


MEMORANDUM

July 9, 2015

TO: Public Safety Committee

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Worksession 2: 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, and Co-Sponsors Councilmembers Rice, Katz, Navarro, Hucker, Riemer, Elrich, Council Vice President Floreen and Council President Leventhal, was introduced on April 14, 2015. A public hearing was held on June 16, and a Public Safety Committee worksession was held on June 29.

As introduced, 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.

County Authority to Regulate Trespass Towing

Nonconsensual towing of vehicles from private property, or "trespass towing" is regulated at the federal, state, and local level. Towing generally is regulated at the federal level under the Federal Aviation Administration Authorization Act of 1994 (FAAAA), which includes a general

preemption of state and local regulation of the “price, route, or service of any motor carrier . . . with respect to the transportation of property.” Tow trucks are included in this preemptive language. Since the enactment of the FAAAA, the United States Supreme Court has held that laws regulating the storage and disposal of a vehicle, once towed, “are not sufficiently related to a motor carrier’s service with respect to the transportation of property to warrant preemption under [the FAAAA].”¹ Under this ruling the County may regulate activities related to towing, once the tow is complete.

In addition to the post-tow regulation, local jurisdictions may enact laws “relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.”² Additionally, there is a broad exclusion from the preemptive language of the FAAAA to allow a state (and a political subdivision of a state) to enact laws under its safety regulatory authority. It is under this authority that the County’s regulation of trespass towing is enacted.

The State of Maryland has also enacted laws regulating trespass towing.³ Under the State law, “nothing . . . prevents a local authority from exercising any power to adopt local laws or regulations relating to the registration or licensing of persons engaged in, or otherwise regulating, in a more stringent manner, the parking, towing or removal, or impounding of vehicles.”⁴ Thus State law does not preempt the County from regulating trespass towing, subject to the stringency requirement.⁵

June 16, 2015 Public Hearing

The Public Safety Committee held a public hearing on the Bill on June 16, 2015. There were 30 speakers at the hearing, representing a wide range of perspectives on the issues covered in the Bill. Eric Friedman, Director of the Office of Consumer Protection (OCP), spoke on behalf of the County Executive, and expressed support for the Bill with a number of additional recommendations. The remainder of the speakers at the public hearing generally represented four perspectives: business owners and property managers, towing companies, homeowners’ associations (HOAs) and condominiums, and “victims” of predatory towing practices.

Concerns expressed by business owners and property managers ranged from descriptions of the hardship that illegal parking imposes on business to concerns more specific to Bill 17-15’s proposed changes, particularly related to overnight tows and increased signage. Representatives from the towing industry were also concerned with the proposed specific authorization requirements for overnight tows and signage, but also objected to the Bill’s proposed ban on the use of “spotters,” its “photographic evidence” requirement, and the grant of additional powers to OCP.

¹ *Dan’s City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1775 (2013).

² 49 U.S.C. § 14501(b)(2)(C).

³ MD. Transportation Code, MD. Transportation Code, §§ 21-10A-01 through 21-10A-06.

⁴ *Id.*, § 21-10A-01(b)(2).

⁵ Certain areas of local towing regulation less stringent than State law may also be permitted under certain sections of the State law, such as the distance of the tow, and many other restrictions on towing. See §§ 21-10A-03 and 21-10A-04.

Representatives of HOAs and condominiums also were primarily concerned with Bill 17-15's proposed changes with regard to overnight tows and signage. However, at least one condominium association board member decried predatory towing practices and urged the Council to enact the Bill. Vehicle owners whose cars were towed from private property told stories of having their cars towed immediately after stepping off the premises ("walk-off" tows) and alleged mistreatment by towing companies.

June 29, 2015 Worksession

At its worksession on June 29, the Committee discussed the Bill, which as introduced would make a number of significant changes to the County's trespass towing law. The Committee also considered a number of additional amendments proposed by the Executive. The Committee recommended a number of amendments reflected in the revised draft of the Bill (©1-29). Bill 17-15, with amendments recommended by the Committee would:

- restructure Chapter 30C by splitting §30C-1 into two sections, clearly stating that the purpose of the Chapter is to protect the health, safety, and welfare of County residents, consolidating enforcement provisions into a single section, and making technical changes (lines 4-102; lines 622-641);
- require the Executive to set flat rate maximum rates for towing (including hook-up, transport to storage area, and the first 24 hours of storage) and storage after the first 24 hours (lines 103-126);
- authorize the Office of Consumer Protection to issue subpoenas for documents and information relevant to the investigation of a complaint filed with the Office (lines 630-633);
- retain the exemption from the express authorization requirement for tows between 2:00 am and 9:00 pm as it exists in the current law (lines 349-357);
- require photographic evidence of violation or event precipitating the towing of a vehicle, and require that photographic evidence to be provided to the vehicle owner along with the receipt required under existing law (lines 358-364; 574-575);
- authorize OCP investigators to order release of a vehicle to prevent a breach of the peace or when there is reasonable cause to believe the tow is or would be unlawful (lines 625-629);
- prohibit immobilization of vehicles on private property without the owners' consent (lines 632-735);
- amend Chapter 30C to be consistent with State law, allowing OCP to enforce the law rather than police. These amendments relate to:
 - identification, registration, and insurance of tow trucks; age of drivers (lines 135-139);
 - number of signs (lines 220-227);
 - sign specifications (lines 228-252);
 - notice requirements for trespass tows solely for violation of State motor vehicle registration law (lines 381-384);
 - storage lot signs and hours of operation (lines 483-487);
 - Inspection and retrieval of personal property (lines 585-591); and

- Notice provisions requiring that a towing company provide the same information provided to police under existing law to the vehicle owner, any secured party, and the insurer of record, within seven days after the towing or removal of the vehicle, and authorizing a fee for providing the notice only for vehicles not reclaimed within 48 hours after towing (lines 426-433; 127-130);
- require all new contracts between towing companies and property owners to include reference to the liability and obligations of property owners under the law (lines 169-183);
- require property owners who wish to engage in non-consensual towing to first electronically register their commercial lots and provide quarterly reports on towing activity (lines 186-204);
- allow residential and commercial property owners to have unauthorized vehicles towed after following certain notice procedures in lieu of posting all required signs (257-301);
- require *written* authorization for each tow in the form of a tow authorization form provided in person, or via fax, email, or other electronic means approved by the Director of OCP (lines 303-348);
- make the towing company exclusively responsible for the law's notification requirements, and both the property owner and the towing company subject to tow authorization form retention requirements (392-425);
- retain the existing County law providing for a release fee for incomplete tows, but set the fee at \$25, and require receipts required under current law to include reference to the County Code fee provisions, and identify and include photographic evidence of the violation that precipitated the incomplete tow (lines 443-464;125-126);
- require storage facilities to accept payment both in cash and by credit card, and have personnel onsite for redemption of vehicles 24 hours per day, seven days per week (483-518); and
- clearly provide that a property owner is not liable for towing when it is not expressly authorized and the property owner does not otherwise have a business relationship with the towing company (lines 606-609).

Remaining Issues for Committee Discussion

What is the best way to prevent towing companies from actively and independently identifying vehicles for towing?

Bill 17-15 would outlaw the use of individuals whose job is essentially to call in tow trucks to remove unauthorized vehicles, commonly known as "spotters." The bill defines a spotter as an individual whose "primary task" is to report the presence of unauthorized parked vehicles for the purpose of towing or removal. "Primary task" is defined as meaning an individual's job function that accounts for more than 50% of the individual's compensation or hours worked." Spotters are one of the major complaints heard by OCP and Council offices.

