

## REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: September 2, 2015

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and  
Neighborhoods Committee

FROM: Sharon M. Tso   
Chief Legislative Analyst

Council File No: 15-0002-S75  
Assignment No: 15-07-0560

SUBJECT: Resolution (Martinez-Buscaino) to SPONSOR and/or SUPPORT Legislation to  
Amend California Vehicle Code Section 22659.5

CLA RECOMMENDATION: Adopt Resolution (Martinez-Buscaino) to include in the City's 2015-2016 State Legislative Program, SPONSOR and/or SUPPORT of legislation that would amend California Vehicle Code Section 22659.5 to allow for the seizure and impoundment of a motor vehicle when used in the commission or attempted commission of an act that violates the California Penal Code sections related to prostitution, pimping, pandering and solicitation even if the owner or operator of the vehicle has not had a prior conviction for the same offense within the past three years.

### SUMMARY

Resolution (Martinez - Buscaino), introduced on July 1, 2015, seeks to sponsor and/or support legislation that would amend California Vehicle Code Section 22659.5 ("VC Section 22659.5"). Currently, VC Section 22659.5 allows cities and counties 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 vehicle is used in the commission or attempted commission of an act that violates the California Penal Code sections related to prostitution, and other crimes if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years ("three-year requirement"). The City of Los Angeles adopted an ordinance (see Los Angeles Municipal Code Section 41.70) that is substantially similar to state law, and which also includes the three-year requirement. The Resolution states that in many cases those who solicit prostitutes may not always be convicted for their crimes, and therefore are not subject to the penalties in the City's Ordinance. The Resolution seeks an official position of the City of Los Angeles to sponsor and/or support legislation that would amend VC Section 22659.5 to allow for the seizure and impoundment of a motor vehicle when it is used in the commission or attempted commission of an action that violates the California Penal Code sections related to prostitution, even if the owner or operator of the vehicle has not had a prior conviction for the same offense within the past three years.

### BACKGROUND

Previously, VC Section 22659.5 only authorized cities and counties to adopt a five-year pilot program for declaring motor vehicles used in prostitution and related offenses to be a nuisance. VC Section 22659.5 was amended in 2009 to allow cities and counties 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 vehicle is used to commit or attempt to commit an act that violates the State Penal Code sections related to prostitution, pimping, pandering and solicitation. VC Section 22659.5 states that a city's or county's ordinance would only apply to vehicles owned or operated

by a person who has a prior conviction for the same offense within the past three years. Existing State law also specifically prescribes the notification requirements when a vehicle has been seized and impounded and any applicable fees.

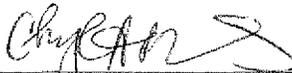
Los Angeles Municipal Code (LAMC) Section 41.70 was amended in 2013 to comply with the provisions in VC Section 22659.5. Prior to amending LAMC Section 41.70, the Ordinance allowed the City to declare a vehicle used to engage in an act of prostitution as a nuisance that was subject to seizure and impoundment without the three-year requirement. However, in *O'Connell v. City of Stockton*, the California Supreme Court invalidated a similar ordinance in the City of Stockton. The Court determined that local governments could not confiscate the vehicles of drivers arrested on suspicion of buying drugs or soliciting prostitutes because prostitution was a matter of "statewide concern" that the State Legislature addressed through various provisions within California's Penal and Vehicle Codes. Furthermore, this "[left] no room for further regulation at the local level." The City of Stockton's ordinance was preempted by State law, which also invalidated similar ordinances throughout various cities, including the City of Los Angeles.

In order to amend LAMC Section 41.70 to eliminate the three-year requirement, VC Section 22659.5 would have to be amended first. If the City amended its Ordinance and eliminated the three-year requirement before the State law is changed, it would be in conflict with State law, and therefore preempted. The State Constitution allows cities and counties to enact and enforce local ordinances, so long as they are "not in conflict" with the state's general laws. (Cal. Const., art. XI, § 7).

The City should sponsor and/or support legislation that would amend VC Section 22659.5 to eliminate the requirement that the owner or operator of the vehicle be convicted of the same offense within the last three years.

DEPARTMENTS NOTIFIED

Los Angeles Police Department

  
Cheryl A. Banares  
Analyst

SMT:cab

Attachment: 1. Resolution (Martinez - Buscaino)

RESOLUTION RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state, or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, prostitution plagues various neighborhoods throughout the City of Los Angeles; and

WHEREAS, California Vehicle Code Section 22659.5 permits cities and counties to adopt an ordinance declaring motor vehicles 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 the California Penal Code sections related to prostitution, pimping, pandering, and solicitation; and

WHEREAS, California Vehicle Code Section 22659.5 only allows cities and counties to seize or impound vehicles if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years; and

WHEREAS, the City of Los Angeles enacted an ordinance, Los Angeles Municipal Code Section 41.70, that is substantially similar to the California Vehicle Code Section; and

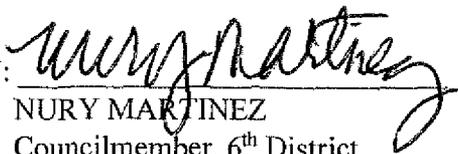
WHEREAS, the California Constitution allows cities and counties to enact and enforce local ordinances so long as they are not in conflict with the state's general laws; and

WHEREAS, any conflicting ordinance is preempted by state law and thus void; and

WHEREAS, in many cases "Johns" or potential "Johns" may not be convicted for their crimes, thus police officers may be unable to seize or impound their vehicles despite the fact that they are committing or attempting to commit solicitation of a prostitute; and

WHEREAS, the City is unable to effectively use its ordinance as a way to deter prostitution and solicitation;

NOW, THEREFORE, BE IT RESOVLED, with the concurrence of the Mayor, that by adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-2016 State Legislative Program sponsor and/or support of legislation that would amend California Vehicle Code Section 22659.5 to allow for the seizure and impoundment of a motor vehicle when it used in the commission or attempted commission of an act that violates the California Penal Code sections related to prostitution, pimping, pandering, and solicitation, even if the owner or operator of the vehicle has not had a prior conviction for the same offense within the past three years.

PRESENTED BY:   
NURY MARTINEZ  
Councilmember, 6<sup>th</sup> District

SECONDED BY: 

JUL 1 2015