

Introduced by: Councilmember Cohen, Henry, Clarke/C.A.

Prepared by: Department of Legislative Reference

Date: December 27, 2016

Referred to: JUDICIARY AND LEGISLATIVE INVESTIGATIONS Committee

Also referred for recommendation and report to municipal agencies listed on reverse.

CITY COUNCIL 17-0006

A BILL ENTITLED

AN ORDINANCE concerning

**Real Estate Practices – Disclosures –  
Industrial, Railroad, and Truck Operations**

FOR the purpose of specifying a certain format for and broadening the scope of a pre-sale disclosure required to be given potential buyers of real property; providing for a special effective date; and generally relating to disclosures required in real estate transactions.

BY repealing and reordaining, with amendments

Article 2 - Consumer Protections  
Section(s) 14-6  
Baltimore City Code  
(As amended by Ord. 16-581)

No. \_\_\_\_\_

**\*\*The introduction of an Ordinance or Resolution by Councilmembers at the request of any person, firm or organization is a courtesy extended by the Councilmembers and not an indication of their position.**

**Agencies**

_____	Baltimore City Public School System
_____	Baltimore Development Corporation
_____	City Solicitor
_____	Comptroller's Office
_____	Department of Audits
_____	Department of Finance
_____	Department of General Services
_____	Department of Housing and Community Development
_____	Department of Human Resources
_____	Department of Planning
_____	Other: _____
_____	Other: _____
_____	Other: _____
_____	Department of Public Works
_____	Department of Real Estate
_____	Department of Recreation and Parks
_____	Department of Transportation
_____	Fire Department
_____	Health Department
_____	Mayor's Office of Employment Development
_____	Mayor's Office of Human Services
_____	Mayor's Office of Information Technology
_____	Office of the Mayor
_____	Police Department
_____	Other: _____
_____	Other: _____
_____	Other: _____
_____	Environmental Control Board
_____	Fire & Police Employees' Retirement System
_____	Labor Commissioner
_____	Parking Authority Board
_____	Planning Commission
_____	Wage Commission
_____	Other: _____
_____	Other: _____
_____	Other: _____
_____	Board of Estimates
_____	Board of Ethics
_____	Board of Municipal and Zoning Appeals
_____	Comm. for Historical and Architectural Preservation
_____	Commission on Sustainability
_____	Employees' Retirement System
_____	Other: _____
_____	Other: _____
_____	Other: _____

**Boards and Commissions**



## BALTIMORE HOUSING

CATHERINE PUGH  
Mayor

MICHAEL BRAVERMAN  
Acting Executive Director, IIABC  
Acting Commissioner, HCD

## MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council  
c/o Natawna Austin, Executive Secretary

From: Michael Braverman, Acting Commissioner *MBR*

Date: March 1, 2017

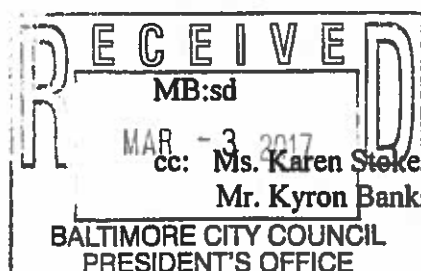
Re: **City Council Bill 17-0006 - Real Estate Practices – Disclosures – Industrial, Railroad, and Truck Operations**

The Department of Housing and Community Development (HCD) has reviewed City Council Bill 17-0006, for the purpose of specifying a certain format for and broadening the scope of a pre-sale disclosure required to be given potential buyers of real property; providing for a special effective date; and generally relating to disclosures required in real estate transactions.

If enacted, this bill would change the existing disclosure language notifying potential buyers of property in the city that the property could be located close to operations that might create or cause noises, odors, fumes, bright lights, vibrations and safety hazards. The current language includes a link to a map that identifies industrial zoning districts and the location of railroad tracks and this bill would update the language to also include a link identifying official truck routes in the City. This bill would also require the disclosure language to be printed in bold capital letters, enclosed in a red box and require the seller to get the signature of the potential buyer prior to them entering into a contract of sale.

HCD supports the addition of the information on truck routes in the city to the existing disclosure language but defers to legal on the signature requirement from the potential buyer of the property.

The Department of Housing and Community Development defers to City's Department of Legal on the passage of City Council Bill 17-0006.





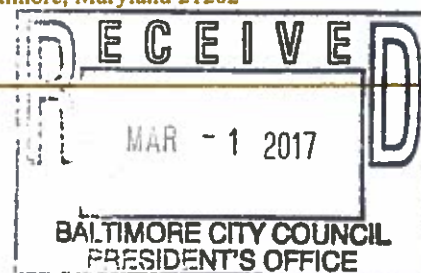
CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

101 City Hall  
Baltimore, Maryland 21202



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

Re: City Council Bill 17-0006 – Real Estate Practices – Disclosures –  
Industrial, Railroad and Truck Operations

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0006 for form and legal sufficiency. The bill would modify the language in Ordinance 16-0581, which contains both the City's new Zoning Code ("Transform Baltimore") and other related provisions. It currently requires sellers of real property in certain Zoning Districts to provide the buyers of those properties with a particular disclosure prior to sale.

