
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



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

October 22, 2024

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

Re: City Council Bill 24-0584 – Baltimore City Government Entities – Language Access

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 24-0584 for form and legal sufficiency. The bill would create “Subtitle 53. Language Access” under Article 1 of the Baltimore City Code. The new Subtitle 53 will require covered entities within the City government to appoint a language access liaison and adopt a Language Access Plan. Covered entities must also provide language access services to specified individuals, and submit annual reports as required in the ordinance.

City Council Bill 24-0584 comports with federal law, which requires programs that receive federal financial assistance to protect individuals from discrimination on the basis of race, color, religion, sex, and national origin under Title VI of the Civil Rights Act of 1964. 42 U.S.C. § 2000d. Failure to ensure that persons who do not speak English very well or are limited English proficient (“LEP”) can effectively participate in, or benefit from, federally assisted programs may violate Title VI’s prohibition against discrimination based on national origin. 67 Fed. Reg. 41455-01 (June 18, 2002). City of Baltimore government entities that are recipients of federal funding are already required to comply with Title IV requirements for language access. 28 CFR 42.102(f); 28 CFR 42.104(b). The bill is unlikely to conflict with Title VI; in fact, the legislation is even more expansive, as it requires meaningful access by covered entities who do not receive federal funding and uses a lower population threshold to determine designated citywide languages than Title VI. 65 Fed. Reg. 52762-01 (August 30, 2000).

Law Department Recommendations

City Council Bill 24-0584 defines “covered entity” in Sec. 53-1(B). The Law Department recommends amending the language to define a covered entity as, “Any Municipal Agency as defined in Section 2(j) of Article 1 of the City Charter that delivers a direct public service”. City Charter, Art. I, § 2(j). An appropriate amendment is attached to this report. The bill defines “direct public service” in Sec. 53-1(D) and limits that provision to a “City resident”. However, Title VI

protects “everyone who is in the United States”. 42 U.S.C § 2000d. The Law Department recommends amending the language of Sec. 53-1(D) to remove “...to a City resident” from the definition. An appropriate amendment is attached to this report. The bill defines “major public contact” in Sec. 53-1(I). As written, the definition appears to be void for vagueness, as there is no language that outlines what conducts entails an interaction. *See, e.g., A.B. Small Co. v. Am. Sugar Ref. Co.*, 267 U.S. 233, 239(1925). The Law Department recommends clarifying specific interactions that constitute major public contact. One possible clarification would be to define an employee with major public contact to be one who averages a certain number of contacts with a member of the public per day. An amendment to this effect is attached to this report.

To provide for the language access required by the ordinance, the bill authorizes covered entities to designate an employee as Language Access Liaison in Sec. 53-2(B)(1). The Law Department suggests that the bill be amended to include the Department of Human Resources (“DHR”) into the designation process so that the bill conforms to the requirements of Section 97(i) of Article VII of the City Charter with respect to Civil Service employees by inserting in Sec. 53-2(B)(1), on page 3, line 29, “In consultation with the Department of Human Resources, where required,...”. An appropriate amendment is attached to this report. The bill also mandates the creation of a Language Access Plan that meets the requirements of City Council Bill 24-0584.

The bill requires grantees and subgrantees to take “reasonable steps” to provide LEP individuals with meaningful access in Sec. 53-3. The term “reasonable steps” is not defined in the bill. As written, this lack of guidance on what types or kinds of steps will be reasonable is void for vagueness because the grantees have no “rule or standard” for what kind of conduct is required. *See A.B. Small Co., supra*. The bill must be amended to define the standards that would need to meet in order to be in compliance with the law. Alternatively, the bill could be amended to simply require grantees and subgrantees to provide LEP individuals with meaningful access. A draft amendment to this effect is attached to this report.

Additionally, under Title VI, once an entity receives federal financial assistance, the federal government has jurisdiction over those contractors. 42 U.S.C. §2000d-1. Unless a reason can be articulated as to why the bill includes grantees and subgrantees but not contractors, the bill should be amended to apply to contractors as well. This avoids an Equal Protection challenge. *See, e.g., Baltimore Gas and Elec. Co. v. Heintz*, 760 F.2d 1408, 1417 (4th Cir. 1985) (*citing Western & Southern L.I. Co. v. Board of Equalization*, 451 U.S. 648, 668, (1981)). An appropriate amendment is attached to this report.

The bill requires the translation of all “vital documents” in Sec. 53-4(1); however, in briefings to City agencies provided by the Mayor’s Office of Immigrant Affairs (“MIMA”), representatives from MIMA clarified that the only documents created by the City’s covered entities were subject to the translation requirement. The Law Department recommends amending the language proposed for §53-1(N) from “...all vital documents...” to “...all *City-created* vital documents” to reflect that only City-created documents require translation. An appropriate amendment is attached to this report.

The Law Department also recommends aligning the language in the bill with the budgeting process in the City Charter by amending Sec. 53-6 to read, “*Subject to appropriation of funds in*

the Ordinance of Estimates or supplemental appropriations, MIMA shall...". Baltimore City Charter, Art. VI, §§ 5-9. An appropriate amendment is attached to this report.

Subject to the required amendments, the Law Department can approve this bill for form and legal sufficiency.

Sincerely,

A handwritten signature in black ink, appearing to read "DLuckey", is positioned above the typed name.

Desiree Luckey
Assistant Solicitor

cc: Ebony Thompson, City Solicitor
Stephen Salsbury, Deputy City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Chief Solicitor
Michelle Toth, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 24-0584
(1st Reader Copy)

Proposed by: Law Dep't

Amendment No. 1 (Conform definition of “Covered Entity” to Charter)

On page 2, strike lines 5 through 8 and substitute ““COVERED ENTITY” MEANS ANY MUNICIPAL AGENCY AS DEFINED IN SECTION 2(J) OF ARTICLE I OF THE CITY CHARTER THAT DELIVERS A DIRECT PUBLIC SERVICE”.

Amendment No. 2 (Conform to Federal law)

On page 2, in line 15, strike “TO A CITY RESIDENT”.

Amendment No. 3 (Clarify “major public contact”)

On page 3, in line 3, strike “regularly” and insert “who”; and on that same page, in line 4, after “PUBLIC”, strike “IN THE COURSE OF DAILY BUSINESS” and substitute “AT LEAST TWICE ON AN AVERAGE WORKDAY”.

Amendment No. 4 (Conform to Charter requirements regarding Civil Service employees)

On page 3, in line 29, after “DESIGNATE” insert “, IN CONSULTATION WITH THE DEPARTMENT OF HUMAN RESOURCES, WHERE REQUIRED,”.

Amendment No. 5 (Clarify “reasonable steps”)

On page 5, in lines 13 and 14, strike “TAKE REASONABLE STEPS TO”.

Amendment No. 6 (Include contractors)

On page 5, in line 13, after “SUBGRANTEE” insert “OR CONTACTOR”.

Amendment No. 7 (Clarify types of documents to be translated)

On page 5, in line 18, after “ALL” insert “CITY-CREATED”.

Amendment No. 8 (Conform to City budget process)

On page 6, in line 5, before “MIMA” insert “SUBJECT TO APPROPRIATION OF FUNDS IN THE ORDINANCE OF ESTIMATES OR SUPPLEMENTAL APPROPRIATIONS”.