
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
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March 12, 2020

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 19-0431 – Towing – Licensing and Regulation

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0431 for form and legal sufficiency. The bill would consolidate the licensing and regulation of towing services in Baltimore City under one administrative body, require the Board of Towing to regulate certain towing services, require a license to perform certain towing services, require additional certification for certain towing services, establish certain standards of operation, prohibit certain conduct, impose penalties, allow for licensure sanctions in certain situations, establish a hearing procedure for licensure discipline and allow for appeals in certain situations.

The Law Department has worked with the sponsor of this bill extensively and many legal issues have been resolved. However, several issues remain with both the bill and current law and are addressed below:

First, on page 3 of the bill in line 2, the definition of license includes "to operate a towing vehicle." This should be deleted, as the City is only authorized to require a license for those providing a towing service for hire.

Second, on page 5, line 10 the bill contains a "Declaration of Policy." The Law Department advises either deleting this from the bill or revising the section to reflect that the bill is intended (assuming it is) to address safety concerns, especially with regard to consensual tows. Regulations not "genuinely responsive to safety concerns" concerning consensual tows could be preempted by the Interstate Commerce Act, as amended by the Federal Aviation Administration Authorization Act. 49 U.S.C. § 14501 (c) and *City of Columbus v. Ours Garage and Wrecker Service*, 536 U.S. 424, 442 (2002).

On page 5, line 28, it should be noted that the City cannot compel the Police Commissioner to be on the Board. PLL § 16-2 (a) ("The Police Department of Baltimore City is hereby constituted and established as an agency and instrumentality of the State of Maryland").

On page 7, line 21, the bill requires the law department to “adequately staff” the board. The law department is not authorized or required by the charter to staff the board, only to render legal advice upon request. This provision should be deleted or revised to reflect the law department’s authority to review documents, advocate for, and render legal advice to the City. City Charter, Art. VII, § 24.

On page 10, line 9 of the bill, the Board is required to develop qualifications for licensure of tow truck operators in its rules and regulations. More guidance must be specified in the ordinance for the qualifications. On that same page, in line 14, the Board is required to develop additional qualifications for right-of-way towing companies. More statutory guidance is needed in this section. See, e.g, *Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 162 (Md. Ct. Spec. App. 1999) (“municipal delegation of ministerial authority must contain sufficient guidelines to ensure that the officers carrying out the delegations will act in accordance with the legislative will, and not employ their own unbounded discretion.”).

Similarly, on page 12, line 22, the Board is required to set maximum charges for towing services and storage. To avoid the delegation of too much discretion, the amount should be set in the ordinance or the amount should be set by the Board of Estimates. On that same page, the Board is authorized to reject a proposed schedule if the proposed charges are “excessive.” It is unclear why the Board would need the authority to reject “excessive” charges (which is arguably subjective) if maximum charges are set.

Section 22-29 of the bill must be revised to reflect the City’s legal relationship to the police. City Charter, Art. II § 27 (“no ordinance of the City ...shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner.”). Amendments are attached hereto.

On page 6, line 13, there is a typographical error (“T” should be “AT”) and on page 11, line 11, “E” should be “BE.”

With these amendments, the Law Department could approve the bill for form and legal sufficiency.

Very truly yours,



Ashlea H. Brown
Assistant Solicitor

cc: Dana P. Moore, Acting City Solicitor
Matthew Stegman, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor
Victor Tervalá, Chief Solicitor
Hilary Ruley, Chief Solicitor

AMENDMENTS TO COUNCIL BILL 19-0431
(1st Reader Copy)

Proposed by: Law Dep't
{To be offered to the Public Safety Committee}

Amendment No. 1

On page 3, line 1, strike (1) and beginning with the semicolon through “vehicle” on line 2.

Amendment No. 2

On page 5, delete section 22-3

OR alternate Amendment No. 2

On page 5, delete lines 12-17 and replace with a purpose clause that demonstrates that the regulations are genuinely responsive to safety concerns

Amendment No. 3

On page 7, line 21, strike “staff” and replace with LEGAL COUNSEL and in line 22 strike “adequate staff” and replace with LEGAL COUNSEL

Amendment No. 4

On page 8, line 8, delete starting with “OR” through and including “VEHICLE” in line 9.

Amendment No. 5

On page 10, line 9, strike lines 9-10 and replace with specific qualifications

Amendment No. 6

On page 10, delete lines 14-17 and replace with specific qualifications

Amendment No. 7

On page 12, line 22, delete lines 22-23 and specify the maximum charge in the ordinance

OR alternate Amendment No. 8

On page 12, line 22, delete lines 22-23 and replace with THE BOARD OF ESTIMATES SHALL SET THE MAXIMUM CHARGES FOR TOWING SERVICES AND STORAGE

Amendment No. 9 (language regarding police)

On page 15, line 23 strike "THE" through and including "PERMIT" and in line 24 after "AVAILABLE" add MAY and strike "TO"

On page 16, line 1, after "SO" insert ONLY and strike starting with "THE" through and including "SUMMON" in line 2 and after "VEHICLE" add MAY TOW THE VEHICLE

On page 16, line 6 after "CIRCUMSTANCES" insert ONLY and strike "THE" through and including "SUMMON" in line 7 and in line 8 insert MAY and strike "TO"

On page 16, line 10 strike starting with "TO" through and including "THAT" in line 11 and in line 13 strike "IS" and insert MUST and insert BE after "NOT"

On page 16, line 15, strike "IS" and replace with "MUST BE" before EITHER