This bill would require the disclosure be given for any "industrial" property and also require the buyer's signature evidencing receipt of the disclosure. These two changes are the very changes the Law Department noted were problematic in City Council Bill 16-0765, which was introduced last term. These concerns were also raised when the disclosure concept was created by Ordinance 12-0053 (City Council Bill 12-0069). Amendments to this bill are required to address these issues. These amendments could be similar to those proposed for the previous bills on this subject or comparable amendments could be offered by the sponsor or others. The Law Department will work to make sure any amendments address the problematic issues.

When the Disclosure can be Required

As indicated in the Law Department's bill report on the disclosure concept when it was originally enacted, the City has the general police and welfare powers to legislate in this area. See City Charter, Art. II, §§(27), (47). The General Assembly has allowed the City "to prescribe, within the limits of the federal and state constitutions, reasonable regulations necessary to preserve the public order, health, safety, or morals." *Tighe v. Osborne*, 149 Md. 349, 356 (1925).

One limit on the government's regulatory power is the constitutional right to be free from burdens on private contracts. "Freedom of contract is subject to legislative regulation in the interest of public health, safety, morals or welfare. But such legislation must not be unreasonable, arbitrary, or capricious, and the means selected must have a real and substantial relation to the object sought to be attained." *Maryland Bd. of Pharmacy v. Sav-A-Lot, Inc.*, 270 Md. 103, 119-120 (1973)(citation omitted)(emphasis added); see also *VNA Hospice v. Dep't*

Fav w/ Amend



of *Health & Mental Hygiene*, 406 Md. 584, 601 n.8 (2008). The current law avoids a general impairment of the right to freedom of contract because it is narrowly tailored to give notice for public welfare reasons of an objectively identifiable feature of the property, but its failure to be given does not impair the contract of sale.

This bill would expand the scope of the required notice to be for any “industrial” operations and remove the provision that tied those operations to a particular district. This change makes the bill susceptible to a claim that it impairs too great a number of transactions because it is not narrowly tailored to serve its public welfare goals.

Additionally, the term “industrial” is impermissibly vague because it does not give sellers of the property adequate notice of when the disclosure is required. The term “industrial” can mean a variety of uses: City Council Ordinance 16-0581 (“Transform Baltimore”) has several pages of definitions tied to the word “industrial” and six separate proposed industrial districts, including those dealing with office and bioscience uses. *See, e.g., A.B. Small Co. v. American Sugar Refining Co.*, 267 U.S. 233, 238-239 (1925)(courts have held a civil “provision invalid as contravening the due process of law clause of the Fifth Amendment, among others, because it required that the transactions named should conform to a rule or standard which was so vague and indefinite that no one could know what it was”)(citations omitted); *see also Johnson v. U.S.*, 135 S.Ct. 2551, 2570 (2015)(Thomas, J., concurring)(discussing how the Supreme “Court’s application of its vagueness doctrine has largely mirrored its application of substantive due process.”). Just because there may be “some conduct that clearly falls within the provision’s grasp” does not cure an otherwise vague law. *Id.* at 2561.

For these two reasons, the bill must be amended to clarify the scope of the term “industrial.” The clarifying language must put the seller on notice as to when the disclosure is required. The bill could be amended to tie the disclosure to a particular zoning district or require the disclosure within a certain distance from a railroad track or a truck route. Certainly, the language concerning where to find railroads and truck routes should be retained.

#### Signature Required

Additionally, this bill, like the previous City Council Bill 16-0765, would change the method of disclosure to require the buyer’s signature. It is unclear if the lack of a signature would allow those buyers who were not given the requisite disclosure to argue that such a failure constituted a substantial and material breach that “would permit the buyer to terminate the contract.” *Dennis v. Rockville*, 286 Md. 184, 190 (1979). Since “the right of private contract is no small part of the liberty of the citizen,” “the usual and most important function of courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appear that they contravene public right or the public welfare.” *Baltimore & O.S.W. Ry. Co. v. Voigt*, 176 U.S. 498, 505 (1900); *accord Maryland National Capital Park and Planning Commission v. Washington National Arena*, 282 Md. 588, 606 (1978); *Loughran Co. v. Lord Baltimore Candy and Tobacco Co.*, 178 Md. 38, 44 (1940). In explaining this right, Maryland Courts often quote the following:





Fearing the disruptive effect that invocation of the highly elusive public policy principle would likely exert on the stability of commercial and contractual relations, Maryland courts have been hesitant to strike down voluntary bargains on public policy grounds, doing so only in those cases where the challenged agreement is patently offensive to the public good, that is, where "the common sense of the entire community would . . . pronounce it" invalid. This reluctance on the part of the judiciary to nullify contractual arrangements on public policy grounds also serves to protect the public interest in having individuals exercise broad powers to structure their own affairs by making legally enforceable promises, a concept which lies at the heart of the freedom of contract principle.

*Maryland National Capital Park and Planning Commission*, 282 Md. at 606 (citations omitted).

To avoid this result, the bill should be amended to state clearly that failure to receive the disclosure does not impact any contract for sale. To accomplish this, the bill should change "the buyer's signature" to "a signature" in line 21 on page 1 so that the signature evidences that a disclosure was given, not that it is a part of the enforceable promise between to privately contracting parties.

