

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

September 25, 2018

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 18-0221 – Recordation and Transfer Taxes -Surtax-  
Dedicating Surtax Proceeds to the Affordable Housing Trust Fund

Dear President and City Council Members:

The Law Department has reviewed Mayor and City Council Bill 18-0221 for form and legal sufficiency. As introduced, the bill is for the purpose of imposing a surtax on recordations subject to the recordation tax and a surtax on property transfers subject to the transfer tax; providing for an exemption from these surtaxes for certain residential properties and dedicating the proceeds from these surtaxes to the Affordable Housing Trust Fund created by City Charter Article 1, §14.

The Law Department has been asked to review significant amendments to the bill that eliminate the surtax and replace it with an excise tax, referred to as the Yield tax which is calculated as a percentage of the amount of transfer and recordation taxes paid on a transaction pursuant to existing law. The bill also dedicates a certain amount of the revenue from the Yield Tax to the Affordable Housing Trust Fund.

The Law Department has concerns regarding the City Council's authority to enact a surtax on top of the State authorized recordation and transfer taxes and the fact that the bill seems to assume that the State laws applicable to recordation and transfer taxes would be applicable to the surtax, such as payment, collection and disbursement requirements. This would result in the City imposing these requirements on the State which it does not have the authority to do.

The proposed amendments take the tax out of the City Code sections regarding recordation and transfer taxes and create an excise tax on the yield from those taxes. This is consistent with the City's broad taxing authority. See Baltimore City Charter, Art. II, Sec. 40. The tax would be

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collected by the Director of Finance, thereby solving the issue of mandating that the State collect and disburse payments.

City Council Bill 18-0221, if the proposed amendments are passed, would be consistent with the City's taxing authority. The Law Department could, therefore, approve City Council Bill 18-0221 for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro  
Chief Solicitor

cc: Andre M. Davis, City Solicitor  
Karen Stokes, Director, MOGR  
Kyron Banks, Mayor's Legislative Liaison  
Hilary Ruley, Chief Solicitor  
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