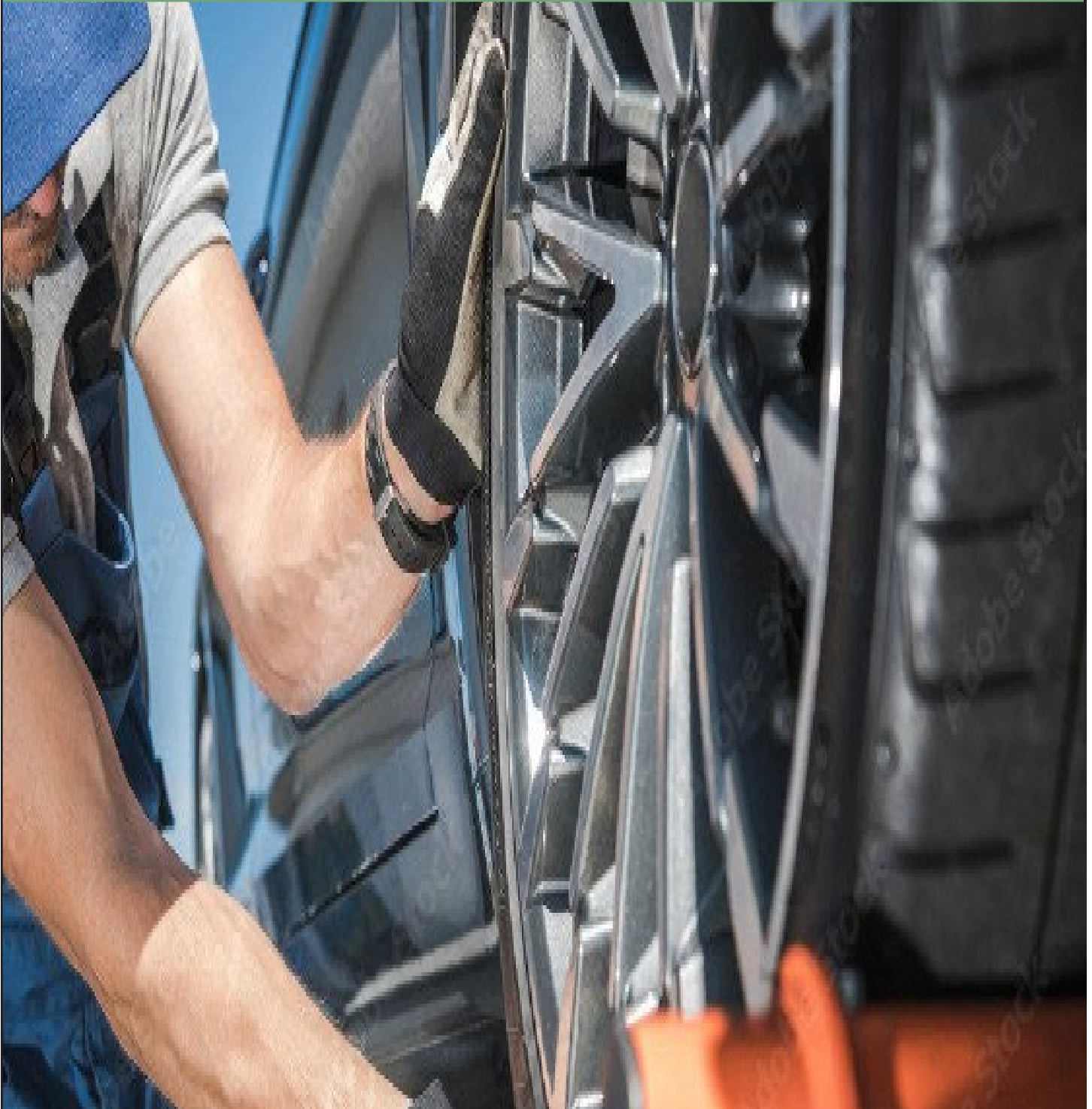


Fort Smith Police Department
Towing Process Review Report
2022-4 July 2022



Internal Audit Department
City of Fort Smith, Arkansas
Tracey Shockley, CFE, CCA
Internal Audit Director

Our Mission

We deliver independent, transparent, and professional audits in order to safeguard and improve the public's investment in the City of Fort Smith. Our work is performed on behalf of everyone who cares about the City, including its residents, workers, and decision-makers.

