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CITY OF BALTIMORE

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Mayor



DEPARTMENT OF LAW  
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June 25, 2021

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

Re: City Council Bill 21-0078 –Required Real Estate Disclosures – Formerly Vacant Structures

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0078 for form and legal sufficiency. The bill would add an additional disclosure requirement in the existing Subtitle 14 of Article 2 of the City Code. Currently, that Subtitle provides two limits on advertising of properties for sale, including single family zoning (14-3) and property taxes (14-5) and one requirement that “on or before entering into a contract for the sale of any real property, the seller must provide the buyer with the following disclosure” concerning heavy industrial railroad operations (14-6). This bill would create a disclosure requirement for vacant building notices similar to the railroad notice contained in Section 14-6 of Article 2 of the City Code.

In City Council Bills 17-0006 (withdrawn), its predecessor 16-0765 (not adopted), as well as when the real estate disclosure concept was created by Ordinance 12-0053 (City Council Bill 12-0069) for the railroad uses, the Law Department noted that the City has the general police and welfare powers to legislate in this area. *See* City Charter, Art. II, §§ (27), (47). The General Assembly has allowed the City “to prescribe, within the limits of the federal and state constitutions, reasonable regulations necessary to preserve the public order, health, safety, or morals.” *Tighe v. Osborne*, 149 Md. 349, 356 (1925).

One limit on the government’s regulatory power is the constitutional right to be free from burdens on private contracts. “Freedom of contract is subject to legislative regulation in the interest of public health, safety, morals or welfare. But such legislation must not be unreasonable, arbitrary, or capricious, and the means selected must have a real and substantial relation to the object sought to be attained.” *Maryland Bd. of Pharmacy v. Sav-A-Lot, Inc.*, 270 Md. 103, 119-120 (1973) (citation omitted) (emphasis added); *see also VNA Hospice v. Dep’t of Health & Mental Hygiene*, 406 Md. 584, 601 n.8 (2008). The current Section 14-6 avoids a general impairment of the right to freedom of contract because it is narrowly tailored to give notice for public welfare reasons of an objectively identifiable feature of the property, but its failure to be given does not impair the contract of sale.

This bill's disclosure requirement is similarly narrow and properly tailored to avoid any impermissible burden on contracts and does not require a buyer's acknowledgement by signature because, as noted in previous bill reports on this topic, it is unclear if the lack of a signature would allow those buyers who were not given the requisite disclosure to argue that such a failure constituted a substantial and material breach that "would permit the buyer to terminate the contract." *Dennis v. Rockville*, 286 Md. 184, 190 (1979); *see also Maryland National Capital Park and Planning Commission*, 282 Md. 588, 606 (1978); *McCrorry Corp. v. Fowler*, 319 Md. 12, 20 (1990) (local governments generally cannot create a private cause of action).

The only recommended amendment is to make clear that the bill does not operate retroactively in violation of the United State Constitution's Contract Clause by requiring any sellers to give the notice required by the bill if an offer for sale of their property has already been accepted. *See, e.g., Board of Trustees of Employees' Retirement System of City of Baltimore*, 317 Md. 72, 99 (1989). Suggested language would be to add a new uncodified recital at the end of the bill to state that: "And be it further ordained that, this ordinance does not operate retroactively to require any current property sellers to give the notice created by this bill if an offer for sale of a property has already been accepted."

Subject to the foregoing amendment, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Nina Themelis, Mayor's Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalá, Chief Solicitor  
Ashlea Brown, Assistant Solicitor