

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

101 City Hall  
Baltimore, Maryland 21202

May 2, 2019

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

Re: City Council Bill 19-0366 Commercial Parking Facilities - Revisions

President and City Council Members:

The Law Department has reviewed City Council Bill 19-0366 for form and legal sufficiency. The bill would make certain revisions to the City's ordinances regarding parking facilities, clarify the subtitle's application, require that commercial parking facilities provide customers with proof-of-payment, prohibit certain commercial parking facilities from removing motor vehicles without the owner's consent, increase certain fines and generally relate to the regulation of commercial parking facilities.

The power to regulate parking facilities is derived from Article II, Section 17, of the Baltimore City Charter which provides that the Mayor and City Council may "license, tax and regulate all businesses, trades, vocations or professions. . . ." This bill would require that commercial parking facilities provide a receipt to customers, so that they have proof of payment in the event that they are wrongfully towed from the facility. Consumer protection is within the authority granted to the City in both its police powers as well as the City's power to "pass any ordinance . . . which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City." City Charter, Art. II §§ 27, 47.

The bill prohibits towing without the owner's consent where the facility is not in compliance with "any provision of this subtitle." Bill 19 – 366, §12-11, p. 4, line 27 - p. 5, line 7. The Law Department recommends clarifying this section. The City has authority to impose civil and criminal penalties for violations of any ordinance. City Charter, Art. II § 48. It does not have authority to penalize violations by any other method. This section seems to penalize those facilities not in compliance with the subtitle by placing a further prohibition on them. The Law Department recommends amending this section to prohibit any parking facility from towing without the owner's consent if the parking facility did not provide that vehicle owner with a receipt. In other



words, nonconsensual towing when a receipt has not been provided in accordance with §12-10 is subject to the penalties in §§12-13 and 12-14. This would achieve the goal of the legislation and still be within the City's authority.

Prohibiting the nonconsensual towing of a car where the owner did not receive proof of payment does not violate the freedom to contract, because the law would only impair future contracts. "Since every contract is made with reference to the laws existing at the time of its making, the Contracts Clause does not apply to a law enacted prior to making a contract when that law's alleged effect is to impair an obligation under the contract. The Contracts Clause only applies to a statute enacted after the making of the contract. Impairment is conceivable as the result of a statute passed after a contract is made but is inconceivable when, at the time of the contract, the statute is in force." Am. Jur 2d Constitutional Law § 726.

The Law Department also recommends clarifying what constitutes "written proof of payment." By requiring "written" proof, the bill seems to suggest that the receipt must be hand written but then permits electronic receipts. This could be cured by either deleting the word "written" or adding "or printed" after the word "written."

Finally, on page 5, line 20 and page 6, line 2, §12-9B should be §12-11B.

Subject to the above, the Law Department approves the bill for form and legal sufficiency.

Sincerely,



Ashlea Brown  
Assistant Solicitor

cc: Andre Davis, City Solicitor  
Jeff Amoros, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor  
Hilary Ruley, Chief Solicitor  
Victor Tervalá, Chief Solicitor