

**Understanding and Challenging
Inventory Searches
ACDLA Friday Lunch Seminar
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Inventory Searches are part of a category of warrantless searches related to arrests & detentions of persons and things, including:

Searches incident to arrest

Searches of objects pursuant to reasonable suspicion, i.e. dog sniff searches

Inventory Searches

Why is it Necessary to Limit Inventory Searches?

- The United States and Texas Constitutions both guarantee the right to be secure from unreasonable searches and seizures. U.S. CONST. amend. IV; TEX. CONST. art. I, § 9.
- The Texas Code of Criminal Procedure forbids any evidence obtained in violation of such guarantees to be admitted against an accused. TEX. CODE CRIM. PROC. ANN. art. 38.23(a).
- There are, however, certain exceptions to the warrant requirement under which federal and state law allow warrantless searches. One exception is an inventory search conducted pursuant to "standardized criteria" or "established routine" Florida v. Wells, 495 U.S. 1 (1990).
- Because judicially sanctioned inventory search of automobile is dilution of Fourth Amendment right to be secure against unreasonable searches and seizures, impoundment and search must be carefully examined and narrowly confined in each case. Rodriguez v. State, 641 S.W.2d 955 (Tex.App—Amarillo 1982).

Definition and Allowed Purposes:

In a valid inventory search, after lawfully taking custody of property, police may conduct a warrantless search of the property to satisfy three purposes:

- i) To protect the owner's property while it is in custody
- ii) To protect the police against claims of stolen property
- iii) To protect the police from potential danger

Limitation—Inventory not merely for investigation:

Because the scope of the search is limited to producing an inventory, the police may not conduct an inventory in bad faith or merely for investigatory purposes. However, as long as justified for some legitimate reason and inventory search can also share some investigatory motivation.

“Requirement” of standardized criteria:

To prevent police from rummaging for incriminating evidence, the law *generally* requires that an inventory search be conducted according to standardized criteria. Within this standardized framework, police may exercise discretion to determine the scope of the inventory search, and they are not required to use the least intrusive means to secure property lawfully in their possession.

Types and extent of searches upheld:

Courts have upheld inventory searches of vehicles lawfully in police custody, including searches of the passenger compartment, glove box, trunk (with some exceptions), engine compartment, and containers in the vehicle. Police can search containers and items in the possession of lawfully detained people.

Abandoned items:

Government officials may also inspect seemingly abandoned items to determine the identity of the owner, protect public safety and to inventory the property for safekeeping.

Impoundment and Inventory of Vehicles Following Lawful Arrest

Generally, persons arrested away from home will have their personal effects as well as their persons, taken into custody.

- **If vehicle located at home, no justification to seize the vehicle.** Includes apartment building, parking garage, or public street where defendant usually leaves his vehicle.
- See Benavides v. State, 600 SW 2d 809 (Tex Crim App 1980) Impoundment improper where defendant arrested at home and car was located 2 blocks away, even if on street with 24-hour parking limit because owner might instruct another to move car before 24 hour limit passes, especially because car would only be ticketed and not towed for parking violation.
- But see US v. Hope, 102 F.3d 114 (5th Cir. 1996) Impoundment proper where car parked at defendant's boarding house, where landlord requests impoundment and Defendant was being returned to prison to complete serving the 80 year sentence he was serving when he broke out of penitentiary.

What if the vehicle is not located at Defendant's own home?

- Vehicle located at a *motel* where Defendant was a guest?
- *Sometimes improper*, Moberg v. State 810 S.W. 2nd 190 (Tex. Crim. App. 1991), particularly because officers had obtained both arrest and search warrants for motel room, indicating their intent to search; testimony of motel manager was that the motel would hold property for past tenants for an extended period of time.
- *Sometimes upheld without discussion*, i.e. U.S. v. Davis, 496 F. 2d 1026 (5th Cir. 1974).
- *Visiting a friend* at the time of the arrest?
- Rodriguez v. State, 641 S.W. 2d 955 (Tex. App 1982). Impoundment improper where arrested at sister's house where Defendant had delivered marijuana, no showing car illegally parked.