Where spotters are used, tows are called in often by the spotter, rather than the actual property owner, and the spotter may wrongly identify a violation, leading to an improper tow. In the June 29 worksession, Councilmember Hucker observed that tow truck drivers frequently serve as "spotters." This situation leads to the active "hunting" of vehicles to tow, not because they inconvenience the property owner, but because they represent profits for the towing company. The

proper balance in trespass towing is to allow private property owners to protect their private property while avoiding tows that are improper or overly aggressive. The penalty for the driver when their car is towed is severe. For simply walking off property to get a cup of coffee next door, property can be taken and can only be reclaimed by paying a substantial fee. As noted in the packet for the June 29 worksession, Council staff believes that, to the extent that spotting encourages cars to be towed without actual authorization from the property owner, it should not be allowed, as it significantly increases the likelihood that an innocent driver will be victimized.

Committee members expressed an interest in strengthening the Bill's provisions pertaining to the use of spotters, and staff looked for other examples of laws banning the practice. Existing State law prohibits the use of spotters,⁶ and of local counties, only Howard County prohibits their use. However, other local jurisdictions such as Orange County, Florida⁷ ban the use of spotters, and Broward County, Florida⁸ and the State of New Jersey,⁹ have gone so far as to ban patrol towing altogether. None of the jurisdictions that ban spotters specifically include a definition requiring a certain percentage of time or compensation dependent of "spotting" activity, as does Bill 17-15. Orange County, Florida's law simply provides that "no towing or immobilization service shall employ or otherwise compensate individuals, commonly referred to as 'spotters' who report the presence of unauthorized parked vehicles for purposes of immobilization or towing.

Unlike the Maryland State law, which provides that a spotter is an individual whose "primary task" is to report unauthorized vehicles for towing, the Orange County law appears to ban the activity by towing company employees entirely. Such an approach would avoid possible enforcement difficulties in determining, and proving, how much of an alleged spotter's time is spent on, or compensation derived from, spotting. A law similar to Orange County's may be vulnerable to the same attack on vagueness that resulted in the Maryland provision being struck down, albeit temporarily but, given that it would be a broader general prohibition on the activity, and not dependent on the definition of "primary task," it may well survive such a challenge. An additional challenge of a law generally banning spotting by towing companies would be enforcement. It would be extremely difficult to prove that a tow truck driver is engaged in spotting, versus just waiting near or in a parking lot waiting for a call.

The possibility of adding a requirement to the Bill that the property owner or owner's agent initiate a tow was discussed at the June 29 worksession. This would also address the problem of tows being motivated by a towing company's profit motive rather than a property owner's interest in keeping spaces open for authorized vehicles. However, as was intimated by OCP staff at the worksession, enforcement of such a requirement would be nearly impossible. Staff was unable to identify any other jurisdiction that has implemented such a requirement.

⁶ A lower court ruling held the State's ban on spotters to be unconstitutionally vague, because it lacked a definition of the term "primary task," but the Maryland Court of Appeals has since held that the lower court should have dismissed the towing company's complaint as not ripe, because the company was not facing a specific threat of enforcement at the time it filed its complaint. *Maryland v. G&C Gulf, Inc.*, Misc. No. 4 (Sept. Term 2014) (April 22, 2015). Bill 17-15's definition of "primary task" should ensure that such a County law would survive a vagueness challenge.

⁷ http://www.orangecountyfl.net/Newsroom/NewTowingOrdinanceEnforcementBegins.aspx#.VYwujk_JC2w

⁸ <http://www.ccfj.net/HOAFLOWAbuse.html>

⁹ <http://www.njconsumeraffairs.gov/News/Consumer%20Briefs/what-you-should-know-about-getting-towed.pdf>

Another alternative is the approach taken by the State of New Jersey, which makes it unlawful for a trespass towing company to “monitor, patrol, or otherwise surveil a private property for the purposes of identifying vehicles parked for unauthorized purposes and towing a motor vehicle parked for an unauthorized purpose from such private property without having been specifically requested to tow such vehicle by the owner of the property.”¹⁰ Like the Orange County law, this approach would prohibit a company, motivated by profits generated by towing a large volume of vehicles, from initiating the tow, but should be somewhat easier to enforce. It should also eliminate the problem, cited by Councilmember Hucker, of tow truck drivers essentially functioning as spotters by trolling private lots for unauthorized vehicles.

If the Committee wishes to be more restrictive of tow truck drivers acting as spotters, it could do this by following the New Jersey model and amending lines 385-391 of the Bill as follows:

(f) [[A property owner or towing [[service]] company 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.]] Except between 2:00 a.m. and 9:00 a.m., a towing company must not monitor, patrol, or otherwise surveil private property for the purposes of identifying unauthorized parked vehicles for towing and removal.

If the Committee does not amend the Bill as described above, staff recommends an amendment that would effectively permit property owners to employ spotters. The current draft of the Bill would prohibit both a property owner and a towing company from using spotters. This could arguably be construed to unduly restrict the activity of parking lot attendants, and does not further the objective of removing the incentive for vehicles to be towed for profit rather than to keep parking spaces clear for customers or residents. If the Bill is not otherwise amended to limit the restriction to towing companies, staff recommends amending lines 385-386 of the Bill as follows:

¹⁰ New Jersey Statutes, Annotated § 56:13-16(h).

(f) A [[property owner or]] towing [[service]] company must not employ or use the services of an individual commonly referred to as a “spotter,”

Would a prohibition on the use of spotters or patrol towing make it virtually impossible to comply with the Bill’s photographic evidence requirement?

If the Council decides to prohibit the use of spotters *by towing companies*, or otherwise restrict patrol towing, the requirement that photographic evidence be obtained prior to towing an unauthorized vehicle may in many instances be impossible to meet under the amendments recommended in the June 29 worksession. This would occur because under the amended language, the *towing company* would be responsible for obtaining photographic evidence of a violation prior to towing the vehicle, while also being prohibited from actively looking for violations. This problem could be remedied, and the photographic evidence requirement be retained, by requiring “a person” (*e.g.*, the property owner or an employee of the property owner) to obtain the photographic evidence before *towing or authorizing the towing of* an unauthorized vehicle.

Staff recommendation: amend lines 354-357 of the Bill as follows:

(11) Before towing or authorizing the towing of an unauthorized vehicle from private property [[, a person]] under this Section, [[the towing company]] a person must obtain photographic evidence of the violation or event that precipitated the towing of the vehicle. The photograph must be available for . . .

Can the County increase the amount of fines for violations of Chapter 30C?

Violations of Chapter 30C are Class A violations under Section 1-19 of the County Code.¹¹ A Class A violation is punishable as a misdemeanor subject to a maximum fine of \$1,000 or not more than six months in jail, or both. Alternatively, a Class A violation may, in the discretion of the enforcing agency, be punishable as a civil violation subject to a maximum fine of \$500 for the initial offense and \$750 for subsequent offenses.

