

OFFICE OF CHIEF OF POLICE  
OAKLAND POLICE DEPARTMENT

SPECIAL ORDER NO. 6031

TO: All Personnel

SUBJECT: Towing Procedures

DATE: 25 Sep 01

The reckless driving, noise, property damage, and intentional disruption of major transportation arteries associated with the illegal cruising in Oakland (typically referred to as "Sideshow") has resulted in a need to expand officer authority within existing law and Department policy. The Department, in collaboration with the City Manager's Office, the City Attorney's Office, the Alameda County District Attorney's Office, and the local courts have worked together to develop this revised tow policy. The policy takes into consideration the problems mentioned above as well as insuring that vehicle owners are afforded appropriate due process. This Special Order shall serve as an addendum to Department General Order J-3, Towing Procedures.

By their very nature, reckless driving, exhibitions of speed, and other illegal activities associated with the illegal cruising and traffic problems in Oakland involve a motor vehicle as an instrumentality of the public offense. Therefore, it has been determined that the vehicle should be removed from the highway, and in some cases held as evidence. The courts will ultimately determine its value as evidence. The policy and procedure associated with this expanded authority is outlined below.

This tow procedure may be used at anytime in any area of the City where an officer has stopped a violator and made a determination that:

- The vehicle has been used to commit a public offense and causing the vehicles removal is in the best safety interests of the driver, registered owner and community.
- The vehicle has been used as an instrumentality in a public offense and has evidentiary value in future criminal proceedings against the driver.

## **SUPERVISOR RESPONSIBILITIES**

Supervisors shall review all the applicable reports written by officers who tow and hold vehicles as evidence under the provisions of this order. At minimum they shall insure that all the required reports have been written and the vehicle's value as evidence has been documented.

## **OFFICER RESPONSIBILITY**

### ***Public Offense Tows***

1. When a driver of a vehicle is arrested or cited for one of the offenses listed below, the vehicle may be towed because it was involved in a public offense (22655.5(a) VC).

C.V.C. §23116(a) Passenger in a Truck Bed (driver responsibility)

C.V.C. §23116(b) Passenger in a Truck Bed (passenger responsibility)

C.V.C. §28118 Driving over a Flare or Cone Pattern

C.V.C. §21460(a) Driving Left of the Double Solid Line

C.V.C. §21663 Driving on the Sidewalk

C.V.C. §12814.6(a) Provisional License. (5)(b)(1)(A) Driving between the hours of 12:00 a.m. and 5:00 a.m. and (B) Transport passengers who are under 20 years of Age

C.V.C. §24004 Unlawful Operation After Notice

C.V.C. §27007 Music Audible 50 feet from Vehicle

2. The officer shall write a Vehicle Storage Report (and Supplemental Report as necessary) documenting the authority and reason for the tow.
3. No holds shall be placed on the vehicle, and it will be released to the registered owner by the Records Section upon presentation of valid

registration, a valid driver's license, and payment of all administrative, tow, and storage fees.

***Evidence Tows***

1. When a driver of a vehicle involved in illegal cruising/"Sideshow" activity is arrested or cited for one of the offenses listed below, the vehicle may be towed and held as evidence.

C.V.C. §21712(a)            Driver permitting a passenger to ride outside of a vehicle.

C.V.C. §21712(b)            Unlawful riding on portion of vehicle not intended for a passenger.

C.V.C. §23103(a)            Reckless driving on a highway.

C.V.C. §23103(b)            Reckless driving in an off-street parking facility.

C.V.C. §23109(a)            Speed contest.

C.V.C. §23109(c)            Exhibition of speed on a highway.

2. The officer shall insure that the following is completed regarding the arrest/citation and the towing of the vehicle:

- A. A Crime Report shall be completed. Each report will indicate the offense and a complete summary of the officer's observations and the evidentiary value of the vehicle. Information concerning the tires, engine size and performance nature of the vehicle should be reported. If necessary a traffic officer should be consulted to assist with documentation. If the driver is released on a citation, they shall be cited into court on the next "V.C. booking date" listed on the Daily Stolen Vehicle List ("Hot Sheet").

- B. A Stored Vehicle Report

- C. A Tow Extension Form as described in General Order J-3.

- D. The officer shall present the reports to an on-duty supervisor for review.
- E. The reports, including any Notice to Appear or a copy of the Consolidated Arrest Report shall be placed in an envelope and deposited in the report writing receptacle at the end of the officer's tour of duty.

## **RECORDS DIVISION RESPONSIBILITY**

### ***Public Offense Tows***

1. Within 48 hours of the tow (excluding Saturdays, Sundays and Holidays), the Records Division shall send, via both certified and regular mail, a letter to the vehicle's registered owner and legal owner (if different than the registered owner) notifying them of the tow and their right to an administrative hearing.
2. Vehicles towed because they were involved in a public offense (authority of 22655.5(a) C.V.C.) that have no evidence holds, shall be released to the registered owner upon presentation of valid registration, a valid license, and the payment of administrative, tow, and storage fees.