What if the vehicle is parked in a public place?

- If *parked illegally* it can be towed and inventoried.
- Robertson v. State, 541 S.W. 2d 608 (Tex. Crim. App 1976) Impoundment proper where car had hit utility pole, was disabled and partially in the street.
- If *owner* of public parking place *asks police to remove vehicle* impoundment is proper.

- If parked legally, in public place, **especially if Defendant is likely to be promptly released**, impoundment is improper.
- Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968). “the police seem to have parked the car *near the courthouse* merely as a convenience to the owner, and to have been willing to for some friend or relative ... to drive it away.”
- Smith v. State, 759 S.W.2d 163 (Tex.App—Houston 14th Dist 1988) Impoundment improper because decision whether to leave vehicle in *private parking lot* should have been made by Defendant.
- Fenton v. State, 785 S.W.2d 443 (Tex. App—Austin 1990) Search improper where vehicle lawfully parked in *public parking lot*, no evidence vehicle stolen or used in crime, no necessity for safekeeping property because arrestee made bond in short amount of time.
- Gords v. State, 824 S.W.2d 785 (Tex.App—Dallas 1992) Inventory violated State constitution even though Defendant trying to enter vehicle when arrested because car was legally parked in *private lot*, was locked, other people present who could have taken custody of car, and no evidence that car was instrument of crime or contained contraband.
- *But see* US v. Ponce, 8 F.3d 989 (5th Cir 1993) where vehicle parked at *gas station* but seized pursuant to department policy so that it would not become a nuisance, and US v. Hall 565 F.2d 917 (5th Cir 1978).
- Arrests for *minor traffic offenses* generally won’t justify impoundment unless there are other circumstances,
- US v. Pennington, 441 F. 2nd 249 (5th Cir 1971) Rental car, driver can’t provide rental paperwork
- Police cannot improperly extend detention by denying bail normally given, etc. to justify impoundment.
- Collins v. State, 630 S.W. 2d 890 (Tex. App Houston 1st Dist. 1982) Invalid impoundment and search where Defendant arrived prior to car being towed from no parking zone & offered to pay no-parking fine.
- Query: Texas statute authorizes arrest for any criminal law violation except speeding. Does this mean virtually any traffic stop can result in impoundment and search?

What if Defendant asks the police to release the car to another driver or park the car?

- Generally the police should release the car to another driver if available.
- *But see* Stephen v. State 677 S.W.2d 42 (Tex. Crim. App. 1984) Impoundment proper where passenger unable to produce any ID including DL.
- Cases upholding impoundment often stress the Defendant’s failure to request the car be released to another, or the lack of an immediately available responsible person to get the car. Starling v. State, 743 S.W.2d 767 (Tex. App—Ft. Worth 1988).
- Might the officer be required to park the car for Defendant? See State v. Crosby, 403 So. 2d 1217 (La. 1981) officer’s failure to move vehicle pursuant to department policy of only releasing vehicles to family members was **unfair to University community population**.
- Watch out for argument that the scene was inherently dangerous, i.e. a “high crime area”

The Requirement of Standardized Police Procedures or Established Routines

Before the US Supreme Court provided direct guidance on the issue, courts vacillated between requiring standardized criteria and simply performing a reasonableness review.

In the leading Texas case, Benavides v. State 600 S.W.2d 809 (Tex.Crim.App. 1980), the Court of Criminal Appeals indicated impoundment would likely be permissible in the following situations:

- to remove a vehicle from an accident scene;
- to remove a vehicle parked in violation of regulations;
- the owner or driver requests or consents;
- officers reasonably believe vehicle is stolen;
- the vehicle is abandoned;
- the vehicle is a “hazard”;
- the vehicle is so mechanically defective that it creates a danger to others using the highways;
- a statute authorizes impoundment;
- the driver is arrested for being intoxicated while in the vehicle and no other person is available to drive the vehicle or otherwise safeguard it; and
- “if the driver is removed from his automobile and placed under custodial arrest and no other alternatives are available other than impoundment to insure the protection of the vehicle.”

