



PROPOSED CHANGES TO CHAPTER 5.15 OF THE RIVERSIDE MUNICIPAL CODE AND BRIEFING ON AB 2876 AMENDING VC 22650

RIVERSIDE POLICE DEPARTMENT

Public Safety Committee
May 15, 2019

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BACKGROUND

What led up to the Police Department's proposed changes of RMC Chapter 5.15 in the November 21, 2018, Public Safety Committee Meeting?

1. RPD Identified deficiencies in the current contract that needed revision
2. The Tow Contract is governed by RMC Chapter 5.15
3. To correct the deficiencies in the Tow Contract, the RMC needed to be revised



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Tow Agreement Example

OFFICIAL POLICE TOW TRUCK SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the CITY OF RIVERSIDE, a California charter city and municipal ("City") and FILL IN THE BLANK, Inc., an Official Police Towing Service ("OPTS" or "Contractor") on the following terms and conditions:

RECITALS

A. OPTS is a towing company selected and designated by the City pursuant to Chapter 5.15 entitled "Regulations of Official Police Tow Truck Service" of the City of Riverside Municipal Code ("RMC") commencing with **§5.15.010 ("ROPTTS Ordinance")** to provide services at the request of the City Police Department throughout the boundaries of the City, on call, on a rotation basis, for any police emergency situation where a tow truck is required.

B. The parties desire to enter into this Agreement pursuant to **RMC §5.15.080** in order to implement the ROPTTS Ordinance. It is understood and agreed by the parties that this Agreement, and each term and condition stated herein, shall be interpreted in such a manner so as to be consistent with the ROPTTS Ordinance, and in such a manner so as to reasonably implement the ROPTTS Ordinance between the parties.

C. In consideration of being selected and designated by the City as an Official Police Towing Service pursuant to **RMC §5.15.080** and in consideration of the benefits OPTS will receive as a result thereof, OPTS agrees to perform vehicle towing and storage services for the City Police Department pursuant to the terms and conditions of this Agreement.



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TIMELINE

1. From March 2018 to June 2018, Lt. Dwayne May, Sgt. Eric Detmer and Tow Coordinator Dawn Reynolds met with each tow company individually.
2. The purpose of these meetings was to identify issues with the current contract with each tow owner/manager and get their input on changes they would like to see.



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TIMELINE

3. Most of the ideas for the new ordinance came from these meetings.
4. On July 31, 2018, the Police Department held a tow meeting with all of the Tow Companies. All companies had representation at the meeting.
5. All representatives were asked as a group if they had input for the new tow agreement that was anticipated for 2019. None offered any input at the meeting.



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TIMELINE

6. In August of 2018, RPD Traffic Personnel met with the City Attorney's Office.
7. It was determined that the Official Police Tow Truck Service Agreement (OPTTSA) could not be appropriately changed without modifying RMC 5.15 first.



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TIMELINE

8. Representatives from the Police Department and City Attorney's Office met for several weeks drafting different possible solutions to revise the current RMC.
9. During those meetings, it was anticipated that the new OPTTSA would not be completed in time for the December City Council meeting, so the decision was made to extend the current contract for one year while those changes were drafted.



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TIMELINE

10. Due to several issues with some of the tow companies, it was decided that PD could not wait a full year to implement changes to the existing contract and RMC.
11. To quickly increase necessary services to the community and Police Department, it was decided that many of the issues could be corrected by implementing the proposed changes to RMC Chapter 5.15 while still operating under the current OPTTSA.



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RMC 5.15.100 (ENACTED 1998)

RMC Chapter 5.15.100 states:

Section 5.15.100 Standards for tow truck equipment.

A. Official police tow services shall provide towing equipment capable of providing for the following services:

1. Recovery trucks with an adjustable boom with at least five ton of lifting capacity.
2. Wheel lift towing.
3. Roll back/flatbed towing.
4. Towing in parking garages.
5. Towing from off-road areas.
6. Towing of large and oversized vehicles.

