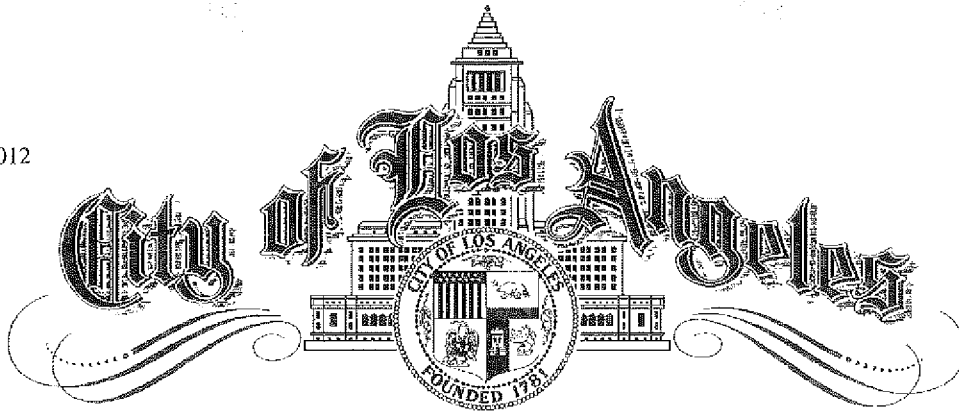


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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 2 - 0 2 7 1

AUG 13 2012

REPORT RE:

DRAFT ORDINANCE REPEALING LOS ANGELES MUNICIPAL CODE SECTIONS 41.70 AND 41.70.3 AND REPLACING SECTION 41.70 WITH LANGUAGE THAT CONFORMS WITH CALIFORNIA VEHICLE CODE SECTION 22659.5 TO PERMIT THE CITY TO SEIZE AND IMPOUND VEHICLES USED IN THE COMMISSION OR ATTEMPTED COMMISSION OF AN ACT THAT VIOLATES CALIFORNIA PENAL CODE SECTION 266(h) (PIMPING), OR 266(i) (PANDERING), OR 374.3(h) (ILLEGAL DUMPING OF WASTE), OR 647(b) (SOLICITATION OF PROSTITUTION), IF THE OWNER OR OPERATOR OF THE VEHICLE HAS HAD A PRIOR CONVICTION FOR THE SAME OFFENSE WITHIN THE PAST THREE YEARS

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 12-0417

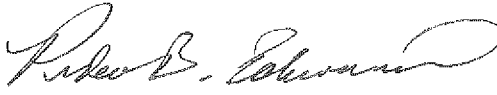
Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance would repeal Sections 41.70 and 41.70.3 of the Los Angeles Municipal Code (LAMC) and replace Section 41.70 with language that conforms to California Vehicle Code Section 22659.5 to permit the City to seize and impound vehicles used in the commission or attempted commission of an act that violates California Penal Code Section 266(h) (pimping), or 266(i) (pandering), or 374.3(h) (illegal dumping of waste), or 647(b) (solicitation of prostitution), if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years.

If you have any questions regarding this matter, please contact Deputy City Attorney Michael Nagle at (213) 978-8141. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 
PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:MDN:fa
Transmittal

ORDINANCE NO. _____

An Ordinance repealing Los Angeles Municipal Code Sections 41.70 and 41.70.3 and replacing Section 41.70 with language to conform with California Vehicle Code Section 22659.5, which permits the City to declare a motor vehicle to be a public nuisance subject to seizure and an impoundment period up to 30 days when the motor vehicle is used in the commission or attempted commission of an act that violates California Penal Code Section 266(h) (pimping), or 266(i) (pandering), or 374.3(h) (illegal dumping of waste), or 647(b), (solicitation of prostitution) if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years.

The City finds and declares the following:

WHEREAS, the California Legislature in 2009 enacted California Vehicle Code Section 22659.5 permitting the City to adopt an ordinance declaring a motor vehicle to be a public nuisance subject to seizure and an impoundment period of up to 30 days when the motor vehicle is used in the commission or attempted commission of an act that violates California Penal Code Section 266(h), or 266(i), or 374.3(h), or 647(b), if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years;

WHEREAS, California Penal Code Sections 266(h) and 266(i) are both designed to discourage prostitution by discouraging persons from augmenting and expanding a prostitute's operation, or increasing the supply of available prostitutes;

WHEREAS, pimping, pandering, and solicitation as set forth in Penal Code Sections 266(h), 266(i), and 647(b), respectively, are a public nuisance and safety hazard, blighting the neighborhoods where these crimes occur and inviting additional criminal behavior such as fights, assaults, vandalism, littering, among others, to frequently occur, significantly diminishing the quality of life of the residents when these crimes occur in residential neighborhoods, and significantly diminishing the economic viability of businesses when these crimes occur in commercial districts;

