

Waltham Police Department

CHAPTER 62

TOWING OF VEHICLES

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Accreditation Standard #'s: 61.1.2, 61.1.11, 61.2.2, 61.4.3

PURPOSE:

This Department has the authority and the responsibility to ensure the safe and efficient flow of vehicular traffic. This may necessitate towing of immobile, impeding or illegally parked vehicles from ways. The towing of vehicles must be done in accordance with Massachusetts General Laws, Codes of Massachusetts Regulations (C.M.R.'s) and City Ordinances.

Illegally parked vehicles can negatively impact the quality of life and atmosphere in a community and creates an unnecessary burden to property owners and the public.

The purpose of this policy is to provide guidance to officers involved in facilitating the removal of illegally parked vehicles, seemingly abandoned vehicles, and other situations involving the towing of vehicles.

POLICY:

It is the policy of this department to:

1. Facilitate the removal of vehicles which create a hazard to traffic from ways.
2. Ascertain whether a vehicle is illegally parked and contact the owners to resolve the situation, prosecute offenders as appropriate, and remove these vehicles before they lead to other problems.

PROCEDURES:

1. VEHICLE INFRACTIONS INVOLVING ARREST:

The arrestee's vehicle shall be inventoried and secured in one of the city's designated tow company's lots when circumstances warrant that the vehicle be towed. **[61.1.2-1A]**

For officer safety, a person under arrest, charged with a crime, or having a vehicle towed against their wishes, shall not be allowed to access or remove any items out of the vehicle. At the officer's discretion, items of value may be removed by the officer and brought to the Police Station for safe keeping. The officer must document those items of value that were taken out of the vehicle.

a. **OPERATING UNDER THE INFLUENCE – ALCOHOL:**

If the subject refuses a Chemical Breath Test, the Breath Test Operator will complete the refusal through the BATS (Breath Alcohol Testing Systems) machine and the Operator's license will be immediately suspended. In accordance with "**Melanie's Law**" the Police Officer administering the test will arrange for the vehicle that was being driven by the operator to be impounded for a period of 12 hours after the operator's refusal, with all the costs for the towing, storage and maintenance of the vehicle to be borne by the operator regardless of ownership. Officers must ensure that the vehicle operated by an OUI suspect who refuses the BATS is not released to the operator, owner, or any other person, until the statutory time has passed. [61.1.11-1A]

b. **OPERATING AFTER LICENSE SUSPENSION / REVOCATION:**

If the registered owner of the vehicle is also the operator, on a way, and their license is suspended or revoked, the vehicle shall be towed. The driver's license and vehicle plates shall be confiscated and destroyed. An affidavit will be sent to the Registrar via a DCJIS teletype.

c. **OPERATING WITHOUT A LICENSE OR EXPIRED:**

If the registered owner of the vehicle is also the operator, on a way, and they do not have a drivers' license or operating with an expired license, the vehicle should not be towed. All efforts should be made to find a licensed driver to take possession of the vehicle.

d. **OPERATING WITH A SUSPENDED / REVOKED REGISTRATION:**

If the registration of the vehicle being operated, on a way, is revoked or suspended, the vehicle shall be towed. The vehicle plates shall be confiscated and destroyed. An affidavit will be sent to the Registrar via a DCJIS teletype.

e. **UNREGISTERED/UNINSURED:**

Motor vehicles that are unregistered and/or uninsured, on a way, are to be towed immediately.

f. PASSENGERS:

Uninvolved passengers will need to make their own efforts to arrange for transportation. If all options have been exhausted and transportation cannot be arranged, the Officer-In-Charge can authorize transportation in a police vehicle to a reasonably located safe place or the police station for those individuals.

2. AUTOMOBILE INVENTORY SEARCH:

An inventory search shall be conducted on all motor vehicles brought into police custody to protect the property of persons and to protect the officers and department from false claims of loss or theft of property.

Officers conducting the inventory are to check the entire motor vehicle, including:

- a.** Passenger compartment.
- b.** Under the seats.
- c.** Glove compartments.
- d.** Consoles.
- e.** Trunk.
- f.** Hidden compartments also known as “hides”.
- g.** Any containers found within the above areas of the vehicle. Any container (or any item reasonably appearing to be a container, including the trunk, glove compartment, and console) found in the motor vehicle shall be opened and its contents inventoried. Any locked container for which the owner/operator and/or detainees has a key among their other personal belongings shall be opened and its contents inventoried. Any locked container for which the owner/operator and/or detainees does not have a key among their other personal belongings shall be opened only if the police have reasonable suspicion to believe that the container contains any items posing a threat to the safety and security of the police station or its personnel or with a search warrant. The rule set forth in this paragraph applies equally to any container found within any other container searched.

