

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



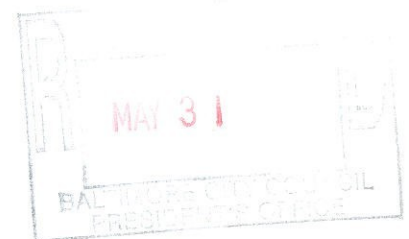
DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

May 31, 2011

Honorable President and Members
of the City Council of Baltimore
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Attn: Karen Randle
Executive Secretary



Re: City Council Bill No. 11-0658 – Traffic Mitigation – Establishing
Traffic Mitigation Zones

Dear President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 11-0658. City Council Bill 658 modifies the current law regarding traffic mitigation requirements for certain development projects. The bill establishes fees and requirements for projects in “traffic mitigation zones” that are defined in the bill and for projects outside of traffic mitigation zones. The Department of Transportation is granted authority to promulgate rules and regulations to implement the requirements of the law. The Department of Transportation has also supplied a list of amendments that the Law Department will review as part of this report.

With regard to the introductory version of the bill, the Law Department has the following comments:

1. Section 3804.2.1.1 – This section requires that consultants hired for traffic impact studies certify to the Director of DOT in the manner prescribed by the Director, that the Consultant is free of any conflicts of interest. The bill does not define what constitutes a conflict of interest so it is presumably left to the Director to decide. A definition of what is considered a conflict of interest should not be left to the discretion of the Director. It should be defined in the legislation by the City Council.
2. Section 3804.3.2.1 – The bill requires that an applicant that is required to do a traffic impact study (TIS) must pay the estimated expense of the study and section 3804.3.2.1 requires that the applicant receive a refund if the estimated cost exceeds the actual cost. Since all expenditures of funds in the possession of the City must be approved by the

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3. Board of Estimates, the bill should be amended to provide for Board of Estimates approval of refunds.
4. Section 3804.4 - Under this section, DOT has 60 days to complete a traffic impact study or the applicant can select a contractor to do the study from an approved list. The applicant is then entitled to receive a refund of any payments made to the City. The concern here is what if the City has put significant resources into a TIS but does not complete it in 60 days. The bill requires the City to refund in full all fees paid. This creates a deficit situation for the City. In addition, any refund should be subject to Board of Estimates approval.
5. Section 3805.2.1 and 3805.2.2 – These sections dictate that the 10 year traffic management plan that the Planning Department must adopt for each traffic mitigation zone include what projects may be funded from traffic mitigation fees and what projects may not be funded by such fees. Although the plan and the bill can contain such requirements, they can not be considered mandatory. Neither the plan or the bill can mandate how money that is in the City’s general fund is expended. The Plan can made recommendations but can not mandate that funds be used for specific purposes.
6. Section 3806.4.1.1 – For clarity insert “Whether credits are required under this section 3806.4 or part of a negotiated agreement pursuant to Section 3806.4.2.1,” at the beginning of this section.
7. Section 3806.4.2.1 – This section requires that mitigation agreements be binding on subsequent purchasers of the property that triggered the traffic mitigation requirements. This will be difficult to enforce. Subsequent purchasers can only be bound by record the requirements as a covenant in the land records.
8. Section 3806.5.1 – Change “Department” to “Director.”
9. Section 3807 – This section attempts to establish what the mitigation fees must be used for. In order to try to clarify that the bill can not mandate that revenue from the fees be used for specific purposes, the phrase “subject to appropriation” was inserted in various clauses. The following language sounds like it mandates that fees be used only for certain purposes. To be clear, this is not necessarily the case. The fees are part of the City’s general fund and although they may be segregated in separate accounts and ultimately used for the purposes prescribed in the bill. They can also be used as designated in the Annual Ordinance of Estimates or supplementary appropriation ordinances.
10. Section 3807.3.1 – Strike “to the approval of the Board of Estimates” and insert “appropriation.”
11. Section 3807.3.2 2. – Strike “Department of Transportation” and insert “City.”

AMENDMENTS

The Department of Transportation has provided the Law Department with a list of proposed amendments to the 1st Reader version of the bill. The Law Department has the following comments on the amendments.

1. Amendment No. 2 – This amendment would actually be on page 21 of the First Reader copy of the bill. I do not know what the practical outcome of applying this formula for right of ways would be but I suspect that it will significantly reduce the number of trips for a project and therefore reduce the mitigation fees perhaps to zero. Is this the intent? If so, who pays for any needed mitigation?
2. Amendment 4 – The amendment is on page 19 of the First Reader copy of the bill.
3. Amendment 5 - Change 18 to 19.
4. Amendment 6 – Change 18 to 19. I do not think it is necessary to move this section. I would simply clarify by inserting after “Credit Cap”, “This credit cap is applicable to all trip-generation credits whether required under §3806.4.3.2 through 3806.4.3.3 or negotiated pursuant to §3806.4.3.1.”
5. Amendment 8 – Change 20 to 21.
6. Amendment 9 – Change 20 to 21.
7. Amendment 10 – The City Council can not mandate refunds of fees. Any expenditure for refunds of fees must be provided for in the Ordinance of Estimates or perhaps through supplemental appropriation if the conditions in Art. VI, §8(b) are satisfied. This same analysis is applicable to refunds mentioned in §3804.3.2.1 and §3804.4. In all these sections, language should be added to provide that refunds are available only to the extent that funds have been appropriated for that purpose through the Ordinance of Estimates or by supplementary appropriation.

Accordingly, subject to the amendments suggested above, the Law Department approves City Council Bill 10-0658 for form and legal sufficiency.

Sincerely yours,


Elena R. DiPietro
Chief Solicitor

cc: George A. Nilson, City Solicitor
Angela Gibson, City Council Liaison, Mayor's Office
Hilary Ruley
Ashlea Brown
Victor Tervalá