

PS COMMITTEE #3  
January 24, 2013

## MEMORANDUM

January 22, 2013

TO: Public Safety Committee

FROM: Susan J. Farag, Legislative Analyst *SJF*

SUBJECT: Update: Office of Consumer Protection

Today, the Committee will receive an update from the Office of Consumer Protection (OCP) on its current initiatives and future plans. The following are expected to brief the Committee:

Eric Friedman, Director of the Office of Consumer Protection  
Ralph Vines, OCP  
Doug Numbers, OCP  
Marsha Carter, OCP

### **Implementation of the State's New Towing Law**

In September 2012, the Committee was briefed by OCP and the Police Department about the State's new towing law that would impact Montgomery County. The State law became effective October 1, 2012. Since the County already has a comprehensive set of towing laws, it was anticipated that the new State law would cause some confusion over various provisions, including vagueness about whether State or County law controlled. OCP has worked with the County Attorney's office to analyze the two laws and prepare a guideline for the County, towing companies, common ownership communities, other business owners, and others potentially impacted by the changes. The guidelines were provided in writing to all licensed towing firms.

OCP has since met with the County's Intergovernmental Relationship Office and State Delegates Niemann and Gilchrist to discuss the new law's impact on Montgomery County, and to request amendments that would allow the County to opt out of the State law.

One of the larger towing firms in the County also filed a lawsuit against the State and the County, seeking declaratory judgment, a temporary restraining order, and both preliminary and permanent injunctions regarding two provisions of the new State law.

### **Auto Sales**

Unlicensed car sales continue to be a concern in the County. OCP continues to work with investigators from the State's Motor Vehicle Administration and prosecutors from the State's Attorney's office in order to take legal action against unlicensed car dealers.

### **Pepco Rate Case**

Pepco has requested a new rate increase of \$60 million, which is pending before the Public Service Commission. This rate increase request comes on the heels of the PSC's denial of a bulk of the company's \$68 million request last year. The new rate request would increase base distribution rates (about \$7.13 per month for an average customer), as well as add a three-year grid resiliency charge. The resiliency charge (\$0.96 to \$1.93 per month) would start in 2014. OCP is working with the County Attorney's Office on the County's intervention (Case #9311). The PSC's decision is expected by July 1, 2013.

### **OCP Outreach**

OCP continues to conduct consumer outreach over the County's Cable TV channel in its half-hour show called "Consumer Compass." The 17<sup>th</sup> episode is currently airing. OCP has also conducted four on-line chats as part of OCP's ongoing "Consumer Café...Food for Thought" series. These topics have included general consumer protection issues, home improvement complaints, trespass towing complaints, and Commission on Common Ownership Communities issues.

OCP also won a NACO Award in 2012 for the database system used to facilitate its volunteer recruitment and training program. The office currently has a team of volunteers including a retired Assistant Attorney General, general counsel with a bank, federal administrative law judge, and a law school professor.

### **Individual Complaint Investigation and Resolution**

OCP continues to handle the investigation and resolution of individual complaints regarding most consumer transactions. One recent complaint concerned a direct mail solicitation sent to senior citizens regarding mortgage payments. The original letter prominently stated the name of a federal agency and failed to disclose that the merchant was in reality selling "reverse mortgages."

## Discussion Issues

1. Trespass towing has historically been one of the largest types of complaints received by OCP. How has the new State law impacted these types of complaints?
2. Has OCP been in contact with COCs about the new towing requirements? What concerns have they raised, if any?
3. What feedback have you received from towing companies?
4. One OCP staff person was transferred to the County Attorney's Office to assist with Pepco utility issues. Is her former OCP position currently vacant? What are OCP's plans for filling that position, and what types of duties will it assume?
5. OCP mentioned that the "reverse mortgage" direct solicitation was misleading and targeted at seniors. What other types of consumer fraud have been targeted at seniors? Have complaints like this increased?

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## Maryland Community News

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*Published: Friday, January 11, 2013*

**Montgomery brings Pepco fight in house** *By Kate S. Alexander*

*Staff Writer*

Ongoing battles against Pepco's requests for more money will now have Montgomery County's full legal attention.

The county has dedicated an assistant county attorney to focus on utility issues, which brings the fight against Pepco's latest rate case in house.

County spokesman Patrick Lacefield said lawyer Lisa Brennan moved from the Office of Consumer Protection, where she dealt frequently with utility issues, to the Office of the County Attorney where utilities will now dominate her time.

In the past, Montgomery County used both outside legal counsel and its county attorneys to fight against Pepco's in proceedings before the Maryland Public Service Commission.

This year, the county decided it would bring its efforts in house, Lacefield said.

"I think that everyone is pretty clear that the county is staying on utilities to make sure that we have as safe and reliable service as we can," Brennan said.

"We have concluded we are going to be in this for the long term, not just one or two rate cases," Councilman Roger Berliner.

Not only is dedicating Brennan's time to utilities evidence that the county is committed to those issues, but it also should reduce costs to taxpayers, said Berliner (D-Dist. 1) of Bethesda.

Montgomery spent \$238,398.75 last year on outside counsel to fight Pepco, which had asked to increase its base distribution rates by \$68 million, according to information from County Attorney Marc P. Hansen, provided by Lacefield. Brennan's annual salary is \$89,596, according to figures released by the county in December.

The county pushed against Pepco's last request, the bulk of which was denied in July.

Pepco has asked the PSC for another rate increase, this time totaling \$60.8 million more in base distribution rates, or \$7.13 per month from the average customer, as well

as a three-year grid resiliency charge. Starting at 96 cents per month in 2014, the charge would increase annually to \$1.70 a month in 2015 and \$1.93 a month in 2016, and would pay to accelerate tree trimming, upgrade 12 more feeders a year and put six distribution feeders underground.

While she will deal with more than just Pepco, the rate case will be her major focus for the time being, Brennan said.

"I don't know if there is going to any other case that is pending at the Public Service Commission that is going to affect county residents quite so much," Brennan said.

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## Key Provisions in the New Maryland Towing Law

**by:**

Keisha A. Garner  
Whiteford, Taylor & Preston L.L.P. - Baltimore Office

November 21, 2012

Previously published on November 16, 2012

*Takeaway: The Maryland General Assembly made changes to the Maryland State Transportation Code, effective October 1, 2012, regulating towing procedures for all Maryland community associations.*

### **Applicability of State towing law (Sec. 21-10A-01(b)(2))**

The new law applies **only** to the towing or removal of vehicles from "parking lots", which are defined as **privately owned** facilities consisting of three or more spaces for motor vehicle parking that are accessible to the general public and are intended to be used by residents and guests.

### **Signage Requirements (Sec. 21-10A-02)**

The state law now requires at least one sign for every 7,500 square feet of parking space in the parking lot. Each sign must:

- Be at least 24 inches high and 30 inches wide
- Be placed in conspicuous locations
- Be clearly visible to the driver of a motor vehicle entering or being parked in the parking lot
- State the location **and** name of the towing company to which the vehicle will be towed
- State that "State law requires that the vehicle be available to be reclaimed 24 hours per day, 7 days per week"
- State the maximum amount that the owner may be charged for the towing of the vehicle, and
- Provide the telephone number of a person who can be contacted to arrange to reclaim the vehicle

### **Authorization (Sec. 21-10A-04(A)(5))**

**Before** towing or removing the vehicle, the parking lot owner (the Association or authorized agent) must authorize the towing company to tow the vehicle. Authorization must include:

- The name of the person authorizing the tow or removal of the vehicle
- A statement that the vehicle is being towed or removed at the request of the parking lot owner, and
- Photographic evidence of the violation or event that precipitated the towing of the vehicle

### **Notice (Sec. 21-10A-04(A)(2)-(4))**

The person undertaking the towing or removing the vehicle (the tow company) must give notice to the **police department** in the jurisdiction where the parking lot is located **and** to the **owner** of the vehicle, any **secured party**, and the **insurer of record**.

Notice to the Police Department

Notice to the **police department** must be made within **1 hour** after towing or removing the vehicle from the parking lot, and the notice must include:

- Description of vehicle, including the registration plate number and vehicle identification number
- Date and time vehicle was towed or removed
- Reason vehicle was towed or removed, **and**
- Locations from which and to which the vehicle was towed or removed

#### Notice to the Vehicle Owner, Secured Party, and Insurer of Record

Notice to the vehicle owner, secured party, and insurer of record must be made by certified mail, return receipt requested, and first-class mail **within 3 days**, exclusive of days that the towing business is closed, after towing or removing the vehicle from the parking lot. Notice must include:

- The same information required in a notice to a police department and
- Itemized actual costs of providing notice

Luckily for community associations, the obligation to send this notice falls on the towing company, not the association.

#### **How Does the New State Towing Law Affect the Local County Towing Laws?**

There is nothing in the state law that prevents a local authority from adopting more stringent local towing laws. However, both, state and county requirements must be met when towing from a parking lot.

#### **What Are the Differences Between the State Law and the Local County Towing Laws?**

##### Montgomery County

- Signage Requirements (Sec. 30C-4(b)(1) - (5)): New state sign requirements mean that an association now cannot tow from a parking lot after placing a notice on the vehicle, without posting the required signs, as previously permitted under County Code Section 30C-4(b)(6). Signs are now required and both state and county sign requirements must be met.
- Authorization (Sec. 30C-3(e)): Since state law now requires authorization for towing each individual vehicle (except when blocking a fire lane or access to the property), towing companies now may not tow a vehicle from a parking lot without the property owner's express authorization between the hours of 2:00 a.m. and 9:00 a.m., as previously allowed under county law.
- Notice (Sec. 30C-5): Both state and county notice requirements must be met when towing from a parking lot. The state law requires the towing company to provide the notifications. The county law requires the property owner, or the property owner's agent, to provide certain notifications to the police department before the vehicle is removed from the property.

##### Prince George's County

- Signage Requirements (Sec. 26-142.02-03): Any signs, permits or stickers or other method indicating authorized parking on posted property must be approved by the County as to design, size and content. In addition, all signs must include the international tow truck symbol. Both state and county requirements must be met with regard to the content requirements of each sign.
- Authorization (Sec. 26-142.01): Since state law now requires authorization for towing each individual vehicle (except when blocking a fire lane or access to the property), towing companies now may not tow a vehicle from a parking lot without the property owner's express authorization between the hours of 9:00 P.M. and 6:00 A.M., as previously allowed under county law.
- Notice: Both state and county notice requirements must be met when towing from a parking lot. Similar to the state law, Prince George's County requires that the tow company give notice to the police department.

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**Other Legal Implications of the New Law**

A towing company has filed a lawsuit challenging the new state towing law. We will be following the progress of this case to see if any aspects of the new law are affected by court decisions. In the meantime, all towing agreements should be reviewed for possible revisions necessary to ensure compliance with the new law. If you have questions about compliance with the state law or how the change in the state law specifically affects your community, please contact our office.

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