

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF LAW

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

February 20, 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: City Council Bill 08-0163 – Live Entertainment – Licensing and Regulation –
Hospitality Services – Promotion and Coordination

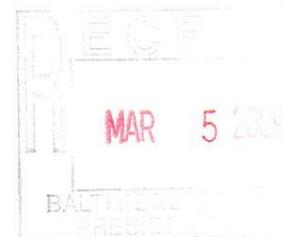
Dear Madame President and City Council Members:

The Law Department has conducted a review of City Council Bill 08-0163 {Live Entertainment – Licensing and Regulation – Hospitality Services – Promotion and Coordination}. 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.

The Law Department has the following comments regarding the bill:

First, 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 location of restaurants and taverns will continue to be regulated by the Zoning Code; however, while “dance club” is defined in this bill for purposes of the “Licensing and Regulation” Article of the City Code {Article 15}, dance clubs are not currently defined or regulated by the Zoning Code. Therefore, in order for BMZA to retain the same level of authority over the location of dance clubs in the City as it does over restaurants and taverns, “dance club” should be added to the Zoning Code, amended to “dance hall” (which is covered by the Zoning Code) deleted from this bill, or otherwise reworked so that dance clubs have the same

F/A



Honorable President and Members
of the City Council of Baltimore
February 20, 2009
Page 2 of 3

level of regulation as restaurants and taverns. Additionally, the definitions of restaurant and tavern in this bill should be made consistent with the definitions in the Zoning Code.

Sandy Gutman, Chief Assistant Solicitor of the Land Use Division, has advised that the Zoning Code is permissive; therefore, any use not regulated by the Zoning Code is permitted. Because live entertainment will no longer be regulated by the Zoning Code and thus permitted unless a license is required, we advise that the City should be very careful to include in the bill every establishment for which a live entertainment license should be required. For example, a "banquet hall," which is defined in the Zoning Code, would not be required to obtain a live entertainment license unless included in section 10-16 of this bill. Similarly, a "dance hall" is included in the Zoning Code and presumably would be permitted to have live entertainment without a license, since a "dance hall" is not covered by this bill. Other zoning use categories not covered by this bill include auditoriums, concert halls, convention halls, union halls, bingo halls, and pool halls.

In section 10-1(c), the definition of "dance club" should also be amended to be "an BUSINESS establishment that..." to (1) be more consistent with the definitions of "restaurant" and "tavern," and to (2) exclude a personal property that might otherwise fit the definition.

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.

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.

Honorable President and Members
of the City Council of Baltimore
February 20, 2009
Page 3 of 3

Section 10-24 should be made consistent with section 10-1(e)(3)(ii); it is unclear whether this bill applies to one-day or single-event live entertainment.

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: Angela C. Gibson, Mayor's Legislative Liaison
George Nilson, City Solicitor
Sandy Gutman, Chief Solicitor
Elena R. DiPietro, Assistant Solicitor
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David Tanner, BMZA
Doug McCoach, Planning
Gary Cole, Planning
Michael Braverman, Housing
Marcia Collins, DPW
Jim Green, Police Department