MEMORANDUM OF LAW

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DATE: August 31, 1989

TO: William Skinner, Lieutenant, via Bob Burgreen, Chief of Police, San Diego Police Department

FROM: City Attorney

SUBJECT: Vehicle Impound Cost Recovery Proposal

You have asked this office to evaluate and render an opinion on a proposal to implement a program for recovering the costs involved with the impounding of vehicles. More specifically, you point out:

> The San Diego Police Department is currently impounding in excess of 50,000 vehicles a year. Of these impounds, 36,500 (73.5%) are because of the owner's negligence or irresponsibility, and the majority is attributed to three (3) vehicle code violations: 22651(i) unpaid parking citations, 22651(o) registration expired in excess of one year, and 22651(p) driving on a suspended or revoked driver's license. The city's cost to impound these vehicles is in excess of one million dollars a year.

The memorandum containing this proposal is attached for reference.

Initially, a distinction must be made between the costs incurred by the police department (agency costs) from those incurred by a private business which tows and stores vehicles. This memorandum primarily addresses recovery of agency costs not provided for by statute. While cost recovery under these circumstances may be a fiscally desirable objective, it may not be legally feasible.

The costs incurred by businesses which tow and store vehicles are generally the responsibility of the vehicle owner. As an example, when a vehicle is impounded because the owner has not responded to five or more parking violation citations issued to the same vehicle (pursuant to Vehicle Code section 22651(i)), the statutory language plainly states, "A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does . . . the following: (1) Pays the cost of towing and storing the vehicle . . . ."

Additionally, it should be recognized that the vehicle code sections cited in the proposal as the authority for impounding vehicles are not violations. California Vehicle Code sections 22651 through 22659 are enabling not enforcement sections. Whereas a verbal warning, citation or arrest are options for enforcement sections, impounding vehicles is not. A vehicle can only be impounded in accordance with the specific statutory provisions found in Vehicle Code sections 22651 through 22659.

It should also be noted that impounding a vehicle is a permissive not a mandatory act. Under all provisions of the Vehicle Code enabling the impounding of a vehicle, the language states that the officer "may" impound if circumstances fit the enabling section. There is no mandatory duty to impound a vehicle, thus there are no mandatory costs involved.

The circumstances enabling the impounding of a vehicle as well as the manner in which the vehicle is impounded is pervasively regulated by state law. Although both directly pertain to the manner in which the vehicle is impounded, recovering the cost of towing and storing vehicles must be distinguished from recovering the costs associated with impounding vehicles. Costs associated with the impounding of vehicles could arguably include agency costs. The legislature has indicated that there are circumstances warranting recovery of costs associated with the impounding of a vehicle. Where this type of cost recovery is the legislative desire, that desire is reflected in specific statutory language. An example of this can be seen in Vehicle Code section 22660.

Vehicle Code section 22660 provides an example of an express statutory grant of authority to municipalities to enact not only a local ordinance authorizing vehicle impounds, but also one authorizing recovery of associated costs. This section states:

> Notwithstanding any other provision of law, a city, county, or city and county may adopt an ordinance establishing procedures for the abatement and removal, as public nuisances, of abandoned, wrecked, dismantled,
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> or inoperative vehicles or parts thereof from private or public property and for the recovery, pursuant to Section 25845 or 38773.5 of the Government Code, or assumption by the local authority, of costs of administration and the removal.

By the plain language it is obvious that this provision pertains specifically to impounds arising out of a local nuisance

abatement procedure.

Although there is a temptation to interpret the omission of a specific statutory prohibition as an invitation to infer permission, as a rule of statutory construction it is improper to insert what has been omitted or to omit what has been inserted. Estate of Tkachuk, 73 Cal. App. 3d 14, 18 (1977). See also, Phillips v. San Luis Obispo County Dept. etc. Regulation, 183 Cal. App. 3d 372 (1986).

The Legislature is presumed to have meant what it said. In re Thompson, 172 Cal. App. 3d 256, 262 (1985). Similarly, "┌ist is a well recognized principle of statutory construction that when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded (citations omitted)." Ford Motor Company v. County of Tulare, 145 Cal. App. 3d 688, 691 (1983).

By the state's statutory scheme, recovering costs associated with impounding vehicles is restricted to the limited circumstances specifically articulated in the Vehicle Code. An attempt to enact a local ordinance contrary to the legislative desire reflected in the state statutory scheme would violate Vehicle Code section 21 which states:

> 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 herein.

In summary, the proposed cost recovery program is not authorized by state law, and the statutory scheme including the lack of specific authorization, would preempt any local ordinance.

JOHN W. WITT, City Attorney
By
Richard L. Pinckard
Deputy City Attorney

RLP:mk:520.1(x043.2)
Attachment
ML-89-85