

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, City Solicitor
101 City Hall
Baltimore, Maryland 21202

June 6, 2018

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 18-0223 – Equity Assessment Program

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0223 for form and legal sufficiency.

Details of the Bill

The bill would add Subtitle 39 to Article 1 of the City Code to create an Equity Assessment Program. The bill defines “Equity Assessment” as a systematic process that “identifies policies and practices that may be implemented to identify and redress disparate outcomes on the basis of race, gender or income.” The Director of the City’s Department of Planning, with approval of the Planning Commission, is to develop, adopt and oversee the program, including rules or regulations to carry it out. Any time that the Planning Commission adopts or amends the Equity Assistance Program or any rule or regulation about it, the Planning Commission is to give the City Council at least five days’ notice. Each year, the Planning Director must conduct an equity assessment on the proposed capital budget and prepare an annual report on the entire Equity Assessment Program that must address specific topics.

Under the program, each unit of City government is to identify an equity coordinator that will manage that entity’s participation in the program, conduct an equity assessment of existing and proposed practices and policies and develop and implement a plan to address any disparate outcomes. When reporting to the City Council on any bill or resolution, any unit of City government must “include in that report the results of an equity assessment of the proposal’s impact on its operations.”

Program in General is Permissible

The creation of an equity assessment program is permissible under the broad police powers given to the Mayor and City Council to secure health and general welfare. City Charter, Art. II, §§(27), (47). It is like the equity requirements proposed by House Bill 1623 and Senate Bill 929, which were introduced in the 2018 General Assembly Session but did not pass. Those bills would have required a similar equity lens analysis from five state agencies: Education, Health, Housing and Community Development, Human Service and Public Safety and Correctional Services. The Fiscal and Policy Notes for the bills detailed the large financial and manpower strain that these bills would have had on state agencies.

Perhaps aware of the fiscal strain that comes with implementing an equity program, Montgomery County recently adopted Resolution 18-0195, which pledged additional revenue to the County's upcoming budget for its Office of Legislative Oversight to develop a baseline report on current disparities in Montgomery County by June of 2019. The County apparently felt that such a baseline was needed even though it already had the Urban Institute's four-year study of Racial Inequities in Montgomery County. After the baseline study is complete in June of 2019, "the Council will introduce legislation for the County to develop an equity policy framework to inform the delivery of all County services." Montg. Co. Res. 18-1095, p. 2.

Similarly, on April 19, 2017, Takoma Park, Maryland adopted Resolution No. 2017-28 that resolved, "that the City Council of the City of Takoma Park commits itself to systematically and deliberately applying a racial equity lens in its decision-making henceforth." On its website, Takoma park references studies by the Government Alliance on Race and Equity, the Aspen Institute, and the Annie E. Casey Foundation as resources that presumably will inform its decisions going forward.

Legal Issue with Planning Department as City-wide Coordinator

Although the concept in general is a permissible exercise of the Mayor and City Council's police and general welfare power, City Council Bill 18-0223 suffers from an important legal impairment: the Planning Department, headed by the Planning Commission, has no legal authority under the City's Charter to oversee or implement this type of program for all of City government. City Charter, Art. VII, §70, *et. seq.* Rather, the Charter makes clear that Planning is to study land uses, development, subdivisions, zoning, urban renewal, and adopt a master plan and a capital budget. City Charter, Art. VII, §72. The Charter is the "instrument which establishes the agencies of local government and provides for the allocation of powers among them." *Cheeks v. Cedlair Corp.*, 287 Md. 595, 606-07 (1980) (citation omitted). In Maryland, a local government's "charter is thus a permanent document intended to provide a broad organizational framework establishing the form and structure of government in pursuance of which the political subdivision is to be governed and local laws enacted." *Cheeks*, 287 Md. at 261. Local laws must respect a charter as "the organic, the fundamental law, establishing basic

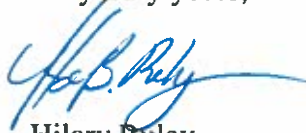
principles governing relationships between the government and the people, and among the various governmental branches and bodies.” *Id.* These powers in the Charter cannot be modified by ordinance of the City Council. City Charter, Art. III, §11.

