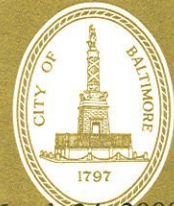


CITY OF BALTIMORE

SHEILA DIXON, Mayor



March 24, 2008

DEPARTMENT OF LAW

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

The Honorable President and Members  
of the Baltimore City Council  
c/o Karen Randle, Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: Baltimore City Council Bill 08-0061 – Food Establishments – Polystyrene Products

Dear Madame President and City Council Members:

The Law Department has reviewed City Council Bill 08-0061 – Food Establishments – Polystyrene Products. The bill would provide that “[n]o food service facility may use any cup, plate, dish, bowl, container, or similar item made from polystyrene unless no affordable alternative exists for the item.”

The term “food service facility” is defined as “any place in which, with or without charge: (i) food is prepared for sale or service on the premises or elsewhere; or (ii) food is manufactured, processed, stored, packaged, handled, distributed, or sold.” Baltimore City Code, Art. Health, § 6-101. Thus, for example, the polystyrene ban would apply to all restaurants, food vendors, food manufacturers, and grocery stores.

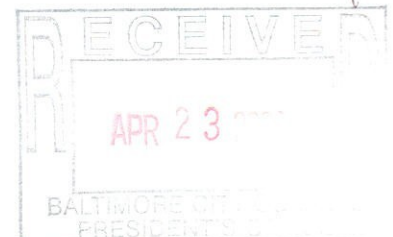
A person who violates the polystyrene ban would be guilty of a misdemeanor and, upon conviction, would be subject to a fine not to exceed \$1,000 per offense. In addition, the person would be subject to an environmental citation and \$200 fine.

In our opinion, Council Bill 08-0061 is consistent with the City’s powers to “license, regulate and inspect the manufacture, transportation, storage, sale and distribution of food of every kind” and to “provide civil and criminal fines.” See Baltimore City Charter, Art. II, §§ 8, 36. However, the bill potentially will undermine existing contracts between food service facilities and their suppliers to purchase polystyrene products.

In order to avoid this effect on existing contracts, we would recommend adding the following Section 4 to the bill:

Section 4. AND BE IT FURTHER ORDAINED, That this Ordinance does not apply to the use of polystyrene products that have been purchased by a food service facility pursuant to a contract that was executed before the effective date of this Ordinance.

FIA



With the amendment suggested above, the Law Department approves Council Bill 08-0061 for form and legal sufficiency.

Sincerely,

A handwritten signature in blue ink that reads "Deepa Bhattacharyya/ERD". The signature is written in a cursive style.

Deepa Bhattacharyya  
Assistant Solicitor

cc: The Honorable James Kraft  
Angela C. Gibson, Mayor's Legislative Liaison  
George Nilson, City Solicitor  
Linda C. Barclay, Chief Solicitor  
Elena R. DiPietro, Senior Solicitor

**Amendment No. 1**

On page 4, after line 5, add the following:

“SECTION 4. AND BE IT FURTHER ORDAINED, THAT THIS ORDINANCE DOES NOT APPLY TO THE USE OF POLYSTYRENE PRODUCTS THAT HAVE BEEN PURCHASED BY A FOOD SERVICE FACILITY PURSUANT TO A CONTRACT THAT WAS EXECUTED BEFORE THE EFFECTIVE DATE OF THIS ORDINANCE.”