



**J. NEIL LANZI**

Writer's Direct Dial / Email:

(410) 659-1390/ [nlanzi@wcsolaw.com](mailto:nlanzi@wcsolaw.com)

October 25, 2024

**VIA HAND DELIVERY**

Eric Costello, Chairman  
Ways and Means Committee  
Baltimore City Council  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: Council Bill No. 24-0599

Dear Chairman Costello:

We write in opposition to Council Bill 24-0599 on behalf of Vaughn C. Greene Funeral Services, P.A. (“Vaughn Greene”), the operator of the funeral home located at 4903-4905 York Road in Baltimore City, Maryland (the “Property”) and the property owner, M&G Property Management Two, LLC (“M & G”), a related entity. Both entities are minority owned, i.e., owned by African Americans. M&G purchased the Property, on or about November 30, 2000, from the Henry W. Jenkins & Sons Company. The Jenkins family operated a funeral home on the Property from 1948 through the sale to M&G in 2000, where Vaughn Greene has since operated the funeral home. Thus, the Property has been continuously utilized as a funeral home for more than 70 years.

**SUMMARY OF OPPOSITION TO BILL 24-0599**

Council Bill 24-0599 was introduced on September 30, 2024 as an end run around the January 4, 2022 decision of the Baltimore City Board of Municipal and Zoning Appeals (the “Board”) to issue a conditional-use approval (CC 00292)<sup>1</sup>, finding that the proposed crematorium did not constitute a threat to the health and safety of those living in the Govans neighborhood of Baltimore City, a decision that was affirmed by the Circuit Court for Baltimore City on May 16, 2023 (CC 00298) and the Appellate Court of Maryland on July 18, 2024 (CC 00338) in extensive written opinions. Moreover, the Board and the Courts rejected the arguments of the Opponents of the zoning approval, who are now the proponents of Council Bill 24-0599, that crematories were solid-waste incinerators and thus were banned under the Baltimore City Zoning Code. The introduction of Bill 24-0599 is also an end run around the environmental and scientific expertise of Maryland Department of Environment (“MDE”) and its Tentative Determination in July 2024 (CC 00381) to issue an MDE permit for the subject crematorium at 4903-

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<sup>1</sup> The bates number reference corresponds to individual documents and pages in the index of all documents that are attachments/enclosures to this letter. The digital copy of the attachment/enclosures are bookmarked.

4905 York Road, and that the terms and conditions of the proposed MDE permit would protect the community, in compliance with the air quality standards established by Maryland law and the U.S. Environmental Protection Agency (EPA), including the National Ambient Air Quality Standards (NAAQS), and the Maryland Environmental Justice Act.<sup>2</sup>

It is an unescapable conclusion that the Bill singles out and targets one particular property, arguably for reasons of public health and climate change, albeit contrary to the decisions of the Maryland courts and the MDE. The Bill would effectively ban cremation services in Baltimore City by making cremation a stand-alone service separate from funeral homes and chapels. The Bill conflicts with Maryland law that governs cremation as part of mortuary services and mandates that licensed morticians perform cremation services. The Bill would financially impact the minority community and those living below the poverty level by denying them cremation services, a less costly alternative to burial. The Bill would severely interfere with the economic viability of a minority-owned business given the market trend that cremations are increasing, compared to burials, as a means of disposition. Moreover, the funeral home with a crematorium is consistent with the York Road plan in terms of services and employment available in the community.

The Bill appears to be an unconstitutional intrusion and interference into the grieving process and the religious and quasi-religious decisions and rituals related to how families or persons dispose of their loved-ones or their own bodies after death. The Bill targets cremation as a source of emissions, while leaving untouched numerous, similar commercial and residential emission sources in the community, such as fast-food restaurants, gas stations and pick-up trucks. The Bill also singles out Vaughn Greene for special treatment by providing for a “special effective date.” Significantly, the Bill is grounded in unsubstantiated science, as will be fully developed below.

The Property is located in a commercial corridor along York Road in Baltimore City, presently designated as a C-2 Zoning District. “The C-2 Community Commercial Zoning District is intended for areas of small to medium scale commercial use, typically located along urban corridors, which are designed to accommodate pedestrians and, in some instances, automobiles.” *See* Code, Art. 32, § 10-204(a). At present, the subject Property is zoned C-2. Under § 10-301 and Table 10-301 of the Code, a funeral home is allowed as a conditional use in a C-2 zone. Under § 1-306(u), a crematorium is included as part of the definition of a funeral home, which provides:<sup>3</sup>

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<sup>2</sup> MDE held informational meetings with the community on November 9, 2020, June 13, 2023, and on December 13, 2023, and a public hearing on August 7, 2024. In addition to public notices in *The Sunpaper*, for the foregoing meetings and hearing, public notices were also provided to the elected officials in all State and municipal legislative districts located within a one-mile radius of the facility’s property boundary. The public-comment period closes on October 22, 2024.

