



CITY OF POMONA COUNCIL REPORT

February 2, 2009

No. 09-063

To: Honorable Mayor and Members of the City Council

From: Freddie Rodriguez, Councilmember/Ad Hoc Committee Chair
Paula Lantz, Councilmember/Ad Hoc Committee Member
Cristina Carrizosa, Councilmember/Ad Hoc Committee Member
Linda Lowry, City Manager *LL*
Dave Keetle, Acting Chief of Police
Arnold Alvarez-Glasman, City Attorney

By: Andrew L. Jared, Assistant City Attorney

Subject: **Recommendations from Ad Hoc Committee on Traffic Safety Checkpoints**

SUMMARY

Recommendation – That the City Council adopt the proposed recommendations of the Ad Hoc Committee on Traffic Checkpoints.

Fiscal Impact – None. Traffic Safety Checkpoints are funded through Office of Traffic Safety (OTS) grants. The City receives franchise fees and vehicle release fees as a result of City-initiated tows.

Public Noticing Requirements – None.

Previous Council Action – On June 2, 2008, the City Council received a report on the May 3, 2008 checkpoint. At that time, Council adopted interim policy recommendations related to checkpoint operation and created an ad hoc committee on traffic checkpoints to review such policies and to evaluate such recommendations in light of the May 3, 2008 checkpoint.

Introduction

On May 3, 2008, a traffic checkpoint was held at the intersection of Mission Blvd. and San Antonio Avenue in conjunction with the countywide “Avoid-the-40” program. Pomona Police officers have attended Avoid-the-40 checkpoints in other cities in the past. However, this was the first Avoid-the-40 checkpoint held within the City of Pomona, and was the first 4-way checkpoint ever done by Avoid-the-40. This checkpoint was also the only checkpoint in the Pomona where traffic was

stopped in all four directions. The City of Pomona personnel participating in these operations are paid through reimbursement by the California Office of Traffic Safety (OTS) grants administered by the City of Glendora for the "Avoid-the-40" program. Personnel from the City of Glendora were instrumental in administering and planning this checkpoint as part of the "Avoid-the-40" program. It has been noted that the standard practice by the City of Pomona for documenting the pre-planning of the checkpoint was deviated from due to the multi-agency effort at this checkpoint.

As a matter of historical context, the Pomona Police Department has conducted traffic safety checkpoints since 1998. The goal of traffic safety checkpoints is to reduce the number of accidents, injuries and fatalities caused by unlicensed drivers and intoxicated drivers every year. The Pomona Police Department participates in approximately twenty-four checkpoints each year. Several have been in association with other agencies (e.g., La Verne Police, Claremont Police, San Bernardino County Sheriff), and when implemented with other agencies are typically at the border of the neighboring jurisdiction. The checkpoints are rotated among the Council districts to focus inspections at areas where there are high number of traffic collisions. Additional factors regarding major thoroughfares, residential zones, and availability of staging areas are also taken into consideration when selecting the specific checkpoint sites.

The scope of the May 3 checkpoint, the impact on the surrounding neighborhood, and the manner of its operation raised community concerns which were voiced at the City Council meeting of May 5, 2008. Various complaints were received during and after the checkpoint related to its impact on the surrounding businesses, the conduct of officers, and the propriety of conducting a 4-way checkpoint. The City Council reviewed of the matter at the May 27 and June 2, 2008 Council meetings. Attached for reference is the June 2 staff report on this issue. (Att. 1, without accompanying attachments).

Council Recommendations for Interim Action and Creation of Ad Hoc Committee

On June 2, the Council approved 21 recommendations for checkpoint operation, identified as "Interim Policy" points in section A below. (Att. 2, Minutes of June 2, 2008 indicating Council motion). The Council also created an ad hoc committee ("the Committee") to address issues related to police policy issues related to checkpoints and consider issues related to the 21 Interim Policy points. The Committee consisted of Councilmembers Hunter, Rodriguez, and Carrizosa, with Councilmember Lantz appointed as an alternate member. Council also appointed City Manager Linda Lowry, City Attorney Arnold Alvarez-Glasman, and Police Chief Joe Romero to the Committee. Councilmember Lantz attended the final two meetings in place of Councilmember Hunter. Upon Chief Joe Romero's retirement, Acting Chief Dave Keetle attended the last meeting.

The Committee met on June 30, 2008, August 6, 2008, November 12, 2008, and January 14, 2009. The meetings were open to the public and public testimony about the various issues related to checkpoints in general and the May 3, 2008 checkpoint in particular were received. Testimony was provided both in favor of and opposing City policy and practices. Testimony was also provided that

checkpoints recently held have had an unintended adverse economic impact on businesses in the City, including a direct impact on businesses in the vicinity of checkpoints during their operation. In support of such position, on January 14, 2009, the Pomona Speaks Coalition presented staff with 72 letters signed by Pomona business owners. (Att. 3). Prior to this date approximately thirty (30) other letters were presented to the City Council at Council meetings. Such letters were from businesses throughout the City. The Committee's meetings culminated in a presentation on January 14 by Chief Keetle reviewing the recommendations to Council from the Committee. After discussing the recommendations, hearing public testimony on the issues, and considering all other evidence presented, consensus was reached by the Councilmembers on the Committee to make the following recommendations for presentation to the City Council in this report.

A. COMMITTEE RECOMMENDATIONS ON COUNCIL'S 21 POLICY POINTS

1. Hours of Operation for Traffic Safety Checkpoints

Issue: The May 3, 2008 checkpoint began operation at 2 pm. State law allows checkpoints to be conducted at any time of day. OTS grants restrict hours of operation to after 6 pm. Checkpoints conducted earlier than funding grant must be paid from other sources. Times of operation are designed to address various DUI scenarios, practical staffing issues, and officer safety.

Interim Policy: Traffic Safety Checkpoints shall not be conducted prior to 6 p.m.

Ad Hoc Recommendation: Maintain policy.

2. Location of Traffic Safety Checkpoints

Issue: As checkpoints require staging areas with sufficient room for investigation, waiting areas, and held vehicles, commercial corridors are sought to accommodate the needed facilities. However, given Pomona's development pattern, commercial zones and corridors are not exclusively non-residential. The May 3, 2008 checkpoint was conducted at Mission Boulevard and San Antonio Avenue. Though this is primarily a commercial zone, two trailer parks (residential use) were located close to the area comprising the checkpoint line waiting area. Motor officers made traffic stops within the trailer park, allegedly for vehicle code violations. Criticism was voiced that residents should not be chased into their place of residence. At this and a later checkpoint, the checkpoint waiting line was within close proximity to a church entrance. It was alleged that this impeded the ability to attend religious services, though no persons testified that they personally were prevented from accessing such facilities.

Interim Policy: Checkpoints should not be conducted in primarily residential areas.

Ad Hoc Recommendation: As Pomona has many commercial zones that have multiple uses, maintain policy of not conducting checkpoints in primarily residential zones, but continue to operate checkpoints on commercial corridors.

3. Publication of Checkpoint Location

Issue: The May 3, 2008 checkpoint did not include the normal notification of Council

members. The standard process also included sending a press release to the media. Case law allows for the exact time and location of the checkpoint to remain unpublished. The effectiveness of the DUI-prevention goals of checkpoints are enhanced if the location of checkpoints is not published.

Interim Policy: The normal established procedure for notifying Councilmembers and the public shall be followed.

Ad Hoc Recommendation: A normal established procedure for notifying Councilmembers and the public shall be followed. Such policy shall include providing a press release indicating the date of checkpoints to all local press agencies, including Daily Bulletin, La Prensa, La Opinion, and Hoy. The Police Department shall also provide email notification to City Council members and City Manager indicating the time and date of checkpoints once they commence operation.

4. Additional Notification

Issue: Additional methods for notification could be utilized. More broadly publicizing *that* checkpoints will be held could increase the effectiveness of the DUI prevention goals of checkpoints. Publishing the exact location of the checkpoint could defeat such public policy goals.

Interim Policy: An enhanced notification system should be established by posting notice of traffic safety checkpoint at city hall, and utilizing the CTY-Connect system or email to provide notice of checkpoints to persons wishing to receive such notification;

Ad Hoc Recommendation: Post "Notice of Traffic Safety Checkpoint" at City Hall which will include the name and cell phone number of the Traffic Supervisor.

5. Approval of Checkpoint Location

Issue: The May 3, 2008, checkpoint deviated from the Police Department's standard procedure of a sergeant or higher level supervisor signing a pre-checkpoint planning form.

The omission of a signature on pre-checkpoint planning form has raised public concern that the event was not held within letter of the law. Though the planning of the checkpoint was conducted consistent with case law requiring supervisory personnel to be involved in the planning, with supervisory officers, some from other Avoid-the-40 agencies, involved in the planning of a joint agency checkpoint. No supervisory officer signed the pre-event checklist.

Additional criticism was heard that the May 3 checkpoint was over-saturated with officers.

Testimony was also heard in regard to a later checkpoint that persons not related to checkpoint operation were allowed unfettered access into the working area of the checkpoint and allowed to interact with officers for a significant period of time. No express policy exists related to non-essential civilians within checkpoint working areas.

Interim Policy: Command personnel at the level of lieutenant or higher should be involved in the planning of future checkpoints;

Ad Hoc Recommendation: Command personnel at the level of lieutenant or higher shall

be involved in the planning of future checkpoints. Two sergeants and one lieutenant (or higher) shall supervise each checkpoint operation. The Police Department shall also develop an updated comprehensive traffic safety checkpoint procedure manual, detailing all pre-planning and operational guidelines. Areas to be secured from the public shall be uniformly applied; no civilians (other than observers registered with the police department and persons being/having been investigated as part of the checkpoint) shall be allowed access to the working area to maintain professionalism of the investigation process and appropriate citizen engagement.

6. 3-Way Checkpoints

Issue: The May 3, 2008, checkpoint conducted as a 4-way stop checkpoint. This was the first and only such multi-directional checkpoint. Typically checkpoints are conducted in only two directions, and occasionally only in a single direction.

Interim Policy: That 3-way checkpoints receive the approval of the Chief of Police.

Ad Hoc Recommendation: Maintain policy.

7. 4-Way Checkpoints

Issue: The May 3, 2008, checkpoint conducted as a 4-way stop checkpoint. This was the first and only such multi-directional checkpoint. Typically checkpoints are conducted in only two directions, and occasionally only in a single direction.

Interim Policy: That 4-way checkpoints not be conducted.

Ad Hoc Recommendation: Maintain policy.

8. Vehicle Stop Determination

Issue: Case law requires that a “neutral formula” for stopping cars through a checkpoint be utilized to avoid profiling or discriminatory practice of effecting stops. The neutral formula can be every car, every other car, or some similar determination of how to stop vehicles. As with all Pomona Police Department checkpoints, on May 3, 2008, the neutral formula utilized was every vehicle. This was chosen to promote the DUI enforcement goals and to avoid criticism that any type of profiling or preference determines which vehicles to stop.

Interim Policy: That the “neutral formula” for determining which car to stop continue to be every vehicle, except at such times where there is a considerable line at the checkpoint, at such time the line would be allowed to proceed without stoppage until diminished to a reasonable wait period through the checkpoint.

Committee Recommendation: Maintain policy.

9. Reasonable Wait Period

Issue: Complaints were heard that at the May 3, 2008 checkpoint, significantly long lines were encountered on Mission Boulevard and San Antonio Avenue. Standard department practice is to shut down the checkpoint and allow traffic to flow through the checkpoint when significant delays are encountered.

Interim Policy: That such reasonable wait period be an average of three minutes or less.

Ad Hoc Recommendation: Maintain policy.

10. Additional signage

Issue: Case law requires that motorists be advised of the existence of a checkpoint and that an alternative route be available. Though signage was located on Mission and San Antonio at the May 3, 2008 checkpoint, it was recommended that additional signage be included or that the existing signage be made more prominent.

Interim Policy: Additional signage be included.

Ad Hoc Recommendation: Continue to use standard reflective signs advising of DUI checkpoint, and include additional electronic message board(s) positioned prior to alternate route, giving motorists more visible advanced notification of the approaching checkpoint.

11. Selection of Checkpoint Location

Issue: Pomona Police Department practice has been to locate checkpoints on major thoroughfares within the city and to rotate checkpoints among the six council districts. In order to have an effect on diminishing DUI-related events, consideration is given to DUI incidents and traffic collisions when determining where to locate checkpoints within each district. Additional consideration is given to traffic patterns, the sufficiency of the staging area, the impact on traffic flow, and relationship to adjacent residential/commercial uses. Though this is primarily a commercial zone, a residential trailer park was close to the area comprising the checkpoint line waiting area. At a subsequent checkpoint, the checkpoint waiting line was within close proximity to a store-front church. It was alleged that this impeded the ability to attend religious services, though no persons testified that they personally were prevented from accessing such facilities.

Interim Policy: That traffic safety checkpoint sites be selected based on analysis of location of DUI incidents, traffic collisions, and traffic patterns, also taking into account sufficiency of the staging area, impact on traffic flow, and relationship to adjacent residential/commercial uses.

Ad Hoc Recommendation: Maintain policy. As Pomona has many commercial zones that have multiple uses, it is recommended to maintain policy of not conducting checkpoints in primarily residential zones, but continue to operate checkpoints on commercial corridors.

It is further recommended that persons attempting to lawfully access alternate routes, and business, residences, and other places within the vicinity of the checkpoint waiting line not be prohibited from doing so; Police officers observing violations of the Vehicle Code or other law, or legitimately believing to be stopping a motorist driving under the influence may further investigate such occurrence, but may not use as a reason for such stop the sole factor that the motorist is not continuing through the checkpoint.

12. Business Advisory

Issue: Pomona Police personnel typically contact businesses prior to checkpoints which they believe will directly be affected by the checkpoint. Pomona Police personnel did contact

several businesses in anticipation of the May 3 checkpoint. However, given the scope of the checkpoint and the multi-jurisdictional scope of the checkpoint, not all businesses ultimately effected by the checkpoint were personally contacted by Pomona Police personnel prior to the May 3 checkpoint.

Interim Policy: That all businesses in the affected area be advised before the checkpoint is implemented, and thanked after the checkpoint is conducted.

Ad Hoc Recommendation: That all businesses (including churches and non-profit organizations) within in the area between the alternate routes on the checkpoint thoroughfare be advised before the checkpoint is implemented, and provide a letter to allow business owner/management to comment prospectively on checkpoint.

13. Identification of Participating Agencies

Issue: At the May 3, 2008 checkpoint there were several agencies participating, though there was no indication to the public which agencies or why officers from other agencies were acting within the City of Pomona. It was recommended that signage advising of the agencies participating in multi-jurisdiction checkpoints could alleviated such confusion.

Interim Policy: That signage indicate the law enforcement agencies participating in the operation and the funding source for such operation.

Ad Hoc Recommendation: Maintain policy.

14. Impound Policy

Issue: Since approximately Fall 2005, the policy of the Pomona Police Department has been not to utilize VC 14602.6 (which requires a thirty (30) day impounding the vehicle driven by and person who has never been issued a license) to impound vehicles of first-time unlicensed drivers at checkpoints, but to use a one day impound vehicles driven by drivers who have never before been cited for driving without a drivers license under VC 22651(p), which allows citation as a impound of the vehicle for one (1) day. This policy was in place at the time of the May 3 checkpoint, however allegations have been made that this policy is not applied in a neutral manner.

Interim Policy: That the current policy regarding 1-day impounds for unlicensed first offenders at checkpoints be maintained.

Ad Hoc Recommendation: Maintain policy. That such policy be formalized by Chief of Police.

15. Waiting Area

Issue: After the May 3 checkpoint, criticism was heard that there was no area for persons whose vehicles were impounded were turned out onto the streets into potentially dangerous situations.

Interim Policy: That a waiting area be established at each checkpoint.

Ad Hoc Recommendation: Maintain policy. Clearly identify waiting area location.

16. Use of Phone After Impound

Issue: After the May 3 checkpoint, criticism was heard that persons whose vehicles were impounded had no way to arrange for alternative transportation away from the checkpoint site. While cell phones have at times been available at prior checkpoints for use by drivers of impounded vehicles, such availability has not been uniformly advertised to drivers.

Interim Policy: That a driver of an impounded vehicle be offered the use of a phone at the checkpoints.

Ad Hoc Recommendation: Maintain policy.

17. Ad Hoc Committee

Issue: At the June 2, 2008 council meeting, council appointed an *ad hoc* committee consisting of Councilmembers Hunter, Carrizosa, and Rodriguez, and the City Manager, City Attorney, and Chief of Police, to evaluate the May 3 incident and checkpoint policy.

Interim Policy: That the Council appoint an *ad hoc* liaison committee, which would be used to address issues related to police policy issues related to checkpoints.

Ad Hoc Recommendation: Disband *ad hoc* Committee as purpose has been met.

18. Avoid-the-40 Participation

Issue: The Office of Traffic Safety provides finding for regional DUI enforcement. The Avoid-the-40 (now called Avoid-the-100) consists of 39 other agencies (now 99 other agencies) to assist with such regional DUI enforcement efforts. As many other smaller agencies their own DUI checkpoint without participation by other agencies, they require other agencies to participate in checkpoints within their city. The Pomona Police Department has sufficient staffing resources to conduct its own checkpoints without asking for other agencies to come into the City.

Interim Policy: Continue to participate in the Avoid-the-40 program as per agreements entered into by the city. Do not host additional Avoid-the-40 operations until further analysis is completed.

Ad Hoc Recommendation: Continue to participate in the Avoid-the-40 (now “Avoid-the-100”) program as per the agreements entered into by the City. Future participation in such program to be approved by the City Council consistent with recommendation in item number 21 below.

19. Checkpoint Atmosphere

Issue: At the May 3 checkpoint, criticism was heard that there was a perceived “celebratory atmosphere” or “party” at the conclusion of the checkpoint. While no organized party was conducted, at meal times and conclusion of the checkpoint, the congregation of personnel led to an atmosphere that was not closely monitored that turned into a perceived display not consistent with professional conduct at a checkpoint event.

Interim Policy: Set policy of no celebration or party at traffic safety checkpoints.

Ad Hoc Recommendation: Maintain policy. Set policy of staggered meal break to avoid grouping of personnel and presenting negative public perception of staff at Traffic Safety Checkpoints.

20. Data Collection

Issue: Complaints were received that insufficient data was collected at the May 3 checkpoint. In fact data is collected at each checkpoint and is provided to the OTS on a quarterly basis. Allegations have been made that data collection done prior to the May 3 checkpoint was insufficient.

Interim Policy: Continue data collection and reporting as currently done on a quarterly basis to OTS.

Ad Hoc Recommendation: Maintain policy.

21. Grant Approval Process

Issue: While the City Council approves the receipt of OTS grants, this is done after staff resources have been expended to apply for the grant, and after OTS has made the determination to offer the grant. As there are often turn-around times for grant application that do not fit within the required lead time for approval by the city council at regular council meetings, past practice has been to apply for grants and seek acceptance of such funds by council after award by OTS. Past practice has also been to include goals relating to the number of cars impounded as part of DUI enforcement operations.

Interim Policy: Continue approval of grant awards at City Council meetings.

Ad Hoc Recommendation: During initial grant application process, Police Department will notify Councilmembers of intent to apply for grant through inter-office communication of intent to seek grant funds. Final acceptance of grant award will be by City Council at Council Meeting. The Department will also discontinue stating as a goal in DUI grants to increase the number of vehicles impounded (unless where required by the grant specifications).

B. ADDITIONAL RECOMMENDATIONS FROM AD HOC COMMITTEE

1. Provide Advisory at time of Checkpoint Impound

Issue: Concerns were raised that persons are unaware of 1) their rights to appeal an impound under certain circumstances, 2) where their vehicle was taken, 3) how long of an impound period was being imposed, and 3) the process for retrieving their vehicle.

Ad Hoc Recommendation: Provide information at the time of impound as to appeals procedure, release procedure, and where vehicle may be retrieved. This information is intended to clearly indicate to the driver whether or not his/her vehicle was taken for one or thirty-days, exactly what their options are, and exactly where to go. These handouts should be available in English and Spanish.

2. Consider Establishing Appeals Process for Post-Storage Hearing

Issue: Under Vehicle Code section 14602.6(b) a post-storage hearing is required for 30-

day impounds. Such hearing is currently done at the Police Traffic Bureau office located at the Metrolink station. The Vehicle Code allows the registered owner to present evidence to determine the validity of the impound, or mitigating circumstances surrounding the impound. Typically these hearings are conducted by Traffic Bureau personnel under the supervision of a sergeant. Allegations were heard that such typical procedure has not been followed in the past. Members of the public requested to the Committee that an independent body review these hearings. The Committee heard discussion on this issue and makes the following recommendation:

Ad Hoc Recommendation: That staff research the possible forms of the post-storage hearing process required under VC 14602.6 for vehicles impounded at checkpoints, including the possibility of implementing a non-judicial appeals process reviewed by persons outside of the police department.

RECOMMENDATION

That the City Council adopt the proposed recommendations of the Ad Hoc Committee on Traffic Checkpoints.

Attachments:

- 1) June 2, 2008 Council Report re Checkpoints (without attachments 1-7 thereto).
- 2) June 2, 2008 Minutes (partial) showing Council action.
- 3) Form letter and List of businesses executing letter (Originals on-file with City Attorney's office)



CITY OF POMONA COUNCIL REPORT

June 2, 2008

To: Mayor and Members of the City Council

From: Linda Lowry, City Manager *RL for LL*
Joseph Romero, Chief of Police

Arnold Alvarez-Glasman, City Attorney
By: Andrew L. Jared, Assistant City Attorney *AS*

Subject: Traffic Safety Checkpoints

SUMMARY

Recommendation – That the City Council adopt the proposed recommendations.

Fiscal Impact – None. Traffic Safety Checkpoints are funded through Office of Traffic Safety (OTS) grants.

Public Noticing Requirements – None.

Previous Council Action – The City Council adopted Ordinance Nos. 4084, 4085, and 4086 awarding non-exclusive towing franchises to three towing companies. The Council adopted Resolution Nos. 2003-160, 2006-82, and 99-28 setting fees associated with towing franchise fees, towing rates, and vehicle release fees. Council has also approved receipt of OTS grants.

Introduction

This report addresses the following issues:

1. The current state of the law regarding traffic safety checkpoint operations,
2. A discussion of the points made by the Pomona Speaks Coalition in the Petition to the City Council,
3. Summary of Data Collected Regarding Checkpoints,
4. Discussion of certain statements at prior council meeting, and
5. Summary of Recommendations to Council for improving Traffic Safety

Agenda Item No. 11

Checkpoint operations.

Background

The Pomona Police Department has conducted traffic safety checkpoints since 1998. The checkpoints are rotated throughout the City to focus inspections at areas with a high incidence of traffic collisions. Additional factors regarding major thoroughfares, residential zones, and availability of staging areas are also taken into consideration when selecting the specific sites.

The purpose for traffic safety checkpoints is to reduce the number of accidents, injuries and fatalities caused by unlicensed drivers and intoxicated drivers. Through vigorous enforcement of traffic safety laws, since the implementation of the checkpoints fatalities from DUIs have decreased from 22 in 2003 to 7 in 2007, with no fatalities thus far in 2008. Such reductions have continued even in light of the department policy as instituted in 2006 of imposing one-day impounds at traffic safety checkpoints under most circumstances in lieu of a 30-day impound.

Each year approximately twenty-four checkpoints are conducted. Several each year are conducted in association with other agencies (e.g., La Verne Police, Claremont Police, San Bernardino County Sheriff), typically at the border of the neighboring jurisdiction.

The May 3, 2008 checkpoint was done in conjunction with "Avoid the 40" which is a consortium of 39 other law enforcement agencies that share man-power to staff checkpoints. This was the first Avoid the 40 checkpoint within the City. Pomona Police officers have attended Avoid the 40 checkpoints in other cities in the past. Each agency participating in an Avoid the 40 checkpoint is responsible for payment of its own personnel participating in such checkpoint, typically through OTS grants. The justification for such a joint effort is that due to the increased staffing needs for a checkpoint operation many smaller law enforcement agencies can only acquire the required number officers is to allow other agencies to assist. The City of Pomona personnel participating in these operations are paid from reimbursement from the Avoid the 40 OTS traffic safety grant.

I. California Law Regarding Safety Checkpoints

The U.S. Supreme Court has established a three-part test to evaluate whether a checkpoint is valid under the United States Constitution:

- (1) Whether the public interest is served by the stop,
- (2) The degree to which the stop advances the public interest, and
- (3) The severity of the interference with individual liberty.

The California Supreme Court has evaluated two checkpoint cases:

- Ingersoll v. Palmer: upholding California's first sobriety checkpoint in November, 1984
- People v. Banks: evaluating the validity of a checkpoint lacking advance publicity

A. Public Interest and Advancement of the Public Interest

The California Supreme Court has held that sobriety checkpoints meet parts 1 and 2 of the above test, stating that "(1) deterring drunk driving and identifying and removing drunk drivers from

the roadways undeniably serves a highly important governmental interest,' and (2) sobriety checkpoints advance this interest." People v. Banks, citing Ingersoll, 43 Cal. 3d 1321, 1341.

Applying this test to the checkpoints done in Pomona under the OTS Grants (the "Sobriety Checkpoint Program for Local Law Enforcement Agencies" grants), the grants state that the goal of the program is "to reduce the number of victims killed and injured in alcohol involved crashes in cities participating in this program."

The grants also list the following six goals as integral to the program:

- (1) to reduce the number of victims killed in alcohol involved crashes,
- (2) to reduce the number of victims injured in alcohol involved crashes,
- (3) to reduce nighttime (2100 to 0259 hours) single vehicle fatal crashes,
- (4) to reduce nighttime single vehicle injury crashes,
- (5) to reduce hit and run fatal crashes, and
- (6) to reduce hit and run injury crashes.

The checkpoint done on May 3, 2008, was conducted in part under the OTS grant. Accordingly, the first and second parts of the test are met by asserting a valid public interest and the advancement of such public interest.

The third prong in analyzing the constitutionality requires evaluation of an eight-factor evaluation to assess intrusiveness.

B. Eight Factor Test to Assess Intrusiveness

The California Supreme Court has articulated eight factors that must be evaluated to assess intrusiveness. The court noted that such factors "provide functional guidelines for minimizing the intrusiveness of the sobriety checkpoint stop." The Court also stated that

"... while the intrusiveness of a sobriety checkpoint stop is not trivial, the enumerated safeguards operate to minimize the intrusiveness to the extent possible. The fright or annoyance to motorists condemned in connection with roving stops is absent *when the checkpoint is operated according to the guidelines followed here.*" *Id.*

Accordingly, checkpoints operated by the Police Department should be evaluated based on the following eight factors to measure the intrusiveness:

(i) Whether law enforcement supervisors make decisions and plan the checkpoint, and not officers in the field

- In Pomona, the decision of when and where to conduct a checkpoint, is assigned to a sergeant in the traffic division. Operational details are reviewed by command staff. Officers in the field are not authorized to conduct, nor have they ever conducted, a checkpoint without approval by supervising personnel. The Police Department has a checklist to ensure the proper implementation of such procedures. (Att. 1).
- For the May 3, 2008 checkpoint, this practice was followed.

- For future checkpoints, it is recommended that “command level personnel” at the level of lieutenant or higher are directly involved in the planning and implementation of the operation.

