

# CITY OF LOS ANGELES

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February 17, 2010

#1 ST

City Council  
Room No. 395  
City Hall

Subject: PROPOSED AMENDMENT TO LOS ANGELES MUNICIPAL CODE SECTION  
41.70.3 TO ALLOW THE 30-DAY IMPOUND OF VEHICLES USED TO COMMIT  
ILLEGAL DUMPING CRIMES

As recommended in the accompanying report of the Director of the Bureau of Street Services, which this Board has adopted, the Board of Public Works recommends approval that your Honorable Body approve an amendment to the Los Angeles Municipal Code Section 41.70.3 to allow the 30-day impound of vehicles used to commit illegal dumping crimes.

It is further requested, that the Council instruct the City Attorney to prepare a draft of the ordinance to reflect the amendments for Council approval subject to concurrence by the Mayor.

### **FISCAL IMPACT**

There will be no significant impact to the general fund.

Respectfully submitted,

James A. Gibson, Executive Officer  
Board of Public Works

JAG:mp



DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES

REPORT NO. # 1

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Date: February 17, 2010

CD# ALL

Honorable Board of Public Works  
of the City of Los Angeles  
Commissioners:

ADOPTED BY THE BOARD  
PUBLIC WORKS OF THE CITY  
of Los Angeles California

AND REFERRED TO THE CITY COUNCIL  
FEB 17 2010

*Jeanne L*  
Secretary

**PROPOSED AMENDMENT TO LOS ANGELES MUNICIPAL CODE SECTION  
41.70.3 TO ALLOW THE 30 DAY IMPOUND OF VEHICLES USED TO  
COMMIT ILLEGAL DUMPING CRIMES**

**RECOMMENDATION:**

That your Board adopts this report amending Los Angeles Municipal Code Section 41.70.3 related to the seizure and impound of vehicles used in the commission of illegal dumping crimes as provided for in California Vehicle Code Section 22659.5, and transmit a copy of this report to the City Council with the recommendation that the attached proposed ordinance amendments be forwarded to the Chief Legislative Analyst and the City Attorney for review as to form and legality; and that the City Attorney be requested to prepare a draft of the ordinance to reflect the amendments for City Council review and approval and final approval by the Mayor.

**TRANSMITTALS:**

1. Proposed amendment to Los Angeles Municipal Code Section 41.70.3.

**RECITAL:**

In 2003, the City enacted an ordinance (Ord.#175,575) authorizing police officers and other law enforcement officers (Street Services Investigators) to seize vehicles used for illegal dumping. Shortly after the ordinance became effective, a series of legal challenges and changes in State law invalidated the ordinance.

Effective January 1, 2010, California law was again changed to allow cities and counties to exercise the authority to impound vehicles used in the commission of certain illegal dumping crimes. Assembly Bill 14 (Fuentes) amended California Vehicle Code (CVC) Section 22659.5 and now authorizes the 30-day impound of vehicles where the operator has a prior conviction for the violation of California Penal Code Section 374.3 (illegal dumping).

This change in State law requires a change in Los Angeles Municipal Code Section 41.70.3 to remove language related to vehicle forfeiture. The Code must be amended to conform to the requirements of CVC Section 22659.5 to authorize City enforcement officers to place impound holds on vehicles used by illegal dumping violators with prior

*"Policy"*

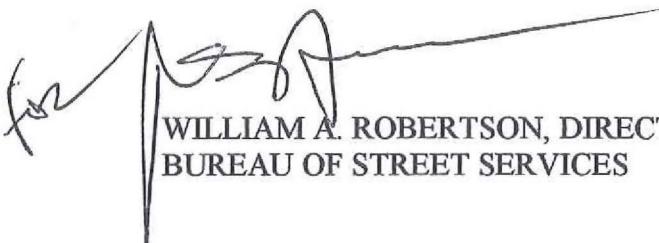
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convictions. Amending the Los Angeles Municipal Code will improve the effectiveness of enforcement and serve as a greater deterrence to illegal dumping in Los Angeles.

(GH----- NS)

Respectfully Submitted,



WILLIAM A. ROBERTSON, DIRECTOR  
BUREAU OF STREET SERVICES

**PREPARED BY:**

Gary Harris, Chief Street Services Investigator II  
Investigation and Enforcement Division  
(213) 847-6000

**Transmittal #1**

**Changes in red and strikethrough.**

**SEC. 41.70.3. NUISANCE VEHICLES – ILLEGAL DUMPING.**

**(Added by Ord. No. 175,575, Eff. 11/29/03.)**

**A. Definitions.**

**“Authorized public officer”** means a public officer authorized under Los Angeles Municipal Code Section 61.07(a) granted the arrest power of a peace officer pursuant to Section 830.7(j) of the California Penal Code.

**“Bulky item”** means any discarded furniture, home or industrial appliance or abandoned vehicle or a part of an abandoned vehicle.

