
CITY OF BALTIMORE

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Mayor



DEPARTMENT OF LAW
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January 29, 2020

The Honorable President and Members
of the Baltimore City Council
c/o Natawna Austin, Executive Secretary
Room 409, City Hall
100 North Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 20-0486 – Private Security Camera System Rebate Program –
Establishment

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0486. This bill is for the purpose of establishing a Private Security Camera System Rebate Program. The Program would apply those owners who purchase a system on or after June 1, 2020 which has been registered with the Citiwatch Community Partnership and for which an application has been submitted to the Director of Finance. Applicant's will be entitled to a rebate of \$150,000 or the cost of their system whichever is less. Granting of rebates is subject to the availability of funds and to the priorities set forth in the bill. The bill requires the Director to prioritize rebates by giving priority to applicants who live or have a commercial establishment in areas with the highest incidents of violent crime and in areas where the median household income is the lowest. Whether the applicant has received a rebate for a prior year is also a factor. The bill requires an annual report by the Director and imposes criminal penalties for knowingly making a false statement on or in connection with an application for a rebate.

The Law Department has several suggested amendments which are necessary in order to approve the bill for form and legal sufficiency. The first set is necessary to guide the discretion of the Director if to avoid an unlawful delegation of legislative authority. In *Mugford v. City of Baltimore*, 185 Md. 266, 271, 44 A.2d 745 (1945) the Court of Appeals stated the "rule is plain and well established that legislative or discretionary powers or trust devolved by law or charter in a council or governing body cannot be delegated to others, but ministerial or administrative function may be delegated to subordinate officials." In the absence of express authorization to delegate a discretionary power, all such powers must be exercised by the council even though a ministerial or administrative function related to implementing a discretionary decision may be delegated to an agent. *City of Baltimore v. Wollman*, 123 Md. 310, 315, 91 A. 339 (1914).

Any delegation of legislative authority must contain sufficient guidelines to ensure that the officers carrying out the delegations will act in accordance with the legislative will, and not

employ their own unbounded discretion. *Hitchcock v. Galveston*, 96 U.S. 341, 6 Otto 341, 24 L. Ed. 659 (1877) (city council could delegate authority to chairman of "committee on streets and alleys" to contract for the construction of sidewalks, where the council specified materials to be used and preparatory work to be done); *Northern Central Railway Co. v. Mayor and City Council of Baltimore*, 21 Md. 93 (1864) ("eminently proper" for Mayor and City Council to delegate, by detailed and restrictive ordinances, administration of railroad construction in city).

When these legal principles are applied to this bill, there are several occasions where guidelines need to be provided to guide the discretion of the Director. First instance of this issue is in Sec. 14-5(a) (2), the language is not sufficient to guide the Director's decision-making. The language in (2) should be amended to read "The Director may adjust rebate amounts based on: (i) whether the property is located in an area with a high number of incidents of violent crime as determined in consultation with the Mayor's Office of Criminal Justice; (ii) whether the property is located in an area where the median household income is X% or lower of the average median income for the metropolitan region that encompasses Baltimore City, as published and annually updated by the United States Department of Housing and Urban Development and (iii) whether the applicant has received a rebate for any property under this subtitle from the City in prior years.

The second instance of a delegation issue is in Sec. 14-5(c). To ensure that the director discretion is guided by the will of the City Council (c)(1) should be amended to read "incidents of violent crime in the vicinity of an applicant's property with areas with the highest incidents of violent crime receiving the highest priority." 14-5(c)(2) should read "median household income in the vicinity of an applicant's property with areas with the lowest median income receiving the highest priority." In (3) for clarity, insert "under this subtitle" after "rebate."

There are also several other amendments needed to clarify language. In Sec. 14-7(2) seems to be missing a word. I think "from" should be inserted after "certification." In Sec. 14-7(3) after "status" insert "based on the requirements of Sec. 14-5 and in collaboration with the Department of Planning and the Mayor's Office of Criminal Justice." In Sec 14-5(a)(1) "system" insert "or the cost of the system whichever is less." In Sec. 14-5 insert (3) Availability of rebates is subject to the appropriation of funds in accordance with the City Charter."

The Law Department's final concern is with the logistics of granting rebates. How is the City going to make sure that applicants in high crime and/or low-income areas get first priority? As the bill is currently written, applications are submitted and presumably the Director can approve or deny at any time. If approved, the rebate is granted but that application may not be for a property in a priority area. I was thinking that there should be a deadline for all applications then the applications can be sorted based on the priority factors and the rebates are then granted. This would maximize the opportunity for applicants in high priority areas. Currently, if high priority applications are not submitted early in the process, the money could be gone by the time those applicants submit their applications.

Provided the proposed amendments are incorporated into the bill, the Law Department can approve Council Bill 20-0486 for form and legal sufficiency.

Sincerely yours,

Elena R. DiPietro
Chief Solicitor

cc: Andre Davis, City Solicitor
Dana P. Moore, Deputy Solicitor
Matthew Stegman, Mayor's Legislative Liaison
Caylin Young, President's Legislative Director
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Avery Aisenstark

AMENDMENTS TO CITY COUNCIL BILL 20-0486

1. On page 4, strike lines 6-8 and substitute “The Director may adjust rebate amounts based on: (i) whether the property is located in an area with a high number of incidents of violent crime as determined in consultation with the Mayor’s Office of Criminal Justice; (ii) whether the property is located in an area where the median household income is X% or lower of the average median income for the metropolitan region that encompasses Baltimore City, as published and annually updated by the United States Department of Housing and Urban Development and (iii) whether the applicant has received a rebate for any property under this subtitle from the City in prior years”.
2. On page 4, strike line 19 and substitute “incidents of violent crime in the vicinity of an applicant’s property with areas with the highest incidents of violent crime receiving the highest priority;” IStrike line 20 and substitute “median household income in the vicinity of an applicant’s property with areas with the lowest median income receiving the highest priority.” In line 21 after “rebate” insert “median household income in the vicinity of an applicant’s property with areas with the lowest median income receiving the highest priority.”
3. On page 4, line 30 after “certification” insert “from”.
4. On page 5, in line 4 after “status” insert “based on the requirements of Sec. 14-5 and in collaboration with the Department of Planning and the Mayor’s Office of Criminal Justice.”
5. On page 4, in line 5 after “system” insert “or the cost of the system whichever is less.”
6. On page 4, after line 9 insert “(3) Availability of rebates is subject to the appropriation of funds in accordance with the City Charter.”

