
CITY OF BALTIMORE

BERNARD C. “JACK” YOUNG
Mayor



DEPARTMENT OF LAW

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May 13, 2020

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

Re: Mayor and City Council Bill 20-0532 – Temporary Street Space for Pedestrians and Cyclists

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0532 for form and legal sufficiency. The bill would require the City’s Department of Transportation to designate additional street space for pedestrians and cyclists within seven days of the Governor or the Mayor’s issuance, during an emergency, of a “temporary spacing order,” defined as one that would “prohibit gatherings of more than 100 individuals within the City.”

This additional street space could be achieved either through the “closure of at least 1 lane of a street to vehicular traffic” or by creating a “shared street.” A “shared street” is defined as one designated by the City’s Department of Transportation as a street with a “recommended speed limit of 5 miles per hour and that allows use by motor vehicles, pedestrians, and individuals using bicycles.” The bill also requires that such additional street space be at least 25 miles long, as measured in the center of City streets regardless of numbers of lanes. There must be at least 1 such mile in every councilmanic district and no more than fifteen percent can be in any one councilmanic district.

In general, the City has the power to regulate the use of its streets. City Charter, Art. II, § (34) (d). The City may exercise that power by ordinance and the Charter recognizes that the Department of Transportation can be given additional powers via ordinance. City Charter, Art. VII, § 109 (1).

However, the Maryland Constitution makes clear that any “local laws enacted by the Mayor of Baltimore and City Council of the City of Baltimore or the Council of the Counties as hereinbefore provided, shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that *in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control.*” Md. Constitution, Art. 11-A, § 3 (emphasis added); *Worton Creek Marina, LLC v. Claggett*, 381 Md. 499, 512-513 (2004) (“when a local government ordinance conflicts with a public general law enacted by the General Assembly, the local ordinance is preempted by the State law and is rendered invalid”).

The Maryland Vehicle laws reiterate this concept and specifically provide:

(c) Except as otherwise provided in the Maryland Vehicle Law:

- (1) The provisions of the Maryland Vehicle Law prevail over all local legislation and regulation on any subject with which the Maryland Vehicle Law deals;
- (2) All public local laws, ordinances, and regulations that are inconsistent or identical with or equivalent to any provision in the Maryland Vehicle Law are repealed; and
- (3) The charters of all political subdivisions of this State are modified to prohibit the political subdivision from making or enforcing any ordinance or regulation in violation of the Maryland Vehicle Law.

Md. Code, Transp., § 25-101.1(c).

It appears that Titles 19 through 27 of the Transportation Article of the Maryland Code make up the Maryland Vehicle laws. Contained within these Titles is a law that prohibits pedestrians from walking in any “roadway” where a sidewalk is provided. Md. Code, Transp., § 21-506. If a sidewalk is not provided, the pedestrian must walk on the shoulder of that “roadway.” Md. Code, Transp., § 21-506. A “roadway” is defined as “that part of a highway that is improved, designed, or *ordinarily used* for vehicular travel, other than the shoulder.” Md. Code, Transp., § 11-151 (emphasis added). Additionally, there is a state law that regulates bicycles use of the road and requires them to be as close to the right side of the “roadway” as possible. Md. Code, Transp., § 21-1205. Thus, even if the City’s Department of Transportation were to provide additional road space for bicycles and pedestrians to use during this unique emergency — either by closing lanes in streets or designating shared spaces — it is not clear that the pedestrians or cyclists could legally use those spaces.

Nor is it clear what right-of-way laws or principles of contributory negligence would apply should a pedestrian or bicyclist be struck by a vehicle in a shared street. *See, e.g., Henderson v. Brown*, 214 Md. 463, 468 (1957) (“While both the pedestrian and the driver have an equal right to use the street, the amount of diligence and care needed on the part of each is shifted from one to the other according to where the accident happens. When a pedestrian crosses between intersections, the law requires him to know that he must accommodate himself to vehicles on the road, that he cannot dispute their right-of-way but must cross only as the traffic affords safe opportunity. These rules give the measure and color of what the pedestrian must do and what the driver can rightfully expect him to do.”); *see also Harris v. Bowie*, 249 Md. 465 (1968) (“it is necessary that there be an area, apart from the ‘roadway’, that is intended for pedestrian use. The intention to set aside an area for a sidewalk, in the absence of official records designating it as such, may be ascertained primarily by its actual physical appearance and the use to which it is put, although a crosswalk cannot be established by customary pedestrian usage.”).

However, because this bill does not require or authorize pedestrians or bicycles in any area, but merely directs the City’s Department of Transportation to provide additional street space, the Law Department cannot say with the limited time to research this issue that the bill is preempted.

It could be that a court utilizes the laws cited, *infra*, to declare this bill void or repealed, but it is not clear because there is a dearth of cases with facts similar to the ones presented by this type of pandemic emergency.

Therefore, the Law Department would approve the bill for form and legal sufficiency.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Hilary Ruley".

Hilary Ruley
Chief Solicitor

cc: Dana P. Moore, Acting City Solicitor
Matthew Stegman, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor