

IN THE CIRCUIT COURT OF GREENE COUNTY  
STATE OF MISSOURI

STATE OF MISSOURI,	)	Cause No. 1331-CR04486-01
Plaintiff	)	
	)	Division No. 5
v.	)	
	)	
CRYSTAL M. WINGARD,	)	
Defendant	)	

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS**

**Introduction**

An inventory search of a car is an exception to the warrant requirement. For it to be valid, however, the police must have had authority to tow the vehicle – i.e. seize it. That authority is derived from the police department’s internal regulations on towing vehicles. Missouri law is clear that if the police did not have authority under their guidelines to tow a vehicle, then they are prohibited from conducting an inventory search. Such an impermissible search would violate the vehicle owner’s Fourth Amendment rights.

That is precisely what happened in this case. The Defendant’s car was in a parking lot. The owner of the lot asked the police for it to be towed. There are specific internal regulations governing when the Springfield Police Department can tow a vehicle from private property when requested to do so by the property owner. Not only did the officer in question violate those regulations by towing the vehicle, he was not even aware that

such regulations existed.

As established below, the police officer was without authority to order a tow of the Defendant's car. Absent that authority, the officer could not search the Defendant's car. But the officer did, and allegedly discovered methamphetamine. Because the search violated the Defendant's Fourth Amendment rights, all alleged contraband found as a result of the illegal search must be suppressed.

### **Facts**

1. On August 28, 2012, Officer Wade McElfresh, with the Springfield Police Department, was dispatched to Academy Sports, located on South Campbell. He had received information that Crystal Wingard, who had an active warrant, was there working. See Transcript, p. 2.

2. Ms. Wingard was working on the night-cleaning crew while the store was closed. Officer McElfresh made contact with her inside the store around midnight. Id., pp. 3 & 11.

3. The officer detained her, confirmed the warrant, and informed her that she was under arrest. Id. at p. 4.

4. At that point, the night manager asked the officer to have her vehicle towed. Officer McElfresh had not even considered towing her vehicle, until the manager made the request. Id. at pp. 4-5.

5. At the hearing, he confirmed that he did not see any contraband while looking through the windows of the vehicle before conducting the actual inventory

search. Id. at pp. 5-6.

6. Pursuant to the night manager's request, the officer did call for a tow truck, and conducted an inventory search before it arrived. It was during that search that the officer allegedly located what he believed to be methamphetamine. Id. at p. 6.

7. Officer McElfresh admitted that Ms. Wingard did not give him permission to search her vehicle. Id. at p. 8.

8. Ms. Wingard did not agree to have her vehicle towed. Id.

9. Moreover, Officer McElfresh did not give Ms. Wingard the opportunity to make arrangements for the vehicle herself. Id. at p. 12.

10. The location of the vehicle was marked on Defendant's Exhibit 1.

11. The officer confirmed Ms. Wingard's car was located in the parking lot of Academy Sports. Id. at p. 10.

12. Her car was located in a parking spot. It was not in the driveway area and was not impeding any possible traffic flow. Id. at p. 11.

13. Officer McElfresh admitted that her car did not appear to be abandoned nor did he have any indication that it was stolen. Id. at pp. 11 & 14.

14. The officer did not recall whether the parking lot had either "no trespassing" or "no unauthorized parking" signs. Id. at p. 18.

15. Finally, Officer McElfresh was unaware that the Springfield Police Department had regulations defining those circumstances when he could and could not tow a vehicle. Id. at p. 12.

16. As such, the officer was forced to admit that he did not know whether he complied with those regulations when he seized Ms. Wingard's vehicle by towing it. Id. at p. 14.

### **LEGAL ANALYSIS**

As established below, Officer McElfresh did not comply with his department's regulations when he towed Ms. Wingard's car. As such, he had no authority to conduct an inventory search. Because he had no other legal basis to search her vehicle, the search was illegal, and the alleged contraband must be suppressed.

#### **I. The State Carries the Burden of Proof**

It is the State's burden to show by a preponderance of the evidence that a motion to suppress should in fact be denied. Mo. Rev. Stat. § 542.296.6; State v. Avent, 432 S.W.3d 249, 252 (Mo. App. W.D. 2014). In ruling on such a motion, the court may believe or disbelieve all or any part of the testimony presented by the State, even if uncontradicted. Id.

