MEMORANDUM

April 13, 2015

TO: County Council

FROM: Josh Hamlin, Legislative Attorney


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.

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COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Berliner

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

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Sections 30C-1, 30C-2, 30C-3, 30C-4, 30C-5, 30C-7, 30C-8, and 30C-11 are amended as follows:

30C-1. Definitions; scope; purpose.

*   *   *

(b) Scope.

(1) This Chapter applies to the towing of a motor vehicle from private property, or the immobilization of a motor vehicle on private property, without the consent of the vehicle owner.

(2) This Chapter does not apply to:

[a.](A) Towing initiated by the vehicle owner;
[b.](B) Towing approved or requested by a police officer, firefighter, or rescue squad member in the course of duty or under the state law on abandoned vehicles; or
[c.](C) Towing a motor vehicle while repossessing it.

(3) Sections 30C-4 and 30C-6 do not apply to:

[a.](A) Towing from designated handicapped parking spaces;
[b.](B) Towing from the yard or driveway of a one-family dwelling; or
[c.](C) Towing from land immediately adjoining an electric or telephone utility building or structure that is not open to the general public.

(c) Purpose. This Chapter does not authorize the immobilization, towing or holding of any vehicle. To the extent that legal authority to immobilize, tow or hold a vehicle without the consent of its owner exists, that authority must be derived from other statutes or the common law.
The purpose of this Chapter is to protect public safety by restricting [restricts] the exercise of any such legal authority.


(a) When charging for towing a motor vehicle from private property without the consent of the owner, a towing service must [not] charge:
(1) a flat rate established by the Executive under this Section; or
(2) a rate that is not more than a maximum rate [which the county executive must establish by regulation under method (2)] established by the Executive under this Section. [The executive must review the rates at least every two (2) years.]

(b) The [executive] Executive must set by method (2) regulation, and review at least every two years, either fair and reasonable flat rates or maximum rates for each of the following acts:
(1) Attaching the vehicle to be towed to the tow truck;
(2) Towing the vehicle to a storage site. This rate must be based on the distance the vehicle is towed;
(3) Storing the vehicle until it is redeemed; and
(4) Any other service needed to safely remove a vehicle.

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

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

30C-3. Administration; rates.

(a) Each driver employed by a trespass towing service must have a valid license to operate a tow truck.
(b) Every trespass towing service must file with the Office a schedule of its rates for each action connected with the towing or storage of unauthorized vehicles. The Office may disapprove a rate that:

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

(2) exceeds the maximum rate set under Section 30C-2.

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

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

30C-4. Public notice; tow procedures.

(b) Signs.

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

(3) Each sign must:

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

[b.](B) Indicate that vehicles violating the restrictions may be towed at the vehicle owner's expense; and
[c.](C) List the telephone number of each towing service hired to tow unauthorized vehicles from the property, or a telephone number that is answered personally at all times of the day and night by the property owner or an agent of the owner who is informed of each vehicle towed from the property.

* * *

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

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

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

[c.](C) The notice informs the vehicle owner that:

(i) the violation must be corrected or the vehicle may be towed at the vehicle owner's expense 48 hours after the notice is attached; and

(ii) an unauthorized vehicle that has received a notice of the same violation under this Section on the same property within the previous 180 days may be towed without any further notice; and

[d.](D) The vehicle is not towed until at least 48 hours after the notice is attached unless the unauthorized vehicle
received a notice of the same violation under this Section on the same property within the previous 180 days.

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

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

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

[c.](C) The notice informs the vehicle owner that:

(i) the violation must be corrected or the vehicle may be towed at the vehicle owner's expense 24 hours after the notice is attached; and

(ii) an unauthorized vehicle that has received a notice of the same violation under this Section on the same property within the previous 180 days may be towed without any further notice; and

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

(c) Tow procedures.

* * *

(5) Any property owner or any person acting as an agent of a property owner, must not:
[a.](A) Falsely state that a property owner authorized the

towing of a particular vehicle;

[b.](B) Record any false information about the towing of a

particular vehicle; or

[c.](C) Sign a tow slip before all of the information relating

to the towing of a particular vehicle is recorded on the slip.

* * *

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

towing of an unauthorized vehicle, must not:

[a.](A) Be employed by, or have any member of his or her

immediate family employed by, any towing service; or

[b.](B) Have any financial interest in any towing service or

the towing of any motor vehicle.

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

of property from which a motor vehicle is towed.

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

without the express authorization of the property owner or the

owner's agent only[

a. Between 2:00 a.m. and 9:00 a.m.; or

b. If] if the vehicle is directly blocking a clearly marked fire

lane or access to the property or a building on the property.

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

person must obtain photographic evidence of the violation or

event that precipitated the towing of the vehicle.

