

CHAPTER 3

TRAFFIC LAW ENFORCEMENT SERVICES/INCORPORATED CITIES

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CHAPTER 3

TRAFFIC LAW ENFORCEMENT SERVICES/INCORPORATED CITIES

1. PURPOSE.

- a. To establish policy and procedures for providing traffic law enforcement services within newly incorporated cities and within any newly annexed area to existing incorporated cities.
- b. To establish procedures for notifying Assistant Commissioner, Field, (ACF) of proposed or pending incorporations and annexations.

2. LEGAL CITATIONS. Legal citations in Annexes A, B, and C define the Department's primary jurisdiction on all freeways, toll roads, and adjacent transit facilities within the state, as well as on surface streets in unincorporated areas. They also define the absence of primary jurisdiction on highways not constructed as freeways, including state highways not constructed as freeways, in incorporated cities.

3. REQUIREMENT FOR CITIES TO PROVIDE POLICE PROTECTION.

- a. California's chartered cities operate under a charter which has been adopted by the electorate and filed with the Secretary of State. Article 11, paragraph 5(b), of California's Constitution states that all city charters must provide for the constitution, regulation, and government of a city police force.
- b. California's general law cities operate under the provisions of the Government Code (GC). Sections 36501, 36505, and 38631 GC require that each general law city must have a chief of police, that the chief of police is appointed by the city council, and that either the chief of police or the city manager may appoint one or more police officers.

4. POLICY.

- a. If requested by the governing body of a newly incorporated city, the California Highway Patrol (CHP) will continue to provide traffic law enforcement services without reimbursement during the remainder of the fiscal year of incorporation or until establishment of a police department, whichever occurs first. A city which has entered into a contractual agreement with a neighboring city or the county for traffic law enforcement services will be deemed to have established its own police department.

b. Generally, traffic law enforcement services will not be provided for a period longer than 12 months from the date of incorporation. However, when unforeseen circumstances arise preventing the timely establishment of police services, the CHP will consider continuing services for a limited duration provided that a formal request is made by the city's governing body. The request must include provisions for full reimbursement of services. California Highway Patrol personnel are not to solicit or encourage requests for such extended services.

c. The CHP will not extend traffic law enforcement services to newly annexed areas of incorporated cities except to provide temporary assistance during the transition period.

d. Contracts for supplemental traffic law enforcement services (or other law enforcement services) on a reimbursable basis will not be negotiated except in very limited cases and only after approval from ACF.

5. PROCEDURES.

a. New Incorporations and Annexations. Section 56325 GC requires that in each county there shall be a local agency formation commission (LAFCO). Proposals for incorporations and annexations are either submitted by petition to the county LAFCO for approval or the county LAFCO may initiate proposals for incorporations and annexations on its own behalf (Section 56375 GC). Before an incorporation or annexation can be implemented, the matter must usually be voted on by the electorate.

(1) Upon learning that a proposed incorporation or annexation of territory has been submitted to (or initiated by) the county LAFCO, the affected Area commander shall notify ACF through channels by memorandum. This notification shall discuss the source of the information and proposed time frames and shall include a map showing the boundaries of the proposed incorporation or annexation. Periodic updates may be required.

(2) Upon learning that the proposed incorporation or annexation is pending implementation, the affected Area commander shall prepare an assessment of the impact on Area staffing requirements for the fiscal year following the incorporation or annexation. The Area commander shall forward the impact assessment to the appropriate Division within 30 calendar days after all legal requirements have been met to implement the incorporation or annexation. The impact assessment shall include:

(a) A map depicting the new city boundaries or area to be annexed and the affected beats.

(b) The effective date of the incorporation or annexation.

(c) A recommendation, with justification, concerning the future staffing level of the Area.

(3) Division will comment on the Area's assessment, and shall forward it to ACF within 15 calendar days of receipt from the Area commander.

b. Requests for Traffic Law Enforcement Services.

(1) Upon receiving a written request from the governing body of a newly incorporated city, Area commanders are to provide traffic law enforcement services.

(2) Services shall not exceed the level provided prior to incorporation. To provide enhanced services would require diversion of the Area command's limited resources from beats which remain within the CHP's primary jurisdiction.

(3) Before initiating the requested services, Area commanders shall:

(a) Meet with an authorized representative of the city and discuss the request. Ensure the representative is fully aware of the CHP's expectation that either a police department will be established or a contract with another agency will be implemented no later than the beginning of the next fiscal year.

(b) Provide the appropriate Division with an assessment of the request for services and an implementation plan within 30 days of receiving the written request. Division will forward the Area's assessment and implementation plan, along with the Division's recommendations, to ACF within 30 calendar days of their receipt.

(c) Provide Information Management Division information necessary to allow processing of accident reports into the Statewide Integrated Traffic Records System (SWITRS). The following information must be received by the Information Services Unit in Support Services Section at least 30 days prior to the effective date of the incorporation to ensure a smooth transition:

1 The effective date of departmental coverage pursuant to the written request of the governing body (usually the effective date of the incorporation).