7. Towing of motorcycles without causing additional damage.

B. All tow trucks shall be equipped as provided in the California Vehicle Code.

C. Official police tow services shall, at all times, have at least three fully equipped and operational tow trucks in service, and three approved drivers available to operate them.

D. Every official police tow service shall be equipped for and have personnel proficient in unlocking locked vehicles when requested to do so by Police Department employees. (Ord. 7190 §2, 2012; Ord. 6454 §2, 1998)



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2018 TOWING STATISTICS

1. Last year the City had 3,300 billed tows from the OPTTSA
2. There were 48 "Heavy-Duty" Tows that were called from the Heavy Duty List
3. There were only 10 tows that were billed as Heavy-Duty (semi-trucks, a loaded water truck, a lumber truck and a cement mixer), which is about 1/3 of 1% of all tows



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2018 TOWING STATISTICS

4. The rest of the Heavy-Duty tows were large vehicles that may have been towed by the general tow list
5. Of the 48 Heavy-Duty tows, **1 company provided 42** of these tows and 6 additional companies each provided 1 tow
6. Chapter 5.15.100 requires all the tow companies to have the equipment to tow “large and oversized vehicles”



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Tow Fee Examples

Type of Tow	Tow Fee \$233 (hr) (minus \$65 Franchise Fee)	Storage (\$50 a day)	Total
Routine Tow w/ 3 days storage	\$168 (one hour)	\$150 (3 days)	\$318
30-Day Impound	\$168	\$1500	\$1668



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Tow Agreement Value

- 3300 billed tows last year / 14 Tow Companies
- approximately 235 tows per company @ conservative \$318 per tow (w/ 3 days storage)
- = \$74,730* per year per company

*does not include citizen request tows



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RMC CHAPTER 5.15.010

Section 5.15.010 Intent and Purpose.

It is the intent of this chapter to prescribe the basic regulation for the operation of "official police towing service" in police emergency situations and in the removal of vehicles which are apparently abandoned, or involved in a collision, or which constitute an obstruction to traffic because of mechanical failure. **It is the purpose of the City Council in enacting the ordinance codified in this chapter to provide a fair and impartial means of distributing requests for towing services among qualified firms,** and to insure that such service is prompt and reasonably priced, and in the best interest of the public as well as the interest of efficient policing operations for the removal from public streets of such vehicles. (Ord. 6965 §1, 2007; Ord. 6454 §2, 1998)



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TOW COMPANY INFORMATION

1. There are currently agreements with 14 tow companies (8 north, 6 south) from the 2016 OPTTSA, which was extended for one year on January 1, 2019.
2. From January 2018 to December 2018, only 1 company was on the Heavy-Duty List. In December 2018, a second company went on the Heavy-Duty list.
3. 2 additional companies have the ability to go on the Heavy-Duty list and are on the Heavy-Duty list with neighboring agencies, but will not go on the Riverside heavy-duty list to avoid towing motorhomes.



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TOW COMPANY INFORMATION

4. 1 tow company on the rotation is on the heavy-duty list with RSO Moreno Valley and can tow oversized vehicles through the City of Riverside contract, but currently does not perform those services under the OPTTSA.



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RMC 5.15.150

1. The current OPTTSA and RMC allows each tow company 2 passes per month
2. Some tow companies started using these passes to avoid taking large, over-sized vehicles such as motorhomes as a business decision because:
 - A. On average, each “junked” motorhome costs about \$1,500 to dispose



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NEGLIGENT PASSING

Section B(4) of the current OPTTSA states:

“Contractor shall be available to respond with sufficient operational equipment to handle any tow call (within the selected operating class: heavy duty and/or light duty) twenty-four (24) hours a day, seven (7) days a week, including holidays”



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OPTTSA

OPTTSA states under Section H (1.5) that the City reserves the right to make changes to the RMC and OPTTSA as long as it gives the tow companies 30 days notice before it makes operational changes to the agreement and RMC



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NEGLIGENT PASSING

There have been several "passes" from tow companies where several companies either could not provide the services they are contracted to perform or used their passes to avoid the difficult task at hand.