A Motor Vehicle Inventory Form #66-6 shall be filed with a report whenever a motor vehicle is towed under police authority for any of the following reasons:

- a. Arrest/Custody.
- b. Parking violations.
- c. Motor vehicle violations.
- d. Accident (if owner of the vehicle is absent or incapacitated due to injury).
- e. Recovered stolen motor vehicle.

VEHICLES BEING HELD BY STATUTORY AUTHORITY, COURT ORDER, OR INVESTIGATORY PURPOSES ARE NOT ELIGIBLE FOR RELEASE.

3. PRIVATE TOWS: [61.4.3-1C]

M.G.L. Ch. 266 § 120D permits “Trespass Tows” where a motor vehicle is towed from a private lot or other property by a tow truck company upon the order of the property owner or person in lawful control of that property, and specifies that the Chief of Police sets policy for the towing of improperly parked vehicles from private property. It is the policy of the Waltham Police Department that “Trespass Tows” are permitted where fairness to both the property owner and vehicle owner is preserved and where persons whose cars are towed can readily locate and retrieve their property. Any violation of the policy outlined below will be subject to the penalties outlined in M.G.L. Ch. 266 s. 120d including the following provision: *“Any person who removes a vehicle illegally parked or standing on a private way or upon improved or enclosed property, or holds such a vehicle after its removal, and who has not complied in full with the provisions of this section, shall release such vehicle to its owner without assessing any charges for its removal or storage.”*

- a. **FAIR NOTICE:** Before a Trespass Tow can be performed, the motorist needs to be given fair notice that they cannot park there either verbally or via posted sign. It is required that the entry points to these properties be posted with reasonable notice that cars unlawfully parked there will be towed. Where a tow company is allowed by a property owner to self-monitor a property and tow at will, a copy of this contract is on file with the Community Services Division at the Waltham Police Department. The tow contract must be current and explicitly state the terms and conditions in which the property owner will authorize a trespass tow. Annually, each tow company must provide the Chief of Police with updated contracts of the properties they self-monitor. This list must be received no later than January 15th of each calendar year. Where no tow contract is on file, the property owner must contact us directly authorizing the tow each and every time a vehicle is towed. In these instances, if the property owners do not contact

the Waltham Police Department the tow will not be approved and cannot be conducted.

- b. **POLICE NOTIFICATION / ENTRY:** Prior to commencing a tow, the tow driver must make an in person visit to the police station. The tow operator conducting the tow will personally deliver a completed Private/Trespass Tow Notification Form to the front counter of Police Operations prior to starting the tow. Operations personnel will then conduct a CJIS query to confirm that the vehicle has not been reported stolen and correctly matches the make, model and color. A CAD incident will be created using incident type code 666 or PRI/TOW to document the tow. CAD incident notes will include the following vehicle information: plate number, state, make, model and color. The CAD incident will also include the name and contact information of the tow company.

A Police incident number shall be created. Operations personnel are NOT to use the CLOSE NO DISPATCH function in order to close out a call. Operations personnel are to close out the call as SERVICED so an incident number is created.

Operations personnel will then note the CAD incident number and police incident number on the form and sign in the appropriate location along with the signed approval of a supervisor. A copy of the completed form will then be turned over to the tow operator for their records and then can perform the tow.

If the vehicle was towed, the tow driver will immediately call Police Operations and notify personnel that the vehicle was towed and whether entry was made or not into the vehicle. Operations personnel will then note this on the tow form and in the CAD call. The plate number, state, make, model, and color shall be entered in the 'vehicle' tab in the CAD call. Once the tow is completed, the Private/Trespass Tow Form will be submitted to Community Services.

If the vehicle is no longer in the lot, and is not towed, the tow operator should notify Police Operations that the vehicle is no longer there. The Private/Trespass Tow Form can be properly disposed of.

If, after a reasonable amount of time with no communication with the tow company, every effort should be made to find the outcome of the private tow.

- c. **STORAGE LOCATION:** MGL Chapter 266 Section 120d mandates that vehicles removed shall be stored in a convenient location. "Trespass Tows"

may not be towed and/or stored outside of Waltham City limits, per city ordinances. Towed vehicles must be stored in a place that is secure from damage and theft. The Chief of Police, at their discretion, may, by written authority, grant authority to out-of-town tow companies on a case-by-case basis.

- d. **VEHICLE RELEASE:** Vehicle owners must be able to retrieve their vehicles 24-hours a day, 7-days a week provided all applicable storage and towing fees have been paid.

