

CITY OF BALTIMORE

SHEILA DIXON, Mayor

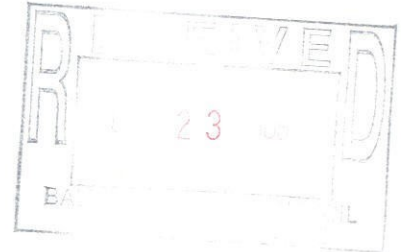


DEPARTMENT OF LAW

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

October 23, 2009

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 09-0406 – Limited Service Pregnancy Centers-Disclaimers-
Reauthorization

Dear President and Members

You have requested the advice of the Law Department regarding City Council Bill 09-0406. City Council Bill 406 is for the purpose of requiring a limited service pregnancy center to post in its waiting room or other waiting area a sign that states that the center does not provide or make referrals for abortion or birth-control services.

Information related to birth control services and abortion would fall within the rubric of public health. Article II, Section 11 of the Charter authorizes the City "to provide for the preservation of the health of all people within the City. . . ." The City also has authority to regulate in this area under Article II, Section 27 of the Charter, which authorizes the City "to have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power in Baltimore City. . . ." See generally 96 ALR 2d 955 ("Regulation of contraceptives and of the dissemination of birth control information is generally held within the police power. . .").

Local governments may constitutionally regulate businesses, occupations and trade in the interest of public health, welfare or morals i such regulation does not impair the constitutional right to pursue a lawful occupation. McQuillin, Municipal Corporations, Sec. 19.43. Municipal restrictions of legitimate commercial, industrial and occupational activities are justified only where they relate to public health, morals, order, welfare, convenience or other proper object of the police power. Id. at Sec. 24.322. Clearly, a business purporting to provide advice as to services needed by pregnant women is related to the public health, welfare and convenience of the citizens of Baltimore City.

The next inquiry is whether the bill, which would compel certain businesses to post a sign listing specific services that they do not provide, violates the 1st Amendment right to freedom of speech. While it is true that compelled disclosure can potentially infringe upon on First Amendment rights, it is well settled that regulations requiring disclosure of truthful, factual

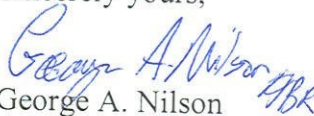
F

City Council Bill 09-0406
October 23, 2009
Page 2

information are permissible, provided the disclosure is justified by a sufficient purpose behind the legislation. Cal. Medical Ass'n v. FEC, 453 U.S. 182 (1981), Buckley v. Valeo, 424 U.S. 1 (1975). Bill 09-0406 requires disclosure of factual, truthful, non-misleading information; namely, whether or not abortion or birth control services are provided at a given facility. The Bill serves the purpose of preventing misleading advertising practices of pregnancy services centers and furthers the City's interest in ensuring that a woman seeking these services in the City is fully informed of what services are available at any given location and can find the services that she needs in a timely manner whether they be abortion or birth control services or any of the many other pregnancy related services that a woman may be seeking. The Supreme Court has held that the government has a substantial interest in preventing consumer confusion or deception which can be furthered by requiring disclosure of factual information. See, e.g. Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985), see also New York State Rest. Assoc. v. New York City Bd. of Health, 556 F.3d 114 (2nd Cir 2009). While the State can not compel a person to put forth its ideological message, it can use its regulatory authority to require that truthful, non-misleading information be provided. See Planned Parenthood of Minnesota v. Rounds, 530 F.3d 724 (2008). Bill 406 merely requires the disclosure of truthful, non-misleading information relevant to a woman's decision to seek services at a particular location. The bill, therefore, does not violate the 1st Amendment right to freedom of speech.

City Council Bill 09-0406 is consistent with the authority of the City Council. The Law Department, therefore, approves the City Council Bill 09-0406 for form and legal sufficiency.

Sincerely yours,


George A. Nilson
City Solicitor

cc: Honorable Stephanie Rawlings-Blake
Angela Gibson, City Council Liaison
Elena R. DiPietro, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Hilary Ruley, Assistant Solicitor