



FROM	NAME & TITLE	CHRIS RYER, DIRECTOR 	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #20-0570 / ZONING – RAILROAD RIGHTS-OF-WAY – BILLBOARDS		

TO

The Honorable President and
Members of the City Council
City Hall, Room 400
100 North Holliday Street

DATE: October 5, 2020

At its regular meeting of October 1, 2020, the Planning Commission considered City Council Bill #20-0570, for the purpose of authorizing, subject to limitations and requirements, the erection of new billboards within a railroad right-of-way or within a railroad facility that adjoins a railroad right-of-way; and correcting, conforming, and clarifying related language.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended amendment and approval of City Council Bill #20-0570 and adopted the following resolution, with nine members being present (seven in favor):

RESOLVED, That the Planning Commission did not concur with the recommendation of its departmental staff, and having adopted the attached findings, recommends that City Council Bill #20-0570 be disapproved by the City Council.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt

attachment

cc: Mr. Nicholas Blendy, Mayor's Office
Mr. Matthew Stegman, Mayor's Office
Ms. Nina Themelis, Mayor's Office
The Honorable Edward Reisinger, Council Rep. to Planning Commission
Mr. Colin Tarbert, BDC
Ms. Livhu Ndou, BMZA
Mr. Geoffrey Veale, Zoning Administration
Ms. Stephanie Murdock, DHCD
Ms. Elena DiPietro, Law Dept.
Mr. Francis Burnszynski, PABC
Mr. Liam Davis, DOT
Ms. Natawna Austin, Council Services
Mr. Dominic McAlily, Council Services

SUMMARY OF HEARING AND RECOMMENDATION

To: Baltimore City Council
From: Baltimore City Planning Commission
Date: October 1, 2020
Subject: **Planning Commission Agenda Item 7, City Council Bill #20-0570**

On October 1, 2020, the Baltimore City Planning Commission held a public hearing on Baltimore City Council Bill 20-0570 (the “Bill”), which, generally speaking, would amend the Zoning Code of Baltimore City to allow billboards facing public highways by-right on railroad rights-of-way. Prior to the hearing, the Planning Commission received and reviewed the Planning Department Staff Report and the Law Department Memorandum, as well as 35 letters from various interested parties, 32 of which opposed the Bill and 3 of which supported the Bill. The Planning Commission received 2 ½ hours of testimony from 13 persons. There were 79 attending the hearing excluding staff and commissioners

By 7-2 vote of the Baltimore City Planning Commissioners, all of whom were present, the Planning Commission voted to recommend the Bill **UNFAVORABLY** to the Baltimore City Council and to **DISAPPROVE** the recommendation of the Planning Department. Below is a summary of evidence and application of that evidence to the legal standard that applies to Zoning Amendments, which forms the basis for this recommendation.

SUMMARY OF EVIDENCE BEFORE THE PLANNING COMMISSION

This section attempts to capture and summarize key evidence but does not reflect all evidence received in the record.

A. Facts Set Forth in the Planning Department Report and Testimony

- Ordinance #00-001 became law in March 2000 and was the result of over a decade of work, including numerous pieces of legislation, to reduce the clutter of general advertising (billboards) throughout the City. The most notable of the prior legislation had been the ban on alcohol beverage and cigarette advertising. Ordinance #00-001 prohibited all new general advertising signs and established standards for changing existing non-conforming signs. There have been two exceptions to the ban authorized by City Council, permitting billboards on the City-owned arena and general advertising on bus shelters.
- In 2009, when the Planning Department started to review the existing code in preparation for drafting the new Zoning Code (Transform Baltimore), there was overwhelming support to maintain the provisions of Ordinance #00-001 and to continue to prohibit new billboards. Since the new zoning code was adopted June 5, 2017, there has been a major overhaul in the signage section of the code based on a Supreme Court Case *Reed et. Al. vs. Town of Gilbert, Arizona, et. al.* that clearly prohibits content-based signage codes. This change required a reorganizing of the code’s signage chapter by type and placement without

considering content of sign. In this signage amendment, there was clarifying language and details established for the Special Signage Districts, which included provisions for general advertising signs. Special Signage Districts are defined areas that have master signage plans established. The districts must be established by the City Council and the detail plans approved by the Planning Commission following the standards of the Zoning Code. The Planning Department, and subsequently the Planning Commission, spent hours reviewing and approving signage district rules in recent years.

- City Council Bill #20-0570 provides for an unlimited number of new billboards in Heavy Industrial (I-2) districts and Maritime Industrial (MI) districts. It limits the signs to railroad rights-of-way or within a railroad facility adjacent to a railroad right-of-way. The signs would be subject to the following criteria:
 - The new billboard may only be located;
 - a. Within a railroad right-of way at a location that immediately adjoins an I-2 or MI zone or;
 - b. Within an adjoining railroad facility that is itself in an I-2 or MI district
 - The new billboard must face or be intended for viewing from an adjacent interstate highway;
 - No billboard is permitted within 500 feet of another billboard on the same side of the highway as measured from the structural pole;
 - The height of the billboard as measured from the grade of the adjacent highway that the billboard is facing may, not exceed 50 feet;
 - No sign face may exceed 672 square feet in area;
 - No sign face may exceed 48 feet in width and 14 feet in height;
 - Digital animation, streaming video, or images that move or give the appearance of moving, are only allowed as described in rules and regulations of the Planning Department; and
 - All digital billboards must have ambient light monitors that automatically adjust the brightness level of the billboard based on ambient light conditions.
- The bill is intended to allow large digital billboards along most of the interstate highways that run through Baltimore. Large sections of I-95, I-295, I-395 and I-895 have adjoining rail right-of-way as does a portion of I-83. The signs will be oriented to the highway with their structural framework facing out to the City. The fifty-foot height is approximately equal to a four-story building.
- Billboards are not permitted in the City except in a Special District approved by the City Council and with a plan approved by the Planning Department
- The Bill could include 58,000 linear feet on one side of the highway, depending on where railroads are located.

