



CITY COUNCIL FOLLOW UP REPORT

MEETING DATE: October 4, 2004 ITEM NUMBER: R 100404-2

TO: COUNCIL MEMBERS/CITY MANAGER
FROM: Police Department/Traffic Safety Bureau
DATE: October 19, 2004
REQUESTED BY: Richard Cohen
ADDRESS OF REQUESTING INDIVIDUAL: 918 Lombard Court, Costa Mesa

BACKGROUND:

Richard Cohen's vehicle was stored as a private property impound when he left it parked overnight in the parking lot of Harbor Center, 2300 Harbor Blvd. He accused the tow truck drivers of "hovering around" and wondered why his car was targeted. He requested an ordinance be adopted that allowed for overnight parking in parking lots such as the shopping center.

During the meeting he was advised by the Acting City Attorney that Federal law preempted the authority of the cities in regulating private property tows. Mayor Monahan requested that staff contact him.

FOLLOW UP REPORT:

Sgt. Durham of the Traffic Safety Bureau contacted Richard Cohen and explained section 22658(A) of the California Vehicle Code that allows private property owners to tow vehicles from their property if the property is properly posted at all entrances. The signs must explain the restrictions on parking, indicate that vehicles will be towed at the owner's expense, and list a phone number for the Police Department. Sgt Durham drove out to the property and found that the signs were in compliance with the law. Mr. Cohen said that he had already read that section and agreed that the private property was posted properly, and that his car may have been legally towed.

Mr. Cohen then inquired as to whether or not any tow truck could "hover around" and store his vehicle. Sgt. Durham explained to him that section 22658(L)(1) of the California Vehicle Code prohibits the removal of a vehicle without written authorization from the property owner, lessee, an employee, or agent, who must be present at the time of the tow. Sgt. Durham explained to Mr. Cohen that any tow truck could tow his vehicle, but that the property owner had to be present and request the tow. He explained to Mr. Cohen that property owners sometimes contract with tow companies to tow vehicles off of their property without being present at the time of the actual tow. This practice would be in violation of the California Vehicle Code.

Sgt. Durham then explained that there is a conflict between State and Federal law. The Federal Aviation Authorization Act of 1994 preempted State law relating to motor carriers,

and that the California law, as it pertains to the regulation of tow companies, was currently unenforceable. He also explained to Mr. Cohen that the U.S. Ninth Circuit Court is reviewing the case and that a decision is expected in early 2005.

Finally, Sgt. Durham explained to Mr. Cohen that under Section 22658(L)(3), that Mr. Cohen could sue the tow company in small claims court for up to 4 times the tow and storage fees if there was no property owner present at the time of the tow. Sgt. Durham also advised Mr. Cohen that if he thought that his car was illegally towed, that he could make a report with the Police Department that would be sent to Consumer Fraud at the Orange County District Attorney's Office, or that he could call them directly at (714) 347-8706.

Mr. Cohen said that he understood the situation. Sgt. Durham provided Mr. Cohen with his phone number for future contact or questions regarding traffic matters. Mr. Cohen seemed satisfied with our response to his request and said that he would contact Sgt. Durham if he had any further questions.

Staff has received a number of like and similar complaints over the past year on this issue. As a result, staff has prepared a letter that has been distributed to members of the public as needed. The letter has also been distributed to businesses and apartments where this practice has been a problem in the past.

ATTACHMENTS: 1 [Private Property Vehicle Impounds and California Vehicle Code 22658 \(l\) \(1\)](#)