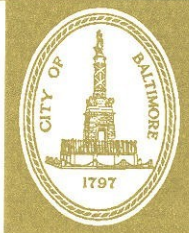


CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

September 16, 2011

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

Re: City Council Bill 11-0765 – Zoning – Licensing and Regulation

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 11-0765 for form and legal sufficiency. The bill provides for the licensing and regulation of special-event parking lots, specifically establishing a special-event parking lot district, within which special-event parking lots may be licensed by the Department of Finance, which would allow such lots to operate on a short-term basis before expiring. The bill defines certain terms; imposes certain fees; requires payment of the parking tax; and imposes certain penalties. The bill conforms certain provisions of the Zoning and Building Codes; conforms, corrects and clarifies other related provisions; and generally relates to the licensing, regulation, operation, and zoning of special event parking lots.

The Law Department's concern with this bill focuses on the discretion available to the Finance Director in granting a license for a special event parking lot. It is a well known rule of law that, except for ministerial or administrative function, a governing body's legislative or discretionary powers cannot be delegated to others. *Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 161 (1999). Thus, in order for the bill to be legally sufficient, it should require either the issuance of a license to be nondiscretionary (i.e., the Director is required to issue a license if an application is received) or it should contain a check list (of sorts) for determining when a license can be issued. The Director can be allowed to interpret the criteria, but the basic outline that directs the agency in this task should be present in the bill. Currently, the bill does not satisfy this legal requirement.

The bill's sponsors have two options for resolving the problem, both of which can derive from the applicant information required by § 13-7, page 14. Among other things, the required information includes such things as the proposed gross area of the parking lot, the schedule of parking fees to be charged, a traffic management plan, a security plan, and a signed affirmation concerning the applicant's right to use the property in the manner proposed. One possible remedy would be to amend the bill to state:

F/A



Upon receipt of the application required by § 13-7 of this subtitle, the Director shall issue the license.

The above amendment, while it would satisfy the legal requirements, would not allow the City to evaluate or determine the merits of the provided information.

The alternative remedy requires the City Council, in advance, to determine the standards that must be met by the applicant's information before the Director can approve the application. Since the application requires a traffic management plan, the bill should identify the characteristics that would adequately facilitate the flow of traffic around a site. Similarly, the bill should specify the elements needed before the Director can conclude that the applicant's security plan adequately protects parking lot patrons and other persons affected by the operation of the special-event parking lot. Such elements should be established for all the other information required in § 13-7 (e.g., what constitutes a reasonable schedule of fees and what gross area of a proposed parking lot that might be deemed adequate or reasonable). Such specificity is required because the Director of Finance should not be exercising too much discretion with respect to evaluating the merits of the information provided by the applicant.

Note that under the second-type of amendment, the Director's must only determine if an application meets the criteria or not. If it meets the criteria, the Director must issue the license, even if he or she has reservations about the information provided him; even if, for example, five licenses for special event parking lots already exist in same neighborhood. The Director does not have discretion to limit the number of applications that can be granted in the special event parking district.

Note further that any amendment that would require fact-finding and evaluation of data that fall outside of the expertise of any one person may require the establishment of a quasi-judicial proceeding before a license can be issued.

Subject to the suggested amendments, the Law Department will approve the bill for form and legal sufficiency.

Sincerely yours,



Victor K. Tervala
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Ashlea Brown, Assistant Solicitor

