

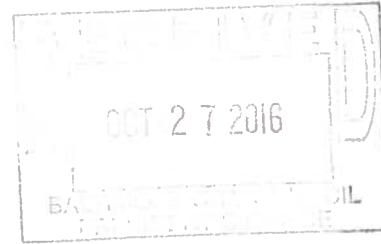
CITY OF BALTIMORE
STEPHANIE RAWLINGS-BLAKE, Mayor



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

October 27, 2016

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 15-0555 – Coal Tar Pavement Products – Prohibition on
Use or Sale

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 15-0555 for form and legal sufficiency. The bill prohibits the use or sale in the City of coal tar pavement products. It also defines certain terms, provides for the publication of alternative pavement products that do not contain coal tar, imposes certain penalties, and provides for a special effective date.

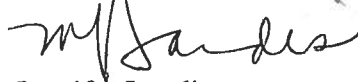
Under the Baltimore City Charter, Article II, Sections 27 and 47, the Mayor and City Council may “exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City,” and may “pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City.”

The Law Department’s concern with this bill, however, is in Section 62-6, on page 3, line 28, which states that “The City Solicitor **or any affected party** may file an action in a court of competent jurisdiction to enjoin repeated violations of this subtitle.” (emphasis added) This language creates a civil cause of action between private parties. Maryland counties, including Baltimore City, ordinarily lack the power to create private causes of action. “In Maryland, the creation of new causes of action in the courts has traditionally been done either by the General Assembly or by [the Court of Appeals] under its authority to modify the common law of this State. Furthermore, the creation of new judicial remedies has traditionally been done on a statewide basis.” *McCrary Corp. v. Fowler*, 319 Md. 12, 20 (1990), (citations omitted), *superseded by statute*, *Washington Suburban Sanitary Commission v. Phillips*, 413 Md. 606 (2010). In *McCrary*, the Court of Appeals concluded that a law creating a judicial cause of action between private individuals to combat employment discrimination encroached upon an area “which heretofore had been the province of state agencies,” and did not qualify as a local law under the Home Rule Amendment. *Id.* at 20-21.

Fav w/ Amends

Since Section 62-6 appears to do what was prohibited in *McCrary*, **the Law Department requests that “or any affected party” be deleted from line 28 on page 3.** If so amended, the Law Department approves the bill for form and legal sufficiency.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Landis", written in a cursive style.

Jennifer Landis
Assistant Solicitor

cc: David Ralph, Acting City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor
Avery Aisenstark, Director, Department of Legislative Reference