

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF LAW

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

January 8, 2009

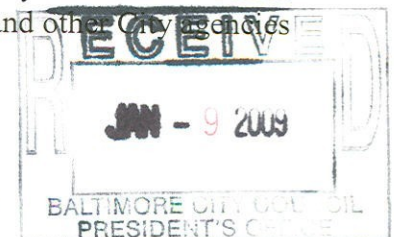
The Honorable President and
Members of the Baltimore
City Council
c/o Karen Randle, Executive Secretary
409 City Hall
Baltimore, MD 21202

RE: City Council Bill 08-0112 – Late Night Commercial Operations-Licensing

Dear President and Members

You have requested the advice of the Law Department regarding City Council Bill 08-0112. City Council Bill 112 calls for the creation of a licensing scheme for commercial entities that are open to the public between the hours of midnight and 6am. The bill does not apply to entities that sell pharmaceuticals and related health needs, a restaurant or tavern operating during hours authorized by its alcoholic beverage license, the sale of motor vehicle fuel and related automotive needs or an entity providing emergency medical or veterinary care. The bill would require covered entities to apply for a license annually. An applicant must post notice on the premises for 15 days and notify the City Council member for the District where the business is located of the filing of the application. The Board of Municipal and Zoning Appeals shall review all applications and either grant or deny a license. If within the 15 day posting period, the Board receives an objection from a Councilmember or at least 10 property owners or persons living in the district where the business is located, the board must hold a hearing giving parties in interest and citizens an opportunity to be heard. The board must consider the testimony from any hearings, the proposed days and hours of operation and the plan for indoor and outdoor security when deciding whether to grant a license. The Board may also impose reasonable conditions on a license to protect the public health, welfare and safety.

Article II, Section 17 of the Baltimore City Charter gives the Mayor and City Council the power to license, tax and regulate all businesses, trades, vocations or professions. Clearly, therefore, licensing late night commercial operations is consistent with the authority of the City Council. There are, however, Constitutional limitations on this power. The equal protection provisions of the Fourteenth Amendment would require that any classifications for the purpose of licensing must be reasonable. In this case, only businesses that operate late at night are being required to obtain a license. In general, the classification must be rationally related to a legitimate government purpose. See Am.Jur.2d Constitutional Law, Sec. 859-860. City Council Bill 112 is designed to enable the City to cope with the additional burden on Police and other City agencies



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created by commercial establishments that remain open between midnight and 6am. These types of businesses create the potential additional traffic, trash, and disturbances by patrons that may lead to increased police calls in the area and an increased need for other City Services. Under these circumstances, the licensing scheme would be considered rationally related to a legitimate government purpose and any classification created would be not cause the legislation to violate the equal protection clause.

City Council Bill 08-0112 is, therefore, consistent with the authority of the City Council to provide for licensing of businesses. The Law Department, therefore, approves the City Council Bill 08-0112 for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Assistant Solicitor

cc: Honorable William Henry
Angela Gibson, City Council Liaison
George A. Nilson, City Solicitor
Linda C. Barclay, Chief Solicitor
Deepa Bhattacharyya, Assistant Solicitor
Ashlea Brown, Assistant Solicitor
Hilary Ruley, Assistant Solicitor