

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22D-0560TO

IN THE MATTER OF TRANSPORTATION STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION’S PETITION FOR DECLARATORY ORDER AS A MATTER OF LAW REGARDING TOWING AUTHORIZATION AGREEMENTS.

**COMMISSION DECISION GRANTING THE
DECLARATORY ORDER, IN PART**

Mailed Date: February 21, 2023
Adopted Date: February 15, 2023

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I. BY THE COMMISSION

A. Summary

1. This Decision grants, in part, the Petition for Declaratory Order (Petition), filed by Transportation Staff (Staff) of the Colorado Public Utilities Commission (Commission) on December 16, 2022, clarifying certain aspects of House Bill (HB) 22-1314. While some

guidance and clarity can be provided in this proceeding, the Commission has already directed a rulemaking to implement HB 22-1314, which will necessarily, and more fully, address the generally applicable provisions of this legislation. Furthermore, this Decision confirms that Staff is not precluded from bringing individual cases and Civil Penalty Assessment Notices (CPANs) forward for adjudication, based on specific facts.

2. The plain language of the statutes renders Rule 6508(a)(I) of the Commission's Rules Regulating Towing Carriers, 4 *Code of Colorado Regulations* (CCR) 723-6, inconsistent with law, as it relates to permitting towing carriers to act as authorized agents for residential private property tows. Given the applicability of the updated statutes, however, Staff's request to render Rule 6508(a)(I), 4 CCR 723-6, entirely inconsistent with law is overly broad. While HB 22-1314 prohibits towing carriers from acting as authorized agents for residential private property tows and is specific on 24-hour notice requirements and exceptions in some circumstances applicable to residential private property tows, proposed rule amendments can further consider if there are specific agency agreement considerations that may be generally permitted in circumstances not prohibited by the updated statutes.¹

B. Background

3. On December 16, 2022, Staff filed the Petition requesting that the Commission issue a declaratory order finding that recent legislative changes prohibit towing carriers from using authorization agreements as the basis for a nonconsensual tow and removal of a vehicle from private property. Staff claims that current Rule 6508(a), 4 CCR 723-6, is inconsistent with the new towing statutes, as amended. Staff did not seek shortened notice or intervention.

¹ A Notice of Proposed Rulemaking regarding implementation of HB 22-1314 was adopted for issuance in Proceeding No. 23R-0085TO.

4. On December 28, 2022, the Commission accepted the Petition and issued notice through January 20, 2023.² The Commission requested that interested parties file interventions or comments by this deadline.

5. On January 19, 2022, the Colorado Apartment Association (CAA) and Donald Coy (Fort Collins Towing, LLC) filed comments in disagreement with Staff's interpretation of the statutes. On January 20, 2022, Wyatt's Towing, Towing and Recovery Professionals of Colorado (TRPC), Heather Schlegel (Dedicated Towing and Recovery, LLC), and Robert Mooney (Denver West Towing) filed comments that were also in disagreement with Staff's interpretation of the statutes. No request to intervene in the proceeding was provided.

C. Staff's Pleading and Response

6. HB 22-1314, which became effective in August 2022, codified operational standards in the newly created § 40-10.1-405, C.R.S., including requirements for towing carriers initiating tows from private property, particularly in rental and common-interest ownership communities. These new statutes require towing carriers to notify a vehicle owner at least 24 hours before towing the vehicle, unless it can satisfy an exception identified in the statutes. Staff claims that the statutes do not include an exception for authorization agreements, as currently described in Rule 6508(a), 4 CCR 723-6, and that it provides that "the towing carrier does not qualify as an agent with authority to grant permission," thereby removing the agency exception currently created in Rule 6508(a), 4 CCR 723-6.

7. Staff's Criminal Investigations Unit includes an affidavit stating it has had a significant increase in referred complaints, resulting in a doubling of the investigators' current caseloads. According to the disclosed figures, a substantial amount of these new cases involves

² See Decision No. C22-0842-I, Proceeding No. 22D-0560TO.

concerns regarding alleged improper authorization via authorization agreement. Furthermore, Staff represents in its Petition that towing carriers believe that Rule 6508(a), 4 CCR 723-6, still allows towing carriers to initiate a nonconsensual tow as the private property owner's authorized agent, without notifying the vehicle owner.

