

August 7, 2019

MEMORANDUM

To: Seattle City Council
From: Jeff Simms, Analyst
Subject: Extensively Damaged Motor Vehicles Ordinance

On Friday, August 9, 2019, the Finance and Neighborhoods Committee will discuss legislation the Executive transmitted but is not yet introduced (see Attachment 1 - TMP 5568). The proposed legislation would prohibit “renting” extensively damaged vehicles and impose penalties on individuals that do so. This memo provides background on the proposal and analyzes:

- new authorities and prohibitions that would be created,
- how the new statute would differ from existing laws and procedures,
- potential consequences of the legislation,
- potential impacts of recent legal rulings, and
- areas where the Council may want to consider changes to the proposed ordinance.

Background

Individuals living in recreational vehicles (RVs) are historically more difficult to connect with services than other populations. These individuals may not consider themselves homeless, and it is difficult to convince a person to leave behind an asset as substantial as an RV in order to enter a shelter. Individuals experiencing homelessness often view RVs as upgrades over tents.

A substantial number of occupied RVs are inoperable, unsafe (e.g., pose a fire hazard), or pose a threat to public health (e.g., infestations, leaking, mold, inoperable sewage system, etc.). Frequently, those living in the RVs find a way to move the RV in advance of a clean-up or before they are towed. However, in 2018, 173 RVs were towed. In some incidents, the occupant of one of the removed RVs indicated they were renting the vehicle from another person and did not have keys or the ability to move the vehicle on their own.

In 2018, 60 of the 173 RVs that were towed reappeared throughout the City in use as a residence. Anecdotally, this occurs when an individual purchases the towed vehicle at auction, has it towed back to the street, and then re-occupies or re-rents the RV. These vehicles are obtained at auction for very low prices (e.g., \$25) or for free. The City makes them available at such low prices because they are too damaged to be recycled or scrapped, leaving the City to pay a \$2,000 disposal fee if no one will take the vehicle. Although it is possible a person obtains these vehicles to occupy themselves, it is common for the purchaser to allow individuals experiencing homelessness to occupy the unit in exchange for “rent”, though payment of rent may be related to exchanging prostitution, drug sales, or other activities rather than cash

payments. This practice is sometimes referred to as “RV ranching”. The Department of Finance and Administrative Services (FAS) estimates that two to five individuals are responsible for the majority of RV ranching in the City.

On June 12, 2019, the Mayor’s Office informed the Council of two steps she is taking or proposing to reduce the number of exceptionally damaged or inoperable RVs used as dwellings in Seattle. Although the Executive’s focus is on RVs, the actions proposed could be applied to other vehicles as well. The first step is to outline new administrative procedures to ensure that towed RVs that are exceptionally damaged or a public health hazard are disposed of as junk vehicles. This step does not require any legislative approval, only intentional exercise of existing laws and guidelines. The second step is the proposed legislation (TMP 5568) that would make renting an exceptionally damaged vehicles (not just RVs) to individuals to reside in illegal.

Prevalence of Occupying an RV as a Dwelling

The [2019 Point-in-Time Count](#) of people experiencing homelessness in King County estimated that 816 people are living in RVs. That number is 38 percent of the 2,147 people experiencing homelessness who are living in a vehicle. Overall, 19 percent of the estimated homeless population in King County is believed to use a vehicle for a dwelling.

Proposed Legislation (TMP 5568)

By definition in the Seattle Municipal Code (SMC), RVs are not dwelling units. The Land Use Code’s definition of a recreational vehicle reads “a recreational vehicle is not a dwelling unit” ([SMC 23.84A.032 – “R”](#)). The building code for mobile homes defines RVs as usable for “temporary living quarters for recreation, camping or travel use” ([SMC 22.904.010](#)) and single-family dwelling units as detached structures with permanent foundations ([SMC 22.204.030, .040, and .200](#)). This is an important distinction because this means that neither State or City tenant protection laws extend to occupants of an RV.

