

**To: Chief Heather Fong, San Francisco Police Department  
Dennis Herrera, San Francisco City Attorney**

**From: American Civil Liberties Union of Northern California  
Asian Law Caucus  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
San Francisco Immigrant Rights Defense Committee<sup>1</sup>**

**Date: June 8, 2009**

**Re: Policy Recommendations Concerning Vehicle Tows and Impoundments**

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This memorandum presents several recommendations concerning the San Francisco Police Department's ("SFPD") vehicle towing and impoundment policies.

Currently, SFPD General Order 9.06 requires mandatory towing of vehicles driven by a driver without a valid driver's license, which often results in the impounding of vehicles for thirty days. The resulting impoundment fees can accumulate to several thousand dollars, which in many cases exceed the value of vehicle. Impoundment thus can effectively constitute a civil forfeiture, permanently depriving the owner of his or her vehicle when someone is found to be driving the vehicle without a valid license. In addition to exorbitant towing and impoundment fees, vehicle owners are deprived of their cars during the impoundment period, which can prevent the owners from commuting to work, taking their children to school or doing any of other tasks for which a car has become essential in today's society. For individuals forced to live in their cars, impoundment can mean the loss of their home and all their possessions.

SFPD's policy has had a particularly harsh impact on poor and immigrant residents in San Francisco who are either unable to afford the costs of a valid California driver's license or cannot obtain a California license under California law, which requires proof of legal immigration status. Additionally, SFPD has engaged in heightened traffic enforcement in communities in which predominately poor and minority residents reside, such as the Tenderloin, Mission, and Bayview districts, resulting in an increased likelihood that these communities will be subject to impoundments under SFPD's current policies. Numerous complaints have been reported to the SFPD and/or are pending with the Office of Citizen Complaints ("OCC") regarding the impact of the SFPD impoundment policy on immigrant residents. For example, in one case, an immigrant resident, who has a valid Oregon driver's license, had his car impounded

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<sup>1</sup> The San Francisco Immigrant Rights Defense Committee is a growing alliance of immigrant rights advocates, labor groups, faith leaders, youth advocates, and LGBT activists. The Committee includes the African Immigrant and Refugee Resource Center, ALDI, American Immigration Lawyers Association of Northern California, Arab Resource and Organizing Center, Asian Law Caucus, Asian Youth Advocacy Network, Bay Area Immigrant Rights Coalition, Central American Resource Center, Chinese for Affirmative Action, Communities United Against Violence, Dolores Street Community Services, EBASE, Global Exchange, H.O.M.E.Y., Filipino Community Center, Immigrant Legal Resource Center, Instituto Familiar de la Raza, La Raza Centro Legal, La Voz Latina, Legal Services for Children, Mission Neighborhood Health Center, Movement for Unconditional Amnesty, Mujeres Unidas y Activas, National Lawyers Guild--San Francisco Chapter, PODER, POWER, Pride at Work, SF Immigrant Legal & Education Network, SF Labor Council, SFOP, St. Peter's Housing, Tenderloin Housing Clinic, Worker Immigrant Rights Coalition, and Young Workers United.

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by SFPD for driving without a valid California license after he called SFPD for assistance when a fire truck struck his vehicle, even though his vehicle was still fully operable. Other complaints from residents include licensed Latino drivers who were pulled over by SFPD officers solely to determine if they had a valid license.

The following policy proposals will address a number of the concerns that have been raised by community members while remaining consistent with the California Vehicle Code and California and federal case law.

**1. Amend SFPD General Order 9.06 to reflect that the decision to either impound or store a vehicle may only be made when the vehicle presents a traffic or public safety concern.**

In exercising its discretion to impound or store vehicles, SFPD is at all times constrained by the Fourth Amendment's prohibition on unreasonable seizures. A seizure conducted without a warrant – such as impounding a vehicle for unlicensed driving – is “*per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions.” *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993) (internal quotation marks and citations omitted). With regard to vehicle impoundment, the Ninth Circuit has recognized that the only applicable exception is the “community caretaking doctrine,” which “allows the police to impound where necessary to ensure that the location or operation of vehicles does not jeopardize the public safety.” *Miranda v. City of Cornelius*, 429 F.3d 858, 860 (9th Cir. 2005); *see also United States v. Caseres*, 533 F.3d 1064, 1074 (9th Cir. 2008) (holding that a vehicle can be impounded under Cal. Veh. Code § 22651 “only if impoundment serves some ‘community caretaking function.’”).

Under the community caretaking doctrine, the police may impound a vehicle where the vehicle presents a traffic or public safety concern, and the driver cannot lawfully operate the vehicle to move it to a safe location. *Miranda*, 429 F.3d at 865. However, a driver's lack of a valid license is not sufficient by itself to justify impoundment absent traffic or public safety concerns. *Id.*; *Caseres*, 533 F.3d at 1075; *United States v. Duguay*, 93 F.3d 346, 353 (7th Cir. 1996). *Miranda* held that “the deterrence rationale is incompatible with the principles of the community caretaking doctrine. Unlike in civil forfeitures, where the seizure of property penalizes someone who has been convicted of a crime, the purpose of the community caretaking function is to remove vehicles that are presently impeding traffic or creating a hazard. The need to deter a driver's unlawful conduct is by itself insufficient to justify a tow under the ‘caretaker’ rationale.” 429 F.3d at 866.

“Whether an impoundment is warranted under this community caretaking doctrine depends on the location of the vehicle and the police officers’ duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft.” *Id.* at 1074. In evaluating whether an impoundment satisfied the community caretaking doctrine, courts have looked to several factors including whether the vehicle obstructs traffic, the type of neighborhood in which the vehicle is parked, the vicinity of the vehicle to the driver's home, *whether there is a properly licensed individual available who can lawfully operate the vehicle* and whether the vehicle is likely to be subject to vandalism. *See id.* at 866 (emphasis added); *Caseres*, 533 F.3d at 1075;

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*Duguay*, 93 F.3d at 353; *United States v. Squires*, 456 F.2d 967, 970 (2d Cir. 1972); *People v. Williams*, 145 Cal. App. 4th 756, 762-63 (Cal. App. 2006).

SFPD's mandatory impoundment policy is contrary to this clearly established case law, and places it at risk of liability for violating federal and state law and of investigation by the Attorney General of California. In a recent investigation of the City of Maywood, the Attorney General concluded that Maywood had engaged in a pattern or practice of impounding vehicles in violation of the Fourth Amendment because the impoundments failed to satisfy the community caretaking doctrine. *See* Exhibit 1, IN THE MATTER OF THE INVESTIGATION OF THE CITY OF MAYWOOD POLICE DEPARTMENT 15-17, *available at*, [http://ag.ca.gov/cms\\_attachments/press/pdfs/n1722\\_maywoodreport.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1722_maywoodreport.pdf) (attached). The Attorney General observed that "it is standard police practice for the citing officer to articulate, in the towing and impound documents, the circumstances that led the officer to believe that the impoundment of the vehicle was necessary," but that Maywood's records "revealed a glaring lack of documentation as to its officers' rationale for impounding the vehicles that they seized, as opposed to allowing the vehicles to remain safely parked or to be driven away by a licensed driver." *Id.* at 16. We are concerned that SFPD – like Maywood – currently impounds vehicles in circumstances in which there are no significant traffic or safety concerns that satisfy the community caretaking doctrine.

In order to ensure that vehicle seizures comply with the Fourth Amendment, SFPD should adopt a policy that it will only store or impound where the vehicle presents a traffic hazard, and the driver cannot arrange its release to a properly licensed driver. Such a policy is consistent with SFPD's approach to vehicle seizures where the driver is arrested. *See* SFPD General Order 9.06(II)(A)(1)(d).

**2. Amend SFPD General Order 9.06 to reflect that vehicle tows are not mandatory.**

Under the California Vehicle Code, an officer may have *discretion*, but is certainly *not mandated*, to tow a vehicle where a driver operates a vehicle without a proper license and the vehicle presents a public safety concern. As such, we ask that SFPD General Order 9.06 be amended to clarify that officers are not mandated to tow the vehicles of unlicensed drivers.

SFPD General Order 9.06(II)(A)(2) currently provides in relevant part:

MANDATORY CIRCUMSTANCES. It is the policy of the Department that officers shall tow any vehicle being driven by a person who has had his/her driver license suspended or revoked, or by a person who has never been issued a driver license.

Section 22651 of the California Vehicle Code provides that a peace officer "*may* remove a vehicle" when the officer cites the driver "for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5"<sup>2</sup> (emphasis added). Thus, removal of a vehicle under Section 22651 is not

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<sup>2</sup> Section 12500 prohibits driving without a valid license. *See* Cal. Veh. Code § 12500(a) ("A person may not drive a motor vehicle upon a highway, unless the person then holds a valid driver's license issued under this code, except those persons who are expressly exempted under this code."). Sections 14601, 14601.1, 14601.2, 14601.3, 14601.4,

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mandatory, but rather an officer has the discretion to decide whether to remove a vehicle. See *Posey v. California*, 180 Cal. App. 3d 836, 850 (Cal. App. 1986) (“[W]e find the conclusion inescapable that the inspection and removal [under Section 22651] are acts discretionary in nature. The meaning of the word ‘may’ in the statute is plain. It affords the CHP officer the permissive authority, not an obligatory duty, to remove a vehicle.”); *Bonds v. Cal. ex rel. Cal. Highway Patrol*, 138 Cal. App. 3d 314, 321 (Cal. App. 1982).

Likewise, the authority to impound a vehicle pursuant to Section 14602.6 of the California Vehicle Code is also discretionary. Relying both on legislative history and public policy concerns, the Court of Appeal in *California Highway Patrol v. Superior Court* found that the legislature had not intended for vehicle impoundment to be mandatory. 162 Cal. App. 4th 1144 (Cal. App. 2008). The court also noted that “[o]ne cannot overstate the logistical difficulties that would ensue if all California police officers arresting an individual for driving with a suspended or revoked license were required to impound that individual’s vehicle for 30 days. . . . It is unclear whether towing facilities would have the capacity to impound the substantial number of vehicles affected by a mandatory regulation, let alone for a period of 30 days.” *Id.* at 1154 (internal citation omitted).

SFPD’s current practice of mandatory vehicle impoundments for driving without a valid California license should be revised because under California law, impoundment is not mandatory. In addition, SFPD current policy should be changed because it has a disproportionately adverse impact on low-income and immigrant residents. SFPD should amend its current policy, in accordance with the California Vehicle Code and California law, to make clear that the decision to tow a vehicle is discretionary.

**3. The Vehicle Code authorizes vehicle impoundments for thirty days only for serious driving violations, and not for circumstances in which a driver has an invalid foreign license or an expired license.**

Based on reports from community members, it appears that the SFPD has been impounding vehicles for thirty days when the driver of a vehicle was driving with a foreign or out of state license (*e.g.*, Oregon license, license from a foreign country) or an expired license and the vehicle does not present a public safety concern. However, Section 14602.6 of the California Vehicle Code provides the exclusive authority to impound a vehicle for thirty days, and under this section, a vehicle may be impounded under only very limited circumstances, which do not include a driver who has been issued an out of state or foreign driver’s license.

Section 14602.6 provides:

Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the

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and 14601.5 prohibit driving on a suspended, revoked or restricted license under various circumstances. Section 14604 prohibits a vehicle owner from allowing a driver to operate the vehicle who the owner knows to be unlicensed. Section 22655.5 provides for the removal of a vehicle used in the commission of crime, is itself evidence that a crime has been committed, or contains evidence that a crime has been committed.

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vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

By the plain language of the statute, if a driver was *ever* issued a driver's license, Section 14602.6 does not apply. The term "driver's license" in Section 14602.6 refers to licenses issued by either California or a foreign jurisdiction. The California Vehicle Code defines "driver's license" as "a valid license to drive the type of motor vehicle or combination of vehicles for which a person is licensed under this code *or by a foreign jurisdiction.*" Cal. Veh. Code § 310 (emphasis added). Accordingly, the phrase "without ever having been issued a driver's license" in 14602.6 means that the driver had *never* been licensed "under this code" or "by a foreign jurisdiction." As a result, Section 14602.6 does not permit impounding a vehicle for thirty days if a driver has ever been issued a driver's license, including an out of state or foreign driver's license.

Likewise, the General Order should reflect the fact that Section 14602.6 does not apply to expired licenses. The terms "revoked" or "suspended" in 14602.6 cannot be read to cover driving with an expired license. Suspension and revocation of a driver's license are punishments imposed for serious criminal offenses. The offenses for which suspension and revocation can be imposed are listed in a separate chapter of the Vehicle Code entitled "Suspension or Revocation of Licenses" and include such crimes as vehicular homicide, assault or driving under the influence, "road rage," or engaging in a speed contest. *See* Cal. Veh. Code §§ 13200, 13201, 13350, 13351, 13351.8, 13352. By contrast, the "expiration" of a driver's license is not punitive in nature. The Vehicle Code provides that – in most cases – a driver's license expires automatically every six years. Cal. Veh. Code 13002(a).

