

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

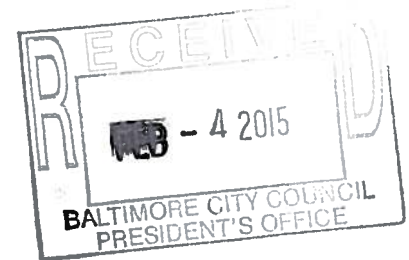


DEPARTMENT OF LAW

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

February 3, 2015

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



Attn: Natawna B. Austin,
Executive Secretary

Re: City Council Bill 14-0464 – Hotels - Human Trafficking Prevention

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 14-0464 for form and legal sufficiency. It requires the registration of all hotels in the City and prohibits hotels from renting out sleeping accommodations for a period of less than ½ day. It also requires that all hotel employees receive training in how to identify human trafficking activities and human trafficking victims, and requires hotels to certify that all employees have been given anti-human trafficking training. The bill defines certain terms and provides penalties.

Under Article II, Section 17 of the Baltimore City Charter, the City has the general power to regulate all businesses within its jurisdiction. This regulation is an exercise of the City's police powers found in Article II, Section 27 of the City Charter. 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. *See* City Charter, Article II, Section 47. 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 Law Department notes, however, that the phrase "rent out sleeping accommodations" in proposed Section 10-5 may not be sufficiently clear to guide those required to follow and enforce the regulation. Does this term refer to the actual time a person occupies the room, or to the period of time the room is available to the customer? Also, if the customer asserts that the room is not being rented for "sleeping accommodations" is the ½ day requirement inapplicable?

A statute must be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties," otherwise, the enactment is void for vagueness. *McFarlin v. State*, 409 Md. 391, 410-12 (2009), quoting, *Galloway v. State*, 365 Md. 599, 614 (2001). A statute must also provide legally fixed standards and adequate guidelines for police, judicial officers, triers of fact and others whose obligation it is to enforce, apply and administer the penal laws. *Id.* To survive analysis, a statute must avoid arbitrary enforcement in addition to being intelligible to the reasonable person. *Id.*

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In sum, the bill is proper exercise of the City's police power. Further clarification of the term "rent out sleeping accommodations," however, either by definition within the ordinance, or substitution of language, may provide greater protection from a constitutional challenge of vagueness. The Law Department has prepared these comments in advance of the work session scheduled for February 6, 2015, and reserves the right to submit an additional report prior to the committee hearing on this bill, in light of discussions and issues raised at the work session.

Sincerely,



Jennifer Landis
Assistant Solicitor

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