



## THE CITY OF SAN DIEGO REPORT TO THE CITY COUNCIL

DATE ISSUED: April 11, 2012 REPORT NO. 12-040

ATTENTION: Public Safety and Neighborhood Services Committee  
Agenda of April 18, 2012

SUBJECT: San Diego Police Department Tow Contract Action Report and Updated Information

### REQUESTED ACTION

The Department requests the Committee approve the following items and move them forward to Council for approval.

1. Proposed Amendments to SDMC:
  - Section 86.28, Police-Initiated Impounds – Compliance with California Vehicle Code
  - Section 86.29, Police-Initiated Impounds – Notice of Stored Vehicles
  - Section 86.30, Police-Initiated Impounds – Conduct of Post-Storage Hearing
  - Section 86.31, Police-Initiated Impounds – Costs related to Post-Storage Hearings
2. Proposed Resolution establishing procedures for release of properly impounded vehicles and for cost recovery of administrative costs per California Vehicle Code section 22850.5
3. Proposed repealing Council Policy 500-03, Tow Trucks – Police Requested

### BACKGROUND

On April 12, 2010, the City of San Diego issued RFQ 10004980-10-P seeking qualified Licensed Tow Providers and Licensed Impound Providers to provide tow and impound services for the City of San Diego. The publication specifically sought operators to furnish the City with Licensed Tow and Impound operations as may be required for a period of two years from the date of execution, with options to renew for three additional one-year periods.

Interested Tow and Impound Providers were required to submit statements of qualifications as either a Licensed Impound Provider (LIP) or Licensed Tow Provider (LTP). Licensed Impound Providers may serve as both. Tow Providers are required to provide towing service only, and not impounding, release, storage, or disposal services. An Impound Provider provides impounding, vehicle release, storage, disposal services, and may additionally provide towing services.

The original submittal date for statements of qualifications was May 13, 2010; however, after the Pre-Submittal Conference, a total of four addendums were added to the original request for qualifications and the time for submission was extended. All qualification statements by interested parties were submitted by June 10, 2010.

A selection committee was assembled to review each of the qualification packages submitted by interested Tow and Impound Providers. Selections were based on qualifying factors detailed in the RFQ document and the attached Tow Manual. The committee's recommendations for selection were sent to City Purchasing in

late October, 2010. Several protests resulted and had to be adjudicated by City Purchasing & Contracts prior to contracts being finalized.

In September 2011, contracts were executed for eight pre-selected LIP locations involving three companies and 13 companies providing LTP operations. There are six to seven LTP companies per zone (8 total zones throughout the City) that tow vehicles to a pre-selected LIP location per zone. Initially, there were several system interface issues resulting in delayed response times; however, these were identified and resolved, eventually resulting in faster response times to officers' requests.

A major component of the City's new tow program involved the selection of an objective Tow Dispatch provider, AutoReturn, through a competitive RFP process. The addition of AutoReturn to the dispatching, billing, and management of towing operations has resulted in a level of transparency to both the Department and general public. AutoReturn (AR) dispatches the pre-qualified LTP through random computer selection and, based upon the location of the incident, notifies the closest available truck/equipment to perform the tow. The vehicle is picked up and taken to a pre-designated LIP, depending on the location of the tow. AR monitors the type and size of the tow, equipment necessary versus what was used, mileage, length of response time and any other pertinent information. All of the tow information is recorded in a proprietary software system in which the City owns the data. This allows the Police Department to monitor and audit all charges. Additionally, AR monitors the final disposition of the vehicle, whether it is released or forfeited and ultimately records all fees paid by and to the various parties. As a result of the contract transparency, towing related fees that are excessive, or charged for services not required or necessary, can be reversed or refunded by the tow provider at the direction of the San Diego Police Department Tow Administrator.

These three separate and distinct operational components of the City's new tow program (LIP, LTP, and Dispatch) are a departure from other conventional tow programs in which there may be shared responsibilities. Although there was some initial apprehension by all interested parties, clearly stated objectives have been achieved, including the ability to provide improved response times to the officers in the field; the inclusion of additional qualified towing operators has increased the participation of small local businesses; the improvement of expense and revenue data collection; and the continued involvement of major tow enterprises for a seamless operation.

To assist officers at accident scenes when a police tow is not warranted, the City and AutoReturn forged an agreement, whereby, AutoReturn uses the same dispatch methodology to request a private tow using the contracted LTP tow providers. The \$22.00 Tow Management Fee (normally collected in conjunction with the Franchise Fee) is collected and paid to AutoReturn. This provides officers a process for removing disabled vehicles from the roadway and resuming normal traffic flow. Citizens still retain the ability to request a tower of their choice through private means as long as the vehicle can be removed timely so as not to obstruct traffic or create a safety hazard.

