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MEMORANDUM OF LAW

DATE: January 25, 2010

TO: Council President Ben Hueso

FROM: City Attorney

SUBJECT: City's Authority to Regulate Traffic Congestion on
City Streets Near Otay Mesa Point of Entry

INTRODUCTION

You have inquired into whether the City of San Diego [City] would be able to regulate vehicular traffic on City streets leading to the Otay Mesa Point of Entry [POE] in order to address the chronic traffic congestion in the area and its impact on the surrounding businesses. Due to the extremely high volume of trucks that use the POE to enter Mexico, long queues of trucks form on City streets leading to the POE, such as Siempre Viva Road, Drucker Lane, and La Media Road. The truck queues result in traffic backups and congestion on those streets, which in turn impacts local businesses because their patrons are impeded, if not precluded, from accessing those businesses. One suggestion that has been raised for mitigating the traffic congestion is to adopt measures that would require trucks to queue in a designated waiting area off City streets and then permit them to approach the POE only a few at a time.

QUESTIONS PRESENTED

Does the City have the authority to regulate vehicular traffic on City streets leading to the POE in order to reduce chronic traffic congestion and its resultant impact on surrounding businesses? If so, does the City have the power to adopt measures that would require trucks to queue in a designated waiting area off City streets and permit the trucks to approach the POE in a regulated manner only, such as by limiting them to a few at a time?

SHORT ANSWER

No. The City's power to regulate traffic is significantly limited to that which is expressly permitted by statute and does not provide the authority to adopt measures or implement a system that would require trucks to queue in a designated waiting area off City streets and restrict or limit the manner in which the trucks can approach the POE.

ANALYSIS

The City's authority to regulate traffic is significantly limited and the extent of its authority is solely that which is expressly permitted by statute. Section 21 of the California Vehicle Code¹ provides: "[N]o local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein." The Legislature has thereby explicitly preempted the entire field of vehicular traffic and local governments are without any authority to enact any additional regulation under their police power. *Pipoly v. Benson*, 20 Cal. 2d 366 (1942) (holding that cities have no police power in this area unless expressly authorized by the Legislature). Charter cities are similarly constrained and are without power to regulate vehicle traffic absent express statutory authorization. *Rumford v. City of Berkeley*, 31 Cal. 3d 545 (1982) (holding that the regulation of vehicular use of public roads and highways is not a municipal affair.) Therefore, the City's authority to regulate the queuing of trucks on City streets leading to the POE, such as by requiring them to queue in a designated area depends on whether the Vehicle Code expressly authorizes or permits such local regulation. Two sections of the Vehicle Code appear to be relevant to this inquiry.

1. Section 21101(c)

Section 21101 permits local municipalities to regulate certain vehicular matters within their jurisdiction: "Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution on the following matters: . . . Prohibiting the use of particular highways by certain vehicles, except as otherwise provided by the Public Utilities Commission pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code." Section 21101(c). Section 1031 of the Public Utilities Code pertains to passenger stage corporations, such as bus transportation and shuttle services.

A city would therefore be permitted to prohibit certain classes of vehicles, such as trucks, from using certain streets. For example, the City can prohibit trucks or tractors from using certain streets on the basis of their being oversize, excessively noisy, or lacking air-inflated tires. *See City of Lafayette v. County of Contra Costa*, 91 Cal. App. 3d 749, 752 n.2 (1979); 55 Ops. Cal. Att'y Gen. 178, 182-183 (1972). However, such prohibitions against trucks and similar commercial vehicles can only be based on size, weight or safety concerns; regulations related to

¹ All subsequent references are to the California Vehicle Code unless otherwise noted.

price, service, or routes of motor carriers are otherwise preempted by federal law. *California Dump Truck Owners Assn. v. Davis*, 302 F. Supp. 2d 1139 (E.D. Cal. 2002) (citing 49 U.S.C. § 14501(c)(1)).² The authority granted by Section 21101(c) explicitly allows only the prohibition of certain vehicles from using roads; it does not provide a more general or broader authority to enact regulations that fall short of complete prohibition, such as requiring trucks to use a staging area rather than queue on City streets.

2. Section 22507(a)

Section 22507(a) provides in pertinent part:

Local authorities may, by ordinance or resolution, prohibit or restrict the stopping, parking, or standing of vehicles, including, but not limited to, vehicles that are six feet or more in height (including any load thereon) within 100 feet of any intersection, on certain streets or highways, or portions thereof, during all or certain hours of the day . . . With the exception of alleys, the ordinance or resolution shall not apply until signs or markings giving adequate notice thereof have been placed.

According to Section 587, “‘Stop or stopping’ when prohibited shall mean any cessation of movement of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or official traffic control device or signal.” “‘Park or parking’ shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.” Section 463. The Vehicle Code does not define “standing”.³

It does not appear that this section enables the City to regulate the POE truck queue, much less implement a system that would require the trucks to wait in a waiting/holding area, because the trucks waiting in the queue to cross through the POE do not meet the definitions of stopping, parking or standing. They do not qualify as “stopping” because the term excludes cessation of movement that is necessary to avoid conflict with other traffic. Nor would the trucks be considered to be “parking”, either under the statutory definition or as the term is commonly used—even if some truck drivers do in fact shift their transmissions into “park” on account of the long wait times. While the term “standing” is not defined, its connotation, based on how the term

² 49 U.S.C. § 14501(c)(1) provides that “a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.”

³ The cases concerning Section 22507(a) do not provide guidance because they involved parking regulations, such as restrictions on parking in residential areas and the creation of preferential parking zones, such as in downtown retail areas. *See, e.g., Homes on Wheels v. City of Santa Barbara*, 119 Cal. App. 4th 1173 (2004) (city ordinance prohibited parking of trailers, semis, recreational vehicles, buses, and vehicles exceeding a ¾-ton capacity between 2:00 a.m. and 6:00 a.m.); *People v. Garth*, 234 Cal. App. 3d 1797 (1991) (city ordinance prohibited parking unhitched trailers and semi-trailers on any highway).

is used in the statutory definition of parking and contrasted with the definition of stopping, is that it involves a cessation of movement that is purposeful and not just simply involuntary (as is the case when one is trying to avoid colliding with the vehicle ahead).

Neither Section 21101(c) nor Section 22507(a) expressly provides the City with the requisite statutory authorization to regulate the POE traffic by requiring vehicles to queue off City streets for the purpose of alleviating traffic congestion.

CONCLUSION

The California Vehicle Code sets forth a comprehensive scheme regarding vehicular traffic regulation. That scheme expressly limits the City's power to enact regulation in that area. There is no provision in the California Vehicle Code that expressly gives the City the authority to enact regulation that would enable it to achieve what has been proposed, *i.e.* requiring trucks that are waiting to go through the POE to queue off City streets in a designated waiting area and then limit or restrict the manner in which the trucks can approach the POE.

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