

MEMORANDUM OF LAW

DATE: April 21, 1997

NAME: Jack Sturak, Deputy Director
Parking Management Division, Transportation Department

FROM: City Attorney

SUBJECT: Parking on Sidewalks and In Front of Driveways

BACKGROUND

Due to limited parking options, many San Diego residents have resorted to parking their vehicles such that a portion or all of the sidewalk is blocked by their vehicle. Residents also park their vehicles on the street, blocking public or private driveways. Such parking violations create problems for two groups. Residents who are cited complain to the Parking Management Division. The disabled community complains when cars block sidewalks or driveways. Blocking access by disabled persons creates potential safety risks. This Memorandum of Law is in response to your request concerning these problems.

QUESTION

May the City adopt a policy or law not to enforce California Vehicle Code sections 22500(e) and (f), which prohibit parking on sidewalks and in front of driveways?

SHORT ANSWER

No. California Vehicle Code sections 22500(e) and 22500(f) state that it is against the law to park vehicles so that they obstruct the sidewalk or driveway. If challenged, any local ordinance or resolution to the contrary would likely be found invalid and unenforceable. However, California Vehicle Code section 22507.2 allows cities to issue permits, authorizing owners and lessees of property to park a vehicle in front of their private driveway.

DISCUSSION

Preemption by State Law

California Vehicle Code sections 22500 (e) and (f) specifically prohibit parking on a sidewalk or blocking a driveway:

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 . . . a peace officer or official traffic control device, in any of the following places:

. . . .

(e) In front of a public or private driveway

(f) On a sidewalk, except electric carts when authorized by local ordinance

Vehicle Code section 21, entitled *Uniformity of code*, 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." The California Attorney General has affirmed the Vehicle Code's authority over local authority by stating, "[t]o the extent that it occupies certain fields of law . . . the Vehicle Code preempts local legislative action." 76 Op. Cal. Atty. Gen. 31, 33 (1993). Since Vehicle Code sections 22500 (e) and (f) specifically occupy the field of law dealing with parking in front of driveways and on sidewalks, these Vehicle Code sections would preempt any local attempt to override these prohibitions.

Charter cities such as San Diego may enact valid and enforceable laws in conflict with state law on matters which are "municipal affairs." *Johnson v. Bradley*, 4 Cal. 4th 389, 398-399 (1992). However, where the subject matter of the contemplated local legislation is of statewide concern, such conflicting laws are preempted by state law. *Id.* at 399.

The mandate contained in Vehicle Code section 21 is clear, and the Vehicle Code has been held to preempt conflicting local law. *Rumford v. City of Berkely*, 31 Cal. 3d 545, 549-550 (1982). Vehicle Code section 22500 entirely occupies the subject matter of parking in front of driveways and on sidewalks, and there is no express authorization for local legislation on this subject matter, except as will be discussed below. Therefore, the City Council has no authority to enact a policy or law which would override the state's prohibition against parking in front of driveways or on sidewalks. San Diego City Charter section 28 specifically requires the City Manager "to see that . . . laws of the State are enforced"

Exception for Private Driveways

Vehicle Code section 22507.2 expressly permits a local authority, by ordinance, to authorize the owner or lessee of property to park a vehicle in front of the owner or lessee's private driveway. Any ordinance that would be adopted must require that the vehicle display a permit issued pursuant to the ordinance, and the City may charge a nonrefundable fee to offset issuing and administrative costs. The statute specifically bans issuing permits for parking on sidewalks.

If you have any questions, or would like to discuss this issue further, please do not hesitate to call.

CASEY GWINN, City Attorney

By

Steven B. Gold
Deputy City Attorney

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