

CITY OF BALTIMORE
STEPHANIE RAWLINGS-BLAKE, Mayor



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

October 23, 2014

The Honorable President and
Members of the Baltimore
City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall
Baltimore, MD 21202

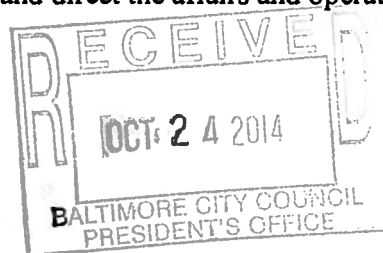
RE: City Council Bill 14-0443 – Police Equipment-Audio-Video Recording Devices

Dear President and Members:

You have requested the Law Department to review and provide a report on City Council Bill 14-0443. Bill 443 proposes to require all police officers to be personally equipped with digital audio-visual recording devices.

Subtitle 16 of the Public Local Law of Baltimore City establishes the Baltimore City Police Department and its powers and duties. The Public Local Laws of Baltimore City are enacted by the General Assembly of the State of Maryland. Section 16-2 states that the Police Department of Baltimore City is established as an agency and instrumentality of the State of Maryland. Section 16-4 states, in general, that the affairs and operations of the department shall be supervised and directed by the commissioner of police and Section 16-7 gives the Commissioner all the powers, rights and privileges attending the responsibility of management, and may exercise the same, where appropriate, by rule, regulation, order or other departmental directive. Section 16-7(12) further provides that the Police Commissioner has the power to “acquire, hold, control and maintain all property, equipment, facilities and premises necessary to the operation of the Department, and to dispose of those in the manner as may be authorized by law.”

Article II, Section 27 of the City Charter states that although the City is vested with police power to the same extent as the State, no ordinance of the City or act of a municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner. Clearly, City Council Bill 14-0443 conflicts with the powers of the Police Commissioner under Sections 16-4 and 16-7(12) to supervise and direct the affairs and operation of the Department



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and to acquire, hold, control and maintain all equipment and is therefore outside the scope of the City Council's authority.¹ The City Council can, however, have some influence on Police Department policy by virtue of its role in enacting the ordinance of estimates and supplementary appropriation bills.

Numerous court decisions have also recognized the nature of the relationship between the City government and the police department, noting that as a result of the removal by State law of the police department from the City's control, the "City was denied, in the most positive manner, any right to interfere with or control" the police. *Mayor and City Council of Baltimore v. Clark*, 404 Md.13 (2008) quoting *Upshur v. Mayor and City Council of Baltimore*, 94 Md. 743 (1902). See also *Baltimore Police Department v. Cherkes*, 140 Md. App 282 (2001) and; *Adams v. Baltimore Transit Co.* 203 Md. 295 (1953).

The advantages of the Mayor and City Council's legal relationship with the Police Department are readily apparent. It prevents legislation that is not consistent with proven crime fighting policy and that could be influenced by factors unrelated to proven crime fighting policy. For example, the City Council could decide that the police should abandon all helicopter patrols in favor of increased motorcycle patrols in spite of evidence that helicopters are essential tools for urban police departments and are more effective tools than motorcycles. The City Council might try to direct that a certain number of officers be transferred to foot patrol within three month. Such a move gives the Commissioner no ability to direct law enforcement resources in appropriate forms to areas in need at that time because a law requires a certain percentage of officers be tied up in foot patrols. Finally, the City Council may want to realign police districts to reflect councilmanic districts or some other alignment not related to Police internal policy. This could result in great expense to reposition facilities and cause a depletion of resources in one area and an overabundance of resources in another that has no basis in the actual needs of the community.²

Over the years, the City Council has recognized the nature of the Police Commissioner's authority and has used resolutions to express its desire for the Police Department to act on a specific matter. See City Council Res. 12-0054R (calling on representatives from the Police

¹ The Law Department concludes that the bill is outside the scope of the City Council's authority. Accordingly, this report will not analyze whether the devices contemplated by the bill could legally record oral communications under Maryland and federal wiretap and electronic surveillance law. See Md. Ann. Code, Cts. and Jud. Proc. Art., §10-402 and 18 U.S.C.A. §2510 et seq.

² The Mayor is constrained by the same legal principles that preclude passage of City Council bill 14-0443. The Mayor's ability to influence Police policy is focused on and limited to her role in appointing or removing the Commissioner and her role in the ordinance of estimates.

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Department to appear before the Council to discuss the problem of racial profiling); City Council Res. 12-0015R(requesting the Baltimore City Police Department to implement systems that allow citizens to report minor crimes, commend an officer and initiate a complaint against an officer on its website in order to provide a greater level of service and transparency to the Citizens of Baltimore); City Council Res. 09-0118R(requesting the Commissioner of Police to investigate the efficacy of instituting a citywide text messaging system to alert residents about criminal activity in a timely manner and to determine what crimes should be included in a citywide alert).

A resolution enables the Commissioner to assess the request of the City Council and its impact on the Department's resources and existing initiatives and strategies without being compelled to act at a specified time or in a specified manner. This ultimately leads to more efficient operations of the department and prevents interruption of important initiatives by City Council actions that may be related to a specific incident but do not consider comprehensive strategies already in place to deal with the problem on a larger scale.

Accordingly, because City Council Bill 14-0443 is not within the scope of the City Council's legislative authority, the Law Department cannot approve City Council Bill 14-0443 for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Chief Solicitor

cc: George A. Nilson, City Solicitor
Angela Gibson, Mayor's Liaison to the City Council
Hilary Ruley, Chief Solicitor
Victor Tervalo, Chief Solicitor
Jennifer Landis, Assistant Solicitor