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CITY OF BALTIMORE

BRANDON M. SCOTT,  
Mayor



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January 16, 2024

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

Re: City Council Bill 23-0465– Tree Removal on City Property – Permits and Procedure

Dear President and City Council Members:

The Law Department reviewed City Council Bill 23-0465 for form and legal sufficiency. The bill would amend several sections of City Code Art. 7, Subtitle 53 and add two new sections to Subtitle 53. The bill establishes standards and requirements for authorized tree removal along City rights-of-way; requires that the Department of Recreation and Parks approve any tree removal on land operated by the Department; specifies the procedure for tree removal mitigation on land operated by the Department of Recreation and Parks; conforms, clarifies, and corrects related provisions; and defines related terms. The bill would take effect 30 days after enactment.

There are several sources of authority for the City Council to legislate regarding trees on City property. The City has the express power “[t]o provide for and regulate the planting, maintenance and removal of trees on streets and public ways and places.” City Charter, Article II, § 34(i). Moreover, the Department of Recreation and Parks is empowered to maintain park property. City Charter Article VII, § 67. The City Council may “exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City,” and may “pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City.” City Charter, Art. II, §§ (27), (47). See also *Chesapeake & Potomac Telephone Co. of Baltimore City v. Goldsborough*, 125 Md. 666 (1915) (Requiring a permit from the State Forestry Department to trim or remove trees found to be within the police power of the state). A local government may adopt laws for the planting, care, and maintenance of street trees that are more stringent than the state law requirements, as long as they do not conflict with state law. See MD Code, Natural Resources, § 5-403(d).

Article 7, Subtitle 53 of the City Code authorizes the Department of Recreation and Parks, in consultation with the Department of Transportation, to “regulate the planting, protection, regulating, and controlling of all trees planted and to be planted in the streets, lanes, or alleys of Baltimore.” City Code Art. 7, § 53-2(a).

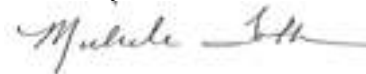
The Law Department has the following comments regarding Council Bill 23-0465. First, § 53-15(d)(1) refers to “breast height” but does not define that term until § 53-15(d)(2)(i). The Council may prefer to add definitions for breast height and caliper inch to § 53-1 rather than defining these terms in parenthesis in §§ 53-15 and 53-16.

Second, §§ 53-15(a) and 53-16(a) require that neither a street tree nor a park tree may be removed without a written permit issued by the Department of Recreation and Parks. There is no provision in either section for waiver of the permit requirement for emergency tree trimming or removal. The permit process can take three weeks or more. It is not clear whether the Council intended that a permit still be required in cases involving emergency tree trimming or removal.

The bill also provides for mitigation when trees are removed. Mitigation decisions are made by the Department pursuant to the standards in the bill. There are separate provisions for street trees and park trees. Section 53-16 has an exemption from mitigation requirements for removal of a park tree that is dead, dying, or diseased. There is no exemption from the mitigation requirement in § 53-15 for removal of a street tree that is dead, dying, or diseased. It was not clear whether this was an oversight or omitted intentionally.

The Law Department approves the bill for form and legal sufficiency.

Sincerely,



Michele M. Toth  
Assistant Solicitor

cc: Ebony Thompson  
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