Benavides, at 811.

Benavides concerned the impoundment of a legally parked, locked vehicle by a police agency that had a “standard operating procedure to take the vehicle of an accused into custody when the accused had been arrested”, the Court of Criminal Appeals held the impoundment before it unlawful because the only justification offered was that the arrest of the owner rendered a vehicle subject to impoundment for safekeeping. *Id.* at 811-12.

In its reasoning the Court of Criminal Appeals explained that “while it may be standard police procedure to impound the vehicle of a person who is arrested we conclude that the Fourth Amendment protection against seizures cannot be whittled away by a police regulation”. *Id.* at 812.

This vague laundry-list of proscriptions and permissible situations certainly did not give much guidance to police actors making decisions about impoundment. It was clear that more definite guidance was needed. Professor **Lafave** has suggested that “for an impoundment to be reasonable under the Fourth Amendment, the arresting officer should be required to follow certain definite guidelines designed to ensure that the impoundment and inventory are not a ruse for conducting investigatory searches:

- i) To advise the arrested operator ‘that his vehicle will be taken to a police facility or private storage facility for safekeeping unless he directs the officer to dispose of it in some other lawful manner (from the Model rules for Law Enforcement, rule 603(B) (1974)), and
- ii) To comply with any reasonable alternative disposition requested

Such alternative means of disposition serve not only to protect the arrestee’s possessory and privacy interests in the vehicle but also to relieve the police of continuing responsibility for the car and its contents, and thus are to be preferred over impoundment when one such alternative has been requested by a properly-advised arrestee and can reasonably be accomplished under the circumstances.

Lafave, Search and Seizure, Section 7.3(c)

In Colorado v. Bertine, 479 U.S. 367 (1987) the Supreme Court declined to adopt a bright-line rule as professor Lafave suggested, instead concluding that individual police agencies could come up with a number of different, equally acceptable procedures which would adequately serve to direct and limit police discretion:

[R]easonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment, even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure.

Bertine at 374.

Facts: Bertine was arrested in Boulder for DWI. After his arrest and as the tow truck was on its way an officer inventoried the van’s contents including a backpack. The backpack contained drugs and money. Boulder’s standard police procedure gave arresting officers the option to impound the vehicle if no other reasonable alternative was immediately available. The trial court found that the procedures *mandated* the opening of closed containers and the listing of their contents.

Because the Court declined to create a bright-line rule, there are areas of confusion and disagreement:

- “Reasonable police regulations relating to inventory procedures”—what is reasonable?
- “Administered in good faith”—how do we challenge “good faith,” who has burden of proof?
- What if no regulations exist or there’s a novel situation?

Reasonable police procedures—unlimited discretion invites problems

Bertine says it’s OK for police to exercise some discretion within the rules—“the exercise of police discretion so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.”

The Bertine dissenters (Marshall and Brennan) realized that any time officers can exercise discretion, abuse may arise:

In Coolidge v. New Hampshire, [403 U. S. 443](#), [403 U. S. 461-462](#) (1971), a plurality of this Court stated: “The word *automobile*’ is not a talisman in whose presence the Fourth Amendment fades away and disappears.” By upholding the search in this case, the Court not only ignores that principle, but creates another talisman to overcome the requirements of the Fourth Amendment -- the term “inventory.” Accordingly, I dissent.

Bertine, at 387 (dissenting opinion).

The three concurring Justices (Blackmun, Powell, O'Connor) were concerned enough about searches of closed containers to write separately:

This absence of discretion ensures that inventory searches will not be used as a purposeful and general means of discovering evidence of crime. Thus, it is permissible for police officers to open closed containers in an inventory search *only if they are following standard police procedures that mandate the opening of such containers in every impounded vehicle.*

Bertine, at 376-377 (concurring opinion).