2 An estimate of the city's population.

3 The name and address of the agency providing street maintenance.

4 Which SWITRS Reports (1 through 8) should be provided and on what basis-quarterly, semi-annually, or annually. The Information Services Unit can assist in this determination, if desired.

5 The National Crime Information Center (NCIC) number of the new city if assigned by the Department of Justice for the establishment of a new police department. If no police department is planned, the Information Services Unit will assign an NCIC number for the city.

6 The estimated date of termination of departmental coverage.

c. Need to Update Beat Descriptions. Whether or not traffic law enforcement services are provided after the date of incorporation, the affected Area command must review General Order 100.64, Beat Descriptions, and update all freeway, state highway, county road line, and Area beats included within the newly incorporated city.

(1) Revised beat descriptions must have the same effective date as the incorporation date.

(2) Revised beat descriptions must be received by the Information Services Unit before the incorporation date.

(3) All beat descriptions for the incorporated city must be deleted when services have been discontinued.

d. Procedures When the Establishment of a Police Department is Delayed.

(1) Traffic law enforcement services will not be provided within a city beyond either the fiscal year of incorporation or beyond 12 months from the date of incorporation, except when all the following conditions exist:

(a) Circumstances have arisen preventing the timely establishment of a police department.

(b) A written request is made by the governing body of the newly incorporated city.

(c) Continued CHP services are in the best interest of public safety.

(d) The Area command is able to provide (and the city can fund) at least the level of service provided prior to and immediately after incorporation.

(e) A limited-term contract is negotiated providing for full reimbursement of services to be provided. It is preferred that contracts be issued on a quarterly basis, but in no event are they to exceed one year in duration.

(2) Commanders shall not make commitments to provide reimbursable traffic law enforcement services within a newly incorporated city unless approval is first obtained from ACF. Upon receiving a written request for such services, commanders are to accomplish the following:

(a) Determine the personnel and equipment resources needed to comply with the request.

(b) Prepare an assessment of the request for services and a proposed course of action for transmittal through channels for approval by ACF.

(c) Upon receiving written approval from ACF, obtain a certified copy of the resolution, passed by the city council of the requesting city, authorizing full reimbursement for the proposed services.

(3) Section 6502 GC allows the Department to contract with governmental agencies for law enforcement services. Reimbursable contract policies, procedures, and approval requirements are contained in Highway Patrol Manual (HPM) 11.1, Administrative Procedures Manual, Chapter 6, Reimbursable Services.

(a) Research and Planning Section is the office of primary interest and will assist in negotiating a contract, once negotiations have been approved by the Office of the Commissioner.

(b) The Information Services Unit in Support Services Section will assist in providing information regarding traffic crash reporting requirements.

(c) The Collision Investigation Unit in Enforcement and Planning Division will provide technical assistance regarding HPM 110.5, Collision Investigation Manual.

(d) The Contract Management Unit in Business Services Section will assist in ensuring that processing requirements are met.

(e) The systems manager of the Systems Unit in Fiscal Management Section will assist in determining contract charges.

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ANNEX A

LEGAL CITATION: CALIFORNIA HIGHWAY PATROL HAS PRIMARY JURISDICTION ON FREEWAYS, TOLL ROADS, AND ADJACENT TRANSIT FACILITIES

1. SECTION 2400(d) OF THE CALIFORNIA VEHICLE CODE. Section 2400(d) of the California Vehicle Code (CVC) provides that the Department shall have primary jurisdiction for the enforcement of laws, and for the investigation of traffic accidents, on all toll roads and state highways constructed as freeways, including adjacent transit facilities. Legislation which was effective September 17, 1965, provided two exceptions: In cities with a population over 2,000,000 or an area over 300 square miles, the Department has primary jurisdiction only if requested by the city council.

2. SUPPORTING COMMENTARY.

a. The City of Los Angeles is the only California city with a population in excess of 2,000,000. In Resolution #126,137, dated February 14, 1968, the Los Angeles City Council requested the Department assume primary jurisdiction over all freeways in that city.

b. The Cities of Los Angeles and San Diego are the only California cities with an area in excess of 300 square miles. In Resolution #193,459, dated April 23, 1968, the San Diego City Council requested the Department assume primary jurisdiction over all freeways in that city.

c. In the 1987 amendment of paragraph 4 of Section 2400 CVC (now Section 2400[d] CVC), the following legislative intent for that paragraph was provided:

“...to clarify the responsibility of the Department of California Highway Patrol as the principal law enforcement agency with respect to enforcement of the Vehicle Code or other laws regulating the operation of vehicles and investigation of traffic accidents on all toll highways and state highways constructed as freeways and transit-related facilities located on or along the rights-of-way of those freeways. This bill has no effect on...”