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CASE EXAMPLES

1. 19-0005569- Four (4) (out of 6 south companies) passed tow at the AMC Theater in the parking structure at the Galleria at Tyler because of “limitations of the call” (Ward 6)
2. P18-175197- All south companies passed tow at Galleria parking structure and vehicle was left at scene (Ward 6)
3. P18-115154- All companies passed tow on motorhome and it had to be left on the side of the road (Ward 3)



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NEGLIGENT PASSING

1. The Police Department cannot allow contracted services to not be performed because that particular job is difficult or non-profitable.
2. Vehicles can not be left at the scene because contractors cannot perform the services they have agreed to do.



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NEGLIGENT PASSING

Passing:

1. Increases the time officers are waiting for a tow truck
2. Increases the time a hazard or road remains closed, which impacts traffic
3. Can jeopardize an investigation



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CURRENT AVAILABLE DISCIPLINARY ACTION

1. The current available discipline violations of the OPTTSA are by fines, suspension or termination of the agreement
2. The Police Department could not issue punitive fines to the tow companies because there is no formal hearing process to hear appeals of fines



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CURRENT AVAILABLE DISCIPLINARY ACTION

3. The disciplinary action for excessive passes (3 or more) is a \$500 penalty under the current OPTTSA even though the Police Department was never able to apply the action
4. This inability to take punitive action has led to what is perceived to be unethical business practices by some of the tow companies



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TOW SURVEY

1. Riverside Police Department staff conducted a study of surrounding agencies
2. None of the surrounding agencies currently reimburse for the disposal of motorhomes
3. The proposed changes are within the normal range of other agencies



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TOW SURVEY-CHP RIVERSIDE

1. CHP Riverside covers western Riverside County
2. Maintains 2 tow lists - Standard and Heavy Duty
3. Heavy Duty List -11 companies
4. Standard Duty Tows - 34 companies



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TOW SURVEY-CHP RIVERSIDE

5. TSA states that tow companies will respond to “any call”
6. If it is believed a company passed on a tow but the company could have handled, a “write-up” is issued
7. If a company gets 2 write-ups, the company is recommended for suspension (usually 5-15 days)



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TOW SURVEY-CHP RIVERSIDE

8. CHP does not allow passing on calls
9. If companies get 3 write-ups in a 36-month period, the company is recommended for termination of the agreement
10. CHP allows 30 minutes for standard tows and 45 minutes for heavy-duty tows



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CORONA PD

1. Corona PD has 3 tow companies and only 1 company has heavy-duty capability
2. If a heavy-duty call is requested and the dispatched tow company does not have the ability, they are passed and drop to the bottom of the list
3. No penalty is assessed to the company other than losing the tow



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RSO-MORENO VALLEY

1. Has 4 tow companies 2 of which are heavy-duty
2. They do not have 2 lists
3. Companies can pass or take the call



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RSO-MORENO VALLEY

If a company has 2 violations of the TSA in a month, the following discipline process begins:

- 1st offense - Letter of Reprimand
- 2nd offense - Up to a 5-day suspension
- 3rd offense – 30-day suspension
- 4th offense – 60-day suspension
- 5th offense - Termination of the contract



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TEMECULA PD

1. 5 tow companies that are rotated weekly
2. All have Heavy-Duty Capability
3. If a tow company passes, they forfeit the remainder of their week on the rotation until their next turn (5 weeks)



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FONTANA

1. Has 5 tow companies
2. All have heavy-duty, which are on weekly rotation
3. \$170 franchise fee for all tows, including citizen requests (Riverside charges \$65 and nothing on citizen requests)



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RANCHO CUCAMONGA

1. Has 5 companies - all have heavy-duty capability
2. Companies pay a \$5,000 per month franchise fee to be on the list
3. All violations are write-ups. Penalties for write-ups are:
 - A. 2 in 90 days - suspension
 - B. 3 in 90 days - more severe suspension
 - C. 4 in 90 days - termination of the agreement



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REVIEW OF PROPOSED CHANGES

1. To correct inadequacies of the current OPTTSA and RMC, the following revisions to the RMC were drafted (review of November 2018 Public Safety Committee Meeting).
2. Many of these changes benefit the tow companies



