

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

August 16, 2012

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: City Council Bill 12-0104 – Food Establishments – Polystyrene Products

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0104 for form and legal sufficiency. The bill would prohibit a food service facility (which is already defined in the Code) from using “cups, plates, dishes bowls, containers, or similar items made from polystyrene.” The bill would set the fine for violation of this section at \$200.

The City has the general police and welfare powers to legislate in this area. *See* City Charter, Art. II, §§ 27, 47. This allows the City “to prescribe, within the limits of the federal and state constitutions, reasonable regulations necessary to preserve the public order, health, safety, or morals.” *Tighe v. Osborne*, 149 Md. 349, 356 (1925). Opponents may argue that the Commerce Clause in the federal Constitution limits the City’s power to enact this law. However, such a challenge would likely fail because the City may regulate local aspects of interstate commerce if the law: (1) does not discriminate against outside interests to benefit local economic interests; and (2) is not unduly burdensome. *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 470-71 (1981); *accord BlueHippo Funding, LLC v. McGraw*, 609 F. Supp. 2d 576, 586 (S.D. W. Va. 2009)(recognizing that the Fourth Circuit has consistently used this two part test). This bill would withstand a Commerce Clause challenge because it does not discriminate against out of state interests and any incidental burden on interstate commerce would not outweigh the significant local environmental benefits produced by the legislation. The Law Department approves the bill for form and legal sufficiency.

Very truly yours,

Hilary Ruley
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Victor Tervalá, Assistant Solicitor

