

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

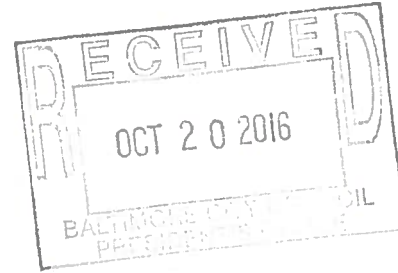


DEPARTMENT OF LAW

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

October 20, 2016

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



Re: Transform – People’s Counsel

Dear Mr. President and City Council Members:

The following are the Law Department’s concerns with what we think are the proposed People’s Counsel amendments. Comments are based on text, not reduced to Transform amendments, of a 2009 City Council bill that was not enacted:

1. No actual amendments were ever submitted to the Committee so, at this point there is nothing for the Committee to vote on. A passing reference to a bill introduced in 2009 was made at a Transform hearing but the content was not discussed. Using the bill as the amendment is problematic as it refers to amending Art. 1 of the Code not the Zoning Code and references the current Zoning Code not Transform. If amendments are submitted at a voting session, they would not have been the subject of a public hearing.
2. State law controls who may appeal a decision of the BMZA. Land Use Art. Sec. 10-405 states that (a) An appeal to the Board may be filed by: a person aggrieved by a decision of the administrative officer or unit; or (2) an officer or unit of Baltimore City affected by a decision of the administrative officer or unit.
Sec. 10-501 states that (a) A request for judicial review by the Circuit Court for Baltimore City may be filed by any person, taxpayer, or officer or unit of Baltimore City aggrieved by: (1) a decision of the Board; or(2) a zoning action by the City Council.

If the 2009 bill is the basis for the proposed amendment, there is nothing to establish the required aggrievement under State law.

3. The term “technical assistance” is not defined and is problematic if it includes legal advice.

4. City Council appoints the People's Counsel which conflicts with the Charter Art. IV, Sec. 6 which provides that the Mayor has the sole power of appointment of municipal officers.
5. Removal provision puts the City Council in a position of conflict as it would be voting to terminate an official that may be contesting one of its actions. This provision also conflicts with the power of the Mayor under Art. VI, Sec. 6.
6. The Peoples' Counsel is authorized to hire accountants experts and consultants but the records of the office would not be protected by the attorney-client privilege and could be subject to disclosure under the MPIA.
7. There is a provision stating that the People's Counsel does not represent the City, its agencies or any private party but states elsewhere that it provides "technical assistance to citizens and citizen organizations" and that "the People's Counsel may not assist or represent any person, other than as People's Counsel, in any matter involving land use in this state." If technical assistance includes legal advice, then the statute cannot disavow that legal advice has been provided and representation has occurred.
8. There is a provision that the People's Counsel is not subject to the authority for the City Solicitor. The Charter, however, would make it a client of the City Solicitor and provides that the City Solicitor shall have "general supervision and direction of the legal business of the City."
9. The People's Counsel is authorized to participate as a party in land use proceedings of the Planning Comm., the BMZA, the Zoning Administrator, CHAP and HCD. CHAP and HCD, however, do not conduct hearings pursuant to the Zoning Code so that is not proper material for the Zoning Code. In addition, the zoning administrator does not conduct "proceedings."
10. Provisions regarding "entry of appearance" and "notice" with respect to the zoning entities above are not consistent with the actual practices and regulations of those entities.
11. The People's Counsel is authorized to take administrative appeals or seek judicial review from decisions in proceedings but the Zoning Code does not authorize appeals in all such proceedings.
12. The People's Counsel is authorized to withdraw from a proceeding in which it has already participated. To the extent that it has acted to provide legal advice to a citizen or citizen group and therefore is acting as an attorney, such withdrawal could violate the Md. Rules 7-202 and 7-203.
13. The People's Counsel is not liable to any person for participating in or declining to participate in any proceeding. We do not believe that this provision can act to allow the People's Counsel to evade liability established under state law and the LGTCA.
14. Provision that requires the People's Counsel to inform recipients that providing technical assistance does not mean that it is acting as the recipient's attorney does not comport with Rules of Professional Responsibility if legal advice is provided.

These items are just a list of initial impressions of what we think may be the proposal for the People's Counsel. The Law Department, however, has not been provided with any official amendments and none where provided to the Committee during a hearing.

Sincerely,

Elena R. DiPietro

Elena R. DiPietro
Chief Solicitor

cc: David Ralph, Acting City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Victor Tervalo, Chief Solicitor
Hilary Ruley, Chief Solicitor
Jennifer Landis, Assistant Solicitor