
CITY OF BALTIMORE

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November 1, 2025

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

Re: City Council Bill 25-0080 – In Rem Foreclosure– Vacant Structures and Nuisance Properties

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 25-0080 for form and legal sufficiency. The bill would authorize certain property located in Baltimore City identified as a vacant structure or nuisance property under the Baltimore City Building Code to be subject to a certain in rem foreclosure process.

The City's current in rem foreclosure procedure was authorized in 2019 by the enactment of Part V ("Judicial In Rem Tax Foreclosure") of Subtitle 8 of the Tax Property Article of the Maryland Code, now codified in Sections 14-873 through 14-876 of that Article. 2019 Md. Laws, ch. 276. This procedure applies to vacant properties or property cited as vacant and unsafe if the time to appeal that decision has tolled and if taxes are in arrears for at least 6 months. Md Code, Tax Prop., § 14-874. Most importantly, **the liens must exceed the value of the property:**

(a) Real property may be subject to foreclosure and sale under this part only if:

(1) the property consists of a vacant lot or improved property cited as vacant and unsafe or unfit for habitation or other authorized use on a housing or building violation notice; and

(2) **the total amount of liens for unpaid taxes on the property exceeds the lesser of the total value of the property as last determined by the Department or as determined by an appraisal report prepared not more than 6 months before the filing of a complaint under this section by a real estate appraiser who is licensed under Title 16 of the Business Occupations and Professions Article.**

Md Code, Tax Prop., § 14-874 (a) (1)-(2) (emphasis added).

The requirement of the liens exceeding the value of the property is the reason that the current process is not a government taking of private property, because the government's interest

in the property is already substantial. In Rem Foreclosure is a method of collecting the unpaid amounts due to the government:

Actions in rem, strictly considered, are proceedings against property alone treated as responsible for the claims asserted by the libelants or plaintiffs. The property itself is in such actions the defendant, and, except in cases arising during war for its hostile character, its forfeiture or sale is sought for the wrong, in the commission of which it has been the instrument, or for debts or obligations for which by operation of law it is liable. The court acquires jurisdiction over the property in such cases by its seizure, and of the subsequent proceedings by public citation to the world, of which the owner is at liberty to avail himself by appearing as a claimant in the case’.

Gathwright v. Mayor & Council of City of Baltimore, 181 Md. 362, 367–68 (1943).

In 2023, the General Assembly added Section 14-894 to the Tax Property Article of the Maryland Code to allow Baltimore City to provide by ordinance for an in rem foreclosure for properties with no value (like the current law) **as well as properties with value**. While the City can sell property to recover taxes owed, it is prohibited by the Fifth Amendment of the U.S Constitution and Section 40 of Article III and Section 1 of Article XI-B of the Maryland Constitution from taking property without just compensation. “[J]ust compensation means the full monetary equivalent of the property taken.” *United States v. Reynolds*, 397 U.S. 14, 16 (1970). As explained below, the bill must be amended to provide the necessary compensation.

Even with these amendments, however, the City may not be able to satisfy the requirement of a public purpose for a taking of private property in a particular case. “Whether the use for which private property is taken is public or private is a judicial question, to be determined by the court; a legislative body cannot make a particular use either public or private by merely declaring it so.” *Mayor and City Council v. Chertkof*, 293 Md. 32, 43 (1982). To operate “otherwise, the constitutional restraint would be utterly nugatory, and the Legislature could make any use public by simply declaring it so, and hence its will and discretion become supreme, however arbitrarily and tyrannically exercised.” *Perellis v. Mayor & City Council of Baltimore*, 190 Md. 86, 93 (1948). The City cannot justify taking a property to give it to another that may make better use of it. *Id.* Rather, each time the City utilizes this process, it will have to show that it is taking the property in question for a public purpose. However, “the public character of a condemnation is not necessarily changed because a private entity will own the property.” *Prince George’s Cnty. v. Collington Crossroads, Inc.*, 275 Md. 171, 187 (1975).

A Court may not be persuaded that in every case the City’s taking title to a vacant or nuisance property is sufficient public purpose when there is still private equity left in the property. The state law applies to “vacant or nuisance property” that is defined as “a vacant lot or improved property determined to be a vacant property or a nuisance property under the Baltimore City Building Code.” Md Code, Tax Prop., § 14-894. A nuisance property according to the building code is:

- a. an unoccupied structure for which 2 or more final, non-appealable Building Code, Fire Code, or Property Maintenance Code violations remained unabated for 10 days or more beyond the date by which the violation notice, citation, or order required the violation to be corrected; or
- b. the exterior premises of an unoccupied structure for which, at any time within the preceding 12 months, on 6 or more separate occasions, final, no-longer appealable violation notices, citations, or orders were served to correct violations of Property Maintenance Code, § 305 {"Exterior Sanitary Maintenance – General"} or § 306 {"Exterior Sanitary Maintenance – Trash, Garbage, and Debris"}.

Building, Fire & Related Codes of Baltimore City, § 116.4.1.3.