"The Fourth Amendment to the United States Constitution guarantees the right of all citizens to be free from unreasonable searches and seizures." State v. Barks, 128 S.W.3d 513, 516 (Mo. 2004). "Enforced pursuant to the exclusionary rule, the protections of the Fourth Amendment have been extended via the Fourteenth Amendment to defendants in state court prosecutions." State v. Stoebe, 406 S.W.3d 509, 515 (Mo. App. W.D. 2013).

"Warrantless searches or seizures are per se unreasonable unless there are special

circumstances which excuse compliance with federal and state warrant requirements.”

State v. Kempa, 235 S.W.3d 54, 60 (Mo. App. S.D. 2007). The burden of placing the search within an exception to the warrant requirement falls exclusively on the state. State v. Milliorn, 794 S.W.2d 181, 184 (Mo. 1990).

## **II. Inventory Searches Must be Carried Out Pursuant to Established Police Procedures**

Inventory searches are only permissible when they are conducted pursuant to standard police procedures. The U.S. Supreme Court first addressed this issue in South Dakota v. Opperman when it held: “The decisions of this Court point unmistakably to the conclusion reached by both federal and state courts that [inventory searches] pursuant to standard police procedures are reasonable.” 428 U.S. 364, 372 (1976).

Missouri courts have followed suit. In Milliorn, the Supreme Court determined that for an inventory search to be valid, there must be a showing “that the decision to impound and conduct an inventory were carried out in accordance with *standard procedures* in the local police department.” 794 S.W.2d at 186 (emphasis in original). See also State v. Jones, 865 S.W.2d 658, 660 (Mo. 1993) (“An inventory search is valid where reasonable police regulations for inventory procedures are administered in good faith”); State v. Ramirez 152 S.W. 3d 385, 391, 402 (Mo. App. WD 2004) (inventory search is an exception to the warrant requirement provided that the seizure and search of the vehicle was “conducted according to standardized criteria or an established routine adopted by the law enforcement agency conducting the search”); State v. Allen, 817 S.W.

2d 526, 527 (Mo. App. ED 1991) (warrant is unnecessary if the decision to impound and inventory the vehicle is made in accordance with standard police procedures). Thus, the issue here becomes: What were the policies of the Springfield Police Department for towing a vehicle; and did the officer in this case comply with those procedures? As thoroughly established above and below, he did not. Accordingly, the search of Ms. Wingard's vehicle was illegal, and the evidence obtained from that search must be suppressed.

### **III. The Springfield Police Department's Towing Procedures from Private Property**

During the hearing, the undersigned attempted to introduce the Springfield Police Department's towing procedures – Defendant's Exhibit 2 – through Officer McElfresh. Because he was not aware of the towing procedures, he could not determine whether Exhibit 2 was the actual procedure in place at the time of this incident. See Transcript, pp. 12-18. The Court allowed the parties to determine – outside of the hearing – what towing procedures were in place at the time Ms. Wingard's vehicle was towed. Id. The State has since provided a copy of those procedures – which are attached hereto and remarked as Exhibit 2.

Officer McElfresh rightfully admitted that the Academy parking lot is private property. Id. at p. 13. He also confirmed that he was being asked by a private citizen to tow another private citizen's car from his property. Id. As such, Section 2.3 of the Springfield Police Department's Towing procedures apply.

Under that section, officers are allowed to tow from private property where the vehicle had been abandoned for 48 hours and the owner did not give the vehicle owner permission for the car to be left there. Under this scenario, there must also have been “no parking” or “no trespassing” signs posted. See Exhibit 2, § 2.3.2(a). But there was no evidence adduced that the vehicle had been parked there for 48 hours, against the permission of the land owner and that “no parking” signs were displayed. As such, this particular provision did not provide Officer McElfresh with the authority to tow Ms. Wingard’s vehicle.

Under a different section of the Tow guidelines, an officer can immediately tow from private property under the following scenarios:

- (a) The car unreasonable interferes with the immediate use of the property, “no parking” or “no trespassing” signs were posted, and the owner did not give permission for the vehicle to be left there. See Exhibit 2, § 2.3.3(a).
- (b) The car has been reported as stolen or appears to be stolen. Id. § 2.3.3(b).
- (c) The abandoned vehicle constitutes a safety hazard. Id. § 2.3.3(c).
- (d) The driver is arrested and cannot arrange for timely removal. Id. § 2.3.3(d).

