
CITY OF BALTIMORE

BRANDON M. SCOTT

Mayor



DEPARTMENT OF LAW

JAMES L. SHEA, CITY SOLICITOR

100 N. HOLLIDAY STREET

SUITE 101, CITY HALL

BALTIMORE, MD 21202

March 10, 2022

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 22-0191- Homeless Shelters and Transitional Housing
Units – Human Trafficking Notice Requirements

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 22-0191 for form and legal sufficiency. The bill is for the purpose of requiring homeless shelters and transitional housing units within the City of Baltimore to place a notice regarding a certain human trafficking prevention hotline in certain locations; providing that the required human trafficking notices may be obtained from the United States Department of Homeland Security's Blue Campaign website; providing for certain penalties; and generally relating to human trafficking notice requirements for homeless shelters and transitional housing units.

To raise awareness and combat the problem of human trafficking, the City may require that these signs be posted in places where victims of human trafficking may travel. State law currently requires the posting of similar notices in rest areas, welcome centers and transportation centers, bus stations, truck stops, adult entertainment establishments, and in certain hotels where crimes related to human trafficking have occurred. MD Code, Trans. § 8-655, Bus. Reg., § 15-207, § 19-103.

This posting requirement is a valid exercise of the City's police and general welfare powers. City Charter, Art. II, §§ (27), (47). Police powers can be legitimately exercised when the regulations are rationally related to preserving the public health, safety, morals or general welfare of the public. When such justification is present, the City is entitled to "great deference" in determining how it addresses its problems. *New Orleans v. Dukes*, 427 U.S. 297, 303-304 (U.S. 1976).

The exercise of police power by the City is, however, subject to the constraints of the State and Federal Constitutions. *Wells v. Chevy Chase Bank*, F.S.B., 377 Md. 197, 209 (2003) (Supremacy Clause of the U.S. Constitution requires that federal law prevail over any state or local law that directly conflicts).

Requiring those in charge of homeless shelters or transitional housing units to post information may raise potential First Amendment issues. However, the required disclosure is factual and does not endorse a particular viewpoint on a controversial topic. *See, e.g.*, May 18, 2010, Letter of the Attorney General to the Honorable Martin O'Malley (noting that courts have merely required a reasonable relationship between the government interest and the disclosure in the commercial context, but the compelled endorsement of a particular viewpoint would be different).

Cases examining the doctrine of compelled speech under the First Amendment have recently been called into question by the Supreme Court, which extended the holding of *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), a case which drastically broadened the scope of speech that is deemed "content-based" and therefore subject to strict scrutiny, to the area of compelled speech. *National Institute of Life and Family Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018). The Court clarified in dicta, however, that cases involving the disclosure of factual, uncontroversial information were unscathed by this extension and that these disclosures were not subject to strict scrutiny. *Id.* at 2376 ("we do not question the legality of health and safety warnings long considered permissible, or purely factual and uncontroversial disclosures about commercial products.").

While the disclosure required by this bill does not fit neatly into the case law, it involves factual, uncontroversial information and is therefore similar to disclosures that have been upheld by the courts. Therefore, although the bill is vulnerable on these grounds, the courts have not yet decided the issue. Generally speaking, if the goal is to raise awareness of an uncontroversial topic through the disclosure of factual information, as it is here, the disclosure will be upheld if reasonably related to the government interest. *See, e.g.*, *American Meat Institute v. United States Department of Agriculture*, 760 F.3d 18, 26 (D.C.Cir. 2014) (required disclosure of country-of-origin information about meat products upheld).

Assuming that data reveals that these shelters are frequented by human trafficking victims, there would be the necessary nexus between the requirement and the government interest to raise awareness. The Law Department recommends bolstering the legal sufficiency of the bill with further information concerning these types of shelters and housing units and how they have been historically places where victims of human trafficking pass. This will increase the likelihood that a court will find a connection between the purpose of the bill and the required disclosure.

This bill's application to City-owned buildings that serve as homeless shelters does not raise constitutional concerns. Posting in City-owned buildings is government speech and not subject to the same constraints.

The Law Department recommends clarifying who is required to post the sign on line 12 on page 3 of the bill or amending the bill to say that a sign must be posted without identifying specifically who is required to post it (just that it is required to be posted in the building in the specified places).

Subject to the above, the bill could be approved for form and legal sufficiency.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Ashlea Brown', written over a light blue horizontal line.

Ashlea Brown
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Hilary Ruley, Chief Solicitor