

CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG
Mayor



DEPARTMENT OF LAW
DANA P. MOORE, ACTING CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

March 11, 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 19-0429 – Vacant Structures – Posting Owner Information

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0429 for form and legal sufficiency. The bill requires that owners of certain vacant structures conspicuously post on the exterior of their structure certain information regarding the ownership of the structures. The bill also requires that the posted signs meet certain specifications and dedicates a certain portion of the fine proceeds to the Affordable Housing Trust Fund. The bill provides for a special effective date.

The bill presents a constitutional problem known as “compelled speech.” Freedom of speech includes both the right to speak freely and the right to refrain from speaking at all. *Janus v. American Federation of State, County, and Mun. Employees, Council 31*, 138 S.Ct. 2448, 2463 (2018). “This general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid.” *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 115 S.Ct. 2338, 2347 (1995). In this instance, the bill proposes to compel the owners of vacant structure to post signs with content that the owners might conclude is contrary to their best interests.

In order for compelled speech to be lawful, “it must serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.” *Janus*, 138 S. Ct. at 2465. In other words, even when a compelling state interest exists, if the information being compelled is available by means that do not mount an assault on First Amendment rights, the proposed restriction on speech is unlawful. In this case, the information about ownership is readily available by another means. It already is on file with the Housing Commissioner. Moreover, the information is available to anyone who requests it under the Maryland Public Information Act (MPIA). As the Law Department has advised in the past, the provisions about confidentiality that appear in § 4-7 of this bill are contrary to the MPIA and are not enforceable. The information must be made available upon request.

Given the unconstitutional nature of the bill, the Law Department is unable to approve it for form and legal sufficiency.

Sincerely,



Victor K. Tervala
Chief Solicitor

cc: Dana Moore, Acting Solicitor
Matt Stegman, Mayor's Legislative Liaison
Caylin Young, President's Legislative Director
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Assistant Solicitor