BACKGROUND

Purpose for the report

Internal Audit was contacted regarding concerns with the Police Departments practice for not towing vehicles when the driver was cited for no driver's license, suspended license, Driving under the Influence (DUI), etc.... and then allowed to drive away or leave their vehicle on the side of the road. Specifically, when the driver is released with a citation and shortly afterwards involved in an accident, injured, killed, or something happens to the vehicle left and not towed, that the Police Department would be held liable for these actions.

The Police Chief requested the Internal Audit Department to review the towing policies and procedures with the police personnel involved with the towing procedures and provide recommendations.

Towing companies are regulated by the Arkansas Towing and Recovery Board, Act1061 and AR Code Annotated 27-50-1201. The State requires that any fees charged must be reasonable and the company must provide the owner an itemized invoice of all charges associated with the tow, recovery, and storage of the vehicle. The company must obtain a renewal of their license annually, and the license must be a non-consent towing/storage and/or consent towing license which the valid Two Vehicle Safety Permit must be displayed on its windshield.

Additionally, each vehicle owned by the company must hold a current motor vehicle registration certificate and evidence of such properly displayed, be in compliance with all motor vehicle laws, have required equipment (i.e. fire extinguisher, amber flashing lights, safety chains, etc...) and must adhere to requirements as Heavy Tow Vehicle, Medium Duty Tow Vehicle, or Light Duty Tow Vehicle.

Lastly, the State identifies the requirements for impounding motor vehicles for violations under 27-22-109, 27-22-110, and 27-22-111, and the traffic violation is classified as an offense under 27-50-302. The Police Department is required to use its towing policy under 27-50-1207. The officer is not required to call for a tow if the driver is taken into custody. The vehicle must not be impeding traffic and it is the discretion of the driver if their vehicle is to be towed.

IA obtained policies 1107.10 and 1107.11, Wrecker Rotation List, and contacted other agencies in Arkansas regarding their policies and procedure for towing vehicles. IA also met with the officers who oversee the departments towing operations.

Process

Police Department procedures and requirements

The Police Department performs specific procedures every year to ensure that the towing companies are in compliance with the City and State laws. A Tow Company Rotation Checklist, Tow Vehicle Report, and a Tow Company Rotation List Application were provided for review. Currently there are 26 Towing Companies who are on the towing rotation list and three additional towing companies who have applied and under review. Seven of those companies are owned by the same individual. Each company currently has between one (1) and six (6) vehicles each. Each year the officers perform the following for each company:

- Inspect each company vehicle
- Ensure the company has a valid business license
- Has the required permit(s) and for each vehicle
- Proof of insurance for all vehicles
- Valid Registration for all vehicles
- Complete each inspection report
- Company application completed and reviewed
- Operation and storage facility inspected for specific requirements and documented on inspection report
- Obtain a list of all employees and date of birth of employees with access to storage facility
- Obtain a price sheet for all services charged in towing or recovery of a vehicle, and
- Have at least one rollback towing vehicle.

If the vehicle is to be towed, the company is required to respond within 25 minutes of the call from dispatch. The officer inventories the entire contents of the vehicle and documents it on the form. The officer and the driver will sign and date the form. One of the tow companies is used for all police department vehicles and one company is used for all vehicles of evidence because of lot access and chain of custody. If the vehicle is not required to be towed under certain violations, the driver/owner has the option to have it towed, remain at its current location, or be driven away by another authorized individual.

The officer captures on their body worn camera, documents in the report and advises dispatch that the driver/owner request that their vehicle be left legally parked at the scene of the arrest. The officer ensures that the driver understands that the Fort Smith Police Department accepts no responsibility for the vehicle and its contents while it is parked at the designated location, and that they are responsible for securing transportation back to the vehicle once they are released from the Detention Center.

