


FROM	NAME & TITLE	David E. Scott, Acting Director	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Public Works 600 Abel Wolman Municipal Building		
	SUBJECT	CITY COUNCIL BILL 08-0049		

DATE: April 23, 2008

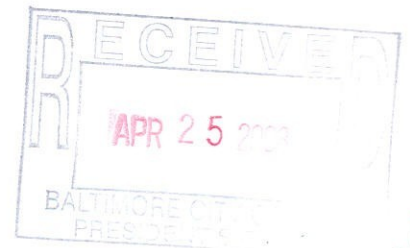
TO

The Honorable President and Members
of the Baltimore City Council
c/o Karen Randle
Room 400 - City Hall

I am herein reporting on City Council Bill 08-0049 introduced by Council Members Clarke, Henry, Kraft, Curran, D'Adamo, Middleton, Reisinger, Welch, Conaway, and Branch.

The purpose of the Bill is to extend certain laws for the protection of trees along public ways to apply also to trees in parks, squares, and other public places; prohibit excessive or unnecessary cutting, trimming, or pruning of public trees; authorize the City arborist to adjudicate complaints of unauthorized or improper treatment of public trees and to impose civil penalties and remedies for violations; redefine certain terms; increasing certain criminal penalties; conform agency references to reflect allocations established by prior enactments; correct, clarify, and conform related language; and generally relating to trees, shrubs, and other plants in the public ways and in the parks, squares, and other public places of the City.

Article 7 Subtitle 53 of the Revised Baltimore City Code (2000 Edition) governs the manner in which City street trees are planted, maintained, removed and replaced. Under current law, two City agencies have responsibility under this Subtitle: the Department of Recreation and Parks and the Department of Public Works. Simply stated, Public Works regulates the manner in which trees are placed in the public way and issues permits to do so; and Recreation and Parks encourages the planting of street trees, maintains their health, and directs their removal and replanting. However, since this Subtitle was enacted, the structure of City government changed with the creation of a Department of Transportation. The highway maintenance functions formerly performed by Public Works were transferred to the new Transportation department. While this function was still with Public Works, highway maintenance crews trimmed street trees impinging upon street lights, excavated tree pits in sidewalks areas, and filled unused tree pits. Tree roots that uplifted portions of sidewalks were cut back and new paving installed. It is assumed these same activities are still performed by highway maintenance crews now under the Department of Transportation.



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City Council Bill 08-0049, if approved, would amend Subtitle 53 of Article 7 to extend the same conditions and controls for street trees under this section of the Code to all City trees. Affording protection for all City trees is in keeping with Mayor Dixon's commitment to expanding the City's tree canopy under her TreeBaltimore program. However, it should be noted that because this Subtitle was meant to address trees planted in City rights-of-way, the issues unique to street trees may not be applicable to all City trees. For example, under current law, a notice of street tree removal is affixed to the affected tree prior to its removal. Applying notice requirements to trees in a public park may or may not be effective notice, depending on their location.

In enforcing the provisions of this Subtitle, the City arborist would now be the recipient and investigator of all complaints alleging violations of this subtitle, as well as hearing officer and imposer of civil fines on persons found in violation. Persons aggrieved by the decision of the arborist may seek judicial and appellate reviews. In addition to concerns regarding the anticipated workload for the arborist, the Department of Public Works recommends that the Department of Law be consulted to determine the appropriateness of one person acting as investigator, hearing officer, and determiner of sanctions.

Finally, while the highway maintenance functions did transfer to the Department of Transportation, the responsibility for issuing street cut and rights-of-way permits (which include tree planting pits and utility work) remains with the Department of Public Works, as required by the Baltimore City Charter [Article VII §§ 39(b) and 116(b)(5)]. Therefore, any references to these functions in the legislation need to revert back to this Department.

Based on this analysis, the Department of Public Works respectfully recommends City Council Bill 08-0049 be amended as noted in the attachment to this memorandum, and that the Department of Law be consulted, prior to its passage.


DAVID E. SCOTT
ACTING DIRECTOR

DES/MMC:pat

Attachment

F/A

DEPARTMENT OF PUBLIC WORKS
ATTACHMENT TO CITY COUNCIL BILL 08-0049
PROPOSED AMENDMENTS

Amendment No. 1

Page 2, line 21, delete the word “does” so that it reads;

[The word “trees”, as used in this subtitle, shall not be construed to] “TREE” DOES NOT include [shrubs which do not grow] A SHRUB THAT ~~DOES GROWS~~ NO higher than 15 feet.

Amendment No. 2

Page 2, beginning on line 24, delete the brackets surrounding Public Works, delete the reference to the Department of Transportation, and delete enforcement language attributed to Public Works that should be attributed to the City arborist, so that it reads;

§ 53-2. Jurisdiction of Department of ~~{Public Works}~~ TRANSPORTATION.

(a) ~~Regulating planting, etc.~~

The Department of ~~{Public Works}~~ TRANSPORTATION [is hereby authorized and directed to regulate] SHALL REGULATE AND CONTROL the planting[,] ~~AND protection~~ [, regulating, and controlling] of all trees [planted and to be planted] in the [streets, lanes or alleys] PUBLIC WAYS of [Baltimore] THE CITY.

