

SAN JOSE POLICE DEPARTMENT



TOW HEARING UNIT

STANDARD OPERATING PROCEDURES MANUAL

FOREWARD

The San Jose Police Department's Tow Hearing Unit was established in order to comply with California Vehicle Code §22852, which defines the requirement and conditions for conducting post storage hearings.

The California Vehicle Code clearly defines the obligation of the department and the rights of the public to a hearing process.

To facilitate consistency in the hearing process and the training of hearing officers, it became necessary to develop a unit manual that encompassed issues pertaining to the hearing process.

The manual's rules & regulations are in accordance with the San Jose Police Department's policies and the State of California's driving laws.

STATEMENT OF THE CHIEF

The "Tow Hearing Procedures Manual" is an approved document of the San Jose Police Department. Members of the department will become familiar with these rules / regulations and will abide by them.

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Tow Hearing Unit

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NOTICE:

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TOW HEARING STAFF RESPONSIBILITIES

OFFICER DUTIES AND RESPONSIBILITIES

- Review and process vehicle reports (CHP-180) dealing with §14602.6 CVC, §14602.7 CVC (warrant/court order tow) & CVC §23109.2 CVC impounds (30 day holds).
- Conduct tow hearings either by telephone or in person within two days as required by law.
- Present to the tow hearing sergeant any cases of reimbursement, refund or waiver of tow and storage fees.
- Provide support, training and perform other related tasks to the tow function as needed. This would include, but not be limited to, accessing various automated systems.
- Prepare limited hand written findings and attach them to the case once a determination is made on the validity of an impound tow.
- May waive release fee without sergeant's approval.
- Coordinate case information with the auto desk staff.
- Maintain Tow Hearing Phone Log Database.
- Maintain Tow Hearing Impound Database.

SERGEANT DUTIES AND RESPONSIBILITIES

The Tow Hearing Sergeant or authorized representative is designated as the Department Tow Hearing Officer per §22852 CVC and may order the release of any vehicle being held in police custody without proper authority, as well as authorizing reimbursements to vehicle owners and tow companies.

- Supervise Tow Hearing Officers.
- Liaison with contracted tow companies.
- Review cases involving refunds, reimbursements, and fee waivers.
- Approval of refund and reimbursement cases.
- Conduct tow hearings by telephone or in person as needed when Tow Hearing Officers are unavailable.
- Conduct tow hearing appeals when claimants requests to speak with the supervisor.
- Conduct tow hearing appeals in complicated, sensitive cases, or with hostile claimants.
- Coordinate case information with Auto Desk staff.
- Document information received from City Finance and complete the tracking function.

TOW HEARING DRESS CODE

It is important to realize, that tow hearing officers represent the department and should maintain a professional bearing and appearance at all times. Any special exceptions to both grooming and clothing standards must be approved by the tow hearing supervisor or unit commander.

This is a non-uniformed position. Tow Hearing personnel will comply with duty manual section S1128. *Appropriate Civilian Attire* will be interpreted as:

Pants: Casual cotton, denim, or dress slacks are typically appropriate for work attire. Pants must be wrinkle-free, in good condition, and must be free of tears, stains, or markings and must fit in accordance with good taste and professionalism.

Shirts/Tops: Casual shirts, dress shirts, sweaters, tops, polo-type shirts, and turtlenecks are acceptable attire for work.

Shoes and Footwear: Conservative athletic or walking shoes, loafers, boots, flats, dress heels, and leather deck-type shoes are acceptable for work. Closed toe and closed heel shoes are required.

Badge/Identification: Tow Hearing personnel will comply with duty manual section S1120 and S1121. Personnel will wear the issued identification card or badge on the outermost garment in a visible location when in any area other than the Main Lobby.

Firearms: Tow Hearing personnel will comply with duty manual section S1135. Personnel will not wear or carry the firearm in such a manner that it is conspicuously exposed to view.

Grooming: SJPD grooming standards apply.

TOW HEARING PROCEDURES

Whenever the Department removes a motor vehicle from the possession or control of its owner or owner's agent, it assumes the responsibility for protection of that vehicle until it is returned to its owner or disposed of through lawful process.

