



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Councilmember Sam Liccardo
Councilmember Nora Campos

SUBJECT: SEE BELOW

DATE: May 1, 2008

APPROVE

DATE: 5-1-08

SUBJECT: MODIFY MUNICIPAL CODE 11.38.210 - NO VEHICLE SOLICITATION ZONE TO PROHIBIT SALE OF CARS IN PUBLIC AREAS THAT CREATE SAFETY HAZARDS OR PUBLIC NUISANCES

RECOMMENDATION

Direct the City Attorney and City Manager to present for Council consideration an amended Section 11.38.210 of the San Jose Municipal Code ("No Vehicle Solicitation Zone") or augment the provision, to prohibit the selling of the vehicles parked on public right of ways in posted areas. The prohibition must enable the City to enforce the ban with both citations and vehicle towing.

BACKGROUND

The level of activity associated with the display and sale of used motor vehicles on public roads has grown considerably in recent years. This activity poses hazards to the public and has deeply frustrated the residents along King Road near Plata Arroyo Park, among other areas in the city. Some public streets, like King Road, have dozens of vehicles for sale parked on the roadway at any given time.

Our offices have received numerous complaints concerning King Road, which forms the border between Districts Three and Five. This problem has gone unabated for several years, and residents have justifiably expressed anger over the situation. The sale of vehicles along that busy thoroughfare has given rise to many complaints and concerns:

- Creation of traffic and accident hazards as drivers slow or stop to look at cars, and to converse with vendors;
- Distraction of drivers in an area surrounded by a park and a nearby school, having a substantial concentration of youth;
- Posing hazards for pedestrians walking into the public right of way to inspect the vehicles;
- Blocking views of drivers entering the road from driveways and side streets;
- Obstructing driveways for residents who become "trapped" in their homes, and giving rise to dangerous confrontations between those residents and the auto vendors; and

RULES AGENDA: 05-07-08
ITEM:

- Reducing the available parking inventory along the street for residents, their guests, and those who might seek to enjoy the nearby park.

Our offices have sought to urge the Department of Transportation (DOT) to post signage and enforce a prohibition of vehicle sales relying upon §11.38.210 of the San Jose Municipal Code, entitled “No Vehicle Solicitation Zone.” That ordinance authorizes the creation of a “no vehicle solicitation zone” where the “traffic volume, traffic patterns, and nature of the conduct of the solicitation activity . . . is creating a public nuisance or is adversely affecting public health, safety and welfare.” The City Attorney’s office has indicated that despite the text of the ordinance, the legislative history of § 11.38.210 suggests that it applies only to prohibit the solicitation of labor for hire and not to solicitation of cars for sale.

Another municipal code section, § 11.36.100, prohibits the “displaying” of “vehicles for sale” on a public roadway, but constitutional concerns arose relating to the expression of commercial speech and have impeded its enforcement. Nonetheless, the City Attorney has made clear that one can distinguish a ban on *speech*—relating to the posting of a “for sale” sign—from a ban on *conduct*—the sale of cars.

For that reason, whether by amending the existing §11.38.210 or by adding a new provision, we seek to ban the selling of cars along King Road and other busy thoroughfares where the conduct creates a safety hazard and where that prohibition has been clearly communicated with appropriate signage.

Finally, enforcement tools need to include the ability to force the car to be towed. Efforts by City officials to cite vendors for various violations typically result in unpaid and unheeded citations. Based on the feedback we have received from DOT, no ordinance appears to empower the City to authorize towing of cars for violations of any relevant ordinance.