Because RVs are not considered dwelling units, the Executive intentionally avoids using that term in the proposed legislation to avoid implying that an RV can be used as a dwelling, including not referring to “renting” these vehicles. Instead, the proposed legislation prohibits “allowing another natural person to occupy” an “extensively damaged” motor vehicle. The Executive had considered “receiving consideration” rather than “allowing”, which would cover any situation in which the RV rancher received a payment, likely in cash, for the person to occupy the vehicle. However, that language could be interpreted as requiring the individual occupying the vehicle to prove such payment was provided. Concern over imposing such a burden on these vulnerable individuals led the Executive to use “allowing”. The legislation defines the criteria for deeming a vehicle “exceptionally damaged”.

The proposal defines two tiers of penalties for RV ranching a vehicle. First, it would impose a civil infraction with a penalty of \$250 per day. A second or subsequent violation would be a misdemeanor. Proving a misdemeanor carries a higher burden of proof and likely necessitates the cooperation of the person occupying the vehicle. The likelihood that a misdemeanor would be pursued is considered low.

Regardless of which penalty is imposed on the RV rancher, the proposal also makes the RV rancher liable for restitution to the vehicle occupant. The restitution could cover costs associated with the occupant relocating and reimbursement for money paid as “rent” to occupy the vehicle. It would be capped at a maximum of \$2,000. Although restitution can be awarded when a civil infraction is confirmed against the RV rancher, with current practice, civil infractions generally do not have any restitution awarded to the victim. For the vehicle occupant to receive restitution, they would need to provide documentation in a separate proceeding. Because vehicles are not dwelling units and the ordinance avoids treating the vehicles as dwelling units, none of the City or State tenant protection laws apply to occupants of these vehicles.

How the Proposed Legislation Differs from Current Law

The proposed legislation would impose penalties for RV ranching that do not currently exist. There is nothing in current law or in the proposal that prohibits sleeping in vehicles, and there are currently no penalties or tenant protection laws related to RV ranching.

Because the City’s definitions of dwelling units exclude RVs, the City’s existing authority in the Housing and Building Maintenance Code to enforce and impose penalties and fees for renting a dwelling that is not fit for human habitation, and require relocation assistance, do not apply. Those penalties and fees can also be imposed on a “premises,” which is defined as “a plot of ground, whether occupied by a structure or not” ([SMC 22.204.170 – “P”](#)). However, the Seattle Department of Construction and Inspections currently interprets “premises” to exclude the right-of-way.

RV ranchers cannot be penalized for not meeting minimum standards for human habitation but could be fined for operating a business without a license. However, there is currently no reason an RV rancher could not obtain a license to avoid such penalties. Providing such a business license would also implicitly condone the practice.

Penalties and fees related to vehicles could apply. Extensively damaged vehicles likely violate requirements for lighting or other equipment on a vehicle ([RCW 46.37](#)), and the relevant traffic violation could be issued. The penalties for such violations range from \$48 to \$93 (see the [Monetary Penalty Schedule for Infractions](#)). It is not clear whether requirements for rental car agencies would apply because a rental car is defined as being rented or leased for a period of 30 days or less ([RCW 48.115.005.4](#)). None of the requirements or penalties for vehicles consider situations where a person lives in the vehicle.

Many of the vehicles used for this practice are not drivable, titled, or registered. As such, these vehicles can be towed under existing regulations, but as noted above, that largely perpetuates the practice of RV ranching rather than stopping it. RV ranchers typically do not pay the tickets and towing fees associated with a vehicle because the vehicle can be repossessed at auction for little or no cost. The changes to administrative practices for junking vehicles that the City is now implementing may begin to reduce the reemergence of these extensively damaged vehicles for the same practices. The proposed legislation would primarily discourage RV ranching before steps are taken to tow the vehicle.

Issue Identification

There are a variety of policy decisions or potential outcomes to the proposed legislation that Councilmembers may want to consider addressing through amendments to the legislation.

