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CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW  
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June 4, 2021

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 21-0071 –Street Encroachment – 1707 Eastern Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0071 for form and legal sufficiency. The bill would allow the new construction at 1707 Eastern Avenue to permanently encroach on the public right of way.

The City's Charter makes clear that the Mayor and City Council's title to a street is inalienable. City Charter, Art. VII, § 1. The City can grant "a minor privilege or franchise to someone for limited duration provided market value compensation is charged. City Charter, Art. VII, §§ 1,2.

Alternatively, the City could grant a "permanent minor privilege." City Charter, Art. VII, § 2. "Permanent minor privileges are those in the nature of steps, porticoes, bay windows, bow windows, show windows, columns, tiers, covered vaults, covered areaways, drains or drainpipes, and the like which cannot be removed without a material alteration of the property where the said privilege is located." City Charter, Art. VII, § 9. These permanent minor privileges are for "the right to use the streets, or other public property, by any person for steps, porticoes, bay windows, bow windows, show windows, signs, columns, piers, or other projections or structural ornaments of any character except so far as the same may be prohibited by law, and covered vaults, covered areaways, drains, drainpipes, or any other private purpose not prohibited by law or ordinance and not being a franchise or right requiring a formal grant by ordinance." City Charter, Art. VII, § 2.

A permanent minor privilege can be "granted by the Board of Estimates for such an amount of money and upon such terms as the said Board may consider right and proper without the necessity of an ordinance or advertising." City Charter, Art. VII, § 2. However, the grant can happen "only after reasonable notice to the holder of the privilege and opportunity to him to be heard before the Board [of Estimates] or its designated representative." City Charter, Art. VII, § 2.

Although the Board of Estimates has the right to grant minor privileges under the process set forth in Section 2 of Article VII of the Charter, it "may delegate to any department or other

municipal agency, and such department or other municipal agency shall exercise, any administrative powers and duties relating to minor privileges.” City Charter, Art. VII, § 2.

Apparently, the Board has delegated review of some permanent minor privileges to the City’s Department of Housing and Community Development as provided in Section 3201.3 of the City’s Building Code:

**3201.3 Other laws.** This Chapter does not permit anything that is otherwise prohibited or regulated by any law governing the use of public property.

**3201.3.1** Permission needed for encroachments. No person may use, encroach on, or connect to any street, highway, alley, or other public right-of-way for any purpose unless that person first obtains permission to do so by:

1. an ordinance of the Mayor and City Council,
2. a minor privilege permit issued by or under the authority of the Board of Estimates, or
3. an appropriate permit issued by the Department of Transportation

This bill is the requisite ordinance to satisfy the requirements of Building Code Section 3201.3.1. The subsequent Building Code section, 3202, provides the maximum projection into the public right of way depending on the type of encroachment. Baltimore City Building Code 3202.1 (Below Grade); Baltimore City Building Code 3202.2 (Above Grade no more than eight feet); Baltimore City Building Code 3202.3 (Above Grade more than eight feet). The Law Department’s understanding is that this encroachment will be more than eight feet above the ground, making the maximum projection four feet into the Right of Way. This ordinance, which would permit the encroachment to be no more than three feet, complies with Section 3202.3 of the Building Code.

The Law Department can approve this bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Matthew Stegman, Mayor’s Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalá, Chief Solicitor  
Ashlea Brown, Assistant Solicitor