WHEREAS, motor vehicles used in the commission of crimes involving pandering, pimping, or the solicitation of prostitution are a public nuisance as the owners or operators of these vehicles often circle the neighborhoods where prostitution occurs for hours on end, slowing traffic or creating safety hazards for other motorists;

WHEREAS, motor vehicles used in the commission of crimes involving pandering, pimping or solicitation of prostitution as set forth in Penal Code Sections 266(h), 266(i), and 647(b) are subject to impoundment when the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years, as set forth in California Vehicle Code Section 22659.5;

WHEREAS, California Penal Code Section 374.3 makes it illegal for a person (meaning an individual, trust, firm, partnership, joint stock company, joint venture, or corporation), to place, deposit, or dump, or cause to be placed, deposited, or dumped, waste matter in commercial quantities, (meaning an amount of waste matter generated in the course of trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard), in or upon a public or private highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon which the public is admitted by easement or license, or upon private property without the consent of the owner, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property;

WHEREAS, motor vehicles used in the commission or attempted commission of placing, depositing, or dumping of waste in violation of California Penal Code Section 374.3 are a public nuisance subject to impoundment when the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years as set forth in California Vehicle Code Section 22659.5;

WHEREAS, California Vehicle Code Section 22659.5 states that a vehicle may only be impounded pursuant to a valid arrest of the driver for a violation of one of its listed provisions; and

WHEREAS, California Vehicle Code Section 22659.5 requires that a City ordinance adopted pursuant to this Section shall, at a minimum, contain all of the provisions listed within Section 22659.5.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 41.70 of the Los Angeles Municipal Code is amended to read as follows:

**SEC. 41.70. NUISANCE ABATEMENT OF MOTOR VEHICLES USED IN THE
COMMISSION OR ATTEMPTED COMMISSION OF AN ACT THAT VIOLATES
CALIFORNIA PENAL CODE SECTION 266(h), or 266(i), or 374.3, or 647(b).**

The City declares that a motor vehicle is a public nuisance subject to seizure and impoundment for a period of up to 30 days when the motor vehicle is used in the commission or attempted commission of an act that violates Penal Code Section 266(h), or 266(i), or 374.3(h), or 647(b), if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years. The vehicle only may be impounded pursuant to a valid arrest of the driver for a violation of one of the Penal Code sections listed above.

(a) Within two working days after impoundment, the impounding agency shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the California Department of Motor Vehicles, informing the owner that the vehicle has been impounded. The notice shall also include notice of the opportunity for a post storage hearing to determine the validity of the storage or to determine mitigating circumstances establishing that the vehicle should be released. The impounding agency shall be prohibited from charging for more than five days storage if it fails to notify the legal owner within two working days after the impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a legal owner and a registered owner to request a hearing. The notice shall include all of the following information:

(1) The name, address, and telephone number of the agency providing the notice.

(2) The location of the place of storage and description of the vehicle, that shall include, if available, the model or make, the manufacturer, the license plate number, and the mileage.

(3) The authority and purpose for the removal of the vehicle.

(4) A statement that, in order to receive a post storage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within ten days of the date appearing on the notice.

(b) The post storage hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The public agency may authorize one of its own officers or employees to conduct the hearing if that hearing officer is not the same person who directed the seizure of the vehicle.

(c) Failure of the legal and the registered owners, or their agents, to request or to attend a scheduled hearing shall satisfy the post storage hearing requirement.

(d) The agency employing the person who directed the storage shall be responsible for the costs incurred for towing and storage if it is determined in the post storage hearing that reasonable grounds for the storage are not established.

(e) Any period during which a vehicle is subjected to storage under this Section shall be included as part of the period of impoundment.

(f) The impounding agency shall release the vehicle to the registered owner or his or her agent prior to the end of the impoundment period under any of the following circumstances:

(1) The driver of the impounded vehicle was arrested without probable cause.

(2) The vehicle is a stolen vehicle.

(3) The vehicle is subject to bailment and was driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(4) The driver of the vehicle is not the sole registered owner of the vehicle and the vehicle is being released to another registered owner of the vehicle who agrees not to allow the driver to use the vehicle until after the end of the impoundment period.

(5) The registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation or was unaware that the driver was using the vehicle to engage in activities subject to Section 266(h) or 266(i), or Subdivision (b) of Section 647 of the California Penal Code.

(6) A spouse, registered domestic partner, or other affected third party objects to the impoundment of the vehicle on the grounds that it would create a hardship if the subject vehicle is the sole vehicle in a household. The hearing officer shall release the vehicle where the hardship to a spouse, registered domestic partner, or other affected third party created by the impoundment of the subject vehicle, or the length of the impoundment, outweigh the seriousness and the severity of the act in which the vehicle was used.

