



MOTOR VEHICLE TOWING AND INVENTORY SEARCHES

General Order Number: 17.1

Effective Date: August 10, 2017

POLICY:

During the course of their duties police officers are often required provide protection or general assistance to stranded motorists or have motor vehicles removed from public ways and ways to which the public has a right of access. Among a variety of reasons that a vehicle may need to be removed from a public way are accidents, arrests, motor vehicle law violations, persons stranded or in need of emergency mechanical assistance, disabled and abandoned vehicles.

It is the policy of the Brookline Police Department to tow vehicles from public ways and ways to which the public has a right of access, with the approval of a supervisory officer when such vehicles create a public hazard or nuisance, obstruct the normal flow of traffic or are not legally permitted on the roadway.

It is also the policy of the Brookline Police Department that all vehicles ordered towed, or in the custody of the Department, shall be inventoried and properly documented in order to protect the vehicle and its contents, the Brookline Police Department, and authorized tow companies against false claims of lost, stolen or vandalized property and the officers and the public from dangerous items that might be in the vehicle.

PROCEDURES:

PROCEDURES FOR TOWING A VEHICLE FROM A PUBLIC WAY:

When an officer encounters a vehicle on a public way or a way to which the public has a right of access that cannot be safely operated from its current location, then the officer must make a determination and seek the approval of a supervisor as to whether the vehicle must be towed from the scene. If the vehicle to be towed is in violation of any Factors to be considered are defined below.

- A. **Public Hazard:** A vehicle can be considered a public hazard if it is leaking fluids or dropping debris such as broken glass, pieces of metal or plastic. Examples of this are vehicles that have been involved in a traffic crash; vehicles not secured and are capable of being driven from the scene by an unauthorized operator, such as a stolen vehicle with a damaged ignition. Also, a vehicle that is located in a dangerous location, such as the middle of a heavily traveled roadway, blocking or impeding

emergency utility repairs, or vehicles in areas of developing critical incidents. (For example, officers actively investigating a suspicious package should divert all commercial vehicles (fuel tank trucks) a safe distance well away from the incident scene.) Officers are obligated to mitigate the hazard by removing the vehicle to a safe location. When the public hazard is also a violation of a

- B. **Public Nuisance:** A vehicle can be considered a public nuisance if it is located in a position that does not rise to the level of a hazard, but inconveniences the general public. This can include habitual vehicle alarm violations, vehicles obstructing the normal flow of traffic, making a way inaccessible to vehicular traffic by occupying travel lanes or street intersections for an extended period of time while reducing visibility. Officers should consider removing vehicles under these conditions unless the problem can be quickly resolved by other means.

- C. **Legal Issues:** Vehicles that are improperly registered, have a suspended registration, or are uninsured must be removed from the roadway and cannot be operated. Vehicles which are confirmed stolen or under certain circumstances considered stolen, unknown to the owner, must be removed from the roadway to safeguard the property interest of the rightful owner. Vehicles can be removed that are illegally parked and create a safety issue such as blocking a hydrant or parked on public ways after the Police Department or Department of Public Works has posted no parking signs twenty-four hours in advance. Unless a safety concern is currently present, it is more appropriate to issue parking tickets as enforcement for violations, such as street sweeping or bus stops. In addition, please pay particular attention to the following language in our Town By-Laws regarding towing:

ARTICLE V (A) TOW-AWAY ZONE REGULATIONS

Section 1 IN GENERAL: In accordance with the provisions of Chapter 40, Section 22D of the Massachusetts General Laws, as most recently added by Chapter 322 of the Acts of 1961, the Transportation Board of the Town of Brookline hereby enacts the following regulations authorizing the removal to a convenient place of vehicles parked or standing in such manner, or in such areas as are hereinafter described on any way under the control of the Town of Brookline. Vehicles specifically exempt by Chapter 322 of the Acts of 1961 shall not however be subject to such removal.

Section 2 AUTHORIZATION OF POLICE: The moving or towing of any vehicle under the provisions of this Article shall be by and at the direction of the Chief of Police or such other officer(s) of the rank of Sergeant or higher as he may from time to time designate.

