



Advancing Justice
Housing | Health | Children & Youth



May 1, 2019

Mayor Lisa Matichak and Mountain View City Council
500 Castro Street
Mountain View, CA 94041

RE: Demand to Oppose and Repeal Unconstitutional Ordinances Banning the Parking of Oversized Vehicles Citywide and the Parking of Vehicles that Discharge Domestic Sewage on the Public Right-of-Way

Dear Mayor Matichak, Vice Mayor, and Councilmembers:

We write to demand that the City of Mountain View (City) stop advancing an ordinance to ban oversized vehicle parking citywide because this proposed ordinance violates the California and US Constitutions. We are deeply concerned that the City is passing such a measure in the midst of an unprecedented regional housing crisis in a city where there are no emergency shelters and the City has fallen so far behind its regional housing needs allocation (RHNA) for housing for low-income families. Local measures intended to make life more difficult for people who are homeless or housing insecure only perpetuate the housing crisis by limiting alternative housing options and precluding any opportunity for these individuals to reach a place of stability that will allow them to find long-term affordable housing. Worse, these measures offend bedrock notions of fairness, inclusivity, and equality, and send a message that our communities are not really open to all.

Like other municipal parking ordinances that target homeless people for citation based on pretextual characteristics, the oversized vehicle parking ban would impermissibly punish individuals for merely trying to survive and stay in their home community, deny equal protection of the law to a particular class of residents, and restrict freedom of association protected by the First Amendment and the right to travel protected by the U.S. and California constitutions. Additionally, enforcement of the proposed ordinance would implicate the Fourth Amendment's prohibition on unreasonable searches and seizures, as well as the Fourteenth Amendment's equal protection clause and substantive due process protection against a substantial risk of harm created by the government.

We also write to demand that City Council repeal Section 19.701.1 of the Mountain View Municipal Code, banning vehicles that discharge domestic sewage on the public right-of-way, as it is unconstitutionally vague in violation of the Fourteenth Amendment.

I. The Oversized Vehicle Parking Ban Would Punish People Living in Oversized Vehicles Merely for Sleeping in their Vehicles When They Have No Other Option in Violation of the Eighth Amendment

Recently, in *Martin v. City of Boise*, the Ninth Circuit Court of Appeals reaffirmed the principle that the “the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.”¹ This means that cities cannot constitutionally cite or ticket an individual for sleeping outside or in a vehicle where, as a practical matter, there are no shelter beds or other housing options that individual can access.²

While we applaud Mountain View’s recent efforts to create safe parking zones within the City, the mere creation of this program does not absolve the City of Eighth Amendment liability. First, and fundamentally, under *Martin*, a city cannot criminalize acts associated with being homeless when it cannot provide unhoused people an “option of **sleeping indoors**.”³ Eighth Amendment concerns are not remediated by virtue of providing safe parking spaces.

Second, even if providing safe parking spaces could satisfy *Martin* and the Eighth Amendment (it can’t), the number of safe parking spaces the City can provide is substantially smaller than the number of individuals currently using oversized vehicle as shelters, and thus the City will still violate the prohibition on cruel and unusual punishment if it tickets for parking an oversized vehicle on a city street because there are neither sufficient safe parking spots nor shelter beds available to the individual ticketed. This will be a frequent scenario given that the Safe Parking program is less than a year old and it has been difficult to find adequate sites for the program. According to the City Manager, the safe parking program’s “scale and scope would likely never be [enough] to meet the need of hundreds of parking spaces.”⁴

Third, the proposed oversized vehicle parking ban may violate the excess fines clause of the Eighth Amendment. Fees associated with towing the vehicle, such as impound and recovery fees, create a separate Eighth Amendment violation where they prevent individuals from

¹ 902 F.3d 1031, 1048 (2018) (citing *Jones v. City of L.A.*, 444 F.3d 1118, 1135 (9th Cir. 2006)), *as amended by* 920 F.3d 584 (9th Cir. 2019).

² *See id.* at 1042 (requiring city to show that shelter beds were available as a practical matter to the particular individuals cited on the night they were cited).

³ *Id.* at 1048 (emphasis added).

⁴ Mountain View City Manager’s Report to Council on Item 7.1 of the Mountain View City Council Agenda for March 19, 2019, at 38 (March 19, 2019). So far, the Safe Parking program includes only 13 spaces for oversized vehicle parking. *See* Attachment 9 to Item 7.1 of the Mountain View City Council Agenda for March 19, 2019.

recovering the vehicle and any personal possessions left inside.⁵ Even a small fee for violation of the oversized parking prohibition may be exorbitant if the individual ticketed is unable to pay, particularly because the magnitude of the forfeiture – potentially an individual’s home and all of his or her personal property – is so extreme.⁶

The Eighth Amendment’s prohibition on excessive fines and fees originated and has been consistently applied to prevent the government from using financial penalties to deprive individuals of other civil liberties, particularly of political dissent.⁷ Thus, although the City may be facing political pressure to do so, it would be cruel and unusual punishment to silence residents living in oversized vehicles by levying fines that effectively deprive these citizens of their homes and prevent them from remaining in Mountain View to participate in civic life and voice their dissent.

II. The Proposed Oversized Vehicle Parking Ban Would Violate the Fourteenth Amendment’s Equal Protection Clause for Targeting People Who Are Homeless, Disproportionately Burdening People with Disabilities, and Infringing on the Fundamental Right to Travel

The proposed oversized vehicle parking ban would disproportionately burden oversized vehicle owners who are homeless in violation of the Equal Protection Clause of the Fourteenth Amendment. The proposed ordinance would prohibit individuals dwelling in oversized vehicles from parking on Mountain View city streets but make exceptions for “vehicles parked adjacent to their residence or business (property owner, tenant, or their guest), government authorities, utilities, emergency vehicles, and disabled placard or license plate holders.”⁸

Like other municipal ordinances that target homeless people for prosecution and removal by arbitrarily criminalizing personal characteristics and/or behaviors that are otherwise lawful,⁹ the oversized vehicle parking ban would disproportionately affect homeless individuals who have no other choice but to live in their vehicles. These individuals would be prevented from obtaining a permit to park their RV’s or other oversized vehicles on City streets while their neighbors who own homes and others covered by the ban’s exceptions would be free to access the permits and the benefit of parking their oversized vehicles within city limits. Such a penalty for being homeless is patently unfair and unlawful. Punishing a person because of his or her poverty violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.¹⁰

⁵ See, e.g., *Timbs v. Indiana*, 139 S. Ct. 682 (2019) (protection against excessive fines is a fundamental right applicable to the seizure of a vehicle by state law enforcement).

⁶ *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) (March 19, 2019).

⁷ *Timbs*, 139 S. Ct. at 689; see also *United States v. Nation*, No. CR 13-0106-DOC-1, 2019 U.S. Dist. LEXIS 36002, at *58 (C.D. Cal. Feb. 28, 2019).

⁸ Mountain View City Manager’s Report to Council, *supra* note 4, at 29.

⁹ See, e.g., *Desertrain v. City of L.A.*, 754 F.3d 1147, 1155–57 (9th Cir. 2014).

¹⁰ See, e.g., *Bearden v. Georgia*, 461 U.S. 660, 668 (1983); *People v. Dueñas*, 30 Cal. App. 5th 1157, 1167-68 (2019).

The proposed oversized vehicle parking ban will also violate the Equal Protection Clause of the Fourteenth Amendment for discriminating against individuals with a disability. Over 42% of chronically homeless individuals in Santa Clara County have a physical disability and *over half* suffer from a psychiatric or emotional condition¹¹ (compared to just 4.3% and 3.2%, respectively, of the county general population¹²). Many of these individuals depend on oversized vehicles not only for shelter, but also other services including mobility, stability, and privacy that are essential to their wellbeing and access to public accommodations in light of a disabling condition. Banning oversized vehicles citywide would deprive these individuals from participating in the everyday activities that make up civic life.

Creating an exception to the ban for individuals with a disability will not absolve the City of liability under laws prohibiting discrimination based on disability. The ordinance will still have a disproportionate effect on the basis of disability because an individual applying for this exception will be required to present at least some additional information (specifically, that they are disabled) on top of what will be required of owners of oversized vehicles without disabilities who apply for the homeowner exception rather than a disability exception.

The ordinance will also be unconstitutional if it requires individuals applying for the disability exception to make a special showing with respect to their vehicle's equipment, or the necessity or impact of its parking location in order to access a permit to park within city limits. Such additional showings create barriers on the basis of disability to accessing permits that homeowners will be able to access as of right in clear violation of the Fourteenth Amendment's Equal Protection Clause.

Additionally, the oversized vehicle parking ban will violate the Fourteenth Amendment by infringing on the fundamental right to travel. The Supreme Court has held that "any classification which serves to penalize the exercise of [the right to travel], unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional."¹³

The ban would subject individuals who reside in an oversized vehicle to the constant threat of citation and seizure of their home and all of their personal possessions just for parking within City limits.¹⁴ This means that individuals cannot safely park in the City to vote, conduct business, attend doctor's appointments or receive other medical care, go to work, or meet and interact with family or friends.

¹¹ APPLIED SURVEY RES., 2017 SANTA CLARA COUNTY HOMELESS CENSUS & SURVEY 37 (2018).

¹² U.S. CENSUS BUR., 2017 AM. COMM. SURVEY tbl. S1810 (2018).

¹³ *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969) (emphasis in original).

¹⁴ Those who are able to access one of the City's Safe Parking sites, of which there are only 13 spaces for the nearly 200 oversized vehicles identified in Mountain View (*see* Attachment 9 to Item 7.1 of the City Council Agenda for March 19, 2019), will not be as restricted as those who cannot access this resource, but will still be forced to surrender their right to travel in order to access a safe parking site and avoid ticketing and seizure of their home and personal property.

This thinly-veiled attempt to eject and exclude from the City oversized vehicle owners who reside in their vehicles while making exceptions for those who do not cannot be supported by a government interest compelling enough to justify a complete ban on their travel within the City. “If a law has no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional.”¹⁵

III. The Proposed Oversized Vehicle Parking Ban Would Subject Oversized Vehicle Owners to a Substantial Risk of Harm in Violation of the Fourteenth Amendment’s Protection for Substantive Due Process

The Fourteenth Amendment’s protection of “a citizen’s liberty interest in her own bodily security” is central to the right to Substantive Due Process.¹⁶ Although this right does not require the government to protect citizens from all forms of private violence, it does prohibit state action that “affirmatively place[s] the plaintiff in a position of danger, that is, where state action creates or exposes an individual to a danger which he or she would not have otherwise faced.”¹⁷ Thus, police and other government actors violate the Fourteenth Amendment “where they affirmatively place an individual in danger . . . , by acting with deliberate indifference to [a] known or obvious danger in subjecting the plaintiff to it.”¹⁸

Banning oversized vehicle parking citywide when there are no shelter beds and insufficient safe parking sites will have the cruel effect of forcing more people to live outside, without any shelter at all, subject to the elements and the risk of harm to their wellbeing and personal safety. A Ninth Circuit district court has held that enforcement of a municipal ordinance that effectively deprives someone of their only source of shelter subjects individuals to risk of serious harm in violation of the Fourteenth Amendment.¹⁹

Ticketing, towing, and impounding oversized vehicles being used for shelter likewise subjects individuals to the obvious harm of living outside without shelter from the elements or protection from theft or assault. City Council’s deliberate indifference to this danger and the people it would subject to it – who, again, are some of our most vulnerable neighbors – is totally contrary to the Fourteenth Amendment’s concern for bodily security.

¹⁵ *Shapiro*, 394 U.S. at 631 (citing *United States v. Jackson*, 390 U.S. 570, 581 (1968)).

¹⁶ See *Kennedy v. Ridgefield City*, 439 F.3d 1055, 1061 (9th Cir. 2006).

¹⁷ *Id.* (internal quotations and citations omitted).

¹⁸ *Id.* at 1062 (internal quotations omitted) (citing *Munger v. City of Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000); *L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996)).

¹⁹ See *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1100-02 (E.D. Cal. 2012).

IV. Enforcement of the Proposed Oversized Vehicle Parking Ban Would Violate the Fourth Amendment’s Protection Against Unreasonable Seizures

Towing and impounding individuals’ vehicles is a seizure under the Fourth Amendment because it interferes with the vehicle owner’s possessory interests in his or her mobile home and the personal property inside.²⁰ “A seizure conducted without a warrant is per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions,” and the burden is on the government to show that such an exception applies.²¹

Probable cause to believe that the driver has committed a traffic violation is not sufficient justification in itself to impound that vehicle.²² The only exception to the Fourth Amendment’s warrant requirement for towing vehicles is for police acting in their “community caretaker” function to “impound[] vehicles that jeopardize public safety and the efficient movement of vehicular traffic.”²³

The City of Mountain View will not be able to meet its burden to show that the community caretaker exception applies. Every decision to impound a vehicle must be supported by a finding that “the vehicle was actually impeding traffic or threatening public safety and convenience on the streets such that impoundment is warranted.”²⁴ Because the proposed ordinance would ban parking oversized vehicles citywide, it will undoubtedly include oversized vehicles that pose no impediment to traffic, public safety or convenience. Enforcing the ordinance against such vehicles by towing them will violate the Fourth Amendment.²⁵

Owners of oversized vehicles also have a possessory interest in the personal property stored in their vehicles. For individuals who must reside in their vehicles, the property stored in their vehicles is frequently everything they own, including forms of identification, financial documents, medication, assistive devices, clothing, children’s toys, toiletries, and keepsakes. Where impound and recovery fees prevent individuals whose vehicles are towed under the proposed ordinance from recovering this personal property, an unreasonable seizure of this property will have occurred.

²⁰ See *Soldal v. Cook County*, 506 U.S. 56, 61 (1992) (“As a result of the state action in this case, the Soldals’ domicile was not only seized, it literally was carried away, giving new meaning to the term ‘mobile home.’ We fail to see how being unceremoniously dispossessed of one’s home in the manner alleged to have occurred here can be viewed as anything but a seizure invoking the protection of the Fourth Amendment.”).

²¹ *United States v. Hawkins*, 249 F.3d 867, 872 (9th Cir. 2001).

²² *United States v. Cervantes*, 703 F.3d 1135, 1141 (9th Cir. 2012) (citing *Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005)).

²³ *Id.* (internal quotation marks and citations omitted).

²⁴ *Id.*

²⁵ See *Taylor v. City of Saginaw*, No. 17-2126, 2019 WL 1757953, at *5 (6th Cir. Apr. 22, 2019) (community caretaker exception does not apply to the enforcement of a parking ordinance against vehicles that are not impeding public safety or convenience).

Additional Fourth Amendment violations may occur if oversized vehicles towed under the ordinance are also searched. “[W]arrantless inventory searches of vehicles are lawful only if conducted pursuant to standard police procedures that are aimed at protecting the owner’s property and at protecting the police from the owner charging them with having stolen, lost, or damaged his property,” and are conducted following a seizure properly conducted under the community caretaking function.²⁶ Thus, Mountain View police will commit an unreasonable search in violation of the Fourth Amendment whenever they enforce the oversized vehicle parking ban outside of their community caretaker role and conduct a warrantless search of that vehicle.²⁷

V. The Oversized Vehicle Parking Ban Would Deny the Right to Travel and Freedom of Association

The proposed oversized vehicle parking ban would also deny the right to travel protected by the Privileges and Immunities Clause of Article IV, Section 2 of the U.S. Constitution and Article I, Sections 7 and 24 of the California Constitution.²⁸ Federal and California state courts alike have consistently held that laws that directly restrict freedom of movement or deny benefits by creating two classes of residents based on one class’s exercise of the right to travel are unconstitutional.²⁹

As explained above, owners of oversized vehicles who reside in them will be effectively excluded from the City entirely because the parking ban will prohibit them from conducting essential life activities without fear of citation and resulting loss of their home and all of their possessions.³⁰ Thus, the proposed ordinance would not only restrict the freedom of association of those who own and live in an oversized vehicle – it would deny them virtually *every* benefit of living in the City of Mountain View. This complete and total ban on these individuals parking anywhere in the City amounts to a direct prohibition on these individuals’ ability to travel to and within the City of Mountain View.

²⁶ *Cervantes*, 703 F.3d at 1141.

²⁷ *See Taylor*, *supra* note 25.

²⁸ *See Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 1100 (1995).

