

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

April 22, 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. 09-0430-  
Transit and Traffic-Bike Lanes

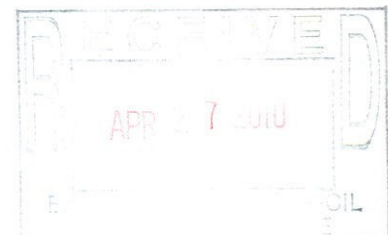
Dear President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 09-0430 . The bill is for the purpose of allowing the creation of bike lanes, and prohibiting parking and standing, and requiring bike-safe grates in bike lanes and generally relating to bike lanes on City streets.

The City has the authority under Title II, Sec. 34 and 35 of the City Charter to construct, maintain and regulate the use of the streets and specifically to prohibit the use where it is deemed necessary or expedient in the interests of the public. Moreover, at Article VII, Section 116 the Department of Transportation is the entity with specific authority with respect to constructing, maintaining streets and regulating traffic. Thus the City has the ability to create bike lanes and prohibit motor vehicle.

The Bill seeks to restrict a "Bike Lane" to non-motorized vehicles but fails to define that term; apparently not limiting the lane to bicycles only. For example, Maryland law defines a play vehicle as not a bicycle, with 2 or three wheels and self propelled. See Annotated Code of Maryland, Transportation, Title 21, section 101. Under this bill, a play vehicle would be permitted in the bike lane. In addition to play vehicles, motor scooters and electric personal assistance mobility devices (EPAMD) should be considered and specifically addressed as the State acted in 2001 and 2002 to schematically align motor scooters and EPAMDs with bicycles. This raises the question of preemption under state law.

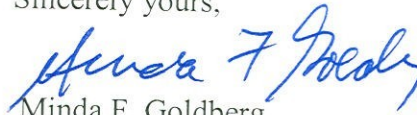
F/A



This bill would prohibit an EPAMD (segway) which is motorized (by an electric propulsion system) and a motor scooter from using the Bike Lane. However, under Maryland law, wherever bicycles are allowed to operate on a highway (a lane is part of a highway) so are EPAMDs as well as motor scooters. See 21-1201. In addition, Section 21-1205.1 states “where there is a bike lane paved to a smooth surface . . . , a person operating a bicycle or a motor scooter shall use the bike lane . . . and MAY NOT ride on the roadway . . . .” (Emphasis added) Thus, Maryland law permits what the bill seeks to prohibit- use by motor vehicles and EPAMDs of the bike lane- and prohibits what the bill would thus silently mandate- use of the roadway by EPAMDs and motor-scooters. Thus as drafted- permitting use only by non-motorized vehicles- the bill is preempted by State law. See 93 Md. Op. Att. Gen 31 (2008) and 73 Md. Op. Att.Gen 252(1988). (local ordinances preempted where ordinance is inconsistent or identical or dealing with “any subject covered by the Maryland Vehicle law”.)

With the attached amendment, City Council Bill 09-0430 can be approved for form and legal sufficiency

Sincerely yours,

  
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 amendment to Council Bill 09-0430

Section 20-1 Definitions at page 2 line 3

Add: EPMDs (electric personal assistive mobility devices) and motor scooters