

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



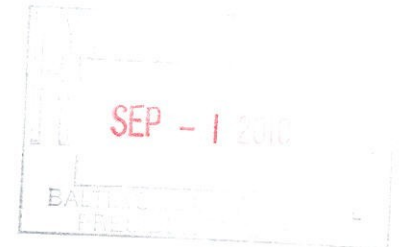
DEPARTMENT OF LAW

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

August 31, 2010

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 10-0574 - Scrap Metal Processors – Conformance to
State Law

Dear President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 10-0574. City Council Bill 574 formally designates, as required by state law, the City's "primary enforcement unit" to receive certain records; conforms a definition to its state law counterpart; clarifies the need of scrap metal processors to comply with state licensing and regulatory provisions; authorizes the denial, suspension, or refusal to renew certain licenses for violation of certain state laws, rules or regulations; provides for a special effective date; and generally relates to the licensing and regulation of scrap metal processors.

During the 2010 legislative session, the General Assembly passed Senate Bill 99 which preempts certain local laws regarding junk dealers and scrap metal processors, but expressly preserves local licensing authority. *See* Md. Code Ann., Bus. Reg. § 17- 1011 (a)(4)(ii) ("This section does not limit the power of a county or municipality to license junk dealers and scrap metal processors."). City Council Bill 574 conforms local law to the requirements of this new State law and designates the Baltimore Police Department as the primary law enforcement unit to receive records pursuant to § 17- 1011 (b) as required by Section 17-1003 (a). Bill 574 changes the local definition of "scrap metal processor." Finally, the bill adds to the local licensing scheme a requirement that applicants first obtain a state license under Title 17, Subtitle 10 of the Business regulation Article (a scrap metal license) and maintain that license in good standing or risk denial, suspension, revocation or a refusal to renew a local scrap license. The bill also requires that licensees abide by state law regarding scrap metal processing or risk license forfeiture, suspension, denial or refusal to renew.

Generally speaking, a local government may deny, suspend or revoke or refuse to renew a license on any grounds that are rationally related to a legitimate objective of the locality with regard to the profession, so long as the grounds are delineated in the statute and there is an opportunity for

the applicant or licensee to be heard. 3 Local Gov. Law § 15:40. Therefore, conditioning the license on violations of the state scrap laws is legally permissible, since the laws pertain to the same occupation, further a legitimate local interest (compliance with applicable laws) and the grounds for revocation are spelled out in the statute. However, to avoid a preemption challenge, the Police and Law departments have determined that Section 8-3 (a)(1) should be amended since Baltimore City is exempted from the state scrap licensing requirement under § 17- 1006 of the Business Regulation Article. Section 8-13.1 (3) (I) should be amended to require compliance with the local licensing procedure, rather than the entire subtitle 8 of Article 2 of the City Code, because state law has preempted the field of scrap regulation with the exception of licensing. Finally, the definition of scrap metal processor should mirror state law.

BPD Amendments

The Police Department's amendments address the legal issues mentioned above. The amendments change the word "processor" to "dealer", delete "transports" from the definition of scrap metal dealer (which, as amended, mirrors the state law definition) and create an exception to the licensing requirement for automotive dismantlers. The amendments also change the requirement in section 8-3 of the bill that an applicant for a local license first obtain a state scrap metal license, which presented a legal issue. The amendments instead require local license applicants to first obtain "all state licenses required for the business."

Subject to the above, if amended as BPD proposes, City Council Bill 574 is consistent with the City Council's authority and with state law. Therefore, the Law Department would approve the amended bill for form and legal sufficiency.

Sincerely yours,



Ashlea H. Brown
Assistant City Solicitor

cc: Angela Gibson, City Council Liaison, Mayor's Office
George Nilson, City Solicitor
Elena DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Terese Brown, Assistant Solicitor