
CITY OF BALTIMORE

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Mayor



DEPARTMENT OF LAW
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June 30, 2022

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

Re: Mayor and City Council Resolution 22-0238 – Charter Amendment– Inspector General –
Advisory Board

The Law Department has reviewed Mayor and City Council Resolution 22-0238 for form and legal sufficiency. Under Article XI-A, Section 5 of the Maryland Constitution, a resolution, such as City Council Resolution 22-0238, is an appropriate method of initiating an amendment to the Baltimore City Charter. If enacted, the Resolution would be placed on the ballot at the City’s next election and would take effect thirty days after being approved by the voters. Md. Const., Art. XI-A, § 5.

The Resolution seeks to modify the membership of the Advisory Board for the Office of the Inspector General so that it is no longer comprised of elected officials, but rather seven Baltimore City residents with certain backgrounds or experience, five of whom are nominated by the City Council and two of whom are selected from one of three Associations: the Baltimore City Bar Association or the Association of Certified Fraud Examiners or Public Accountants. A person is ineligible to serve if she has a disqualifying relationship or employment, as outlined in the Resolution. The Chair of the Baltimore City Board of Ethics must select members “at random” from pools of City Council nominees and from the Associations (although no application process is given for Association members). The Ethics Board itself is to train these Advisory Board members on Ethics laws, as well as the basics of work for an Inspector General. The Ethics Board can also remove any member of the Advisory Board by a majority vote of the Ethics Board.

While the reconstitution of the Advisory Board is a permissible amendment to the City’s Charter, two of the duties assigned to the Board of Ethics are not within its power to accomplish. First, the Ethics Board cannot remove members of another public body and remain an independent reviewer of the actions of government actors. Md. Code, Gen. Prov., §§ 5-102; 5-807; City Charter, Art. VII, § 109. Therefore, lines 16 through 21 on page 8 should be amended. A suggested amendment is attached that would allow the Advisory Board to vote to remove one of its own members.

Second, the Ethics Board would not be qualified to train others on non-Ethics topics; although it is already required by existing law to provide training on ethics. Md. Code, Gen. Prov., § 5-807; City Charter, Art. VII, § 109; City Code, Art. 8, § 3-20. It is also unclear what is meant

by the “rules governing the Advisory Board” as those are set-forth in the Resolution itself and would be part of the City’s Charter if the Resolution is adopted. Nor is it clear what is meant by the “rules governing and duties of the Inspector General” as those are already part of the Charter. Charter, Art. XI. An amendment to remove the training language is attached.

Next, the Law Department assumes that the term “random” in the selection done by the Ethics Board Chair is the mere ministerial function of picking a name from a proverbial hat containing all applicant names. Thus, the Resolution should be amended to provide for an application process for the members the Associations so that the same random process can occur. A suggested amendment is attached.

Finally, the Resolution provides a durational residency requirement for members of the Advisory Board. This is unconstitutional. *See, e.g., Saenz v. Roe*, 526 U.S. 489, 502 (1999) (durational residency requirement violates the Privileges and Immunities Clause where there is no purpose to the duration other than length of residency because “permissible justifications for discrimination between residents and nonresidents are simply inapplicable to a nonresident’s exercise of the right to move”); *accord McBurney v. Young*, 667 F.3d 454, 462 (4th Cir. 2021). An amendment to remove the duration for the residency requirement is attached.

Subject to the necessary amendments, the Law Department can approve the Resolution for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
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D’ereka Bolden, Assistant Solicitor
Michelle Toth, Special Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 22-0238
(1st Reader Copy)

Proposed by: Law Dep't

Amendment No. 1: Advisory Board Member Removal

On page 8, in lines 16, 17, 18 and 21, delete “Board of Ethics” and replace with “Advisory Board”

Amendment No. 2: Training Requirements

On page 9, delete lines 1 through 7.

Amendment No. 3: Providing Applications from Associations

On page 7, in line 26, delete “membership” and replace with “applications received by members”

Amendment No. 4: Removal of Unconstitutional Duration in Residency Requirement

On page 4, delete lines 17-19 and substitute, “(1) is a resident of Baltimore City”