The City is currently working with the LIP's to address evidentiary storage and vehicle transfer and relocation rates that were inadvertently not included in the original contracts. The City anticipates being able to work with Licensed Impound Providers to amend fee structures related to the storing of vehicular evidence; thereby reducing costs to the City.

## COST RECOVERY

The primary expenses of the City of San Diego's new tow program are comprised of the following elements:

1. Dispatch Service Expense:

This is a per-tow fee charged to the City by the current contracted dispatch administrator (AR).

2. Tow Provider Expense:

This is a variable rate expense paid to the towing contractor (LTP), the actual owner/operator of the tow truck. The pre-determined rate established by the City and stated within the contract, depends on the location, vehicle size and any necessary additional equipment. This rate is structured as a pass-through fee because the LTP is bringing the LIP a vehicle in which the LIP has an opportunity to earn money. The Licensed Impound Provider (LIP) pays the City the fees, the City then passes 100% of the fees to the LTP. This assures that the LTP and LIP cannot collude or create side agreements for rerouting vehicles and provides a transparent financial transaction for the safety of all parties involved. The Licensed Impound Provider is then allowed to recover this expense through the fees it charges the vehicle owner upon release.

3. Police Administrative Expenses:

This is the expense of operating a qualified tow program including a sworn police sergeant who is the tow administrator, tow program staff, and direct administrative expenses. It also may include inspection time for impound yards or for inspecting tow equipment by various SDPD personnel.

4. Police Field Expenses:

This is the expense of the sworn/civilian personnel in the field that are necessary to impound a vehicle. The cost includes wait time, the time necessary to inventory vehicle contents, complete paperwork, and any other duties required to secure the vehicle for towing and impound.

The assumptions for developing the Towing Program Cost Recovery model included an estimate of the number of tows, which has been declining over the last four years. Two primary reasons have been attributed to the decline in tow numbers. The first, a change in operating policy which allows officers increased discretion on whether to tow a vehicle; the second, an increase of sworn officers focused on responding to radio calls and other patrol activities, rather than conducting enforcement which generated tows due to parking or registration violations. As provided in the chart below towed vehicles have declined an estimated 33% since 2008.

### **Towed Vehicle Impounds Per Year**

2008	47,585
2009	46,857
2010	40,091
2011	32,544
2012 (estimated)	32,000

The following chart is a summary of the current City of San Diego towing cost model with estimated expenses totaling \$6,816,717.

## EXPENSE

SDPD and City Administrative/Support Costs		
City Attorney	\$119,601	
City Treasurer	\$88,218	
Police - Communications	\$277,463	
Police - Data Systems	\$14,000	
Police - Fiscal Operations	\$21,570	
Police - Tow Management	\$512,390	
Police - Records	\$598,138	
<b>Subtotal</b>		<b>\$1,631,380</b>
AutoReturn Contracted Dispatch Services		
City Authorized Tows	\$704,000	
Private Property Tows	\$0	
<b>Subtotal</b>		<b>\$704,000</b>
SDPD Sworn/Code Enforcement Costs		
Police - Parking Enforcement	\$276,168	
Police - Sworn Field Operations	\$1,389,169	
<b>Subtotal</b>		<b>\$1,665,337</b>
Contracted Tow Services to LTP's - Cost Neutral to City		
Paid to Tow Providers - Corresponding revenue from Impound Operators		
<b>Subtotal</b>		<b>\$2,816,000</b>
<b>EXPENSE TOTAL</b>		<b>\$6,816,717</b>

Under the authority of the California Vehicle Code sections 12110(b) and 22850.5 (a), the City developed a cost recovery fee model to divide the expense of the tow program between the LIP and the vehicle's registered owner/agent. The fees exist to minimize any negative impact to the City's general fund budget. The combined revenue of these fees is structured to recover all actual and reasonable tow program expenses. California Vehicle Code sections 12110 and 22850.5 do not allow the City to capture any revenue in excess of the total tow program expenses or in excess of the administrative costs relating to the removal, impound, storage, or release of an impounded vehicle. It should be noted that there is no direct link or correlation between the previous fees and the current cost recovery fees.

The two new cost recovery fees are:

### 1. The Tow Impound Cost Recovery (TICR) Fee (\$54.00)

California Vehicle Code section 22850.5(a) authorizes a city to adopt a regulation, ordinance, or resolution establishing procedures for release of properly impounded vehicles and for the imposition of a charge equal to its administrative costs relating to the removal, impound, storage, or release of the vehicle.



