

---

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

---

January 10, 2020

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: City Council Bill 19-0382 – Charter Amendment – City Administrator

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0382 for form and legal sufficiency. The bill establishes the position of City Administrator as the Chief Administrative Officer of Baltimore City. It establishes how the City Administrator is appointed and removed and provides the powers and duties of the City Administrator. The bill requires the City Administrator to appoint a Deputy City Administrator and certain other staff and provides that the City Administrator may appoint and remove certain municipal officials. It also provides for submitting this amendment to the qualified voters of the City for adoption or rejection.

This bill as drafted is full of inconsistencies.

First, we note that the office of Mayor retains the responsibility for ensuring “that ordinances and resolutions are duly and faithfully executed.” CB 19-0382, page 3, lines 3-4. Yet the bill strips the office of the responsibility for supervising those who would perform the work that implement an ordinance or resolution – our municipal officers and agencies. Page 3, lines 4-5. Instead, the bill gives the responsibility for implementation to the new office of the City Administrator. Page 7, lines 16-17. The City Administrator is charged with administering day-to-day operations and with overseeing the delivery of municipal services.

If the Mayor is required to operate at arms-length from the personnel and agencies that actually deliver City services, we do not see how the Mayor would be able to ensure that “ordinances and resolutions are duly and faithfully executed.” Such assurances would be more reliably offered by the City Administrator.

Second, for similar reasons, it would be misleading to designate the Mayor as the City’s “Chief Executive Officer.” Page 3, lines 3-4. The Mayor is unable to personally direct or redirect resources or otherwise correct or adjust an agency’s operational components, even when the Mayor finds them unsound or wasteful of taxpayer dollars. Hands-on directing or redirecting of

operational resources appears to be securely in the hands of the City Administrator. The bill merely gives the Mayor supervisory control over the City Administrator. Page 7, lines 14-15.

Third, in performing this supervisory role, we note that if a Mayor is unhappy with how the City Administrator is performing the duties of office, the Mayor is permitted to remove the City Administrator. Page 6, lines 21-22. Yet the power to remove an unsatisfactory City Administrator is diminished by the additional requirement that a termination must meet with the City Council's approval. Page 6, lines 24-26. Under Council Bill 19-0382, a Mayor can threaten the City Administrator with termination but the bill provides no guarantees that an unhappy Mayor can actually remove an unsatisfactory officer.

Fourth, special note should be taken of the Mayor's ability to remove a City Administrator "without cause." Page 6, line 22. The use of this terminology typically signals that an officer – in this case a City Administrator – can be terminated for any reason or no reason at all. The City Administrator would be an "at-will employee" of the appointing authority - the Mayor. But since the City Council must assent to the termination, the City Administrator is effectively an at-will employee of the City Council, not the Mayor, because the City Council ultimately determines if a City Administrator is removable. This fact makes the inclusion of the phrase "without cause" superfluous. If the City Council can block the termination of a City Administrator, a Mayor cannot terminate the employee for any reason or for no reason but only for reasons that meet the Council's approval.

Turning to other matters, when two offices possess parallel or overlapping responsibilities it raises concerns about the overall functioning and accountability of both. In particular, note Section 139 of the bill, page 7, lines 1-12, which permits the City Administrator to hire employees and appoint a Deputy City Administrator. This function evidently is to be performed independently and will lie beyond the scope of mayoral supervision. The only restraint on the City Administrator's discretion in hiring staff is the annual budget appropriation process. Page 7, lines 3-4.

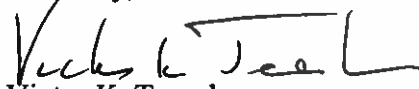
The largely unchecked ability of a City Administrator to grow the office raises concerns about the direction and size of its growth. Except for the annual appropriation ordinance, nothing prevents the City Administrator from duplicating functions now found in the Mayor's Office – or if not duplicating them in their entirety, then creating functions or hiring staff to rival them and, perhaps ultimately, call into question why those functions should remain housed in the Mayor's Office. Today, the Mayor's Office is comprised of 13 different entities or "offices." Most of them are intended to advise the Mayor about current government programs and operations and to suggest the means to improve them. Yet, when a City Administrator is the operational head of government, the City Administrator arguably has the same need for the advice and recommendations the Mayor currently receives. Unless there is a reasonable restraint on the creation of duplicative functions, their eventual emergence is likely, given the need attendant to both offices. The budgetary impact of such an emergence we leave to the Department of Finance to determine. We point out, however, that the potential for duplicative functions raises concerns about the potential for administrative confusion and the political in-fighting that could foreseeably result.

The above problems arise from creating a hybrid form of City government by trying to blend two distinct forms of government: a Council-Manager form with a Mayor-Council form. See, e.g., ICMA, *Forms of Local Government*, <https://icma.org/documents/forms-local-government-structure>. Either form is legally available, but if the Mayor is intended to be the City's Chief Executive Officer and not merely the ceremonial figure head of City government, as it would be in a Council-Manager form, that office must be empowered to oversee and direct City operations. In that event, the City Manager truly would work under the Mayor's supervision. Furthermore, if the Mayor is the Chief Executive Officer, there would be no grounds for allowing the City Administrator to independently hire additional staff because the work of the additional staff, like the work of the City Administrator, would be in support of the mayoral function.

The Law Department also points out that while the City Charter may lawfully require the appointment of a City Administrator, even when that office is not independent of the Mayor, the only reason to include one is if the City Administrator is to be truly independent of the Mayor. Today's City Charter provides sufficient power for the Mayor to appoint a City Administrator in the absence of a charter amendment, assuming the City Administrator is subordinate to the Mayor. On the other hand, the current City Charter does not contemplate an independent City Administrator. If the intent is to create one, a charter amendment is needed. In framing one, the Council-Manager form of government should be fully explored and embodied in a different bill where the disposition of the mayoral office becomes a live issue.

The Law Department cannot approve Council Bill 19-0382 for form and legal sufficiency as it is currently drafted.

Sincerely,



Victor K. Tervalo  
Chief Solicitor

cc: Andre M. Davis, City Solicitor  
Matt Stegman, Mayor's Legislative Liaison  
Caylin Young, President's Legislative Director  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Hilary Ruley, Chief Solicitor  
Ashlea Brown, Assistant Solicitor