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**LAW DEPARTMENT**

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TO: Honorable Board of Police Commissioners  
Laura B. Goodspeed, City of Detroit Auditor General

CC: Stephani Labelle, Attorney, Board of Police Commissioners

FROM: Conrad Mallett, Corporation Counsel

Date: April 16, 2024

RE: BOPC Role in Towing

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### **INTRODUCTION**

On March 23, 2024, the Law Department received a communication from the Chairperson of this Honorable Body, requesting an opinion from the Law Department regarding the Board of Police Commissioners' (the Board or BOPC) role in towing. Specifically, the City of Detroit Auditor General (AG) gave a public presentation to the BOPC on March 21, 2024, that contained many assertions about the legal responsibilities and authority of the BOPC in relation to towing. The Chairperson requested that the Law Department provide confirmation or clarity as to the AG's statements and any additional recommendations related to the questions the AG asked the BOPC to answer related to towing. This memorandum is not confidential in order to provide clarity to both governmental units and the public.

### **SHORT ANSWER**

The towing provisions highlighted by the Auditor General during her presentation are provisions of the 2019 Detroit City Code (the Code), not the 2012 City of Detroit Charter (Charter). In the event of a conflict between the Code and the Charter, the provisions of the Charter govern. As a creation of the Charter, the BOPC is limited to those powers enumerated in the City Charter. Like any body created under the City Charter, the Board "must act strictly within the power granted to it in the Charter."<sup>1</sup> In consultation with the Chief of Police and approval of the Mayor, the BOPC is permitted by Charter to establish policy, rules, and regulations. Therefore, when read in a manner that avoids conflict with the Charter, any requirement that the BOPC provide a recommendation for or "establish" any rules, policies, or other regulations, must be done in consultation with DPD and with the approval of the Mayor. The Auditor General ought not forget that the Corporation Counsel is the only authorized legal counsel for the City of Detroit and its constituent branches, units and agencies of government.<sup>2</sup>

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<sup>1</sup> L.A. Thompson Scenic Ry. Co. v. McCabe, 211 Mich. 133, 139, 178 N.W. 662, 664 (1920) (citing Kalamazoo v. Titus, 208 Mich 252; 175 NW 480 (1919) and Cooley's Constitutional Limitations (7<sup>th</sup> ed), pp 163 et seq.)

<sup>2</sup> 2012 Detroit Charter Section 7.5-201.



## BACKGROUND

In a misguided effort to interpret the law for the BOPC, the Auditor General was mistaken on many matters during her March 21, 2024, public presentation. The presentation created confusion and misinformation for both the BOPC and the public. The Auditor General would do well to consult the Law Department attorneys, to ensure that proper and accurate legal advice is given. Further, the Law Department reminds the Auditor General that the Law Department is the only permissible source of legal advice and opinion for each branch and unit of government, and any person who provides legal counsel to a government agency or unit is in violation of both the City Charter and the rules of the Michigan State Bar. The Law Department commends the BOPC for seeking clarity from qualified, City approved, attorneys on the role of the BOPC regarding any legal matter, including towing.

Finally, the Law Department notes that Section 46-2-92(d) of the City Code provides that “nothing in this section or in this code shall be deemed to authorize the Board of Police Commissioners to conduct or supervise the procurement of police authorized towers.” This language was intentional. Grave concerns about the state of towing in the City of Detroit necessitated an implementation of checks and balances in towing procedures. To that end, all authority was removed from the BOPC, and every step of the towing and regulation ordinance now contains a collaborative approach across multiple agencies to avoid the opportunity for any abuse or governmental maleficence. In fact, in recognition of these concerns, this honorable body adopted a resolution transferring all towing authority from the BOPC to the Office of Contracting and Procurement, as a stopgap measure until the new towing ordinance could be implemented. The resolution passed 8-1.

## ANALYSIS

In an effort to broadly address any confusion or misinformation that may have resulted from the AG’s presentation, the Law Department will provide an analysis of all language in the authorized towing and impoundment provisions of Chapter 46 of the 2019 City Code that reference the BOPC. Specifically, the Law Department addresses the BOPC’s authority, and the process related to (1) authorized towers and (2) impounded vehicles.