Therefore, SFPD should clarify its General Order to inform officers that the Vehicle Code authorizes impoundment for thirty days only for the serious offenses listed in Section 14602.6 when the vehicle also presents a public safety concern.

**4. Clarify that vehicles may not be stopped for the sole reason of determining whether the driver is properly licensed.**

SFPD should adopt clear policies that prohibit stopping a vehicle on the mere suspicion that the driver is unlicensed, arresting a driver for unlicensed driving or conducting checkpoints solely to identify unlicensed drivers. Such practices violate California law, disproportionately impact poor and minority members of our community, and can lead to discriminatory, pretextual stops.

The Vehicle Code prohibits both stopping a vehicle and arresting a driver merely because the officer believes the driver is unlicensed. Vehicle Code Section 14607.6(b) prohibits officers from stopping a vehicle "for the sole reason of determining whether the driver is properly

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licensed.” Likewise, Vehicle Code Section 12801.5(e) provides that “a peace officer may not detain or arrest a person solely on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person driving is under the age of 16 years.” Section 12801.5(e) “prohibits arresting someone solely for being an unlicensed driver.” *Bingham v. City of Manhattan Beach*, 341 F.3d 939, 950 (9th Cir. 2003).

SFPD should ensure compliance with these laws by clearly prohibiting its officers from stopping vehicles for the sole reason of determining whether the driver is properly licensed or conducting checkpoints solely to find unlicensed drivers. Additionally, SFPD should require that its officers articulate with sufficient detail in their reports the facts supporting reasonable suspicion for a vehicle stop, as well as maintain adequate racial and ethnic data for each vehicle stop.

Moreover, SFPD should remove the traffic enforcement strategy from the Violence Reduction Program. Aggressive traffic enforcement, which has included pulling over drivers to determine if they have a license, has had a disparate impact on communities of color who reside in the zones of enforcement (*e.g.*, the Tenderloin, Bayview, and Mission districts), and is not related to the reduction of violence in communities. Moreover, aggressive traffic enforcement for minor matters, such as driving without a license, strains the relationship between residents and SFPD; and thereby, reduces the likelihood that residents who are witnesses or victims of crime will come forward to report crimes or cooperate with investigations.

**5. Create practical alternatives to vehicle impoundment.**

In addition to ensuring its compliance with state and federal law, when a vehicle must be taken into custody pursuant to state law, SFPD should adopt the following policies to alleviate the unnecessarily harsh burdens of vehicle impoundments on community members.

**A. Allow an opportunity for a licensed driver to take possession of vehicle.**

If a properly licensed driver is present or can be summoned promptly, allow the licensed driver to remove the vehicle to a place of safety.

SFPD currently allows a twenty minute waiting period for the owner of a vehicle to retrieve the vehicle in other situations. As set forth in SFPD General Order 9.06(II)(B)(2), when a stolen vehicle is recovered, SFPD’s policy is to attempt to contact the registered owner of the vehicle, and wait by the vehicle for twenty minutes to allow the owner to pick up the car. Moreover, pursuant to SFPD General Order 9.06(III)(D), in the event that the operator of a vehicle which is being towed arrives after a tow truck has made the hookup, but before the towed vehicle has entered the flow of traffic, the vehicle shall be returned to the operator at no charge.

The City of Maywood has already passed a resolution in response to numerous complaints involving discriminatory practices. *See* Exhibit 2 (attached). Pursuant to this resolution, officers cannot impound a vehicle if the driver can independently secure the prompt removal of the vehicle to a secure area.

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We ask that this same practice be applied to situations in which an officer decides to either store or impound a vehicle and that the SFPD General Order be amended accordingly.

**B. If a properly licensed driver cannot be located to take possession of the vehicle, allow the vehicle's driver to either have the vehicle towed to a safe location or leave the vehicle in a location that does not present a public safety concern.**

If a properly licensed driver cannot be located, allow the driver to have the vehicle towed to the vehicle owner's home or other safe location at the owner's expense. Such a policy is consistent with the community caretaking doctrine and would avoid the significant time, expense and hassle of retrieving a vehicle from a storage lot.

**C. Store a vehicle rather than impounding it.**

In the event that an SFPD officer decides to use his or her discretion to remove a vehicle because of a public safety concern, the officer should have the vehicle temporarily stored rather than impounded. Temporarily storing the vehicle, rather than officially impounding it, would significantly reduce the adverse consequences resulting from SFPD's current practice. Currently, low-income residents whose vehicles have been impounded by SFPD have had to pay thousands of dollars in fees, which sometimes surpass the value of the vehicle and, as a result, have led to forfeiture of the vehicle and subsequent loss of employment.

Unlike Section 14602.6 of the California Vehicle Code, a vehicle stored pursuant to 22651(p) of the Vehicle Code is not required to be held for any statutorily specified amount of time. Instead, a stored vehicle is available for immediate release "upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court." Cal. Veh. Code § 22651(p). For example, in *Cal. Highway Patrol v. Sup. Ct.*, the police marked the driver's "car as 'stored' (as opposed to 'impounded')" and allowed the driver's mother to retrieve the vehicle that same day. 162 Cal. App. 4th at 1149.

Accordingly, in the limited circumstances in which an officer determines that removal of a vehicle is warranted for public safety reasons, SFPD policy should require the officer to store the vehicle pursuant to Section 22651, rather than impounding the vehicle pursuant to Section 14602.6. Impoundment should be reserved for serious violations per Section 14602.6.

**D. If a vehicle may be subject to vandalism, allow the vehicle owner to sign a waiver releasing SFPD from any liability.**

If a properly licensed driver cannot be located and the officer is concerned that the vehicle may be subject to vandalism, allow the vehicle owner to sign a waiver releasing SFPD from any liability should the vehicle be vandalized.

SFPD cannot be held liable for vandalism to vehicles that SFPD determines in its discretion not to impound. *California Highway Patrol v. Superior Court* holds that an officer cannot be held liable for damage later caused by a car the officer decides not to impound because

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Section 14602.6 does not mandate the impoundment of a car driven by an unlicensed driver. 162 Cal. App. 4th at 1144. Likewise, SFPD is under no constitutional obligation to ensure the safe-keeping of cars it decides not to impound. *Deshaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 195-97 (1989) (holding that because “the Due Process Clause does not require the State to provide its citizens with particular protective services, it follows that the State cannot be held liable under the Clause for injuries that could have been averted had it chosen to provide them.”). Accordingly, SFPD is not at risk of being held liable for vandalism to a car that it determines in its discretion not to impound.

However, if SFPD remains concerned about exposure to liability for vandalism, SFPD should allow the vehicle owner to sign a waiver releasing SFPD from any liability should the vehicle be vandalized, rather than impounding the car to prevent the possibility of vandalism. There is little reason to impound a vehicle to protect it from vandalism if the vehicle’s owner is willing to sign a waiver releasing SFPD from any liability. A waiver would save the officer the time and effort of arranging the towing of the vehicle, and save the vehicle owner the significant expense of storage or impoundment. This is especially true since the cost of impoundment more often than not is greater than the cost of repairs for vandalism.

**6. Broaden factors allowing for mitigation of consequences of vehicle impoundments.**

If SFPD does impound a vehicle in a situation where it is required by state law, SFPD should allow the fees to be waived or significantly reduced where the driver can demonstrate financial hardship. This would reduce the harm caused by the vehicle impoundment on low-income residents who simply cannot afford to pay the substantial impoundment fees that in some cases can amount to thousands of dollars.

Under Section 14602.6(b) of the California Vehicle Code, the registered and legal owner of a seized vehicle “shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage.” Cal. Veh. Code § 14602.6(b). Although Section 14602.6 enumerates a number of reasons for early release of an impounded vehicle, courts have held that this list is not exhaustive and have allowed mitigating circumstances in storage hearings for reasons not enumerated under Sections 14602.6 and 14607.6. *See Smith v. Santa Rosa Police Dep’t*, 97 Cal. App. 4th 546 (Cal. App. 2002); *People v. One, 1986 Cadillac Deville*, 70 Cal. App. 4th 157, 159 (Cal. App. 1999). In *Smith*, the owner of a vehicle challenged a thirty-day impoundment of his vehicle by arguing that he did not know his grandson’s driver’s license had been suspended and that the impoundment fees for the vehicle exceeded the value of the vehicle. During the storage hearing, the officer denied Smith’s request to release his vehicle because Smith did not make a reasonable effort to determine whether his grandson had a valid license. *See id.* On appeal, the court ruled in favor of Smith, reasoning that considerations outside those listed in Section 14602.6 could constitute a mitigating circumstance by reviewing the impoundment statutory scheme through the companion statutes of 14602.6. *See id.* at 567-68. The court also took into consideration that “[i]n this case, given the value of the vehicle and the costs of storage, application of the thirty-day storage period of section 14602.6 effects a forfeiture of the vehicle in circumstances where the registered owner did not know the license of the driver to whom he loaned his car had been suspended.” *Id.* at 568 (emphasis added). Thus, the court in *Smith* interpreted “mitigating circumstances” in a

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storage hearing to include the effect of forfeiture on the owner of a vehicle when the cost of storage exceeds the value of the vehicle.

Another mitigating factor that should be considered is whether “there is a community property interest in the vehicle . . . and the vehicle is the only vehicle available to the driver’s immediate family,” as provided under Section 14607.6 . *See* Cal. Veh. Code § 14607.6(d)(2). Thus, in addition to considering whether the impoundment constitutes a forfeiture of the vehicle, the impact of impoundment on a family should be considered, and a vehicle should be released if it is the only vehicle available to a driver’s immediate family.

# **EXHIBIT 1**

STATE OF CALIFORNIA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF THE  
INVESTIGATION OF THE CITY OF  
MAYWOOD POLICE DEPARTMENT

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ATTORNEY GENERAL'S FINAL REPORT  
MARCH 2009

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## INTRODUCTION

In March 2007, in response to a request from then Assembly Speaker Fabian Nunez, Attorney General Edmund G. Brown Jr. directed the Civil Rights Enforcement Section to conduct an investigation to determine whether the City of Maywood Police Department has engaged in a pattern or practice of conduct that deprives persons of "rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California." (Civ. Code, § 52.3.)

The investigation was commenced in April 2007 and was concluded in August 2008. The Civil Rights Enforcement Section was assisted by Special Agents and other staff from the Division of Law Enforcement, Bureau of Criminal Investigation and Intelligence, and a national expert in contemporary police practices, Joseph Brann.

Between August 2008 and February 2009, the City Council's efforts to reform the policies and practices of the Police Department were monitored in order to evaluate whether and to what extent the Attorney General's participation in the effort to reform the Police Department might be necessary. Importantly, the City Council hired a permanent Chief of Police in October 2008. For almost two years prior to that action, the Department was headed by an Interim Chief of Police. Discussions and meetings with the new Chief of Police have been ongoing in the effort to obtain information on the current status of the Department and the City's and the Chief's efforts to reform its policies and practices. While many problem officers have departed the Department since the initiation of our investigation, use of excessive force has subsided, and revision of the Department's written policies and procedures is in progress, the underlying structural and cultural causes of many of the deficiencies identified in this Final Report have not been remedied. The attempt to reform the Department is in its infancy.

During the course of the investigation, well in excess of thirty thousand pages of documents including the Maywood Police Department's written policies and procedures, personnel files, use of force reports, arrest reports, Internal Affairs investigation files, citizen complaints, vehicle impound records, training files, armory inventory reports, vendor records, California Commission on Peace Officer Standards and Training (POST) audit reports, and civil lawsuits filed against the City of Maywood for alleged misconduct by Maywood Police Department personnel were reviewed and analyzed. These documents covered the period from January 2002 to April 2007. Interviews were conducted of former and current sworn and non sworn Maywood Police Department personnel, current and former City of Maywood administrative personnel, City of Maywood City Council members, the City Manager of Cudahy, California, private civil rights attorneys who represented or are representing alleged victims of civil rights violations by Maywood Police Department sworn personnel, alleged victims of civil rights violations by Maywood Police Department officers, and other residents of the City of Maywood who have expressed concern about the policies, practices and conduct of the Maywood Police Department. A total of sixty-four witness interviews were conducted.

Most witnesses interviewed were helpful and candid. However, difficulty was experienced in securing the interviews of a significant number of alleged victims of officer misconduct. This was the case even where we secured the assistance of private civil rights attorneys with whom these individuals had contact. The failure to secure the cooperation of these witnesses may be due in part to their fear of law enforcement generally and the fact that some of these individuals may be undocumented.