Certainly, Planning can continue with its Equity in Planning Committee (EIPC) that promotes the use of equity policies in planning decisions. *See* Baltimore City Department of Planning, *Equity In Planning Committee* (visited June 6, 2018) <<https://planning.baltimorecity.gov/equity-planning-committee>>. The Department of Planning can also be required in this bill, as any other city entity, to evaluate equity in its own operations, or functions, including the annual capital budget over which it has control. City Charter, Art. VII, §72.

The bill must be modified to remove the Department of Planning and the Planning Commission as the oversight and implementation body for this program for the entire City government. Under the City’s Charter, the Mayor has the executive power to oversee government entities. City Charter, Art. IV, §4(b)(“The Mayor shall be the chief executive officer of the City, shall see that ordinances and resolutions are duly and faithfully executed, and shall have general supervision over all municipal officers and agencies.”). One way to accomplish this needed change is to amend the bill to make each equity coordinator responsible for the equity program in its agency and for submitting a yearly report. Amendments to accomplish this are attached.

With the suggested amendments or similar amendments that remove the Planning Department as City’s coordinator for this program, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor’s Office of Government Relations
Kyron Banks, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Avery Aisenstark

AMENDMENTS TO COUNCIL BILL 18-0223
(1st Reader Copy)

Proposed by: Law Dep't
(To be offered to the Judiciary and Legislative Investigations Committee)

Amendment No. 1:

On page 1, in line 4, strike “, to be developed and overseen by the Department of Planning”; and in lines 7 and 8 strike “providing for the adoption of rules and regulations to carry out this Program;”; and in line 8 strike “notices and”.

Amendment No. 2:

On page 1, in line 13, strike “12” and substitute “6”.

Amendment No. 3:

On page 2, delete lines 8-10, and in lines 11 and 15, strike “(D)”, “(E)”, respectively, and substitute “(C)”, “(D)”.

Amendment No. 4:

On page 2, delete lines 21 to 28.

Amendment No. 5:

On page 2, in line 29, strike “6” and substitute “2”; and in line 30, strike “THE DIRECTOR, WITH THE APPROVAL OF THE PLANNING COMMISSION,” and substitute “EACH CITY AGENCY” and in line 31, strike “CITY AGENCIES” and substitute “IT”.

On page 3 in lines 8 and 10, strike “CITY” and substitute “ITS”.

Amendment No. 6:

On page 3, delete lines 12 through 17.

Amendment No. 7:

On page 3, in line 18, strike “8” and substitute “3”; and in the same line, strike “IN GENERAL.” and substitute “EQUITY COORDINATOR.”; and in lines 19 and 20, strike “THE PROGRAM SHALL

REQUIRE” and “IN COOPERATION WITH THE DIRECTOR, TO:” and substitute “SHALL”; and in line 21 delete “(1)”; and in line 22 delete “;” and substitute (“.”); and delete lines 23 through 27.

Amendment No. 8:

On page 3, in lines 28 and 32, strike “(9)”, “(10)”, respectively, and substitute “(4)”, “(5)”.

Amendment No. 9:

On page 3, in line 33, after “DIRECTOR”, insert “OF PLANNING”.

Amendment No. 10:

On page 4, in line 1, strike “11” and substitute “6”; in line 3, strike “THE DIRECTOR” and substitute “EACH CITY AGENCY”; and in line 9, strike “AGENCY” and substitute “ITS”; and in line 11, insert “ITS” before “EXISTING”; and in line 11 strike “CITY”.

**CITY OF BALTIMORE
COUNCIL BILL 18-0223
(First Reader)**

Introduced by: Councilmembers Scott, Sneed, Henry, President Young, Councilmembers Dorsey, Bullock, Burnett, Pinkett, Schleifer, Cohen, Middleton, Reisinger, Stokes, Clarke, Costello

Introduced and read first time: April 16, 2018

Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Baltimore Development Corporation, Office of the Comptroller, Department of Finance, Department of General Services, Department of Housing and Community Development, Department of Human Resources, Department of Planning, Department of Public Works, Department of Recreation and Parks, Department of Transportation, Fire Department, Health Department, Mayor's Office of Employment Development, Mayor's Office of Human Services, Mayor's Office of Information Technology, Police Department, Board of Ethics, Baltimore Municipal and Zoning Appeals, Commission for Historical and Architectural Preservation, Commission on Sustainability, Employees' Retirement System, Environmental Control Board, Fire and Police Employees' Retirement System, Labor Commissioner, Baltimore City Parking Authority Board, Wage Commission

