
CITY OF BALTIMORE

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DEPARTMENT OF LAW

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July 14, 2022

Honorable President
Members of the City Council
c/o Natawna Austin, Executive Secretary
409 City Hall
Baltimore, MD 21202

RE: City Council Bill 22-0246 – York Corridor Business Improvement District

Dear President and City Council Members:

The Law Department reviewed City Council Bill 22-0246 for form and legal sufficiency. City Council Bill 22-0246 would create the York Corridor Business Improvement District and Authority by repealing and re-ordaining the provisions of City Code Article 14, Subtitle 9, without amendments, except for Article 14, § 9-6. Section 9-6 would be amended to alter the composition of the Board for the York Road Authority.

The City Council previously enacted Council Bill 18-0288-York Corridor Business Improvement District as Ordinance 19-249 on May 6, 2019. The provisions of the Bill were codified in Article 14, Subtitle 9 creating the York Road Community Benefits District (“CBD”). As set forth in the Charter, once created the Community Benefits District must be approved by fifty-eight percent of “the aggregate votes cast in a special election by the affected voters.” See City Charter Article II, § (63)(k)(1). In 2019, the York Road Community Benefits District failed to garner the support of fifty-eight percent of qualified voters, and in accordance with Art. II, § (63)(k), the provisions of Article 14, Subtitle 9 did not take effect. The Interim Authority for the York Road CBD ceased operations in fiscal year 2019.

As an initial matter, the language of CB 22-0246 and CB 18-0288 is contradictory in that both bills are entitled the “York Corridor Business Improvement District,” however they refer to the creation of the York Road Community Benefits District. The creation of business improvement districts is authorized by the Maryland Economic Development Article, Title 12, Subtitle 4. The creation of community benefits districts is authorized by City Charter Art. II, § 63. Both CB 18-0288 and CB 22-0246 refer to the Charter provision. Although the language of the bills tracks the Charter provisions, because the bills refer to both a business improvement district and a

community benefit district, the language of CB 22-0246 must be clarified to reflect which entity the Council intends to form.¹

In February 2019, the Law Department reviewed Council Bill 18-0288 for form and legal sufficiency. A thorough analysis of the original bill creating the York Corridor Business Improvement District was conducted under the assumption that the entity was being formed under Art. II, § 63 of the Charter. A number of amendments to the original bill were required by the Law Department. These amendments were largely adopted. The report of the Law Department contained the following suggested amendment:

The wording of Section 20-5(B)(3) [the original York Road Community Business District was slated to be in City Code Article 14, Subtitle 20, but was moved to Subtitle 9] must be changed because the Authority does not levy the taxes at issue here, but instead proposes such taxes be levied in addition to the other real property taxes levied by the City and State, consistent with state law. *See, e.g., Casey Development Corp. v. Montgomery County*, 212 Md. 138, 148 (1957) (levying a tax is a legislative function that the Authority could not do). Although this wording exists in the City Code for other Benefit Districts, it is not accurate and the wording should read: **“Taxes may not be imposed against properties that are exempt under state law from ordinary property taxes.”** City Charter, Art. II, §§ (63)(c), (d). (emphasis added)

Rather than adopting the suggested language above, Article 14, § 9-5(b)(3) was amended to read: “The Authority may not impose taxes against properties that are exempt under State law from ordinary property taxes.” This language still implies that the Authority has the power to levy taxes. See *The American Heritage Dictionary* (New College Ed., 1975), p. 752 (levy means to impose or collect a tax). Accordingly, lines 22-23 should be amended to read “Taxes may not be imposed against properties that are exempt under state law from ordinary property taxes.” See City Charter Article II, §63(d)(7) Similarly, § 9-4(b)(6) states: “The Authority shall adopt an annual budget and shall impose, charge and collect the taxes or charges on benefitted properties within the District, as authorized by City Charter Article II, § (63) and this subtitle.” Since the Authority has no power to impose or levy taxes, § 9-4(b)(6) should be amended to read “The Authority shall adopt an annual budget and shall propose, charge and collect the taxes or charges imposed on benefitted properties within the District, as authorized by City Charter Article II, § (63) and this subtitle.”

Council Bill 22-0246 contains uncodified sections at the end which establish the identity of the initial interim Board for the Authority, and set forth the duties of the interim Board. See Art. II, § 63(c). The uncodified sections do not appear to contain any provisions that will interfere with the duties of the permanent Board once established. To the extent that the uncodified provisions do not interfere with the duties of the permanent Board they are permissible under the Charter.

As noted in the bill report for CB 18-0288, the Authority, created to administer the community benefits district, is a public corporation. Article 14, § 9-4(b)(3) provides that the District, the Authority, its Board of Directors and its Administrator will have limited liability available to

¹ There are differences between business improvement districts and community benefits districts. For instance, CB 18-0288 and CB 22-0246 specify that the Board for the York Road Authority will be comprised of 9 to 15 members. Under the MD Statutory provisions authorizing business improvement districts, the board is to have only 5 members. See MD Econ Dev Art., § 12-404. For additional differences, see generally MD Econ Dev Art., Title 12, Subtitle 4.

governmental bodies. A public corporation can qualify for sovereign immunity. See *Mangetti v. University of Maryland*, 402, Md. 548 (2007). Accordingly, unless immunity has been waived for the Authority and its Board and Administrator, the members of this public corporation may qualify for immunity. See *Brooks ex rel. Wright v. Housing Authority of Baltimore City*, 411 Md. 603 (2009).

If the procedural requirements set forth above are met and the suggested clarifying amendments adopted, the Law Department approves the bill for form and legal sufficiency as the required authorization to create the district and Authority. If enacted, it will not become law unless it is approved by fifty-eight percent of the aggregate votes cast by the affected voters in a special election.

Sincerely yours,



Michele Toth
Special Solicitor

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