24-hour basis for the exclusive use of involuntarily homeless persons residing in RVs and other oversized vehicles during the three (3) year term of the Agreement. Plaintiffs and Class Members who enter the lot will be allowed to have one smaller vehicle in addition to their oversized vehicle and be permitted to leave their oversized vehicle (including a non-motorized trailer) in the lot while using their smaller vehicle for public transportation for work, school, and other errands, or activities. The City also agrees to make improvements to the Mission Valley location of the City's parking program, with a focus on essential improvements of electric hookups, running water, bathrooms, and showers, at a cost of up

to, but at an estimate and not to exceed \$900,000, subject to contracting and public works procurement requirements and fiscal year time constraints. The City will make a reasonable, good faith attempt to complete the following improvements within the budget:

Water Services

- Hookups for up to forty (40) RV parking sites (the maximum number that can be safely accommodated at the lot)
- Water capacity fees
- 3" water meter

Electrical Power

- New conduit & wire runs to provide up to forty (40) RV hookups, with associated trenching (assumed use of same utility trench which was drafted for site lighting; power to RV sites is based on the assumption that the existing panel at Fire Station 45 can support the demand loads & capacity resulting from the addition of forty (40), 50AMP hookups).

Access Gate

- Demolition and expansion of existing access gate to broaden egress & ingress.
- Additional exit in case of fire or other emergency.

Site Lighting

- Up to twenty-five (25) new light posts and associated conduit standard to provide adequate lighting at the site.
- Connecting to the existing FS45 panel to power proposed site lighting.

Proposed pump-out station for RV's containing sewer

- Concrete pad for one (1) RV sewage disposal
- One (1) sewer service and connection to existing sewer in Friars Rd.
- One (1) potable water service for hose spigot (wash out).

Sanitation & Sewer services

- Connections for four (4) bathrooms with flush toilets and shower stalls (excludes cost of trailers, assumed to be provided by on-site service provider)
- ADA restroom trailer
- ADA shower trailer
- Standard restroom trailer

Shade

- Adequate shade structures and/or the planting of trees to protect against heat.

6. ADA Accommodations and Procedures

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), the City will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The City agrees to consider all Plaintiffs and Class Members requests for reasonable modifications in good faith in compliance with Title II and its implementing regulations, though it reserves the right not to take any action that would fundamentally alter the nature of its programs or services or impose an undue financial or administrative burden.

7. Reservation of Jurisdiction, Monitoring and Recordkeeping

The Parties agree to reserve to the Court jurisdiction to enforce the terms of the settlement agreement for three years. Subject to the approval of the Court, jurisdiction for purposes of enforcement will be delegated to Magistrate Judge Butcher. During this time and subject to any legal prohibitions on disclosure, the City agrees to provide Plaintiffs' counsel every three months with available records of: (i) enforcement of the VHO; (ii) enforcement of the OVO; (iii) ticket forgiveness; and (iv) reasonable accommodation/modification requests and responses regarding enforcement of the VHO and/or the OVO. These records should include but not be limited to the following:

- Copies of any electronic or paper records of VHO enforcement, including officer notes;
- Copies of any electronic or paper records of OVO enforcement, including officer notes;
- Electronic or paper records related to applications for and/or granting of ticket forgiveness under this Settlement Agreement;
- The alleged criminal offense(s) committed by Plaintiff(s) other than the VHO and the basis for reasonable suspicion of such a violation;
- The evidence to show that the vehicle was not being used for transportation purposes at the time of the enforcement;
- Photographic evidence of the condition of the vehicle, contents in the vehicle, and location immediately around vehicle;
- Whether the Plaintiff was asked to relocate their vehicle and whether Plaintiff was given a reasonable opportunity to relocate their vehicle prior to taking any enforcement action beyond a Field Interview;
- Any actions law enforcement took to determine whether lawful parking options were practically available at the time police performed any stage of the VHO progressive enforcement protocol; and
- Any information provided to Plaintiffs regarding available lawful parking options.

Disclosure of information to Class Counsel pursuant to this Settlement Agreement shall not constitute a waiver of any applicable exemptions to a request made under the California Public Records Act.

8. Informational Flyer

The Parties will agree on the content of an Informational Flyer to be distributed widely to the Plaintiffs and Class Members also distributed as specified in this Agreement. The Informational Flyer will contain information about applying to the City's safe parking lot program and for ticket forgiveness.

9. Damages and Service Awards

The City agrees to pay each of the nine current Plaintiffs \$15,000 in monetary damages. In addition, the seven current class representatives. Stephen Chatzky, Valerie Grischy, Penny Helms,

Benjamin Hernandez, Suzonne Keith, Gerald Stark and Anna Stark will each be provided a service award of \$7,500.

10. Attorneys' Fees and Costs

The City agrees to pay Plaintiffs' counsel \$2,950,000 in attorneys' fees and costs for work done through final approval of the Agreement. The City also agrees to pay reasonable attorney's fees and costs for work necessary to monitor compliance with the Agreement during the period of reserved jurisdiction set forth in paragraph 7 not to exceed \$25,000.

11. Dispute Resolution

It is the intent of the Parties that any disputes concerning the interpretation or implementation of this Agreement be solved as swiftly and inexpensively as possible, initially through communication among counsel for the Parties, and, in the event such communication does not result in resolution, submission of the dispute for resolution by the Court.

If any Party believes that another Party is substantially violating this Agreement, within 30 days of receipt of information, including any records produced by the City pursuant to this Agreement, counsel of record for that Party shall provide a written Notice of Dispute to counsel of record for the other Party, setting forth the Dispute in reasonable detail. Counsel for the other Party shall be required to respond to the Notice of Dispute within 14 days. To the extent non-compliance is identified, the responding Party will have 45 days to cure the non-compliance (or identify a plan to cure any non-compliance). If the Parties are unable to resolve the Dispute within 45 days of the Notice of Dispute, the Party that served the Notice of Dispute may thereafter petition the Court through Judge Butcher for resolution of the Dispute, according to such procedures as the Court may direct. The issues brought before Judge Butcher shall be systemic in nature regarding compliance with one or more sections of the Agreement and not merely an isolated incident or issue involving only an individual ticket. Reasonable attorneys' fees and costs shall be awarded for work done in connection with dispute resolution pursuant to the standards set forth in *Christiansburg Garment Co. v. Equal Employment Opportunity Comm'n*, 434 U.S. 412, 422 (1978). In addition, if Judge Butcher finds systemic violations of one or more sections of the Agreement which will need time to resolve or further monitoring, he may extend the length of jurisdiction an additional six to twelve months and order whatever other remedies he deems appropriate.

12. Release of Claims

Conditioned upon and subject to the City's compliance with the terms of this Agreement, Members of the Class hereby release the City and its departments, heirs, successors, present and former employees, officers, members, councilmembers, attorneys, agents, insurers, successors and assigns from any and all claims, demands, obligations or causes of action, and suits for equitable relief, whether based on or arising under federal or state law and whether known or unknown, which Plaintiffs ever had or now have relating to the allegations in the operative Complaint in this Action.

Plaintiffs acknowledge that the release of claims for equitable relief applies to claims that may be unknown at the time of execution of the Agreement, and that they have been advised by legal counsel and are familiar with the provisions of California Civil Code § 1542, which provides as

follows: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.” Plaintiffs expressly waive this provision with respect to claims for equitable relief.

The release of claims for equitable relief shall extend through the period of reserved jurisdiction set forth in paragraph 7. Upon expiration of the period of reserved jurisdiction set forth in paragraph 7, the release of claims for equitable relief described in this section shall also expire.

Named Plaintiffs, as consideration for the Damages awarded pursuant to Section 9 of this Agreement, further release any claims for expenses and compensation of every kind or nature including but not limited to losses, damages (including punitive damages and treble damages), physical or mental injuries, loss of earnings or earning capacity, liabilities, expenses, fees and costs (but excluding the attorneys’ fees and costs sought in connection with the prosecution and settlement of the Action and for the period of reserved jurisdiction set forth in paragraph 7) regarding facts up to the Effective Date of the Agreement.

The above releases do not apply to any claims to enforce the terms of this Settlement Agreement.

13. Authorization

Each individual or entity that executes this Agreement represents and warrants, in their personal capacity, that they are duly authorized and empowered to enter into this Agreement on behalf of themselves or the Party they purport to represent.

