

**MEMORANDUM**

April 13, 2015

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Introduction:** Bill 17-15, Motor Vehicle Towing and Immobilization on Private Property – Amendments.

Bill 17-15, Motor Vehicle Towing and Immobilization on Private Property – Amendments, sponsored by Lead Sponsor Councilmember Berliner, is scheduled to be introduced on April 14, 2015. A public hearing will be scheduled at a later date.

Bill 17-15 would:

- (1) authorize the County Executive to set flat rates for certain towing services;
- (2) add certain notice and towing procedure requirements;
- (3) provide certain additional enforcement powers for the Office of Consumer Protection;
- (4) prohibit the immobilization of certain vehicles; and
- (5) generally amend the law governing motor vehicle towing and immobilization on private property.

**Background**

Chapter 30C of the County Code governs the towing or immobilization of motor vehicles on private property without the consent of the vehicle owners, and has not been substantively amended since 1997. Bill 17-15 would make a number of changes to the law to better protect public safety in incidents where vehicles are towed without their owners' consent. Specifically, Bill 17-15 would amend the law to:

- clearly state that the purpose of the Chapter is to protect public safety;
- require the Executive to set either maximum rates or flat rates, and require towing companies to charge rates either not in excess of the maximum rate, or equal to the flat rate, depending on which is set;
- grant subpoena powers for the Office of Consumer Protection in enforcing the Chapter;
- require one notice sign per 25 spaces in parking lots with 100 or more parking spaces, in addition to requiring signs at entrances;

- require that tows between 2:00am and 9:00am be “specifically authorized” by the property owner;
- require photographic evidence of violation or event precipitating the towing of a vehicle;
- prohibit the use of "spotters" to identify vehicles for towing;
- require a property owner or property manager to maintain tow slips and information on nonconsensual tows;
- give authority to Office of Consumer Protection investigators to order release of vehicle; and
- prohibit immobilization of vehicles under this Chapter.

The Bill would also make a number of corrective technical amendments throughout Chapter 30C to make subparagraph references consistent with current practice.

This packet contains:	<u>Circle #</u>
Bill 17-15	1
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Bill No. 17-15  
Concerning: Motor Vehicle Towing and Immobilization on Private Property – Amendments  
Revised: April 13, 2015 Draft No. 2  
Introduced: April 14, 2015  
Expires: October 14, 2016  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Berliner

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**AN ACT** to:

- (1) authorize the County Executive to set flat rates for certain towing services;
- (2) add certain notice and towing procedure requirements;
- (3) provide certain additional enforcement powers for the Office of Consumer Protection;
- (4) prohibit the immobilization of certain vehicles; and
- (5) generally amend the law governing motor vehicle towing and immobilization on private property

By amending

Montgomery County Code  
Chapter 30C, Motor Vehicle Towing and Immobilization on Private Property  
Sections 30C-1, 30C-2, 30C-3, 30C-4, 30C-5, 30C-7, 30C-8, and 30C-11

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



27           The purpose of this Chapter is to protect public safety by restricting  
 28           [restricts] the exercise of any such legal authority.

29 **30C-2. Maximum rates.**

30           (a) When charging for towing a motor vehicle from private property  
 31           without the consent of the owner, a towing service must [not] charge:

- 32           (1) a flat rate established by the Executive under this Section; or  
 33           (2) a rate that is not more than a maximum rate [which the county  
 34           executive must establish by regulation under method (2)]  
 35           established by the Executive under this Section. [The executive  
 36           must review the rates at least every two (2) years.]

37           (b) The [executive] Executive must set by method (2) regulation, and  
 38           review at least every two years, either fair and reasonable flat rates or  
 39           maximum rates for each of the following acts:

- 40           (1) Attaching the vehicle to be towed to the tow truck;  
 41           (2) Towing the vehicle to a storage site. This rate must be based on  
 42           the distance the vehicle is towed;  
 43           (3) Storing the vehicle until it is redeemed; and  
 44           (4) Any other service needed to safely remove a vehicle.

