
CITY OF BALTIMORE

BRANDON M. SCOTT,
Mayor



DEPARTMENT OF LAW
JAMES L. SHEA, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

October 4, 2021

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

Re: City Council Bill 21-0125 – Trespass Towing - Revisions

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0125 for form and legal sufficiency. The bill is for the purpose of making certain substantive and technical revisions to Article 15 {"Licensing and Regulation"}, Subtitle 22 {"Towing Services – Trespass Towing"}; establishing certain maximum charges for towing services; specifying certain required information to be included on towing service receipts and on daily logs maintained by each towing service; specifying certain limitations on incomplete tows; requiring that a towing service must accept credit cards; prohibiting certain instances of patrol towing; making certain stylistic changes; conforming, clarifying, and correcting related provisions; and generally related to the regulation of trespass towing services in Baltimore City.

The City has concurrent authority with the state to regulate the nonconsensual towing of vehicles from parking lots. See, Md. Code. Ann., Trans. §§ 21-10A-01 – 21-10A-06. Furthermore, state law expressly permits the City to regulate the parking, towing or removal of vehicles from parking lots "in a more stringent manner." § 21-10A-01(b)(2); see also *City of Baltimore v. Sitnick & Firey*, 254 Md. 303 (1969) (City's higher minimum wage not preempted).

Several aspects of the bill are more stringent than state law:

The bill authorizes the Board to set maximum charges for towing services, storage and release fees that cannot exceed \$250 for towing service fees and 25% of the towing fee for the release charge. CCB 21-0125, p. 3, lines 16-21. Maryland law caps trespass towing charges, but the state law's ambiguity has been noted in previous hearings and a formal Attorney General's opinion has been requested. The bill's section on maximum charges is authorized so long as it less than the State's. Md

Code Ann., Trans. § 21-10A-04. The state caps the release fee at 50% of the “cost of the full tow.” Md Code Ann., Trans. § 21-10A-05 (b)(4).

Section 22-13 of the bill (“Incomplete Tows”) is also more stringent than state law. It prohibits the imposition of a release fee when a vehicle owner returns to the car and requests release prior to the attachment of the vehicle to the tow truck and prior to the vehicle being lifted from the ground. CCB 21-0125, p. 6, lines 14-24. State law allows the imposition of a release fee whether or not the vehicle has been lifted. Md Code Ann., Trans. § 21-10A-05 (b).

Section 22-14 requires towing services to accept at least two major credit cards. CCB 21-0125, p. 6, lines 25-27. State law allows towing services to accept only cash, but only if they have an ATM on the premises. Md Code Ann., Trans. § 21-10A-05 (c). Other jurisdictions require towing services to accept credit cards. *See* Montgomery County Code Chapter 30C and *Cade v. Montgomery Co.*, 83 Md. App. 419 (1990) (County code provision requiring towing services to accept credit cards upheld against constitutional challenge).

The Patrol Towing section of the bill raises potential legal issues. It prohibits towing services from patrolling property for the purpose of identifying vehicles to be towed during certain hours. CCB 21-0125, p. 7, lines 1-13. State law prohibits the use of “spotters” but that law has been challenged as unconstitutionally vague. *Maryland v. G&C Gulf, Inc.*, Misc. No. 4 (Sept. term 2014) (dismissed later on ripeness grounds). While the bill does a better job of describing the conduct that is prohibited than State law, it is unclear if it would survive a similar challenge. Furthermore, the nature of the law will make enforcement problematic.

The bill can be approved for form and legal sufficiency.

Very truly yours,



Ashlea H. Brown
Chief Solicitor

cc: Matthew Stegman
Nina Themelis
Nikki Thompson
Elena DiPietro
Victor Tervalva
Hilary Ruley