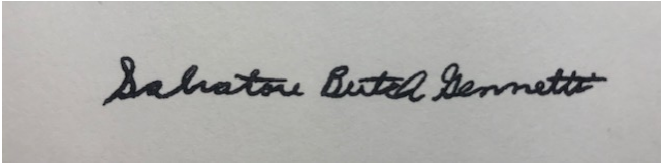



MALDEN POLICE DEPARTMENT MOTOR VEHICLE TOWING POLICY

<p>Massachusetts police accreditation standards referenced: 41.4.1; 41.4.5; 61.1.5; 61.1.11; 61.2.2; 61.4.1; 61.4.2; 61.4.3</p>		<p>GENERAL ORDER GEN 2023-004 POLICY NUMBER: TRA-002</p>
<p><u>Effective Date:</u> 01/12/2023 Total Pages: 7</p>	<p style="text-align: center;"><i>ISSUING AUTHORITY</i></p> <hr/> <p style="text-align: center;">Police Commissioner</p> <div style="text-align: center;">  <p><i>Salvatore "Butch" Gennetti</i></p> </div>	

I. GENERAL CONSIDERATIONS & GUIDELINES:

During the course of their duties police officers are often required to 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. This policy and procedure will provide guidelines for when a vehicle must be towed and the procurement of a towing service. [61.4.1 \(a\), \(b\), \(c\), \(d\)](#); [61.4.3 \(b\)](#);

II. POLICY:

It is the policy of the Malden 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.

III. PROCEDURES FOR TOWING A VEHICLE FROM A PUBLIC WAY:

When an officer on patrol or responding to a call 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 supervisory

officer as to whether the vehicle must be towed from the scene. Factors to be considered are defined below:

Public Hazard: 61.4.2

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 and are blocking or impeding emergency utility repairs, or vehicles in areas of developing critical incidents. Officers are obligated to mitigate the hazard by removing the vehicle to a safe location.

Public Nuisance: 61.4.2

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.

Legal Issues: 61.4.3 (b)

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 Traffic Department 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.

Arrest: 61.4.3 (b)

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 and refuses the breathalyzer test.

(See section VI. of this policy Impoundment of a Motor Vehicle Pursuant to MELANIE'S LAW.)

Snow Emergency: 61.4.3 (b)

Any vehicles parked on posted designated public ways within the City of Malden, in violation of the Snow Emergency Parking Ban, shall be issued a parking ticket for the violation and towed. The Department of Public Works Director or his designee can also declare a vehicle to be impeding snow removal operations, at which time the vehicle can be towed with the approval of a police department supervisor.

Damaged or leaking Vehicles: 61.4.2

The vehicle shall be removed and taken to the contracted towing location or a storage facility to prevent hazardous materials from penetrating into the ground. For this reason, the vehicle 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.

IV. ABANDONED MOTOR VEHICLES: 61.4.3 (a), (b)**Definitions:****ABANDONED or ABADONMENT:**

A vehicle left parked and unattended for seventy-two (72) hours or more.

JUNK VEHICLE:

A vehicle with no obvious salvage value.

Abandoned Vehicles: 61.4.3 (a)

When an officer has initially noticed a vehicle that may be considered abandoned or when a citizen complains that a vehicle may be abandoned in a particular area, officers shall determine if the vehicle is violating a parking regulation and may issue a parking violation and affix it to the vehicle for said violation. If it is determined that the vehicle is legally parked, the department shall monitor the vehicle for at least twenty-four (24) hours. A CAD entry shall be generated and follow up information will be provided to the Traffic Department via email message. Although circumstances may at times dictate that a particular motor vehicle is abandoned although legally parked, whenever possible it is preferred that the vehicle be treated as an unattended motor vehicle due to the following;

- The owner may respond upon seeing the parking ticket;
- More time may be allowed (72 hours) to ascertain ownership
- An Officer pursuing court action shall file a complaint with the District Court. Officers are not required to issue a Mass Uniform Citation, the complaint with the charge - MGL c. 90, s. 22C is sufficient.

Investigations of Abandoned/Junk Vehicles: 61.4.3 (a)**Ownership Determination:**

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

- Checking the Vehicle's Registration Number;
- Confirm the Vehicle Identification Number (VIN);
- Examine state inspection sticker; and
- 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.

Vehicle Condition:

If the vehicle has physical conditions, indicating abandonment, pictures of the vehicle should be taken for evidence, optional but recommended.

Investigation: 61.4.3 (a)

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.

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.

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.

Private Property Abandonment: 61.4.3 (b)

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.

In order to have the abandoned motor vehicle removed, the owner or person having lawful control of the property must provide the police department with the following information:

- The address from which the motor vehicle is being removed;
- The address to which the motor vehicle will be moved;

- The registration (plate) number;
 - The name of the owner or person in lawful control of the property;
 - The name of the person or tow company that will be towing the motor vehicle and who is responsible for payment of services;
1. The towed motor vehicle shall be stored in a safe and convenient place and the owner of the vehicle shall be liable for the towing and storage expense.
 2. Abandoning a motor vehicle on private property does not prevent police from charging the owner of the motor vehicle with Abandonment.

V. Removing, Impounding, Inventory, Documentation & Release: 61.4.3 b

When an officer arrives at an incident involving a vehicle or vehicles and the officer with the approval of a supervisory officer 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 his decision. Generally, delays of longer than twenty (20) minutes will be considered unreasonable.

Regular Tows:

All vehicles ordered towed at the direction of the Malden 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.

Impounded Vehicles:

Any vehicle that is impounded by order of the Malden 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 (CID).

Inventory of Towed Vehicles: 41.4.1 (f); 61.4.3 (f)

Officers towing a motor vehicle shall conduct a documented inspection and inventory on the MPD Impounded Motor Vehicle Inventory Control Sheet, according to department procedure. All inventories shall be conducted pursuant to Policy and Procedure “Motor Vehicle Inventory Policy”.

Documentation of Vehicles Towed by the Police Department: 61.4.3 (c)

All vehicles towed from public or private property by the Malden Police Department shall be properly documented in the QED/CAD police computer system by the officer towing the vehicle. Officers responsible for towing vehicles which appear to be stolen,

abandoned, disabled, impounded unknown to the owner or trespass tows shall be entered into the tow log at Police Dispatch. Private tows due to trespass or other, must notify dispatch prior to towing and dispatch must enter into QED/CAD system.

Release of Towed Vehicles:

The release of vehicles towed by the Malden Police Department shall be, absent extenuating circumstances, to the registered owner of the motor vehicle. The releasing officer shall investigate the circumstances surrounding the towing of the vehicle. Upon determining that the release of the vehicle is proper shall release the vehicle to the registered owner or other authorized person. The releasing officer shall fill out a tow release form and provide it to the owner or other authorized person. If the vehicle is unregistered and/or uninsured, or the person requesting release is unlicensed, but otherwise is proper, the vehicle may be released with a notation on the tow release form stating "TOW ONLY." In this case the releasing officer shall notify the designated towing contractor and inform them of the situation. In all cases, except in the case of an ongoing investigation, reasonable efforts shall be made to make contact the registered owner.

VI. IMPOUNDMENT OF A MOTOR VEHICLE PURSUANT TO MELAINE'S LAW: 41.4.5; 61.1.5 a; 61.2.2 c; 61.1.11

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:

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

**** This is obviously a problem 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.***

Any operator who refuses or fails a breathalyzer test: Hold the vehicle for a minimum of twelve (12) hours.

Any operator twenty-one (21) or older: Release the vehicle if they submit and have a reading of .05 or less.

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.

- * Special Bulletin issued to all MPTC Instructors on 02/14/06 by the Massachusetts District Attorney's Association.

720 CMR 9.04 (1).

MGL c. 90B, §32; 323 CMR 3.04 (1).

MGL c. 90B, § 26, authority to tow is derived from 323 CMR 3.04 (1) (d). Termination as unsafe is authorized under 323 CMR 3.06. Unsafe is defined under 323 CMR 3.02.

MGL c. 90, §22C

MGL c. 266, §120D

MGL c. 90, §22C

MGL c. 90, §22C