14. Knowing and Voluntary

This Agreement is an important legal document that has been voluntarily and knowingly executed by the Parties. The Parties, and each of them, specifically represent that, prior to signing this Agreement:

1. they have each been provided a reasonable period of time within which to consider whether to accept this Agreement;
2. they have each carefully read and fully understand all of the provisions of this Agreement; and
3. they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment.

Plaintiffs, and each of them, further specifically represent that, prior to signing this Agreement, they have conferred with counsel of their choice to the extent desired concerning the legal effect of this Agreement, and that the legal effect of this Agreement has been adequately explained to them.

15. Entire Agreement

This Agreement embodies the entire understanding and agreement between the Parties with respect to the matters referred to herein. This Agreement supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between


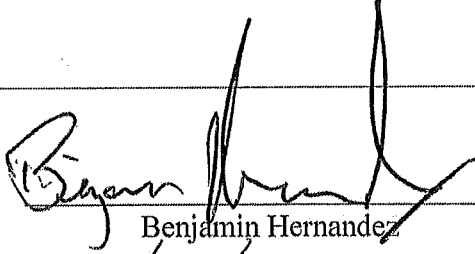

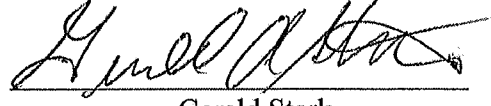


the parties to the same. No other representations, covenants, undertakings or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or to bind any of the Parties. Each of the Parties acknowledges that they have not executed this Agreement in reliance on any such promise, representation, or warranty.

16. No Waiver of Terms of Agreement

The failure to insist upon compliance with any term, covenant or condition contained in the Agreement shall not be deemed a waiver of that term, covenant, or condition.

IN WITNESS WHEREOF, the Parties hereby enter into this Agreement:

PLAINTIFFS:

By:  Stephen Chatzky DATE: 1/31/24	By:  Benjamin Hernandez DATE: 1/31/24
By: _____ Valerie Grischy DATE:	By:  Suzonne Keith DATE:
By: _____ Penny Helms DATE:	By:  Gerald Stark DATE: 1-31-24
By:  Anna Stark DATE: 1-31-24	By:  Doug Higgins DATE: 1/31/24

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IN WITNESS WHEREOF, the Parties hereby enter into this Agreement:

PLAINTIFFS:

By: _____ Stephen Chatzky DATE: _____	By: _____ Benjamin Hernandez DATE: _____
By: <u>Valerie Grischy</u> Valerie Grischy DATE: <u>2/1/24</u>	By: _____ Suzonne Keith DATE: _____
By: _____ Penny Helms DATE: _____	By: _____ Gerald Stark DATE: _____
By: _____ Anna Stark DATE: _____	By: _____ Doug Higgins DATE: _____

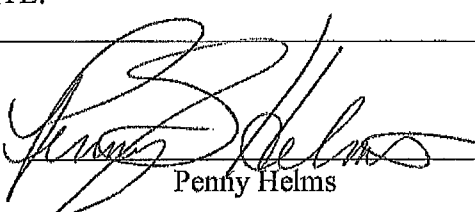
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IN WITNESS WHEREOF, the Parties hereby enter into this Agreement:

PLAINTIFFS:

By: _____ Stephen Chatzky DATE:	By: _____ Benjamin Hernandez DATE:
By: _____ Valerie Grischy DATE:	By: _____ Suzonne Keith DATE:
By:  Penny Helms DATE: 1-31-2024	By: _____ Gerald Stark DATE:
By: _____ Anna Stark DATE:	By: _____ Doug Higgins DATE:

<p>By <u>Tony Diaz</u> Tony Diaz</p> <p>DATE: 2/1/24</p>	
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DEFENDANT:

By: [Signature]
On Behalf of the City of San Diego

DATE: Feb. 9, 2024

Approved as to Form:

Dated:

Michael Amon
Fish & Richardson P.C.