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RMC SECTION 5.15.020-DEFINITIONS

1. Add definition of "*Complaint*"
 - A. Provide clearer definition and examples
2. Add definition of "*Tow Board*"
 - A. Investigate violations of Official Police Tow Truck Service Agreements
 - B. Due process for Tow Contractors
3. Add definition of "*Passing*"
 - A. Refusing, for any reason, any tow assignment or call for service from the City or from the Riverside Police Department



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RMC SECTION 5.15.095-FRANCHISE FEE

1. Establish Franchise Fee Credit:
 - A. If a vehicle is towed to a police station on an evidence hold and the vehicle is released from the station and not returned to the original police tow service, the contractor will receive (2) franchise fee credits (one credit is currently \$65)



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RMC SECTION 5.15.110 STANDARD RULES OF OPERATION

1. Section 5.15.110 B.4. – No longer allow Tow Service Contractors to release a vehicle with verbal authorization from Police employee
 - A. Must have written authorization
 - B. Prevents miscommunication
2. Section 5.15.110 J – Tow Service Contractors to leave 3 feet between stored vehicles instead of 2 feet
 - A. More room to collect and process evidence



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RMC SECTION 5.15.120 RESPONSE TIME

1. Tow Service Contractor must respond to a call for service in a time not to exceed 30 minutes

*Current requirement is 20-minute average response time in a 30-day period



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RMC SECTION 5.15.140

GROUND FOR CANCELLATION, REVOCATION OR SUSPENSION

1. Eliminate requirement for Tow Service Contractor to appear before Traffic Bureau Commander within five days to appeal a contract cancellation, revocation or suspension
2. Revised process outlined in Section 5.15.145 – Procedure for action against official police tow service



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RMC SECTION 5.15.145

PROCEDURE FOR ACTION AGAINST OFFICIAL POLICE TOW SERVICE

1. Creates a "Tow Board" as defined in 5.15.020
2. Board consists of Traffic Division Commander, or designee, and 2 sergeants
3. Provides due process for tow contractors
4. Provides City ability to impose disciplinary action up to and including termination of agreement



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RMC SECTION 5.15.150-LIQUIDATED DAMAGES

1. Change title to "Penalties for passing on a call for tow service"
2. Remove liquidated damages
 - A. \$500 for each liquidated damage
 - B. \$200 every time contractor fails to meet response time
3. Impose new penalties for passing on calls for service:
 - A. 1st offense: 3-day suspension from tow rotation
 - B. 2nd offense: 7-day suspension from tow rotation
 - C. 3rd offense (and any pass thereafter): 30-day suspension from tow rotation



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FOLLOW-UP ON 5.15 RMC

1. On February 5, 2019, the City Council suspended adoption of this ordinance until further review
2. On February 13, 2019, Lt. Warren and Sgt. Detmer met with US Tow Consortium (USTC) President Ronnie Bauman (Bauman's Towing) and Vice-President Ruben Ayala (Tippy's Tow) to discuss issues the tow companies and PD were having



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TOW OUTREACH

Over the next several weeks, RPD communicated with USTC over the phone as their discussions progressed, but they were not ready to have a meeting to discuss their contract wishes until March 19, 2019.



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TOW OUTREACH

On March 19, Mr. Bauman and Mr. Ayala (US Tow Consortium [USTC]) proposed changes that were supported by 12 of the 14 current tow companies

1. Patriot Tow and Angelo's Tow did not support the proposed changes



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TOW OUTREACH-PASSING

1. The USTC wanted to define passing as “refusing, for any reason, any tow assignment or call for service from the RPD within five (5) minutes of receiving the tow assignment from the answering service.
2. The USTC wanted to keep the existing 2 free passes per month with no discipline until the third pass



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TOW OUTREACH

1. The USTC wanted to add the definition for “refusing” to RMC Section 5.15.020
2. Suspected refusing would initiate an investigation, which could result in a hearing by the Tow Board with the same progressive penalties as passing



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Abandoned Vehicle Program (AVA)

1. State funded program for reimbursement of abandoned vehicles

2. Our city is not currently eligible for RV Reimbursement under this program



SUMMARY OF CHANGES

RMC AGMT	ITEM	CURRENT	PREVIOUSLY PROPOSED	TOW CONTRACTOR PROPOSED	RPD NEW RECOMMENDATION
5-15-150	PASSING	No more than 2 passes in a month	None allowed (with 3-day, 7-day and 30-day suspension)	No more than two a month (only within 5 min of call or considered a refusal)	Three passes in 90 days will be investigated with possible 3-day, 7-day, 30-day suspensions. Refusals will go straight to investigation with possibility of suspension penalty progression.
5-15-145	TOW BOARD	Fines cannot be imposed.	Tow Board (Lieutenant, 2 Traffic Sergeants)	Tow Board (2 RPD, 2 Tow Owners, 1 Independent Party)	Cannot allow Tow Owners on panel. Allow Lieutenant, 2 Sergeants, 1 Tow Liaison (no vote)



SUMMARY OF CHANGES

RMC AGMT	ITEM	CURRENT	PREVIOUSLY PROPOSED	TOW CONTRACTOR PROPOSED	RPD NEW RECOMMENDATION
5.15.100	Number of tow lists	2 lists – Light/Heavy	1 List	3 lists (1 contractor wants 4) Light, Heavy, Parking, Structure	1 list with option to use other approved companies as subcontractors for heavy/special circumstance tows. Would not take place until 01/01/20.
AGMT	Contract Term	2 years + 2 (1-year extensions)	2 years + 2 (1-year extensions)	Initially wanted 2 years + 2 (1-year extensions); now wants 5-10 years	2 years + 2 (1-year extensions)
5.15.120	Time to arrive on call	20-minute average	Not to exceed 30 minutes	30 minutes on light tows, 40 minutes on heavy, 60 minutes from 6 p.m. - 6 a.m.	30 minutes for regular tow, 45 minutes for heavy and special circumstance tows.



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SUMMARY OF CHANGES

RMC AGMT	ITEM	CURRENT	PREVIOUSLY PROPOSED	TOW CONTRACTOR PROPOSED	RPD NEW RECOMMENDATION
5.15.095	Evidence vehicles	RPD does not compensate	Compensation of 2 franchise credits (\$130)	Regular charge for Tow and \$1 a day for storage after 30 days	\$168 (\$233 minus franchise fee of \$65) and \$1 a day for storage after 30 days
AGMT	Agmt			Consideration for tow agreement limited to businesses with 5 years experience in City	Does not agree



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ASSEMBLY BILL 2876

1. Approved by Governor Jerry Brown on September 20, 2018
2. Amended VC 22650, which became effective January 1, 2019



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VC 22650

22650. (a) It is unlawful for a peace officer or an unauthorized person to remove an unattended vehicle from a highway to a garage or to any other place, except as provided in this code.



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VC 22650

(b) Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is **only reasonable** if the removal is **necessary** to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.



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VC 22650

The California Legislature concluded that towing a vehicle is a government seizure and all such seizures require the following:

- a) A warrant; or
- b) A tow authority AND a community caretaking exception



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VC 22650

Examples of a Community Caretaker Exception:

1. Preventing a hazard to other drivers;
2. Protecting the public from an unsafe driver; or
3. Preventing theft or vandalism.



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RECOMMENDATIONS

That the Public Safety Committee:

1. Approve the proposed changes to Chapter 5.15 of the Riverside Municipal Code regarding Regulation of Riverside Police Official Police Tow Service;
2. Recommend that City Council adopt an ordinance amending chapter 5.15 of the Riverside Municipal Code regarding the regulation of Riverside Police Official Police Tow Truck Service including sections 5.15.020, 5.15.095, 5.15.110, 5.15.120, 5.15.140, 5.15.145, and 5.15.150 as described herein; and
3. Receive a report on changes in case law that affect the towing of vehicles off public property (Assembly Bill 2876 Amending Vehicle Code 22650).



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