
CITY OF BALTIMORE

BRANDON M. SCOTT,
Mayor



DEPARTMENT OF LAW
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BALTIMORE, MD 21202

September 12, 2024

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

Re: City Council Bill 23-0363 - Land Bank Authority

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 23-0363 for form and legal sufficiency. The bill is “for the purpose of providing certain unamended authorizing language for context of [the] ordinance; establishing the Land Bank Authority of Baltimore City; providing for the Authority’s powers, duties, and limitations; providing for a Board of Directors, for the selection and terms of the Board’s members, and for the powers and duties of the Board; providing certain immunities; providing for providing certain tax exemptions; and generally relating to the establishment and operation of a Land Bank Authority, as authorized by the City Charter.”

The Law Department has worked extensively on this legislation and approves the bill for form and legal sufficiency provided the bill is amended as follows:

First, Section 22-6 (D) (1) pertaining to the qualifications of board members requires that each member be “a person of ability and integrity.” CCB 23-0363, p. 23, line 19. This is vague and should be deleted from the bill.

Second, Section 22-9 of the bill, p. 27 entitled “Role in Financing” authorizes the land bank to “create a fund pledging assets to leverage private investment to fulfill the purposes of this title.” The land bank is authorized to “invest money of the Authority in instruments, obligations, securities or property.” Charter, Art. II sec. 65 (e) (2) (vii). It is not clear from this language whether the creation of a fund is authorized. Furthermore, there is no authority given to “make loans or grants to assist with financing projects.” Although there is language in the enabling legislation that is broad and could potentially authorize the creation of a fund, the specificity of the powers section and the fact that it does not mention these powers suggests that the creation of a fund is not authorized.

We recommend deleting section 22-9 from the bill and consulting with land bank counsel once the land bank is established to determine whether this is an investment strategy that is authorized. If so, it would not need to be in the ordinance.

Third, Section 22-11 of the bill on page 28 requires that each sale of the land bank's property be accompanied by a land disposition agreement including certain terms like maintenance and uses of the property and allows the land bank to repossess the property and terminate the estate conveyed to the buyer in the event of default. It also provides that title will automatically revert to the land bank under these circumstances. CCB 23-0363, Sec. 22-11 (E) - (H).

Sections (F) Failure to comply, (G) Causes of Action and (H) Title to Revest must be removed from the bill, as they are not authorized by the enabling act and are arguably a restraint on alienation.

Section (E) requiring that each sale of the land bank's property be accompanied by an agreement regarding maintenance, property uses and outcomes and benefits to the community could remain in the bill to preserve the policy, leaving the penalty of noncompliance with the agreement to be negotiated by the parties to the sale.

If the entire section regarding disposition agreements is removed, section 22-23 B (2) (VI) on p. 35, line 27, requiring the reporting of compliance with these agreements should also be deleted. Land disposition agreements and penalties for default can be negotiated and implemented by land bank counsel. The "best outcomes" policy is required by section (D) of 22-11 and can remain in the bill to ensure that the policy guides the disposition should section 22-11 (E) - (H) be removed.

Section (D) of 22-11 requires that the land bank consider the best outcomes and not necessarily the highest bid. CCB 23-0363, p. 29, line 3. "Unless state law or a court requires otherwise" should be inserted here.

Fourth, the address of the principal office must be included in the proposed Articles of Incorporation. Charter, Art. II, sec. 65 (c)(2)(iv). The charter also requires that the proposed Articles of Incorporation contain the addresses and terms of office of the initial Board members. Blanks are provided in the bill presumably for this purpose.

Next, the enabling act requires that the proposed Articles of Incorporation contain the purposes for which the land bank is formed. Art. II, Sec. 65 (c)(2)(v). Although the Articles do contain a general statement about nonprofit purposes, further elaboration might be needed here (the purposes listed in 22-3 of the bill could be inserted).

Further analysis is needed to determine whether the land bank qualifies as a corporation exempted under 26 U.S.C.A. § 501 (c)(3). Although the Authority is going to operate as a nonprofit organization, an argument could be made that it is not a "charitable" organization within the purview of 501 (c) (3).