Additionally, the Civil Rights Enforcement Section was unable to secure the interviews of several Maywood Police Department police officers who repeatedly were reported by witnesses interviewed to be "good guys." The refusal of these officers to be interviewed evidences a code of silence that substantially contributes to the deficiencies found in the Maywood Police Department's organizational culture, systems, policies and practices that will be discussed in this report.

Based upon the information and evidence gathered during this investigation, the Attorney General concludes that, during the period from January 2002 to March 2007, the Maywood Police Department engaged in a pattern or practice of conduct that deprived persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California.<sup>1</sup> He further concludes that such conduct was caused by a number of factors including the following:

- The Maywood City Council has failed to monitor and provide oversight of the Maywood Police Department.
- No City of Maywood administrative employee has adequately monitored or provided effective oversight of the Maywood Police Department.
- The Maywood City Council has failed to recruit and retain permanent Chiefs of Police with the qualifications and experience necessary to competently manage the Maywood Police Department.
- The Maywood Police Department has failed to consistently follow generally accepted hiring practices in evaluating applicants for the position of police officer and has failed to screen out and disqualify individuals who are not suited to perform the duties of a peace officer.
- The Maywood Police Department does not maintain adequate written policies and procedures to ensure that the police services it provides are delivered in a manner that is consistent with applicable laws and contemporary police practices.

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<sup>1</sup> It is significant that, as of August 2008, there were 14 privately-filed civil actions pending against the City that allege Maywood Police Department sworn personnel engaged in misconduct such as false arrests, excessive force and sexual assault.

- The Maywood Police Department has failed to ensure that officers consistently prepare and submit use of force reports where reportable uses of force have occurred, and supervisors and managers often have failed to review and sign off on reports that have been prepared and submitted.
- The Maywood Police Department has failed to provide adequate training to its sworn personnel to ensure that they are capable of performing the duties of a peace officer consistent with Department policies and procedures and all applicable laws.
- The Maywood Police Department has failed to consistently accept and investigate citizen complaints as required by California law.
- The Maywood Police Department routinely has accepted poor and insufficient report writing by officers. Reports often fail to adequately document the probable cause for an arrest or the reasonable suspicion to support the detention and/or search of a suspect.
- The Maywood Police Department has failed to adopt and implement an Early Intervention System to identify police officers who, because of their conduct, have demonstrated the need for intervention to address and deter inappropriate or unlawful behavior.
- The Maywood Police Department uses Sergeants to supervise officers in the field and serve simultaneously as Watch Commanders. Such practice results in inadequate supervision of its sworn personnel and the inability to effectively manage incidents in the field.
- The Maywood Police Department suffers from a serious lack of accountability. Officers are not held accountable by their Sergeants for failure to conform their conduct to applicable policies, procedures and law, and the Sergeants are not held accountable by managers in the Department for their failure to adequately supervise those under their command.
- The culture of the Maywood Police Department is one permeated with sexual innuendo, harassment, vulgarity, discourtesy to members of the public as well as among officers, and a lack of cultural, racial and ethnic sensitivity and respect.
- There is little evidence of a good faith effort to embrace and implement a community-oriented policing philosophy that accepts and engages the public as co-producers of public safety.

## BACKGROUND

The City of Maywood is located in the southeast section of the County of Los Angeles. It is approximately one square mile in size. Its estimated population is 28,381.<sup>2</sup> However, it reportedly has a significant population of undocumented residents and its true population is likely much higher.<sup>3</sup> It is reportedly the most densely populated city in California and the most densely populated city in the United States outside the New York City metropolitan area.<sup>4</sup> In addition to patrolling and enforcing the law in the City of Maywood, the Maywood Police Department provides, pursuant to a contract, services to the City of Cudahy, California. Cudahy does not border Maywood. Maywood is bordered by Bell to the north and south, Vernon to the north and west, Huntington Park to the west and Commerce to the east.<sup>5</sup> Cudahy's population is estimated to be 24,516, and it is approximately one square mile in size. Both Maywood and Cudahy have a predominant Latino population.

The City of Maywood Police Department is authorized to employ 45 sworn personnel. It is headed by a Chief of Police. At times, the Maywood Police Department has maintained a Captain or a Commander position, but has not consistently filled that position. Currently, the City has authorized a Captain position, but it is not yet filled. The Maywood Police Department maintains one Lieutenant position. It has nine authorized Sergeant positions and six of those are currently filled.

The Maywood Police Department's budget for fiscal year 2008/2009 is \$8.3 million. Of that sum, \$2.9 million comes from its contract with the City of Cudahy.

The City of Maywood is governed by a City Council of five members who are elected at-large. From its membership, the Council appoints members of the Council to serve as Mayor and Vice Mayor. Those positions are ceremonial. However, information gathered during the course of the investigation suggests that many of those who have held these positions often directed City of Maywood personnel to act on decisions and policies that they personally wished to pursue. Accordingly, these elected positions have not necessarily been ceremonial at all times. However, in a special election held in December 2008, the voters enacted an ordinance that is intended to prohibit individual members of the City Council from directing city personnel and making it clear that instruction to such personnel will come only from the Chief Administrative Officer who takes his or her instruction and orders only from the City Council when sitting in a duly convened meeting of the Council.

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<sup>2</sup> Estimated population as of July, 2007, per U.S. Census Bureau. (See <http://www.census.gov/popest/cities/tables/SUB-EST2007-04-06.xls>.)

<sup>3</sup> One such estimate is 40,000 and another places the population at 60,000.

<sup>4</sup> [http://en.wikipedia.org/wiki/Maywood,\\_California#Geography](http://en.wikipedia.org/wiki/Maywood,_California#Geography).

<sup>5</sup> For a map, see <http://www.laalmanac.com/geography/gc30ba.htm>.

Attendance at City Council meetings has varied over the years. While attendance has been generally low, in recent years controversy over the policies and practices of the Maywood Police Department has generated Council meetings that have been well-attended and contentious.

Voter participation in the City of Maywood varies. In the last general election for City Council held in November 2007, there were 6,447 registered voters in the City. Two Council seats were filled. Voters were allowed to vote for a maximum of two candidates. A total of 4,072 votes were cast. If each voter voted for two candidates, voter turnout was 32%. In the November 2005 election for City Council, three Council seats were up for election. Voters were allowed to vote for up to three candidates. There were 5,858 voters registered for this election. A total of 8,358 votes were cast. Assuming each voter voted for three candidates, the voter turnout was 48%. This higher voter turnout was likely due to the significant public controversy over the Maywood Police Department's aggressive towing and impounding of motor vehicles. It was this controversy and allegations of excessive force that led to the request for the initiation of this investigation.

A special election was held in December 2008 on the recall of three of the five City Council members including the then Mayor and Vice Mayor. The recall was spurred by an incident, in February 2008, when these three council members voted to hire, without first securing a background check, a former police officer who was convicted of falsifying overtime records while employed by the Los Angeles Police Department. Although this hiring decision was subsequently nullified, an effort to recall these three council members was launched. Ultimately, the voters determined to not remove the council members who were recalled. Approximately, 30.17 percent of the City's 7,470 registered voters cast ballots in this special election. Three council members' terms of office will expire later this year. One of these council members faces a quo warranto action to remove him from office for simultaneously holding two incompatible offices. On May 27, 2008, the Attorney General granted the Los Angeles County District Attorney leave to sue in quo warranto to resolve the question of whether the subject council member may continue to serve in both offices.<sup>6</sup> The District Attorney has not yet filed that action. An election to fill these three seats will be held in November 2009.

## **PATTERN OR PRACTICE OF CIVIL RIGHTS VIOLATIONS**

### **Excessive Force - Due Process and Unreasonable Search and Seizure Violations**

The investigation documented a troubling pattern or practice of the use of excessive force by Maywood Police Department officers. The identities of specific officers with a reputation for using excessive force on individuals encountered during the course of their official duties were consistently repeated to the investigation team by Police Department personnel, private citizens, community activists and city officials. Despite the well-known reputation of these officers, the evidence gathered during the investigation documents a disturbing lack of action by Police Department management to address this problem. Citizens complaining about the use of excessive force on them often were refused their right to file a written complaint. When

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<sup>6</sup> 91 Ops.Cal.Atty.Gen. 25 (2008).

complaints were accepted, the complaints were often either poorly investigated or not investigated at all. Unfortunately, when misconduct was confirmed, the statute of limitations applicable to the imposition of administrative discipline sometimes had expired. This compromises and negates the agency's ability to impose discipline and take corrective actions that have meaningful consequences.

There is a conspicuous absence of use of force reports in many Maywood Police Department files for incidents where force was deployed by Maywood police officers. This is so despite the fact that the Department's written policy is quite clear that a use of force report must be completed whenever force is used. During the course of one internal affairs investigation, one officer boldly asserted that, although the written policy requires the submission of a use of force report whenever a reportable use of force occurs, in practice a report need only be filed if the suspect's injury is not minor.

During the course of the investigation, a Maywood Police Department officer was charged by the Los Angeles County District Attorney with using excessive force on an in-custody and handcuffed suspect in May 2004 and falsifying the report he submitted to document the incident. While the officer's first trial resulted in a hung jury, he was retried and convicted of both charges. He is now serving his sentence. It should be noted that the Maywood Police Department did not submit a request that the District Attorney review this matter for possible criminal prosecution until the three-year statute of limitations applicable to the felonies was close to expiring.

Other examples of excessive force uncovered by the investigation include:

- In June 2004, Maywood police officers assaulted a suspect without legal cause or justification. The suspect was arrested for allegedly throwing a bottle at one of the officers. He was repeatedly punched in the face with closed fists. Subsequently, after a jury hung on whether to convict him, the charges against him were dismissed. He sued the City of Maywood and several officers and secured a \$350,000 settlement from the City.
- In July 2005, several Maywood police officers, without legal cause or justification, assaulted and beat a father and one of his sons in the course of arresting the father and his two sons for obstructing and resisting a police officer. One son was charged with carrying a loaded firearm. The mother, who was not arrested, was also assaulted by an officer. Although all three men were criminally charged, they were acquitted by a jury on all charges.
- In March 2006, a driver was stopped for allegedly not having a front license plate and having a cracked windshield, which are infractions. The driver had an expired Class B license but also had a valid Class C license in his possession. Without legal cause or justification, the man was pulled out of the vehicle and handcuffed. He was placed in a Maywood police vehicle for some time with the doors closed and the heater on. When he was placed in the vehicle, the officers

intentionally pushed his head into the door a couple of times. Without probable cause the officers proceeded to search the vehicle and seized two cell phones, approximately \$200 and other miscellaneous items. The vehicle was impounded and the man was arrested for driving without a valid license. He was also cited for improper display of a license plate and operating a vehicle with a defective windshield. He was taken to the Maywood police station where he was placed in a cell and remained handcuffed overnight until the next morning when he was released.

In April 2006, six days after the vehicle was impounded, the man went to the Maywood police station in an attempt to gain release of the vehicle. Maywood police officers refused the request and ejected him and his mother from the station. A short while later, the mother reentered the police station in order to retrieve documents which she and her son believed they had left behind. Subsequently, the man realized that he had the missing documents in his possession and he reentered the station to get his mother. At this time, without any warning and legal cause or justification, a Maywood police officer shot him with a Taser in the lobby of the police station. His mother was then forcibly removed from the station lobby. He was then physically assaulted by a Maywood police officer and taunted with a police dog by another officer. He was arrested for making a terrorist threat and resisting arrest. A charge of resisting and obstructing an officer was subsequently added.

The man was then taken to the Los Angeles County Jail. The next morning he appeared before a judge and was ordered released on his own recognizance. However, instead of being released he was placed in a holding cell with many other inmates. He was later escorted out of the jail through a side entrance. As he exited the building, he was met by the same Maywood officer who had Tased and assaulted him at the Maywood Jail. The officer rearrested him for the same charges for which he had originally been arrested. He was first returned to the Maywood Jail for booking and then was returned to the Los Angeles County Jail. Five days later he was again released on his own recognizance. Ultimately, the man pled guilty to the vehicle equipment infractions, but all other charges filed against him were dismissed. He filed a private civil rights action and, recently, that action was resolved to his satisfaction.

- In June 2006, two young men were attempting to leave the second floor of a night club when, without legal cause or justification, they were assaulted by two Maywood police officers. The assault on one of the individuals included being shot with a Taser in the groin area while handcuffed. Although one of the officers involved reported by radio to the Maywood police station that his life was in jeopardy at the time of the encounter with these two young men, they were not arrested but were released at the scene and never charged with any crime.

