

CITY OF BALTIMORE

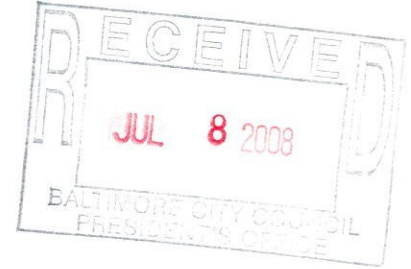
SHEILA DIXON, Mayor



DEPARTMENT OF LAW

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

July 8, 2008



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 08-0127 – Accident and Disabled – Vehicle Towing

Dear Madame President and City Council Members:

You have requested the advice of the Law department regarding City Council Bill 08-0127. The bill would clarify and revise the laws governing accident and disabled vehicle towing, increase certain penalties, authorize the issuance of civil citations for violations and conform these laws to current practices.

Bill Summary

The bill codifies a system for the towing of cars which are involved in accidents or are otherwise “disabled” as defined by the bill. This law is designed to protect the public from unauthorized, predatory towers, and eliminate traffic delays, hazards and congestion. The bill creates a classification of “Medallion” towing companies, which must meet certain criteria of licensure promulgated by the Police Commissioner. These “Medallion” towing companies are the only authorized companies called by the Police to the scene of an accident or a “disabled” vehicle. The owner of the vehicle in question has the option to call an alternate towing company to the scene, provided the alternate tow truck is summoned by the owner’s “bona fide” automobile or motor club. If summoned by the Police, the Medallion Towing Company may charge the owner or operator of the vehicle a cancellation fee if it finds that another company has towed the vehicle once it arrives upon the scene.

City Council Bill 127 would broaden the definition of “disabled vehicle” to include “stolen” vehicles as well as vehicles being held for evidence. The bill would exclude government personnel from the definition of “person.” The bill also raises the application fee for a towing license from \$20 to \$1,000 and provides for a renewable annual term for a “Medallion” towing license. Annual licensing fees are \$1,000 plus \$100 per Medallion towing vehicle to be operated under that license. The bill provides that the Police Commissioner shall adopt rules and regulations specifying the qualifications required for towing licenses and requires that those rules assure that applicants have “a significant business presence in the City” and are “capable of providing the services required” and that all towing vehicles are adequate for the services required. The bill raises the required surety bond from \$5,000 to \$75,000. The bill permits the

F/A



subtitle to be enforced by the issuance of a civil citation in the amount of \$750 and raises the criminal fine to a maximum of \$1,000 and/or the possibility of imprisonment for not more than 12 months; each day that a violation continues constitutes a separate offense. The ordinance takes effect 30 days after enactment.

Legal Authority

The City's regulation of the towing of vehicles from City streets for the purpose of protecting the public from predatory and unauthorized towers is a valid exercise of its police powers found in section 27 of Article II of the City Charter. *See* Baltimore City Charter, Article II § 27, *see also Meyer v. St. Louis County*, 602 SW 2d 728 (Mo. App. 1980) (holding that regulating towing businesses is a valid exercise of city's police power where the objective is consumer protection from predatory towers). However, the Maryland Court of Appeals has held that a list of preferred towers which is used by the Police to call towers to the scene of disabled vehicles is *not* valid where county limits are used to exclude businesses from the list. *Verzi v. Baltimore County*, 333 Md. 411, 635 A.2d 967 (1994) (Baltimore County ordinance which required that towing businesses called to the scene by Police be located within county limits violated equal protection of the laws under the Maryland and U.S. Constitution). City Council Bill 08-0127 does *not* use geographic boundaries as a determining factor in the selection of towing businesses used by the Police. Instead, it requires that applicants have a "significant business presence" in Baltimore City. Therefore, it is *not* discriminating based on geographic location as was the ordinance in *Verzi*. Furthermore, the City has the authority to license and regulate businesses under Article II, section 17 of the Charter. Finally, Article II, Section 48 of the Charter gives the Mayor and City Council the authority to provide for civil and criminal fines and penalties for the violation of any ordinance, rule or regulation, provided that no fine exceeds \$1,000. The fines provided for in City Council Bill 08-0127 do not exceed \$1,000 and are therefore consistent with the authority of the City Council.

Amendments

On June 25th, a meeting was held regarding City Council Bill 08-0127. At the meeting, representatives of the towing industry, police, City Council and the Law Department discussed potential concerns with the bill. Amendments were proposed which address these issues. Specifically, the Bill preserves the owner of the vehicle's right to choose a towing company by providing him or her the opportunity to contact a "bona fide automobile or motor club of which he or she is a member" to summons a tow truck. The Law Department recommends adding "or his or her automobile insurance provider" to this list, since not all City drivers are members of a "bona fide" motor club. This would assure that all drivers are given the opportunity to summons an alternate tow truck under the new law. Secondly, the issue of an emergency situation was raised. Under certain circumstances, as identified by the police, it may be necessary to immediately remove a car from the scene of an accident. Allowing the owner to call their own tow truck could slow down this process and endanger the safety of the public. A solution was proposed whereby the police may summons a Medallion tow truck which would remove the vehicle to a safe place, where the owner could then opt to have it towed by another truck to its destination. The Law Department also recommends deleting section D(2), page 8 line 25, which

creates the cancellation fee charge for situations where the Medallion tow truck has been summoned, but the car has already been towed. Representatives of the towing industry and the police agreed at the meeting that this cancellation charge would be an impractical solution to this problem and the Law Department concurs. Amendments addressing these concerns will be presented at the hearing on the bill on July 15. Finally, after consultation with the Office of Risk Management, the Law Department recommends changing the amount of the required surety bond on page 7, line 2, from "AT LEAST \$75,000" to "\$25,000." as this would be a commercially reasonable amount sufficient to guard against potential damage caused by the towing of a vehicle.

Subject to the suggested amendments, the Law Department approves City Council Bill 08-0127 for form and legal sufficiency.

Sincerely,



Ashlea Brown
Special Assistant Solicitor

cc: Honorable Rochelle "Rikki" Spector
Honorable Robert Curran
George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Linda Barclay, Chief Solicitor
Elena DiPietro, Assistant Solicitor
Deepa Bhattacharyya, Assistant Solicitor