
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
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November 28, 2023

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: Mayor and City Council Resolution 23-0444 – Charter Amendment – Inner Harbor Park

Dear President and City Council Members:

The Law Department has reviewed Mayor and City Council Resolution 23-0444 for form and legal sufficiency. Under Article XI-A, Section 5 of the Maryland Constitution, a resolution, such as Mayor and City Council Resolution 23-0444, is an appropriate method of initiating an amendment to the Baltimore City Charter. If enacted, the Resolution would be placed on the ballot at the City's next election and would take effect thirty days after being approved by the voters. Md. Const., Art. XI-A, § 5.

The Resolution seeks to modify Section 9 of Article I of the City's Charter that dedicates Inner Harbor Park area as a public park. Currently, that Section permits eating places and commercial uses in not more than 3.2 acres of the Inner Harbor Park area. This amendment would include multi-family dwellings and off-street parking to the eating and commercial uses and increase the area in which they are permitted from 3.2 to 4.5 acres.

However, neither multi-family dwellings nor off-street parking are recreational uses that are available to the public. *See, e.g., Green v. Garrett*, 192 Md. 52, 62-63 (1949). The state's highest court recognized that professional baseball games that can be attended by the public are a "use for the benefit of the public." *Id. (citing Cleary v. Philadelphia*, 166 A. 237, 238 (1933) (held that because a public hall could be rented it did not deprive the public of all use of the building)). Like a professional baseball use, which is available to the public for a fee, businesses and eateries are also generally open to the public. Thus, those uses can be part of an area dedicated to all and generally used for recreation. In contrast, the multi-family dwellings and attached parking will never be open to the public. Thus, they cannot be characterized as park land or dedicated to public purposes.

Moreover, municipal land in Maryland dedicated for park purposes is characterized differently for purposes of tort law and governmental immunity. *See, e.g., Mayor and City Council of Baltimore City v. Blueford*, 173 Md. 267, 272 (1937). Characterizing land that is used for exclusive private purposes as park land would run contrary to the long-standing principles in

Maryland that “the maintenance of a public park is a governmental function.” *Id.* In analyzing whether a public pool with an entry fee could be part of park property, the court in *Blueford* held that when “the act in question is sanctioned by legislative authority, is solely for the public benefit, with no profit or emolument inuring to the municipality, and tends to benefit the public health and promote the welfare of the whole public, and has in it no element of private interest, it is governmental in its nature.” *Id.* at 275-76. The Court reasoned that a pool was still a “public convenience” and the same rules for tort liability in public parks carry to public pools. *Id.* at 274. The same reasoning could not be applied to a park that also has exclusive private uses that are not for public convenience. Characterizing land with both private and public uses as dedicated for a governmental park purpose could jeopardize the characterization of the entire park area. *See also, Rios v. Montgomery County*, 386 Md. 104, 128 (2005) and cases cited therein.

Therefore, this Mayor and City Council Resolution should be amended to excise from the dedicated park land that part of the area that will be used for non-public purposes; namely the multi-family dwellings and parking. A suggested amendment to effectuate this change is attached to this report.

Subject to the required amendment, the Law Department can approve the Resolution for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Ebony M. Thompson, Acting City Solicitor
Nina Themelis, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
Jeffery Hochstetler, Chief Solicitor
Teresa Cummings, Assistant Solicitor
Michelle Toth, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 23-0379
(1st Reader Copy)

Proposed by: Law Dep't

Amendment No. 1: Remove areas that will not be dedicated to the public

On page 2, in line 6, after "Field" insert, "BUT NOT INCLUDE THOSE AREAS USED AS MULTI-FAMILY DWELLINGS AND OFF-STREET PARKING;"; and on that same page in lines 7 and 8, delete all the brackets; and in lines 7 and 8 delete "MULTI-FAMILY DWELLINGS, AND OFF-STREET PARKING" and delete "4.5"; and on the same page in line 8, substitute the correct amount of acreage less than 3.2 acres that removes the areas dedicated for the multi-family dwellings and off-street parking area for "3.2".