

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

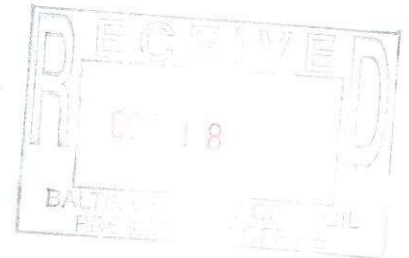


DEPARTMENT OF LAW

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

October 18, 2013

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 11-0005 Loitering – Requests to Move On

Dear President and City Council Members:

The Law Department has received City Council Bill 11-0005 to review for form and legal sufficiency. The bill would specify the distance a person found loitering must move when requested to “move on” by a police officer.

Generally speaking, to survive a challenge of unconstitutional vagueness, anti-loitering laws must provide sufficient guidelines to law enforcement and adequate notice of which behavior is prohibited. *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). Bill 11-0005 enhances the current guidelines to law enforcement and further clarifies the behavior required to comply with the current law by adding a specific distance one must move after ordered to move on. In fact, the Supreme Court has expressly stated that clarifying the dispersal order component of an anti-loitering law with a specified distance that one must move would eliminate constitutional vagueness. *Morales*, 527 U.S. at 59-60 (adding that lack of clarity in the dispersal component would not render the law unconstitutionally vague if the prohibited conduct was clear, but would further buttress the law from a vagueness attack) see also *Boos v. Barry*, 485 U.S. 312, 331 (1988) (upholding 500 feet restriction with narrow interpretation of dispersal component).

The Law Department recommends adding a time component to the dispersal to further clarify the law. See *Morales*, 527 U.S. at 59 (noting that an open ended dispersal requirement raises uncertainty as to distance and time). The Law Department defers to the Police Department as to the duration.

The Law Department also recommends amending section 25-1 (b)(2)(II) on page 2, line 8, section 25-2 (a)(2) page 2 line 21, section 26-6 (b)(3) page 3, line 25 and section 27-3 B page 4, line 3, all of which measure the distance from the “spot” of loitering. Since loitering can include moving or wandering about, this creates uncertainty as to the point at which the 500 feet

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is measured. The point at which the distance is measured should be fixed, so as to limit misinterpretation in enforcement and compliance. For example, measuring the distance from the boundary or property line of the "public place", liquor establishment, drug abuse center or arcade would provide more clarity. Again, the Law Department defers to the Police as to the clearest point to measure the distance.

With these amendments, the Law Department would approve the bill for form and legal sufficiency.

Sincerely,



Ashlea H. Brown  
Special Assistant Solicitor

cc: The Honorable William Henry  
George Nilson, City Solicitor  
Angela C. Gibson, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor  
Hilary Ruley, Assistant Solicitor  
Victor Tervalva, Assistant Solicitor