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CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW  
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October 11, 2023

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

Re: City Council Bill 23-0425 – Improving Safety and Habitability in  
Supportive and Other Residential Housing

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 23-0425 for form and legal sufficiency. The bill would change several sections in the Building Code and Article 13 (Housing and Urban Development) of the City Code. Specifically, it would add the following to the existing list of certain uses that require a permit before continuation after ownership change: congregate housing, residential care facility, rooming house and supporting housing facility. It would also put these properties into a new Residential Group R-4 Use and Occupancy permit and further divide them in two subsets: 1) occupants can complete building evacuations in an emergency without assistance and 2) at least one occupant requires some verbal or physical assistance to evacuate in an emergency. Finally, it adds supporting housing facilities to the list of “rental dwellings” that need to be licensed under Subtitle 5 of Article 13 of the City Code.

The Mayor and City Council of Baltimore has the express power to pass laws that promote the general welfare and to regulate the “construction, use, operation, maintenance and removal of buildings and structures, or any part thereof, of every kind.” City Charter, Art. II, §§ (1), (47).

Adding the additional building permit classification to identify structures that may have residents that need assistance in an evacuation and requiring licensing of congregate housing, residential care facilities, rooming houses and supporting housing facilities could be challenged as violating the Fair Housing Act or the Americans with Disability Act by creating additional hurdles for these groups. 42 U.S.C. § 3604(f)(1) (FHA makes it illegal to “discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap.”); 42 U.S.C. § 12132 (the ADA provides “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”). To prevail in either context, however, a plaintiff would have to show that another similarly situated group was treated differently (*McDonnell Douglas Corp. v. Green*, 411 U.S.

792, 802-03 (1973)) or that there was discriminatory intent (*Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985)).

In this bill, the specified intent to is to include these uses in the existing licensing scheme for properties that furnish dwellings to tenants and to promote classification of these uses as ones in which there is a likelihood that the occupants may need additional help in an evacuation. This is distinguishable from local governmental regulations that disparately impact these groups or in prevent their access to their choice of housing. For example, a federal court found that a Montgomery County regulation requiring group home occupants be able to exit a building independently in event of a fire, although ostensibly for safety, was discriminatorily overbroad. See, e.g., *Potomac Group Home Corp. v. Montgomery County, Md.*, 823 F. Supp. 1285, 1292, 1300 (D. Md. 1993). In that case, the group homes were to evict residents that would need assistance exiting in an emergency. *Id.* at 1288. In contrast, the City merely seeks to classify uses where residents may need additional assistance. The licensing scheme in the *Potomac Group Home* case required neighborhood input as part of the licensing process with the goal of continuing neighbor input and compatibility with the use of the property for congregate living. *Id.* at 1289-90. In this bill, the licensing requirement will be the same as those done already for residential tenancies.

These code changes do not prevent residents from living in any facilities or burden their receipt of any government benefits in violation of the ADA or FHA. However, at the hearing on the bill, it would behoove the Mayor and City Council to provide additional testimony or facts that demonstrate why the permits and licenses are now being required, assurances that the new government processes are the minimal required to meet these goals and the anticipated benefits because of these changes.

The Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Chief Solicitor

cc: Ebony M. Thompson, Acting City Solicitor  
Nina Themelis, Mayor's Office of Government Relations  
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