

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

November 16, 2015

The Honorable President and
Members of the Baltimore
City Council
c/o Natawna Austin, Executive Secretary
409 City Hall
Baltimore, MD 21202

RE: City Council Bill 15-0590 – Demolition etc. of City Property

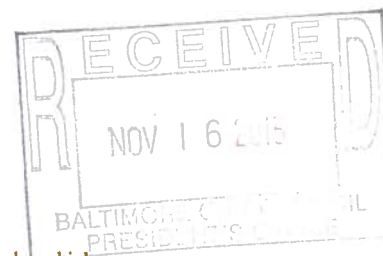
Dear President and Members

You have requested the advice of the Law Department regarding City Council Bill 15-0590. City Council Bill 590 is for the purpose of prohibiting the demolition or reconstruction of certain City-owned structures unless expressly authorized by an ordinance of the Mayor and City Council.

The Law Department has several concerns about Bill 15-0590. First, there are several different provisions of law involved with demolition of City –owned buildings. The City’s Express Powers, codified in Art. II of the City Charter, grant the Mayor and City Council authority to regulate the location, construction, use, operation, maintenance and removal of buildings and structures, or any part thereof, of every kind. Art. II, §1. The general grant of language that precede this provides that “the Mayor and City Council of Baltimore shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public general or Public Local Laws of the State of Maryland; and in particular, without limitation upon the foregoing, shall have power by ordinance, *or such other method as may be provided for in its Charter*, subject to the provisions of said Constitution and Public General Laws.”

Pursuant to the italicized language above, the Charter provides, in two separate provisions, for demolition authority with respect to city-owned structures. Art. VII, §132(c) gives the Department of General Services (DGS) authority, unless otherwise provided for in the Charter to have “charge of the construction, demolition, alteration, operation and maintenance of all municipal buildings and related improvements.” Similarly, Art. VII, §31 provides that the Department of Public Works (DPW) “has charge of the construction, demolition, alteration,

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operation and maintenance of all public works¹ that relate to the Department's powers under this Charter." Pursuant to the grant of authority under the general grant language at the beginning of Art. II, the demolition power with respect to properties under the auspices of DGS or DPW is vested in those departments by the Charter. Amendments to the Charter would be necessary to alter those provisions. Bill 15-0590 therefore conflicts with the Charter with respect to those properties.

In addition, demolition of city-owned property could be considered part of the Mayor's Charter powers with respect to economic development under Art. IV, §4.

Another consideration is the statutory provisions in State law providing for protection of underground facilities. The Public Utilities Art., Title 12 extensively regulates demolition near underground facilities. The requirements of this bill cannot conflict with this State law which has specific requirements for demolition near underground facilities.

Finally, the bill does not provide for an exception in the case of emergencies. This would

¹ The Court of Appeals in 2010 examined the definition of a public work for the purpose of awarding public works contracts under Article VI, § 11(b) of the Baltimore City Charter. The Court used the term's "ordinary and natural meaning" and began its analysis with a definition found in Black's Law Dictionary: Public works are "[s]tructures (such as roads or dams) built by the government for public use and paid for by public funds." *120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore City*, 413 Md. 309, 335 (2010). "Not only is this definition consistent with the commonly understood meaning of public work but also it is consistent with the definition of public work established by the Maryland Prevailing Wage Law, Md. Code Ann. (2009 Repl. Vol.) § 17-201 et seq. of the State Finance & Procurement Article, and the definitions adopted in many of our sister jurisdictions." *Id.* at 335. The Court outlined the various definitions it found:

*§ 17-201(j) of the State Finance & Procurement Article ("'[P]ublic work' means a structure or work, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that: (i) is constructed for public use or benefit; or (ii) is paid for wholly or partly by public money."); see also, e.g., Mo. Rev. Stat. § 290.210(7) (2000) ("'Public works' means all fixed works constructed for public use or benefit or paid for wholly or in part out of public funds."); Pa. Stat. Ann. § 165-2(5) ("'Public work' means construction, reconstruction, demolition . . . done under contract and paid for in whole or in part out of the funds or a public body[.]"); *Bessemer Water Serv. v. Lake Cyrus Dev. Co.*, 959 So. 2d 643, 650 (Ala. 2006) ("The construction, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads . . . as well as any other improvement to be constructed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds[.]" (internal quotation marks, citations, and emphasis omitted)); *Raley v. Cal. Tahoe Regional Planning Agency*, 68 Cal. App. 3d 965, 137 Cal. Rptr. 699, 710 (1977) ("For general purposes public works are defined as 'fixed works (as schools, highways, docks) constructed for public use or enjoyment [especially] when financed and owned by the government.'" (internal citations omitted)); *Carson-Tahoe Hosp. v. Bldg. & Constr. Trades Council of N. Nev.*, 122 Nev. 218, 128 P.3d 1065, 1067 (Nev. 2006) ("A public work is defined as any project for the new construction, repair, or reconstruction of . . . a project financed in whole or in part from public money[.]" (internal quotation marks and citations omitted)).*

Id. at 335-336.

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expose the City to significant liability if dangerous conditions could not be remedied by emergency demolitions without having to go through the time-consuming ordinance process.

Based on the foregoing the Law Department cannot approved City Council Bill 15-0590 for form and legal sufficiency. Absent a Charter amendment, the bill would not apply to the majority of City-owned buildings and structures.

Sincerely yours,



Elena R. DiPietro

Chief Solicitor

cc: Angela Gibson, City Council Liaison
George A. Nilson, City Solicitor
Vic Terval, Chief Solicitor
Jennifer Landis, Assistant Solicitor
Hilary Ruley, Chief Solicitor