<sup>3</sup> The current zoning code provisions at issue were enacted on December 5, 2016, effective June 5, 2017, as part of “Transform Baltimore-New Zoning Code” after extensive study.

**(u) Funeral home.**

(1) *In General.*

“Funeral Home” means an establishment for preparing deceased individuals for burial or cremation and for conducting rituals before burial or cremation.

(2) *Inclusions.*

“Funeral Home” includes:

(i) chapels for viewing a deceased and for conducting rituals; and

(ii) **a crematorium.**

By contrast, the Bill would do away with crematory services in C-2 Districts altogether and leave stand-alone crematory services in C-3 and C-4 Zoning Districts. It also removes crematory services from cemeteries. It defines a crematorium as a “furnace where a human or animal corpse, in whole or in part, is burned.” The definition includes maintenance and facilities.

**SUMMARY OF THE FINDINGS OF THE BOARD AND THE MARYLAND COURTS**

MD Environment Art. § 2-404(b)(1) requires, among other things, that the applicant for an air-quality permit to operate a source of emissions into the air, such as a crematorium, must demonstrate to the MDE that the proposed use has been approved by the local jurisdiction “for all zoning and land use requirements.” On June 4, 2020, M&G applied for zoning approval to operate a crematorium within the already existing Vaughn Greene Funeral Home (CC 00003). On June 8, 2020, Vaughn Greene filed an application with MDE for an air-quality permit for a crematorium (CC 00004). The York Road Partnership, Winston-Govans Neighborhood Improvement Association, Radnor-Winston Improvement Association, resident Cindy Camp and resident Moria Horowitz opposed both the zoning application and permit application.

The Board conducted three separate public, evidentiary hearings with extensive testimony from both sets of parties on August 10, August 24, and September 16, 2021. Both sets of parties submitted written arguments to the Board on or about October 5, 2021 and oral arguments on October 19, 2021. The Board conducted public deliberations on October 19, 2021 and November 30, 2021. The Board voted 3-1 to approve M&G’s application for a crematorium.

In a January 4, 2022, final written decision referred to as a “Resolution” (CC 00292), the Board granted zoning approval to M&G for the installation and operation of a crematorium and imposed three operating restrictions. The three conditions were:

- (1) Only human remains from funeral homes owned, operated, or controlled by Vaughn Greene Funeral Services may be cremated on the premises;
- (2) Vaughn Greene Funeral Services will remove any and all teeth containing mercury amalgams prior to cremation; and
- (3) Vaughn Greene Funeral Services will comply with all applicable federal, state, and local laws.

York Road Partnership, et al., filed a Petition for Judicial Review in the Circuit Court for Baltimore City on February 2, 2022 (*In the Matter of the York Road Partnership, et. al.*, Circuit Court Case No: 24-C-22-000610). Following a hearing on July 12, 2022, the Circuit Court for Baltimore City affirmed the Board's decision in a 38-page Memorandum Opinion (CC 00298) on May 16, 2023. The Appellate Court of Maryland affirmed on July 18, 2024 in a 42-page opinion (CC 00338).

Both the Circuit Court and the Appellate Court held that crematories did not fall under the Baltimore City Zoning Code definition of an incinerator and thus were not banned under the City Zoning Code. The Court also observed that the Baltimore City Zoning Code and the Maryland State regulations concerning emissions were not part of the same regulatory scheme, and addressed different interests, and that the structure of the MDE regulations was more complicated than labeling a crematorium as an incinerator. (CC 00322). In addition to the Courts' statutory interpretation, the Courts found that evidence produced by the Opponents to the zoning approval concerning the emissions from the proposed crematory were not unique and different from other uses in the neighborhood such as the fast-food restaurants and motor vehicle emissions, although there was cumulative impact with such existing emission sources. Significantly, the Board, Circuit Court and Appellate Court each envisioned in their respective written opinions that MDE would be the ultimate arbiter whether the emissions posed a risk to public health of the surrounding area, in deciding whether to issue an MDE permit for Vaughn Greene to install the crematory at the existing funeral home.

The scientific evidence presented to the Board by many of the very same proponents of Council Bill 24-0599, through their expert witness Lisa Polyak (CC 00239), a neighborhood resident and zealous proponent of Council Bill 24-0599, established that the emissions from the proposed crematory at the Property were no different than fast-food restaurants and sources of motor-vehicle emissions within two blocks of the Property, which included customer and postal vehicles at the post office; two fast-food restaurants with drive-through lanes operating thirteen and fifteen hours per day; two gasoline service stations with eight and ten pumps respectively; and two MTA bus stops on a route with 206 buses per day. Polyak testified at the Board proceedings that she inventoried the air-pollution sources within two blocks of the Property, as discussed above. (CC 00242 – CC 00244). Additionally, Polyak testified that lights at Cold Spring Lane and Winston Avenue intersections cause vehicles to stop and idle at those intersections. (CC 00244 – CC 00245). Polyak testified that these vehicle sources of emissions are mobile sources of air pollution and **“what they all have in common is that they're combustion sources just like the crematorium that Vaughn Greene wants to add to the funeral home”**. (Emphasis added) (CC 00245).

Before the Board, Vaughn Greene himself testified (CC 00016, CC 00054) that most of Vaughn Greene's clients and their loved ones are lifelong city residents and African American, as are their clergy. Minority family members are subjected to additional stress and anxiety because their loved ones must be transported to an unfamiliar place for cremation in one of the counties. The Socioeconomic/ Demographic data in the MDE Tentative Determination (CC 00381) reflects that the population in the surrounding community consisted of 97.08% minorities and that the population consists of 44.50% below the poverty level. Thus, Bill 24-0599 not only substantially impacts a minority business economically but also substantially impacts its minority clientele by denying them more affordable cremation services.

Carla Kinslow, Ph.D., a doctoral-level toxicologist, provided expert testimony (CC 00148, CC 00178) to the Board on behalf of M&G. Kinslow testified in detail and set forth in her reports (CC 00068, CC 00082, CC 00107, CC 00124, CC 00404) admitted into evidence that air emissions modeling data indicated that emissions of the proposed crematorium will be well below the MDE and federal allowable limits, and that public health would be protected by compliance with MDE standards and federal standards. Kinslow testified that the crematorium would only operate within MDE standards, which she said were "very conservative" and intended to protect the surrounding community. Kinslow also testified that the crematorium would comply with federal environmental standards, e.g., the National Ambient Air Quality Standards. Kinslow opined that the emission standards take into account the health hazards of at-risk or vulnerable populations; thus, the proposed crematory emissions, which are well within acceptable regulatory values, are not dangerous to human health in the community. Based on the modeling data and other information available to her, Kinslow's opinion was that any inherent adverse effects to this neighborhood from the emissions of the proposed crematory would not be unique and different from similar emissions sources in the community. Kinslow also testified that the crematorium will be in line with environmental goals set forth in the Baltimore City Sustainability Plan.

Kinslow addressed the PLACES report from the Centers for Disease Control and the Abell Foundation Report discussed by Polyak to show a higher incidence of certain health problems in the neighborhood around the proposed crematorium. Kinslow testified that the reports discussed by Polyak, addressing the increase in incidences of asthma, were attributed primarily to indoor air-quality issues caused by tobacco smoke, allergens, occupational exposure to high concentrations of dust, and chemicals, and that the proposed crematorium would not contribute to higher incidences of either chronic, obstructive pulmonary disease or heart disease. In her August 20, 2021 report (CC 00082) submitted to the Board as evidence, Kinslow stated "[T]here is no evidence that the addition of the crematorium would harm public health, welfare, or the quality of life of the surrounding community". In short, Kinslow testified that the emissions from the crematory would be the same as the exhaust of an F-150 pickup truck. (CC 00166-67)

Apart from the existing statutes and Code of Maryland Regulations (COMAR) governing the Maryland Department of Environment ("MDE"), the Legislature has enacted laws regulating cremations. The Board of Morticians and Funeral Directors ("Board of Morticians") regulates crematories under the authority of the Health Occupations Article, §§7-101(e), 7-102, and 7-205(c), and the Board of Morticians has promulgated and codified regulations governing cremations as defined in COMAR 10.29.16.02.B(5)-(10). Among other regulations, the Board of Morticians has promulgated regulations requiring the

presence, management and supervision of a licensed mortician at cremation sites; COMAR 10.29.17.02 *et seq*; and mandating the removal and proper disposition of any foreign or hazardous objects and materials, for example pacemakers and defibrillators, which are then to be disposed of as “medical waste.” COMAR 10.29.19.02.