Section 3 MAXIMUM TOWING AND STORAGE FEES: In accordance with Title 220 CMR, Chapter 272.00, the maximum charge for towing up to five miles under Table 1 may not exceed \$90.00 which includes one hour of Service and/or Waiting Time to be computed from the time of arrival at the

scene. (If service exceeds one hour refer to Note 1. The use of Note 1, however, for a trespass tow or snow removal tow is prohibited.) A surcharge per mile of \$3.00 is established for miles towed in excess of five miles. Storage Fees not to exceed two dollars (\$2.00) for any twenty-four hour period; not to exceed one dollar and fifty cents (\$1.50) for any period less than twenty-four hours.

Section 4 LIABILITY FOR DAMAGE DURING REMOVAL OR STORAGE: The Contractor shall be liable to the owner for any damage arising out of negligence caused to a vehicle in the course of removal and storage.

Section 5 GENERAL PROHIBITION TOWING ZONES: No person shall stand or park or allow, permit or suffer any vehicle registered in his name to stand or park in any of the following places. Vehicles found in violation of the provisions of this Section except those specifically exempt by law, shall be removed to a convenient place under the direction of an officer of the Police Department and the owner of the vehicle so removed, or towed away shall be liable to the cost of such removal and storage, if any, as set forth in Section 3 of the Article. The owner of any vehicle removed or towed away under the provisions of this section shall also be subject to the penalties as allowed under Chapter 138 of the Acts of 2001 and any other violations shall be punishable as may be provided by law. (a) 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. (b) Upon any sidewalk. (c) Upon any crosswalk. (d) Upon any way within twenty (20) feet of an intersecting way except alleys. (e) Upon any way within ten (10) feet of a fire hydrant. (f) On the roadway side of any vehicle stopped or parked at the edge or the curb of the way. (g) In front of a public or private driveway. (h) Within a crossover. (i) Upon any way where the parking of a vehicle will not leave a clear and unobstructed lane of at least ten (10) feet wide for passing traffic. (j) Upon any way for a period of time exceeding twenty four (24) consecutive hours whether or not such vehicle is disabled and preparations are being made by owner or operator for its removal. (k) Within 15 feet of the wall of a fire station or directly across the street from such station provided official signs are erected prohibiting such Parking. (l) Upon any way parked in violation of any existing Traffic Rules and Regulations provided that such vehicle has previously been tagged for violation of such Rules and Regulations and that the owner or person in control of said vehicle has failed to return the tag to the Court having jurisdiction as required by the provisions of Chapter 90, Section 20C, of the General Laws. (m) In any bus stop. (n) Any motor vehicle not duly registered or insured in accordance with Chapter 90 of the Massachusetts General Laws, parked or operating on a public way or place under the jurisdiction of the Transportation Board shall be towed in the same manner as provided in other sections of this Article. (o) Within any loading zone established under Article

V, Section 3, in accordance with a schedule designated as Schedule #12(b) hereto appended, to which reference is made and which Schedule #12(b) is specifically incorporated into this Section. (p) In front of any Handicap Ramp. (q) No vehicle shall park in any parking space designated for handicapped parking with official signs unless the registration number of the vehicle begins with the letters HP, DV (Disabled Veteran), or any passenger vehicle displaying a validly issued unexpired HP placard displayed on the rearview mirror. (r) No vehicle shall park in any parking space designated for Overnight Permit Parking without a proper Parking Permit as issued by the Engineering & Transportation Division. Such vehicle shall be tagged and towed.

AUTHORIZATION FOR POLICE CHIEF TO TOW: The Chief of Police is authorized to tow any vehicle found in violation of an emergency parking ban or street closing as allowed under Sections 3 and 4 or Article II. Streets designated for an emergency parking ban or closing shall be posted with Tow Away signs.

Section 6 PARKING PROHIBITED, TOWING ZONE: No person shall stand or park or allow, permit or suffer any vehicle registered in his name to stand, or park on any of the ways or parts of ways hereinafter described and during the periods of time set forth. Vehicles found in violation of the provisions of this section except those specifically exempted by law shall be removed to a convenient place under the direction of an officer of the Police Department and the owner of the vehicle so removed or towed away shall be liable to the cost of such removal and storage, if any, as set forth in Section 3 of this Article. The owner of any vehicle removed or towed away under the provisions of this Section shall also be subject to the penalties as allowed under Chapter 138 of the Acts of 2001 and any other violations shall be punishable as may be provided by law Section

Section 7 OFFICIAL TRAFFIC SIGNS: The provisions of Section 6 shall be effective only during such time as sufficient number of official traffic signs bearing the legend "TOW AWAY ZONE" are installed, erected, maintained and located so as to be visible to approaching drivers, and signs to be appended above or incorporated into the legend of Parking Prohibition signs.

