



MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council
c/o Natawna Austin, Executive Secretary

From: Alice Kennedy, Acting Housing Commissioner

Date: November 1, 2020

Re: City Council Bill 20-0625 Landlord-Tenant - Right to Counsel in Eviction Cases

The Department of Housing and Community Development (DHCD) has reviewed City Council Bill 20-0625 for the purpose of establishing a mechanism to provide counsel for individuals in certain matters involving eviction; providing that the Commissioner of the Department of Housing and Community Development oversee the provision of counsel for individuals in certain matters involving eviction in Baltimore City; setting forth certain additional duties of the Commissioner of the Department of Housing and Community Development and the Affordable Housing Trust Fund Commission; providing for an additional member of the Affordable Housing Trust Fund Commission as permitted by the City Charter; defining certain terms; requiring an annual report to the Mayor and City Council regarding certain metrics; providing for the severability of certain provisions; requiring licensed landlords to disclose to their tenants certain information regarding the right to counsel in eviction matters.

If enacted, City Council Bill 20-0625 would assign additional duties to the Commissioner of the Department of Housing and Community Development (DHCD) with the objective of assisting individuals facing eviction. These duties would include; overseeing the provision of legal counsel, adopting rules and regulations to carry out this legislation with the advice of the Affordable Housing Trust Fund Commission (AHTF) and providing tenancy education regarding tenant rights. Additional requirements would include annual reporting and a City Council hearing to share findings. The legislation also provides for an additional member and duties for the AHTF. Finally, if adopted the legislation would require landlords to furnish tenants with a disclosure regarding their right to counsel.

DHCD supports the intent of this legislation, especially during the ongoing pandemic and the potential for an eviction crisis that it brings. However, the fiscal and operational implications of the legislation, as drafted, require additional consideration in order to achieve the intent of the Bill. There are fiscal, agency operations, and legal process implications associated with this legislation that need additional consideration in conjunction with the Affordable Housing Trust Fund Commission, Designated Organizations, the Department of Finance, the Housing Authority of Baltimore City (HABC), the Sheriff's Office and potentially the Health Department and the Mayor's Office of Homeless Services.

DHCD recommends that a study group undertake a review of the issues addressed by the Bill and would otherwise only support the Bill with Amendments detailed below.

The legislation reads that the Commissioner shall “ensure” that all individuals in a set of defined eviction-related judicial and administrative proceedings receive legal representation. While the Bill promotes the utilization of “designated organizations” to provide these services, the word “ensure” sets a very-high standard which could only be met if the City itself is willing and able to provide the representation, should designated groups not be able to do so. Establishing that capacity in City government would be a significant, lengthy and expensive administrative undertaking. The language should be amended to delete the word “receive” on page 5, line 8 of the Bill and replaced with “are referred to” to make clear that the expectation is that the Commissioner shall refer all covered individuals to a designated organization for legal representation and is not obligated to provide direct representation.

Secondly, the language indicating that meeting the requirements of the Bill is “subject to the appropriation of funds” should be made stronger and clearer to ensure the Bill does not represent an unfunded mandate for the City. The Bill itself notes that the City can see 140,000 eviction filings in a single year. A detailed analysis of the issue released by the Public Justice Center in May, 2020 “The Economic Impact of an Eviction Right to Counsel in Baltimore City” estimates the program costs at \$5.7M for representation of roughly 7,000 tenants. DHCD has contributed \$250,000 for such services in recent Fiscal Years. This amount has increased to over \$700,000 this year, primarily through a one-time COVID Federal CDBG-CV funding.

Meeting the intent of the legislation will require a large-scale increase in funding. As this will prove difficult to accomplish, the language of the Bill should be clear regarding what constitutes an “appropriation” to be applied to the purpose of the Bill and what are the expectations of the City in the event of partial funding, increased demand for services, a reduction of anticipated funding from state, federal or other external sources (which are included in appropriations), a reduction in available City revenue to fund appropriations, or other unforeseen circumstances.

In addition, the \$5.7M figure does not include a full accounting of administrative and operational costs to be accrued by the City. The Bill requires a significant increase in procurement actions, contract monitoring and oversight responsibilities, data collection, reporting and hearing requirements, and possibly a need for an ‘ombudsman’ role to address issues that may arise between covered individuals and designated organizations.

Thirdly, the legislation has a series of other operational issues which require consideration and possible amendment.