Scope of Affected Vehicles

The proposed legislation is intended to address issues largely related to RVs being ranched, but the proposed ordinance would apply to any vehicle, not just RVs. The reference in the first sentence of 11.75.010 to “recreational vehicle, as defined in Section [22.904.010](#) for purposes of this Chapter 11.75” serves to clarify that vehicles without their own motive power would be included along with “motor vehicles” as defined in [SMC 11.14.360](#).

Typically, individuals residing in cars and trucks are more easily engaged in services and willing to accept offers of shelter. Conversely, while cars and trucks do not have the problems with inoperable or malfunctioning sanitation systems that RVs can have, these types of vehicles can still pose health and safety hazards. As such, it is not clear how broadly the Council would want penalties for RV ranching to be applied to other types of vehicles if this legislation is adopted. Including all types of vehicles may result in fewer vehicles being used for shelter by individuals experiencing homelessness than if it is applied only to RVs.

Impact Upon Vehicle Occupants

The legislation would likely reduce the number of people residing in vehicles by people experiencing homelessness in Seattle, and the proposed penalties could be pursued without the cooperation of the people occupying the extensively damaged vehicle. Although the legislation would create a pathway for the occupants of the vehicle to have their payments reimbursed and their relocation costs offset, it seems unlikely that the individuals displaced from the extremely damaged vehicles would move into housing or benefit from that option.

First, it is not likely that these individuals have the means to cover rental payments for apartments or other housing. Anecdotally, people occupying these RVs see these extensively damaged vehicles as upgrades over tents and other sleeping conditions available to them. Some portion of these occupants do not make cash payments as rent but instead participate in other, often illegal or victimizing, activity.

Second, even if an affected individual was successful in providing the documents necessary to have their previous “rent” reimbursed and relocation costs paid for, which is likely to be a difficult feat for such vulnerable and marginalized populations, it is not clear that RV ranchers would ever provide restitution payments. Unlike some tenant protection laws, this legislation would not authorize advance payments from the City to the affected individual while the restitution amount was obtained from a recalcitrant RV rancher.

Unlike other relocation assistance provided under City and State tenant protection laws, the restitution amount is capped at \$2,000 and tied to what has been paid by the person who was occupying the extensively damaged vehicle. The State’s landlord-tenant laws ([RCW 59.18.085](#)) make the landlord liable for the greater of three months rent or treble the actual damages incurred and requires the landlord to pay relocation assistance constituting up to three months rent or \$2,000, whichever is greater. In addition to the larger restitution and assistance payments under the Landlord-Tenant Act, a timeline is established for receiving the payments and the law authorizes a government agency to advance the relocation assistance to the affected tenant after seven days. No such provisions are included in the bill, which could exacerbate the occupant’s vulnerability or exposure to unsafe living conditions.

Under the City’s authority to issue emergency orders that require the building, housing unit or premises be vacated and closed, the property owner must pay relocation assistance. The amount to be paid is \$4,734; the amount paid to a tenant who is not low-income is two months of rent. ([SMC 22.206.265](#)). This would also not apply to RV ranchers under the proposed legislation.

The proposal also lacks provisions related to possessions that are in the relevant vehicle. FAS staff have shared that many occupants of RVs are hesitant to leave the RV for fear that the RV rancher will relocate or lock the RV or take their possessions. Although such concerns could arise when the City tows a vehicle, current practice by City staff is to allow the occupant supervised access to the vehicle while it is in the tow yard. Nevertheless, the proposal does not have any provisions that address the belongings of the occupant or assurances that they would not lose their belongings.

Penalization of Individuals Who Are Not RV Ranching

Although the proposal ostensibly seeks to discontinue the practice of RV ranching, individuals who reside in vehicles while allowing others to occupy the vehicle with them would also be impacted—a situation that is not likely the predatory pattern of RV ranching that is the primary concern of this proposal. However, because the proposal would penalize the practice of “allowing another natural person to occupy” the vehicle, such individuals could be penalized, displaced from their vehicle, or discouraged from remaining with their partner or family members.