#### Preventing Retroactivity

Finally, the bill needs a third amendment to be clear that it does not operate retroactively in violation of the United State Constitution's Contract Clause by requiring any sellers to give the notice required by the bill if an offer for sale of their property has already been accepted. *See, e.g., Board of Trustees of Employees' Retirement System of City of Baltimore*, 317 Md. 72, 99 (1989). Suggested language would be: "this ordinance does not operate retroactively to require any current property sellers to give the notice created by this bill if an offer for sale of a property has already been accepted."

Subject to the requisite amendments, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours, *ecm*

*Hilary Ruley*


Hilary Ruley  
Chief Solicitor

cc: David E. Ralph, Acting City Solicitor  
Karen Stokes, Director, Mayor's Office of Government Relations  
Kyron Banks, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalo, Chief Solicitor  
Jennifer Landis, Assistant Solicitor



**MEMORANDUM**

**TO:** Honorable President and Members of the City Council  
Attention: Natawna B. Austin, Executive Secretary

**FROM:** William H. Cole, President and CEO 

**DATE:** January 24, 2017

**SUBJECT:** City Council Bill No. 17-0006  
Real Estate Practices – Disclosures – Industrial, Railroad, and Truck Operations

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The Baltimore Development Corporation (BDC) has been asked to comment on City Council Bill No. 17-0006, an ordinance for the purpose of requiring a disclosure of adjacent or nearby industrial operations, railroad operations, and/or truck operations to a buyer of any real property in Baltimore City; a disclosure requiring the buyer's signature. BDC has reviewed the ordinance and supports, with amendments, the proposed ordinance and is respectfully requesting that Bill No. 17-0006 be given favorable consideration by the City Council.

While we are generally in agreement with the terms of the Bill we would like recommend amendments that include:

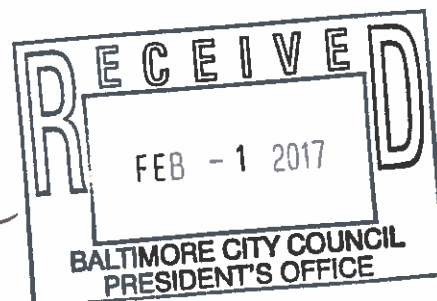
- Outlining a specific radius/distance from heavy industrial, railroad, and truck operations, where disclosure is necessary (e.g. ½ mile)
- Exempting industrial, maritime, and commercial properties from this disclosure requirement
- OR
- Specifying RESIDENTIAL real estate transactions are subject to the terms of this bill.

BDC has reviewed City Council Bill No. 17-0006 and respectfully requests that favorable consideration is given to this Bill with amendments as stated above.

cc: Colin Tarbert  
Angela Gibson


sandra.blake/ccbill17/17-0007

*F w/Amend*





*TJS*

<b>FROM</b>	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE  <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 <sup>TH</sup> FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #17-0006/ REAL ESTATE PRACTICES – DISCLOSURES – INDUSTRIAL, RAILROAD, AND TRUCK OPERATIONS		

DATE:

TO

The Honorable President and  
Members of the City Council  
City Hall, Room 400  
100 North Holliday Street

January 23, 2017

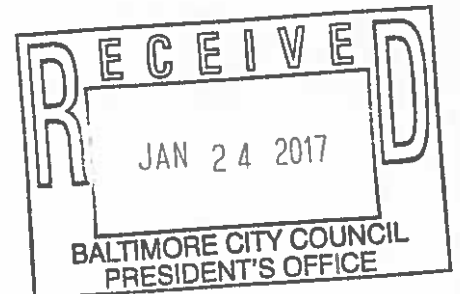
The Department of Planning is in receipt of City Council Bill #17-0006, which is for the purpose of specifying a certain format for and broadening the scope of a pre-sale disclosure required to be given potential buyers of real property; providing for a special effective date; and generally relating to disclosures required in real estate transactions.

The Department of Planning has no opposition to City Council Bill #17-0006.

If you have any questions, please contact Mr. Wolde Ararsa, Division Chief, Land Use and Urban Design Division at 410-396-4488.

TJS/WA

- cc: Mr. Pete Hammen, Chief Operating Officer  
Mr. Jim Smith, Chief of Strategic Alliances  
Ms. Karen Stokes, Mayor's Office  
Mr. Colin Tarbert, Mayor's Office  
The Honorable Edward Reisinger, Council Rep. to Planning Commission  
Mr. William H. Cole, IV, BDC  
Mr. David Tanner, BMZA  
Mr. Geoffrey Veale, Zoning Administration  
Ms. Sharon Daboin, DHCD  
Mr. Patrick Fleming, DOT  
Ms. Elena DiPietro, Law Dept.  
Ms. Natawna Austin, Council Services  
Mr. Francis Burnszynski, PABC



*no  
opposition*



**CITY OF BALTIMORE  
COUNCIL BILL 17-0006  
(First Reader)**

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Introduced by: Councilmembers Cohen, Henry, Clarke, Scott

Introduced and read first time: January 9, 2017

Assigned to: Judiciary and Legislative Investigations Committee

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REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Housing and Community Development, Baltimore Development Corporation, Department of Planning