In this case, Officer McElfresh testified that the vehicle was located in the parking lot of the Academy and was not in area that would impede traffic. See Transcript, p. 11. Moreover, there was no indication that the car was stolen. Id. at p. 14. No evidence was

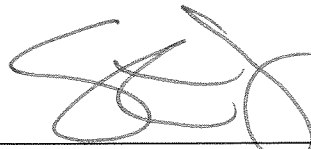
introduced to suggest that the vehicle constituted a safety hazard. And finally, while Ms. Wingard was in fact arrested, she was not given an opportunity to make arrangements for the vehicle herself. Id. at p. 12. Indeed, by statute, an officer cannot have a vehicle towed after arresting its driver, without first giving the driver the opportunity to arrange for its timely removal. See Mo. Rev. Stat. § 304.155.1(5).

The State was unable to introduce evidence of any scenario that would have allowed Officer McElfresh to have the car towed. Because he was not empowered to impound the vehicle, he was likewise without authority to conduct an inventory search. As such, the search of Ms. Wingard's car was illegal, and all evidence found within her vehicle must be suppressed.

### **CONCLUSION**

For all of the foregoing reasons, the Defendant respectfully requests that all evidence confiscated as a result of the illegal search of her car be considered fruit of the poisonous tree and suppressed as required by law, and for such other and further relief as this court deems just and proper.

Respectfully submitted,



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**Certificate of Service**

I hereby certify that on this 25th day of June, 2015, an electronic copy of the foregoing was sent through the Missouri e-Filing System to the Greene County Prosecuting Attorney's Office.

A handwritten signature in black ink, appearing to read 'SK', is written over a horizontal line.

Steven Kellogg

# SPRINGFIELD POLICE DEPARTMENT

## Standard Operating Guideline

<b>Effective Date:</b> 06/30/2012	<b>Supersedes Policy Dated:</b> 06/30/2009	<b>Rescinds:</b>	<b>SOG Number:</b>  <b>405.1</b>
<b>Accreditation Index:</b> 61.4.3 (5 <sup>th</sup> Edition)			
<b>Part Title:</b> Operations		<b>Chapter Title:</b> Traffic Operations	
<b>Chief of Police:</b> <i>Paul F Williams</i>			

## Custody and Non-Custody Tows

### I Policy

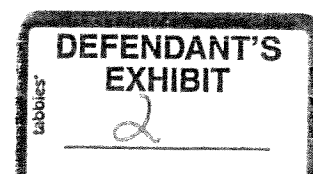
Numerous situations may occur that require police personnel to have vehicles towed, including custody and non-custody situations, on both public and private property. The Department hereby establishes this policy for impounding motor vehicles and processing custody and non-custody vehicle tows by its employees as required in Ordinances 106-34 through 106-534, RSMO 304.155 and 304.157.

### II Definitions

**Vehicle** – a general term to describe any self-propelled device with a motor and a vehicle identification number (VIN), a boat or vessel, or trailer, designed to carry passengers or property.

**Custody Tow** - A vehicle towed for the following reasons:

- The driver or owner is arrested,
- Illegally parked,
- Recovered after being reported stolen or borrowed and not returned,
- Abandoned,
- Disabled on a public street,
- Ordered removed by the Police Department or other authorized agent of the City because of a violation of law (including trespass on private property),
- Impounded for evidentiary or inventory purposes,
- Ordered removed from private or public property by the Municipal Court under the nuisance ordinances of the City,
- Tows resulting from accidents where the operator of a vehicle is not available for contact or incapacitated to the extent that they are unable to request a tow service.



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**Non-Custody Tow -** Where a citizen is requesting assistance in the towing of a vehicle.

