
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
EBONY THOMPSON
ACTING CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

March 29, 2023

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

Re: City Council Bill 23-0347 – Department of Business Licensing and Consumer Protection

Dear President and City Council Members:

The Law Department has reviewed Council Bill 23-0347 for form and legal sufficiency. The bill has five primary objectives: 1) it establishes the Baltimore City Department of Business Licensing and Consumer Protection (“Department”); 2) it establishes the Baltimore City Business Licensing and Consumer Protection Board (“Board”); 3) it proscribes “unfair, abusive, or deceptive trade practices” and provides for enforcement thereof; 4) it transfers a variety of existing business licensing and consumer protection responsibilities from other City agencies to the Department and Board; and 5) it establishes an administrative complaint, investigation, and enforcement scheme related to the business licensing and consumer protection responsibilities under the Department and Board’s jurisdiction. Each of these objectives will be reviewed in turn below.

At the outset, the bill’s purpose clause should be amended because it erroneously refers to the creation of a “Commission,” instead of a Board. The purpose clause should also reference the bill’s provisions pertaining to unfair, abusive, and deceptive trade practices. These proposed amendments, as well as all others noted hereafter, are included in Attachment 1.

I. Establishment of the Department

Among the express powers given to the Mayor and City Council of Baltimore (“City”) by the Maryland General Assembly in Article II of the Charter is the authority to “license, tax and regulate all businesses, trades, vocations or professions.” City Charter, Art. II, § (17). The City is also authorized to pass any “ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City” and to “have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City.” City Charter, Art. II, §§ (47) and (27).

Pursuant to this authority, the City has enacted a variety of legislation pertaining generally to business licensing, regulation, and consumer protection. The responsibility for administering and enforcing these provisions currently resides with several City agencies, primarily the Department of Finance (“Finance”) and various minor boards or commissions. The bill would create the Department for the purpose of taking over many of these licensing and consumer protection responsibilities and would create the Board to provide related administrative hearings.

Article VII, Section One of the Charter permits the creation of executive departments and boards by law. Except as noted below in specific instances, nothing in the City Charter or other relevant law generally prevents local business licensing and consumer protection responsibilities moving from an existing agency to a newly created Department and Board.

The bill establishes a Director of the Department of Business Licensing and Consumer Protection (“Director”) to administer and oversee the Department, to be appointed by the Mayor in accordance with Article IV, Section 6 of the City Charter. The bill’s definition of “Director” should include the Director’s designee, to clarify that the Director may delegate the variety of responsibilities ascribed to that position. The bill also authorizes the Department to employ staff as provided in the Ordinance of Estimates.

The Department’s purposes include: 1) centralizing the administration of the various City licenses, permits, and practices specified in Section 42-9 of the bill (discussed in more detail below); 2) making efficient inspections of City businesses; 3) ensuring City businesses are properly licensed and operating in accordance with City law; 4) conducting administrative hearings on contested business licensing enforcement actions; 5) investigating claims of unfair, abusive, or deceptive trade practices; and 6) enforcing business licensing and consumer protection provisions of the City Code. Most of these purposes are fleshed out elsewhere in the bill. However, there is no further reference to or explanation of the Department’s “inspecting” authority and it is unclear how or if it is different from the Department’s investigation and enforcement authority. Accordingly, the bill should either be amended to provide more detail as to what is meant by inspections or to delete the clause altogether. Regarding administrative hearings, the bill vests that authority in the Board, not the Department *per se*. Accordingly, this purpose clause should be deleted.

The bill sets forth the Department’s powers, including: 1) administering and enforcing the licensing schemes set forth in Section 42-9 of the bill; 2) receiving and investigating complaints of unfair, abusive, or deceptive trade practices set forth in an amended Article 2, Subtitle 4 of the City Code (discussed below); 3) setting licensing fees, with the approval of the Board of Estimates; 4) bringing enforcement actions against businesses for violating City law, including initiating hearings before the Board; 5) issuing summonses and subpoenas during an investigation; 6) issuing environmental citations under Subtitle 40 of Article 1 of the City Code; 7) issuing civil citations under Subtitle 41 of Article 1 of the Code; 8) reporting consumer protection violations to another

appropriate government agency with jurisdiction; and 9) advising the Mayor and City Council on issues relevant to City business licensing and consumer protection.

