

**CITY OF OAKLAND**  
**AGENDA REPORT**

2010 DEC -2 PM 12: 56

**To:** Office of the City Administrator  
**Attn:** Dan Lindheim  
**From:** Oakland Police Department  
**Date:** December 14, 2010

**Re: Informational Report From the Office of Chief of Police on the Oakland Police Department's Tow Policy**

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**SUMMARY**

As requested by the Public Safety Committee, staff has prepared an informational report detailing changes made from the Oakland Police Department's previous towing policy as it relates to the towing of vehicles driven by unlicensed drivers and 30 day holds placed on those vehicles.

**FISCAL IMPACT**

The information contained in this report focuses on unlicensed driver tows as the new tow policy will severely reduce the number of these tows. In the fiscal year 2009-2010 approximately 2058 vehicles were towed pursuant to vehicle code section 22651(p) which authorizes the tow of vehicles operated by unlicensed drivers. Per the Department's contract with B&B towing, the City receives \$40.00 per towed vehicle from B&B towing. Additional funds are received from the release of towed vehicles and property releases (where citizens pay a fee to obtain a release to access the towed vehicle in the tow yard) so they can remove their property from a towed vehicle; the release fee is \$140.00 per vehicle.

The total collected in FY 09-10 from towing releases was \$504,470, based on 3,997 releases. \$13,005 was collected from property releases. The 22651(p) tow release fees accounted for approximately \$288,120 (\$140.00 x 2058 tows). All or part of this money will not be collected dependant on how many 22651(p) tows are made. It is unclear how the new tow policy will affect the number of 22651(p) tows. It is certain the number of 22651(p) tows will be dramatically reduced. The property release fees will also be reduced, although it is not possible to determine the dollar amount.

Additionally, OPD will lose the \$40.00 tow fee per vehicle. This equates to a possible loss of approximately \$82,320 (\$40.00 x 2058 tows), depending upon how many fewer vehicles are towed as a result of the policy change.

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## BACKGROUND

In 2008, City of Oakland community members raised concerns with the Mayor's office and the Oakland Police Department concerning the Department's towing policy as it related to the towing of vehicles for unlicensed drivers and the placement of 30 day holds on those vehicles. They felt that the policy (as it existed), negatively impacted the livelihood of citizens by restricting their ability to perform basic functions such as work, transport their children to and from school, shop, etc. The policy allowed officers to tow vehicles that were driven by unlicensed drivers *and* place 30 day holds on such vehicles.

As a result of these concerns, the Oakland Police Department had a series of meetings with individual representatives from the community, community based organizations, and City Council representatives to identify plausible solutions which would afford citizens the ability to perform basic life tasks, yet have the least amount of impact on the overall safety of other drivers.

## KEY ISSUES AND IMPACTS

The Oakland Police Department's previous policy (Training Bulletin III.E.3- 30-day Hold, Suspended, Revoked, or Never Issued a License) allowed officers to use their discretion to tow and place a 30 day hold on the vehicle of persons confirmed as never been issued a driver's license under the California Vehicle Code (CVC) 14602.6(a) **Vehicle Impoundment: Suspended, Revoked, or Unlicensed Driver**, which states:

*(1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle, or if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.*

As stated above, this practice raised concern with numerous members of the Oakland community which eventually led to the revision and dissemination of a new Tow Policy (Training Bulletin III-E.3-Towing Vehicles Pursuant to Violations of 12500 and 14601 CVC) on November 1, 2010 (Attached). This revised policy provides specific directions with respect to the towing and placing of 30-day holds on vehicles driven by persons confirmed as never been issued a driver's license.

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## PROGRAM DESCRIPTION

Training Bulletin III-E.3-Towing Vehicles Pursuant to CVC of 12500 **Unlawful to Drive Unless Licensed**, and 14601 **When Driving Privilege Suspended or Revoked** states the following:

Officers shall allow unlicensed drivers the opportunity to:

1. Relinquish the vehicle to a family member or acquaintance who is on scene that is in possession of a driver's license **OR**
2. Leave the vehicle on scene after a liability waiver has been signed.

