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Chief Charles E. Beck
Los Angeles Police Department
100 West 1st Street
Los Angeles, California 90012


Dear Chief Beck:

This letter is in response to requests from several members of the Los Angeles County Police Chiefs Association made to the Los Angeles County District Attorney's Office. We are responding to all Los Angeles County Police Chiefs. The question essentially is, "should law enforcement agencies adopt policies prohibiting or restructuring the impounding of vehicles driven by unlicensed drivers?" In our view, such policies are contrary to state law and likely would create risks both to public safety and to public treasuries.

Doctrine of Preemption. It is a general rule of law in California that when the Legislature enacts statutes that occupy a particular field of law, cities and counties may not deviate from state law. A local ordinance or regulation that conflicts with state law is invalid.

The statutory provisions on impounding vehicles, such as those in Vehicle Code (VC) sections 14601 through 14607.8 and 22650 through 22856 (removal of vehicles), constitute a comprehensive statutory scheme that occupies the law on impounding vehicles in California, allowing only those areas of local regulation expressly permitted by statute. (Example: VC §22660 authorizes local ordinances for the removal of abandoned vehicles.)

To the extent that any local policy on vehicle impoundment conflicts with state law, the policy would be invalid under the doctrine of preemption. (*O'Connell v. City of Stockton* (2007) 41Cal. 4th 1067-68.)

Civil Liability. Government Code (GC) section 815.6 provides as follows: "*Where a public entity is under a **mandatory duty** imposed by an enactment that is designed to protect against the risk of a particular kind of injury, **the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty...***"

VC §14607.6(c)(1), for example, states that if a driver is unable to produce a valid driver's license as required by VC §12951(b), "***the vehicle shall be impounded regardless of ownership,***" unless licensure can be otherwise established (exception: newly-enacted VC §2814.2 restricts impounds at sobriety checkpoints **only**). Therefore, when an unlicensed driver fails to produce a license on demand during a traffic stop or at an accident scene, the vehicle "shall" be impounded. Does this statute create a mandatory duty?

"Shall' is mandatory and 'may' is permissive." (VC §15; *People v. Standish* (2006) 38 Cal. 4th 858, 869.) "*The legislature's use of 'shall' instead of 'may' in this section [14607.6(c)(1)] indicates that it understands the distinction between the two words and acts deliberately in choosing its vocabulary.*" (*CHP v. Superior Court* (2008) 162 Cal.App.4th 1144, 1154.)

Was the purpose of the mandatory impoundment provision of VC §14607.6 to prevent damage to lives and property by unlicensed drivers? The Legislature found: "*Californians who comply with the law are frequently victims of traffic accidents caused by unlicensed driver. These innocent victims suffer considerable pain and property loss at the hands of people who flaunt the law.*" (VC §14607.4(e).)

The legislature further found: "*It is necessary and appropriate to take additional steps to prevent unlicensed drivers from driving, including the civil forfeiture of vehicles used by unlicensed drivers. The state has a critical interest in enforcing its traffic laws and in keeping unlicensed drivers from illegally driving. Seizing the vehicles used by unlicensed drivers serves a significant governmental and public interest, namely the protection of the health, safety and welfare of Californians from the harm of unlicensed drivers, who are involved in a disproportionate number of traffic incidents, and the avoidance of the associated destruction and damage to lives and property.*" (VC §14607.4(f).)

Under the foregoing authorities, the failure of an agency to comply with the **mandatory duty** created by VC §14607.6(c)(1) to impound vehicles when unlicensed drivers are **unable to produce a license** as required by VC §12951(b) may endanger **civil liability on the part of the agency** under GC §815.6 for **property damage, injury and death** resulting from the operation of a vehicle by an unlicensed driver **following the deliberate failure of the agency to impound the vehicle.**

Chief Charles E. Beck
Los Angeles Police Chief
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We recommend seeking the advice of your City Attorney or the civil counsel when considering changes to your impound policy.

Very truly yours,



STEVE COOLEY
District Attorney

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c: Mr. Richard Tefank, Executive Director
Los Angeles Police Commission