(ii) Whether motorists are stopped according to a neutral formula;

- In Pomona, the neutral formula adopted as standard policy is to check every vehicle. Other departments use “every other car”, “every third car”, etc. The decision to adopt the every car formula is based on two policies:
 - 1) to make sure an impair driver does not slip through the checkpoint, and
 - 2) to eliminate the argument that bias is present in the decision to stop a car

The standard practice also is to allow for a break in checkpoint activities when the traffic line gets too long. This is to accommodate factors iii, iv and vii below. Such practice is consistent with court decisions which allow one neutral formula to be changed to a different neutral formula if traffic began to back up and then resumed when traffic volume permitted resumption of safe checkpoint operation.

- For the May 3, 2008 checkpoint, the standard practices were followed.
- For future checkpoints, it is recommended that the every driver neutral formula continue to be implemented.

(iii) Whether adequate safety precautions are taken (i.e., proper lighting, warning signs, and signals, clearly identifiable official vehicles and personnel are used);

- In Pomona, the standard practice is to have cone patterns of appropriate length and dimension per the traffic engineer, to have flashing traffic signals (when conducted at intersections), to have temporary stop signs at the investigation line, to the investigation areas well lit by overhead lighting, to have message boards indicating the nature of the checkpoint, and to have a sign indicating the nature of the checkpoint ahead placed prior to an alternate route of travel.
- For the May 3, 2008 checkpoint, the standard practices were followed as to signage. However, this operation was the first 4-way checkpoint conducted in the city. Though this was essentially two 2-way checkpoints, it is apparent that the coordination of such operation creates unique operational issues (e.g., traffic coordination, officer safety, traffic safety) that require a higher degree of care and coordination.
- For future checkpoints, it is recommended that additional signage be included. It is further recommended that 2-way checkpoints continue to be used, but that 3-way or 4-way checkpoints only be conducted under direct approval of the Chief of Police. The Chief has announced that he will not approve of 4-way checkpoints.

(iv) Whether the location of the checkpoint was purposefully chosen and decided by considering safety issues;

- In Pomona, the standard practice is to locate checkpoints in non-residential neighborhoods, on arterial or major roads. Locations are selected to address prior incidents of DUI and traffic collisions with consideration given to accessibility for staging area, officer safety, and checkpoint adverse impact on traffic patterns. The

checkpoints are circulated among the six council districts, as best as can be done given residential patterns and operational requirements. Based on such constraints, typically District 2 and the Phillips Ranch area of District 5 receive fewer checkpoints over the average year.

- For the May 3, 2008 checkpoint, the standard practices were followed in determining the location of the checkpoint at Mission and San Antonio. However, given the mixed use of commercial and legal non-conforming residential in the commercial corridor, the checkpoint was located near a mobile home park. The standard followed by the department is not to locate in residential zones was followed as this was located on two intersecting commercial corridors.
- For future checkpoints, it is recommended that sites continue to be selected based on a priority of location of traffic collisions and DUI incidents, with consideration given as to sufficiency of the staging area, the impact on traffic flow, and relation to adjacent residential uses.

(v) Whether the time the checkpoint was conducted and its duration reflect “good judgment” on the part of law enforcement officials;

- The typical practice is to address early evening through late night/early morning times of day. Typically checkpoints in Pomona begin at 4 pm and run through 2 am. Local considerations such as “happy hours” and holiday weekends account for checkpoint start times prior to 6 pm. This is not contrary to the OTS grant funding which will fund checkpoints running from 6 pm (1800 hours) through 2:59 am (0259 hours), as hours worked by staff before 6 pm are paid by Police Department overtime accounts and hours worked between 6 pm and 3 am are reimbursed through the grant.
- In addition to the OTS grant for DUI operations, another Traffic Safety Checkpoint grants exists, known as the “STEP” grant. This grant is for enforcement details between October 2006 and September 2008, including red light enforcement, aggressive driver programs, and CDL enforcement. Through this program up to 12 CDL/DUI checkpoints per year (24 total) are conducted. Based on the requirements for this grant there are no time restrictions for checkpoint enforcement.
- For the May 3 checkpoint, the operation ran from 4:00 pm to 12:00 am. This duration is typical of checkpoints operated in the City.
- For future checkpoints, the Police Department concurs that checkpoints should not be conducted prior to 6 pm and that staffing levels be appropriate to the duration and anticipated level of traffic flow based on prior experiences at such location.

(vi) Whether the checkpoint demonstrates sufficient indicia of its official nature (to reassure motorists of the authorized nature of the stop);

- The concern expressed by the courts here relates to ensuring that motorists would reasonably believe that the checkpoint is a legitimate stop. This is ensured by having sufficient signage, multiple uniformed officers, and police vehicles.
- May 3, 2008 uniformed officers from multiple agencies were present. The area was well lit and signage provided assurances of the legitimacy of the checkpoint.

- For future checkpoints, it is recommended that additional signage be placed at the line indicating the law enforcement agencies participating in the operation, and that signage be placed indicating the source of funding for the operation.

(vii) Whether the average length and nature of the detention is minimized;

- The average length of time spent in the line is minimized by two practices Pomona Police employ. First, contact with each driver begins with a simple question regarding producing a driver's license. The officer observes the driver's demeanor and behavior to determine potential alcohol consumption and may ask further questions to determine level of intoxication. If further evaluation is warranted due to responses or manner of response, or if the driver cannot immediately produce a valid driver's license, then the driver is directed to the staging area nearby where officer and drive safety can be maintained. Second, if the wait at the line poses a traffic hazard, the line will be shut down for a sufficient period of time for normal traffic patterns to return. These two methods ensure that average length and nature of detention is minimized.
- For the May 3, 2008 checkpoint, the standard practices were followed.
- For future operations, it is recommended that the methods of average detention be continued, and that a standard of less than three minutes wait in line be targeted.

(viii) Whether the checkpoint is preceded by publicity.

- Publicity is required in the form of a press release indicating that there will be a checkpoint conducted within the city. However, exact time and location is not required to be announced. Additionally, though not required by law, typically in addition to the Daily Bulletin notification is given to each councilmember and the Mayor. In the Banks case, the California Supreme Court noted that "advance publicity is not a constitutional prerequisite" for sobriety checkpoints and concluded that a sobriety checkpoint conducted "in the absence of advance publicity, *but otherwise in conformance* with the guidelines" does not result in an unreasonable seizure within the meaning of the United States Constitution. They also noted that courts throughout the U.S. have uniformly held that advance publicity *need not include* reference to the location of the checkpoint. The court stated that "such precision is unnecessary and counterproductive, because publicizing this type of information would allow motorists to avoid the checkpoint, thereby lessening its deterrent effect."
- For the May 3, 2008 checkpoint, the press release was sent to the Daily Bulletin. However, the customary notice to each councilmember and the Mayor was not done in the typical fashion.
- For future checkpoints, it is recommended that the normal press release be circulated to the established sources and methods, that anyone wishing to receive such notice be able to register to be included on a list of notified parties (by CTY Connect phone service or email delivery), and that the notice be posted at City Hall. Additionally, it is recommended that the council members and the Mayor be advised via email of the particular location at the time of operation.

II. POMONA SPEAKS COALITION PETITION TO CITY COUNCIL

A. Points Raised by the Pomona Speaks Coalition

The Pomona Speaks Coalition ("the Coalition") provided a petition to the City Council at the council meeting of May 27, 2008. (Att. 2). The Coalition is comprised of "Latin@ Rountable, Labor Council for Latin American Advancement, Pomona Latino Chamber of Commerce, La Gente Unida, The Inland Valley Peacemakers Council, and Pomona residents and allies." The petition raises the following ten points:

"1. Checkpoints should only be conducted from 9:00 p.m. to 2:59 a.m. per the recommendation of OTS in the grant (contract) document."

- **CLARIFICATION:** OTS funds checkpoints from 1800 hours (6:00 PM). Reference is made in the OTS grant document to the "nighttime period" as defined by California Highway Patrol as 9:00PM through 2:59 AM. As a policy to promote reduction of fatalities and single vehicle collisions the 9 pm to 2:59 "nighttime" period is referenced.
- **CURRENT POLICY:** Currently checkpoints in Pomona are typically operated from 4:00 pm through 2:00 am.
- **RECOMMENDED POLICY:** The Police Department recommends that checkpoints begin no earlier than 6:00 pm.

"2. A driver stopped without a valid driver's license should be offered an opportunity to allow another licensed driver to take custody of the vehicle per the opinion of the California Legislative Counsel's Office (5-29-07)"

- **CLARIFICATION:** Office of Legislative Counsel of California provides analysis of bills currently on the floor of the state Assembly or Senate. It does not provide advisory or binding opinions. Any recommendation in such analysis would be of statements in a pending piece of legislation, not a position on the issues. No reference to the piece cited could be identified.
- Vehicle Code section 14602.6 requires a 30 day impound where an officer arrests an unlicensed driver or vehicle involved in a collision without the driver being arrested. Inherent is the discretion of the officer to cite under this section of the Vehicle Code or under VC 22651(p) requiring a one day impound where a driver is cited for driving without a license. The statutory intent is clear that the impound is present to prevent the means of the act of illegal driving from being used in the continued illegal act.
- Such sections impose minimum penalties, with due process safeguards imposed through post-detention hearings. No provision is present under the Vehicle Code to allow another driver to take the vehicle.
- Allowing another driver to take the car of the cited driver poses additional complications, including potential liability to the City. Some difficult scenarios include: release of vehicle where the cited driver is not the registered owner; release of vehicle to driver with provisional license; release of vehicle to driver who cannot arrive for several hours posing on-site storage issues, liability for damage to the vehicle and personal property, etc.

- **CURRENT POLICY:** Currently drivers at checkpoints in Pomona are not cited for a 30 day impound, unless the driver is cited for driving with a suspended or revoked driver's license or if the driver is found to be a repeat offender of driving without a license. At checkpoints, drivers cited for not having a valid driver's license are issued a one-day impound under 22651(p). The vehicle may be retrieved by the registered owner and a person with a valid driver's license the following day.
- **RECOMMENDED POLICY:** It is recommended that this policy be maintained.

"3. If a vehicle is impounded and the driver or passengers cannot arrange their transportation, the police should provide a safe haven especially if women, children, elderly or disabled persons are involved."

- **CURRENT POLICY:** Currently at checkpoints there is an area dedicated for drivers to remain safely while waiting for a ride after vehicle impound.
- **RECOMMENDED POLICY:** It is recommended that the police department offer the use of a phone at checkpoints to allow drivers of impounded vehicles to secure transportation. It is further recommended that the current policy of a waiting area for drivers of impounded vehicles be maintained.

"4. There should not be an automatic impound of an unlicensed driver's vehicle. The driver should be advised of the statutory exceptions and the right to present mitigating circumstances at the checkpoint interview."

- **CLARIFICATION:** Limited exceptions exist under the vehicle code for continued impoundment of vehicles of an employer, rental vehicles, stolen vehicles, and certain license suspensions/revocations (non-reckless driving, non-DUI, etc.). However, such exceptions are inapplicable to unlicensed or typical revoked/suspended licensed drivers. Case law exceptions related to proximity to one's home (e.g., *Miranda v. City of Cornelius* and *People v. Williams*) are also inapplicable as the checkpoints do not occur in residential areas.
- **CURRENT POLICY:** Presently one-day impounds are issued for unlicensed drivers, and 30-day impounds are issued for suspended/revoked licensed drivers. Currently drivers of impounded vehicles at checkpoints are given advisory information (Att. 9) describing the procedures (in English and Spanish) for retrieving their vehicle. Such information is in addition to a citation they receive for the violation incurred.
- **RECOMMENDED POLICY:** It is recommended that this policy be maintained.

"5. Checkpoints should not be conducted in residential areas. The OTS recommends they be in high-flow traffic areas of frequent traffic accidents."

- **CURRENT POLICY:** Traffic safety checkpoints are not conducted in purely residential neighborhoods. Checkpoint sites are determined and selected based on the frequency of accidents and DUI citations. Consideration is given to locate checkpoints on major thoroughfares (Garey, Mission, Holt, Valley, Towne, San Antonio, Reservoir, Arrow Highway, Bonita, and Foothill). Consideration is given to avoid adversely impacting traffic patterns along such thoroughfares. Additional consideration is given to select locations where adequate staging/work area for further investigations and vehicle storage can be safely conducted (i.e., adjacent parking

area).

- **RECOMMENDED POLICY:** It is recommended that this policy be maintained.

“6. The City Council should order a review of the Tow Truck/Impound businesses’ contracting process with the City and its agents and their compliance with state law regarding unconscionable practices.”

- **CURRENT POLICY:** Three towing companies are used: S and J Towing, Bill & Wags Towing, and Pomona Valley Towing. All three were awarded a three year non-exclusive franchise by the City Council on September 11, 2006 (Att. 3: Franchise Agreements, and Ord. 4063, 4064, and 4065 awarding Franchise Agreements). Only one other company applied for a franchise but was determined to be non-compliant with the City Code franchise ordinance requirements (PCC 58-671, et seq.). The council may award as many franchises as needed and that qualify for consideration under the franchise ordinance. Per the PCC and the terms of the franchise, the three towing franchisees rotate as to which company is responsible for the next tow of a vehicle due to a city-initiated call.

As set by council Resolution number 2003-160 (July 21, 2003)(Att. 4), the City receives a franchise fee of \$50 per tow conducted by a franchisee if the tow is initiated by a City or police call for service. The maximum allowed fee a franchised towing company may charge for such call for service was set by Council Resolution Number 2006-82 (July 10, 2006) (Att. 5). at \$115 per hour for towing services, \$25 per day for outdoor storage, \$27 per day for indoor storage, and \$100 for weekend release. Though the resolution allowed for a 5% increase in such rates annually in 2007, 2008, and 2009, a recent survey of current rates charged indicates that franchisees have not raised their towing rates as they could have done under the resolution. Since December 2007, the City has received \$67,800 in franchise fees which includes tows resulting from checkpoint operations as well as all other non-checkpoint tows conducted by the franchisee. Monies from franchise fees are directed to the general fund. Annually such franchise fees represent approximately \$600,000 in revenue to the City.

In order to process the release of a vehicle, the City charges a Vehicle Release Fee of \$100 as set by Council Resolution 99-28 (February 1, 1999). (Att. 6). Where the impound was the result of a violation related to a driver’s license issue (except revocation/suspension for non-payment of child support), the Vehicle Release Fee is directed to the Traffic Offender Fund where such monies are restricted for use for further traffic enforcement activities.

- **RECOMMENDED POLICY:** It is recommended that this policy be maintained. However, council may consider amending the franchise fees, schedule of towing fees, and/or vehicle release fee through further council action.

- “7. The City Council should order an investigation and report of the May 3, 2008 checkpoint which produced numerous complaints from citizens and even City Council members regarding the over-zealous and excessive conduct of Pomona officers and outside agencies that participated.”**
- Council could choose to initiate such an investigation. This report is intended to address the concerns and questions presented to date.
 - As indicated at the council meeting of May 27, 2008, a complaint process exists through the police department for allegations of conduct by individual officers. Such “citizen complaints” result in an investigation for each complaint received.
- “8. The City Council should appoint an ad hoc committee of residents, city officials, and a representative of OTS to oversee these demands.”**
- **CLARIFICATION:** OTS is the California Office of Traffic Safety. It has the mission statement to “obtain and effectively administer traffic safety grant funds to reduce deaths, injuries and economic losses resulting from traffic collisions.” No contact has been made or provided to indicate OTS would be willing to participate at a local level in an ad hoc committee to evaluate local checkpoint practices.
 - **CURRENT POLICY:** A committee of residents appointed by city officials currently exists in the form of the Community Life Commission (CLC). The CLC’s purpose is to provide a forum for the community to address concerns about police activities in the community. Though not specifically addressed in the code, one or more council members could attend CLC meetings as an *ad hoc* committee to provide feedback to the council at large.
 - **RECOMMENDATION:** That the CLC be used as a forum for continued discussions and citizen redress of checkpoint issues.
- “9. A mid-grant evaluation and report should be done with a public hearing to assess the accomplishments of the checkpoints balanced against the counterproductive social, political and economic impacts. This should be done before seeking a renewal grant from ORA on 9-30-08.”**
- **CURRENT POLICY:** Quarterly reports are prepared and submitted to OTS. Accordingly, the ‘mid-grant review’ is conducted four times a year. Receipt of the grant is approved by the City Council at public City Council meetings. Data is collected and a report created for each checkpoint operation.
 - **RECOMMENDATION:** Continue the reporting and data collection currently conducted. The requested public hearing for the grant renewal will be conducted in the form of the City Council meeting to approve application and receipt of future grants. Without standards for the evaluation of the criteria indicated in the petition, no comment can be made as to evaluation of social, political, and economic impacts.
- “10. The City Council should order a suspension of checkpoint operations until these issues are fully and adequately addressed.”**
- Currently, the City is mid way through the current grant. Defaulting on the current agreement may jeopardize future funding.
 - It is recommended that complete suspension of checkpoint operations until issues are

discussed and addressed not be completed as this may cause unintended future consequences, including breach of the current Avoid the 40 grant agreement.

III. SUMMARY OF DATA

Certain data is routinely collected and readily available for Traffic Safety checkpoints. Demographic data is not among that data collected in this manner.