Before towing a vehicle for a violation of Traffic Rules and Regulations, the officer shall affix a parking violation tag to vehicle indicating the offense for which the vehicle is being towed.

- D. **Arrest:** When an officer arrests the operator of a motor vehicle, that person no longer has control over that vehicle. Towing the motor vehicle serves a multiple purpose in this instance. It addresses the issues raised under public hazard and public nuisance sections of this policy by removing the vehicle from the roadway. It also serves as a safeguard for the vehicle and property of the arrested party, since they

are no longer at liberty to act to protect it. If there is another person present who is capable of operating the vehicle and the person legally in control of the vehicle gives express permission, that person should be permitted to remove the vehicle from the scene without it being towed. An exception to this procedure is if the operator is arrested for OUI (see section on Melanie's Law).

- E. **Snow Emergency:** Any vehicles parked on posted designated public ways within the Town of Brookline, in violation of the Snow Emergency Parking Ban, shall be issued a parking ticket for the violation and towed.
- F. **Damaged or leaking Vehicles:** Damaged or leaking vehicles shall be removed and taken to the contracted towing location or a storage facility to prevent hazardous materials from penetrating into the ground. Vehicles that are damaged or leaking should be considered unsafe to operate. Vehicles that are damaged due to a traffic crash or other event, or any vehicle observed to be leaking environmentally hazardous fluids or substances such as antifreeze, oil, brake fluid, diesel fuel or gasoline, shall be removed from the roadway, usually at the direction of the fire department. The fire department can order the removal of a damaged or leaking vehicle from private property, a public way or a way to which the public has a right of access due to a dangerous or environmentally hazardous circumstance.

ABANDONED MOTOR VEHICLES:

A. DEFINITIONS:

1. **ABANDONMENT** - A vehicle left parked and unattended for 72 hours or more. A motor vehicle shall be deemed "abandoned" by its owner if it is left parked and unattended for 72 hours or more on public/private property (Mass. Gen. Law, Chap. 90, Sec. 22C).
2. **JUNK CAR** - Has no salvage value. Before disposal it must be stripped of tires and batteries; oil, gas, transmission fluid, and radiator fluids must be drained; stuffing or fill-in seats must be removed, as well as papers or foreign debris; the gas tank must also be removed.

B. ABANDONED MOTOR VEHICLES NOT CLASSIFIED AS JUNK CARS LEFT UNATTENDED FOR OVER 24 HOURS:

In all circumstances, towing will be in compliance with Town of Brookline By-Laws.

When an officer has initially noticed a vehicle that may be in violation of above, officer shall monitor vehicle for 24 hours or more, affix a parking violation tag to vehicle indicating offense (two hour violation, overnight parking). At the conclusion of the 24 hours, vehicle may be towed for storage.

Although circumstances may at times dictate that a particular motor vehicle be towed under the guise of “storage”, whenever possible, it is preferred that the vehicle be ticketed appropriately and treated as an abandoned motor vehicle. The advantage is the owner may respond upon seeing the parking violation tag.

C. INVESTIGATIONS OF ABANDONED/JUNK VEHICLES:

1. Ownership Determination:

Officers shall determine ownership and attempt to notify the owner by;

- a. Checking the Vehicle’s Registration Number;
- b. Confirm the Vehicle Identification Number (VIN);
- c. Examine state inspection sticker; and
- d. Thorough examination of the interior of the vehicle for notes, letters, papers, materials or other types of identification to identify the owner.

NOTE: If any of the above results in the determination of the owner, that information shall be provided to the tow company, so that they may contact the owner as well.

2. **Vehicle Condition:** If the vehicle has physical conditions, indicating abandonment, pictures of the vehicle should be taken for evidence, (optional but recommended.)
3. **Investigation:** A police officer may search an abandoned motor vehicle for evidence in an attempt to determine the owner and monitor the vehicle during the next three (3) days.
4. **Owner Contact:** If within three (3) days the vehicle owner contacts the department, they will be ordered to remove the vehicle. The department’s involvement is ended if the vehicle is removed.
5. **Owner Not Located:** If the owner cannot be located within three (3) days, the last registered owner of the vehicle may be charged with abandonment of a motor vehicle, (optional procedure.)

