


F R O M	NAME & TITLE	Michelle Pourciau, Director	CITY of BALTIMORE  M E M O	
	AGENCY NAME & ADDRESS	Department of Transportation (DOT) 417 E Fayette Street, Room 527		
	SUBJECT	City Council Bill Report 17-0150		

TO Mayor Catherine E. Pugh

DATE: February 23, 2018

TO: Respective City Council Land Use and Transportation Committee

FROM: Department of Transportation

POSITION: Oppose

RE: Council Bill 17-0150

**INTRODUCTION** – The proposed bill, as written, seeks to ban the storage, transfer, shipping, and processing of crude oil within Baltimore City, with the exception of facilities owned or operated by a rail carrier.

**PURPOSE/PLANS** – As written, this bill seeks to prohibit new or expanded crude oil terminals throughout Baltimore City, by repealing and reordaining, with amendments Article 32- Zoning, Section(s) 1-218, Baltimore City Code (Edition 2000), and adding Article 32- Zoning, Section(s) 1-304(v-1), Baltimore City Code (Edition 2000).

**BRIEF HISTORY** – “Crude Oil” is a broad term, as it refers to an unrefined, naturally occurring fossil fuel used to create petroleum products. The product, once refined, can be used to produce gasoline, diesel, kerosene, asphalt, heating oils, and a plethora of other products.

Crude oil, in its unrefined state, has varying densities, viscosities, and volatilities, and are frequently identified using their region of origin. There are four definitive types of crude oils, varying from very light, to heavy fuels, each used to produce distinct types of petroleum products.

**FISCAL IMPACT** – Not applicable at this time.

**AGENCY/DEPARTMENT POSITION** –

The Department of Transportation respectfully **opposes** City Council Bill 17-0150.

If you have any questions, please do not hesitate to contact Ms. Katelyn McCauley, at [Katelyn.McCauley@baltimorecity.gov](mailto:Katelyn.McCauley@baltimorecity.gov) or (443) 677-9391.

Sincerely,



Michelle Pourciau  
Director

**CITY OF BALTIMORE  
COUNCIL BILL 17-0150  
(First Reader)**

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Introduced by: Councilmembers Clarke, Reisinger, Cohen, Henry, Bullock, Pinkett, Dorsey,  
Middleton, Burnett, Sneed, Stokes

Introduced and read first time: October 16, 2017

Assigned to: Land Use and Transportation Committee

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REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning  
Appeals, Planning Commission, Department of Transportation

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A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Zoning – Prohibiting Crude Oil Terminals**

3 FOR the purpose of prohibiting new or expanded crude oil terminals throughout Baltimore City;  
4 defining a certain term; and generally relating to crude oil terminals.

5 BY repealing and reordaining, with amendments

6 Article 32 - Zoning  
7 Section(s) 1-218  
8 Baltimore City Code  
9 (Edition 2000)

10 BY adding

11 Article 32 - Zoning  
12 Section(s) 1- 304(v-1)  
13 Baltimore City Code  
14 (Edition 2000)

15 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the  
16 Laws of Baltimore City read as follows:

17 **Baltimore City Code**

18 **Article 32. Zoning**

19 **Title 1. General Provisions**

20 ***Subtitle 2. Rules of Interpretation***

21 **§ 1-218. Uses prohibited citywide.**

22 (a) *Application of section.*

23 This section and its listing of certain prohibited uses:

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter deleted from existing law.

CITY OF BALTIMORE

CATHERINE E. PUGH,  
Mayor



DEPARTMENT OF LAW  
ANDRE M. DAVIS, CITY SOLICITOR  
100 N. HOLLIDAY STREET  
SUITE 101, CITY HALL  
BALTIMORE, MD 21202

February 15, 2018

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

Re: City Council Bill 17-0150 – Zoning – Prohibiting Crude Oil Terminals

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0150 for form and legal sufficiency. The bill would prohibit new or expanded crude oil terminals throughout Baltimore City.

Proper subject of regulation

The Interstate Commerce Commission Termination Act (“ICCTA”), codified at 49 U.S.C. §§ 10101 et seq., preempts State and local law “that may reasonably be said to have the effect of ‘managing’ or ‘governing’ rail transportation.” *PCS Phosphate Co. v. Norfolk S. Corp.*, 559 F.3d 212, 218 (4th Cir.2009). Under the ICCTA, if a local regulation attempts to manage or govern rail transportation, it will be preempted by the regulatory authority of the federal Surface Transportation Board (“STB”). The ICCTA grants the STB “exclusive” jurisdiction over “transportation by rail carriers.” 49 U.S.C. § 10501(b)(1). It defines the term “transportation” to include a “yard, property [or] facility ... of any kind related to the movement of [property] by rail....” 49 U.S.C. § 10102(9)(A). Thus, the powers of the STB are broad in scope and impact not only the movement of rail freight but extend to the facilities used in handling rail freight. See *Norfolk S. Ry Co. v. City Of Alexandria*, 608 F.3d 150,(4th Cir. 2010) (City regulation of transloading operations of a railroad facility owned and operated by the railway pre-empted by STB regulations).

Facilities not owned or substantially controlled by a railroad – that is, by an independent party – can be the subject of local regulation. For example, in *New York & Atl. Ry. Co. v. Surface Transp. Bd.*, 635 F.3d 66 (2d Cir. 2011), a railway entered into an agreement with a company to build and own a facility to transload construction materials delivered by the railway. The railway contracted with a second company to operate the facility. In reviewing the ICCTA, the New York Court noted that “where the railroad maintains the appropriate control over the transload facility,

of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest.”). Under this standard, “the relationship of the classification to its goal [cannot be] so attenuated as to render the distinction arbitrary or irrational.” *Id.* at 11-12.

We assume that CB 17-0150 is premised on health and safety concerns raised by the flammability of crude oil and the possibility that it may ignite. If the City were to allow the storage of products that equal or exceed the flammability of crude oil, its prohibition on the storage of crude oil could be deemed an unreasonable classification; that is, the prohibition of one product would not serve a legitimate governmental interest when the storage of other similar products is permitted.

The Law Department possesses no more information about this subject than what is available in the media. Its review, however, suggests that natural gas and gasoline, for example, are generally more flammable than all types of crude. Among the different types of crude, Brakken shale light crude apparently is the most volatile of the crude oils. Its shipment, rather than the shipment of other types, has been responsible in recent years for explosions resulting from train derailments. A review of the media suggests, however, that Brakken crude is less volatile than gasoline and natural gas, yet the storage of these other, more dangerous products in Baltimore is not subject today to any proposed prohibition. If these or similar assertions can be firmly established as fact by knowledgeable industry representatives, the Law Department would be forced to conclude that CB 17-0150 violates Equal Protection. In this event, the Law Department would be unable to approve the bill for form and legal sufficiency.

Sincerely,



Victor K. Tervala  
Chief Solicitor

cc: Andre M. Davis, City Solicitor  
Karen Stokes, Director, Mayor's Office of Government Relations  
Kyron Banks, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Hilary Ruley, Chief Solicitor  
Ashlea Brown, Special Assistant City Solicitor