



October 29, 2015

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 15-0558 – Animal Fighting Paraphernalia

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 15-0558 for form and legal sufficiency. The bill prohibits the possession, sale, transfer, or manufacture of animal fighting paraphernalia with the intent to engage in or otherwise promote or facilitate an animal fight. It defines certain terms, lists factors in determining whether an object is an item of animal fighting paraphernalia and imposes certain penalties.

The Law Department's concern with this bill begins with the definition used to describe "animal fighting paraphernalia." The bill defines it generally as:

any equipment, product, drug, or other substance of any kind, or any literature, manual, guide, or other material, of any kind, that is used or intended or designed for use in the training, preparation, conditioning, or breeding for, in conducting, or otherwise in furtherance of an animal fight.

Page 2, lines 14 through 18. Thereafter the possession, sale, transfer and manufacture of animal fighting paraphernalia with the intent to engage, facilitate or promote animal fighting is prohibited. Page 3, lines 21 - 23.

We raise no objection to a City ordinance that prohibits equipment, products and drugs from being used in this business, but a prohibition on the creation and distribution of related literature challenges First Amendment guarantees of free speech. The courts:

have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). Under the imminent lawless action test, if speech amounts "to nothing more than advocacy of illegal action at some indefinite future time," the First Amendment protects it. *Hess v. Indiana*, 414 U.S. 105, 108 (1973). In our view, the creation and distribution of literature about animal fighting presents "nothing more than



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advocacy of an illegal act at some indefinite time.” Accordingly, animal fighting literature should be protected speech.

Furthermore, the Law Department notes that “animal fighting paraphernalia” includes a “fighting pit” which is defined as a “walled area, or otherwise confined area that is designed to contain an animal fight.” Page 3, line 5 – 6. This definition strikes us as too vague to administer. For example, if a walled area is designed for animal fights but is used exclusively for recreational uses like patio barbeques, the law as drafted would prohibit it. In contrast, if a walled area was designed for patio barbeques but is used as a fighting pit, the law would permit it. We also wonder how Code Enforcement would know a walled area was designed specifically as a fighting pit and not for a use unrelated to animal fighting? For this reason, unless there is a distinguishable physical characteristic that makes a walled area specifically designed for fighting animals, the definition as drafted should be deleted or amended.

Finally, we note that the bill lists relevant factors to assist a court in determining whether the ordinance is violated. Page 3, Line 26. The burden of proof, however, will be on the City to produce evidence to that effect. A court thereafter will consider whatever evidence is produced that is probative of a violation. We therefore believe it would be more useful to list the relevant factors to assist enforcement by a police or code enforcement officer rather than attempt to direct a court in its duties.

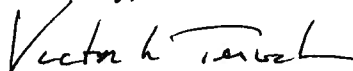
The Law Department therefore recommends three amendments.

Amendment 1: On page 2, lines 15 and 16, strike “, or any literature, manual, guide or other material of any kind”.

Amendment 2: On page 3, line 6, strike “designed” and insert “used”.

Amendment 3: On page 3, lines 25 – 27, strike everything after the phrase “To determine whether” and insert, “this subsection is violated, the following may be considered, among other relevant factors:”.

Sincerely,



Victor K. Tervala
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief, Opinions & Advice
Hilary Ruley, Chief Solicitor
Jennifer Landis, Assistant Solicitor