

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

101 City Hall  
Baltimore, Maryland 21202

July 17, 2017

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

Re: City Council Bill 17-0111 – Weapons – Prohibiting Handguns Near Places of Public Assembly.

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0111 for form and legal sufficiency. This bill provides that a person may not wear, carry or knowingly transport a handgun, concealed or open, on or about the person within 100 yards of or in a park, church, school, public building or other place of public assembly. The bill also provides that a person may not wear, carry or knowingly transport a handgun, concealed or open, in a vehicle within those same areas. The bill provides for the same exceptions to the prohibition that are found in the State gun law Md. Criminal Law Art. §4-203(b). Within these exceptions is a provision which exempts persons from the prohibition who have a valid permit to carry a handgun. See §4-203(b)(2).

Upon review, there are several legal issues that arise that will be discussed below. The Law Department believes that these issues can be resolved in a way that allows for approval for form and legal sufficiency.

**Preemption**

Md. Crim. Law Art., §4-209 expressly preempts law regulation of handguns. It states (a) Except as otherwise provided in this section, the State preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun ....”

§4-209(b) provides for exceptions to the general preemption of local regulation. It states: (b)(1) A county, municipal corporation, or special taxing district may regulate the purchase, sale, transfer, ownership, possession, and transportation of the items listed in subsection (a) of this section: (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park, church, school, public building, and other place of public assembly.

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(2) A county, municipal corporation, or special taxing district may not prohibit the teaching of or training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of this section. This bill exercises the authority granted in this section but only with respect to handguns. Accordingly, the bill is not preempted by State law.

### **Mandatory Sentences**

The bill imposes a mandatory sentence of one year and a \$1,000 fine. Art. II of the City Charter contains the powers granted to the City by the Maryland General Assembly. §48 gives the Mayor and City Council the authority to provide, by ordinance, for “civil and criminal fines and penalties for the violation of any ordinance, rule or regulations established by the City under or in the execution of any power granted by this Article II; provided that no fine or penalty shall exceed \$1000.00 and no imprisonment shall be for a longer period than 12 months.” The penalty provided for in the bill is within the scope of the Charter authority but removes any discretion to impose less prison time or a lower fine.

In general, “[a]lthough sentencing is an exclusively judicial function, the legislature may choose to constrict the independent exercise of judicial discretion in sentencing. The legislature has the power to define criminal punishments without giving the courts any sentencing discretion and mandatory sentences do not violate the principle of separation of powers.” 16A Am. Jur.2d Constitutional Law §298. This authority has been recognized with respect to local governments as well. See *Brown v. City of Chicago*, 250 N.E.2d 129 (1969) and *City of Detroit v. Recorder’s Court Traffic and Ordinance Judge*, 104 Mich. App. 214(1981). Given these general principles, the Law Department concludes that the City Council is acting within its Charter powers when providing for a mandatory sentence in this bill.

Based on the foregoing, the Law Department approves the bill for form and legal sufficiency.

Sincerely yours,



Elena R. DiPietro  
Chief Solicitor, Division Chief



Hilary Rule,  
Chief Solicitor



Victor Tervalo  
Chief Solicitor

cc: David Ralph, Acting City Solicitor  
Karen Stokes, Director of Government Relations  
Kyron Banks, Legislative Liaison  
Hilary Rule, Chief Solicitor  
Victor Tervalo, Chief Solicitor  
Jennifer Landis, Special Assistant Solicitor

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