Dated:

Stuart Seaborn
Disability Rights Advocates

Dated:

Ann E. Menasche
Law Office of Ann E. Menasche¹

Dated:

William Knight
The National Homelessness Law Center

Dated:

Christian A. Abasto
Disability Rights California

Dated:

Manfred Muecke
Manfred, APC

¹ As of May 2022, lead Attorney Ann E Menasche was no longer at Disability Rights California and continued her role representing the class in her private practice.

<p>By _____ Tony Diaz</p> <p>DATE:</p>	
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DEFENDANT:

By: _____
On Behalf of the City of San Diego

DATE:


Approved as to Form:

Dated: February 1, 2024



 Michael Amon
 Fish & Richardson P.C.

Dated: February 1, 2024



 Stuart Seaborn
 Disability Rights Advocates

Dated:

 Ann E. Menasche
 Law Office of Ann E. Menasche¹


Dated:

 William Knight
 The National Homelessness Law Center

Dated:

 Christian A. Abasto
 Disability Rights California

Dated: February 1, 2024



 Manfred Muecke
 Manfred, APC

¹ As of May 2022, lead Attorney Ann E Menasche was no longer at Disability Rights California and continued her role representing the class in her private practice.

<p>By _____ Tony Diaz</p> <p>DATE:</p>	
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DEFENDANT:

By: _____
On Behalf of the City of San Diego

DATE:

Approved as to Form:


Dated:

Michael Amon
Fish & Richardson P.C.

Dated:

Stuart Seaborn
Disability Rights Advocates

Dated:



Ann E. Menasche
Law Office of Ann E. Menasche¹

Dated:

William Knight
The National Homelessness Law Center

Dated: 2/1/2024

Dated:

Christian A. Abasto
Disability Rights California

Manfred Muecke
Manfred, APC

¹ As of May 2022, lead Attorney Ann E Menasche was no longer at Disability Rights California and continued her role representing the class in her private practice.

<p>By _____ Tony Diaz</p> <p>DATE:</p>	
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DEFENDANT:

By: _____
On Behalf of the City of San Diego

DATE:

Approved as to Form:

Dated:

Michael Amon
Fish & Richardson P.C.

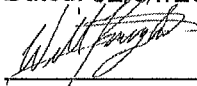
Dated:

Stuart Seaborn
Disability Rights Advocates

Dated:


Ann E. Menasche
Law Office of Ann E. Menasche¹

Dated: 02/01/2024



William Knight
The National Homelessness Law Center

Dated: 2/2/2024



Christian A. Abasto
Disability Rights California

Dated:

Manfred Muecke
Manfred, APC

¹ As of May 2022, lead Attorney Ann E Menasche was no longer at Disability Rights California and continued her role representing the class in her private practice.

Dated: 2-1-24



Scott Dreher
Dreher Law Firm

Dated:

DocuSigned by:
Tristia Bauman

Tristia Bauman
Law Foundation of Silicon Valley²

DEFENDANT:

Dated:



Michelle T. Neff
Deputy City Attorney
On Behalf of the City of San Diego

² Attorney Tristia Bauman is no longer at The National Homelessness Law Center but has continued her role representing the class in this case at Law Foundation of Silicon Valley.

EXHIBIT A

San Diego Police Department

TRAINING BULLETIN

A PUBLICATION OF THE SAN DIEGO POLICE DEPARTMENT

DAVID NISLEIT
CHIEF OF POLICE

23-XX

X/XX/2024

Enforcement of Vehicle Habitation Ordinance

This Training Bulletin supersedes Training Bulletin 19-09.

I. PURPOSE

This bulletin is meant to educate officers and outline enforcement considerations and procedures when enforcing the Vehicle Habitation Ordinance (VHO). Officers shall not enforce the VHO until they have received Department approved training and have been authorized to begin enforcement.

II. BACKGROUND

The City of San Diego recently enacted a new Vehicle Habitation Ordinance.