Bond counsel and land bank counsel should review the requirement that the land bank comply with State Local Government Article 17-204 (“Local Government Investment Guidelines”) on p. 34, line 12 of the bill.

There is a typo (the word property is repeated) on p. 37, line 11.

Board of Estimates Resolution Needed

Since the Land Bank is designed to streamline the disposition of property, one of its primary goals is to skip some of the procedural “red tape” to which land transactions are currently subject. Some of these procedural requirements stem from the City Charter and the City Code. The Charter contains several provisions that govern the disposition of City property.¹

Article II § 15 of the Charter pertains to the disposition of land used for “development and redevelopment.” See City Charter, Article II § 15. Most of the land transactions of the Authority, if not all, will be for this purpose. The Charter does not require approval of these transactions by the Board of Estimates, but these powers were vested in Baltimore’s Department of Housing by City Code, Article 13, § 2-7 and section 2-7 (f) does require Board approval. See City Code, Article 13 § 2-7 (a) (1) and § 2-7 (f). The acquisition of abandoned property, which is specifically addressed in § 2-7 (h) of Article 13, also requires “prior approval of the Board of Estimates.” City Code, Article 13 § 2-7 (h) (1) and (2).

Assuming that the Authority acquires its initial inventory of land from the City, and complies with the Charter and Code for this initial transaction, the property it manages will be titled to the Authority itself. This may seem on the surface to cure the need for Board of Estimates approval for the Authority’s future transactions. However, given the interconnectedness of the Authority to the City, taking into consideration Maryland case law on the subject², and the enabling statute expressly providing that the Authority is an “instrumentality of the City,” the Authority would still be required to adhere to the same procedures it was designed to avoid. Although an argument could be made that the Act, which grants the Authority the power to acquire and dispose of land without Board of Estimate’s approval, trumps any conflicting local laws, the Law Department advises a Board of Estimates resolution to eliminate the need for Board approval for land transactions handled by the Authority. The resolution must contain criteria which, if satisfied, would absolve future land transactions handled by the Authority from Board of Estimate’s approval.

¹ First, § 5 (b) of Article V provides that the Department of Real Estate “shall (unless and to the extent otherwise provided by the Board of Estimates) arrange for the disposition of any ...real property ... no longer needed by the City for public use.” City Charter, Article V § 5 (b). It requires that such disposition be authorized by ordinance and approved by the Board of Estimates. See City Charter, Article V § 5 (b). Secondly, § 6 of the same Article requires that the proceeds of these sales go into the Real Property Account. See City Charter, Article V § 6. The acquisition of land by the Real Estate Department must also “from time to time” be approved by the Board of Estimates. See City Charter, Article V § 5(a).

² See, e.g. *Andy’s Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125 (1999) and *City of Baltimore Development Corp. v. Carmel Realty Associates*, 395 Md. 299 (2006)

This resolution makes the Memorandum of Understanding between the Authority and the City required on p. 41, line 4 unnecessary.

A copy of suggested amendments is attached.

Subject to the above, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Ashlea H. Brown', is written over a vertical line.

Ashlea H. Brown
Chief Solicitor

cc: Ebony Thompson, Acting City Solicitor
Stephen Salsbury, Deputy Solicitor
Nina Themelis, MOGR
Hilary Ruley
Michele Toth
Desiree Luckey
Ahleah Knapp

LAW DEPARTMENT AMENDMENTS
CCB 23-0363

For Legal Sufficiency:

Amendment 1

p. 23, delete line 19. (ability and integrity)

Amendment 2

Delete section 22-9 p. 27, lines 6-17 entitled “Role in Financing”

Amendment 3

Delete sections (F)-(H) of 22-11, p. 29 lines 11-29. (Failure to comply, causes of action and title to re-vest)

Amendment 4

On p. 29, line 3 add “Unless state law or a court requires otherwise”

Amendment 5

Fix typo p. 37, line 11 delete “property”

Amendment 6

p. 41, delete lines 4-7 (memorandum of understanding not needed with BoE resolution).

Suggested:

Add to purposes clause in Article of Incorporation, p. 42, line 11