Honorable President and Members December 15, 2021

of the City Council of Baltimore

c/o Natawna Austin, Executive Secretary

Room 409, City Hall

100 N. Holliday Street

Baltimore, Maryland 21202

Re: City Council Bill 21-0173- Baltimore City Home Repairs Grant Program

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0173 for form and legal sufficiency. This bill is for the purpose of establishing the Baltimore City Home Repairs Grant Program. The bill establishes eligibility criteria for the Program and specifies the types of repair assistance provided by the Program. The establishment of this program is within the legislative authority to the City Council. There are some details in the bill, however, that are problematic.

The bill contains several categories of eligible applicants for repair grant some of which require that the applicant must satisfy certain Baltimore city residency thresholds. The first category with residency-based criteria requires that the applicant must have resided in the City as their principal residence for 15 years prior to June 30, 2022. The second category requires residency for at least 15 years at some point in time and changed residency due to foreclosure, short sale or deed in lieu of foreclosure. Both these of categories are subject to the condition that the home was the applicant’s principal residence and was purchased or refinanced during the period of January 1, 2001 and December 30, 2008. The final residency-based requirement applies to residents of a Designated Impact Investment Neighborhood (DIN). It mandates 10 continuous years of residency prior to application or 10 years at some point and a change in residency taking them outside the DIN due to foreclosure, short sale or deed in lieu of foreclosure provided the home was the applicant’s principal residence and it was purchased or refinanced between January 1, 2001 and December 30, 2008.

The bill also has three other categories of eligible applicants 1) those whose household income is 80% or less of the city’s median income 2) those who are participants in the U.S. Department of Housing and Urban Development Housing Choice Voucher Program and 3) those who have an existing reverse mortgage.

The categories requiring a certain number of years as residents prior to being eligible to apply for the home repair grant are problematic. These types of requirements are known as durational residency requirements. Such a test for eligibility for a statutory benefit is considered unconstitutional as violating the right to travel under the equal protection and/or the privileges and immunities clauses of the U.S. Constitution unless there is a compelling state interest for the requirement. See *Shapiro v.*

*Thompson*, 394 U.S. 618 ((1969); *Saenz v. Roe*, 526 U.S. 489 (1999) and *Dunn v. Blumstien*, 405 U.S. 330 (1972). The constitutional problem often arises in cases where a new resident attempts to exercise a right and the durational residency requirement deters the exercise of that right. These classifications are found to be invalid under a strict scrutiny analysis unless shown to be necessary to serve a compelling governmental interest. In cases involving governmental benefits, courts have routinely found the durational residency requirements to be unconstitutional and not justified by a compelling state interest. *Id*.

In this bill, it is difficult to justify why the durational residency requirement is necessary. How does it serve the government’s interest to require ten or fifteen years of city residency before the home is eligible for a repair grant. If the home needs repair and the owner needs financial assistance to do so ,the government’ s interest is served by allowing application for the grant regardless of the length of residency. The purported purpose of the bill to revitalize and stabilize Baltimore’s neighborhoods will be served without the residency restrictions. The three remaining categories of applicants remain intact in the bill.

The Law Department therefore cannot approve this bill unless it is amended to remove lines 6-24 on page 4. The Law Department also recommends that Sec. 6D-6 be amended clarify that the applications shall be prioritized based on the categories listed in that section and in the order listed with the first factor receiving the highest priority and the last factor having the lowest priority.

If City Council Bill 21-0173 is amended as provided above, the Law Department could approve it for form and legal sufficiency.

Sincerely,



Elena R. DiPietro

Chief Solicitor

Cc: James Shea, City Solicitor

Darnell Ingram, Deputy Solicitor

Stephen Salsbury, Chief of Staff

Natasha Mehu, Director. MOGR

Nina Themelis, Mayor’s Office of Government Relations

Matthew Stegman, President’s Office

Nikki Thompson, President’s Legislative Liaison

Ashlea Brown, Special Solicitor

Victor Tervala, Chief Solicitor

Hilary Ruley, Chief Solicitor

Dereka Bolden, Assistant Solicitor

Avery Aisenstark