The following are exceptions where (if one is met) officers may tow the unlicensed driver's vehicle to B&B Auto under authority CVC 14602.6(a)(1) with a 30 day hold

1. Location to legally park the vehicle is not readily available; and
2. The unlicensed driver refuses to sign the waiver agreeing to leave his or her vehicle on scene.

The policy further states:

In addition to citing the driver for CVC 12500, officers shall complete a Field Contact Report on Field Based Reporting (FBR) indicating the initial reason for the stop and the fact that the driver was cited for CVC 12500(a).

The following are exceptions where (if one is met) officers may tow the unlicensed drivers vehicle to B&B Auto under authority 14602.6(a)(1) with a 30 day hold:

1. Any vehicle owned by a person whose vehicles have been impounded one or more times in the last six months; and
2. Any vehicle driven by a person who has been cited one or more times in the last six months for CVC 12500, driving without having been issued a driver's license.

## SUSTAINABLE OPPORTUNITIES

*Economic:* The indirect economic benefits associated with removing/keeping alcohol-impaired drivers off City streets are significant in terms of life and property protection.

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Environmental: No environmental issues have been identified.

Social Equity: The services provided by the Police Department's participation in the DUI Enforcement and Awareness Program will assist the community through improved police services and enhanced police-community relations.

**DISABILITY AND SENIOR CITIZEN ACCESS**

There are no ADA or senior citizen access issues contained in this report.


**RECOMMENDATION**

Staff recommends acceptance of this report.

**ACTION REQUESTED BY THE CITY COUNCIL**

No action requested from the Council. This is an informational report

Respectfully submitted,

  
Anthony W. Batts  
Chief of Police

Prepared by:  
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Traffic Operations Section

Reviewed by:  
Ms. Cynthia Perkins  
Legislative Analyst  
Oakland Police Department

APPROVED AND FORWARDED TO  
THE PUBLIC SAFETY COMMITTEE:

  
\_\_\_\_\_  
Office of the City Administrator

*Attachment: Tow Policy*

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# TRAINING



# BULLETIN

Effective Date  
1 Nov 10

Index Number: III-B.3  
Alpha Index: Towing Vehicles Pursuant to  
Violations of 12500 and 14601 CVC

Evaluation Coordinator: Traffic Section Commander  
Automatic Revision Cycle: 3 Years

*"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."*

## TOWING VEHICLES PURSUANT TO VIOLATIONS OF 12500 AND 14601 CVC

### INTRODUCTION

Officers shall only tow a vehicle of an unlicensed driver after an opportunity has been granted to allow the unlicensed driver to relinquish the vehicle to a licensed driver already on scene or secure his or her vehicle on scene after a waiver has been signed.

This Training Bulletin reviews steps for properly towing a vehicle whose driver is unlicensed or in possession of an expired, suspended, or revoked license.

### RELEVANT CALIFORNIA VEHICLE CODE SECTIONS

#### 12500(a) CVC

12500(a) A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver's license issued under this code, except those persons who are expressly exempted under this code.

When encountering drivers who never have been issued a license or possess an expired license, the correct section to issue a citation for is CVC § 12500(a).

Officers shall allow an unlicensed driver the opportunity to:

1. Relinquish the vehicle to a family member or acquaintance who is on scene that is in possession of a valid driver's license **OR**
2. Leave the vehicle on scene after a liability waiver is signed.

The following are exceptions where, if one is met, officers may tow the unlicensed driver's vehicle to B&B Auto under the authority of CVC § 14602.6(a) (1) with a 30-day hold:

1. Locations to legally park the vehicle are not readily available.
2. The unlicensed driver refuses to sign a waiver agreeing to leave his or her vehicle on scene.

In addition to citing the unlicensed driver for CVC § 12500(a), officers shall complete a Field Contact report on FBR, indicating the initial reason for the stop and the fact that the driver was issued a citation for CVC § 12500(a).



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## Towing Vehicles Pursuant to Violations of 12500 and 14601 CVC, Index Number III-E.3

The following are exceptions where, if one is met, officers may tow the unlicensed driver's vehicle to B&B Auto under the authority of CVC § 14602.6(a) (1) with a 30-day hold:

1. Any vehicle owned by a person whose vehicles have been impounded one or more times in the last six months.
2. Any vehicle driven by a person who has been cited one or more times in the last six months for driving without ever having been issued a license (12500).