Lack of Available Shelter Beds or Housing

Reducing the number of vehicles being ratched to people experiencing homelessness could result in more of those individuals accepting offers of shelter. However, the proposal does not increase the number of available beds, particularly enhanced shelter or Tiny House Village beds that are most likely to be accepted. Currently, enhanced shelters and Tiny House Villages operate at near maximum capacity, and it is not clear that either of these options would be available as shelter for the displaced occupants of a vehicle.

Stakeholder Engagement

The Executive reached out to the following groups for input: Ballard Improvement Area, SODO Business Improvement Area, Seattle King County Coalition on Homelessness and Interfaith Task Force on homelessness. It is not clear how extensively these agencies or others serving the homeless and people experiencing homelessness were consulted in developing this proposal or to what degree the community supports this strategy.

Relevant Judicial Decisions

Two recent judicial decisions could have ramifications for the proposed legislation: the March 2018 Superior Court decision in [City of Seattle v. Steven Gregory Long](#) and the April 2019 decision of the U.S. Court of Appeals 9th Circuit in [Martin et al. v. City of Boise](#).

In *Seattle v. Long*, the Court found that a person's dwelling can be defined as a vehicle and, therefore, subject to the protections of the [Homestead Act](#). This finding prevents attachments, such as liens, on a person's home and could prevent the City from imposing penalties in situations where an occupant of the RV is allowing other people to reside in the RV.

In *Martin et al. v. Boise*, the Court of Appeals ruled that homeless persons cannot be punished for sleeping outside on public property in the absence of adequate alternatives. Because the proposal applies to vehicles in the right-of-way and can be pursued without the cooperation of the occupant of the vehicle, removal of those individuals due to the condition of the vehicle could require the City to have adequate shelter space available as an alternative. At this time, the City has had enough shelter space available, typically basic shelter beds, to avoid liability related to this finding.

Potential Amendments

Given the potential impacts and judicial implications outlined above, the Council may want to explore amendments to the Executive's proposal. This could be achieved through amendments after introduction or making changes to include in an alternative version prior to introduction. First, councilmembers could consider incorporating additional protections for occupants of these vehicles who would be displaced. Amendments could:

1. Clarify that RV ranchers and City staff must allow occupants of an extensively damaged RV to have access to their possessions.
2. Add requirements that an occupant must cooperate with action brought against an RV rancher.
3. Allow the occupant to remain in the vehicle until an alternative option is identified for the occupant.
4. Amend the type of vehicles subject to the requirements and penalties in the proposed legislation.
5. Clarify the applicability of the RV ranching prohibition and penalties to people that reside in the RV. Such a clarification could ensure that the judicial decisions discussed above would not apply to the bill.

In addition, the councilmembers could consider adding to or changing the assistance that the occupants of the RV could receive in the event they are displaced as a result of the proposed legislation, if adopted. One option would be to provide assistance options similar to those provided in the State Landlord-Tenant Act or the City's tenant relocation assistance program, such as the authority for the City to advance up to three months of rent to an affected individual. Some of these changes would have budgetary impacts that will be explored further if councilmembers request these changes.

Next Steps

The proposed legislation will also be discussed at the August 14 meeting of the Finance and Neighborhoods Committee as an information item that has not yet been introduced. Because some of the potential amendments above would require changing the title of the legislation prior to introduction, it is recommended that amendments are requested prior to Council recess. It is anticipated that the legislation will be introduced on September 3.

Attachment(s):

1. Executive's Proposed Legislation (TMP-5568)

cc: Kirstan Arestad, Exec Director
Aly Pennucci, Supervising Analyst

ATTACHMENT 1 – EXECUTIVE’S PROPOSED LEGISLATION (TMP-5568)

Tess Colby and Kiersten Grove
MO Extensively Damaged Motor Vehicles ORD
D2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to the use of extensively damaged motor vehicles; prohibiting persons from allowing the occupation of extensively damaged motor vehicles; and adding a new Chapter 11.75 to the Seattle Municipal Code.

