



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of July 8, 2006

DATE: July 6, 2006

SUBJECT: Proposed amendment to the Arlington County Code by adding a new chapter (Chapter 14.3) entitled Towing and Storage of Motor Vehicles.

C. M. RECOMMENDATION:

Approve adoption of the proposed amendment to the Arlington County Code set forth in Attachment I adding a new Chapter 14.3 to the Code relating to the towing and storage of motor vehicles, setting a flat fee of \$115 for towing, eliminating any drop fee, and eliminating any charges on the first 24 hours of storage, with a maximum of \$40 per subsequent 24 hour period, and adopting the new consumer protection provisions and those for informing the police department of tows. Not approve the proposed secondary signature requirement.

ISSUE: Whether the County Board should amend the Arlington County Code by adding a new chapter (Chapter 14.3) entitled Towing and Storage of Motor Vehicles intended to protect citizens from unfair and predatory towing and pricing practices when trespassing motor vehicles are towed from private property without the owner's consent.

SUMMARY: The County has had a longstanding problem with the practices of some towing and recovery operators overcharging motor vehicle owners whose vehicles have been towed from private property without their consent. Recently enacted federal and state legislation have increased local government authority to regulate towing and recovery operators performing non-consensual tows. The new state law took effect July 1, 2006, establishing new standards and procedures for towing and recovery operators in the Commonwealth. The legislation, one of Arlington's legislative priorities for the 2006 session, enhances local authority to enact consumer protection authority and address numerous types of complaints, such as damage to vehicles, inappropriate tows, poor customer service, and illegal overcharges. The proposed amendment to the County Code takes advantage of the new legislation.

Proposed Ordinance

The proposed ordinance contains provisions designed to sets limits on fees that may be charged for towing or storage, and acceptable means of payment; and to protect consumer safety by regulating the actions of towing and recovery operators who tow motor vehicles from privately-owned property without the consent of the owner or driver and setting standards on the removal

County Manager: _____

County Attorney: SAM

Staff: Mary-Alice Gray, Staff Coordinator, Advisory Board on Trespass Vehicle Towing

of trespassing motor vehicles. The ordinance includes a provision that, in the event a vehicle is towed from Arlington to be stored in another jurisdiction; the County's ordinance would apply. It also requires photographic evidence to support "trespass tows," appropriate signage both at the location where the towing is being enforced and at the site where cars are reclaimed, obtaining authorization from the property owner agent prior to tows, and notifying the County Police when a vehicle has been towed.

The proposed ordinance would regulate the removal of trespassing vehicles through:

- Requirements for clearer and more conspicuous signage on the property and clear signage on the tow truck itself;
- Requiring the towing and recovery operator to obtain at the time of the tow authorization from the owner, operator, lessee, or authorized agent of the property from which the vehicle is to be towed (which agent may include a representative of the tow company);
- Photographs and other documentary evidence to substantiate the reason for removal; and
- Notice to the police prior to its removal.

The ordinance also proposes to require greater consumer information be provided at storage facilities (including a Consumer Information Sheet provided by Arlington County); that cash change is available; that such storage facilities be open 24 hours a day; and that storage facilities be within or close to Arlington County. The proposed ordinance would require an itemized receipt and set maximum fees for the towing and storage of vehicles, as well as the permissible manners of payment for such charges, and maintenance of records for each vehicle towed. The proposed ordinance would provide for a fine of up to \$1,000 for any violation.

Key Provisions

The key provisions in the proposed ordinance involve proposed new fees for towing and storage; consumer protection; provisions for removal of trespassing vehicles; and informing the police department of tows:

- Proposed New Fees: The proposed ordinance would set fees for the towing, storage, and safekeeping of any vehicle removed without the consent of the vehicle owner.
- Consumer Protection: The proposed ordinance includes a number of provisions to significantly enhance consumer notice, to require storage lots to remain open, to require photographic evidence of the location from which and at the time of a tow, as well as the condition of the vehicle at the time of such tow, greater options for payment and assurance that cash is available to make change, and itemized receipts;
- Provisions for Removal: The proposed ordinance would require police notification and photographs and other documentary evidence prior to a tow, as well as authorization from the owner, operator, lessee, or authorized agent of the property from which the vehicle is to be towed (which agent may include a representative of the tow company);
- Police Notification: The proposed ordinance would require, immediately prior to a tow, notice to the Arlington County Police, identifying the vehicle, the location to which the car is to be towed, and the name of the individual who authorized the tow; and

DISCUSSION: As required by the new Virginia law, the Board in May appointed an advisory board to review the provisions of the draft ordinance and to provide input and recommendations for the Board’s consideration. The advisory board, which includes three representatives from the Police Department, three from the towing industry, and one citizen, met on June 12, 2006. The recommendations were submitted to the Board on July 5, 2006. Their recommendations are attached as Attachment II.

