



## Lunenburg Police Department

<b>Policy Number:</b> <b>5.04</b>	<b>Subject:</b> <b>Towing &amp; Abandoned Vehicles</b>
<b>Issue Date:</b> <b>11/28/2012</b> <b>Revision Date:</b> <b>10/22/2021; 2/2/2022</b> <b>Effective Date:</b> <b>11/28/2021</b>	<b>Massachusetts Police Accreditation Standards Referenced:</b> <b>61.4.3(b); 61.4.3(c)</b>
<b>Issuing Authority:</b>  <i>Chief Thomas L. Gammel</i>	

### I. GENERAL CONSIDERATIONS AND GUIDELINES

The Lunenburg Police Department has the authority and the responsibility to ensure the safe and efficient flow of vehicular traffic. This may necessitate towing of immobile or abandoned vehicles from ways. The towing of vehicles must be done in accordance with Massachusetts General Laws, Codes of Massachusetts Regulations (C.M.R.'s) and local ordinances.

Abandoned vehicles can negatively impact the quality of life in a community. Vehicles left in parking lots or on public and private property, which fall into disrepair, promote the broken window theory of Community Policing. They contribute to a negative community atmosphere as well as creating an unnecessary burden to property owners and the public.

The purpose of this policy is to provide guidance to employees involved in facilitating the removal of vehicles by towing, as well as addressing abandoned vehicles.

### II. POLICY

It is the policy of the Lunenburg Police Department to:

- A. Facilitate the removal of vehicles which create a hazard to traffic from ways;
- B. Quickly identify abandoned vehicles, identify and contact the owners to resolve the situation, prosecute offenders as appropriate, and remove abandoned vehicles before they lead to other problems.
- C. This policy applies to abandoned and seemingly abandoned vehicles.

### **III. DEFINITIONS**

- A. Abandoned Vehicle: Any vehicle that is apparently abandoned by its owner and standing for more than seventy-two hours upon a public or private way or on any property without the permission of the property owner or lessee.<sup>1</sup>
- B. Junk Car: Any vehicle which is abandoned by its owner and apparently is worth less than the cost of removal, storage and expenses incident to disposition.<sup>2</sup>
- C. Owner: Person or entity listed as the owner in the records of the Registry, or who last had possession of the vehicle, legally or otherwise.
- D. Parking Clerk: Designated or appointed pursuant to M.G.L. c. 90 s. 21A ½ and shall supervise and coordinate the processing of abandoned motor vehicles.
- E. Hearings Officer: The parking clerk or designee.

### **IV. PROCEDURES**

#### **A. Authority to Tow Vehicles Generally**

- 1. Vehicles may be towed for the following reasons,
  - a. The vehicle is not properly registered or insured and on any way.<sup>3</sup>
  - b. The vehicle has been involved in a collision and is not safe to drive.
  - c. The vehicle constitutes an obvious hazard.
  - d. The vehicle is obstructing public travel.
  - e. The motor vehicle has been reported stolen or taken without the owner's consent and the owner cannot be contacted or cannot or will not respond to the scene within a reasonable period of time; or
- 2. For the safekeeping of the vehicle and/or its contents; or
- 3. The vehicle may contain evidence of a crime and cannot be processed at the scene.
  - a. The operator of the vehicle is taken into custody and the vehicle would be left:
- 4. In a location hazardous to traffic;
- 5. Unattended without the owner's consent;
- 6. In the care of an individual who is not authorized by the owner to operate the vehicle;
- 7. In the care of an individual who is not capable of lawful operation of the vehicle.
  - a. The operator of the vehicle is not properly licensed, and the vehicle would be left unattended on a public way.

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<sup>1</sup> M.G.L. c. 90, §22C

<sup>2</sup> M.G.L. c. 90, §22C

<sup>3</sup> M.G.L. c. 90, §11; M.G.L. c. 90, §34J.

- b. The motor vehicle is unregistered and is on public land when deemed necessary for the protection of public safety.<sup>4</sup>
- c. Adverse weather conditions or other emergency situation necessitates the removal of the vehicle from a way or public land.
- d. The owner, operator or person having control of the vehicle authorizes the tow.
- e. It is necessary to safeguard the vehicle and/or contents due to the inability, illness, injury or death of the operator, owner or person having control of the vehicle to adequately protect the vehicle and/or its content from theft or destruction.
- f. When otherwise legally authorized.

