

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

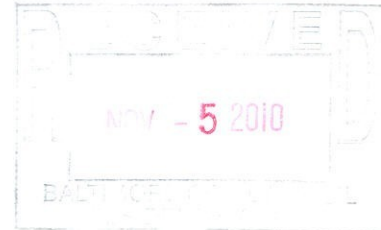


DEPARTMENT OF LAW

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

November 5, 2010

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



Re: Baltimore City Council Bill 10-0494 – Urban Renewal – Annapolis Road  
– Renewal Area Designation and Renewal Plan

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 10-0494, as well as the amendments recommended by the Planning Commission, for form and legal sufficiency. City Council Bill 10-0494 establishes the Annapolis Road Urban Renewal Area (the “UR”) under the authority granted by Article 13, Subtitle 2 of the Baltimore City Code. *See* City Code, Art. 13, §2-4(a)(2). The bill meets the requirements in Section 2-5 of Article 13 governing the contents of UR bills, including the requirement that any zoning changes contemplated by the UR be approved by a separate zoning ordinance. *See* City Code, Art. 13, §2-5(b)(4).

However, the requirement that all temporary signs not listed in the UR be authorized by the Department of Housing and Community Development (“HCD”) and be displayed for no more than thirty days, is problematic under the First Amendment for two reasons. *See* page 8, lines 4-7. First, HCD would be able to deny authorization for a sign based on its content. *See Dimmitt v. City of Clearwater*, 985 F.2d 1565, 1569 (11<sup>th</sup> Cir. 1993)(held city ordinance not content-neutral because it allowed some types of displays but not others). Content based restrictions are valid only if the City can show a compelling government interest, such as aesthetic or safety regulations. *Curry v. Prince George’s County*, 33 F.Supp.2d 447, 452 (D. Md. 1999). It would be difficult to articulate a compelling interest if the same sign is permissible if made permanent, but requires authorization for temporary display. *See, e.g., Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)(“Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.”)(cited with approval in *American Legion Post 7 of Durham, N.C. v. City of Durham*, 239 F.3d 601, 610 (4<sup>th</sup> Cir. 2001)).

Second, any restriction on temporary signs must leave open ample alternative channels to communicate the same information. *See Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)(reasonable time, place and manner restrictions must be content-neutral and leave open ample channels for communication); accord *National Federation of the Blind v. FTC*,

420 F.3d 331, 350 (4<sup>th</sup> Cir. 2005); *Curry*, 33 F.Supp.2d at 454 (suggesting difficulty in justifying durational bans on signs, regardless of content). As written the bill would prohibit signs, even if approved by HCD, from being displayed for more than 30 days unless they are displayed permanently. Coupled with lines 3-4 on page 10 that contemplate review of sign color and materials, the bill may not leave open ample alternative channels to communicate the same information; particularly where the sign, such as a campaign sign, is not designed by the property owner.

For these reasons, the Law Department recommends deleting lines 4 through 7 on page 8. Subject to the suggested amendment, the Law Department approves Council Bill 10-0494 and Planning's amendments thereto for form and legal sufficiency.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hilary Ruley". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Hilary Ruley  
Assistant Solicitor

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