

CITY OF BALTIMORE

SHEILA DIXON, Mayor

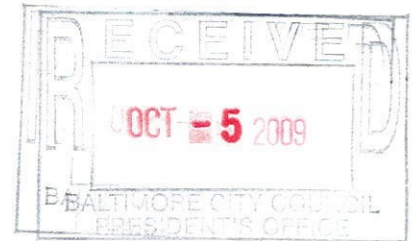


DEPARTMENT OF LAW

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

October 2, 2009

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: Supplemental Report
City Council Bill 09-0373 – Food Service Facilities – Suspension or
Nonrenewal of Licenses – Multiple or Unpaid Citations

Dear Madame President and City Council Members:

The Law Department has reviewed City Council Bill 09-0373 for form and legal sufficiency. This bill proposes to add Section 6-603.1 to the Health Code of Baltimore City (hereinafter “Health Code”) to allow for the suspension or nonrenewal of a food service facility license of a facility that has received multiple environmental control board citations under City Code, Article I, Subtitle 40 and/or multiple civil citations under City Code, Article I, Subtitle 41 within the preceding six months, or that has been declared in default of one or more environmental control board citations or civil citations within the preceding twelve months. The bill also would mandate that the Health Commissioner provide a food service facility with notice and an opportunity for a hearing prior to the suspension of a license under Section 6-603.1.

The Health Commissioner has the authority to ensure that all laws for the preservation of the health of the inhabitants of Baltimore City are faithfully executed, and has general care of, and responsibility for, the prevention of disease, epidemics, and nuisances affecting public health. *See* Charter, Article VII, §56(a). Pursuant to this general authority, and a concurrent authority under State law, the Health Commissioner has the power to regulate food service facilities. *See* Health Code, §6-502; Md. Code, Health Gen., §§ 21-303, 21-304(c). Currently, the Health Commissioner can suspend a food service facility license for certain delineated reasons, including if he or she concludes that it is “necessary in the interest of public health.” *See* Health Code, §6-603. This bill would expand upon that power by allowing the Health Commissioner to suspend or refuse to renew the license of a food service facility based on multiple violations of Subtitles 40 and 41 of Article I of the City Code (environmental control board citations and civil citations, respectively), which both include various health-related violations. *See* Balt. City Code, art. I, §§ 40-13, 41-2. Allowing the Health Commissioner to use multiple environmental control board or civil citations as a basis for suspending or refusing to renew food service facility licenses is consistent with the Health Commissioner’s powers so long as these violations are for reasons related to public health and/or the prevention of disease,

F/A



epidemics or nuisances affecting public health. An amendment to that effect is attached. During the course of the September 29, 2009 Public Safety and Health Committee hearing regarding Bill 09-0373, it was recommended that the particular environmental control board or civil citations that constitute violations for reasons related to public health should be identified, for purposes of clarity. Accordingly, an amendment to that effect also is attached.

Additionally, the law department recommends two amendments to conform the language in the notice and opportunity to be heard provision proposed in the bill to that of the rest of Title 6 of the Health Code. One of those amendments requires a minor change in the wording of Section 6-604 of the Health Code. These proposed amendments also are attached.

Subject to the foregoing amendments, the Law Department approves City Council Bill 09-0373 for form and legal sufficiency.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Amy Beth Leasure".

Amy Beth Leasure
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Bernard C. "Jack" Young – Chair of the Public Safety and Health Committee
Elena DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Ashlea Brown, Special Assistant Solicitor

**CITY OF BALTIMORE
COUNCIL BILL 09-0373
(Amendment)**

On page 1, line 24 and page 2, line 5, after “CITATIONS” insert “FOR REASONS RELATED TO PUBLIC HEALTH AND/OR THE PREVENTION OF DISEASE, EPIDEMICS OR NUISANCES AFFECTING PUBLIC HEALTH,”

On page 2, line 9, insert the following

(3) (A) FOR PURPOSES OF THIS SECTION 6-603.1, ENVIRONMENTAL CITATIONS AND/OR CIVIL CITATIONS ISSUED FOR OFFENSES UNDER THE FOLLOWING CITY CODE PROVISIONS SHALL BE PRESUMED TO BE FOR REASONS RELATED TO PUBLIC HEALTH AND/OR THE PREVENTION OF DISEASE, EPIDEMICS OR NUISANCES AFFECTING PUBLIC HEALTH: ARTICLE 13, SUBTITLE 5; ARTICLE 15, SUBTITLES 17, 18; ARTICLE 19, §§ 1-2, 7-2, 8-18, 13-1, 13-2, 14-2, 14-3, 26-6, 27-3, 27-15, 34-5, 34-6, 40-9, 41-2, 45-2, 47-5, 50-2, 50-3, 50-26, 50-41, 50-56, 59-18; ARTICLE 19, SUBTITLE 25; ARTICLE 19, SUBTITLE 46; ARTICLE 23, §§ 2-1, 2-2, 4-1, 4-2; ARTICLE 24, §§ 21-1 – 21-6; ARTICLE 26, SUBTITLE 6; ARTICLE 31, §§ 16-12, 18-8; BUILDING, FIRE, AND RELATED CODES – BUILDING CODE, §§ 113.14, 114.3, 115, 120, 123.8, 3302.3; BUILDING, FIRE, AND RELATED CODES – FIRE CODE, §§ 107.6, 110.1, 1001.2; BUILDING, FIRE, AND RELATED CODES – PROPERTY MAINTENANCE CODE, CHAPTER 3; HEALTH CODE, § 5-210; HEALTH CODE, TITLE 5, SUBTITLE 4; HEALTH CODE, §§ 5-501, 5-503, 5-504; HEALTH CODE, TITLE 5, SUBTITLE 7; HEALTH CODE, TITLE 6; HEALTH CODE, TITLE 7, SUBTITLES 2, 4, 6, 7; HEALTH CODE, TITLE 8; HEALTH CODE, TITLE 9, SUBTITLES 2 – 4; HEALTH CODE, TITLE 10, SUBTITLES 2 – 7, 9; HEALTH CODE, TITLE 11, HEALTH CODE, TITLE 12, SUBTITLES 1, 2, 4, 5; HEALTH CODE, TITLE 15, SUBTITLES 2, 3; AND ZONING CODE, § 2-402, 3-107.

(B) NOTHING IN THIS SECTION 6-603.1(A)(3) SHALL PRECLUDE THE HEALTH COMMISSIONER FROM DETERMINING THAT A CITATION ISSUED UNDER CITY CODE ARTICLE 1, SUBTITLE 40 OR CITY CODE ARTICLE 1, SUBTITLE 41 WAS ISSUED FOR REASONS RELATED TO PUBLIC HEALTH AND/OR THE PREVENTION OF DISEASE, EPIDEMICS OR NUISANCES AFFECTING PUBLIC HEALTH, IN HIS OR HER DISCRETION.

On page 2, line 4, after “FACILITY” insert “HAS”

On page 2, line 10, after “SUSPENDING” insert “OR REFUSING TO RENEW”

On page 2, line 13, insert the following

§ 6-604. Reinstatement of suspended licenses.

(c) Required reinstatement.

If, on reinspection, the facility is found to comply with all APPLICABLE requirements [of this title], the license must be reinstated.