

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

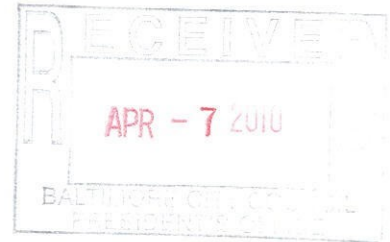


DEPARTMENT OF LAW

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

April 7, 2010

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 10-0436 – BMore Streets for People Program -
Establishment

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 10-0436 for form and legal sufficiency. This bill seeks to add a new subtitle 15 to City Code Article 31–Transit and Traffic. The new subtitle would create the BMore Streets for People Program (the “Program”) consisting of an Advisory Board that would advise the Department of Transportation (“DOT”) on the creation of schedules and routes of streets to be closed temporarily to vehicle traffic in order to allow for pedestrians and bicycle riding.

The bill should be clear that streets are not being closed as that term is used under section 116 of Article VII of the City Charter because that process requires the Department of General Services (“DGS”) to draft an ordinance to close the streets under Section 3 of Article 26 of the City Code. The bill should be amended to clarify that the program seeks to temporarily close streets to vehicle traffic.

There is already a process by which streets can be temporarily closed pursuant to a permit obtained from DGS under Section 50-31 of Article 19 of the City Code. This permit process functions as a centralized control, evaluating parking, notice and police requirements incident to street closures. The permit also generates the requisite revenue needed to support the closure of the street. To avoid liability that could result from decentralizing this process, including lack of adequate police support and potential conflicts as to events and locations, the Law Department recommends that Section 15-9 of the bill be amended to clarify that a DGS permit is still required for any street closure. Thus, the Advisory Board should advise DGS as well as DOT concerning suitable routes and schedules. The Law Department also recommends that one of the Advisory Board members be the Director of DGS.

The bill also needs to be amended so that the Advisory Board membership conforms with the requirements in sections 6(a) and 8 of Article IV of the City Charter, which gives the Mayor the sole power of appointment of municipal officers, including those on boards, and requires that at least two members the board (in any board comprising more than 5 members) be a registered

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voter of the minority political party. By allowing the City Council President to appoint members of the Advisory Board, the bill infringes on the Charter power of the Mayor to make these appointments. The bill can be amended to state that City Council President shall recommend to the Mayor a certain number members for this Advisory Board. Additionally, the requirement that the Advisory Board members be appointed “without regard to political affiliation” violates section 8 of Article IV of the City Charter. The bill must be amended to comply with these requirements in the Charter.

The bill should also be amended to change the wording in lines 9-10 on page 4 because it is impossible for board members to be from associations representing neighborhoods along Program routes before those routes have been recommended by the Advisory Board. Additionally, the wording in lines 12 and 13 of page 6 should be changed to “the Chair must recommend for appointment by the Mayor, a replacement member with similar qualifications to the resigning member.” Inherent in that definition is that the replacement member will be recommended by the same group as the departing member.

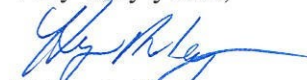
Sections 15-18(H) and 15-21 must be removed as outside of the scope of the power of an advisory board to “remove impediments” or to compel the extension of all “services and facilities” needed to serve the Program.

Section 15-16 can be removed in its entirety as it is not needed in the bill to allow an Advisory Board to engage volunteers. Similarly, the phrase “it considers necessary and proper” can be removed from line 24 on page 7 as surplusage.

Finally, additional clarification of some language is recommended to reflect the advisory role of the Board. In Section 15-18(C), line 2 on page 7 should be changed from “propose solutions” to “make recommendations.” Also, in Section 15-18(F)(1), lines 21 to 23 on page 7, should be changed from “advise and counsel” to “provide education to.”

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

Very truly yours,



Hilary Ruley
Assistant Solicitor

- cc: The Honorable Councilmember Mary Pat Clarke, 14th District
George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor
Ashlea Brown, Special Assistant Solicitor
Terese Brown, Assistant Solicitor