- Each side of the highway could have 105 billboards on each side, permitted by right.
- Various amendments were recommended by the Planning Department staff as set forth in the Planning Department’s report.
- The billboards would not follow Light Rail tracks and therefore would not go up I-83 into Roland Park, Mount Washington and other neighborhoods of Northern Baltimore.
- The primary purpose of this Bill is to allow billboards by right along the I-95, I-895 and nearby railway corridors.
- An amendment to this Bill would exclude parts of the I-83 Corridor by explicitly excluding the Light Rail and metro-rail.
- Notice of public hearing was duly provided as set forth by the Planning Department and as noted in the Planning Department’s Report.
- The Planning Commission adopted facts in the Planning Department’s Report but not its recommendation.

B. Facts about the Impacted Communities, including South Baltimore, East Baltimore and Remington.

- Curtis Bay and South Baltimore is one of the highest air pollution areas in a major city in the United States.
- Curtis Bay and South Baltimore have some of the highest concentration of brownfields and heavy industrial and heavy truck uses in the United States.
- A large uncovered coal export facility is in East Baltimore near the Fort McHenry tunnel.
- The Baltimore incinerator is located in South Baltimore, and Baltimore City Council has found that the incinerator impairs the air quality of those living in South Baltimore. The incinerator takes the trash of Baltimore City and the surrounding suburbs.
- The Baltimore landfill is located in South Baltimore and takes ash from the incinerator as well as trash from the surrounding region.
- A large medical waste incinerator is located in South Baltimore.
- I-95 and I-895 are both located in South and East Baltimore—their presence there is at least in part due to the fact that South and East Baltimore, despite its significant residential population, has historically been considered a manufacturing area near rail and harbor transport operations and, thus, the destination for environmentally unpopular (NIMBY-opposed) or industrial uses.

- Working class neighborhoods historically developed around manufacturing areas where land and housing were affordable and jobs available.
- Billboards would follow because the historic placement of I-95, I-895 and cargo train tracks in these communities.
- The friends of Garrett Park wrote the following in a letter to the Commissioners: “Demonstrating an effort to have a different future, a model of a new Brooklyn and Curtis Bay was recently developed by University of Maryland School of Design representing an alternative future to further reduce pollution in an era of zero waste. As we maintain and activate our parks and gardens including Garrett Park, which has the most amazing views of Downtown Baltimore, we are conscious of environmental sustainability. Billboards would frustrate these efforts by ruining the 180-degree view of the area, especially in the park.”
- Max Green testified and wrote:
 - Greektown residents encounter noise pollution, litter, and countless other daily impacts to the quality of life and safety of our community.
 - Railroad companies, who would be the primary benefactors of this proposed legislation, have done little to nothing to address issues of safety and litter along their railroads in our community.
 - Neighbors have spent countless hours cleaning up all nature of debris and litter from property adjacent to railroads, which has been a persistent issue and eyesore for decades. Greektown has 2 major highways and railroad barrier between Greektown and Highlandtown.
 - I-895 and I-95 has an iconic vista and cityscape and this would destroy it. And that billboards pollute visual space.
 - Billboards would be placed immediately above Bayview and there is concern that residents will be impacted by billboards all hours of the night.
- The *Locust Point Civic Ass’n* wrote and Kate McComiskey testified:
 - The billboards would affect the neighborhood disproportionately due to the neighborhood being surrounded by train tracks. We also believe that the billboards would not further the preservation of our community’s place on the National Historic Register, reference number 12001084. Over the years, the Locust Point community has worked hard to beautify the area. We have welcomed hundreds of new residents, including families who hope to remain in the area for decades to come. This bill has the potential to thwart all of the progress we have made thus far. We ask you to exclude Locust Point from the bill, and we hope that you will withdraw the bill in its entirety in order to protect the South Baltimore Peninsula and the communities here. *Id.*
- John Pare from the Riverside Neighborhood Association testified on location at Riverside Park:

- Sight lines of park from the highway and the sightlines when standing in the park would be significantly impacted by these signs and be 9 stories high in this location. He testified this would have a dramatic aesthetic impact on Riverside Park, where people have spent their lives and time to beautify. Interstate signs could practically hang over top of people's homes.
- The Riverside pool is to become Elijah Cummings pool and signs will detract from that legacy. He expressed concern about all the effort to build up Baltimore and said we are going to put massive interstate signs up to tear it down. He testified that people who live in South Baltimore recognize industry, and trains, and intense industrial use, but they came and moved in to change the rules and change their history. They don't want interstate signs to make things worse.
- Jed Weeks testified on behalf of the Greater Remington Improvement Association and was concerned about the areas that would impact Remington near the MTA Light Rail Yard. Without amendment, billboards could go 14 stories or 150 feet high in this area. This could add 4-5 more billboards and blight the neighborhood; the billboard is one of the worst parts of the Remington neighborhood which shares a working-class automotive background with other communities impacted by this Bill.
- Joseph McNeely testified in opposition to the bill and expressed concern that this bill would inhibit improvement to the Canton/East Baltimore community. Mr. McNeely testified that this is a private benefit bill and not a zoning bill.
- Joseph Diseta testified against the Bill. He disputed the notion that this Bill is in any way about Pacific Outdoor Advertising or its owner and urged to the Planning Commission not to impose additional industrial uses on residential neighborhoods.
- Many more letters in opposition said similar things primarily about impacted neighborhoods or residents.
- Frank Boston testified on behalf of Clear Channel Outdoor and said they oppose the Bill.

