



# ***GENERAL ORDER***

**DURHAM POLICE DEPARTMENT  
DURHAM, NC**

**NUMBER:**

**4044 R-3**

## **TOWED & STORED VEHICLES**

Effective Date: 12/15/1995

Revision Dates: R-1 12/05/2003; R-2 07/18/2012; **R-3 12/17/2013**

### **INTRODUCTION**

It is the policy of the Durham Police Department to ensure that the streets and highways remain clear of vehicles that remain unattended for prolonged periods of time and that vehicles which obstruct traffic or which are left in violation of certain parking regulations are promptly removed. It is also the policy of the Durham Police Department to tow and process vehicles involved in major criminal acts, and to seize vehicles being operated in violation of certain criminal laws.

The guidelines outlined in this General Order are presented to assist officers in decision-making when confronted with situations involving the towing of vehicles. In general, it is desirable to avoid ordering a vehicle towed whenever possible due to the expense and inconvenience caused by such action. It is recognized that no single document can cover every possible situation. When in doubt, the best course of action is to confer with your supervisor.

### **REMOVAL OF VEHICLES FROM THE RIGHT OF WAY**

An officer observing any vehicle parked or left standing upon the right of way of a public street or highway, unless subject to immediate towing under another provision of this General Order, shall place on the vehicle, a bright orange "*Abandoned Vehicle Sticker*". These stickers shall be placed in a conspicuous location on a glass surface of the vehicle. If no glass is available, the stickers may be placed on a non-glass surface. These stickers are available from the Department Storekeeper. The sticker shall serve notice to the person in control of the vehicle that the vehicle will be towed if not moved within seven (7) days from the date of the notice. The officer shall make a reasonable attempt to locate the owner or person in control of the vehicle prior to ordering it towed. The officer shall complete the "*Imminent Towing and Storage of Vehicle Form*" as thoroughly and completely as possible.

The towing of all abandoned and/or derelict vehicles, unless in a hazardous situation, is restricted to the hours of 0800 - 1700, Monday through Friday.

### **REMOVAL OF ABANDONED, HAZARDOUS, AND JUNKED VEHICLES**

The Department of Housing and Community Development of the City of Durham is responsible for the removal of vehicles left for more than 24 hours upon property owned or operated by the City of Durham.

A hazardous motor vehicle is one declared to be a health or safety hazard by the housing code administrator when found to meet one or more of the criteria stated in City Code Section 10-110(4)(a-h). The Department of

Housing and Community Development is responsible for the removal of hazardous motor vehicles from public or private property.

A junked motor vehicle is a vehicle that does not display a current and valid license plate and that: is partially dismantled or wrecked; cannot be self-propelled or moved in the manner it was originally intended to move; or is more than 5 years old and appears to be worth less than \$100.00. The Department of Housing and Community Development is responsible for the removal of junked vehicles from public or private property.

Any officer who observes any of the above types of vehicles shall contact the City of Durham Department of Housing and Community Development and notify them of the situation. This office is available by telephone at 560-4570.

## **REMOVAL OF VEHICLES FROM PRIVATE RESIDENTIAL OR BUSINESS PROPERTY**

Except as previously noted above, owners of private residences or businesses are responsible for contacting wreckers and absorbing related costs associated with the removal of vehicles from their private property.

## **VEHICLES OBSTRUCTING TRAFFIC OR OTHERWISE PARKED ILLEGALLY**

When a vehicle is left unattended upon any street and constitutes an obstruction to traffic because of its location in the flow of traffic or because it blocks the vision of motorists, it may be ordered immediately towed. If the danger is minimal and it appears that the vehicle has just been recently parked, the officer should wait a few minutes to see if the driver returns. If the driver does return, the officer may issue a citation or warning for obstructing traffic. If the vehicle can be moved by means other than towing to a position which does not constitute an obstruction, and the means of moving and subsequent security of the vehicle are satisfactory to the owner or operator of the vehicle, this should be done in preference to having the vehicle towed.

Vehicles parked on the shoulder of the highway in any area designated as a Bus on Shoulder System (BOSS) with signs marking the beginning and end of the BOSS corridor may be ordered immediately towed. However, officers should use their discretion when the vehicle is attended and the owner/occupant is actively pursuing means to remove the vehicle in a timely manner. Time of day and the likeliness of traffic congestion on the highway may also factor in the decision to tow.

