

**CITY OF BALTIMORE
COUNCIL BILL 10-0236R
(Resolution)**

Introduced by: Councilmembers Conaway, Clarke, Middleton, Branch, Curran, Henry

Introduced and read first time: December 6, 2010

Assigned to: Health Committee

REFERRED TO THE FOLLOWING AGENCIES: Baltimore City Board of Liquor License
Commissioners, Health Department

A RESOLUTION ENTITLED

1 A COUNCIL RESOLUTION concerning

2 **Informational Hearing – Baltimore City Liquor License Board – Federal Recall**
3 **of Certain Caffeinated Alcoholic Beverages**

4 FOR the purpose of requesting the Baltimore City Board of Liquor License Commissioners and
5 the Baltimore City Health Commissioner to report to the City Council on measures in place
6 to ensure that certain caffeinated alcohol drinks are not sold in bars, are removed from
7 inventory in package good stores and other liquor retailers, and are generally unavailable
8 throughout Baltimore City.

9 **Recitals**

10 On November 17, 2010, the U.S. Federal Food and Drug Administration (FDA) sent letters
11 to four makers of caffeinated alcoholic beverages warning that the caffeine added to their malt
12 alcoholic beverages is an “unsafe food additive” and that further action, including seizure of
13 their products, is possible under federal law. The companies receiving Warning Letters and their
14 products are:

- 15 • Charge Beverages Corp.: Core High Gravity HG, Core High Gravity HG Organe, and
- 16 Lemon Lime Spiked,
- 17 • New Century Brewing Co., LLC: Moonshot,
- 18 • Phusion Projects, LLC (Doing business as Drink Four Brewing Co.) Four Loko, and
- 19 • United Brands Company, Inc.: Joose and Max.

20 In the letters, the FDA stated specific concerns about the safety of such drinks, particularly
21 when consumed by young adults:

- 22 • Studies suggest that the combined effects of caffeine and alcohol may lead to
23 hazardous and life-threatening situations because caffeine counteracts some, but not
24 all, of alcohol’s diverse effects. One study showed that the mixture reduced subjects’
25 perception of intoxication but did not improve diminished motor coordination or
26 slower visual reaction times.
- 27 • Because caffeine alters the perception of alcohol intoxication, the consumption of
28 pre-mixed products may result in higher amounts of alcohol consumed per drinking
29 occasion, a situation that is particularly dangerous to naive drinkers.

EXPLANATION: Underlining indicates matter added by amendment.
~~Strike out~~ indicates matter deleted by amendment.

Council Bill 10-0236R

1 The action taken by the FDA follows years of growing concern publicly expressed by
2 officials in Maryland and other states. Our Attorney General joined Attorneys General from 28
3 states in a May 2007 letter to a leading manufacturer citing serious health concerns that
4 caffeinated energy drinks combined with alcohol pose significant health and safety risks
5 particularly to young people. In June 2008, 11 states, including Maryland, reached an agreement
6 with another manufacturer that resulted in a nationwide discontinuance of two popular pre-mixed
7 alcoholic energy drinks.

8 The success of the National Association of Attorneys General Youth Access to Alcohol
9 Committee in getting the two leading manufacturers of alcoholic energy drinks to cease
10 production was offset by other manufacturers quickly filling the void left in the marketplace with
11 products packaged in larger volume containers and containing a higher percentage of alcohol.
12 The failure of these companies to prove to the FDA’s satisfaction the safety of their products
13 gave rise to the latest regulatory action.

14 In addition to the actions taken by the FDA, Maryland’s ongoing struggle to make
15 caffeinated energy drinks unavailable to the public has been endorsed by the Maryland State
16 Licensed Beverage Association and the Maryland Beer Wholesalers Association. In response to
17 requests from the Attorney General, State Comptroller, and the Secretary of Health and Mental
18 Hygiene, both associations asked their members to “voluntarily halt the distribution and sale of
19 infused caffeinated alcoholic beverages.”

20 Most recently, the Baltimore City Health Commissioner banned the sale of alcoholic
21 beverages containing caffeine in the City, effective Thursday, December 2, at 5:00 p.m.. The
22 prohibition and notice to remove a health nuisance applies to the following commercially
23 available products: Core High Gravity HG Green, Core High Gravity HG Orange, Lemon Lime
24 Core Spiked, Moonshot, Four Loko, Joose and Max. Official notice was sent out on November
25 30 to 566 licensed facilities to stop the sale and/or distribution of those and similar products.
26 Failure to comply with the order is a misdemeanor and, if convicted, violators will be subject to
27 a fine of up to \$1,000.00 for each offense.

28 Given the regulatory action by the FDA, the voluntary compliance of the trade associations,
29 and the order of the Health Commissioner, caffeinated alcoholic beverage drinks should no
30 longer be available in the City or the State. The question remains, however, how will their
31 unavailability be assured?

32 As the agency of the State responsible for regulating the sale, storage, and distribution of
33 alcoholic beverages in Baltimore City, we look to the Board of Liquor License Commissioners
34 for answers in consort with the Health Commissioner who has determined that “in addition to
35 initiating criminal prosecution or other legal enforcement proceedings” the Commissioner “may
36 secure personnel to remove the nuisance items from the shelves of retail establishments”.

37 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BALTIMORE,** That the
38 Baltimore City Board of Liquor License Commissioners and the Baltimore City Health
39 Commissioner are requested to report to the City Council on measures in place to ensure that
40 certain caffeinated alcohol drinks are not sold in bars, are removed from inventory in package
41 good stores and other liquor retailers, and are generally unavailable throughout Baltimore City.

42 **AND BE IT FURTHER RESOLVED,** That a copy of this Resolution be sent to the Mayor, the
43 Maryland Attorney General, the State Comptroller, the Members of the Baltimore City Board of

Council Bill 10-0236R

1 Liquor License Commissioners, the Baltimore City Health Commissioner, and the Mayor's
2 Legislative Liaison to the City Council.