



**BALTIMORE CITY  
BOARD OF MUNICIPAL  
AND ZONING APPEALS**

**MEMORANDUM**

**To:** The Honorable Members of the Land Use & Transportation Committee  
**From:** Justin A. Williams, Interim Executive Director  
**CC:** Geoffrey Veale, Zoning Administrator  
**Date:** February 26, 2026  
**Re:** Council Bill No. 25-0015 – Zoning – Conditional Use - Crematorium  
**Position:** No Objection

Brandon M. Scott  
Mayor

Justin A. Williams  
Interim Executive Director

Members  
Leland Shelton  
Chair

Victor Clark  
Liz Cornish  
David Marcozzi  
Rian Hargrave

Pursuant to Baltimore City Code, Article 32, § 5-506(b), the Board of Municipal and Zoning Appeals (“BMZA”) submits this staff report and recommendation regarding City Council Bill 25-0015. This report was prepared by BMZA staff and has not been reviewed or voted upon by the full BMZA Board. The observations and recommendations herein represent staff analysis based on the Board’s operational experience and caseload history.

BMZA staff does not object to the passage of Council Bill 25-0015. However, the following observations are offered for the Council’s consideration in evaluating this legislation against the approval standards set forth in § 5-508(c) of the Zoning Code.

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**SUMMARY OF PROPOSED LEGISLATION**

Council Bill 25-0015 proposes to separate “crematorium” from its current inclusion within the definitions of “Cemetery” (§ 1-303(u)) and “Funeral home” (§ 1-306(u)) and establish it as a stand-alone defined use under a new § 1-304(u). The bill amends Tables 7-702 and 10-301 to designate the zoning districts in which a crematorium is permitted of right or as a conditional use.

Notably, the bill excludes crematoria from the C-2 Community Commercial Zoning District in Table 10-301, where they are currently permitted by inclusion within the definitions of “Cemetery” and “Funeral home.” The bill permits crematoria as a conditional use in the C-3 and C-4 districts, as permitted of right in the C-5 district, and as a conditional use in the OS Open-Space District. As the Law Department has confirmed, this bill is a “legislative authorization” under § 5-501 because it amends the text of the Zoning Code, and accordingly triggers the procedural requirements of §§ 5-504, 5-506, and 5-507.

**CONCURRENCE WITH AGENCY REPORTS**

The Planning Commission voted unanimously to recommend approval of the bill, and the Law Department has approved the bill for form and legal sufficiency. BMZA staff generally concurs with the analysis set forth in both reports.

Staff notes, however, the Law Department’s observation that the Planning Commission’s staff report “did NOT evaluate [the § 5-508(c)] factors per se,” and that “the City Council must take care to evaluate them.” The observations below are offered to assist the Council in that evaluation, particularly with respect to the amendment’s consistency with the intent and general regulations of the Code under § 5-508(c)(3) and the extent to which the amendment would create nonconformities under § 5-508(c)(5).

## **OBSERVATIONS FOR THE COUNCIL’S CONSIDERATION**

### **A. Zoning as a Tool for Addressing Emissions and Air Quality Concerns**

Staff understands that community opposition to a proposed crematorium at 4905 York Road (BMZA Case No. BMZ2021-00161) is the proximate catalyst for this legislation. As the Planning Commission staff report acknowledges, residents’ “significant concerns” relate primarily to emissions and air pollution. Those concerns are understandable. Crematoria emit criteria pollutants common to combustion (particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and sulfur dioxide (SO<sub>2</sub>)) as well as trace amounts of vaporized mercury derived primarily from dental amalgam fillings and dioxins/furans.<sup>1</sup>

However, zoning is a blunt instrument for addressing what is fundamentally an environmental and public health concern. As the Planning Commission staff noted, zoning “affects the ‘what’ not the ‘who’ of a given land use.” Air pollutants, particularly vaporized mercury and fine particulate matter, do not respect zoning district boundaries. Vaporized mercury is highly volatile and enters the atmospheric cycle, traveling hundreds to thousands of miles before depositing via rainfall.<sup>2</sup> Fine particulate matter (PM<sub>2.5</sub>) similarly remains airborne and disperses over distances well beyond adjacent parcels. As a practical matter, relocating a crematorium from a C-2 district to a C-3, C-4, or industrial district does not meaningfully reduce exposure for nearby residential areas, given prevailing wind patterns and the physics of atmospheric dispersion.

The more effective regulatory lever for addressing crematory emissions lies at the state level. Crematory permits in Maryland are issued by the Maryland Department of Health pursuant to COMAR 10.29.17–10.29.20, which governs operator certification, facility standards, and inspections.<sup>3</sup> The Maryland Department of the Environment (“MDE”) administers air quality permits and conducts air dispersion modeling to assess off-site ground-level pollutant concentrations against National Ambient Air Quality Standards (“NAAQS”). If the Council’s underlying concern is the safety of crematory emissions, BMZA staff respectfully suggests that the more targeted and scientifically grounded response would be legislative engagement at the state level to ensure that MDE’s emission standards, scrubber technology requirements, and enforcement mechanisms remain robust rather than relying on zoning district boundaries to serve as an environmental buffer.

## **B. Consistency with the Intent and General Regulations of the Code (§ 5-508(c)(3))**

Among the factors the Council must consider when evaluating text amendments is “the amendment’s consistency with the intent and general regulations of this Code.”<sup>4</sup> If the implicit rationale for excluding crematoria from the C-2 district is concern over localized air emissions, the Council should consider whether the Code consistently addresses similar emitting uses. Numerous commercial uses permitted in C-2 and other commercial districts generate comparable or greater volumes of particulate matter and volatile organic compounds on a continuous basis, such as fast-food/char-broiler restaurants and industrial bakeries, yet face no analogous zoning restriction.

