

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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

April 23, 2013

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

Re: City Council Bill 13-0214 – Change To Grow:10 Year Plan- Excise Tax
on Outdoor Advertising

Dear President and City Council Members:

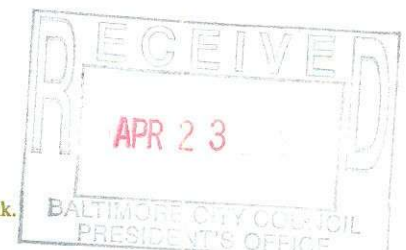
The Law Department has reviewed City Council Bill 13-0214 for form and legal sufficiency. The bill imposes a tax on the privilege of exhibiting outdoor advertising displays in the City; provides for the administration and collection of the tax; defines certain terms and imposes certain penalties.

Bill 214 is an excise tax, because it is a tax on the enjoyment of a privilege. An excise tax is “any tax which is not directly on property or the rent or income of real estate.” M.L.E. Revenue §113 (citing *Herman v. Mayor and City Council of Baltimore*, 189 Md. 191 (1947)); *see also* 93 Md. Op. Atty. Gen. 12 at 8 (an excise tax is “measured by the extent to which a privilege is exercised without consideration of value”). Since this tax falls within the “excise” classification, it is within the City’s taxing power under Article II, Section 40 of the City Charter.

Bill 214 does not offend the First Amendment because it is not based on the content of speech and has no discriminatory purpose, but rather is intended to raise revenue and lessen the negative impact of billboards on the City. It is clear that a tax on speech is constitutional if it is not based on content and therefore does not aim to suppress ideas. *Leathers v. Medlock*, 499 U.S. 439, 453 (1991) (“differential taxation of speakers, even members of the press, does not implicate the First Amendment unless the tax is directed at, or presents the danger of suppressing, particular ideas”) and *Combined Communications Corp. v. City of Bridgeton*, 939 S.W.2d 460 (E.D. Mo. 1997) (upholding a business license tax on billboards because it did not discriminate on the basis of ideas) and *Free Speech v. City of Philadelphia*, 884 A.2d 966 (Pa. 2005) (denying injunctive relief when a similar tax was challenged on constitutional grounds).

The Law department recommends amending section 29-9 of the bill which pertains to sale or closing of a business. The bill currently requires that the advertising host remit the taxes owed and the report “within 3 days of the cessation of operations or business.” This section should be clarified so as to better determine when the clock starts to run with respect to the sale or closure of a business and the 3 day period extended slightly to allow for remittance of the required payment and report.

F/A



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Bill 214 is within the authority of City Council and is constitutional. The Law Department, therefore, approves the bill for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Hilary Ruley, Assistant Solicitor
Victor Tervalo, Assistant Solicitor