- In July 2006, several Maywood police officers, without legal cause or justification, used a Taser on an individual and kicked and punched the individual's face, head and body while he was handcuffed. The individual was charged with four counts of battery on a police officer, resisting arrest, and obstructing and delaying a police officer. The individual, who was a college student, pled no contest in order to get the matter behind him.
- In September 2006, a man was arrested for allegedly obstructing and resisting a police officer who was attempting to remove handcuffs from his wrists in order to release him. While handcuffed and shackled and in a holding cell at the City Jail, the officer kned him in the groin and choked him without legal cause or justification. Later, the officer coerced him into signing a statement apologizing for his conduct. The District Attorney declined to file criminal charges against this citizen.
- In September 2006, Maywood police officers, without legal cause or justification, Tased, assaulted and beat a father and son in front of their home. The incident was triggered when the son witnessed Maywood officers assaulting a man across the street from his home. He asked one of the officers for his badge number. As he wrote the number down, he was assaulted by the officer. Other officers joined in. The assault included being repeatedly shot with a Taser by one of the officers while he was handcuffed. At one point, the father exited the home and yelled "what are you doing to my son." The father was then attacked and assaulted by several officers. Both men were taken to the hospital for medical treatment. They were charged with battery on a police officer, and resisting and obstructing an officer. Eventually, those charges were dismissed.
- In March 2007, a Maywood police officer, without legal cause or justification, assaulted a man in the driveway of the man's home. The man drove up to his home and found a police vehicle blocking his driveway. He then drove up his neighbor's driveway and across his lawn and into his driveway. The officer walked up to the man and forcefully twisted the man's arm behind his back and threw him against a police car. After being held in a police car for an hour, the man was released and cited for driving on the sidewalk. The traffic citation was ultimately dismissed.

#### **Absence of Probable Cause and Reasonable Suspicion - Due Process and Unreasonable Search and Seizure Violations**

Review of arrest reports revealed a pattern of the conspicuous absence of meaningful articulation of probable cause to justify arrests and searches and reasonable suspicion to detain members of the public. There was an evident pattern wherein officers failed to document the reasonable suspicion for the initial contact or probable cause for the arrest. And, in those instances when the officers did document the reasons for the initial stop or the arrest, the documentation was often exceedingly weak. These deficiencies in the officers' reports, coupled with inconsistencies noted

in officers' statements, strongly suggest that the reasons for the contacts and the arrests were often trumped up.

There was also an unusual evident pattern where particular officers stopped or contacted individuals for seemingly minor or unusual reasons, and the stops or contacts escalated into more serious actions. Stops for such reasons as minor Vehicle Code violations or to tell individuals who were already leaving a location to not return are examples of this pattern. In those cases, arrests and use of force incidents that occurred were unnecessary and appeared to be the result of deliberate provocation by the officers involved.

A former Maywood officer who was familiar with the Department's practices stated that Maywood Police Department officers routinely dispensed with probable cause and reasonable suspicion requirements when interfacing with members of the public. More specifically, he was told by his training officers that when he saw someone walking down the street he should stop them and "brace them" (i.e., confront, aggressively question, and search); there was not any interest in establishing probable cause. He also stated that it was common for officers to dispense with pat-down searches; instead, the officers would just go directly into the pockets of the persons detained. It was his view that officers were deliberately disregarding and violating the civil rights of the subjects they contacted. In one specific instance he stated he overheard one officer talking to another officer in the report writing room about how a particular situation actually transpired versus how he documented it in the report.

While the use of force examples set forth above and the sexual assault examples discussed below also serve to illustrate and demonstrate a pattern or practice of failing to establish the required probable cause and reasonable suspicion, one additional example is instructive and is described below.

- In January 2007, two Maywood police officers spotted a group of young men in front of a home. Some of the young men were standing on the sidewalk in front of the home and others were just inside the fence. The officers observed a pedestrian walk into the street and around the young men. Although it was dark, the officers drove up to the young men without their unmarked vehicle lights on. One officer immediately drew his weapon on the young men and ordered all of them down on their knees. The young men were searched and detained for approximately an hour and a half to two hours. During this exceedingly long detention, a parent tried to ascertain why the young men were being detained. She was treated rudely and subjected to a variety of vulgarities by one officer. Eventually, the young men were issued citations for blocking the sidewalk and released. The next day, the officer who issued the citations drove by the same location and called the young men "little bitches." When the young men appeared in court, the citations were dismissed. The officer who issued the citations failed to appear at the court hearing. The prolonged detention and search of these young men were without legal cause or justification.

## **Sexual Assaults/Misconduct - Due Process and Unreasonable Search and Seizure Violations**

The investigation encountered a variety of allegations concerning the sexual conduct of officers while on duty. There were a number of allegations concerning consensual sexual encounters by several Maywood officers while on duty. As these matters do not concern police practice civil rights violations, they were not pursued. However, there were two allegations involving sexual misconduct by two officers where the victims did not consent. Substantial evidence supports these allegations. These incidents are as follows:

- In May 2008, the District Attorney filed a multiple count information charging a Maywood Police Department officer with the sexual assault of three women. The assaults took place in 2006 and 2007 and occurred while the officer was on duty. The assaults all commenced with detentions for which there was no legal cause or justification. In February 2009, following a preliminary hearing, the officer was held to answer seventeen felony counts related to these assaults. The case remains pending.
- In or about February and March 2007, a Maywood police officer engaged in misconduct by sexually harassing and, without their consent, assaulting two young women by touching their breasts or genitalia. In an effort to seek their compliance with his request for sex, he threatened to arrest the women for outstanding warrants.

## **Statutory Violations - Citizen Complaints**

Penal Code section 832.5 requires that each agency employing peace officers establish a complaint procedure to investigate complaints by members of the public against its personnel. The agencies are also required to make a description of the procedure available to the public. The Maywood Police Department's complaint form and procedure were not readily accessible to members of the public. Individuals seeking a complaint form or information would have to request it from an officer or other employee of the Department.

The investigation secured evidence that establishes that the Maywood Police Department often refused to accept complaints from members of the public. This refusal was, at times, passive. An example of passive refusal is that the Sergeant on duty would discourage the member of the public from filing a complaint. Other times, the Sergeant on duty flatly refused to provide a complaint form.

As noted earlier in this report, the investigation found that citizen complaints were sometimes simply not investigated. There were many other instances where the investigations into complaints were superficial and inadequate. In many instances, little or no effort was made to canvas the relevant neighborhood to identify witnesses who could corroborate the alleged victim's or an accused officer's version of the facts. This was true whether the investigation was conducted by the Police Department or by a contractor hired by the Department. Also, often

there was no documentation to confirm that the Chief of Police had reviewed and signed off on the recommended findings and conclusions for these investigations. Additionally, the initiation of an investigation sometimes was delayed for no apparent reason. Delays were sometimes so lengthy that they compromised management's ability to take any corrective action when discipline was warranted.

### **Towing/Impounding of Vehicles - Due Process, Unreasonable Search and Seizure, and Statutory Violations**

A major controversy that led to the request for this investigation was the Maywood Police Department's practice of aggressively stopping motorists within the City of Maywood and impounding their vehicles. The decision to embark on this mission was made in 1999, and was sanctioned by the City Council then in power.

The decision to make this issue an enforcement priority appears to have been motivated by two major concerns—the desires to provide safe streets and roads within the City limits and to raise revenue for the City. The first concern is legitimate. No one can question the fact that unlicensed drivers pose a serious danger. However, the second concern is, at the very least, troublesome. Between February 1, 2002 and April 30, 2007, the Maywood Police Department towed and impounded 17,773 vehicles. The Department impounded 12,136 of those vehicles based on stops it conducted in the City of Maywood. The remaining 5,597 impounds were based on stops the Department conducted in the City of Cudahy. The cities earned a minimum of \$200 per impound.<sup>7</sup> This revenue appears to have been the primary motivation for impounding such an extraordinary number of vehicles. Enforcement priorities that are motivated by the desire to raise revenue for a municipality, however, may result in the redeployment of existing police resources, thereby making it increasingly difficult to address more serious crime problems. And, where an enforcement priority is motivated by the desire to raise revenue, allegations of corruption may arise, as occurred here.

The Maywood Police Department's decision to make the impounding of vehicles such a major organizational priority was implemented, in part, by increasing traffic stops. Some Maywood Police Department witnesses stated that a quota for impounds was imposed on patrol officers. At a minimum, supervisors put pressure on officers to identify and cite unlicensed drivers and to impound their vehicles. But it was the Department's decision to set up traffic checkpoints that created great controversy. The traffic checkpoints commenced in 1999 and continued through sometime between late 2003 and 2004. Witnesses estimated the number of vehicles towed per night at these checkpoints to be in the 70 to 100 range. This estimate has been verified through documents obtained from the City.

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<sup>7</sup>The information provided by the Department reflected the following numbers for impounds of vehicles that occurred in the City of Maywood from February 1, 2002 through April 30, 2007: 2002, 3,059; 2003, 3,114; 2004, 2,195; 2005, 2,672; 2006, 839, and 2007, 257. Due to the fact that the Department's recordkeeping is not very reliable, the actual number of impounds may be higher than these numbers reflect.

The traffic stops and checkpoints generated thousands of citations and impounds of vehicles. (See footnote 7.) Vehicles were impounded even where the vehicle was legally parked, not obstructing the public way, or could be driven away by a licensed driver. Impounded vehicles were subjected to a mandatory, 30-day hold. While there were some exceptions that would occasionally allow for the early release of an impounded vehicle through an appeal hearing procedure, the exceptions were narrow in scope and inconsistently applied. The vast majority of the vehicles remained impounded for the full 30 days and incurred storage fees so high that owners of the vehicles commonly could not afford to pay for the release of their vehicles. The storage and other fees were often at least \$1,200 to \$1,500, payable to a private towing company, the Maywood Club Tow. Often this amount was more than the value of the vehicle.

Between late 2003 and 2004, the checkpoints ceased due to the controversy that they had generated. However, aggressive citation of drivers and impounding of their vehicles continued in the general enforcement of traffic laws. In the fall of 2005, there was an election for City Council. The newly elected Council ordered a substantial revision of this practice that led to a significant reduction in impounds. This was around the time that the City declared itself to be a sanctuary for undocumented persons.

In the course of investigating this impounding of vehicles controversy, many serious public integrity allegations were raised. These allegations focused on the Maywood Club Tow, which had an exclusive contract with the City of Maywood to tow all vehicles ordered impounded by the Maywood Police Department. It has been alleged that the owner of this business provided and paid for Las Vegas trips for members of the Department. It has also been alleged that a number of officers purchased unclaimed impounded vehicles from the tow company. Another allegation is that an officer received a free apartment from the tow company. It was alleged and confirmed by many witnesses that the tow company paid for food and beverages offered by catering trucks and consumed by officers working at the checkpoints. There were more general and nebulous allegations of payoffs to public officials.

These and other public integrity allegations were not pursued because they are beyond the scope of this civil investigation. Any criminal conduct that may have occurred is something that is appropriately left for the District Attorney to consider and determine whether to commit the significant resources that would be required to investigate such allegations.

What is within the scope of this investigation is whether, in implementing an aggressive policy of stopping and citing drivers and impounding their vehicles, the Maywood Police Department violated the Constitution or laws of the United States or the Constitution or laws of California. As discussed in more detail below, the answer to this query is, yes.<sup>8</sup>

In order to evaluate the Maywood Police Department's policies and practices regarding identifying and citing drivers and impounding the vehicles they were driving, interviews of

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<sup>8</sup> There is a privately-filed civil lawsuit pending against the City alleging that the towing and impound practices of the Maywood Police Department during the relevant time period were unconstitutional. That case is currently before the United States Court of Appeals for the Ninth Circuit.

Department personnel, both sworn and non sworn, were taken. However, securing the interviews of those who were cited for driving without a license and had the vehicles they were driving impounded proved to be difficult. Only a few of these individuals were interviewed. The passage of time and the fact that many of the individuals are likely undocumented contributed to this difficulty. As such, the conclusions reached with respect to the Maywood Police Department's aggressive towing of vehicles between 1999 and 2005 are largely based on the more general statements of witnesses employed by the Department during the relevant period, and the Department's failure to require its officers to document, with the necessary degree of detail, the probable suspicion to stop vehicles and the rational justifying the impoundment of the vehicles.

Under the federal constitution, in order to justify an investigative traffic stop, the police must have "reasonable suspicion" to believe that a traffic law has been violated or other criminal conduct is occurring. (*United States v. Lopez-Soto* (9th Cir. 2000) 205 F.3d 1101, 1104-05; see *Delaware v. Prouse* (1979) 440 U.S. 648, 663 [requiring "at least articulable and reasonable suspicion" to support random, investigative traffic stop to check driver's license and registration].)

