1MEMO TO: THE CITY COUNCIL OF THE CITY OF HYATTSVILLE

FROM: RICHARD COLARESI, ESQUIRE, CITY ATTORNEY

RE: INSTALLATION OF SIDEWALKS IN THE PUBLIC RIGHTS OF WAY

DATE: February 3, 2016

QUESTION: Does installation by the City of new sidewalks in the public right of way pursuant to Article VII of the City Charter trigger the procedural requirements as to consent that are contained in Article VIII of the City Charter, when the City is not assessing the cost of the installation to landowners abutting the installation?

ANSWER: No.

I. THE CHARTER SECTIONS[1]

Article VII of the City Charter grants the City plenary power and control over the "public ways" in the City. Section C7-2 of Article VII recites that the City has such control and authority and the City ". . . may do whatever it deems necessary to establish, operate and maintain in good condition. . ." the improvements to the public rights of way. Section C7-3 gives the City the power to ". . . grade, layout, construct, open, extend and make new public ways." This section also empowers the City to alter or improve any existing City public way or part thereof. Section C7-4 specifically addresses sidewalks and gives the City broad authority to ". . . grade, layout, construct, reconstruct, pave, repave, repair, extend or otherwise alter sidewalks. . ." Article VII is silent as to any consent procedures or any assessments of abutting property owners.

Article VIII on the other hand deals in great detail with special assessments to abutting property owners for the costs of such public improvements. Section C8-1, in apparent

[1] The two relevant Charter sections are included at the end of this memo.

contradiction to Article VII, grants the City the authority to ". . . construct road beds, sidewalks, curbs, gutters. . . provided that, before any permanent street sidewalk. . . shall be made under the provisions of this Section, the City Council shall obtain from more than fifty percent (50%) of the property owners of record abutting upon such street, sidewalk, curb and/or alley their written approval of such permanent improvement. . ."(underlining added). Section C8-1 then creates exceptions to the consent requirement for short distances and for areas near Baltimore Avenue. The penultimate sentence of C8-1 states that when the City does not have the required consents, the City shall grant the exceptions outlined in C8-3, ". . . except that the cost of such exemptions shall be paid by the City Council. . ." Article VIII then details how such special assessments are calculated, assessed or granted exceptions to the special assessment.

II. DISCUSSION.

The two referenced Charter Articles do not outline a clear or unambiguous procedure for the City to engage in improvements to its public rights of way. In fact, the two Articles of the City Charter are subject to various interpretations (as most recently evidenced by the public debate on the application of Article VIII). Are there two separate and distinct procedures as outlined in each section, or do the consent procedures outlined in Article VIII make the grant of seemingly plenary authority in Article VII contingent on the approval of the abutting landowners before the City can install a public sidewalk. Such various interpretations are in fact an ambiguity that requires further analysis.

The broad grant of power in Article VII has no limits except for the fact that the improvement must be for the common good. Article VII is also consonant with the police powers traditionally given to governments who are charged with the protection of the common good and theCity's liability for its public rights of way. Further, the City must conform in all

public improvements to all reasonable standards and Statutes, as for example the City has obligations to conform to the Americans with Disabilities Act as to its public improvements. Hence, the City should have authority over its streets. To interpret Article VIII as making the City's rightful and necessary authority over the public rights of way contingent on consents of the abutting landowners is to impose a local plebiscite on matters that impact much larger populations than those abutting the property. Such an interpretation is not reasonable, nor consistent with the internal language of the two Articles when read together.

Article VIII on close examination limits itself to improvements that will result in assessment to abutting landowners and with citizens having a say in the assessment as to those public improvements.

Maryland's highest court has stated "'local ordinances and charters are interpreted under the same canons of construction that apply to the interpretation of statutes.'" *Kane v. The Board of Appeals of Prince George's County*, 390 Md. 145, 887 A.2d 1060 (2005) (quoting *O'Connor v. Baltimore County*, 382 Md. 102, 113, 854 A.2d 1191, 1198 (2004)). Some of the well-settled rules of construction were restated by the Court of Appeals:

> "When we interpret [charters], our goal is to identify and effectuate the legislative intent underlying the [charter(s)] at issue. . . . [T]he best source of legislative intent is the [charter's] plain language and when the language is clear and unambiguous, our inquiry ordinarily ends there. Although the plain language of the [charter] guides our understanding of the legislative intent, we do not read the language in a vacuum. Rather, we read [charter] language within the context of the [charter's] scheme, considering the purpose, aim, or policy of the enacting body. When interpreting the language of a [charter], we assign the words their ordinary language and natural meaning. *We will neither add nor delete words to a clear and unambiguous [charter] to give it a meaning not reflected by the words the Legislature used or engage in a forced or subtle interpretation in an attempt to extend or limit the statute's meaning."*

Serio v. Baltimore County, 384 Md. 373, 390, 863 A.2d 952, 962 (2004) (citations omitted) (emphasis added) (quotations omitted). Furthermore:

> "When the [provision] is part of a larger [charter's] scheme, it is axiomatic that *the language of a provision is not interpreted in isolation; rather, we analyze the [charter's] scheme as a whole* considering the purpose aim, or policy of the enacting body and attempt to harmonize provisions dealing with the same subject so that each may be given effect."

Bowen v. City of Annapolis, 402 Md. 587, 613-14, 937 A.2d 242, 258 (2007) (citations omitted) (emphasis added) (quotations omitted). Thus, the language of relevant Charter provisions must be applied in their entirety and may not be viewed in isolation so as to create a forced or subtle interpretation.

In reading both Articles together as required by law, the most rational interpretation is that the City has plenary authority to make improvements to the public rights of way (including sidewalks) but the City has limited its ability to specially assess the cost of those improvements against abutting land owners where it has not followed the procedures outlined in Article VIII. The language in Article VIII, C8-1 leaves little doubt that the consent provisions contained therein apply only for installations "under this section" and is thus self-limiting. The language in the penultimate sentence of C8-1 further confirms that the failure to obtain consents does not prohibit installations so long as the City pays the costs outlined there.

This interpretation "harmonizes" the two Articles in a way that balances the public good and gives the locally impacted citizens a voice in the assessment process. Hence, the evidence provided internally by the Charter itself and the two Articles can be clarified.

Additionally, there is evidence extrinsic to the language of the Charter that is also relevant and supports this reading of both provisions. The extrinsic evidence is that the City's patterns and practices have construed these provisions in exactly this fashion. The City has also adopted a policy of not assessing public rights of way improvements against abutting land owners. The City has for as far back as anyone can remember been installing sidewalks and not

engaged in the practice of receiving consents for such public improvements or of requiring special assessments.

Hence the conclusion is inescapable that the City has the authority to place sidewalks within the public rights of way without receiving the consent of abutting land owners, unless the City intends to specially assess the costs.

Respectfully submitted,

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