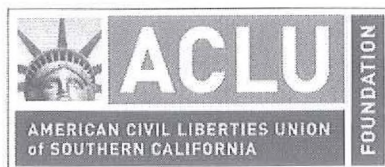


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February 23, 2012

*Via mail and email*

Chief Charlie Beck  
100 West 1st Street Room  
Los Angeles, CA 90012

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John Mack, Vice President  
Alan J. Skobin, Commissioner  
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Los Angeles Police Commission  
100 West First Street, Room 134  
Los Angeles, CA 90012

Date: 2-24-12  
Submitted in PS Committee  
Council File No: 11-2009  
Item No.: 4  
Deputy: [Signature]

**Re: California State Legislative Counsel Opinion (Unlicensed Drivers - #1200017)**

Dear Chief Beck and Police Commissioners:

As you may know, on February 11, 2012, the California Legislative Counsel Bureau wrote a letter to Senator Emmerson opining that a local government does not have the authority to establish a policy authorizing the release of an impounded vehicle driven by an unlicensed driver prior to the end of a 30-day impoundment period, regardless of whether the vehicle is seized under California Vehicle Code Section 14602.6 or 22651. The Legislative Counsel's opinion, however, is contrary to the plain language of Vehicle Code Section 22651. Accordingly, we write to summarize the authority of law enforcement officers to seize vehicles driven by unlicensed drivers under the California Vehicle Code and discuss what, if any, effect the Legislative Counsel's opinion has on LAPD's February 10, 2012 Special Order establishing the "Community Caretaking Doctrine and Vehicle Impound Procedures."

# **I. Statutory Background**

Under current law there are two statutes that authorize the seizure of vehicles from unlicensed drivers in certain circumstances: California Vehicle Code Sections 22651 and 14602.6.

Section 22651 provides certain specified instances in which law enforcement is authorized to "remove" vehicles. *See* Cal. Veh. Code § 22651. Section 22651(p) provides:

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A peace officer . . . may remove a vehicle . . . [w]hen the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500...and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed... shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.<sup>1</sup>

Section 14602.6 provides circumstances where a police officer is authorized to "impound" the vehicle of drivers with suspended or revoked licenses, or drivers who have never been issued a license. *See* Cal. Veh. Code § 14602.6 ("Vehicle Impoundment: Suspended, Revoked, or Unlicensed Driver"). Section 14602.6(a)(1) provides:

Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

Both 22961 and 14602.6 provide police officers with discretion and authority to seize a vehicle pursuant to each provisions' terms, but courts have clearly held that neither provision makes seizure of a vehicle mandatory for any violation. *See Posey v. California*, 180 Cal. App. 3d 836, 850 (1986) ("[W]e find the conclusion inescapable that the inspection and removal [under Section 22651] are acts discretionary in nature. The meaning of the word 'may' in the statute is plain. It affords the CHP officer the permissive authority, not an obligatory duty, to remove a vehicle."); *California Highway Patrol v. Superior Court*, 162 Cal. App. 4th 1144, 1154 (. 2008) ("We conclude that section 14602.6 . . . provides only discretionary authority to impound . . .").

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<sup>1</sup> Section 12550 of the Vehicle Code provides in relevant part: "A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver's license."



## II. The Plain Language of the Vehicle Code and Case Law Permit Law Enforcement to Remove Unlicensed Drivers' Vehicles for Less than 30 Days under Vehicle Code Section 22651.

There is no question that the Vehicle Code affords law enforcement the discretion to determine whether to seize a vehicle – either under Section 14602.6 or 22651 – in the first instance. *See Posey v. California*, 180 Cal. App. 3d 836, 850; *California Highway Patrol*, 162 Cal. App. 4<sup>th</sup> at 1154. Legislative Counsel's opinion confirms that "Section 14602.6 grants a peace officer the discretion to determine whether a vehicle driven by a person who has never been issued a driver's is to be impounded." Exhibit A at 6. Thus a "local government" is authorized to adopt "standard criteria" that instruct officers when it is, and is not, appropriate to seize the vehicle of an unlicensed driver. *Id.*

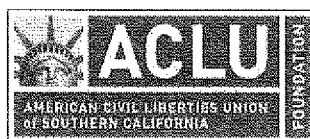
The only issue raised by Legislative Counsel's opinion is what happens after an officer exercises his or her discretion to seize a vehicle. Legislative Counsel opined that the California Legislature intended that law enforcement use a mandatory 30-day impound under Section 14602.6 as the sole and exclusive means of dealing with unlicensed drivers.<sup>2</sup> Invoking the maxim that the "specific controls the general," Legislative Counsel read Section 14602.6's provision of a 30-day "impound" for drivers never issued driver's licenses to displace the general authority under Section 22651 to "remove" vehicles for Section 12500 violations.

