CITY OF BALTIMORE
STEPHANIE RAWLINGS-BLAKE, Mayor

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

May 6, 2014

The Honorable President and
Members of the Baltimore
City Council
c/o Karen Randle, Executive Secretary
409 City Hall
Baltimore, MD 21202

RE: City Council Bill No. 13-0261 – Minors – Curfew Reform

President and Members:

You have requested the advice of the Law Department regarding City Council Bill 13-0261. City Council Bill 13-0261 changes the existing juvenile curfew law eliminating exceptions for minors on an errand for a parent and minors who are married, by creating separate curfews for minors age 14 and younger and minors aged 14 to 17, by creating separate curfew hours for summer months and the remainder of the calendar year for minors aged 14 to 17 and by providing for a notice in lieu of citation if parents agree to attend family counseling sessions.

Juvenile curfew laws have been the subject of many cases across the country. In Maryland, the last cases challenging a juvenile curfew was in 1995. In *Ashton v. Brown*, 339 Md. 70 (1995), the Court of Appeals found the City of Frederick Ordinance was unconstitutionally vague because it exempted youth attendance at events after curfew hours held by "bona fide organizations," which had no discernable definition. In that case, the court found that the vague ness of the language of the ordinance did not allow a person to choose between lawful and unlawful activity. City Council Bill 13-0261 does not use the same terminology. Its exception allows for attendance at or travel to and from "school, religious or other recreational activity supervised by adults and sponsored by the City of Baltimore, a civic organization or another similar entity that takes responsibility for the minor." While this language appears to be more descriptive of the exempt activities, it si not possible to say with certainty that it would be detailed enough to survive a vagueness challenge. The 4th Circuit,however, has upheld a Charlottesville, Virginia curfew that is substantially similar to Baltimore City's curfew, holding that the exceptions in the curfew law were not unconstitutionally vague, despite the higher standard for vagueness that must be imposed on criminal laws. *Schleifer by Schleifer v. City of Charlottesville*, 159 F.3d 843, 855 (4th Cir. 1998). The court upheld exceptions for emergencies, First Amendment activities and activities sponsored by 'civic organizations." The Court found these terms sufficiently clear so as not to render the law void for vagueness.

In the last decade and a half alone, there have been numerous challenges to juvenile curfew laws. For example, in *Ramos v. Towns of Vernon*, 353 .3d 171(2nd Circuit 2004), the court ruled that the "defendants have failed to demonstrate that Vernon's curfew ordinance is substantially related to an important governmental interest, we hold that it is unconstitutional as applied. We do not intend by our holding to rule that the Equal Protection Clause prohibits the enactment of a juvenile curfew ordinance. Nor do we think communities need to bide their time waiting for unspeakable tragedies to befall them before responding with legislation. But equal protection demands that the municipality 'carefully stud[y] the contours of the problem it [is] seeking to address and legislate[ ] in accordance with its findings.'" In *Hodgkins v. Peterson*, 355 F.3d 1048, (7th Cir. 2004), the court ruled "[i]n sum, we hold that the curfew law, even with the new affirmative defenses for First Amendment activity, is not narrowly tailored to serve a significant governmental interest and fails to allow for ample alternative channels for expression. The statute restricts a minor's access to any public forum during curfew hours, and the affirmative defense for participating in First Amendment activities does not significantly reduce the chance that a minor might be arrested for exercising his First Amendment rights." In *Anonymous v. City of Rochester,* 915 N.E.2d 593(NY 2009), the court noted that "[u]nder intermediate scrutiny, defendants must show that the ordinance is "substantially related" to the achievement of "important" government interests (see Craig v. Boren, 429 U.S. 190, 197, 97 S.Ct. 451, 50 L.Ed.2d 397 [1976]). Here, defendants assert that their governmental interest is to prevent minors from perpetrating and becoming victims of crime during nighttime hours. While this is clearly an important governmental interest, its expression does not end the intermediate scrutiny analysis. In addition to identifying an important governmental interest, defendants must show a substantial nexus between the burdens imposed by this curfew and the goals of protecting minors and preventing juvenile crime." The court ruled that the city did not have enough evidence to show a substantial nexus. Finally, in *People v. Liccione*, 964 N.Y.S.2d 405 (2013), the court found that "the 'purpose of requiring proof of that close relationship is to assure that the validity of a classification is determined through reasoned analysis rather than mechanical application of traditional, often inaccurate assumptions.' Jiovon Anonymous v. City of Rochester, 13 N.Y.3d at 48, 886 N.Y.S.2d 648, 915 N.E.2d 593, citing Mississippi University for Women v. Hogan, 458 U.S. 718, 725–726, 102 S.Ct. 3331, 73 L.Ed.2d 1090 [1982]. The proof also offered to this Court demonstrates that the Hilton Curfew Law was enacted in response to complaints about minors specifically and there is no question that 'the population targeted by the [curfew] represent[s] that

part of the population causing trouble.'" Id. at 49, 886 N.Y.S.2d 648, 915 N.E.2d 593.

Courts are clearly not in agreement regarding the requirements for juvenile curfew laws to be found constitutional. There does seem to be a trend toward requiring proof of a nexus between the governmental purpose and the requirements of the law. Under current Maryland law, it is possible that City Council Bill 13-0261 will be upheld. It is recommended that there be proof offered that the law has a nexus to the governmental purposes sought to be achieved. Accordingly, the Law Department approves City Council Bill 13-0261 for form and legal sufficiency.

Sincerely yours,

Elena R. DiPietro

Elena R. DiPietro
Chief Solicitor

cc: George A. Nilson, City Solicitor
Angela Gibson, City Council Liaison
Hilary Ruley, Chief Solicitor
Victor Tervala, Chief Solicitor
Jennifer Landis, Assistant Solicitor