¹¹ Section 1-19 sets forth a three tiered schedule of fines and penalties, with Class A being the highest. The schedule is as follows:

<i>Class</i>	<i>Criminal Violation</i>		<i>Civil Violation Maximum Penalty</i>	
	<i>Maximum Fine</i>	<i>Maximum Jail Term</i>	<i>Initial Offense</i>	<i>Repeat Offense</i>
A	\$1000	6 months	\$500	\$750
B	\$200	30 days	\$100	\$150
C	\$50	None if fine is paid; 10 days otherwise	\$50	\$75

The decision whether to issue a criminal or civil citation is based on a number of factors, and is made by the enforcing agency – in this instance, OCP. Enforcement procedures are set out in Section 1-18 of the Code, and in either case, a summons must be issued along with a citation. There are two key distinctions in the processes for criminal and civil citations that staff understands have been critical in OCP decision to enforce Chapter 30C by imposing civil penalties. First, a summons issued in conjunction with a civil citation gives the cited person the option to pay the fine in lieu of appearing in court. There is no such option with a criminal summons, so each criminal citation must go to court. Also, in instances where the recipient of a civil citation elects to stand trial, the burden of proof on the County is to show that the defendant is guilty by a preponderance of the evidence. In contrast, a criminal citation trial is governed by State law and the rules of the court, and the burden of proof is higher. The County must show that the defendant is guilty beyond a reasonable doubt.

Should the County require a “waiting period” before an unauthorized vehicle is towed from private property?

At the June 29 worksession, Councilmember Katz expressed interest in considering requiring a sort of “grace period” before a vehicle could be towed from private property. Staff looked for examples of other jurisdictions that mandated that a property owner wait a period of time before having an unauthorized vehicle towed. The State of California is the only example identified by Council staff. California law provides that, subject to certain exceptions, “an owner . . . of private property that is held open to the public . . . for parking of vehicles at no fee . . . shall not tow or remove, or cause the towing and removal, of a vehicle within one hour of the vehicle being parked.”¹² Exceptions to California’s “one hour rule” include vehicles “illegally parked within 15 feet of a fire hydrant, in a fire lane, in a manner that interferes with an entrance to, or an exit from, the private property, or in a parking space or stall legally designated for disabled persons.” The rule also does not apply to “property designated for parking at residential property, or to property designated for parking at a hotel or motel where the parking stalls or spaces are clearly marked for a specific room.”

A fundamental problem, in staff’s view, with requiring a property owner to wait a period of time before having an unauthorized vehicle removed is that it arguably amounts to a legislative sanction of an activity that deprives a property owner of the use of the owner’s property, even for a short period of time. It would effectively legislate free short-term parking on private property, with no recourse for the property owner. Requiring a “waiting period” would likely just shift arguments about *whether* a towed vehicle was illegally parked to *how long* the vehicle was illegally parked. While the intent behind such a provision, to reduce overaggressive “walk-off” tows, is certainly in the public interest, staff believes that shifting the burden of this problem from vehicle owner to property owner is an inequitable reallocation of costs between two presumably good actors without addressing the actor – the predatory towing company – that causes the problem.

¹²California Vehicle Code, § 22953.

Also, staff believes that imposing a California-style waiting period, even if significantly shorter, could hurt small businesses with a relatively small number of dedicated parking spaces. These businesses typically do not do a large volume of business; to prevent them from clearing parking spaces of unauthorized vehicles immediately could cost them a small number of customers that nonetheless represent a significant share of their business. If the Committee believes that imposing a waiting period is warranted, staff believes that such period limited to the towing of unauthorized vehicles from large commercial lots with 100 or more parking spaces.

Should the County require a towing company to accept payment by credit card of the release fee for incomplete tows?

In the June 29 worksession discussion of the issue of release fees, concern was expressed that the payment of a release fee, after a vehicle has been attached to a tow truck but not removed from the property, appeared to many consumers to be a “shady transaction.” The Committee recommended a number of changes to the applicable section of the law, setting the fee at \$25 and requiring information about the County law and receipts that identify the violation, include photographic evidence, and inform the vehicle owner of the owner’s rights under the law. An additional measure to require that payment of the release fee be accepted by cash *or credit card*, as is the case when redeeming an impounded vehicle, would further improve the appearance of the transaction, and would allow owners that are not carrying cash to reclaim their vehicles prior to the completion of the tow.

Staff recommendation: Amend lines 448-449 of the Bill as follows:

Section ~~[[30C-2(c)]]~~ 30C-3(c). The towing service must accept payment by cash or credit card as under Section 30C-9(b) and must not charge any other fee for attaching or releasing the vehicle.

This packet contains:	Circle #
Bill 17-15	1
Legislative Request Report	30
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Bill No. 17-15
Concerning: Motor Vehicle Towing and Immobilization on Private Property – Amendments
Revised: July 8, 2015 Draft No. 3
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

Lead Sponsor: Councilmember Berliner
Co-sponsors: Councilmembers Rice, Katz, Navarro, Hucker, Riemer, Elrich, Council Vice President Floreen and Council President Leventhal

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-6, 30C-7, 30C-8, 30C-9, 30C-10, and 30C-11

Boldface	<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:

1 **Sec. 1. Sections 30C-1, 30C-2, 30C-3, 30C-4, 30C-5, 30C-6, 30C-7, 30C-8,**
2 **30C-9, 30C-10, and 30C-11 are amended as follows:**

3 **30C-1. [[Definitions; scope]] Scope; purpose.**

4 (a) *[[Definitions. As used in this Chapter, unless the context indicates*
5 *otherwise;*

6 (1) *Office* means the Office of Consumer Protection.

7 (2) *Immobilize* means to use any method, object, or device, including
8 a clamp or lock, to prevent or inhibit the movement of a motor
9 vehicle.

10 (3) *Owner* includes any person in lawful possession or control of a
11 property or a motor vehicle. The “owner” of general common
12 elements of a condominium is the council of unit owners, or the
13 council’s agent for parking management. The “owner” of limited
14 common elements of a condominium is the unit owner or owners
15 who have the exclusive right to use the common elements, or the
16 agent of that unit owner or owners.

17 (4) *Redemption area* means any area or building where a vehicle
18 owner may pay any charges necessary to redeem a vehicle.

19 (5) *Storage site* means any land or building used by a towing service
20 to store towed vehicles.

21 (6) *Towing* means the removal, or preparation to remove, any motor
22 vehicle by another motor vehicle for compensation.

23 (7) *Trespass towing service or towing service* means any person who
24 tows any motor vehicle from private property for compensation
25 without the consent of the vehicle owner

26 (8) *Tow truck* includes any motor vehicle used to tow, or attempt to
27 tow, a motor vehicle from private property.

28 (9) *Unauthorized vehicle* means any motor vehicle which a property
 29 owner has not consented to have parked on the property.

30 (b)]] *Scope.*

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

34 (2) This Chapter does not apply to:

35 [a.](A) [[Towing]] towing initiated by the vehicle owner;

36 [b.](B) [[Towing]] towing approved or requested by a
 37 police officer, firefighter, or rescue squad member in the
 38 course of [[duty]] a criminal investigation or under [[the
 39 state]] State law [[on]] regulating abandoned vehicles; or

40 [c.](C) [[Towing]] towing a [[motor]] vehicle while
 41 repossessing it.

42 (D) towing from the yard or driveway of a single-family
 43 dwelling; or

44 (E) towing from land immediately adjoining an electric or
 45 telephone utility building or structure that is not open to
 46 the general public.

47 (3) [[Sections 30C-4 and 30C-6 do]] Section 30C-5 does not apply
 48 to[[:

49 [a.](A) Towing]] towing from designated handicapped
 50 parking spaces[[:

51 [b.](B) Towing from the yard or driveway of a one-family
 52 dwelling; or

53 [c.](C) Towing from land immediately adjoining an electric
 54 or telephone utility building or structure that is not open to
 55 the general public]].

