

CITY OF BALTIMORE

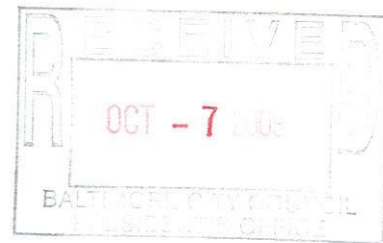
SHEILA DIXON, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

October 7, 2009



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 09-0368 – Zoning – Junk or Scrap Storage and Yards –
Critical Area Overlay District

Dear Madame President and City Council Members:

The Law Department has reviewed City Council Bill 09-0368 for form and legal sufficiency. The bill defines and clarifies the scope of the term “junk or scrap storage and yards” and expressly prohibits the storage of junk or scrap on barges, docks, piers, and belt conveyor systems in the Critical Area Overlay District (“the District”). The bill makes an exception for loading and unloading. It also prohibits construction and demolition debris processing facilities in the District.

Title 8, Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland governs the Chesapeake Bay Critical Area Protection Program. Section 8-1801 sets forth the State’s policy regarding the program. Section 8-1801(b) states that the purpose of Subtitle 18 is:

- (1) To establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize damage to water quality and natural habitats; and
- (2) To implement the Resource Protection Program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State criteria and oversight.

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Pursuant to Maryland law, Baltimore City must review its local Critical Area Program and propose any amendments to that program at least every six years. § 8-1809 (g). “A program may not be amended except with the approval of the [Critical Area] Commission.” § 8-1809 (i). The Commission shall approve the amendment if it finds that the change is consistent with the

criteria set forth under State law. § 8-1809 (j). Therefore, as stated in the Planning Commission's Staff Report, if City Council Bill 368 is passed, it must then be approved by the Critical Area Commission via the procedures set forth under Maryland law. Section 4 of the bill should be amended to reflect this (see attached).

Pursuant to Section 8-1808 of Maryland's Critical Area law, Baltimore City has enacted a series of provisions in its zoning code in Section 8-301 et seq. Section 8-310 sets forth a list of prohibited uses within the District. Junk or scrap storage and yards are currently listed in this section as prohibited uses. Therefore, Bill 368 reinforces and clarifies the scope of the existing prohibition against junk or scrap storage in the Critical Area. The bill expressly includes storage of these materials on barges, docks, piers and belt conveyor systems within the prohibition.

Section 1-1808.4(d) of Maryland's Critical Area law states that, "this Section preempts any other requirement concerning piers in the Critical Area." While it is true that the City currently prohibits non-water dependent structures on piers, that regulation was intended to mirror State law. Conversely, the prohibition of junk and scrap storage is a local law and does not mirror state law. Since the State law expressly preempts "other requirements concerning piers," the City is preempted from further regulating piers in the District and the Law Department recommends striking the word "piers" from the bill. The word "dock" is included in the definition of "pier" under State law, which reads "... 'pier' means any pier, wharf, **dock**, walkway, bulkhead, breakwater, piles, or other similar structure." § 8-1808.4(b)(1). Therefore, the same preemption of local regulation applies to docks. The Law Department recommends striking the word "docks" from the bill on the same premise. The addition of a requirement concerning barges, however, would not impinge on the State's intention to preempt any additional regulation of piers. Barges are not piers under the definition of "pier" in Section 8-1808.4. Similarly, local regulation of belt conveyor systems is not preempted by State law.

The addition of construction and demolition debris processing facilities to the list of prohibited uses in the Critical Area is within the zoning authority of the City, provided it is approved by the State Critical Area Commission.

Subject to the above, the Law Department approves City Council Bill 09-0368 for form and legal sufficiency.

The Law Department also approves the amendments suggested by the Planning Department for form and legal sufficiency.

Sincerely,



Ashlea H. Brown
Special Assistant Solicitor

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

Law Department Amendments

Amendment No. 1

On page 3, line 5, strike “DOCKS, PIERS,”

Amendment No. 2

On page 3, line 17 after “enacted” strike the period, add a comma and add “CONTINGENT ON APPROVAL BY THE CHESAPEAKE BAY CRITICAL AREA COMMISSION, AS PROVIDED IN § 8-1809 OF THE NATURAL RESOURCES ARTICLE, ANNOTATED CODE OF MARYLAND.”