

MEMORANDUM OF LAW

DATE: June 7, 1989

TO: Bob Slaughter, Captain, via Bob Burgreen,  
Chief of Police, San Diego Police Department  
FROM: City Attorney  
SUBJECT: Traffic Congestion Problems in South Mission  
Beach

Reference is made to your memorandum dated April 17, 1989, outlining the traffic congestion problems at South Mission Beach and the complaints and concerns of area residents. You also requested a "formal legal opinion" regarding when and to what extent traffic diversion measures are legal and justified.

Additionally, you asked this office to consider "the applicability and impact of an anti-cruising ordinance, on residents as well as nonresidents, in this situation."

Background

South Mission Beach is a peninsula with only one way in and out causing all traffic to converge at the intersection of Mission Boulevard and Ventura Place (West Mission Bay Drive). Serious traffic congestion problems exist on holidays and warm weekends through the area of Mission Boulevard from Ventura Place south. Public parking is scarce for tourists and other beach visitors who come to the area and the public beaches.

The Police Department has used a variety of traffic diversion plans to reduce the number of vehicles entering the South Mission Beach area. Such tactics merely shift the congestion to other locations including the freeways causing traffic backups in those areas.

Certain South Mission Beach residents are demanding traffic diversion measures by the police whenever the public parking in the area becomes filled to capacity. At such point those residents want all traffic, with the exception of resident traffic, denied access to the area south of Ventura Place and

West Mission Bay Drive. They cite the following as justification for this action:

1. In the absence of available public parking, the nonresidents have no legitimate right/need to drive into the area and compound the existing traffic congestion.
2. The traffic congestion caused by these nonresidents creates a gridlock situation

in which it would be impossible for emergency vehicles (Police/Fire/Ambulance) to respond to an actual emergency.

3. The congestion described in no. 2 causes unreasonable inconvenience to residents attempting to enter or leave the area.

Certain South Mission Beach residents also seek "an anti-cruising ordinance enacted to keep undesirable elements from entering and remaining in the area."

The first legal issue concerns the use of traffic diversion measures to relieve congestion by denying nonresidents vehicle access to the area south of Ventura Place and west of Mission Bay Drive. A similar legal issue was presented when the City of Lafayette City Council voted "to close Happy Valley Road to through traffic except for drivers with an established need to use the road." The partial closure was to be accomplished by installation of a "traffic diverter" or automatic gate across the road at a point within the city limits. Exempted drivers were to be furnished devices to open the gate. This partial closure was successfully contested by the County of Contra Costa; the First District Court of Appeals held that the proposed ordinance was in derogation of public policy because a city may not restrict the right to travel upon one of its streets to its residents or to other "exempted drivers." *City of Lafayette v. County of Contra Costa*, 91 Cal. App. 3d 749, 754 (1979). The court restated the public policy of the state at page 753 as follows:

Fundamentally, it must be recognized that in this country 'Highways are for the use of the traveling public, and all have . . . the right to use them in a reasonable and proper manner, and subject to proper regulations as to the manner of use.' . . . 'The streets of a city belong to the people of the state, and

the use thereof is an inalienable right of every citizen, subject to legislative control or such reasonable regulations as to the traffic thereon or the manner of using them as the legislature may deem wise or proper to adopt and impose.' . . . "Streets and highways are established and maintained primarily for purposes of travel and transportation by the public, and uses incidental thereto. Such travel may be for either business or pleasure . . . The use of highways for purposes of travel and transportation is not a mere

privilege, but a common and fundamental right, of which the public and individuals cannot rightfully be deprived . . . all persons have an equal right to use them for purposes of travel by proper means, and with due regard for the corresponding rights of others'."

City of Lafayette v. County of Contra Costa, rejected the same justification relied on by the residents of South Mission Beach to deny nonresidents access to the area south of Ventura Place and West Mission Bay Drive whenever the public parking in the area becomes filled to capacity.

The broader issue posed by the memorandum relates to when and to what extent traffic diversion measures by the San Diego Police Department are legal and justified under the California Vehicle and Penal Codes and other applicable laws.

Section 21 of the California Vehicle Code provides as follows: "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 authority shall enact or enforce any ordinance on the matters covered in this code unless expressly authorized."

When the state adopts a general scheme for the regulation and control of motor vehicles upon public highways, the state has entire control over the areas covered by the state legislation thereby preempting local legislation. *People v. Moore*, 229 Cal. App. 2d 221, 226 (1964). The California Vehicle Code as state law, has preempted local legislation regarding the control of motor vehicles upon public highways. Unless the California Vehicle Code allows traffic diversions, The City of San Diego is without power to create or enforce them.

California Vehicle Code section 21101(c) authorizes "local authorities" to prohibit "the use of particular highways by certain vehicles . . ." That authority covers "certain classes of vehicles" such as trucks, tractors, oversize and "excessively noisy" vehicles, as well as those lacking air-inflated tires. This section authorizes local governments to restrict certain classes of vehicles from using the streets because of noise. It does not permit exclusion of classes of persons from using any of the city streets.

