

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

April 1, 2015

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

Re: City Council Bill 15-0475 – Drug Paraphernalia and Smoking Aids –  
Commercial Display to Minors


Dear President and City Council Members:

The Law Department has reviewed City Council Bill 15-0474 for form and legal sufficiency. The bill would amend Section 17 of Article 19 of the City Code governing the use, possession, sale, delivery and certain advertising of items that facilitate ingesting or inhaling a controlled dangerous substance, as that term is defined in state law. City Code, Art. 19, §17; Md. Code, Crim. Law, §5-101 (specifically excludes tobacco as a controlled dangerous substance).

The federal government has allowed states to regulate the advertising of products that can be used for tobacco, such as rolling papers, and the City is not preempted by state law from making additional, reasonable time, place and manner restrictions on advertising of tobacco products that do not unreasonably interfere with permissible commercial speech. 15 U.S.C. § 1334; *Penn Advertising of Baltimore, Inc. v. Mayor and City Council of Baltimore*, 63 F.3d 1318, 1326 (4<sup>th</sup> Cir. 1995)(*aff'd on remand*, 101 F.3d 332, 333 (4<sup>th</sup> Cir. 1996)(discussing the City's restriction on advertising tobacco on billboards, the Court held that although "the fit between the City's objectives and the means selected to achieve them may not be perfect, it nevertheless falls well within the range tolerated by the First Amendment for the regulation of commercial speech.")).

The Law Department has worked with the bill's sponsor and the Department of Legislative Reference on amendments to the First Reader version of the bill to address potential concerns of vagueness and unreasonable interference with commercial speech. *See, e.g., Galloway v. State*, 365 Md. 599, 613-14 (2001). The Law Department can approve the bill for form and legal sufficiency with the suggested First Reader amendments.

Very truly yours,

  
Hilary Ruley  
Chief Solicitor



cc: George Nilson, City Solicitor  
Angela C. Gibson, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalva, Chief Solicitor