The distinguishing feature of crematory emissions is the presence of trace vaporized mercury from dental amalgam, which is the specific environmental trigger that differentiates crematoria from other commercial emitters.<sup>5</sup> However, as noted above, mercury’s atmospheric behavior in traveling vast distances before deposition undercuts the rationale for a localized zoning solution. Singling out crematoria while permitting other emitting commercial uses in C-2 could be viewed as inconsistent application of the Code’s regulatory framework, and may invite scrutiny as to whether the restriction addresses a genuine land-use compatibility concern or is instead a targeted response to a specific controversy.

In this connection, BMZA staff notes that it has observed an increase in applicants asserting claims under the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”).<sup>6</sup> While a standard commercial funeral home would face a high bar in establishing that a zoning restriction on cremation services imposes a “substantial burden” on “religious exercise,” cremation is a religious mandate in certain faith traditions, including Hinduism and Buddhism. A crematorium operated by or affiliated with a religious institution in a C-2 district could present a more colorable RLUIPA claim if this restriction prevents the exercise of a religiously mandated practice.<sup>7</sup> The Council may wish to consider this potential exposure, even if the likelihood remains low for the typical commercial operator.

## **C. Creation of Nonconformities (§ 5-508(c)(5))**

The Council must also consider “the extent to which the amendment would create nonconformities.” ZC § 5-508(c)(5). The Planning Commission staff report identified 46 funeral homes citywide, of which 18 are located in the C-2 district. Upon the bill’s enactment, any existing funeral home operating cremation services in a C-2 district will become a lawful nonconforming use under Title 18 of the Zoning Code.<sup>8</sup>

This carries meaningful practical consequences for affected businesses. Nonconforming use status restricts the ability to expand or make significant structural alterations

without BMZA approval.<sup>9</sup> A structure containing a nonconforming use that is damaged or destroyed may only be repaired or reconstructed if “no new nonconformities are created and the existing degree of any nonconformity is not increased,” and a building permit must be obtained within one year of damage.<sup>10</sup> Financial institutions are also generally reluctant to extend financing against nonconforming properties, given the risk that the use cannot be re-established after destruction beyond a certain percentage of replacement value.

An ironic consequence of this bill is that nonconforming status could prevent existing crematorium operators from modernizing their facilities, including installing the advanced filtration and scrubber technology that would address the very emissions concerns motivating this legislation. Any significant structural alteration or expansion to accommodate upgraded equipment could trigger BMZA review and may not be approved. The bill therefore risks freezing legacy operators in place with older, potentially less efficient cremation technology, while doing little to reduce emissions from those operations.

#### **D. The Policy Balance**

BMZA staff recognizes that the Council is responding to legitimate constituent concerns, and that local land-use regulation is among the limited levers available to the City. As the Planning Commission staff acknowledged, “whether it is appropriate to include a Crematorium in a given district or another is purely a policy decision.” BMZA staff does not question the Council’s authority to make this policy judgment.

Staff’s observations are offered in the spirit of providing the Council with a complete picture of the downstream regulatory and economic effects, so that the Council may make a fully informed decision. In balancing the legitimate concerns of constituents with the practical limitations of zoning as an environmental tool and the consequences of creating nonconformities for local businesses, the Council may wish to consider whether complementary action at the state level, e.g., through engagement with MDE and MDH, would more directly address the underlying public health concerns.

#### **CONCLUSION**

BMZA staff does not object to the passage of Council Bill 25-0015. The bill makes a rational administrative improvement in establishing crematorium as a stand-alone defined use, which will provide greater clarity in the Zoning Code’s use classifications. BMZA staff respectfully offers the above observations regarding (1) the limitations of zoning as a tool for addressing environmental emissions, (2) the potential inconsistency of singling out crematoria relative to other emitting uses, (3) the creation of nonconformities and their practical consequences for existing businesses, and (4) the

availability of state-level regulatory mechanisms that may more directly address the Council’s underlying concerns.

BMZA staff remains available to assist the Council and the Land Use and Transportation Committee with any questions regarding this report or the operational impacts of this legislation.

## ENDNOTES

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<sup>1</sup> See U.S. Environmental Protection Agency, [2020 National Emissions Inventory Technical Support Document, Section 29: Cremation](#) (Apr. 2023).

<sup>2</sup> *Id.*

<sup>3</sup> See Md. Code Ann., Health Occ. §§ 7-205, 7-411.

<sup>4</sup> Zoning Code (ZC), § 5-508(c)(3).

<sup>5</sup> See U.S. EPA, [2020 National Emissions Inventory Technical Support Document, Section 29](#) (estimating approximately 2.3 tons of mercury emitted nationally from human cremation in 2020).

<sup>6</sup> 42 U.S.C. §§ 2000cc *et seq.*

<sup>7</sup> *Id.* § 2000cc(a)(1); see also *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005) (holding arbitrary government action prohibiting religious land use may establish substantial burden without further demonstration).

<sup>8</sup> See *id.* § 2-203(e) (providing that a preexisting lawful use reclassified so that it is no longer permitted or conditional may continue as a nonconforming use, subject to Title 18’s requirements and limitations).

<sup>9</sup> See generally Title 18, Subtitle 3 of the Zoning Code.

<sup>10</sup> *Id.* § 18-304.