

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

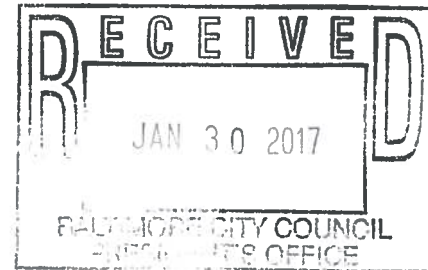


DEPARTMENT OF LAW

101 City Hall  
Baltimore, Maryland 21202

January 27, 2017

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



Re: City Council Bill 17-0004 - Railway Franchise - Consent to Transfer

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0004. The bill proposes to give the consent of the Mayor and City Council for the transfer of a State granted easement to Baltimore Washington Rapid Rail, LLC.

The original State franchise involved in this Resolution was granted by the General Assembly to the Washington and Annapolis Electric Railway Company ("WAERC") in 1900 by Chapter 307 of the Laws of Maryland. The original intent of the company was to connect the City of Annapolis to Washington, D.C. The State franchise required the company to obtain the consent of the local governments through which the railroad passed. 1900 MD Laws, Chapter 307, §10.

Several years later, the WAERC decided to connect to Baltimore. At approximately the same time, the Baltimore Terminal Company ("BTC") formed to construct a railway in the City of Baltimore. When the BTC connected to the WAERC (now operating under the name the Washington, Baltimore and Annapolis Electric Railway - the "WBAER"), the General Assembly granted the BTC a franchise. 1906 MD Laws, Chapter 193. Section 1 of this franchise permitted the BTC "to lay tracks, and build and operate its lines on such streets in the city of Baltimore as it has been or maybe authorized by the Mayor and City Council of Baltimore." The State franchise was granted March 30, 1906.

Pursuant to the 1906 State franchise, the Mayor and City Council of Baltimore the following month authorized the BTC and its successors and assigns "to lay down, construct and maintain iron and steel railway tracks" on certain specified streets. The authorization was in a form of a franchise ordinance, a legislative vehicle required under the City Charter when granting permission to use City right-of-way for a private purpose. See Ordinance 123, 1906.

*Fav w/ Amend*

As required by the City Charter, the term of the franchise was 25 years. Ordinance 123, §10. The ordinance granted the BTC the right to renew the franchise for another 25 years under certain conditions. *Id.*

Under Ordinance 123, the City franchise granted the BTC, as well as its successors and assigns, terminated on April 27, 1931. There is no record that the franchise was renewed. For this reason, a successor to BTC is not recognized in any City ordinance. More specifically, a successor is not currently permitted to occupy or use City right-of-way for any purpose.

Section 1 of City Council Bill 17-0004 resolves that the Mayor and City Council of Baltimore consents to the exercise of the State franchise now held by the Baltimore Washington Rapid Rail, LLC, as a successor to the WBARC. The Law Department points out that if consent is granted, the consent does not authorize the use of City right-of-way. Under the City Charter consent to use City right-of ways can only be granted by the adoption of a franchise ordinance. See City Charter of Baltimore, Article 8. Furthermore, under the Charter any franchise granted to the WBARC can only exist for a maximum of 25 years before it needs renewal by the passage of another ordinance. *Id.*

The Law Department notes that Section 2 of City Council Bill 17-0004 recognizes the fact: i.e., that consent to the State franchise does not provide consent to “occupy any road, street, alley, or other public way in Baltimore City” and that “additional prior consent” must be maintained.

To clarify the limitations of this resolution, the Law Department proposes several amendments .

1. On page 1, line 5 after the word “Railroad” insert “(WBAR); and on line 6, after the name BWRR, insert “, as successor to the WBAR,”
2. On page 3, line 15, after “consent” insert “,subject to Section 2 of this ordinance regarding the necessity of a franchise ordinance to construct and operate the SCMAGLEV on City public ways”
3. On page 3, line 19, after “consent” in accordance with Article 8 of the Baltimore City Charter”.

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Accordingly, provided the bill is amended as set forth above, the Law Department can approve Council Bill 17-0004 for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro  
Chief Solicitor

cc: David Ralph, Acting City Solicitor  
Angela C. Gibson, Mayor's Legislative Liaison  
Hilary Ruley, Assistant Solicitor  
Victor Tervalá, Assistant Solicitor  
Jenny Landis, Assistant Solicitor