In Florida v. Wells, 495 U.S. 1 (1990), the United States Supreme Court affirmed the Florida Supreme Court's decision to suppress evidence found in a closed container during an inventory search, and reaffirmed the need for a standardized policy:

- Police had "no policy whatever with respect to the opening of closed containers encountered during an inventory search." Wells at 4-5.
- "Standardized criteria . . . or established routine must regulate the opening of containers found during inventory searches." Wells at 5.
- Since "there was no evidence that the inventory search was done in accordance with any standardized inventory procedure," the trial court should have suppressed the evidence. Wells at 5 (Brennan, J., concurring).
- While the Supreme Court rejected the proposition that a policy could only allow the search of all containers or a search of no containers, the Supreme Court emphasized that inventory searches must be conducted pursuant to "standardized criteria" or "established routine." Wells at 4.

Overbroad police procedure:

- Police procedure can be overbroad where it will result in every arrested person's vehicle being impounded, the functional equivalent of having no procedure at all.
- See Benavides, above.
- US v. Duguay, 93 F.3d 346 (7th Cir. 1996)—stated policy was to impound "based solely on arrestee's status as a driver, owner, or passenger" in the vehicle, in other words, "towing is required any time the arrestee is carted off to jail."
- Facts of Duguay: arrestee's girlfriend was driving vehicle when he was arrested, he asked the police to release vehicle to her and they refused.

Does the Texas Constitution Provide Greater Protection Than the US Constitution?

- For a brief, shining moment, it seemed as though our State Constitution would serve to protect the individual even more than the U.S. Constitution. But alas, this glimmer of hope was quickly to be extinguished.

- In a plurality decision penned by Judge Charlie Baird, the Texas Court of Criminal Appeals in Autran v. State, 887 S.W.2d 31 (Tex. Crim. App. 1994), held that Article I, Section 9 of the Texas Constitution provides greater protection than the Fourth Amendment in the context of inventory searches of closed containers. Autran, at 42. The members of the court joining in the plurality opinion stated they would "refuse to presume the search of a closed container reasonable under art. I, § 9 simply because an officer followed established departmental policy." *Id.* The opinion concluded that peace officers "may not rely upon the inventory exception" to conduct a warrantless search of a closed or locked container. *Id.*
- Many courts of appeals have rejected Autran, stating that as a plurality decision it is not binding precedent.
- In a footnote in Crittenden v. State, 899 S.W.2d 668 (Tex. Crim. App. 1995), without mentioning Autran, the majority stated,
 - Absent some significant difference in the text of the two provisions, or some historically documented difference in attitude between the respective drafters, there would be no apparent reason to prefer an interpretation of Article I, § 9 any different from our preferred interpretation of the Fourth Amendment. We will not read Article I, § 9 differently than the Fourth Amendment in a particular context simply because we *can*. **Id. at 682**

Are There Greater Limitations When Searching Locked Containers?

Maybe: In Gill v. State, the Court of Criminal Appeals held that officers could not validly enter the locked trunk of a car by using substantial force (*i.e.*, by forcibly removing the car's back seat) under the auspices of an inventory search. 625 S.W.2d 307, 319-20 (Tex. Crim. App. 1980) (op. on reh'g), overruled on other grounds by Osban v. State, 726 S.W.2d 107 (Tex. Crim. App. 1986), overruled by Heitman v. State, 815 S.W.2d 681 (Tex. Crim. App. 1991).

Maybe Not: In Kelley v. State, 677 S.W.2d 34, 37 (Tex. Crim. App. 1984) Valid inventory of items in trunk, opened with suspect's key, distinguishing Gill by indicating that it was the substantial force used by the officers in Gill that made the inventory in that case invalid. Additionally, in Gill, the court noted that "if the locked trunk cannot be entered without the use of substantial force, it is unlikely that the police would be charged with losing or misappropriating items of personal property found"

Challenging Impoundments and Inventory Searches

Standard of Review

Rulings on motions to suppress are subject to a bifurcated standard of review. Carmouche v. State, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000), giving almost total deference to the trial court's determination of historical facts that depend on credibility choices. See Guzman v. State, 955 S.W.2d 85, 87-88 (Tex. Crim. App. 1997); However, the court of appeals decides de novo whether the trial court erred in applying the law to the facts. Carmouche, 10 S.W.3d at 327.