...body

WHEREAS, the occupation of extensively damaged motor vehicles has increased in frequency over time in the City of Seattle; and

WHEREAS, many of these vehicles are parked in the public right-of-way; and

WHEREAS, many who use these vehicles belong to vulnerable populations; and

WHEREAS, the safety and cleanliness of these vehicles often poses a health and safety risk to those using the vehicles and the public; and

WHEREAS, it is incumbent upon the City to protect its residents from predatory practices happening within the right-of-way; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 11.75 of the Seattle Municipal Code is added as follows:

CHAPTER 11.75 USE OF EXTENSIVELY DAMAGED MOTOR VEHICLES

11.75.010 Extensively damaged motor vehicles

No person shall allow another natural person to occupy any motor vehicle (or recreational vehicle, as defined in Section 22.904.010 for purposes of this Chapter 11.75) located on a street or alley open to the public, or on municipal or other public property, that is extensively damaged.

A motor or recreational vehicle is extensively damaged if it meets at least two of the following five conditions:

- A. Has a broken window or windshield and/or missing wheels or tires;

ATTACHMENT 1 – EXECUTIVE’S PROPOSED LEGISLATION (TMP-5568)

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D2

- 1 B. Is apparently inoperable;
- 2 C. Has inadequate sanitation to the extent that occupants or the general public are directly
- 3 exposed to the risk of illness or injury, including but not limited to:
 - 4 1. Infestation by insects, vermin, rodents, or other pests;
 - 5 2. Accumulation of garbage and rubbish;
 - 6 3. Hazardous and/or inoperable wastewater system leading to improper disposal
 - 7 and/or discharge of sewage;
 - 8 4. Leaking automotive fluids and other hazardous/dangerous materials; or
 - 9 5. Poor indoor air quality due to mold, exposed insulation, or other air pollutants;
- 10 D. Creates a health, fire, or safety hazard, including but not limited to:
 - 11 1. Accumulation of junk, debris, or combustible materials; or
 - 12 2. Any device, apparatus, equipment, waste, vegetation, or other material in such
 - 13 condition as to cause a fire or explosion or to provide a ready fuel to augment the spread or
 - 14 intensity of fire or explosion; or
- 15 E. Has inadequate protection to the extent that occupants are exposed to the weather,
- 16 including but not limited to:
 - 17 1. Crumbling, broken, loose, or missing walls or ceiling covering;
 - 18 2. Broken or missing doors, windows, or door frames;
 - 19 3. Ineffective or inadequate waterproofing; or
 - 20 4. Deteriorated, buckled, broken, decayed, or missing walls or roof.

21 **11.75.020 Enforcement and penalties**

ATTACHMENT 1 – EXECUTIVE’S PROPOSED LEGISLATION (TMP-5568)

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MO Extensively Damaged Motor Vehicles ORD
D2

1 A. The first violation of this Chapter 11.75 shall be a class 1 civil infraction as
2 contemplated by chapter 7.80 RCW for which there shall be a penalty of \$250, which penalty
3 shall not be suspended or deferred.

4 B. A second or subsequent violation of this Chapter 11.75 is a misdemeanor subject to
5 the provisions of Chapters 12A.02 and 12A.04, except that absolute liability shall be imposed for
6 such a violation and none of the mental states described in Section 12A.04.030 need be proved.

7 C. Each day a violation of this Chapter 11.75 continues and each occurrence of a
8 prohibited activity shall be considered a separate offense.

9 D. A person violating the provisions of this Chapter 11.75 shall also pay restitution to the
10 person(s) occupying or renting the motor or recreational vehicle, including but not limited to,
11 reimbursement for any money paid and the costs associated with relocating, up to \$2,000.

12 E. This Chapter 11.75 does not apply to a temporary occupation of a motor or
13 recreational vehicle primarily for purposes of driving, repair, or towing.

