

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF LAW

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

April 8, 2009

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 09-0261 – Land Bank Authority

Dear Madame President and City Council Members:

You have asked the Law Department to review City Council Bill 09-0261. The bill would establish the Land Bank Authority of Baltimore City (“the Authority”) pursuant to State Law and provide for its powers, duties and limitations. The bill would establish the Authority’s Board of Directors, specifying their selection and terms and granting their powers and duties. The bill would provide certain immunities and tax exemptions for the Authority. The bill relates generally to the establishment and operation of the Authority.

Before City Council Bill 09-0261 was introduced, the Law Department participated in months of task force meetings, interagency negotiations and deliberations on its provisions. The bill is designed to streamline the disposition of City property with the purpose of eliminating or decreasing blight in the City. The Law Department has reviewed the proposed legislation extensively and provided comments and criticism during the drafting process. Although this endeavor presents many challenges, such as insurance for the Authority, collateralization of its funds, and other financial concerns, the Law Department would approve the bill, provided that certain measures are taken once the Authority is established. Given the possibility of interagency conflicts and the potential volume of legal work generated by the Authority, the Law Department strongly recommends that the Authority obtain outside legal counsel as soon as practicable.

**Compliance With Enabling Act**

Article 24, Title 22 of the Maryland Code (“the Act”) authorizes Baltimore City to establish the Land Bank by ordinance. The establishing ordinance must contain certain items, including proposed Articles of Incorporation for the Authority, the establishment of a Board of Directors, and a Code of Ethics. The Act provides for certain tax exemptions and immunities for the Authority. It also requires the Authority to take inventory and classify the property held by it in a certain fashion, requires the Authority to make an annual report to the Mayor and City Council and the General Assembly, and authorizes it to take certain measures necessary for its establishment. The Act grants the City the authority to terminate the Authority or change its structure. In the event the Authority is terminated, all property titled to it vests in the City, and all obligations of the Authority are assumed by the City. The Act does not authorize the

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Authority to exercise the power of eminent domain or to levy taxes. Finally, the Act grants the Authority the ability to exercise the powers granted to the City under §§ 14-825 – 831 of the Tax Property Article.

City Council Bill 09-0261 complies with the requirements of its enabling State legislation with a few minor exceptions that require amending its Articles of Incorporation (which are contained in the ordinance). First, the proposed Articles of Incorporation must expressly state that the Authority is formed under Title 22 of Article 24 of the Annotated Code of Maryland. *See* Md. Ann. Code art. 24, § 22-103(b)(2) (2009). Second, the Articles must list the Authority’s powers, specifying that those powers are subject to the Act. *See* Md. Ann. Code art. 24, § 22-103(b)(6) (2009). Both could be accomplished by adding a short sentence to the Articles of Incorporation stating that the powers of the Authority, which is formed by the Act, are listed in Article 5, Subtitle 22, of the Baltimore City Code. Third, the proposed Articles of Incorporation provide that if “the Corporation is dissolved or ended for any reason” its “net assets” will be distributed to charitable organizations under section 501(c)(3) of the Internal Revenue Code. This must be changed because the Act requires that if the Authority is terminated, its property will automatically vest in the City. Md. Ann. Code art. 24 § 22-103 (e)(2)(i) (2009). Furthermore, further analysis is needed to determine whether the Land Bank qualifies as a corporation exempted under 26 U.S.C.A. section 501 (c)(3). Although the Authority is going to operate as a nonprofit organization, an argument could be made that it is not a “charitable” organization within the purview of section 501(c)(3). Finally, the Act requires that the proposed Articles of Incorporation contain the addresses and terms of office of the initial Board members. Md. Ann. Code art. 24, § 22-103(b)(3) (2009).

### **Charter and Code Compliance: Board of Estimates Resolution Needed**

Since the Land Bank is designed to streamline the disposition of property, one of its primary goals is to bypass some of the procedural “red tape” to which land transactions are currently subject. Some of these procedural requirements stem from the City Charter and the City Code. The Charter contains several provisions that govern the disposition of City property.<sup>1</sup> Article II section 15 of the Charter pertains to the disposition of land used for “development and redevelopment.” *See* Baltimore City Charter, Article II § 15. Most of the land transactions of the Authority, if not all, will be for this purpose. The Charter does not require approval of these transactions by the Board of Estimates. However, section 2-7(f) of Article 13 of the City Code, which vests these powers in Baltimore’s Department of Housing, does require Board approval. *See* Baltimore City Code, Article 13 § 2-7(a)(1) and § 2-7(f)<sup>2</sup>. The acquisition of abandoned

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<sup>1</sup> Section 5(b) of Article V, for example, provides that the Department of Real Estate “shall (unless and to the extent otherwise provided by the Board of Estimates) arrange for the disposition of any ...real property ... no longer needed by the City for public use.” Baltimore City Charter, Article V § 5(b). It requires that such disposition be authorized by ordinance and approved by the Board of Estimates. *See* Baltimore City Charter, Article V § 5(b). Secondly, section 6 of the same Article requires that the proceeds of these sales go into the Real Property Account. *See* Baltimore City Charter, Article V § 6. The acquisition of land by the Real Estate Department must also “from time to time” be approved by the Board of Estimates. *See* Baltimore City Charter, Article V § 5(a). However, the Authority is designed to handle transactions involving abandoned property, which is addressed in Article 13 specifically, the authority for which stems from Article II § 15 discussed above.

