

MEMORANDUM OF UNDERSTANDING

DATE: March 18, 2009
FROM: SAN LUIS POLICE DEPARTMENT
RE: VEHICLE TOWING AND STORAGE SERVICES
RULES AND REGULATIONS

Recently there has been some confusion about what laws govern towing and storage services within the City of San Luis, Arizona. The purpose of this memorandum is to give a non-exclusive listing of some of principal laws affecting vehicle towing and storage in an attempt to end possible confusion. Also it is to serve as notice and warning to tow service operators of the laws under which towing and storage services operate, so that any violation of those laws cannot be said to have occurred in ignorance. Please understand that any operator who is determined, in the sole judgment of the Police Department of the City of San Luis to have violated these laws, in any way, intentional or unintentional, may be subject to being removed from the list of towing companies which may be called by Police Department Dispatch. There is no right to be called by dispatch, and which businesses may be called is purely discretionary by the Police Department. Due to the large number of citizen complaints received this past year regarding a number of towing and storage operators, it is the determination of the Police Department that restricting who will be called is necessary to encourage legal compliance as a matter of ordinary business practice so that the number of complaints, and involvement of department time in resolving complaints can be lessened.

ARTICLE 10-7 OF THE CITY CODE

The City of San Luis regulates towing in the City of San Luis pursuant to the authority of ARS §9-499.05. These regulations are set forth in Article 10-7 of the City Code. The ordinance number establishing this article is Ordinance 202. The rates authorized were changed by Resolution 817. The intent of Council in establishing the rates in Resolution 817 were clarified in Ordinance 273. By signing receipt of this memorandum, the towing operator acknowledges being put on full notice of these laws, and understands that he/she will be considered to be fully knowledgeable of them.

Article 10-7 regulates two types of towing. First are tows from private property. For a tow from private property to be legal, the property MUST be posted with a sign no smaller than 15" by 30" with letters at least 1" in height readable from within the parking area AND at any entrance to the parking area, in both English and Spanish. The sign or signs must state 1) the restrictions on parking; 2) disposition of vehicles found in violation of the restrictions; 3) the maximum cost to the violator, including storage; 4) telephone numbers and addresses where the vehicle can be located. Failure to have signs which meet ALL of these conditions means there is NO legal right to either tow or store the vehicle. This means the towing operator risks being responsible for criminal theft, a criminal violation of the city code, as well as possible civil liability for conversion and/or trespass.

The MAXIMUM one can charge is \$75.00 for towing and \$25.00 per twenty four day for storage. An example of what this means is if a car is towed at 1:30 pm on a Wednesday, the maximum that can be charged is \$100.00, (\$75.00 plus \$25.00), for the period up and until Thursday at 1:30 p.m. ***No charges beyond these sums can legally be charged.*** Doing so will subject the towing operator to being charged with a class two misdemeanor pursuant to the ordinance.

Also, ***there is no lien on the car. There is no right to hold onto the car until the towing and storage charges are paid!*** If the owner of the car demands the car be turned over to them, and refuses to pay, the towing operator cannot refuse to return the car. The only remedy to collect that the towing operator has is to sue the owner for the money. See Adage Towing & Recovery, Inc. v. City of Tucson, 187 Ariz. 396, 930 P.2d 473 (Ct. App. Div. 2, 1997). Failure to deliver the vehicle could subject the towing operator with being charged with criminal theft. In Capson v. Superior Court of State of Ariz., In and For Maricopa County, 139 Ariz. 113, 116, 677 P.2d 276, 279 (Ariz.,1984) the Supreme Court of Arizona upheld charging the towing operator with felony car theft under these exact circumstances.

The second area of regulation is towing requested by the Police Department. For all tow requests other than requests covered by ARS §28-3511, as will be discussed below, Section 10-7-3 J of the City Code states in applicable part:

“No private towing and recovery service or its representatives shall charge more than the established tariff for non-consensual towing and recovery or no-preference towing originated by the San Luis Police Department.” [Emphasis added.]

Once again an attempt to charge more than \$75.00 plus \$25.00 per twenty four hour day for storage is a class two misdemeanor.

