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| **CITY OF BALTIMORE****BRANDON M. SCOTT,****Mayor** |  | **DEPARTMENT OF LAW****Ebony M. Thompson,** **Acting City Solicitor100 N. Holliday Street** **Suite 101, City HallBaltimore, MD 21202** |

January 23, 2023

Honorable President

Members of the City Council

c/o Natawna Austin, Executive Secretary

409 City Hall

Baltimore, MD 21202

RE: City Council Bill 22-0254 - Office of Aging - Independent Agency

Dear President and Members

 You have requested the advice of the Law Department regarding City Council Bill 22-00254. City Council Bill 22-0254 creates the Office of Aging (“Office”) and provides for the administration of the Office.

 Section 1(a) of Article VII of the Baltimore City Charter provides that “the executive power of the City is vested in the Mayor, the departments, commissions and boards provided for in this article and the special officers, departments, commissions and boards that may be created by law.” Charter, Art. VII, §1(a). Section 2(a) of Article VII allows for ordinances to give additional duties to “a department, officer, commission, board or other municipal agency” so long as those duties are “consistent with the Charter and subject to the supervision of a superior municipal officer or agency.” Clearly, these Charter provisions give the City Council the power by ordinance to create a department or office.

 In addition, under Art. IV, Sec. 4 the Mayor is deemed the “chief executive officer of the City [and] shall see that ordinances and resolutions are duly and faithfully executed, and shall have general supervision over all municipal officers and agencies” and “subject to more specific provisions of the Charter, the Mayor shall have general responsibility for the economic development of the City.” This gives the Mayor’s Office the ability to provide for certain programs subject to the Charter/s grants of power to departments.

 With respect to the legislative authority of the City Council, the Md. Constitution, Art. XI, Sec. 3 provides that “from and after the adoption of a charter by the City of Baltimore, or any County of this State, as hereinbefore provided, the Mayor of Baltimore and City Council of the City of Baltimore or the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said City or County including the power to repeal or amend local laws of said City or County enacted by the General Assembly, upon all matters covered by the express powers granted ….”

 From these provisions, it can be gleaned that a department, board or commission may be created by laws other than the Charter but in order for the City Council to do this by ordinance, the power to provide for the purpose of the office must also be within the express powers of the Mayor and City Council granted to it by the General Assembly or granted by public general law. There is no specific authority in the City’s Express Powers i.e. Art. II of the Charter or in public general law to provide for the purpose of the Office which is to advise the Mayor and City Council on issues relating to the needs of Baltimore aging population. However, the Charter does grant to the MCCB to have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City. See Art. II, Sec.27 and the power to pass any ordinance not inconsistent with the provisions of the Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, was well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City…” See Art. II. Sec 47. Providing for an office to provide for the needs of the City’s aging population is within the scope of these powers.

 The Law Department has one concern regarding the Commission on Aging. The Bill calls for a 24- member commission with a broad variety of people. Th City Council should be aware that it cannot compel representatives of private entities to serve.

 Based on the foregoing analysis, this bill is consistent with the Charter authority of the City Council. The Law Department can, therefore, approve the bill for form and legal sufficiency. Please do not hesitate to contact me if you have any questions.

 Sincerely yours,

 

 Elena R. DiPietro

 Chief Solicitor

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