

Police Review Commission (PRC)

TOW FEES SUBCOMMITTEE

Commissioners: Kitty Calavita, Julie Leftwich, Nathan Mizell

Thursday, January 28, 2021

4:30 p.m.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting of the City of Berkeley Police Review Commission's Subcommittee on Police Acquisition & Use of Controlled Equipment Ordinance will be conducted exclusively through teleconference and Zoom videoconference and there will not be a physical meeting location available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/86164435646>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial 1 **669 900 6833** and enter Meeting ID **861 6443 5646**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

1. CALL TO ORDER

2. APPROVAL OF AGENDA

3. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

4. ELECT SUBCOMMITTEE CHAIRPERSON (discussion and action)

5. NEW BUSINESS (discussion and action)

Determine plan for review of imposition of fees for vehicle towing and storage authorized by the Berkeley Police Department, and possible revisions for cases of hardship.

(See materials posted for this subcommittee at:
<https://www.cityofberkeley.info/ContentDisplay.aspx?id=12962>)

6. SCHEDULE NEXT MEETING DATE

7. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information. City offices are currently closed and cannot accept written communications in person.



Communication Access Information (A.R.1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer

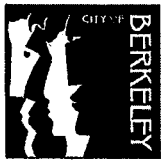
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public by being posted on the Police Review Commission's web page within three business days of the meeting.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

Received by PRC

OCT 07 2020

Date Received:



POLICY COMPLAINT FORM

Police Review Commission (PRC)

1947 Center Street, 1st Floor, Berkeley, CA 94704

Website: www.ci.berkeley.ca.us/prc/

E-mail: prc@ci.berkeley.ca.us

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

PRC CASE #

2478

1

Name of Complainant: **Navarro** **Monica**
Last First Middle

Mailing Address: 940 Washington St. 407B San Francisco California 94108
Street City State Zip

Primary Phone: (510)480-6039 Alt Phone: () _____

E-mail address: monavsal@gmail.com

Occupation: unemployed Gender: Female Age: 50

Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiethnic: _____ Other: _____

2

Identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.

Traffic Division Berkeley

My van was towed by the Berkeley Police Department and is stored in a private towing company as of Monday, October 5th 2020 I was told that I owe \$1200. People should have other options like having a hearing in order to reduce or remove the fees the towing company charges for towing and storing vehicles. Maybe the police should not use private towing companies but have their own facility to store vehicles being towed.

3

Location of Incident (if applicable) Spaulding Ave. & Allston Way, Berkeley

Date & Time of Incident (if applicable) According to an officer September 25th 2020

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

In August of 2019, I left my home in Vallejo to move into La Casa De Las Madres, a domestic violence shelter in San Francisco. I filled up my unregistered vehicle with my belongings and whatever else I could fit in my van. When I arrived at the shelter there was no parking space or garage that I could use to store my van. I started getting a lot of parking tickets so I decided to leave my van in Berkeley close enough to the Bart Station but in a street where I didn't have to move the van every two hours. Before moving to the shelter I tried to register my van in the Vallejo DMV but because the registration notice had been sent to my last address in Oakland I had some late penalty charges and I did not have enough money to pay for registration and the penalties.

Right now I live in Gum Moon a transitional home in San Francisco, I don't have a job and I'm waiting for a response from Social Security because I applied to SSDI for a disability.

My van was towed on September 25th 2020 according to the Berkeley Police Department. I can register the van and pay for auto insurance but it is impossible for me to pay \$1200 in fees from the towing company that the Berkeley Police Department hired to tow and store my van. The fees are \$1200 as of October 5th 2020, everyday after the fees will increase. The towing company also told me that if I don't pay they will send the bill to a collections agency and that they will sell my van without my authorization.

I'm very sorry that my van was parked unregistered on the street but I had no other option. I used the van to get away from my abuser and had no option but to park it on the street.

I called the traffic division in Berkeley to see if they could help me but they said that there was nothing that they could do. Later, an officer called and told me to apply for the victims of crime program through the Alameda DA's office but according to them that could take a very long time for me to get any compensation and the fees for my van keep increasing every day. I called the victims of a crime program and the person that I spoke to told me that this program doesn't cover towing fees.

Please I'm just asking for you to look at the circumstances that drove me to make the decisions that I made and to help get rid of the fees from the towing company.