B. Authority to Tow Vehicles for Parking Violations

1. AUTHORITY TO TOW

- a. Vehicles parked or Standing in Violation of the Law: Vehicles may be towed for the following offenses for parking or standing on any part of any way under the control of the municipality only if authorized by a supervisor, or Officer in Charge (OIC).
  - i. Obstructing any handicapped ramp;
  - ii. Parking in or obstructing any handicapped parking area; or
  - iii. Impeding snow removal.
- b. The following vehicles may not be towed for these offenses:
  - i. Any government vehicle; and
  - ii. Any vehicle registered to a foreign consular corps or consular officer bearing a distinctive number plate or conspicuously marked.

2. AUTHORITY TO TOW, STATE HIGHWAYS

- a. Police officers have the authority to cite and/or tow vehicles parked in a prohibited manner for certain violations.<sup>5</sup>
  - i. Impeding snow or ice removal;
  - ii. Within a crossover;
  - iii. Upon any sidewalk;
  - iv. Within a cross walk;
  - v. Leaving less than twelve (12) feet of unobstructed lane;
  - vi. Within twenty (20) feet of an intersection way (except alleys);
  - vii. Within ten (10) feet of a fire hydrant;
  - viii. Upon or in front of any private road or driveway without consent of the owner;
  - ix. Double parked; With one or more wheels more than twelve (12) inches from the curb unless otherwise permitted;
  - x. On the roadway in a rural or sparsely settled district within any “No Passing Zone”;

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<sup>4</sup> 323 CMR 3.04(1).

<sup>5</sup> 720 CMR 9.04(1).

- xi. For more than twenty-four (24) hours, without permission of the Mass Highway;
- xii. On any bridge or in any tunnel, or approaches to unless a sign permitting parking has been posted or a breakdown lane has been designated;
- xiii. In any acceleration or deceleration lane, on ramp, or off ramp of any express state highway; or
- xiv. Upon a safety rest area those vehicles left unattended for more than 30 consecutive minutes provided signs are posted notifying of the tow zone.

b. EXCEPTIONS TO TOW AUTHORITY: The following vehicles may not be towed for these offenses:

- i. Any government vehicle; and
- ii. Any vehicle registered to a foreign consular corps or consular officer bearing a distinctive number plate or conspicuously marked.

C. Authority to Tow Snow or Recreational Vehicles

1. Vehicles may be towed for the following offenses:

- a. When the operator willfully neglects or refuses to obey the order of a police officer;
- b. When the operator is arrested;
- c. When the vehicle is abandoned;
- d. If the vehicle is in an unsafe condition:
  - i. Not displaying lights at night;
  - ii. Vehicle has a fuel leak;
  - iii. Persons on board do not have proper head gear as required by M.G.L. c. 90B, §26
  - iv. Operating under the influence of drugs or alcohol;
  - v. Reckless operation;
  - vi. Vehicle is not equipped with a spark arrestor;
  - vii. The vehicle is being operated on a way.
- e. Dangerous or prohibited operation:<sup>6</sup>
  - i. In a reforested or planted area causing damage to growing stock;
  - ii. Under the age of sixteen and one half on any public way, or under the age of fourteen unless directly supervised by an adult;
  - iii. On private land without permission;
  - iv. Harassing deer or other wildlife; or
  - v. With a firearm not unloaded and cased (exception for paraplegic hunters M.G.L. c. 131, §65).

D. Trespass by Motor Vehicle

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<sup>6</sup> M.G.L. 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.

**1. PRIVATE PROPERTY [61.4.3(b)]**

- a. An abandoned motor vehicle, left on private property for more than 72 hours, without permission of the person controlling the property may be removed as abandoned, provided that the abandoned vehicle procedure is properly followed, see below.
- b. Any motor vehicle may be towed from private property as a trespass tow if the owner of the vehicle has been forbidden to park on the property either directly or by a posted notice (i.e., No Parking - No Trespassing sign). There is no 72-hour requirement on private property.<sup>7</sup>