To verify whether a driver has met any these two exceptions, officers may conduct a query check through dispatch and also verify if any Field Contact reports have been submitted through FBR indicating that the driver has been previously cited and/or his or her vehicle(s) has been impounded.

Officers may tow a vehicle under a different towing authority with any applicable holds if they have additional authority to do so.

Officers may consider towing a vehicle of an unlicensed driver if, after reviewing their driving record, the driver presents a history of incautious driving. For example, if an officer stops a vehicle whose driver has not been issued a license, yet received a constructed driver's license number (i.e. X1234567) from DMV resulting in a previous DUI arrest, the officer may tow his or her vehicle based on their driving record indicating incautious behavior.

If an officer makes contact with a driver who possess an expired license, the officer may tow the vehicle for CVC § 22651(p) without a 30 day hold.

### **14601(a) CVC**

No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for reckless driving in violation of Section 23103, 23104, or 23105, any reason listed in subdivision (a) or (c) of Section 12806 authorizing the department to refuse to issue a license, negligent or incompetent operation of a motor vehicle as prescribed in subdivision (e) of Section 12809, or negligent operation as prescribed in Section 12810.5, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

When encountering drivers who are in possession of a suspended, revoked, or restricted license the correct section to issue a citation for is CVC § 14601 (a).

### **COMMUNITY CARETAKING DOCTRINE**

A recent 9<sup>th</sup> Circuit Court decision, *Miranda v. City of Cornelius; Acme Towing Inc.*, ruled that impounding a legally parked vehicle was an unreasonable seizure. Officers shall consider the community caretaking doctrine prior to impounding a vehicle of an unlicensed driver. For example, if the unlicensed driver of the vehicle pulls over in the driveway of their home or positioned legally on the side of a public roadway, the impoundment of the vehicle pursuant to CVC § 12500(a) would be unconstitutional. If, however, the driver legally pulls over to the side of a public roadway and the officer can adequately articulate that it is a high-crime area, officers may tow the vehicle under the community caretaking doctrine.



The towing of a vehicle shall not be pre-textual or retributive.

## **TOWING AUTHORITY**

### **22651(p) CVC**

When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

### **14602.6(a) (1) CVC**

Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license<sup>1</sup>, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

## **ORDERING A TOW**

CVC § 14602.6(a) (1) shall be used when ordering a tow for an unlicensed driver or possess a suspended or revoked license.

### **1. Officer Responsibility**

When ordering a tow under authority 14602.6(a) (1) VC with the appropriate hold, the officer ordering the tow shall provide the service dispatcher with the driver's license number of the person driving the vehicle at the time it was seized. If the person does not have physical possession of their suspended or revoked license the officer shall provide the service dispatcher with the name, DOB, and address of the person driving the vehicle at the time it was seized.

In the event the tow was not ordered directly from the dispatcher (tow sweep or STOP program, etc.) the officer ordering the tow shall ensure that the required information above is obtained and forwarded to the Communications Section prior to end of shift.

**NOTE:** The required information is needed by the Communications Section prior to the vehicle being entered into SVS as a towed vehicle.

Provide the person driving the vehicle, at the time it was seized, with a Tow Resource Guide (TF-3202).

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<sup>1</sup> For the purposes of this policy, officers shall not tow an unlicensed driver's vehicle for 30 days unless one of the exceptions enumerated above are met.



## 2. Dispatcher Responsibility

When a tow is ordered pursuant to 14602.6(a) (1) VC with a 30-Day hold, the dispatcher shall obtain the driver's license number of the person driving the vehicle at the time it was seized from the officer ordering the tow.

The dispatcher entering a vehicle into SVS, under the above listed authority shall, upon completion of the entry into SVS:

- Print-out and fax the SVS entry and the driver's license record of the person driving the vehicle at the time it was seized to the City of Oakland Administrative Hearing Examiner in a timely manner and in no event more that 24 hours later than the entry of the tow into SVS.
- In the event the driver of the vehicle has never been issued a license, the dispatcher shall print-out the CLETS response of, "None Issued."

### COMPLETE A STORED/TOWED VEHICLE REPORT TO PLACE A 30-DAY HOLD

Complete a Stored/Towed Vehicle Report (536-928) in accordance with the provisions of Report Writing Manual Insert 1-2.