There is circumstantial evidence to support the conclusion that the Maywood Police Department engaged in a pattern or practice of violating the above constitutional standard by making suspicionless traffic stops. For example, a former Maywood officer acknowledged that the Maywood Police Department conducted traffic stops without reasonable suspicion that a traffic law or other crime had been committed. The former officer stated that some of the Sergeants "were pushing tows" and that officers were told to get at least two tows per shift. This officer also explained that there were officers who would target, for such stops, individuals who appeared to be undocumented. Some officers would call such persons "Mo" for "Mojado" (Spanish slang for undocumented person) and would be heard asking, "how many Mos did you get today?" The former officer described an incident when an officer, noting a car being parked by a Latino woman, commented, "I'm going to get her," and approached the woman for questioning. Though the officer did not cite the woman after finding out that she was licensed, it appears that the woman nevertheless was subjected to an unlawful investigative stop based solely on her ethnicity.

Review of Department impound records and other police reports revealed the repeated failure to articulate, with sufficient detail, the facts supporting reasonable suspicion for stops. When a traffic stop results in a citation and impound, it is standard police practice for the citing officer to note the initial reason for the traffic stop (the applicable code violation and short narrative) in the officer's report. A review was conducted of the Department's records relating to all 164 impound appeals that took place in 2005. The Department's documentation for more than one third of the impounds that were the subjects of these appeals, including its CHP 180s (Vehicle Reports), lacked the above-referenced vital information. Moreover, few drivers who were subjected to impounds were cited for any purported violations that led to the stop; rather, the majority of the citations were issued solely for the violation of driving without a valid driver's license. This lack of information regarding the reasonable suspicion required for the stops is

highly irregular and supports a strong inference that the Maywood Police Department engaged in a pattern or practice of conducting unlawful traffic stops.<sup>9</sup>

Circumstantial evidence also supports the conclusion that the Maywood Police Department engaged in a pattern or practice of violating California law by improperly citing drivers for driving without a valid license. As noted above, in 2005, the majority of the citations underlying the vehicle impounds were issued by the Maywood Police Department for alleged violations of driving without a valid license. (Veh. Code, § 12500.) Some drivers, however, produced a license from another state or Mexico. The information obtained during this investigation strongly suggests that, when citing and impounding vehicles due to the driver's purported failure to have a valid drivers' license, officers routinely failed to take the necessary steps to determine whether the driver was illegally driving with an out-of-state license.

Specifically, in California, a "nonresident over the age of 18 years having in his or her immediate possession a valid driver's license issued by a foreign jurisdiction of which [the driver] is a resident," "may operate a motor vehicle in [California] without obtaining a driver's license under the [California Vehicle] Code." (Veh. Code, § 12502, subd. (a)(1).) For purposes of this rule, "residency shall be determined as a person's state of domicile." (Veh. Code, § 12505, subd. (a)(1).) And, "[s]tate of domicile' means the state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent." (*Ibid.*)<sup>10</sup> Generally, any person entitled to drive with an out-of-state drivers' license, may operate a motor vehicle in California for a period not to exceed 10 days from the date he establishes residence in this State. (Veh. Code, § 12505, subd. (c).) Finally, the "presumption of residency in this state may be rebutted by satisfactory evidence that the licensee's primary residence is in another state." (Veh. Code, § 12505, subd. (b).)

A review of the Maywood Police Department's impound records revealed a complete lack of documentation to establish that the citing officer took any steps to determine whether drivers

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<sup>9</sup> In addition, the Department's stopping of vehicles at fixed checkpoints, activity that ceased sometime between late 2003 and 2004, raises a serious question as to whether the Department's checkpoint program violated state statutory law. Generally, as a matter of constitutional law, checkpoints to identify unlicensed or drunk drivers are not unlawful if executed properly. (See, e.g., *City of Indianapolis v. Edmond* (2000) 531 U.S. 32, 39-41 [observing that the Court has approved checkpoint programs "designed primarily to serve purposes closely related to the . . . necessity of ensuring roadway safety," and recognizing that checkpoints to verify licensure and vehicle registration would be permissible]; *Mich. Dep't of State Police v. Sitz* (1990) 496 U.S. 444, 447 [upholding sobriety checkpoints].) However, checkpoints aimed solely to identify unlicensed drivers violate Vehicle Code section 14607.6. That section provides that an officer "shall not stop a vehicle for the sole reason of determining whether the driver is properly licensed." (Veh. Code, § 14607.6, subd. (b).) While the Department maintained that the checkpoints were instituted, at least in part, as sobriety checkpoints, the evidence does not support that was the Department's motive or purpose for the checkpoints. Rather, circumstantial evidence supports the conclusion that the checkpoints were conducted to identify drivers who were operating vehicles without valid California driver's licenses.

<sup>10</sup> "Prima facie evidence of residency for driver's licensing purposes includes, but is not limited to, the following: (A) Address where registered to vote. (B) Payment of resident tuition at a public institution of higher education. (C) Filing a homeowner's property tax exemption. (D) Other acts, occurrences, or events that indicate presence in the state is more than temporary or transient." (Veh. Code, § 12505, subd. (a)(1).)

were lawfully operating their vehicles with out-of-state licenses. Specifically, there was no indication that the officers who conducted the stops made any inquiries regarding the location of the drivers' "true, fixed, and permanent home and principle residence," before issuing the citation and impounding the vehicle. The inclusion of such information in the Police Department's records should be routine, however, that was not the practice of the Department. Moreover, there is evidence that suggests the Department's failure to engage in a proper inquiry led to a number of improper citations and impounds. According to one source, a Maywood sworn employee with intimate knowledge of the Department's impound policies and procedures and, specifically, the impound hearings, stated the production of a driver's license of another jurisdiction, such as Mexico or another state, including the states of Washington, Oregon or Indiana, was a common reason for early release of an impounded vehicle. In those cases, had the officer conducted a proper inquiry at the time of the stop, it appears likely that many of those drivers would have been spared being issued an unnecessary and unlawful citation and impound of their vehicles.

Lastly, a serious question remains as to whether the Maywood Police Department engaged in a pattern and practice of impounding vehicles in violation of the constitutional right against unreasonable seizures. The Maywood Police Department typically cited Vehicle Code section 14607.6, subdivision (c)(1)<sup>11</sup> and section 14602.6, subdivision (a)<sup>12</sup> to justify its policy of impounding, for 30 days, the vehicle operated by any driver who did not possess a valid California driver's license. The evidence gathered during this investigation supports the conclusion that when impounding vehicles pursuant to these two statutes, the Department routinely failed to satisfy the "community caretaking doctrine," one of the "few specifically established and well delineated exceptions" to the Fourth Amendment prohibition against warrantless seizures, including the impoundment of a vehicle. (See *Miranda v. City of Cornelius* (*Miranda*) (9th Cir. 2005) 429 F.3d 858, 862; see also *United States v. Duguay* (7<sup>th</sup> Cir. 1996) 93 F.3d 346, 352-353.)

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<sup>11</sup>During the period relevant to this investigation, Vehicle Code section 14607.6, subdivision (c)(1) provided that, "[i]f a driver is unable to produce a valid driver's license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed. Prior to impounding a vehicle, a peace officer shall attempt to verify the license status of a driver who claims to be properly licensed but is unable to produce the license on demand of the peace officer." This statute, however, does not authorize the 30-day impound that the Maywood Police Department routinely applied to the vehicles it seized. Rather, 30-day impounds are governed by Vehicle Code section 14602.6, discussed *infra*.

<sup>12</sup>Vehicle Code section 14602.6, subdivision (a) provided in relevant part, during the period covered by this investigation, that whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked or "without ever having been issued" a driver's license, "the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days." An officer's authority to impound a vehicle under this statute is discretionary. (*California Highway Patrol v. Superior Court* (2008) 162 Cal.App.4th 1144, 1148.)

Under the community caretaking doctrine, an officer may only impound a vehicle if “necessary to ensure that the location or operation of vehicles does not jeopardize the public safety.” (*Miranda, supra*, at pp. 860.) An impoundment may be proper under this doctrine, “if the driver’s violation of a vehicle regulation prevents the driver from lawfully operating the vehicle, and also if it is necessary to remove the vehicle from an exposed or public location.” (*Id.* at p. 865.) “Whether an impoundment is warranted . . . depends on the location of the vehicle and the police officer’s duty to prevent it from creating a hazard to other drivers or being the target for vandalism or theft. [Citations.]” (*Id.* at p. 864.)

The applicability of the community caretaking doctrine to California Vehicle Code section 14602.6, one of the two statutes that the Department often cited for impounding vehicles, may be resolved soon by the United States Court of Appeals for the Ninth Circuit in a case that is currently pending before that court. (*Salazar et al. v. City of Maywood et al.*, United States Court of Appeals for the Ninth Circuit, Case No. 08-56604.) The decision reached by the Ninth Circuit could also have implications for the application of the community caretaking doctrine to Vehicle Code section 14607.6, the other statute the Department often relied upon. Whether the Department was constitutionally required to satisfy the community caretaking doctrine may therefore depend on the outcome of the *Salazar* Ninth Circuit case.

If it is established that law enforcement is constitutionally required to satisfy the community caretaking doctrine when impounding vehicles pursuant to Vehicle Code section 14602.6, the evidence obtained during this investigation supports the conclusion that the Maywood Police Department engaged in a pattern and practice of ignoring the requirements and limitations of that doctrine. Review of the Maywood Police Department’s documents for 2005 revealed a glaring lack of documentation as to its officers’ rationale for impounding the vehicles that they seized, as opposed to allowing the vehicles to remain safely parked or to be driven away by a licensed driver. When a traffic stop results in a citation and impound, it is standard police practice for the citing officer to articulate, in the towing and impound documents, the circumstances that led the officer to believe that the impoundment of the vehicle was necessary. The totality of the evidence here, including the high volume of vehicles being towed and the consistent lack of information in the Maywood Police Department’s documents, both of which are highly irregular, raises a strong suspicion that the Maywood Police Department routinely towed and impounded vehicles in situations that were not warranted under the community caretaking doctrine.

Finally, the following anecdotal evidence further supports the conclusion that Maywood Police Department engaged in a pattern and practice of violating individuals’ constitutional right to be free from unreasonable detentions and/or violating the community caretaking doctrine:

- In August 2005, a driver, driving with an Oregon driver’s license, parked his vehicle in the parking area of an apartment building. As the driver was walking up the stairs to the apartment, a Maywood Police Department officer parked his motorcycle in the driveway and called the driver over. The officer stated that the vehicle’s registration had expired (even though the driver had proof of an extension) and rejected the driver’s Oregon license as insufficient. The officer cited the driver for purportedly having an expired vehicle registration and for

failing to have a valid California driver's license, and confiscated the driver's Oregon driver's license. The officer also caused the driver's car to be towed from the private driveway and impounded for 30 days. The driver paid approximately \$1,500 to retrieve his car. The two officers involved failed to appear in court for the citations and the case was dismissed.

- In or about March 2005, a licensed driver, who was not feeling well, was being driven by a friend in the licensed driver's own vehicle. A Maywood Police Department officer pulled the car over, explaining that the vehicle had not signaled soon enough before making a right turn. When being pulled over, the driver turned into a restaurant's parking lot. The passenger (and owner of the vehicle) showed the officer her valid driver's license, but was cited for allowing an unlicensed driver to drive her vehicle. Rather than allow the licensed driver to drive her vehicle away or to leave the vehicle in the parking lot, the officer had the car towed and impounded. When the owner tried to retrieve the car from the impound yard, the Department told her that she had to wait thirty days before the vehicle could be released. The officer also told her that the storage fee was \$75 per day. The vehicle was never recovered due to the storage fees. When the owner went to court for a hearing on the citation, it was dismissed.
- In or about January 2007, a driver drove by a Maywood Police Department officer who had pulled two other cars over. The officer signaled for the driver to pull over. The officer explained that he had pulled the vehicle over because the windshield was cracked. The windshield, however, just had a few minor chips in the glass. After the officer confirmed that neither the driver nor the passenger had a driver's license, the officer issued the driver a citation and had the car towed and impounded. The driver's brother-in-law paid more than \$1,000 to retrieve the vehicle from impound.

## **CAUSES OF THE PATTERN OR PRACTICE OF CIVIL RIGHTS VIOLATIONS**

**The Maywood City Council has failed to monitor and provide oversight of the Maywood Police Department.**

The failure of the Maywood Police Department to provide quality police services that are consistent with the Constitution and laws of the United States and the Constitution and laws of the State of California is in large part due to the failure of the City Council to effectively monitor the Police Department. Over the past ten years, the Council has neglected to hold the Chief of Police accountable for the actions of Police Department personnel. Former and current council members interviewed readily admitted their lack of knowledge of policing generally and, specifically, contemporary police practices including community-oriented policing. While some of those individuals who were interviewed stated that, at times, they were concerned about allegations of misconduct in the Department, they failed to pursue those allegations to effectively identify and rectify problems within the Department. It appears that the preferred method of resolving a perceived problem was for a council member to speak with the Chief of Police and to

ask that he look into the matter. When such a request was made, however, there was no follow up to inquire what had been done in response to the request.

