

AN ORDINANCE 2006-06-08-0694

AMENDING CHAPTER 19, ARTICLE VI OF THE CITY CODE TO CREATE DIVISION 5, "PARKING FOR UNAUTHORIZED SALE"; ESTABLISHING DEFINITIONS; PROHIBITING THE DISPLAYING OF PARKED VEHICLES FOR SALE ON ALL PROPERTIES AND PUBLIC RIGHTS OF WAY EXCEPT WHERE SPECIFICALLY ALLOWED; DECLARING SUCH SALES TO BE PUBLIC NUISANCES, DECLARING VIOLATIONS OF THE CIVIL PARKING VIOLATIONS TO BE SUBJECT TO THE ENFORCEMENT PROVISIONS OF CITY CODE SECTION 19-225; AUTHORIZING THE REMOVAL AND STORAGE OF UNAUTHORIZED SALE VEHICLES AT THE OWNER'S EXPENSE; ALLOWING FOR HEARING FOLLOWING THE REMOVAL OF THE VEHICLE; AND DIRECTING PUBLICATION.

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WHEREAS, the city has zoning provisions for the sale of vehicles and issues certificates of occupancy for the sale of vehicles on properly zoned properties; and

WHEREAS, the Texas Department of Transportation issues licenses for vehicle sales; and

WHEREAS, vehicle sales on properly zoned properties and for which valid licenses and certificates of occupancy exist are considered authorized; and

WHEREAS, the unauthorized sale of vehicles creates a public nuisance in that such sales

- (1) Create a visual blight;
- (2) Increase traffic hazards due to the distractive nature of such sales;
- (3) Pose a safety hazard to potential purchasers;
- (4) Disturb the peace and quiet of residential neighborhoods;
- (5) Tend to attract other vendor types thereby creating a "flea market" atmosphere;
- (6) Cause damage to public property due to curb jumping;
- (7) Cause damage to private property due to accumulations of trash and traffic over unpaved surfaces;
- (8) Fail to protect the legitimate interests of licensed vehicle dealers; and/or
- (9) Fail to protect the public against fraudulent transactions; and

WHEREAS, the city does not wish to interfere with a non-dealer owner's occasional private sale of a vehicle; and

WHEREAS, the city wishes to establish regulations to prohibit the unauthorized sales of vehicles; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Division 5, sections 19-240 through 19-248 of Chapter 19, Article VI of the City Code are hereby established and added as follows:

DIVISION 5. PARKING FOR UNAUTHORIZED SALE

Sec. 19-240. Definitions.

When used in this division, the following terms shall have the following meanings:

Authorized official shall mean the Police Chief, the Director of Code Compliance, or any other city official designated by the City Manager or their designees

Unauthorized sale shall mean the display for sale of any parked vehicle for which an exemption is not given within this article.

Unauthorized sale vehicle shall mean any vehicle displayed for an unauthorized sale.

Property and Premises shall mean all lots or parcels of land (platted and/or unplatted), together with all buildings, structures, yards areas, parking spaces and contiguous rights of way as defined by the Unified Development Code; collectively used for the same, general purpose or use as permitted by zoning.

Reasonable notice to the public shall mean

- (a) any method making the sign or wording reasonably visible to a person passing by the perimeter of the property if the property is not open to the public; or
- (b) any method making the sign or wording reasonably visible to a person entering onto the property or passing by the vehicle if the property is open to the public; or
- (c) any method making the sign or wording reasonably visible to a person passing by the vehicle or perimeter of the property if the vehicle is parked on a right of way.

Vehicle shall mean a motor vehicle, motorcycle, watercraft, trailer, semi-trailer, camper or recreational vehicle.

Sec. 19-241 Exceptions

It shall be an exception to the presumption of an unauthorized sale if:

- (a) the property is zoned residential and
 - (1) the registered owner of the vehicle actually resides on the property; and
 - (2) no more than five (5) vehicles are displayed for sale on a property zoned single family residential during the calendar year; and
 - (3) no more than one (1) vehicle per property zoned single family residential is displayed for sale at any one time; or
- (b) the vehicle is located on property zoned for such sales and for which a certificate of occupancy for such sales is in effect and for which there is a valid license issued by the Texas Department of Transportation for such sales at that location. Any vehicle located on a public right of way shall not be included in this exception.

