

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Police

**AGENDA DATE:** March 3, 2009 for Introduction.  
Public Hearing on March 10, 2009

**CONTACT PERSON/PHONE:** Chief Gregory Allen, 564-7302.

**DISTRICT(S) AFFECTED:** All

**SUBJECT:** An Ordinance amending Title 12, (Vehicles and Traffic), to amend Chapter 12.08 (Administration and Enforcement), Section 12.08.220 (Impounding Vehicles) of the El Paso Municipal Code, by adding subsection 12.08.220 A.21, authorizing a police officer to impound a motor vehicle stopped for a traffic law violation if the vehicle's owner or operator fails to show evidence of financial responsibility.

**BACKGROUND / DISCUSSION:** Amendment allows for towing of uninsured vehicles.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

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**AMOUNT AND SOURCE OF FUNDING:**

**BOARD / COMMISSION ACTION:**

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example:if RCA is initiated by Purchasing, client department should sign also) *Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

AN ORDINANCE AMENDING TITLE 12, (VEHICLES AND TRAFFIC), TO AMEND CHAPTER 12.08 (ADMINISTRATION AND ENFORCEMENT), SECTION 12.08.220 (IMPOUNDING VEHICLES) OF THE EL PASO MUNICIPAL CODE; BY ADDING SUBSECTION 12.08.220 A.21, AUTHORIZING A POLICE OFFICER TO IMPOUND A MOTOR VEHICLE STOPPED FOR A TRAFFIC LAW VIOLATION IF THE VEHICLE'S OWNER OR OPERATOR FAILS TO SHOW EVIDENCE OF FINANCIAL RERSPONSIBILITY.

WHEREAS, owners or operators operating vehicles in the City of El Paso are required to show evidence of financial responsibility as required under Chapter 601 of the Texas Transportation Code;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Subsection 12.08.220 (Impounding Vehicles) of the El Paso Municipal Code shall be amended to add the following subsection 12.08.220 A.21; it shall read as follows:

**Section 12.08.220 Impounding Vehicles. Subsection 12.08.220 A.21:**

21. When a vehicle is stopped by a police officer for an alleged violation of a city or state traffic law or other law applicable to the operation of a vehicle on the roadway and the vehicle's owner or operator fails to show evidence of financial responsibility as required under Chapter 601 of the Texas Transportation Code, as amended.

Section 2. Except as herein amended, Section 12.08.220 of the El Paso Municipal Code (Impounding Vehicles) shall remain in full force and effect.

ADOPTED this \_\_\_\_ day of March 2009.

CITY OF EL PASO

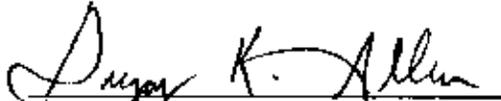
\_\_\_\_\_  
John F. Cook, Mayor

ATTEST:

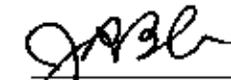
\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

*Signatures Continue on Following Page*

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Gregory Allen, Chief of Police  
El Paso Police Department

APPROVED AS TO FORM:

  
\_\_\_\_\_  
John R. Batoon  
Assistant City Attorney



March 9, 2009

RE: City Council Agenda Item 17

Ordinance amending Title 12 (allow impounding of vehicles without insurance)

March 10, 2009

Uninsured motorists continue to remain a significant problem in El Paso. During 2008, the El Paso Police Department issued 51,238 citations for no insurance (15% of the total citations issued). This includes FTMFR and failure to show proof of insurance as required by law. The department also investigated over 21,000 motor vehicle accidents during 2008. Of these 15% of the vehicles were failed to comply with the Texas Motor Vehicle Safety Responsibility Act, in Transportation Code §601.051. This is not only a violation of state law and but creates a substantial financial burden on other motorists.

2007 Census estimates that 69% of our residents are over 18 years of age and therefore within the normal DL age and we have nearly 200,000 residents commuting to work in a POV on a daily basis. Therefore using 15% as an average number of vehicles on the roadway without insurance, there is the potential of over 27,000 vehicles driving daily without insurance. This does not include those drivers going to school or traveling from Mexico. As such, it is in the government's interest to remove uninsured vehicles from the road and in deterring persons from operating a motor vehicle without insurance. These interests justify the immediate seizure of an owner's use of a motor vehicle.

Key points

1. The law states that to operate a Motor Vehicle you must have minimum liability coverage.
2. The law states that you must carry proof of this insurance in your motor vehicle or on your person when operating the vehicle.
3. The law states that you must provide this proof of insurance when requested by law enforcement.
4. Driving is a privilege not a right. You are required to meet certain requirements to operate a vehicle.
5. The responsible drivers with insurance have something to lose and take fewer chances and threat of immediate impoundment serves as a significant deterrent to those who would consider operating a motor vehicle without insurance.



Mayor  
John F. Cook

City Council

*District 1*  
Ann Morgan Lilly

*District 2*  
Susannah M. Byrd

*District 3*  
Emma Acosta

*District 4*  
Melina Castro

*District 5*  
Rachel Quintana

*District 6*  
Eddie Holguin Jr.

*District 7*  
Steve Ortega

*District 8*  
Beto O'Rourke

City Manager  
Joyce A. Wilson

Chief of Police  
Gregory K. Allen

6. The policy benefits all drivers even those in lower income levels as they have the most economic loss if involved in an accident with a motor vehicle without insurance.

### Legal Justification

United States District Court, Northern District, Dallas Division in Maricle v. Biggerstaff, 10 F.Supp.2d. 705 (1998) (affirmed by the Fifth Circuit Court of Appeals in an unpublished opinion in January 1999) addressed the seizure concern as it related to due process of law, in violation of the 14<sup>th</sup> Amendment, in which the court held that police clearly had probable cause to believe that the vehicles had been and were being used in the commission of an offense,” and that “a warrantless seizure (of the cars), based on probable cause, is a reasonable exercise of police power.”

In terms of current City of El Paso ordinances involving seizing vehicles, the EPPD already has authority to boot or impound vehicles based on the City of El Paso parking ordinances and other state laws.

### EPPD Policy Parameters

1. Officers will make a reasonable attempt to verify the insurance and not rely solely on the DPS Program.
2. Officers will not leave a driver or occupants of a towed vehicle in a hazardous location. They will transport into the nearest safe public place with a telephone. We will take into account the safe disposition of drivers and passengers.
3. Officers are allowed limited discretion in enforcing this policy. We are limiting our policy to towing vehicles from accident scene or under extenuating circumstances such as a traffic stop of involving a public safety hazardous violation.
4. Impounded vehicles will be immediately released upon proof of compliance with the Texas Motor Vehicle Safety Responsibility Act, in Transportation Code §601.051.

### The Law

The Texas Motor Vehicle Safety Responsibility Act, in Transportation Code §601.051, states that a person may not operate a motor vehicle in this state unless financial responsibility is established for that vehicle. Transportation Code §601.002(3) defines financial responsibility as the ability to respond to damages for liability for an accident that arises out of the ownership, maintenance, or use of a motor vehicle. Most people do this by buying automobile liability insurance as allowed by Transportation Code §601.051(1). Texas law, under Transportation Code §601.072, currently requires minimum coverage of \$25,000 per injured person, up to a total of \$50,000 for everyone injured in an accident, and \$25,000 for property damage. This basic coverage is called 25/50/25 coverage.



## Fines

First time offenders are subject to a fine of up to \$275, plus court costs, and may be assessed additional fees as authorized by Transportation Code Chapter 708:

## What is TexasSure?

TexasSure, the “financial responsibility verification program” was created by the 79th Texas Legislature, Regular Session, in Senate Bill 1670, which added Subchapter N, Chapter 601 Transportation Code. Section 601.452 of the Transportation Code, as added by SB 1670, provides that the Texas Department of Insurance (TDI), in consultation with the Texas Department of Public Safety (DPS), the Texas Department of Transportation (TxDOT) and the Texas Department of Information Resources (DIR) “shall establish a program for verification of whether owners of motor vehicles have established financial responsibility.”

Pursuant to SB 1670, the established program is designed to reduce the number of uninsured motorists in this State; operate reliably; be cost-effective; sufficiently protect the privacy of the motor vehicle owners; sufficiently safeguard the security and integrity of information provided by insurance companies; identify and employ a method of compliance that improves public convenience; provide information that is accurate and current; and be capable of being audited by an independent auditor.

TexasSure users include the DPS, sheriffs, local police, and vehicle registration offices. These users obtain accurate and timely insurance information on a given vehicle and/or driver promptly upon request. For example, law enforcement officers will be able to electronically confirm whether or not a registered vehicle or motorist has insurance coverage in effect.

## City of El Paso – A.D. Wrecker Contract

- Storage Lot (600 spaces)
- Auction Lot (300 spaces)
  
- Towing Fee ranges from \$40.29 to \$175.00
- Daily Storage Fees at \$11.75 until claimed or auctioned
- Vehicles can be auctioned after 42 to 52 days



Total Citations issued 2008	338,447	
<b>FTMFR Citations Issued</b>	<b>51,238</b>	<b>15%</b>
MX MVR Issued for FTMFR	3,059	6%
P/Day FTMFR Citations Avg	144	
FTMFR Citations Paid or handled	31,562	62%
Pending (Deferred, Pre-trial)	4,291	8%
<b>Warrants (not paid/ pending warrants)</b>	<b>15,386</b>	<b>30%</b>
Accidents Reports Generated	21,448	
<b>Vehicles w/o Ins Citations</b>	<b>3,227</b>	<b>15%</b>
MX MVR Citations Issued	126	4%
P/Day Accidents Avg w/o Ins	9	
<b>2007 Census Estimates</b>		
18 years and over	411,522	69%
Commuting in POV to Work	181,597	
<b>Vehicles Available</b>		
Occupied housing units	196,788	
1 or multiple vehicles available	90%	320,374
1 vehicle available	68,433	68,433
2 vehicles available	72,755	145510
3 or more vehicles available	35,477	106,431
Potential Uninsured Vehicles on Roadway	27,240	

