

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

May 9, 2018

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

Re: City Council Bill 18-0201– Waterfront Management District – Exemption  
from Supplemental Tax

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0201 for form and legal sufficiency. The bill would allow the Waterfront Management Authority to exempt certain mixed use properties from the supplemental tax.

The Waterfront Management District and Management Authority was created by Ordinance 07-0417 pursuant to authorization from the Maryland General Assembly that allowed the City to create community benefits districts. *See* 1994 Md. Laws ch. 732, codified in City Charter, Art. II, §63 City Code. The law enacted to create the district is codified in Art. 14, Subtitle 8 of the Baltimore City Code. Sec. 8-8 provides for certain exemptions from the supplemental tax established by the law. This bill would create an additional exemption for properties containing 4 or fewer units, with a nonresidential use on the ground or first level only, if exempted by the Authority in accordance with guidelines approved by the Authority and the Board of Estimates.

After reviewing the authorizing provisions and the Code provisions, the Law Department has determined that this proposed exemption unlawfully delegates legislative authority to another body. By allowing the Authority and the Board of Estimates to decide which properties will be exempted, without providing sufficient standards to guide the discretion of those bodies, the bill unlawfully delegates legislative authority given to the City Council in Art. II, Sec. 63. "The rule is plain and well established that legislative or discretionary powers or trusts devolved by law or charter in a council or governing body cannot be delegated to others, but ministerial or administrative functions may be delegated to subordinate officials." *City of Baltimore v. Wollman*, 123 Md. 310, 315, 91 A. 339 (1914).

In order to remedy this problem, the Law Department proposes the following amendment:

On page 2, strike lines 3-6 and substitute:

(iii) PROPERTIES CONTAINING 4 OR FEWER RESIDENTIAL UNITS, WITH A NON-RESIDENTIAL USE ON THE GROUND OR FIRST LEVEL ONLY, PROVIDED THAT THE NON-RESIDENTIAL USE IS OPERATED BY THE OWNER OF THE PROPERTY WHO ALSO OCCUPIES THE RESIDENTIAL PART OF THE PROPERTY OR A UNIT THEREIN AS THEIR PRIMARY RESIDENCE. THE AUTHORITY WITH THE APPROVAL OF THE BOARD ESTIMATES SHALL ADOPT REGULATIONS SETTING FORTH THE DOCUMENTATION NEEDED TO PROVE PRIMARY RESIDENCY ON THE PROPERTY AND OWNERSHIP OF THE BUSINESS ESTABLISHMENT ON THE PROPERTY.

Provided the bill is amended as noted above, the Law Department can approve it for form and legal sufficiency.

Sincerely yours,

*Elena R. DiPietro*

Elena R. DiPietro  
Chief Solicitor

cc: Andre M. Davis, City Solicitor  
Karen Stokes, Director, MOGR  
Kyron Banks, Mayor's Legislative Liaison  
Kara Kunst, Legislative Director, City Council President  
Hilary Ruley, Chief Solicitor  
Victor Tervala, Chief Solicitor  
Ashlea Brown, Assistant Solicitor  
Avery Aisenstark, DLR

LAW DEPARTMENT AMENDMENTS  
CITY COUNCIL BILL 18-0201

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