### SUMMARY OF MDE DETERMINATION

MDE reviewed the application from Vaughn Greene Funeral Services, P.A. (“Vaughn Greene”) for a Permit to Construct for the installation of a new Matthews Environmental Solutions PowerPak II Plus human crematory. The MDE has concluded that the proposed installation would comply with all applicable State and Federal air quality control requirements, and imposed additional restrictions on the operation of the crematory to further ensure the surrounding community is not adversely affected. In accordance with Section 1-604 of the Maryland Environment Article, MDE has made a Tentative Determination to issue the Permit to Construct. (CC 00381, CC 00392). Additionally, the MDE added operational requirements in accordance with the Maryland Environmental Justice Act.

The proposed installation is subject to all applicable State air-quality-control regulations. (CC 00383). Specifically, Code of Maryland Regulations (COMAR) Title 26, Department of Environment, Subtitle 11, Air Quality, requires Vaughn Greene, in accordance with MDE, to have and maintain a valid permit-to-operate, report any occurrences of excess emissions, install air-pollution control equipment, submit an annual certification of emissions, maintain records to support emissions information, ensure emission discharges do not go beyond the property line creating a nuisance or air pollution, ensure there are no visible emissions, limit the concentration of particulate matter, implement best available control technology for toxins to control emissions of toxic air pollutants, and ensure that the discharge of toxic air pollutants do not unreasonably endanger human health.

The predicted maximum concentration of toxic air pollutants emitted from this facility is less than the corresponding screening level for the toxic air pollutant. Although all mercury amalgams will be required to be removed from human remains prior to cremation, the MDE has conservatively assumed each cremation still contains mercury as a worst-case operating scenario. This significantly limits the number of cremations the facility can conduct in any 8-hour period, and annually.

In order to maintain compliance with Maryland’s toxic-air pollutant ambient impact requirements, Vaughn Greene must comply with the following premises-wide operational limits: only cremate human remains in the Matthews Environmental Solutions, PowerPak II Plus, 175 pounds per hour, crematory; not cremate more than two human remains during any 8-hour period; not combust any halogenated plastics, including polyvinyl chloride (PVC) body bags or PVC pipes; and not combust any hazardous waste, or hospital, medical, and infectious waste. (CC 00387).

In addition to all State-imposed emissions limitations and screening levels, the proposed installation must comply with the National Ambient Air Quality Standards (NAAQS) established by the U.S. Environmental Protection Agency (EPA). (CC 00386). Worst-case criteria for pollutant emissions from the crematory are well below major-source-emissions thresholds applicable in Baltimore City. The

combined impact of the proposed installation and the ambient background concentration for each pollutant is less than the NAAQS for each pollutant. Emissions of oxides of nitrogen and volatile organic compounds from the proposed crematory are each less than 1 ton per year, much less than the federal major source threshold of 25 tons per year. Emissions from the proposed crematory will not significantly impact the local, ground-level ozone concentration.

Beyond the public-health safety protection provided by compliance with MDE and EPA regulation, MDE has imposed additional requirements given the environmental justice (EJ) score of the surrounding community. (CC 00385). The proposed crematorium is located in a community where the EJ score was shown to be 95%, which indicates that the proposed installation would be in an area that is disproportionately impacted by environmental and public health hazards, resulting in a higher risk of health problems from environmental exposures. As a result, MDE has included several additional protective measures in the permit. In addition to minimum retention time, temperature, and stack-height requirements to ensure complete combustion of human remains and proper dispersion of combustion gases, the draft permit for Vaughn Greene includes the following:

- (1) A requirement that the crematory be equipped with an opacity sensor interlocked with a control system that continuously monitors the stack gases for visible emissions during operation and adjusts cremation operations to prevent visible emissions from exiting the crematory stack.
- (2) A requirement to develop and maintain an Operations and Maintenance Plan approved by the Department. A properly operated and maintained crematory will not result in smoke, odors, or excess emissions.
- (3) A requirement to comply with all local zoning conditions as specified by the Baltimore City Board of Municipal and Zoning Appeals (BMZA), limiting the type of human remains that can be processed in the crematory unit to only those remains owned, operated, or controlled by Vaughn Greene Funeral Services, P.A., and only human remains that have had all teeth containing mercury amalgams removed.
- (4) A requirement to conduct a Method 9 opacity observation for a modified period of one hour during a cremation to assess the effectiveness the crematory's opacity sensor and to determine when operations require adjustments to ensure compliance with applicable visible emissions standards.
- (5) A requirement to conduct stack-emissions testing to demonstrate compliance with applicable particulate matter and metal toxic-air pollutant standards. In lieu of stack testing, the Applicant may provide a stack-testing report demonstrating compliance that was conducted within the last five years by a third-party stack-testing company on an identical crematory unit.

## REBUTTAL TO POLYAK MDE PUBLIC HEARING COMMENTS

At the August 7, 2024 MDE public hearing, Lisa Polyak, acting as scientific advisor to the York Road Partnership, stated that “there’s only one emission limit right now for crematories in MDE regulations. It’s for total particulate matter and it hasn’t been updated in over 30 years.” Polyak added, “[i]t was promulgated in 1991 and that was six years before EPA published a single regulation on fine particulate matter which is PM 2.5. So this regulation is significantly out of date[,]” and “MDE needs to update the crematory emission limit for particulate [matter] to reflect current science and current medicine.” Polyak has never identified the MDE regulation that has been the subject of her MDE comments. Assumably, Polyak has been making similar comments in support of Bill 24-0599.

MDE regulations in COMAR limit emissions for crematories based on total particulate matter. COMAR 26.11.08.05B(2)(a) limits the concentration of total particulate matter in exhaust gases to 0.10 grains per standard cubic foot of dry exhaust gas. This standard has been in place for 30 years and is considered safe as there has been no scientific evidence suggesting otherwise. Polyak has not advanced any arguments in the litigation to date or to MDE or the City Council concerning this standard.

The Clean Air Act requires the EPA to set NAAQS for air pollutants. *See* 42 U.S.C. § 7409 (National primary and secondary ambient air quality standards); § 7410 (State implementation plans for national primary and secondary ambient air quality standards). Federal law requires that all states attain compliance with NAAQS. *See* 42 U.S.C. § 7410. Nonattainment areas must develop plans to comply with the NAAQS, and attainment areas must develop plans to maintain attainment. Additionally, COMAR 26.11.04.02, Ambient Air Quality Standards, incorporates by reference the NAAQS specified in 40 CFR Part 50 and the associated definitions, reference conditions, and methods of measurement specified in 40 CFR Parts 50, 51, 53, and 58. Thus, MDE is required to comply with the EPA NAAQS standards for pollutants, including fine particulate matter known as PM-10 and PM-2.5, under the Clean Air Act.<sup>4</sup> These standards are based on extensive, peer-reviewed scientific research and are designed to protect public health. The EPA continuously updates the NAAQS to strengthen the standards for particulate matter.<sup>5</sup> It was last updated on February 7, 2024. Thus, MDE’s application of NAAQS in its Tentative Determination is not based on outmoded standards and methodology.

The MDE uses a statewide air-monitoring network to measure pollutant concentrations. Current data indicates that Baltimore City complies with the NAAQS for particulate matter, showing a reduction in PM-2.5 levels over time.

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<sup>4</sup> <https://www.epa.gov/criteria-air-pollutants/naaqs-table>

<sup>5</sup> <https://www.epa.gov/pm-pollution/national-ambient-air-quality-standards-naaqs-pm>



While the COMAR standard Polyak alludes to does not specifically address PM-10 or PM-2.5, the MDE ensures compliance with more stringent federal regulations for these fine-particulate matters, as evidenced by the proposed crematorium's tentative determination and draft permit.<sup>67</sup>

The proposed crematorium's emissions are projected to be well below state and federal limits (CC 00387), suggesting that it will not pose an unreasonable danger to the surrounding community. Compliance with both current NAAQS and MDE standards ensures the protection of public health, including sensitive populations, based on peer-reviewed scientific research and scientific data.

### CONCLUSION

For the foregoing reasons, the findings of the Board of Municipal and Zoning Appeals and the Maryland Courts and the MDE establish that crematorium in question will not adversely affect public health and, thus, Vaughn C. Greene Funeral Services, P.A. and M&G Property Management Two, LLC respectfully request that Council Bill 24-0599 not be adopted.

Respectfully submitted,



Neil J. Lanzi

cc: Nick Mosby - councilpresident@baltimorecity.gov  
Kristofer Burnett - kristofer.burnett@baltimorecity.gov  
Ryan Dorsey - ryan.dorsey@baltimorecity.gov  
Danielle McCray - danielle.mccray@baltimorecity.gov  
Sharon Green Middleton - sharon.middleton@baltimorecity.gov  
Isaac "Yitzy" Schleifer - isaac.schleifer@baltimorecity.gov  
Robert Stokes - robert.stokes@baltimorecity.gov  
Michael Redman - michael.redmond@baltimorecity.gov  
Vaughn C. Greene Funeral Services, P.A.  
M&G Property Management Two, LLC

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<sup>6</sup> MDE Air and Radiation Administration Fact Sheet and Tentative Determination

<sup>7</sup> MDE Air and Radiation Administration Permit-To-Construct