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

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

the vehicle from the lot, when moving the vehicle is necessary to:
[a.](A) Remove large quantities of snow or debris;
[b.](B) Repair the parking lot; or
[c.](C) Respond to a threat to a person's safety or health.

(2) In moving a vehicle within a parking lot, a property owner must:
[a.](A) Take reasonable care not to damage the vehicle;
[b.](B) Pay any cost of moving the vehicle; and
[c.](C) Inform the vehicle owner where the vehicle was relocated or return the vehicle to its original location as soon as possible.

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

30C-5. Notice to police.

*  *  *

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

*  *  *
30C-7. Incomplete tows.

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

30C-8. Redemption and storage procedures.

(b) Payment and promise to pay.

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

(2) Options.

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

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

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

(3) Credit card option.
Each trespass towing service must accept the 2 most widely used major credit cards. The Office must define, in regulations under method (2), which major credit cards are the 2 most widely used.

In addition, if a trespass towing service accepts any other credit card for any other purpose, it must accept that credit card under this Chapter.

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

Withholding payment. If:

The vehicle owner withholds payment in a credit card transaction with a towing service under this Chapter; and

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

Stopping payment. If:

The vehicle owner stops payment on a check written to a towing service under this chapter;

The towing service follows the procedures in state law for collection of dishonored checks; and
[c.](C) A court in any subsequent civil action finds that the
tow was valid and the amount charged was correct; the
vehicle owner must pay the towing service, in addition to
the amount validly charged, liquidated damages of 2 times
the amount validly charged (but not more than $1,000.00)
and a collection fee of $25.00.

* * *


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

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

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

(1) the owner of the property where the vehicle is located has
expressly authorized the person to immobilize unauthorized
vehicles on the property;
(2) the person, and any business that employs the person to
immobilize vehicles, has registered with the Department of
Housing and Community Affairs under Section 31A-2 as if Chapter 31A applies to that person and business;

(3) the person has been adequately trained to apply an immobilizing device;

(4) signs meeting all requirements of subsection (b) have been properly posted on the property;

(5) the person attaches to the vehicle's front windshield a notice prominently warning the operator not to move the vehicle;

(6) the person takes reasonable care not to damage the vehicle; and

(7) the owner of the property carries at least $25,000 in liability insurance which will cover any damage to the vehicle.

(d) Entrapment not allowed. A person must not immobilize a motor vehicle on private property if:

(1) the property is a parking garage or lot which is normally used for paid public parking and operated by an attendant;

(2) the vehicle entered the garage or lot between 6 p.m. and 8 a.m.; and

(3) the garage or lot was unattended, and access to the garage or lot was not physically blocked, when the vehicle entered.

(e) Release of vehicle. A person who is authorized to release immobilized vehicles must:

(1) arrive as promptly as possible, but in any case within 30 minutes after the owner or operator of an immobilized vehicle calls the telephone number listed on the sign posted at the property and requests the release of the vehicle;

(2) immediately release the vehicle after a lawful release fee is paid;
(3) not require the vehicle owner or operator to waive any right to receive compensation for damages to the vehicle; and

(4) give the operator of the vehicle a receipt which legibly shows:

(A) the release fee paid,

(B) the date, time, and location of the release, and

(C) the name of the person who received the payment and any business for which the person acted.

(f) Maximum rate. A person must not charge more to release an unauthorized vehicle than a maximum rate set by the County Executive by regulation under method (2). The Executive must set a maximum rate which fairly compensates the property owner for the reasonable cost of immobilization, but which does not exceed $50, and must review the maximum rate at least every 2 years.

(g) Payment and promise to pay. A person who is authorized to release immobilized vehicles must accept payment:

(1) in cash, or by a traveler's check accompanied by reasonable identification;

(2) by a personal check, accompanied by reasonable identification, if the vehicle is registered in Maryland; or

(3) by the 2 most widely used major credit cards, as defined by the Department of Housing and Community Affairs. In addition, if the person, or the business which employs the person, accepts any other credit card for any other purpose, the person must accept that credit card for this purpose.

The remedies in Section 30C-8(b)(5)-(6) apply to any payment under this section.
(h) No lien. This section does not create or imply a lien in favor of any person when such a lien would not otherwise exist. This section does not give any person a right to retain possession of any vehicle it would otherwise have to return to the vehicle owner.

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

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

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

(1) all actual damages sustained; or

(2) liquidated damages of $100.

This remedy does not replace or limit any other remedy available by law.
LEGISLATIVE REQUEST REPORT

Bill 17-15
Motor Vehicle Towing and Immobilization on Private Property – Amendments

DESCRIPTION: 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.

PROBLEM: “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.

GOALS AND OBJECTIVES: To protect public safety by strengthening the regulation of trespass towing in the County.

COORDINATION: Office of Consumer Protection

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Josh Hamlin, 240-777-7892

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Subject to Class “A” violation.