**“Driver”** means any person who drives a motor vehicle.

**“Hazardous waste”** means any waste as defined in California Health and Safety Code Section 25117.

**“Illegal dumping”** means the willful throwing, dropping, placing or depositing of a bulky item, hazardous waste or solid waste on public or private property not designated for that dumping or disposal purpose. ~~“Illegal dumping” does not include the discarding, dropping, or scattering of small quantities of waste matter ordinarily carried on or about the person, including, but not limited to, beverage containers and closures, packaging, wrappers, wastepaper, newspapers, and magazines and including waste matter that escapes or is allowed to escape from a container, receptacle.~~ as defined in California Penal Code Section 374.3.

**“Solid waste”** means all putrescible and non-putrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, dewatered, treated or chemically fixed sewage sludge, which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. Solid waste does not include hazardous waste.

**“Vehicle”** means any transportation device that requires the driver to have in his or her immediate possession a valid driver’s license for the appropriate class of vehicle being driven and which transportation device is equipped with a motor.

**B. Abatement of Nuisance Vehicle by Seizure and Forfeiture Impoundment.**

1. Any vehicle used for the purpose of illegal dumping is a nuisance and the vehicle shall be ~~enjoined and abated~~ **impounded** as provided in this section.

2. Any vehicle used to transport any bulky item, any hazardous waste or solid waste for the purpose of illegal dumping is a nuisance and the vehicle shall be enjoined and abated **impounded** as provided in this section.

3. Any person or his or her servant, agent, or employee who owns, leases, conducts or maintains any vehicle used for any of the purposes or acts set forth in this section is responsible for creating a public nuisance.

C. **Title to Vest in the City.** All rights, title and interest in any vehicle described in Subsection B. shall vest in the City upon commission of the act giving rise to the nuisance under this section

**C. D. Seizure Impound of Vehicle.**

1. A peace officer or authorized public officer may seize a vehicle subject to forfeiture **impound** under this section upon the issuance of an order by a court having jurisdiction of the vehicle. Seizure without court order may be made in any of the following circumstances: 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 Section 374.3 of the Penal Code, if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years.

— (a) The seizure is incident to an arrest or search under a search warrant;

— (b) There is probable cause to believe the vehicle was used in violation of this section.

— 2. A peace officer or authorized public officer seizing a vehicle under this section shall complete a receipt in accordance with Penal Code Section 1412 and deliver it to the person from whose possession the vehicle was seized.

— 3. An immediate investigation shall be made by the public agency making the seizure as to any potential claimant to a seized vehicle whose right, title, interest, or lien is of record in the Department of Motor Vehicles of this or any other state or appropriate federal agency. The public agency shall send a notice of seizure within two business days of the vehicle's seizure, to all potential claimants whose right, title, interest or lien did not arise subsequent to the date and time of seizure of the vehicle, if that person or entity was not previously given a notice of seizure.

— 4. The public agency seizing the vehicle shall provide any potential claimants discovered as a result of the investigation set out in D.3. with the opportunity for a post-seizure hearing to determine the validity of the seizure. The post-seizure hearing shall be conducted within two business days of the request for the hearing. The public agency may authorize its own officer or employee to conduct the hearing if the hearing officer is

not the same person who directed the seizure of the vehicle. Failure of the potential claimant to request or attend a scheduled hearing within the appropriate time frame shall satisfy the post-seizure requirement.

- (a) The notice of seizure shall include the following:
  - (i) the name, address and telephone number of the agency providing the notice;
  - (ii) the authority and reason for the seizure;
  - (iii) a statement that in order to receive their post-seizure hearing, the potential claimant shall request the hearing in person, in writing, or by telephone within ten calendar days of the date of the notice; and
  - (iv) the time in which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.

— 5. A vehicle seized pursuant to this section, where appropriate may be held as evidence in any proceeding brought by the City Attorney or District Attorney.

— **E. Forfeiture and Notice of Intended Forfeiture of Vehicle.**

— 1. The City Attorney may, pursuant to this section, order the forfeiture of vehicles seized under this section.

— 2. If the City Attorney determines that the factual circumstances warrant forfeiture of the vehicle described in Subsection B., the City Attorney shall serve a notice of intended forfeiture upon any person who has an interest in the seized vehicle. The notice shall be served as soon as practicable, but in any event within 30 calendar days of the seizure of the vehicle subject to forfeiture.

— 3. The notice of intended forfeiture shall be served as follows:

— (a) By personal delivery or certified mail, return receipt requested, upon any person who has an interest in the seized vehicle as determined pursuant to Subsection D.3.

— (b) In the event that the person entitled to service refuses to accept certified return receipt mail or cannot be personally served, service may be made by substituted service. Substituted service may be accomplished by any one of the following methods:

— (i) By leaving a copy during usual business hours at the recipient's business with the person who is apparently in charge, and by thereafter mailing by first class mail a copy to the recipient where the copy was left;

— (ii) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household and thereafter mailing by first class mail a copy to the recipient at the address where the copy was left.

— (c) If the person entitled to service lives out of state and will not accept certified return receipt mail, then service may be made by first class mail.

