

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



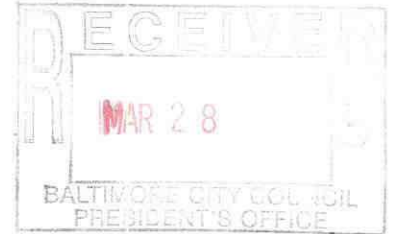
DEPARTMENT OF LAW

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

March 28, 2013

Honorable President and Members  
of the City Council of Baltimore  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Attn: Karen Randle Executive Secretary



Re: City Council Bill No. 12-0152 – Transform Baltimore- Zoning

Dear President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 12-0152. City Council Bill 152 repeals the existing Baltimore City Zoning Code and replaces it with a new version. The bill also changes other parts of the Baltimore City Code to reflect the new Zoning Code.

Baltimore City is granted authority to regulate land use through the enactment of a zoning code by the State of Maryland. See Md. Ann. Code, Land Use Art., Title 10. Title 10 grants the Mayor and City Council fairly broad authority but does impose some requirements. Section 10-303 sets forth requirements for hearings at which citizens have an opportunity to be heard and requirements for notice of those hearings. Section 10-304 provides for procedures for the amendment or repeal of zoning regulations. Under this section, if the City Council is reclassifying a property, it must make certain findings of fact to support a finding of a substantial change in the character of the neighborhood where the property is located or a mistake in the existing zoning classification in order to justify the zoning change. Sec. 10-305 requires the City Council to refer changes to the boundaries of a district or zone to the Baltimore City Planning Commission and to the Board. The Planning Commission and the Board must report their findings and recommendations to the City Council.

The initial report of the Law Department will provide an overview of concerns for each Title in the proposed new Zoning Code. This report will be followed by supplemental reports on individual areas of concern.

Title 1 – General Provisions

1. In general, throughout the entire bill, there are references to “this Code.” The Law

*Comments*

Department found this confusing as it unclear whether the reference is to the Baltimore City Code or only the Zoning Code. Perhaps additional language could be added to Art. 1, Subtitle 2 to clarify that “this Code” means the Zoning Code.

2. On page 8, line 34, there is an “and” at the end of the line but no additional text follows.
3. On page 29, the definition of “government offices” does not indicate whether the entire structure must be occupied by a government agency exclusively to fall under the definition.

#### Title 2 – Purpose, Applicability, Short Title

The applicability and intent of Section 2-203(j) was unclear to the Law Department. It seems to apply to variances and conditional uses that were granted prior to the effective date of the new zoning code but not acted upon before the effective date. In which case, the rules regarding expiration for approval under the new zoning code apply. In addition, any changes or modifications to a previously approved conditional use are subject to the procedures and requirements of the new zoning code.

#### Title 3 – Outline of Administration

1. Need consistency in language in language regarding rules and regulations between page 71, line 5 and page 72, line 6-7.
2. On page 72, Line 31 there is a reference to “parties in interest” but no definition of who is considered a party in interest.
3. On page 72, lines 31 and 32, there is no indication of how notice is to be given.
4. On page 74, line 21 after (4) insert, “unless otherwise specifically provided for”. There are other provisions in the City Code that provide for a different mechanism for the setting certain fees. For example Art. 1, Sec. 16-2 provides for the planning Commission to set the subdivision fee with the approval of the City Council.
5. Section 3-206 limits City Council authority to approval of zoning text and map amendments and approval of Planned Unit Developments.

#### Title 4 – Development Review

Throughout this Title reference is made to hearing on administrative appeals but no requirements for notice of those hearings is provide. Should reference Title 19 if intend for those provisions regarding appeals and notice to apply.



#### Title 5 – Applications and Authorizations

Title 5 provides for the process for the approval of zoning applications, variances, conditional uses, text and map amendments, notices, use permits, zoning interpretations and zoning verifications. The Law Department has serious concerns about the process provided for applications and approval of applications. The major concern is, for matters requiring City Council approval, it is our understanding that the process allows an applicant to initiate an application and have Planning Commission review prior to introduction of a bill or have the bill introduced first. The problem is that there is no process set forth for how the application proceeds through the process if the City Council bill is introduced before Planning Commission review. Furthermore, the timing of the various steps does not work if the City Council bill comes first. In addition, the zoning amendment process seems to impinge on the authority granted to the City Council by the General Assembly. Other concerns in this Title include the approval standards for zoning amendments and the zoning interpretation process. The Law Department will provide a supplemental report on this Title which explains the legal concerns in Title 5 in detail and provides suggestions on how to amend the bill.

#### Titles 6 – 12 Various Zoning Districts

1. Page 115, line 6, reference should be to Department of General Services not Department of Public Works.
2. Page 135, line 16, concerned about whether the phrase “countryside character” is vague and would be difficult to interpret. If this is a term of art in zoning, there is no problem.
3. Page 177, Sec. 12-210 needs to be clarified to provide that it is applicable to new AU zoning districts and not those designated as such in the maps incorporated with this bill.