Regarding the issuance of environmental and civil citations, such citations can be issued for violations of a variety of City laws, as enumerated in Article 1, Sections 40-14(e) and 41-14, respectively. Because a number of those laws either directly or indirectly pertain to consumer protection and business licensing matters under the Department's jurisdiction, it may be logical to authorize Department personnel to issue such citations. The bill achieves this by adding the Department's Director to the list of officials in City Code, Art. 19, Section 71-1 who may certify employee names to the Police Commissioner for appointment as Special Enforcement Officers. *See* City Code, Art. 1, §§ 40-7(c) (requiring environmental citations to be issued by a "Code Enforcement Officer") and 40-1(c) (in pertinent part, defining "Code Enforcement Officer" as "a Special Enforcement Officer appointed under City Code Article 19, § 71-1"). *See also* City Code, Art. 1, §§ 41-4(a) (requiring civil citations to be issued by an "enforcement officer") and 41-1(c) (in pertinent part, defining "enforcement officer" as "a Special Enforcement Officer appointed under City Code Article 19, § 71-1").

The bill adds employees and officials of the Department and Board to the list of individuals required to file financial disclosure statements under Subtitle 7, Article 8 of the City Code. The new section—7-8(4a)—requires a likely irrelevant group to file: "all bureau heads, directors, and division chiefs of department." It's unlikely such positions will exist in the Department. Moreover, the bill already adds all non-clerical employees of the Department to the list, which would include any such officials. Accordingly, that subpart should be deleted.

II. Establishment of the Board

The bill establishes the Board, which is comprised of five members appointed by the Mayor in accordance with Article IV, Section 6 of the Charter. The Mayor must nominate one member in consultation with the City Council President, and one member in consultation with the Comptroller. Each member must be a resident of Baltimore, be an individual of known personal integrity, and possess a recognized knowledge in business licensing or consumer protection. The members serve a four-year term.

The bill does not specify staff for the Board. Presumably, the Board would be staffed by employees of the Department and, if that is the intent, it should be added to the bill.

The bill provides that, among other duties, the Board shall adjudicate all hearings of the Department. Because there are at least two licensing schemes transferred to the Department in which administrative review of a decision is given to another party, this section should be amended with the qualifier "unless otherwise provided by law." *See, e.g.,* City Code, Art. 15, § 3-4(c) (requiring a hearing before the Board of Municipal Zoning Appeals under certain circumstances); Code, Art. 15, §§ 9-9 and 9-10 (providing for administrative review by the Director).

The Board is also authorized to hold information hearings, undertake surveys and studies, and make recommendations regarding existing City licensing and consumer protection procedures and policies and improvements thereto. It is also authorized, in coordination and consultation with the Department, to review, evaluate, and recommend improvements to business licensing and consumer protection laws, regulations, and training. Both the Board and Department are required to submit an annual report to the Mayor and City Council that details their activities.

III. Code, Art. 2, Subtitle 4 (Unfair, Abusive, or Deceptive Trade Practices)

The bill entirely rewrites Subtitle 4 of Article 2 of the City Code, eliminating the former “False Advertising” provisions and replacing them with new provisions covering “Unfair, Abusive, or Deceptive Trade Practices.” That term is defined by reference to the State’s exhaustive definition in Title 13 of the Commercial Law Article of the Maryland Code (“State Consumer Protection Act”), which includes false advertising, along with many other predatory practices.

The State Consumer Protection Act explicitly authorizes local jurisdictions, including Baltimore City, to enact and enforce local consumer protection laws that are at least as strict as the State’s. *See* Md. Code Ann., Commercial Law Article, Sections 13-102(b) (“It is the intention of this legislation to set certain minimum statewide standards for the protection of consumers across the State, and the General Assembly strongly urges that local subdivisions which have created consumer protection agencies at the local level encourage the function of these agencies at least to the minimum level set forth in the standards of this title) and 13-103(b) (permitting the City to enact even more stringent consumer protection provisions than those in the State Consumer Protection Act).

The bill prohibits any person from engaging in unfair, abusive, or deceptive trade practices. The bill should be amended to define the term “person.” A suggested amendment that references the definition in the State Consumer Protection Law is attached. Additionally, because the City may only enact laws with local effect under the home rule provisions of the Maryland Constitution, Section 4-2 should specify that the proscription covers unfair, abusive, or deceptive trade practices “within Baltimore City.” *See, e.g., Holiday Universal, Inc. v. Montgomery Cnty.*, 377 Md. 305, 308 (striking down a Montgomery County consumer protection law because of its “significant extraterritorial impact”).

The bill authorizes a variety of penalties for violation of the Subtitle, including: the possibility of a civil citation of \$1,000 per violation; a civil penalty of up to \$1,000 per violation; and a criminal penalty of up to \$1,000 and/or imprisonment for not more than 90 days per violation. These penalties are consistent with the City’s authority under Article II, Section (48) of the Charter, which permits the City to “provide civil and criminal fines and penalties for the violation of any ordinance . . . provided that no fine or penalty shall exceed \$1000.00 and no imprisonment shall be for a longer period than 12 months.”

Separate from the penalties it imposes, the bill, as amended, would authorize the Office of the City Solicitor, on behalf of the Mayor and City Council, to institute injunctive or other legal proceedings in a court of competent jurisdiction to enforce the Subtitle.¹ Sections 4-401 and 4-402 of the State Courts and Judicial Proceedings Article allow for this possibility. Specifically, those Sections taken together permit counties and municipalities, including Baltimore City, to file a petition for injunctive relief in either the District Court or Circuit Court “for enforcement of local health, housing, fire . . . *consumer protection*, and zoning codes for which equitable relief is provided.” Md. Code Ann., Courts and Judicial Proceedings Article, §§ 4-401(8) and 4-402(d)(2) (emphasis added). Moreover, this authority does not exceed the scope of the City Solicitor’s powers in the Charter or Code. *See* Charter, Art. VII, § 24 (“The City Solicitor shall have sole charge and direction of the preparation and trial of all suits, *actions and proceedings of every kind* to which the City, or any municipal officer or agency, shall be a party.”) (emphasis added). *See also, e.g.,* City Code, Art. 15, § 46-12 (“Whenever the City Solicitor shall be notified of any violation of the provisions of this article, it shall be his duty immediately to institute legal proceedings against the offender or offenders to recover from him, her, or them, the penalty or penalties prescribed by this article.”). A written statement in support of this portion of the bill from the Law Department’s Chief of Affirmative Litigation is included as Attachment 2.

IV. Business Licensing and Consumer Protection Responsibilities Transferred to Department

The bill transfers several existing City business licensing and consumer protection responsibilities from other agencies to the Director and Department as follows.

a. Code, Article 2, Subtitle 1 (Auctions)

The bill transfers the authority to appoint auctioneers from the Mayor to the Director. Because auctioneers are not municipal officers, this does not run afoul of the Mayor’s sole appointment power in Article IV, Section 6 of the Charter. The bill also eliminates the Auction Advisory Board. Among the Auction Advisory Board’s roles is to investigate, interview, and recommend auctioneer candidates and to investigate complaints of auctioneer wrongful acts. The latter function is transferred to the new Board, but the former function is not replaced. Nonetheless, the qualification criteria for appointment as an auctioneer in Section 1-5 of Article 2 appear sufficient to guide the Director’s discretion in making auctioneer appointments.

The bill transfers the auctioneer licensing function, as well as the receipt of the surety bond and licensing fee, from the Director of Finance to the Director of the Department. Although the bill’s transfer of the licensing function does not pose a problem, the receipt of the licensing fee should remain with the Director of Finance as Finance is responsible for collecting monies owed to the City. *See* City Charter, Art. VII, § 12(a) (“The Director [of Finance] shall receive, collect, and

¹ Law and the sponsor previously discussed this amendment but it was not in the First Reader version of the bill. For convenience, it is included with Law’s other suggested amendments in Attachment 1.

account for all moneys due the City and deposit these moneys in depositories selected by the Board of Finance.”).

b. City Code, Article 2, Subtitle 4 (New Provision – Unfair, Abusive, Or Deceptive Trade Practices)

The bill’s amendment of Subtitle 4 or Article 2 of the Code (formerly False Advertising) is discussed in detail in the previous section of this bill report.

c. Code, Article 2, Subtitle 6 (Going Out of Business Sales)

The bill transfers licensing responsibility from the Director of Finance to the Director of the Department. The licensing fee remains payable to the Director of Finance.

d. Code, Article 2, Subtitle 7 (Scrap Collectors and Scavengers)

The bill transfers permitting responsibility from the Police Commissioner to the Director of the Department. It does not appear that the Police Commissioner’s duties here stem from Public Local Law or other State law, so there is no impediment to the bill’s transfer permitting responsibility.

e. Code, Article 2, Subtitle 8 (Scrap Metal Dealers)

The bill transfers licensing responsibility from the Police Commissioner to the Director of the Department. It does not appear that the Police Commissioner’s duties here stem from Public Local Law or other State law, so there is no impediment to transferring licensing responsibility.

