

FROM	NAME & TITLE	Rudolph S. Chow, P.E., Director
	AGENCY NAME & ADDRESS	Department of Public Works 600 Abel Wolman Municipal Building
	SUBJECT	CITY COUNCIL BILL 15-0590

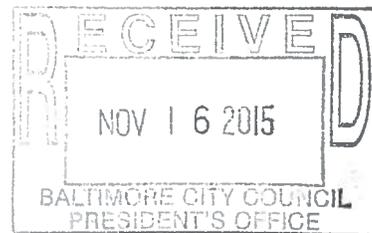
CITY of
BALTIMORE
MEMO



TO

DATE:
November 13, 2015

The Honorable President and Members
of the Baltimore City Council
c/o Natawna Austin
Room 400 – City Hall



I am herein reporting on City Council Bill 15-0590 introduced by Council Member Henry, President Young, Council Members Middleton, Costello, Kraft, Clarke, Reisinger, Spector, Welch, Scott, and Mosby.

The purpose of the Bill is to prohibit the demolition or reconstruction of certain City-owned structures unless expressly authorized by an ordinance of the Mayor and City Council; define certain terms; and require that, on introduction of a proposed authorizing ordinance, the bill be referred to certain agencies for their reports and recommendations.

City Council Bill 15-0590 would prohibit the demolition of any City structure unless the demolition or reconstruction has been expressly authorized by an ordinance. A City structure is defined as any building or other structural improvement that is owned by the Mayor and City Council of Baltimore and has been or is being used for a municipal function or public purpose. Examples provided in the legislation included offices, work places, schools, fire stations, police stations, monuments, recreation facilities, and neighborhood centers. Once the ordinance is introduced, it would be referred to the Planning Department, the agency or public official that has or will have control over the City structure, the Department of Real Estate, and any other agency so designated by the Council President for comment.

The Department of Public Works is responsible for constructing, reconstructing, maintaining and operating utility and solid waste yards, pumping stations, water towers, reservoirs, filtration and treatment facilities, stormwater facilities, transfer stations, landfills, and thousands of miles of underground infrastructure. All of these structures are managed for a public purpose and many are subject to federal and State oversight and regulation. The authority for construction, demolition, alteration, operation, and maintenance of these facilities is granted to Public Works by Charter (Article VII § 31). The legislative definition of “City structure” appears to be broad enough to include the aforementioned Public Works facilities, thus requiring an ordinance before any demolition or substantial reconstruction could be performed. Assuming “City structure” does include these Public Works facilities, and assuming that an ordinance can modify the Department’s Charter-granted authority over

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these facilities, this Department has the following issues with City Council Bill 15-0590 which prevent supporting the legislation as written:

- Ongoing maintenance and replacement of underground utilities – Replacement and repair of the water, wastewater and stormwater underground infrastructure are necessary to keep these systems performing as intended, meet permit requirements, and limit the disruptions in service caused by deferred maintenance. Removing damaged or aging pipes and replacing them with new pipes, or improving service through the less invasive pipe lining processes, are activities that can occur through routine maintenance or through formal contracts. All of these activities, however, would appear to be considered demolition and reconstruction as presently written in the legislation.
- Operational facilities – The legislation provides examples of the kind of structures used for a municipal function or a public purpose that would be subject to the ordinance requirement before demolition or substantial reconstruction could occur. While the bill does note the examples to be by way of illustration and not limitation, the examples are all above ground structures which are accessible to the public. In addition to underground infrastructure, many Public Works structures are operational in nature (e.g. pumping stations, testing laboratories, aeration tanks, digesters, sand filters) and are not open to the public except for supervised guided tours or occasional special events. These facilities, however, are of great interest to the regulatory agencies who implement laws and regulations through permits and it is these very laws, regulations and permits that drive the improvements to these facilities. In addition to new structures, required improvements could result in demolition or reconstruction of operational facilities without recourse.
- Emergency circumstances – There are times when emergencies arise that require immediate action in the interests of public safety. For example, water main breaks or damaged water or wastewater facilities caused by severe weather or other unanticipated events require Public Works to react quickly to restore water service, protect the environment, or to limit the impact of emergency conditions on affected communities. Another example is structures deemed to be unsafe. The Commissioner of Housing and Community Development is empowered to declare structures unsafe and grant their immediate demolition (Chapter 1 § 116.5.2 of the International Building Code). This authority is used when fire or natural disasters render a structure unstable. While the intent of this legislation is to address the planned activities of the City that would result in demolition or substantial rehabilitation, there is no exception for emergency circumstances.

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The Department of Public Works must perform long term planning of its facilities and infrastructure to be prepared for new or changing demands on systems and facilities, ensure vital services continue unabated, and to meet regulatory requirements imposed by the State or federal government. Many of these projects take multiple years to go from design to completed construction, and require significant preparations to ensure all phases of the projects are adequately funded. As a result, any demolition, substantial reconstruction, or new construction projects generated by this Department are included in the City's Six Year Capital Improvement Program (CIP). The CIP projects go through an extensive prioritization process within the agency, are presented to and publicly heard by the Planning Commission, and the proposed CIP program is included in the Ordinance of Estimates, which has its own extensive hearing process conducted by the City Council. Based on these processes, it is the opinion of this Department that its capital projects included in the Ordinance of Estimates already comply with the ordinance requirement of City Council Bill 15-0590.

Should the Charter-granted authority and the CIP and Ordinance of Estimates process be determined to not satisfy the intent of the legislation, the Department of Public Works proposes to amend City Council Bill 15-0590 (amendments attached) to meet the concerns raised in this response, prior to the Bill's passage.



Rudolph S. Chow, P.E.
Director

Attachment

AMENDMENTS TO COUNCIL BILL 15-590
(1st Reader Copy)

Proposed by: Department of Public Works
{To be offered to the Judiciary Committee}

Amendment No. 1

On page 2, after line 1, insert the paragraph designation “(1) IN GENERAL.”; and, on the same page, in line 2, after “MEANS”, insert “, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION.”; and, on the same page, in line 4 and in line 5, strike “(1)” and “(2)”, respectively, and substitute “(1)” and “(II)”, respectively; and, on the same page, after line 7, insert:

“(2) EXCLUSIONS.

“CITY STRUCTURE” DOES NOT INCLUDE:

(I) ANY SUBSURFACE INFRASTRUCTURE OR ITS APPURTENANCES; OR

(II) ANY OPERATIONAL FACILITY NOT ROUTINELY OPEN TO THE PUBLIC.”

Amendment No. 2

On page 1, in line 5, after the semicolon, insert “; providing an exception for certain emergency situations.”; and, on page 2, in line 23, after “UNLESS”, insert a colon, a line break, and the item designation “(1)”; and, on the same page, in line 24, after “COUNCIL”, insert:

“; OR

(2) THE BUILDING OFFICIAL OR HIS OR HER DESIGNEE HAS CERTIFIED THAT THE DEMOLITION OR RECONSTRUCTION IS AN EMERGENCY MEASURE NECESSARY TO PROTECT LIFE, HEALTH, SAFETY, OR PROPERTY FROM IMMINENT DANGER.”