



**BEST BEST & KRIEGER**  
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**MEMORANDUM**

**TO:** City Council  
Circulation Commission

**FROM:** City Attorney

**DATE:** December 22, 2017

**RE:** Reliez Valley Road and Legality of Potential Traffic Measures

The City has received numerous comments regarding both congestion and safety concerns along Reliez Valley Road. Congestion primarily occurs prior to the opening of local schools, i.e., Springhill Elementary, Stanley Middle School, and Acalanes High School. Safety concerns occur at all times and involve speeding, crossing a double-yellow line, illegally passing a school bus, and other violations of the vehicle code. In November, the City took steps to partially address safety concerns by, for example, installing new stop signs, a new crosswalk and by painting the speed limit on the road. A review of those actions will occur in February.

Both the Council and Circulation Commission received suggestions for potential traffic measures to alleviate the traffic congestion on Reliez Valley Road. In light of this, I have prepared this memorandum to address the legality of these options to assist you in your decision-making process.

**ANALYSIS**

The California Vehicle Code provides the express authority for the City to act regarding traffic control. In other words, state government has preempted the field of traffic control. Vehicle Code section 21 provides that “the provisions of this code are applicable and uniform throughout the state and in all counties and municipalities therein, and a local authority shall not enact or enforce any ordinance or resolution on the matters covered by this code, including ordinances or resolutions that establish regulations or procedures for, or assess a fine, penalty, assessment, or fee for a violation, of matters covered by this code, unless expressly authorized by this code.”

**Location of Signs**

Cities and other local authorities have express authority to place traffic signs within their respective jurisdictions that are authorized by the Vehicle Code. Vehicle Code section 21351 provides “Local authorities in their respective jurisdictions shall place and maintain or cause to be placed and maintained such traffic signs, signals, and other traffic control devices upon streets and highways as required hereunder, and may place and maintain or cause to be placed and maintained, such appropriate signs, signals or other traffic control devices as may be authorized hereunder or as may be necessary properly to indicate and to carry out the provisions of this code or local traffic ordinance or to ward or guide traffic.”



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In addition, Vehicle Code section 21100(d) provides that local authorities may adopt rules and regulations by ordinance or resolution regulating traffic by means of official traffic control devices. Official traffic control devices are defined as “any sign, signal marking or device consistent with Section 21400, placed or erected by authority of a public body or official having jurisdiction, for the purposes of regulating, warning, or guiding traffic”. (Veh. Code, § 440.) Furthermore, Vehicle Code section 21104(d) provides that no ordinance or resolution proposed to be enacted under Vehicle Code section 21100(d) is effective as to any highway not under the exclusive jurisdiction of the local authority enacting the same.

Therefore, local agencies have authority “in their respective jurisdictions” to place traffic signs and signals. However, it does not authorize any jurisdiction to place a traffic sign or signal in another jurisdiction. (Veh. Code, § 21351). As further indication that a jurisdiction’s authority is limited to its boundaries, the Attorney General has opined that a county board of supervisors may not adopt ordinances authorizing the placement of stop signs and establishment of speed zones on roads owned and maintained by a community services district, since it is the district that has the authority to adopt the ordinances. (67 Ops. Atty. 145 (4-10-84).)

A local authority can place traffic control devices within its jurisdiction and the same local authority that is authorized to install the traffic control device is also authorized to place appropriate signage accompanying the traffic control device. Vehicle Code section 22101 dealing with intersections, provides that “local authorities in respect to highways under their respective jurisdictions, may cause official traffic control devices to be placed or erected within or adjacent to intersections to regulate or prohibit turning movements at such intersections.” Furthermore, the same section provides that when a right or left-hand turn is prohibited at an intersection, “notice of such prohibition shall be given by erection of a sign.” (Veh. Code, § 22101(c).) Therefore, the local authority with jurisdiction of the traffic control device is authorized and responsible to place a sign prohibiting turns and it is unlawful for a driver to disobey the sign that is placed pursuant to Vehicle Code section 22101(c). (Veh. Code. § 22101(d).) Signs requiring right or left hand turns only rather than allowing through traffic or prohibiting right or left hand turns at all times or during parts of a day or on certain days of the week are allowed. Similarly, a traffic signal is permissible, if the local jurisdiction follows all applicable state laws and standards.