45           (c) The fee for releasing a vehicle under section 30C-7 must not exceed  
 46           one-half the attachment fee set under subsection (b)(1),

47           (d) A towing service must not charge for any act not listed in this section  
 48           unless that act was expressly requested by the vehicle owner.

49 **30C-3. Administration; rates.**

50           (a) Each driver employed by a trespass towing service must have a valid  
 51           license to operate a tow truck.

52 (b) Every trespass towing service must file with the Office a schedule of its  
53 rates for each action connected with the towing or storage of  
54 unauthorized vehicles. The Office may disapprove a rate that:

55 (1) is different from a flat rate set under Section 30C-2; or

56 (2) exceeds [the] a maximum rate set under Section 30C-2.

57 \* \* \*

58 (f) The Office may issue subpoenas to compel the production of  
59 documents, papers, books, records, and other evidence in any matter to  
60 which this Chapter applies.

61 (g) Any violation of this chapter is a class A violation.

62 **30C-4. Public notice; tow procedures.**

63 \* \* \*

64 (b) *Signs.*

65 \* \* \*

66 (2) Sufficient numbers of signs must be posted permanently so that at  
67 least one sign is clearly readable from each parking area and each  
68 vehicle entrance to the property at all times. [Alternatively]  
69 Additionally, in a parking lot with more than 100 parking spaces,  
70 at least one sign must be posted in a conspicuous place for each  
71 [75] 25 parking spaces, and each sign must be readable from all  
72 affected spaces.

73 (3) Each sign must:

74 [a.](A) Summarize all parking restrictions on the property  
75 enforced by towing unauthorized vehicles, including time  
76 and area restrictions;

77 [b.](B) Indicate that vehicles violating the restrictions may  
78 be towed at the vehicle owner's expense; and

79 [c.](C) List the telephone number of each towing service  
 80 hired to tow unauthorized vehicles from the property, or a  
 81 telephone number that is answered personally at all times  
 82 of the day and night by the property owner or an agent of  
 83 the owner who is informed of each vehicle towed from the  
 84 property.

85 \* \* \*

86 (6) An owner of residential property, including a condominium,  
 87 cooperative or homeowners' association, may have an  
 88 unauthorized vehicle towed from that property without posting  
 89 the signs required by this subsection if:

90 [a.](A) A notice specifying a violation of an applicable rule  
 91 or covenant is securely attached to the vehicle in a  
 92 conspicuous place;

93 [b.](B) The date and time the notice was attached is written  
 94 on it;

95 [c.](C) The notice informs the vehicle owner that:  
 96 (i) the violation must be corrected or the vehicle may  
 97 be towed at the vehicle owner's expense 48 hours  
 98 after the notice is attached; and  
 99 (ii) an unauthorized vehicle that has received a notice of  
 100 the same violation under this Section on the same  
 101 property within the previous 180 days may be towed  
 102 without any further notice; and

103 [d.](D) The vehicle is not towed until at least 48 hours after  
 104 the notice is attached unless the unauthorized vehicle

105 received a notice of the same violation under this Section  
 106 on the same property within the previous 180 days.

107 (7) An owner of a commercial parking lot with more than 100 spaces  
 108 may have an unauthorized vehicle towed from that property  
 109 without posting the signs required by this subsection if:

110 [a.](A) A notice specifying a violation of an applicable rule  
 111 or covenant is securely attached to the vehicle in a  
 112 conspicuous place;

113 [b.](B) The date and time the notice was attached is written  
 114 on it;

115 [c.](C) The notice informs the vehicle owner that:  
 116 (i) the violation must be corrected or the vehicle may  
 117 be towed at the vehicle owner's expense 24 hours  
 118 after the notice is attached; and  
 119 (ii) an unauthorized vehicle that has received a notice of  
 120 the same violation under this Section on the same  
 121 property within the previous 180 days may be towed  
 122 without any further notice; and

123 [d.](D) The vehicle is not towed until at least 24 hours after  
 124 the notice is attached unless the unauthorized vehicle  
 125 received a notice of the same violation under this Section  
 126 on the same property within the previous 180 days.