<sup>2</sup> Board approval is required “as to the legal and financial ability of the contracting parties.”

property, which is specifically addressed in section 2-7 (h) of Article 13, also requires “prior approval of the Board of Estimates.” Baltimore City Code, Article 13 § 2-7(h)(1) and (2).

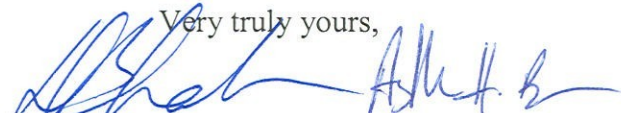
Assuming that the Authority acquires its initial inventory of land from the City, and complies with the Charter and Code for this initial transaction, the property it manages will be titled to the Authority itself. This may seem on the surface to cure the Article 13 requirement<sup>3</sup> for Board of Estimates approval for the Authority’s future transactions. However, given the interconnectedness of the Authority to the City, taking into consideration Maryland case law<sup>4</sup> on the subject, and the enabling statute expressly providing that the Authority is an “instrumentality of the City,” the Authority may legally still be required to adhere to the same procedures it was designed to avoid. Although an argument could be made that the Act, which grants the Authority the power to acquire and dispose of land without Board of Estimates approval, trumps any conflicting local laws,<sup>5</sup> the Law Department advises a Board of Estimates resolution to eliminate this potential legal challenge. The resolution must contain criteria which, if satisfied, would absolve future land transactions handled by the Authority from Board of Estimates approval.

### Recommended Amendments

Several amendments were recommended to this bill, which were the products of interagency meetings. A copy of these amendments is attached hereto. The Law Department approves these amendments for legal form and sufficiency.

Subject to the above, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Deepa Bhattacharyya and Ashlea H. Brown

cc: George A. Nilson, City Solicitor  
Angela C. Gibson, Mayor’s Legislative Liaison  
Elena R. DiPietro, Chief Solicitor  
Hilary Ruley, Assistant Solicitor  
Avery Aisenstark, Legislative Reference

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<sup>3</sup> Furthermore, the Authority is not limited to any certain type of land transaction, opening up the possibility of the Authority handling other types of transactions, which fall outside the scope of Article II § 15 and Article 13 of the Code and may require Board approval.

<sup>4</sup> See, e.g. *Andy’s Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125 (1999) and *City of Baltimore Development Corp. v. Carmel Realty Associates*, 395 Md. 299 (2006).

<sup>5</sup> See, e.g. *Wilson v. Board of Supervisors of Elections of Baltimore City*, 273 Md. 296 (1974) (holding that any conflict between the City’s charter and a state law must be resolved in favor of the state law).

# Recommended Amendments to City Council Bill 09-261, "Land Bank Authority"

1. On p. 2, line 29, insert a new Subsection 22-3 to read as follows:

## **22-3. Purposes of this Subtitle.**

- (1) **Provide a mechanism by which properties, primarily those that are foreclosed, vacant, and abandoned, in the City of Baltimore may be efficiently acquired, held, managed, redeveloped, and disposed of, and;**
- (2) **Further and enhance the City's goals to, among other things,**
  - a. **Eliminate blight;**
  - b. **Sustain neighborhood viability;**
  - c. **Create opportunities for affordable and mixed-income homeownership and rental;**
  - d. **Facilitate economic development; and**
  - e. **Promote fiscal stability of the City as a whole as well as that of individual neighborhoods.**

2. On p. 6, Line 2, amend Subsection 22-13 (b) as follows:

An affirmative vote of [at least 6 members] **the majority of those present**, at least 2 of whom are appointed members, is needed for any action by the Board.

2. On p. 7, line 7, amend Subsection 22-16 (c) (4) as follows:

[establishes the] **develops for the Board's approval** procedures and processes needed to perform the functions of the Authority.

3. On p. 10, line 1, insert a new Subsection 22-44 (c) (2) as follows:

- (2) **These rules and regulations must include but are not limited to the following topics:**
  - a. **Source of properties conveyed to the Authority;**
  - b. **Disposition priorities that:**
    - i. **meet the goals and objectives of the Authority, and;**
    - ii. **are consistent with the City's established plans and policies where applicable, including, and without limitation, Master Plans, Urban Renewal Plans, and established Economic Development initiatives and projects**
  - c. **Disposition pricing policies; and**
  - d. **Public notification and participation.**

and re-number Subsections 22-44 (c) (2) and 22-44 (c) (3) to be Subsections 22-44 (c) (3) and 22-44 (c) (4) respectively.

4. On p. 11, line 14, amend Subsection 22-47 (a) as follows:

The Authority shall maintain an inventory of all property held by it, classified according to title status, **code compliance**, and suitability for [use] **disposition**.

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Explanation: **Bold face** indicates matter recommended to be added to the bill;  
[Brackets] indicate matter recommended to be deleted from the bill.