First, it is important to reiterate that an entity which is a creation of the City Charter, such as the BOPC, is limited to only the authority that the Charter specifically grants it, notwithstanding any provisions to the contrary in the City Code. Therefore, when interpreting provisions in the City Code pertaining to entities such as the BOPC, those provisions must be read in a way that does not conflict with applicable provisions of the Charter. All of the powers and duties of the Board derived from the City Charter are set forth in Article 7, *The Executive Branch: Programs, Services and Activities*, Chapter 8. *Police*.



In particular, for the purposes of the analysis at hand, Section 7-803 of the 2012 Detroit City Charter, *Duties of the Board of Police Commissioners*, provides in relevant part:

**The Board shall:**

- 1. In consultation with the Chief of Police, and with the approval of the Mayor establish policies, rules and regulations; [emphasis added]**

For the purposes of this opinion, any provisions of Chapter 46 of the City Code must be read in a manner consistent with the above Charter provision.

- 1. What is the BOPC's authority and responsibilities and the related process in relation to authorized towers?*

During the march 21, 2024 presentation, the AG and LPD both stated that it is the BOPC's responsibility to establish standards, including insurance and bonding requirements, that must be met in order for a tower to qualify for police authorized tows. While an accurate summary of the City Code, the AG and LPD's statement is not consistent with the City Charter. Section 7-803 of the Charter is clear. Establishing standards and requirements for towers related to police authorized tows is a form of establishing policies, rules, or regulations. As explained above, by Charter, the BOPC may only establish policies, rules, or regulations in consultation with the Chief of Police and with the approval of the Mayor. Furthermore, once approved by the Mayor, the BOPC must follow the process provided for in Section 2-111 of the City Charter, *Promulgation of Administrative Rules*. Without consultation with DPD and approval by the Mayor, the Board has no authority to establish policies, rules, or regulations, notwithstanding anything to the contrary in the City Code. Therefore, the BOPC may consult with DPD and submit to the Mayor any recommendations related to standards or requirements related to police authorized tows. The Mayor must approve any such standards or requirements prior to the promulgation of such rules.

- 2. What is the BOPC's authority and responsibilities and the related process in relation to impounded vehicles?*

Section 46-2-64 of the 2019 Detroit City Code provides that it is City Council's responsibility to adopt a resolution establishing fees for the reasonable cost of receiving, safeguarding and discharging an impounded vehicle in the custody of the Police Department.<sup>3</sup> At first glance, it would appear that Section 46-2-64 authorizes the BOPC alone to provide a recommendation of fees to City Council. However, as previously explained, a complete review of the law demands a more nuanced interpretation. The Charter does not provide the BOPC standalone authority to recommend or implement fees. However, Section 7-803 of the Charter allows for the BOPC to recommend regulations, of which fees could be a subset. Pursuant to Section 7-803 of the Charter, the BOPC may submit a recommendation for impound fees to City Council *if that recommendation was done in consultation with DPD and approved by the Mayor*.

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<sup>3</sup> Section 46-2-64 of the 2019 Detroit City Code, Same-Redemption; establishment, approval, and publication of impoundment fee.



## CONCLUSION

The law is clear. Any responsibility or authority granted to the BOPC by the towing ordinance must necessarily be read within the bounds of the authority and responsibilities granted to the BOPC in the Charter. As such, the towing procedures discussed herein must follow the requirements of Section 7-803. The BOPC cannot establish or approve any City rules, regulations, or policies without consulting DPD and the approval of the Mayor.

As to the Auditor General's questions to the BOPC, the Law department provides the following feedback for the BOPC's consideration:

- (1) Has this body approved any changes that would tend to usurp, regulate, etc. any mandated Charter requirements since 2012?

No governmental body of the City has the authority to "usurp" or otherwise change any requirement of the City Charter. Not even the Mayor or City Council. As such, the BOPC could not possibly have legally approved any such changes.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "C. Mallett", written over a horizontal line.

Conrad W. Mallett  
Corporation Counsel