



City of Huntington Beach

File #: 19-1288

MEETING DATE: 2/18/2020

REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Oliver Chi, City Manager

PREPARED BY: Robert Handy, Chief of Police

Subject:

**Adopt Ordinance No. 4204 repealing Chapter 10.40.125 of the Huntington Beach Municipal Code regarding vehicles marked for sale on streets, as it is no longer legally valid
Approved for introduction February 3, 2020 - Vote: 7-0**

Statement of Issue:

Police Department Staff and the City Attorney's Office reviewed Huntington Beach Municipal Code (HBMC) section 10.40.125 in light of a Federal (United States District Court for the Central District of California) decision and other First Amendment considerations and determined that HBMC section 10.140.125 should be repealed.

Financial Impact:

This ordinance has not been enforced for several years due to the above referenced case decision. There is no financial impact associated with repealing this ordinance.

Recommended Action:

Adopt Ordinance No. 4204, "An Ordinance of the City of Huntington Beach Repealing Chapter 10.40.125 of the Huntington Beach Municipal Code Relating to Sale On Vehicles Upon Streets."

Alternative Action(s):

Do not approve and direct staff accordingly.

Analysis:

The Police Department occasionally receives citizen complaints regarding legally parked vehicles on public roadways being marked for sale and not moving for extended periods. As it stands currently, HBMC section 10.40.125 allows Police and Code Enforcement employees the ability to issue citations for this violation. On October 17, 2000, the United States District Court for the Central District of California rendered a decision in *Burkow v. City of Los Angeles*. In summary, the court ruled a citizen's display of a "For Sale" sign on a vehicle was protected commercial speech under the U.S. Constitution and the ordinance did not directly advance public interest. The facts and circumstances with this case are on point with the intent of our ordinance and enforcement practices.

In light of this court case decision, we recommend the ordinance be repealed. Leaving the ordinance in place could create confusion for our citizens as they see it in the Huntington Beach Municipal Code and believe enforcement action is possible.

For several years, the Police Department has been acting in accordance with the *Burkow v. City of Los Angeles* case. There have been no citations issued for violating the provisions of the existing code and enforcement entities use other available codes to deter illegal parking issues, such as enforcing the 72-hour ordinance.

Environmental Status:

Not applicable.

Strategic Plan Goal:

Enhance and modernize public safety service delivery

Attachment(s):

1. Ordinance No. 4204 Repealing HBMC 10.40.125
2. Legislative Draft Repealing HBMC 10.40.125