



November 20, 2012

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

Re: City Council Bill 12-0153 – Soil Erosion and Sediment Control

Dear President and City Council Members:

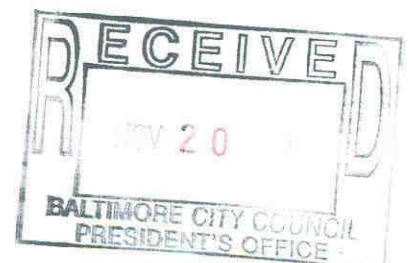
The Law Department has reviewed City Council Bill 12-0153 for form and legal sufficiency. The bill is for the purpose of establishing minimum requirements and procedures to control the adverse impacts associated with land disturbances; minimize soil erosion and prevent off-site sedimentation by using soil erosion and sediment control practices; reduce the negative impacts of land development on water resources, maintain the chemical, physical, and biological integrity of streams, minimize damage to public and private property; correct, clarify and conform related provisions; provide for a special effective date and generally relates to soil erosion and sediment control.

State law requires the Maryland Department of the Environment (MDE) to implement an erosion and sediment control program throughout Maryland. The City is required to adopt a local ordinance that meets the intent of the state sediment control laws and regulations. This bill is introduced for that purpose.

The law Department does have concerns about the Appeals section of the bill. Even though the section is found elsewhere in the code, there are potential delegation issues that should be addressed. Also, on a practical note, having this much detail in the Code could put constraints on the appeal process that could only be fixed by additional City Council legislation. If these procedures issues were handled by rule or regulation, they could be modified more easily to conform to the needs of this particular matter and not hamstring the process. The following amendments would solve the delegation problem.

1. Starting on page 23 – Line 8 – change to “The hearing officer may issue”
Delete the word “final” lines 9 – 12
Delete (5) in line 13 and cChange to (C) “After review of the findings/conclusions of the hearing officer, the Director shall issue a final an administrative decision of the Department.”

F/A



City Council Bill 12-0153

November 20, 2012

Page 2

2. Page 24 – line 8 – delete “on a genuine issue of fact”. Line 14 to line 1 on page 25 delete the Scope section (it is currently (B) but should be (c))

Detail about what is admissible as evidence can be provided by regulations, but if the hearing is to be informal generally do not follow formal rules of evidence and hearing officers that are not trained would have difficulty applying legal concepts regarding evidence such as hearsay, judicial notice etc.

MDE has approved Bill 12-0153 as compliant with Maryland regulations and Title 4 of the Maryland Environmental Article. With the suggested revisions, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Ashlea H. Brown
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Victor Tervalva, Assistant Solicitor