**III Procedure**

**1 CONTRACT TOW COMPANY**

**1.1 GENERAL INFORMATION**

- 1.1.1 All Custody Tows shall be towed by the Contract Tow Company.
- 1.1.2 Police Department vehicles needing to be towed shall be towed by the Contract Tow Company.
- 1.1.3 The Contract Tow Company will tow all Custody Towed vehicles to their storage facility unless otherwise directed to do so by an Officer.
- 1.1.4 The Contract Tow Company is required to respond to the location within forty (40) minutes after notification by the Communications Center.
  - 1.1.4(a) Exception: During periods of extraordinary weather conditions, as determined by the Chief of Police or his designee, the Contract Towing Company's response time can be extended.
  - 1.1.4(b) If the Contract Towing Company is unable to or does not respond within sixty (60) minutes, the officer shall contact their supervisor. The supervisor can request the Communications Center to contact the first tow company listed on the monthly Tow List to tow the vehicle.
- 1.1.5 The Contract Tow Company is responsible for removal from the road and surrounding area of all vehicle parts, glass, small amounts of vehicular fluids and other debris, only after receiving authorization to do so by an officer at the scene.
  - 1.1.5(a) The Contract Tow Company will not be required to clean up large spills of liquids or solid materials.
  - 1.1.5(b) Clean up of debris or spills classified as hazardous materials by the U.S. Department of Transportation will not be a responsibility of the Contract Tow Company.

**2 CUSTODY TOWS**

**2.1 GENERAL INFORMATION**

- 2.1.1 When Custody Towing a vehicle, personnel shall complete Missouri Department of Revenue Crime Inquiry and Inspection Report / Authorization to Tow, (DOR Form # 4569) (**Tow Report**) which

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shall serve as the written record of all vehicles towed at the direction of police personnel.

2.1.1(a) The inventory section of the Tow Report shall be completed as follows:

2.1.1(a.1) The inventory section must be completed in all cases.

2.1.1(a.2) Vehicles that are locked or otherwise inaccessible shall be noted as such on the Tow Report and a plain view inventory shall be conducted.

2.1.1(a.3) All property with an estimated value of \$25 or more shall be documented.

2.1.1(a.4) All property with an estimated value of less than \$25.00 shall be entered as "Misc. (articles/papers/effects, etc.)".

2.1.1(a.5) Any situation that prevents an inventory from being completed shall be documented in the inventory section.

2.1.1(b) When there is a need to maintain custody of a towed vehicle, personnel completing the Tow Report shall place a hold on the vehicle, by writing "Hold for (Criminal Investigations Persons Section, Criminal Investigations Property Section, Special Investigations Section, LSOA, Registered Owner, etc.)" in large letters on top of the page.<sup>1</sup>

2.1.1(b.1) The release of such vehicles shall be authorized by the officer assigned to follow up investigation in the incident.

2.1.1(c) Appropriate copies of the Tow Reports shall be provided to the tow driver with the remaining copies being forwarded to the Records Section as soon as possible.

2.1.2 When the violator (abandoned vehicles/parking), is not physically contacted, the officer shall issue a summons for the appropriate charge and:

2.1.2(a) The violator's copy of the summons shall be given to the tow operator to present to the owner upon claiming the vehicle.

<sup>1</sup> Section 2.1.1(b) changed CIS to Criminal Investigations Persons Section, Criminal Investigations Property Section, Special Investigations Section, per Policy Change Order 12-079, Effective Date 06/30/2012.

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- 2.1.2(b) All remaining copies of the summons shall be forwarded to the Records Section.
  - 2.1.3 When conducting a Custody Tow a member the police department shall remain with the vehicle until the contract tow company removes it from the scene.
  - 2.1.4 In cases where the vehicle to be Custody Towed has been attached to or loaded onto the contract tow company truck, but the vehicle has not yet been removed from the scene, the person with a legal right to the vehicle may gain release of the vehicle at the scene.
    - 2.1.4(a) The claimant is responsible for all tow charges.
    - 2.1.4(b) The officer shall complete a Property Release form (SPD #02-SP-0454) and forward it to Central Records with the Tow Report.
    - 2.1.4(c) If a person with a legal right to the vehicle to be towed arrives on the scene prior to the contract tow company attaching to the vehicle in any manner no charges shall be incurred and the vehicle can be released.
- 2.2 **OFFICERS TOWING FROM PUBLIC RIGHT-OF-WAY or CITY OWNED PROPERTY**
  - 2.2.1 Officers (to include Traffic Service Officers) may immediately tow a vehicle from the public right-of-way or City owned property under the following circumstances:
    - 2.2.1(a) When such vehicle creates a safety hazard.
    - 2.2.1(b) Any vehicle which has been reported as stolen, taken without consent of the owner, or borrowed and not returned.
    - 2.2.1(c) When the driver is arrested and cannot arrange for timely removal.
    - 2.2.1(d) The driver of the vehicle is incapacitated as a result of an accident and is not capable of requesting a tow service.
    - 2.2.1(e) The vehicle is parked in a no parking zone and the officer has supervisory approval to tow.
    - 2.2.1(f) The vehicle is parked in a designated route of a special event or dignitary visit and the officer has supervisory approval to tow.
    - 2.2.1(g) The vehicle is parked/abandoned in a prohibited area, on City owned property, that is posted in a manner that gives notice to the public that doing so is a violation of City ordinance.