CHP-180 REVIEW

- Collect CHP-180s from the Auto Desk.
The pending CHP-180s are filed in the vertical stand up file located near the Auto Desk window position. The file is labeled “TO Be Reviewed Tow Hearing”.
- Review CHP-180s and ensure that the tows comply with SJPd Memorandum 2017-030.
- Stamping.
If a tow meets the requirements for a 30 day hold, then the Tow Hearing Officer must stamp the CHP-180 with the 30 day impound stamp at the top of the CHP-180. He must also stamp and fill in the lower part of the page with the “Badge/Release” date stamp. The release date will be 30 calendar days from the impound date. Make sure to cross out the 14602.6 CVC and replace it with either 23109.2 CVC or 14602.7 CVC, as 14602.6 CVC is no longer an authorized impound authority.
- If the tow authority section used for the tow was §14602.6 CVC, the Tow Hearing Officer will stamp the top of the CHP-180 with §22651(p) CVC. This will also require that the authority be crossed out and changed to §22651(p) CVC. Make sure to include your name and badge number
- 30-Day Holds for tows with §23109.2 CVC are held for no more than 30 days. The Tow Hearing personnel may exercise discretion on the duration of the hold based on reasonable mitigating circumstances.
- If the release / hold status does change, the Tow Hearing Officer needs to cross out the 30 day impound at the top of the CHP-180 and write a notation at the top of the page indicating an “Early release is authorized” by name and badge number.
- Return the reviewed CHP-180s to the Auto Desk for filing.

THE HEARING

NOTE: The tow hearing has time limitations.

The California Vehicle Code requires a vehicle owner be offered a hearing to determine the validity of any city generated tow (§22852 CVC). The law allows that the department 48 hours (not including weekends or holidays) from the time of the tow to send the vehicle owner a letter with information regarding the tow. Prior to the letter going out, the tow hearing officers must review the cases associated with the 30-day hold law so that information can be included in the letters.

The second time limit to be aware of is the 48 hour hearing requirement. If a hearing is requested, the Tow Hearing Officer has 48 hours, excluding weekends & holidays to contact the registered owner and schedule a tow hearing.

If these time limits are not met, the registered or legal owner cannot be charged the entire storage fee. Since the vehicles are stored at private tow yards, the implication is the city could be responsible for a 15-day portion of the storage fee. This could be very costly to

the city. It should be noted that the vehicle owners request for a hearing must be received within 10 days from the date the notice of stored vehicle was sent to the vehicle owner.

- After documenting the caller information onto the Tow Hearing Worksheet the hearing officer should pull the matching CHP-180 and attach it to the corresponding worksheet.
- It is advisable to have the CHP-180 during the hearing to communicate accurate information.
- A Hearing can **ONLY** be requested by the registered owner or the legal owner. For the purpose of this manual, the registered owner and legal owner can have a hearing but all further notes in this section will refer to the registered owner even though the notes apply to both.
- If the caller is other than the registered owner it may be appropriate to record notes in the narrative section, but it is important to indicate in the notes that the conversation **does not** constitute a tow hearing.

If it is indeed the registered owner or legal owner the following advisement must be made in some form or approximation of the following:

“As the registered owner you have certain rights, primarily anytime a registered owner’s vehicle is towed they are afforded the right to a tow hearing. As the registered owner you have the right to choose a hearing over the phone or a hearing in-person.”

- If the registered owner chooses an in-person hearing, then schedule a time for the hearing. If the registered owner chooses a telephone hearing, be prepared to continue with the hearing if it is convenient and appropriate to do so.
- Once the hearing has been completed, the hearing worksheet and any other documents relating to the hearing are attached to the CHP-180. The CHP-180 and all attached documents must be returned to the auto desk for filing.
- If the department is responsible for any fees, an “Authorization to Pay” form will be completed for the Tow Hearing Sergeant’s approval.

Tow Hearing Officers must also avail themselves to the specialists at the Auto Desk to interpret or assist with questions related to license/registration or general enforcement questions.

TOW HEARING DIGITAL RECORDING POLICY

When conducting a tow hearing, the Tow Hearing Officer will digitally record with BWC all tow hearings and adhere to the following procedures:

- Create a Tow Hearing event noting BWC activation for cross reference to the original case number and for submission of tow hearing report documentation.
- Advise all parties present that the tow hearing is being video/ audio recorded with Department issued BWC.
- State the date, time, case number, and identity of the persons present for the hearing.
- Include the tow hearing admonishment in the recording (see page 7).
- Note on the tow hearing worksheet that the hearing was digitally recorded via BWC
- Upload the BWC recording into the Digital Crime Scene (DCS) system
- Associate the tow case number on the tow hearing worksheet with the BWC recording on DCS

POST-STORAGE DUE PROCESS HEARINGS

Whenever the Department removes a motor vehicle from the possession or control of its owner or owner's agent, it assumes the responsibility for protection of that vehicle until it is returned to its owner or disposed of through lawful process.

Vehicles impounded for Vehicle Code violations or parking infractions are to be considered as automatically cleared for release without further investigation except in the case of §14602.7 CVC*, and §23109.2 CVC (30 day holds).

*Vehicles held for investigation need a release from the assigned investigative unit. It is the investigator's responsibility to notify the Vehicle Records Unit of an investigative release, and to communicate the status of the impound to the registered owner or legal owner.

