

 Lexington Police Department	Subject: Towing Motor Vehicles					Policy Number:	
	Accreditation Standards: Reference: 61.4.3					61C	
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By Order of: Mark J. Corr, Chief of Police							

GENERAL CONSIDERATIONS AND GUIDELINES

Every day thousands of motor vehicles traverse the roadways of Lexington. Inevitably, motorists encounter mechanical or other difficulties requiring the assistance of a service or towing company. Disabled motorists frequently rely on police assistance to obtain the needed services.

Another daily responsibility for police officers is to assist in the safe and rapid movement of motor vehicle traffic. While administering to these responsibilities, officers are often required to remove or tow the vehicles that are:

- Improperly or illegally stopped, standing, or parked;
- Stolen or abandoned;
- Disabled by accidents or other mechanical problems; and/or
- Otherwise in police custody.

The procedures outlined in this directive shall guide officers in the proper means of obtaining mechanical or towing services.

PROCEDURES

A. Police Ordered Tows; Log Entries [\[61.4.3\(C\)\]](#)

1. Police ordered tows shall only be performed by companies approved by the Chief of Police.
2. Whenever a vehicle is towed at the direction of a police officer, the following information shall be recorded in the daily log in accordance with the Code of Lexington (bylaws) Chapter 192, section 8:
 - Date, time and location where tow is made;
 - Vehicle description including registration number;
 - Owners name and address, if known, and whether or not the owner is aware of the vehicle's removal;

- Tow company and impoundment location;
 - Reason for vehicle removal and the name and rank of the person authorizing tow.
3. In compliance with M.G.L. Chapter 40 Section 22D, M.G.L. 85 Section 2c and Chapter 195 Section 8 and 9 of the Town By-Laws a Sergeant, or higher ranking officer, must authorize each vehicle towed. When towed or impounded. An officer shall inventory the vehicle in a manner consistent with the Department Policy **83C – Motor Vehicle Inventory**.

B. Specific towing situations

1. **Disabled Motor Vehicles-Owner Present.** Police officers are often called upon to assist motorists who are tending to a disabled motor vehicle. If the vehicle is not in a hazardous location, officers may:
 - a. Permit the vehicle to stand on the roadway and allow the operator to make his/her own arrangements to remove or repair the vehicle.
 - b. Arrange for the transportation of the operator to a local service station or public telephone.
 - c. Notify, on behalf of the operator, a towing service for the vehicle's removal and/or service.
2. **Hazardous Locations - Parked or Disabled Motor Vehicles.** Any motor vehicle which is parked or disabled upon a way and "jeopardizes both the public safety and the efficient movement of vehicular traffic" shall be moved from the roadway as soon as possible (see United States Supreme Court decision **South Dakota v Opperman**, 428 US 364). Officers should:
 - a. Take immediate steps to protect the area by the placement of flares, cones, and/or by positioning the police cruiser, with activated emergency lights and flashers, to the rear of the disabled vehicle.
 - b. If the vehicle's operator is present, assist in the notification and prompt removal of the vehicle by a towing company.
 - c. Notify the Commanding Officer or Patrol Supervisor for authorization to remove a vehicle when the vehicle owner/operator cannot be located **OR** when insufficient measures have been taken by the operator to eliminate the hazard. Vehicles removed in this manner shall be towed by an approved towing agency.
3. **Accidents-Disabled Motor Vehicles.** At the scene of a motor vehicle accident, officers are authorized to remove any vehicle when:
 - a. The vehicle is so disabled as to constitute a hazard if operated;

