

**San Diego Police Department**

**TRAINING BULLETIN**

A PUBLICATION OF THE SAN DIEGO POLICE

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CHIEF OF POLICE

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**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. SCOPE**

This Training Bulletin applies to all members of the Department.

**III. BACKGROUND**

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

**IV. 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.

## V. **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 VI).
- 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 VI).
- 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 VI) 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 IV 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.

## **VI. PROGRESSIVE ENFORCEMENT PROTOCOL**

- A. Generally, officers should offer services and follow the progressive enforcement model when enforcing the Vehicle Habitation Ordinance.
- B. When officers contact 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.
  - 1. In the event the HOT team is not available, Officers should give the HOT team phone number (619-446-1010) to those requesting services.
  - 2. 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.
- C. 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.
- D. Before contacting 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
- E. 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 IV, V and VI above:

1. **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 a Field Interview.
  - a. The officer shall list the person's name along with the associated vehicle license plate or vehicle identification number (VIN) on the Field Interview.
  - b. The officer shall list "86.0137(f) SDMC" in the crime potential box on the form.
  - c. The officer should direct the person to call (858) 637- 3373 for information on one of the City's overnight parking lots.
  - d. If the person is experiencing homelessness and is willing to accept services, the officer should contact the HOT team as described Section VI.B.1. above.
  - e. Officers should issue warnings consistent with the guidelines described in sections IV, V and VI above.
2. **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 in sections IV, V and VI, above.
  - a. The officer should direct the person to call (858) 637- 3373 for information on one of the City's overnight parking lots.
  - b. If the person is experiencing homelessness and is interested in services the officer should contact the HOT team as described in Section VI.B.1. above.
3. **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 in sections IV, V and VI above.
  - a. The officer should direct the person to call (858) 637- 3373 for information on one of the City's overnight parking lots.
  - b. If the person is experiencing homelessness and is interested in services the officer should contact the HOT team as described under Section VI.B.1. above.

4. **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 IV, V and VI, above, and a custodial arrest is authorized by California Penal Code section 853.6(i).
5. 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.