C. Facts about Baltimore's External Image

- We know from the Capital Improvement Program that Baltimore spends significant sums of money each year to improve its national reputation.
- Visit Baltimore is funded with City dollars and encourages tourism and the convention industry.
- Live Baltimore is funded with City dollars and encourages people to live in Baltimore.
- Baltimore Development Corporation encourages developers to invest in Baltimore and promotes catalytic development throughout the City.

- The Downtown Partnership encourages investment in commercial office and retail space in Baltimore’s Downtown area.
- I-95 is one of the most traveled roads in North American, traveling from Maine to Florida and through the densely populated Northeast corridor.
- Other than the news and sports, millions of people’s only interaction with Baltimore is seeing the Downtown area from I-95 just south of Baltimore’s Downtown.
- Baltimore spends considerable sums of money on its national image because encouraging people from the northeast to come to Baltimore and spend money in Baltimore is a key part of Baltimore’s strategy to expand the residential tax base and promote businesses that reside in the City.
- Susan Collins wrote as a City resident and business owner:
 - “As a city resident and business owner, I highly object to this kind of blight you are proposing coming into the city. It will be a terrible eyesore as you enter the city. We have a beautiful skyline and this would detract from it. We have an already bad opinion from outsiders about our city and this eyesore would only add to their talking points.”
- Doug Kaufman of Canton Community Association testified:
 - Canton has many concerns, including about Baltimore’s branding crisis and the issue of commercial real estate problems, especially in light of the WIRE. The billboards will confirm this negative perception. People passing town or coming in from airport will get a negative first impression.
 - He noted there could be 20 signs in a given mile which would create a façade that blocks the view of the City.
 - Damages to the City’s perception would be multiples of any revenue stream. He testified that they understand that Canton is an industrially adjacent community but did not sign up for billboards. Mr. Kaufman testified that they are trying so hard to improve and things like this are a setback.
- Brad Rogers, Executive Director of South Baltimore Gateway Partnership testified that \$14 Million a year is spent to improve aesthetics just in South Baltimore and that South Baltimore is undergoing a renaissance, (for example, the effort to transform Middle Branch with 11 miles of parks and trails; Port Covington; Westport Waterfront) and this Bill undermines all of this effort.

D. Facts about Billboards Generally

- In 2013, Baltimore City Council Bill 13-0214 imposed an excise tax on billboards and in adopting that tax recited as follows:

- “The unregulated display of outdoor advertising constitutes a public nuisance that imposes costs on the City beyond those caused by other activities by harming the health, safety, convenience and welfare of City residents. Bill 13-0214
- “The Council has determined that outdoor advertising endangers public safety by distracting the attention of drivers from the roadway and may otherwise endanger the public, safety, and welfare. This leads to increased public safety costs for the City.” *Id.*
- “The Council has also determined that outdoor advertising may harm the City by creating visible clutter and blight, and by promoting negative aesthetic impact in the City, in a way that reduces the City’s ability to collect revenue from other sources.” *Id.*
- Wells Obrecht wrote: Billboards devalue a community’s business climate, image and reputation letter; high value business is reluctant to invest or locate projects near billboards; and any short-term increase in fees will be more than offset by costs and losses in tax revenue and investment dollars.
- Ms. Hecker testified on behalf of Clear Channel Communications that this Bill would create a third class of billboards that are by-right and that would go against the entire zoning code and treat everyone who is not a railroad differently and implicate the Equal Protection Clause of the United States Constitution. Ms. Hecker also testified that the Bill would risk the State violating policies that support receipt of Federal highway funds as a result of the Lady Bird Johnson act. Ms. Hecker submitted a letter to similar effect.
- Susan Williams testified about the Lady Bird Johnson highway beautification legislation and the moratorium legislation and said the goal has been to reduce billboards. Baltimore City has disproportionate number of billboards. She worked on Bosclair Advertising illegal billboards, they almost all were in minority neighborhoods. There is a great deal of inequity in where billboards are placed. She does not think there is a complete list of where all the billboards are located. If all billboards were mapped, she believes that the City would see a disproportionate burden [in minority communities], and the City is also probably losing tax revenue on these. She noted that the potential 25 more billboards are fully one quarter of all the billboards in Baltimore County.

E. Facts about City Council Bill 20-0570

- See Planning Department Report and analysis above.
- The Bill would permit billboards by right every 500 feet in the I-95 or I-895 corridor.
- There is no plan to place billboards on the I-83 railroad tracks, although those also would be permitted by right.
- By permitting billboards by right, local community members would have no ability to address their concerns that any particular billboard on railroad tracks would impair the living conditions or people’s perception of the City.