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Equity Assessment Program**

3 FOR the purpose of providing for the implementation of an Equity Assessment Program for
4 Baltimore City, ~~to be developed and overseen by the Department of Planning~~; requiring City
5 agencies to assess existing and proposed policies and practices for disparate outcomes based
6 on race, gender, or income and to proactively develop policies, practices, and investments to
7 prevent and redress those disparate outcomes; defining certain terms; ~~providing for the~~
8 adoption of rules and regulations to carry out this Program; requiring certain ~~notices and~~
9 reports; and generally relating to the goal of eliminating structural and institutional racism
10 and other forms of discrimination based on immutable characteristics.

11 BY adding

12 Article 1 - Mayor, City Council, and Executive Agencies
13 Section(s) 39-1 to 39-12 ~~6~~, to be under the new subtitle designation,
14 "Subtitle 39. Equity Assessment Program"
15 Baltimore City Code
16 (Edition 2000)

17 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
18 Laws of Baltimore City read as follows:

19 **Baltimore City Code**

20 **Article 1. Mayor, City Council, and Executive Agencies**

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 SUBTITLE 39. EQUITY ASSESSMENT PROGRAM

2 § 39-1. DEFINITIONS.

3 (A) *IN GENERAL.*

4 IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

5 (B) *AGENCY.*

6 "AGENCY" MEANS ANY DEPARTMENT, AUTHORITY, OFFICE, BOARD, COMMISSION,
7 COUNCIL, COMMITTEE, OR OTHER UNIT OF THE CITY GOVERNMENT.

8 ~~(C) *DIRECTOR.*~~

9 ~~"DIRECTOR" MEANS THE DIRECTOR OF THE BALTIMORE CITY DEPARTMENT OF PLANNING~~
10 ~~OR THAT DIRECTOR'S DESIGNEE.~~

11 (D) *EQUITY ASSESSMENT.*

12 "EQUITY ASSESSMENT" MEANS A SYSTEMATIC PROCESS OF IDENTIFYING POLICIES AND
13 PRACTICES THAT MAY BE IMPLEMENTED TO IDENTIFY AND REDRESS DISPARATE OUTCOMES
14 ON THE BASIS OF RACE, GENDER, OR INCOME.

15 (E) *GENDER.*

16 "GENDER" MEANS ACTUAL OR PERCEIVED SEX AND INCLUDES A PERSON'S GENDER
17 IDENTITY, SELF-IMAGE, APPEARANCE, BEHAVIOR, OR EXPRESSION, WHETHER OR NOT THAT
18 GENDER IDENTITY, SELF-IMAGE, APPEARANCE, BEHAVIOR, OR EXPRESSION IS DIFFERENT
19 FROM THAT TRADITIONALLY ASSOCIATED WITH THE SEX ASSIGNED TO THAT PERSON AT
20 BIRTH.

21 ~~§ 39-2. RULES AND REGULATIONS.~~

22 ~~(A) *IN GENERAL.*~~

23 ~~THE DIRECTOR, WITH THE APPROVAL OF THE PLANNING COMMISSION, MAY ADOPT RULES~~
24 ~~AND REGULATIONS TO CARRY OUT THIS SUBTITLE.~~

25 ~~(B) *FILING WITH LEGISLATIVE REFERENCE.*~~

26 ~~A COPY OF ALL RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF~~
27 ~~LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.~~

28 ~~§§ 39-3 TO 39-5. [RESERVED]~~

29 § 39-62. PROGRAM INITIATED.

30 ~~THE DIRECTOR, WITH THE APPROVAL OF THE PLANNING COMMISSION, EACH CITY AGENCY~~
SHALL DEVELOP,
31 ADOPT, AND OVERSEE AN EQUITY ASSESSMENT PROGRAM THAT REQUIRES CITY AGENCIES ~~IT~~ TO:

Council Bill 18-0223

(1) PROACTIVELY DEVELOP POLICIES, PRACTICES, AND STRATEGIC INVESTMENTS TO REVERSE DISPARITY TRENDS BASED ON RACE, GENDER, OR INCOME;

