

CITY OF BALTIMORE

SHEILA DIXON, Mayor

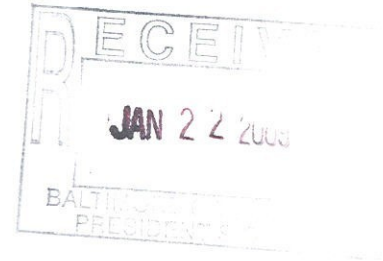


DEPARTMENT OF LAW

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

January 21, 2009

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 08-0214 {Illegal Dumping – Penalties – Enforcement}

Dear Madame President and City Council Members:

The Law Department has reviewed City Council Bill 08-0214 and the accompanying amendments prepared by the Department of Legislative Reference for form and legal sufficiency. Because City Council Bill 08-0095 {Illegal Dumping – Forfeiture of Vehicle}, was enacted since the introduction of this bill, the accompanying amendments prepared by the Department of Legislative Reference are necessary to conform the bill's language to the current City Code. The bill – with the proposed amendments – would amend Subtitle 6 {Prohibited Disposal} of Title 7 {Waste Control} of the Baltimore City Health Code. The bill would allow the Health Commissioner to issue a written notice to a person who violates that subtitle, mandate certain information and service related to that notice, allow the Health Commissioner to abate a violation while holding the violator responsible for abatement costs and expenses, and allow for the imposition of a civil penalty equal to twice the amount of those costs and expenses. The bill also requires the Health Commissioner to establish a hotline for reports of illegal dumping, and provides other specifics for a reward and for preserving the anonymity of a caller. The bill adds a possible criminal penalty of up to 200 hours of community service to existing criminal penalties for violation of this subtitle. Lastly, the bill requires every contract awarded by the City to include a provision that a contractor's violation of this subtitle, whether or not in the performance of the contract, constitutes a breach of the contract.

Pursuant to the Baltimore City Charter, the Mayor and City Council have the express power “[t]o provide for the preservation of the health of all persons within the City; to prevent the introduction of contagious diseases within the City...; and to prevent and remove nuisances.” *Baltimore City Charter*, Art. II, § 11. The Mayor and City Council also have the authority to pass any ordinance for the general welfare of Baltimore City (*Charter*, Art. II, § 47); therefore, this ordinance would properly fall under the authority of the Mayor and City Council to enact.

F/A

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The Health Department "shall...have general care of, and responsibility for, the study and prevention of disease, epidemics, and nuisances affecting public health." *Charter*, Art. VII, § 54. Therefore, the bill's proposed grant of authority to the Health Commissioner is proper, because "Illegal dumping in Baltimore City is an ongoing environmental and public health issue." *Health Department Bill Report on CCB 08-0214*, November 6, 2008.

The bill proposes (page 4, lines 24-25) a civil penalty "in an amount equal to twice the amount of those costs and expenses [incurred in removing or abating the violation identified in the notice]." While an ordinance may "provide civil and criminal fines and penalties for the violation of any ordinance, rule or regulations established by the City under or in the execution of any power granted by [Article II of the Charter], ...no fine or penalty shall exceed \$1000.00 and no imprisonment shall be for a longer period than 12 months." *Charter*, Art. II, § 49. Therefore, the bill should be amended to cap any civil or criminal penalty at \$1,000.00.

The contract provision of the bill (page 7, lines 1-5) should also be amended. Every City contract already specifies that the contractor must comply with all laws. Instead, every time a contractor violates this law, the City should determine whether the violation is a material breach warranting termination of the contract.

Subject to these proposed amendments, the Law Department approves the bill for form and legal sufficiency.

Sincerely,



Deepa Bhattacharyya
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Assistant Solicitor
Ashlea Brown, Assistant Solicitor
Hilary Ruley, Assistant Solicitor

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Amendment No. 1

On page 4, in line 25, after “expenses”, insert “but not exceeding \$1,000”.

Amendment No. 2

On page 7, in lines 4-5, strike “, whether or not in the performance of the contract,”. On page 7, in line 5, after “breach of the contract.”, insert “The City shall determine whether the violation is a material breach warranting termination of the contract.”.