

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

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February 15, 2018

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 18-0185 Non-Owner-Occupied Dwelling Units,
Rooming Houses, and Vacant Structures – Rental Dwellings –
Registration and Licensing

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0185 for form and legal sufficiency. The bill would add certain non-owner-occupied 1 and 2 family dwellings to the licensing, inspection, and related requirements for multi-family dwellings and rooming houses (“rental dwellings”); modify the procedures and prerequisites for the registration of certain non-owner-occupied dwellings, rooming houses, and vacant structures; modify the procedures and prerequisites for the licensing of rental dwellings; provide for the denial, suspension, or revocation of a rental dwelling license under certain circumstances; provide for judicial and appellate review of administrative decisions relating to the registration or the licensing of these structures; amend the underlying definition of “rooming house” to clarify its applicability to a bed and breakfast facility; define and redefine certain other terms; impose certain penalties; correct, clarify and conform related language; provide certain transition rules for pre-existing licenses; and provide for a special effective date.

First, the bill adds a judicial and appellate review section to the registration subtitle. Since the process is largely ministerial, the Law Department recommends deleting this section, as the right to judicial review already exists in the form of a mandamus action. In the alternative, the Law Department recommends adding an administrative hearing section, so as to provide a meaningful review for the court.

Second, the bill provides for third-party home inspections. Only “ministerial or administrative functions may be delegated to subordinate officials.” *City of Baltimore v. Wollman*, 123 Md. 310, 342 (1914); *accord Andy’s Ice Cream v. City of Salisbury*, 125 Md. App. 125, 161 (1999); *see also* 72 Op. City Sol. 18, 20 (1980)(citing 73 C.J.S. §75, p. 381-382)(“In general, administrative officers and bodies cannot alienate, surrender or abridge their powers and duties, and they cannot legally confer on their employees or others authority and functions which under law may be exercised only by them or by other officers or tribunals ... mere ministerial functions may be delegated.”). Therefore, the third party home inspectors must only perform

ministerial, nondiscretionary functions. A checklist provided by the Commissioner, for example, would ensure that discretion is not improperly delegated. The rules adopted for this section should provide for this. The Law Department can review the rules to ensure that discretion is not delegated and to ensure that the rules do not exceed the scope of the law. "Rules and regulations adopted by an administrative agency must be reasonable and consistent with the letter and policy of the statute under which the agency acts." *MCC v. Koons*, 270 Md. 231, 237 (1973).

With these recommendations, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Ashlea H. Brown
Assistant Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor
Avery Aisenstark, Director of Legislative Reference

Law Department's Proposed Amendments to City Council Bill 18-0185

1. On page 6, strike lines 10-24.

OR

On page 6, after line 9 and before line 10, add § 4-10 "Notice and hearing." On the next line, add "The Commissioner shall provide for an administrative hearing in the rules and regulations adopted under this subtitle."