4

What changes to BPD policy, practice, or procedure do you propose?

I want to have a hearing so a judge can hear my side of the story. I'm willing to register the vehicle but under my circumstances I had no option but to park the vehicle on the street.

5

Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Commission in evaluating your complaint.)

6

CERTIFICATION

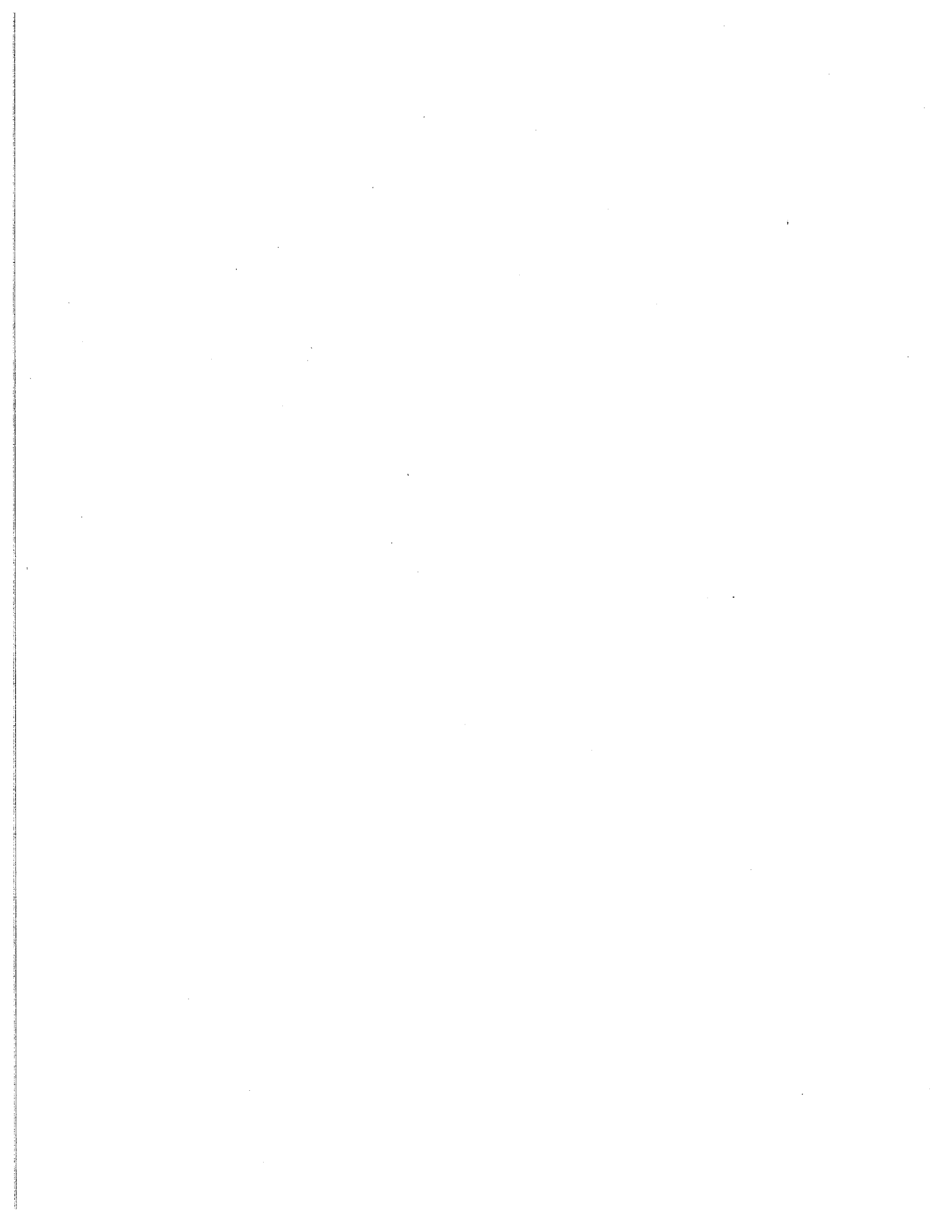
I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

Monica Navarro
Signature of Complainant

October 7, 2020
Date

How did you hear about Berkeley's Police Review Commission?

- Internet
- Publication: _____
- Referral: _____
- Other: _____



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
Training and Information Bulletin 235