In most circumstances, this fee is charged to the registered owner/agent when they claim the vehicle. If they forfeit the vehicle, the charge can still be collected through proceeds from a forfeiture sale. When a vehicle is forfeited, the LIP assumes ownership of the vehicle and may auction the vehicle to recover storage and other fees. Basically, if the proceeds of the sale are greater than the storage expense, the LIP is required to reimburse the State and City any outstanding fees. This is where the City could collect the TICR fee revenue or even recover revenue from delinquent parking violations.

## 2. Franchise Fee (\$74.00)

The Franchise Fee that is collected is divided into two portions, the actual City Franchise Fee of \$74.00 and the Tow Management Fee of \$22.00 that is collected by the LIPs on a “per-vehicle basis” and paid to the City. The Tow Management Fee (\$22.00) is, in turn, paid to AutoReturn by the City on a “pass-through basis.” The revenue from a towing franchise agreement is different than revenue from other franchise agreements such as utility franchises. Utility franchises are typically awarded for utility services provided to residents (gas, electricity, water) and are based on the use of rights of way.

Under the Broughton Act, Public Utilities Code sections 6001-6092, franchises for gas, electricity and water may be awarded to the highest bidder. California Vehicle Code section 12110 (b) allows a public entity to require a fee in connection with the award of a franchise for towing vehicles on behalf of that public entity, however, it is important to note that, “the fee in those cases may not exceed the amount necessary to reimburse the public entity for its actual and reasonable costs incurred in connection with the towing program.” Therefore a towing Franchise Fee can only recover the cost of the program.

The Towing Program Franchise Fee is only charged to the LIP because it has the privilege of receiving the vehicle and has the potential to make a profit from the towed vehicle. The LIP is able to charge various service fees and storage fees.<sup>1</sup> If the vehicle is not claimed, the LIP has the ability to auction the vehicle to recover its expenses, pay the City and profit from any additional proceeds.

The two fee revenue sources combined with the reimbursement of the Tow Service Fee from the Impound Provider total an estimated revenue amount to the City of \$6,808,320. This creates an estimated net cost to the City of \$8,397.

## REVENUE

Tow-Impound Cost Recovery (TICR) Fee	
TICR Fees collected at Release	\$1,240,320
	<b>\$1,240,320</b>
Contracted Tow Services (paid to truck operators by impound yard)	<b>\$2,816,000</b>
Franchise Fee Revenue (Paid to City by Impound Yards)	<b>\$2,752,000</b>
<b>REVENUE TOTAL</b>	<b>\$6,808,320</b>
<b>EXPENSE TOTAL</b>	<b>\$6,816,717</b>
<b>Net Cost to City</b>	<b>\$8,397</b>

<sup>1</sup>Service and storage fee limits are established by the City within the contracts with both LIPs and LTPs

**The Department requests the Committee to approve the following items and move them forward to Council for approval.**

Exhibit A: Proposed Amendments to SDMC:

Section 86.28, Police-Initiated Impounds – Notice Compliance with California Vehicle Code

Section 86.29, Police-Initiated Impounds – Notice of Stored Vehicles

Section 86.30, Police-Initiated Impounds – Conduct of Post Storage Hearings

Section 86.31, Police-Initiated Impounds – Costs Related to Post Storage Hearings

Oversight of the new tow contracts was moved from the Department's Vice and Licensing Unit to Traffic Division. Responsibility for post-storage hearings, previously handled by Risk Management, was also transferred to Traffic Division. The California Vehicle Code states that vehicle owners who have their vehicles towed at the request of law enforcement are entitled to notice and a post-storage hearing. These proposed amendments bring the Municipal Code up to date to comply with current provisions of the California Vehicle Code, and more properly reflect current Department procedures.

Exhibit B: Proposed Resolution establishing procedures for release of properly impounded vehicles and for cost recovery of administrative costs per California Vehicle Code section 22850.5

The City last authorized cost recovery fees through a combination of Negligent Impound Fee (NIP), a Referral Fee, and/or an Unlicensed Driver Fee (ULD).

The California Vehicle Code allows cost recovery for administrative costs related to a tow program. Under the restructured towing program, the Department has eliminated the NIP, Referral Fee and ULD fees, and now collects the Towing Impound Cost Recovery Fee (TICR) fee and Franchise Fee.

Exhibit C: Proposed Repeal of Council Policy 500-03, Tow Trucks – Police Requested


The Council Policy was last updated in 1981, when contracts for towing districts were awarded to the highest responsible bidder. The Vehicle Code precludes awarding contracts in that manner, as the City is limited to recovering its actual and reasonable costs. If the Council desires to retain a policy, staff needs direction as to what the Council would like to address in such a policy.