In summary, the City Council has neglected to effectively oversee the Police Department and its relationship with the Department is best described as dysfunctional. Essentially, the Police Department has been left to "police" itself.

**No City of Maywood administrative employee has adequately monitored or provided effective oversight of the Maywood Police Department.**

City Council members do not serve full-time. Accordingly, an alternative to providing oversight of the Department is to charge a specific employee such as the City Chief Administrative Officer or a Public Safety Director with the responsibility for monitoring the activities of the Police Department and the Chief of Police. However, the City Council has not considered this alternative. While the City Finance Manager has provided fiscal oversight of the Police Department, no other city employee including the City Chief Administrative Officer has provided any meaningful oversight on how the Police Department delivers services to the community.

**The Maywood City Council has failed to recruit and retain permanent Chiefs of Police with the qualifications and experience necessary to competently manage the Maywood Police Department.**

The City of Maywood, through its City Council, has not used a merit-based hiring process that is reasonably calculated to result in the hiring of a highly qualified individual to serve as Chief of Police. The investigation revealed that political considerations rather than the qualifications of the applicants were the determining factors in the hiring of Police Chiefs. By any measure, the last two permanent Police Chiefs hired by the City Council (in 1999 and 2002, respectively) did not possess the necessary management experience and professional and educational qualifications to effectively lead the Department.

The first of these two Police Chiefs originally served as a patrol officer and separated from his employment with the Maywood Police Department. He was later rehired and again served as a patrol officer and was eventually promoted to Sergeant. Within approximately five years he was appointed Chief of Police. He served in that position from 1999 to 2002.

The next Police Chief served as a patrol officer in the Maywood Police Department for a number of years and was promoted to Sergeant in 1989. He served in that position until he was promoted to the position of Commander by the Sergeant who was promoted to Chief of Police in 1999.<sup>13</sup> He was appointed Police Chief in 2002 and served in that position until he separated

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<sup>13</sup> One witness interviewed stated that this Commander appointment was, in part, motivated by the fact that this individual and another Sergeant competed against each other for the position of Chief of Police and that the individual who was appointed felt compelled to promote the other individual to Commander because that person had been a Sergeant for a longer period of time than he had.

from employment in November 2007. In October 2006, this Chief of Police went on an extended voluntary leave of absence. Several witnesses interviewed surmised that this leave was precipitated by the controversies that eventually led to the request that the Attorney General initiate a civil investigation into the Maywood Police Department's policies and practices.

In appointing the two individuals described above to the position of Chief of Police, the City Council never sought to conduct a search beyond the limited confines of the Maywood Police Department. Several witnesses interviewed described the process used to be very much one that was conducted behind the scenes and the hiring decisions to be political rather than ones based upon merit. These witnesses were of the view that both of these individuals aggressively pursued the votes of individual city council members in order to bring about their appointments.

In November 2006, the City Council appointed an Interim Chief of Police. At the time of his appointment, this individual had held the position of patrol officer in the Department for approximately only two years and had no police management experience. This individual attempted to make changes in the operation of the Department to improve the quality of services delivered by the Department and to address the significant personnel issues that it faced. He referred a criminal case involving a Maywood police officer to the District Attorney. As discussed earlier in this report, this referral ultimately led to the conviction of the officer involved. The City Council also authorized him to hire a series of contract sworn personnel to assist him in his attempt to reform the Department's policies and practices. However, he was overwhelmed and ill-equipped to continue in this position. In late January 2008, he subsequently resigned as Interim Chief of Police and returned to his position as a patrol officer.

In February 2008, without first conducting a background check, the City Council voted to hire a new Interim Chief of Police. This individual was sworn-in as Chief of Police. However, immediately after his swearing-in, the City Council learned that a background check had not been done and chose to delay his appointment until one could be completed. Shortly thereafter, this individual withdrew his application to become Interim Chief of Police. This individual had been previously employed by the Maywood Police Department as a patrol officer for approximately one year and then separated from his employment. While employed at another local law enforcement agency prior to his employment with the Maywood Police Department, he pled no contest to charges that he falsified overtime records while employed at that other agency.<sup>14</sup>

Following this aborted attempt to hire the above-described individual, the City Council then voted to appoint a Captain who, at the time, was employed on a contract basis at the Department, to the position of Interim Chief of Police. Assisted by a professional search firm, the City conducted a broad and lengthy search for a permanent Chief of Police. In October 2008, the City Council hired the individual serving as Interim Chief of Police to the permanent position. Since his appointment, the new Chief of Police has commenced an effort to reform the policies and practices of the Maywood Police Department. Notwithstanding his good faith efforts to date, the

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<sup>14</sup> He later secured a court order expunging the record of this conviction.

fundamental structural and cultural deficiencies that caused the civil rights violations identified in this report remain.

It should be noted that in December 2008, the voters enacted a new ordinance, proposed by the City Council, which now sets forth some minimum qualifications for the position of Chief of Police. Those qualifications include the requirement that the Chief possess at least a bachelor's degree in public administration, criminal justice or a closely related field, and a minimum of four years of command-level experience at the rank of lieutenant or above.

**The Maywood Police Department has failed to consistently follow generally accepted hiring practices in evaluating applicants for the position of police officer and has failed to screen out and disqualify individuals who are not suited to perform the duties of a peace officer.**

The Maywood Police Department has the reputation for being an "agency of last resort" for those who seek employment as a peace officer. Review of the Maywood Police Department's hiring practices over the past ten years validates this perception. This review included all phases of the hiring process including background investigations.

The hiring process has varied over the years. However, two critical deficiencies were identified that have greatly contributed to the hiring of individuals who are not well suited for police work, incredibly poor background investigations of applicants and the cessation of polygraph examinations. These are serious deviations from the standards employed by professional local law enforcement agencies.

Over the past ten years, background investigations of applicants grew progressively more superficial. The personnel files of lateral applicants maintained by their prior employers were not reviewed or were only cursorily examined. Where performance or personal problems of applicants were identified, little if any follow up was done to learn more about the applicant.

The inadequate background investigations appear to be caused by the desire to save money and, unfortunately, in some instances the decision to hire was made prior to the completion of a background investigation.

In May 2008, the then Interim Chief of Police secured an audit of the background investigations of the Department's sworn personnel. That audit confirmed the very poor quality of background investigations.

Disturbingly, sometime between 2001 and 2002, the Maywood Police Department completely dispensed with the requirement that applicants be subjected to a pre-employment polygraph examination. Without such an examination there was no opportunity to require the applicant to complete a pre-polygraph questionnaire and to then test an applicant's veracity on his representation of his background. Discontinuance of pre-employment polygraph examinations was prompted, again, by the desire to save money.

As publicly reported, several Maywood Police Department officers hired over the past decade had misdemeanor convictions for a variety of offenses. And a few officers were rehired by the Department after some time had passed following their separations from employment from the Department that were precipitated by performance issues.

The failure of the Maywood Police Department to have and implement a meaningful and highly selective hiring process has greatly contributed to the development of its reputation as an agency of last resort and to all of the problems in the Department that are identified in this report.

**The Maywood Police Department does not maintain adequate written policies and procedures to ensure that the police services it provides are delivered in a manner that is consistent with applicable laws and contemporary police practices.**

The Maywood Police Department's written policies and procedures are a hodge-podge that was apparently lifted from other agencies over the years. A thorough review of all the Department's written policies and procedures was conducted. It was readily apparent that the policies and procedures had been copied from other sources, with inadequate thought being given to their relevance and application to the structure and systems in place at the Department. There are frequent references to things that are not in place in the City (such as a City Charter) or the Department (Bureau Commanders, Division Commanders, Area Commanders, Captains, etc.). Because the Maywood Police Department gave little thought to tailoring the Department's policies and procedures to the organization, management's credibility and its ability to hold employees accountable have been undermined. Simply stated, there is a lack of ownership of the Department's policies and procedures.

More importantly and of graver concern is the fact that there is little effort to ensure Department employees, including supervisors and managers, adhere to the standards and expectations identified in the policies and organizational rules and regulations. The standards ignored include those addressing broad strategies such as the expectation that supervisors will promote a philosophy of problem-solving, which is nonexistent at the Department, to more specific standards addressing basic and effective functioning of police organizations. Examples of this latter type of standard include those addressing areas such as basic report writing, truthfulness of employees, supervisory and management responsibilities for conducting investigations into use of force incidents and personnel complaints, and other behavioral and performance issues.

Statements from supervisors and employees revealed that they are not adequately familiar with the Department's written policies and procedures, or they deliberately choose to ignore them or interpret them as they see fit. Based upon the Department's past practices and a wide variety of incidents reviewed during the course of the investigation, it is evident that the enforcement of the Department's written policies and procedures has been highly selective and inconsistent at best.

**The Maywood Police Department has failed to ensure that officers consistently prepare and submit use of force reports where reportable uses of force have occurred, and supervisors and managers have failed to review and sign off on reports that have been prepared and submitted.**

During the course of the investigation, it was very common to find inadequate and poor record-keeping. One startling example is the failure of officers to consistently submit use of force reports in accordance with the Department's written use of force policy. The failure to adequately document uses of force is a serious impediment to determining whether a particular use of force is within policy and lawful. The use of force reports that were prepared and submitted often contained insufficient information to make such determinations. Finally, it was often unclear whether a supervisor actually had reviewed and approved a use of force report. Perhaps most telling was the statement of one officer, who was the Acting Sergeant when an incident involving use of force occurred. He stated that whether a use of force report was required depended on whether the injury to the suspect was minor or serious and that this was the practice of the Department.

Maywood Police Department's existing Use of Force Policy clearly defines reportable use of force incidents and specifies that any employee involved in a reportable incident is required to notify a supervisor of the incident and report the full details of the incident in specific reports and forms used by the agency. The policy also requires the supervisor to investigate the incident and to complete and distribute the results of the investigation on a Department memorandum form. However, these requirements have routinely been ignored by employees, supervisors and management.

This investigation included a review of reported uses of force cases as well as an examination of incidents in which no use of force reports were generated by the Department but documentation was found that established a reportable use of force involving officers had occurred. In a number of instances it was determined that uses of force had been documented or referred to in an arrest, crime or other report, but there was no documented investigation of the incident conducted by a supervisor. Where investigations had been conducted or some documentation had been provided, it was not unusual to find a lack of documentation of management review or any further action taken on these cases.

The quality of the investigations conducted by supervisors was often exceedingly poor and falls far short of what is acceptable within the policing profession. The cases reviewed showed consistent problems or raised serious concerns relating to the justifications cited for using force, the nature and level of force used, the lack of adequate investigations, failure to follow departmental policies and procedures relative to the documentation of injuries, failure to identify and address poor police tactics on the part of officers involved, unwillingness or deliberate failure to address obvious questions or glaring issues that were evident, failure to contact or seek out witnesses other than police officers, and general shoddy or substandard reviews by supervisors and command staff.

**The Maywood Police Department has failed to provide adequate training to its sworn personnel to ensure that they are capable of performing the duties of a peace officer consistent with Department policies and procedures and all applicable laws.**

Training for sworn personnel in the Maywood Police Department has been virtually nonexistent. The provision of continuous training on topics such as use of force, the law on probable cause and reasonable suspicion, use of less lethal force (including Tasers), citizen complaint procedures, report writing, supervision and leadership training, debriefing on critical incidents, Field Training Officers, diversity training, pretext stops, the receipt and investigation of citizen complaints, and community-oriented policing philosophy is critical. The investigation found that where such training was provided, it appeared to be inadequate. This latter conclusion is based on the experiences and observations documented in this report.

**The Maywood Police Department has failed to consistently accept and investigate citizen complaints as required by California law.**

The investigation confirmed that it is not unusual for a citizen to encounter difficulty in filing a citizen complaint against a Maywood police officer. Several refusals of Department personnel to provide and/or accept a complaint from a member of the public were documented. More than one sworn employee of the Department readily acknowledged that it was common for Sergeants to "handle complaints" at the front desk in order to avoid the lodging of a written complaint.

The Department's complaint form has not been easily accessible to members of the public. The only way to secure a form was to ask an employee for a form at the Department. This, of course, can discourage members of the public from lodging complaints against Department personnel.

