

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

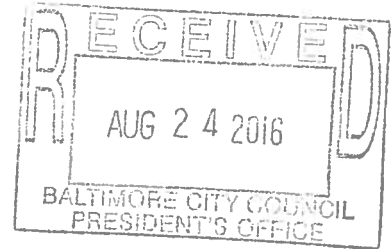


DEPARTMENT OF LAW

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

August 24, 2016

The Honorable President and Members  
of the Baltimore City Council  
Attn: Natawna Austin, Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202



Re: City Council Bill 16-0700 –Payment in Lieu of Taxes - Ward 07,  
Section 04, Block 1567, Lot 51A and Ward 07, Section 03, Block  
1586, Lot 2, “Eager Square”

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 16-0700 for form and legal sufficiency. The bill authorizes an economic development project to be known as “Eager Square”, in order that the Board of Estimates of Baltimore City may enter into a Payment in Lieu of Taxes Agreement with Eager Place, LLC, a Maryland limited liability company, its successors or assigns, for a project, the details of which are outlined in the bill.

Payments in lieu of taxes agreements (“PILOTS”) are permitted under State law only if a project can be classified as an “economic development project” under § 7-504.3(a) of the Tax-Property Article of the Annotated Code of Maryland. In that subsection, six different types of projects are deemed economic development projects. None of them, however, appears to match the bill’s project description.

The bill’s Recitals describe the project as involving the construction of approximately 246 residential market rate apartments and townhomes; 3,485 square feet of street retail; 152 on-site parking spaces; and related improvements or amenities. As complete as this description might be for purposes of generally introducing the project’s general characteristics, it simply falls short of allowing us to determine whether the proposed project can be classified as an economic development project under § 7-504.3(a). More specific information is needed.

We note that the bill tells us in Section 1 that the project is in accordance with § 7-504.3(a)(2)(ii)(6) of the Tax-Property Article. In other words, we are meant to believe that of the six types of economic development projects approved for PILOT programs, the proposed project is, in fact, one of the six: a type of project described in § 7-

*Fav w/ Amend*



504.3(a)(2)(ii)(6). That subsection describes “a mixed-use facility that contains one or more of the facilities described in items 1 through 5 of this item, at least one of which satisfies the minimum criteria set forth in item 1, 2, 3, 4, or 5 of this item.” We point out, however, that a claim that the project satisfies this subsection does not allow any conclusion that the subsection actually does satisfy it unless something in the bill tells us which of the five items (1, 2, 3, 4, or 5) the project satisfies and in what way its minimum criteria are satisfied, as required by § 7-504.3(a)(2)(ii)(6).

For the above reasons, if this bill is to be declared legally sufficient, it would require an amendment to the Recitals. The Recitals should provide more specific information as to how the proposed project can be classified as a § 7-504.3(a)(2)(ii)(6) project. For example, if the developer intends that the project satisfy the minimum criteria in § 7-504.3(a)(2)(ii)(4), the Recitals should say something to the effect that the project includes “a multifamily residential facility that has a private capital investment of equity and debt combined in excess of \$5,000,000” - a description that comports with the language of the subsection. In any event, the bill’s description of the project should leave no doubt that it can be legitimately classified as an economic development project under State law and hence, eligible for a PILOT.

A second legal concern is raised by omissions in the language of Section 1. As drafted, this section declares, “That subject to the conditions specified in this Resolution, the Project is authorized for purposes of allowing the Board to enter into a PILOT Agreement...” Section 1, Council Bill 16-0700. It is important to recognize in the bill, however, that in order for any resulting PILOT to be lawful, the City and the developer are required to meet a host of prior conditions specified in the relevant State law, conditions which are beyond those specified in this Resolution. For example, in addition to having this Resolution adopted on its behalf, the City or its designated agency must produce an economic analysis for the Board of Estimates. MD Tax Property § 7-504.3(b)(1)(i). That economic analysis must demonstrate, to the satisfaction of the BOE, the existence of a long and specific set of facts. *Id.* Thereafter, an agreement between the BOE and the owner or owners of the economic development project may enter into a payment in lieu of taxes agreement. MD Tax Property § 7-504.3(b)(3).

If this bill is to be declared legally sufficient, it should be amended to expressly recognize the need to satisfy all of the State requirements attendant to PILOT programs. As drafted, the bill today merely recognizes some of them. Accordingly, on page 2, line 12 after the word “Resolution” add: “and upon the satisfaction of the requirements of § 7-504.3 of the Tax-Property Article of the Annotated Code of Maryland” (or words to this effect).

Assuming these amendments are made, the Law Department will approve the bill for form and legal sufficiency.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victor K. Terval". The signature is fluid and cursive, with a long horizontal stroke at the end.

Victor K. Terval  
Chief Solicitor

cc: George Nilson, City Solicitor  
Angela C. Gibson, Mayor's Legislative Liaison  
Elena DiPietro, Chief, Opinions & Advice  
Hilary Ruley, Chief Solicitor  
Jennifer Landis, Assistant Solicitor