

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
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Baltimore, Maryland 21202

May 24, 2012

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

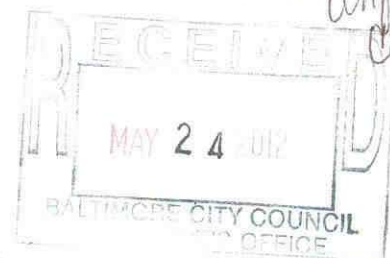
Re: City Council Bill 12-0065– Tax Lien Certificates – Verifications Required
Before Issuance for Water Bills

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0065 for form and legal sufficiency. The bill requires that, before the Chief Clerk issues any tax lien certificates that include water or sewer charges, the Chief Clerk obtain certifications from the Director of Public Works that the charges are based on actual (not estimated) meter readings; that the meters have been verified to be functioning properly; and that meter readings have been verified as correctly transcribed. The bill also corrects, clarifies, and conforms related provisions involving tax lien certificates.

As an initial observation, note that *this bill does not affect tax sales*. Lien certificates, the main focus of this bill, are required for sales and transfers of property between private parties. Before such sales can be recorded, the buyer needs to present a lien certificate to the Clerk of the Circuit Court, which shows all the liens that have attached to the property. City Code, Art. 28, § 2-6. State law requires the retirement of all debts appearing on the lien before the property can be transferred and recorded. Real Property Article, § 3-104. Consequently, without a lien certificate, property cannot be transferred or recorded.

Unlike private sales, lien certificates play no role in tax sales. Those who bid on property at tax sales bid for the right to purchase the enforceable liens against the real property at 18% per annum redemption interest. City Code Art. 28, § 8-1. Successful bidders receive certificates of sale that show the liens that have been purchased. Tax Property Article (“TP”) § 14-820. These certificates of sale sometimes are mistakenly referred to as “tax lien certificates,” but they are sales documents that evidence the lien sale. Note further that the purchase price retires the liens. TP § 14-817. Thus, if a property involved in a tax sale ultimately is sold and transferred, it will be free of liens, unless other liens have arisen subsequent to the tax sale.



Council Bill 12-0065 therefore does not affect tax sales; it affects the transfer and recordation of property. At a minimum, the enactment of this bill will delay property transfers. According to its provisions, before a lien certificate can be issued, the Chief Clerk must obtain a certification from the Director of Public Works that any unpaid water and sewer charges on the lien arise from actual meter readings and that the readings have been verified to be correct. These requirements demand that the meters on each property be individually inspected before the Public Works Director can certify that the meters satisfy the bill's criteria. Thus, it is inevitable that the process of recordation and property transfer will be slowed until work crews can visit a site, test it, report back, and issue a certificate of authentication. Moreover, we note that since transfer taxes are collected when a sale of property is recorded, the bill will slow the collection of this revenue. *See* TP § 13-208.

Council Bill 12-0065 expressly forbids issuing a lien certificate for a property that includes water and sewer charges unless the criteria concerning meter readings are met. If the criteria cannot be met, the bill is ambiguous as to whether any lien certificate can be issued for the property. Note that if the City is unable to issue a lien certificate, then the property cannot be transferred. On the other hand, if the City issues a lien certificate that avoids mention of unpaid water and sewer bills, then the City's ability to collect the debt is weakened.

We point out that halting the transfer of properties could place the City in a legally untenable position. A contract of sale could not be fully executed if the transfer could not be recorded until water and sewer bills could be validated. This action by the City could be deemed a violation of the Contract Clause of the Constitution, Article 1, Section 10. An impairment of the ability to contract is valid only if it satisfies a three-part test, which includes an inquiry into whether the impairment is "reasonable and necessary to serve an important public purpose." *FOP Lodge No. 89 v. Prince George's County*, 608 F.3d 183, 188 (4th Cir. 2010). While the Law Department concedes that an important public purpose is behind the bill, it cannot conclude that a court would agree that the motive is sufficient for halting property transfers. On the other hand, we recognize that the City would not be permanently interfering with the ability to transfer; only temporarily, until the water and sewer bills are cleared.

If the City side-steps the above problem by issuing lien certificates that fail to list unpaid water and sewer bills then, as we noted above, the City's ability to collect the debt is weakened. Without a lien certificate that records the debt, a purchaser of the property would be required only to retire the debt listed on the lien certificate. In essence, the debt of unpaid water bills would not be a lien on the property once the property is sold. We note, however, that by operation of City Code, Article 28, Section 2-3(b)(2), the seller would still owe the money to the City, but the City would have lost its secured interest in the property. There could no longer be any assurance that the debt could ever be collected.

Assuming the intent of Council Bill 12-0065 is not to halt property transfers, its provisions do not violate any law. Although the Law Department does not support the passage of this bill for the reasons noted above, the bill is approved for form and legal sufficiency.

Very truly yours,



Victor K. Tervala
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
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