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**CITY OF BALTIMORE**

**BERNARD C. "JACK" YOUNG**  
Mayor



**DEPARTMENT OF LAW**  
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July 16, 2019

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

Re: City Council Bill 19-0359 – Open-Space Zoning Districts – Tree Canopy  
Preservation

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0359 for form and legal sufficiency. The purpose of the bill is to require the approval of the Forestry Division of the Department of Recreation and Parks prior to any tree removal on certain properties within a Baltimore City Open-Space Zoning District and provide for a special effective date.

The bill prohibits the removal of any tree from a privately-owned property within an open-space district without the approval of the Forestry Division of the Department of Recreation and Parks. The only standard for approval is whether the tree “significantly affect[s] the City’s tree canopy.”

The preservation of the City’s tree canopy is a valid exercise of the City’s police power. City Charter, Art. II § 2, 2 Rathkopf’s The Law of Zoning and Planning § 20:64. However, it is unclear which agency should implement the program. The Department of Recreation and Parks does not have authority or control over private property. City Charter, Art. VII, §67 (explaining that the Department has authority over parks, zoos, squares etc and “charge and control of all such property ...belonging to ... the City”). The Department of Planning has authority to “assure that **development** is well-planned, efficiently coordinated by the City, and consistent with the health, order, security, safety and morals of the inhabitants of Baltimore City, as well as the aesthetic and natural environment of the City.” City Charter, Art. VII §72 (n). The Department of Planning currently reviews landscape plans and assures that certain City and State programs are adhered to with regard to the preservation of trees in the City. It is possible that with sufficient guidelines and standards, the Planning Department, in consultation with the Forestry Division of Rec and Parks, could review the removal of trees within the open-space districts to achieve the bill’s intent.

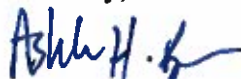
Any tree protection regulation must contain sufficient guidelines and an exemption for those situations where denying the removal of trees would result in a drastic diminution of value of the property or where the tree presents a hazard. The bill should be amended to include clear

standards for the grant or denial of a tree removal. The Law department defers to the implementing agencies with regard to those standards but can review them for clarity.

Finally, other laws may apply to the removal of a given tree, depending on its location. Trees by the roadside, for example, are treated differently and could be subject to state law. Tree removal that is part of development of the property could be subject to other state and city programs. Trees in certain environmentally sensitive areas may also be subject to state conservation programs. These overlapping concerns must be addressed in the reworking of the bill.

Subject to the above amendments, the Law Department could approve the bill for form and legal sufficiency and is able to assist in its redrafting.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ashlea H. Brown", with a stylized flourish at the end.

Ashlea H. Brown  
Assistant Solicitor

cc: Andre M. Davis, City Solicitor  
Jeffrey Amoros, Mayor's Office of Government Relations  
Elena DiPietro, Chief Solicitor  
Victor Tervalá, Chief Solicitor  
Ashlea Brown, Assistant Solicitor