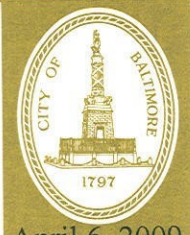


CITY OF BALTIMORE

SHEILA DIXON, Mayor

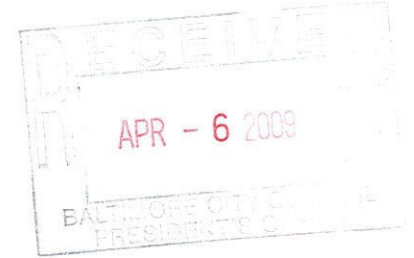


DEPARTMENT OF LAW

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

April 6, 2009

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 09-0278 – Urban Renewal – Reisterstown Plaza Transit Station – Renewal Area Designation and Renewal Plan

Dear Madame President and City Council Members:

The Law Department has reviewed City Council Bill 09-0278 for form and legal sufficiency. The bill would repeal the existing Reisterstown Plaza Urban Renewal Plan and replace it with a designation as a “Renewal Area” and establish a Renewal Plan for the area. The bill is generally consistent with Section 2-6, Article 13 of the Baltimore City Code, which governs City Renewal Plans.

The Law Department recommends deleting the “Homes for the rehabilitation of non-bedridden alcoholics and for the care and custody of homeless persons” language on page 7 in lines 21-23, in order to avoid a possible violation of the Federal Americans with Disabilities Act. *See, e.g., MX Group, Inc. v. City of Covington*, 293 F.3d 326, 342 (6th Cir. 2002); *Start, Inc. v. Baltimore County, Md.*, 295 F.Supp.2d 569 (D.Md. 2003).

Additionally, it is a violation of the First Amendment to prohibit temporary signs in their entirety, as this bill does on page 17, line 17. Although this is a content-neutral restriction, by banning all temporary signs, the restriction would likely be seen as not leaving 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); *see also Baldwin v. Redwood City*, 540 F.2d 1360, 1372 (9<sup>th</sup> Cir. 1976)(held total prohibition on temporary signs unconstitutional violation of First Amendment right to free speech); *Curry v. Prince George’s County*, 33 F.Supp.2d 447, 454 (D. Md. 1999)(suggesting difficulty in justify durational bans on signs, regardless of content).

Similarly, the restriction that flags and banners may only be used for grand opening events is likely a violation of the First Amendment because it is not content-neutral, in that it allows some commercial speech but prohibits other types of speech. *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 flags but not others). Content based restrictions are valid only

F/A

if the City can show a compelling government interest. *Curry*, 33 F.Supp.2d at 452. Here, there is doubt as to a compelling government interest, such as visual clutter or traffic safety, when flags can be flown temporarily for a commercial purpose, i.e. "Grand Opening" flags, but cannot be flown permanently for non-commercial purpose, such as the American Flag. *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)). Therefore, the Law Department recommends removing these restrictions.

An appropriate amendment to effectuate these changes is attached. Subject to the suggested amendment, the Law Department approves Council Bill 09-0278 for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Assistant Solicitor

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

CITY OF BALTIMORE  
COUNCIL BILL 09-0278  
(First Amendment)

On page 7, delete beginning with line 21, “nonprofit homes for” through line 23 “homeless persons.”

On page 17, delete lines 16 and 17.