
CITY OF BALTIMORE

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Mayor



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December 10, 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 21-0174 – Baltimore City Senior Homeowners Grant
Program

Dear President and City Council Members:

DRAFTThe Law Department has reviewed City Council Bill 21-0174 for form and legal sufficiency. The bill is for the purpose of establishing the Baltimore City Senior Homeowners Grant Program; specifying the purpose of the Program; establishing eligibility criteria for the Program; specifying the assistance provided by the Program; defining certain terms; and generally relating to the Baltimore City Senior Homeowners Grant Program.

Generally speaking, the City Council has authority to establish this program for the purposes stated in the bill, including the stabilization of the City’s neighborhoods. City Charter, Art. II, § 47 (To pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City). Furthermore, this program can be added by ordinance to the duties of the Department of Housing. City Charter, Art. VII, § 2(a) (Consistent with the Charter, and subject to the supervision of a superior municipal officer or agency, a department, officer, commission, board or other municipal agency provided for in the Charter shall perform additional duties and possess additional powers, as may be prescribed by ordinance).

The bill provides that the program “shall be subject to an appropriation of funds in accordance with the City Charter.” CCB 21-0174, p. 4, lines 16-17. The Maryland Constitution requires that programs funded by tax monies serve a public purpose. However, this purpose is satisfied, even in the case of payment to individuals, if “the legislative determination to spend a particular amount of public funds [is] reasonable and based on an honest judgment of those officials charged with the care of the public purse that the expenditure is for the best interests of the jurisdiction.” *Town of Williamsport v. Washington County Sanitary District*, 247 Md. 326, 231 A. 2d 40 (1967).

A court would likely find that the expenditure of funds by the program to seniors for the purpose of stabilizing neighborhoods is reasonable and serves a public purpose.

The program creates a classification among citizens who are or are not eligible for the grants. This classification survives a challenge based on the Equal Protection Clause if there is a legitimate purpose and a rational basis for the class. "Our review of the classification under the equal protection clause is two pronged: First we must determine whether the challenged legislation has a legitimate purpose. Then, we must determine whether it was reasonable for the state legislature to believe that the classification would promote that purpose." *Baltimore Gas and Elec. Co. v. Heintz*, 760 F.2d 1408, 1417 (4th Cir. 1985) (citing *Western & Southern L.I. Co. v. Board of Equalization*, 451 U.S. 648, 668, (1981)). A court would likely find that designing a program to benefit seniors in this context is reasonable, given the vulnerabilities of the class.

Several aspects of the bill should be revised. Maryland law prevents a government from keeping information about a person that is not necessary for the accomplishment of the governmental purpose articulated in the statute. Md. Code, Gen. Prov., § 4-102. Certain information that is requested of the applicant is arguably not necessary for the purpose of the program (e.g., number of family members living in the home, sources of income). Any information requested in the bill that is not directly related to the purpose of the program should be deleted.

Any documents requested should be reviewed and returned to the applicant, for the same reason stated above (retention is not necessary).

The Law Department has concerns about the request of information concerning the title of the home, as it does not account for the possibility of one having a life estate with reversion who would be responsible for taxes on the home despite title. This request for information should also be deleted as not relevant.

Finally, further guidelines should be provided by ordinance to limit the delegation of discretion. "The rule is plain and well established that legislative or discretionary powers or trust devolved by law or charter in a council or governing body cannot be delegated to others, but ministerial or administrative function may be delegated to subordinate officials." *City of Baltimore v. Wollman*, 123 Md. 310, 342 (1914); accord *Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 161 (1999).

The Law Department can assist in making the recommended changes.

Subject to the above, the bill is approved for form and legal sufficiency.

Very truly yours,



Ashlea Brown
Chief Solicitor

cc: James L. Shea, City Solicitor

Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalo, Chief Solicitor
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