

April 27, 2001

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PREEMPTION OF THE CITY'S TOW TRUCK REGULATIONS

INTRODUCTION

The United States Court of Appeals for the Ninth Circuit recently struck down Santa Ana, California's tow truck laws, because the court found they were preempted by federal legislation. *Tocher v. Santa Ana*, 219 F.3d 1040, 1051 (9th Cir. 2000). The City of San Diego's tow truck regulations are similar to the ones that were struck down by the court in the *Tocher* case. This report discusses the effect of the *Tocher* case on the enforceability of San Diego's existing tow truck regulations and recommends their repeal.

DISCUSSION

For the past five years, courts around the country have been divided on the question of whether federal legislation adopted in 1994 preempted local governments' attempts to regulate tow truck companies. See the discussion in "Did Congress Intend to Preempt Local Tow Truck Regulations?" presented by Margaret W. Baumgartner, Deputy City Attorney for the City and County of San Francisco, at the League of California Cities Annual Conference, October 1998. The discussion came to an abrupt halt in California this past summer when a federal appellate court made a key ruling about local governments' attempts to regulate this area.

On July 14, 2000, the controlling federal court in this jurisdiction, the Ninth Circuit Court of Appeals, held that Santa Ana, California's tow truck licensing requirements and regulations directly or indirectly affected the price, route, or service of a motor carrier and, therefore, were preempted by 49 U.S.C. 14501(c). *Tocher v. Santa Ana*, 219 F.3d at 1048. The court further held that under 49 U.S.C. 14501(c)(2)(a), the State of California could not delegate its limited power to promulgate safety regulations to municipalities. *Id.* at 1051. The court also held, however, that a local government, when acting as a private consumer of towing services, may set standards and requirements for tow truck companies through its contracts with those companies, even though it still could not require them to obtain a license from that local government. *Id.* at 1049-50.

We have reviewed the City of San Diego's licensing requirements and regulations governing tow truck companies doing business in San Diego in light of the court's decision in *Tocher*. In our opinion, this City's current tow truck licensing requirements and regulations

would be preempted by federal law, because they either directly or indirectly affect the pricing, routes, or services of tow truck companies that do business in this City, and are therefore unenforceable. We believe that the federal legislation has so clearly preempted the entire field that no amendment to the City's laws would cure the problem. We recommend that San Diego Municipal Code [SDMC] sections 33.4000-33.4011 be repealed so that the public is not misled into believing that the regulations currently on the books are enforced and enforceable. We have prepared an ordinance repealing those sections for your consideration.

CONCLUSION

This report discusses the impact of the court's decision in *Tocher* on this City's tow truck laws [SDMC sections 33.4000-33.4011] and concludes that they are preempted by 49 U.S.C. 14501(c). It recommends that these Municipal Code sections be repealed. An ordinance repealing those sections has been prepared for the Council's consideration. This report takes note that the City may continue to set standards for tow truck companies with which it does business through the contracts it makes with those companies.

Respectfully submitted,

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