Although State law provides for the licensing and regulation of junk dealers and scrap metal processors (Md. Code Ann., Business Regulations, Title 17, Subtitle 10), it explicitly does not “limit the power of a county or municipality to license junk dealers and scrap metal processors.” Md. Code Ann., Bus. Reg., § 17-1009. State law also requires “the primary law enforcement unit” of the jurisdiction to receive relevant records, but it does not state that that official must be the local licensor. *See* Md. Code Ann., Business Regulations, § 17-1003(b) (“A county or municipal governing body in the county in which the license of the junk dealer or scrap metal processor is held shall designate by resolution the primary law enforcement unit to receive records in accordance with § 17-1011(b) of this subtitle.”).

f. Code, Article 2, Subtitle 10 (Motor Fuel Sales)

The bill transfers licensing responsibility from the Director of Finance to the Director of the Department. There is no impediment to this change. However, State law also regulates the storage and sale of motor fuel, so it is unclear the extent to which this local licensing scheme is preempted. *See* Md. Code Ann., Business Regulation, § 10-303 (requiring registration with the State Comptroller before a person stores or sells motor fuel in the State). Nonetheless, that question need

not be addressed for purposes of this bill, which simply transfers existing responsibilities between agencies.

g. Code, Article 2, Subtitle 11 (Pawnbrokers)

The bill transfers licensing responsibility from the Director of Finance to the Director of the Department. The bill leaves in place the duty for licensed pawnbrokers to submit certain reports to the Police Commissioner, but adds the Director of the Department as a recipient of those required reports. The bill also eliminates the pawnbroker license review board, whose purpose was to recommend an appropriate course of action to the Director of Finance when licensees had violated two or more provisions of the subtitle within a 12-month period. There are no legal impediments to any of these changes.

Although State law provides for the licensing and regulation of certain kinds of pawnbroker dealers, it explicitly “does not apply to a pawnbroker located in a county [including Baltimore City] that regulates pawnbrokers unless the pawnbroker does business as a dealer.” Md. Code Ann., Business Regulation § 12-101(c). *See also Hamdan v. Klimovitz*, 124 Md. App. 314, 327–28 (1998) (“[I]f a local jurisdiction enacts legislation regulating pawn transactions, the State statute applies only to the extent that the pawnbroker is operating as a dealer. . . . There is no inconsistency in requiring that a pawnbroker obtain the necessary licenses that cover all types of transactions conducted, even if one is issued by the State while another is issued by local authorities.”).

h. Code, Art. 2, Subtitle 12 (Second-Hand Property, Antiques, and Consignment Goods)

The bill transfers licensing responsibility from the Director of Finance to the Director of the Department. The bill leaves in place the duty for licensed dealers to submit certain reports to the Police Commissioner, but adds the Director of the Department as a recipient of those required reports.

i. Code, Art. 13, Subtitle 13 (Licensing of Peep Show Establishments)

The bill transfers licensing responsibility from the Commissioner of housing and Community Development to the Director of the Department.

j. Code, Art. 15, Subtitle 1 (Adult Entertainment)

The bill transfers licensing and regulatory responsibilities from the Board of Liquor License Commissioners for Baltimore City to the Department. The proposed amendments to this subtitle are preempted in their entirety by State law and should be stricken from the bill.

The Board of Liquor License Commissioners for Baltimore City is established in State law. *See* Md. Code Ann., Alcoholic Beverages Article (“AR”), § 12-201. State law also explicitly permits the City to authorize the Board of Liquor License Commissioners “to enforce the laws and regulations of the City that govern adult entertainment business licenses” and sets forth various

provisions, including security and measures and hours of operation, that specifically apply to holders of adult entertainment licenses issued by the Board of Liquor License Commissioners. *See* AR §§ 12-2102 and 12-2009. By eliminating the Board of Liquor License Commissioners from the adult entertainment licensing sphere, the bill interferes with this State regulatory scheme. The changes to this subtitle should therefore be deleted.

k. Code, Art. 15, Subtitle 2 (Amusements)

The bill transfers from the Director of Finance to the Director of the Department licensing responsibility for a variety “amusements,” including billiards; amusement devices; theaters, halls, etc.; animated riding devices; and mobile riding units.

