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MEMORANDUM OF LAW

DATE: October 4, 2011

TO: Gail Granewich, City Treasurer
DeeDee Alari, Revenue Collection Manager

FROM: City Attorney

SUBJECT: Pedicab Parking Violations

INTRODUCTION

A pedicab¹ operator contested three parking citations he received under San Diego Municipal Code (SDMC) section 83.0110(b) for parking his pedicab on the sidewalk. The pedicab operator argues the City had no authority to cite him because a pedicab is not a vehicle.

QUESTION PRESENTED

Can the City cite a pedicab operator under SDMC section 83.0110(b), which incorporates all applicable parking provisions of the California Vehicle Code, for parking on a City sidewalk?

SHORT ANSWER

Yes, the City may cite a pedicab operator for parking on a City sidewalk, as SDMC section 83.0110(b) imposes “the same rights and responsibilities as a driver of a motor vehicle as it relates to parking violations” upon a pedicab driver.

ANALYSIS

San Diego Municipal Code section 83.0110 addresses pedicab parking. It states, “[e]very operator and every owner is subject to all applicable parking provisions of the California Vehicle Code and the San Diego Municipal Code. Owners and operators are subject to the same rights and responsibilities as a driver of a motor vehicle as it relates to parking violations.” *Id.*

¹ A “pedicab” is 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. . . .” SDMC § 83.0102.

The City cited a pedicab operator on three separate occasions for parking his pedicab on a City sidewalk in violation of California Vehicle Code² section 22500(f). It says:

No person shall stop, park, or leave standing any vehicle whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or official traffic control device, in any of the following places:

(f) On any portion of a sidewalk, or with the body of the vehicle extending over any portion of a sidewalk, except electric carts when authorized by local ordinance. . . .

The pedicab operator challenges the parking citations he received on the ground that a pedicab is not a vehicle because it is moved exclusively by human power, which is an exception to the definition of vehicle as set forth in section 670.

Recent amendments to section 21200(a) negate this argument and make clear that a pedicab operator may be cited under applicable motor vehicle statutes. As of January 1, 2011,

- (a) A person riding a bicycle or operating a pedicab upon a highway³ has all the rights and is subject to all the provisions applicable to the driver of a vehicle by this division, including, but not limited to, provisions concerning driving under the influence of alcoholic beverages or drugs, and by Division 10 (commencing with Section 20000), Section 27400, Division 16.7 (commencing with Section 39000), Division 17 (commencing with Section 40000.1), and Division 18 (commencing with Section 42000), except those provisions which by their very nature can have no application.

The Legislative Counsel's Digest further describes the intent of this amendment:

- (1) Existing law regulates the operation of bicycles. Under existing law, local authorities may regulate, by ordinance or resolution, among other things, the licensing and operation of vehicles for hire and drivers of passenger vehicles for hire.

² All references to the California Vehicle Code unless otherwise indicated.

³ "Highway," as used in section 21200(a), does not limit the application of section 22500(f) to highways as defined in section 360. Highways include sidewalks. Thus, persons riding bicycles or pedicabs on sidewalks are subject to the same California Vehicle Code requirements that apply to persons riding bicycles on roadways and such persons may be subject to additional local regulations *See*, 76 Op. Cal. Att'y Gen. 214 (1993).

This bill would define the term "pedicab" for purposes of the Vehicle Code. The bill would authorize a city or county to adopt rules and regulations, by an ordinance or resolution, licensing and regulating the operation of pedicabs for hire, and operators of pedicabs for hire, including requiring one or more of the following: (1) a valid California driver's license; (2) proof of successful completion of a bicycle safety training course certified by the League of American Bicyclists or an equivalent organization as determined by the local authority; or (3) a valid California identification card and proof of successful completion of the written portion of the California driver's license examination.

- (2) Under existing law, every person riding a bicycle upon a highway has all the rights of, and is subject to specified provisions in, the Vehicle Code, including rules of the road, that are applicable to the driver of a vehicle.

This bill would make those provisions also applicable to a person operating a pedicab. By making the operation of a pedicab subject to the Vehicle Code, a violation of which is a crime, this bill would impose a state-mandated local program.

Cal. Assembly Bill 2294 (2009-2010 Reg. Sess.), emphasis added.

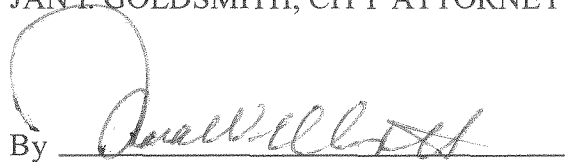
Section 21200(a), as amended, makes clear that the California Vehicle Code applies to the operation of pedicabs.

CONCLUSION

Section 21200(a) authorizes the City to cite a pedicab operator or owner who parks his or her pedicab on a City sidewalk.

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By



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