Denying or Restricting Access to Certain Members of the Public

The City may not deny access to certain members of the public, while allowing other members of the public unrestricted access to a public street. The Vehicle Code prohibits the installation of gates or other selective devices on any public street if the devices deny or restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street. (Veh. Code, § 21101.6).



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Vehicle Code section 21101.6 specifically states “this section is not intended to make a change in the existing law, but is intended to codify the decision of the Court of Appeal in the City of Lafayette v. County of Contra Costa (91 Cal.App.3d 749).” In 1979, the City of Lafayette sought a judicial declaration that it was entitled to close Happy Valley Road to through traffic, except for drivers with an established need to use the street.

The facts of the case are similar to our current situation. “For several years, the City of Lafayette (‘City’) has been concerned with problems of pedestrian safety, vehicle accidents, injuries and pollution due to heavy use of Happy Valley Road. . . . In January 1975, the Lafayette City Council voted to close Happy Valley Road to through traffic except for drivers with an established need to use the Road. The City Council determined that this was the best way of promoting safe use of the Road while reducing the hazards caused by traffic greatly exceeding the Road’s capacity. The partial closure was to be accomplished by installation of a ‘traffic diverter’ or automatic gate across the Road at a point within the City limits. Exempted drivers were to be furnished devices to open the gate.” (Id. at 752.)

The Court of Appeal found that in the absence of express legislative authority to the contrary, the city had no authority to restrict the right to travel on one of its streets. The court also held that the city’s proposed ordinance was in derogation of the state public policy 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.

Therefore, any limitation of a public street would need to apply uniformly to all people. For instance, a jurisdiction could place a no turn sign during certain hours at an intersection within its jurisdiction that applied uniformly to all drivers under Vehicle Code section 22101. However, a jurisdiction could not charge for use of a public street, even if such charge applied uniformly to all drivers, absent special legislation. Likewise, a jurisdiction could not allow passage for some members of the public and not others on a public street. For example, signs limiting access to traffic going to a particular destination, or originating from designated areas, or having two or more people in the vehicle are not allowed. Furthermore, any gates that you may see on a street are likely located on a private street, since a gate allowing only some members of the public entry would not be permitted on a public street.

#### Vacating Reliez Valley Road as a Public Street

A city can vacate a public street, however the street is then no longer available for public use. The process to vacate a public street requires a noticed public hearing in which the City Council must make findings that the street is not necessary for present or prospective use. Streets & Highways Code section 8324(b) provides that “[I]f the legislative body finds, from all of the evidence submitted, that the street, highway or public service easement described in the notice of hearing or petition is unnecessary for present or prospective use, the legislative body may adopt a resolution vacating the street, highway or public service easement...” (Emphasis added.) Thus,



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before the City Council vacates a street it must find that it is no longer necessary for present or prospective use as a street. As Reliez Valley Road is a well-traveled road that is used daily, the Council will not be able to make this finding.