- The areas primarily impacted by this Bill are Locust Point, Curtis Bay, Cherry Hill, Federal Hill, Westport, Riverside, Carroll Camden, Brooklyn, as well as Highlandtown, O'Donnell Heights, and Greektown, which is the corridor traversed by I-95 and I-895 through Baltimore.
- Typical billboards are 14 feet x 48 feet in size.
- At \$15 per square foot in tax for digital billboards, the revenue would be \$10,080 per digital billboard per year.
- At that rate, the 20-25 billboards proposed by Pacific Outdoor Advertising would generate around \$250,000 per year or about \$400,000-\$500,000 per year if double-sided.
- Pacific Outdoor Advertising has only limited rights to put billboards on railroad tracks and this Bill would create additional billboards on railroad tracks beyond those planned for development by Pacific Outdoor Advertising.
- Proponents of the Bill sent letters indicating that they would accept the recommended amendments proposed by Planning Department staff. Proponents also wrote to contest aspects of the Law Department's letter (addressed below) relating to a State-level highway beautification law and funding and equal protection.
- Atlantic City wrote a letter that spoke to the charitable work of Joe Jacobs and his company, Pacific Outdoor Advertising—the proposed developer and Bill proponent.
- CSX wrote that the Bill closes a loophole in Baltimore zoning because zoning is silent on railroad track billboards. CSX also wrote about supporting diversity and inclusion.
- Norfolk Southern wrote that the Bill would close a loophole (similar to CSX) and testified that the Bill would raise money for the City and promote a minority business owner, presumably Mr. Joe Jacobs and Pacific Outdoor Advertising.
- Mr. Jacobs's representative, Mr. Greenfeld, indicated that no billboard in Maryland is owned by an African American or minority company. He further testified:
 - There are 134 billboards on R/R rights-of-way, and none are owned by minority or small owners. Expressed willingness to meet with community groups.
 - Regarding federal highway beautification act, it expressly permits certain billboards.
 - Each billboard would generate about \$10,000 of City revenue; agreement in place for 2x sided; approximately \$400,000 revenue on annualized basis.
 - No intent to disturb neighborhoods.
 - This Bill is different because billboards are proposed in a maritime or industrial zone.

- Pacific Advertising testified it will improve the overpasses and train trestles at its own costs.
- Mr. Jacobs has a long history of partnership with railroads.
- Anyone can approach the railroads and do a similar deal with the railroads.
- Mr. Greenfield testified about community outreach with South Baltimore organizations and said Mr. Jacobs had offered to enter into an agreement saying Mr. Jacobs would not put up a sign without the community support, location, angle and height, but they have not agreed to this yet.
- Mr. Greenfield noted that Mr. Jacobs did not proactively engage in community discussions so as not to gin up opposition.
- To this point, Commissioner Horne expressed concern that greater community outreach had not been achieved in relationship to this Bill.
- Mr. Greenfield testified that Mr. Jacobs has businesses in New Jersey and there are no Baltimore employees at the moment, but that Mr. Jacobs will hire all local Baltimore individuals to put up the billboards. He did not have specific information about how many jobs would be created.
- Mr. Greenfield testified that the Mr. Jacobs does not prefer to go through the special signage control process and that he wants the by-right zoning amendment.
- Michael Blumenfeld, Nelson Mullins testified on behalf of Mr. Jacobs:
 - Company is debt free; company is 100% owned by Mr. Jacobs.
 - Mr. Jacobs has done this kind of development across the country. He gives back to the communities. Mr. Jacobs does not take this opportunity lightly.
 - Clear Channel has near monopoly. He testified that the bill does not offend the Constitution or Equal Protection clause as contended by Clear Channel. He testified that ordinances related *Pizza de Joey v. Md City Council of Baltimore* holds that local governments must balance competing interests to promote general welfare, including decisions that hurt some businesses and help others.
 - Mr. Jacobs is a 100% owned minority business and this Bill would give him the opportunity to enter the market. This is not just about Mr. Jacobs but about outdoor advertising. It is about inclusivity and equity in this area of business.
 - Mr. Jacobs is willing to work with the communities to minimize any inconvenience or other concerns.
 - He testified that the area does not support any more than 25 billboards;

- To this point the Planning Commission expressed surprise based on conflicting evidence and asked the Planning Department to follow-up on Mr. Jacob's representatives' assertion that the area (presumably railroad rights-of-way through Baltimore) supports only 25 billboards.
- Mr. Blumenfeld asserted that not granting this by-right zoning amendment was a violation of the Equal Protection Clause because Clear Channel has a near monopoly and this proposal would break that monopoly. He asserted that if the City does not break the monopoly by granting this particular proposal to permit zoning by right on all railroad rights-of-way near highways than the City will violate Equal Protection. He said rejecting the Bill would be an anti-competitive pushback by a majority-owned business with a near monopoly on the market.
- When asked by Commissioner Prevas: we have heard the costs of this Bill to Baltimore Communities, what does Baltimore get by passing this Bill (in other words what is on the benefit side of the ledger); Mr. Jacobs representative responded, Mr. Jacobs—the individual. He also responded that the Mayor supports this Bill and that allowing Mr. Jacobs to develop billboards would break a monopoly of Clear Channel Communications and allow the entry of a minority business owner.
- Chairman Davis reminded the Planning Commission without objection from Mr. Blumenfeld, that contracts are freely assignable, and any permissive use provided to Mr. Jacobs through a Zoning Amendment would have greater application across all railroad rights-of-way. Chairman Davis reminded the Planning Commission that the Bill under consideration was a Zoning Amendment of general applicability and not the application of any particular individual.