Vehicles with registration or identification in an unclear condition need to be held for proof of ownership. In these cases, the Auto Desk will release the vehicle once ownership has been established and the vehicle has been properly registered with the Department of Motor Vehicles. A vehicle release fee will be charged to the vehicle owner.

When a vehicle is cleared to be released back to the owner, the Auto Desk personnel will notify the vehicle owner after the hold has been released.

Vehicles impounded on the authority of a 30 day seizure warrant require an order of the Court to the investigative unit to release prior to 30 days.

Complications arising from any investigative vehicle storage or impound should be resolved by the corresponding investigative unit.

The Tow Hearing Sergeant or authorized representative is designated as the Department Tow Hearing Officer per CVC 22852 and may order the release of any vehicle being held in police custody without proper impound authority, as well as authorizing reimbursements to vehicle owners and tow companies.

REIMBURSEMENT AND FEE WAIVER PROCEEDURE

The Tow Hearing Sergeant is responsible for authorizing reimbursements of tow fees to tow companies and private citizens. The reimbursements are required under the following conditions:

- The vehicle was not towed in accordance with the law. (officer error)
- A tow hearing was held and the findings dictate a reimbursement. (mitigating circumstances)
- The vehicle was seized in accordance with the law (§22655.5 CVC -evidence), but the investigative unit has authorized the reimbursement, or the vehicle was used by the alleged perpetrator of the crime without the express or implied permission of the owner of the vehicle. (§22655.5 (c) CVC)
- The department failed to send a certified letter to the registered/legal owner within 2 working days, excluding weekends and holidays, of the 30 day impound.
- The department failed to notify the registered/legal owner within 48 hours, excluding weekends and holidays, of the impound. Or failed to provide a poststorage hearing to the registered/legal owner within 48 hours of the request for a hearing, excluding weekends and holidays. (§22852 CVC)

Invoices from the tow companies and receipts from citizens are delivered to the Tow Hearing Sergeant's box located on the outside of the Tow Hearing Office door. All invoices from the tow companies must have a "Tow Services Audit Sheet" attached. The Tow Services Audit Sheet must be completed by the tow truck driver and signed by the officer on scene.

Once we have determined that the Department is reimbursing the costs, the following documentation is required.

RAR –Revenue Account Reduction

- A city memorandum requesting the reimbursement (city release fee to a citizen)
- Completed/ Signed Authorization for Payment form.
- Copy of the numbered receipt from the Auto Desk
- Delivered to Melida Beavers, Fiscal Unit – PAB x4086

All reimbursements except RAR:

- Completed/ Signed Authorization for Payment form.
- Numbered invoice/receipt detailing the costs to be paid.
- Delivered to Melida Beavers, Fiscal Unit – PAB x4086

After the poststorage hearing, citizens have the right of appeal to the City of San Jose Clerk's Office at 535-1260.

TOWING FEES:

- Basic tow - \$225
- Storage Vehicle or Motorcycle - \$90 per day
- Labor ¼ hour (cancelled tow) - \$56.25
- Service Hourly - \$225
- After Hours Gate Fee – \$85.00
- Lien Sale Fee – \$70.00 or \$100 (depends on vehicle type)
- City of San Jose Release Fee - \$122

* Tow fees are established in the Tow Contract with The City of San Jose.
Code Enforcement will update this unit when changes occur.

TOW COMPANIES:

Century Tow

344 Old Tully Rd, San Jose, CA 95116

Billing – [REDACTED]

Owner – William Spencer

Main: 408-885-1701

Fax: 408-926-7522

City Tow

224 S. 24th Street, San Jose, CA 95116

Billing – [REDACTED]

Owner – Kenny Carvallo

Main: 408-490-4300

Fax: 408-490-4010

Courtesy Tow

681B Lenfest Road, CA 95133

Billing – [REDACTED]

Owner – Bob Cohen

Main: 408-248-9716

Fax: 408-248-9731

Matos Tow

681A Lenfest Road, San Jose, CA 95133

Billing – [REDACTED]

Owner – Bob Cohen

Main: 408-259-2000

Fax: 408-923-4747

Motorbody Tow

455 Sunol Street, San Jose, CA 95126

Billing – [REDACTED]

Owner – Nick & Russell

Main: 408-993-9555

Fax: 408-977-9025

Alongi Tow

455 Sunol Street, San Jose, CA 95126

Billing – [REDACTED]

Owner – Nick & Russell

Main: 408-993-9888

Fax: 408-977-9025

CITY BILLING RESOURCES:

Department of Transportation (DOT) Tow Hearing Officer for all DOT Tows

[REDACTED]: 408-793-6901

City Code Enforcement:

[REDACTED]: 408-535-5647