l. Code, Art. 15, Subtitle 3 (Amusement Device Location Permits)

The bill transfers permitting responsibility from the Commissioner of Housing and Community Development to the Director of the Department. The bill retains certain hearing authority of the Zoning Board.

m. Code, Art. 15, Subtitle 6 (Carriages, Wagons, Boats and Scows)

The bill transfers licensing responsibility from the Director of Finance to the Director of the Department.

n. Code, Art. 15, Subtitle 7 (Employment Agencies)

The bill transfers licensing responsibility from the Director of Finance to the Director of the Department.

o. Code, Art. 15, Subtitle 9 (Late-Night Commercial Operations)

The bill transfers licensing responsibility from the Department of Finance to the Department of Business Licensing and Consumer Protection.

p. Code, Art. 15, Subtitle 11 (Massage Establishments)

The bill transfers licensing responsibility from the Director of Finance and the Commissioner of Housing and Community Development to the Director of the Department. The bill also eliminates the Board of Licenses for Massage Establishments and transfers that board’s responsibilities to the Business Licensing and Consumer Protection Board. In light of this change, the bill’s proposed change to Section 11-1 should be amended so that “Board” means the Business Licensing and Consumer Protection Board, because the shortened term “Board” is used elsewhere in the subtitle. Additionally, the bill’s proposed changes to Section 11-15(a) and (c) pertaining to license revocation and hearing should be amended to appropriately reflect the respective responsibilities of the Director, the Department, and the Board. Finally, there are typos in Sections 11-11(b), 11-(c), and 11-13(d) consisting of a duplicate “of” in the full title of the Director.

Generally, massage therapists are licensed and regulated by the State. *See* Md. Code Ann., Health Occupations Article, Title 6. It is unclear the extent to which the local licensing scheme may be preempted. Nonetheless, that question need to be addressed for purposes of this bill, which simply transfers existing responsibilities between agencies.

q. Code, Art. 15, Subtitle 12 (Commercial Parking Lots)

The bill transfers certain license-related authority from the Director of Finance and Department of Finance to the Director of the Department and the Business Licensing and Consumer Protection Board. The bill should clarify the entity responsible for granting the license by amending Section 12-4 to specify that the license is obtained from the Department and the licensing fee is paid to the Director of Finance.

r. Code, Art. 15, Subtitle 13 (Special-Event Parking Lots)

The bill transfers licensing responsibility from the Department of Finance to the Director of the Department. It retains the Director of Finance as the recipient of the licensing fee, which is appropriate.

s. Code, Art. 15, Subtitle 15 (Street Entertainers)

The bill eliminates the Board of Licenses for Street Entertainers and transfers that board's licensing authority to the Department. Section 15-19(c) erroneously omits the word "Board" from the Board's title, so that should be amended.

t. Code, Art. 15, Subtitle 18 (Itinerant Wholesale Produce Dealers)

The bill transfers permitting authority from the Director of Finance to the Director of the Department.

u. Code, Art. 15, Subtitle 20 (Transient Merchants)

The bill transfers licensing authority from the Director of Finance to the Director of the Department. It retains the Police Commissioner as recipient of the report required under Section 20-6 and adds the Director of the Department as an additional recipient.

v. Code, Art. 15, Subtitle 22 (Towing Services)

The bill eliminates the Board of Licenses for Towing Services and transfers the duties of that board to the Department. The bill also transfers duties of the Director of Finance to the Director of the Department. The bill retains the Director of Finance as the recipient of licensing fees, as is appropriate.

In light of all of the bill's proposed changes to Article 15, there should be an amendment to Article 15, Section 46-11 that adds the Director of the Department (in addition to the Director of Finance,

who is currently listed) as having “full power and authority to refuse to grant [or to revoke] licenses under the provisions of this article” upon the Mayor’s approval.

V. The Department and Board’s Administrative Complaint, Investigation, and Enforcement Scheme

The bill creates an administrative enforcement scheme pertaining to the areas under the Department’s jurisdiction. Specifically, it permits any person, including the Director, to file a complaint with the Department alleging that a business is committing or has committed one or more of the acts described in Section 42-28(a). That Section, in turn, requires the Department to investigate a complaint alleging that a business is: 1) operating without a license; operating with improper licensure; violating the terms of a business license; or 4) engaging in unfair, abusive, or deceptive trade practices.