## CONCLUSION

The City authorized Tow Program was in need of improvement. The previous fee structure was comprised of three fees that were not fully effective in generating 100% cost recovery revenue. There were limits to the accuracy of the towing data and the City could not enforce the fees in all towing cases. Additionally, the work was being completed via a month to month contract and the towing contractors had litigated the City over the fee structure.

The current City of San Diego Tow Program has been established to provide quick, prompt and safe service to the employees of the San Diego Police Department while keeping the citizens safe from illegal or unscrupulous towing or impound operators with regards to police-initiated towing. The current fee structure exists to minimize any negative impact to the City's General Fund. The City is able to accurately analyze the towing data, including both expense and revenue, based upon the transparency of all facets of the towing program. Lastly, the qualified LIPs and LTPs are working with secure contracts that protect the City, the contractors, and the citizens.

Respectfully submitted,



William M. Lansdowne  
Chief of Police

LANSDOWNE/pn  
Attachments

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING THE TITLE OF ARTICLE 6; AMENDING CHAPTER 8, ARTICLE 6, DIVISION 00, BY AMENDING SECTIONS 86.28, 86.29, AND 86.30, AND ADDING SECTION 86.31, ALL RELATING TO PROCEDURES REGARDING POLICE IMPOUNDS OF VEHICLES.

WHEREAS, the California Vehicle Code gives to peace officers and other authorized persons the authority to remove vehicles from public streets and highways; and

WHEREAS, California Vehicle Code section 22852(a) provides that, with some exceptions, whenever an authorized member of a public agency directs the storage of a vehicle, the agency or person directing the storage shall provide the vehicle's registered and legal owners of record, or their agents, with the opportunity for a post-storage hearing to determine the validity of the storage; and

WHEREAS, California Vehicle Code section 22852(b) requires that when a vehicle is stored at the direction of a public agency, notice of the storage must be given to registered and legal owners of record; and

WHEREAS, the San Diego Municipal Code provisions relating to notice of stored vehicles and post-storage hearings were last amended in the 1980's; and

WHEREAS, this amendment to the San Diego Municipal Code will update the provisions relating to notice of stored vehicles and post-storage hearings to comply with current requirements of the California Vehicle Code and to reflect current practices of the City; NOW  
THEREFORE,



BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 8, Article 6 of the San Diego Municipal Code is amended by amending the title of Article 6 to read as follows:

**Article 6: Stopping, Standing, Parking of Vehicles, and Impound Procedures**

Section 2. That Chapter 8, Article 6, Division 00, of the San Diego Municipal Code is amended by amending sections 86.28, 86.29, and 86.30 to read as follows:

**§ 86.28      Police-Initiated Impounds – Compliance with California Vehicle Code**

- (a) Persons authorized to remove vehicles, including peace officers, regularly employed and salaried employees of the City who are engaged in directing traffic or enforcing parking laws and regulations, and trained volunteers of the San Diego Police Department who are engaged in directing traffic or enforcing parking laws and regulations, shall comply with the procedures for removing and impounding vehicles pursuant to the California Vehicle Code, including the noticing of stored vehicles, and post-storage hearings.
- (b) If any provision of section 86.28, 86.29, 86.30, or 86.31 conflicts with the California Vehicle Code, the California Vehicle Code shall control.

**§ 86.29      Police-Initiated Impounds – Notice of Stored Vehicles**

- (a) In accordance with the California Vehicle Code, a notice of stored vehicle shall be mailed or personally delivered to the registered and legal owners of record within 48 hours, excluding weekends and holidays, notifying them of their right to a post-storage hearing.
- (b) The notice of stored vehicle shall include all of the information required by California Vehicle Code section 22852, including the authority and

purpose for the removal of the vehicle, and the right to request a hearing within ten days of the date of the notice.

- (c) In accordance with California Vehicle Code section 22852, sections 86.29, 86.30, and 86.31 do not apply to vehicles abated, impounded, or removed pursuant to California Vehicle Code sections 22660 to 22668 inclusive; section 22655; section 22658; section 22710; or removed pursuant to section 22669 if the vehicle is determined to have a value of five hundred dollars or less.

**§ 86.30 Police-Initiated Impounds – Conduct of Post-Storage Hearing**

- (a) The City shall provide the registered and legal owners of record, or their agents, with an opportunity for a post-storage hearing, in compliance with California Vehicle Code section 22852, to determine the validity of the storage.
- (b) The hearing shall be conducted within 48 hours of the request, excluding weekends and holidays.
- (c) The City may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.
- (d) During the hearing, the City shall have the burden of establishing the reasonable grounds for the storage.
- (e) The hearing may be conducted informally, in person or telephonically, and neither party shall be bound by the Rules of Evidence.