Sec. 19-242. Unauthorized sale presumed.

- (a) Any vehicle on which is displayed a sign or words giving reasonable notice to the public that the vehicle is for sale shall be presumed to be an unauthorized sale vehicle.

(b) Any vehicle located on property on which is displayed signage or writing giving reasonable notice to the public that the vehicle on it is for sale shall be presumed to be a unauthorized sale vehicle.

(c) All vehicles, under the control of one or more sellers acting in concert with each other, located on property on which is displayed signage or writing giving reasonable notice to the public that a non-specified vehicle on it is for sale shall be presumed to be unauthorized sale vehicles.

Sec. 243. Declaration of unauthorized sale vehicle to be a public nuisance.

An unauthorized sale vehicle is hereby declared to be a public nuisance as it:

- (1) Creates a visual blight;
- (2) Increases traffic hazards due to its distractive nature;
- (3) Poses a safety hazard to potential purchasers;
- (4) Disturbs the peace and quiet of residential neighborhoods;
- (5) Tends to attract other vendor types thereby creating a "flea market" atmosphere;
- (6) Causes damage to public property due to curb jumping;
- (7) Causes damage to private property due to accumulations of trash and traffic over unpaved surfaces;
- (8) Fails to protect the legitimate interests of licensed vehicle dealers; and/or
- (9) Fails to protect the public against fraudulent transactions.

Sec. 244. Unauthorized sale unlawful.

(a) It shall be unlawful for any person or entity to knowingly place or cause to be placed any vehicle in such a manner as to be an unauthorized sale vehicle.

(b) An offense under this division shall be a parking violation and shall be subject to the maximum fine provided in this article for civil parking violations.

(c) The remedies within this division are not exclusive and nothing herein shall preclude the city's pursuit of any and all other remedies allowed by City Code or state statute.

Sec 245 Determination of an unauthorized sale vehicle

The authorized official shall have the authority to determine if a vehicle is an unauthorized sale vehicle if that official has:

(a) personally observed the vehicle to be within the definition and presumption of an unauthorized sale vehicle or can combine his/her observations with another official to satisfy the definition and presumption; and

(b) has made a record and has secured the record of any other official's observations stating the specific observations to support the vehicle being within the definition and presumption as well as stating that none of the exceptions to the definition and presumption were applicable.

Sec. 246. Towing of unauthorized sale vehicles authorized

(a) Upon determination that the vehicle is an unauthorized sale vehicle and upon the expiration of any time given to correct the unauthorized sale violation, an authorized official, after issuance of a citation or summons, may cause any unauthorized sale vehicle and any property on or in the unauthorized sale vehicle to be removed and stored at a vehicle storage facility at the owner's or person in control of the vehicle's expense.

(b) Before any unauthorized sale vehicle shall be towed, the city shall first attach in a reasonably conspicuous manner to the vehicle's front windshield or, if the vehicle has no front windshield, to a conspicuous part of the vehicle a notice stating that:

- (1) the vehicle is displayed and parked in violation of the prohibition of unauthorized sale;
 - (2) the vehicle will be towed and stored at the expense of the owner or person in control of the vehicle if it is not removed from the area by a specified time not to exceed four (4) hours from the date the notice is attached;
 - (3) if the vehicle is found to be in violation of the prohibition of unauthorized sale within the next ninety (90) days, it may be towed and stored at the expense of the owner or person in charge of the vehicle without further notice.
- (c) Any towing, storage or other fees incurred due to the towing of an unauthorized sale vehicle shall be in addition to any fine imposed due to the parking violation and shall not lessen such fine.
- (d) If the unauthorized sale vehicle has been noticed within the previous ninety (90) days that it is in violation of the prohibition of unauthorized sale, no further notice or time to correct the violation shall be required before the vehicle may be towed.

Sec. 247. Owner's right to hearing

- (a) An owner of a vehicle cited and/or towed under this division shall be entitled to a hearing under this article.
- (b) Should the hearing officer determine the person charged is not liable for the violation, the city shall refund all storage and towing payments to the person or entity having made such payments.

Sec. 248. Property owner may remove vehicle

Nothing within this division shall preclude the owner of the property on which a vehicle is parked from removing a vehicle on the property owner's own initiative. Such removal, however, shall be a private matter and shall not be considered sanctioned or authorized by the City of San Antonio.

SECTION 2. A violation of any parking regulations established herein is hereby declared to be a civil parking violation, and shall be punished by a penalty established in City Code Section 19-225.

SECTION 3. Funds generated by this ordinance are to be deposited into the General Fund, 11001000 as listed below:

- Internal Order 217000000045, VEHICLE STORAGE UNIT, General Ledger 4406853, Impounded Vehicle Storage Fees;
- Internal Order 217000000045, VEHICLE STORAGE UNIT, General Ledger 4404235, Police Impound Fee;
- Internal Order 217000000051, WRECKER SVCS CONTRCT DETAIL, General Ledger 4406847, City Wrecker Service Contract Fees.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this ordinance.

SECTION 5. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, or any appendix thereof, for any reason, be held illegal, inoperative, or invalid or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 6. No other provision of the City Code is amended hereby. All other provisions shall remain in effect.

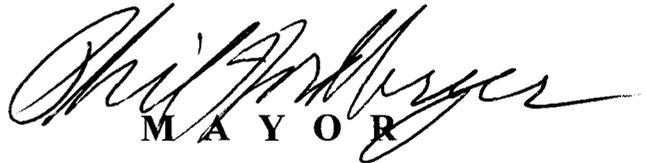
SECTION 7. It is officially found, determined, and declared that the meeting at which this ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Texas Revised Civil Statutes Annotated as amended Title 5, Chapter 551, Government Code.

SECTION 8. The City Clerk is directed to publish notice of this ordinance in accordance with Section 17 of the City Charter.

SECTION 9. The publishers of the City Code are authorized to amend and format said Codes to reflect the changes adopted herein.

SECTION 10. This ordinance shall become effective on July 8, 2006; but in no manner earlier than the fifth day after publication in accordance with Article 2, Section 17, of the City Charter.

PASSED AND APPROVED this 8th day of June, 2006.



M A Y O R

PHIL HARBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

Agenda item # 26

**CITY OF SAN ANTONIO
CODE COMPLIANCE DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley, City Manager
FROM: Liz C. Garcia, Acting Director of Code Compliance
SUBJECT: Proposed Ordinance Prohibiting the Parking of Vehicles for Sale
DATE: June 8, 2006

SUMMARY AND RECOMMENDATIONS

This ordinance will authorize amendments to Chapter 19 of the City Code creating Division 5 of Article VI that will establish a definition prohibiting the parking of vehicles for sale, on commercial parking lots, vacant lots, and public rights-of-way, and declaring such violations as a public nuisance, declaring violations to be municipal parking violations, and authorizing the abatement of such nuisance by the removal and storage of the vehicle, at the owner's expense, to a vehicle impound facility, upon the expiration of a four-hour "Official Notice" conspicuously placed on the vehicle at the time of the inspection, and allowing for the owner to have a hearing after the towing of the vehicle.

This item was presented to the Governance Committee on April 26, 2006; and on June 1, 2006, the Quality of Life Committee moved that the item be placed on the City Council Agenda for June 8, 2006.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

Based upon a Council Consideration Request submitted by Councilwoman Elena Guajardo, the Code Compliance Department began to review the possibility of creating an ordinance that would regulate the sale of vehicles occurring on commercial parking lots, vacant lots and on public rights-of-way. The City of San Antonio currently lacks a comprehensive ordinance that addresses this particular method of selling vehicles (*commonly referred to as curbstoning*). The Texas Department of Transportation is tasked with regulating "curbstoned" vehicles, but is severely limited in their enforcement capabilities, with approximately only 18 investigators for the entire state that are based out of Austin. They investigate violations on a reactive basis and do not have a proactive program.

Some of the concerns that have been expressed by citizens regarding these types of unregulated sales include, but are not limited to the following:

- Creates a visual blight and increases traffic hazards;
- Exposes the public to potentially fraudulent transactions. (salvaged, stolen or reconditioned vehicles, rolled-back odometers, clouded title, etc.);
- Causes damage to public property and creates a nuisance on private property and vacant lots because of the accumulation of trash and debris; and
- Diminishes the residential character of abutting neighborhood

POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council policy to provide for public safety, health and welfare through the abatement of public nuisance and blight.