When a parked vehicle impedes cleaning of or working on a street, it may be ordered immediately towed only when the cleaning or repair work is of an emergency nature. If no previous warning has been given, a vehicle should be towed only if absolutely necessary.

In cases of non-emergency pre-planned street repairs, "No Parking" signs are posted well in advance of the initiation of the repairs. If previous warnings have been posted, impeding vehicles should be towed.

The Department does not order vehicles towed merely to allow access for the cleaning of streets unless "No Parking" signs or other previous warnings have been posted.

When a parked vehicle interferes with or obstructs an authorized street parade or procession, it may be towed provided there has been reasonable advance notification by posting of "No Parking" signs.

When a vehicle is parked upon the street so that it blocks a privately owned driveway, it may be ordered immediately towed if the occupant or owner of the building which the driveway serves makes a direct and specific request, either orally or in writing. On occasion, the responding officer may be able to remove the

vehicle sufficiently by physically pushing it away from the driveway. Officers are authorized to use discretion in such cases.

Ordering a vehicle towed, which is parked within fifteen (15) feet of a fire hydrant, calls for a discretionary decision on the officer's part. If, in the officer's judgment, the fire hydrant is blocked to the point that a firefighter would be unable to hook up to it, then the vehicle should be immediately towed. Otherwise, the issuance of a citation or parking ticket should suffice.

If a vehicle is parked in front of the entrance to a Fire Station, it may be ordered immediately towed. However, officers should use their discretion in deciding to tow a vehicle that is simply parked in a "No Parking" zone, not obstructing the traffic lane or prohibiting fire apparatus from entering or exiting the Fire Station. The optimal decision in such cases may be to issue a parking ticket as opposed to towing the vehicle.

When a vehicle is parked within the confines of a bus stop, it should not be towed except when access to the bus stop is reasonably obstructed. Otherwise, a parking ticket should be issued and the vehicle checked periodically. If, after several hours, the vehicle is still in the same place, officers may, at their discretion, order the vehicle towed.

Vehicles parked within any area where parking of vehicles is prohibited may be issued a parking ticket but are not to be ordered immediately towed unless they constitute a traffic hazard. An exception is unattended vehicles left in a loading zone or fire lane. Vehicles may be towed in these cases at the officer's discretion.

A vehicle parked in any area in excess of the authorized period of time shall be issued a parking ticket but not ordered immediately towed. An exception is repeat offenders parking in controlled residential areas. When towing in these circumstances, the officer should attempt to locate the owner/operator by telephone prior to the towing action.

If a vehicle is towed under any of the circumstances of this section, the towing officer shall notify the desk and complete the *"Post Tow Notice"*.

## **VEHICLES USED IN MAJOR CRIMINAL ACTS**

When a vehicle used in the commission of a major crime, such as a homicide or violent death, is a part of the evidence of a major crime, or has evidence on it such as fingerprints or blood or contains evidence that cannot be readily seized, and the vehicle will probably be released once processed, the officer in charge of the vehicle shall notify the light or heavy city contract wrecker and request the Identification Unit process the vehicle as necessary.

If the vehicle cannot be processed at the scene due to inclement weather or an unsafe crime scene, the towing officer, acting on the authority of the Watch Commander, shall have the vehicle towed by the City contract wrecker to an appropriate location. Depending on the availability of space, this location may be the Forensic Services Unit lot, the City Garage, or the storage lot of the City contract wrecker. The vehicle shall be secured with Crime Scene Barrier Tape.

Once a vehicle is turned over to a wrecker company, they will only release it to its lawful owner. Officers may not order the wrecker company to "hold" a vehicle in order to identify a driver in the case of a minor traffic offense.

## **DWI SEIZURE VEHICLES**

All DWI Seizure vehicles shall be handled in accordance with the procedures outlined in General Order 4043 (Driving While Impaired Procedures and Guidelines).

## **CONFISCATED / FORFEITURE VEHICLES**

An officer having a vehicle towed for possible forfeiture under Chapter 90 of the General Statutes or other provisions of the law shall contact Communications for the dispatching of a rotation wrecker. Vehicles towed under this provision will require completion of a *Vehicle Report* (Code 2) and a *Vehicle Inventory Form*.

