

Memorandum

TO: ALL SWORN PERSONNEL **FROM:** Christopher M. Moore
Acting Chief of Police

SUBJECT: TOWING PROCEDURES UPDATE **DATE:** January 13, 2011

Approved

Date 2011-001

BACKGROUND

In a period of diminished staff availability, the San Jose Police Department (Department) must identify operational efficiencies which balance public safety requirements with demands for core services. Department staff has spent an inordinate amount of time and resources with the towing of vehicles seized for violations of California Vehicle Code §12500(a), unlicensed drivers, and §14601.1(a) when the suspension is for reasons not related to serious driving offenses.

The number of vehicles abandoned by their owners following 30-day impounds and the associated costs have become burdensome to all parties involved. To better reflect the intent of the legislation as well as to maximize cost and operational efficiencies, Department towing protocols need to be amended. The procedures will ensure that 30-day impounds will continue for the vehicles of the most serious offenders, while reducing the number of tows and impounds for persons whose violations are not related to serious driving offenses.

Additionally, in a 2008 California Appellate Court case involving the California Highway Patrol (CHP), the Court concluded that §14602.6(a)(1) grants **discretionary** authority to law enforcement personnel to impound vehicles of persons cited or arrested for driving with a suspended license under §14601.1(a). The Court also held that an officer and his/her employing agency **cannot** be held civilly liable for not impounding a vehicle under §14602.6(a)(1) for 30 days, *California Highway Patrol v. Superior Court*, 162 Cal.App.4th 1144 (2008).

ANALYSIS

When an officer cites or arrests an individual solely for violations of §12500(a) or §14601.1(a), when the license is suspended for reasons not related to serious driving offenses as defined below, officers may use alternatives to towing the vehicle.

Examples of alternatives include but are not limited to:

- Allowing a properly licensed passenger to drive the vehicle from the scene
- Permitting a licensed relative or friend to respond and take control of the vehicle
- Allowing the vehicle to be safely parked.

In circumstances where the vehicle would impede traffic, jeopardize public safety or be subject to vandalism or theft¹, officers may continue to tow the vehicles of persons cited or arrested for

¹ *United States v. Jensen*, 425 F.3d 698, 706(9th Cir.2005), *Hallstrom v. City of Garden City*, 991 F.2d 1473, 1477, n.4 (9th Cir. 1993)

violations of §12500(a) or §14601.1(a). If a tow is warranted, the officer will tow the vehicle under §22651(p) instead of §14602.6. This will allow the vehicle to be retrieved by the properly licensed registered owner or agent without the requirement for a 30-day impound. Officers will document the justification for the impound in the narrative portion of the CHP-180.

Although 30-day impounds for violations of §12500(a) and §14601.1(a) remain statutorily permitted under State law. Supervisor approval will be obtained prior to any 30-day impound for §12500(a) or §14601.1(a). The name of the authorizing supervisor will also be documented in the narrative section of the CHP-180. Officers maintain discretion to impound for 30 days when it is in the interest of public safety (i.e., the vehicle is used as a means to commit a more serious crime, or repeat offender).

Officers are reminded that §14601 suspensions that are the result of serious driving offenses such as; DUI convictions, negligent operator status, and reckless driving convictions, are NOT appropriately cited under §14601.1(a). The authority code sections whose violations should be cited under §14601(a), §14601.2(a) and (b), or any other §14601 violation other than §14601.1(a), should continue to be impounded for 30 days pursuant to §14602.6. No supervisor approval is required.

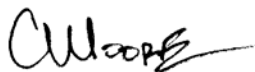
A few exceptions exist in the Vehicle Code which would warrant a 30-day impound of the vehicle even though the appropriate charging section is §14601.1(a). When the following suspension authority codes are encountered, officers will continue to cite for §14601.1(a) and may impound the vehicle for 30 days:

- §13350: Felony Hit and Run/ Felony Using a Vehicle/ Reckless Driving with Injury
- §13351: Manslaughter with Vehicle/ 3+ convictions
- §13361: Misdemeanor Hit and Run/ Manslaughter with Vehicle.

A copy of the Department's Authority Code Reference Guide is attached and also available at Central Supply. Proper citing sections, authority codes, and additional information can be found in the guide.

ORDER

Effective immediately, all sworn personnel will adhere to the procedures described above when towing and/or impounding vehicles of individuals cited or arrested for violations of §12500(a) and §14601.1(a). Officers will exercise discretion when determining if a tow is warranted and may find alternatives when appropriate. Vehicles impounded for §12500(a) or §14601.1(a) will be impounded using CVC authority code §22651(p), unless a public safety exception exists. When statutorily authorized, 30-day impound authority code §14602.6 will be utilized only as described above and with supervisor approval.



CHRISTOPHER M. MOORE
Acting Chief of Police