

BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 12, 2010

GENERAL ORDER V-2

SUBJECT: CUSTODY AND DISPOSITION OF MOTOR VEHICLES

PURPOSE

- 1 - This order sets forth policy and procedures regarding the towing, storage and disposition of motor vehicles.

POLICY

- 2 - It shall be the policy of the Berkeley Police Department to tow vehicles when necessary for lawful investigative purposes or when authorized by law.
- 3 - A numbered report shall document when a vehicle is taken into custody.
 - (a) If **seized** in connection with a crime under investigation, the report number assigned to the **tow shall be different from the criminal case number.**
 - (b) **If seized in association with a special event, a single report number may be used to document the event and tow.**
 - (c) **The seizure of multiple vehicles in association with a particular event or enforcement activity may be documented under a single report number.**

PROCEDURE

- 4 - A tow report form (e.g., CHP 180 form) shall be submitted by the responsible employee whenever a vehicle is taken into custody.
 - (a) The description of known valuable property or evidence contained in a vehicle taken into custody shall be included in the written report.
 - (b) When several vehicles are impounded in the course of a special event (i.e., a UC football game tow), a tow log listing the vehicles' descriptions and locations of tow may be used instead of individual tow report forms.
 - (1) The employee responsible for maintaining a special event tow log shall route the original log form to the Support Services Division Records **Detail**, to be filed under the event's assigned report number, and forward copies to the Communications Center and Traffic **Bureau.**
- 5 - The employee ordering a vehicle into custody shall notify the assigned tow company of all "holds" restricting the vehicle's release.
- 6 - The employee ordering a vehicle into custody shall provide the following information to Communications Center personnel when making a tow request:

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- (a) The location from where the vehicle will be towed;
 - (b) The statutory authority; and,
 - (c) The description and identifying number of the vehicle, either license plate or vehicle identification number (VIN.)
- 7 - Whenever possible, the employee who completes the tow report form will:**
- (a) **Request the signature of the driver of the vehicle being towed on the tow report form;**
 - (b) **Provide a copy of the tow report to the driver of the vehicle being towed; and,**
 - (c) **Provide the driver of the vehicle being towed information explaining the vehicle release process.**
- 8 - Determination of tow authority for vehicle seizures based on a driver's license status offense (i.e., no license, expired, suspended, driving outside of restriction) shall be based on the particular circumstances of the violation.**
- (a) **VC §14602.6 shall only be used in cases of a serious license status violation:**
 - (1) **Driving with a suspended or revoked license; or,**
 - (2) **Driving in violation of license restriction(s) imposed under VC §§13352 or 23575 and when the vehicle is not equipped with a functioning, certified interlock device.**
 - (b) **VC §22651(p) shall be used in instances other than a serious license status violation.**
 - (c) **Based on articulable extenuating circumstance(s), a supervisor may authorize the use of VC 22651(p) in situations where VC §14602.6 may be prescribed (ref. paragraph 8(a) of this Order).**
- 9 - A vehicle shall not be seized pursuant to tow authorities associated with invalid driver's license status if driven onto the owner's private property by a person (other than the owner) not having a valid license, and the vehicle's owner is present and properly licensed.**
- 10 - Unless prior warning of a tow is given, employees shall not direct the seizure of a vehicle parked on a highway, public land, or offstreet parking facility for an expired registration violation (ref. VC §22651(o)) if the owner has a valid "Planned Non-Operation" certificate on file at the DMV.**

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- (a) **Prior warning of a tow may be accomplished via common means of verifiable communication, to include, but not be limited to, issuance of a citation for an expired registration violation.**
- 11 - **An employee may direct the seizure of a vehicle pursuant to a custodial arrest unrelated to a driver's license violation (ref. VC §22651(h)(1)) only:**
- (a) **If the vehicle is illegally parked; or,**
 - (b) **If left unattended, the vehicle will either pose a hazard to others or be a high-risk target for vandalism or theft.**

ABANDONED VEHICLES

- 12 - A CAD entry shall be generated and a report number assigned when the Communications Center receives a report of a vehicle parked in excess of 72 hours (i.e., "abandoned") in violation of Berkeley Municipal Code §14.36.050.
- 13 - The employee assigned to investigate a 72 hour parking violation shall make a reasonable effort to locate and appropriately mark the subject vehicle.
- (a) If located, the vehicle shall be "marked" (e.g., corresponding yellow crayon marks on a tire and roadway, object atop a tire, etc.) in a manner that will indicate at the time of follow-up investigation if the vehicle has moved.
 - (1) The marking employee will report how the vehicle was marked to a Communications Center dispatcher, who shall enter that information into the associated CAD event.
 - (b) The marking employee should place a courtesy 'warning' notice on the subject vehicle.
- 14 - The employee conducting the initial investigation shall make a reasonable effort to determine the name and address of the registered owner, or the person in control of the subject vehicle, and if the address is in reasonable proximity to the vehicle request that person remove it from the street.
- 15 - If, by evidence and/or reliable citizen statement, it is determined a vehicle has been abandoned (i.e., is inoperable as defined in Vehicle Code §22669(d) and/or has not been moved in a significant period), the employee may forego the 'initial mark/72-hour follow-up' procedure described herein and proceed as in paragraph 17(a) of this Order.
- 16 - The investigating employee shall complete a written report (e.g., NCIR or MDT report) documenting: the location of the vehicle; date, time and manner in which the reported vehicle was marked; and, date at least 72 hours from the date of initial mark for follow-up action.