D. PRIVATE PROPERTY ABANDONMENT:

In order to have an abandoned motor vehicle removed from private property under M.G.L. Ch. 266, Sec 120D, it is necessary to show that the owner of the vehicle has been forbidden to park on the property either directly by a posted notice No Parking or No Trespassing sign. There is no 72 hour requirement on private property.

1. **OWNER'S RESPONSIBILITY:** In order to have the abandoned motor vehicle removed, the owner or the person having lawful control must provide the Chief of Police or their designee with the following information:
 - a. The address from which the motor vehicle is being removed.
 - b. The address to which the motor vehicle will be moved.
 - c. The registration number (plate).
 - d. The name of the owner or person in lawful control of the property.
 - e. The name of the person or tow company that will be towing the motor vehicle.
 - f. 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.

2. 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).

E. REMOVING, IMPOUNDING, INVENTORY & DOCUMENTATION

When an officer arrives at an incident involving a vehicle or vehicles and the officer, with the approval of a supervisor, determines that one or more of the vehicles must be removed, the owner or person in control of the vehicle should be advised if possible. They should be afforded an opportunity to request a tow service of their choice, provided that such a selection shall not unreasonably delay the removal of the vehicle or endanger the public safety. The officer in charge at the scene shall determine whether the delay is unreasonable for the circumstances and shall inform the person making the request of their decision.

1. **Regular Tows:** All vehicles ordered towed at the direction of the Brookline Police Department shall be towed by the contracted towing company. When circumstances develop that require the towing of large commercial vehicles or multiple vehicles it is the responsibility of the contracted towing company to provide additional equipment or special oversize towing equipment within a reasonable period of time.

2. **Impounded Vehicles:** Any vehicle that is impounded by order of the Brookline Police Department for further investigation or parking ticket violations shall be towed to the contracted towing facility, the sally port at Police Headquarters or any other facility authorized by the Officer-in-Charge, a Patrol Supervisor or a member of the Criminal Investigations Unit (CIU).

3. **Inventory of Towed Vehicles:** Officers towing a motor vehicle shall conduct a documented inspection and inventory on the BPD Tow Sheet. All inventories shall be conducted pursuant to 17.1 Motor Vehicle Inventory.

4. **Documentation of Vehicles Towed by the Police Department:** All vehicles towed by the Brookline Police Department shall be properly documented in Larimore by the Dispatcher at the Emergency Communications Center.
5. All vehicles towed from private property shall be properly documented in Larimore by the House Officer upon receipt of information by the Tow Company.

F. IMPOUNDMENT OF A MOTOR VEHICLE PURSUANT TO MELANIE'S LAW:

Any motor vehicle operated by a defendant at the time of an arrest for operating under the influence of alcohol, directs officers to impound the vehicle driven by the defendant at the time of arrest, for a period of twelve (12) hours, if the defendant refuses a breathalyzer test. There are two (2) important points to remember under this circumstance:

1. It does not matter who the vehicle is owned by. The vehicle must be impounded if it was driven by the defendant.
2. The mandate only refers to vehicles being driven by operators who refuse the breathalyzer.

Since officers normally impound vehicles before a defendant decides to submit to a breathalyzer. The District Attorney's Office has recommended that police officers be instructed to impound any vehicle operated by a defendant at the scene and adhere to the following guidelines.

1. Any operator who refuses or fails a breathalyzer test: Hold the vehicle for a minimum of twelve (12) hours.
2. Any operator twenty-one (21) or older: Release the vehicle if they submit and have a reading of .05 or less.
3. Motorists under twenty-one (21): If they submit and have a reading of .02 or above, hold the vehicle for a minimum of twelve (12) hours.

