



PRIVATE PROPERTY TOWING MANAGEMENTS' FRIEND OR FOE

Towing is a service, empowering property management to control vehicle parking. With the support of CTTA (California Tow Truck Association), the future may one day bring special certifications and training classes for tow companies and drivers specializing in private property towing. The relationships are easy; the tow company is the vendor, and the property manager is his customer. The people being towed are the public to the tow company, but entrusted to the care and custody of the tow company by the property manager. The property manager demands that the person towed will be treated professionally at all times by the vendor, the tow company.

The vast majority of vehicle owners should not be angry with management, or the tow company, when their vehicle is towed; more importantly is the care in which the vehicle is towed, that personal property is not disturbed, and the owner of the vehicle is professionally treated when they call or claim their vehicle. In multifamily housing, most residents should be pleased when management engages a responsible towing company to preserve their parking. Only a small percentage of residents are towed, and they are generally angry because their extra cars are towed, or their friends who visit will not be able to park where they want.

The California Tow Truck Association (CTTA), state and local governments are currently examining the extent and value of regulations for private property towing. With proper oversight, private property towing can be an organized, controlled, and disciplined service that professional property management can use as a valuable tool. Regulations can create a uniform platform from where property management can expect and depend on uniform standards, from one area to another. State regulations would provide the broadest platform; the City of San Jose has adopted Tow Company Business Codes 6.66, (one of the strictest codes in the state) which has attempted to regulate private property towing, with positive results in that city.

My qualifications for this article is both owning a property management company and owning a towing company. I retired after 25 years from property management with CPM, CACM, and NAHP property management certifications, and felt private property towing was a misunderstood, and often abused, service. For instance, when drivers' receive commissions, they have an interest in every tow; if they are paid wages they would be more inclined to tow with property management goals and criteria. After retiring from property management, I purchased a tow company to put my ideas to a test, and although there are no awards in the industry, these ideas have been gratifying.

SELECTING A TOW COMPANY: Towing is a serious event and selection of the tow company should be conscientious. Selection of the tow company needs to follow the property manager's normal contractor selection process. The property manager needs to be concerned for the credibility of the contractors they sponsor on properties.

The criteria below is not intended as a "yes/no" or "pass/fail" list; it may be more applicable to grade each item below on a scale of 1 to 10 for each tow company, as it applies to your complex, and then compare companies by the total grade received:

- ✓ Fees for towing and storage should not be negotiable between properties and tow company; they should be consistent with nonconsensual towing charges approved by the local police and/or sheriff in your community.
- ✓ It is a misdemeanor (CVC 12110) for the tow company to give, or for any person or business to receive, any part of the fees charged by the tow company, with the exception of police, city or county agencies.
- ✓ Tow companies can compete for your towing contract by their willingness or ability to pay the cost of required signage, or other costs of start-up. A large complex that may produce several tows a week could justify more front-end participation from the tow company than a 10-unit complex that will not produce any tows.
- ✓ Tow company references:
 - One question to ask the tow company is whether or not they are on any police rotation lists – if not, why not? Then call the local police or sheriff "tow-liaison person" and verify their response with the local police jurisdictions. Criminal records of the tow company owners and/or employees are not readily available to property managers; however, police and CHP generally disqualify towing companies and individual drivers

from their rotation list (nonconsensual tows for accidents or arrests) if there are criminal histories. Some cities, such as San Jose, require permits for tow companies and drivers, which includes a criminal background check. Although the agency will not tell you the results of their investigation because it is confidential information, you can ask the tow company why they do not participate with rotation towing for CHP, sheriff and police.