(2) ACT TO ELIMINATE STRUCTURAL AND INSTITUTIONAL RACISM AND DISCRIMINATION OF ALL KINDS BASED ON IMMUTABLE CHARACTERISTICS TO ENSURE THAT OUTCOMES AND OPPORTUNITIES FOR ALL PEOPLE ARE NO LONGER PREDICABLE BASED ON THOSE CHARACTERISTICS;

(3) DEVELOP AND IMPLEMENT AN EQUITY ACTION PLAN TO INCORPORATE AND EMBED EQUITY PRINCIPLES AND STRATEGIES INTO CITY ITS OPERATIONS, PROGRAMS, SERVICES, AND POLICIES; AND

(4) CONDUCT EQUITY ASSESSMENTS OF ITS EXISTING AND PROPOSED CITY ACTIONS AND POLICIES.

~~§ 39-7. NOTICE OF PLANNING COMMISSION MEETINGS.~~

~~THE PLANNING COMMISSION SHALL GIVE TO EACH MEMBER OF THE CITY COUNCIL AT LEAST 5 DAYS WRITTEN NOTICE OF ANY COMMISSION MEETING AT WHICH THE COMMISSION PROPOSES TO CONSIDER APPROVING:~~

~~(1) THE ADOPTION OF OR AMENDMENT TO THE EQUITY ASSESSMENT PROGRAM; OR~~

~~(2) ANY RULE OR REGULATION ADOPTED OR AMENDED UNDER THIS SUBTITLE.~~

§ 39-83. AGENCY IMPLEMENTATION – IN GENERAL EQUITY COORDINATOR.

~~THE PROGRAM SHALL REQUIRE EACH CITY AGENCY, IN COOPERATION WITH THE DIRECTOR,~~
~~TO: SHALL~~

~~(1) IDENTIFY AN EQUITY COORDINATOR WHO WILL BE RESPONSIBLE FOR MANAGING THAT AGENCY'S PARTICIPATION IN THE EQUITY ASSESSMENT PROGRAM;~~

~~(2) CONDUCT EQUITY ASSESSMENTS OF THE AGENCY'S EXISTING AND PROPOSED PRACTICES AND POLICIES; AND~~

~~(3) DEVELOP AND IMPLEMENT A PLAN TO ADDRESS ANY DISPARATE OUTCOMES BASED ON RACE, GENDER, OR INCOME THAT HAVE BEEN IDENTIFIED BY THE AGENCY'S ASSESSMENTS.~~

§ 39-94. AGENCY IMPLANTATION – BILL REPORTS.

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.

§ 39-105. AGENCY IMPLEMENTATION – CAPITAL BUDGET SCORING.

THE DIRECTOR OF PLANNING SHALL CONDUCT AN EQUITY ASSESSMENT ON ANY PROPOSED CAPITAL BUDGET AND SCORE THE PROPOSED PROJECTS BASED ON THAT ASSESSMENT.

Council Bill 18-0223

1 **§ 39-116. ANNUAL EQUITY REPORT.**

2 (A) *IN GENERAL*

3 ON OR BEFORE JUNE 30 OF EACH YEAR, ~~THE DIRECTOR~~ EACH CITY AGENCY SHALL PREPARE AND
SUBMIT TO
4 THE MAYOR AND THE CITY COUNCIL AN ANNUAL EQUITY REPORT.

5 (B) *CONTENTS.*

6 THE REPORT SHALL INCLUDE:

7 (1) AN ASSESSMENT OF PROGRESS TOWARDS ACHIEVEMENT OF THE GOALS OF THE
8 EQUITY ASSESSMENT PROGRAM;

9 (2) AN ASSESSMENT OF THE CURRENT SCOPE OF AGENCY ITS COMPLIANCE;

10 (3) A DISCUSSION OF ANY DISPARATE OUTCOMES IDENTIFIED THROUGH EQUITY
11 ASSESSMENTS OF ITS EXISTING ~~CITY~~ POLICIES OR PROCEDURES;

12 (4) RECOMMENDED STEPS TO ADDRESS THE IDENTIFIED DISPARATE OUTCOMES; AND

13 (5) AN UPDATE ON PROGRESS TOWARDS ELIMINATING PREVIOUSLY IDENTIFIED
14 DISPARITIES AND IMPLEMENTING ACTIONS RECOMMENDED IN PAST REPORTS.

15 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
16 are not law and may not be considered to have been enacted as a part of this or any prior
17 Ordinance.

18 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
19 after the date it is enacted.