III. VEHICLE HABITATION ORDINANCE

Municipal Code section 86.0137 – Prohibition of Use of Streets for Storage, Service or Sale of Vehicles or for Habitation – states the following:

- A. It is unlawful for any *person* to use a vehicle for human habitation on any street or public property, unless the street or public property is specifically authorized for such use by the City Manager, as follows:
1. Between the hours of 9:00 p.m. and 6:00 a.m.; and
 2. At any time, within 500 feet of a residence, meaning a building used for living, including a house, condominium, apartment unit, or similar dwelling unit affixed to real property; and
 3. At any time, within 500 feet of a school that offers instruction on those courses of study required by the California Education Code or that is maintained pursuant to standards set by the State Board of Education. School for purposes of this section, 86.0137(f), does not include a vocational or professional institution of high education, including a community or junior college, college, or university.
 4. For purposes of this section 86.0137(f), evidence of human habitation may include observations, considering all the circumstances, that a person is using a vehicle for: sleeping; bathing; preparing or cooking meals; possessing or storing items that are not associated with ordinary vehicle use, such as a sleeping bag,

bedroll, blanket, sheet, pillow, used bedding, kitchen utensils, cookware, cooking equipment, camping gear, food, water, personal grooming items, or containers of feces or urine. Evidence of human habitation also may include observations, considering all the circumstances, that: a person has obscured some or all of the vehicle's windows; there is litter, rubbish, or waste in or around the vehicle; there is furniture set up in or around the vehicle, such as chairs, tables, umbrellas, or portable cooking equipment; or there is evidence of human urination or defecation around the vehicle.

IV. ENFORCEMENT GUIDELINES

- A. When enforcing the Vehicle Habitation Ordinance, Officers should keep in mind the totality of the circumstances and avoid enforcement against unhoused people who are sheltering in their vehicles who are not reasonably suspected of committing other criminal offenses as explained below. Officers should consider why a person has certain items associated with habitation inside their vehicle, the purpose for parking on a public street, parking lot, or other public property, and whether the person has committed a separate offense described in the Progressive Enforcement Protocol (Section V).
- B. Officers responding to community complaints, such as those in the Get-It-Done system and non-emergency calls, should proceed to investigate the complaint and when appropriate enforce the law according to the guidance in this Training Bulletin. Enforcement should be avoided when a person is not reasonably suspected of committing a separate offense such as those described in the Progressive Enforcement Protocol (Section V).
- C. Enforcement should be avoided when a vehicle is lawfully parked in a location that is open to the general public, including but not limited to a public parking lot, for a purpose other than vehicle habitation. Enforcement of the VHO should not occur when a person who shelters in a vehicle is using the vehicle as transportation, including but not limited to traveling and temporarily parking at locations to: 1) visit locations in the City that are open to the general public, including but not limited to public parks and beaches, shops, libraries, and/or government offices, 2) obtain health care or medical treatment, 3) seek employment or be employed, 4) obtain education, 5) attend religious services, 6) participate in political activity (such as voting, attending rallies, or attending community meetings), 7) visit family and/or friends, 8) seek housing or social services, 9) transport passengers to and/or from locations within the City, including but not limited to dropping off or picking up a child from school.
- D. The VHO shall not be enforced based on the 9:00 p.m. to 6:00 a.m. restriction when legal parking options, including safe parking lots in the City of San Diego, are full, closed, or are not reasonably available to involuntarily homeless individuals sheltering in vehicles at the time of the law enforcement contact. To determine whether a safe parking lot is reasonably available to an involuntarily homeless person sheltering in their vehicle, Officers should consider the totality of the circumstances, including the type of vehicle, the distance to the safe parking lot, and whether there is adequate space for the vehicle in the safe parking lot.
- E. Additionally, a person merely sleeping, sitting, or eating or drinking inside a vehicle parked on a street or in a public parking lot is not in violation of the Vehicle Habitation Ordinance based on those factors alone. Officers should assess whether the person in the vehicle has committed a separate offense as described in the Progressive Enforcement Protocol (Section

V) before taking enforcement action. Officers should also consider other factors, such as the examples listed in section 86.0137(f)(4) of the Vehicle Habitation Ordinance (section III of this training bulletin) before taking enforcement action. Factors considered when enforcing the Vehicle Habitation Ordinance shall be documented in the officer's report.