Since public purpose must be decided by a court, the Law Department cannot disapprove the bill for form and legal sufficiency on these grounds as they are determined on a case by case basis. However, amendments are needed to be sure that the City provides fair market value for the property, allows the property owner to contest that value with a jury trial as a matter of right and does not take title until payment is given subject to the City's lien amount.

Amendment Required to Pay Fair Market Value

Determining the value of the property makes sure there is just compensation paid to the property owner to avoid an unconstitutional taking. In condemnation proceedings, fair market value must be paid. Md. Code, Real Prop., § 12-104(a). Fair market value is defined as:

the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay, excluding any increment in value proximately caused by the public project for which the property condemned is needed. In addition, fair market value includes any amount by which the price reflects a diminution in value occurring between the effective date of legislative authority for the acquisition of the property and the date of actual taking if the trier of facts finds that the diminution in value was proximately caused by the public project for which the property condemned is needed, or by announcements or acts of the plaintiff or its officials concerning the public project, and was beyond the reasonable control of the property owner.

Md. Code, Real Prop., § 12-105(b).

A defendant can challenge the value before the final judgment is issued. Md. Code, Real Prop., § 12-105(c). A defendant challenging value typically obtains their own appraisal. If the City and defendant do not agree on the value, the condemnation case is tried by a jury for the value to be determined unless the parties waive the jury trial right. Maryland Rule 12-207(a). The requirements in Maryland law stem from the fact that the "right to private property, and the protection of that right, is a bedrock principle of our constitutional republic. This is explicit in the federal constitution. The Fifth Amendment of the United States Constitution, made applicable to

the States through the Fourteenth Amendment, states that, ‘No person shall ... be deprived of life, liberty, or property, without due process of law.’” *Mayor & City Council of Baltimore City v. Valsamaki*, 397 Md. 222, 241 (2007) (citations omitted).

This bill lacks the necessary due process. The Law Department recommends that Section 8.2-9 on page 12 be amended to include the right to a jury trial to contest value as required under Section 40 of Article III and Section 1 of Article XI-B of the Maryland Constitution unless waived by the parties in writing. Section 8.2-12 on page 14 should be amended to ensure that the fair market value of the property is obtained by providing an opportunity to contest the adequacy of the auction and applying the definition of fair market value as provided in Section 12-105(b) of the Real Property Article of the Maryland Code, rather than two appraisals.

Amendment Required to Prevent Taking Title Without Payment of Fair Market Value

The bill permits the City to take control of a property with value before the property owners have been paid that value. This type of government action would be characterized as quick take condemnation, permitted in some jurisdictions in Maryland under Sections 40a of Article III of the Maryland Constitution. *See, e.g., Makowski v. Mayor & City Council of Baltimore*, 439 Md. 169, 186 (2014) (Baltimore’s evidentiary showing “met the high threshold for situations to qualify as ‘necessary’ for Baltimore City to have ‘immediate’ possession and/or title to real property”). Since this bill contemplates a judicial in rem process, not an immediate quick take for possession, the bill needs to be amended to make clear that title is not taken until after the payment of just compensation. Thus, Section 8.2-13 may not be needed in those cases where the property has value above the lien amount since the City will have already paid fair market value for the property before obtaining title. Additionally, for those properties with value, the court may require in personam jurisdiction and additional notice.

Additional Amendments Needed

Section 8.2-14 “Reopening Judgment” on page 15 should be deleted as it attempts to direct the actions of the Baltimore City Circuit Court, thereby exceeding the City’s legislative power. MD Constitution, Art. 11-A, Sect. 3. Moreover, it is duplicative of existing state law.

Next, lines 10 through 12 on page 3 of the bill must be deleted because the lawyer is distinct from the client. Md. Rule, 19-301.2 (Maryland Rule of Professional Conduct explaining lawyer and client relationships).

Finally, the change of Mayor and City Council to be a plural noun is incorrect, as it is the legal name of the City as provided in its Charter. City Charter, Art. I, § 1. Therefore, the Law Department recommends removing the suggested change in line 7 on page 2. Similarly, there are several other references throughout the bill that refer to the Mayor and City Council as a plural noun that should be revised. Additionally, the bill alters between referring to the City and referring to the Mayor and City Council. To avoid a Court interpreting these two terms differently, the Law Department recommends that one moniker be used consistently. *See, e.g., Toler v. Motor Vehicle Admin.*, 373 Md. 214, 223–24 (2003) (“It is a common rule of statutory construction that, when a

legislature uses different words, especially in the same section or in a part of the statute that deals with the same subject, it usually intends different things”).

Since the required amendments are substantial, the Law Department has not attempted to draft them but remains happy to consult on their creation. With these required amendments, the bill is not unconstitutional on its face because it will provide the due process and just compensation required under the Fifth Amendment of the United States Constitution and the applicable articles of the Maryland Constitution. In any particular case, however, a court may find the City’s attempt to take title unconstitutional if it cannot provide an adequate public purpose. Since this would only invalidate the law as applied, the Law Department can approve the bill for form and legal sufficiency with the required amendments.

Very truly yours,



Hilary Ruley
Chief Solicitor

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