

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

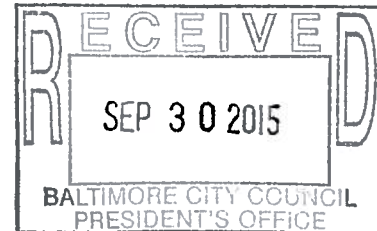


DEPARTMENT OF LAW

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

September 29, 2015

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 15-0260R – Investigative Hearing – Reviewing Charter
Required Agency Audits

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 15-0260R for form and legal sufficiency. This resolution calls on representatives of applicable departments to appear before the Council to discuss the requirement of certain agency audits as provided by the new Section 4.5 in Article VII of the City Charter, which was created by City Council Bill 12-0053 (Ordinance 12-0009) and thereafter voted upon in the November 2012 general election.

The Third Reader version of City Council Bill 12-0053 provided the text of the amendment to the Charter. It stated that at least once during every four year term of the Mayor and City Council, beginning in January of 2014, thirteen specific agencies (“principal agencies”) had to “arrange for an audit of its operations.” Charter, Art. VII, §4.5(a), (b). The term audit is defined as including both a financial audit and a performance audit. Charter, Art. VII, §4.5(a)(2). The audit must be performed by either the City Auditor or “an independent certified public accountant or firm of certified public accountants” and must be done in accordance with generally accepted accounting principles. Charter, Art. VII, §§4.5(a)(2)(i); 4.5(c). It is silent on how an agency is to arrange for the audit except that it requires the agency to include the cost of the audit in its budget for the year in which it is to be conducted. Charter, Art. VII, §4.5(d).

Since “Charters are subject to the ‘same canons of statutory construction that apply to the interpretation of statutes’” and those rules of construction require that “all parts are to be reconciled and harmonized if possible,” the City’s Charter must be read to give general power over auditing to the City Auditor, except in the case of these quadrennial audits of principal agencies, which are to be conducted as provided in Section 4.5 of Article IV. See Charter, Art. V, §§7-10; see e.g., *Foster v. Office of Public Defender*, 426 Md. 565, 570 (2012) (“the rule of statutory construction that when two statutes appear in conflict, the more specific statute serves as an exception to the more general one”); *WFS Financial, Inc. v. Mayor and City Council of Baltimore*, 402 Md. 1, 15 (2007); *Mayor & City Council v. Bunting*, 168 Md. App. 134, 141 (2006) (citations omitted). Thus, wherever Section 4.5 of Article VII is silent on how something

Fw/ comm

is to be done, the rest of the provisions in the City's Charter (or other applicable law) will govern. The Charter is silent on the consequences for failure to complete the audits by a time certain. Absent a specific remedy, enforcement may be possible through a mandamus action. *See, e.g., Ipes v. Board of Fire Commissioners of Baltimore*, 224 Md. 180 (1961). A Court has discretion to decide if mandamus is appropriate, which in this instance may turn on the length and reasons for the delay. *See, e.g., Baltimore City Dept. of Social Services v. Hayward*, 426 Md. 638, 646-47 (2012).

Since a resolution of the City Council is typically used to address matters of concern to the City or policy matters that impact the City, City Council Bill 15-0260R is the appropriate manner in which to discuss this topic. *McQuillin, Municipal Corporations*, §§15.01 *et seq.*; *see also Inlet Assocs. v. Assateague House Condominium*, 313 Md. 413, 428 (1988).

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Victor Tervala, Chief Solicitor
Jennifer Landis, Assistant Solicitor