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A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Real Estate Practices – Disclosures –**  
3 **Industrial, Railroad, and Truck Operations**

4 FOR the purpose of specifying a certain format for and broadening the scope of a pre-sale  
5 disclosure required to be given potential buyers of real property; providing for a special  
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7 BY repealing ands reordaining, with amendments

8 Article 2 - Consumer Protections  
9 Section(s) 14-6  
10 Baltimore City Code  
11 (As amended by Ord. 16-581)

12 SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the  
13 Laws of Baltimore City read as follows:

14 **Baltimore City Code**

15 **Article 2. Consumer Protections**

16 **Subtitle 14. Real Estate Practices – Disclosures**

17 **§ 14-6. [Heavy-industrial] INDUSTRIAL, [and] railroad [operations], AND TRUCK**  
18 **OPERATIONS.**

19 On or before entering into a contract for the sale of any real property, the seller must provide  
20 the buyer with the following disclosure, PRINTED IN BOLD CAPITAL LETTERS, ENCLOSED IN A  
21 RED BOX, AND REQUIRING THE BUYER'S SIGNATURE TO ACKNOWLEDGE THE BUYER'S RECEIPT  
22 OF THE DISCLOSURE:

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter deleted from existing law.

**Council Bill 17-0006**

**Disclosure of [Heavy-]Industrial OPERATIONS, [and] Railroad Operations,  
AND TRUCK ROUTES**

Buyer is advised that the property may be located near [heavy-]industrial operations [( ) – that is, land uses limited to an [I-2 General] Industrial Zoning District[, an MI Maritime Industrial Zoning District, or a T Transportation Zoning District]] – or near railroad operations OR TRUCK ROUTES.

These operations may involve the use of machinery, trucks, or trains, 24 hours a day, 7 days a week, and may create or cause noises, odors, fumes, bright lights, vibrations, and safety hazards.

Detailed information on the location of [heavy-industrial (I-2, MI, and T) zones] INDUSTRIAL ZONING DISTRICTS and on the location of railroad tracks can be found on the “Baltimore CityView” website, at <http://cityview.baltimorecity.gov>. TRUCK ROUTES CAN BE FOUND ON THE CITY’S MAP OF “OFFICIAL TRUCK ROUTES”, PUBLISHED BY THE CITY DEPARTMENT OF TRANSPORTATION AND POSTED ON ITS WEBSITE.

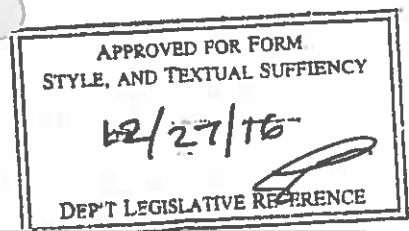
**SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

**SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance does not apply to any contract for the sale of real property that has been entered into before the effective date of this Ordinance

**SECTION 4. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on: (i) the 30<sup>th</sup> day after the date on which this Ordinance is enacted; or (ii) if later, the date on which Ordinance 16-581 becomes effective.



INTRODUCTORY\*  
CITY OF BALTIMORE  
COUNCIL BILL \_\_\_\_\_



Introduced by: Councilmember Cohen

A BILL ENTITLED

AN ORDINANCE concerning

**Real Estate Practices – Disclosures –  
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FOR the purpose of specifying a certain format for and broadening the scope of a pre-sale disclosure required to be given potential buyers of real property; providing for a special effective date; and generally relating to disclosures required in real estate transactions.

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**Baltimore City Code**

**Article 2. Consumer Protections**

**Subtitle 14. Real Estate Practices – Disclosures**

**§ 14-6. [Heavy-industrial] INDUSTRIAL, [and] railroad [operations], AND TRUCK OPERATIONS.**

On or before entering into a contract for the sale of any real property, the seller must provide the buyer with the following disclosure, PRINTED IN BOLD CAPITAL LETTERS, ENCLOSED IN A RED BOX, AND REQUIRING THE BUYER'S SIGNATURE TO ACKNOWLEDGE THE BUYER'S RECEIPT OF THE DISCLOSURE:

**Disclosure of [Heavy-]Industrial OPERATIONS, [and] Railroad Operations,  
AND TRUCK ROUTES**

Buyer is advised that the property may be located near [heavy-]industrial operations [(] – that is, land uses limited to an [I-2 General] Industrial Zoning District[, an MI

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter deleted from existing law.

\* WARNING: THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THE BILL.  
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

Maritime Industrial Zoning District, or a T Transportation Zoning District)] – or near railroad operations OR TRUCK ROUTES.

