

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



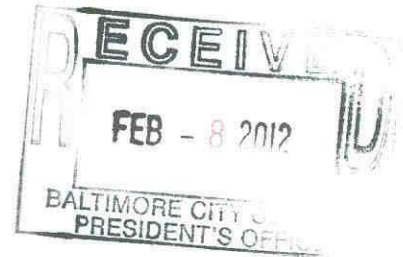
DEPARTMENT OF LAW

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

February 8, 2012

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

Attn: Karen Randle, Executive Secretary



Re: City Council Bill No. 12-0012 - Planned Unit Development -
Amending Ordinance 11-571

Dear President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 12-0012. City Council Bill 12 amends the Ordinance 11-571 by adding Section 6 and Section 7 to that ordinance. Section 6 provides that a minimum 10 foot tall fence be erected on the southern boundary of the Planned Unit Development. Section 7 is a statement that the property is in close proximity to industrially-zoned land which may used 24 hours a day and 7 days a weeks and may produce bothersome noise, light, dust, fumes or traffic in the area. Section 7 also states that it applies to all owner and tenants of properties within the area.

The Law Department has commented in the past on the type of language used in Section 7. In those instances, we have approved the language in proposed Section 7 except for the last sentence. The last sentence states that "this sentence shall apply to all owners and tenants of the properties within the planned unit development." This sentence renders the bill unconstitutionally void for vagueness." The void-for-vagueness doctrine is embodied in the Due Process Clauses of the Fifth and 14th Amendments, and it is a general principle of statutory law that a statute must be definite to be valid. A statute is void for vagueness when its prohibition is so vague as to leave an individual without knowledge of the nature of the activity that is prohibited." "A statute is so vague as to violate the Due Process Clause where its language does not convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices or where its language is such that people of common intelligence must necessarily guess at its meaning." See 328 Am.Jur2d Constitutional Law, § 972. The last sentence in Section 7 purports to have that section apply to all owners and tenants of properties in the planned unit development. The problem is that there is no "requirement" in the language of that section to be applied. Section 7 is merely a statement concerning the nature of

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the surrounding land uses and the impact of those uses. The final sentence leaves one wondering if the law is trying to put owners and tenants on constructive notice of such conditions or implying that their rights in their properties are subject to the rights of industrial uses. The law therefore leaves an individual without knowledge of the nature of the rights being affected by the legislation.

If the sentence referenced above is removed, the Law Department could approve City Council Bill 12-0012 for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro
Chief Solicitor

cc: George A. Nilson, City Solicitor
Angela Gibson, City Council Liaison, Mayor's Office
Hilary Ruley
Ashlea Brown
Victor Tervalá