F. Law Department Memorandum

- The Baltimore City Solicitor's Office (the "Law Department") provided the Planning Commission with a memorandum prior to the October 1, 2020 hearing.
- In that memorandum, the Law Department stated:

Although this textual change in the zoning code to permit additional billboards is otherwise legal, it has far-reaching consequences. Unlike the areas of special sign control that have dimension restrictions and criteria for digitization, billboards in these railroad areas would be free of almost any regulation. This would severely limit the City's ability to claim that its billboard ban is legitimately based on safety and aesthetics as this would allow for the proliferation of billboards. As such, the ban would be underinclusive. *Central Radio v. City of Norfolk*, 811 F. 3d 625, 633-34 (4th Cir. 2016) (citing *Reed [v. Town of Gilbert Arizona]*, 135 S.Ct. 2218], 2232 [2015]. If challenged, the City could face a repeal of the entirety of the billboard ban that is codified in the restrictions of Section 17-406 of the Sign Code.

- According to the Law Department, the Bill would change provisions of Article 32 of the Baltimore City Code (hereinafter the “Zoning Code”), and therefore under § 5 508 (c) of the Baltimore City Code, the City Council (and by extension the Planning Commission as a recommending body) must consider the following factors:
 - (1) the amendment’s consistency with the City’s Comprehensive Master Plan;
 - (2) whether the amendment would promote the public health, safety, and welfare;
 - (3) the amendment’s consistency with the intent and general regulations of this Code;
 - (4) whether the amendment would correct an error or omission, clarify existing requirements, or effect a change in policy; and
 - (5) the extent to which the amendment would create nonconformities.

G. Equity Assessment

- In 2018, the City Council adopted the Equity Assessment Program, codified in Article 1, Subtitle 39 of the City Code, which requires, among other things, that City agencies “conduct equity assessments of existing and proposed City actions, policies, and both capital and operating budgets.” Art. 1, § 39-6 (b)(4). Specifically, it requires that “whenever an agency reports to the City Council on a proposed ordinance or resolution, the agency shall include in that report the results of an equity assessment of the proposal’s impact on its operations.” Art. 1, § 39-9. In reporting to the City Council on the Bill, the Planning Commission is therefore also required to perform an equity assessment and report the results to the Council.

Legal Standard

As set forth in the Baltimore City Law Department’s Memorandum, recited above and included in this record, this Bill would modify the Baltimore City Zoning Code and therefore under § 5 508 (c) of the Baltimore City Code, the City Council (and by extension the Planning Commission as a recommending body) must consider the following factors:

- (1) the amendment’s consistency with the City’s Comprehensive Master Plan;
- (2) whether the amendment would promote the public health, safety, and welfare;
- (3) the amendment’s consistency with the intent and general regulations of this Code;
- (4) whether the amendment would correct an error or omission, clarify existing requirements, or effect a change in policy; and
- (5) the extent to which the amendment would create nonconformities.

The Planning Commission must also conduct an equity assessment of the Bill under Article 1, § 39-6 (b)(4) of the Baltimore City Code.

Application of Facts and Evidence to the Legal Standard

The Planning Commission's **UNFAVORABLE** recommendation is based on the following application of facts to the legal standard:

(1) City Council Bill 20-0570 consistency with the City's Comprehensive Master Plan

Baltimore City's Live-Earn-Play-Learn Master Plan, which was adopted on July 9, 2006, establishes a series of goals for the future of the City and identifies strategies that can be implemented by the City to attain these goals. Among other things, the Master Plan identifies the goals of "Elevat[ing] the Design and Quality of the City's Built Environment," (LIVE, Goal #2) and "Increas[ing] the Attractiveness of Baltimore's Natural Resources and Open Spaces" (PLAY, Goal #3).

In addition, Baltimore spends millions of dollars each year on its image, which is consistent with these master plan goals. Baltimore desires to attract and retain residents, tourists, conventions, businesses and retail establishments, among others, to Baltimore and thereby improve the quality of life in the City and its tax base. I-95 and I-895 are key arteries to Baltimore and play a key role in Baltimore's image nationally.

Permitting billboards by right will not "elevate the design and quality of the City's built environment" or attract businesses, and more likely would cause people not to want to come to Baltimore. In fact, as the City Council found in adopting Ord No. 13-139, outdoor advertising creates "visible clutter and blight." Likewise, the addition of new billboards will not "increase the attractiveness of Baltimore's natural resources and open spaces"; rather, the natural beauty of the waterfront and Downtown that is currently visible to motorists traveling along the interstate highways will be obstructed by billboards at a permitted distance of 500' apart. Permitting billboards by right on railroad properties is inconsistent with the City's Master Plan, as well as decades of prior legislation in support of the general effort to attract people to our City.

(2) Whether the Bill would promote the public health, safety, and welfare

The City Council has "determined that outdoor advertising endangers public safety by distracting the attention of drivers from the roadway and may otherwise endanger the public health, safety, and welfare. This leads to increased public safety costs for the City." Ord. No. 13-139.

Baltimore City Council recited in Bill 13-0214 (2013) that (1) "[t]he unregulated display of outdoor advertising constitutes a public nuisance that imposes costs on the City beyond those caused by other activities by harming the health, safety, convenience and welfare of City residents; (2) outdoor advertising endangers public safety by distracting the attention of drivers from the roadway and may otherwise endanger the public, safety, and welfare and (3) outdoor advertising may harm the City by creating visible clutter and blight, and by promoting negative aesthetic impact in the City, in a way that reduces the City's ability to collect revenue from other sources.

We are guided with these findings of City Council, understanding that prior legislation limiting billboards in Baltimore was done for the public good and to promote the good and welfare

of the City. Just as the City historically has used the zoning code to prevent unattractive nuisances, such as noise pollution and heavy industry in historic residential neighborhoods, so too does the City have the right to prevent visual pollution and clutter across Baltimore's landscape. Adding billboards as proposed in this Bill cuts against the City Council's prior findings regarding billboard's impacts and countermands decades of policy.

