

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



November 21, 2018

DEPARTMENT OF LAW

ANDRE M. DAVIS, CITY SOLICITOR
100 N. Holliday Street
Suite 101, City Hall
Baltimore, Maryland 21202

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

Re: City Council Bill 18-0296 Licensing and Regulation – National Human
Trafficking Resource Center Hotline Information Sign Posting

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0296 for form and legal sufficiency. The bill would require certain businesses to post a National Human Trafficking Resource Center hotline information sign in designated areas; require certain reports, define certain terms, and establish certain penalties.

To raise awareness and combat the problem of human trafficking, the City may require that these signs be posted in places where victims of human trafficking have been known to travel. State law currently requires the posting of similar notices in rest areas, welcome centers and transportation centers, bus stations, truck stops, adult entertainment establishments, and in certain hotels where crimes related to human trafficking have occurred. MD Code, Trans., § 8-655; Bus. Reg., §§ 15-207, 19-103.

Requiring businesses to post information may raise potential First Amendment issues, but whether this particular disclosure is compelled speech has not yet been directly addressed by the case law. Although the Attorney General has advised in the past that this disclosure would be commercial speech, lessening the legal hurdle the law would be required to surpass, recent cases suggest that this disclosure could be considered noncommercial, subject to a strict scrutiny analysis. *See, e.g.* May 18, 2010, Letter of the Attorney General to the Honorable Martin O'Malley (noting that courts have merely required a reasonable relationship between the government interest and the disclosure in the commercial context, but the compelled endorsement of a particular viewpoint would be different); *but see PSEG Long Island v. Town of North Hempstead*, 158 F. Supp. 3d 149, 168 (E.D. N.Y. 2016) (mandatory posting of warning signs on utility poles not commercial speech). Generally speaking, if the goal is to raise awareness, as it is here, the disclosure will be upheld if reasonably related to the government interest. *American Meat Institute v. United States Department of Agriculture.*, 760 F.3d 18 (D.C.Cir.2014) (required disclosure of country-of-origin information about meat products upheld).

Research of the City task force on human trafficking, as well as data from across the

country, reveals that these locations are frequented by human trafficking victims. The Law Department recommends bolstering the data in the bill with further information concerning each type of business and how it has been historically a place where victims of human trafficking pass through. This will increase the likelihood that a court will find a connection between the purpose of the bill and the required disclosure. The penalties imposed are within the Charter limits.

Finally, the Law Department recommends adding "IN A" before "CONSPICUOUS PLACE" in line 27, page 5.

The Law Department, therefore, approves City Council Bill 18-0296 for form and legal sufficiency.

Sincerely,

A handwritten signature in blue ink that reads "Ashlea H. Brown" with a stylized flourish at the end.

Ashlea H. Brown
Assistant Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor K. Tervalo, Chief Solicitor
Avery Aisenstark