



TOWING VEHICLES IN A CID VEHICLE CODE SECTION 22658

It has been more than fifteen years since the legislature gave homeowners’ associations a gift to enable the effective administration of one the most difficult issues facing boards of directors – insufficient parking. That “gift” was to allow the association to tow vehicles parked in violation of association CC&Rs or rules *without any waiting period*.

However, there is a common belief that vehicles parked in violation of CC&Rs or rules cannot be towed until 96 hours (four days) have passed. To compound matters, this belief often finds its way into the rules adopted by many CIDs. Nothing is as effective in getting a parking violator to follow the rules as towing his or her car. Nevertheless, this enforcement gift from the legislature is commonly wasted.

As a reminder of this effective tool available to associations, we have summarized Vehicle Code section 22658 below, including the instances in which an association is authorized to tow, and the process the association must follow in order to tow the vehicle.

When May an Association Tow?

An association can tow cars from property within the boundaries of the association in any one of the following situations:

1. Permanent signs are posted at each entrance to association property (see details below) **AND** a vehicle is parked in violation of association rules and regulations;

OR

2. A vehicle within the boundaries of the association has been issued an association “parking ticket” and has not been removed for 96 hours (four days);

OR

3. A vehicle is essentially inoperative and lacks a major component required for safe operation on the highways such as a windshield, tires, etc.;

OR

4. A car is illegally parked within 15 feet of a fire hydrant, in a fire lane, or interferes with entrance or exit from association property.

It is not necessary to wait 96 hours before a car can be towed. If the association has posted the proper signs (see below) at all of its entrances, and the vehicle is in violation of its CC&Rs or parking rules, no 96-hour (4-day) waiting period is necessary. The same applies to towing away inoperative vehicles. If all association internal parking restrictions or rules regarding towing are followed, these vehicles may also be towed away without waiting four days.

NOTE: *While an association may tow an owner’s vehicle for violation of one of the association’s parking rules (assuming the proper signs have been posted), the association will want to ensure that the rule was validly adopted. The rule adoption procedures are set forth in Civil Code sections 4340 through 4370, which require the proposed rule to be disseminated to the membership for the minimum 30-day review period before adoption at an open meeting of the board. Within 15 days of adopting the policy, the board must deliver notice of the adoption of the new rule to all members.*

The Towing Process

While the above sets forth the instances when an association is authorized to have a vehicle towed, the PROCESS for the actual act of towing is outlined below. No car may be towed from association property unless:

1. A written authorization from an employee or agent of the association has been given to the tow company. This authorization must provide:
 - a. The make, model, vehicle identification number and license plate for the car to be towed; **AND**
 - b. The name, signature, job title, address (residential or business) and telephone number of the association employee or agent; **AND**
 - c. The grounds for removal of the vehicle; **AND**
 - d. The time when the vehicle parking violation was observed; **AND**
 - e. The time that the authorization to tow was given.
2. The association employee or agent must be present on the association property at the time of the tow. This does not mean the authorizing individual has to be

standing next to the car that is towed. He or she simply has to be somewhere on the association grounds.

3. The association employee or agent must notify the police within one hour of issuing the authorization to tow.

NOTE: *The person filling out the authorization does not have to be an association member; a security company employee can act as the agent of the association.*

Exception to Requirement of “Written Authorization”

There is an important exception to the requirement that a specific authorization to tow be issued before towing a vehicle. The fourth instance under “When May an Association Tow?” (when it is parked within 15 feet of a hydrant, in a fire lane, or blocking an entrance or exit from the association), does not require an authorization to tow. Instead, the association may provide its towing company, in advance, with a “General Authorization to Tow.” If such an authorization is given, a tow company may tow any vehicle parked in violation of these three categories without any further involvement of the association. This, of course, assumes that the association has installed the permanent signs at all entrances meeting the requirements of Vehicle Code section 22658.

Sign Requirements

We recommend that the association have installed in plain view at all entrances to the property signs that meet the following specifications:

1. Not less than 17 inches by 22 inches with lettering not less than one inch in height;
2. State that public parking is prohibited and warning that vehicles in violation will be removed at the owner’s expense;
3. State the telephone number of the local police department;
4. State the name and telephone number of each towing company that the association has authorized to tow cars from the premises.

Please note that Vehicle Code section 22658 sets forth

a series of penalties for not following all of its terms, including a \$2,500 fine and payment to the owner of four times the amount of the towing and storage charges for a towed vehicle. As a result, associations should scrupulously adhere to the procedures set forth in the Code. Many towing companies have adopted contracts which are designed to shield them from liability, particularly because violations can constitute misdemeanor offenses. It is therefore important that the association and its selected towing companies are in complete agreement as to how each must proceed to follow the laws governing towing. The association should attempt to require that the towing company indemnify it for any claims against the association due to actions of the towing company, however, many towing companies’ contracts seek to have the association indemnify them. Careful attention is required before associations sign any agreements or authorizations with towing companies – consult with legal counsel beforehand if you have any questions or concerns.

Conclusion

We believe it is widely accepted that many common interest developments suffer from a shortage of parking, and this shortage results in people repeatedly parking where they are not supposed to. In our experience, the towing of the offending vehicle in strict compliance with the procedures set forth above usually solves the problem, whereas levying fines for parking violations often go uncollected and are of little benefit. If an association opts to wait four days prior to towing, that vehicle can easily be moved allowing its owner to freely commit the same violation repeatedly. Enforced in this delayed fashion, parking rules are not really enforced at all and become, in most cases, ineffective.

The decision to tow is discretionary as is the decision to tow without notice. Associations are also free to adopt a series of warning measures that can be given prior to actual towing and may also adopt a grace period. However, if your parking rules set up a byzantine system of warnings, tickets and grace periods, they may be taken advantage of by those who choose to disregard the association’s efforts at fairly administering its limited parking resources. If you want an effective means for managing your parking, Vehicle Code section 22658 is a powerful tool that should not be ignored.