Placing additional billboards on I-95 and I-895 also may be more likely to distract drivers and cause more accidents than to promote the public health, safety and welfare of the City.

(3) The amendment's consistency with the intent and general regulations of this Code

As set forth in the prior Section and for the additional reasons that follow, the Bill is not consistent with the intent and general regulation of the Zoning Code. *See* § 5-508(c)(3). The following are some of the stated purposes of the Zoning Code articulated in Art. 32, § 2-101:

- to promote and protect public health, welfare, and quality of life for current and future generations;
- to ensure that the visions set forth in the City's Comprehensive Master Plan are implemented by land use regulations consistent with the goals set forth;
- to protect the physical environment and public natural resources for all residents;
- to preserve and enhance the value of structures, communities, and neighborhoods

By allowing billboards by right at a distance of 500' apart on railroad properties abutting interstate highways, the Bill disrupts the Council's previous findings that the unregulated proliferation of outdoor advertising endangers public health, safety, and welfare, creating visual clutter and blight that will impact the City for generations. The Bill also fails to "protect the physical environment" of the City and to "preserve and enhance the value of structures, communities, and neighborhoods." Substantial testimony was received on this point. Indeed, the City has invested greatly in improving its stature and to attract residents, businesses, conventions and tourists to Baltimore. By allowing billboards every 500' and obstructing the view of the City, the Bill could perpetuate pre-existing notions that Baltimore is a dangerous City or a "pass-through" City between Washington D.C. and New York and could frustrate decades of investment and millions of dollars in effort to attract people and businesses to Baltimore—both as tourists and to stay permanently. The Bill harms Baltimore's environment and reputation with nearly no countervailing benefit to the City (as opposed to an individual or company). That the Bill would assist a particular developer to enter the market is not a proper Zoning Amendment consideration.

The developer, through his representative, testified that he was not interested in exploring a special signage district or an option separate from this sweeping Zoning Amendment. As written, this Bill would make this developer and those on train tracks the beneficiary of by-right billboard authority against the general intent and regulations of the rest of the Zoning Code.

(4) Whether the Bill would correct an error or omission, clarify existing requirements, or effect a change in policy

The Bill would effect a change in policy; not correct an error or omission. *See* Zoning Code. *See* § 5-508(c)(4). The Bill would allow billboards without any regulatory oversight where none were permitted previously and where Baltimore’s policy for two decades has been to reduce the number of billboards.

Again, City policy can be summarized as follows:

“The unregulated display of outdoor advertising constitutes a public nuisance that imposes costs on the City beyond those caused by other activities by harming the health, safety, convenience and welfare of City residents; (2) outdoor advertising endangers public safety by distracting the attention of drivers from the roadway and may otherwise endanger the public, safety, and welfare and (3) outdoor advertising may harm the City by creating visible clutter and blight, and by promoting negative aesthetic impact in the City, in a way that reduces the City’s ability to collect revenue from other sources.” Bill 13-0214 (2013)

By-right billboards every 500’ runs contrary to this policy and two decades of policy aimed at removing billboards and blight from our neighborhoods.

In addition, by permitting this use across all train-tracks, which run linearly, no consideration is given for particular neighborhoods’ needs, which is contrary to ordinary zoning policy that incorporates neighborhood needs or disproportionate impact into decision-making—be it in creating zoning rules in the first place or in special exception, conditional-by-ordinance or similar application-driven hearings.

CSX and NS testified that the bill closes a loophole in the Zoning Code because the Zoning Code is silent on billboards on railroad tracks. New billboards are not allowed in the City unless they are in special signage districts with a City Council ordinance and an adopted plan of this Commission. This Bill does not close a loophole, it makes billboards permitted-by-right where none were permitted previously.

Ms. Hecker on behalf of Clear Channel Communications testified that the Bill creates a third class of billboard under the Zoning Code—billboards by-right. She also testified that allowing this bill would implicate Equal Protection and create problems for State highway funding from the federal government. Although we agree that this Bill would create a new class of billboards by-right and that doing so in this manner is contrary to the intent and general regulations of the Zoning Code, we do not agree that Equal Protection is implicated nor that State funding under the Lady Bird Johnson act guides our analysis.

We also disagree with Mr. Blumenfeld’s position that not passing this Bill somehow creates an Equal Protection cause of action for Mr. Jacobs because Clear Channel Communications has a near monopoly. When reviewing a Zoning Amendment, our job is to apply the facts and evidence to the factors set forth in the Zoning Code and to conduct an equity assessment. Neither Mr. Jacobs’ desire to enter the Baltimore market nor Clear Channel Communication’s ownership of billboards in the City “moves the needle” materially, when the law requires our focus to remain

on what this Zoning Amendment Bill means in terms of the Zoning Amendment factors and the equity analysis. As Chairman Davis pointed out, this Zoning Amendment Bill goes well beyond Mr. Jacob's interests, and his contracts are almost certainly freely assignable.

(5) The extent to which the amendment would create nonconformities

We would not want this Bill to turn certain existing nonconforming billboards into conforming billboards. Nonconforming billboards are subject to the provisions of § 18-501 *et seq.*, which are designed to permit these billboards to remain in place but not be altered or modified. If these existing billboards were to become conforming, they would be subject to the new regulations under the Bill, which would permit, among other things, “digital animation, streaming video, or images that move or give the appearance of movement” subject to Planning Department regulations. We have possible concerns that this Bill could permit existing billboards on railroad properties to convert to digital and display animated video along the interstate highways. This consequence, while likely unintended, has the potential to have safety effects.

