

# **DOWNEY POLICE DEPARTMENT**

**TRAINING**



**BULLETIN**

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Chief of Police

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## **Downey Municipal Code 3195 – Living in Motorhomes or Other Recreational Vehicles.**

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In 1976, the City of Downey enacted **DMC 3195**, which provides:

*“No vehicle, including a truck-camper, motor home, travel home, travel or recreational trailer or other similar recreational vehicle, shall be used as a place for human habitation, nor shall any person sleep in, inhabit or live in any such vehicle while the same is parked in the public right-of-way.”*

In 2014, the US Court of Appeals for the 9th Circuit decided the case of *Desertrain v. City of Los Angeles* [754 F.3d 1147] - in which it determined that a Los Angeles Municipal Code section that prohibited the use of a vehicle “as living quarters” was unconstitutionally vague (as it failed to define “living quarters” and that it promoted arbitrary and discriminatory enforcement due to the term’s vagueness).

Since the *Desertrain* case, we have had a number of attorneys seek dismissal of charges against defendants who have been charged with violations of DMC 3195 - arguing that the prohibition against using a vehicle as “a place for human habitation” is equally vague as the LA City provision.

In each of the cases to date, our City Attorney has been successful in defending our cases because in each such case, our officers have actually caught the person sleeping in the vehicle. Since DMC 3195 prohibits BOTH the use of the vehicle for human habitation AND sleeping in a vehicle parked in a public right-of-way, the City Attorney has focused the court on the 2nd half of DMC 3195 and its prohibition against sleeping in the vehicle and has argued that “sleeping” is NOT vague nor subject to arbitrary enforcement by officers. Again, to date, the court has agreed with our City Attorney’s distinction between “human habitation” and “sleeping”.

Please note that in order for our City Attorney to continue successfully defending the use of DMC 3195, Police Officers need to ensure that

- (1) All persons cited for a violation of DMC 3195 are actually sleeping in a vehicle; and,

- (2) All such vehicles are parked on a public right-of-way (e.g., street, alley, or other public way designed for pedestrian or vehicular travel).

Please note that although the DMC does not define “public right-of-way”, it cross-references definitions in the California Vehicle Code. The CVC defines a “right-of-way” as a "privilege of the immediate use of the highway” and further defines a “highway” to be "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.”

Based upon these definitions, persons who are asleep in a vehicle that is parked on private property would **NOT** be in violation of the 2nd half of DMC 3195 (which is the portion that is most defensible in court in light of Desertrain).