

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

November 8, 2012

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 12-0123 – Building, Fire and Related Codes – 2012 Edition

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0123 for form and legal sufficiency. The bill repeals the current Building, Fire and Related Codes article of the Baltimore City Code and enacts a replacement article that is updated to reflect the changes in the state, federal, and international codes of which it is comprised.

On page 21, the bill inserts an exception to the standard copy charges for open violation and condemnation notices so as to waive the fees if the notices are for residential property and requested by a certain person. This violates Section 10-614 of the Maryland Public Information Act (“MPIA”), codified in the State Government Article of the Maryland Code. *See* Md. Code, State Gov., §10-614(c)(1). That state law prohibits the City from conditioning release of documents on the identity of the person seeking those documents. However, the City is able to take into consideration the identity of the requesting party if that party seeks to have the standard fees waived. *See* Md. Code, State Gov., §§10-614(c)(1); 10-621(e)(record custodian can waive fee if requested and if a waiver is in the public interest). Thus, the law should be modified to track the requirements of the MPIA. A suggested amendment is attached hereto.

Additionally on page 21, the fee of \$50 for photocopies of such notices violates the MPIA if that fee does not bear “a reasonable relationship to the recovery of actual costs incurred by the governmental unit” producing the record. *See* Md. Code, State Gov., §10-621(a). Although the Council may find that it costs \$50 to produce such records, that finding would be suspect considering the prior lines state that the general charge is \$1 for the first page and 50 cents for each additional page. The fee must be reduced to reflect the actual cost of reproduction unless the agency producing these records can justify the need for a \$50 charge.

On page 37, the bill inserts a new penalty for violation of “a provision of this code, or a permit, or of the rules and regulations of any department or agency of the City.” Currently, the existing permits can be revoked or additional permits can be refused to be granted for a period of up to five years. This bill would also allow the Building Official to prevent the issuance of any


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further permits “for work on the property with respect to which the violation occurred” for a period of five years. Unlike a penalty tied to the violator, this penalty burdens the land itself, making it impossible for any subsequent purchaser to obtain a building permit for that timeframe. Such a restriction operates to impair the free alienation of property and may also result in waste by preventing rehabilitation of that land. Md. Constit., Dec. of Rights, Art. 24. For this reason, the Law Department recommends deleting line 30 on page 37.

On page 73, the Law Department recommends clarifying §1804.1.2 (Underpinning Foundation Walls – Party Walls) to require applicants give several days written notice of the proposed underpinning to the owners of all adjoining properties prior to filing the application so that it is clear when notice is required. A draft amendment is attached hereto. The Law Department has selected 10 days but another period of time could be utilized.

The bill is a proper exercise of the power of the Mayor and City Council “to regulate the location, construction, use, operation, maintenance and removal of buildings and structures, or any part thereof, of every kind” as provided by Section 1 of Article II of the City Charter. *See also* City Charter, Art. II, §47 (general welfare power); Art. III, §11 (“The Mayor and City Council of Baltimore shall have power to pass all ordinances, not inconsistent with the Charter, necessary to give effect and operation to all powers vested in the City.”). Additionally, the bill is in accordance with state law concerning certain safety standards. *See* Md. Code, Pub. Safety, Title 12. Therefore, subject to the foregoing amendments, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,


Hilary Ruley
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor
Ashlea Brown, Special Assistant Solicitor
Victor Tervalva, Assistant Solicitor

**AMENDMENTS TO COUNCIL BILL 12-0123
(FIRST READER COPY)**

By: Councilmember(s) _____
{To be offered to the Judiciary and Legislative Investigations Committee}

Amendment No. 1

On page 21, in line 24, delete "THERE IS NO" and insert "THE"
On page 21, in line 25, after the comma insert "WILL BE WAIVED"
On page 21, in line 27, after "THE COPIES" insert "AND THE FEE WAIVER"

Amendment No. 2

On page 37, delete line 30.

Amendment No. 3

On page 73, in line 26, insert "THIS NOTICE MUST BE GIVEN AT LEAST 10 WORKING DAYS BEFORE THE PERMIT APPLICATION IS FILED."