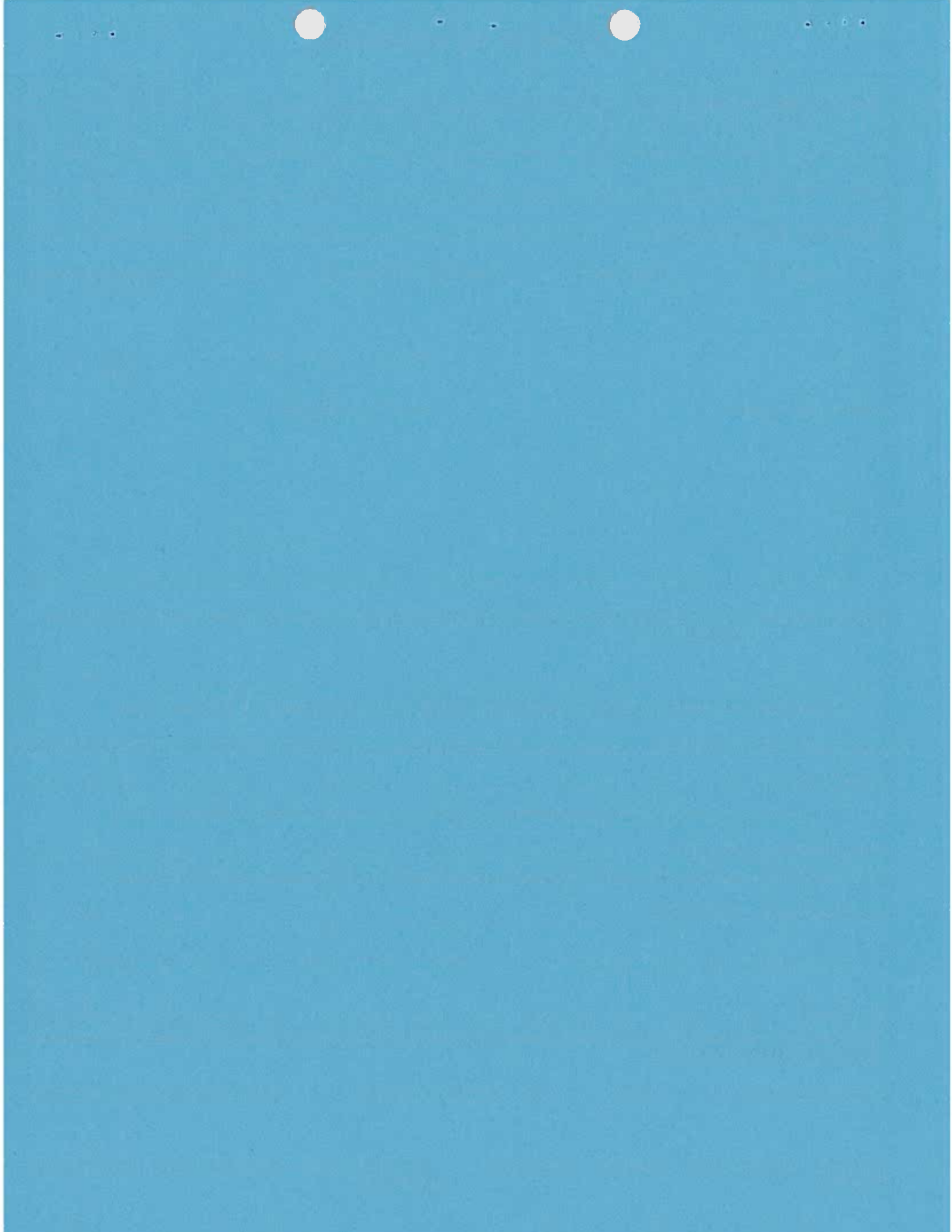
These operations may involve the use of machinery, trucks, or trains, 24 hours a day, 7 days a week, and may create or cause noises, odors, fumes, bright lights, vibrations, and safety hazards.

Detailed information on the location of [heavy-industrial (I-2, MI, and T) zones] INDUSTRIAL ZONING DISTRICTS and on the location of railroad tracks can be found on the “Baltimore CityView” website, at <http://cityview.baltimorecity.gov>. TRUCK ROUTES CAN BE FOUND ON THE CITY’S MAP OF “OFFICIAL TRUCK ROUTES”, PUBLISHED BY THE CITY DEPARTMENT OF TRANSPORTATION AND POSTED ON ITS WEBSITE.

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**ACTION BY THE CITY COUNCIL**

JAN 09 2017

FIRST READING (INTRODUCTION) \_\_\_\_\_ 20 \_\_\_\_\_

PUBLIC HEARING HELD ON \_\_\_\_\_ 20 \_\_\_\_\_

COMMITTEE REPORT AS OF \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_ FAVORABLE \_\_\_\_\_ UNFAVORABLE \_\_\_\_\_ FAVORABLE AS AMENDED \_\_\_\_\_ WITHOUT RECOMMENDATION

\_\_\_\_\_  
Chair

COMMITTEE MEMBERS:

COMMITTEE MEMBERS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECOND READING: The Council's action being favorable (unfavorable), this City Council bill was (was not) ordered printed for Third Reading on:

\_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING \_\_\_\_\_ 20 \_\_\_\_\_

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THIRD READING (ENROLLED) \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (RE-ENROLLED) \_\_\_\_\_ 20 \_\_\_\_\_

WITHDRAWAL \_\_\_\_\_ 20 \_\_\_\_\_

There being no objections to the request for withdrawal, it was so ordered that this City Council Ordinance be withdrawn from the files of the City Council.

