

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Brian Maienschein, Chair

AB 718 (Chu) – As Amended April 21, 2015

SUBJECT: Local government: powers.

SUMMARY: Prohibits a city, county, or city and county from prohibiting or otherwise subjecting to civil or criminal penalties the act of sleeping or resting in a lawfully parked motor vehicle.

EXISTING LAW:

- 1) Provides, under the California Constitution, that a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- 2) Authorizes a legislative body to pass ordinances not in conflict with the Constitution and laws of the state or the United States.
- 3) Prohibits local governments from regulating the movement or parking of vehicles, unless specifically authorized by state law. With respect to parking, under current law local governments may, by ordinance or resolution, do the following:
 - a) Prohibit or restrict the stopping, standing, or parking of vehicles on a local road or on a state highway in their jurisdiction with the approval of the Department of Transportation;
 - b) Prohibit or restrict the stopping, standing, or parking of vehicles that are six feet or more in height within 100 feet of any intersection, street, or highway during all or certain hours of the day;
 - c) Prohibit or restrict the parking or standing of vehicles on certain streets or highways, between the hours of 2 a.m. and 6 a.m.;
 - d) Designate certain streets for the exclusive parking privileges of residents and merchants adjacent to the streets for their use or the use of their guests and issue parking permits that exempt them from the restriction or prohibition of the ordinance or resolution;
 - e) Authorize preferential parking permits for members of organizations, professions, or other designated groups, including, but not limited to, school personnel, to park on specified streets, if the local authority determines that the use of the permits will not adversely affect parking conditions for residents and merchants in the area; and,
 - f) Establish procedures for the abatement and removal, as a public nuisance, of abandoned, wrecked, dismantled, or inoperative vehicles from private or public property.
- 4) Makes it an infraction to violate any provision of the Vehicle Code or any local ordinance adopted, pursuant to the Vehicle Code.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background.** According to the U.S. Department of Housing and Urban Development, California had 113,952 homeless people, or 20% of the nation's overall homeless population, as of January 2014. Of California's total homeless population, 27% were chronically homeless, 20% were in households with at least one parent and one child, 10% were veterans, and 10% were victims of domestic violence. California also had the largest number of homeless families, unaccompanied homeless youth, and homeless veterans. California has one of the nation's highest rates of "poor renters," or people that spend more than 50% of their income on rent. While most homeless people in the U.S. lived in emergency shelters or transitional housing in 2013, most homeless people in California were unsheltered. For example, in Los Angeles only 22% of homeless people had a shelter bed in 2013. California's high housing costs and shortage of shelters leave many homeless people with no choice, but to rest and sleep in public.

The Policy Advocacy Clinic at the University of California, Berkeley Law School released a report in February of this year titled "California's New Vagrancy Laws: The Growing Enactment and Enforcement of Anti-Homeless Laws in the Golden State." The report states, "Homelessness is a persistent problem in California. California cities have responded to this problem by enacting municipal codes that criminalize activities associated with homelessness. Most of the current municipal anti-homeless laws were enacted during the last 25 years. This proliferation of laws shows no signs of abating. Importantly, California cities are substantially more restrictive than the national average in terms of criminalizing sleeping, resting or lodging in legally parked vehicles. While only 33% of non-California cities studied by NLCHP [National Law Center on Homelessness and Poverty] restrict sleeping or lodging in vehicles, 74% of California cities do so." Homelessness not only has grave human consequences, it also creates challenges for local governments, both rural and urban. The researchers at the Policy Advocacy Clinic at the UC Berkeley Law School conclude that enforcement efforts may burden cities with significant financial costs.

In June of 2014 the U.S Court of Appeals for the Ninth Circuit struck down a Los Angeles ordinance that prohibited people from using a vehicle parked or standing on any city street or parking lot as living quarters either overnight, day-by-day, or otherwise (*Desertrain v. City of Los Angeles*). The court found that the ordinance paved the way for law enforcement to target the homeless and was therefore unconstitutionally vague. Additionally, the judge questioned if the conduct the ordinance was trying to prohibit criminalized otherwise innocent behavior, and posed a number of questions about what types of behavior in a vehicle would subject an individual to citation and arrest. The opinion stated "Is it impermissible to eat food in a vehicle? Is it illegal to keep a sleeping bag? Canned food? Books? What about speaking on a cell phone? Or staying in the car to get out of the rain? For many homeless persons, their automobile may be their last major possession – the means by which they can look for work and seek social services. The City of Los Angeles has many options at its disposal to alleviate the plight and suffering of its homeless citizens. Selectively preventing the homeless and the poor from using their vehicles for activities many other citizens also conduct in their cars should not be one of those options."

- 2) **Bill Summary.** This bill prohibits a city, county, or city and county from prohibiting or otherwise subjecting to civil or criminal penalties the act of sleeping or resting in a lawfully parked vehicle.

This bill does not prevent local governments from establishing local parking regulations, as authorized by the state, to address the hours a vehicle can be parked on the street. For example, this bill would not prevent a city from prohibiting overnight parking, unless a vehicle obtains a residential permit.

This bill is sponsored by Housing California.