- Subsection 6A-3 (A) (2) of the Bill requires the Commissioner, or designee, to prioritize the provision of legal representation based on median income. While DHCD supports the intent of the requirement, in practice the designated organizations will have the responsibility for ensuring that low income households receive priority. In addition, in an environment of limited resources, any higher income tenant who becomes a “covered



individual” would need to continue to receive representation, even if a lower income tenant subsequently also needed such services. The Bill should be amended to add the words “seek to” after the word “shall” and before the word “prioritize,” on page 5, line 13 of the Bill to indicate that the Commissioner shall encourage designated organizations prioritize the provision of representation based on income of the covered individuals as possible.

- Subsection 6 A-3 (A) (C) of the Bill would require the Commissioner to engage designated community groups to educate tenants regarding their rights. DHCD would recommend that the Commissioner be allowed flexibility in education and engagement activities by amending “shall” on page 5, line 23 of the Bill to “may”. While DHCD can, and does support tenant education, the City does not “designate” community organizations for this purpose or have any regulatory function in this respect. Doing so would require establishing and maintaining a formal process. The value of doing so is uncertain and the effort adds to the administrative burden created by the Bill. In addition, DHCD suggests a minor amendment to Subsection 6A-3 (A) (C) to make it clear that the list of activities in this Section are examples of the types of engagement that community groups may undertake to “engage and educate tenants” and not the responsibility of the Commissioner. DHCD recommends that page 5, line 25 strike the word “including” and replacing it with “through activities such as”.
- The Bill includes annual reporting and hearing requirements. The report is to include; the number of covered individuals served, the extent of legal representation performed and metrics on evaluating outcomes and the education and engagement of tenants. DHCD does not object to these provisions of the Bill. However, it should be recognized that these requirements represent an additional administrative burden, the costs of which should be considered in the determination of appropriations needed to carry out the requirements of the Bill as discussed above. DHCD would recommend the Council be allowed flexibility as to whether and when to require a hearing by amending the word “shall” on page 6, line 18 in Section 6A-5 (A) to “may” or, the Bill should be amended to allow for more time to prepare the report than currently allotted. Page 6, line 17 of the Bill should be amended to replace August 31st of each year with “November 1st of each year” for the reporting deadline, and page 7, line 2 of the Bill should be amended to replace “September 30th of each year” with “No later than December 1st of each year.”

It is noted that DHCD has significant contributions to the arena of tenant protection.

- DHCD is using CDBG-COVID and other sources to fund the provision of legal advice, and, in some cases, representation to renters facing eviction and other landlord-tenant issues through local nonprofits such as; Maryland Legal Aid, Public Justice Center, Homeless Persons Representation Project, Pro Bono Resource Center of Maryland /Tenant Volunteer Lawyer of the Day Program, Disability Rights Maryland and the Maryland Courts Self-Help Center. These organizations take different types of eviction cases and all have capacity limitations.
- DHCD’s Code Enforcement & Legal Division pursue litigation of problem landlords and issue notices and citations to tenants for violations they are responsible for under the

code. DHCD dedicates three property maintenance inspectors that serve as “escrow inspectors” for the Court in rent escrow actions. These inspectors conduct investigations as a result of an escrow case and testify in rent Court. DHCD attorneys prosecute illegal lockouts/denial of essential services charges and pursue actions against landlords who demonstrate a pattern of failing to comply with outstanding violation notices. In other instances, DHCD can file nuisance actions against tenants for criminal activity that may result in eviction under the State Drug Nuisance statute.

- DHCD property and registration staff provide copies of license verification documents for tenants to use in Court when seeking to defend failure to pay rent cases in unlicensed properties. The intersection of code enforcement and evictions often lead to DHCD’s frequent contact with rent court.

DHCD supports the intent of this legislation however additional review is necessary and suggests amending page 9, line 16, to require that this Ordinance take effect 180 days after it is enacted, which would allow the Department of Housing and Community Development, in collaboration with other agencies and designated organizations, to formulate a plan for the implementation of a “Right to Counsel in Eviction Program” for use by the Board of Estimates and City Agencies

DHCD has provided comment and **recommends the establishment of a work group** on City Council Bill 20-0625 to consider the concerns mentioned within this report.

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cc: Mr. Blendy, Nicholas, *Mayor’s Office of Government Relations*