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CITY OF BALTIMORE

BERNARD C. “JACK” YOUNG  
Mayor



DEPARTMENT OF LAW  
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April 20, 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 20-0519– Children and Youth Fund – Establishment of  
Permanent Fiscal Agent

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0519 for form and legal sufficiency. This bill is the exercise of the City Council’s authority granted in Art. I, Sec, 13 of the Baltimore City Charter to provide for expenditure of funds required to be used for programs for children and youth.

The bill is for the purpose of designating a permanent fiscal agent to administer the Children and Youth Fund and establishing that the fiscal agent be governed and administered by a Board of Directors. The bill provides for the creation of the Board of Directors and requires that they adopt bylaws that detail the governance of the fiscal agent. The Board of Directors must submit an annual proposed financial plan to the Board of Estimates. The bill also provides that the City Council shall hold annual public hearings into the activities of the fiscal agent. The bill also includes the fiscal agent and its Board of Directors within the coverage of the City Ethics Code.

The Law Department has several concerns about this bill.

1. Methods and Criteria

The Charter provision authorizing the C&Y Fund states that “By Ordinance, the Mayor and City Council shall provide for the oversight, governance, and administration of the Children and Youth Fund, including: (1) methods and criteria for identifying specific program and services eligible for funding by the Fund; (2) methods and criteria for allocating available funds among eligible programs and services; and (3) the establishment of any other legislative or

administrative rules, regulations, or standards, consistent with this section, governing the Fund, its operations, and programs and services funded by it. Charter Art. 1, Sec. 13(e).

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In Sec. 9-4(b) of the proposed bill, the Charter language is reiterated and some criteria for identifying specific programs and services to be funded is found in Sec. 9-4(c). There are not, however, any methods and criteria for allocating available funds among eligible programs and services. Sec. 9-6(B)(2) provides that the “Board must allocate the remainder of the Fund’s balance among the programs and services identified under Sec. 9-4(c) of this subtitle, with an emphasis on programs and services operating in, or meant to assist young people from, the communities in Baltimore City most impacted by high poverty.” While this is instructive, it does not satisfy the enabling law’s requirement for “methods and criteria” for allocating funds. One option is to insert in the bill the language in Sec.13(e)(3) of the Charter as follows.

Sec. 9-4 (d) Allocation of Funds – The Director of Finance shall consider the following when determining standards and criteria for allocation of funds under Sec.9-9:

- (1) funds shall be allocated based on best practices and successful and innovative models;
- (2) to the maximum extent feasible, funds shall be allocated equitably among services for all age groups – from infancy to transitional-aged youth;
- (3) Allocation shall be gender-responsive and culturally competent; and
- (4) programs and services shall be designed to strengthen collaboration among service providers for children, youth, and their families, including collaboration among public agencies and non-profit organizations.

## 2. Board Composition

In Section 9-5(C), there is a proposal to add another Board member identified as a representative of the Mayor’s Office of Children and Family Success.” The problem with designating a member from a specific Mayoral office is that those offices often change names as administrations change. Sec. 9-4 (C) of the 1<sup>st</sup> Reader states that one of the ex officio members is the Director of the Mayor’s Office of Children and Family Success or the Director’s designee. This does not solve the problem. In order to assist future Boards to adapt to such changes, it would be helpful to add “or other Mayoral Office designated as responsible for overseeing programing for children and youth.”

Another consideration is that there are only 4 City representatives on a board that could have 9 to 20 members. This does not give the City the ability to have much of an impact on the decision making of the Board. The City has dedicated a substantial amount of taxpayer’s money to the Fund and should have a greater voice on the Board.

## 3. Interim Fiscal Agent

Section 3(e) mandates that the interim fiscal agent be compensated for any work done for the Fund after June 30, 2020. It is not clear what the funding source of this compensation would be. The arrangement between the City and the interim fiscal agent is governed by an MOU. The

obligations of the Interim fiscal agent under the terms of the MOU remain in place until the expiration of Subtitle 9. Subtitle 9 is due to expire on July 1, 2020 at which time the interim fiscal agent's responsibility ceases. Furthermore, the MOU provides that "Contingent on appropriation and the terms of Article 1 and Subtitle 9, the City shall pay the fiscal agent from the Fund each fiscal year during the term the Agreement ("each a Disbursement")....Contingent on appropriations and the approval of the Board of Estimates, the City shall pay the Fiscal Agent a Disbursement each subsequent year during which Subtitle 9 and this Agreement are in effect.....Any expense/costs incurred by the Fiscal Agent in excess of these Disbursements shall be the sole responsibility of the Fiscal Agent." After this agreement expires, the responsibilities of both parties end. Without a subsequent agreement for payment, there is no obligation on either party.

The MOU with the Interim Fiscal Agent has no requirement that the Fiscal Agent perform audits. It is only required to keep records and make them available for inspection by the City. In the MOU, the City is charged with auditing the fiscal agent and the grantees. This responsibility can easily be turned over to the City but can also be the subject of agreement with interim fiscal agent for any post-expiration assistance.

If the Law Department's concerns above are addressed through amendments to the bill, the Law Department could approve the bill for form and legal sufficiency.

Sincerely,

Elena R. DiPietro  
Chief Solicitor  
Division Chief

cc: Dana P. Moore, Acting City Solicitor  
Nick Blendy, Mayor's Office of Government Relations (MOGR)  
Matthew Stegman, MOGR

Nina Themelis, MOGR  
Caylin Young, President's Legislative Dir.  
Ashlea Brown, Assistant Solicitor  
Hilary Ruley, Chief Solicitor  
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