California Vehicle Code section 21101(a) authorizes "local authorities" to close any highway, when in the opinion of the legislative body with jurisdiction over the highway, it is "no longer needed for vehicular traffic." This section authorizes only complete closure such as a street vacation based on a finding that the road was "no longer needed for vehicular

traffic." Closure under this section is not discriminatory. The street would be closed to residents as well as nonresidents.

In addition to the California Vehicle Code provisions on highway closure, California Streets and Highways Code section 8312 provides that, "a city legislative body may vacate . . . all or part of a street . . . within the city." Implementation of the vacation law requires only that the city "legislative body finds . . . that the street . . . is unnecessary for present or prospective public use . . . ." Vacating in this manner is forbidden however, if doing so would "cut off all access to a person's property which, prior to relocation, adjoined the street or highway." California Streets and Highways Code section 8330. As the property of South Mission Beach residents would be directly affected, street closure through vacancy would not be available.

The language of California Vehicle Code section 21 does not allow powers over traffic regulation to be implicitly granted to the local governments. "No local authority shall enact or enforce any ordinance on the matters covered by this section unless expressly authorized." Thus unless "expressly provided" by the legislature, a city has no authority over vehicular traffic control. *Ranford v. City of Berkeley*, 31 Cal. 3d 545, 550 (1982).

Furthermore, the delegation of power to proscribe traffic rules is strictly construed. *People v. Moore*, 229 Cal. App. 2d 221, 228 (1964). The contention that California Vehicle Code section 21101(a) implicitly grants the power to partially close a street has been specifically rejected by the California courts. "It will thus be seen that the City's contention that section

21101, subdivision (a) must be deemed to have implicitly granted authority for partial closure of Happy Valley Road is contrary to law, and to the clear language of the statute." *City of Lafayette v. County of Contra Costa*, 91 Cal. App. 3d 749, 756, 757 (1979).

California Vehicle Code section 21101.2 authorizes "local authorities" to adopt rules and regulations that permit a peace officer to divert vehicles when the officer finds there is little or no vehicular flow and vehicles are not moving promptly when an opportunity to do so arises. The officer may continue diversion until a "reasonable flow" of traffic is restored. In other words, this statute allows local governments to grant police the limited and temporary authority to divert traffic to ease congestion and restore traffic flow.

Management of the scene of an accident, which includes traffic control, is vested in the appropriate law enforcement

agency whose representative shall consult with representatives of other response agencies at the scene to ensure that all appropriate resources are properly utilized. California Penal Code section 409.3. The San Diego Police Department will normally be the appropriate law enforcement agency when an accident occurs in the Mission Beach area.

When a menace to public health or safety is created by a calamity such as an accident or other disaster, appropriate peace officers and other publicly employed persons "may close the area where the menace exists for the duration thereof by means of ropes, markers or guards to any and all persons not authorized . . . to enter or remain within the enclosed area." Penal Code section 409.5. The authority to close a street or highway in the Mission Beach area is included within this grant of power but only for the duration of the "menace." Although there are no cases on point, mere traffic congestion should not be reasonably construed as "a menace to the public health or safety . . . created by a calamity such as flood, storm, fire, earthquake, explosion, accident, or other disaster" within the meaning of California Penal Code section 409.5.

The San Diego Police Department on behalf of the City Manager has authority "to place and maintain or cause to be maintained official traffic control devices when and as required . . . ." for traffic movement and control consistent with the California Vehicle Code. San Diego Municipal Code section 82.01 et seq.

The final issue presented deals with the enactment of an anti-cruising ordinance "to keep undesirable elements from

entering and remaining in the area." In California Vehicle Code section 21100(k), the state legislature has specifically delegated the power to regulate cruising to the local governments. The state legislature has gone further however, in setting forth specific guidelines and requirements for the local authorities in adopting an anti-cruising statute. Cruising has been defined as "repetitive driving of a motor vehicle past a traffic control point which is congested." In order to be cited for violation of an anti-cruising statute the suspect must be given written notice that further driving past the control point will be a violation and the cruising control ordinance must be identified at the appropriate portions of the street. The city council has the authority to adopt such an ordinance. However, enforcement of such an ordinance could not be limited to any group or class. It would apply to residents and all others regardless of their desirability.

#### Summary

The use of traffic diversion measures to relieve congestion

by denying nonresident vehicle access and allowing resident vehicle access to the area south of Ventura Place whenever the public parking in the area becomes filled to capacity would be in derogation of state public policy. All persons have an equal right to use public highway for purposes of travel by proper means and with due regard for the corresponding rights of others. Lafayette v. County of Contra Costa, 91 Cal. App. 3d 749, 754 (1979)

The San Diego Police Department may use only those traffic diversion measures expressly authorized by the California Vehicle Code and the California Penal Code. Such traffic diversion measures are strictly tailored to specific situations and do not allow for street or highway closure merely because parking lots are full.

An anti-cruising ordinance is within the traffic regulation powers the state has granted The City of San Diego. Since the state legislature has dictated specific requirements for anti-cruising ordinances, these standards must be followed, and should be taken into account when adoption is contemplated. Such an ordinance would apply to residents, nonresidents and all others regardless of their desirability.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino

Deputy City Attorney

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