(b) ~~Enforcing protective laws.~~

The Department of ~~{Public Works}~~ TRANSPORTATION shall cause all ~~[statutes and ordinances]~~ LAWS for the protection of trees in the ~~[streets, lanes, or alleys]~~ PUBLIC WAYS to be strictly observed.

Amendment No. 3

Page 4, line 3, delete the reference to the Department of Transportation and replace with the Department of Public Works, so that it reads;

§ 53-5. RULES AND REGULATIONS

(A) *OFFICIALS TO ADOPT.*

THE DIRECTOR OF ~~TRANSPORTATION~~ PUBLIC WORKS, THE DIRECTOR OF RECREATION AND PARKS, AND THE CITY ARBORIST SHALL ADOPT RULES AND REGULATIONS TO CARRY OUT THEIR RESPECTIVE RESPONSIBILITIES UNDER THIS SUBTITLE.

Amendment No. 4

Page 4, lines 12 and 13, delete reference to the Department of Transportation and clarify that no City agency may remove a City tree without notice, so that it reads;

§ 53-6. [§ 53-5.] Public notice of tree removal.

(a) *Notice required.*

[The] NEITHER THE Department of Recreation and Parks [and] NOR ~~the ANY CITY DEPARTMENT~~ Department of ~~[Public Works]~~ TRANSPORTATION [shall not] MAY remove or destroy a tree [along one of the streets, lanes, alleys, or other] IN A public [ways in this City] WAY OR IN A PARK, SQUARE, OR OTHER PUBLIC PLACE OF THIS CITY unless IT GIVES notice of the intended removal or destruction [is given].

Amendment No. 5

Page 5, beginning on line 7, delete brackets surrounding Public Works and delete references to the Department of Transportation so that it reads;

§ 53-11. [Permit requirements -] Planting trees.

(a) *Permit Required.*

(1) No person [shall] MAY plant any tree in [any street, lane, or alley] A PUBLIC WAY OR IN A PARK, SQUARE, OR OTHER PUBLIC PLACE OF THIS CITY without:

(I)[(1)] first having obtained a written permit [therefore] TO DO SO from:

(A) AS TO PUBLIC WAYS, the Department of {Public Works} TRANSPORTATION[.]; OR

(B) AS TO PARKS, SQUARES, AND OTHER PUBLIC PLACES, THE DEPARTMENT OF RECREATION AND PARKS [setting forth the conditions under which such trees may be planted, including the kind and variety thereof]; and

Amendment No. 6

Page 5, beginning on line 30, delete brackets surrounding Public Works and delete references to the Department of Transportation so that it reads;

§ 53-12. [Permit requirements -] Treating Trees

(a) *Permit Required.*

No person [shall spray, mulch, fertilize, or otherwise treat,] MAY DESTROY, remove, [destroy,] break, OR HURT OR cut, [or] trim, OR PRUNE any tree, or any part [thereof] OF A TREE, in any [street, lane, or alley] PUBLIC WAY OR ANY PARK, SQUARE, OR OTHER PUBLIC PLACE OF THIS CITY without having first having obtained a written permit TO DO SO from:

(1) AS TO PUBLIC WAYS, the Department of {Public Works} TRANSPORTATION; AND

(2) AS TO PARKS, SQUARES, AND OTHER PUBLIC PLACES, THE DEPARTMENT OF RECREATION AND PARKS.

(b) [*Department to direct*] TRIMMING BY *utilities, etc.*

(1) [And no] NO CITY AGENCY, PUBLIC UTILITY OR PUBLIC SERVICE COMPANY, OR OTHER PERSON, NOTWITHSTANDING ANY FRANCHISE, EASEMENT, OR OTHER RIGHT TO USE A PUBLIC WAY OR OTHER PUBLIC PLACE, MAY [cutting or trimming of] CUT, TRIM, OR PRUNE any tree, OR ANY PART OF A TREE, in [any street, lane, or alley in

connection with the work of any other City department or of any public service corporation or other person having a right to use said street, lane, or alley shall be done] THE PUBLIC WAY OR OTHER PUBLIC PLACE except;

- (I) IN FULL COMPLIANCE WITH ALL CONDITONS IMPOSED BY THE PERMIT ISSUED UNDER THIS SECTION;
- (II) IN A MANNER TO ASSURE THAT NO MORE GROWTH IS REMOVED FROM THE TREE THAN IS THEN ABSOLUTELY NEEDED FOR THE EXERCISE OF THAT PERSON'S FRANCHISE, EASEMENT, OR OTHER RIGHTS; AND
- (III) OTHERWISE [in such manner] as directed by the Department of {Public Works} ~~TRANSPORTATION~~ AND THE CITY ARBORIST.

Amendment No. 7

Page 6, line 20, adjust brackets to surround Director, add Department before Public Works, and delete reference to the Department of Transportation, so that it reads;

§ 53-13. [Permit requirements -] Impeding roots.

No person [shall] MAY, without first having received a written permit TO DO SO from the [Director] DEPARTMENT of Public Works] ~~DEPARTMENT OF TRANSPORTATION~~, place or maintain [upon] ON the ground [in] OF any [street, lane, or alley} PUBLIC WAY, any stone, cement, or other substance [which shall] THAT WOULD impede the free entrance of water and air to the roots of any tree without leaving an open space of ground outside the trunk of [said] THAT tree[,] in area not less than 16 square feet.