- F. Parking violation(s) alone will not trigger enforcement of the VHO pursuant to the progressive enforcement protocol, unless the person is first given the opportunity to cure the parking violation at issue and refuses to do so.
- G. After taking enforcement action, Officers should evaluate whether the vehicle can be legally parked, and if so, refrain from towing the vehicle. As per Department Procedure 7.08 (Vehicle Towing/Impound and Release Procedures), Officers should keep in mind that not every vehicle should be impounded. For example, when a person is arrested for any criminal offense and taken into custody, the vehicle may be legally parked or may be impounded per California Vehicle Code section 22651(h)(1). Refer to DP 7.08 for impound procedures. Factors considered when enforcing the VHO, including a description of the separate offense, shall be documented in the officer's report.

V. PROGRESSIVE ENFORCEMENT PROTOCOL

Generally, Officers should offer services and follow the progressive enforcement model when enforcing the Vehicle Habitation Ordinance. When Officers make contact with a person experiencing homelessness, Officers should ask the person if they are interested in services. If the person is interested, Officers should contact the Homeless Outreach Team (HOT) to assess the person for appropriate services such as the City's safe parking program. In the event the HOT team is not available, Officers should give the HOT team phone number (619-446-1010) to those requesting services. Officers should provide all unhoused individuals that are contacted with the approved flyer that contains information regarding parking options and the process for obtaining reasonable modifications under the Americans with Disabilities Act.

Officers should also encourage tourists and recreational campers who have housing and who are contacted for vehicle habitation to park their vehicles in legally permitted campgrounds.

Before making contact with any person suspected of violating the VHO, Officers should also determine whether there is reasonable suspicion of illegal behavior other than vehicle habitation or parking violations, such as:

1. California: Illegal Waste Dumping under Penal Code § 374.3
2. San Diego: Urination and defecation prohibited under SDMC § 56.55
3. San Diego: Illegal waste dumping prohibited under SDMC § 54.0209
4. San Diego: Public Nuisance Littering Prohibited under SDMC § 54.0210
5. San Diego: Illegal abandoning of personal property is prohibited under SDMC § 54.0212
6. San Diego: Alcohol beverages open on public sidewalks is prohibited under SDMC § 56.54
7. San Diego: Noise Nuisance is prohibited under SDMC §59.5.0501

When contacting a person for a vehicle habitation violation, Officers shall conduct a computer check to determine the person's contact history. Progressive enforcement generally proceeds through the following steps consistent with the guidelines described in Sections III, IV, and V, above:

- A. **The first time** a person is contacted for a potential vehicle habitation violation, the officer should educate and warn them of the new law, and document this warning on an ARJIS-1/Field Interview.
 1. The officer shall list the person's name along with the associated vehicle license plate or vehicle identification number (VIN) on the Field Interview.
 2. The officer shall list "86.0137(f) SDMC" in the crime potential box on the form.
 3. The officer should direct the person to call (858) 637- 3373 for information on one of the City's overnight parking lots.
 4. If the person is experiencing homelessness and is willing to accept services, the officer should contact the HOT team as described above under section V, above.
 5. Officers should issue warnings consistent with the guidelines described in sections III, IV, and V, above.
- B. **The second time** the same person is contacted for a potential vehicle habitation violation, the officer should re-explain the law and may issue an infraction citation for the violation if the violation is established by the evidence and consistent with the guidelines described under sections III, IV, and V, above. The officer should direct the person to call (858) 637- 3373 for information on one of the City's overnight parking lots. If the person is experiencing homelessness and is interested in services the officer should contact the HOT team as described under section V, above.
- C. **The third time**, and each subsequent time thereafter, the same person is contacted for a potential vehicle habitation violation, the officer should re-explain the law and may issue a misdemeanor citation for the violation if the violation is established by the evidence and consistent with the guidelines described under sections III, IV, and V, above. The officer should direct the person to call (858) 637- 3373 for information on one of the City's overnight parking lots. If the person is experiencing homelessness and is interested in services the officer should contact the HOT team as described under section V, above.
- D. **The fourth time**, and each subsequent time thereafter, the same person is contacted for a potential vehicle habitation violation, the officer should reexplain the law and may make a custodial arrest, if the violation is established by the evidence and consistent with the guidelines described under sections III, IV, and V, above, and a custodial arrest is authorized by California Penal Code section 853.6(i).
- E. Nothing in this Training Bulletin shall be construed to interfere with an officer's ability to make a custodial arrest for misdemeanors or felonies that are unrelated to vehicle habitation.