Legislative Counsel's opinion is misguided for at least two basic reasons. First, Legislative Counsel's opinion presumes there is a conflict between Sections 14602.6 and 22651, but there is none. The Vehicle Code creates two independent and different options for vehicle seizures for unlicensed driving: a "removal" under Section 22651, or a 30-day "impound" under Section 14602.6. Sections 14602.6 and 22651 authorize distinct and independent enforcement actions for unlicensed driving. While we colloquially use the term "impound" to apply to any vehicle seizures, the Vehicle Code assigns different terms to vehicle seizures depending on the context: "removals" for seizures under Section 22651, and "impounds" for seizures under Section 14602.6.

Legislative Counsel's opinion fails to appreciate this distinction. In its opinion, Legislative Counsel asserts that

While subdivision (p) of Section 22651 also provides for the impoundment of a vehicle driven in violation of subdivision (a) of Section 12500, Section 14602.6, as a more specific statute, would govern the impoundment of vehicle driven by a person who had never been issued a driver's license.

<sup>2</sup> We use the term "unlicensed driver" to refer to drivers who have never been issued a driver's license. We do not here address circumstances where the driver may have been previously licensed in California (e.g., a driver with an expired license), or in a foreign jurisdiction.



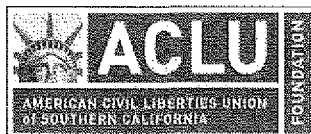
See Exhibit A at 6. Critically, however, Section 22651 does not provide for “impoundment” – it provides only for the “removal” of a vehicle. Thus, the authority to “impound” under Section 14602.6 does not in any way conflict with, or displace, the authority to “remove” under Section 22651. Section 14602.6 clearly reads as providing law enforcement with an additional enforcement tool – a 30 day impound – for unlicensed driving, rather than limiting law enforcement’s flexibility and discretion to utilize Section 22651 in certain circumstances.<sup>3</sup>

Because the Sections 22651 and 14602.6 authorize distinct enforcement actions and do not conflict, the “specific controls the general” canon does not apply. “[T]he specific statute prevails over the general” canon “applies when the two statutes cannot be reconciled.” *Miranda v. 21st Century Ins. Co.*, 117 Cal.App.4th 913, 923-34 (2004) (internal citation and quotation marks omitted). This requirement flows from the maxim that “[t]wo statutes must be read together and so construed to give effect to *all* the provisions of *each* statute.” *Lincoln Place Tenants Ass’n v. City of Los Angeles*, 155 Cal. App. 4th 425, 440 (2007) (emphases added). Courts have recognized that “[t]he presumption against implied repeal is so strong that [t]o overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.” *Id.* (internal quotation and citation omitted). Sections 22651 and 14602.6 are plainly not irreconcilable.

Second, the California Court of Appeals held in *California Highway Patrol v. Superior Court*, 162 Cal. App. 4th 1144, 1154 (2008), that law enforcement have the discretion to remove or store the cars of drivers with suspended licenses for less than 30 days under Section 22651. The reasoning of *California Highway Patrol* applies equally to unlicensed drivers, and supports the plain text reading that the Sections 22651 and 14602.6 are independent grants of discretion, not conflicting directives.

*California Highway Patrol* involved wrongful death actions brought against the California Highway Patrol (CHP) and two officers. *Id.* at 1148. The plaintiffs alleged that CHP officers had arrested a motorist for driving under the influence and driving on a suspended license, but chose to remove or store his vehicle under Section 22651 rather than impound it under Section 14602.6. *Id.* at 1148-49. After the motorist was subsequently released from jail, he retrieved his vehicle immediately and caused a fatal accident. *Id.* at 1149. The trial court held that the CHP could be held liable because the officers breached a mandatory duty under

<sup>3</sup> Further, section 22651(p) expressly authorizes law enforcement to “remove” vehicles for violations of section 12500, which prohibits driving without a “valid driver’s license.” See Cal. Veh. Code § 12500. Section 22651(p) thus, by its terms, applies broadly to any unlicensed driving violation, including driving with a suspended or revoked license, or without ever being issued a driver’s license. Legislative Counsel’s opinion does not explain why the Legislature would leave undisturbed section 22651(p)’s broad authorization of “removal” for any unlicensed driving violation if the Legislature had in fact intended to limit section 22651(p) to the unlicensed driving violations not covered by section 14602.6. There is no doubt that the Legislature knows how to include such limiting language: section 22651(p) expressly states that it only applies if “the vehicle is not impounded pursuant to Section 22655.5.”