A. Data Regarding Traffic Safety Checkpoint on May 3, 2008

The following chart details the statistics surrounding the May 3, 2008 checkpoint, located at Mission and San Antonio:

Location	Date	Vehicles Screened	Arrests (DUI Arrests)	Impounds		Total Citations Issued	Suspended/Revoked License Citations (VC 14601)
				Total	30 Day		
Mission & San Antonio	5/3/08	2862	3 (2)	108		125	16

B. Data of Prior traffic Safety Checkpoints in the City of Pomona

As a point of comparison to the May 3 checkpoint, the following chart details the statistics collected for the checkpoints conducted over the past 12 months:

Location	Date	Vehicles Screened	Arrests (DUI Arrests)	Impounds		Total Citations Issued	Suspended/Revoked License Citations (VC 14601)
				Total	30 Day		
Valley & Kellogg	5/16/08	2301	1 (1)	74	2	83	11
Mission & San Antonio	5/3/08	2952	2 (1)	108	6	125	16
Garey & Freda	4/25/08	4298	2 (2)	70	4	82	13
Reservoir & Olive	4/12/08	4027	4 (3)	152	4	170	19
Mission & Curran	3/28/08	6323	2 (1)	194	6	200	26
Towne & Monterey	3/8/08	3822	4 (2)	154	5	162	26
Holt & Hershey	2/23/08	CANCELLED					
Holt & Union	2/8/08	4478	1 (0)	106	9	111	19
Garey & Freda	1/26/08	CANCELLED-- RAINED OUT					
Reservoir & Second	1/2/08	2373	2 (0)	139	4	150	11
Mission & Curran	12/1/07	3207	2 (0)	126	2	140	16
Valley & Kellogg	11/29/07	3712	1 (0)	98	2	100	13
Towne & Monterey	11/9/07	4352	5 (3)	113	9	120	18
Garey & Lexington	10/27/07	5190	2 (0)	174	9	190	15
Reservoir & Olive	10/12/07	4090	6 (2)	150	3	160	10
Holt & Hershey	9/24/07	3865	6 (2)	145	10	165	20
Mission & Curran	9/10/07	3603	4 (0)	151	12	180	16
Garey & Freda	8/31/07	4756	4 (2)	64	3	72	9
Garey & Pearl	8/18/07	4003	2 (2)	96	1	98	13
Reservoir & Olive	7/28/07	3209	6 (2)	131	2	145	15
Holt & Indian Hill	7/13/07	3946	10 (2)	84	2	95	11
Holt & Union	6/23/07	3639	4 (3)	176	6	200	18
Towne & Monterey	6/6/07	3615	3 (2)	77	4	85	17

Holt & Hershey	5/18/08	3157	7 (3)	80	3	100	14
Mission & Curran	5/11/07	4889	10 (7)	158	11	170	12
Mission & Curran	4/28/07	5417	10 (5)	154	9	160	15

As demonstrated, though the four-way stop was conducted on May 3, 2008, the doubling of the operation did not result in a wholesale doubling of vehicles screened, impounds, arrests, or citations.

C. Physical Components of Checkpoint Operations

The typical checkpoint consists of the inspection line ("the line") where the initial investigation for valid driver's license and sobriety takes place, and the staging area where the investigation continues for those drivers requiring follow-up evaluation. (Att. 7). Within the staging area typically there is the "work area" where the investigation is conducted, the violator vehicle area where violators park awaiting investigation, and the tow truck area where towing companies wait for vehicles to be towed. Three signs are placed in each direction on the primary road in each direction. Signs are placed at the curb in each direction of traffic ahead of an alternate route advising that a "CDL/DUI Police Checkpoint" is ahead. Signs are placed also placed at the curb in each direction of traffic between the alternate route and the inspection line. Stop signs are placed at the line. Cones are placed to block left and right turn pockets (if present), and along the lane dividing lines (white lines) and lane separation lines (double or solid/dashed yellow). A flashing message board indicating the presence of the checkpoint is placed within this area. Motor officers are placed in the median area or curbside ahead of the lane separation cones to patrol for drivers violating the vehicle code to evade the checkpoint.

The schematic for the operation conduction on May 3, 2008 (Att. 8) contains the above described elements.

D. Personnel at Traffic Safety Checkpoint Operations

The number of personnel utilized to conduct this operation was slightly larger than other operations. Part of the decision to conduct a 4-way operation was based on the fact that the Avoid the 40 participation resulted in higher number of personnel available to the department. It consisted of 29 sworn officers and 23 non-worn personnel from Pomona, and officers from Azusa (5), Glendora (6), La Verne (2), LASD (2), and LAPD (3), and five non-sworn personnel from other agencies. With the exception of approximately 5 motor officers from other agencies, and 4 officers from other agencies working on the line, the personnel from other agencies were assigned to the working area for further investigation.

IV. ADDITIONAL ISSUES

The following are answers to several questions and issues raised in relation to the May 3 checkpoint and checkpoints in general.

"Was the May 3, 2008, checkpoint videotaped by COPS?"

No. The TV show COPS was not present at the checkpoint. However, a camera crew from KTLA was on sight to do a story about Traffic Safety checkpoints. The video has been ordered.

“Are the towing companies owned by police officers?”

No. No current or former Pomona police officers own any of the towing companies issued franchises in the City of Pomona.

“Is there a ‘party’ at the end of each Traffic Safety Checkpoint?”

No celebration is sanctioned by the City or the Police Department. While there were allegations at the last council meeting that officers and tow franchise employees showed support and congratulated on another during the meal break and at the conclusion of the operation, there is not a policy to do so or to create a “party atmosphere.” It is recognized that a proper policy is that such behavior be prohibited.

IV. SUMMARY OF RECOMMENDATIONS

The following are a summary of recommendations identified above:

1. Traffic Safety Checkpoints shall not be conducted prior to 6 pm
2. Traffic Safety Checkpoints should not be conducted in residential areas
3. The normal established procedure for notifying Councilmembers and the public should be followed
4. An enhanced notification system should be established by posting notice of traffic Safety Checkpoint at City Hall, and utilizing the CTY Connect system or email to provide notice of checkpoints to persons wishing to receive such notification
5. Command personnel at the level of lieutenant or higher should be involved in the planning of future checkpoints
6. That 3-way checkpoints receive the approval of the Chief of Police
7. That 4-way checkpoints not be conducted
8. That the “neutral formula” required under California law for determining which car to stop continue to be every vehicle, except at such times where there is a considerable line at the checkpoint, at such time the line would be allowed to proceed without stoppage until diminished to a reasonable wait period through the checkpoint
9. That such reasonable wait period be an average of three minutes or less
10. Additional signage be included
11. That Traffic Safety Checkpoint sites be selected based on analysis of location of DUI incidents, traffic collisions, and traffic patterns, also taking into account sufficiency of the staging area, impact on traffic flow, and relationship to adjacent residential uses
12. That all businesses in the affected area be advised before the checkpoint is implemented, and thanked after the checkpoint is conducted
13. That signage indicate the law enforcement agencies participating in the operation and the funding source for such operation
14. That the current policy regarding 1-day impounds for unlicensed first offenders at checkpoints be maintained
15. That a waiting area be established at each checkpoint
16. That a driver of an impounded vehicle be offered the use of a phone at the checkpoints
17. That the Council appoint an ad hoc liaison committee to the Community Life Commission which could be used to address issues related to police policy issues related to checkpoints

18. Continue to participate in the Avoid the 40 program as per the agreement entered into by the City. Do not host additional Avoid the 40 operations until further analysis is completed
19. Set policy of no celebration or party at Traffic Safety Checkpoints
20. Continue data collection and reporting as currently done on a quarterly basis to OTS
21. Continue approval of grant awards at city council meetings

Attachments:

- 1) Checklist of Checkpoint Operations
- 2) Petition to City Council, by Pomona Speaks Coalition
- 3) Towing Franchise Agreements and Ordinances
- 4) Council Resolution No. 2003-160
- 5) Council Resolution No. 2006-82
- 6) Council Resolution No. 99-28
- 7) Traffic Safety Inspection Line Schematic (Typical Inspection)
- 8) Traffic Safety Inspection Line Schematic (5/3/08 Inspection)
- 9) Advisory Information Given at Time of Impound

7. CALHOME PROGRAM – RESPONSE TO NOTICE OF FUNDING AVAILABILITY (NOFA)
131.3.2 FOR OWNER-OCCUPIED MANUFACTURED HOME REHABILITATION PROGRAM

–RESOLUTION NO. 2008-55: A Resolution of the City Council of the City of Pomona authorizing submittal of an application to the California State Department of Housing and Community Development for funding under the CalHome Program

Councilmember Carrizosa inquired and Housing Manager DeFrank informed that staff had specifically targeted trailer parks that had been assigned a rating of five or above. She noted that the list of target parks had been approved by the City Council approximately five years ago. Councilmember Carrizosa requested a copy of the list of trailer parks.

Councilmember Hunter asked and Housing Manager DeFrank advised that this grant applied to manufactured housing, as well as mobile home parks.

MOTION BY COUNCILMEMBER HUNTER, SECOND BY COUNCILMEMBER CARRIZOSA, CARRIED BY UNANIMOUS VOTE OF THE MEMBERS PRESENT (7-0), ADOPTING RESOLUTION NO. 2008-55 AUTHORIZING SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE CALHOME PROGRAM.

10. APPROVAL OF UNDERPASS MURAL PROJECT AT GAREY AVENUE RECOMMENDED
125.2.3 BY THE CULTURAL ARTS COMMISSION

Councilmember Lantz expressed concern with the design of the mural. She did not think it would fit in with the architecture of the downtown area, or the Metrolink Center.

Councilmember Rothman suggested sending the project back to the Cultural Arts Commission for additional choices.

Mr. Larry Egan, Downtown Pomona Business Owners Association, noted that the artist was currently out of the country. He stated that the mural was intended to be an art deco design and that he believed the artist would be amenable to making changes to the design.

MOTION BY COUNCILMEMBER ROTHMAN, SECOND BY COUNCILMEMBER ATCHLEY, CARRIED BY UNANIMOUS VOTE OF THE MEMBERS PRESENT (7-0) SENDING THIS MATTER BACK TO THE CULTURAL ARTS COMMISSION FOR ADDITIONAL RENDERINGS TO BE PROVIDED TO THE CITY COUNCIL AT A LATER DATE.