- (f) The only issue to be determined by the hearing officer is the validity of the storage.
- (g) Failure of either the registered or legal owner, or his or her agent, to request or to attend a scheduled hearing shall satisfy the post-storage hearing requirement.

Section 3. That Chapter 8, Article 6, Division 00, of the San Diego Municipal Code is amended by adding section 86.31 to read as follows:

**§86.31 Police-Initiated Impounds – Costs Related to Post-Storage Hearing**

- (a) No charge may be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a vehicle unless that hearing or appeal was requested in writing by the registered or legal owner, or their agent, and such charge may be imposed only upon the person requesting that hearing or appeal.
- (b) The City shall be responsible for the costs incurred for towing and storage if it is determined in the post-storage hearing that reasonable grounds for the storage were not established.

Section 4. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from  
and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

\_\_\_\_\_  
Linda L. Peter  
Deputy City Attorney

LLP:amt:ccm  
04/05/2012  
Or.Dept:Police Dept.  
O-2012-xxx

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San  
Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayo

STRIKEOUT ORDINANCE

OLD LANGUAGE – ~~Strikeout~~  
NEW LANGUAGE – Underlined

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING THE TITLE OF ARTICLE 6; AMENDING CHAPTER 8, ARTICLE 6, DIVISION 00, BY AMENDING SECTIONS 86.28, 86.29, AND 86.30, AND ADDING SECTION 86.31, ALL RELATING TO PROCEDURES REGARDING POLICE IMPOUNDS OF VEHICLES.

**Article 6: Stopping, Standing, and Parking of Vehicles, and  
Impound Procedures**

**§ 86.28 Post-Storage Hearings for Impounded Vehicles Police-Initiated Impounds –  
Compliance with California Vehicle Code**

~~As to any vehicle impounded pursuant to this chapter by or at the request of~~  
~~The City of San Diego, its agents or employees, a person who has a legal~~  
~~entitlement to possession of the vehicle has a right to request a post-storage hearing~~  
~~in person, in writing or by telephone to determine whether there was probable~~  
~~cause to impound the vehicle. Requests shall be made to The City of~~  
~~San Diego within ten (10) days after such person has learned such vehicle has been~~  
~~impounded or within ten (10) days after the mailing of the date set in the Notice of~~  
~~Stored Vehicle, whichever occurs first. The Notice of Stored Vehicle shall be sent~~  
~~in the mail to the legal and registered owner or their agent and to the garage where~~  
~~the vehicle is stored within forty-eight (48) hours, excluding weekends and~~  
~~holidays, after impounding and storage of the vehicle.~~



- (a) Persons authorized to remove vehicles, including peace officers, regularly employed and salaried employees of the City who are engaged in directing traffic or enforcing parking laws and regulations, and trained volunteers of the San Diego Police Department who are engaged in directing traffic or enforcing parking laws and regulations, shall comply with the procedures for removing and impounding vehicles pursuant to the California Vehicle Code, including the noticing of stored vehicles, and post-storage hearings.
- (b) If any provision of section 86.28, 86.29, 86.30, or 86.31 conflicts with the California Vehicle Code, the California Vehicle Code shall control.

§ 86.29 Conduct of HearingPolice-Initiated Impounds – Notice of Stored Vehicles

~~A hearing shall be conducted before a hearing officer designated by the City Manager within forty eight (48) hours of receipt of a demand therefor from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays, and City holidays are to be excluded from the calculation of the 48 hour period. The hearing officer shall be someone other than the person who directed the impounding and storage of the vehicle. The sole issue before the hearing officer shall be whether there was probable cause to impound the vehicle in question.~~

~~“Probable cause to impound” shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of local, state or federal law to grant legal authority for the removal of the vehicle. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the~~

vehicle. The Police Department shall carry the burden of establishing that there was probable cause to impound the vehicle in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision.

A copy of such decision shall be provided to the person demanding the hearing and the registered owner of the vehicle (if not the person requesting the hearing). The hearing officer's decision in no way affects any criminal proceeding in connection with the impound in question and that any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final. Failure of the registered or legal owner, or their agent to request a post-storage hearing in person, in writing or by telephone shall be deemed a waiver of the right to such hearing.

- (a) In accordance with the California Vehicle Code, a notice of stored vehicle shall be mailed or personally delivered to the registered and legal owners of record within 48 hours, excluding weekends and holidays, notifying them of their right to a post-storage hearing.
- (b) The notice of stored vehicle shall include all of the information required by California Vehicle Code section 22852, including the authority and purpose for the removal of the vehicle, and the right to request a hearing within ten days of the date of the notice.
- (c) In accordance with California Vehicle Code section 22852, sections 86.29, 86.30, and 86.31 do not apply to vehicles abated, impounded, or removed pursuant to California Vehicle Code sections 22660 to 22668 inclusive; section 22655; section 22658; section 22710; or removed pursuant to

section 22669 if the vehicle is determined to have a value of five hundred dollars or less.

§86.30

**Decisions of The Hearing Officers and Their Effect ~~Police-Initiated Impounds~~**  
**- Conduct of Post-Storage Hearing**

The hearing officer shall only determine that as to the vehicle in issue either (a) there was probable cause to impound the vehicle or (b) there was no probable cause. In the event that the hearing officer determines that there was no probable cause, the hearing officer shall prepare and date a Certificate of No Probable Cause, copies of which shall be given to the possessor of the vehicle and the Police Department. Upon receipt of the possessor's copy of such certificate, the Official Police Garage having custody of the vehicle shall release the vehicle to its possessor. Upon a finding of no probable cause, towing and storage fees shall be paid by the City in accordance with arrangements made between the City and the Official Police Garages. If the possessor fails to present such certificate to the Official Police Garage having custody of the vehicle within twenty four (24) hours of its receipt, excluding such days when the Official Police Garage is not open for business, the possessor shall assume liability for all subsequent storage charges. Such certificate shall advise the possessor of such requirement.

- (a) The City shall provide the registered and legal owners of record, or their agents, with an opportunity for a post-storage hearing, in compliance with California Vehicle Code section 22852, to determine the validity of the storage.
- (b) The hearing shall be conducted within 48 hours of the request, excluding weekends and holidays.

- (c) The City may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle.
- (d) During the hearing, the City shall have the burden of establishing the reasonable grounds for the storage.
- (e) The hearing may be conducted informally, in person or telephonically, and neither party shall be bound by the Rules of Evidence.
- (f) The only issue to be determined by the hearing officer is the validity of the storage.
- (g) Failure of either the registered or legal owner, or his or her agent, to request or to attend a scheduled hearing shall satisfy the post-storage hearing requirement.

**§86.31**

**Police-Initiated Impounds – Costs Related to Post-Storage Hearing**

- (a) No charge may be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a vehicle unless that hearing or appeal was requested in writing by the registered or legal owner, or their agent, and such charge may be imposed only upon the person requesting that hearing or appeal.
- (b) The City shall be responsible for the costs incurred for towing and storage if it is determined in the post-storage hearing that reasonable grounds for the storage were not established.

LLP:amt  
04/06/2012  
Or.Dept:Police Dept.

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING THE TITLE OF ARTICLE 6; AMENDING CHAPTER 8, ARTICLE 6, DIVISION 00, BY AMENDING SECTIONS 86.28, 86.29, AND 86.30, AND ADDING SECTION 86.31, ALL RELATING TO PROCEDURES REGARDING POLICE IMPOUNDS OF VEHICLES.

This ordinance amends provisions of the San Diego Municipal Code (SDMC) relating to procedures for impounded vehicles, including notice requirements and post-storage hearings.

This ordinance describes those persons in the City authorized to remove vehicles, and the duties of the City to provide notice and an opportunity for a hearing, and the conduct and costs of those hearings. This ordinance is intended to conform the SDMC to the requirements of the California Vehicle Code.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its passage, since a written or printed copy will be available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.



A complete copy of the Ordinance is available for inspection in the Office of the City  
Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street,  
San Diego, CA 92101.

LLP:amt:ccm  
04/06/2012  
Or.Dept:Police Dept.

DRAFT

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL ESTABLISHING  
PROCEDURES FOR THE RELEASE OF PROPERLY  
IMPOUNDED VEHICLES AND FOR THE IMPOSITION OF A  
CHARGE EQUAL TO ADMINISTRATIVE COSTS RELATING  
TO THE REMOVAL, IMPOUND, STORAGE, OR RELEASE  
OF IMPOUNDED VEHICLES.

WHEREAS, California Vehicle Code section 22850.5 authorizes the City to adopt a regulation, ordinance, or resolution establishing procedures for the release of properly impounded vehicles; and

WHEREAS, California Vehicle Code section 22850.5 authorizes the imposition of a charge, equal to the administrative costs relating to the removal, impound, storage, or release of properly impounded vehicles; and

WHEREAS, California Vehicle Code section 22850.5 authorizes the City to waive the charge for administrative costs upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed; and

WHEREAS, California Vehicle Code section 22850.5 authorizes the imposition of the charge in addition to any other charges authorized or imposed pursuant to the California Vehicle Code; and

WHEREAS, in 1990, the Council of the City of San Diego adopted Resolution R-275487, authorizing cost recovery on impounded vehicles whereby a Negligent Impound (NIP) fee would be collected on specifically-identified impounds, based on impound authority as authorized by the California Vehicle Code; and

