

MEMORANDUM OF LAW

DATE: April 11, 1995

TO: Councilmember Scott Harvey

FROM: City Attorney

SUBJECT: Legal Questions Regarding Sign Requirements for
Mission Beach Boardwalk

I. QUESTIONS PRESENTED

You recently asked certain questions about signs for the eight mile per hour speed limit on the Mission Beach Boardwalk. In general, neither the California Streets and Highways Code ("S & H") nor the California Vehicle Code ("CVC") requirements for the setting or enforcement of speed limits applies specifically to the boardwalk since it fits neither the definition of a Class I bikeway F

S & H ' 890.4(a): "Class I bikeways, such as a `bike path,'
. . . provide a completely separated right-of-way designated for the exclusive use of bicycles and pedestrians with crossflows by motorists minimized."

nor of a sidewalk.F

CVC ' 555, Sidewalk: "That portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel."

Therefore, any regulations the City establishes will of necessity be an interpretation of existing law, tailored to fit the particular circumstances of the boardwalk. With this caveat, we will proceed to answer your questions.

II. DISCUSSION

1. Is this signage regarding the speed limit legally required?

There is no specific legal requirement for speed limit signs on the boardwalk. However, in order for the City to enforce a speed limit, and to issue citations for violation of that limit, notice is required.

Both the federal Constitution and the California Constitution require due process, which includes notice for the enforcement of criminal statutes. For example, for vehicles (but not bicycles), CVC section 21103 states that highway regulations shall not be effective until signs giving notice of local traffic laws are posted at all entrances to the highway or part thereof affected.

In addition, CVC section 21359, regarding speed signs for special areas, requires that: "Appropriate speed restrictions shall be

erected and maintained at the outside entrance of the highway or portion thereof upon which the speed limit is applicable." CalTrans Traffic ManualF

California Department of Transportation, Traffic Manual (12th ed. 1988).

section 8-03.4(B) states: "Speed limit signs shall be placed at the beginning of all restricted speed zones. Where speed zones are longer than 1 mile, intermediate signs may be placed at approximately 1-mile intervals."

Although there is no specific statutory requirement for speed limit signs for bicycles on the boardwalk, operation of bicycles in certain areas is regulated by statute. CVC section 21100 authorizes local authorities to regulate bicycle operation on sidewalks. CVC section 21206 states that local authorities are not prevented from regulating parking and operation of bicycles on pedestrian or bicycle facilities, provided that such regulations are not in conflict with other provisions of the CVC. In addition, CVC section 21207 does not prohibit local authorities from establishing bicycle lanes, other than on state highways. According to a California Attorney General's opinion, 76 Ops. Atty. Gen. 418 (1993), persons riding bicycles on sidewalks are subject to the same CVC requirements that apply to persons riding bicycles on roadways, and may also be subject to additional local regulations.

The California Bicycle Transportation Act, codified at S & H sections 891 through 894.2, requires that all local agencies responsible for the development or operation of bikeways, or roadways where bicycle travel is permitted, shall utilize all minimum safety design criteria and uniform specifications and symbols for signs, markers, and traffic control devices. Specifications and standards are found in both the CalTrans Traffic and Highway Design Manuals.F

State of California Department of Transportation, Highway Design Manual (4th ed. 1990).

CVC sections 21968 and 21969, respectively, regulate skateboards and rollerskates on highways, sidewalks, or roadways, but do not include signage requirements for skateboards and rollerskates.

In sum, there is no specific statutory requirement for signs on the boardwalk. In order to enforce the limit, however, minimum signage would be required which, in our opinion, should mirror the requirements for vehicles.

2. If signage is legally required, what can be done to allow for a waiver in this case?

Since notice is required in order to enforce speed limits, a waiver would not be an option.

3. What is the legal definition of posting?

Black's Law Dictionary 1166 (6th ed. 1990) defines Post: "To bring to the notice or attention of the public by affixing to a post or wall, or putting up in some public place; to announce, publish, or advertise

by use of placard."

4. Would stenciled wording on the boardwalk suffice?

Section 1004.2 of the CalTrans Highway Design Manual states: "White painted word (or symbol) warning markings on the pavement may be used as an effective means of alerting bicyclists to approaching hazards, such as sharp curves, barrier posts, etc." Furthermore, CalTrans Traffic Manual section 8-03.4(E) states: "Pavement markings with appropriate figures may be used to supplement speed limit signs." Pavement markings, however, may not be utilized in lieu of required signs for enforcement purposes, since they do not comply with standardized CalTrans sign requirements.