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- (a) Enforcement action taken pursuant to paragraph **15** of this Order shall be substantiated by the investigating employee in his/her written report.
- 17 - If required, the primary investigating officer, or in his/her absence another assigned officer, shall accomplish a follow-up investigation after a period of 72 hours to determine the status of the marked vehicle.
 - (a) If the vehicle is present and without indication of significant movement, the officer shall issue a citation for the appropriate Vehicle Code or City Ordinance violation, request a tow via the Communication Center, and document the removal on a **tow** report form.
 - (1) "Significant movement" means a vehicle has been moved from the associated parking location by at least one car length.
 - (b) If the vehicle has been moved, the officer shall ensure the associated CAD event is updated to indicate the outcome of the follow-up investigation.

COMMUNICATION CENTER PROCEDURES

- 18 - Subsequent to request from the investigating officer, a Communications Center employee shall call the appropriate towing contractor and request the subject vehicle be towed.
 - (a) The Communications Center employee ordering the tow shall enter required information into the Communications Center "Tow Log."
- 19 - Communications Center personnel shall ensure that **accurate tow authority and vehicle** disposition information is **included** in the Computer-Aided Dispatch system (CAD) incident event associated with a vehicle tow.
 - (a) A "non-criminal incident" or "criminal investigation" **CAD report type** shall be used for incidents involving the tow and storage of a vehicle.
 - (b) A "miscellaneous service call" **CAD report type** shall be used for incidents where the reported vehicle could not be located or was ineligible for tow.
- 20 - When notified of a completed vehicle tow by a towing contractor, the Communications Center Telecommunications dispatcher will enter the vehicle's description, date of tow, **correct** tow authority, **and accurate custody status (e.g., "Towed/Stored", "Impounded, etc.)** into the California Law Enforcement Telecommunications System (CLETS.)
- 21 - The Telecommunications dispatcher shall obtain Department of Motor Vehicles (DMV) registration information on every vehicle taken into police custody, and will compare the license plate and vehicle identification number (VIN) to the information provided by the towing contractor to ensure accuracy.

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- 22 - The Telecommunications dispatcher shall determine if the vehicle has been reported as stolen to CLETS Stolen Vehicle System.
- 23 - The Telecommunications dispatcher shall forward the **completed** "Towed/Stored Vehicle" entry form, DMV registration print-out, and tow contractor towing sheet to the Traffic **Bureau** prior to the conclusion of their duty shift.

RELEASING VEHICLES

- 24 - This Department is responsible for authorizing the release of all vehicles towed and stored by its employees.
- 25 - Persons who want to regain custody of a towed or impounded vehicle during normal business hours shall be referred to the Support Services Division Records Detail for a vehicle release form.
 - (a) **Assisting employees will provide information which explains the reason a vehicle was towed/impounded and describes the vehicle release process.**
 - (b) After normal business hours, owners or their authorized agents should be referred to the Jail's public counter for vehicle release assistance.
- 26 - No vehicle may be authorized for release if there is an investigative "hold" on it.
 - (a) The employee assisting a citizen with a vehicle release request will determine if the "hold" has been rescinded prior to issuing a vehicle release form.
- 27 - A vehicle may be released to its owner or, upon presentation of written authorization, his/her agent.
 - (a) Sufficient proof of identity, valid vehicle registration, and valid driver's license (**domestic or foreign issued**) shall be required prior to release of a towed/stored vehicle.
 - (1) **A vehicle's owner or his/her agent will not be required to present proof of insurance to facilitate a vehicle release unless expressly required by law.**
 - (b) Written authorization received from an owner's agent and a copy of their proof of identity shall be attached to the original vehicle release form and routed to Records **Detail** for incorporation into the report file.
- 28 - All applicable laws and relevant administrative requirements not presented in this Order shall be followed prior to the release of towed/stored vehicles.

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MAILING REQUIRED NOTICE

- 29 - The designated Traffic **Bureau** employee shall ensure a formal notice is mailed to the registered and legal owners advising them of the vehicle's tow and storage.
- (a) Notice to owners of vehicles towed pursuant to Vehicle Code §14602.6 must be mailed by "certified/return receipt requested" post within 48 hours of the vehicle's tow/storage.