Complaints that were accepted for lodging were often poorly and inadequately investigated. This was true whether the complaint was investigated by Department personnel or by an outside consulting firm. The investigations were often superficial. In many instances, there was little or no effort to canvas a neighborhood to identify additional witnesses to an alleged incident of officer misconduct. This is especially critical where the alleged victim and accused officer accounts of the incident varied significantly.

There were also instances where no investigation was done in response to a citizen complaint and there was no explanation proffered as to why. Also there was at least one instance where no investigation was done because it was anticipated that litigation would likely follow. In that case, a tort claim was filed with the City by alleged victims of officer misconduct and eventually a civil lawsuit was filed.

In other instances, the investigations of complaints were delayed and not completed within the one-year period required by law. This is a significant obstacle in that the agency can be barred from imposing serious and warranted discipline in instances where officers are guilty of willful misconduct.

Because the Maywood Police Department has failed to accept and adequately and timely investigate citizen complaints and otherwise hold its sworn personnel accountable for their actions, it has resorted to using vehicles other than the disciplinary process to effectuate the separation from employment of unsuitable sworn personnel. Such vehicles include accepting a resignation in lieu of termination and medical and disability retirements. Unfortunately, this practice enhances the involved officer's chances of securing employment as a peace officer elsewhere and unfairly taxes the medical and disability retirement systems.

**The Maywood Police Department has accepted poor and insufficient report writing by officers. Often reports fail to adequately document the probable cause for an arrest or the reasonable suspicion to support the detention or search of a suspect.**

Examination of arrest reports prepared by Maywood officers revealed a fairly consistent pattern of the lack of factual detail and, at times, contradictory information. A particularly serious issue that was commonly encountered was the lack of sufficient information to determine whether the officer involved in the incident that a report purports to memorialize had probable cause to arrest an individual or reasonable suspicion to detain or conduct a pat down search of an individual.

Review of the reports also revealed supervisors do not always sign off on reports. Moreover, the Maywood Police Department does not require the approval of a Sergeant or other supervisor to review the circumstances of an arrest report and authorize the arrest.

Internal Affairs reports and use of force reports written by Department sworn personnel similarly often lack sufficient detail and information.

The poor report writing is very troubling. The lack of specificity and detail in such reports makes it difficult to evaluate the conduct of officers when they are accused of misconduct such as the use of excessive force. At the very least, this poor report writing creates doubt as to the appropriateness of the actions of officers in many instances. This poor report writing can make it difficult for the District Attorney to evaluate whether to bring criminal charges in cases presented by the Maywood Police Department. In one instance, after two individuals had been charged with resisting arrest and obstructing the officer, the District Attorney's Office reviewed the arrest reports submitted and determined that it was necessary to request supplemental reports from all officers involved in the incident and that all such officers be interviewed in person. All officers involved declined to submit supplemental reports and to be interviewed. The charges against the two individuals were, accordingly, dismissed.

**The Maywood Police Department has failed to adopt and implement an Early Intervention System to identify police officers who, because of their conduct, have demonstrated the need for intervention to address and deter inappropriate or unlawful behavior.**

The Maywood Police Department has no Early Intervention System (EIS) in place to assist it in tracking and documenting officer behavior to identify, at the earliest possible moment, actual and potential problems which, if addressed, would prevent more serious problems from occurring. As discussed earlier in this report, there is a serious problem of a lack of accountability in the

Maywood Police Department. Its lack of an EIS reflects a disinterest in holding officers accountable for inappropriate or unlawful conduct.

**The Maywood Police Department uses Sergeants to supervise officers in the field and serve simultaneously as Watch Commanders. Such practice results in inadequate supervision of its sworn personnel and the inability to effectively manage incidents in the field.**

The Maywood Police Department has only one Lieutenant position and deploys only one Sergeant per shift to supervise officers on patrol. Accordingly, at almost all times, the Sergeant on duty serves as Watch Commander and is at the police station and not in the field supervising officers on patrol. This lack of supervision in the field is a major problem. Without supervision, officers in the field are subject to little if any oversight while they perform their duties as peace officers. Such a situation creates an environment where there is little to deter officer behavior that deviates from policy or law.

**The Maywood Police Department suffers from a serious lack of accountability. Officers are not held accountable by their Sergeants for failure to conform their conduct to applicable policies, procedures and law, and the Sergeants are not held accountable by managers in the Department for their failure to adequately supervise those under their command.**

Several sworn members of the Department acknowledged that Sergeants provide little effective supervision to officers. As noted above, because they serve as Watch Commanders, Sergeants are not consistently deployed in the field where they can observe officers in the execution of their duties, provide supervision when critical incidents occur, and observe officers' interactions with members of the public. Additionally, managers in the Department have not held Sergeants accountable for their failure to adequately supervise officers when they have been deployed in the field. The lack of accountability is pervasive. Many of the failures identified in this report can be traced to the failure of supervisors and managers to hold officers accountable for their actions.

**The culture of the Maywood Police Department is one permeated with sexual innuendo, harassment, vulgarity, discourtesy to members of the public as well as among officers, and a lack of cultural, racial and ethnic sensitivity and respect.**

The investigation revealed that officers in the Maywood Police Department frequently engage in inappropriate sexual banter. Allegations of sexual harassment of non sworn personnel and members of the public by officers were raised. The investigation revealed a significant problem with the use of vulgarity and the display of discourtesy and rudeness by officers. Similarly, many allegations were raised regarding racial and ethnic bias of officers. One Latino officer was reportedly referred to as a "Nigger" by another officer because of his dark complexion. This same officer reportedly had a swastika etched into his locker. Another officer, was called a "Louisiana Nigger." Also, undocumented immigrants were commonly referred to as "Mos," short for "Mojados."

Strangely, officer badges are emblazoned with the outdated title "Policeman." This is indeed a very rare title in contemporary policing and not known to be used elsewhere in the State.

Almost all Maywood police officers are Latino or White. Until recently, they have been all male.<sup>15</sup> This lack of diversity likely contributes to the culture described above. During the investigation, a management employee of the Department was asked whether the Police Department had considered sending its personnel to the Museum of Tolerance's renowned "Tools for Tolerance" program. He replied that the Department had not availed itself of that program and he feared that if officers were sent to the program they would embarrass the Department.

In addition to gender, racial and ethnic improprieties, distrust among officers in the Department is pervasive. In reviewing internal affairs investigation files, it was common to find that an officer accused of misconduct by another officer would defend against the allegations lodged against him by lodging counter allegations against other officers.

The culture described above is a significant obstacle to delivering police services in a fair, nondiscriminatory and an impartial manner, to securing the trust of the community, and to fostering a healthy and respectful relationship between officers and between officers and civilian employees of the Department.

**There is little evidence of a good faith effort to embrace and implement a community-based policing philosophy that accepts and engages the public as co-producers of public safety.**

There is a clear disconnect between a significant portion of the City of Maywood community and the Maywood Police Department. There is much distrust and fear of the police. While this report concludes that the Department has engaged in a pattern or practice of civil rights violations, there is an even more pervasive problem of the display of discourtesy and rudeness by officers of the Maywood Police Department to members of the public they are charged with serving and protecting.

This discourtesy and rudeness evidences an "us versus them" culture in the Maywood Police Department, a culture that rejects the proposition that the most effective way to prevent and solve crime is for a law enforcement agency to accept and embrace the public as co-producers of public safety. It is difficult to convincingly dispute that inclusion rather than exclusion of the public in the process of developing and implementing strategies to secure the safety and well-being of a community is the more effective approach.

It is important to recognize that effective community-oriented policing is not evaluated by the sum total of programs employed by a law enforcement agency to deliver police services. Rather, effective community-oriented policing is synonymous with the successful implementation of a philosophy that accepts and embraces a partnership between the law enforcement agency, other

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<sup>15</sup> In 2008, the Police Department hired two female police officer recruits. One of these individuals completed the training process at an academy and is currently a probationary officer.

agencies within the governmental entity and the public and a culture that willingly embraces these concepts. Programs are merely the vehicles through which that philosophy is implemented.

The City of Maywood Police Department's method or philosophy of policing is the complete antithesis of community-oriented policing. Its transition to community-oriented policing cannot begin until it is sincerely committed to abandoning the "us versus them" culture that predominates in the Department and to embracing all of the Maywood community, including the public, as co-producers of public safety.

### **ATTORNEY GENERAL'S TWELVE POINT PLAN FOR THE REFORM OF THE MAYWOOD POLICE DEPARTMENT**

1. The City Council of the City of Maywood (City Council) must accept responsibility for the actions of the Maywood Police Department and its personnel by providing comprehensive and effective oversight of that Department. This shall be accomplished by holding the Chief of Police and City Chief Administrative Officer accountable for the performance of the Police Department and its personnel. Additionally, the City must retain an expert who is highly qualified on the subject of contemporary police practices to evaluate the activities of the Police Department and prepare and submit an annual report on the state of the Department which shall be released to the public. The City Council must ensure the recruitment and retention of highly qualified Chiefs of Police. This shall be accomplished by appointing individuals on the basis of merit and who have the education and experience necessary to effectively lead the Department, establishing and maintaining strict accountability by defining expectations and performance standards, implementing a community-oriented policing philosophy, and ensuring that all of the reforms that will be discussed below are carried out.

2. The City Council must require the Maywood Police Department to adopt, implement and adhere to a written hiring procedure that is equivalent to or exceeds California Peace Officers Standards and Training Commission hiring standards for both sworn and civilian positions in the Police Department. The goals of the hiring process must be to ensure those individuals who are hired possess character and background that are beyond reproach and are committed to embracing a community-oriented policing philosophy, and that the agency successfully screens out applicants who are not suited to be peace officers or civilian police employees.

3. The City Council must require the Maywood Police Department to develop, implement and maintain a new and comprehensive set of written policies and procedures that ensure the Department delivers police services in a manner that is consistent with applicable laws and contemporary police practices.

4. The City Council must require the Maywood Police Department to update all of its policies related to use of force in order to be consistent with contemporary police practices. It is particularly critical that the policy make clear that all use of force cases be documented, reports are submitted and reviewed by supervisory and management and executive staff, incidents are analyzed for compliance with policy, and all incidents become part of the Early Intervention System that is discussed below.

5. The City Council must ensure the Maywood Police Department develops and implements a comprehensive written plan to provide adequate training to its sworn personnel in the following areas: use of force, the law on probable cause and reasonable suspicion, use of less lethal force (including Tasers), citizen complaint procedures, report writing, supervision and leadership training, debriefing on critical incidents, Field Training Officers, diversity training, pretext stops, the receipt and investigation of citizen complaints, and community-oriented policing philosophy. The City Council must fully fund all of this training.

6. The City Council must require the Maywood Police Department to develop and implement a comprehensive policy for the provision, acceptance and investigation of citizen complaints. The policy shall include requirements that the complaint form be made available without necessity for a request. The complaint form shall be readily available at the police station, city hall and other locations within the City, be made available on the City's Internet web site, and be available in both English and Spanish. The policy must require that all investigations conducted be thorough, fair and professional. And, where a finding rests on a credibility determination, the reasons for that determination must be clearly articulated in the final investigative report;

7. The City Council must require the Maywood Police Department to take all steps that are necessary to address and correct the glaring deficiency that reports prepared by Maywood police officers are often poorly written and provide insufficient information to determine the probable cause for an arrest or search or reasonable suspicion for a detention or pat-down search;

8. The City Council must require the Maywood Police Department to develop and implement an Early Intervention System in order to track and monitor the activities and actions of its sworn personnel in order to effectively and timely address and deter inappropriate or unlawful conduct;

9. The City Council must retain an independent outside expert to evaluate the Maywood Police Department's span of control to determine appropriate level of supervision and management that is necessary to ensure all Department employees comply with all applicable policies, procedures and laws in the performance of their duties and execution of their responsibilities. It is readily apparent that there is an insufficient number of supervisors and managers above the level of Sergeant within the Department to provide the Chief of Police with a command staff that can capably and effectively assist him/her in consistently delivering police services in a professional and

lawful manner. For example, as noted earlier in this report Sergeants should not simultaneously serve as a supervisor of officers deployed in the field and as Watch Commander. Consideration must also be given to the deployment of current and additional non sworn personnel to perform functions that are currently performed by sworn personnel but could be more effectively performed by non sworn personnel;

10. The City Council must take all steps, including but not limited to the reforms discussed above, to ensure that all employees of the Maywood Police Department, including the Chief of Police and all sworn and non sworn employees, are held accountable for their obligation to comply with and conform their behavior to all applicable policies, procedures and laws. Specifically, the City Council must require the Maywood Police Department to purchase and require all police officers who are deployed in the field to carry a digital audio recorder. A written policy governing the use of such recorders shall be developed and implemented.

The City Council must require and fund the installation of video cameras on all Maywood Police Department vehicles. As the cost of such a program is significant, the installation of such cameras can be phased in over a reasonable period of time. Moreover, a written policy governing the use of the video recorders shall be developed and implemented.

Video cameras shall also be installed in the lobby of the police station and all other areas of the station where officers interface with members of the public in order to monitor those interactions, and a written policy respecting these cameras must be developed and implemented. The Department's history of refusing to accept citizen complaints and incidents that have occurred in the lobby and other areas of the station warrant installation of those cameras.

11. The City Council must take all steps that are necessary, including but not limited to the reforms discussed above, to permanently remove inappropriate sexual innuendo and harassment, vulgarity, discourtesy to members of the public as well as between officers, and cultural, racial, and ethnic insensitivity from the culture of the Maywood Police Department.

12. The City Council must take all steps that are necessary, including but not limited to the reforms discussed above, to develop, implement and embrace a community-oriented policing philosophy that accepts the public as co-producers of public safety.

## **CONCLUSION**

The Maywood Police Department is critically in need of comprehensive and serious reform. The City Council has for at least a decade failed to effectively oversee and control the Department's activities and actions. The City of Maywood is at a crossroads. It must devote the time and significant human and financial resources that are required to maintain a professional and effective police department or implement another option to provide police services to the City of Maywood. The comprehensive reform of the Department is critical to the safety and well-being of the residents of the City and to all who enter and cross the City's borders.

March 2009

## **EXHIBIT 2**

RESOLUTION NO. 5215

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MAYWOOD, CALIFORNIA, ESTABLISHING A VEHICLE  
RELEASE POLICY FOR IMPOUNDED VEHICLES

THE CITY COUNCIL OF THE CITY OF MAYWOOD HEREBY FINDS,  
DETERMINES AND RESOLVES AS FOLLOWS:

WHEREAS, the California Vehicle Code requires that vehicles driven by unlicensed drivers be impounded, and may not be released from impound for thirty days except under certain designated circumstances; and

WHEREAS, among the reasons vehicles may be released prior to the end of the thirty day period are "mitigating circumstance;" and

WHEREAS, persons whose vehicles are impounded are entitled to a prompt fair hearing to attempt to establish the mitigating circumstances which should entitle them to early release of their vehicle; and

WHEREAS, the policies and laws of the State of California make it difficult or impossible for undocumented persons to obtain drivers licenses; and

WHEREAS, many unlicensed persons are not licensed through no fault of their own and suffer serious financial and familial hardships when their vehicles are impounded; and

WHEREAS, the City Council wishes to reduce the hardship attendant upon unlicensed drivers who are unlicensed through no fault of their own, to the maximum extent consistent with state law.

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. Effective immediately, it is the policy of the City of Maywood that, to the maximum extent allowed by state law, police officers shall exercise their discretion to refrain from impounding vehicles being driven by unlicensed drivers where those drivers were not eligible to obtain drivers licenses as a result of their residency status, or whose licenses have expired, so long as said drivers have not been convicted of an offense preventing issuance or reissuance of a license. Owners of vehicles that were impounded from drivers who were not eligible to obtain a drivers license shall be entitled to a prompt informal hearing by the Chief Administrative Officer or Assistant Chief Administrative Officer, if available, or by a Police Commander, Lieutenant or designated Sergeant if neither are available. Prompt shall mean the same business day, or not later than the end of the next business day following the hearing request. At the hearing, the hearing officer shall consider, as a mitigating circumstance, the fact that the driver of the vehicle was not eligible to obtain (or renew) a drivers license as a result of his or her residency status in the United States. When a vehicle is ordered released as a result of mitigating circumstances, the hearing officer shall, if the mitigating circumstances include financial hardship, order that storage fees be waived for up to the first seven days of storage.

Section 2. Effective immediately, it is the policy of the City of Maywood that hearing officers hearing appeals relating to vehicle impounds of vehicles being driven by unlicensed drivers, shall consider as a mitigating circumstance requiring release to the owner, the fact that the owner did not know that the driver was unlicensed. The owner need not have made inquiry into the license status of the driver in order to justify release under this policy.

Section 3. Effective immediately, it is the policy of the City of Maywood that, to the maximum extent allowed by state law, police officers shall exercise their discretion to refrain from impounding vehicles for equipment violations. Vehicles with equipment violations shall not be impounded if it is safe to drive the vehicle from the point of the stop; and if unsafe to drive, shall not be impounded if the driver or owner is able to arrange for the prompt towing of the vehicle to his or her home or other preferred place. The driver or owner may utilize an official police towing service for such tow, but shall be responsible for making payment arrangements for said service. The driver or owner may utilize a different towing service of his or her choice, so long as towing can be accomplished in the same approximate period of time as would the official police towing service.

Section 4. The Police Department's Policy and Procedure regarding vehicle impounds shall be amended to reflect the policies set forth in this Resolution, and a copy of said Policy and Procedure in English or Spanish (or both, if requested) shall be provided, at the time of impound, to every person from whom a vehicle is impounded, in addition to mailing copies to the owners as required by state law.

Section 5. This Resolution shall be effective immediately upon adoption. The written Policy and Procedure amendments shall be made as soon as reasonably practicable.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED and ADOPTED this 21<sup>st</sup> day of December, 2005.

  
\_\_\_\_\_  
Thomas Martin  
Mayor

ATTEST  
  
\_\_\_\_\_  
Erika Navarro  
City Clerk

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) ss.  
CITY OF MAYWOOD )

I, HECTOR DUARTE JR., Chief Deputy City Clerk of the City of Maywood, do hereby certify that the foregoing resolution, being Resolution No. 5215, was passed by the City Council of the City of Maywood, signed by the Mayor of said City, and attested by the City Clerk, all at a regular meeting of the City Council held on the 21<sup>st</sup> day of December, 2005, and that the same was passed by the following vote, to wit:

AYES: Councilmember Sergio Calderon, Mayor Pro Tem Felipe Aguirre & Mayor Thomas Martin. *and*  
Councilmember Samuel Peña & Councilmember George Martinez.  
ABSTAIN: None  
ABSENT: None

  
Hector Duarte Jr., Chief Deputy City Clerk

## City of Maywood Policy & Procedure; Vehicle Impounds and Releases

As of December 13, 2005, this City Policy shall be in affect and shall supercede all other City Policies concerning stored or impounded vehicles.

Police Officers are authorized by the California Vehicle Code and other Federal, State and Local laws to remove, store and impound vehicles under certain circumstances. Although under California law, Police Officers and other legally authorized employees of the Maywood-Cudahy Police Department are authorized to enforce all applicable constitutional laws, the impoundment of vehicles by certain unlicensed drivers has been determined by the Ninth Circuit Court of Appeals to constitute a violation of constitutional rights. It is the purpose of this policy to give guidance to employees and the public, as to the fair and impartial enforcement of these laws when taking possession of a vehicle.

It is the policy of the City of Maywood that police officers shall refrain from impounding vehicles being driven by unlicensed drivers where those drivers have not been convicted of an offense preventing issuance or reissuance of a license, if a licensed driver is available to remove the vehicle to a place of safety. Where there is no licensed driver available to remove the vehicle to a place of safety, and the vehicle is not already securely located in a place where it may remain (such as a private driveway with the property owner's or tenant's permission) the vehicle may be impounded and towed to a City storage yard.

However, if there is no licensed driver immediately present and the vehicle is securely located, the officer may cite the driver under California Vehicle Code § 12500, and:

- a) shall inform the driver that he or she must get a licensed driver to take possession of the vehicle, or, at the driver's option, the vehicle may be impounded until the registered owner can recover it with a licensed driver;
- b) shall admonish the driver that if he or she attempts to drive the vehicle away from the secure location, the vehicle may be subject to impound pursuant to California Vehicle Code sections 14602.6 or 22651(p);
- c) may, if the admonished driver is found to have ignored the admonishment and drives the vehicle away from the traffic stop location while still unlicensed, stop the driver again, if he has not already done so, cite the driver under California Vehicle Code section 12500, and impound the vehicle pursuant to Vehicle Code sections 14602.6 or 22651(p).

When the decision to store or impound a vehicle is made, the employee must take the occupants well-being into consideration. (Such as a handioapped person having special needs, persons with obvious medical problems that would prevent them from walking to a phone to call for assistance or leaving persons in an unsafe or secluded area.) Assistance in the form of directions or other helpful recommendations should be offered to the occupants of the stored or impounded vehicle. Vehicles impounded from unlicensed drivers who, because of legal status are unable to secure a drivers license,

shall be released from impound to the owner so long as they can be driven away by a licensed driver (or otherwise legally removed such as by tow truck).

CVC Section 14602.6 authorizes the impoundment of a vehicle for 30 days if the driver of the vehicle is found to have been driving while having their driving privileges suspended or revoked. It is the policy of the City of Maywood to enforce CVC Section 14602.6 against such drivers. This section was enacted by the State of California to protect society and to deter persons from driving a motor vehicle, who have been determined by a court of law and/or DMV to be ineligible to drive.

In all cases where a person is entitled to an impound hearing ("appellant"), such hearing may, at the option of the appellant, be held by the Chief Administrative Officer or Assistant Chief Administrative Officer. If confidential Department of Motor Vehicle or CLETS records need to be reviewed, the appellant shall first agree in writing, to waive confidentiality of such records in order to permit the hearing officer to review such records. If the appellant declines to waive confidentiality, or chooses not to have the hearing conducted by the Chief Administrative Officer or Assistant Chief Administrative Officer, the hearing shall be conducted by a Police Commander, Lieutenant or designated Sergeant. Hearings shall be held and rulings issued the same business day, or not later than the end of the next business day following the hearing request.

Appellants may request hearings to contest impounds in circumstances permitted by the Vehicle Code, and to contest the amount of storage fees. During hearings to contest storage fees, the hearing officer may order storage fees waived based upon financial hardship. The matter of payment of waived storage fees to the storage yard shall be between the City and the storage yard.

It is the policy of the City of Maywood that, to the maximum extent allowed by state law, police officers shall exercise their discretion to refrain from impounding vehicles for equipment violations. Vehicles with equipment violations shall not be impounded if it is safe to drive the vehicle from the point of the stop; and if unsafe to drive, shall not be impounded if the driver or owner is able to arrange for the prompt towing of the vehicle to his or her home or other preferred place. The driver or owner may utilize an official police towing service for such tow, but shall be responsible for making payment arrangements for said service. The driver or owner may utilize a different towing service of his or her choice, so long as towing can be accomplished in the same approximate period of time as would the official police towing service.

#### Vehicle Releases:

- 1.) Vehicles shall only be released to the registered owner, lien holder or person representing a business or institution that can produce the legal documents necessary to prove that they have a legal right to claim the towed vehicle and must have a valid form of picture identification.

- 2.) Vehicles shall only be released to persons who possess a valid driver's license (unless they are to be legally towed away). If the owner is unlicensed, he/she must have a licensed driver with him/her at the time of release and pick up of the vehicle from the tow yard.
- 3.) Vehicles shall only be released to persons who can show proof of valid auto insurance for the vehicle that is being released, CVC 16028(a).
- 4.) Vehicles to be released shall have current vehicle registration, per CVC 22850.3(a).
- 5.) Vehicles to be released shall have all outstanding parking citations paid, per CVC 22851.1(b)
- 6.) If a vehicle has been impounded and a 30 day hold has been placed on the vehicle, the vehicle shall not be released until the 30-day period is over, unless:
  - a.) Per CVC Section 14602.6 an impounded vehicle shall be released to the registered owner prior to the 30-day statutory impounding period
    - (1.) When the vehicle was seized for an offense that does not authorize seizure; or
    - (2.) When the driver reinstates his driver's license and proper insurance.
  - b.) We are compelled to do so by law.
  - c.) A post storage hearing has been conducted and the hearing officer has determined that the storage of the vehicle was not valid or there is mitigating circumstances relating to the storage in accordance with CVC 22852.
  - d.) When the vehicle was seized based upon an unlicensed driver who was unlicensed because he/she was not eligible to secure a driver's license solely because of his/her legal status in this country; or
  - e.) An administrative review of the storage was conducted due to special circumstances and it was deemed appropriate to release the vehicle early.

Vehicles that have been impounded for 30-days (i.e., not including vehicles listed in section (d) above) and released early shall only be released with the approval of the City's Chief Administrative Officer, Assistant Chief Administrative Officer, Police Administration or the Traffic Division Supervisor. The person authorizing the release of the vehicle shall sign the release form.

Hardship Circumstances and Early Releases:

It shall be the policy of the City of Maywood to give vehicle owners the opportunity to request an early release on vehicles that have been impounded for 30 days, if the impoundment of their vehicle causes an unreasonable hardship or the owner can present a special circumstance or need to have their vehicle released early. Information regarding this policy shall be mailed to the registered or legal owner, along with the required impound notice.