In conducting an investigation, the Department is authorized to issue subpoenas to any person for documents or testimony related to the allegations in the complaint. “There is abundant precedent for an ordinance of the Mayor and City Council conferring subpoena power upon an administrative agency of the City which possesses quasi-judicial functions.” 60 Solicitor Opinions 169 (1968). Accordingly, vesting the Department with subpoena power is permissible because it has quasi-judicial enforcement functions.

At the conclusion of the investigation, the Department must prepare a written report of findings, at which point the Director has two avenues of action. If the Director determines that the information in the report does not tend to substantiate an allegation in the complaint, the Director shall dismiss the complaint and, if appropriate, refer the complaint to another entity with jurisdiction over the matter. If the Director determines that the information in the report tends to substantiate an allegation in the complaint, the Director may take one or more of the following actions: 1) refer the complaint for a hearing before the Board; 2) issue a civil citation; 3) issue an environmental citation; 4) provide the respondent with the opportunity to remedy the behavior at issue in the complaint; 5) seek injunctive relief in a court of competent jurisdiction; and 6) any other legal or equitable relief or enforcement available under the law.

To better guide the Director’s decision as to which action(s) to take, and because some of the actions listed—such as issuing citations—may not be authorized elsewhere in the Code for a particular type of violation, the bill should be amended to limit the range of options by stating “as appropriate for the nature of the offense and subject to other applicable law.” To comport with required due process, the bill should also be amended to clarify that, notwithstanding the Director’s authority to take any other actions, before the Director or Department suspends or revokes any license, the respondent must be given notice and opportunity for a hearing before the Board, unless otherwise provided by law. The “unless otherwise provided by law” qualifier is needed because some particular licensing schemes transferred to the Department by the bill provide for a different hearing procedure, such as Art 15, Section 3-4(c), which provides for a hearing before the Zoning

Board under certain circumstances related to a permit for an amusement device location. For the same reason, Section 42-19, which states that the Board shall adjudicate all hearings of the Department, should also be amended with the “unless otherwise provided by law” language.

If a matter is referred to the Board for a hearing, the Board must provide notice and opportunity for a hearing, and the respondent is entitled to be represented by counsel. The Board may issue a subpoena for documentary and/or testimonial evidence related to the hearing, and the Board’s Chair may administer an oath to those testifying. If, upon consideration of the entire record produced at the hearing, the Board finds, by preponderance of the evidence, that the respondent has violated the City Code, the Board may take one or more of the following actions: 1) issue a cease and desist order; 2) issue a reprimand; 3) revoke or suspend the respondent’s license; 4) report any information concerning a violation of law to any appropriate government agency with jurisdiction; 5) refer a violation or complaint to any federal, state, or local agency with jurisdiction; 6) order the respondent to restore money or property to the person who made the complaint; 7) order the respondent to pay any costs of investigation or related activities of the Department; 8) impose and order the respondent to pay any relevant civil penalty authorized by law; and 9) take any other action that would assist the person who made the complaint in obtaining relief, or prevent future violations of law.

It appears options 4 and 5 above are duplicative, so one should be deleted. Additionally, as suggested above regarding the Director’s choice of options, the Board’s choices should include the qualifier: “as appropriate for the nature of the offense and subject to other applicable law.”

In ordering any remedy outlined above, the Board is required to consider a number of factors, including: 1) the severity of the violation; 2) the severity of any harm to consumers; 3) the motives of the respondent; 4) any previous violations; 5) whether the remedy will deter future misconduct; and 6) whether a stop order or restitution would sufficiently protect consumers or the person who made the complaint.

The Director is given authority to seek enforcement of the Board’s orders and subpoenas in any court of competent jurisdiction. The Director may also bring an action in any court of competent jurisdiction to recover any civil penalties imposed by the Director or Board, and also to seek injunctive relief. In carrying out these duties, the Department and Board shall be reasonably assisted by the City Solicitor, including in any judicial enforcement action. The bill clarifies that nothing in this section shall limit the authority of the Office of the Solicitor, on behalf of the Mayor and City Council, to directly bring an enforcement action under Subtitle 4 of Article 2 (Unfair, Abusive, and Deceptive Trade Practices”), as discussed above.² The Department and Board may also request the assistance of other City departments as necessary. Finally, any person aggrieved

² Law and the sponsor previously discussed this amendment but it was not in the First Reader version of the bill. For convenience, it is included with Law’s other suggested amendments in Attachment 1.

by a final decision of the Board or Director under the new subtitle may petition the Circuit Court for judicial review of that decision.