WHEREAS, in 1991, the Council of the City of San Diego adopted Resolution R-278498, expanding the cost recovery program to include any and all vehicles impounded under authority of the California Vehicle Code or San Diego Municipal Code; and

WHEREAS, Resolution R-278498 also authorized the City Manager to add or delete from authorized impound services listed on a fee schedule and to review and adjust the fee schedule annually; and

WHEREAS, in 1996, the Council of the City of San Diego adopted Resolution R-287838, authorizing collection of an Unlicensed Driver (ULD) fee for vehicles impounded when a driver had a suspended or revoked driver's license, or had no valid license at all; and

WHEREAS, in 2001, the Council of the City of San Diego adopted R-295739, authorizing continued collection of the ULD fee for driver's license related impounds; and

WHEREAS, the City has restructured its towing program and the recovery of costs and fees; and

WHEREAS, under the current program, the City is divided into tow zones, with separate services for the dispatch of calls, the towing of vehicles, and the impound, storage, and release of vehicles; and

WHEREAS, the City developed a new cost recovery fee model to divide the expense of the tow program between the impound service providers and the registered owners/agents of towed vehicles; and

WHEREAS, the new cost recovery fee model renders unnecessary the previously approved fees and fee resolutions; and

WHEREAS, in 2011, the City entered into non-exclusive contracts with multiple tow providers to provide towing services (licensed tow providers) and impound, storage, release and disposal services (licensed impound providers); and

WHEREAS, in 2011, the City entered into a contract with a provider for dispatch services; and

WHEREAS, the City wishes to recover its administrative costs pursuant to California Vehicle Code section 22850.5 through a Tow Impound Cost Recovery (TICR) fee; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the City may continue to impose a fee, equal to the administrative costs relating to the removal, impound, storage, or release of properly impounded vehicles, through a Tow Impound Cost recovery (TICR) fee.

BE IT FURTHER RESOLVED, that the TICR fee for administrative costs shall only be imposed upon the registered owner or the agents of that owner and shall not include any vehicle towed under an abatement program or sold at a lien sale, unless the sale is sufficient in amount to pay the lien holder's total charges and proper administrative costs.

BE IT FURTHER RESOLVED, that the TICR fee for administrative costs shall not be charged to the legal owner who redeems a vehicle unless the legal owner voluntarily requests a post-storage hearing.

BE IT FURTHER RESOLVED, that the City's contracted tow operators are authorized to collect the TICR fee for administrative costs on behalf of the City from owners who redeem their vehicles from impound.

BE IT FURTHER RESOLVED, that the TICR fee for administrative costs shall be in addition to any other charges authorized or imposed pursuant to the California Vehicle Code.

BE IT FURTHER RESOLVED, that procedures for the release of properly impounded vehicles shall include, at a minimum, that a vehicle may be released to a registered or legal owner of record, or their agent, conditioned upon the person having a valid driver's license or being accompanied by a licensed driver; and upon payment of towing and storage fees; and upon payment of the TICR fee for administrative costs, when authorized; and upon proof of current vehicle registration.

BE IT FURTHER RESOLVED, that this Resolution replaces the previous resolutions related to cost recovery of fees and the tow program, specifically San Diego Resolutions R-275487 (Apr. 16, 1990), R-278498 (Aug. 5, 1991), R-287838 (Sept. 16, 1996), and R-295739 (Nov. 19, 2001).

BE IT FURTHER RESOLVED, that the Mayor is hereby directed to review the TICR fee for administrative costs annually to ensure that all actual and reasonable costs incurred are being recovered.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to include the TICR fee for administrative costs in the City Ratebook.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

\_\_\_\_\_  
Linda L. Peter  
Deputy City Attorney

LLP:amt  
04/06/2012  
Or.Dept:Police Dept.



I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

DRAFT



RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO REPEALING COUNCIL POLICY 500-03.

WHEREAS, Council Policy 500-03, relating to police tows, was last amended in 1981;  
and

WHEREAS, the Council Policy describes a process involving the highest responsible bidder, which is now disallowed under the California Vehicle Code because the Code limits the City to recovery of its actual and reasonable costs in connection with its towing program; and

WHEREAS, the City of San Diego has recently restructured its towing program and the recovery of costs and fees which has three district operational components: dispatch service, towing service, and impound service; and

WHEREAS, in 2011, the City entered into non-exclusive contracts with multiple tow providers to provide: (1) towing services and (2) impound, storage, release, and disposal services and entered into a separate contract with a provider for dispatch services; and

WHEREAS, by separate resolution RR-\_\_\_\_\_, the Council has authorized the imposition of fees consistent with the California Vehicle Code requirements for the tow program; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that Council  
Policy 500-03 is hereby repealed.

