

CITY OF BALTIMORE

SHEILA DIXON, Mayor

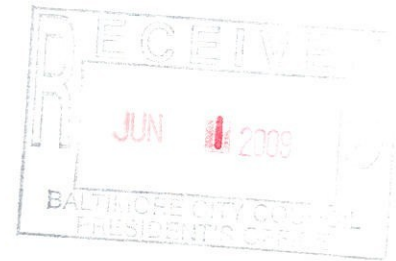


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

May 29, 2009

The Honorable President and Members
of the Baltimore City Council
Attn: Karen Randle, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 09-0320 – Trespass Towing – Fees

Dear Madame President and City Council Members:

You have asked the Law Department to review City Council Bill 09-0320. The bill would set maximum towing, storage, and related charges that may be imposed on the owners or operators of certain towed vehicles; require certain information to be disclosed on a towing service's schedule of charges; increase certain penalties and correct, clarify and conform related provisions.

Title 21, Subtitle 10A of the Maryland Transportation Article governs the towing of vehicles from parking lots. Md. Code Ann., Transp. § §21-10A-01-06 (2009). Since Baltimore City has concurrent regulatory power over the towing of parked cars from private property, Bill 09-0320 would withstand a preemption challenge if amended.

Bill 09-320 is not preempted by express preemption, because the General Assembly did not specifically prohibit local legislation on towing from private property and, in fact, expressly permits it. Md. Code Ann., Transp. §26-301 (b) "...any political subdivision of this State may adopt ordinances or regulations that ... (3) regulate the towing of vehicles from publicly owned and privately owned parking lots" and *See Worton Creek Marina v. Claggett*, 381 Md. 499, 512 fn. 6 (2004). Since local legislation on the matter is expressly permitted, it is not preempted by implication, because no legislative intent to occupy the entire field may be implied from the "comprehensiveness with which the General Assembly has legislated in the field." *Id.* (internal citation omitted). Most importantly, this bill, if amended, would not be preempted by conflict, because the ordinance would not permit an act that State law clearly prohibits or prohibit an act that the State law expressly permits. *Id.* at 513.

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State law caps the fees charged to the owner of a vehicle which is towed from a parking lot at twice the amount permitted by the City for impound towing. Md. Code Ann., Transp. §21-10A-04 (2009). Since Bill 09-0320 caps the fees at a smaller, more restrictive amount (150% of

the fees permitted for impound towing or \$250, whichever is less), and the City may enact greater protections for its citizens than the federal or state governments, this section of the bill is not preempted by state law. See, e.g. *City of Baltimore v. Sitnick & Firey*, 254 Md. 303 (1969) (holding that Baltimore City ordinance which imposed a higher minimum wage than required by state law was not preempted).

However, in section 22-8, the bill also places a limit on the fees charged for storing a vehicle that has been towed from private property. The limit is the same as the one imposed on towing: %150 of the fees authorized for impound towing or \$250, whichever is less. The fees permitted for storing a vehicle that has been impounded are found in Article 31, section 31-47 (a) which places the storage charges at \$50 for the first 48 hours or any shorter period and \$15 per 24 hour period thereafter. State law places the cap on the fees for storing a vehicle that is towed from a parking lot at \$8 per day. Md. Code Ann., Transp. §21-10A-04A(1)(ii) (2009).

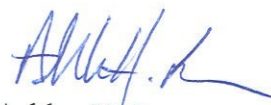
Therefore, the bill's cap on fees for storage of vehicles towed from parking lots permits fees which are greater than those permitted by state law and are, therefore, preempted by conflict. However, an amendment could cure this defect by deleting the word "storage" from section 22-8 of the bill and/or adding a section to section 22-8 which pertains only to storage and which caps the fees at \$8 per day, in accordance with state law.

Finally, the Bill raises the penalty for violating these provisions to \$1000 for each offense or 180 days imprisonment. This is consistent with Article II section 48 of the City Charter which provides that "...no fine or penalty shall exceed \$1000.00 and no imprisonment shall be for a longer period than 12 months."

Furthermore, the bill is consistent with Article II section 17 of the Baltimore City Charter, which grants the City Council the authority to regulate and license businesses.

Therefore, the Law Department would approve Council Bill 09-0320, with the above amendment regarding the fees for storage of the towed vehicles, for form and legal sufficiency.

Very truly yours,



Ashlea H. Brown
Special Assistant Solicitor

cc: The Honorable Robert Curran
George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena R. DiPietro, Chief Solicitor
Deepa Bhattacharyya, Assistant Solicitor
Hilary Ruley, Assistant Solicitor
Avery Aisenstark, Legislative Reference