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BALTIMORE CITY BOARD OF ETHICS

November 28, 2022

The Honorable Mayor Brandon Scott
Mayor's Office
100 N. Holliday Street
Baltimore, MD 21202
mayor@baltimorecity.gov

Re: City Council Bill 22-0292 ("Elected Officials' Retirement System – Benefits – Eligibility")

Dear Mayor Scott,

On behalf of the Baltimore City Board of Ethics ("Ethics Board"), I write to respectfully request a delay in implementation of the above-referenced Bill 22-0292 ("Bill") until such time as the Ethics Board is able to provide an advisory opinion on whether the terms of the Bill comply with the Baltimore City Public Ethics Law, found in Article 8 of the City Code.

By way of background, on Monday, November 21, 2022, members of the Baltimore City Council voted to pass City Council Bill 22-0292 ("Elected Officials' Retirement System - Benefits – Eligibility"). Bill 22-0292 provides, in relevant part, that an elected official who first became a member of the Elected Officials' Retirement System ("EOS") on or after December 6, 2016, "*or is a member and serving in office as of December 1, 2022,*" vests in the right to receive an annual pension at age 55 once they have attained 8 years of service. As a result, this Bill shortens vesting for the grandfathered Councilmembers from 12 to 8 years, and increases the age at which Council members become eligible to receive pensions from 50 to 55.

The Bill passed by a vote of 8 to 5, with 2 abstaining, and is currently awaiting your signature.

A reader of Bill 22-0292 was circulated to the City Solicitor, the Employees' and Elected Officials' Retirement Systems, the Retirement Savings Plan Board of Trustees, the City Administrator, and the Department of Finance for review prior to the Council vote. The Baltimore City Ethics Board was not asked to weigh in; however, the Ethics Board has reviewed this Bill and believes that, as written, the Bill is inconsistent with the intent of Baltimore City Code, Art. 8 (the "Ethics Law"), which intends that the provisions of this article "be liberally construed to accomplish their purposes." *See*, § 2-33.¹

¹ Unless otherwise indicated, all citations are to the Baltimore City Public Ethics Law, contained in Article 8 of the City Code.

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In pertinent part, the Ethics Law provides:

§ 1-1. Findings.

(a) *Trust in government essential.*

The Mayor and City Council of Baltimore recognizes that our system of representative government largely depends on the people's trust in their public servants.

(b) *Need for impartiality.*

The citizens of Baltimore City rely on their public servants to preserve their safety, health, and welfare through fair and impartial enforcement of laws, imposition of taxes, and expenditure of public funds.

(c) *Citizens' right of reliance.*

Each citizen of Baltimore City has a right to be assured of the fair, impartial, and independent judgment of all public servants.

The Board believes that certain terms of Bill 22-0292 do not appear to be impartial or a product of independent judgment and that the appearance of or lack of impartiality could undermine – and may have already undermined – public confidence in the execution of City governance.

More specifically, the following prohibitions of the Ethics Law are also implicated:

§ 6-6. Prohibited participation. (...)

(b) *When participation prohibited.*

Except as otherwise provided in this Part II, a public servant may not participate in and must disqualify himself or herself from any matter if:

- (1) the public servant has an interest in the matter of which the public servant might reasonably be expected to know; ...

and

§ 6-11. Prohibited employment, interests.

Except as otherwise provided in this Part III, a public servant may not:

- (1) be employed by or have a financial interest in any person that is subject to the authority of that public servant or of the City agency with which the public servant is affiliated;...

Bill 22-0292 intends to change City policy so that current and future Councilmembers and elected officials would obtain a considerable financial benefit to which they are presently not otherwise entitled. Importantly, the Bill benefits *current* Councilmembers and elected officials, not members of the general public. The intent of the Ethics Law is not only to preclude the use of government to advance personal and/or private financial and economic interests, but also to preclude the *appearance* of the use of government in furtherance of such interests. *See*, § 1-2.

The Ethics Board is concerned that it is impossible for the current Council, while in term, to have voted in favor of the amendment without giving the appearance of a conflict of interest; the terms of the Bill as written and approved by a majority of the Council serve the private and/or personal interests of the current Council members themselves.

Accordingly, understanding that time is of the essence and given the above concerns, the Ethics Board respectfully requests adequate time to provide a formal advisory opinion to the Mayor's Office on the Bill's compliance with the Ethics Law before it is signed into law.

Respectfully yours,



Stephan W. Fogleman
Chair, Ethics Board

CC: Citizens of Baltimore City
Members of the Ethics Board
J. Christoph Amberger, Ethics Board Director