Burden of Proof

Once properly raised by objection, the State carries the burden of proving that the police followed the proper procedures. At least one court has noted in dicta that failure by the State to show evidence that the search was conducted pursuant to the police department's procedure will invalidate the search. Yaws v. State, 38 S.W.3d 720, 723 (Tex. App.--Texarkana 2001, pet. ref'd).

Establishing Bad Faith

Mixed motivation on part of Police is permissible so the "pretextual" nature of the inventory search must be developed during motion to suppress. Look for factors that are inconsistent with the stated goal of providing a thorough listing of vehicle's contents.

State v. Giles, 867 S.W.2d 105 (Tex.App—El Paso 1993), Invalid inventory search where the postal inspector testified that search conducted at Sheriff's impound lot was for purpose of finding evidence rather than conducting inventory. "Inventory" sheet contained important omissions as well, so court found that primary motive was not to safeguard Defendant's possessions.

Aitch v. State, 879 W.W.2d 167 (Tex.App—Houston 14th Dist 1994), No valid inventory where only item taken from vehicle was purse containing stolen jewelry. Incriminating nature of jewelry was not immediately apparent and only determined following subsequent investigation.

A classic case of a bogus inventory as a general search without impoundment is State v. Griffin, 2008 La. App. LEXIS 242 (1st Cir. February 8, 2008), reversing a life sentence:

The facts and circumstances of this case indicate that the "inventory search" of the defendant's vehicle was actually a pretext to search for illegal drugs. Although the officers recorded information about the contents of the vehicle, they made absolutely no attempt to determine whether an inventory search could have been avoided. There is no indication in the record that the vehicle could not have remained safely at the place where it was stopped. The purported "inventory search" was conducted on location immediately upon the defendant's arrest. It is not clear whether a tow truck was called before the search commenced or whether one was ever called at all. There is no evidence that the defendant was asked if he consented to the search, if the vehicle contained valuables or if he would consent to the agency's failure to afford him the protection of an inventory search.

If the defendant could have easily made arrangements for the vehicle other than having it impounded, or if he had been willing to waive his rights against the law enforcement agency for failure to guard against loss of his valuables, a justification for the inventory search would not have existed. See Killcrease, 379 So.2d at 739. Because the officers failed to make efforts to determine whether the impoundment of the vehicle could have been avoided, it is clear that the motivation for the search was not to protect the defendant's loss of property or to protect the agency against a claim for failure to guard against such a loss. In this case, the conduct of the police indicates that the officers did not conduct a true inventory search of the defendant's car. Instead, under pretext of an inventory, the officers set out on a warrantless search of the vehicle

without probable cause. Thus, the State has not borne its heavy burden of proving there legitimately existed, in this instance, an inventory search exception to the warrant requirement. See Carey, 499 So.2d at 288.

Circuit Court Split: Is a Standardized Procedure Really Required?

- United States v. Smith, No. 06-3112 (3d Cir. April 9, 2008): Following arrest of vehicle occupants in high crime area, vehicle impounded and gun found in glove box.
- On appeal, the defendant argued that the decision to impound the car had to "be exercised pursuant to standardized criteria or the seizure is unconstitutional." The defendant further argued that the Police did not have a standard procedure regarding the impounding of vehicles.
- Judge Greenberg, on behalf of a unanimous panel, recognized that the circuits have split on this point. The source of the disagreement is ambiguous language contained in the Supreme Court's decision in Colorado v. Bertine.
- In Bertine the Court upheld an impoundment where officers had the discretion either to park and lock the vehicle or to impound it, stating that "[n]othing in [previous cases] prohibits the exercise of police discretion so long as that discretion is exercised according to standard criteria" Should this language be read to create a prophylactic rule requiring standard criteria, or simply a rejection on a false limitation of police discretion?
- Circuits 1 and now 3 do not *require* a standard procedure (although encouraging their adoption), but have held that the proper test is whether the impoundment was reasonable given the circumstances – applying the Fourth Amendment directly. On the other hand, Circuits 8 and DC both read Bertine to require a policy document that cabins the officers' discretion – reading Bertine as a new prophylactic requirement.