Recommendations

The City authorizes tows of vehicles from public streets for a variety of reasons, including when vehicles are abandoned, inoperable, illegally stolen, involved in accidents, evidence in criminal cases, or in violations of a parking or vehicle law. IA reviewed the policies, procedures, forms, and laws and recommends the following:

Internal Audit Recommendations/ Possible Improvements

1. A column should be added to the Wrecker Rotation List that identifies the towing driver and can be relayed to the officer by dispatch. This information allows the officer to ensure the correct tow company is on scene and the driver is authorized to remove the vehicle. It also enables management to verify the driver name on signed form, rotation list and employee listing obtained from the towing company, specifically for non-consensual towing which have stricter requirements. Tow drivers cannot have a felony record and adding this information also allows PD to verify the towing company did not violate that requirement.
2. A towing contract. A review of other similar size Cities throughout Arkansas and other states have implemented towing contracts. The Police Department should consider contracting with one Tow Company. This enables the Police Department to complete yearly reviews efficiently and timely, ensure prices charged are correct, reasonable and one set fee. Additionally it helps eliminates ensuring the correct towing company and driver has responded and has met all towing requirements.
3. If contracting with one towing company is not feasible, the Police Department should then divide the City into four zones to allow for quicker response times, the correct towing company and driver is on scene, and prices charged are of equal and reasonable. This will also help reduce the monopolization that some towing companies may have by having a number of different towing companies where it rotates more often to those companies. The companies set fees for the equipment used to tow the vehicle, towing fee, storage fee, etc... Additionally, this allows the officers to direct their time towards traffic, police and community functions.
4. Towing contractors should pay the City a set fee per dispatch, a separate fee per towed vehicle for the exclusive right to tow in their dedicated zone and any liquidated damages that are charged for violations of the contract (such as arriving to the scene late, or failing to provide a tow truck when requested).

The City should institute a process by which potential towing contractors propose a contract fee in their response to an RFP, rather than the City setting the fee in advance, and create an equitable distribution of zones across the City by using a geographic zone-based model.

Additionally, the City has tort immunity and would not be held liable for incidents that transpire after the officer issues a citation and the individual is released. According to PD, the officers instruct the driver, depending on the citation, they are not to drive away and are to contact someone that can drive the vehicle. The officer usually receives another call for service and cannot remain on the scene.

Internal Audit would like to thank Captain Grubbs, LT. S. Creek, and SGT. Story for their time, patience, knowledge, and assistance during the towing review process. Without their experience and expertise this review would have taken more time to evaluate.

Management Responses

Below are recommendations from Internal Auditor Tracey Shockley, and my response to each:

1. A column should be added to the Wrecker Rotation List that identifies the towing driver and can be relayed to the officer by dispatch. This information allows the officer to ensure the correct tow company is on scene and the driver is authorized to remove the vehicle. It also enables management to verify the driver name on signed form, rotation list and employee listing obtained from the towing company, specifically for non-consensual towing which have stricter requirements.

- I believe this is a good idea. Adding the wrecker driver's name will also allow for internal auditing to ensure appropriate wrecker driver's identities are current with our records. **I also believe a column should be added to the Wrecker Rotation List to document the "purpose" of the tow. Purposes would include accident, arrest, abandoned vehicle, etc.

2. A towing contract. A review of other similar size Cities throughout Arkansas and other states have implemented towing contracts. The Police Department should consider contracting with one Tow Company. This enables the Police Department to complete yearly reviews efficiently and timely, ensure prices charged are correct, reasonable and one set fee. Additionally it helps eliminates ensuring the correct towing company and driver has responded and has met all towing requirements.

- I believe this is an excellent idea. Members of Special Operations spend weeks conducting yearly inspections of the 26 towing companies currently on our list. Having one company would exponentially save administrative man hours and allow our officers to focus on other duties.

3. If contracting with one towing company is not feasible, the Police Department should then divide the City into four zones to allow for quicker response times, the correct towing company and driver is on scene, and prices charged are of equal and reasonable. This will also help reduce the monopolization that some towing companies may have by having a number of different towing companies where it rotates more often to those companies. The companies set fees for the equipment used to tow the vehicle, towing fee, storage fee, etc... Additionally, this allows the officers to direct their time towards traffic, police and community functions.

- I do not believe this is a good idea. A vast majority of our wrecker companies are located along Towson Avenue on the western corridor of our city. I believe the zones would cause confusion and issues over companies competing for particular zones. I believe the contract with one company is the preferred route.

4. Towing contractors pay the City a set fee per dispatch, a separate fee per towed vehicle for the exclusive right to tow in their dedicated zone and any liquidated damages that are charged for violations of the contract (such as arriving to the scene late, or failing to

provide a tow truck when requested).

- I believe this would / could be addressed if the city chose to enter into a contract with a sole wrecker company utilized for non-consensual tows.