127 (c) *Tow procedures.*

128 \* \* \*

129 (5) Any property owner or any person acting as an agent of a  
 130 property owner, must not:

- 131 [a.](A) Falsely state that a property owner authorized the
- 132 towing of a particular vehicle;
- 133 [b.](B) Record any false information about the towing of a
- 134 particular vehicle; or
- 135 [c.](C) Sign a tow slip before all of the information relating
- 136 to the towing of a particular vehicle is recorded on the slip.

137 \* \* \*

138 (9) An agent of a property owner, for the purpose of ordering the

139 towing of an unauthorized vehicle, must not:

- 140 [a.](A) Be employed by, or have any member of his or her
- 141 immediate family employed by, any towing service; or
- 142 [b.](B) Have any financial interest in any towing service or
- 143 the towing of any motor vehicle.

144 This provision does not apply if the towing service is the record owner

145 of property from which a motor vehicle is towed.

146 (10) An unauthorized vehicle may be towed from private property

147 without the express authorization of the property owner or the

148 owner's agent only[;

- 149 a. Between 2:00 a.m. and 9:00 a.m.; or
- 150 b. If] if the vehicle is directly blocking a clearly marked fire
- 151 lane or access to the property or a building on the property.

152 (11) Before towing an unauthorized vehicle from private property, a

153 person must obtain photographic evidence of the violation or

154 event that precipitated the towing of the vehicle.

155 (d) (1) A property owner may move a vehicle within a parking lot

156 without prior notice to the vehicle owner, but must not remove

157 the vehicle from the lot, when moving the vehicle is necessary to:

- 158 [a.](A) Remove large quantities of snow or debris;
- 159 [b.](B) Repair the parking lot; or
- 160 [c.](C) Respond to a threat to a person's safety or health.

161 (2) In moving a vehicle within a parking lot, a property owner must:

- 162 [a.](A) Take reasonable care not to damage the vehicle;
- 163 [b.](B) Pay any cost of moving the vehicle; and
- 164 [c.](C) Inform the vehicle owner where the vehicle was
- 165 relocated or return the vehicle to its original location as
- 166 soon as possible.

167 (e) A property owner or towing service must not employ or use the services  
 168 of an individual commonly referred to as a "spotter," whose primary  
 169 task is to report the presence of unauthorized parked vehicles for the  
 170 purpose of towing or removal. For the purposes of this subsection,  
 171 "primary task" means an individual's job function that accounts for  
 172 more than 50% of the individual's compensation or hours worked.

173 **30C-5. Notice to police.**

174 \* \* \*

175 (c) The property owner or [the owner's agent] property manager must  
 176 retain each tow slip and, for those vehicles towed without a tow slip, a  
 177 record of the information furnished to the police, for one year after the  
 178 tow. For each vehicle towed without a tow slip, the property owner or  
 179 [agent] property manager must record and retain the name of the owner  
 180 of the property and, if the tow was authorized by an agent, the name of  
 181 the agent. The Police Department, the Office, and the owner of any  
 182 vehicle towed by the service may inspect and copy this information at  
 183 any time during normal business hours.

184 \* \* \*

185 **30C-7. Incomplete tows.**

186

\* \* \*

187 (e) A police officer or investigator employed by the Office may order a  
 188 towing service to release a vehicle, or to stop attaching a vehicle, at any  
 189 time.

190 **30C-8. Redemption and storage procedures.**

191

\* \* \*

192 (b) *Payment and promise to pay.*

193 (1) *Cash payment.* A trespass towing service must accept payment in  
 194 cash, or by a traveler's check accompanied by reasonable  
 195 identification.

196 (2) *Options.*

197 [a.](A) Each trespass towing service must accept as full  
 198 payment either a credit card slip or a personal check, at the  
 199 option of the towing service, validly signed by the vehicle  
 200 owner or the owner's agent for the amount of all valid  
 201 charges.

202 [b.](B) Each trespass towing service must notify the Office  
 203 on the rate schedule filed under Section 30C-3 whether it  
 204 opts to accept credit cards or personal checks or both. The  
 205 towing service must notify the Office if it changes that  
 206 option.