A towed vehicle can be released from impound when one of the following conditions are met:

1. The vehicle is properly registered.
2. Is being released to the properly licensed owner.
3. Is being released to a properly licensed operator.
4. The vehicle is being towed from impound to another location with the owner's consent.
5. All applicable storage and towing fees have been paid along with any of the above requirements (1 – 4).

- e. **VEHICLE ENTRY:** No entry may be made into any vehicle towed unless such entry is necessary for the safe towing of that vehicle. If entry is made, the tow operator will notify Police Operations. This information will be documented in the appropriate CAD private tow call.

- f. **ANIMALS IN VEHICLES:** No vehicle may be towed with an animal therein. In instances where an animal is present in the vehicle for a prolonged period, the Animal Control Officer (ACO) of the Waltham Police Department shall be called during duty hours to remove the animal. During off hours, qualified personnel may be called upon to perform the duties of the Animal Control Officer.

- g. **PROPERTY RETRIEVAL:** Vehicle owners, who cannot immediately pay the towing and storage fees to the tow company operator, shall be afforded a reasonable opportunity to retrieve personal belongings from the vehicle while it is in the custody of the tow company. No parts or any item mounted to the vehicle such as audio, video, permanently mounted GPS systems, etc. may be removed from the vehicle while the vehicle is in the custody of the tow company.

- h. **INCOMPLETE TOWS:** The Department of Public Utilities – Transportation Oversight Division allows for a tow company at their discretion to charge up to half the towing fee for an incomplete private tow. (Chapter 120d allows for a “drop fee”). An incomplete private tow is defined as a vehicle actively being hooked up to a tow truck and the owner of the vehicle arrives to move it. It is at the discretion of the tow driver to charge for an incomplete tow.

4. **POLICE TOWS:** [61.4.3-1A, B, E]

All police tows, including tows of abandoned motor vehicles, are to be recorded in QED with an incident report. The schedule for the tow companies being used each week is maintained in Dispatch.

The following shall be included in the officer’s report:

- a. Date and time of tow.
- b. Company towing the motor vehicle.
- c. Location of tow.
- d. Year, make, model, color and plate number of the motor vehicle towed.
- e. Reason for the tow.
- f. Property owner/manager requesting the tow.
- g. Whether or not the vehicle was entered during the tow.
- h. Any pre-existing damage or damage as a result of the tow operator.

The vehicle information shall be entered into the vehicles tab of the call screen to ensure that the vehicle is not inappropriately reported stolen.

5. **ABANDONED MOTOR VEHICLE:** [61.4.3-1A]

All abandoned vehicles towed will be recorded and maintained in the Waltham Police QED system.

In all circumstances, towing will be in compliance with the Traffic Rules and Regulations of the Waltham Traffic Commission, Article IX.

- a. Abandoned vehicles on private ways require 72-hour notice prior to being towed. Officers shall make every attempt to contact the owner prior to

towing. If no contact is made, a green City of Waltham warning sticker is to be placed on the vehicle. If the vehicle is not moved in 72 hours from when it is tagged, the vehicle is towed and issued a parking ticket.

- b. **CONDITIONS ALLOWING TOWING ON PRIVATE PROPERTY:** [61.4.3-1C] In order to have an abandoned motor vehicle removed from private property under Mass. Gen. Law, Chap. 266, Sec. 120D, it is necessary to show that the owner of the vehicle has been forbidden to park on the property either directly or by a posted notice (i.e., No Parking - No Trespassing sign). There is no 72-hour requirement on private property.
- c. **PROPERTY OWNER'S RESPONSIBILITY:** In order to have the abandoned motor vehicle removed, the owner or the person having lawful control of the property must provide the Chief of Police or their designee with the following information:
 - 1. The address from which the motor vehicle is being removed.
 - 2. The address to which the motor vehicle will be moved.
 - 3. The registration number (plate).
 - 4. The name of the owner or person in lawful control of the property.
 - 5. The name of the person or tow company that will be towing the motor vehicle.
 - 6. The towed vehicle shall be stored in a convenient place and the owner of the vehicle shall be liable for the tow and storage charges.
 - 7. Abandoning a motor vehicle on private property does not prevent police from charging the owner of the motor vehicle with Abandonment (Mass. Gen. Law, Chap. 90, Sec. 22C).

6. OVER 24 HOURS:

When an officer has become aware that a vehicle may be in violation of the over 24-hour rule on a **PUBLIC WAY**, the officer should mark the tires and call it in to dispatch. This violation should be scheduled 24-hours later. At the conclusion of the 24-hour period, officers should make every effort to locate the owner and have the vehicle moved. If all options are exhausted, officers should issue a parking violation with the proper offense and have the vehicle towed.

**7. TOWING MOTOR VEHICLES FROM PUBLIC PROPERTY / WAYS:
[61.4.3-1B]**

Vehicles may be towed, only if authorized by the Officer-In-Charge, for the following reasons:

- a. The vehicle is not properly registered or insured and on any way.
- b. The vehicle has been involved in a collision and it's determined not safe to drive.
- c. The vehicle constitutes an obvious hazard.
- d. The vehicle is obstructing public travel.
- e. The motor vehicle has been reported stolen or taken without the owner's consent and the owner cannot be contacted or cannot or will not respond to the scene within a reasonable period of time.
- f. For the safekeeping of the vehicle and/or its contents.
- g. The vehicle may contain evidence of a crime and cannot be processed at the scene. Vehicles may be brought to the police station and secured in one of the police bays at the discretion of the Officer-In-Charge or designee. If the vehicle is too big or the bays are full, the vehicle(s) may be secured in the City garage as a last resort.
- h. The operator of the vehicle is taken into custody and the vehicle would be left:
 - 1. In a location hazardous to traffic.
 - 2. Unattended without the owner's consent.
 - 3. In the care of an individual who is not authorized by the owner to operate the vehicle.
 - 4. In the care of an individual who is not capable of lawful operation of the vehicle.
- i. The operator of the vehicle is not properly licensed, and the vehicle would be left unattended on a public way.
- j. The motor vehicle is unregistered and is on public land when deemed necessary for the protection of public safety.

- k.** Adverse weather conditions or other emergency situation necessitates the removal of the vehicle from a way or public land.
- l.** The owner, operator or person having control of the vehicle authorizes the tow.
- m.** It is necessary to safeguard the vehicle and/or contents due to the inability, illness, injury or death of the operator, owner or person having control of the vehicle to adequately protect the vehicle and/or its content from theft or destruction.
- n.** Vehicles parked in violation the following infractions:
 - 1.** Meter violations
 - 2.** Parking on sidewalk
 - 3.** No parking zones
 - 4.** Wrong direction parking
 - 5.** Wheels over 12” from curb
 - 6.** Taxicab stand parking
 - 7.** Night parking 2am-6am
 - 8.** Parking over 24 hours
 - 9.** Parking on crosswalk
 - 10.** Obstructing driveway or private way
 - 11.** No standing / stopping
 - 12.** Bus stop
 - 13.** Double parking
 - 14.** Fire lane violation
 - 15.** Restricted commercial parking
 - 16.** Within 10’ of a hydrant
 - 17.** Parking too close to intersection

- 18. Vehicle interferes with public works operation
- 19. Unattended trailer, dumpster, or container
- 20. Blocking fire station access
- 21. Disturbance of funerals
- 22. Handicap parking
- 23. Abandoned vehicle

8. **OTHER CIRCUMSTANCES:**

- a. Damage to any vehicle that requires it to be towed. [61.2.2-1L]
- b. Vehicles that are deemed unsafe to the operator, passenger or general public.

9. **IMPEDING TRAFFIC:**

Any vehicle that prevents the safe flow of traffic can be towed. All efforts should be made to contact the owner and have the vehicle moved before requesting a tow.

10. **FIRE SCENES:**

Vehicles, which are parked, which interfere with fire operations may be towed as needed or as requested by the Fire Department.

11. **TOW TRUCK OPERATOR RESPONSIBILITIES:**

The driver of the tow truck will be required to sign the Waltham Police Department Motor Vehicle Inventory Form #66-6 PRIOR to towing the motor vehicle. The IGNITION KEY ONLY will be turned over to the tow truck driver. All other keys or items on the key ring (i.e., trunk key, personal keys, etc.) shall be given to the vehicle owner or operator if feasible. Otherwise, they shall be brought to the station for safe keeping.

12. **RATES FOR THE TOWING OF MOTOR VEHICLES:**

The maximum charges established in 220 CMR 272.00 shall only apply to the towing and transportation of motor vehicles when said transportation is ordered by the police or other public authority pursuant to M.G.L. Chapter 159B, Section 6B or for trespass pursuant to M.G.L. Chapter 266, Section 120D. Rates stated in 220 CMR 272.00 shall not apply to towing which results from a call made by a police officer or other public employee at the request of the owner/operator to transport

the vehicle to a location other than the carrier's garage. If, at the scene, the owner/operator requests that the vehicle be transported to a location other than the carrier's garage, the maximum tow rate may not apply.