8. In Footnote 5 of Staff's filing, Staff recognizes that the Commission granted a Petition for Rulemaking, as filed by Wyatt's Towing.³ In its filing, Wyatt's Towing requested that the Commission promulgate rules to address the statutory changes. The list of changes in statute that Wyatt's Towing raised included, but was not limited to, those found in §§ 40-10.1-405(3)(a) and (b), C.R.S., which address when and whether a towing carrier may act as the authorized agent for a private, residential property owner. The Commission agreed that revised rules were necessary and instructed that stakeholder efforts be engaged to bring forward a Notice of Proposed Rulemaking (NOPR). In its filing, Wyatt's Towing also requested that the Commission forebear from enforcement actions until the rules are revised. The Commission, noting that it could not waive statute, denied this request. In addition, the Commission included that there are "many provisions in the statutes that can be read, and followed, based on a plain reading of the language." No specific requests for clarity were provided in the context of the Petition for Rulemaking proceeding.

9. Staff points out that, prior to the enactment of HB 22-1314, the towing statutes did not specifically address nonconsensual tows or authorization agreements. The Commission's rules established the framework under which a towing carrier could nonconsensually tow a vehicle from private property. Pursuant to Rule 6508(a), 4 CCR 723-6, the Commission has allowed towing carriers the ability to be designated as the authorized agent for private property

³ See Decision No. C22-0705, issued November 9, 2022, Proceeding No. 22M-0412TO.

owners, meaning that they could remove vehicles from the applicable private properties without additional permission. However, Staff states that, with the statutory provisions incorporated by HB 22-1314,⁴ the authorization standards have been changed, whereby towing carriers are now prohibited from being designated as the authorized agent for private property owners. Staff also mentions that the statutory changes apply a 24-hour notice requirement for nonconsensual tows, which must be adhered to in addition to the authorization requirements.

10. Staff requests that the Commission issue a declaratory order, finding that 1) § 40-10.1-405(3)(a), C.R.S., only permits nonconsensual towing of vehicles from private property under the circumstances enumerated in subsections (I)-(IV) of that code; 2) § 40-10.1-405, C.R.S., prohibits towing carriers from acting as authorized agents for property owners for the purposes of nonconsensually towing vehicles from private property; 3) Rule 6508(a), 4 CCR 723-6, directly conflicts with the provisions of § 40-10.1-405(3), C.R.S., and is void as a matter of law, pursuant to § 24-4-103(8)(a), C.R.S.; and 4) Staff is free to issue CPANs to towing carriers who do not comply with the authorization and notice requirements in § 40-10.1-405(3), C.R.S.

11. The public comments underscore Staff's claims that there is disagreement on implementation of the statutes. CAA argues that § 40-10.1-405(3)(a)(IV), C.R.S., should be interpreted to only prohibit a towing carrier from acting as an authorized agent for tows conducted under § 40-10.1-405(3)(a), C.R.S., regarding nonconsensual private property tows. CAA argues that the clause in § 40-10.1-405(3)(a)(IV), C.R.S., does not apply to any tows "conducted under" § 40-10.1-405(3)(b), C.R.S., that includes language prohibiting nonconsensual tows from a parking space or common parking areas without 24-hour notice.

⁴ See § 40-10.1-405(3)(a), C.R.S.

Corresponding comments, primarily from towing carriers, similarly claim that subsections (a) and (b) are entirely separate, and that the language “under this subsection” in subsection (a) only applies to those specifically listed towing circumstances in § 40-10.1-405(3)(a), C.R.S.

12. TRPC argues that it makes sense that there are no agency restrictions in § 40-10.1-405(3)(b), C.R.S., as this section identifies urgent circumstances that would require immediate action.

D. Discussion, Findings, and Conclusions

13. Rule 6508(a)(I), 4 CCR 723-6, states, in relevant part, “A towing carrier may act as the authorized agent for the property owner under a written tow agreement to that effect, provided the tow agreement is compliant with this paragraph (a).” This rule essentially allows a towing carrier to authorize tows on behalf of the private property owner, so long as it is an arrangement established in a written agreement that meets the Commission’s standards.

14. The newly incorporated § 40-10.1-405(3)(a), C.R.S. states:

(3) Authorization and notice required for tows from private property

(a) A towing carrier shall not nonconsensually tow a vehicle from private property unless:

- (I) The vehicle is being repossessed by a creditor with a lien or security interest in the vehicle;
- (II) The removal is expressly ordered or authorized by a court order, an administrative order, or a peace officer or by operation of law;
- (III) The vehicle blocks a driveway or roadway enough to effectively obstruct a person’s access to the driveway or roadway; or
- (IV) The towing carrier has received permission to tow the vehicle, within the twenty-four hours immediately preceding the tow, from:

- (A) The owner of or lease holder of the private property;
- (B) A person subject to the “Colorado Common Interest Ownership Act”, article 33.3 of title 38, if the private property is located within the boundaries of the person’s area of operation; or
- (C) An agent of a person described in subsection (3)(a)(IV)(A) or (3)(a)(IV)(B) of this section; except that the towing carrier does not qualify as an agent with authority to grant permission under this subsection (3)(a).

