

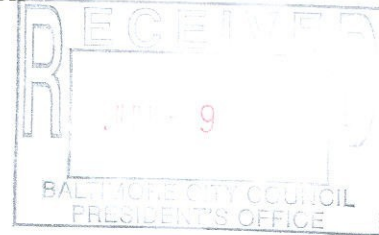
MEMORANDUM

TO: Honorable President and Members of the City Council  
Attention: Karen Randle, Executive Secretary

FROM: M. J. Brodie, President *M. J. Brodie*

DATE: June 7, 2011

SUBJECT: City Council Bill 11-0693  
Living Wages – Limited Exemption from Overtime Requirements for Workers  
Receiving Commissions



Baltimore Development Corporation (BDC), for itself and on behalf of the Baltimore Hotel Corporation, is responding to City Council Bill 11-0693. This bill modifies the City's Living Wage Ordinance to pay overtime (at 1½ times the regular hourly rate for hours worked in excess of 8 hours per day or 40 hours in any work week) to a certain class of employees in retail or service establishments where more than half of the employee's compensation is paid from commissions.

While it is not obvious from reading Bill 11-0693, its purpose is to modify the City's Living Wage requirements for banquet servers at the City-owned Hilton Baltimore Convention Center Hotel. Under Ordinance 05-128, approved in September 2005, the Council required that the convention center hotel would comply with the City's Living Wage Ordinance. As with other City contracts, this mandated that all hourly non-exempt employees would be paid no less than the approved Living Wage hourly rate (currently \$10.59 per hour); and that the hotel would pay 1½ times the employee's hourly rate for all hours that exceed eight (8) hours per day or forty (40) hours per week. The Hilton Baltimore has complied with the Living Wage since its opening on August 22, 2008.

In 2005, Hilton Hotels Corporation executed a neutrality agreement with Local 7, the Hotel Employees and Restaurant Employees Union. The Hilton employees held a successful card check in early 2009; Hilton and the Union have been negotiating a collective bargaining agreement (CBA) to cover approximately 250 hourly non-exempt employees.

Part of the CBA negotiations has focused on the Union's request to allocate a portion of the service charge revenue earned by the hotel to banquet servers. This type of compensation can be found at other union hotels in the United States; it has been made possible because the hotel industry enjoys an exemption under Federal labor law from paying overtime to employees who earn more than 50% of their wages from service charge commissions. The issue at the convention center hotel is that the hotel must comply with the City's Living Wage Ordinance, which has no exemption from overtime.

Bill 11-0693 raises three important issues. First, after discussions with the Wage Commission, BDC is unaware of any other circumstances where the City has agreed to narrow or eliminate the protections workers enjoy under the Living Wage ordinance. Bill 11-0693 impacts not only 73 banquet servers at the Hilton Baltimore; it has the potential to affect any workers under City contracts where

*unfair*



service charges or commissions are earned in the normal course of business (for example, the Baltimore Convention Center).

Second, the beneficiaries of Bill 11-0693 is limited to 73 banquets servers at the hotel. All other hourly hotel employees (approximately 275 people) and all other workers under city contracts who are not eligible to earn service charges or commissions will receive no benefit from the bill.

Finally, BDC cannot discuss the thirty- three months since the hotel opened without addressing the recession and its impact on the national, regional and local economy. Historically, Baltimore hotels had fared better than hotels in most cities in economic downturns; this was certainly the case following the "9/11" economic downturn. The 757-room Hilton Baltimore opened three weeks before the financial meltdown; the recession has resulted in a significant decline in occupancy and room rates in downtown Baltimore.

Despite the economic downturn, we are pleased to report that we have maintained sufficient cash flow to pay all hotel operating expenses and debt service payments. Since the bond closing on February 8, 2006, the Hotel Corporation has used only hotel bond proceeds or hotel revenues to pay hotel expenses and debt service. Since March 1, 2009 when we used the last of the pre-opening and capitalized interest funds from the initial bond offering (exactly as those funds were scheduled to be used), every dollar of hotel expenses and debt service has been paid from hotel revenues. The Trustee has the original \$22 Million in operating or debt service reserves funded in February 2006. The Hotel Corporation has not used any of those reserves to pay the hotel expenses or the bond debt service. The Hotel Corporation has never drawn on the Site-specific or City-wide hotel occupancy tax pledges (HOT) to pay the bond debt service.

We believe that this Bill, if approved, will negatively impact the hotel cash flow necessary to pay operating expenses and the bond debt service. Any shortfall in paying the bond debt service could place the hotel at risk of drawing on its bond reserves and/or the City HOT pledges to make up the shortfall.

For all the reasons stated above, we oppose passage of City Council Bill 11-0693.

cc: Kalliope Parthemos  
Angela Gibson



**City Council Bill 11-0693**  
**Living Wage – Limited Exemptions from**  
**Overtime Requirements for Workers**  
**Receiving Commissions**  
**Economic Impact Analysis**  
**Hilton Baltimore Convention Center Hotel**

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## **Bill Overview**

- City Council Ordinance 05-0128 binds the Hilton Baltimore to comply with the City's Living Wage Ordinance
  - Pay no less than Living Wage hourly rate (currently 10.59 per hour).
  - Pay 1 ½ times the employee's hourly rate for all hours worked over 8 hours per day or 40 hours per week
- Hilton Baltimore has complied with the Living Wage since its opening (August 22, 2008).
- City Council Bill #11-0693 will remove the overtime requirement for banquet staff (73 workers out of approximately 350 employees in the bargaining unit) in order to permit 70% of Banquet Service Charge Revenue earned by the Hotel to be shared among the 73 banquet staff employees.



### *Key Issues*

- In 2009 – 2010, the Hotel has achieved “breakeven”, that is, we are paying all expenses and the bond debt service without drawing on City’s hotel occupancy tax (HOT) pledges. While the Hotel is steadily showing revenue improvement, it has not reached stabilization (as projected in 2005) as a result of the recession.
- Distributing 70% of the Banquet Service Charge Revenue to Banquet Servers:
  - Will negatively impact the hotel cash flow to pay debt service and increase the risk of drawing on City’s HOT pledge.
  - As the hotel revenue increases in future years, hotels profits (which are distributed 100% to the City’s General Fund) will be decreased.
  - Will not increase employment at the hotel; the bill only shifts income to a select group of employees.



**Impact to 2010 Hotel Performance if the 70% Banquet Service Charge Revenue Distribution had been in effect**

Banquet Service Charge Revenue Earned by Hotel	\$1,941,203
Amount of Service Charge Revenue Distributed @ 70%*	\$1,780,083
Payroll Offset (Exemption from Overtime Requirement)	(\$650,000)
<b>Total 2010 Impact of Service Charge Distribution</b>	<b>\$1,130,083</b>

\* Includes 31% Payroll Tax & Employee Benefits on the 70% revenue distribution.

The proposed bill would reduce 2010 Net Operating Income by an estimated \$1.13 million, 7.1% of the Net Operating Income for 2010. See Page 5.



	2010 under 70% Banquet Service Charge Distribution		2010 Actual		Variance
	62.5%		62.5%		
	Amount (\$000)	Percent	Amount (\$000)	Percent	
Avg Occupancy					0.0%
Avg Daily Rate	\$174.83		\$174.83		\$0.00
RevPAR	\$109.22		\$109.22		\$0.00
<b>Revenue</b>					
Rooms	\$30,177,481	62.4%	\$30,177,481	62.4%	\$0
Food & Beverage	17,075,071	35.3%	17,075,071	35.3%	\$0
Telephone	780,552	1.6%	780,552	1.6%	\$0
Other	<u>360,401</u>	<u>0.7%</u>	<u>360,401</u>	<u>0.7%</u>	\$0
<b>Total Revenue</b>	<b>\$48,393,505</b>	<b>100.0%</b>	<b>\$48,393,505</b>	<b>100.0%</b>	<b>\$0</b>
<b>Departmental Profits</b>					
Rooms	\$22,701,018	75.2%	\$22,701,018	75.2%	\$0
Food & Beverage	<b>4,627,225</b>	<b>27.1%</b>	<b>5,757,308</b>	<b>33.7%</b>	<b>(\$1,130,083)</b>
Telephone	434,428	55.7%	434,428	55.7%	\$0
Other	<u>360,401</u>	<u>100.0%</u>	<u>360,401</u>	<u>100.0%</u>	\$0
<b>Total Departmental Profits</b>	<b>\$28,123,072</b>	<b>58.1%</b>	<b>\$29,253,155</b>	<b>60.4%</b>	<b>(\$1,130,083)</b>
Total Undistributed Expenses	\$11,666,876	24.1%	\$11,666,876	24.1%	\$0
<b>House Profit</b>	<b>\$16,456,196</b>	<b>34.0%</b>	<b>\$17,586,279</b>	<b>36.3%</b>	<b>(\$1,130,083)</b>
Total Fixed Charges	\$1,696,670	3.5%	\$1,696,670	3.5%	\$0
<b>NET OPERATING INCOME</b>	<b>\$14,759,526</b>	<b>30.5%</b>	<b>\$15,805,457</b>	<b>32.7%</b>	<b>(\$1,045,931)</b>



*How could the Hotel have offset the loss of the \$1.13 Billion in revenue in 2010?*

<b>Additional Room Nights Necessary to Offset Lost Revenue</b>	
Projected Loss of Hotel Income	\$1,130,083
Room Nights Needed to Offset Proposed Distribution	6,991
Impact to Annual Hotel Occupancy %	2.5%

An additional 2.5% increase in hotel occupancy would have been necessary to achieve the same net operating income in 2010. The hotel could not have achieved this.



**Impact to 2011 Hotel Performance if the 70% Banquet Service Charge Revenue Distribution is in effect**

Banquet Service Charge Revenue Earned by Hotel	\$2,143,683
Service Charge Distributed to Banquet Servers @ 70%*	\$1,965,757
Payroll Offset (Exemption from Overtime Requirement)	(\$740,000)
<b>Total 2011 Impact of Service Charge Distribution</b>	<b>\$1,225,757</b>

\* Includes 31% Payroll Tax & Employee Benefits on the 70% revenue distribution.

Payout potential to staff continues to grow as Occupancy increases. This is driven by the F&B contribution by the group room nights.



**2011 Hilton Baltimore Average Hourly Wage Scale Analysis**

	<b>April 2011 Wage Scale</b>	<b>Union Proposal</b>
<b>Banquet Servers</b>	\$15.26	\$25.00-\$26.00
Engineer	\$16.26 - \$18.26	\$16.78-\$18.78
Room Attendant	\$10.59	\$11.11
Cook/Kitchen Staff	\$10.59 - \$13.51	\$10.58-\$14.03

Average hourly wages for banquet staff would increase +\$10/hour, or + 65%, while tipped and non-tipped hourly wages would increase \$0.52 and \$0.58, respectively.