A copy of the *Vehicle Report* and *Vehicle Inventory Form* shall be forwarded to the District Attorney's Office, along with the Felony Screening required by General Order 4070. It is imperative to get this information to the District Attorney's Office as soon as possible, so that they know the circumstances surrounding the seizure in case the suspect's attorney tries to get the vehicle released from seizure.

Officers shall seek their supervisor's approval prior to ordering a vehicle towed for the purpose of confiscation. For details regarding where to store the vehicle and seizure criteria, the Special Operations Division or the Durham County District Attorney's Office should be contacted. Information regarding vehicle location and all other information concerning the circumstances are considered confidential. All requests for information should be referred to the District Attorney's Office.

The towing officer shall have the vehicle towed to an appropriate location. Depending on the availability of space, this location may be the Forensic Services Unit lot, the City Garage, or other appropriate secure lot where a daily storage charge will not be incurred.

Under certain circumstances, vehicles may be subject to forfeiture under appropriate federal laws, such as 19 USC 1602-1621. An officer who needs information on such seizures and related towing procedures shall contact the appropriate federal law enforcement agency or a Department member who is on a task force with one of these agencies.

## **SEIZURE & TOWING OF FELONY SPEEDING TO ELUDE ARREST SUSPECT VEHICLES**

North Carolina law mandates that the vehicles of certain felony speeding to elude arrest offenders be seized by the officer charging the felony speeding to elude arrest offense. These vehicles are then sold at auction by the State of North Carolina, with the proceeds going to the school district of the county in which the vehicle was seized.

### **Eligible Vehicles for Felony Speeding to Elude Arrest Seizure**

Any vehicle driven by an eligible offender shall be seized, except for mopeds as defined by G.S. 20-1.04(21a), stolen vehicles, and rental vehicles that are either: 1) not operated by a driver authorized by the rental agreement; or 2) operated by a driver authorized by the rental agreement, but the rental car company had no actual knowledge of the person's driver's license revocation at the time the rental agreement was executed.

### **Eligible Offenders for Felony Speeding to Elude Arrest Seizure**

All suspects that are charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1) qualify to have their vehicle seized.

## Felony Speeding to Elude Arrest Seizure Procedures

If a suspect qualifies to have his or her vehicle seized, the charging officer shall seize the vehicle and the key(s) to the vehicle. The charging officer shall obtain a wrecker to take possession of the vehicle. In order to do this, the charging officer shall contact Communications and request a "10-51 for a Speeding to Elude Seizure." Communications shall then contact a wrecker service that is authorized by the State of North Carolina to tow and store felony speeding to elude arrest seizure vehicles. No other type of wrecker (owner's request, regular rotation, etc.) shall be used in these cases.

The charging officer shall also affix a green speeding to elude arrest seizure sticker to the driver's side of the windshield. These stickers are available from the Department storekeeper.

In addition to any other required paperwork, the charging officer shall complete an AOC-CR-323B form, entitled "Officer's Affidavit for Seizure and Impoundment and Magistrate's Order" and provide this form to the magistrate when the suspect is presented for his or her appearance before the magistrate. If the suspect is not arrested at the time the vehicle is seized, the officer shall provide this form to the magistrate immediately following seizure of the vehicle.

The magistrate shall determine if probable cause exists for the seizure of the suspect vehicle. If the magistrate determines that there is no probable cause for the seizure, the charging officer must notify the towing service as soon as possible that the vehicle may be returned to the suspect, once the suspect pays whatever fees are required by the towing company.

It is possible that a suspect may elude immediate arrest with the vehicle. If this occurs, appropriate charges shall be taken out against the suspect. The charging officer shall complete the AOC-CR-323B form, entitled "Officer's Affidavit for Seizure and Impoundment and Magistrate's Order" and provide this form to the magistrate. After the magistrate signs this form, the charging officer shall attempt to locate the vehicle and seize it, in accordance with the same procedures as if he or she was seizing the vehicle at the time of arrest. Once executed by the magistrate, the AOC-CR-323B form authorizes an officer with jurisdiction to enter the property of the suspect to seize the motor vehicle. However, if the vehicle is located within an enclosed structure on the defendant's property, such as a garage, the officer shall obtain valid consent or a search warrant to enter the property and seize the vehicle. If the suspect vehicle is on the private property of another, it is necessary to obtain valid consent to enter the property to seize the vehicle. If consent cannot be obtained, then the charging officer shall attempt to obtain a search warrant to enter the property to seize the vehicle.