Failure to properly complete or turn in the report in a timely manner may result in the release of the vehicle before the expiration of any holds or the City of Oakland Administrative Hearing Examiner releasing the vehicle and the City of Oakland being charged the cost of tow and storage.

### PROPER APPLICATION

Officer Jones conducts a car stop on a motorist for a broken taillight. Upon contacting the driver, Officer Jones discovers that he has never been issued a driver's license. After citing the driver for CVC §12500(a), Officer Jones permits the driver to relinquish his vehicle to his sister who is on scene and possesses a valid driver's license. Officer Jones completes a Field Contact report on FBR indicating that the driver has been cited for CVC §12500(a).

Officer Jones conducts a car stop on a motorist for an inoperable headlamp. Upon contacting the driver, Officer Jones discovers that he has never been issued a driver's license. After citing the driver for CVC §12500(a), Officer Jones allows the driver the opportunity to leave the vehicle on scene after presenting him a waiver. The driver, however, refused to sign the waiver, prompting Officer Jones to tow the vehicle to B&B under the authority of CVC § 14602.6(a) (1) with a 30-day hold.

Officer Jones stops a vehicle for running a stop sign and determines that the driver has a suspended license. The officer verifies the suspended license offense and that the driver has been officially served. The officer cites the driver for CVC §14601 and tows the vehicle with a 30-Day hold under the authority CVC §14602.6(a) (1) CVC.

Officer Jones stops a vehicle for speeding and determines that the driver has never been issued a license. Officer Jones verifies through FBR that the driver was cited 3 months prior for CVC § 12500(a) and elects to tow the vehicle to B&B Auto under the authority of 14602.6(a) (1) CVC with a 30-day hold.





Officer Jones stops a vehicle whose driver is in possession of an expired driver's license. After citing the driver for CVC § 12500(a), the officer elects to tow the vehicle for CVC § 22651(p) without placing a 30-Day hold on the vehicle.

Officer Jones stops a vehicle after observing the driver engage in reckless driving activity during the sideshow. Upon contact, the driver of the vehicle advises Officer Jones that he has never been issued a license. Although the driver has not been issued a license, Officer Jones tows the driver's vehicle for reckless driving (CVC § 23109.2) with a 30-day hold.

### IMPROPER APPLICATION

Officer Jones conducts a car stop on a motorist for a broken taillight. Upon contacting the driver, Officer Jones discovers that he has never been issued a driver's license. After citing the driver for CVC § 12500(a), Officer Jones elects to tow the driver's vehicle to B&B under the authority of CVC § 14602.6(a) (1) without allowing the driver the opportunity to park his vehicle.

Officer Jones stops a vehicle for running a stop sign and learns that the driver has an expired license. The officer tows the vehicle to B&B Auto for 30 days.

Officer Jones observed a vehicle running a stop sign and elects to pull over the driver in the driveway of his home. Upon contacting the driver, Officer Jones discovers that he was never issued a drivers license. Officer Jones elects to tow the vehicle to B&B Auto, not taking into consideration the community caretaking doctrine.

### QUICK REFERENCE GUIDE

DL Status	Citation Authority	Tow	Authority	Hold
None Issued	CVC § 12500(a)	No <sup>2</sup>	14602.6(a) (1) CVC	Yes (30 Days) <sup>3</sup>
Expired	CVC § 12500(a)	Yes	CVC § 22651(p)	No
Suspended	CVC § 14601	Yes	CVC § 14602.6(a) (1)	Yes (30 Days)
Revoked	CVC § 14601	Yes	CVC § 14602.6(a) (1)	Yes (30 Days)

<sup>2</sup> Shall allow the driver to legally park the vehicle after the waiver is signed. If the driver refuses to sign the waiver or there are no legal parking spaces readily available, the vehicle may be towed.

<sup>3</sup> Shall only apply to any vehicle owned by a person whose vehicles have been impounded one or more times in the last six months and/or any vehicle driven by a person who has been cited one or more times in the last six months for driving without ever having been issued a license (VC § 12500).



Towing Vehicles Pursuant to Violations of 12500 and 14601 CVC, Index Number III-E.3