If the bill is amended as suggested above and reflected in Attachment 1, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,



Jeffrey Hochstetler
Chief Solicitor

cc: Ebony Thompson, Acting City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Chief Solicitor
D'Ereka Bolden, Assistant Solicitor
Michelle Toth, Special Solicitor
Teresa Cummings, Assistant Solicitor

Law Department Amendments to Council Bill 23-0347

(1st Reader Copy)

1. On page 1, in lines 5 and 7, strike “Commission” and substitute “Board”; and on that same page, in line 9, after the word “Boards” and before the word “providing,” add “prohibiting unfair, abusive, and deceptive trade practice and providing for related enforcement;”.
2. On page 2, strike line 26 in its entirety and strike line 27 up until “2-1(a).” Also on page 2, in line 11, strike “4-3 and 4-4” and substitute “4-3 to 4-5”.
3. On page 4, in line 11, after the word “protection” add “or the Director’s designee.” On that same page, either strike line 25 in its entirety and renumber accordingly, or, after the word “businesses” add “to ensure compliance with City licensing requirements.” On that same page, strike lines 28 and 29 in their entirety.
4. On page 7, strike line 13 in its entirety.
5. On page 8, after line 5, create a new “§ 42-17” entitled “Board Staff” and provide as follows:

“The Director shall designate Department staff to assist the Board in carrying out its functions.” Renumber the following sections accordingly.
6. On page 9, in line 26, after the word “Department” add “unless otherwise provided by law.”
7. On page 12, in line 21, after the word “actions” add “as appropriate for the nature of the offense and subject to other applicable law.”
8. On page 13, after line 10, add a new subsection “(c)” entitled “Action on licenses” and provide as follows:

“Before revoking or suspending any license, the Department must provide notice and opportunity for a hearing before the Board, unless otherwise provided by law.”
9. On page 14, in line 6, after the word “actions” add “as appropriate for the nature of the offense and subject to other applicable law.” On that same page, strike lines 13 and 14 in their entirety.
10. On page 15, strike lines 20 through 23, inclusive, and substitute:

“(1) IN GENERAL.

THE OFFICE OF THE CITY SOLICITOR SHALL REASONABLY ASSIST THE DEPARTMENT AND BOARD IN CARRYING OUT THE DEPARTMENT AND BOARD'S RESPECTIVE DUTIES UNDER THIS SUBTITLE, INCLUDING IN ANY JUDICIAL ENFORCEMENT ACTION.

(2) AUTHORITY TO BRING ACTION.

NOTHING IN THIS SUBTITLE SHALL LIMIT THE AUTHORITY OF THE OFFICE OF THE CITY SOLICITOR TO BRING AN ENFORCEMENT ACTION UNDER CITY CODE, ARTICLE 2, SUBTITLE 4 {"UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICES"}."¹

11. On page 18, in line 16 after "\$1,600-license fee" add "paid to the director of Finance"; and on that same page, in line 17, strike "office" and substitute "Department".
12. On page 19, in line 21, strike "Unfair, Abusive, or Deceptive Trade Practices" and substitute "Definitions." On that same page, in line 32, add a subsection label "(a)" before the word "Unfair"; and on that same page, after line 33, add a new subsection "(b)" and provide as follows: "Person" has the meaning stated in Title 13 of the State Commercial Law Article."
13. On page 20, in line 7, after the word "practices" add "within Baltimore City."
14. On page 20, strike lines 14 and 15, inclusive, and substitute:

"(1) EACH VIOLATION OF THIS SUBTITLE IS A SEPARATE OFFENSE.

(2) EACH DAY UPON WHICH A VIOLATION OCCURS IS A SEPARATE VIOLATION.

(3) MULTIPLE VIOLATIONS OF A SINGLE DAY SHALL BE CONSIDERED SEPARATE VIOLATIONS."

Also on page 20, after line 27, insert:

"§ 4-5. OTHER ENFORCEMENT.

IN ADDITION TO ANY OTHER ENFORCEMENT ACTION AUTHORIZED BY LAW, THE OFFICE OF THE CITY SOLICITOR, ON BEHALF OF THE MAYOR AND CITY COUNCIL, MAY INSTITUTE INJUNCTIVE OR OTHER LEGAL PROCEEDINGS IN A COURT OF COMPETENT JURISDICTION TO ENFORCE THIS SUBTITLE AND TO COLLECT ANY CIVIL PENALTIES UNDER § 4-3 OF THIS SUBTITLE."²

¹ Law and the sponsor previously discussed this amendment but it was not in the First Reader version of the bill.