- 3) **Author's Statement.** According to the author, "Local ordinances make it illegal for a person to rest or sleep in their own private vehicle, even if otherwise lawfully parked on a public way within a local jurisdiction. The aim of this type of ordinance has no other legitimate purpose than to target people experiencing homelessness. In fact, punishing people who have no other form of shelter by ticketing, citing/arresting them, or impounding their vehicle, has a disastrous effect on the person experiencing homelessness who rests in their vehicle. Many people who sleep in vehicles are women and children who do not feel safe in a shelter, are ineligible to stay in a family or women's shelter because of the gender and age combination of their children, or who do not feel safe out on the street or in other unsheltered spaces. Contrary to belief, many people who rest in vehicles have some type of employment. For them, the vehicle is transportation to work as well as shelter. For a parent with children, it is transportation to a school or medical appointment. For all of these people, the vehicle is sometimes the last personal asset they own. Punishing a person with fines, impoundment or seizure of a vehicle that is shelter, transportation, the connection to employment, education or medical care, and an asset only deepens poverty and prolongs homelessness. Increasing the number of people without shelter or deepening their poverty reduces public safety and increases other types of local costs."
- 4) **Related Legislation.** AB 5 (Ammiano) of 2013 would have established a number of rights for homeless people. Among the numerous provisions in AB 5, the bill would have provided the right to occupy a motor vehicle or recreational vehicle either to rest, sleep, or use for the purposes of shelter, provided that the vehicle is legally parked on public property, without being subject to criminal or civil sanctions, harassment, or arrest from law enforcement, public or private security personnel, or Business Improvement District agents. AB 5 was held in the Assembly Appropriations Committee.

Similarly, SB 608 (Liu), currently pending in the Senate Transportation and Housing Committee, would enact the Right to Rest Act and contains many of the same provisions as AB 5. SB 608 also includes the right to occupy a motor vehicle or a recreational vehicle, provided the vehicle is legally parked on public property or parked on private property with the permission of the property owner.

- 5) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Charter Cities and Counties.** In order to fulfill the author's intent that this bill applies to all cities and counties, the author may wish to clarify that this bill applies to all general law and chartered cities and counties.
 - b) **Impoundment.** In support of the bill, the American Civil Liberties Union (ACLU) requests that the bill is clarified to include an explicit prohibition on the impoundment of vehicles. In order to fulfill the author's intent, the author may wish to clarify that the prohibition in the bill includes, but is not limited to, the impoundment of vehicles.

- 6) **Arguments in Support.** Supporters argue, "Tragically, an increasing number of local jurisdictions have enacted ordinances that punish people for the mere fact that they sleep in a vehicle. This type of punishment reflects an alarming level of ignorance to the daily reality of people who experience homelessness. For many women and children experiencing homelessness, sleeping or living in a vehicle affords them a sense of safety that they cannot experience sleeping outdoors, which is often the only other option in the absence of adequate shelter beds across the state. A vehicle is not simply shelter for them, but also the transit source that connects them to their only source of income. Likewise, a vehicle can also represent the difference between whether a homeless child gets to school or a disabled individual keeps in touch with a medical provider. Educational attainment is a major predictor for leaving homelessness in adulthood. Access to healthcare is critical for people subjected to life's elements. The average life span for an adult experiencing chronic homelessness is less than fifty years of age.

"Finally, a vehicle is perhaps the only asset that many people experiencing homelessness have left. Citing vehicle owners because they sleep in their car, subjecting them to fines they can never afford to pay, and putting them at risk of vehicle seizure deepens homelessness, exacerbates mental health problems, leads to increased contact with law enforcement, and lowers public health in the community. Further miring individuals, families, and children in homelessness by ticketing them for their poverty only deepens their health, education and economic problems, and ensures that more people remain homeless longer."

- 7) **Arguments in Opposition.** Opposition argues, "This bill is a preemption of local authority to regulate and enforce laws governing the use of public and private space. Local ordinances arise and are adopted by communities to address specific issues affecting health, safety, and broader public welfare. The issues raised by this bill are less about parking and more about the use of vehicles for human habitation, including sleeping and resting. City parking locations whether on public or private property – other than campgrounds – were never intended or designed for residential occupancy.

"While this bill seeks to remove local authority to regulate such activity, the community impacts that will be imposed by this bill cannot be avoided. By combining the terms 'sleeping and 'resting' within a vehicle, to the time that the occupant may be otherwise outside of the vehicle, the bill appears to be designed to allow an individual to live in a vehicle anywhere on either public or private property where it is not otherwise forbidden to park a vehicle. It is one thing to park an empty car in front of someone's house; it is quite another for an occupied vehicle to be parked 'resting' in front of the house for hours and days. Commercial properties would face similar issues. One or more vehicles could park in front of a business removing potential parking spots for customers, and depending on the conduct of the occupants, potentially intimidate the public from visiting the location."

- 8) **Double-Referral.** This bill was heard by the Transportation Committee on April 24, 2015, where it passed with a 12-1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Housing California [SPONSOR]
Abode Services
Affordable Homeless Housing Alternatives, Humboldt County
American Civil Liberties Union of California
Caduceus Justice
California Labor Federation
Coalition of California Welfare Rights Organization
Corporation for Supportive Housing
East Bay Community Law Center
Ella Baker Center for Human Rights
Kings/Tulare Homeless Alliance
LA Human Right to Housing Collective
Los Angeles Anti-Eviction Campaign
Los Angeles Community Action Network
National Association for the Education of Homeless Children and Youth
River City Food Bank
Sacramento Homeless Organizing Committee
Sacramento Regional Coalition to End Homelessness
San Diego Housing Federation
San Francisco Coalition on Homelessness
Share the Bulb
St. Anthony Foundation
St. Mary's Center
Venice Community Housing Corporation
WellSpace Health
Western Center on Law and Poverty
Western Regional Advocacy Project

Opposition

American Planning Association, California Chapter
California Association of Code Enforcement Officers
California Business Properties Association
California College and University Police Chiefs Association
California Law Enforcement Association of Records Supervisors
California Police Chiefs Association
International Council of Shopping Centers
League of California Cities

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