— (d) If the person entitled to notice cannot be located, or service cannot be effected as set forth in this subsection, service may be made by publication in a Los Angeles newspaper of general circulation. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

#### **— F. Claim Opposing Forfeiture and Court Proceedings.**

— 1. A person claiming an interest in the vehicle seized pursuant to Subsection B. must within ten calendar days from the date of the notice of intended forfeiture or within 30 calendar days from the date of first publication of the notice of intended forfeiture, file with the Superior Court of the county in which the vehicle was seized, a Claim Opposing Forfeiture, verified in accordance with Section 446 of the Code of Civil Procedure, stating his, her or its interest in the vehicle. An endorsed copy of the claim shall be served upon the City Attorney within ten calendar days of the filing of the claim.

— 2. If a verified claim is filed in accordance with this section, the forfeiture proceeding shall be set for hearing within 30 calendar days from the date the claim is filed with the court. The City Attorney shall file a petition for forfeiture with the court within ten calendar days of service of the claim upon the City Attorney. A copy of the petition shall be served upon the claimant.

— 3. The hearing shall be before the Superior Court of Los Angeles County. The provisions of the Code of Civil Procedure shall apply to proceedings under this section unless otherwise inconsistent with the provisions or procedures set forth in this section. However, in proceedings under this section, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this section. Trial shall be by court or jury.

— 4. With respect to vehicles described in Subsection B. for which forfeiture is sought and as to which forfeiture is contested, the City Attorney shall have the burden of proving by a preponderance of the evidence that the vehicle was used as set forth in Subsection B.

— 5. Upon proof that the vehicle was used for any of the purposes set forth in Subsection B., the court shall declare the vehicle a nuisance and order that the vehicle be forfeited, sold, and the proceeds distributed as set forth in Subsection G. The court may make a different distribution of the proceeds, if the court finds that the claimant did not know that the vehicle was used for a purpose that constitutes a violation of this section

6. If no claims are timely filed, the City Attorney shall prepare a written declaration of forfeiture of the vehicle to the City. A written declaration of forfeiture signed by the City Attorney under this section shall be deemed to provide good and sufficient title to the forfeited vehicle. The proceeds from the disposal of the vehicle declared forfeited by the City Attorney shall be distributed in accordance with Subsection G. The City Attorney ordering forfeiture pursuant to this section shall provide a copy of the declaration of forfeiture to any person who received notice of the forfeiture proceedings.

**G. Disposal of Vehicle and Distribution of Proceeds.**

1. In all cases where vehicles seized pursuant to this section are forfeited to the City, the vehicles shall be sold, or if cash is paid as settlement in lieu of forfeiture of the vehicle, the proceeds of sale or settlement shall be distributed and appropriated as follows:

(a) To pay costs associated with the towing, storage and release of any vehicle seized under this section.

(b) To pay costs associated with the sale of the vehicle.

(c) To the lien holder of the vehicle, if any, up to the amount of his, her or its interest in the vehicle.

2. The remaining funds shall be distributed as follows:

(a) To the City Attorney for all expenditures other than personnel costs, made or incurred by the Office in connection with the enforcement of this section, including but not limited to, costs for equipment, investigation, supplies, litigation, insurance and liability resulting from enforcement of this section and costs of publication of the notices set forth in Subsection E.

(b) To local law enforcement for all expenditures other than personnel costs, made or incurred by the Department in connection with enforcement of this section, including but not limited to, costs for equipment, investigation and supplies related to enforcement of this section.

(c) To the general fund.

3. For budgeting purposes, funds attributable to this ordinance shall not be considered anticipated revenue into the general fund.

**H. Stolen Vehicles.** A vehicle that has been reported stolen, prior to a seizure under this section shall not be subject to forfeiture unless the identity of the registered owner cannot be reasonably ascertained or the registered owner fails to redeem the

~~vehicle within 60 days of the seizure. The registered owner of the vehicle may claim the vehicle upon payment of tow, storage and release charges, provided the vehicle is not subject to any holds for traffic or parking violations and the vehicle registration is current.~~

~~— I. Recovery of Monetary Loss. Nothing in this section shall preclude an owner of a vehicle who suffers a monetary loss from the forfeiture of a vehicle under this section from recovering the amount of the actual monetary loss from the person who committed the act giving rise to forfeiture under this section.~~

2. 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 department, informing the owner that the vehicle has been impounded. The notice shall also include notice of the opportunity for a poststorage 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 poststorage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within 10 days of the date appearing on the notice.
    - (a) The poststorage 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.
    - (b) Failure of the legal and the registered owners, or their agents, to request or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.
    - (c) 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 poststorage hearing that reasonable grounds for the storage are not established.
    - (d) Any period during which a vehicle is subjected to storage shall be included as part of the period of impoundment.
    - (e) 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.

(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)(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 Section 22850.5, unless the legal owner voluntarily requested a poststorage 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 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 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) (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 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 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 Business and Professions Code.  
(2) Administrative costs authorized under subdivision (a) of Section 22850.5 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 poststorage hearing. A city, county, city and county, or state agency shall not require a legal owner or a legal owner's agent to request a poststorage 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 poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent.
- (m) (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) (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