(6) Revenue Generated for the City

When considering a Zoning Amendment, revenue generated for the City is not part of the statutorily prescribed analysis. Even were this to be a proper consideration, the \$250,000-\$500,000 in possible revenue (the testimony was inconsistent) would have to offset any risk of economic and reputational impact to Baltimore City—be it loss of reputation because out-of-state drivers see billboards instead of a skyline or loss of property value in neighborhoods if areas suffer visual disturbance or blight. The City has found previously that any income to be gained is more than offset by the loss caused by billboards. In addition, given the testimony about the City's very substantial investment in its image and our knowledge of the same through our review of the annual Capital Improvement Plan Budget, we find it hard to see how this Bill presents an economic benefit for the City, even were it to generate four or five million a year in revenue. Having said this, we reiterate that revenue is not one of the statutorily prescribed factors when determining whether to adopt this Zoning Code Amendment.

(7) Equity Assessment

This Bill fails the Equity Assessment because the Bill promotes historic and systemic injustice stemming from prior iterations of our Zoning Code, which is exactly the type of circumstance the Equity Assessment was designed to address.

Recognizing the systemic injustices historically perpetuated in Baltimore City and in partial response to the negative national attention the City received after the 2015 death of Freddie Gray, in 2018, the City Council adopted the Equity Assessment Program, requiring this Department and Commission to “conduct equity assessments of existing and proposed City actions, policies, and both capital and operating budgets.” Art. 1, § 39-6 (b)(4). Specifically, it requires that “whenever an agency reports to the City Council on a proposed ordinance or resolution, the agency shall include in that report the results of an equity assessment of the proposal's impact on its operations.” Art. 1, § 39-9.

The neighborhoods along the I-95 and I-895 corridors include Cherry Hill, Brooklyn, Westport, Carroll Camden, Locust Point, South Baltimore, Canton, and Greektown. Remington on I-83 corridor historically was a neighborhood of similar character. Each of these neighborhoods have long been home to working class communities that have supported the City's industrial manufacturing centers (many of which have long since left, leaving brownfields in their wake). Historically, these neighborhoods have shouldered many of the noxious, but necessary, burdens of the Baltimore Metropolitan area. These include (1) high density manufacturing zoning; (2) the metropolitan area's dump at Curtis Bay; (3) the metropolitan area's incinerator at BRESCO on Russell Street; (4) a large open coal export facility near Canton and Highlandtown; (5) a large medical incinerator in South Baltimore. Pertinent in this case, these communities also were forced to shoulder the burden of I-95, I-295, and I-895 (I-83 as pertains to Remington) through Baltimore City, as well as the major freight rail tracks that run near these highways. In addition, as these highways pass through South and East Baltimore, they are elevated; this means that (a) air pollution spreads farther; (b) the sight and nuisance value is greater and (c) proposed billboards, naturally, must be at least 4 stories tall so drivers can see them from these elevated highways.

It is not, therefore, by accident that we are now considering a new noxious use for South Baltimore, Remington, Highlandtown and historic working-class communities. Of course, a railroad with rights next to the most traveled highway corridor in North America wants to put up billboards to make money, and of course doing so will raise some additional revenues for the rest of the City. But from an equity perspective, if we are going to treat certain communities, like South Baltimore, as we treat others, like North Baltimore, then we must begin to prevent those uses that would place an additional noxious burden on these particular communities simply because an initial noxious use was assigned to that community long ago. To the same point, we heard evidence that there is a disproportionate number of billboards in minority and working-class communities in Baltimore City and that 25 billboards are fully one quarter of all the billboards in Baltimore County.

Mr. Blumenfeld presented a type of equity argument when he testified that Mr. Jacobs is a minority investor and that Clear Channel Communication has a near monopoly. Although we can see a superficial appeal in Mr. Blumenfeld's position, this Bill does not present Mr. Jacob's application for a special exception or conditional use by ordinance; the Bill is a Zoning Amendment of general applicability. The equity lens, thus, should zoomed out to see the larger City-wide equity impact instead of focused on the narrow diversity and competition benefits presented by this particular investor (who, understandably, would prefer permitted-by-right zoning over the established special sign district process).

Ending systemic injustice requires us all to share the burden of noxious uses not only across the City (but perhaps even more importantly) across the entire metropolitan area. South Baltimore has shouldered our burdens for a long time, and as we consider siting new noxious uses, we need to think about spreading the burden or at least designing these facilities in a manner that substantially mitigates the impact and overburden that certain communities, like South Baltimore, have experienced as a result of historic zoning decisions.

Because this Bill appears to exacerbate rather than mitigate South Baltimore's overburden and lacks any apparent capacity or proposal to mitigate, it fails the equity assessment.

Conclusion

For these reasons, City Council Bill 20-0570 fails to meet the factors set forth in the Baltimore City Zoning Code to amend the Zoning Code and fails the equity assessment.

By vote of 7-2 Commissioners with all Commissioners present, the Baltimore City Planning Commission recommends City Council Bill 20-0570 **UNFAVORABLY** to City Council and **DISAPPROVES** of the recommendation of the Planning Department.