Checklist for Litigating Pretext Impoundment

1. Were there "standardized criteria" for an inventory search to limit the officer's discretion in deciding whether, when, and how to conduct the purported inventory?
2. Can the officer articulate the "standardized criteria" accurately or in detail?
3. If the policy is in writing, where is it?
4. If it is oral, describe how this "custom and usage" came into being and who the "oral historians" are who are responsible for it. Consider subpoenaing several officers and getting them each to describe the policy.
5. Is there any relationship between the arrest or impoundment and the need for an inventory; i.e., does the inventory stand on its own and not as a search incident to arrest?
6. Does the agency have an inventory form? If so, was it used?
7. Was any list made? Did the defendant sign the inventory sheet to show he knew what was inventoried?

8. How was the inventory conducted? The thoroughness or lack of detail in performing the inventory can give clues as to whether it was really an investigatory search. Likewise, if the "inventory essentially ends when the sought-after object is found," it is a criminal evidentiary search
9. What was the true motivation for the purported inventory? This can be shown circumstantially by how the search was conducted or how the officer referred to the inventory.
10. Since inventories are warrantless searches presumed invalid under the Fourth Amendment, the prosecution has the burden of proof to sustain them.

Sample Written Impoundment and Inventory Policy: Georgetown PD

Policy: Warrantless arrest and Searches incident to arrest

S302.04 Procedures

- A. Warrantless arrests may be made as outlined above. Additionally, the following guideline will be used when making a warrantless arrest:
1. The officer shall announce the authority for making the arrest within a reasonable amount of time.
 2. The rights of an individual arrested without warrant are the same as any other citizen. These rights shall not be violated.
- B. Search incident to any arrest made without a search warrant and includes the arrestee's person and clothing and their immediate proximity. In the course of a lawful arrest, the officer may search the arrested person and their immediate proximity for contraband, fruits and instrumentalities of a crime, and other evidence. This applies to both felonies and misdemeanors where the accused is lawfully taken into custody. The U.S. Supreme Court has held that the federal constitution does not prohibit a full search of a person incidental to a lawful custodial arrest for a traffic violation; however, the search must not be used as an excuse to conduct a general search for evidence.



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Policy: Inventory Searches and Searches Incident to Arrest

M. Inventory Searches

If a suspect is arrested and taken to jail, officers are allowed to search the car and belongings to protect the suspect's property and to protect officers from charges of theft. Requirements for this type of search are:

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1. The arrest must be legal.
2. The officer cannot use force to open something found during an inventory search.

SOP 5302.00
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3. The search cannot be used as a pretext to investigate suspected criminal activity.
4. There is no reasonable alternative to impoundment available at the time of seizure.

N. Search Incident to Lawful Arrest

When someone is arrested, an officer may search the person without a warrant in order to remove any weapons that could be used to resist arrest or escape, or to prevent possible destruction of evidence. After arrest, The officer may search the person, areas the suspect might reach or areas within the suspect's immediate control. The room a suspect was arrested in may also be searched to allow officers to look into closets and other spaces from which an attack could be immediately launched.