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- 2.2.1(g.1) If City owned property is not posted; it will be treated as if privately owned.
    - 2.2.1(h) Any other situation as listed in Municipal Code, (Section 106-101) and allowed under RSMO 304.155.
  - 2.2.2 Officers may tow an abandoned vehicle (Municipal Code, Sections 106-34 & 106-101) from the public right-of-way, after 48 hours, once the following criteria have been met.
    - 2.2.2(a) The officer will obtain an event number and place an Abandoned Vehicle Sticker, (SPD Form # 94-OP-0112) on the window.
    - 2.2.2(b) The officer shall mark the vehicle tire and roadway in a manner that will allow determining if the vehicle is moved during the 48 hour period.
    - 2.2.2(c) The officer shall return after 48 hours to recheck the vehicle and tow if in violation or make arrangements with another officer to do so.
    - 2.2.2(d) The original event number will be referenced to obtain the corresponding case number for reporting purposes.
    - 2.2.2(e) An operable vehicle which displays a valid license and current inspection certificate, when legally parked in view of owner's residence, is not to be considered abandoned/unattended under (Municipal Ordinance Section 106-34), even though it is not moved for 48 hours.
- 2.3 OFFICERS TOWING FROM PRIVATE PROPERTY
  - 2.3.1 Missouri Revised Statute (304.157) determines when officers may tow from private property and enacts criminal penalty for removal of an abandoned vehicle in violation of this statute.
  - 2.3.2 Officers may tow from private property under the following circumstances:
    - 2.3.2(a) The vehicle has been abandoned for 48 hours and the property owner or their designee did not initially give permission for the vehicle to be left there. The same rules for tagging and marking a vehicle on the public right-of-way apply.
      - 2.3.2(a.1) In accordance with (Municipal Code, Section 106-532 and 106-533), the owner or their designee in charge of the property must have previously posted signs using the words "no trespassing," "no parking," or words with similar

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meaning in order for there to be a presumption that the registered owner committed the violation of vehicular trespass.

2.3.2(a.1.1) If the property is not posted, and the officer is not able to determine who parked/abandoned the vehicle, the officer should explain to the owner or their designee the procedure for having the vehicle towed on their own behalf under Section 3.

2.3.2(a.2) Officers shall not tow vehicles from apartment complex lots OR rental properties at the request of a landlord, which do not constitute a safety hazard or unreasonable interference, due to the difficulties in determining whether a trespassing violation has occurred. Officers will advise the property owner/manager how to have the vehicle towed on their own behalf as explained in Section 3.

2.3.2(a.3) The property owner or their designee must co-sign a summons for vehicular trespassing (Section 106-532) with the officer.

2.3.3 Officers may tow immediately from private property under the following circumstances:

2.3.3(a) The vehicle unreasonably interferes with immediate use of the real property by the person in possession, the property was previously posted "no trespassing" or "no parking" and the property owner or their designee did not initially give permission for the vehicle to be left there.

2.3.3(a.1) If the property is not posted, the officer must conduct follow-up to determine who parked/abandoned the vehicle.

2.3.3(a.2) Depending on the level of



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inconvenience being created for the property owner or their designee, the officer may, as an alternative, explain to the owner or their designee the procedure for having the vehicle towed on their own behalf under Section 3.

