

CITY OF BALTIMORE

SHEILA DIXON, Mayor

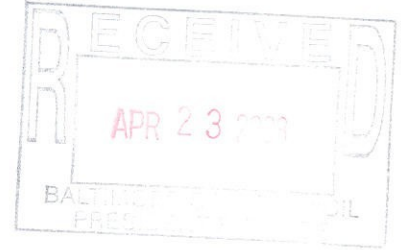


March 24, 2008

DEPARTMENT OF LAW

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

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



Re: Baltimore City Council Bill 08-0059 – Beverage Containers – Refund Value

Dear Madame President and City Council Members:

The Law Department has reviewed City Council Bill 08-0059 – Beverage Containers – Refund value. The bill provides that “[e]very nonreusable beverage container in which beverages are sold or offered for sale in Baltimore City has a minimum cash refund value of 10 cents.” The bill also provides that “[n]o distributor or dealer may sell or offer for sale in Baltimore City a beverage in a nonreusable container that does not clearly indicate... (1) that the container is to be sold within Baltimore City; and (2) that the refund value of the container is not less than [10 cents].” The bill also provides that a dealer or distributor may not refuse to accept such empty nonreusable beverage containers or refuse to pay the refund value.

The terms “beverage,” “nonreusable beverage container,” “dealer,” and “distributor” are defined by the bill.

A person who violates the law would be guilty of a misdemeanor and, upon conviction, would be subject to a fine not to exceed \$1,000 or up to one year imprisonment or both per offense.

The requirement that a beverage in a nonreusable container must clearly indicate, in a securely affixed manner, that the container is to be sold within Baltimore City could be extremely impractical and costly for manufacturers, distributors, and dealers. This provision may be challenged, but the bill likely could withstand such a legal challenge if the City’s interest in passing the bill is deemed sufficient.

However, the bill potentially could undermine existing contracts between beverage manufacturers, distributors, and dealers. In order to avoid this effect on existing contracts, we would recommend adding the following Section 4 to the bill:

Section 4. AND BE IT FURTHER ORDAINED, That this Ordinance does not apply to the use of polystyrene products that have been purchased by a food service facility pursuant to a contract that was executed before the effective date of this Ordinance.

F/Comment



Additionally, legislation is currently pending before the Maryland General Assembly to establish a task force to study the feasibility of establishing such a program Statewide. Therefore, it is the recommendation of the Law Department to wait until recommendations are proposed by the task force, or at least until after the end of the current General Assembly, session before passing this bill into law.

Notwithstanding our recommendation, the Law Department approves Council Bill 08-0059 for form and legal sufficiency.

Sincerely,



Deepa Bhattacharyya
Assistant Solicitor

cc: The Honorable James Kraft
Angela C. Gibson, Mayor's Legislative Liaison
George Nilson, City Solicitor
Linda C. Barclay, Chief Solicitor
Elena R. DiPietro, Senior Solicitor

F/Comments

Amendment No. 1

On page 4, after line 23, add the following:

“SECTION 4. AND BE IT FURTHER ORDAINED, THAT THIS ORDINANCE DOES NOT APPLY TO THE SALE OR OFFER OF A BEVERAGE IN A NONREUSABLE CONTAINER THAT HAS BEEN PURCHASED BY A DISTRIBUTOR OR DEALER PURSUANT TO A CONTRACT THAT WAS EXECUTED BEFORE THE EFFECTIVE DATE OF THIS ORDINANCE.”