G. WHEN TO INVENTORY A VEHICLE: A detailed inventory shall be made whenever a vehicle is ordered towed, removed, or impounded, including the following conditions:

1. When involved in an accident, and the owner is unable to care for it;
2. Pursuant to a lawful stop of the vehicle and arrest of the driver, when the vehicle would be left unattended;

3. As a seizure – the vehicle is subject to statutory forfeiture or lawful seizure pursuant to a governmental interest, such as:
 - a. A seizure pending forfeiture;
 - b. The vehicle was used in the commission of a crime, as an instrument of a crime, or is stolen;
 - c. Any other impending public safety issue, e.g. disabled, auto fire, abandoned, tow zone, snow emergency, etc.
 - d. The inventory process should be conducted at the scene before towing the vehicle. If the scene is not safe or practical, the process may be done at another location, but should be done as soon as is safe and practical.

H. INVENTORY PROCEDURE

The standard inventory procedure consists of a detailed inspection of the interior and exterior of the vehicle for damaged and missing parts, as well as to locate and record the contents of the vehicle. The following areas should be inventoried:

1. The interior of the vehicle;
 1. The glove compartment and trunk (unless they are locked and there is no key available), and;
 3. The exterior of the vehicle for missing or damaged parts.
 4. The inventory listing of personal items and valuables will extend to all storage areas and compartments that are accessible to the operator or occupants. This encompasses the following:
 - a. All open areas, including the floor areas, the surfaces of the instrument panel and rear deck above the passenger seat, the open area under the seats, the glove compartment and trunk, and other places where personal property is likely to be stored.
 - b. All closed but unlocked containers should be opened, and each article inventoried individually.
 - c. If any closed container is locked it shall be opened if possible without damage to the lock (e.g. key present, combination known, tape removal). Locked containers that are unable to be opened should be inventoried as a single unit.

- d. If an owner and / or operator requests to remove or entrust their possessions to another person without it impeding the towing or impoundment process, such request may be granted unless the officer has probable cause to seize the items.

I. PROPERTY SAFEKEEPING

1. The Brookline Police Department has a responsibility when towing a motor vehicle to secure for safekeeping any property of value when the owner or operator is unable to do so.
2. The officer, before the vehicle is towed, shall remove any property of value and/or of evidentiary value and submit it to the Evidence/Property Officer as outlined in the Department's General Evidence and Property policies and procedures.
3. If any property is too large to remove, it should be inventoried and noted on the tow slip.
4. The officer shall complete the vehicle tow slip and affix his or her signature and badge number and then have the tow truck operator acknowledge with their signature on the slip.
5. The officer shall then turn over the tow slip to the Communications Dispatcher who shall see that the stolen check, RMV listing, and the tow information are entered into the department computer and submitted to the Commanding Officer – Platoon on Duty. He/she will then sign the slip as complete.
6. The tow slip will then be submitted to the Traffic/Service Division.
7. Keys to the vehicle, if available, are to be considered valuable property and are not to be left in the vehicle. They shall be submitted to the Evidence/Property Officer as outlined in the Department's General Evidence and Property Policies and Procedures.

J. RESPONSIBILITIES

1. Any officer conducting an inventory shall:
 - a. Locate any monies or articles of value and secure and submit to the Evidence/Property Officer as outlined in the Department's General Evidence and Property Policies and Procedures any such monies or articles of value that are not secured by the tow company.

- b.** Accurately record on the motor vehicle tow slip a complete listing of the general condition of the vehicle and its contents.
 - c.** Submit the completed tow slip to the dispatch center at the police station.
 - d.** File a copy of this slip with any report of investigation.
 - e.** Ensure that all articles taken for safekeeping are noted on the tow slip and are stored in an appropriate container and secured in a property locker at the police station.
 - f.** License or registration plates removed from a towed vehicle should be noted on the tow slip and submitted to the marked license plate container in the bulk property storage area in the booking room. Officers should attach a copy of the incident report to the license plate with a rubber band before placing license plates in the container. Officers should indicate in both the narrative of their report and the property field that plates were seized and placed in bulk property.
 - g.** An article of value may be left with the vehicle, if the owner so requests, by storing it in the trunk. This request shall be noted and affirmed on the tow slip.
 - h.** In addition to property taken for safekeeping, any items or contraband taken from a towed motor vehicle to be used as evidence will be listed on the tow slip. The evidence should be secured as evidence following the Department's *Evidence and Property Policy, Procedures and Guidelines*.
- 2.** Commanding Officers – Platoon on Duty shall review all tow slips for compliance with this policy and ensure that any property taken during the inventory procedure is properly recorded and secured.