Standard Operating Procedures:

Vehicle impoundment

SOP #	S332.00	Issue Date:	05/14/2007
Section(s):	Field Operations Bureau	Revised Date:	
		Review Date:	
Chapter:	Patrol	Authorized By:	Captain Robert Hernandez
Topic:	Impounding Vehicles	Approved By:	Chief of Police David Morgan

Special Instructions:

Distribution: All Personnel

For purposes of this policy, impoundment of a motor vehicle means the taking of a vehicle from a street, alley, highway, sidewalk or public thoroughfare, and in some instances a "public place", into actual constructive police custody. It is the removal of a vehicle from where it is initially located, and may also include continued retention of the vehicle in a garage, vehicle storage facility, or other place of safekeeping.

S332.01 Authority to Impound
The decision to impound may be made by any officer as long as the vehicle is in violation of any City ordinance related to traffic or parking, is abandoned in a public place, or constitutes a traffic hazard.

S332.02 Authorized Impounds
The following are situations/circumstances for which a vehicle may be impounded.

- A. It is an "Abandoned Vehicle" as defined in the Transportation Code of Texas;
- B. It is a "Junked/Nuisance Vehicle" as defined in the Transportation Code of Texas;
- C. Due to any catastrophe, emergency or unusual circumstances, the safety of the vehicle is imperiled and it cannot be moved to a safe place by other means;
- D. The vehicle (including non-motorized) is an immediate and substantial hazard to persons or property because of the vehicle's location and/or condition;
- E. The vehicle (including non-motorized) is parked, stopped or left standing upon any alley, highway, street, sidewalk, or other thoroughfare within the City in apparent violation of state law or City ordinance and the vehicle:
 1. Is in an area other than a low-away zone and is obviously obstructing the safe and orderly flow of vehicular and/or pedestrian traffic; and it is impractical to move the vehicle to a nearby location;
- F. When there is articulable probable cause to believe that the vehicle:
 1. Is the instrument, fruit, or evidence of a crime;
 2. Contains an instrument, fruit or evidence of a crime; or
 3. Other means of effecting the gathering or security of evidence at the immediate

After Arrest of Vehicle Operator

- location of the vehicle is not readily available, or appears futile.
- G. The operator of the vehicle has been arrested.

S332.03

Towing or Removal of Vehicles Not Considered an Impound

The following are situations/circumstances which do not constitute an "impound."

- A. The towing/removal of a vehicle from the scene of a traffic accident.
- B. The removal of an unauthorized vehicle from a private parking lot by the person who has care, custody and control of the lot.
- C. Persons engaged in construction, street repair, etc. relocating vehicles to a nearby place of safety.
- D. The towing of a vehicle seized by police under application forfeiture proceedings.

S332.04

Arrest of Vehicle Operator

- A. If the owner/operator of a vehicle has been arrested and the vehicle is the instrument, fruit, or evidence of a crime or contains an instrument, fruit or evidence of a crime, it will be impounded and preserved for evidence processing.
- B. If the owner/operator of a vehicle has been arrested but the vehicle is not needed for evidentiary purposes, the arresting officer will impound the vehicle unless the owner/operator requests the vehicle be released to another responsible person who is present.
 - 1. The person taking custody of the vehicle must be in possession of a valid drivers license and be capable of providing care, custody and control of the vehicle.
 - 2. The identity of the person (name, DOB, driver's license, address) who receives the custody of the vehicle will be noted in the officer's incident report.
- C. If after leaving the scene of an arrest where a person's vehicle has been impounded, it is determined that the person will be released rather than being booked into jail, a supervisor may authorize the waiving of any applicable impound fee and the wrecker be placed back on top of the rotation list.
 - 1. The supervisor will contact the impounding company and advise to release the vehicle without charge.
 - 2. The fact that the fee was waived, and the name and employee of the supervisor authorizing the waiver, will be documented in the officer's incident report.