#### Title 13 – Planned Unit Developments

The Law Department has serious concerns about the PUD process provided for in this Title. The initial phase of the process, i.e., the review of the pre-application consultation, the concept plan, and the preliminary development plan by the Planning Department and/or the Planning Commission all are required to occur prior to the introduction of a City Council bill. Once the City Council bill is approved there are additional modifications allowed to the development plan approved by the City Council without City Council approval. This amounts to amendment of a law outside of the legislative process. The process impinges on the legislative authority of the City Council.

Another issue in this Title is the broad language of the exemption provision and whether it would allow a PUD to include provisions authorizing outdoor advertising signs. The Law Department will provide a supplemental report on this Title which explains the legal concerns in Title 13 in detail and provides suggestions on how to amend the bill.

#### Title 14- Use Standards

1. On page 215, line 26, need to clarify who management plan is submitted to.
2. On page 229, line 29-31, the requirements are not consistent with initiatives regarding sponsorship of City facilities.
3. On page 234, Sec. 14-339 needs to be reviewed for compliance with FCC regulations. A supplemental report on this issue will be provided.

#### Title 15 – Site Development Standards

1. On page 261, Sec. 15-703, this regulation seems more like general nuisance regulation and not land use. If these districts allow uses that generate noise, vibration etc., those uses would be potentially impaired by the complaints of adjacent users. If the activity is regulated by other City State or federal law than this section is not needed to prevent it.

#### Title 16 – Off-Street Parking and Loading

1. On page 265, Sec. 16-401 regulates how a property that is being used for permitted off-street parking must be titled in order for the use to be allowed. The Zoning Administrator cannot hold up the recording of a deed or be required to approve a deed under State law. In addition, the City Council cannot regulate how a person owns their property as seems to be the case under paragraph (3). Paragraph (3) also purports to bind heirs and assigns but not successors. In paragraph (4), the bill should reference compliance with the City's valet parking law. The Law Department will provide a supplemental report on this Title which explains the legal concerns in Title 16 in detail and provides suggestions on how to amend the bill.
2. On page 269, line 35, the reference to "shared parking agreement" is not consistent with other language in this section which refers to "shared parking arrangements".
3. On page 270, line 37, a City Council bill cannot mandate that fees be used for a specific purpose, in this case, off-street parking facilities unless required by Charter or State or federal law.



4. On page 273, line 18, for liability purposes, the City should not be determining whether the bicycle parking reasonably safeguards from intentional or accidental damage to the bicycle.
5. On page 277, the numbering of the paragraphs within Sec. 16-802 seems to be incorrect, (B) through (E) should be 1 – 4.

#### Title 17 – Signs

1. Title 17 regulates signs in the City and seems to allow general advertising sign were previously prohibited thus eroding the ban and perhaps making it difficult to justify prohibition of other signs. In addition, the bill alters the provisions concerning alcohol and tobacco advertising in a way that could jeopardize the ban under caselaw that upheld the law when it was initially challenged. The Law Department will provide a supplemental report on this Title which explains the legal concerns in Title 17 in detail and provides suggestions on how to amend the bill.
2. On page 295, Sec. 17-603 needs to be clarified to provide that a new digital billboard can only be placed on the site of one of the traditional billboard the is removed under this section.
3. Subtitle 7, Temporary signs provides no definition of “temporary” and does not limit these signs to advertising goods and services available on the premises that is granted the permit.
4. Subtitle 8 – Permanent signs are not restricted to advertising goods and services available on the premises to which they are attached.

#### Title 18 – Nonconformities

The Law Department will provide by supplemental report it legal analysis of the issue of nonconformity of retail goods establishments with alcohol sales and any additional issues regarding nonconformities.

#### Title 19 – Enforcement; Appeals

1. Page 330, line 8 and page 331, line 22 should be removed. The City cannot sue itself.

#### Miscellaneous Issues

1. Figures 5-901 and 5-509 do not correspond to the text.
2. The Law Department is in the process of reviewing comments submitted by the Archdiocese of Baltimore regarding potential RLUIPA and First Amendment issues.
3. The Mayor and City Council may want to take this opportunity to consider whether it wants to specifically exempt itself from Zoning regulations. This is not an uncommon

City Council Bill 12-0152

March 28, 2013

Page 6

provision in local zoning codes. The Law Department is available to provide research needed on this issue.

In conclusion, it is the position of the Law Department that it is premature to approve City Council Bill 12-0152 for form and legal sufficiency. The Law Department will follow the process carefully and in addition to the supplemental reports mentioned herein, provide additional advice as issues arise. At the end of the process, provided the legal concerns are addressed, the Law Department will provide a final report regarding approval for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro  
Chief Solicitor

cc: George A. Nilson, City Solicitor  
Angela Gibson, City Council Liaison, Mayor's Office  
Hilary Ruley  
Ashlea Brown  
Victor Tervalo  
Minda Goldberg  
Matthew Nayden