

CITY OF BALTIMORE

SHEILA DIXON, Mayor

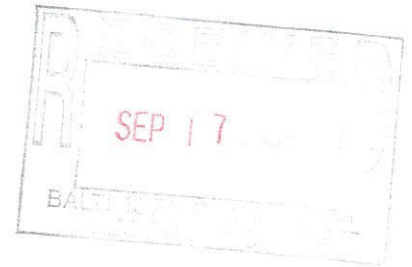


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

September 17, 2009

The Honorable President and  
Members of the Baltimore  
City Council  
c/o Karen Randle, Executive Secretary  
409 City Hall  
Baltimore, MD 21202



RE: City Council Bill 09-0349 "Quick-Take" Condemnation – Notice of Proposed Commencement

Dear President and Members:

You have requested the advice of the Law Department regarding City Council Bill 09-0349. City Council Bill 349 requires that the City provide at least ten days notice before it institutes a quick-take condemnation proceeding to persons whose interests in the property are sought to be condemned as well as notice to the Councilmember who represents the council district in which the property is located.

The City's legal authority for taking property pursuant to a quick-take proceeding comes from the General Assembly and the Maryland Constitution. See PLL §§21-16 – 21-19 and MD Const. Art. 3, § 40A. The expedited proceeding is found in Public Local Law, Sections 21-16 – 21-19. Section 21 – 16 pertains to quick-take condemnation in general and sub-section b of that section governs the notice and hearing for the proceeding. It states "Upon the filing of any such Petition for Immediate Taking of Possession, the Court may direct the City to give such notice to the Defendants as the Court may deem proper." PLL §21-16(b).

Generally, state law preempts by implication local law where the local law deals with an area in which the state legislature has acted with such force that an intent by the state to occupy the field must be implied. *Talbot Co. v. Skipper*, 329 Md. 481 (1993). "The primary indicia of a legislative purpose to preempt an entire field of law, absent express statutory language to this effect, is the comprehensiveness with which the General Assembly has legislated in the field" *AD Soil, Inc. v. County Somm. Of Queen Anne's Co.*, 307 Md. 307(1986). Although the State law governs notice

*unfair.*



after the petition for quick-take is filed and City Council Bill 349 governs notice before the petition is filed, the Court of Appeals has held that even where the particular aspect of the field sought to be regulated locally is not directly addressed by the state law, it is still preempted where co-regulation would result in a two tiered process which “would invite chaos and confusion.” *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 303 (holding that a local regulation which governed the physical location of a cigarette machine was preempted by state law which provided a comprehensive licensing scheme, even though the state law did not address the location of the machine).

“Another factor taken into consideration when determining if the state law was intended to occupy the aspect of the field is whether the state law contains a provision requiring compliance with local laws on the same subject or any reference to concurrent legislative authority to legislate in this area.” *Id.* at 310. The public local law which governs quick-take proceedings makes no reference to concurrent regulation with regard to notice or any aspect of the proceeding. See PLL §§21-16 – 21-19. Furthermore, public local law directly addresses notice to the defendants in the procedure, and leaves it to the discretion of the court.

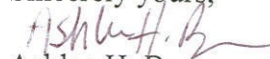
Although there is limited case law in Maryland addressing quick-take proceedings, and most of these cases deal with whether the taking is “necessary,” these cases make it clear that state law governs the proceeding. “Maryland has an extensive statutory framework to guide governmental entities in the exercise of their eminent domain powers, set forth both in the Maryland Constitution and in the Maryland Code. Political subdivisions . . . have no condemnation powers other than those conferred upon them by the State. Therefore, where the state has conferred condemnation authority, these governmental entities must strictly follow the statutory procedures.” *Mayor and City Council of Baltimore City v. Valsamaki*, 397 Md. 222, 247 (2007) (quoting Gregory Schwab, *The Maryland Survey: 2001-2002 Recent Decisions: The Court of Appeals of Maryland*, 62 Md. L.Rev. 840, 845-6 (2003)).

City Council Bill 349 would usurp the authority of the Court to govern notice. This is authority that the General Assembly clearly intended to vest in the court. Furthermore, if an additional pre-petition procedure was instituted by the City, it would render the court’s notice meaningless. This would violate the oft-repeated rule of statutory construction that every law must be construed so “no word, phrase, clause or sentence is rendered surplusage or meaningless.” *Design Kitchen and Baths v. Lagos*, 388 Md. 718, 728 (2005).

We have found no Maryland case or Attorney General Opinion directly addressing whether the notice provision in the quick-take statute is preemptive of local procedure. However, although there is no litmus test for determining whether a local law is preempted by implication, for the above-mentioned reasons, a court would likely hold that Bill 349 is preempted by state law.

Based on the foregoing, the Law Department cannot approve City Council Bill 09-0349 for form and legal sufficiency.

Sincerely yours,



Ashlea H. Brown

Special Assistant Solicitor

cc: Honorable Bernard C. "Jack" Young  
Angela Gibson, City Council Liaison  
George Nilson, City Solicitor  
Elena R. DiPietro, Chief Solicitor  
Hilary Ruley, Assistant Solicitor  
Avery Aisenstark, Legislative Reference