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MEMORANDUM OF LAW

DATE: May 21, 2010

TO: Patti Boekamp, Director, Engineering & Capital Projects

FROM: City Attorney

SUBJECT: Requirement of a California Driver's License to Operate a Pedicab for Hire

INTRODUCTION

On September 11, 2009, the San Diego City Council amended the San Diego Municipal Code to impose additional requirements on pedicab operators, including requiring pedicab operators to possess a valid form of federal or state issued photo identification. This memorandum addresses whether the City of San Diego (City) may require pedicab operators to possess a valid driver's license.

QUESTIONS PRESENTED

1. Does the Vehicle Code require pedicab operators to possess a valid California driver's license?
2. Does the Vehicle Code preempt a City, including a charter city, from imposing a requirement that pedicab operators possess a valid California driver's license?

SHORT ANSWERS

1. No. Vehicle Code section 12500(a) expressly requires drivers of motor vehicles to possess a valid California driver's license. A pedicab is not a motor vehicle.
2. Yes. The Vehicle Code expressly requires that operators of motor vehicles must possess a valid California driver's license. There is no other authority elsewhere granted in the Vehicle Code that would empower the City, as a charter city, to broaden this requirement to include additional types of vehicles.

ANALYSIS

1. THE CALIFORNIA VEHICLE CODE DOES NOT REQUIRE THE OPERATOR OF A PEDICAB TO POSSESS A VALID DRIVER'S LICENSE BECAUSE A PEDICAB IS NOT A MOTOR VEHICLE.

A. Definition of a Pedicab

The Vehicle Code does not provide a definition of pedicab. However, San Diego Municipal Code section 83.0102 defines pedicab as:

- (a) A bicycle that has three or more wheels, that transports, or is capable of transporting, passengers on seats attached to the bicycle, that is operated by a person, and that is used for transporting passengers for hire; or
- (b) A bicycle that pulls a trailer, sidecar, or similar device, that transports, or is capable of transporting, passengers on seats attached to the trailer, sidecar, or similar device, that is operated by a person, and that is used for transporting passengers for hire.

B. California Driver's License

The use of the public streets, highways, and other public rights-of-way is governed by the Vehicle Code. The Vehicle Code states that "a person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver's license issued under this code, except those persons who are expressly exempted under this code." Cal. Veh. Code § 12500(a). A motor vehicle is defined as "a vehicle that is self-propelled." Cal. Veh. Code § 415(a). A pedicab is propelled by a person by means of pedals and gears. A pedicab is not self-propelled. Therefore, a pedicab is not a motor vehicle as defined within the Vehicle Code, and one operating a pedicab is not required to possess a California driver's license.

C. California Commercial Driver's License

The Vehicle Code also requires that "a person may not operate a commercial motor vehicle unless that person has in his or her immediate possession a valid commercial driver's license of the appropriate class." Cal. Veh. Code § 15250(a)(1). The Vehicle Code further defines a commercial driver's license as "a driver's license issued by a state or other jurisdiction, in accordance with the standards contained in Part 383 of Title 49 of the Code of Federal Regulations, which authorizes the licenseholder to operate a class or type of commercial motor vehicle." Cal. Veh. Code § 15210(a). The Code of Federal Regulations, Title 49, section 383.5 defines a commercial motor vehicle as a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle has a weight in excess of 26,001 pounds, is designed to transport 16 or more passengers, or is used for the transportation of hazardous materials. A pedicab is not a motor vehicle, nor does it meet any of these criteria.

Thus, a pedicab would not be classified as a commercial motor vehicle and an operator of a pedicab would not be required to possess a valid commercial driver's license.

D. Regulation of Bicycles under the Vehicle Code

The Vehicle Code also regulates the operation of bicycles, and defines a bicycle as “a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having one or more wheels.” Cal. Veh. Code § 231. A pedicab certainly meets this definition and is thus subject to Vehicle Code regulations pertaining to bicycles. These regulations include that “[e]very person riding a bicycle upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle by this division” Cal. Veh. Code § 21200(a). This provision extends the rights and responsibilities of vehicle operators to those operating a bicycle. It does not require that operators of non-motorized vehicles, or specifically bicycles, possess a valid California driver's license.

The California Legislature (Legislature) in crafting the Vehicle Code chose to require operators of motor vehicles to possess a valid California driver's license, but not operators of bicycles or other types of non-motorized vehicles. The Vehicle Code provisions related to bicycles also apply to pedicabs. As there is no requirement for operators of a bicycle to possess a California driver's license, it follows that the operation of a pedicab also does not require a California driver's license.