- Other property management companies can give reference information on complaint history, if staff and drivers seem to be trained and experienced, and if they treat vehicle owners courteously and their vehicles and personal property carefully.
 - ✓ Inspect the tow companies facilities:
 - Storage facility: It needs to be secured with a fence, lighted and paved with a safe walking surface (no mud holes that could damage the vehicles or make it difficult for people claiming their vehicle), with adequate space for storing vehicles with 2 feet of clearance around each vehicle (not jammed together).
 - Office: People who go to the tow yard to claim their vehicles should enter a safe, and lighted, office out of the weather. There should be a public pay phone so people arriving late at night can call for a 24/7 vehicle release availability, without waiting over 30 minutes. The paperwork needs to be at the location where the vehicle is stored, and the person claiming the vehicle should not be given the run-around to claim their vehicle.
 - ✓ There should be only one tow company contracted with each private property. Multiple tow companies would create confusion for vehicle owners to figure out who to call or where to go to claim their vehicle.
 - ✓ They should produce proof of liability, workers comprehensive and on-hook insurance policies, and offer to have your property added as additionally insured, and a surety bond covering tow company employees.
 - ✓ They should have a random drug-testing program for employees.
 - ✓ Drivers need to be uniformed and certified (by CTTA or other accrediting towing association)
 - ✓ Drivers should be paid wages, not commission. No employee should have a vested interest in any tow; commissions create pressure, tempting them to tow borderline parking violations. Drivers need to follow property management and tow company policies and towing criteria.
 - ✓ The tow tag should list:
 - Every tow requires proper endorsement. It needs to have either:
 - Photo Tow - photograph clearly showing vehicle in relationship with the illegally parked vehicle in fire lanes, with a copy available for to vehicle owner;
 - Signature Tow – All other tows require a signature from an authorized person who witnessed the violation. A tow tag should never be signed in blank; a blank signed tow tag is no different than giving someone a blank signed check. A copy of the completed and signed tow tag should be retained by the person signing including the below information.
 - Date and time of the tow,
 - Identify the vehicle by license, VIN, year, make, model, color.
 - Include a specific, legal reason, for the tow, so that when the registered owner claims the vehicle, the tow company can tell them the reason for the tow. It does not work to say, "It was towed because it was violating parking rules"; the tow tag must say what the violation was.
 - The vehicle owner, or their agent, claiming the vehicle, should receive a copy of the paid tow tag upon vehicle release.
 - ✓ It is required to report all tows to the police department (auto desk) within 25 minutes, and record the badge number or other identification number of the police or sheriff on the tow tag as proof of report.
 - ✓ Questions to ask your proposed tow company in addition to the above:
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- What is the tow companies' minimum driver requirements and training program for private property towing laws and procedures?
- How does the tow company control the names of persons authorized to tow; the tow company needs to prevent only approved persons sign for a tow? *Recommendation - Only persons authorized in writing (by the property manager) can sign for tows; that way management has a controlling register of whom they have approved to tow vehicles, or enforce parking violations.*
- What are the tow company policies for "drop fees"? Under possessory lien laws (CVC 22851 & 22658), the tow company cannot charge a drop fee until they are connected to the vehicle, and until they reach the public street. Once they reach the public street, the tow must be reported to the local police department (CVC 22658) and formally released which needs to be done at the tow yard. *Recommendation - Once the tow truck reaches the public street the vehicle owner must claim the vehicle at the tow yard after presenting documentation (for copying by the tow company) of vehicle ownership (or owners' agency status) and matching photo I.D.*

ESTABLISHING THE NEED FOR TOWING:

It is clear that rural and urban communities will have a different perspective towards private property towing. High-density residential housing has limited provisions for parking spaces due to zoning ordinances and cost of land. When construction goes more than one story, land for parking becomes an item. Management is hesitant to contract towing services; towing negatively impacts their residents in the short run. Before making their decisions, management will consider the economics, type of problems, and services available. Property managers can provide labor-intensive parking lot supervision under the budget classification of "resident services", or require violators to pay the cost for towing. When the limited supply of parking spaces is abused, and management cannot add parking lot security to their budget, professional management may consider towing.

After selecting a tow company, the next step is knowing when, where, and how to place signs on the property, whether or not warning vehicles is required, and what wording is required on the sign. *Recommendation - Post signs at all entrances and exits to the property with the local jurisdiction required language. Additional signs on the interior are generally not required or recommended. California law clearly states property must meet only one of the four options, below.* When properties are properly posted with signage (SJC 666.27; CVC 22658) at the entrance to the property towing can begin after 96 hours from the time the signs are installed; no further warning notices are required:

1. CVC 22650: Except as provided in Section 22658.2, the owner or person in lawful possession of any private property, subsequent to notifying, by telephone or, if impractical, by the most expeditious means available, the local traffic law enforcement agency may cause the removal of a vehicle parked on the property to the nearest public garage under any of the following circumstances:
 - A. There is displayed, in plain view at all entrances to the property a sign not less than 17 by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency. The sign may also indicate that a citation may also be issued for the violation.
 - B. The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.
 - C. The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.
 - D. The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

METHODS OF PRIVATE PROPERTY TOWING:

There are three methods of enforcement towing:

- ✓ **REACTIVE TOWING:** Tow company responds only to requests for service:
 - Towing contracts can specify towing only upon request for unauthorized parking, to clear fire lanes, removing abandoned or stored vehicles, etc.
 - A list of authorized persons needs to be provided to the tow company for enforcing parking regulations. This list includes property owners, their agents, property management, licensed security contractors, or others whose names are provided to the tow company as authorized persons.
 - Residents, who find someone parked in their stall, or blocking, must call management or security to have the unwanted vehicle towed. However, it is possible to authorize all residents by submitting the resident roll to the tow company, but this is not generally recommended for tenants, but can be extended to responsible homeowners. The problem could be retaliatory towing between residents.