² Law and the sponsor previously discussed these amendments but they were not in to the First Reader version of the bill.

15. On page 28, strike line 13 in its entirety.
16. Beginning on page 30, line 13 and continuing through page 34, line 13, strike all lines in their entirety.
17. On page 45, in line 7, do not delete the word “Board” but strike the word “Reserved.” On that same page, in line 8, add: “Board means the Business Licensing and Consumer Protection Board.”
18. On page 47, in lines 8, 11, and 18, strike the duplicate word “of”.
19. On page 48, in line 2, add a new amendment to the bill covering current subsection “(a) Grounds” as follows:

“Whenever the [Board] DIRECTOR believes that any licensed massage establishment or registered massagist has violated any of the provisions of this subtitle, the rules and regulations promulgated by the [Board] DEPARTMENT, or is not qualified to hold a license, [it may] THE DIRECTOR MAY order a hearing BEFORE THE BOARD.”

On that same page, in line 5, strike the word “Board” and substitute “Department”. On that same page, in line 17, add a new amendment to the bill covering current subsection “(a) License required; fee” as follows:

"No person may operate a commercial parking facility in the City of Baltimore unless the person has first obtained an annual license for the facility FROM THE DIRECTOR OF BUSINESS LICENSING AND CONSUMER PROTECTION and has paid the annual fee for the license TO THE DIRECTOR OF FINANCE."

20. On page 52, in line 19, after the word “Protection” add “Board.”
21. On page 59, after line 34, add a new amendment to the bill covering current “§ 46-11. Refusal, revocation of license” as follows:

"Upon the approval of the Mayor, the Director of Finance AND THE DIRECTOR OF THE DEPARTMENT OF BUSINESS LICENSING AND CONSUMER PROTECTION shall have full power and authority to refuse to grant licenses under the provisions of this article, and also, when directed by the Mayor, shall have full power and authority to revoke any license granted by virtue of this article."

Attachment 2 – Law 23-0347

To: Honorable President and Members of the City Council
From: Sara Gross, Affirmative Litigation Practice Group Chief, Department of Law
Re: Council Bill 23-0347
Date: March 28, 2023

The Department of Law supports Council Bill 23-0347, as amended, and respectfully asks that you vote in favor of the bill. While Councilman Dorsey and his team provided the bulk of the effort in creating this legislation, we were privileged to contribute the sections providing a local prohibition on unfair and deceptive trade practices and civil penalties for the same.

The State of Maryland provides local governments with the opportunity to regulate in the consumer protection space, but the City has yet to take advantage of this authorization. Currently, the only City consumer protection ordinance is a 1970s era provision that provides criminal penalties for false advertising, which does not appear to have been utilized in modern times, if ever.

As a result, the City can only pursue legal action against companies when they harm the City directly, as we have with our lawsuits against Big Oil, the opioid industry, *et cetera*. We have no current recourse against companies who harm our citizens through unfair and deceptive trade practices. The State has the ability to pursue fines and other relief under the Maryland Consumer Protection Act, and authorizes local governments to do so as well, but the City has no such powers. As a result, we have missed out on opportunities to participate in major consumer protection litigation, such as the lawsuit that the City of Chicago brought in 2021 against DoorDash and GrubHub for charging consumers deceptive and misleading fees. The aggregated financial penalties for each violation, if sustained, total in the millions of dollars. Further, a local consumer protection ordinance would have allowed us to request fines for consumer protection violations as part of our pending lawsuit against ghost gun kit manufacturer Polymer80. In 2022, Washington, DC was awarded over \$4 million against Polymer80 for local consumer protection violations alone.

In addition, this proposed ordinance will allow us to pursue injunctions against companies to prohibit their ongoing bad conduct, as DC also was able to do in its case against Polymer80.

Thus, this proposed ordinance will allow us to hold businesses who harm our citizens through unfair, deceptive, and abusive practices accountable for their actions. It is imperative that Baltimore joins major cities and counties around the country that already have local consumer protection ordinances, like Chicago, DC, and New York City, as well as Howard and Montgomery Counties here in Maryland, in order to protect our citizens from harmful practices. Accordingly, we strongly support this legislation and respectfully ask that you do the same.