

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF LAW

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March 26, 2009

Honorable President and Members
of the City Council of Baltimore
c/o Karen Randle, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Revised Bill Report for City Council Bill 08-0163 {Live Entertainment –
Licensing and Regulation – Hospitality Services – Promotion and Coordination}

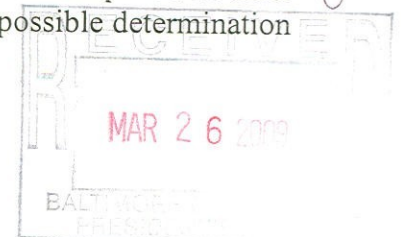
Dear Madame President and City Council Members:

Upon further review of City Council Bill 08-0163 {Live Entertainment – Licensing and Regulation – Hospitality Services – Promotion and Coordination}, the Law Department submits this revised report on the form and legal sufficiency of the bill. The bill would delete live entertainment and dancing as a zoning use category; require the licensing of restaurants, taverns, and dance clubs that provide live entertainment or dancing; establish the Board of Licenses for Live Entertainment; establish an Office of Hospitality Services; and provide for related penalties. Pursuant to Article II, section 17 of the Baltimore City Charter, the Mayor and City Council have the power “[t]o license, tax, and regulate all businesses, trades, vocations, or professions” in the City.

As I mentioned at the March 4, 2009, bill hearing, there is a possibility that this bill is largely preempted by State law, insofar as it pertains to establishments within Baltimore City that are licensed by the State Board of Liquor License Commissioners. Assistant Attorney General Kathryn Rowe wrote in a letter dated November 14, 2008, addressed to Senator Lisa Gladden, that “it is [her] view that the proposed ordinance would be preempted by State law with respect to alcoholic beverage licenses. It could, however, be enforced for premises that do not hold alcoholic beverage licenses.” While this certainly may be true, which could lead a court to strike down this ordinance as invalid, the Law Department feels that the issue is debatable, and that the scope of the preemption may not be as broad as the Assistant Attorney General concludes.

Secondly, the bill deletes live entertainment and dancing as a zoning use category in the Zoning Code. Instead, it proposes to regulate live entertainment at restaurants, taverns, and dance clubs by requiring a live entertainment license from the Board of Licenses for Live Entertainment. The Law Department agrees with the Planning Commission staff recommendation to retain live entertainment as a form of land use within the Zoning Code. Thus, live entertainment would be permitted in certain zoning districts and also require a license. This would allow for possible differentiation by license type, as well as a possible determination for what would be appropriate for a certain area.

Comments



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In section 10-22(c)(1)(i), the bill should specify the number of days within which the Board must refer the applicant and objectors to the Director of Hospitality Services for mediation. Depending on how many days after the last day of the posting periods the Board refers the applicant to mediation, it may be a better option to amend section (c)(2) to require the mediation to be concluded within 21 days after that referral. Otherwise, the Board could refer to matter to mediation on the 18th day after the posting periods end, and the mediation would then need to be concluded within 3 days. The Committee should ensure that whatever terms are used are consistent with mediation provisions in section 10-24(e).


Additionally, there may be practical, logistical, and resource problems with some of the timelines set forth in the bill. Holding a hearing within 15 days after the certification of mediation results, as provided in section 10-22(c)(3), seems to indicate that a fairly quick process is required. One option would be to amend section 10-23(a)(1) so that "hearing" is replaced with "mediation," and another section could be added to provide that if a mediation is conducted but no hearing required, the Board must notify the applicant of its decision within a certain number of days of the Director of Hospitality certifying the mediation results. Additionally, if the Board waits until the end of the 30 day posting periods to begin its investigation, 15 days may not be sufficient time to investigate all the pertinent considerations.

In section 10-23(c), the "notice" and "opportunity to be heard" provisions could be made more specific, or the Board could merely promulgate rules or regulations to delineate specific notice and opportunity to be heard procedures.

We recommend working on clarifying section 10-32 {Fines} and 10-33 {Notice and Hearing}. We believe any clarifications can be worked out during forthcoming work sessions and discussions.

The Law Department approves the concept of Council Bill 08-0163 for legal sufficiency. Regarding the form of the bill and other concerns, we expect continuing discussions and work sessions to resolve any outstanding issues.

Sincerely,



Deepa Bhattacharyya

cc: The Honorable James Kraft
Angela C. Gibson, Mayor's Legislative Liaison
George Nilson, City Solicitor
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