Advantages of Reactive Towing:

- Management, and/or the authorized person, has complete control over which vehicles are towed, and when.
- The person selecting vehicles to tow can address specific problems
- The person assigned to the stall can have their name registered with the tow company as authorized for purposes of towing. If all the parking spaces are numbered and assigned, no parking permits or other administration is necessary. Parking can be self-monitoring for certain types of properties.
- Parking permits allow management to control parking lot density; management can inspect the parking lot for the validity of visible parking permits and tow vehicles without valid, visible parking permits.

Disadvantages of Reactive Towing:

- If residents are required to sign for the tow, they may be subject to retaliation. Even managers may not wish to sign for tows from some residents, either because they need to maintain an arms-length relationship, or they may also fear retaliation.
 - There may be legal exposure if the authorized enforcement person is accused of selective towing; i.e., when not towing friends in the complex while towing others.
 - Towing from a vehicle registration list would generally not include rented or newly purchased vehicles, not yet registered with management.
 - If parking permits are used, they must be regularly inspected which may be labor intensive. It is most effective to inspect late at night when overcrowding occurs making it a long day for management.
- ✓ **PROACTIVE TOWING:** Residents sign and receive copies of property rules and regulations, including towing provisions, as part of their lease; homeowner associations have CC&R's that authorize the board of directors to establish and enforce parking rules. The towing contract can authorize "Tour and Tow", allowing regular inspections of the parking lot with security or specified person. Management needs to use regular written communications such as flyers or newsletters to bring residents attention to parking problems and enforcement policies. These serve as a reminder of active towing policies. (Writers note: The property manager will find some solace from the intentions of memos and warnings when the people towed, do not have money, and they are in denial about knowing the policies. It is not advisable to make exceptions; exceptions could open allegations of selectively charging some, but not others.) The tow company could schedule:
- Patrol fire lanes and automatically tow vehicles documented with a photograph.
 - Meet with security or authorized person and inspect parking permits and other parking violations.
 - Towing is a highly visible event; management is not trying to create income for the tow company, nor does management need their office clogged with residents the next morning voicing their frustration, and escalating anger when more than one towed resident is in the office. **Recommendation - Should not allow towing of more than three or four vehicles once or twice a week in complexes of 200-300 units. Residents will get the message when they hear about or see other residents being towed.**
 - The parking lot should be scheduled for regular inspections, and vehicles in violation would be towed without further notice. Giving warning notices before towing is a problem; this would require onerous logs, kept accurately, on every vehicle warned for months or years; this creates voluminous entries with each one becoming an opportunity for error. The vehicle owner will deny receiving the notice; warning notices may need to be properly serviced to insure the head of household received it. **Recommendation - Warning notices should not be required because of the problem of documentation. The authorized person or security company should leave a citation (violation notice) with the vehicle, at the time of the tow to indicate the tow company did not act alone.**
 - Every tow for parking violations requires verification by the person signing at the time of the tow. **Recommendation - Whoever signs for the tow must physically witness the parking violation and sign a completed tow tag. NEVER sign blank tow tags.**

Advantages of Proactive Towing:

- It is easy to schedule parking lot inspections with the tow company and security late at night, when they are overcrowded and vehicles are parked without valid or visible permits.
- Retaliation between residents is reduced because know one knows who to blame. The inspection is done by people who do not live on the property.
- The resident does not need to be directly involved. Residents assigned to parking stalls may call security, which would verify the resident and their request, and sign for the tow.
- When security signs for tows it gives them a record of being on the property and provides for servicing the residents.
- Management is not personally involved in towing vehicles if they have security:
 - Management labor is not required to check stalls, inspect the parking lot, or wait for the tow truck.
 - There is less exposure for allegations of selective towing practices when the inspector is a contractor who is disassociated with the people being towed.

Disadvantages of Proactive Towing:

- Without parking permits, it is labor intensive to inspect a registration list against license plates late at night, and then wait for a tow truck.
 - Failure to communicate the towing program to those affected by an automated system can cause confusion and problems.
 - Management's support of the towing criteria is necessary, without exceptions, once the tow is ordered. After the fact, when complaints are filed, it is too late to take back the towing or fees because of an angry resident.
- ✓ **Tour & Tow by Photograph:** All tows require authentication:
- California law CVC22658 requires property owner, agent, or security to sign for tows with the exception of fire lanes that can be done by photograph. The photo must show (document) the vehicle violation in relationship to the legal fire lane, or fire hydrant (CVC 22500 and CVC 22658). The property manager can authorize the tow company to tour the property, photograph vehicles in violation and tow; henceforth the terminology, "Tour and Tow".
 - Management has the option of requiring authorized signature for all tows, even those in the fire lane and handicap stalls.