Even if a city does not describe the withdrawal of its streets from public use as a street vacation, courts will look at the ultimate purpose for the closure. This approach was reinforced in Citizens Against Gated Enclaves v. Whitley Heights Civic Association, where the City of Los Angeles entered into an agreement at the request of the Whitley Heights Civic Association, to withdraw their streets from public use and place gates around the Whitley Heights community. (Citizens Against Gated Enclaves v. Whitley Heights Civic Association (1994) 23 Cal.App.4th 812.) The City of Los Angeles and the Whitley Heights Homeowners Civic Association took pains not to describe the withdrawal as a street vacation. (Id. at 820.) The withdrawal of the public streets included closing the streets to public use without a determination that the streets were no longer needed for vehicular traffic. (Id. at 821.) The court found that the City had no authority to withdraw the streets from public use without making this determination. The court addressed this by noting: “[T]he City was well advised not to call the withdrawal order a vacation or abandonment. ‘A street may not be vacated for exclusive private use.’ (Constantine v. City of Sunnyvale (1949) 91 Cal.App.2d 278, 282.) To abandon a public road, the City must find that it is no longer necessary, i.e. there is no present or future use for the road, and that the abandonment is in the public interest.” (Emphasis added.) (Id.)

#### Use of Video or Photo Evidence to Enforce Traffic Laws

After following certain procedures, a city can utilize a red light camera at an intersection pursuant to Vehicle Code section 21455.5 to enforce stopping at a limit line, intersection or other place designated in Vehicle Code section 21455. Currently, there is no other authority for a city to utilize a camera or video to enforce other traffic laws.

#### Environmental Review

Once a local agency has determined the traffic measure to impose, the environmental review process will occur. CEQA Guideline section 15301 exempts from further CEQA review the operation and the minor alteration of existing public facilities, so long as the activity involves "negligible" or "no expansion of previous use . . ." The Guideline provides examples of activities that fall under this exemption, including the “maintenance of existing highways, streets, sidewalks, gutters, and trails.” Given the broad application of this exemption in cases such as *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 793, in which the court upheld the use of this exemption for the adoption of a parking ordinance on grounds that parking permits can be part of the "operation" of curbside parking, it seems reasonable that this exemption could be used to exempt a local agency’s decision to approve traffic measures to alleviate traffic congestion on Reliez Valley Road. In order to prepare for any potential challenge to this decision, we recommend the creation of a record



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documenting that the traffic measures are a minor alteration to the operation of an existing street make findings as to why none of the exceptions to the use of exemptions (such exceptions for “unusual circumstance,” or “cumulative impacts”) apply. (See CEQA Guideline section 15300.1; *see also Respect Life South San Francisco v. City of South San Francisco* (2017) 14 Cal.App.5th 449.)

If a local agency determines that it only wishes to impose traffic measures to alleviate traffic congestion on Reliez Valley Road on a short-term, temporary, basis in order to determine the potentially efficacy of such measures, an argument could be made that such a decision is not a “project,” as defined by CEQA, as it does not commit the local agency to maintaining these measures. (Pub. Res. Code, §§ 21080(a); 21065.) However, given that a “project” can include any activity authorized by a public agency that results in a direct or reasonably foreseeable indirect impact on the environment, an argument could be made that there could be such impacts, with regard to topics such as traffic and air quality, even if only on a temporary basis, and thus even as a temporary measure it should be subject to CEQA review. (*Id.*) However, as noted above, it is likely that the appropriate level of CEQA review for a local agency’s decision to impose these traffic measures on a permanent or temporary basis would be the use of an exemption pursuant to CEQA Guideline section 15301. In addition, with regard to a temporary measure, CEQA Guideline section 15306 may be used, an exemption for data collection and research. This exemption applies only to activities that are strictly for information gathering purposes, or that may be part of a study that will ultimately lead to an agency action that has not yet been approved, adopted, or funded.

**CONCLUSION**

Any traffic measure to mitigate traffic congestion on Reliez Valley Road will require authorization and compliance with the California Vehicle Code. Only the local authority with jurisdiction over a given section of Reliez Valley Road will be authorized to place appropriate signage to regulate that section of Reliez Valley Road. Therefore, because different jurisdictions are responsible for different segments of the road, the affected jurisdictions will need to work together to mitigate traffic congestion along the corridor. The features of the traffic measure imposed and whether the measure is temporary or permanent will determine the level of environmental review, which may include a CEQA exemption.

MALA SUBRAMANIAN