5. Are there any existing laws prohibiting visual blight, clutter, or limiting the number of signs allowable within a specified area or distance?

The City's sign ordinance deals with commercial signs and the City's sign regulations do not apply to City signs in the right-of-way when the signs are for the purpose of enforcing City regulations. The CalTrans Traffic Manual addresses number of signs and method of posting. Section 4-01.6 states: "Care should be taken not to install too many signs. A conservative use of regulatory and warning signs is recommended as these signs, if used to excess, tend to lose their effectiveness." Section 4-01.7 states: "Different types of signs should not be mounted on the same post." In other words, for maximum effectiveness, prudent placement and number of signs are important.

It is our understanding that a City Manager's Report expanding on these answers will be available for the Natural Resources, Culture & Arts Committee meeting of April 12, 1995. In any case, we will be glad to answer any further questions you may have.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

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March 23, 1995

REPORT TO THE HONORABLE

MAYOR AND CITY COUNCIL

MICHAEL FORRESTER, et al. v. CITY OF SAN DIEGO

The litigation of the above-entitled matter has finally and successfully been concluded. Plaintiffs were injured when they were arrested and forcibly removed by San Diego police officers from three anti-abortion protests staged by Operation Rescue in the City of San Diego in April and June of 1989. Plaintiffs

filed suit in U.S. District Court, claiming that their constitutional rights were violated when excessive force was used upon them during their arrests. The case was tried by jury, with a unanimous verdict returned on all counts in favor of the City of San Diego. Plaintiffs appealed to the United States Court of Appeals for the Ninth Circuit, which issued a published opinion upholding the jury verdict. Plaintiffs then filed a Petition For Writ Of Certiorari to the United States Supreme Court. That petition was denied on February 21, 1995.

FACTS

The six plaintiffs were arrested during the course of three anti-abortion protests staged by Operation Rescue at medical facilities in the City of San Diego on April 8, April 29 and June 10, 1989. Prior to the demonstrations, former Chief of Police Robert Burgreen adopted an official policy that mandated that City police officers use pain compliance techniques, including the use of police nunchukas, to remove any demonstrators who, once arrested, refused to voluntarily leave the premises upon which they were trespassing. On the day of the demonstrations, plaintiffs were arrested and ordered to leave the premises; upon their refusal to leave, they were forcibly removed with wristlocks and/or nunchukas, resulting in injuries to plaintiffs. The injuries included a fractured right wrist to plaintiff Michael Forrester, M.D., an eye, ear, nose and throat surgeon, and assorted bruises and damaged nerves to the remaining plaintiffs.

Plaintiffs contended that their constitutional rights were violated when excessive force was used upon them by the arresting officers and that the constitutional violations were pursuant to, and consistent with, the City's official pain-compliance policy. The City contended that its policy was not unconstitutional and that the individual officers used only that amount of force reasonably necessary to effect the arrests of plaintiffs. In response to plaintiffs' contention that they should have been dragged or carried from the premises, the City claimed that dragging and carrying the demonstrators from the scene was not a viable option because of the potential for injuries to both the police and the protestors and that pain compliance techniques were the only reasonable alternatives available to the police, who were required by law to remove the demonstrators from the premises upon which they were illegally trespassing.

LITIGATION

The six-day trial was by jury before U.S. Magistrate Judge Roger C. McKee. The jury returned unanimous (6-0) special verdicts in favor of the City on all eight arrests (two plaintiffs were arrested twice), finding that excessive force was

not used during the arrests.

Following the entry of judgment in U.S. District Court, plaintiffs filed an appeal to the United States Court of Appeal for the Ninth Circuit, contending that the City's pain compliance policy was unconstitutional as a matter of law, despite the jury's verdict, and that the verdict was not supported by substantial evidence. The case was briefed and argued before the Ninth Circuit, which issued a published opinion upholding, by a vote of two to one (2-1), the jury verdict below. Plaintiffs petitioned the Ninth Circuit for a rehearing, but that request was denied.

Plaintiffs then petitioned the United States Supreme Court for a Writ Of Certiorari, contending that the Ninth Circuit Court of Appeals erred in upholding the jury verdict and that the case raises questions of such exceptional national importance that the Supreme Court should decide them. The Supreme Court refused to hear the case and denied the Petition For Writ Of Certiorari on February 21, 1995.

Deputy City Attorney Francis M. Devaney tried the case on behalf of the City and handled all facets of the appellate process, including the preparation of all briefs and written responses and the oral argument before the Ninth Circuit Court of Appeals.

Respectfully submitted,
JOHN W. WITT
City Attorney

FMD:kjk:Lit.
RC-95-9