



McSweeney Cynkar & Kachouff, PLLC
TRIAL & APPELLATE LAWYERS

January 15, 2016

By hand

Richmond City Council
900 East Broad Street, Suite 305
Richmond, Virginia 23219

Dear ladies and gentlemen:

I represent the RVA Coalition for Smart Transit, which is an association of twelve independent organizations:

Byrd Park Civic League
Downtown Neighborhood Association
Fan Area Business Alliance
Fan District Association
Historic Jackson Ward Association
Monument Avenue Preservation Society
NAACP, Richmond Chapter
Museum District Association
Scott's Addition Boulevard Association
West Avenue Improvement Association
West Grace Street Association
Richmond Transit Riders Association

The Coalition was formed to support a comprehensive, well-designed regional mass transit system. The Broad Street Bus Rapid Transit Project described in Ordinance No. 2015-263 and the documents accompanying that ordinance does not achieve that objective.

13649 Office Place, Suite 101
Woodbridge, VA 22192
(703) 621-3300

Patrick M. McSweeney
Powhatan Office
3358 John Tree Hill Road
Powhatan, VA 23139
(804) 937-0895
patrick@mck-lawyers.com

This letter is submitted to demonstrate that the introduction of Ordinance No. 2015-263 did not comply with the specific requirements imposed by Ordinance No. 2015-144-154. Neither a fiscal impact statement nor an economic impact statement that is in compliance with the requirements of Ordinance No. 2015-144-154 was filed at the time Ordinance No. 2015-263 was introduced.

Fiscal Impact Statement Requirements

A “fiscal impact statement” is defined in City Code § 2-305 as “a written report containing analysis of the estimated public service costs and the increase or decrease of revenues to the City associated with the proposed economic development project.” The Project is obviously one that meets the definition of an “economic development project” in City Code § 2-305.

A fiscal impact statement required by section 2-306 of the City Code must include, at a minimum, all of the following:

(a) The sources of information, assumptions and methodologies used to reach the conclusions set forth in the fiscal impact statement. [*The EA assumes incorrectly that “the fiscal impacts for local governments will be derived from the initial investment activities associated with the Broad Street BRT Project....” EA at page 12 and Chmura Economics & Analytics report at 9. This utterly ignores the City’s burden of subsidizing the annual operating and maintenance deficits attributable to the Project once it begins to operate. The EA points to the potential, long-term enhancement of tax revenues resulting from redevelopment and new development without discussing the anticipated annual O&M deficits. Because the long-term deficits are ignored, there is no information, assumption or methodology provided regarding that significant matter.*]

(b) A debt capacity schedule, if debt is a funding mechanism. In addition, the debt capacity schedule shall show the City’s current debt capacity and how the City’s current debt capacity is expected to change if the Council approves the proposed ordinance to which the fiscal impact statement relates for adoption or amendment. [*Although the proposed agreement contains language providing that the City’s obligation to contribute capital contributions for the Project is subject to its appropriation of such funds, the agreement does not address the City’s obligation to contribute toward the anticipated O&M deficits that GRTC will incur in the operation of the Project. The Coalition has found no document that shows the long-term schedule of probable appropriations that will be required to cover all or any part of these anticipated O&M deficits.*],

(c) A comparison of funding and financing options available, including, but not limited to, expenditures from City funds, the issuance of general obligation bonds, and the issuance of revenue bonds. [*As noted in the discussion above, the EA considers capital expenditures only and ignores the anticipated O&M deficits. There is no discussion of*

options other than the City's contribution to fund the anticipated shortfalls once the Project is put into operation.]

(d) A detailed cost analysis, including, but not limited to, costs to the City and private funding, and a listing of the amount, value and source, as applicable, of each public and private investment, including, but not limited to, any property values of any real estate transferred, incentives provided, or infrastructure improvements made to facilitate the economic development project. *[The cost projections for the Project contained in the documentation provided to Council at the time proposed Ordinance 2015-263 was introduced are not detailed.]*

(e) Projected revenue and expenditure estimates attributable to the City, as a result of the proposed ordinance for adoption or amendment, if it is approved, covering at least the next ten fiscal years, including, but not limited to, debt repayment, new tax revenue, ownership, management, and maintenance costs, and additional service delivery costs for police and fire protection services and refuse collection services. *[The inevitable result of the execution of the proposed agreement and the completion of the Project is an ongoing obligation by the City to contribute to the operating shortfalls. A schedule of those probable contributions has not been provided.]*

(f) Subsequent actions that may affect future revenue and expenditures if the proposed ordinance authorizes spending, including, but not limited to, the City's full fiscal obligation, ownership, management and maintenance. *[See the comment in the previous paragraph.]*

(g) A description of any variables that may affect revenue and cost estimates. *[See the comment in (e) above.]*

(h) An estimate of the staff time and staff costs needed to implement the proposed ordinance. *[No such information appears to have been provided.]*

(i) An explanation of how the addition of new staff, if any, and responsibilities would increase costs and affect other duties.

(j) Ranges of revenue or expenditures that are uncertain or difficult to project. *[Although the documents provided to Council mention the difficulty in making projections, they do not provide a range of either revenues or expenditures.]*

(k) If it is determined that the proposed ordinance, or any proposed amendments thereto, is not likely to have a fiscal impact, the basis for such a determination.

Because the documents provided to Council do not satisfy the requirements of City Code § 2-307, City Code § 2-306 provides that City Council must delay consideration of the ordinance until at least two weeks after a fiscal impact statement that does satisfy those requirements has been provided to Council.

Economic Impact Statement Requirements

As defined in City Code § 2-305, an “economic impact statement means a written report containing analysis and estimates of the effect of a proposed economic development project in the [City] on the creation or loss of employment and business opportunities within the [City].” As noted above, the Project meets the definition in § 2-305 of an “economic development project.”

The economic impact statements and the revised economic impact statements required by § 2-307 must include, at a minimum, all of the following:

(a) The sources of information, assumptions and methodologies used to reach the conclusions set forth in the economic impact statement. [*The document attached as Appendix A-15 to the environmental assessment (EA) submitted to the City by the Federal Transit Administration of the U.S, Department of Transportation, the Virginia Department of Rail and Public Transportation and the GRTC Transit System and identified as “Economic Impact Statement” does not satisfy the requirements of City Code § 2-308. The EA does not provide all of the assumptions on which it relies for its conclusions. It also fails to explain the methodologies used by the model on which it relies (IMPLAN). Such an explanation, including the basis for accepting those methodologies as reliable, is not included in the EA. The EA is dated March 2014; consequently, it contains data and analyses that may be out of date. An economic impact statement that would be appropriate for Council’s consideration of the Project in 2016 should contain updated information and analyses.*]

(b) An outline that lists all ordinances, resolutions or actions that are required to be completed related to and for the economic development project, with an associated timeline for each. [*The EA contains no specific timeline that would satisfy this requirement. The documents previously submitted do not detail the actions that Council must take once the Project begins operations, particularly any appropriations that would be required to cover operating shortfalls.*]

(c) A description of any variables that could affect economic impact estimates. [*The EA fails to provide such a description, including any mention of economic cycles that would affect property values, new technologies or changes in transit demand.*]

(d) The partnerships, corporations, businesses, boards, commissions, nonprofit organizations and other entities that the Mayor anticipates will be stakeholders in the economic development project to be authorized by the proposed ordinance and the level and nature of their involvement with the economic development project to be authorized by the proposed ordinance. *[The EA does not provide this information. It is noteworthy that Cleveland's Euclid Avenue Corridor Project involved a partnership with the Cleveland Clinic. The documents submitted to Council ignore the existence of the Virginia Commonwealth University's transit system, which serves its two campuses. There is no discussion of VCU as a stakeholder or even a mention of the potential effect of the Project on VCU's system or the potential benefits that could be derived through a partnership with VCU, as was developed with the Cleveland Clinic.]*

(e) Any anticipated positive or negative impact, if any, on employment. *[The conclusory statement in the EA about potential employment increases does not comply with the intent of this paragraph.]*

(f) A range of economic impact factors that are uncertain or difficult to project. *[The EA does not provide such information. See the comment in paragraph (c) above.]*

(g) The number of permanent or temporary jobs that are anticipated to be created as a result of the economic development project to be authorized by the proposed ordinance. *[See the comment in paragraph (e), above.]*

(h) An analysis and timeline showing the projected revenues that are expected to be generated as a result of the City's expenditure of public funds, if the proposed ordinance is approved by the Council. The analysis and timeline shall include the benchmarks used to determine the revenue projections. An annual progress report concerning the actual revenues collected as a result of the City's expenditure of public funds and how such revenues exceeded, met or failed to meet the revenue projections and benchmarks shall be provided to the Council no later than December 31 of each year for ten years and as may be requested by the Council for any subsequent year beyond the initial ten years. *[The failure of the EA to provide the information required by this paragraph showing is particularly significant because it denies Council information that the Coalition believes is essential to Council's determination of the appropriateness of the Project. Without such information, Council is without the analysis necessary to determine, among other things, the likely amount of annual subsidies required to assure the continued operation of the Project once constructed and put into operation.]*

(i) An explanation of how the expenditure of any public funds by the City, as may be indicated in the proposed ordinance, complies with any guidelines, policies or best practices that help to achieve or maintain the goal of being a AAA bond rated locality. *[The EA does not include this information.]*

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(j) If it is determined that the proposed ordinance, or any proposed amendments thereto, is not likely to have an economic impact, the basis for such a determination.

The Coalition has not found any other document submitted upon the introduction of proposed Ordinance No. 2015-263 that purports to be an economic impact statement. The failure to comply with City Code § 2-308 compels Council to delay consideration of the adoption of proposed Ordinance No. 2015-263.

The Coalition would appreciate your consideration of these comments and will be pleased to assist Council in whatever manner Council requests in assuring that Council has the information necessary and appropriate to make the best decision regarding the development of public transit in the City.

Respectfully yours,

Patrick M. McSweeney
Counsel for the RVA Coalition
for Smart Transit

cc: Allen L. Jackson, Esquire, City Attorney
Jonathan Marcus