Section 14602.6 by not impounding the vehicle of the unlicensed motorist for 30 days. *Id.* at 1148.

In rejecting the trial court's interpretation of Section 14602.6, the Court of Appeals analyzed the language of the provision, its legislative history, statutory context and the public policy issues implicated. The Court of Appeals found that the trial court's conclusion that "any action under Section 14602.6(a)(1) mandated a 30-day impoundment" was based on a misreading of Section 14602.6. *Id.* at 1151 (emphasis in original). Specifically, the Court found that the term "shall" in Section 14602.6

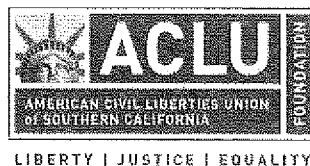
describes only the 30-day time period for any vehicle '*so impounded.*' (Italics added.) If an officer decides not to impound a car under the discretionary authority provided by section 14602.6(a)(1), it is not '*so impounded*' and therefore the 30-day provision is inapplicable.

*Id.* at 1151-52. The legislative history of the provision, the Court found, revealed that the Legislature's intent in adopting Section 14602.6 was "actually" to give "a police officer more discretion in deciding whether to impound a vehicle," not less. *Id.* at 1152. Accordingly, the Court of Appeals concluded that the Vehicle Code provides law enforcement "full discretionary authority" to determine whether to impound a car in the first instance, and only if the officer decided to impound the vehicle, rather than remove or store it, would the mandatory 30 day impound under Section 14602.6 apply. *Id.* at 1153.

While *California Highway Patrol* concerned a driver with a suspended license, its conclusion that Section 14602.6 is discretionary applies equally to drivers who have never been issued a driver's license. The California Court of Appeals did not view Section 14602.6's grant of discretionary authority to impound for 30 days as in any way conflicting with law enforcement's discretionary authority to "remove" vehicles under Section 22651. Indeed, the Court's analysis of the legislative history and public policy considerations implicated apply equally to unlicensed drivers. Further, there is nothing in the language of the statutes or legislative history that indicates the Legislature intended Section 14602.6 to operate differently with respect to unlicensed drivers. Such a reading in fact would have perverse results, permitting more lenient penalties for drivers who have had their licenses suspended for serious driving violations (such as DUIs) while requiring the harsher penalty of a 30-day impound for all unlicensed drivers, including those who have no prior driving violations and whose lack of a driver's license is based on nothing more than their undocumented immigration status.

### **III. LAPD's Special Order Allowing Release of a Vehicle Seized under Vehicle Code Section 22651 Before 30 Days is Lawful.**

LAPD's February 12, 2012 Special Order Section II.A (addressing unlicensed drivers with no priors) clearly states that the authority to seize an unlicensed driver's vehicle is Section 22651, which authorizes removal, not impound. Of course, the section uses the term "impound," but does so in a colloquial sense, not as a legal term of art. Accordingly, LAPD's proposed



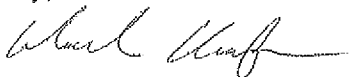
procedure, which would allow the LAPD to release a vehicle seized from an unlicensed driver before 30 days, is consistent with the Vehicle Code and relevant case law.

Moreover, it is standard practice in jurisdictions throughout California for law enforcement agencies to seize vehicles of unlicensed drivers for less than 30 days depending on the circumstances. These practices are dictated by informal policies for some agencies (*e.g.*, the CHP), and by written policies for others. *See* <https://www.aclu-sc.org/documents/view/423> (compiling policies for the San Diego, San Jose, Berkeley, San Francisco, Oakland, Baldwin Park, and Santa Ana Police Departments). As Assistant Chief Moore acknowledged at the Police Commission hearing on February 14, 2012, it is LAPD's current practice to remove cars under Section 22651 in some circumstances, and impound for 30 days under Section 14602.6 in others.

\* \* \*

In sum, it is clear that the plain language of Section 22651 of the Vehicle Code and relevant court authority authorize law enforcement to seize vehicles driven by unlicensed drivers for less than 30 days. The California Legislative Counsel Bureau's opinion to the contrary is based on a misreading of the Vehicle Code and applicable precedent, and should be disregarded.

