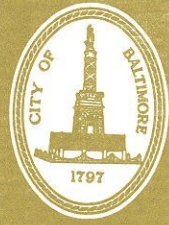


CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

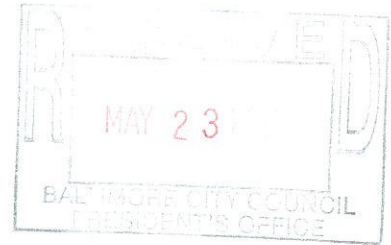


DEPARTMENT OF LAW

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

May 23, 2011

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



Re: City Council Bill 11-0695 – Surcharge on Trespass Towing

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 11-0695, which would impose a surcharge on towing companies who engage in the trespass towing of vehicles; provide for the administration and collection of the surcharge; define certain terms; prohibit certain activities and impose certain penalties.

Bill 11-0695 imposes a thirty dollar surcharge on each trespass tow in the City. The surcharge is owed by the company towing the vehicle and due on the 25th day of the month following the tow. The Bill also requires the towing company to notify the police before engaging a vehicle for a trespass tow and report certain information. The Bill also requires trespass towing companies to submit a monthly report of towing operations along with the surcharge amounts due to the Director of Finance. The Bill requires towing companies to keep accurate and complete records of towing operations which must be available for inspection by the Director of Finance during business hours. The bill imposes interest and penalties for late payment of the surcharge and penalties for violations of the subtitle. It also authorizes the Director of Finance to adopt rules and regulations to carry out the subtitle.

The City of Baltimore has been granted broad taxing powers by the State of Maryland. Article II, Section 40 of the Baltimore City Charter gives the City the power “to have and to exercise, within the limits of Baltimore City, in addition to any and all taxing powers heretofore granted by the General Assembly of the Maryland to the Mayor and the power to tax to the same extent as the State of Maryland has or could exercise said power within the limits of Baltimore City as a part of its general taxing power; and to provide by ordinance for the imposition, assessment, levy and collection of any tax or taxes authorized by this subsection; and from time to time to grant exemptions and to modify or repeal existing or future exemptions....”

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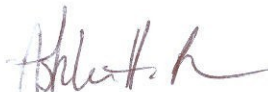
The surcharge imposed by Bill 11-0695 is not collected from the user or purchaser of the towing services, but is imposed instead on the vendor (the towing company) at a time independent of the service and is therefore an excise tax or privilege tax levied by the legislature without assessment, measured by the extent to which a privilege is exercised by a taxpayer (the tower) without regard to the nature or value of its assets. 71 Am. Jur.2d, State and Local Taxation, Section 25. This type of tax, as an excise tax, is not prohibited by Maryland law and is within the broad taxing powers of the City.

City Council has the authority to “tax and regulate all businesses, trades, vocations or professions” under City Charter Article II, Section 17 and the General Assembly expressly permits concurrent authority over trespass towing. 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”).

Finally, the amount of the surcharge is within the discretion of City Council. *Eastern Diversified Properties, Inc. v. Montgomery County*, 319 Md. 45, 53, n.4 (1990)(“if the raising of revenue is the primary purpose, the amount of the tax is not reviewable by the courts”).

Accordingly, the Law Department would approve Council Bill 11-0695 for form and legal sufficiency.

Very truly yours,



Ashlea H. Brown
Special Assistant Solicitor

cc: Hon. Robert Curran, Councilmember 3rd District
George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena R. DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Victor Tervalva, Assistant Solicitor