²⁹ *See id.* at 1099; *see also Shapiro v. Thompson*, 394 U.S. 618, 634 (1969) (durationsal residence as a condition of receiving public assistance impermissibly penalized right to travel); *Dunn v. Blumstein*, 405 U.S. 330 (1972) (durationsal residence as a condition of voting impermissibly penalized right to travel); *In re Marriage of Fingert*, 221 Cal. App. 3d 1575 (1990) (court order requiring parent to remain in county or surrender custody of child impermissible penalized right to travel); *In re White*, 97 Cal. App. 3d 141, 150 (1979) (condition of probation prohibiting individual from entering certain map areas impermissibly burdened state constitutional right to intramunicipal travel).

³⁰ *See supra* notes 10, 13–15 and accompanying text.

VI. Mountain View Municipal Code Section 19.70.1, Prohibiting Parking of Vehicles that Discharge Domestic Sewage on the Public Right-of-Way is Unconstitutionally Vague in Violation of the Fourteenth Amendment

Section 19.70.1 of the Mountain View Municipal Code is void for vagueness under the Fourteenth Amendment's Due Process Clause because "it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits" ³¹ More specifically, the ordinance is unconstitutionally vague both because it fails "to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits," and because it "may authorize and even encourage arbitrary and discriminatory enforcement." ³²

Section 19.70.1 makes it "unlawful to park a vehicle on a public street or highway that discharges or has discharged domestic sewage... onto the public right-of-way." ³³ However, the statute fails to actually identify the activity prohibited because it does not define what "a vehicle... that discharges or has discharged domestic sewage" actually means. Furthermore, as the preamble to the ordinance makes clear, it is already unlawful to discharge or threaten to discharge domestic sewage onto the public right of way and the Mountain View Police Department already tickets for these violations. What additional conduct, then, does the ordinance seek to prohibit?

Vehicle owners are left "guessing as to what behavior would subject them to citation...." ³⁴ This uncertainty makes it impossible for ordinary citizens to differentiate between innocent and illegal conduct and conform their behavior to the law. ³⁵ Therefore, Section 19.70.1 is void for vagueness because it fails to provide fair notice of the conduct it prohibits.

Section 19.70.1 is void for vagueness for the additional reason that it encourages arbitrary and discriminatory enforcement. ³⁶ The ordinance was passed along with a package of measures aimed at homeless individuals residing in their vehicles, which shows that the intent behind it is in fact to encourage discriminatory enforcement against oversized vehicle owners who are homeless. This charge is a rank violation of due process and patently "incompatible with the concept of an even-handed administration of the law to the poor and to the rich that is fundamental to a democratic society." ³⁷

³¹ *Desertrain*, 754 F.3d at 1155 (quoting *Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966)).

³² *Id.* (citing *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999)).

³³ Mountain View Mun. Code § 19.70.1.

³⁴ *Desertrain*, 754 F.3d at 1155.

³⁵ *See id.*

³⁶ *See id.* at 1156 (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972)) ("If a statute provides no standards governing the exercise of... discretion, it becomes a convenient tool for harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.").

³⁷ *Id.* at 1157.

VII. Conclusion

The proposed ordinance banning the parking of oversized vehicles in Mountain View would violate the Eighth Amendment's prohibition on cruel and unusual punishment, the Fourteenth Amendment's Equal Protection Clause and protection for Substantive Due Process, the Fourth Amendment's prohibition on unreasonable searches and seizures, the First Amendment's protection of the freedom of association, and the right to travel protected by the U.S. and California constitutions. Section 19.70.1 is unconstitutionally vague, encourages discriminatory enforcement against the homeless, and should be repealed.

As the housing crisis continues to worsen, increasing numbers of Mountain View residents will be forced from their homes due to rising costs. For many of these residents, living in an RV or other oversized vehicle will be the only affordable option to safely and securely remain in the community they call home.³⁸ Measures like the proposed oversized vehicle ban that penalize those whose only available shelter is an RV ignore the reality of this hardship and inhumanely punish some of our most vulnerable neighbors.

We thank you for your consideration.

Sincerely,



Nadia Aziz, Interim Directing Attorney
Michael Trujillo, Staff Attorney
Law Foundation of Silicon Valley



Jamie Crook, Senior Staff Attorney
American Civil Liberties Union

CC:

Jannie L. Quinn, City Attorney
Daniel H. Rich, City Manager

³⁸ *See also id.* at 1157 (“For many homeless persons, their automobile may be their last major possession – the means by which they can look for work and seek social service. The City [] 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 more of those options.”)