Sincerely,



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Carlos De La Guerra, Managing Asst. City Attorney, Police Liaison Unit



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# **Exhibit A**



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February 11, 2012

Honorable Bill Emmerson  
Room 4082, State Capitol

UNLICENSED DRIVERS - #1200017

Dear Senator Emmerson:

You asked whether a local government has the authority to establish a policy authorizing the release of an impounded vehicle driven by a driver who has never been issued a driver's license and who does not have a prior conviction for driving without a valid driver's license prior to the end of a 30-day impoundment period under circumstances not specified in subdivision (b), (d), (f), or (h) of Section 14602.6 of the Vehicle Code.

By way of background, subdivision (a) of Section 12500 of the Vehicle Code<sup>1</sup> prohibits a person from driving a vehicle unless the person holds a valid driver's license. Hence, a person whose driver's license<sup>2</sup> has expired, or has been suspended or revoked, or a person who has never been issued a driver's license, is prohibited from driving a vehicle. Subdivision (p) of Section 22651 authorizes a peace officer to remove a vehicle "[w]hen the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500 ... and the vehicle is not impounded pursuant to Section 22655.5."<sup>3</sup> The court has interpreted this provision as authorizing, but not requiring, the impoundment of the vehicle (*People v. Green* (1996) 46 Cal.App.4th 367, 372-373; hereafter *Green*). Section 22651 does not specify a time period for which the vehicle is to be impounded.

<sup>1</sup> All further section references are to the Vehicle Code, unless otherwise stated.

<sup>2</sup> Section 310 defines "driver's license" as "a valid license to drive the type of motor vehicle or combination of vehicles for which a person is licensed under [the Vehicle Code] or by a foreign jurisdiction."

<sup>3</sup> Subdivision (p) of Section 22651 further prohibits the release of an impounded vehicle, "except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court."



In addition to subdivision (p) of Section 22651, Section 14602.6 also authorizes the impoundment of a vehicle driven by a specified group of people.<sup>4</sup> Section 14602.6 provides, in relevant part, as follows:

"14602.6. (a) (1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

\* \* \*

"(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to the storage, in accordance with Section 22852.

\* \* \*

"(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

"(A) When the vehicle is a stolen vehicle.

"(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

"(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

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<sup>4</sup> In addition to subdivision (p) of Section 22651 and Section 14602.6, Section 14607.6 requires, except for specified circumstances, a peace officer to impound a vehicle driven by an unlicensed driver who has a previous misdemeanor conviction for violating subdivision (a) of Section 12500 (para. (1), subd. (c), Sec. 14607.6; *California Highway Patrol v. Superior Court* (2008) 162 Cal.App.4th 1144, 1154; hereafter *California Highway Patrol*).

"(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

"(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

\* \* \*

"(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

"(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

"(2) (A) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

"(B) A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing, storage, and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card shall be in the name of the person presenting the card. 'Credit card' means 'credit card' as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of this section, credit card does not include a credit card issued by a retail seller.

"(C) A person operating or in charge of a storage facility described in subparagraph (B) who violates subparagraph (B) shall be civilly liable to the owner of the vehicle or to the person who tendered the fees for four times the amount of the towing, storage, and related fees, but not to exceed five hundred dollars (\$500).

"(D) A person operating or in charge of a storage facility described in subparagraph (B) shall have sufficient funds on the premises of the primary storage facility during normal business hours to accommodate, and make change in, a reasonable monetary transaction.

"(E) Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates.

"(3) The legal owner or the legal owner's agent presents a copy of the assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions Code; a release from the one responsible governmental agency, only if required by the agency; a government-issued photographic identification card; and any one of the following, as determined by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The law enforcement agency, impounding agency, or any other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency, or any person acting on behalf of those agencies, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

"No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents other than those specified in this paragraph. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The legal owner or the legal owner's agent shall be given a copy of any documents he or she is required to sign, except for a vehicle evidentiary hold logbook. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies, or any person in possession of the vehicle, may photocopy and retain the copies of any documents presented by the legal owner or legal owner's agent.

"(4) A failure by a storage facility to comply with any applicable conditions set forth in this subdivision shall not affect the right of the legal owner or the legal owner's agent to retrieve the vehicle, provided all conditions required of the legal owner or legal owner's agent under this subdivision are satisfied.

\* \* \*

"(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

\* \* \* (Emphasis added.)