- 2.3.3(a.3) The property owner or their designee must co-sign a summons for vehicular trespassing (Section 106-532) with the officer.
- 2.3.3(b) Any vehicle which has been reported as stolen, taken without the owner's consent, borrowed and not returned, or the condition of the vehicle gives the officer reason to believe that it has been stolen but not yet reported as such (i.e. punched lock, etc.).
- 2.3.3(c) In the judgment of the officer, the abandoned vehicle constitutes a safety hazard.
- 2.3.2(d) The driver is arrested and cannot arrange for timely removal.

**3 NON-CUSTODY TOWS****3.1 TOWING VEHICLES BY PRIVATE PROPERTY OWNERS WITHOUT AUTHORIZATION FROM LAW ENFORCEMENT**

- 3.1.1 Private citizens may have vehicles towed from property legally under their control in certain circumstances. Any owner or lessee in lawful possession of real property who requests a towing company to tow abandoned property without authorization from a law enforcement officer shall complete an (Abandoned Property Report, DOR-4669).
  - 3.1.1(a) Tow operators will typically have these forms available.
  - 3.1.1(b) Once completed, the Abandoned Property Report must be delivered to the Springfield Police Department Records Section by the tow company within two (2) hours of the vehicle removal if the vehicle is towed from property where there is signage. Otherwise the report must be delivered within 24 hours of the vehicle being towed.
  - 3.1.1(c) Upon delivery to the Records Section the report must be signed by a sworn officer. If available, the information concerning ownership and lien holders of the vehicle will be completed.



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- 3.1.1(d) A copy of the report will be returned to the tow company and a copy will be retained within the Records Section for documenting into the MULES System.
- 3.1.2 The private property owner/lessee/property or security manager must certify that one of the following three circumstances exist as reason for the tow:
  - 3.1.2(a) Signs are displayed in plain view at all entrances to the property.
    - 3.1.2(a.1) The signage shall include the following:
      - 3.1.2(a.1.1) Be no less than 17 by 22 inches in size.
      - 3.1.2(a.1.2) Lettering shall not be less than one inch in height.
      - 3.1.2(a.1.3) Language shall clearly state public parking is prohibited and indicate that unauthorized abandoned property or property parked in a restricted or assigned area will be removed at the owner's expense.
      - 3.1.2(a.1.4) Language disclosing the maximum fee for all charges related to towing and storage.
      - 3.1.2(a.1.5) The telephone number for the Springfield Police Department where information can be obtained or a 24 hour staffed emergency information telephone by which the owner of the abandoned property or property parked in a restricted or assigned area may call to receive information regarding the location of such

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owner's property.

3.1.2(a.2) Under this circumstance, there is no waiting period and no requirement that the property owner or designee contact the police department prior to removal.

3.1.2(b) The abandoned property is left unattended on owner-occupied residential property with four residential units or less, and the private property owner/lessee/property or security manager has notified the Springfield Police Department Telcom desk, obtained an event number, and 10 hours have elapsed since notification.

3.1.2(c) The abandoned property is left unattended on private property and the private property owner/lessee/property or security manager has notified the Springfield Police Department Telcom desk, obtained an event number, and 96 hours have elapsed since notification.

**3.2 TOWING MOTOR VEHICLES AT THE REQUEST OF THE OWNER**

3.2.1 The owner of a motor vehicle may request any tow company to tow their vehicle if it is not in the custody of law enforcement.

3.2.2 Consideration should be given to the situation and the amount of time needed by a particular tow service to respond.

3.2.2(a) Example- if the vehicle is creating a traffic congestion problem, the tow service should be able to respond within 40 minutes.

3.2.3 If the vehicle driver/owner has no preference for a tow company, police personnel shall have the owner select a tow company from the authorized non-custody tow list.

3.2.4. The Inspections and Internal Affairs Unit shall publish and distribute the Non-Custody Tow List monthly.

3.2.5 Police Personnel shall not recommend any tow service.

**4 RELEASE OF CUSTODY TOWED VEHICLES**

4.1 The Records Section is responsible for owner notification and release of custody towed vehicles in accordance with applicable City Ordinances and State Statutes.

4.2 Detailed procedures for the notification and release processes shall be maintained in the Records Section SO Manual.

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**IV Attachments**