15. The statute continues to provide, under § 40-10.1-405(3)(b), C.R.S., that a towing carrier shall not nonconsensually tow a vehicle from a parking space or common parking area without the towing carrier or property owner giving the vehicle owner or operator 24 hours’ written notice, subject to specific exceptions that allow for removal without 24 hours’ written notice. This section of the statute reads as follows:

- (b)(I) Except as provided in subsection (3)(b)(IV) of this section, a towing carrier shall not nonconsensually tow a vehicle from a parking space or common parking area without the towing carrier or property owner giving the vehicle owner or operator twenty-four hours’ written notice, unless:
 - (A) The vehicle owner or operator has received two previous notices for parking inappropriately in the same manner;
 - (B) The vehicle is being repossessed by a creditor with a lien or security interest in the vehicle;
 - (C) The removal is expressly ordered or authorized by a court order, an administrative order, or a peace officer or by operation of law;
 - (D) The vehicle blocks a driveway or roadway enough to effectively obstruct a person’s access to the driveway or roadway;
 - (E) The vehicle is parked in violation of section 42-2-1208(4) or in reserved parking for people with disabilities without displaying an identifying placard or

an identifying plate, as those terms are defined in section 42-3-204(1)(f) and (1)(g), that is currently valid or has been expired for no more than sixty days;

(F) The vehicle is parked in or effectively obstructing a designated and marked fire zone;

(G) The vehicle is occupying without permission or effectively obstructing access to or from any individually designated, rented, or purchased parking space of a resident; or

(H) The vehicle is parked without displaying valid authorization in a parking lot marked for the exclusive use of residents.

16. As noted in the comments filed by TRPC, the Commission uses the tenors or statutory interpretation when considering how to interpret and apply direction from the legislature. The Commission looks to the “entire statutory scheme to give consistent, harmonious, and sensible effect to all of its parts, and we avoid constructions that would render any words or phrases superfluous or that would lead to illogical or absurd results.” *Jefferson Cnty. Bd. Of Equalization v. Gerganoff*, 241 P.3d 932, 935 (Colo. 2010). In doing so, the Commission must first look to the plain and ordinary meaning of the express language in the statutes.

17. TRPC argues that the language “under this subsection (3)(a)” requires the Commission to interpret § 40-10.1-405(3)(a), C.R.S., and § 40-10.1-405(3)(b), C.R.S., as mutually exclusive. Such a reading silos subsections (a) and (b), failing to read the statutes in harmony, and is inherently inconsistent with the overarching section addressing “authorization *and* notice.” Subsection § 40-10.1-405(3)(a), C.R.S., in no way addresses notice requirements, and § 40-10.1-405(3)(b), C.R.S., only addresses notice and fails to make clear who may authorize a tow. Reading the statutes in harmony makes clear that subsection

§ 40-10.1-405(3)(a), C.R.S., provides *authorization* requirements, and § 40-10.1-405(3)(b), C.R.S., provides 24 hours' *notice* requirements, with certain exceptions.

18. Reading the statutes within subsections (a) and (b) as mutually exclusive is not only inconsistent with the plain language but would render duplicative language in each subsection meaningless. For example, there would be no need to repeat the authorization of a tow via repossession, under § 40-10.1-405(3)(a)(I), C.R.S., court or other lawful order, under § 40-10.1-405(3)(a)(II), C.R.S., and blocking a driveway or roadway, under § 40-10.1-405(3)(a)(III), C.R.S., in both the *authorization* subpart (a) and *notice* subpart (b). Rather, the subsections clearly identify that a court or other lawful order may *authorize* a tow and that the court order may expressly permit the tow to occur without 24 hours' *notice* from the towing carrier or private property owner. Both subsections work in concert to clearly identify (a) who may authorize a nonconsensual private property tow, and (b) whether or not 24 hours' written notice is required.

19. For repossession, court or other orders, and vehicles blocking driveways or roadways, when read together, § 40-10.1-405(3)(a), C.R.S., and § 40-10.1-405(3)(b), C.R.S., both authorize these vehicles to be towed, and explain that 24 hours' written notice is not required. For purposes of authorization, § 40-10.1-405(3)(a), C.R.S., makes clear that all other cases permit authorization via permission, within 24 hours immediately preceding the tow, from the private property owner, or their authorized agent, and prohibits the towing carrier from acting as the authorized agent. The language that "under this subsection 3(a)" therefore clearly identifies that for purposes of authorization, towing carriers are prohibited from acting as authorized agents, as the statute applies.

20. Logically, reading the statutes in harmony, a towing carrier or private property owner can provide written notice to a vehicle owner within 24 hours, but a towing carrier must confirm permission from the residential private property owner, or their authorized agent, before commencing a tow, within that preceding 24 hours. This reading promotes a policy determination from the legislature that a towing carrier alone will not both provide notice and authorize a tow without first confirming permission from the private property owner, or their authorized agent, prior to commencing the tow from an apartment complex, multi-dwelling unit, or other residential property.

