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CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG,  
Mayor



DEPARTMENT OF LAW  
ANDRE M. DAVIS, CITY SOLICITOR  
100 N. HOLLIDAY STREET  
SUITE 101, CITY HALL  
BALTIMORE, MD 21202

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

September 13, 2019

Re: City Council Bill 19-0409 – Transparency and Oversight in Claims Litigation

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0409 for form and legal sufficiency. This bill requires the Baltimore City Department of Law to post on its website certain claims against Baltimore City regarding police misconduct and unlawful discrimination and to report to the City Council on certain litigation involving Baltimore City. The bill also prohibits the Baltimore City Department of Law from approving certain settlement agreements that require claimants to waive their rights with respect to making statements pertaining to the Mayor and City Council or its agencies, officials or employees or their claim or the terms of any settlement of that claim. The bill also prohibits the Board of Estimates from approving settlement agreements that contain such a waiver.

A charter form of government is viewed in law as a miniature state where “the council is its legislature [and] the charter is its constitution. The city charter represents the supreme law of the city, subject only to conflicting provisions in the state and federal constitutions, or to preemptive state or federal law.” 2A McQuillin Mun. Corp. § 9:3 (3<sup>rd</sup> ed.) “Unless additional powers are conferred by statute or by the state constitution, a municipal corporation created by charter derives all its powers from the charter.” 2A McQuillin Mun. Corp. § 9:3. “The charter supersedes all municipal laws, ordinances, rules or regulations that are inconsistent with its provisions.” *Id.* “In the event of an inconsistency between the provision in the Charter and any contrary [ordinance], the provision in the Charter would control....” *Swarthmore Co. v. Kaestner*, 258 Md. 517, 526–27 (1970). The Baltimore City Charter itself recognizes the supremacy of the City Charter over all municipal ordinances: “The Mayor and City Council of Baltimore shall have power to pass all ordinances, not inconsistent with the Charter.” City Charter, Art. III, §11.

These fundamental principles of law, when applied to the provisions of this bill, reveal that the bill impinges upon certain powers granted by the Charter. These provisions unequivocally conflict with the City Charter. First, Paragraph (A) of the bill forbids the Law Department from approving settlement agreements that do not contain certain listed terms. This conflicts with Section 24(c) of Article VII of the Charter, which requires that any “legal instruments involving the interest of the City” shall be “submitted to the City Solicitor and have endorsed upon them the

City Solicitor's opinion as to their legal sufficiency." Approval of such agreements and their terms is within the prerogative of the City Solicitor. An ordinance cannot direct the City Solicitor otherwise. Sec. 25(b)

Paragraph (B) of the bill violates Section 15 of Article VI of the City Charter: "No private claims against the City shall be paid nor shall any claims held by the City be compromised or released except in accordance with procedures established by the Board of Estimate" An ordinance that prevents the Board of Estimates from settling claims unless certain conditions are met impinges on the power granted to the Board to exercise that discretion. Furthermore, Paragraph (B) of Council Bill 19-0409 establishes procedures that the Board of Estimates must follow before paying a claim. This is in clear violation of, and therefore is plainly unenforceable under, Section 15 of Article VI of the City Charter.

Turning to Paragraph (C), there are several sections of the City Charter that are relevant. Section 24(a) of Article VII provides that the "City Solicitor shall be the legal adviser and representative of the City and its several departments, officers, commissions, boards and authorities, and shall have general supervision and direction of the legal business of the City." The provisions in Paragraph (C), that would prohibit the City Solicitor from enforcing a settlement agreement that he or she may conclude is lawful, stands in direct conflict to Charter provisions. The Charter says the Solicitor controls "the direction of [l]legal business of the City." Nothing in this or any other section of the City Charter provides authority for the Mayor and City Council, acting alone or jointly, to by ordinance or otherwise, direct the legal affairs of the City.

Next, Section 24(b) of Article VII states that the "City Solicitor shall have sole charge and direction of the preparation and trial of all suits, actions and proceedings of every kind to which the City, or any municipal officer or agency, shall be a party." This provision places the Solicitor in "in sole charge" of actions and proceedings of a legal nature that involve the City. Its language gives no room for the Mayor and City Council by ordinance to determine how actions and proceedings of a legal nature are to be handled by the City.

Additionally, Section 26 of Article VII of the City Charter speaks to another power of the City Solicitor which provides that the "City Solicitor shall have authority to institute, defend or discontinue on behalf of the City, any suit, action, or proceeding in any local, State or federal court or tribunal." In contrast to this delegation of power, Paragraph (C) of Council Bill 19-0409 would eliminate the ability of the Solicitor to "discontinue" a lawsuit, unless the discontinuance conforms to the provisions of § 5-5 of the proposed legislation. This is contrary to the plain language of the City Charter.

In addition to these conflicts with the Charter, the bill attempts to govern the terms of certain settlement agreements that may include not just the Mayor and City Council of Baltimore but also the Baltimore City Police Department ("BPD"), which is a separate legal entity. *See, e.g.,*

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*Clea v. Mayor of Baltimore*, 312 Md. 662, 668 (1988). Subtitle 16 of the Public Local Law for Baltimore City governs the Baltimore City Police Department. The Public Local Laws are enacted by the General Assembly and can only be modified by it. *Herman v. Mayor and City Council of Baltimore*, 189 Md. 191, 196 (1947)(public local laws are enacted by the state legislature and no

Baltimore City ordinance may conflict with them). The General Assembly has provided that the “The Police Department of Baltimore City is hereby constituted and established as an agency and instrumentality of the State of Maryland” and is directed in its affairs by the Police Commissioner. Baltimore City, Public Local Law, §§ 16-2, 16-4. As such, the General Assembly has explicitly stated that the Mayor and City Council may pass no law that conflicts with the power of the Baltimore Police Department. Charter, Art. II, § (27). The case law also makes this plain by clearly stating that “the General Assembly, and not the Baltimore City Council, has continued to be the legislative body enacting significant legislation governing the Baltimore City Police Department.” *Mayor and City Council of Baltimore v. Clark*, 404 Md. 13, 23-24 (2008).

Based on the foregoing analysis, the Law Department can not approve City Council Bill 19-0409 for form and legal sufficiency.

Sincerely,



Andre M. Davis

cc: Nicholas Blendy, Mayor’s Office of Government Relations  
Caylin Young, Council President’s Legislative Liaison  
Elena R. DiPietro, Chief Solicitor  
Victor Tervalá, Chief Solicitor  
Hilary Ruley, Chief Solicitor  
Ashlea Brown, Assistant Solicitor  
Natwana Austin  
Avery Aisenstark