APPROVED: JAN I. GOLDSMITH, City Attorney

By \_\_\_\_\_  
Mary T. Nuesca  
Chief Deputy City Attorney

MTN:ccm:amt  
04/06/2012  
Or.Dept:Police Dept.

I hereby certify that the foregoing Resolution was passed by the Council of the City of  
San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

**COUNCIL POLICY**

SUBJECT: TOW TRUCKS – POLICE REQUESTED  
POLICY NO.: 500-03  
EFFECTIVE DATE: April 13, 1981

**BACKGROUND:**

The Police Department finds it necessary from time to time to remove vehicles from public streets and highways by utilizing the services of private towing companies. Towing expense is charged to the owner of the towed vehicle when the vehicle is redeemed from impound. It is desirable to establish certain operating procedures and safeguards because the Police Department initiates these services.

**PURPOSE:**

It is the intention of the City Council to establish an equitable means of distributing requests for towing services among qualified companies, and to ensure that such service is prompt and reasonably priced.

**POLICY:**

- A. Towing Districts - The City shall be divided into Towing Districts and a map describing these districts shall be filed in the office of the City Clerk. Contracts for police requested towing shall be awarded for each district to the highest responsible bidder for a three-year term.
- B. Agreement - Successful bidders shall enter into an agreement with the City; which agreement shall contain eligibility requirements, operating regulations and fee schedule. The City and the towing contractors may review and revise the fee schedule by mutual agreement at any time upon finding that the existing rates are inequitable. The fee schedule shall be available to interested citizens upon request.



C. Negotiated Agreement - Contracts for districts in which no bids are received shall be negotiated by the City Manager and approved by the City Council with contractors from contiguous districts or other qualified tow car operators. Bidding shall be open to qualified operators outside the City within reasonable proximity to those particular districts that do not have an established operator.

D. Terminated Agreement - In the event a contract is terminated before the end of the term, the district may be reopened for bids and a new contract awarded. Contractors in contiguous districts or other qualified tow car operators shall provide interim service. Contracts shall not be assigned without the City's consent.

HISTORY:

Adopted by Resolution R-176968	08/22/1963
Amended by Resolution R-180314	06/11/1964
Amended by Resolution R-185159	10/07/1965
Amended by Resolution R-253998	04/13/1981
Repealed by Resolution R-xxxxxx	00/00/2012

CP-500-03

## COUNCIL POLICY STRIKEOUT

OLD LANGUAGE: ~~Struck Out~~NEW LANGUAGE: Underlined

SUBJECT: TOW TRUCKS — POLICE REQUESTED  
POLICY NO.: 500-03  
EFFECTIVE DATE: April 13, 1981

BACKGROUND:

The Police Department finds it necessary from time to time to remove vehicles from the streets and highways by utilizing the services of private towing companies. Towing expense is charged to the owner of the towed vehicle. Because the Police Department frequently initiates these services, it is desirable to establish certain operating procedures and safeguards.

PURPOSE:

It is the intention of the City Council to establish an equitable means of distributing requests for towing services among qualified firms, and to insure that such service is prompt and reasonably priced.

POLICY:

A. — Towing Districts — The City shall be divided into Towing Districts and a map describing these districts shall be filed in the office of the City Clerk. Contracts for police requested towing shall be awarded for each district to the highest responsible bidder for a three-year term.

B. — Agreement — Successful bidders shall enter into an agreement with the City, which agreement shall contain eligibility requirements, operating regulations and fee schedule. The City and the towing contractors may review and revise the fee schedule by mutual agreement at any time upon finding that the existing rates are inequitable. The fee schedule shall be available to interested citizens upon request.

C. ~~Negotiated Agreement~~ Contracts for districts in which no bids are received shall be negotiated by the City Manager and approved by the City Council with contractors from contiguous districts or other qualified tow car operators. Bidding shall be open to qualified operators outside the City within reasonable proximity to those particular districts that do not have an established operator.

D. ~~Terminated Agreement~~ In the event a contract is terminated before the end of the term, the district may be reopened for bids and a new contract awarded. Contractors in contiguous districts or other qualified tow car operators shall provide interim service. Contracts shall not be assigned without the City's consent.

HISTORY:

Adopted by Resolution R-176968	08/22/1963
Amended by Resolution R-180314	06/11/1964
Amended by Resolution R-185159	10/07/1965
Amended by Resolution R-253998	04/13/1981
<u>Repealed by Resolution R-xxxxxx</u>	<u>00/00/2012</u>

CP-500-03