

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF LAW

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

February 1, 2010

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 09-0418– Vehicle Forfeiture Sales

Dear Madame President and City Council Members:

The Law Department has reviewed City Council Bill 09-0418 for form and legal sufficiency. The bill would add section 35B to Article 5 of the Baltimore City Code to require the Director of Finance, or his designee, (hereinafter “Finance”) to give a list vehicles to be sold at any “Forfeiture Sale” to the Director of the Department of General Services (“DGS”) at least fifteen days before that sale, so that DGS may evaluate any vehicle and determine if it wants to repurpose the vehicle for City use. Pursuant to Sections 38(b) and 132(G) of City Ordinance 08-03, which created DGS and transferred the Department of Public Works (“DPW”)’s powers with respect to vehicle fleet maintenance to it, DGS would be the proper recipient of such a list.

However, the bill is unclear as to which vehicles are required to be on the list because neither the term “abandoned” nor “forfeited” is defined. A “statute must be ‘sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties,’ otherwise, the enactment is void-for-vagueness.” *See McFarlin v. State*, 409 Md. 391, 410-11 (2009)(citations omitted).

Principals of statutory construction dictate that the term “abandoned” be read in harmony with the definition that currently exists in Article 31, Subtitle 31 of the City Code (hereinafter Section 31-x or §31-x, *et. seq.*). *See, e.g., Thomas v. Police Commissioner of Baltimore City*, 211 Md. 357, 361 (1956)(“It is a hornbook rule of statutory construction that, in ascertaining the intention of the Legislature, all parts of a statute are to be read together to find the intention as to any one part and that all parts are to be reconciled and harmonized if possible.”); *see also Criminal Injuries Compensation Bd. v. Gould*, 273 Md. 486, 498 (1975)(in enacting a law, the legislative branch is presumed to know the existing laws). Sections 31-8 and 31-41(a) define “abandoned vehicle” consistent with state law (including requisite exceptions in Section 31-1(a)(2)). Subtitle 31 provides procedures for the removal, impoundment and sale of such abandoned vehicles, which include giving the requisite notice prior to auction. *See* Sections 31-41 through 31-60.

F/Comments

Abandoned vehicles are not the only vehicles subject to auction from the City impound lot. Section 31 also addresses the removal of other types of vehicles to the impound lot, including vehicles that obstruct traffic (Section 31-6(b)(2)(iii)), are illegally parked (Section 31-7(b)(2)), involved in accidents (Section 31-9), unattended (Sections 31-21(a)(1),(c)(1)), recovered after theft (Section 31-10(a)), and certain semi-trailers (Section 31-7(c)(2)), all of which are also subject to the auction sale and notice requirements. However, since that Subtitle does not discuss vehicles “forfeited to the City under any federal, state or local law,” the impound lot would not have the power to auction such a vehicle. *See* §31-41(a)(the impound lot is only allowed to “receive, hold and dispose” of cars “delivered to it under the provisions hereof”; i.e. under the provisions of Article 31, Section 31 of the Code).

With respect to vehicles that *are* sold from the impound lot, including abandoned vehicles, Section 31-57(c)(2) requires that DPW prepare and give a list of the vehicles to be auctioned to the Police Commissioner prior to the auction. Since all of the functions under Article 31 of the Code were transferred to the Department of Transportation (“DOT”) under section 2(a) of Bill 02-0951 (Ordinance 03-0501), DOT should currently be supplying a list of vehicles located at the City impound lot to the Police Commissioner. The Law Department therefore recommends that should Finance need assistance with the creation of the abandoned vehicles part of the list mandated by this bill, that it work in conjunction with DOT.

The bill is less clear as to which vehicles have been “forfeited to the City under any federal, state or local law,” necessitating Finance’s inclusion of them on this list. The plain meaning of these words govern their interpretation and therefore necessitate that a “forfeited” vehicle be one to which the City would have a legal possessory interest. *See, e.g., Singley v. County Com’rs of Frederick County*, 178 Md.App. 658, 675 (2008)(held that the plain meaning of a statute governs). There is no suggestion that the City Council is seeking to require Finance to list property to which the City has not yet perfected its possessory interest. *See, e.g., Allen v. State*, 402 Md. 59, 73 (2007)(“the purpose of the plain meaning rule is to ascertain and carry out the real legislative intent”). Therefore, it is not necessary for the Law Department to explore all the ways in which such vehicles may come to be in the possession of the Mayor and City Council. The Law Department notes, however, that the asset forfeiture unit of the Baltimore City Police Department (hereinafter “BCPD”), in consultation with the Baltimore City State’s Attorney’s Office, obtains judgments of forfeiture for vehicles, which give the City title to some vehicles. The Law Department defers to the BCPD as to the criteria it uses to decide whether to auction or retain a particular vehicle for BCPD’s fleet. In so doing, BCPD would take care to act pursuant to any applicable state and federal law. *See, e.g., Md. Code, Crim. Proc., §§12-403(a)*(governs disposition of forfeited property seized in conjunction with controlled dangerous substance investigations); 12-403(d)(“Except as otherwise provided under federal law, a law enforcement unit other than a State law enforcement unit that participated with a State law enforcement unit in seizing property forfeited under this section: (1) shall be paid by the State law enforcement unit the share of the proceeds from the sale of the forfeited property as agreed by the law enforcement units; or (2) may ask the Governor’s Office of Crime Control and Prevention to determine its share.”)).

Under Section 44-1(a) of Article 5 of the City Code, Finance is authorized “to sell any tangible personal property belonging to the Mayor and City Council of Baltimore which is no longer needed for municipal purposes.” Finance’s Surplus Property Disposal Division has confirmed that this can include surplus vehicles. Section 306-1 of the Administrative Manual provides the procedures for Finance’s sale of surplus property, which Section 44-1(a)(2) makes clear “may be either public or private.” *See* Code, Art. 5, §44-1(a)(2). The Administrative Manual describes several ways in which the sale can take place, only one of which includes public or internet auction. Thus, if the intention is to make the list mandated by this bill include all surplus vehicles, and not those sold only at auction, the bill should be amended to so state.

Nevertheless, the fact that there could be multiple ways that a vehicle becomes “forfeited” to the City and then slated for auction, is not a legal impediment to this bill since Finance’s report indicated no problems understanding which vehicles it would need to include on its list to DGS, making the bill, if enacted, likely able to survive a challenge that it is void for vagueness. *See Singley* 178 Md.App. at 675 (the governmental agency’s “interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.”). Therefore, the Law Department approves the bill for form and legal sufficiency

Very truly yours,


Hilary Ruley
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor
Ashlea Brown, Special Assistant Solicitor
Terese Brown, Assistant Solicitor