MEMORANDUM OF LAW

DATE: January 10, 1990

TO: Councilmember Abbe Wolfsheimer
FROM: City Attorney
SUBJECT: Regulating Commercial Vehicle Parking in Residential Districts

This memorandum is in response to a series of Route Slips (the most recent of which is Route Slip No. 01-1289-023) generated by the Vista de Bernardo Owners Association and Mrs. Virginia Huddleston (complainants hereinafter). In a letter dated July 19, 1989, the graveman of their concern is stated as follows, "We have had a two-month ╒plusσ problem of a resident from another neighborhood parking a commercial vehicle (called an auto crane) overnight and on weekends at the entrance to our neighborhood." The concerned parties are seeking local legislation which will curtail non-resident commercial vehicle parking in residential areas. This is a two part concern, and necessitates an analysis of residential parking programs and commercial vehicle parking restrictions.

Local ordinances restricting parking in residential districts have been constitutionally upheld, notwithstanding the patent distinction between residents and non-residents, resulting in favorable treatment of the former to the detriment of the latter. Arlington County Board v. Richards, 434 U.S. 5, 54 L. Ed. 2d 4 (1977); People v. Housman, 163 Cal. App. 3d Supp. 43 (1984).

If the problem noted by the complainants is pervasive enough to warrant designation of their neighborhood as a "residential permit parking area," then this option is certainly available. However, the criteria set out in Municipal Code section 86.2005 must be met prior to any such designation. Because Vehicle Code section 22507 specifically authorizes local ordinances and resolutions establishing preferential residential parking, there is no preemption issue to address.

Assuming the complainants do not wish to implement a permit parking program in their neighborhood, the scope of their concerns is narrowed to controlling only the parking of commercial vehicles on their residential streets.

Vehicle Code section 22507.5 specifically authorizes enactment of a local ordinance "prohibit ╒ingσ or restrict ╒ingσ the parking or standing, on any street, or portion thereof, in a residential district, of commercial vehicles having a

manufacturer's gross vehicle weight rating of 10,000 pounds or more." The section goes on to state, "For the purpose of implementing this section, each local authority may, by ordinance, define "residential district" in accordance with its zoning ordinance."

The San Diego Municipal Code, within its zoning ordinance, at one time defined "residence district" as " ╒tσhose areas which have not been zoned for commercial or industrial uses including areas which have been annexed to the City but which have not been zoned by The City of San Diego." Municipal Code section 101.0101.42 (added 1/28/64 by Ord. 8958 N.S.; repealed 3/21/68 by Ord. 9782 N.S.). While there is no longer a single definition of "residential district" within the zoning ordinance, that term is defined in Municipal Code section 86.27.

The complainants have recommended that Municipal Code section 86.27 be amended to facilitate effective regulation of commercial vehicle parking in their neighborhood. As authorized by Vehicle Code section 22507.5, Municipal Code section 86.27 generally prohibits the parking of certain defined commercial vehicles for longer than three hours within a residential district. In the section "residential district" is defined as "any block in which over fifty percent (50%) of the ground level buildings fronting on said block are dwellings. Said dwellings may be single-unit structures or multi-unit structures." From the perspective of the complainants this definition is inadequate because most of buildings on any given block within their neighborhood do not "front" onto the block.

The proposed amendment to the Municipal Code would redefine "residential district" as "any block in which over fifty percent (50%) of the ground level buildings on said block are zoned residential. Said buildings may be zoned for single-family or multi-family uses."

The Planning Department, in a memorandum responding to issues raised by the complainants stated, "that the proposed language will ensure application of section 86.27 to all residentially zoned property in the city, including PRD's." That memorandum, dated October 25, 1989, is attached for reference. If the

proposed language accurately reflects the difference in street construction it could be incorporated into the local ordinance regulating the parking of commercial vehicles in residential districts. A close examination of Vehicle Code section 22507.5 supports this conclusion.

Vehicle Code section 22507.5 recognizes two predominately local concerns; first, street construction may be substantially

different for residential streets than it is for major thoroughfares, and second, residential street construction may not support the parking of vehicles with gross vehicle weight in excess of 10,000 pounds. Therefore, the local definition of "residential district" should be reflective of the difference in street construction so that the parking restriction will be rationally related to the legitimate local concern of residential street maintenance and repair. The Traffic Engineering Department is the appropriate City department to determine whether the proposed language accurately reflects the difference in street construction.

Finally, it must be understood that the local ordinance can only regulate "commercial vehicles" as that term is defined in Vehicle Code section 22507.5, to include those vehicles "having a manufacturer's gross vehicle weight rating of 10,000 pounds or more." Enacting a local ordinance which would restrict or prohibit the parking in residential districts of commercial vehicles having a manufacturer's gross vehicle weight rating of less than 10,000 pounds would be in direct conflict with the state law, and preempted.

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

RLP:mk:520.1(x043.2)
Attachment
ML-90-04