

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: December 23, 2009

TO: Robert Kanaski, Assistant Chief of Police
Carolyn Wormser, Program Manager, Special Events

FROM: City Attorney

SUBJECT: Towing Vehicles in Connection with Special Events

INTRODUCTION

In response to your inquiry regarding whether a public street closed by permit for private use by a private special event organizer constitutes private property and who is authorized to remove vehicles from such a venue, our Office has prepared this legal memorandum to address these issues.

QUESTIONS PRESENTED

1. Does a special events permit change the character of a public street to private property for purposes of towing vehicles from a special event venue?
2. May a private citizen special event organizer authorize removal of vehicles from public streets in a special event venue after a special event permit has been issued by the City?

SHORT ANSWER

1. No. A special event permit granted by the City under its police power creates no property right. The private use of a public street closed for a special event does not make the street private property.
2. No. Private citizens may not authorize the towing of vehicles from a public street closed for private use as a special event venue.

LEGAL ANALYSIS

The California Vehicle Code [Vehicle Code] clearly delineates the situations in which private citizens and peace officers, respectively, may remove vehicles. Vehicle Code section 22651 *et. seq.* establishes when law enforcement personnel are authorized to conduct tows. Unless otherwise set forth, Vehicle Code section 22650 states that it is unlawful for any peace officer or any unauthorized person to remove any vehicle from a highway.¹

The authority for private property tows of vehicles is set forth in Vehicle Code section 22658. Section 22658 authorizes private parties to initiate tows if they are “the owner or person in lawful possession of private property.” Vehicle Code § 22658(a). Therefore, private event organizers may only authorize tows if a public street that is closed for private use pursuant to the issuance of a special event permit is private property.

I. Public Property Temporarily Closed for a Special Event is Not Private Property

In order to conduct a special event² within the City of San Diego [City], an event organizer must obtain a special event permit which is issued by the San Diego Police Department [SDPD].³ San Diego Municipal Code [SDMC] § 22.4004. Examples of special events include concerts, parades, fairs, block parties, community events, and festivals. SDMC § 22.4003(d).

Although the term “permit” is not specifically defined under the Special Events Ordinance, it is defined under “Chapter 3: Business Regulations, Business Taxes, Permits and Licenses,” which is an analogous section of the SDMC setting forth the requirements of police-regulated businesses and occupations. In particular, the terms “permit,” “police permit,” and “license” are considered synonymous. SDMC § 33.0201. In fact, Black’s Law Dictionary defines “permit” as a license. Black’s Law Dictionary (9th edition 2009).

A special event permit issued by the City is essentially a license allowing an event organizer to make private use of public property such as a street. A license grants authority to a licensee to

¹ Vehicle Code section 360 defines “highway” as “[A] way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.”

² SDMC section 22.4003 defines “Special Event” as:

(a) any organized formation, parade, procession or assembly consisting of seventy-five (75) or more Persons, and which may include animals, vehicles or any combination thereof, which is to assemble or travel in unison on any Street which does not comply with normal or usual traffic regulations or controls; or,
(b) any organized assemblage of seventy-five (75) or more Persons at any public beach or public park which is to gather for a common purpose under the direction and control of a Person; or,
(c) any other organized activity conducted by a Person for a common or collective use, purpose or benefit which involves the use of, or has an impact on, other public property or facilities and the provision of City public safety services in response thereto.

³ SDMC section 22.4004 sets forth that a Special Event Permit shall be obtained from the City Manager/Mayor. Depending on the scope and nature of the special event, there are several different reviewing departments including the SDPD, City’s Office of Special Events Department, Fire Marshal, and Environmental Services Department. However, the SDPD actually issues the Special Event Permit.

perform acts on the property of another pursuant to permission of the owner. *Jenson v. Kenneth I. Mullen Co.*, 211 Cal.App.3d 653, 657 (1989); *Guerra v. Packard*, 236 Cal.App.2d 272, 285 (1965). A license provides “authority to do a lawful act which without it would be unlawful.” *Fisher v. General Petroleum Corp.*, 123 Cal. App. 2d 770, 776 (1954). The issuance of a license to use real property is a personal privilege which does not create or convey any interest or right in land or any estate in the property of another. *Vincent Petroleum Corp. v. Culver City*, 43 Cal. App. 2d 511, 517 (1941); *Eastman v. Piper*, 68 Cal. App. 554, 560 (1924).

In the context of special events, the City allows private citizen event organizers who properly obtain a special event permit to close public streets in order to host such events. The issuance of a special event permit by the City does not convey any interest or estate in the public city property to the private event organizer. Therefore, the public street is not private property even during the time of the special event.

II. Only Law Enforcement Personnel are Authorized to Remove Vehicles from Public Streets Closed for City-Permitted Special Events

Towing of vehicles in connection with special events on public streets must be in compliance with the California Vehicle Code. The Vehicle Code states, “[e]xcept as otherwise expressly provided, the provisions of this code are applicable and uniform through 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.” Cal. Veh. Code § 21; *Rumford v. City of Berkeley*, 31 Cal. 3d 545, 550 (1982). “[U]nless express authority is granted, a local government has no authority to regulate or control any matter covered by the Vehicle Code.” *Biber Electric Co. v. City of San Carlos*, 181 Cal. App. 2d 342, 344 (1960).

The state authorizes local regulations in limited circumstances. Cal. Veh. Code §§ 21100-21117. Local authorities, for those highways under their jurisdiction, have express authority to adopt rules and regulations by ordinance or resolution to “[t]emporarily clos[e] a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee that the local authority designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.” Cal. Veh. Code § 21101(e).

By authority granted in Vehicle Code section 21101(e), the City has adopted SDMC section 82.23 which governs temporary road closures for special events. However, the City’s special event permitting process does not supplant the Vehicle Code which regulates the towing of vehicles from public streets. “It is unlawful for any peace officer or any unauthorized person to remove any unattended vehicle from a highway to a garage or to any other place, except as provided in [the Vehicle Code].” Cal. Veh. Code § 22650.

Vehicle Code section 22651(m) is the impound authority for towing a vehicle which is parked on a closed street in violation of a posted sign such as one for a special event. That statute

authorizes "a peace officer" or "a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations" to remove vehicles . . . "[w]herever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic . . . and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance." Cal. Veh. Code § 22651(m).

In addition to those persons specifically authorized by Section 22651 to tow vehicles, the Vehicle Code also authorizes "[a] trained volunteer of a state or local law enforcement agency, who is engaged in directing traffic or enforcing parking laws and regulations, of a city . . . to remove or authorize the removal of vehicles" when parked in violation of posted signs giving notice of street closure. Cal. Veh. Code § 22651.05(a)(3). The Vehicle Code defines a "trained volunteer" as "a person who, of his or her own free will, provides services, without any financial gain, to a local or state law enforcement agency, and who is duly trained and certified to remove a vehicle by a local or state law enforcement agency." Cal. Veh. Code § 22651.05(c).

Thus, the only individuals authorized to initiate the tow of vehicles at a designated special event venue are: (1) peace officers; (2) regularly employed and salaried (civilian) employees of SDPD who are engaged in directing traffic or enforcing parking laws and regulations; and, (3) trained volunteers of the SDPD, as defined in Vehicle Code section 22651.05(c). Therefore, private citizen special event organizers may not initiate the tow of vehicles from a special event venue.

CONCLUSION

The issuance of a special event permit may authorize closure and private use of a public street, but it does not convey any property rights or interests. Therefore, a public street which is closed and utilized for a special event is not private property. Furthermore, the Vehicle Code provides for only law enforcement personnel to authorize the tow of vehicles that are parked on closed public streets used as special event venues.

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cc: Jay M. Goldstone, Chief Operating Officer
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