21. As suggested by Staff, the Commission agrees that there is a conflict between Rule 6508(a), 4 CCR 723-6, and the newly incorporated § 40-10.1-405(3)(a)(IV)(C), C.R.S. However, Staff's pleading and the submitted comments raise that there are additional nuances that are best addressed by rules. For one, Staff omits that these specific provisions included in HB 22-1314 are limited to only residential private property tows. Specifically, § 40-10.1-405(9), C.R.S., provides that the statutory requirements found in these sections do not apply to law enforcement-ordered tows and nonconsensual tows from commercial private properties, with limited exceptions.⁵ The policy concerns raised by TRCP further emphasize why this distinction is important – namely that a tow from a commercial or business property for disability parking or fire zone may need to be immediate in a commercial situation, where the private property may be closed for significant time due to holiday, weekend, or other circumstances. Whether and how a towing carrier may act as an authorized agent for non-residential private properties, including where a commercial or business agent may not be available 24 hours preceding the tow, is not

⁵ Law enforcement-ordered tows and nonconsensual tows from commercial private properties, which do not completely meet the exemption provisions outlined in § 40-10.1-405(9), C.R.S., would still be required to meet the operational standards contained within § 40-10.1-405, C.R.S.

addressed in § 40-10.1-405(3)(a), C.R.S., or § 40-10.1-405(3)(b), C.R.S., pursuant to § 40-10.1-405(9), C.R.S., and may be appropriately considered through future rule considerations.

22. Through its plain language, § 40-10.1-405(3)(a), C.R.S., includes, more broadly, authorization requirements for residential “private property.” In § 40-10.1-405(3)(b), C.R.S., the 24-hour notice requirement includes notices applicable to a “parking space or common parking area.” Rules may necessarily need to address requirements on not only commercial private properties – including agency and other notice requirements – but towing notice requirements for residential private properties that do not involve a “parking space or common parking area,” such that authorization requirements are met, but urgent or emergent issues can be remedied. The considerations in this petition are narrow. Broader conversations and nuances regarding implementation of HB 22-1314 are best addressed through rulemaking considerations.

23. The Commission grants, in part, Staff’s request that § 40-10.1-405(3)(a), C.R.S., permits nonconsensual towing of vehicles from *residential* private property, under the circumstances enumerated in §§ 40-10.1-405(3)(a)(I)-(IV), C.R.S. and that towing carriers are prohibited from acting as authorized agents for nonconsensual towing of vehicles from residential private property, as discussed. Staff’s request omits the applicability provision, pursuant to § 40-10.1-405(9), C.R.S., and rule considerations will necessarily consider fully the implementation of HB 22-1314.

24. The Commission denies, in part, Staff’s request that the Commission find that Rule 6508(a), 4 CCR 723-6, directly conflicts in its entirety with the provisions of § 40-10.1-405(3), C.R.S., and is void as a matter of law, pursuant to § 24-4-103(8)(a), C.R.S. Since Staff’s argument does not consider the applicability provision involving this newly

incorporated statute, pursuant to § 40-10.1-405(9), C.R.S., the Commission clarifies that the statute precludes certain towing carriers from acting as authorized agents, for the purposes of authorizing nonconsensual tows from *residential* private properties, consistent with the discussion above. Whether or not other authorized agent considerations are appropriate can be contemplated in future NOPR processes to revise Rule 6508, 4 CCR 723-6, and other related provisions.

25. Finally, the Commission grants, with clarification, Staff's request to affirm that Staff may use its discretion and issue CPANs to towing carriers who do not comply with the authorization and notice requirements in § 40-10.1-405(3), C.R.S. As the Commission explained in prior order, it is appropriate for Staff, in its discretion, to engage in any applicable enforcement action(s) related to the provisions outlined in § 40-10.1-405(3), C.R.S., as it deems appropriate. This is consistent with the Commission's decision in the recently filed Petition for Rulemaking.⁶ However, the Commission notes the applicability of § 40-10.1-405(3), C.R.S., considering the provisions of § 40-10.1-405(9), C.R.S., and explains that, as always, Staff would need to identify the legal basis and facts at issue, under applicable law.

⁶ See Decision No. C22-0705, Proceeding No. 22M-0412TO.

II. ORDER

A. The Commission Orders That:

1. The Petition for Declaratory Order, filed by Transportation Staff of the Colorado Public Utilities Commission, on December 16, 2022, is granted, in part, and denied, in part, consistent with the above discussion.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 15, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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TOM PLANT

Commissioners