Proposed New Fees

The new state law provides local governments with discretionary authority to set fees for non-consensual tows and storage. Unless a local ordinance sets different limits, the new state law raises maximum allowable hookup and initial towing fees for trespass tows of passenger cars from \$85 to \$125, and the amount of additional fees for late night, weekend, and holiday tows from \$10 to \$25, not to exceed \$50. The Board will consider adoption of an ordinance which would set rates somewhere between \$85 and \$125 for such tows.

The following information is provided for comparison purposes:

- Fairfax City and the City of Falls Church follow State Code at \$125;
- Alexandria currently sets charges at \$75 and is not amending its code at this time;
- Fairfax County currently sets charges at \$90 and is in the process of changing its ordinance;
- Prince William County sets a ceiling of \$75, or up to \$125 for larger vehicles in excess of 10,100 lbs., \$20/day (excluding the first 24 hours) for storage, or \$25/day for larger vehicles.
- City of Richmond sets charges at \$65, \$20/day for storage, and is not amending its code at this time; and
- Virginia Beach sets charges at \$85, \$20/day (excluding the first 24 hours) for storage.
- The District of Columbia sets charges \$100, \$20/day for storage, in addition to a ticket being issued.

The legislation allows local governments, by ordinance, to (i) prohibit storage charges for periods of time when owners cannot reclaim their vehicles because the towing and recovery business is closed and (ii) place caps on the charges that these businesses may impose and requires that any such limits be subject to “periodic and timely” adjustments. The preexisting fee was \$85 during the day, and \$95 at night and on the weekends—considerably above the level in Alexandria, and a level which seemed adequate to provide for a competitive market in Arlington. Nevertheless, there has been no increase in these fees for over a decade, a time period in which a blended consumer price index has increased about 37 percent.

The advisory board focused considerable time on the fee issue and made a series of recommendations with regard to towing, storage, and drop fees, generally proposing a simpler flat fee arrangement of \$125 per tow—the maximum increase permitted under state law for tows—and eliminating any drop fee and eliminating any charges on the first 24 hours of storage. The group discussed that a flat rate makes it easier for the consumer to understand compared to the current multi fee structure.

Consumer Protection

With regard to consumer protection, the proposed ordinance seeks to address concerns about consumer safety and protection. Thus, it proposes the provision of more information and consumer notice; it proposes to address concerns about post-towing damage to vehicles; and it seeks to provide access at any time—and through more payment methods, so that a consumer can repossess his or her vehicle and pay with a credit card or other non-cash means, receive change in a cash transaction and obtain an itemized receipt.

There has been significant concern about consumer safety, especially at night, due to requirements for significant amounts of fees payable only in cash with no ATM at storage facilities. The advisory board was generally supportive of these proposals, including suggesting larger signs. The advisory board discussed the expense of Polaroid versus digital photos, agreeing to recommend either, and had some discussion with regard to non-cash options for payment, questioning the inclusion of travelers' checks and money orders, but ultimately recommending no change.

Provisions for Removal

The provisions for removal present the most difficult issues. The advertised ordinance seeks to address apprehensions about predatory towing through both photographic and documentary evidence, as well as through the requirement that the property owner or agent authorize the tow in writing. The concern is to address a rogue tower who might lurk and make an illegal tow—but where the vehicle owner would have no evidence to prove that a predatory tow had occurred. The requirement for a second signature would ensure that the tow was made to address a trespass situation.

The second signature provision generated significant debate and discussion by the advisory board. The advisory board was concerned about the potential cost and burden on property owners, businesses, and the towing industry. There was also concern that such a requirement could create personal safety issues, as it could lead to confrontations. The advisory board, on a 6-1 vote, recommended dropping the second signature provision, believing that the photographic and other documentary evidence would be effective in preventing predatory tows.

Police Notification

The proposed ordinance's provision for police notification is intended to assist the consumer by providing information not only that the vehicle has not been stolen, but also so that the owner knows where he or she can retrieve the vehicle—and that the police department has independent records. The advisory board was generally supportive, but expressed concern that simultaneous notification could also lead to confrontational scenes, recommending instead that such notification be made prior to such a tow at a distance from the vehicle.

FISCAL IMPACT: The proposed Code amendment will require staff resources and associated costs to manage this program, the advisory board, and an increase in workload as a result of the adoption of this ordinance.