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CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG  
Mayor



DEPARTMENT OF LAW  
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October 25, 2020

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

Re: City Council Bill 20-0558- City Officers and Employees –  
Commuting Benefits

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0558 for form and legal sufficiency. The bill requires that the Department of Human Resources must have a written policy that clearly articulates the eligibility criteria for parking benefits and requires the Department of Human Resources to offer a public mass transit subsidy to every officer and employee of the City who is not eligible for parking subsidies. The bill also requires that any employee who is eligible to receive a parking subsidy must be offered, as an alternative, the cash pay-out equal to the amount that the agency would have paid for the parking benefit.

Article VI, Sec. 2 of the Baltimore City Charter provides that the Board of Estimates shall formulate and execute the fiscal policy of the City to the extent and in the manner provided in the Charter. The Charter provides for various rules with respect to formulating and executing the fiscal policy of the City. Art. VI. itself contains the procedures for determining and providing for the fiscal needs of the City each year. This occurs in the budget process. See Art. VI., §§3-7. Of particular interest for this proposed bill is Art. VI, §6 which says that the proposed

Ordinance of Estimates which is submitted to the City Council shall be accompanied by materials that include the compensation of every officer and salaried employee. Compensation is generally defined to include a bonus, a commission, a fringe benefit, overtime wages or any other remuneration promised for service. See for example, Md. Ann. Code Labor and Employment Art., §3-501. Art. VI. The parking subsidies in the bill are offered in exchange for an employee's service so are clearly compensation. They must therefore be included in the budget materials supporting the needed appropriation for the compensation for eligible employees.

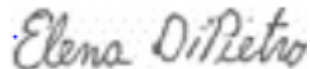
Further support for the power of the Board of Estimates in this area is found in §10(d) which states "except in cases of promotion, the salary or compensation of no officer or employee of the City shall be increased beyond that set forth in the materials accompanying the proposed Ordinance of Estimates unless the increase be approved by the Board of Estimates upon the recommendation of the head of the agency concerned, and funds therefor are available in the appropriation allotted in the Ordinance of Estimates to the agency in question ...." Finally, Art. VII, §97(k) states that the Department of Human Resources "shall administer employee benefits and pre-employment screening programs as directed by the Board of Estimates. These sections make it clear that compensation is recommended by the agencies with the final approval in the Board of Estimates via the budget process. There is no authority for the City Council to set the policy with respect compensation which would include a fringe benefit such as a parking subsidy.

Similarly, there is no authority for the City Council to legislate with respect to reimbursement of employees who do not utilize the benefit. Again, this involves the fiscal policy of the City and rests within the authority of the Board of Estimates to appropriate funds for this purpose through the budget process. A review of the Administrative Manual shows that similar reimbursements are provided for in the AM. See Am-204-25 Health Incentive Reimbursement Program. The Administrative Manual is a merging of the provisions of the City Charter, Board of Estimates policies and rules, Memoranda of Understanding and the decisions and directives of the City Administration. Reimbursement in this section does not occur without first obtaining the approval of the Board of Estimates. In the same fashion, any change to the Manual must also be approved by the relevant City

agencies and finally by the Board of Estimates. The City Council has no role in this process because there is no source of authority for it to legislate in this area. The authority has been granted to the Board of Estimates and to a limited degree with the Department of Human Resources and the other agencies through in the Charter appropriation process.

Based on the foregoing, it is the conclusion of the Law Department that this bill impinges on the Charter authority of the Board of Estimates and is outside the scope of legislative authority of the City Council. The Law Department, therefore, cannot approved the bill for form and legal sufficiency.

Sincerely yours,

A handwritten signature in cursive script that reads "Elena DiPietro".

Elena R. DiPietro  
Chief Solicitor

cc: Dana P. Moore, Acting City Solicitor  
Matthew Stegman, Mayor's Office of Government Relations  
Caylin Young, President's Legislative Director  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalá, Chief Solicitor  
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