### ***Evidence Tows***

1. Within 48 hours of the tow (excluding Saturdays, Sundays and Holidays), the Records Division shall send, via regular mail and certified mail, letters to the vehicle's registered owner and legal owner notifying them of the tow and their right to an administrative hearing. A copy of the aforesaid letter shall also be sent to the City Manager's Office Hearing Officer.
2. The Records Division shall make 4 copies of the reports regarding the arrest/citation and tow and forward them to the Traffic Section's Investigation Unit.
3. Vehicle owners or their agents who wish to dispute the tow shall be referred to the City Manager's Office (CMO) hearing officer. Vehicle operators (if different from the vehicle's owner) have no standing to request a hearing. The Records Division tow coordinator shall continue to act as the hearing officer for all other vehicles towed outside of this

order. Nothing in this order shall change the method by which those hearings are conducted.

4. The Records Section shall ensure that vehicles are released to registered owners who have a valid driver's license under the following circumstances:
  - A. They receive written or telephone notification from the CMO that a hearing has been conducted and the vehicle should be released
  - B. The registered owner presents a completed and signed Vehicle Release Form from the Traffic Section.
  - C. Prior to releasing a vehicle, Records Division personnel shall determine what administrative, tow and storage fees shall apply and collect all administrative fees owed the City. Vehicle owners shall be charged the standard daily storage rate with no reduction. **FEES SHALL ONLY BE WAIVED UPON ORDER OF THE COURT.** Fees shall not be waived simply because a case was not charged or dismissed.
5. The Records Section shall direct the registered owner to the location of the vehicle and inform them of the additional tow and storage fees associated with the impoundment.

#### **TRAFFIC SECTION RESPONSIBILITIES**

1. The Traffic Section Investigation Unit shall receive the reports on arrest, citations, and tows where vehicles have been towed and are being held as evidence of a violation of one of one or more of the aforesaid Vehicle Code Sections.
2. Within 6 hours of the first business day following the incident the Traffic Section Investigation Unit shall deliver a copies of all reports regarding the aforesaid offenses where a vehicle is being held as evidence to the City Manager's Office's (CMO) hearing officer.

3. The Traffic Section Investigation Unit shall:
- A. Review the Crime Report to insure that the vehicle's evidentiary value was documented and inspect the vehicle to gather what additional evidentiary value the vehicle offers.
  - B. Present the case to the Alameda County District Attorney's Office for charging.
  - C. Inform the Deputy District Attorney:
    - 1. There is a vehicle being held as evidence in the case.
    - 2. The District Attorney's Office or the court must send written notice of that stipulation or ruling and associated fees to the Traffic Section's Investigation Unit before the vehicle will be released.
  - D. Note all of the above in a Follow-up Report and confirm that the Deputy District Attorney has noted it in his charging reports.
  - E. The Traffic Section shall send a vehicle release to the Records Division under the following circumstances:
    - 1. The investigating officer determines that the vehicle holds no evidentiary value or it was not documented in the Crime Report.
    - 2. A Crime Report was not written documenting the evidentiary value of the vehicle.
    - 3. The Deputy District Attorney reviewing the case orders the vehicle released.
    - 4. An order from the court or District Attorney's office is received ordering that the vehicle be released.
  - F. Prior to releasing the vehicle the Traffic Section investigating officer shall make a determination regarding what administrative, tow, and storage fees apply. **FEES SHALL**

**ONLY BE WAIVED UPON ORDER OF THE COURT.**  
**Fees shall not be waived simply because a case was not charged or dismissed.**

- G. The investigating officer shall include copies of all reports and correspondence in the investigative package and note their receipt in the Follow-up Report. Any tape recordings sent to the Department for inclusion in the file shall be placed in the Property Section with a Property Release ordering their destruction after one year from the date of deposit.

### **CITY MANAGER'S OFFICE HEARING OFFICER RESPONSIBILITIES**

1. The City Manager's Office (CMO) will be responsible for scheduling and conducting administrative hearings for vehicles towed under this order. The Records Division tow coordinator will continue to act as the hearing officer for all other tows. The vehicle owner or agent must request hearings within ten days of the notice of the tow. Vehicle operators (if different from the vehicle's owner) have no standing to request a hearing. All hearing conducted by the CMO hearing officer shall be tape-recorded and the tape shall be sent to the Police Department's Traffic Investigations Unit for retention.
2. The CMO hearing officer should only make determinations related to the following:
  - A. Was the vehicle towed in error?
  - B. Was the vehicle reported stolen (this does not include embezzled vehicles taken by someone known to the registered owner who had prior permission to use the vehicle)?
  - C. Is the vehicle owned by a business and is necessary for the day to day operation of the business?
3. The CMO hearing officer shall not make any judgement or render any opinion as to the evidentiary value of the vehicle.

4. The CMO hearing officer will immediately notify the OPD Records Division (by telephone or facsimile) of the hearing officer's decision and will forward a copy of the written decision to the Traffic Section. The hearing officer shall also include an accounting of all administrative, tow, and storage fees to be charged.
5. The CMO will also forward all files related to the tow hearing to the Records Division, including a copy of the tape recording of the hearing. The OPD Records Division will maintain the files for all tow hearings.
6. If the hearing officer upholds the tow, or if no hearing is requested within 10 days of the date on the notice by the vehicle owner(s), the vehicle shall be held until the vehicle is ordered to be released by the court.

By order of

A handwritten signature in black ink, appearing to read "R. Word", written in a cursive style.

Richard L. Word  
Chief of Police