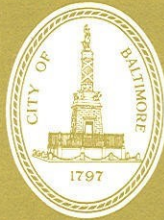


CITY OF BALTIMORE

SHEILA DIXON, Mayor



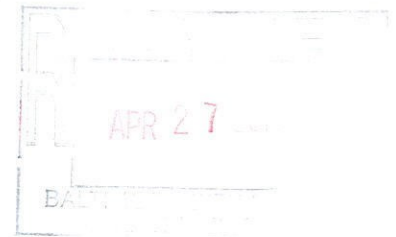
DEPARTMENT OF LAW

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

April 26, 2010

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. 09-0431-
City Streets – Bike-Safe Grates

Dear Mister President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 09-0431 for form and legal sufficiency. The bill seeks to require all City contracts for paving and repaving and all paving projects that are permitted in the City to install bike-safe drainage grates. Bike-safe drainage grates are grates where the gaps between the bars are positioned to prevent the tire from becoming lodged in the grate.

The intent of City Council Bill 09-0431 is consistent with Maryland law since 1980 that requires all new or replacement storm drain covers consist of “bars running perpendicular to the flow of traffic” or grating composed of “intersecting bars” or other designs approved by the Department of Transportation.” Md. Ann. Code, Title 8 Highways, Section 8-648. The City Council’s Bill, however, only allows covers with perpendicular bars. As the State has chosen to act on the specific issue, the issue of preemption is raised. Here the Bill seeks to restrict further the configuration of the storm drain; prohibiting configurations that the state permits. However, not every conflict ‘permit-prohibit’ results in a ruling of preemption. It is intended that there be a functional interplay between State and local legislation. Recognizing the need of a locality to address differences in population and other circumstances, additional regulation does not constitute conflict. See *Mayor and City Council of Baltimore v. Sitnick*, 255 A.2d 376 (1969) and *Worton Creek Marina, LLC v. Claggett*, 850 A.2d 1169 (2004).

The Council’s Bill also seeks to mandate replacement on any paving or repaving project regardless of whether the grate itself needs to be replaced whereas the State law only requires any new or replacement grate to conform, apparently allowing a

F/A

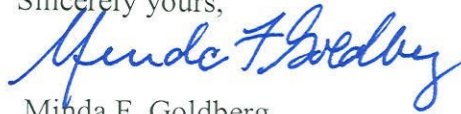


nonconforming grate to remain. Again, preemption would not prohibit this further requirement in the City.

As drafted, Section (A) dictates the grating requirement in contracts made by the City and Section (B) appears to place that requirement on all other paving projects taking place in the City. All such projects require either permitting by the Department of Public Works or are done by the City itself. For clarity, the language of Section (B) should state "No permit for paving or repaving shall be issued by the Department of Public Works and no paving or repaving project shall be undertaken by the City unless the plans require that all drainage grates in the affected area be placed so that the gaps between the bars on the grates are perpendicular to the direction of traffic."

With the attached amendment, City Council Bill 09-0431 can be approved for form and legal sufficiency.

Sincerely yours,

A handwritten signature in blue ink that reads "Minda F. Goldberg". The signature is written in a cursive, flowing style.

Minda F. Goldberg
Chief Solicitor

cc: Honorable Jack Young
Angela Gibson, City Council Liaison
George Nilson, City Solicitor
Elena Dipietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Ashlea Brown, Assistant Solicitor
Terese Brown, Assistant Solicitor

Proposed Amendments City Council Bill 09-0431

On Page 2, line 3, delete “No paving project may be permitted on any street, avenue, lane or alley within the City unless the person undertaking the project ensures...”
and replace it with the following language: “No permit for paving or repaving shall be issued by the Department of Public Works and no paving or repaving project shall be undertaken by the City unless the plans require...”