- b. The vehicle is disabled and is an obstruction to "the efficient movement of vehicular traffic," **South Dakota v Opperman**; or
 - c. The person in charge of the vehicle is by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody and removal.
4. **Abandoned Motor Vehicles**. M.G.L. Chapter 90, section 22C states that an officer having charge of the public ways in a city or town may order the removal of any motor vehicle from a public way when there is reasonable cause to believe that the vehicle has been abandoned by its owner and it has been standing upon the way for more than seventy-two (72) hours. Officers should tow vehicles in these instances after: [\[61.4.3\(a\)\]](#)
- a. Taking reasonable measures to identify and notify the vehicle's owner; and
 - b. Obtaining authorization from the Commanding Officer or Patrol Supervisor to tow the vehicle by an approved towing agency.
 - c. NOTE: See Section III of this policy for additional towing authority permitted by Lexington bylaws.
5. **Unregistered Motor Vehicles**. "The owner or custodian of such a vehicle shall not permit the same to be operated, pushed, drawn or towed upon or to remain upon any way ... unless such vehicle is registered..." M.G.L. Chapter 90, section 9. Officers having reasonable cause to believe that a vehicle is unregistered should:
- a. Whenever possible, confirm the registered status of the vehicle with the Registry of Motor Vehicles;
 - i. Officers should keep in mind that with handheld electronic devices and phones having Internet capability, the registration status of a motor vehicle can be changed during the time of a car stop.
 - ii. Officers should cause the vehicle to be removed from the roadway in compliance with the requirements of Chapter 90, section 9.
6. **Unsafe and Improperly Equipped Motor Vehicles**. If an officer determines that a certain aspect of a motor vehicle is in such poor condition that it would certainly fail to pass the State inspection process, and the operation of the vehicle would jeopardize the public safety, the officer may:
- a. Prohibit further operation of the vehicle upon any way until appropriate repairs are made;
 - b. Direct the operator/owner to tow or otherwise remove the vehicle from the way; and/or

- c. Obtain authorization from the Commanding Officer or Patrol Supervisor to tow the vehicle by an approved towing agency.
7. **Snow Removal.** Code of Lexington Chapter 100, section 4 states: "Any vehicle on any way in the Town interfering with the work of removing or plowing snow or removing ice from the way, may be removed by or under the direction of the director of Public Works to a public garage or convenient place. The director of Public Works shall, within a reasonable time, notify the Chief of Police (or designees thereof) of the removal of any such vehicle and of the place to which it has been removed, and the Chief of Police shall give like notice to the registered owner of the vehicle." Officers receiving notice that a vehicle has been towed by Public Works shall:
 - a. Attempt to notify the owner of any vehicle within a reasonable period of time; and
 - b. Record in the daily log the required information outlined in section A-2 of this policy and whether or not the registered owner has been contacted. If necessary, the vehicle owner shall be mailed a notice indicating when, where and why the vehicle was towed, and how the vehicle may be recovered.
8. **Stolen Motor Vehicles.** Before towing a stolen motor vehicle, officers should insure that valuable evidence will not be lost due to improper handling. Officers should consult with the Commanding Officer or Patrol Supervisor to determine:
 - a. If the vehicle will be processed for fingerprints or other evidence;
 - b. When appropriate, where the vehicle will be processed; on the scene, at the Police Station, in the tow yard, etc.; and
 - c. An approved towing agency should be used whenever a vehicle will remain in Department custody.
9. **Towing Subsequent to an Arrest.** Whenever the operator of a motor vehicle is arrested or otherwise taken into custody, precautions must be taken to secure the motor vehicle and any property contained therein. After consulting with the Commanding Officer or Patrol Supervisor, an officer may:
 - a. When necessary, impound the vehicle at the police department for evidentiary purposes;
 - b. Permit another licensed operator selected by the owner to drive the vehicle from the scene; or
 - c. Have the vehicle inventoried and towed by an approved towing agency, moving it and the contents to the tow yard where they would be more secure. Note: Vehicle will not be inventoried if a licensed operator is allowed to take the vehicle.

Note: Officers should be aware of Commonwealth vs. Eddington, 76 Mass. App. Not Ct. 173, 179 (2010) when considering whether to tow vehicles subsequent to arrests. In summary, the court stated that when a vehicle is otherwise legally parked at the location of the stop, and the owner or person in possession of it does not wish for it to be removed; and, where officers cannot show that it represents a safety hazard, or was at particular “risk for theft or vandalism” (must prove if claiming “high crime” neighborhood), impoundment for non-investigatory reasons is not justified. If the owner or person in charge wishes for the vehicle to be removed to a location of his or her own choice, it is not necessary to inventory that vehicle.

C. Towing of parked vehicles from public way or property [\[61.4.3\(b\)\]](#)

1. **Code of Lexington Chapter 192, section 8:** Although parking tags or notices are used for most parking violations, the Town of Lexington authorizes this Department, in accordance with the provisions of M.G.L. Chapter 40 section 22D, to remove from a public way any vehicle which is found parked or standing in the following manner:
 - a. Upon a sidewalk;
 - b. Upon any crosswalk;
 - c. Upon any way within twenty (20) feet of an intersecting way, except alleys;
 - d. Upon a way within ten feet of a fire hydrant;
 - e. On the roadway side of any vehicle stopped or parked at the edge or curb of the way (double-parked);
 - f. In front of a public or private driveway;
 - g. Upon any way where the parking of a vehicle will not leave a clear and unobstructed lane at least ten (10) feet wide for passing traffic;
 - h. Within the limits of any way for a period of time exceeding twenty-four (24) consecutive hours without the permission of the Board of Selectman or the Chief of Police, whether or not said vehicle is disabled and preparations are being made by the owner or operator for its removal;
 - i. In a restricted area where parking is prohibited by posted signs;
 - j. Obstructing any curb ramp designed for use by handicapped persons for egress to a street or public way or parking spaces reserved for the handicapped.
 - k. Upon any way in such a manner as to impede the removal or plowing of snow or ice except vehicles parked in accordance with approved regulations governing all night parking. (Town General bylaw Chapter 192-23 states, “It shall be unlawful for the driver of any vehicle, other than one acting in an emergency, to park said vehicle on any street or any municipal off-street parking area for a period of

time longer than one hour between the hours of 2:00 a.m. and 6:00 a.m. of any day except in official governmental capacity.”

2. **Exemptions.** Any vehicle specifically mentioned in M.G.L. Chapter 40, section 22D shall not be subject to removal. These vehicles include those owned by the Commonwealth or a political subdivision thereof, the United States and bearing the distinctive number plate or otherwise conspicuously marked as so owned or registered, or any vehicle registered to a foreign diplomat or consular officer.
3. As with all other towing situations, officers shall only tow a motor vehicle when authorized to do so by a Sergeant or higher-ranking officer. The vehicle shall also be towed by an approved towing agency.
4. Reasonable efforts should be made whenever possible to locate an owner / driver to have vehicles moved to correct issues rather than being towed (even if the violation is addressed by ticketing, verbally advising, etc.)

D. Tow and hold policy

1. **Parking Violations – Code of Lexington, Chapter 192, section 9:** In accordance with M.G.L. Chapter 90, section 20A½, the Department may tow and hold any motor vehicle, which has three or more unpaid Lexington parking tickets. The following procedures shall be followed when identifying and towing a vehicle.
 - a. The Captain of Operations, Traffic Bureau Manager or a designee, will generate a list of vehicles from the unpaid parking ticket logbook. The list will then be given to the day shift Commanding Officer who will distribute the list at his/her discretion (i.e.: on the computer bulletin board, hot-sheet supplement, etc.)
 - b. When a vehicle is located, the Commanding Officer shall be notified. The C.O. will check with a member of the Traffic Bureau who will then verify the status of each ticket.
If the tickets are confirmed as unpaid, then a Sergeant or higher-ranking officer may authorize the tow of the vehicle. All towing will be done by an approved towing agency.
 - c. The towing agency will be instructed to hold the vehicle until this Department authorizes the release.
2. Generally, no other situation shall warrant the "tow and hold" of a vehicle unless approved by the Commanding Officer.
3. Massachusetts General Law Chapter 90, Section 20 A ½ also allows vehicles meeting the above criteria to be “otherwise immobilized by a mechanical device...” This Department utilizes a wheel clamp known as the “Denver Boot” to secure such vehicles. The “Denver Boot” is a device that is designed to prevent vehicles from moving. In its most common form, it consists of a clamp that surrounds a vehicle wheel, designed to prevent

removal of both itself and the wheel. This device will be removed from the violator's car when the hold placed on the vehicle due to unpaid fines has been removed.

E. Removal from private property [\[61.4.3\(b\)\]](#)

1. Generally, motor vehicles, which are parked or standing on private property, shall not be towed by this Department unless authorized by a Commanding Officer.
2. Private property owners requesting the removal of an unwanted vehicle should be directed to follow the strict guidelines set forth in M.G.L. Chapter 266, section 120D. When possible, a copy of this law should be made available to the property owner.