
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
EBONY M. THOMPSON, ACTING SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

October 25, 2023

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 23-0422 – Public Nuisances – Modifications

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 23-0422 for form and legal sufficiency. The bill would change several sections in Subtitle 43 (Public Nuisances) of Title 19 (Police Ordinances) of the City Code. Specifically, it would remove prostitution, lewdness, assignation, and illegal adult entertainment from the list of offenses that can constitute a public nuisance. It adds to that list any premises that within a six-month period have been issued two or more environmental citations for mixed refuse handling under Sections 2-1 or 2-2 of Article 23 of the City Code or have been issued two or more environmental citations for weeds under Subtitle 7 of Title 5 of the City Code. The bill would then require that notice for the nuisance hearing be given to the City Councilmember that represents the district in which the property is located, the relevant community association and the Baltimore City Department of Planning, which is directed to record the notice on CodeMap or its successor system.

The Mayor and City Council of Baltimore’s express powers granted by the General Assembly include the power to pass laws that promote the general welfare and expressly to “prevent and remove nuisances.” City Charter, Art. II, §§ (11)(a), (27), (47). The concept of holding a person, usually a landowner, responsible for actions on her property that interfere with the common health or public good dates from twelfth-century English common law offenses against the Crown, or government. *See, e.g., State v. Lead Industries, Ass’n, Inc.*, 951 A.2d 428, 443-44 (R.I. 2008) (citations omitted). Maryland now defines a public nuisance as “an unreasonable interference with a right that is common to all members of the general public.” *Tadger v. Montgomery County*, 61 Md. App. 492, 552 (1985); *accord Mayor and City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 210 (4th Cir. 2022) (citations omitted).

The current wording of this subtitle classifies drug dealing, gang activity and illegal gun possession occurring on a property twice in six months (as averred to by a police officer) to be a public nuisance. It is not clear that a court will view trash or weeds as a similar unreasonable interference with a right common to all members of the public. Public nuisance is generally reserved for ongoing conduct that is either intentional or reckless because the activity is

abnormally dangerous. *See, e.g., Adams v. NVR Homes, Inc.*, 135 F.Supp.2d 675, 689- 90 (D. Md. 2001); *Ace Tire Co., Inc. v. Municipal Officers of City of Waterville*, 302 A. 2d 90, 98-99 (Maine 1973) (“legislature has no power arbitrarily or capriciously to declare any or every act a nuisance”); Restatement (2d) of Torts § 821B, cmt. e (1979) (May 2023 update). Nor is it clear that failing to address weeds or trash interferes with a right common to all. Restatement (2d) of Torts § 821B, cmt. g (1979) (May 2023 update). As an example, pollution of a stream, while impacting the downstream water, does not interfere with public rights until all are deprived of fishing or bathing in the water. *Id.*

However, as Maryland’s highest Court has recognized: “There is perhaps no more impenetrable jungle in the entire law than that which surrounds the word ‘nuisance.’ It has meant all things to all people, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie. There is general agreement that it is incapable of any exact or comprehensive definition.” *Miller v. Maloney Concrete Co.*, 63 Md. App. 38, 49 (1985) (citing W. Keeton, *Prosser & Keeton on Torts* § 86, at 616 (5th ed. 1984)). Thus, defining trash and weeds to be nuisances is not clearly impermissible.

However, the bill defines trash and weed problems as nuisances *only* when a property has already received two citations from the City for that same behavior. This causes two legal problems. The first is that it is underinclusive by allowing properties with similar refuse and weed issues to be free of a nuisance designation if they happen to have not received a citation for that activity. *See, e.g., Hargrove v. Bd. of Trustees of Maryland Ret. Sys.*, 310 Md. 406, 420 (1987) (“classification was underinclusive in that it omitted some persons who should have been subjected to the regulation in order to attain the stated legislative purpose.”). The bill should be amended to describe the type of weed or refuse issues that constitute a nuisance, just as the crimes of drug dealing or storage of illegal weapons are described without reference to their possible punishment under criminal laws, and thereby classify all properties with those issues as nuisances, regardless of whether they received a citation. This will parallel the existing scheme for the other behaviors that are listed as nuisances regardless of whether the person has received criminal or civil citations for those behaviors.

Describing the type of refuse or weed issues within the list of nuisances also helps to avoid the second legal problem caused by referencing existing citations: namely, a second punishment for these citations in addition to that given by the Environmental Control Board (“ECB”). City Code, Art. 1, §§ 40-5, 40-14(e)(4), (7). ECB provides for uniform citations, service of process, hearings, and appeals on those citations. City Code, Art. 1, §§ 40-3, 40-6 through 40-12. While the City Code makes clear that receiving a citation for those infractions listed in Section 40-14 “does not preclude pursuit of any other remedy or enforcement action authorized by law,” the Code gives ECB “full authority to enforce” remedies for the citations themselves. As written, this bill would add additional penalties to the same citations that ECB adjudicates, resulting in two punishments for the same citation. U.S. Const., amend. V; *Benton v. Maryland*, 395 U.S. 784, 794 (1968) (Fourteenth Amendment makes the Fifth Amendment applicable to the states); *Brown v. Ohio*, 432 U.S. 161 165 (1977) (“The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it **protects against multiple punishments for the same offense.**”) (emphasis added). Creating a separate offense for weeds and trash that is considered a

nuisance and is punishable apart from any ECB citation will remove the double jeopardy. An amendment to effectuate this change is attached to this bill.

Subject to the foregoing amendment, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Ebony M. Thompson, Acting City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
Jeffery Hochstetler, Chief Solicitor
Teresa Cummings, Assistant Solicitor
Michelle Toth, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 23-0422
(1st Reader Copy)

Proposed by: Law Dep't

On page 3, in line 14 delete "OR"; and on that same page after line 16, insert:

(X) FAILING TO CONTAIN MIXED REFUSE IN RECEPTACLES THAT ARE SUFFICIENTLY COVERED TO KEEP CONTENTS REASONABLY DRY UNLESS BEING FILLED OR EMPTIED;

(XI) ALLOWING GRASS, WEEDS OR RANK VEGETATION TO REACH A HEIGHT OF 8 INCHES OR MORE; OR

(XII) ALLOWING GRASS, WEEDS OR RANK VEGETATION ABUTTING A SIDEWALK, GUTTER OR ALLEY TO REACH A HEIGHT OF 4 INCHES OR MORE.

and on that same page delete lines 20 through 28.