Commissioner Allen voted to approve the Bill as amended and to accept the recommendation of the Planning Department. She indicated that she agrees billboards cause blight in communities, but said that, based on her extensive experience as a Baltimore City planner who fought for a billboard ban two decades ago, she is now being pragmatic: billboards are still very present, 20 years after the ban, and *if* they *must* remain part of the landscape, then the currently-monopolized market should be opened up to competitors, like Mr. Jacobs.



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

October 1, 2020

REQUEST: City Council Bill #20-0570/ Zoning – Railroad Rights-of-Way – Billboards:
For the purpose of authorizing, subject to limitations and requirements, the erection of new billboards within a railroad right-of-way or within a railroad facility that adjoins a railroad right-of-way; and correcting, conforming, and clarifying related language.

RECOMMENDATION: Amend and Approve

STAFF: Laurie Feinberg

INTRODUCED BY: President Scott

SITE/GENERAL AREA

Site Conditions: Specific sites are not identified.

General Area: This amendment applies to I-2 and MI zoned property in railroad right-of-way and adjacent to rail roads throughout the City

CONFORMITY TO PLANS

According to Section 5-508(c) *Text amendments*, the Planning Commission must consider the following standards:

- (1) the amendment's consistency with the City's Comprehensive Master Plan;*
- (2) whether the amendment would promote the public health, safety, and welfare;*
- (3) the amendment's consistency with the intent and general regulations of this Code;*
- (4) whether the amendment would correct an error or omission, clarify existing requirements, or effect a change in policy; and*
- (5) the extent to which the amendment would create nonconformities.*

ANALYSIS

Background: Ordinance 00-001 became law in March 2000 and was the result of over a decade of work, including numerous pieces of legislation, to reduce the clutter of general advertising (billboards) throughout the City. The most notable of the prior legislation had been the ban on alcohol beverage and cigarette advertising. Ordinance 00-001 prohibited all new general

advertising signs and established standards for changing existing non-conforming signs. There have been two exceptions to the ban authorized by City Council, they were billboards on the City-owned arena and general advertising on bus shelters.

In 2009, when the Planning Department started to review the existing code in preparation for drafting the new Zoning Code (Transform Baltimore) there was over-whelming support to maintain the provisions of Ordinance 00-001 and the continue to prohibit new billboards. Since the new zoning code was adopted in 2016 there has been a major overhaul in the signage section of the code and it was based on a supreme court case that clearly prohibits content based signage codes. This change required a reorganizing of the signage chapter by type and placement without considering content of sign. In this signage amendment, there was clarifying language and details established for the Special Signage Districts. These included provisions for general advertising signs. Special signage districts are basically defined areas that have master signage plans established. The districts must be established by the City Council and the detail plans approved by the Planning Commission following the standards of the Zoning Code.

Description of the Bill: City Council Bill 20-0570 provides for an unlimited number of new billboards in Heavy Industrial (I-2) districts and Maritime Industrial (MI) districts. It limits the signs to railroad rights-of-way or within a railroad facility adjacent to a railroad right-of-way. The signs would be subject to the following criteria;

- A. The new billboard may only be located;
 - a. Within a railroad right-of way at a location that immediately adjoins an I-2 or MI zone or;
 - b. Within an adjoining railroad facility that is itself in an I-2 or MI district
- B. The new billboard must face or be intended for viewing from an adjacent interstate highway;
- C. No billboard is permitted with 500 feet of another billboard on the same side of the highway as measured from the structural pole;
- D. The height of the billboard as measured from the grade of the adjacent highway that the billboard is facing may not exceed 50 feet;
- E. No sign face may exceed 672 feet in area;
- F. No sign face may exceed 48 feet in width and 14 feet in height;
- G. Digital animation, streaming video, or images that move or give the appearance of moving are only allowed as described in rules and regulations of the Planning Department;
- H. All digital billboards must have ambient light monitors that automatically adjust the brightness level of the billboard based on ambient light conditions.

The bill is intended to allow large digital billboards along most of the interstate highway that runs through Baltimore. Large sections of I-95, I-295 and I-895 have adjoining rail right-of-way as does a small portion of I-83. The signs will be oriented to the highway with their structural

frames work facing out to the City. The fifty-foot height is approximately equal to a four-story building.

Billboards are taxed in Baltimore at a square foot rate; \$5.00 per square foot for regular and \$15.00 per square foot for digital boards. Based on this rate each digital billboard will raise \$10,080 per year.

Amendments

The bill has criteria that were intended to temper the impact of the billboards on the adjacent neighborhoods. The following amendments are recommended to further that goal;

1. Railroad right-of-way, though not defined in the code is understood to mean heavy rail (freight or passenger). It was not intended to include metro-rail or Light-rail. Therefore we recommend an amendment be added on Page 2, line 7 after the words, right-of-way, **excluding metrorail and light rail**
2. The billboards are intended to be highway oriented, in order to make that clearer we recommend changing (B) on the line 3, page three to read
(B) The new billboard must face and be intended for viewing from an **adjacent to rail right-of-way**, interstate highway.
3. The billboard height is intended to be no greater than 50 feet, it should be clarified that it is measured from the highway adjacent to the top of the sign, therefore we recommend adding on Line 10, Page 3, **to the top of the sign.**
4. Item G in the above criteria that refers to Planning Department rules regarding digital animations etc. There are already fairly specific requirements for these types of animation that exist in the code that should be cross-referenced. We recommend changing item G to the following;
 - a. Digital animation, streaming video, or images that move or give the appearance of moving **must meet the requirements of section 17-407 of the code and** are only allowed as described in rules and regulations of the Planning Department;

Notification: Notification went to our 15,000 + person email list



Chris Ryer
Director