If the motor vehicle is subject to seizure for both (1) Felony Speeding to Elude Arrest and (2) DWI with revoked license or DWI with no license and no insurance, then the officer shall complete both applicable affidavits (CR-323A and CR-323B) and request that the magistrate sign both orders. The statutes provide that the vehicle "shall" be seized for both offenses and since the motor vehicle is now towed to the same location, both statutes should be used. This will allow the District Attorney the broadest authority to have the vehicle forfeited.

## DMV Notification

After a vehicle is seized under these procedures, the DMV must be notified of the seizure within 24 hours. The charging officer shall contact the Warrant Control / DCI Unit and have a DCI operator fill out the "Seized Vehicle NCGS 20-28.1 (VSEZ)" online form with the appropriate information and transmit it to the DMV through a DCI terminal. The charging officer will need to provide the DCI operator with detailed information about the suspect, the vehicle, and the owner.

## Tow Log and Reporting Requirements

The charging officer shall enter the vehicle's information into the Desk Officer's Tow Log, in accordance with this General Order. Additionally, the charging officer shall complete a vehicle report (code 2), either in paper or electronic form.

#### Court Date for Initial Appearance

The charging officer shall set the initial court date for the charges that precipitated the seizure of the vehicle to within 30 days of the charge being filed.

### **RECOVERED STOLEN VEHICLES**

A recovered stolen vehicle shall be processed by the Identification Unit. This can be done at the scene of the recovery or the vehicle may be towed to the wrecker operator's storage lot for processing. The processing location is the decision of the officer initiating the tow and shall be based on such factors as inclement weather conditions, populated areas where a crowd might gather and possibly interfere with the Technician's work, or an Identification Technician is not readily available. When in doubt as to where to have the vehicle processed, the towing officer should consult with their supervisor.

The officer should attempt to notify the owner by telephone or have another officer go by the owners address prior to the tow. If contact is not made and a tow is requested, the officer is to:

- Notify the desk as to location, etc.;
- Complete the Post Tow Notice;
- Complete a Vehicle Inventory form

Copies of all paperwork concerning a recovered stolen vehicle are to be sent to Records to ensure that a notice is sent to the owner of the vehicle by registered mail notifying them that their vehicle has been recovered.

### **DISPOSITION OF A VEHICLE WHEN THE OPERATOR IS ARRESTED**

When the person in charge of a vehicle upon a public street is under arrest or is incapacitated by physical injury or other cause and the vehicle is not towed as evidence of a crime, subject to seizure or stolen as already described, the officer may:

- Allow the driver to turn the vehicle over to a person designated by the arrestee, but not until the officer confirms that the person has a driver's license and that they are not under the influence of alcohol or drugs at the time they take charge of the vehicle.
- Allow the driver to leave the vehicle parked at the place of arrest if parking is legal at that location. The arresting officer, at their discretion, may allow the arrested driver to move the vehicle to a location where parking is legal if the driver is not under arrest for a license violation or for driving while impaired. If a driver is incapacitated by physical injury, mental impairment, or under the influence of an alcoholic beverage or drugs, the officer has the authority to either order the vehicle towed, secure it, or release it to the registered owner, if the owner is not the person arrested.
- Allow the arrested driver to move the vehicle to a location where parking is legal if the driver is not under arrest for a license violation or impaired; or
- Order the vehicle immediately towed.

If the vehicle is left at the scene, a *Consent to Tow, Remove or Store Vehicle or Leave Vehicle at the Scene Form* shall be completed.