ATTACHMENT 1 – EXECUTIVE’S PROPOSED LEGISLATION (TMP-5568)

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MO Extensively Damaged Motor Vehicles SUM
D1

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Mayor’s Office	Kiersten Grove/6-6261	Kara Main-Hester/4-8746

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to the use of extensively damaged motor vehicles; prohibiting persons from allowing the occupation of extensively damaged motor vehicles; and adding a new Chapter 11.75 to the Seattle Municipal Code.

Summary and background of the Legislation: The City has experienced a growth in number of people occupying extensively damaged motor and recreational vehicles. The people occupying these vehicles are often vulnerable and have limited options for housing. The vehicles are often parked in the right of way and often create a health and safety risk to those living within and to the public in general. This legislation prohibits allowing other people to occupy damaged motor or recreational vehicles that are in the City right-of-way when they are inoperable and present a health or safety risk.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Yes. As more hazardous vehicles are removed from the right of way and disposed of due to health and safety hazards the City will incur costs for the disposal for these vehicles. The City has 2019 appropriation in FAS to cover some RV disposal, however, the additional costs from this change means total costs could exceed this budgeted amount. If the costs of disposal exceed the current appropriation, a request will be brought forward for changes to the 2019 budget. Changes to the 2020 budget will be managed through the budget development process.

Is there financial cost or other impacts of *not* implementing the legislation?

If this legislation is not implemented, the health and safety hazards they present will be perpetuated. The health hazards associated with RVs and vehicles include:

- Infestation by insects, vermin, rodents, or other pests.
- Accumulation of garbage and rubbish.
- Accumulation of expired, rotten, and/or improperly stored food
- Poor indoor air quality due to mold, exposed insulation, or other air pollutants.
- Accumulation of infectious waste, such as urine, feces, blood, and/or sharps.

ATTACHMENT 1 – EXECUTIVE’S PROPOSED LEGISLATION (TMP-5568)

Tess Colby and Kiersten Grove
MO Extensively Damaged Motor Vehicles SUM
D1

- Hazardous and/or inoperable wastewater system leading to improper disposal and/or discharge of sewage.
- Presence of improperly contained hazardous waste such as propane tanks, batteries, chemicals or motor oils.
- Accumulation of junk, debris, or combustible materials.
- Structural damage to the extent that occupants are exposed to the weather.

It is important that these vehicles not reenter the market to mitigate public health and safety risks to both future RV occupants, the general public and the City’s natural environment. In 2018, 53% (60) of the RVs/vehicles towed through the RV Remediation Pilot reentered the market despite being removed from high-ranking cleanup sites with significant health and safety risks.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

Yes. The Seattle Police Department and Seattle Public Utilities partner to perform the RV Remediation Pilot. The Department of Finance and Administrative Services manages the contract with the tow companies who provide towing and destruction of vehicles.

b. Is a public hearing required for this legislation?

No.

c. Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?

No.

d. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

e. Does this legislation affect a piece of property?

No.

f. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

The occupation of extensively damaged vehicles is an issue affecting vulnerable populations and adjacent neighborhoods. It has been identified by both the RV Remediation Pilot and SPD Parking Enforcement as a means for individuals to take advantage of already vulnerable groups by seeking rent for inadequate and in some cases dangerous alternative living arrangements.

This legislation will prohibit allowing occupation of RVs and vehicles that are unfit for human habitation based on public health and safety standards. Occupants will be offered services, including shelter, to help them re-establish a rental in a safe and appropriate location. The legislation includes a restitution provision that requires anyone violating this

ATTACHMENT 1 – EXECUTIVE’S PROPOSED LEGISLATION (TMP-5568)

Tess Colby and Kiersten Grove
MO Extensively Damaged Motor Vehicles SUM
D1

law to pay the persons occupying or renting the RV costs associated with relocation and/or moneys paid for the use of the RV.

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s).**

N/A

List attachments/exhibits below: