

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

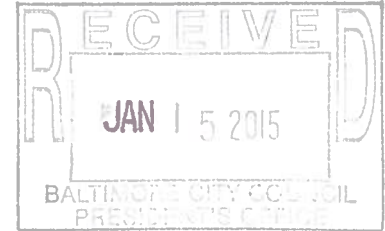


DEPARTMENT OF LAW

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

January 15, 2015

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



For w/ Amendment

Re: City Council Bill 14-0449 – Urban Renewal – Coldspring Neighborhood
Development Program – Amendment _

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 14-0449 for form and legal sufficiency. The bill would amend the Urban Renewal Plan for the Coldspring Neighborhood Development Program by deleting an existing land use and adding a new land use to the Plan. The bill establishes design standards for the new land use, removes certain language from a development objective, deletes the acquisition and clearance provisions from the Plan, and deletes a certain exhibit from the Plan. It also waives certain content and procedural requirements, makes provisions of this Ordinance severable and provides for the application of this Ordinance in conjunction with certain other ordinances. The bill provides for an immediate effective date.

The Law Department's initial concern with this bill is its establishment of certain standards applicable to an "area designated on the General Land Use Plan as transit oriented development." See Council Bill 14-0449, page 2, lines 38-39. Yet, no such area is designated in any existing exhibit. Without an exhibit or a written description of the boundaries of the affected area, the bill cannot be approved as legally sufficient as it would be "void for vagueness." *Bowers v. State*, 283 Md. 115, 121 (1978) ("A statute may ... be stricken for vagueness if it fails to provide legally fixed standards and adequate guidelines for police, judicial officers, triers of fact and others whose obligation it is to enforce [and] apply" it.)

We note, however, that the Planning Department's report to the Planning Commission on the bill recommends certain amendments, including updating exhibits showing the transit oriented development area. The area is further outlined in a companion rezoning bill, Council Bill 14-0456. Thus, if the City Council approves this bill with the relevant recommendations of the Planning Department, the bill will provide adequate guidelines for the application and enforcement of the law.

A second concern with the bill is its prohibition on locating Homes for the Rehabilitation of Non-Bed Ridden Alcoholics in the transit oriented development area. See Council Bill 14-

0449, page 3, lines 14-15. This provision will violate the Americans with Disabilities Act (ADA) unless the City can support the prohibition with a substantial health and safety reason. The ADA prohibits the City from discriminating against persons with disabilities in its zoning laws and decisions. See *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 44-46 (2nd Cir. 1997); *A Helping Hand, L.L.C. v. Baltimore County*, 2005 U.S. Dist. LEXIS 22196 *60 (D. Md. Sept. 30, 2005). In fact, Baltimore City has recently been challenged with respect to its use of zoning legislation in a manner that alleges discrimination against recovering alcoholics and substance abusers. See *U.S. v. City of Baltimore*, 845 F.Supp2d 640 (2012). Accordingly, this language will need deletion from the final bill before the Law Department can approve it for legal sufficiency.

A third area of concern is the fact that this bill is a companion bill to Council Bill 14-0456, which seeks to rezone property from the M-1-1 Zoning District to the B-2-3 Zoning District. The transit oriented development discussed in the present bill, Council Bill 14-0449, is dependent on B-2 zoning. As long as the area in question remains M-1, the Urban Renewal Plan presented in Council Bill 14-0449 will be ineffective. Thus, Council Bill 14-0449 cannot be adopted unless and until Council Bill 14-0456 is adopted. The Law Department therefore recommends that the two companion bills move together through the Second and Third Reader process and be signed by the Mayor on the same date, if these bills are to move forward at all.

In conclusion, Council Bill 14-0449 presents several problems, all of which can be overcome. First, the City Council will need to amend the exhibits as discussed in the Planning Department's recommendations. Second, the City Council needs to strike the prohibition on locating Homes for the Rehabilitation of Non-Bed Ridden Alcoholics in the transit oriented development area. Third, Council Bill 14-0449 and Council Bill 14-0456 should be adopted together or not at all.

If the above recommendations are followed, the Law Department will approve the bill for form and legal sufficiency.

Very truly yours,



Victor K. Tervala
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