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CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG  
Mayor



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November 15, 2019

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 19-0451 – Biennial Comprehensive Crime Reduction Plan

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0451 for form and legal sufficiency. The bill would legislate in an area over which the Mayor and City Council has not been given legislative authority. Article II of the City's Charter, which is enacted by the General Assembly, contains all the topics of permissible City legislation. *Kimball-Tyler Co. v. Baltimore*, 214 Md. 86, 94 (1957) (General Assembly gives the City its express powers). Section (27) of Article II allows the City to exercise police power, which courts have defined as "regulations necessary to preserve the public order, health, safety, or morals." *Tighe v. Osborne*, 149 Md. 349, 131 A. 801, 803 (1925). However, the Charter is clear that this power is not absolute, but that it is subject to other provisions of the Charter. Charter, Art. III, §11.

Section 2(a) of Article VII of the Charter 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." Charter, Art. VII, §2(a). Clearly absent from this Section is any ability of an ordinance to give additional duties to the Mayor's Office. This is no mere omission because the previous Section 1(a) of Article VII 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). The inclusion of the Mayor in Section 1 describing executive power but the exclusion of the Mayor in Section 2 describing the entities subject to direction by ordinance expresses the intent that no ordinance may direct the Mayor in his or her duties. *See, e.g., Friedman v. Hannan*, 412 Md. 328, 337 (2010) (courts begin "our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory"); *accord Hylton v. Mayor and City Council of Baltimore*, 268 Md. 266, 282 (1972) ("the maxim '*expressio unius est exclusio alterius*' . . . meaning that the expression of one thing implies the exclusion of another thing not mentioned, is not a rule of law, but merely an auxiliary rule of statutory construction"); *see also Mayor & City Council v. Bunting*, 168 Md. App. 134, 141 (2006) ("Charters are subject to the

'same canons of statutory construction that apply to the interpretation of statutes.'") (citations omitted). Therefore, there can be no ordinance that directs the operation of the Mayor's Office.

The bill could be amended to require the crime plan be created by some other entity that can be directed by ordinance. However, that duty cannot conflict with the Charter given responsibilities for the entity so directed. Charter, Art. VII, §2(a).

Additionally, page two of the bill must be amended to make it clear that the Mayor and City Council does not have the power to compel the cooperation or consultation of several of the government entities listed: The Baltimore City Police Department (PLL 16-2(a)), the Baltimore City Public School System (1997 Md. Laws, ch. 105), the Baltimore City State's Attorney's Office (Md. Constit., Art. V, §7), the Governor's Office of Crime Control and Prevention (Md. Constit, Art. II, §10), the Housing Authority of Baltimore City (Md. Code, Housing & Comm. Dev., §15-104 ) and the State Department of Juvenile Services (Md. Code, Human Serv., § 9-201). This can be done by removing them from the list on page 2 or changing the language in lines 7 and 8 on that page to be clear that the coordination is voluntary.

Finally, it is important to recognize that the Mayor and City Council cannot require that the crime plan be followed by the Police Commissioner. Charter, Art. II, § (27). The General Assembly has recently exercised its authority to direct the Commissioner to report yearly to the Mayor and City Council and to require the Commissioner create police districts based on the census. Public Local Law §§ 16-9; 16-55. As such, only the General Assembly can enact a law that directs the Police Commissioner with respect to a crime plan. *See, e.g., Allied Vending v. Bowie*, 332 Md. 279, 297 (1993).

The Law Department is happy to work with the Mayor and City Council to make the amendments to this bill, without which it cannot be approved for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Chief Solicitor

cc: Andre M. Davis, City Solicitor  
Matthew Stegman, Mayor's Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalá, Chief Solicitor  
Ashlea Brown, Assistant Solicitor