

LOCAL LAW NO. "A" FOR 2007

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK PROHIBITING PREDATORY TOWING IN ALBANY COUNTY

Introduced: 1/8/07

By Messrs. Nichols, Cunningham, Domalewicz and Ms. McKnight:

BE IT ENACTED by the Legislature of the County of Albany as follows:

SECTION 1. Legislative intent and purpose.

a. This Legislature hereby finds that Section 1210(c) of the New York Vehicle and Traffic Law provides that towing agencies which remove vehicles unlawfully parked on private property at the request of the owner of the premises and without the written consent of the owner of the vehicle shall immediately notify the local police station house having jurisdiction over the area where such vehicle was unlawfully parked, of the description of the car which was removed and the time of removal, so as to inform owners of towed vehicles that their cars have not been stolen.

b. This Legislature further finds and determines that consumers are currently at risk of having their vehicles seized without substantive due process, notice or opportunity to retrieve their vehicles without the fear and panic or believing that their towed cars have been stolen, as evidenced by the growing number of incidents involving senior citizens and other innocent consumers who return to the upsetting scene of an apparent theft of their vehicles in a shopping center parking lot.

c. Therefore, the purpose of this local law is to regulate the towing and seizure of consumers' motor vehicles in noncriminal law enforcement situations by private towing companies in order to protect consumers while maintaining the rights of property owners.

SECTION 2. Definitions.

a. The term "abandoned vehicle" shall mean as it is or may be defined by Section 1224 of the New York Vehicle and Traffic Law.

b. The term "motor vehicle" shall mean every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power. This term shall specifically include, but shall not be limited to, motorcycles and snowmobiles, as such terms are or may be defined by the New York Vehicle and Traffic Law.

c. The term “department” shall mean the Albany County Department of Consumer Affairs.

SECTION 3. Restrictions - Seizure/Towing of Vehicles From Private Property.

a. A private property owner who wishes to have a vehicle towed from his, her or its privately owned, publicly accessed parking lots, without the written consent of the owner of the vehicle, shall comply with the following requirements:

(1) The parking lot shall have conspicuously posted, at each entrance, signs (at least two feet high with at least two-inch-high lettering), which shall contain the following information:

- (a) A statement warning that illegally parked vehicles will be towed.
- (b) The hours during which this prohibition is applicable.
- (c) The cost of the tow to be paid by the vehicle owner.
- (d) Name and phone number of the towing company.
- (e) Location where the vehicle is to be towed.
- (f) Property owner's name.

(2) The property owner shall supply the towing company with a notarized affidavit authorizing tows, which shall contain the following:

- (a) The name, address, and phone number of the owner.
- (b) The address and description of the property.
- (c) The name of the authorized tow company.
- (d) The cost of the tow to be paid by the vehicle owner.
- (e) The specific violations in which the tows/seizures are authorized.
- (f) The specific days and hours during which towing is authorized.
- (g) The location where the vehicles will be stored.
- (h) A statement as to whether the owner is receiving any compensation for each vehicle seized or towed.

b. A tow company or tow truck operator shall comply with the following regulations when seizing or towing vehicles for privately owned, public access parking lots, without the written consent of the owner of the vehicle:

(1) Tow companies shall enter into an agreement with the property owner prior to any towing of vehicles.

(2) The seizure or tow of a vehicle is only authorized when the owner of the property or his or her representative is actually present and requests that a particular vehicle be seized or towed. The property owner's representative cannot be

the tow company or tow truck operator unless the tow company or operator is the actual property owner.

(3) The tow truck operator shall have a copy of the affidavit from the property owner in his or her possession.

(4) The tow truck operator shall have a written "seizure/tow authorization" in his or her possession, to tow a specific vehicle, which shall be signed by the property owner or his representative prior to the seizure/tow. This authorization shall contain the following information:

- (a) Date and time of the seizure/tow.
- (b) Location of the seizure/ tow.
- (c) Reason for the seizure/tow.
- (d) Cost of the seizure/tow to be paid by the vehicle owner.
- (e) Location to which the vehicle is towed.
- (f) Description of the vehicle (plate number, vehicle identification number, year, make, model, color and notation of any damage to the vehicle).
- (g) Name, address and date of birth of the tow truck operator.
- (h) Tow company name, address and phone number.
- (i) Name and address of the owner or representative who authorized the seizure or tow.
- (j) Signature of the owner or representative who authorized the seizure/tow.

(5) The tow truck operator who seizes or tows a vehicle shall immediately respond to the nearest police station with the vehicle and provide a copy of the seizure/tow authorization.

c. When the seizure/tow of a vehicle from privately owned publicly accessed parking lots, without the written consent of the owner of the vehicle, is in dispute or a breach of the peace occurs, the following shall apply:

(1) If the seizure/tow process has begun, but the vehicle is still at the location, the following shall apply.

(a) The vehicle shall be released to the owner upon the owner providing the tow truck operator with proper personal and vehicular identification; and

(b) The property owner and tow company shall have recourse to Civil Court or Small Claims Court to seek compensation for any monetary damages incurred as a result of the actions of the vehicle owner.

(2) If the seizure/tow process has been completed (the vehicle is no longer at the location), the following shall apply:

(a) A vehicle owner shall pay the tow truck operator to release the vehicle;

(b) The only additional fee that may be assessed is for storage of the vehicle, which fee shall not exceed \$20 per day. Storage fees shall not be charged for days on which the vehicle is not available for pickup from the pertinent tow operator or for days on which the pertinent tow operator is closed; and

(c) The vehicle owner shall have recourse to Civil Court or Small Claims Court to seek compensation for any monetary damages incurred as a result of the actions of the property owner or the tow company.

d. Fees charged for the seizure/tow of a vehicle from privately owned publicly accessed parking lots within the County of Albany shall not exceed the fees established for municipal towing purposes by the town within which the tow/seizure occurs.

SECTION 4. Exceptions.

a. This local law shall not apply to the removal of abandoned motor vehicles that are in violation of Section 1224 of the New York Vehicle and Traffic Law.

b. This local law shall not apply to motor vehicles towed and/or seized by, or on behalf of, any state, local or federal law enforcement authorities.

SECTION 5. Enforcement.

This local law shall be enforced by the Department of Consumer Affairs. The Director of the Department is hereby authorized and empowered to issue and promulgate such rules and regulations as he or she shall deem necessary and appropriate to implement and carry out the provisions of this local law.

SECTION 6. Penalties.

a. Any person who intentionally violates this local law, or a rule or a regulation issued pursuant to this local law, shall be guilty of an unclassified misdemeanor, punishable by a fine of not less than \$5,000 nor more than \$10,000 or up to one year imprisonment, or both. Each such violation shall constitute a separate and distinct offense.

b. Any person who intentionally violates this local law or a rule or regulation issued pursuant to this local law, shall also be subject to a civil penalty of not less than \$1,000 nor more than \$10,000 for each violation. Each such violation shall constitute a separate and distinct offense.

SECTION 7. Preemption.

This local law shall be null and void on the day that statewide legislation goes into effect incorporating either the same or substantially similar provisions as are contained in this local law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

SECTION 8. Severability.

If any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

SECTION 9. Effective date.

This law shall take effect April 1, 2007.

Referred to Law Committee. 1/8/07