

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, City Solicitor
101 City Hall
Baltimore, Maryland 21202

September 13, 2018

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 18-0275 – Unidentifiable Vehicles – Immediate Towing

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0275 for form and legal sufficiency. The bill prohibits the parking of unidentifiable vehicles on City streets; authorizes the immediate removal of unidentifiable vehicles parked on City streets; and sets a certain penalty.

State law defines vehicles left on public property for more than 48 hours without valid registration plates as abandoned and subject to removal. Md. Code, Trans., §§ 25-201, 25-203. Therefore, state law authorizes removal of this type of abandoned vehicle only after a 48-hour period. Bill 18-0275 differs from state law because it only authorizes immediate removal of the vehicle if it lacks valid plates *and* has an obscured VIN that cannot be read from outside the vehicle, a matter not addressed in the state abandoned vehicle law. CCB 18-0275, p. 2, line 2. A vehicle without valid plates or a visible VIN is deemed by Bill 18-0275 as “unidentifiable” and is subject to immediate towing.

Bill 18-0275 would survive a preemption challenge because the City “may prohibit what the State has not expressly permitted.” *City of Baltimore v. Sitnick*, 254 Md. 303, 317 (1969). In other words, because the state law’s purpose is presumably to clear streets of illegally parked vehicles, and Bill 18-0275 “is in furtherance of the [state’s] function, then the local law is valid without regard to any verbal conflict.” J. Scott Smith, *State and Local Legislative Powers*, 8 U. Balt. L. Rev. at 308-09 (quoted in *Mayor and City Council of Baltimore v. Hart*, 385 Md. 394, 406 (2006) (upholding a City Police General Order imposing a higher standard for emergency vehicles than state law, state law requiring them to slow down at intersections while local law requiring them to stop)); *see also Sitnick*, 254 Md. at 317 (1969) (City law establishing a higher minimum wage than state law upheld on similar grounds).

Furthermore, Bill 18-0275 is not authorizing towing because the vehicle is abandoned, but rather, because it is unidentifiable. The removal of unidentifiable vehicles left on public streets is a valid exercise of the City’s police powers found in Article II, Section 27 of the City Charter.

The Law Department recommends adding “unidentifiable” to Section 31-43 (a)(1)(iv) to clarify that an owner whose vehicle is impounded as “unidentifiable” has a right to a hearing. *Assoc. Commercial Corp. v. Wood*, 22 F. Supp.2d 502, 506 (D. Md. 1998) (owners of abandoned or junked vehicles entitled to post-deprivation notice and hearing). Subject to the foregoing amendment, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,



Ashlea Brown
Assistant Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor’s Office of Government Relations
Kyron Banks, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor