

**Testimony of Amit Bagga
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**Before the
New York City Council Committee on Consumer Affairs**

**Hearing on
Oversight of regulation of the towing industry, and
Introduction 1173, in relation to increasing maximum towing fees**

February 14, 2017

Good morning, Chairman Espinal and members of the committee, my name is Amit Bagga and I am the Deputy Commissioner of External Affairs for the New York City Department of Consumer Affairs (“DCA”). I am joined today by my colleague, Associate General Counsel Jordan Cohen, as well as other members of the DCA team, on behalf of Commissioner Lorelei Salas. I would like to thank the committee for the opportunity to offer testimony about City regulation of the towing industry as well as Introduction 1173 (“Intro. 1173”), which would increase the maximum fees that towing companies may charge consumers. The regulatory structure crafted by the Council over the past three decades shows a clear recognition on the part of legislators that this industry merits special attention from regulators and strong safeguards for consumers. I will begin my testimony this morning by offering the committee a brief history and overview of regulation in this industry before turning to Intro. 1173, about which DCA will offer feedback, questions, and concerns. I will also offer the committee some ideas for your consideration that DCA believes could improve and streamline the tow truck regulatory structure while better serving consumers.

Background and Overview

DCA regulation of the towing industry began in 1987, with the passage of Local Law 28 (“LL 28”). With that law, the Council sought to set up a comprehensive regulatory scheme by combining a licensing requirement with surety bonding, liability insurance requirements, and robust powers for the commissioner of Consumer Affairs to revoke, suspend, or refuse to renew the license of businesses who violated the law. In addition, the law created two programs that continue to be major components of towing regulation today: the Directed Accident Response Program (“DARP”) and the Rotation Tow program (“ROTOW”). While the Council has revisited towing regulations since, most notably in 2001, 2004, and 2011, LL 28 continues to serve as the foundation for today’s structure.

DCA’s regulatory efforts are directed primarily to non-consensual towing. Non-consensual towing can be broken down into four categories: DARP, ROTOW, private lot tows, and arterial tows. I will now give a brief description of each of these categories. All companies conducting these types of tows must be licensed by DCA.

The Directed Accident Response Program (DARP)

The Directed Accident Response Program is a partnership between DCA and the NYPD that provides for the safe and orderly removal of disabled vehicles involved in traffic accidents on city streets. This program does not cover vehicles disabled on highways, which come under the arterial towing program. The Council created DARP to address traffic and safety concerns caused by a practice known as “chasing.” Towing companies would often “chase” potential tows by instructing their drivers to monitor police frequencies and beat competitors to the scene of any reported accident. Predictably, this competition resulted in unsafe and sometimes reckless driving by tow truck operators. In addition, monitoring police frequencies allowed drivers to compete for only the most lucrative potential tows - e.g., where a radio request indicated a disabled luxury vehicle - and ignore others, making it harder for the NYPD to remove older or less valuable disabled vehicles quickly and safely.

Under DARP, the city is divided into zones for disabled vehicle removal, each of which has its own list of DARP participants. Police officers responding to an accident call companies participating in DARP for the zone in which the vehicle is located on a rotational basis. Only the company that is summoned by the NYPD from the DARP list for the zone in which the vehicle is disabled may tow the vehicle. By participating in DARP, companies agree to respond to these calls immediately and can face penalties for failure to do so.

In order to participate in DARP, a tow company must apply to DCA to be placed on the list. Companies must meet certain requirements to be eligible to be placed on the DARP list, including: licensure by DCA for at least one year before application; possession of at least two tow trucks and sufficient towing equipment per zone in which the company seeks to participate; and possession of adequate storage facilities. Companies may only apply to participate in DARP for the zone in which their business premises are located. If an applicant meets all requirements and passes a qualifying inspection, they are placed at the bottom of the rotational list for the zone in which they are located.

Rotation Tow Program (ROTOW)

The Rotation Tow Program is similar to DARP and provides for the removal of stolen and abandoned vehicles. Like DARP, ROTOW requires DCA and NYPD to divide the city into zones and maintain a list of participating companies that can be called by the NYPD to remove vehicles in each zone on a rotational basis. The requirements that a company must meet to participate are similar, though not entirely the same, as those required to participate in DARP. ROTOW participants must maintain larger storage facilities than DARP participants and can apply to participate in both a primary zone where their business premises are located as well as a qualifying adjacent zone. DCA understands that ROTOW is seen as a less lucrative program than DARP because abandoned vehicles are less likely to be reclaimed and fewer companies apply to participate.

Private lot towing

Private lot tows occur when a tow company, pursuant to a pre-executed contract, is called by a private lot owner to remove a vehicle that is parked inconsistently with posted notices. Like in DARP and ROTOW, the rates a company may charge for private lot tows are capped by law. The rate for private lot tows is reduced by half if the driver of a vehicle returns before the tow truck has removed it from the lot.

Arterial towing

The arterial tow program covers cars disabled on highways. The highway is divided into segments that are exclusively served by companies permitted by the NYPD.

Consumer Complaints and DCA Response

The tow industry is consistently one of the top consumer complaint-generating industries regulated by DCA. Since 2014, the agency has received almost 3,600 complaints from consumers about towing companies. These complaints paint a clear picture of the potential consumer harms in this industry- the top three complaints all relate to overcharging and misrepresentation, while the fourth relates to cars damaged during towing or transport. It is a common predatory practice for tow truck drivers to loiter near private lots and put a consumer's car on the hook illegally as soon as the consumer leaves the property, despite the fact that the company must be called and authorized by the lot owner pursuant to a contract to conduct a lawful tow. Tow truck drivers also demand cash on the spot in excess of the permissible rates, despite the fact that companies are required by law to accept credit cards. Consumers that depend on their vehicle for personal or work purposes and are not aware of their rights may feel that they have no choice but to comply.

One consumer's story, which is typical of private lot towing complaints, involved a simple trip to the laundromat with her mother. The consumer parked her car in a shopping plaza while the consumer and her mother visited a laundromat located inside the plaza. A tow truck approached her vehicle and the driver put it on the hook, but was stopped by a member of the consumer's family before the car could be hauled off the lot. The driver demanded \$125 on the spot to release the vehicle, despite the fact that the tow was illegal because the consumer had not violated any posted instructions and the tow company had not been authorized and summoned by the lot operator. Even if the tow had been proper, the tow truck driver was demanding twice the legal rate for private lot tows that do not take the car off the lot. For many families, choosing between an unexpected expense of \$125 or more and losing their vehicle is painful and unworkable. These types of illegal tows cause real harm to consumers across New York City.

Complaint response

The nature of the towing industry makes it difficult for DCA to prevent consumer harm before it occurs. While the agency produces educational materials and does outreach to inform consumers

of their rights under the law, inspectors cannot be present to witness the type of transaction that gives rise to a towing complaint because it occurs on the street and away from the licensee's business premises. As a result, DCA's enforcement in this area is necessarily complaint-driven.

DCA takes its mandate to protect and assist consumers very seriously, and each complaint goes through a careful process meant to hold companies who violate the law accountable and make the complainant whole where possible. Complaints are first received by our Consumer Services Division, where a mediator may try to resolve the dispute between the consumer and the company. Where resolution is not possible, or where the complaint suggests that the company has violated the law, the Consumer Services Division will refer the complaint to the General Counsel for further investigation.

DCA's General Counsel is empowered to investigate potential violations of the law, assess fines, and seek restitution for wronged consumers. Common violations include failure to maintain or produce records required either by the licensing law or a particular tow program and failure to post required rate signs. As part of the law that increased maximum fees, the Council also increased the penalties for certain violations of the law in 2011. As a result, penalties for towing violations can be quite high and are sometimes an effective motivator for companies to comply with the law, especially when coupled with DCA's authority to deny, suspend, and revoke the licenses of businesses that violate the law or fail to pay their fines. DCA has used this authority to suspend 55 and revoke 15 tow truck company licenses since 2014. In addition, DCA has denied 22 tow truck company license applications since 2014. Unfortunately, because DCA does not have the authority to docket our fines as judgments in state courts, some companies may decide to go out of business rather than pay what they owe or may try to evade a large fine by dissolving their business and reconstituting it under a new name.

DCA also maintains the Tow Truck Company Trust Fund ("the Fund") as an alternative to the surety bond that companies are required to maintain. The Fund allows DCA to compensate consumers who are wronged by tow truck licensees. In a 2015 case that gives a sense of the type of cases the agency brings in this area, DCA successfully charged a company with a slew of violations, including illegal towing, deficient record-keeping, towing from private lots without authorization, and even towing occupied vehicles. In addition to revoking the company's license and imposing significant fines and consumer restitution, DCA was able to access the Fund to pay out \$6,306 in restitution to victims of the company's predatory conduct. Since 2014, DCA has used mediation and adjudication to obtain almost \$170,000 in restitution for consumers aggrieved by the towing industry.

In addition to legal investigations, DCA conducts inspections of individual tow trucks and towing company business premises for compliance with legal requirements. These inspections take place at the license application and renewal stages. Any company that wishes to participate in either DARP or ROTOW must also pass a qualifying inspection for compliance with the particular requirements of those programs. Since 2014, DCA has conducted more than 5,400 inspections of tow trucks and towing companies.

Intro. 1173

I will now turn to Intro. 1173, which would increase the maximum rates that towing companies may charge for nonconsensual towing and the storage of towed vehicles. The Council last increased these fees in 2011, and before that the fees were raised in 2004 and 2001. DCA appreciates the opportunity to revisit this issue and weigh in on the proposed increase. After reviewing agency data and researching comparable regulatory schemes in other jurisdictions, DCA does not feel that a further increase in tow fees is warranted at this time. We hope the following details will enrich the Council's legislative deliberations on this subject.

First, the rates proposed in Intro. 1173 would make New York City's tow fees the highest in the country. While the cost of doing business in New York City might be higher than in other jurisdictions, DCA believes that more research would need to be done to justify this dramatic increase and ensure that it is proportional to increases in towing company operating costs. Second, the number of towing companies licensed by DCA has remained steady since the fees were last increased. This suggests that the fees are not so low that companies are leaving the industry. Third, the number of consumer complaints has not decreased since the last increase. Increasing fees does not appear to have disincentivized predatory practices.

Finally, the proposed increases far outpace the rise in the Consumer Price Index ("CPI") and other inflation indicators that measure how far consumers' dollars will go. For example, Intro. 1173 proposes to increase the initial fee for vehicle removal under DARP from \$125 to \$225, an 80% increase in the cost to consumers. In contrast, the CPI has increased just 7% since the Council last increased tow fees. DCA does not believe that increasing fees would serve consumers, who do not have the ability to shop around for the lowest fees and are essentially locked-in to a transaction with the operator performing the nonconsensual tow, or better incentivize companies to comply with the law.

Looking forward

DCA reaffirms that close, careful regulation of the towing industry is the best way to protect consumers and combat predatory behavior. While not all tow truck companies engage in predatory or unlawful behavior, the nature of their business gives these companies tremendous leverage over consumers who are in vulnerable positions. Over three decades of regulating this industry, DCA has gained unique experience with the regulatory structure and would like to offer the Council the following suggestions for updating the law.

First, DCA suggests increasing the license fee for tow truck drivers. Currently, this fee is only \$20, making it among the lowest charged by the agency and insufficient to cover the costs associated with processing applications. The application process for drivers includes fingerprinting, a criminal background check, and initial reviews and ongoing monitoring of Department of Motor Vehicle records pertaining to each licensee. Other license categories with similar application requirements have much higher license fees that better reflect the time and labor costs DCA incurs to administer them.

Second, DCA seeks to work with the Council to ensure that the agency's ability to suspend, revoke, or refuse to renew the licenses of companies that break the law covers all towing-related violations.

Lastly, DCA suggests aligning the requirements of DARP and ROTOW to allow any company qualified to participate in the former program to participate in the latter. Currently, the requirements for these programs are similar, but not identical, and companies are not enthusiastic about meeting the increased storage requirements of the ROTOW program for what they view as a less lucrative return. Synergizing the two programs would make them more efficient and increase the availability of tow trucks to remove the types of vehicles covered by ROTOW.

Conclusion

I would like to thank the committee for the opportunity to offer testimony today and discuss some of the ways the City can improve its regulation of the industry to better serve consumers. We look forward to continuing the conversation as the legislative process continues. I, and my colleagues, will be happy to answer any questions you may have.