The only time more than this can be charged is if the car owner asks for towing and agrees to pay more than the ordinance.

ARS §28-872 AND §28-873

Under ARS §28-872 a police officer may remove or cause the removal of a vehicle under a variety of circumstances including if the person or persons in charge of the vehicle are unable to provide for its custody or removal. ARS §28-873 provides, in part, that a person shall not stop, stand, or park a vehicle in any of the places listed in the statute including at any place where official signs prohibit standing or parking. When a vehicle is towed because of ARS §28-872, subsection ARS §28-872.H.2 provides that before release of the vehicle by the towing company, the owner or the owner’s agent of a vehicle shall pay or make satisfactory arrangements to pay for any reasonable towing and storage costs. There some exceptions. For example, if a vehicle is towed as evidence in a criminal investigation, then the public agency requesting the tow is responsible for the towing and storage charges. To be fully informed of

these legal provisions, one should read the entirety of the statutes involved. Again, for tows requested by the Police Department of San Luis, the maximum that can be charged are the rates authorized by the City Code.

ARS §28-3511 AND §28-3512

ARS §28-3511 governs towing because the driver's license has been suspended; there is no proof of a driver's license; there is not sufficient compliance with the financial responsibility requirements; the driver is subject to ignition interlock requirements and the vehicle does not have a functioning interlock; the driver is driving while intoxicated; the driver is less than 21 and has consumed alcohol; or the driver has been involved in an accident resulting in either property damage or injury. Under any of these circumstances a vehicle can be towed.

If a vehicle is towed under ARS §28-3511, then §28-3512 governs. The statute provides the circumstances when vehicles must be released. Owners must pay towing and storage charges as a precondition of release unless the vehicle was stolen and the theft was reported to the appropriate law enforcement agency.

The \$75.00 maximum charge for towing under the City Code applies. However, ARS §28-3512.H limits storage to \$15.00 per day. A day would be a normal calendar day from midnight to midnight. However, since Article 10-7 of the City Code also applies, both of these laws need to be read together. As a result, if storage crosses midnight on one day, but is less than twenty four hours from time of the tow, the maximum that can be charged is \$25.00. The following are examples:

1. The vehicle is towed at 11:30 am on Wednesday and the owner is entitled to release at 4:30 p.m. on Wednesday. The maximum that can be charged is \$75.00 for the tow and \$15.00 for storage.
2. The vehicle is towed at 10:00 pm on Tuesday and the owner is entitled to release at 2:00 p.m. on Wednesday. The maximum that can be charged is \$75.00 for towing and \$25.00 for storage since storage is less than a twenty-four hour period under the City Code but two days under the state statute.
3. The vehicle is towed at 11:00 am on Thursday and the owner is entitled to release at 3:00 p.m. on Friday. The maximum that can be charged is \$75.00 for towing and \$30.00 for storage since while more than twenty four hours under the City Code is still in the second day under the state statute.
4. The vehicle is towed at 11:30 am on Monday and the owner is entitled to release at 9:00 am on Wednesday. The maximum that can be charged is \$75.00 for towing and \$45.00 for storage. City Code allows a maximum of \$25.00 for a twenty-four hour day. This period is more than twenty four hours and less than forty eight. The City Code would allow up to \$50.00. But state law only allows a maximum of \$15.00 per calendar day. Since this is in the third day, the maximum is \$45.00.

OTHER LAWS

This is not an all inclusive list of the laws that must be obeyed. For example, Article 10-7 requires the owner of a storage facility to have a place of business within the City and shall have staff available from 8:00 am to 5:00 pm Monday through Friday except holidays. Storage facilities in the City need to meet zoning requirements. Business records must be available for inspection upon request by law enforcement officers. Towing operators need to have a city business license. Please understand that any violation of any law can result in enforcement.

By signing below I acknowledge I have received a copy of this memorandum, have read it, understand it, and agree to abide by all of the state, federal and local laws regulating towing and storage in San Luis, Arizona.

By: _____

Name of Operator: _____

Date: _____