## **DUTIES OF THE OFFICER PRIOR TO ORDERING A TOW**

When an officer orders a vehicle towed, except those that are seized for forfeiture or evidence of a major crime; or when the tow is requested or voluntarily consented to, the officer shall:

- Make reasonable attempts to notify by telephone, or have a fellow officer go by the residence, of the registered owner of the vehicle to inform the owner of the vehicle location, and his/her right to a hearing before a magistrate regarding the tow.
- Complete the *Imminent Towing Form* or the *Post Tow Notice* when taking immediate action. The forms should be completed as thoroughly and completely as possible using care to use proper abbreviations only when necessary.
- If the vehicle is registered in North Carolina, the officer must, as soon as possible and always within twenty-four (24) hours of the towing, attempt to contact the registered owner by telephone. If the number is busy or there is no answer, a subsequent attempt shall be made within the twenty-four (24) hour period.
- If the vehicle is registered outside of North Carolina, a telephone notification as described above shall be attempted as soon as possible and always within seventy-two (72) hours of the towing.
- If the call is completed, but the officer is unable to speak to the registered owner, the officer should, if possible, leave a clear message that the registered owner can call the Desk Officer at Durham Police Headquarters for information about the location and status of the towed vehicle. If a long distance call is necessary, officers shall place the call with their supervisor's approval.
- If the officer is successful in contacting the registered owner by telephone, the officer should read him/her the information contained on the completed proper towing form, and within reasonable limits, answer the owners' questions regarding the vehicle and the towing.
- Whether or not telephone contact has been made with the registered owner, the officer shall place the proper towing form stamped "towing notice" and transport it to the Records Unit so that it can be mailed to the registered owner. The mailing must occur under the same time constraints (i.e., 24 or 72 hours depending on the situation). Therefore, officers must turn in the completed form by the end of their shift.
- If the registered owner is present at the scene of the vehicle to be towed, the officer may, at that time, provide the owner with a completed *Imminent or Post Tow Form* followed up by turning in a copy of that form to the Records Unit. In this situation, it would not be necessary to make telephone contact or mail the registered owner a towing notice. The officer shall, however, indicate on the top of the form turned into the Records Unit that the original has been hand delivered to the registered owner.

## **DUTIES OF THE OFFICER AFTER ORDERING A VEHICLE TOWED**

A *Vehicle Report* shall be completed for all vehicles ordered towed. In addition to the information provided on the form, the towing officer shall also furnish the name, address, and telephone number of the wrecker towing the vehicle as well as the storage location and telephone number.

The towing officer shall contact the Desk Officer whenever a vehicle is towed and stored regardless of the reason. The towing officer shall provide the Desk Officer with the make and year of the vehicle towed, the owner's name and address, wrecker company and telephone number, storage location and telephone number,

the correct Incident Report number and the reason for the tow. This information is imperative in assisting the Desk Officer in maintaining an up-to-date log on the whereabouts of towed vehicles.

In situations involving the recovery of stolen vehicles, the towing officer shall notify DCI immediately so the vehicle in question can be cleared from NCIC

In cases involving vehicles left parked or standing upon the right of way of a public street, if, after waiting seven (7) days, an officer observes that the vehicle has not been moved, the officer shall have the vehicle removed and stored. Towing under these circumstances should be between the hours of 0800 - 1700, Monday through Friday.

Except in cases involving owner requested wreckers, the towing officer shall, prior to having the vehicle removed, provide the wrecker operator with a Vehicle Inventory Form as outlined in the City Council's "Tow Truck Resolution" dated April 14, 1977. The form is to be filled out by the wrecker operator and witnessed by the officer. If the operator of the vehicle being towed is present, a copy of the inventory form shall be furnished to the operator. If the operator is not present, the towing officer shall retain the remaining copies turning them into the Records Unit with the completed Vehicle Report.

In a situation where the Identification Unit is going to process a vehicle, the towing officer shall request the City-contract wrecker operator to tow the vehicle to the location that it is to be processed. The officer shall follow the wrecker to ensure that any possible evidence or items of value are kept intact. Once at this location, the wrecker operator will secure the vehicle until the ID Technician processes it and then fill out a Vehicle Inventory Form with the ID Technician standing by as witness.

## **TYPES OF WRECKERS AND CONTACTING COMMUNICATIONS**

The City of Durham does not pay for towing of any vehicles, except vehicles towed by the City contract wrecker service. The owner or person in control of the vehicle is responsible for all charges incurred by the wrecker company. The wrecker company may decide not to release a towed vehicle until all appropriate charges are paid for. Also, many wrecker companies charge storage fees. These practices and fees are legal, as long as they conform to state law and City ordinances regulating such matters.

