

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

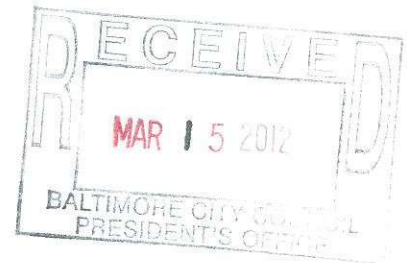


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

March 15, 2012

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



Re: City Council Bill 12-0032R – Water Bill Tax Lien Sale Moratorium

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0032R for form and legal sufficiency. The bill calls for a moratorium on the inclusion of properties in City tax sales solely based on unpaid water and sewer charges for a period of two years or until the Departments of Finance and Public Works demonstrate an appropriate billing system is in place.

Resolutions such as the one embodied in Council Bill 12-0032 are “an expression of opinion or mind concerning some particular item of business coming within the legislative body’s official cognizance...” *Inlet Assocs. v. Assateague House Condominium*, 313 Md. 413, 428 (1988) (quoting *McQuillin Mun. Corp.* § 15:2 (3rd Ed.)). As such, the bill is an appropriate expression of the Council’s resolve to seek a moratorium on tax sales for unpaid water and sewer bills.

State Law

State law requires that all property with unpaid taxes or other charges must be sold at tax sales at times required by local law, but in no case later than 2 years from the date the property is in arrears, “except in Baltimore City.” Prop-Tax Art. §14-808. State law does not, however, provide a timetable for Baltimore City. I find no reference in local law that establishes a City timetable. Thus, the resolution to suspend tax sales for certain delinquency payments will not violate State or local law.

City Charter

The City Charter requires that water and wastewater utilities “be financially self-sustaining” and operate “without profit or loss to other funds and programs of the City.” City Charter Art. VI § 18. The Law Department has been advised that a moratorium will likely reduce the cash balances of the utility funds at issue, but the reductions would not jeopardize the ability of a fund to be self-sustaining.

George A. Nilson



If no other corrective measures are possible, the utility would be forced to meet the charter obligations through raising the rates charged to its customers.

Bond Resolution Covenants

The Mayor and Council of Baltimore have adopted the Amended and Restated Water Projects Resolution, originally on June 6, 1990 but thereafter supplemented from time to time. By express provision, the terms of all revenue bonds issued for water projects are subject to the terms found within the Resolution. The Resolution establishes certain covenants with bondholders. A number of these covenants suggest that a moratorium on tax sales could violate covenants that, among other things, require the City to take "all actions necessary to ensure" that the collection of water charges attain certain specified amounts:

Section 5.03. Rate Requirements.

(a) The City covenants that it will take or cause to be taken all actions necessary to ensure that Rates and Charges are assessed, established and collected so that, for each Fiscal Year, (i) Net Revenues will at all times equal to at least 1.15 times the Debt Service Requirements on Senior Revenue Obligations for such Fiscal Year and (ii) Net Revenues after payment of debt service on the Senior Revenue Obligations will be at all times equal to at least 1.10 times the Debt Service Requirements on outstanding Subordinate Revenue Obligations for such Fiscal Year....

*(b)****

*(i)****

(ii) The Board of Estimates shall assess and establish and the Director of Finance shall collect Rates and Charges which at least meet the Rate Requirements.

*(iii)****

(iv) Except as otherwise provided in the Ordinance or in this Resolution, so long as any Revenue Obligations are outstanding, the City shall not, in the normal course and without taking corrective steps to remedy the reasons therefor, furnish or supply any facilities or services or commodities afforded by it in connection with the Water Utility free of charge, except for water provided through hydrants....

Section 5.04. Ordinance of Estimates. The City hereby covenants that:

(a) It will take or cause to be taken all actions necessary so that amounts at least equal to the Rate Requirements for each Fiscal Year (i) are included in the Ordinance of Estimates for Each Fiscal Year and (ii) are collected when due (or as

soon thereafter as possible in accordance with Applicable Law) or are otherwise made available in a timely manner.

(b) ***

(c)***

Section 5.14. Operating Revenues; Operating Reserve; Rate Stabilization Fund; Operating Reserve Fund

(a) ***

(b) The City shall maintain operating reserves ...in an amount determined by the City to be adequate operating reserves for the Water Utility, but in any event no less than eight percent of the operating expenses of the Water Utility...."

[emphasis supplied]

The Law Department has been advised that the Water and Wastewater Funds, as Proprietary Enterprise Funds, utilize the accrual method of accounting, and thus makes a breach of most of the aforementioned covenants unlikely. Nonetheless, the ability to meet the requirement of maintaining operating reserves of at least eight percent of operating expenses would be placed at risk by the moratorium, according to information supplied by the Bureau of Water and Wastewater. Notice is provided to delinquent accounts eligible for tax sale in amount at approximately \$17 million in delinquent balances. The threat of the tax sale recovers approximately \$10 million in delinquent account balances annually. If all the accounts so threatened failed to pay their water bills because of a moratorium, the Bureau reports that the cash reserves would be spent down to a point that will be near or that will exceed the eight percent limit.

While a covenant could be breached in the above situation, a breach will occur in actuality when the City fails to collect charges when they are due, as required in Section 5.04(a). As noted above, that section requires the City to take "all actions necessary so that amounts ... are collected when due...." A moratorium would violate the plain meaning of the requirement. Thus, the City is potentially exposed to law suits brought by bondholders for failing to honor covenants in the Resolution.

The Law Department notes that a breach of any of the covenants might weaken the City's credit rating and result in higher user rates for City services. In fact, any restraint on the ability of the City to collect revenue to pay off its debt service obligations may result in a lower bond rating.

For the above reasons, the Law Department cannot support a moratorium on tax sales and advises City officials to reject the proposal embodied in Council Bill 12-0032.

Very truly yours,



Victor K. Tervala
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Ashlea Brown, Assistant Solicitor