207 [c.](C) The option chosen by a trespass towing service must  
 208 be available to the owners of all vehicles towed by that  
 209 service without the consent of their owners.

210 (3) *Credit card option.*

211 [a.](A) Each trespass towing service must accept the 2 most  
 212 widely used major credit cards. The Office must define, in  
 213 regulations under method (2), which major credit cards are  
 214 the 2 most widely used.

215 [b.](B) In addition, if a trespass towing service accepts any  
 216 other credit card for any other purpose, it must accept that  
 217 credit card under this Chapter.

218 (4) *Personal check option.* A trespass towing service must, if it does  
 219 not accept the 2 most widely used credit cards under subsection  
 220 (c)(3), accept a personal check, with reasonable identification, if  
 221 the vehicle is registered in Maryland.

222 (5) *Withholding payment.* If:

223 [a.](A) The vehicle owner withholds payment in a credit  
 224 card transaction with a towing service under this Chapter;  
 225 and

226 [b.](B) A court in any subsequent civil action finds that the  
 227 tow was valid and the amount charged was correct; the  
 228 vehicle owner must pay the towing service, in addition to  
 229 the amount validly charged, liquidated damages of 2 times  
 230 the amount validly charged (but not more than \$1,000.00)  
 231 and all reasonable costs of collection, including court costs  
 232 and a reasonable attorney's fee.

233 (6) *Stopping payment.* If:

234 [a.](A) The vehicle owner stops payment on a check written  
 235 to a towing service under this chapter;

236 [b.](B) The towing service follows the procedures in state  
 237 law for collection of dishonored checks; and

238                    [c.](C)            A court in any subsequent civil action finds that the  
 239    tow was valid and the amount charged was correct; the  
 240    vehicle owner must pay the towing service, in addition to  
 241    the amount validly charged, liquidated damages of 2 times  
 242    the amount validly charged (but not more than \$1,000.00)  
 243    and a collection fee of \$25.00.

244    \*            \*            \*

245    **30C-11. Immobilization [restrictions] prohibited.**

246            (a)    *Applicability.* A person must not immobilize a motor vehicle owned by  
 247    another person [without complying with all requirements of this section]  
 248    on private property, without the consent of the vehicle owner.

249            (b)    [*Signs.* The owner of the property on which a vehicle is immobilized  
 250    must permanently post a sufficient number of signs which meet all  
 251    requirements of Section 30C-4(b)(1)-(5) on the property at least 24  
 252    hours before a person immobilizes an unauthorized vehicle. The text of  
 253    the sign must reflect that vehicles may be immobilized rather than, or in  
 254    addition to, being towed, and must specify the rate charged to release a  
 255    vehicle. The Department of Housing and Community Affairs may by  
 256    regulation prescribe the text, graphics, symbols, shape, size, color, or  
 257    other elements necessary for a sign to comply with this section.

258            (c)    *Requirements.* A person must not immobilize an unauthorized vehicle  
 259    unless:

260                    (1)    the owner of the property where the vehicle is located has  
 261    expressly authorized the person to immobilize unauthorized  
 262    vehicles on the property;

263                    (2)    the person, and any business that employs the person to  
 264    immobilize vehicles, has registered with the Department of

- 265                   Housing and Community Affairs under Section 31A-2 as if  
266                   Chapter 31A applies to that person and business;
- 267           (3)   the person has been adequately trained to apply an immobilizing  
268           device;
- 269           (4)   signs meeting all requirements of subsection (b) have been  
270           properly posted on the property;
- 271           (5)   the person attaches to the vehicle's front windshield a notice  
272           prominently warning the operator not to move the vehicle;
- 273           (6)   the person takes reasonable care not to damage the vehicle; and
- 274           (7)   the owner of the property carries at least \$25,000 in liability  
275           insurance which will cover any damage to the vehicle.
- 276   (d)   *Entrapment not allowed.* A person must not immobilize a motor vehicle  
277           on private property if:
- 278           (1)   the property is a parking garage or lot which is normally used for  
279           paid public parking and operated by an attendant;
- 280           (2)   the vehicle entered the garage or lot between 6 p.m. and 8 a.m.;
- 281           and
- 282           (3)   the garage or lot was unattended, and access to the garage or lot  
283           was not physically blocked, when the vehicle entered.
- 284   (e)   *Release of vehicle.* A person who is authorized to release immobilized  
285           vehicles must:
- 286           (1)   arrive as promptly as possible, but in any case within 30 minutes  
287           after the owner or operator of an immobilized vehicle calls the  
288           telephone number listed on the sign posted at the property and  
289           requests the release of the vehicle;
- 290           (2)   immediately release the vehicle after a lawful release fee is paid;

- 291 (3) not require the vehicle owner or operator to waive any right to  
292 receive compensation for damages to the vehicle; and
- 293 (4) give the operator of the vehicle a receipt which legibly shows:
- 294 (A) the release fee paid,
- 295 (B) the date, time, and location of the release, and
- 296 (C) the name of the person who received the payment and any  
297 business for which the person acted.
- 298 (f) *Maximum rate.* A person must not charge more to release an  
299 unauthorized vehicle than a maximum rate set by the County Executive  
300 by regulation under method (2). The Executive must set a maximum  
301 rate which fairly compensates the property owner for the reasonable  
302 cost of immobilization, but which does not exceed \$50, and must review  
303 the maximum rate at least every 2 years.
- 304 (g) *Payment and promise to pay.* A person who is authorized to release  
305 immobilized vehicles must accept payment:
- 306 (1) in cash, or by a traveler's check accompanied by reasonable  
307 identification;
- 308 (2) by a personal check, accompanied by reasonable identification, if  
309 the vehicle is registered in Maryland; or
- 310 (3) by the 2 most widely used major credit cards, as defined by the  
311 Department of Housing and Community Affairs. In addition, if  
312 the person, or the business which employs the person, accepts  
313 any other credit card for any other purpose, the person must  
314 accept that credit card for this purpose.

315 The remedies in Section 30C-8(b)(5)-(6) apply to any payment under  
316 this section.

317 (h) *No lien.* This section does not create or imply a lien in favor of any  
318 person when such a lien would not otherwise exist. This section does  
319 not give any person a right to retain possession of any vehicle it would  
320 otherwise have to return to the vehicle owner.

321 (i) *Public property.* Only a properly authorized agent of a government  
322 agency with jurisdiction over a public road or other public property may  
323 immobilize a motor vehicle on that road or property.

324 (j) *Enforcement; police power.* The Department of Housing and  
325 Community Affairs and the Police Department enforce this section. A  
326 police officer may order a person not to immobilize a vehicle, or to  
327 release an immobilized vehicle without payment, at any time to prevent  
328 a breach of the peace or if the officer has reasonable cause to believe  
329 that the immobilization would be or was unlawful.

330 (k) *Civil remedy.* Any person whose vehicle has been unlawfully  
331 immobilized, unlawfully held after being lawfully immobilized, or  
332 damaged while immobilized, may recover from the owner of the  
333 property or any other person responsible for immobilizing the vehicle,  
334 in a civil action, the greater of:

335 (1) all actual damages sustained; or

336 (2) liquidated damages of \$100.

337 This remedy does not replace or limit any other remedy available by  
338 law.

339 *Approved:*

340

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George Leventhal, President, County Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 17-15

*Motor Vehicle Towing and Immobilization on Private Property – Amendments*

<b>DESCRIPTION:</b>	Bill 17-15 would amend the County's towing and vehicle immobilization law to authorize the County Executive to set flat rates for certain towing services; add certain notice and towing procedure requirements; provide certain additional enforcement powers for the Office of Consumer Protection; and prohibit the immobilization of certain vehicles.
<b>PROBLEM:</b>	"Trespass towing," the towing of a motor vehicle from private property for compensation without the consent of the vehicle owner, is subject to certain predatory practices which lead to confrontations that threaten public safety.
<b>GOALS AND OBJECTIVES:</b>	To protect public safety by strengthening the regulation of trespass towing in the County.
<b>COORDINATION:</b>	Office of Consumer Protection
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Josh Hamlin, 240-777-7892
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	Subject to Class "A" violation.