II. THE VEHICLE CODE PREEMPTS ANY CITY IMPOSED REQUIREMENT THAT PEDICAB OPERATORS POSSESS A VALID CALIFORNIA DRIVER'S LICENSE AS THE VEHICLE CODE EXPRESSLY OCCUPIES THE FIELD.

A. Preemption Generally

The California Constitution provides that a “county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” *Cal. Const. art. XI, § 7*. It has not been contended that a City requirement that pedicab operators possess a valid California driver's license is not within its local police powers. The question is whether a City driver's license requirement would conflict with the general laws of the state.

“If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.” *Sherwin-Williams Company v. City of Los Angeles*, 4 Cal. 4th 893, 897 (1993) (quoting *Candid Enterprises, Inc. v. Grossmont Union High School District*, 39 Cal. 3d 878, 885 (1985)). Generally, for local legislation to be held valid and not preempted by state law, the local legislation must not enter an area where “the Legislature has manifested an intention, expressly or by implication, wholly to occupy the field, so that any local regulations will necessarily be inconsistent with state law” Witkin, *Summary of California Law*, vol. 8, *Constitutional Law* § 986 (10th ed. 2005).

Preemption by the Vehicle Code is clear. “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 therein.” Cal. Veh. Code § 21. Therefore, any municipality establishing a driver’s license requirement for the operation of a pedicab would need the express authority of state law to do so. Any “local regulation of any matter covered by this state’s Vehicle Code is prohibited unless the Legislature has expressly allowed local regulation in that field.” *O’Connell v. City of Stockton*, 41 Cal. 4th 1061 (2007).

The Vehicle Code does provide authority for local jurisdictions to adopt regulations regarding the “licensing and regulating” of the operation of “vehicles” for hire. Cal. Veh. Code § 21100(b). The definition of vehicle excludes “a device moved exclusively by human power. . . .” Cal. Veh. Code § 670. Therefore, a pedicab would not be classified as a vehicle and Vehicle Code section 21100(b) would not provide authority to impose local regulation.

Absent express authority under state law any “conflicting ordinance is preempted by state law and thus void.” *O’Connell*, 41 Cal. 4th at 1065; *see also Tosi v. County of Fresno*, 161 Cal. App. 4th 799 (2008). The Vehicle Code specifies what activities require the possession of a driver’s license. No other equivalent authority expressly grants local jurisdictions the right to expand this requirement. Any local requirement that operators of a pedicab possess a driver’s license conflicts with state law and is thus void.

B. Preemption Applied to a Charter City

The City of San Diego as a charter city is granted considerable autonomy and is exempt from general laws with respect to their “municipal affairs” under article XI, section 5 of the California Constitution. article XI, section 5(a) of the California Constitution provides:

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.

A charter city may enact valid and enforceable ordinances which deal with purely municipal affairs even if they conflict with general laws. *Johnson v. Bradley*, 4 Cal. 4th 389, 398-399 (1992). However, where issues of statewide concern “remain subject to and controlled by applicable general laws regardless of the provisions of [a city’s charter], if it is the intent and purpose of the general state laws to occupy the field to the exclusion of municipal regulation.” *Bishop v. City of San Jose*, 1 Cal. 3d 56, 61-62 (1969). This is known as the preemption doctrine.

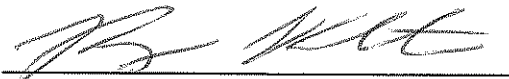
Vehicle Code section 21 clearly expresses the intent to preempt all conflicting local law. Furthermore, the subject matter governed under the Vehicle Code has been held to preempt local laws unless authority has been expressly provided by the Legislature. *Rumford v. City of Berkeley*, 31 Cal. 3d 545, 549-550 (1982). As discussed above, no express authority exists within

either Vehicle Code section 12500(a) or 21100(b) to allow local jurisdictions to require a driver's license of pedicab operators. Without this express grant of authority, any local driver's license requirement is void and unenforceable.

CONCLUSION

The Legislature has made plain its intent for the Vehicle Code to be enforced unfettered by local enactments, including charter cities, across the state. The Vehicle Code contains clear express determinations of what activities require a valid driver's license, including that they be required for operators of motor vehicles. A pedicab is not a motor vehicle; therefore, a driver's license is not required. Neither is there another source of authority within the Vehicle Code which would empower a City to enact a driver's license requirement broader than that provided by Vehicle Code section 12500(a). Without that authority any conflicting local regulation would be void and unenforceable.

By



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