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ANNEX B

LEGAL CITATIONS: CALIFORNIA HIGHWAY PATROL HAS PRIMARY JURISDICTION ON HIGHWAYS NOT CONSTRUCTED AS FREEWAYS IN UNINCORPORATED AREAS

1. SECTION 2400(b) CALIFORNIA VEHICLE CODE.

a. Section 2400(b) of the California Vehicle Code (CVC) provides that the Department shall enforce all laws regulating the operation of vehicles and the use of the highways, with one limited exception - highways subject to Section 592 CVC, relating to federal lands which are open to the public and maintained by private interests.

b. Supporting Commentary. Ways and places referred to in Section 592 CVC are primarily logging roads maintained by the logging industry pursuant to an agreement with the U.S. Department of Agriculture.

2. SECTION 29601 AND 26613 OF THE GOVERNMENT CODE.

a. Except as provided in Section 26613 of the Government Code (GC), Section 29601(b)(1) GC precludes the county from funding the sheriff to enforce the CVC on any highway with respect to misdemeanors (and by extension, infractions), except driving under the influence misdemeanors. The following are the texts of those Sections:

(1) Section 29601(b)(1) GC - The following expenses of the district attorney and the sheriff are county charges, all other expenses necessarily incurred by either of them: In the detection of crime. Except as violations of Section 23152 CVC, this section does not apply to the detection of those crimes declared to be misdemeanors by the CVC.

(2) Section 26613 GC - Notwithstanding the provisions of Section 29601 the board of supervisors in a county having a population in excess of 3,000,000 may authorize the sheriff to enforce the provisions of the CVC in the unincorporated area of such county but only upon county highways. The expense incurred by the sheriff in the performance of such duties shall be a proper county charge.

b. Supporting Commentary.

(1) Los Angeles, San Diego, and Orange Counties currently have populations in excess of 3,000,000.

ANNEX B

LEGAL CITATIONS: CALIFORNIA HIGHWAY PATROL HAS PRIMARY JURISDICTION ON HIGHWAYS NOT CONSTRUCTED AS FREEWAYS IN UNINCORPORATED AREAS (*continued*)

(2) In 1961, the State Attorney General issued an opinion (38 Ops. Atty. Gen. 49) that where the board of supervisors has provided for extended police protection by the sheriff in a county service area, or where the board has contracted with a community service district for the sheriff to furnish police protection, the sheriff may enforce CVC misdemeanors and issue parking citations in such area or district.

(3) In 1960, the State Attorney General issued an opinion (36 Ops. Atty. Gen. 271) that the detection of violations of county traffic ordinances on highways are a proper county charge. This opinion confirms that the Department has primary jurisdiction for enforcing the CVC in unincorporated areas of every county.

ANNEX C

LEGAL CITATIONS: CALIFORNIA HIGHWAY PATROL DOES NOT HAVE PRIMARY JURISDICTION ON HIGHWAYS NOT CONSTRUCTED AS FREEWAYS IN INCORPORATED CITIES

1. STATE HIGHWAYS NOT CONSTRUCTED AS FREEWAYS IN INCORPORATED CITIES.

- a. Section 2400(d) of the California Vehicle Code (CVC) gives the Department primary jurisdiction on state highways constructed as freeways. The legal principle that "the expression of one thing in a statute implies the intentional exclusion of that which is omitted," leads to the conclusion that the Department is excluded from having primary jurisdiction on state highways not constructed as freeways, except in unincorporated areas (Annexes A and B). Primary jurisdiction on state highways not constructed as freeways within a city would, consequently, fall on the city police.
- b. This conclusion is supported by Section 2400.6 CVC, effective January 1, 1993, which requires that the Department patrol State Highway 1 in the city of Malibu (a state highway which is not constructed as a freeway), but only under a fully reimbursable contract.

2. OTHER HIGHWAYS (PRIMARILY SURFACE STREETS) NOT CONSTRUCTED AS FREEWAYS.

- a. Section 2400(e) CVC, provides that the Department will retain primary jurisdiction on all highways in a city/county with a population under 25,000, if at the time the city/county government is established, the county has no incorporated cities. The legal principle that "the expression of one thing in a statute implies the intentional exclusion of that which is omitted," leads to the conclusion that except for freeways, the Department is excluded from having primary jurisdiction on any highway in any incorporated city (regardless of population), or any city/county with a population over 25,000. This conclusion is supported by Section 2400.5 CVC, which allows the Department to enforce all laws on surface-street expressways in Santa Clara County, if requested by a city or the county, but only under a fully reimbursable contract.
- b. Supporting Commentary.
 - (1) There is only one city/county in the state, the City and County of San Francisco, which has a population in excess of 700,000 (source: State Department of Finance).

ANNEX C

LEGAL CITATIONS: CALIFORNIA HIGHWAY PATROL DOES NOT HAVE PRIMARY JURISDICTION ON HIGHWAYS NOT CONSTRUCTED AS FREEWAYS IN INCORPORATED CITIES *(continued)*

(2) There are only three counties with no incorporated cities and with a population of less than 25,000: Alpine, Mariposa, and Trinity. If any of these counties were to organize into an incorporated city/county, the Department would continue to provide its full range of services pursuant to Section 2400(e) CVC.