Thus, under paragraph (1) of subdivision (a) of Section 14602.6, a peace officer has the discretion to impound a vehicle driven by a person who has never held a valid driver's license. In exercising this discretion, an officer must follow standard criteria (*Green*, supra, at pp. 372-373). "If an officer decides to exercise this authority, the vehicle is subject to a 30-day impoundment" (*California Highway Patrol*, supra, at p. 1152; *Samples v. Brown* (2007) 146 Cal.App.4th 787, 801; hereafter *Samples*). Subdivisions (d), (f), and (h) require the release of an impounded vehicle prior to the 30-day period to the registered owner, legal owner, or rental car agency that owns the vehicle, under specified circumstances. In addition, subdivision (b) of Section 14602.6 "directs the impounding agency to consider facts or situations that might reduce the culpability of the owner and warrant an early release of the impounded vehicle" (*Samples*, supra, at pp. 801-802). Hence, a finding that the "vehicle owner's lack of actual knowledge regarding the unlicensed status of the driver is also a mitigating circumstance" warranting early release (*Id.*, at p. 805).

Turning to the question posed, both subdivision (p) of Section 22651 and Section 14602.6 authorize the impoundment of a vehicle driven by a person who has never been issued a valid driver's license. While Section 14602.6 specifies a mandatory 30-day impoundment period, subdivision (p) of Section 22651 does not. However, subdivision (p) of Section 22651 applies generally to vehicles driven by drivers in violation of Section 12500, which includes drivers whose driver's licenses have expired, while Section 14602.6 applies only to those vehicles driven by drivers whose licenses were suspended or revoked, or by drivers who were never issued a driver's license. It is a "long-standing principle of statutory construction [that] a special statute governs over a general" (*People v. Jackson* (2005) 129 Cal.App.4th 129, 170). Hence, in regard to a vehicle driven by a person who has never been issued a driver's license, it is our opinion that Section 14602.6 would control.

Pursuant to Section 21 of the Vehicle Code, the state has preempted the field of motor vehicle traffic regulation (*Zack's, Inc. v. City of Sausalito* (2008) 165 Cal.App.4th 1163, 1183). Subdivision (a) of Section 21 prohibits local governments from enacting or enforcing an ordinance or resolution on matters covered by the Vehicle Code unless expressly authorized by the Vehicle Code. In this case, paragraph (1) of subdivision (a) of Section 14602.6 specifically gives a peace officer the discretion to determine whether to impound a vehicle driven by a person who has never been issued a driver's license, but if the vehicle is impounded, requires the vehicle to be impounded for 30 days. Subdivisions (d), (f), and (h) of Section 14602.6 prescribe specific circumstances under which the impounded vehicle could be released prior to the end of the 30-day impoundment period (see *Samples*,

supra, at p. 804). In addition, subdivision (b) of Section 14602.6 directs the impounding agency to consider facts and situations that might reduce the culpability of the owner, warranting an early release of the vehicle (*Id.*, at pp. 801-802).<sup>5</sup> Hence, the Vehicle Code covers matters related to the impoundment of vehicles driven by persons who have never been issued a driver's license and circumstances under which the impounded vehicle may be released prior to the end of the mandatory impoundment period. Accordingly, pursuant to Section 21, a local government may not establish a policy through an ordinance or resolution authorizing the early release of those impounded vehicles under circumstances not specified in Section 14602.6.

In summary, Section 14602.6 grants a peace officer the discretion to determine whether a vehicle driven by a person who has never been issued a driver's license is to be impounded. In exercising this discretion, the peace officer must follow standard criteria, which may be established by the local government. Once the decision to impound the vehicle is made, the vehicle is required to be impounded for 30 days.

While subdivision (p) of Section 22651 also provides for the impoundment of a vehicle driven in violation of subdivision (a) of Section 12500, Section 14602.6, as a more specific statute, would govern the impoundment of vehicles driven by a person who had never been issued a driver's license. Because the Vehicle Code specifically addresses the impoundment of vehicles driven by a person who has never been issued a driver's license and specifies circumstances under which the impounded vehicle might be released prior to the end of the mandatory 30-day impoundment period, it has preempted these matters and a local government may not provide for the early release of that impounded vehicle in circumstances not specified in Section 14602.6.

Accordingly, in our opinion, a local government does not have the authority to establish a policy authorizing the release of an impounded vehicle driven by a driver who has never been issued a driver's license and who does not have a prior conviction for driving without a valid driver's license prior to the end of a 30-day impoundment period under

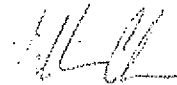
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<sup>5</sup> The mitigating circumstance does not need to justify or excuse the wrongful conduct of the unlicensed driver (*Samples, supra*, at p. 801).

circumstances not specified in subdivision (b), (d), (f), or (h) of Section 14602.6 of the Vehicle Code.

Very truly yours,

Diane F. Boyer-Vine  
Legislative Counsel

A handwritten signature in black ink, appearing to read 'W Chan', written over a horizontal line.

By  
William Chan  
Deputy Legislative Counsel

WKYC:ipba