\_\_\_\_\_  
President

\_\_\_\_\_  
Chief Clerk



## BALTIMORE HOUSING

CATHERINE PUGH  
Mayor

MICHAEL BRAVERMAN  
Acting Executive Director, HABC  
Acting Commissioner, HCD

## MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council  
c/o Natawna Austin, Executive Secretary

From: Michael Braverman, Acting Commissioner *MBR*

Date: March 1, 2017

Re: **City Council Bill 17-0006 - Real Estate Practices – Disclosures – Industrial, Railroad, and Truck Operations**

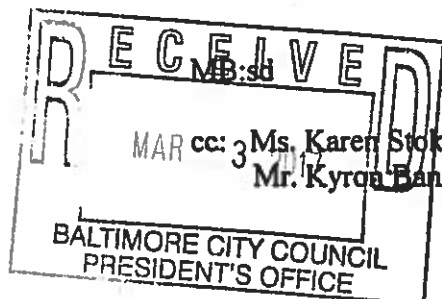
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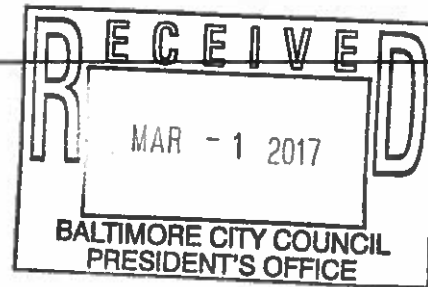
CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

101 City Hall  
Baltimore, Maryland 21202



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Attn: Executive Secretary  
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*of Health & Mental Hygiene*, 406 Md. 584, 601 n.8 (2008). The current law avoids a general impairment of the right to freedom of contract because it is narrowly tailored to give notice for public welfare reasons of an objectively identifiable feature of the property, but its failure to be given does not impair the contract of sale.

This bill would expand the scope of the required notice to be for any “industrial” operations and remove the provision that tied those operations to a particular district. This change makes the bill susceptible to a claim that it impairs too great a number of transactions because it is not narrowly tailored to serve its public welfare goals.

Additionally, the term “industrial” is impermissibly vague because it does not give sellers of the property adequate notice of when the disclosure is required. The term “industrial” can mean a variety of uses: City Council Ordinance 16-0581 (“Transform Baltimore”) has several pages of definitions tied to the word “industrial” and six separate proposed industrial districts, including those dealing with office and bioscience uses. *See, e.g., A.B. Small Co. v. American Sugar Refining Co.*, 267 U.S. 233, 238-239 (1925)(courts have held a civil “provision invalid as contravening the due process of law clause of the Fifth Amendment, among others, because it required that the transactions named should conform to a rule or standard which was so vague and indefinite that no one could know what it was”)(citations omitted); *see also Johnson v. U.S.*, 135 S.Ct. 2551, 2570 (2015)(Thomas, J., concurring)(discussing how the Supreme “Court’s application of its vagueness doctrine has largely mirrored its application of substantive due process.”). Just because there may be “some conduct that clearly falls within the provision’s grasp” does not cure an otherwise vague law. *Id.* at 2561.

For these two reasons, the bill must be amended to clarify the scope of the term “industrial.” The clarifying language must put the seller on notice as to when the disclosure is required. The bill could be amended to tie the disclosure to a particular zoning district or require the disclosure within a certain distance from a railroad track or a truck route. Certainly, the language concerning where to find railroads and truck routes should be retained.

#### Signature Required

Additionally, this bill, like the previous City Council Bill 16-0765, would change the method of disclosure to require the buyer’s signature. It is unclear if the lack of a signature would allow those buyers who were not given the requisite disclosure to argue that such a failure constituted a substantial and material breach that “would permit the buyer to terminate the contract.” *Dennis v. Rockville*, 286 Md. 184, 190 (1979). Since “the right of private contract is no small part of the liberty of the citizen,” “the usual and most important function of courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appear that they contravene public right or the public welfare.” *Baltimore & O.S.W. Ry. Co. v. Voigt*, 176 U.S. 498, 505 (1900); *accord Maryland National Capital Park and Planning Commission v. Washington National Arena*, 282 Md. 588, 606 (1978); *Loughran Co. v. Lord Baltimore Candy and Tobacco Co.*, 178 Md. 38, 44 (1940). In explaining this right, Maryland Courts often quote the following:



Fearing the disruptive effect that invocation of the highly elusive public policy principle would likely exert on the stability of commercial and contractual relations, Maryland courts have been hesitant to strike down voluntary bargains on public policy grounds, doing so only in those cases where the challenged agreement is patently offensive to the public good, that is, where "the common sense of the entire community would . . . pronounce it" invalid. This reluctance on the part of the judiciary to nullify contractual arrangements on public policy grounds also serves to protect the public interest in having individuals exercise broad powers to structure their own affairs by making legally enforceable promises, a concept which lies at the heart of the freedom of contract principle.

*Maryland National Capital Park and Planning Commission*, 282 Md. at 606 (citations omitted).

To avoid this result, the bill should be amended to state clearly that failure to receive the disclosure does not impact any contract for sale. To accomplish this, the bill should change "the buyer's signature" to "a signature" in line 21 on page 1 so that the signature evidences that a disclosure was given, not that it is a part of the enforceable promise between to privately contracting parties.