RECOMMENDED TOWING POLICIES AND PROCEDURES (SUPPORTED BY CALIFORNIA LAW):

There is no room for "judgment" decisions in the towing process. Either the vehicle is in violation of written parking rules, or not. The tow must meet specific, identifiable, criteria received by the residents. Problems arise if there is "wobble room" for the reason of the tow; if, after the vehicle is towed, management changes their mind or does not want to support the tow, there is a possible allegation of "Negligent Towing", or "Wrongful Towing". No one wants to pay towing and storage fees which are regulated by the State of California, CVC 22658. Between the laws regulating towing, and the legal platform governing real estate management, we are making recommendations for the following common problems:

- ✓ **Selective towing:** Towing policies must follow specific parking rules, distributed, and uniformly enforced. If you tow one car without a parking permit, you cannot skip the next vehicle without a permit just because you recognize the vehicle; that may open the door for selective towing allegations. The innocent bystander seeing that some vehicles are towed, and not others, may think the manager or security person gives favorable treatment, or perhaps takes under-the-table compensation, not to tow. If the permit cannot be read, you are not authorized to open the vehicle for closer inspection; if you excuse one vehicle because the permit numbers are not visible (even if the permit can be seen), then you need to excuse all similar. **Recommendation - Valid parking permit numbers must be visible from outside the vehicle, or they are towed.** Allowing partially visible parking permits could encourage such things as stealing or counterfeiting permits and staging them in a conspicuous place without numbers visible in order to park extra vehicles on the property, which would defeat the purpose of the parking permit program.

It is important for management to distribute the parking rules with advance notice of towing, make all tows in accordance to those rules, and do not waiver when confronted by the vehicle owner.

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- ✓ Selective charging – Property managers understand that when government is involved in regulating rates (such as tow rates or apartment rents) you cannot “selectively” charge different fees to different people; you could be subject to discrimination allegations. Technically, there is disagreement as to the standing of government regulations over towing fees, but selectively charging may have different sensitivities. This article is not a discussion of those technicalities, it is a recommendation for management not to be involved in requesting discounts or fee waivers, unless there is a legitimate human error.
 - ✓ Bad (error) tows - According to law (CVC 22658(a)(c)), the vehicle owner can collect damages and fines up to 4 times the tow and storage charges, not to exceed \$500.00 for certain types of errors. Therefore, if there are no charges (if the vehicle goes back free), then there would be no charges to base a fine, except for gross negligence – No fees, No fines. It is, therefore, easier to waive all fees for clearly defined errors, than to give discounts. Towing is a serious event, causing people to be late for work, subjecting their vehicle to possible accidents while in tow, and a worst-case scenario would be if the resident had their heart medicine in the vehicle and the vehicle was wrongfully towed, at the wrong time. *Recommendation - Waive fees for tow and storage when management, their employees, security, or the tow company makes errors.* But, if waiving fees becomes frequent, then the errors need to be analyzed to secure vehicles from unnecessary towing, or harassment towing allegations, “Wrongful Towing”.

If the tow is for proper cause, California law holds both your complex and the tow company harmless except for acts of negligence CVC 22658 (a)(b); 22658.2. Errors are, by definition, negligence, and indiscriminately claiming an error to get a vehicle released free could end up being a stage for negligence; why would you give the car back unless it was admission of some kind of guilt. There can be exposure for such things as a broken transmission, missing prop; but, if there is negligence, the complex and/or the tow company have the burden for proof of innocence, which is nearly impossible. i.e., how are you going to prove you did not wreck the transmission, unless you can prove it wasn't right before the tow? Or, how about the subjective claim that the vehicle does not feel right, or safe, after it was towed?

- ✓ NEVER tow vehicles back to private property without proper documented release: When vehicles are towed, nonconsensually, law (CVC 22658; SJBC 666.3) requires the tow to be reported to the local police authorities. When the owner finds it missing, and tries to report it stolen, the police are able to inform them who towed the vehicle, and where it is stored. Once the vehicle is removed from private property, it is under possessors' lien laws (CVC 22851). CVC 22851, which requires that the vehicle must be release, to the registered owner or their agent. Therefore, it is illegal to remove a vehicle from the storage yard, for any reason before it is legally released; and therefore, only the registered owner or their agent, after producing identification, can remove the vehicle from the storage yard. Records of the storage and release of vehicles are required (CVC 10650). *Recommendation - If there is an error, and the vehicle is being released free of charge to avoid problems, only the registered owner, or their agent, can claim the vehicle from the storage yard after producing proper documentation. It is also recommend that taxicab fare for the vehicle owner to pick up their vehicle is reimbursed.*
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