

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

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November 26, 2018

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 18-0302 – Late-Night Commercial Operations –  
Licensing

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0302 form and legal sufficiency. The bill would amend Subtitle 9 on Late-Night Commercial Operations in Article 15 on Licensing and Regulation of the City Code, which currently provides that a license is not required for the sale of motor vehicle fuels. It repeals this exception so that a license would be required for any sales of motor fuels during the late night hours.

As noted in the Law Department bill report on this bill when it was enacted, the City has authority to license late-night commercial operations pursuant to Section 17 of Article II of the Baltimore City Charter, but there are Constitutional limitations on this power. The equal protection provisions of the Fourteenth Amendment require that any classifications for licensing be reasonable and rationally related to a legitimate government purpose. *See Baltimore Gas and Elec. Co. v. Heintz*, 760 F.2d 1408, 1417 (4<sup>th</sup> Cir. 1985) (citing *Western & Southern L.I. Co. v. Board of Equalization*, 451 U.S. 648, 668 (1981) (classifications must reasonably promote the government's legitimate purpose to survive an Equal Protection challenge)). Therefore, the bill's requirement that gas stations now be subject to this licensing scheme must be rationally related to a legitimate government purpose. The rationale provided with the enactment of the initial licensing scheme was to enable the City to cope with the additional burden on Police and other City agencies created by commercial establishments that remain open between midnight and 6am.

Assuming this or another sufficient rationale can be provided, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,

Hilary Ruley  
Chief Solicitor



cc: Andre M. Davis, City Solicitor  
Karen Stokes, Mayor's Office of Government Relations  
Kyron Banks, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor, General Counsel Division  
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