FISCAL IMPACT

Under the proposed ordinance, any vehicle that is abated after having been found to be in violation, will incur fees for the towing, impoundment and storage of the vehicle. The average amount a vehicle owner would have to pay in order to reclaim their vehicle would be approximately **\$107 per vehicle** for storage, impound and towing fees. Below is a detailed itemization of the costs to be incurred by the owner of a vehicle that has been abated under the proposed ordinance.

TOWING, IMPOUND & STORAGE COSTS TO BE PAID BY VEHICLE OWNERS:

STORAGE FEE

\$15/day for storage

= \$ **15.00** total storage fee

IMPOUND FEE

\$ 20 impound fee per vehicle

= \$ **20.00** total impound fee

TOWING CHARGE

\$72 minimum charge for each tow

= \$ **72.00** total tow charge

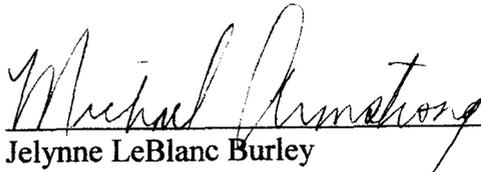
APPROXIMATE COST TO VEHICLE OWNER \$ 107.00

COORDINATION

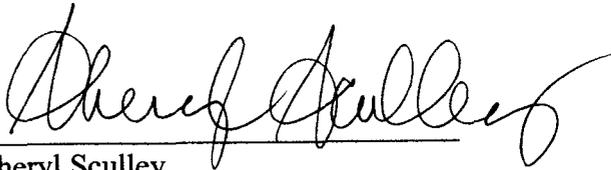
This request for ordinance has been coordinated with the City Attorney's Office, Municipal Court, and the San Antonio Police Department.



Liz C. Garcia
Acting Director of Code Compliance

for 
Jelynn LeBlanc Burley
Deputy City Manager

Approved for City Council Consideration:



Sheryl Sculley
City Manager

DO NOT TYPE IN THIS SPACE	CITY OF SAN ANTONIO	
Approval	Request For Ordinance/Resolution	Consent <input type="checkbox"/> Individual <input type="checkbox"/>
Finance	Budget	Item No. 26
Legal	Coordinator	Ord. No.

Date: June 1, 2006	Department: Code Compliance	Contact Person/Phone #: 210 207-8200 Liz C. Garcia
Date Council Consideration Requested: June 8, 2006	Deadline for Action:	Dept. Head Signature <i>Liz C. Garcia</i>

SUMMARY OF ORDINANCE

This ordinance will authorize amendments to Chapter 19 of the City Code creating Article XVII that will establish a definition prohibiting the parking of vehicles for sale on commercial parking lots, vacant lots, and public rights-of-way, and declaring such violations as a public nuisance, declaring violations to be Class C misdemeanors, and authorizing the abatement of such nuisance by the removal and storage of the vehicle, at the owner's expense, to a vehicle impound facility, upon the expiration of a four-hour "Official Notice" conspicuously placed on the vehicle at the time of the inspection, and allowing for the owner to have hearing after the towing of the vehicle.

Council Memorandum Must be Attached To Original

Other Depts., Boards, Committees Involved (please specify):

City Attorney's Office, Municipal Court, SAPD

Contract signed by other party Yes No

FISCAL DATA (If Applicable)			
Amount Expended		N/A	
Fund	11001000	SAP GL Account	Storage Fee - 4406853 Impound Fee - 4404235 Towing Fee - 4406847
*Cost Center	N/A		
*Internal Order No.	217000000045 (Storage and Impound Fees) 217000000051 (Towing Fee)	*WBS (Capital Proj.)	
*(Fill out only the field that is appropriate to your council action.)			

Funds/Staffing Budgeted	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Positions Currently Authorized	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Impact on future O & M		
If positions added, specify Class and Job No.		

Comments:
This revenue is to be posted to the San Antonio Police Department's revenue accounts listed above.

Please submit 3 copies with your original

Please submit 3 copies with your original