**2. PROPERTY OWNER'S RESPONSIBILITY**

- a. **NOTICE TO VEHICLE OWNER:** The owner must give permission for the vehicle to be towed, or:
- b. **NOTICE TO POLICE:** The property owner must provide the department with the following information:
  - i. The address from which the motor vehicle is being removed;
  - ii. The address to which the motor vehicle will be moved;
  - iii. The registration number (plate);
  - iv. The name of the owner or person in lawful control of the property; and
  - v. The name of the person or tow company that will be towing the motor vehicle.
- c. 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.
- d. Abandoning a motor vehicle on private property does not prevent police from charging the owner of the motor vehicle with Abandonment.<sup>8</sup>

**E. Abandoned Motor Vehicles**

**1. DOCUMENTATION [61.4.3(c)]**

- a. All vehicles towed will be documented BY ENTERING THE VEHICLE INTO THE TOW LOG; CJIS TOW UTILITY, OR BOTH.
- b. Any inventories shall be done in accordance with the departmental policy on Motor Vehicle Inventories.

**2. VEHICLES UNATTENDED FOR MORE THAN 24 HOURS**

- a. Officers shall address seemingly abandoned vehicles.
  - i. Vehicle left unattended on a roadway in a hazardous location.
  - ii. Vehicle left unattended on a roadway for more than 24 hours.
  - iii. In response to a complaint of a citizen that a vehicle may be abandoned
- b. Officers shall attempt to determine the owner, registration status of the vehicle, and the reason for being there.

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<sup>7</sup> M.G.L. c. 266, §120D

<sup>8</sup> M.G.L. c. 90, §22C

- i. Unregistered vehicles on public ways should be removed immediately.
- ii. Vehicles left in within the limits of any state highway for more than 24 consecutive hours may be towed by the police. The following are exceptions:<sup>9</sup>
  - 1) Any government vehicle.
  - 2) Foreign consular diplomatic corps.
  - 3) Foreign consular office.
- iii. Vehicles in hazardous locations must be removed quickly by the owner or towed to negate the hazard.
- iv. Vehicles on private property may be towed by the person having control of the property.

- c. A log entry should be made to document the incident and the vehicle should be cited for parking violations, if any exist.
- d. If the owner is not able to be contacted or the status of the vehicle cannot be discovered, the officer should follow up at the conclusion of the 24 hour period.

### **3. INVESTIGATION OF JUNK OR ABANDONED VEHICLES**

- a. OWNERSHIP DETERMINATION: Officers shall determine ownership and attempt to notify the owner by checking:
  - i. Registration plate;
  - ii. Vehicle Identification Number (VIN);
  - iii. Visible stickers, inspection or other type; and
  - iv. Interior of vehicle for notes, letters, papers, materials, or other types of identification of owner.

**NOTE:** If any of the above results in the determination of the owner, that information shall be given to the tow facility, so that the tow facility may contact the owner also.

- b. VEHICLE CONDITION: If vehicle has physical conditions indicating abandonment, pictures of the vehicles may be taken for evidence.
- c. SEARCH OF VEHICLE: 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 days.
- d. IF OWNER CONTACTS DEPARTMENT: If within 3 days the owner contacts the department, [s]he will be ordered to remove the vehicle. The department's involvement is ended if the vehicle is removed.

### **4. PROCEEDINGS AGAINST OWNER**

- a. The person who had last registered the vehicle may be cited under M.G.L. c. 90 s. 22C for abandonment of a motor vehicle.
- b. A police officer shall attach a tag to the vehicle containing at least the following:
  - i. Current date

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<sup>9</sup> 720 CMR 9.04(l)

- ii. Vehicle Location
- iii. Make
- iv. Color
- v. Registration, VIN Number
- vi. Department telephone number
- vii. Hearing procedure for abandoned vehicles
- viii. Warning that vehicle will be towed in a specified time
- ix. Towed vehicle may be disposed of.

- c. If the owner is identified, the officer shall send a notice to the owner, by first class mail, to the address listed in Registry records, stating the information above as well as the amount of fines and costs assessed and a date for a hearing with the parking clerk.
- d. If the owner fails to appear at the scheduled hearing, the parking clerk shall notify the Registry, which will take administrative action.
- e. **TOWING ABANDONED VEHICLES [61.4.3(b)]** Abandoned vehicles may be towed after 72 hours.
  - i. The Chief of Police shall be notified that such vehicle has been determined to be abandoned and may order the vehicle to be removed.
  - ii. Abandoned vehicles towed at the direction of a police officer shall be entered into the department Tow Log. **[61.4.3(c)]**