VEHICLES IMPOUNDED FOR INVESTIGATIVE PURPOSE, STORAGE OF

- 30 - Employees shall tow a vehicle for investigative purpose (i.e., is or contains evidence of a public offense) pursuant to Vehicle Code §22655.5 only with approval of a sergeant or command officer.
- (a) If evidence can be legally obtained from a vehicle under investigation without towing it, this shall be the preferred procedure; supervisors should exercise discretion in approving the towing of such vehicles.
- (b) Whenever a vehicle is towed as evidence, an Evidence Receipt form shall be completed and a copy delivered to the vehicle's owner or agent.
- 31 - The employee or detail/unit responsible for investigative follow-up of the matter related to a tow shall have primary responsibility for the custody of the vehicle stored as evidence or for investigative purposes.
- (a) If the vehicle is held in custody in excess of 72 hours, the responsible employee or detail/unit shall consult with the District Attorney's Office regarding the need for continued custody of the vehicle.
- (b) If required to be maintained in custody, the responsible employee or detail/unit shall make reasonable efforts to transfer physical custody, or financial responsibility for commercial storage services, of the vehicle to the District Attorney's Office, or relocate the vehicle to a City-controlled storage facility.
- (c) The employee or detail/unit responsible for investigative follow-up of the matter related to a tow shall notify the person authorized to receive custody of the stored vehicle (i.e., registered owner, agent of owner, etc.) as soon as practical after the police hold on the vehicle has ended.
- 32 - The Traffic **Bureau** shall maintain a log of all vehicles towed for investigative purposes.
- (a) A designated Traffic **Bureau** employee will monitor investigations resulting in an impound and take reasonable measures to ensure a vehicle is held in custody no longer than is necessary to accomplish required law

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enforcement activities.

- 33 - Contents of a vehicle having no evidentiary value may be released to its owner or his/her agent, and shall be listed in a written report.

TOW/STORAGE HEARINGS

- 34 - The Vehicle Code requires a hearing be provided to a vehicle owner, or his/her agent, within ten (10) days of mailing of the "Notice of Stored Vehicle" form to determine the validity of a vehicle's tow/storage.

(a) The right to a post-storage hearing applies to all tows except:

- (1) Vehicles impounded for investigation of a hit-and-run collision pursuant to Vehicle Code §22655;
- (2) Vehicles removed from private property pursuant to Vehicle Code §22658;
- (3) Abandoned or hazardous vehicles removed pursuant to Vehicle Code §22669 determined to have an estimated value of five hundred dollars (\$500.00) or less; and,
- (4) Vehicles or vehicle parts removed from private property by authority of a City or County ordinance pursuant to Vehicle Code §§22660 to 22668, inclusive, and §22710.

- 35 - A request for a tow hearing may be submitted in person, telephonically or in writing to the Traffic **Bureau**.

- 36 - Tow hearings shall be conducted by a designated Traffic **Bureau** employee within 48 hours of the request, excluding weekends and holidays.

(a) The hearing employee shall not be the person who directed the storage of the vehicle.

(b) If the citizen is fifteen (15) or more minutes late, or fails to appear for their scheduled hearing, the statutory requirement for a hearing will be satisfied.

(1) While not required by law, missed tow hearings may be rescheduled as Traffic **Bureau** staffing permits.

(c) A log documenting the date, time, requesting citizen information, and outcome of tow hearings shall be maintained **by** the Traffic **Bureau**.

- 37 - The hearing employee shall arrange for the release of a vehicle if it is determined to be eligible for release.

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- 38 - A citizen disputing their financial responsibility for tow/storage fees should be referred to the City Attorney's Office to file a civil claim.
- (a) Upon request, the Traffic **Bureau commander**, or his/her designee, shall research the claim, render a judgment, and submit a report of findings to the City Attorney's Office.

TOW PROGRAM MONITORING

- 39 - The Traffic Bureau will regularly monitor vehicle tows accomplished pursuant to this Order, as represented in tow reports, to ensure adherence to established policy and procedure.
- 40 - The Traffic Bureau will be responsible for the periodic review of this General Order and related tow program to assess the currency, applicability and effectiveness of related policy and procedure, and any identifiable impacts this Department's tow program has on traffic safety.

References: Vehicle Code §§14602.6, 22523, **22651**, 22655, 22655.5, 22658, 22660 (et seq.), 22669, 22710, 22852, and 22853

***Miranda v. Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005))**

***Clement v. Glendale*, 518 F.3d 1090 (9th Cir. 2008)**

***U.S. v. Ceseares*, 533 F.3d 1064, 1074-75 (9th Cir. 2008)**

***People v. Williams*, 145 Cal.App.4th 756, 762-63 (2006)**

Berkeley Municipal Code Chapter 14.36

General Orders C-2, 0-7, P-65, R-18, R-24, R-31, T-1, and V-5

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