
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW

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December 15, 2021

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 21-0172 – Baltimore City Legacy Residents – Urban
Homesteading Program

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0172 for form and legal sufficiency. The bill revives the Baltimore City Urban Homesteading Program for legacy residents and establishes the program, including specifying program procedures and criteria for participation.

For reasons described below, the Law Department considers this bill unconstitutional and in conflict with the City Charter. It cannot be approved for form or legal sufficiency.

The constitutional issues arise under the bill's participation requirements. Those requirements include an individual being classified as a legacy resident, which requires City residency for 15 continuous years, and a resident of designated neighborhoods for 10 continuous years. § 2C-4. Participation in the housing program allows individuals to receive favorable leasing rates and sale prices of City-owned property.

Given the participation requirements, the bill will distribute government benefits unequally, allowing long term residents of Baltimore to participate in a program unavailable to City residents who have lived in the City for fewer years. Moreover, the benefits provided participants are not rationally related to the need for the benefit. If a City resident loses their home because of a discriminatory housing practice, whether they resided in Baltimore for 15 years or 1 year, their need for the program benefit is the same.

When a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment. Generally, a law will survive that scrutiny if the distinction it makes rationally furthers a legitimate state purpose. Some particularly invidious distinctions are subject to more rigorous scrutiny.

Zobel v. Williams, 457 U.S. 55, 60 (1982). The “invidious distinction” in this case is favoring long established residents over more recent residents, which the Supreme Court says “is constitutionally unacceptable.” 457 U.S. at 65.

The bill also provokes a violation of the Privileges or Immunities Clause of the Fourteenth Amendment. The Supreme Court holds that that durational residency requirements interfere with the right of newly arrived citizens to possess the same privileges and immunities enjoyed by other citizens of the same jurisdiction.

The states have not now, if they ever had, any power to restrict their citizenship to any classes or persons. A citizen of the United States has a perfect constitutional right to go to and reside in any State he chooses, and to claim citizenship therein, and an equality of rights with every other citizen; and the whole power of the nation is pledged to sustain him in that right. He is not bound to cringe to any superior, or to pray for any act of grace, as a means of enjoying all the rights and privileges enjoyed by other citizens.

Saenz v. Roe, 526 U.S. 489, 503–04 (1999), quoting *Slaughter-House Cases*, 83 U.S. 36 at 112. (1872). We note also that the Supreme Court has rejected attempts to advance a fiscal justification for a benefit provided to some residents but not to others. According to the Court in *Saenz*,

The question is not whether such saving is a legitimate purpose but whether the State may accomplish that end by the discriminatory means it has chosen...[T]he Citizenship Clause of the Fourteenth Amendment expressly equates citizenship with residence: ‘That Clause does not provide for, and does not allow for, degrees of citizenship based on length of residence.’”

526 U.S., at 506, quoting *Zobel*, 457 U.S., at 69.

Beyond these constitutional issues, the Law Department cannot approve the bill because it conflicts with the City Charter; namely, the City Council is unable to legislate the lease rates and sale prices of properties. This bill establishes a lease rate of \$1.00 for each year of a 2-year term for City-owned properties affected by it. § 2C-6(A). At end of the term, the Department of Housing and Community Development (“DHCD”) is directed to transfer property to a program participant for the cost of the 2-year lease, provided certain criteria are met. § 2C-7(f). The Department is provided no discretion in these matters.

Article II of the City Charter, which establishes the legislative powers of the City Council, is silent on the Council’s ability to set lease rates and sale prices of City-owned properties. The absence of this subject matter as a legislative topic means the Council is bereft of authority to legislate on these matters. *Ritchmount Partnership v. Board of Sup’rs of Elections for Anne Arundel County*, 283 Md. 48, 57 (1978) (“the exercise of local legislative powers is subject at all times to provisions of the Constitution and general law and is limited to those matters allocated by the express powers which the Legislature has delegated...”).

The bill also serves as a vehicle to determine when a property is to be sold; namely, at the end of two years, in most cases. § 2C-7(f). The City Charter, however, limits the City Council’s ability to control sales by ordinance to the property disposed pursuant to Article 5, § 5(b) of the City Charter. In contrast, the power of selling properties pursuant to the provisions in this bill arise from the powers granted under Article II, § 15(g) of the City Charter. That provision authorizes

the City, by ordinance, to vest the lease, sale and disposition of property acquired for redevelopment with any “suitable board, commission, department, bureau or other agency of the Mayor and City Council of Baltimore” – in this bill, to DHCD. Nothing in that section of the City Charter or in any other section of the Charter but Article 5, § 5(b) provides the Council the ability to determine by legislation when sales of property occur. That power is reserved to an agency delegated this power under Article II, § 15(g) of the City Charter or to the Board of Estimates under Article VI, § 2 of the City Charter.

In order for Council Bill 21-0172 to be lawful constitutionally, the durational residency requirements must be struck from the bill, leaving first time home buyers and individuals currently employed in the City to benefit for its provisions. To be lawful under the City Charter, the bill must allow DHCD or the BOE discretion to establish when sales occur and to establish the lease rates and sale prices charged for the properties subject to the bill. The bill’s recitals must reflect the revisions.

Sincerely,

Victor K. Tervala

Victor K. Tervala
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor’s Office of Government Relations
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