



*City of Arts & Innovation*

# City Council Memorandum

**TO: HONORABLE MAYOR AND CITY COUNCIL** **DATE: JULY 16, 2019**

**FROM: CITY ATTORNEY'S OFFICE** **WARDS: ALL**  
**RIVERSIDE POLICE DEPARTMENT**

**SUBJECT: CALIFORNIA STATE LEGISLATION UPDATE: AB 2876 (AMENDING  
VEHICLE CODE 22650) REGARDING POLICE AUTHORIZATION TO TOW  
VEHICLES.**

## **ISSUE:**

On September 20, 2018, Governor Brown signed Assembly Bill No. 2876 which amends California *Vehicle Code* section 22650. Effective January 1, 2019, this amendment clarifies the removal of a vehicle as authorized by California statute is also required to be constitutionally reasonable based on the specific situation.

## **RECOMMENDATION:**

That the City Council receive and file this report.

## **COMMITTEE RECOMMENDATION:**

The Public Safety Committee met on May 15, 2019, with Chair Perry and Council Member Soubirous substituting for Member Adams present, and received a presentation from the Riverside Police Department that included a discussion regarding California Assembly Bill No. 2876 which amends California *Vehicle Code* section 22650. After discussion, the Committee unanimously voted to have staff make a presentation regarding Assembly Bill No. 2876 to the City Council.

## **BACKGROUND:**

### **Federal Constitutional Provisions**

The Fourth Amendment to the Constitution protects people from unreasonable searches and seizures by the government. It does not, however, guarantee against all searches and seizures, but only those that are deemed unreasonable under the law. While searches and seizures occurring without a warrant issued by a judge or magistrate are considered to be per se unreasonable, there are exceptions. (*Katz v. U.S.* (1967) 389 U.S. 347, 357.) Such exceptions

must comply with the touchstone of the Fourth Amendment—reasonableness. (*Florida v. Jimeno* (1991) 500 U.S. 248, 250.) Whether a particular type of search is considered reasonable is determined by balancing two important interests. On one side of the scale is the intrusion on an individual's Fourth Amendment rights. On the other side of the scale are legitimate government interests, such as public safety.

### California Assembly Bill 2876

The California *Vehicle Code* has long provided statutory authority for authorized peace officers to remove vehicles from streets in various authorized situations.

On February 16, 2018, California State Assemblymember Reginald Byron Jones-Sawyer, Sr. introduced legislation that clarified that the protections against unreasonable seizures provided by the Fourth Amendment of the U.S. Constitution apply even when a vehicle is removed pursuant to an authorizing statute.<sup>1</sup> This bill passed the Senate by a vote of 36-2 and the Assembly by a vote of 75-2. Governor Edmund G. Brown Jr. signed the bill into law on September 20, 2018 and it became effective on January 1, 2019. This bill has been codified as *Vehicle Code* Section 22650 and states, in part, the following:

***“Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.”***

The legislative history for AB 2876 states that the bill does two things:

1. “state(s) that all warrantless removals of vehicles are seizures under the Fourth Amendment of the U.S. Constitution and must be reasonable” and
2. “provide(s) that vehicle removals authorized by community caretaking statutes are reasonable only if the removal was necessary to achieve the community caretaking need.”

(AB 2876, “Concurrence in Senate Amendments”/Assembly Floor Analysis, 8/30/18.)

### **DISCUSSION:**

<sup>1</sup> The legislative history attributes the following quote to Assemblymember Jones-Sawyer:

*“In various court cases this lack of clarity has led to the seizure of vehicles that should not have been removed. These instances are violations of people’s 4th Amendment right, but more importantly they are instances where people’s only means of transportation was taken from them. In urban districts, like the one I represent, having a vehicle impounded can mean that an individual needs to choose between picking up their child from school and going to work on time. Providing clarity regarding the 4th Amendment would help law enforcement know their rights as community caretakers, while preventing needless vehicle seizures.”*

This new law makes clear that a vehicle removal that is based on community caretaking is only reasonable if the removal is necessary to achieve the community caretaking need. The idea behind community caretaking is that police do not always function as law enforcement officials investigating wrongdoing, but sometimes may act as community caretakers to help people in danger and to protect property.

AB 2876 is consistent with past decisions of the United States Court of Appeals for the Ninth Circuit. In *United States v. Torres* (2016) 828 F.3d 1113, the court ruled that under the community caretaking doctrine, police may, without a warrant, impound a vehicle so long as they do so in conformance with the standardized procedures of the local police department and in furtherance of a community caretaking purpose, such as promoting public safety or the efficient flow of traffic. The court added that the government bears the burden of establishing that a vehicle's impoundment and search are justified under an exception to the warrant requirement.

In *Miranda v. City of Cornelius* (2005) 429 F3d 858, the court stated:

*"In their 'community caretaking' function, police officers may impound vehicles that 'jeopardize public safety and the efficient movement of vehicular traffic.' Whether an impoundment is warranted under this community caretaking doctrine depends on the location of the vehicle and the police officer's duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft."*

The community caretaker function applies where police officers engage in a community caretaker function totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. Where a warrantless removal is based on a community caretaking statute, a police officer must have both a valid storage authority (e.g., *Vehicle Code* Section 22651) and a community caretaking justification such as, but not limited to the following examples: (1) if the vehicle is towed to prevent a hazard to other drivers; (2) if the officer towing the vehicle is protecting the public; and (3) if the officer is preventing a theft or vandalism to the vehicle.

The Riverside Police Department has trained its officers that the community caretaker justification for vehicle removal must be reasonable and clearly documented in the officer's report.

### **FISCAL IMPACT:**

There is no fiscal impact associated with this report.

Prepared by: Gary G. Geuss, City Attorney  
Certified as to  
availability of funds: Edward Enriquez, Chief Financial Officer/City Treasurer  
Approved as to form: Gary G. Geuss, City Attorney

Concurs with;



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Jim Perry, Chair  
Public Safety Committee

Attachment: AB 2876