Impoundment Procedures

S332.09

Impoundment Procedures

- A. Only authorized impound wrecker services will be used to tow and store impounded vehicles.
- B. A vehicle is considered "impounded" once the wrecker has been called by Communications.
 1. In the event that the owner/operator of the operable vehicle arrives before the arrival of the authorized impound wrecker, the officer should attempt to cancel the wrecker.
 2. If the authorized impound wrecker cannot be cancelled, the owner/operator of the vehicle must settle with the authorized impound wrecker service by payment of a standard fee at the scene or the vehicle will be impounded by the wrecker.
- C. When a vehicle is impounded, the impounding officer will deliver the ignition key, if available, to the wrecker driver.
- D. A parking citation will be issued in all cases in which the vehicle was impounded for a parking violation.
- E. Anytime a vehicle is actually impounded or moved, the officer will:
 1. Complete an incident report, which will identify the vehicle, location, time, registered owner, wrecker service and show justification for the impoundment, unless it is being documented in an offense report.
 2. Complete an impound sheet and provide the wrecker service driver with the yellow copy marked "Wrecker Company" and place the pink copy marked

Inventory Procedures

"owner/operator" in the impounded vehicle.

- S332.10 Inventory of Impounded/Moved Vehicles**
- A. In all incidents where a vehicle is impounded or moved, the officer will make an inventory of the vehicle for damage and any items of personal property. Such an inventory is a care taking function intended to protect:
 1. The owner's property while it remains in police custody.
 2. The police against claims or disputes over lost or stolen property.
 - B. The scope of the inventory will include:
 1. The exterior for body damage.
 2. Those places in a vehicle where a person ordinarily would store or leave items of personal property. Those areas can be but are not limited to:
 - a. Passenger compartment.
 - b. Trunk, console, glove box, and attached locked containers (i.e. toolbox) if the key is readily available.
 - c. Open and closed containers.
 3. The inventory will include contents of locked containers (i.e., briefcase, footlockers, ect.) if the key or combination is readily available. If key is unavailable, containers/compartments may be opened with supervisor's approval or it's an abandon vehicle impounded for Code Enforcement.
 - C. All damage and personal property located during an inventory of a vehicle will be listed on the impound sheet including its description and location.
 - D. Any personal property removed from the vehicle by the impounding officer will be:
 1. Listed and described on the impound sheet and the property section of the offense/incident report, depending upon the circumstance.
 2. Turned into the Evidence Room in accordance with Department policy.
 - E. If, during a vehicle inventory, an item of contraband or fruit or instrument of a crime is found, it may be seized and the person in possession of the vehicle arrested for the appropriate offense(s).

- S332.11 Searches of Impounded Vehicles**
- A. An inventory of a vehicle should not be construed as being:
 1. A lawful consent search.
 2. A probable cause search.
 3. A search incidental to arrest.
 4. A search pursuant to a search warrant.
 - B. A decision NOT to impound a motor vehicle, although it may seem justified at the time, does not prohibit or limit the scope of an officer's authority to search and/or seize evidence incidental to an arrest, or based upon probable cause, if the applicable legal guidelines are observed.

- S332.12 Holds on Vehicles**
- A. A "hold" may be placed on an impounded vehicle when:
 1. The vehicle was involved in a criminal incident and it is necessary to establish the identity of the person who is attempting to claim the vehicle.
 2. There is a need to secure the vehicle for evidential reasons (i.e., homicide, stolen property, a vehicular fatality, vehicle to be forfeited, etc.).
 - B. The initial hold placed on an impounded vehicle shall be in effect for 72 hours. A hold may be lifted by a Supervisor before the 72 hours expires, or extended if continued retention is necessary.
 - C. The hold will only be authorized by a Supervisor. The authorizing supervisor's employee number will be placed in the *Holding Officer* space on the Vehicle Impound/Inventory/Release Form. The impounding officer will document the hold in their incident report.

PO Standard Operating Procedures: Approved:

Approvers	Title	Assigned	Notified	Received	Status	Status
					Changed	
4 Robert Hernandez	Captain	05/15/2007	05/15/2007	05/15/2007	05/15/2007	Approved
David Morgan	Chief of Police	05/15/2007	05/15/2007	05/15/2007	05/15/2007	Approved
Charlie Vasquez	Administrative Assistant	05/15/2007	05/15/2007	05/15/2007	05/15/2007	Approved