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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

CITY'S OPTIONS IN IMPOSING TOUGHER PENALTIES THAN STATE LAW FOR
DRUNK DRIVING OFFENSES

During public comment at the January 7, 2003, meeting of the City Council, a question arose about the City's ability to impose tougher penalties than the state currently allows on persons convicted of driving while under the influence of alcohol [DUI]. The City Council asked the City Attorney to prepare a report on the City's options to impose penalties for DUI offenses that are different from and tougher than those already imposed by state law. This report is in response to that request.

The state has plenary power to regulate traffic in this state, and the state legislature's intent to occupy the field of traffic regulation except as it specifically delegates to local governments has been upheld by the California Supreme Court. *Rumford v. City of Berkeley*, 31 Cal.3d 545 (1982). In so holding, the Supreme Court has stated that travel on public roads is a matter of statewide concern and state law thus preempts local regulation. *Rumford*, 31 Cal.3d at 549-550, n.3. The state legislature has declared its intention to delegate limited authority to local governments in section 21 of the California Vehicle Code, which states: "Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein." Cal. Veh. Code § 21; *Rumford*, 31 Cal.3d, 550.

The state legislature has in fact delegated authority to local governments to regulate certain traffic matters on their own streets. That delegation of authority is located in sections 21100 through 21117 of the California Vehicle Code. However, these sections contain no specific provision granting authority to local governments to establish penalties for the offense of driving under the influence of alcohol (or drugs). The delegation of authority found in the sections is strictly construed. *Rumford*, 31 Cal. 3d at 550. "Unless express authority is granted, a local government has no authority to regulate or control any matter covered by the California Vehicle Code." *Biber Electric Co. v. City of San Carlos*, 181 Cal. App. 2d 342, 344 (1960).

If this City wants to create penalties for convictions of DUI offenses committed in this City that are in addition to those currently imposed by state law, we recommend that the City propose an

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amendment to Vehicle Code sections 21100 – 21117 to specifically allow local governments to create such penalties. Alternatively, the City could propose an amendment elsewhere in the Vehicle Code to create such penalties statewide for DUI offenses.

Respectfully submitted,

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CCM:sc
RC-2003-6
cc: City Manager