

Memorandum

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To: DEPUTY DISTRICT DIRECTORS, Construction
DEPUTY DIVISION CHIEF, Structure Construction
CONSTRUCTION MANAGERS
SENIOR CONSTRUCTION ENGINEERS
RESIDENT ENGINEERS

Date: August 5, 2013

File: Division of Construction
CPD 13-6

From: MARK LEJA, Chief
Division of Construction



Subject: LOCAL AGENCY FEES, PERMITS, AND SERVICES

Some local agencies are attempting to impose permit requirements, service charges, and permit fees on the California Department of Transportation (Caltrans) and Caltrans contractors working on state projects. This directive reaffirms the law and Caltrans policy¹ that Caltrans is not required to obtain permits from any city or county for work it performs within Caltrans' own right-of-way or when operating detours. Caltrans' own right-of-way includes real property which it holds title over, or property over which it has right in the form of an easement, license, or a lease. This directive also reaffirms that in those situations where Caltrans elects to use a permit from a local agency, Caltrans is not required under the law to pay fees for permit issuance, inspection services, or plan checking. A local agency cannot impose permit, inspection, or plan checking fees on any Caltrans contractor performing Caltrans work, as such imposition transfers the costs to Caltrans and is considered a levy of fees on Caltrans.

Caltrans has the sovereign authority to engage in the construction, operation, and maintenance of its highways. According to case law² and legal opinion³ a state agency's sovereign power in regulating its affairs and the use of its property are not subject to local ordinances or rules. As long as the state agency has not relinquished this authority either by the Constitution or any legislative enactment, it cannot be forced to comply with any local agency's rules including permit requirements.

Similarly, Caltrans has authority and jurisdiction over those portions of local streets or roadways that are within the boundaries of Caltrans' right-of-way, if it elects to exercise those rights under California Streets and Highway Code (SHC) Section 83.

Caltrans is authorized by SHC Section 93, to operate detours on local agency streets or highways. SHC Section 93 does not impose restriction on Caltrans by requiring it to obtain a permit or the local agency's consent for the purpose of operating a detour upon the local agency's roadway. However, SHC, Section 93, does require Caltrans to restore a local road detour to its former condition and to reimburse the local agency for reasonable expenses incurred after the detour ceases. These costs could include added law enforcement, changes to signal timing, or emergency services caused by the detour. Caltrans is not required to provide any betterment for local agency streets or highway detour, other than those required to meet minimum design or operational standards for the traveling public while using said detour. Follow the district procedures to implement detours that are not identified in the contract.

Caltrans is not required to obtain local agency permits for work performed within rights-of-way that Caltrans has rights to be in possession of, such as an easement, lease, or license. However, for work performed by Caltrans or its contractors outside the geographical areas stated above, encroachment permits and other permits from cities and counties having jurisdictional rights over the specific work or project area may be required. Nevertheless, no fees can be imposed by those cities and counties as per California Government Code Sections 6103.6, and 6103.7. Such fees include fees for permit issuance, inspection services, or plan checking.

“Permit and inspection fees” should be distinguished from “service charges” imposed by the local agency. While Caltrans is exempt from paying permit, inspection, and plan checking fees, it is not exempt from paying “service charges” imposed by the local agency. Service charges are not inspection, plan checking, or permit fees that are charged by the local agency to ensure that Caltrans complies with local standards and specifications. Examples of local agency service charges include:

- Water provided by the local agency water distribution system and used for construction or operation of the state highway.
- Preparation of engineering documents for local agency infrastructure located and permitted to be within the Caltrans right-of-way.

Though Caltrans is not required to obtain permits from or pay fees to a local agency, a Caltrans District Director or their authorized representatives may elect to do so. These commitments should be documented and included in the resident engineer’s pending file. It is permissible to pay these elective permit fees or inspection costs out of the project allotment when authorized by a cooperative agreement or a side letter approved by the local agency and Caltrans prior to contract award. Do not enter into such agreements after the contract has been awarded, consistent with the *Project Development Procedures Manual*.

If you have questions regarding this directive, please contact Bob Molera, Division of Construction, at bob_molera@dot.ca.gov or (916) 654-3088.

¹ The *Project Development Procedures Manual* (Chapter 13, Article 2)

² Regents of University of California v. City of Santa Monica, 77 Cal. App. 3d 130 and Hall v. City of Taft, 47 Cal.2d 177, 302 P.2d 574

³ 31 Ops. Cal.Atty. Gen. 46, 51