

MEMORANDUM OF LAW

DATE: July 11, 1985

TO: Deputy Chief K. J. O'Brien, San Diego Police
Department

FROM: City Attorney

SUBJECT: Closing of Streets in Beach Areas

At the morning meeting of July 8, 1985 you directed an inquiry to me concerning the closure of streets in beach areas.

Your question could be summarized as follows: Is the closing of streets in beach areas because of excessive congestion and a lack of available parking a valid exercise of the police power?

We have reviewed applicable authority and conclude that the city's police powers do not extend to the closing of a street to vehicular traffic. The police power extends only to the diverting of traffic under special circumstances. Vehicle Code Sections 21101 through 21101.2 are controlling.

A city has no right to restrict the right to travel on one of

its streets. *City of Lafayette v. County of Contra Costa*, 91 Cal.App.3d 749 (1979). It is strong public policy in California that a city's streets belong to the people of the state and that all persons have an equal right to use them for purposes of travel. 91 Cal.App.3d at 750. The delegation of the State's power to make vehicular traffic rules and regulations is strictly construed, and must derive from an express declaration by the legislature. See also, *Rumford v. City of Berkeley*, 31 Cal.3d 545 (1982). There is no express authority in the California Vehicle Code which permits the closing of a street because of excessive congestion and the lack of available parking spaces.

Local authorities may adopt rules and regulations by ordinance or resolution which grant peace officers with the power to temporarily divert traffic on a congested city street.

Vehicle Code Section 21101.2. The ordinance or resolution must provide that, before the officer can divert traffic, he make the determination that 1) little or no vehicular traffic flow is occurring, and 2) a significant number of vehicles are not promptly moving when the opportunity arises to do so.

Additionally, the diverting of traffic should continue only until such time as reasonably flowing traffic is restored. *City of Lafayette, supra*.

As noted above, the authority to local peace officers to divert traffic under Section 21102.2 of the Vehicle Code must be by ordinance or resolution. Such authority in the circumstances under concern may be properly delegated by Section 81.08 of the San Diego Municipal Code. This section reads as follows:

At places where large numbers of people and vehicles are to gather or have gathered, nothing in this chapter shall be construed to prevent any police officer from prohibiting any person from parking any vehicle upon or using any street or sidewalk, or from prohibiting any pedestrian from using any street or sidewalk, and said police officer shall have authority to direct the parking of vehicles in any reasonable manner, way or direction, and it is hereby declared to be unlawful for any person to fail to promptly obey the said police officer's order, signal or command, regardless of any other provision of this chapter.

Based on the above, there is basis for concluding that the San Diego Police Department may divert traffic from streets where congestion has resulted in little or no movement.

JOHN W. WITT, City Attorney

By

Grant Telfer

Deputy City Attorney

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