OLD BUSINESS

11. DISCUSSION OF TRAFFIC SAFETY CHECKPOINTS
160.1

Assistant Police Chief Dave Keetle reported that there were two purposes for checkpoints. He noted that the first reason was to remove unlicensed and impaired drivers from the road; and the second purpose was to educate the public and to act as a deterrent to those unlicensed and impaired drivers contemplating driving. He commented on the dramatic reduction in fatal collisions in the City since 2003, as a result of checkpoints. He discussed the operation of the checkpoints and how they had been adapted to meet the needs of the community.

Assistant City Attorney Andrew Jared provided an overview of the legal parameters for conducting checkpoints and addressed issues related to the petition that had been submitted by the Pomona Speaks Coalition on May 27, 2008. He discussed the various recommendations in the Council report that would be implemented in future checkpoints. He stated that the investigation of the May 3 checkpoint did not reveal any egregious errors on the part of the Police Department. He noted that there were some areas where additional measures could have been taken. He provided a Power Point presentation which summarized the 21 recommendations that had been included in the report.

Police Chief Romero indicated that there had been a practice in place to provide transportation to those individuals whose vehicles were impounded. He advised that they were also provided the opportunity to make phone calls.

The following individuals spoke in favor of Police checkpoints:

- Mr. Douglas Pierce
- Ms. Cheryl Burns
- Ms. Dee Barrow
- Ms. Cherie Wood
- Ms. Carol Schlaepfer
- Ms. Virginia Madrigal
- Mr. Raymond Herrera
- Ms. Robin Hvidston
- Mr. Frank Delgado

They expressed support and appreciation for the Police Department, and voiced concerns with the harsh remarks made against the Police, and the manner in which this issue had been brought into the public forum. They stated it was the responsibility of the Police to enforce the law. They suggested that residents contact their legislators if they wanted to change the law. They stated that parents were putting their children at risk by driving without a license, and that the vast majority of Pomona residents were in support of the checkpoints. A copy of the California Code 834b and 834c regarding individuals suspected of being in the U.S. in violation of Federal immigration laws was submitted to the City Clerk.

The following individuals spoke in opposition to Police checkpoints:

- Mr. Arturo Jimenez
- Ms. Maricruz Hernandez
- Ms. Elvia Bernal
- Mr. Ignacio Montes
- Mr. Leonard Baleon
- Mr. James Sanbrano
- Mr. Jose Calderon
- Mr. Nativo Lopez
- Mr. Mike Suarez
- Mr. Gustavo Ramirez
- Mr. Alfonso Villanueva

The aforementioned individuals did not believe there had been sufficient time to discuss the recommendations presented in the report and recommended the formation of an ad hoc committee to discuss the issue. The members of the Pomona Speaks Coalition stated that they had not received a formal response to the petition submitted on May 27, 2008. They expressed concern with the way women and children were treated during the checkpoints, the time of day they were conducted, the profits made by the tow operators, and called for an immediate moratorium on checkpoints. They discussed the negative economic impact of the checkpoints on the small businesses in the surrounding area. They expressed concern with the lack of respect for others and the attitude of young children in the community towards the Police department.

Councilmember Carrizosa inquired about the type of disciplinary action that would be taken against the employees that ordered the four-point checkpoint. She questioned the cost of and use of outside agencies to conduct the checkpoint. She noted that she had requested copies of all the proposals for grants received, statistics on traffic collisions at that intersection, and statistics on all the checkpoints that had been conducted to date. She informed that she had only received statistics for one year. She asked that she be provided the financial costs for all checkpoints and the revenue the City received from them. She suggested the formation of an ad hoc committee to be comprised of the Police Chief, City Attorney,

two to three Councilmembers, and a representative from each member organization of the Pomona Speaks Coalition.

Councilmember Atchley objected to any disciplinary action being taken against employees regarding the May 3 checkpoint. He called for the community to look ahead from this point.

Councilmember Rodriguez stated that he was not against checkpoints; however, he expressed the need for more clarification on what had taken place at the May 3 checkpoint.

MOTION BY COUNCILMEMBER CARRIZOSA, SECOND BY COUNCILMEMBER RODRIGUEZ, FAILED BY MAJORITY VOTE OF THE MEMBERS PRESENT (2-5) HUNTER, LANTZ, ROTHMAN, ATCHLEY AND TORRES OPPOSED, TO POSTPONE APPROVAL OF THE 21 RECOMMENDATIONS IN THE STAFF REPORT PERTAINING TO THE CONDUCT OF POLICE CHECKPOINTS; AND TO FORM AN AD HOC COMMITTEE COMPRISED OF THE POLICE CHIEF, CITY ATTORNEY, TWO OR THREE CITY COUNCILMEMBERS, AND A REPRESENTATIVE FROM EACH MEMBER ORGANIZATION OF THE POMONA SPEAKS COALITION TO MAKE RECOMMENDATIONS REGARDING THE CONDUCT OF POLICE CHECKPOINTS TO THE CITY COUNCIL.

Councilmember Hunter stated that he supported all of the recommendations; however, he did not believe the ad hoc committee should be tied to the Community Life Commission.

Councilmember Lantz believed that the Police Department had made a significant effort to address the issues that arose during the May 3 checkpoint. She was not supportive of the ad hoc committee being a liaison committee to the Community Life Commission. She stated that an ad hoc committee should be comprised of more community members than just those representing the Pomona Speaks Coalition.

Mayor Torres advised that following the May 3 checkpoint she had attempted to schedule a meeting between the Police Department and community members to address the issues. She stated that she was told that the meeting would not take place until after the community had voiced their concerns through a march on City Hall. She noted that the City had met with One LA in the past and had been able to address concerns related to earlier checkpoints. She expressed disappointment that this current issue had not been resolved in a similar manner. She thought that the recommendations in the report were a good starting point towards resolving the issues surrounding checkpoints.

Councilmember Rothman was not in support of the ad hoc committee being part of the Community Life Commission. He stated that he would support the approval of the 21 recommendations as a start, and then review further recommendations made by the ad hoc committee.

Councilmember Carrizosa inquired and Assistant Police Chief Keetle informed that one of the grants specified that checkpoints begin after 6:00 p.m. and that the other grant did not specify a starting time.

MOTION BY COUNCILMEMBER HUNTER, SECOND BY COUNCILMEMBER LANTZ, CARRIED BY MAJORITY ROLL CALL VOTE OF THE MEMBERS PRESENT (6-0-0-1) CARRIZOSA ABSTAINED, APPROVING THE FOLLOWING RECOMMENDATIONS: (1) TRAFFIC SAFETY CHECKPOINTS SHALL NOT BE CONDUCTED PRIOR TO 6:00 P.M. (START TIME TO BE REVIEWED BY THE AD HOC COMMITTEE); (2) TRAFFIC SAFETY CHECKPOINTS SHOULD NOT BE CONDUCTED IN RESIDENTIAL AREAS (FOLLOWING REVIEW OF ZONING ISSUES BY AD HOC COMMITTEE, "SHOULD" MAY BE CHANGED TO "SHALL"); (3) THE NORMAL

ESTABLISHED PROCEDURE FOR NOTIFYING COUNCILMEMBERS AND THE PUBLIC SHALL BE FOLLOWED; (4) AN ENHANCED NOTIFICATION SYSTEM SHOULD BE ESTABLISHED BY POSTING NOTICE OF TRAFFIC SAFETY CHECKPOINT AT CITY HALL, AND UTILIZING THE CTY CONNECT SYSTEM OR EMAIL TO PROVIDE NOTICE OF CHECKPOINTS TO PERSONS WISHING TO RECEIVE SUCH NOTIFICATION; (5) COMMAND PERSONNEL AT THE LEVEL OF LIEUTENANT OR HIGHER SHOULD BE INVOLVED IN THE PLANNING OF FUTURE CHECKPOINTS; (6) THAT 3-WAY CHECKPOINTS RECEIVE THE APPROVAL OF THE CHIEF OF POLICE; (7) THAT 4-WAY CHECKPOINTS NOT BE CONDUCTED; (8) THAT THE "NEUTRAL FORMULA" REQUIRED UNDER CALIFORNIA LAW FOR DETERMINING WHICH CAR TO STOP CONTINUE TO BE EVERY VEHICLE, EXCEPT AT SUCH TIMES WHERE THERE IS A CONSIDERABLE LINE AT THE CHECKPOINT, AT SUCH TIME THE LINE WOULD BE ALLOWED TO PROCEED WITHOUT STOPPAGE UNTIL DIMINISHED TO A REASONABLE WAIT PERIOD THROUGH THE CHECKPOINT; (9) THAT SUCH REASONABLE WAIT PERIOD BE AN AVERAGE OF THREE MINUTES OR LESS; (10) ADDITIONAL SIGNAGE BE INCLUDED; (11) THAT TRAFFIC SAFETY CHECKPOINT SITES BE SELECTED BASED ON ANALYSIS OF LOCATION OF DUI INCIDENTS, TRAFFIC COLLISIONS, AND TRAFFIC PATTERNS, ALSO TAKING INTO ACCOUNT SUFFICIENCY OF THE STAGING AREA, IMPACT ON TRAFFIC FLOW, AND RELATIONSHIP TO ADJACENT RESIDENTIAL/COMMERCIAL USES; (12) THAT ALL BUSINESSES IN THE AFFECTED AREA BE ADVISED BEFORE THE CHECKPOINT IS IMPLEMENTED, AND THANKED AFTER THE CHECKPOINT IS CONDUCTED; (13) THAT SIGNAGE INDICATE THE LAW ENFORCEMENT AGENCIES PARTICIPATING IN THE OPERATION AND THE FUNDING SOURCE FOR SUCH OPERATION; (14) THAT THE CURRENT POLICY REGARDING 1-DAY IMPOUNDS FOR UNLICENSED FIRST OFFENDERS AT CHECKPOINTS BE MAINTAINED; (15) THAT A WAITING AREA BE ESTABLISHED AT EACH CHECKPOINT; (16) THAT A DRIVER OF AN IMPOUNDED VEHICLE BE OFFERED THE USE OF A PHONE AT THE CHECKPOINTS; (17) THAT THE COUNCIL APPOINT AN AD HOC LIAISON COMMITTEE, WHICH WOULD BE USED TO ADDRESS ISSUES RELATED TO POLICE POLICY ISSUES RELATED TO CHECKPOINTS; (18) CONTINUE TO PARTICIPATE IN THE AVOID THE 40 PROGRAM AS PER THE AGREEMENT ENTERED INTO BY THE CITY. DO NOT HOST ADDITIONAL AVOID THE 40 OPERATIONS UNTIL FURTHER ANALYSIS IS COMPLETED; (19) SET POLICY OF NO CELEBRATION OR PARTY AT TRAFFIC SAFETY CHECKPOINTS; (20) CONTINUE DATA COLLECTION AND REPORTING AS CURRENTLY DONE ON A QUARTERLY BASIS TO OTS; (21) CONTINUE APPROVAL OF GRANT AWARDS AT CITY COUNCIL MEETINGS.

MOTION BY COUNCILMEMBER ROTHMAN, SECOND BY COUNCILMEMBER HUNTER, CARRIED BY UNANIMOUS VOTE OF THE MEMBERS PRESENT (7-0) APPOINTING COUNCILMEMBERS CARRIZOSA, RODRIGUEZ, HUNTER AND LANTZ (ALTERNATE) AS MEMBERS OF THE AD HOC COMMITTEE TO ADDRESS ISSUES RELATED TO POLICE POLICY ISSUES RELATED TO CHECKPOINTS.

Mayor Torres requested that the meeting times for the ad hoc committee be posted on the City's website in order for members of the public to attend if they wished.

Councilmember Carrizosa communicated that she still wished to receive all of the information regarding the checkpoint that she had requested.

NOTE: Councilmember Atchley left the dais at 9:22 p.m. and returned at 9:24 p.m. The City Council recessed at 9:25 p.m. and reconvened at 9:39 p.m.

ATTACHMENT 3

September 2008

Honorable Mayor Torres and City Council members of Pomona:

I am the owner, or manager, of the business _____, located in Pomona, California. Our business depends on the patronage of families and individuals of modest economic resources. The traffic checkpoints that you carry out around the general area where our business is located (District _____) have created a state of mistrust towards the police and stress and fear among many people and customers. These checkpoints also negatively impact our business.

If the purpose of the checkpoints is to arrest drunk drivers, I ask that you set them up at night, after 10pm (at the earliest), but not during the hours when most peaceful (working) people go shopping and about their personal business, such as from 6pm to 10pm.

Therefore, as the owner or manager of a local business, I ask you to stop or move the traffic checkpoints to more LOGICAL times and we completely support all ten demands made by the *Coalición Pomona Habla* (Coalition Pomona Speaks). Along with these ten demands is the plea that you not reapply for Office of Traffic and Safety grants which fund some of these checkpoints. Anything less than these demands will not help correct the financial and social problems caused by the checkpoints; and thus continue to contribute to the sinking of the local economy, including that of Pomona.

Thank you, _____

(Signature)

(Print Name)

(Business Name)

(Business Address)

Businesses Executing "September 2008" Letter re Economic Impact

Name	Business Name	Business Address	District
Hector Erami	Hector's Smog Check	1081 W. Holt	1
Valentin Gutierrez	Tequila's Raspaderias	1305 Holt	1
Carmen Perez	Carmen's Beauty Salon	1305 W. Holt	1
Ascencio Raro	Del Fin Restaurant	1395 W. Holt	1
Kelly Kim	Ginza Bowl	1495 W. Holt	1
Roy Kwon	Kwon's Restaurant	1625 W. Holt	1
Lea Diaz	Cielos Unisex	1629 W. Holt	1
Freddy Garay	Xiomara's Shop	1631 W. Holt	1
Rosie Cruz	98 Discount Store	1635 W. Holt	1
Alicia Perez	Mundo Wireless & More	1690 W. Holt	1
Jose G. Perez Luna, DDS	Santamaria Dental Center	1690 W. Holt	1
Aurelio Cardenas	Tune Tech	402 W. Holt	1
Pam Singh	Gold Strike	416 N. Park	1
Maria Mora	Salon Rami	430 W. Holt	1
Maria Silva	Fiesta Zone	444 W. Holt	1
Ramiro G.A	El Mercadito Carniceria	445 Holt	1
Ki Hong Moon	Pomona Happy Market	445 W. Holt	1
Martha Ramirez	Tita's Multiservices	450 W. Holt	1
Luis Pelayo	Cellmex Cellular & Paging	474 W. Holt	1
Edith Gutierrez	The Princess Beauty Salon	485 W. Holt	1
Alejandro Fuentes Salas	Tijuana's Tacos	485 W. Holt	1
Carlos A. Escobar	Pomona Custom Covers	488 W. Holt #1	1
Armando Perez	Panaderia & Pasteleria Colima	528 Holt	1
Alicia Chavez	Alicia Beauty Salon	534 W. Holt	1
Jose Maldonado	Pacific One Dollar	546 W. Holt	1
Nam Truong	Low Cost Smog	601 W. Holt	1
Hoss Holakoui	Pars Motor Inc.	804 W. Holt	1
Juan Perez	Golden Wheel	833 W. Holt	1
Maria E. Chavez	Mary's Bakery	835 W. Holt	1
Maria Teresa Monge	Teresita Party Supplies	837 W. Holt	1
Laura Cruz	La Musica Wireless	840 Holt	1
Karina Alcantara	La Pizza Loca	937 W. Holt	1
Efren Gonzalez	Mariscos El Ostion	937 W. Holt	1
Jesus Torres	Torres Auto Repair	996 W. Holt	1
Francisco Espinoza	Francisco Espinosa & Co.	1284 S. Garey	3
Allen Hasan	A-1 Cellular	1600 E. Holt	4
Bertha Leticia Sandoval	Andrea's Shoes	1600 E. Holt	4
Juana C. Alvarez	Cecey's Lingerie	1600 E. Holt	4
Alicia Carrillo	Cellnet Communications	1600 E. Holt	4
Agdelia O. Chavez	Chavez Clothing	1600 E. Holt	4
Leticia Del Real	Corona Foto Estudio	1600 E. Holt	4
Andrew K. Lee	D.J Socks	1600 E. Holt	4
Dagoberto Rodriguez	Dago's Speaker Repair	1600 E. Holt	4
Mohamad Ferdaws	Ferclaws Fashion	1600 E. Holt	4
Elisa Rodriguez	JE Rodriguez Sportswear	1600 E. Holt	4
Joseito Sanchez	Leadercorp Financial	1600 E. Holt	4
Leticia Araujo	Lety's Fashion	1600 E. Holt	4
Alberto Salazar	Musica Jalisco	1600 E. Holt	4

Patricia E. Hernandez	P&E Fashion	1600 E. Holt	4
Tomik Aghakian	Perfume & Fashion 2000	1600 E. Holt	4
Alfredo L. Mercado	Premium Pet Store	1600 E. Holt	4
Carlos Torres	Rincon Catolico	1600 E. Holt	4
Sarkis Kalandjian	S & A Fashion Jewelry	1600 E. Holt	4
Estela Gonzalez	Shalom Jerusalem	1600 E. Holt	4
Rolando Codina	Solimar Optical Inc.	1600 E. Holt	4
Estefania Martinez	Vigo Money Orders	1600 E. Holt	4
Urania Hernandez	West Of Midnight	1600 E. Holt	4
Jacqueline Benitez	Zapp Wireless	1600 E. Holt	4
Alma Bernal	Guera's Maternity	1600 Holt	4
Carlos Benitez	Natural Help Production	1600 Holt	4
Mohammad	Sporting Goods	1600 Holt	4
Roberto Enriquez	Enriquez Tools	1600 Holt	4
Nancy Gonzalez	Mariscos Ensenada	612 Indian Hill Blvd.	4
Hyun Cha	Hill's Cleaners	626 Holt	4
Regionald Batz	Villa Toros Restaurant	636 E. Holt	4
Irma B. Munoz	La Barata Discount	638 E. Holt	4
Margarita Gutierrez	Mr. Pizza Burgers & Mexican Food	742 E. Holt	4
Ernesto Araiza	Movie Island	746 E. Holt	4
Jorge Jimenez	Sport Wear	Indian Hill Indoor Swapmeet	4
Erendira Moreno	Mini Shoe Warehouse	Pomona, CA	4