
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW

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April 28, 2023

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

Re: City Council Bill 23-0372 – CitiStat – Establishment and Administration

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 23-0372 for form and legal sufficiency. It would create a new office of Citistat.

An ordinance can establish a new City office. Charter, Art. VII, § 1(a). However, it cannot give duties or powers to that office that conflict with the Charter in general, or its hierarchical oversight structure:

Consistent with the Charter, and subject to the supervision of a superior municipal officer or agency, a department, officer, commission, board or other municipal agency provided for in the Charter shall perform additional duties and possess additional powers, as may be prescribed by ordinance.

Charter, Art. VII, § 2(a); Charter, Art. III, § 11. Therefore, several amendments are needed to conform language in the bill to the requirements of the Charter. Specifically, CitiStat cannot supervise or implement programs in other agencies, boards or commissions as that is the Charter-given function of the Mayor as Chief Executive Officer. Charter, Art. IV, § 4(b). It is the Mayor's role to oversee the executive branch entities and to determine their priorities and performance. An amendment to conform the bill's language to the relevant Charter provisions is attached.

Nor can an ordinance allow the City Administrator to give duties to a City office or agency since that conflicts with the Charter requirement that it be an ordinance that prescribe "additional duties" or grant "additional powers." Charter, Art. VII, § 2(a). Of course, the City Administrator can always supervise CitiStat in the execution of its given duties and powers. *Id.* An amendment to conform the bill's language to the Charter is attached.

The Charter also provides that the Mayor and City Council of Baltimore is one legal entity. City Charter, Art. 1, § 1. As such, there is no mechanism for a legal entity to agree with itself in a "Performance Management Agreement." This makes sense because City entities could not decide to self-supervise via an agreement, as that would conflict with the Mayor's power as Chief Executive. City Charter, Art. IV, § 4; Art. VII, § 1(b). The language in the bill could be changed

to reflect a general performance management plan that is not an agreement; however, that would overlap with some of the existing bill language. An amendment to conform the bill's language to the Charter is attached. Alternatively, the bill could rework this concept.

The Maryland Public Information Act governs what information, including data and documents, can be shared between record custodians within the same government. Md. Code, Gen. Prov., §§ 4-101(b); 4-102; *Montgomery County v. Shropshire*, 420 Md. 362, 365 (2011) (disclosure of records between government agencies in the same government are subject to the PIA). State law, therefore, dictates what information can be shared between agencies and what information can be published. Local governments in Maryland have no power to make laws that conflict with this State framework. 86 Md. Op. Ag. 94, 107 (2001). Alternatively, the bill could rework the references to the publishing and sharing data to reflect that it be done in accordance with applicable state and federal laws. That would make clear that the bill does not provide additional authority for sharing or publication beyond what is allowed by those laws. A possible amendment to conform the bill language to this State law is attached.

Federal and State preemption would prevent a City law from attempting to require meetings with those other governments. US Constit., Amd. X; Md. Constitution, Art. XI-A, § 3. Nor could the City require a meeting with a private entity, as the City's only power to enforce ordinances is through fines up to \$1,000, misdemeanors generally enforced by the State's Attorney's Office, or other enforcement powers specifically authorized by State law. City Charter, Art. II, § (48); *see also McCrory Corp. v. Fowler*, 319 Md. 12, 20 (1990). The appropriate amendments are attached to this report.

Finally, it is worth noting that the Baltimore Police Department ("BPD") is listed as a principal agency. Since BPD is a City entity but the City's express powers prevent enacting a law that conflicts with the Police Commissioner's current powers, the requirements in this ordinance *may* create a conflict in practice. City Charter, Art. II, § (27); Baltimore City Public Local Law, § 16-1, *et. seq.* However, since no conflict is apparent by virtue of the language of the bill alone, no amendment is needed.

Subject to the requisite amendments, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Ebony Thompson, Acting City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
Jeffrey Hochstetler, Chief Solicitor
Teresa Cummings, Assistant Solicitor

D'reka Bolden, Assistant Solicitor
Michelle Toth, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 23-0372
(1st Reader Copy)

Proposed by: Law Dep't

Amendment No. 1: Conform to Executive Powers and Duties in Charter

On page 5, in lines 20 and 21, replace “ENSURE THAT” with “ESTABLISH”; and on the same page, in lines 25 replace “ENSURE THAT” with “ASSIST IN PUBLISHING”; on page 6 in lines 11 and 27 delete “AND IMPLEMENT”.

Amendment No. 2: Conform to Charter Requirement that Ordinance must give additional Duties

On page 5, delete lines 32 and 33; on page 6 delete lines 30 and 31.

Amendment No. 3: Conform to Charter recognition of One Legal Entity

On page 2, delete line 23; on page 3, delete lines 19-22; on page 5, delete lines 16-19 and in that same page on lines 21 and 22, replace “ESTABLISHED IN PERFORMANCE MANAGEMENT AGREEMENTS ARE” with “THAT CAN BE”; on page 6, delete line 26.

Amendment No. 4: Conform to Maryland Public Information Act

On page 5, in line 26, delete “ARE SHARED”; and on the same page, delete lines 27 through 29; and on page 6 in lines 13 and 16, delete “AND DISTRIBUTE”; and on that same page at the end of line 29, insert “AS ALLOWED BY APPLICABLE LAWS”.

Amendment No. 5: Remove Language Preempted by Federal and State laws and exceeding Charter authority

On page 5, delete lines 30 through 31.