

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

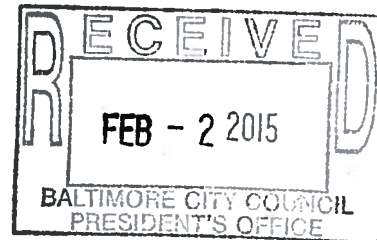


DEPARTMENT OF LAW

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

February 2, 2015

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



Re: City Council Bill 15-0469 – Plastic Bags – Reduction

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 15-0469 for form and legal sufficiency. It would repeal Subtitle 16 of Article 15 on Licensing and Regulation of the City Code that has the City's current plastic bag reduction plan and add a Subtitle 62 to Article 7 on Natural Resources of the City Code to prevent Dealers from supplying customers with plastic bags for use as checkout or carryout bags. The bill defines the term "Dealer" and provides exceptions to the plastic bag ban for certain products. The bill also amends Section 40-14 of Article 1 of the City Code to provide for enforcement by issuance of environmental citations, as well as criminal penalties.

The City has the general police and welfare powers to legislate in this area. *See* City Charter, Art. II, §§ 27, 47. This allows the City "to prescribe, within the limits of the federal and state constitutions, reasonable regulations necessary to preserve the public order, health, safety, or morals." *Tighe v. Osborne*, 149 Md. 349, 356 (1925).

Opponents may argue that the Commerce Clause in the federal Constitution limits the City's power to enact this law. However, such a challenge would likely fail because the City may regulate local aspects of interstate commerce if the law: (1) does not discriminate against outside interests to benefit local economic interests; and (2) is not unduly burdensome. *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 470-71 (1981); *accord BlueHippo Funding, LLC v. McGraw*, 609 F. Supp. 2d 576, 586 (S.D. W. Va. 2009) (recognizing that the Fourth Circuit has consistently used this two part test). The Supreme Court has stated that "the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." *Clover Leaf Creamery Co.*, 449 U.S. at 471 (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

Since this bill would likely withstand a Commerce Clause challenge because it does not discriminate against out of state interests and any incidental burden on interstate commerce

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would likely be seen as not outweighing the significant local environmental benefits, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

Cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Jenny Landis, Assistant Solicitor