

MARY JO LANZAFAME
ASSISTANT CITY ATTORNEY

RYAN P. GERRITY
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Jan I. Goldsmith

CITY ATTORNEY

MEMORANDUM OF LAW

DATE: September 18, 2013
TO: City Councilmember David Alvarez
FROM: City Attorney
SUBJECT: Delegation of Authority to Approve Angle Parking

INTRODUCTION

Traditionally, angled parking has been approved by the City Council by resolution. Your office has asked whether this can be done more efficiently by delegating the authority to approve angle parking to the Mayor or his designee.

QUESTIONS PRESENTED

Can the City Council delegate the authority to approve angle parking to the Mayor or his designee?

SHORT ANSWERS

Yes, the Council may delegate the authority to approve angle parking, provided that the City Council adopts an ordinance amending the Municipal Code with a set of standards for when angle parking is appropriate.

ANALYSIS

The California Vehicle Code allows cities to create angle parking on local streets. "Local authorities may by ordinance permit angle parking on any roadway, or left-hand parking upon one-way roadways of divided highways, except that no ordinance is effective with respect to any state highway until the proposed ordinance has been submitted to and approved in writing by the Department of Transportation." Cal. Veh. Code § 22503.

In 1956, the City adopted its current process for designating angle parking as called for by the California Vehicle Code. San Diego Ordinance No. O-6936 (Apr. 10, 1956).

The City Council may by resolution permit angle parking on any street. Lines indicating such angle parking shall be shown upon the surface of such street.

The City Council may by resolution designate certain days or limited time periods when angle parking shall be observed. No lines shall be shown upon the street for such limited period, but such restriction shall be effective when appropriate signs giving notice thereof are erected.

SDMC § 86.03.

I. THE CITY COUNCIL MAY AMEND THE MUNICIPAL CODE AND DELEGATE ITS AUTHORITY TO APPROVE ANGLE PARKING PROVIDED IT IS NOT AN IMPROPER DELEGATION OF LEGISLATIVE FUNCTION.

The City Charter states that the Council members “shall not delegate legislative power or responsibility which they were elected to exercise in the adoption of any ordinance or resolution which raises or spends public monies . . . or set[s] public policy.” San Diego Charter § 11.1. This reflects the same prohibition against the delegation of legislative authority contained within the California Constitution: “The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.” Cal. Const., art. XI, § 11(a).

Courts have identified several principles that interpret this prohibition on the delegation of legislative power.

The essentials of the legislative function are the determination and formulation of the legislative policy. Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others. The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the “power to fill up the details” by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect.

First Industrial Loan Co. v. Daughetry, 26 Cal. 2d 545, 549 (1945).

Thus, so long as the legislative body performs its “essential function” of determining and formulating policy, the actual carrying out of that policy may be performed by others. “For example, legislative power may properly be delegated if channeled by a sufficient standard. ‘It is well settled that the legislature may commit to an administrative officer the power to determine whether the facts of a particular case bring it within a rule or standard previously established by the legislature.’” *Kugler v. Yocum*, 69 Cal.2d 371, 375-76 (1968) (internal citations omitted).

In *Daugherty*, the court determined that the Commissioner of Corporations exceeded the authority delegated to him by the Industrial Loan Act. *Daugherty*, 26 Cal. 2d at 547-48. The Commissioner adopted a rule prohibiting industrial loan companies from using a surplus to offset bad debts, doubtful accounts, or for other special reserve accounts. *Id.* According to the court, the effect of this rule “would be to impose requirements not included in the statute and not wholly consistent with the typical financial structure there contemplated.” *Id.* at 556. Thus, an executive operating under delegated authority may not add to or modify the underlying policy upon which his authority is based. Only actions in conformity with the standard established by the legislative body would be appropriate.

In contrast, the court in *Yocum* determined that a policy which set the salaries of firefighters in the city of Alhambra based on the average and comparable salaries of firefighters in the city of Los Angeles was a proper delegation of legislative authority. *Yocum*, 69 Cal.2d at 374-76. The court ruled that, even though the policy relied on future events outside of the control of the legislative body, the policy was valid because it created a standard by which the “fundamental issue” of setting firefighter salaries was resolved. *Id.* at 376-78. Any administrator or executive carrying out the policy would simply be “filling in the facts” for a formula that had already been determined by the legislative body. *Id.*

With these principles in mind, the City Council may amend the Municipal Code to adopt standards regarding angle parking that would allow the Mayor or his designee to approve angle parking. Such an amendment would have to resolve the fundamental issue of what criteria should be considered when designating angle parking, such that an administrator would be left only with “filling in the facts” for each scenario in which angle parking was considered or desired. We defer to City staff as to what the criteria should be.

CONCLUSION

The City Council may delegate the authority to approve angle parking to the Mayor or his designee, provided the Municipal Code is amended to adopt specific criteria describing when angled parking is appropriate.

JAN I. GOLDSMITH, CITY ATTORNEY

By: /s/ Ryan P. Gerrity
Ryan Gerrity
Deputy City Attorney

RPG:cfq

cc: Linda Marabian, Deputy Director, Transportation & Storm Water Department
ML-2013-17