56 [(c)](b) *Purpose.* The purpose of this Chapter is to protect the health,
 57 safety, and welfare of County residents and to regulate and authorize the
 58 County Executive to set maximum rates for the towing of vehicles from
 59 private property without the consent of the vehicle owner. This Chapter
 60 does not authorize the immobilization, towing or holding of any vehicle.
 61 To the extent that legal authority to immobilize, tow or hold a vehicle
 62 without the consent of its owner exists, that authority must be derived
 63 from other statutes or the common law. [This] [[The purpose of this]]
 64 This Chapter [[is to protect public safety by restricting]] [restricts]
 65 restricts the exercise of any such legal authority.

66 **30C-2. Definitions.**

67 In this Chapter:

68 Commercial property means real estate approved and designed for retail
 69 or wholesale trade, hotel, restaurant, offices, clinics, warehouses, light
 70 manufacturing, and other such uses but not for residential purposes.

71 GVWR means gross vehicle weight rating for the vehicle.

72 Immobilize means to use any method, object, or devise, including a
 73 clamp or lock, to prevent or inhibit the movement of a vehicle.

74 Office means the Office of Consumer Protection.

75 Property manager means any person who manages real property on
 76 behalf of the owner.

77 Property owner means the person in whose name the property is titled.

78 The owner of general common elements of a condominium is the
 79 Council of unit owners or the Council's agent for parking management.

80 The owner of limited common elements of a condominium is the unit
 81 owner or owners who have the exclusive right to use the common
 82 elements, or the agent of that unit owner or owners.

83 Redemption area means an area or building where a vehicle owner may
 84 pay any charges necessary to redeem a vehicle.

85 Residential property means real estate containing either a single family
 86 or multifamily structure that is available for occupation for non-business
 87 purposes.

88 Storage site means any land or building used by a towing service to
 89 store towed vehicles.

90 Tow or towing means use of a tow truck to remove a vehicle from
 91 private property for compensation without the consent of the vehicle
 92 owner.

93 Tow truck includes any vehicle which may tow or attempt to tow a
 94 vehicle from private property.

95 Trespass towing company or towing company means any person who
 96 tows any vehicle from private property for compensation without the
 97 consent of the vehicle owner.

98 Unauthorized vehicle means any vehicle which a property owner has
 99 not consented to have parked on the property owner's property.

100 Vehicle means a device that is able to transport persons or property on a
 101 public highway and is required to be registered pursuant to Title 13 of
 102 the Transportation Article of the Annotated Code of Maryland.

103 **[[30C-2]] 30C-3. Maximum rates.**

- 104 (a) When [[charging for]] towing a motor vehicle from private property
 105 without the consent of the owner, a towing [[service]] company must
 106 [not] not charge[[:

- 107 (1) a flat rate established by the Executive under this Section; or
 108 (2) a rate that is not]] more than a maximum rate [which the county
 109 executive must establish by regulation under method (2)]
 110 [[established by the Executive under this Section]] which the
 111 County Executive must establish by regulation under method (2).
 112 [The executive must review the rates at least every two (2) years.]
 113 The Executive must review the rates at least every two (2) years.
- 114 (b) The [executive] Executive must set [[by method (2) regulation, and
 115 review at least every two years, either]] fair and reasonable [[flat rates
 116 or]] maximum rates for each of the following acts:
- 117 (1) towing, which includes [[Attaching]] attaching the vehicle to be
 118 towed to the tow truck, towing the vehicle to a storage site, and
 119 the first 24 hours of storage;
- 120 (2) [[Towing the vehicle to a storage site. This rate must be based on
 121 the distance the vehicle is towed;
- 122 (3)]] [[Storing]] storing the vehicle until it is redeemed; and
 123 [[(4)](3)] [[Any]] any other service needed to safely remove a
 124 vehicle.
- 125 (c) The fee for releasing a vehicle under section 30C-7 must not exceed
 126 [[one-half the attachment fee set under subsection (b)(1)]] \$25.
- 127 (d) A towing company may charge a vehicle owner a fee for providing
 128 notice under section 30C-6(e) only if the vehicle has not been reclaimed
 129 within 48 hours after the towing or removal of the vehicle; the fee must
 130 not exceed the actual cost of providing that notice.
- 131 (e) A towing [[service]] company must not charge for any act not listed in
 132 this section unless that act was expressly requested by the vehicle
 133 owner.

134 **[[30C-3]] 30C-4. Administration; rates.**

- 135 (a) Each tow truck operated by a trespass towing company must be
136 identified, registered, and insured as required under State law, except
137 that any required lettering must be placed on both sides of the truck.
138 Each driver employed by a trespass towing service must be at least 18
139 years of age and must have a valid license to operate a tow truck.
- 140 (b) Every trespass towing [[service]] company must [[file]] register with the
141 Office and must file a schedule of its rates for each action connected
142 with the towing or storage of unauthorized vehicles. The Office may
143 disapprove a rate that~~[[~~:
- 144 (1) is different from a flat rate set under Section 30C-2; or
145 (2)]] exceeds [the] a maximum rate set under Section 30C-2.
- 146 (c) A trespass towing [[service]] company must not charge a rate that is
147 higher than the rate on file with the Office for any action in connection
148 with the towing or storage of any unauthorized vehicle.
- 149 (d) Each trespass towing [[service]] company must furnish the Office proof
150 that it carries the insurance required under Section 31A-15(b). Each
151 trespass towing [[service]] company must inform the Office of the type
152 of business organization or ownership in which the [[service]] company
153 operates and the names and current addresses of all owners or, if the
154 [[service]] company is a corporation, of the officers of the corporation
155 and the name and address of a person authorized to accept service of
156 process.
- 157 (e) A property owner must not order the towing of an unauthorized vehicle
158 unless the property owner has entered into a written contract that
159 authorizes a towing [[service]] company to tow vehicles from the
160 owner's property. This provision does not apply if the towing

161 [[service]] company is the record owner of the property from which a
162 [[motor]] vehicle is towed. The property owner and the towing
163 company must keep on file each contract that is in effect, or that was
164 terminated within the previous 12 months. The Office, the Police
165 Department, and the owner of any vehicle towed by the [[service]]
166 company may inspect and copy any contract during normal business
167 hours. The Office may issue model contracts that meet the requirements
168 of this Chapter.

169 Any new written contract must include:

170 (1) a statement that the property owner is responsible for posting
171 proper and sufficient signage to notify the public of parking
172 restrictions;

173 (2) a statement that the property owner is responsible for expressly
174 authorizing the towing of a particular vehicle, except as allowed
175 under 30C-4(c)(10), and that the existence of this contract does
176 not constitute express authorization;

177 (3) a statement that a property owner is liable for a violation of any
178 duty imposed on the property owner by Chapter 30C, and the
179 damages payable are three times the amount of any towing,
180 release or storage fees charged; and

181 (4) a statement that any violation of any duty imposed on the
182 property owner by Chapter 30C subjects the property owner to a
183 potential fine of \$500.00.

184 (f) [[The Office may issue subpoenas to compel the production of
185 documents, papers, books, records, and other evidence in any matter to
186 which this Chapter applies.]] Any property owner wishing to engage in
187 the non-consensual towing of vehicles from their property must first

188 register each commercial parking lot with the Office of Consumer
 189 Protection using an electronic registration program. The property owner
 190 must provide:

- 191 (1) the name and contact information for the property owner;
- 192 (2) the name and contact information of all individuals who may
 193 authorize the towing of each vehicle;
- 194 (3) a copy of the contract between the property owner and the towing
 195 firm; and
- 196 (4) a diagram of the dimensions of the parking lot including a mark
 197 indicating the locations of each sign stating the parking
 198 restrictions and disclosures required by County and State law.

199 (g) [[Any violation of this chapter is a class A violation.]] A property owner
 200 must update the information provided to the Office of Consumer
 201 Protection within 24 hours of any changes to the information provided
 202 under subsection (f).

203 (h) A property owner must provide quarterly reports regarding the number
 204 of vehicles towed and the reason why each vehicle was towed.

205 **[[30C-4]] 30C-5. Public notice; tow procedures.**

206 (a) *Requirement.* Before towing a motor vehicle from private property
 207 without the consent of the vehicle owner, the property owner and the
 208 towing [[service]] company must comply with all applicable provisions
 209 of this section.

210 (b) *Signs.*

211 (1) A property owner must post a sign, notifying the public of
 212 parking restrictions, at least 24 hours before towing or ordering
 213 the towing of an unauthorized vehicle.

- 214 (2) [[Sufficient numbers of signs must be posted permanently so that
 215 at least one sign is clearly readable from each parking area and
 216 each vehicle entrance to the property at all times.]]
 217 [Alternatively] [[Additionally, in a parking lot with more than
 218 100 parking spaces, at least one sign must be posted in a
 219 conspicuous place for each [75] 25 parking spaces, and each sign
 220 must be readable from all affected spaces.]] The property owner
 221 must post a sufficient number of signs so that:
 222 (A) at least one sign is clearly readable from each parking area
 223 and each vehicle entrance to the property at all times; or
 224 (B) in a parking lot with more than 45 parking spaces, at least
 225 one sign must be posted in a conspicuous place for each 45
 226 parking spaces and each sign can be read from all affected
 227 spaces.
 228 (3) Each sign must:
 229 [a.](A) be at least 24 inches high by 30 inches wide;
 230 (B) [[Summarize]] summarize all parking restrictions on the
 231 property enforced by towing unauthorized vehicles,
 232 including time and area restrictions;
 233 [b.][[(B)]](C) [[Indicate]] state that a [[vehicles violating]]
 234 vehicle parked in violation of the restrictions may be
 235 towed at the vehicle owner's expense; [[and]]
 236 [c.][[(C)]](D) state that County and State law require that
 237 towed vehicles be available for redemption 24 hours per
 238 day, seven days per week;

239 (E) state the maximum amount that the owner of the vehicle
 240 may be charged for the towing or removal of an
 241 unauthorized vehicle;

242 (F) ~~[[List]]~~ list the name and telephone number of each towing
 243 [[service]] company hired to tow unauthorized vehicles
 244 from the property, [[or a telephone number that is
 245 answered personally at all times of the day and night by
 246 the property owner or an agent of the owner who is
 247 informed of each vehicle towed from the property]] and
 248 the location to which the vehicle will be towed;

249 (G) be sized and made of reflective material that can be seen in
 250 low light, and located so that it is able to be read by
 251 motorists in daylight at night; and

252 (H) be maintained in a legible and unobstructed condition.

253 ~~[[~~(4) Each sign must be sized, printed and located so that it is readable
 254 by motorists in daylight and at night.

255 (5) The property owner must maintain each sign in legible and
 256 unobstructed condition.

257 ~~(6)]~~(4) An owner of residential property, including a
 258 condominium, cooperative or homeowners' association, may also
 259 have an unauthorized vehicle towed from that property ~~[[without~~
 260 posting the signs required by this subsection if]] by posting the
 261 signs required in subsection (b)(2) only at the entrances to that
 262 property and:

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

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

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

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

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

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

280 ~~[[7]]~~ (5) An owner of a commercial parking lot ~~[[with more than~~
 281 ~~100 spaces]]~~ may have an unauthorized vehicle towed from that
 282 property ~~[[without posting the signs required by this subsection~~
 283 ~~if]]~~ by posting the signs required in subsection (b)(2) only at the
 284 entrances to that property and:

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

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

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

- 291 (i) the violation must be corrected or the vehicle may
 292 be towed at the vehicle owner's expense 24 hours
 293 after the notice is attached; and
- 294 (ii) an unauthorized vehicle that has received a notice
 295 of the same violation under this Section on the same
 296 property within the previous 180 days may be towed
 297 without any further notice; and
- 298 ~~[d.](D)~~ ~~[[The]]~~ the vehicle is not towed until at least 24
 299 hours after the notice is attached unless the unauthorized
 300 vehicle received a notice of the same violation under this
 301 Section on the same property within the previous 180 days.

302 (c) *Tow procedures.*

- 303 (1) Except as provided in subsection (c)(10), a ~~[[property owner]]~~
 304 towing company must not tow a motor vehicle from ~~[[the~~
 305 owner's]] private property unless the property owner has, directly
 306 or through an agent, expressly authorized the towing of the
 307 particular vehicle.
- 308 (2) ~~[[The authorization to tow may take the form of a tow slip.]]~~ The
 309 property owner must authorize the towing of a vehicle in writing
 310 via tow authorization form in person, or via fax, email, or other
 311 electronic means approved by the Director of the Office of
 312 Consumer Protection.
- 313 (3) The Office may issue a model tow ~~[[slip]]~~ authorization form.
- 314 (4) ~~[[If a tow slip is used, the property owner or the owner's agent~~
 315 must sign the slip immediately before the vehicle is towed. A
 316 legible copy of the slip must be securely attached to the vehicle.

317 (5)] Any property owner or any person acting as an agent of a
 318 property owner, must not:

319 [a.](A) [[Falsely]] falsely state that a property owner
 320 authorized the towing of a particular vehicle; or

321 [b.](B) [[Record]] record any false information about the
 322 towing of a particular vehicle[[; or

323 [c.](C) Sign a tow slip before all of the information relating
 324 to the towing of a particular vehicle is recorded on the
 325 slip]].

326 [[(6)](5) A towing [[service]] company must not charge a vehicle
 327 owner any fee for the services of another agent of the property
 328 owner.

329 [[(7) In this subsection, "owner" means the person in whose name title
 330 to the property is registered. The "owner" of general common
 331 elements of a condominium is the council of unit owners. The
 332 "owner" of limited common elements of a condominium is the
 333 unit owner or owners who have the exclusive right to use the
 334 common elements. "Property manager" means a person who
 335 generally manages the property on behalf of the owner.

336 (8)](6) A person must not act as a property owner's agent for the
 337 purpose of ordering the towing of an unauthorized vehicle, unless
 338 the owner or property manager has expressly authorized in
 339 writing the person to so act.

340 [[(9)](7) An agent of a property owner, for the purpose of ordering
 341 the towing of an unauthorized vehicle, must not:

342 [a.](A) [[Be]] be employed by, or have any member of his
 343 or her immediate family employed by, any towing
 344 [[service]] company; or

345 [b.](B) [[Have]] have any financial interest in any towing
 346 [[service]] company or the towing of any motor vehicle.

347 This provision does not apply if the towing [[service]] company is the
 348 record owner of property from which a motor vehicle is towed.

349 ~~[(10)]~~(8) An unauthorized vehicle may be towed from private
 350 property without the express authorization of the property owner
 351 or the owner's agent only[;

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

353 b. If]:

354 (A) Between 2:00 a.m. and 9:00 a.m.; or

355 (B) if the vehicle is [[directly]] blocking a clearly marked fire
 356 lane or access to another vehicle, the property or a building
 357 on the property.

358 (11) Before towing an unauthorized vehicle from private property [[, a
 359 person]] under this Section, the towing service must obtain
 360 photographic evidence of the violation or event that precipitated
 361 the towing of the vehicle. The photograph must be available for
 362 inspection by any interested party for at least one year, and a
 363 copy of the photograph must be provided to the vehicle owner
 364 along with the receipt required under Section 30C-9.

365 (d) (1) A property owner may move a vehicle within a parking lot
 366 without prior notice to the vehicle owner, but must not remove
 367 the vehicle from the lot, when moving the vehicle is necessary
 368 to:

369 [a.](A) [[Remove]] remove large quantities of snow or
 370 debris;

371 [b.](B) [[Repair]] repair the parking lot; or

372 [c.](C) [[Respond]] respond to a threat to a person's safety
 373 or health.

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

375 [a.](A) [[Take]] take reasonable care not to damage the
 376 vehicle;

377 [b.](B) [[Pay]] pay any cost of moving the vehicle; and

378 [c.](C) [[Inform]] inform the vehicle owner where the
 379 vehicle was relocated or return the vehicle to its original
 380 location as soon as possible.

381 (e) A vehicle must not be towed from private property solely for a violation
 382 of failure to display a valid current registration under Section 13-411 of
 383 the Transportation Article of the Annotated Code of Maryland until 72
 384 hours after a notice of violation is placed on the vehicle.

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

392 **[[30C-5]] 30C-6. Notice [[to police]].**

393 (a) [[If a]] A towing [[service]] company that tows an unauthorized vehicle
 394 from private property[[, the property owner or the owner’s agent]] must
 395 notify the County or municipal Police Department with jurisdiction over

396 the site of the tow before the towing [[service]] company leaves the
 397 property. The [[owner or agent]] towing company must tell the Police
 398 Department:

- 399 (1) [[The]] the name of the towing [[service]] company;
- 400 (2) [[The]] the make, model, color, year [[if known]], vehicle
 401 identification number and registration plate number of the towed
 402 vehicle;
- 403 (3) [[The]] the address the vehicle was towed from;
- 404 (4) [[The]] the time the vehicle was towed; and
- 405 (5) [[The]] the storage site where the vehicle will be stored.
- 406 (b) The [[property owner or the owner's agent]] towing company must
 407 promptly notify the police department if the towing [[service]] company
 408 moves the vehicle to another storage site.
- 409 (c) The property owner [[or]] [the owner's agent] [[property manager]] and
 410 the towing company must retain each tow [[slip]] authorization form
 411 [[and, for those vehicles towed without a tow slip, a record of the
 412 information furnished to the police,]] for one year after the tow. [[For
 413 each vehicle towed without a tow slip, the property owner or [agent]
 414 property manager must record and retain the name of the owner of the
 415 property and, if the tow was authorized by an agent, the name of the
 416 agent.]] The Police Department, the Office, and the owner of any
 417 vehicle towed by the service may inspect and copy [[this information]]
 418 tow authorization forms at any time during normal business hours.
- 419 (d) The [[property owner or the owner's agent]] towing company must
 420 promptly notify the County Police Department by telephone of each
 421 vehicle that has remained in a towing [[service's]] company's

422 possession for 72 hours. The ~~[[property owner or the owner's agent]]~~
 423 towing company must tell the Police Department:

- 424 (1) ~~[[All]]~~ all information required under subsection (a); and
- 425 (2) ~~[[The]]~~ the vehicle identification number of the towed vehicle.

426 (e) Within seven days after the towing or removal of the vehicle, the towing
 427 company must notify the owner, any secured party, and the insurer of
 428 record by certified mail, return receipt requested, and first class mail, of
 429 the same information required to be given to the Police Department
 430 under subsection (a) of this Section.

431 (f) The towing Company must provide to the owner, any secured party, and
 432 the insurer of record the itemized actual costs of providing notice under
 433 this Section.

434 ~~[[30C-6]]~~ **30C-7. Handicapped vehicle owners.**

435 A property owner must not authorize a towing ~~[[service]]~~ company to tow a
 436 vehicle with a valid handicapped registration plate or valid disabled person's
 437 parking permit conspicuously displayed from private property without the
 438 consent of the vehicle owner unless:

- 439 (a) ~~[[The]]~~ the tow is expressly authorized by a police officer at the request
 440 of the property owner; or
- 441 (b) ~~[[The]]~~ the vehicle is blocking a clearly marked fire lane or access to
 442 another vehicle, the property or a building on the property.

443 ~~[[30C-7]]~~ **30C-8. Incomplete tows.**

444 (a) If a vehicle owner returns to an unauthorized vehicle at any time after
 445 the vehicle is attached to the tow truck but before it is towed from
 446 private property, the towing ~~[[service]]~~ company must release the
 447 vehicle to the owner if the owner pays a release fee as provided in

448 Section ~~[[30C-2(c)]]~~ 30C-3(c). The towing service must not charge any
 449 other fee for attaching or releasing the vehicle.

450 (b) A towing ~~[[service]]~~ company must not charge for releasing an
 451 unauthorized vehicle unless the service has physically attached the
 452 vehicle to the tow truck and lifted the vehicle at least 6 inches off the
 453 ground before the vehicle owner returns. If the towing ~~[[service]]~~
 454 company has begun to attach the vehicle to the tow truck but has not
 455 completed the attachment or lifted the vehicle, the towing ~~[[service]]~~
 456 company must release the vehicle without charging the owner any fee.

457 (c) A towing ~~[[service]]~~ company must not block an unauthorized vehicle
 458 with a tow truck to obtain payment from the vehicle owner before
 459 attaching the vehicle to the tow truck.

460 (d) The towing ~~[[service]]~~ company must provide a receipt that includes a
 461 reference to the County Code provisions setting the release fee and
 462 meets all of the requirements ~~[[of section 30C- 8(f)]]~~ for receipts under
 463 Section 30C-9(e), indicating the release fee paid and the date of the
 464 incomplete tow.

465 ~~[[e)]~~ A police officer or investigator employed by the Office may order a
 466 towing service to release a vehicle, or to stop attaching a vehicle, at any
 467 time.]]

468 ~~[[30C-8]]~~ 30C-9. Redemption and storage procedures.

469 (a) *Storage of towed vehicles.* A ~~[[property owner must have an authorized~~
 470 ~~vehicle towed]]~~ towing company must immediately deliver a towed
 471 vehicle directly to a storage site that complies with the following
 472 conditions:

473 (1) A storage site must not be more than ~~[[12]]~~ 15 miles from the
 474 origin of the tow. ~~[[Each vehicle must be towed to the nearest~~

475 storage site available to the towing service.]] Every storage site
 476 must be located in Montgomery County, unless the nearest
 477 storage site is within one mile of the County line.

- 478 (2) A storage site must be brightly lit at all times.
- 479 (3) A towed vehicle must not be stored more than a reasonable
 480 walking distance from a redemption area.
- 481 (4) The towed vehicle and its contents must be kept secured at all
 482 times.
- 483 (5) The storage site must remain open and have personnel on-site for
 484 redemption of vehicles at [[least 2 hours after the completion of
 485 the last tow]] 24 hours per day, seven days a week.
- 486 (6) The storage site must be identified by a sign at the entrance
 487 indicating the name and telephone number of the tow service.

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

489 (1) *Cash payment.* A trespass towing [[service]] company must
 490 accept payment in cash, or by a traveler's check accompanied by
 491 reasonable identification.

492 (2) [[Options.

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

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

501 towing service must notify the Office if it changes that
502 option.

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

506 (3)]] *Credit card* ~~[[option]]~~ payment.

507 [[[a.](A)]] Each trespass towing ~~[[service]]~~ company must
508 accept the ~~[[2]]~~ two most widely used major credit cards.
509 The Office must define, in regulations under method (2),
510 which major credit cards are the ~~[[2]]~~ two most widely
511 used.

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

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

519 (5)]](3) *Withholding payment.* If:

520 [a.](A) ~~[[The]]~~ the vehicle owner withholds payment in a
521 credit card transaction with a towing service under this
522 Chapter; and

523 [b.](B) ~~[[A]]~~ a court in any subsequent civil action finds
524 that the tow was valid and the amount charged was correct;
525 the vehicle owner must pay the towing ~~[[service]]~~
526 company, in addition to the amount validly charged,
527 liquidated damages of ~~[[2]]~~ two times the amount validly

528 charged (but not more than \$1,000.00) and all reasonable
 529 costs of collection, including court costs and a reasonable
 530 attorney's fee.

531 ~~[(6)]~~ *Stopping payment.* If:

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

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

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

542 ~~[(7)]~~(4) *Applicability.* This subsection applies to payment of any
 543 charge arising from the towing or storage of a vehicle without the
 544 owner's consent, and to payment for an incomplete tow under
 545 Section ~~[[30C-7]]~~ 30C-8.

546 ~~[(8)]~~(5) *Purpose.* This subsection and Section ~~[[30C-7]]~~ 30C-8 do
 547 not create or imply a lien in favor of a towing ~~[[service]]~~
 548 company when such a lien would not otherwise exist. This
 549 subsection and Section ~~[[30C-7]]~~ 30C-8 do not give a towing
 550 ~~[[service]]~~ company a right to retain possession of any vehicle it
 551 would otherwise have to return to the vehicle owner.

552 (c) *Rates displayed.* Every trespass towing ~~[[service]]~~ company must
 553 display prominently, at each redemption area, a copy of its current rates
 554 and a statement that these rates do not exceed the rates filed with the

555 Office. Every trespass towing [[service]] company must also display
556 prominently a sign, furnished at a reasonable fee by the Office, listing
557 the Office's telephone number and summarizing the vehicle owner's
558 rights under this Chapter.

559 (d) *Storage fee.* A trespass towing [[service]] company must not charge a
560 storage fee for any time before the vehicle actually reaches the storage
561 site [[or the service notifies the Police Department under Section 30C-5,
562 whichever is later]].

563 (e) *Receipt.* Upon receiving payment, a towing [[service]] company must
564 furnish the vehicle owner a receipt on a form approved by the Office.
565 The receipt must:

- 566 (1) [[Record]] record the amount paid to redeem the vehicle, the
567 actions for which the vehicle owner paid, and the date and time of
568 the redemption;
- 569 (2) [[Be]] be signed legibly by an agent of the towing [[service]]
570 company, and list the name, address and telephone number of the
571 towing [[service]] company;
- 572 (3) identify the violation or event that precipitated the towing of the
573 vehicle;
- 574 (4) include photographic evidence of the violation required under
575 subsection 30C-5(c)(11); and
- 576 (5) [[Briefly]] briefly inform the vehicle owner that the Office can
577 explain the vehicle owner's rights and how to enforce them in
578 small claims court or another appropriate forum if the vehicle
579 owner believes that any provision of County law has been
580 violated, and that the owner may obtain a copy of the law from
581 the Office.

582 (f) *Damage waiver.* A trespass towing [[service]] company must not
 583 require a vehicle owner to sign any waiver of the owner's right to
 584 receive compensation for damages to the vehicle.

585 (g) *Inspection and retrieval of personal property.* A storage site that is in
 586 the possession of a towed vehicle shall make the vehicle available,
 587 without charge, to the owner, the owner's agent, a secured party, or
 588 the insurer of record, under the supervision of the storage site, for:

- 589 (1) inspection; or
- 590 (2) retrieval from the vehicle of personal property that is not
 591 attached to the vehicle.

592 **[[30C-9]] 30C-10. Liability for damages.**

593 (a) Any trespass towing [[service]] company, and any private property
 594 owner who authorizes, expressly or under a standing authorization, the
 595 towing of a vehicle from private property, are liable for violation of any
 596 duty imposed on the [[service]] company or owner by this Chapter with
 597 regard to:

- 598 (1) [[Any]] any towing of a vehicle that does not comply with this
 599 [[chapter]] Chapter;
- 600 (2) [[Any]] any towing of a vehicle in the mistaken belief that the
 601 vehicle was not authorized to park in the place from which it was
 602 towed; and
- 603 (3) [[Any]] any damages to a towed vehicle incurred during the tow
 604 or storage and caused by a lack of reasonable care by the towing
 605 [[service]] company, the property owner or an agent of either.

606 (b) A property owner is not liable for the towing of a vehicle if the property
 607 owner did not expressly authorize the towing, [[expressly or under a

608 standing authorization]] and does not otherwise have a business
 609 relationship with the towing company.

610 (c) Except as provided in subsection (b), a]] A property owner and a towing
 611 [[service]] company are jointly and severally liable for the violation of
 612 any duty imposed by this Chapter on the towing [[service]] company,
 613 with a right of contribution or indemnification.

614 ~~[[d]]~~ (c) A vehicle owner must mitigate any damages recoverable under
 615 this ~~[[chapter]]~~ Chapter.

616 ~~[[e]]~~ (d) Damages payable under subsections (a)(1) and (a)(2) are ~~[[3]]~~
 617 three times the amount of any towing, release or storage fees charged.

618 ~~[[30C-10]]~~ **30C-11. Rebates prohibited.**

619 A towing ~~[[service]]~~ company must not pay or offer to pay a property owner,
 620 and a property owner must not accept payment, for authorizing the towing of a
 621 vehicle from any private property.

622 **30C-12. Enforcement, police power, subpoena authority.**

623 (a) The Office of Consumer Protection and the Montgomery County Police
 624 Department enforce this Chapter.

625 (b) A police officer or Office of Consumer Protection investigator may
 626 order a towing company to release a vehicle, or to stop attaching a
 627 vehicle, at any time to prevent a breach of the peace or if the
 628 investigator or officer has reasonable cause to believe that the tow
 629 would be or was unlawful.

630 (c) The Office may issue subpoenas to compel the production of
 631 documents, papers, books, records, and other evidence relevant to the
 632 investigation of a complaint filed with the Office in any matter to which
 633 this Chapter applies.

634 (1) If any person does not comply with any subpoena issued under this
 635 Chapter, the County may enforce the subpoena by appropriate legal
 636 action.

637 (2) Any court with jurisdiction may grant injunctive or other
 638 appropriate relief to enforce a subpoena.

639 (3) A person must comply with any subpoena issued under this
 640 Chapter.

641 (d) Any violation of this Chapter is a Class A violation.

642 **[[30C-11]] 30C-13. Immobilization [restrictions] prohibited.**

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

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

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

657 (1) the owner of the property where the vehicle is located has
 658 expressly authorized the person to immobilize unauthorized
 659 vehicles on the property;

- 660 (2) the person, and any business that employs the person to
661 immobilize vehicles, has registered with the Department of
662 Housing and Community Affairs under Section 31A-2 as if
663 Chapter 31A applies to that person and business;
- 664 (3) the person has been adequately trained to apply an immobilizing
665 device;
- 666 (4) signs meeting all requirements of subsection (b) have been
667 properly posted on the property;
- 668 (5) the person attaches to the vehicle's front windshield a notice
669 prominently warning the operator not to move the vehicle;
- 670 (6) the person takes reasonable care not to damage the vehicle; and
671 (7) the owner of the property carries at least \$25,000 in liability
672 insurance which will cover any damage to the vehicle.
- 673 (d) *Entrapment not allowed.* A person must not immobilize a motor vehicle
674 on private property if:
- 675 (1) the property is a parking garage or lot which is normally used for
676 paid public parking and operated by an attendant;
- 677 (2) the vehicle entered the garage or lot between 6 p.m. and 8 a.m.;
- 678 and
- 679 (3) the garage or lot was unattended, and access to the garage or lot
680 was not physically blocked, when the vehicle entered.
- 681 (e) *Release of vehicle.* A person who is authorized to release immobilized
682 vehicles must:
- 683 (1) arrive as promptly as possible, but in any case within 30 minutes
684 after the owner or operator of an immobilized vehicle calls the
685 telephone number listed on the sign posted at the property and
686 requests the release of the vehicle;

- 687 (2) immediately release the vehicle after a lawful release fee is paid;
 688 (3) not require the vehicle owner or operator to waive any right to
 689 receive compensation for damages to the vehicle; and
 690 (4) give the operator of the vehicle a receipt which legibly shows:
 691 (A) the release fee paid,
 692 (B) the date, time, and location of the release, and
 693 (C) the name of the person who received the payment and any
 694 business for which the person acted.

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

- 701 (g) *Payment and promise to pay.* A person who is authorized to release
 702 immobilized vehicles must accept payment:
 703 (1) in cash, or by a traveler's check accompanied by reasonable
 704 identification;
 705 (2) by a personal check, accompanied by reasonable identification, if
 706 the vehicle is registered in Maryland; or
 707 (3) by the 2 most widely used major credit cards, as defined by the
 708 Department of Housing and Community Affairs. In addition, if
 709 the person, or the business which employs the person, accepts
 710 any other credit card for any other purpose, the person must
 711 accept that credit card for this purpose.

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

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

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

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

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

732 (1) all actual damages sustained; or

733 (2) liquidated damages of \$100.

734 This remedy does not replace or limit any other remedy available by
 735 law.

736 *Approved:*

737

George Leventhal, President, County Council

Date

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.



ROCKVILLE, MARYLAND

MEMORANDUM

May 5, 2015

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance *JFB*

SUBJECT: FEIS for Bill 17-15, Motor Vehicle Towing and Immobilization on Private Property - Amendments

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Eric Friedman, Director, Office of Consumer Protection
David Platt, Department of Finance
Helen Vallone, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 17-15 Motor Vehicle Towing and Immobilization on Private Property

1. Legislative Summary.

The purpose of this legislation is to amend Chapter 30C, Motor Vehicle Towing and Immobilization on Private Property with respect to: setting 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.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

In the event this bill results in an increase in the number of non-consensual towing complaints filed with OCP and this increase results in the number of civil citations filed by OCP; a slight rise in County revenues might be expected. However, no such growth in the number of civil citations is expected.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

No expected change to response in #2 above.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

7. An estimate of the staff time needed to implement the bill.

Two OCP investigators examine and handle non-consensual towing complaints. This bill may result in a slight rise in the number of complaints filed with OCP. However, it is anticipated that OCP staff would absorb any moderate increase in the number of complaints.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

9. An estimate of costs when an additional appropriation is needed.

Not Applicable.

10. A description of any variable that could affect revenue and cost estimates.

Additional investigative and support staff may be needed to investigate and handled complaints if there is a significant increase in the number of non-consensual towing complaints filed with OCP.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

It is difficult to predict with any certainty if there will be a significant increase in the number of complaints filed with OCP, or the amount of time it would take to educate property owners and towing firms regarding the amendments.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not Applicable.

13. Other fiscal impacts or comments.

The County Executive's Office will provide legislative suggestions to enhance amendments to Chapter 30C in an effort to curb overly aggressive non-consensual towing practices in Montgomery County.


14. The following contributed to and concurred with this analysis:

Eric Friedman, Director Office of Consumer Protection

Marsha Carter, Management and Budget Specialist III, Office of Consumer Protection

Edward Lattner, Chief, Office of the County Attorney

Helen P. Vallone, Senior Management and Budget Specialist, Office of Management and Budget


Jennifer A. Hughes, Director
Office of Management and Budget

5/5/15
Date

Economic Impact Statement
Bill 17-15, Motor Vehicle Towing and Immobilization on Private Property –
Amendments

Background:

This legislation would:

- 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 (OCP), and
- Prohibit the immobilization of certain vehicles.

Specifically, Bill 17-15 provides for the following:

- adds public safety to the purpose of the law,
- establishes flat rates,
- gives subpoena authority to OCP under Chapter 30C of the County Code,
- requires more low signage to be posted on properties,
- requires that a tow be authorized at all times of the day,
- required photographic evidence of violation,
- prohibits the use of “spotters”, and
- prohibits the immobilization or booting on private property.

1. The sources of information, assumptions, and methodologies used.

Source of information and data is the Office of Consumer Protection. The assumption is that the flat rate would be similar to the overall average of the current towing fees. There are no methodologies used in the preparation of the economic impact statement. OCP provided data on the estimate of the economic impact.

2. A description of any variable that could affect the economic impact estimates.

Currently there are three sets of towing fees: hookup fee, mileage fee, and storage fee. The most controversial fee is the per mileage fee. According to OCP, the overall average of the sum of the three fees is \$168. Bill 17-15 would eliminate the three-fee structure and set a fixed rate. As such, OCP assumes that an average fixed rate could be \$168 which is the same as the overall average of the sums of the current three sets of fees. Therefore, since the flat fee structure would replicate the overall average of the current rates, there is no net economic impact.

However, on a case-by-case basis, if the fixed rate is set at a level that is less than the current sum of the individual towing fees, a towing company would receive less revenue than with a fixed rate. If the fixed rate is set at a level that is greater than the current sum of the individual towing rates, a towing company would receive more revenue than with a fixed rate. Overall, the result would be a zero sum effect for the County's economy, that is, the revenue differentials from towing companies and individuals would offset each other. Therefore, according to OCP the impact from

Economic Impact Statement
Bill 17-15, Motor Vehicle Towing and Immobilization on Private Property –
Amendments

the fixed rate would be similar to the average of the current rates, and there would be no overall “net” economic impact to the County.

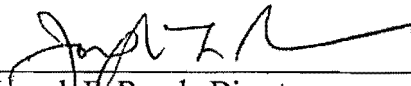
- 3. The Bill’s positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

Given the assumption that the flat rate would be the same as the overall average of the current fees, there is no effect on employment, spending, savings, investment, incomes, and property values in the County. However, since Bill 17-15 would require more tow signage, the cost to the towing company would increase for purchasing and installing the signs. Since, Finance assumes that each sign would range between \$10 and \$20, the additional expenditure would be minimal and have no significant impact on business spending.

- 4. If a Bill is likely to have no economic impact, why is that the case?**

See #3 above.

- 5. The following contributed to or concurred with this analysis:** David Platt and Rob Hagedoorn, Finance; Eric Friedman, Director, Office of Consumer Protection.



Joseph F. Beach, Director
Department of Finance

5-3-15
Date