#### Preventing Retroactivity

Finally, the bill needs a third amendment to be clear that it does not operate retroactively in violation of the United State Constitution's Contract Clause by requiring any sellers to give the notice required by the bill if an offer for sale of their property has already been accepted. *See, e.g., Board of Trustees of Employees' Retirement System of City of Baltimore*, 317 Md. 72, 99 (1989). Suggested language would be: "this ordinance does not operate retroactively to require any current property sellers to give the notice created by this bill if an offer for sale of a property has already been accepted."

Subject to the requisite amendments, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours, *ecm*

*Hilary Ruley*


Hilary Ruley  
Chief Solicitor

cc: David E. Ralph, Acting City Solicitor  
Karen Stokes, Director, Mayor's Office of Government Relations  
Kyron Banks, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalá, Chief Solicitor  
Jennifer Landis, Assistant Solicitor



**MEMORANDUM**

**TO:** Honorable President and Members of the City Council  
Attention: Natawna B. Austin, Executive Secretary

**FROM:** William H. Cole, President and CEO 

**DATE:** January 24, 2017

**SUBJECT:** City Council Bill No. 17-0006  
Real Estate Practices – Disclosures – Industrial, Railroad, and Truck Operations

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The Baltimore Development Corporation (BDC) has been asked to comment on City Council Bill No. 17-0006, an ordinance for the purpose of requiring a disclosure of adjacent or nearby industrial operations, railroad operations, and/or truck operations to a buyer of any real property in Baltimore City; a disclosure requiring the buyer's signature. BDC has reviewed the ordinance and supports, with amendments, the proposed ordinance and is respectfully requesting that Bill No. 17-0006 be given favorable consideration by the City Council.

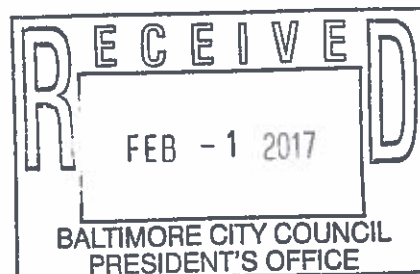
While we are generally in agreement with the terms of the Bill we would like recommend amendments that include:

- Outlining a specific radius/distance from heavy industrial, railroad, and truck operations, where disclosure is necessary (e.g. ½ mile)
  - Exempting industrial, maritime, and commercial properties from this disclosure requirement
- OR
- Specifying RESIDENTIAL real estate transactions are subject to the terms of this bill.

BDC has reviewed City Council Bill No. 17-0006 and respectfully requests that favorable consideration is given to this Bill with amendments as stated above.


cc: Colin Tarbert  
Angela Gibson





sandra.blake/ccbill17/17-0007



<b>FROM</b>	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 <sup>TH</sup> FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #17-0006/ REAL ESTATE PRACTICES – DISCLOSURES – INDUSTRIAL, RAILROAD, AND TRUCK OPERATIONS		

**TO**

DATE:

The Honorable President and  
Members of the City Council  
City Hall, Room 400  
100 North Holliday Street

January 23, 2017

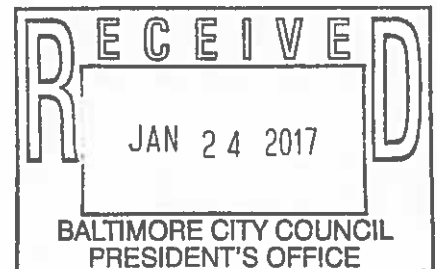
The Department of Planning is in receipt of City Council Bill #17-0006, which is for the purpose of specifying a certain format for and broadening the scope of a pre-sale disclosure required to be given potential buyers of real property; providing for a special effective date; and generally relating to disclosures required in real estate transactions.

The Department of Planning has no opposition to City Council Bill #17-0006.

If you have any questions, please contact Mr. Wolde Ararsa, Division Chief, Land Use and Urban Design Division at 410-396-4488.

TJS/WA

- cc: Mr. Pete Hammen, Chief Operating Officer  
Mr. Jim Smith, Chief of Strategic Alliances  
Ms. Karen Stokes, Mayor's Office  
Mr. Colin Tarbert, Mayor's Office  
The Honorable Edward Reisinger, Council Rep. to Planning Commission  
Mr. William H. Cole, IV, BDC  
Mr. David Tanner, BMZA  
Mr. Geoffrey Veale, Zoning Administration  
Ms. Sharon Daboin, DHCD  
Mr. Patrick Fleming, DOT  
Ms. Elena DiPietro, Law Dept.  
Ms. Natawna Austin, Council Services  
Mr. Francis Burnszynski, PABC



*No  
opposition*





**CITY OF BALTIMORE  
COUNCIL BILL 17-0006  
(First Reader)**

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Introduced by: Councilmembers Cohen, Henry, Clarke, Scott

Introduced and read first time: January 9, 2017

Assigned to: Judiciary and Legislative Investigations Committee

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REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Housing and Community Development, Baltimore Development Corporation, Department of Planning

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A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Real Estate Practices – Disclosures –**  
3 **Industrial, Railroad, and Truck Operations**

4 FOR the purpose of specifying a certain format for and broadening the scope of a pre-sale  
5 disclosure required to be given potential buyers of real property; providing for a special  
6 effective date; and generally relating to disclosures required in real estate transactions.