When contacting Communications, officers shall advise the following information:

- The type of vehicle to be towed; and
- Whether keys are available; and
- The condition of the wheels (missing, tires flat, etc.); and
- Any other information that is available about the vehicle to be towed that the wrecker driver would need to know, such as whether the vehicle is stuck under a bridge, contains hazardous materials, is broken into two pieces, etc.

**Rotation** – Communications keeps a list of wreckers that are authorized to tow for the Department. These wreckers shall be used for any tow where the person in control of a vehicle has no preference as to which wrecker company to use, or where there is no person in control of the vehicle, unless the tow is due to a situation that specifies another type of wrecker. Also, seizures under N.C.G.S. Chapter 90 use rotation wreckers.

Officers requesting rotation wreckers should not specifically request a rollback. Wrecker companies are not required to have a rollback to get on the rotation list. All conventional wreckers are required to have a dolly to



facilitate towing of severely wrecked vehicles; so requesting a rollback unnecessarily makes wrecker companies without a rollback miss a rotation call.

***Owner's Request*** - Unless the tow is due to a situation that specifies another type of wrecker, the person in control of a vehicle may request a wrecker of their preference. To avoid the appearance of any improprieties, officers may not suggest the use a particular wrecker service to any such person. Communications keeps a list of contact numbers for wrecker services. However, they may not have this information for some of the lesser-known wrecker services, and the person in control of the vehicle may need to provide this number. Communications does not have time to look up wrecker services in the telephone book, so officers should not request that they research numbers for out-of-area or independent wreckers who have not advised Communications of their contact information. If contact information for an owner's request wrecker company cannot be found, the person in charge of the vehicle shall be asked for an alternative wrecker company. If no requested wrecker can be located, a rotation wrecker shall be used.

***Heavy Tow*** – These wreckers may be either rotation or owner's request, as described above. These wreckers are used for towing heavy equipment, semi-trailers, and trucks that are larger than a heavy-duty pickup truck.

***Motor Club*** – Automobile clubs have their own wrecker services under contract. Communications has the contact information from the American Automobile Association (AAA). Unless the tow is due to a situation that specifies another type of wrecker, the person in control of a vehicle may request a wrecker from a motor club service that they belong to. If the motorist wishes to use a wrecker from a motor club besides the AAA, then they are responsible for contacting that motor club directly, as Communications does not have the contact information for any other wrecker service. If no requested wrecker can be located, a rotation wrecker shall be used.

***City Contract*** – The City of Durham generally has one wrecker service that has been contracted to tow vehicles for city purposes. Communications has the contact information for this wrecker company. The City Contract wrecker (also known as a "city tow") should be used for vehicles that are seized as evidence (not for DWI seizures) and for City vehicles that need to be towed.

***DWI Seizure*** – These wreckers are under contract with the State of North Carolina to tow, store, and process vehicles that are subject to DWI seizure, as outlined under General Order 4043.

All wreckers, except for Heavy Tow wreckers, shall have a time limit of 35 minutes from time of notification to respond to the scene of an officer request. Communications will inform the officer of the time. If a wrecker fails to show within the 35-minute time limit, the officer may call for another wrecker. Heavy Tow wreckers have a time limit of 45 minutes.

## **DUTIES OF THE RECORDS UNIT**

The Records Unit is responsible for postage and mailing of vehicle forms and ensuring that the tow notices are filed with the vehicle reports. The Records Unit shall maintain a file of these forms for a period of three (3) years from the date of the towing.

## **THE HEARING**

There are certain towing situations in which a vehicle owner has a right to contest the validity of the tow. Such challenges will result in a hearing before a magistrate.

Officers are to comply with the procedures established by the Chief District Court Judge regarding the conduct of these hearings. Each magistrate, whether civil or criminal, has a copy of those guidelines.

In some instances, officers may be required to file an "Affidavit" with the magistrate's office or to appear personally to give oral testimony at such a hearing. Officers are to follow the directions of the magistrate.

A handwritten signature in blue ink, appearing to read "Jose L. Lopez, Sr.", is positioned above a horizontal line.

*Jose L. Lopez, Sr.*  
*Chief of Police*