(g) Notwithstanding any provision of law, if a motor vehicle is released prior to the conclusion of the impoundment period because the driver was arrested without probable cause, neither the arrested person nor the registered owner of the motor vehicle shall be responsible for the towing and storage charges.

(h) Except as provided in Subdivision (g), the registered owner or his or her agent shall be responsible for all towing and storage charges related to the impoundment.

(i) A vehicle removed and seized under an ordinance adopted pursuant to this Section shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period if both of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner and holds a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure and impoundment of the vehicle.

(j) Towing and storage fee requirements:

(1) No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of the impoundment period. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner as described in paragraph (1) of Subdivision (i), or the legal owner's agent, any administrative charges imposed pursuant to California Vehicle Code Section 22850.5, unless the legal owner voluntarily requested a post storage hearing.

(2) A person operating or in charge of a storage facility where vehicles are stored pursuant to this Section shall accept a valid bank credit card or cash for payment of towing, storage, and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card or debit card shall be in the name of the person presenting the card. For purposes of this Section, "credit card" is as defined in Subdivision (a) of Section 1747.02 of the California Civil Code. Credit card does not include a credit card issued by a retail seller.

(3) A person operating or in charge of a storage facility described in paragraph (2) who violates paragraph (2) shall be civilly liable to the owner of the vehicle or the person who tendered the fees for four times the amount of the towing, storage, and related fees not to exceed five hundred dollars (\$500).

(4) A person operating or in charge of the storage facility described in paragraph (2) shall have sufficient funds on the premises of the primary storage facility during normal business hours to accommodate, and make change for, a reasonable monetary transaction.

(5) Credit charges for towing and storage services shall comply with Section 1748.1 of the California Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates.

(6) A failure by a storage facility to comply with any applicable conditions set forth in this Subdivision shall not affect the right of the legal owner or the legal owner's agent to retrieve the vehicle if all conditions required of the legal owner or legal owner's agent under this Subdivision are satisfied.

(k) Requirements for release of a vehicle subject to assignment or repossession:

(1) The legal owner or the legal owner's agent shall present to the law enforcement agency, impounding agency, person in possession of the vehicle, or any person acting on behalf of those agencies, a copy of the assignment, as defined in Subdivision (b) of Section 7500.1 of the California Business and Professions Code, a release from the one responsible governmental agency, only if required by the agency, a government-issued photographic identification card, and any one of the following as determined by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a security agreement

for the vehicle, or title, whether or not paperless or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the California Business and Professions Code, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency, or any person acting on behalf of those agencies that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the California Business and Professions Code.

(2) Administrative costs authorized under Subdivision (a) of Section 22850.5 of the California Vehicle Code shall not be charged to the legal owner of the type specified in paragraph (1) of Subdivision (i) who redeems the vehicle unless the legal owner voluntarily requests a post storage hearing. The City shall not require a legal owner or a legal owner's agent to request a post storage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents other than those specified in this Paragraph. The legal owner or the legal owner's agent shall be given a copy of any documents he or she is required to sign, except for a vehicle evidentiary hold log book. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies, or any person in possession of the vehicle, may photocopy and retain the copies of any documents presented by the legal owner or legal owner's agent. The legal owner shall indemnify and hold harmless a storage facility from any claims arising out of the release of the vehicle to the legal owner or the legal owner's agent and from any damage to the vehicle after its release, including the reasonable costs associated with defending any such claims.

(l) A legal owner, who meets the requirements for release of a vehicle pursuant to Subdivision (i), or the legal owner's agent, shall not be required to request a post storage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent.

(m) Time period for release of the vehicle:

(1) A legal owner, who meets the requirements for release of a vehicle pursuant to Subdivision (i), or the legal owner's agent, shall not release the vehicle to the registered owner of the vehicle or an agent of the registered owner, unless the registered owner is a rental car agency, until after the termination of the impoundment period.

(2) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the seizure and impoundment.

(n) Time period for release of the vehicle to a rental car agency:

(1) A vehicle removed and seized pursuant to an ordinance adopted pursuant to this Section shall be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure and impoundment of the vehicle.

(2) The owner of a rental vehicle that was seized under an ordinance adopted pursuant to this Section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver of the vehicle that was seized until the impoundment period has expired.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the seizure and impoundment.

(o) **Severability.** If any subsection, sentence, clause, or phrase of this Section is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Sec. 2. Urgency Clause. Based on the findings set forth above, the Council adopts this ordinance as an urgency ordinance that is required for the preservation of the public peace, health and safety. Pursuant to Charter Section 253, this Ordinance shall become effective upon publication.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than three-fourths** of all its members, at its meeting of _____.

JUNE LAGMAY, City Clerk


By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality:

CARMEN A. TRUTANICH, City Attorney

By  _____
MICHAEL D. NAGLE
Deputy City Attorney

Date May 17, 2012

File No. 12-0417