7 BY repealing ands reordaining, with amendments

8 Article 2 - Consumer Protections  
9 Section(s) 14-6  
10 Baltimore City Code  
11 (As amended by Ord. 16-581)

12 SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the  
13 Laws of Baltimore City read as follows:

14 **Baltimore City Code**

15 **Article 2. Consumer Protections**

16 **Subtitle 14. Real Estate Practices – Disclosures**

17 **§ 14-6. [Heavy-industrial] INDUSTRIAL, [and] railroad [operations], AND TRUCK**  
18 **OPERATIONS.**

19 On or before entering into a contract for the sale of any real property, the seller must provide  
20 the buyer with the following disclosure, PRINTED IN BOLD CAPITAL LETTERS, ENCLOSED IN A  
21 RED BOX, AND REQUIRING THE BUYER'S SIGNATURE TO ACKNOWLEDGE THE BUYER'S RECEIPT  
22 OF THE DISCLOSURE:

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter deleted from existing law.

**Council Bill 17-0006**

**Disclosure of [Heavy-]Industrial OPERATIONS, [and] Railroad Operations,  
AND TRUCK ROUTES**

Buyer is advised that the property may be located near [heavy-]industrial operations  
[() – that is, land uses limited to an [I-2 General] Industrial Zoning District[, an MI  
Maritime Industrial Zoning District, or a T Transportation Zoning District]] – or near  
railroad operations OR TRUCK ROUTES.

These operations may involve the use of machinery, trucks, or trains, 24 hours a day,  
7 days a week, and may create or cause noises, odors, fumes, bright lights, vibrations,  
and safety hazards.

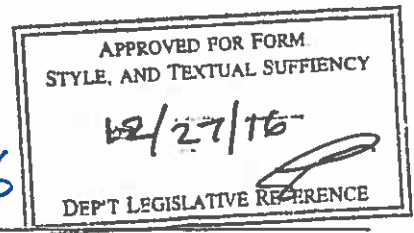
Detailed information on the location of [heavy-industrial (I-2, MI, and T) zones]  
INDUSTRIAL ZONING DISTRICTS and on the location of railroad tracks can be found  
on the “Baltimore CityView” website, at <http://cityview.baltimorecity.gov>. TRUCK  
ROUTES CAN BE FOUND ON THE CITY’S MAP OF “OFFICIAL TRUCK ROUTES”, PUBLISHED  
BY THE CITY DEPARTMENT OF TRANSPORTATION AND POSTED ON ITS WEBSITE.

**SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance  
are not law and may not be considered to have been enacted as a part of this or any prior  
Ordinance.

**SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance does not apply to any  
contract for the sale of real property that has been entered into before the effective date of this  
Ordinance

**SECTION 4. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on: (i) the 30<sup>th</sup>  
day after the date on which this Ordinance is enacted; or (ii) if later, the date on which Ordinance  
16-581 becomes effective.

INTRODUCTORY\*  
CITY OF BALTIMORE  
COUNCIL BILL 17-0006



Introduced by: Councilmember Cohen

A BILL ENTITLED

AN ORDINANCE concerning

**Real Estate Practices – Disclosures –  
Industrial, Railroad, and Truck Operations**

JLF  
Law  
HCD  
BDC  
Planning  
Dept.

FOR the purpose of specifying a certain format for and broadening the scope of a pre-sale disclosure required to be given potential buyers of real property; providing for a special effective date; and generally relating to disclosures required in real estate transactions.

BY repealing and reordaining, with amendments

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**Article 2. Consumer Protections**

**Subtitle 14. Real Estate Practices – Disclosures**

**§ 14-6. [Heavy-industrial] INDUSTRIAL, [and] railroad [operations], AND TRUCK OPERATIONS.**

On or before entering into a contract for the sale of any real property, the seller must provide the buyer with the following disclosure, PRINTED IN BOLD CAPITAL LETTERS, ENCLOSED IN A RED BOX, AND REQUIRING THE BUYER'S SIGNATURE TO ACKNOWLEDGE THE BUYER'S RECEIPT OF THE DISCLOSURE:

**Disclosure of [Heavy-]Industrial OPERATIONS, [and] Railroad Operations,  
AND TRUCK ROUTES**

Buyer is advised that the property may be located near [heavy-]industrial operations  
[[] – that is, land uses limited to an [I-2 General] Industrial Zoning District[, an MI

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter deleted from existing law.

\* WARNING: THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THE BILL.  
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

Maritime Industrial Zoning District, or a T Transportation Zoning District)] – or near railroad operations OR TRUCK ROUTES.

These operations may involve the use of machinery, trucks, or trains, 24 hours a day, 7 days a week, and may create or cause noises, odors, fumes, bright lights, vibrations, and safety hazards.

Detailed information on the location of [heavy-industrial (I-2, MI, and T) zones] INDUSTRIAL ZONING DISTRICTS and on the location of railroad tracks can be found on the “Baltimore CityView” website, at <http://cityview.baltimorecity.gov>. TRUCK ROUTES CAN BE FOUND ON THE CITY’S MAP OF “OFFICIAL TRUCK ROUTES”, PUBLISHED BY THE CITY DEPARTMENT OF TRANSPORTATION AND POSTED ON ITS WEBSITE.

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