

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

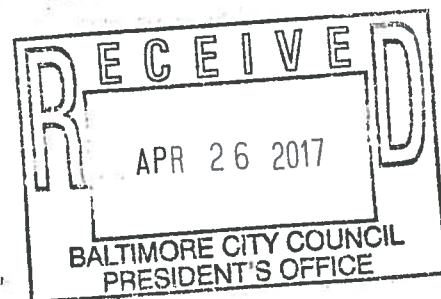


DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

April 26, 2017

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



Re: City Council Bill 17-0056 – Electronic Control Devices – Authorizing Control in Most Circumstances

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0056 for form and legal sufficiency. The bill would repeal the City's existing stun gun ban, contained in Section 59-28 of Article 19 of the City Code. It would replace the complete ban with restrictions that would prevent the possession of stun guns by those adjudicated mentally defective, as defined in state law, as well as by those under a protective order. It would also prevent the possession of stun guns in certain government and school buildings. These restrictions would operate in conjunction with the existing state laws on stun guns, which prohibit possession by those under 18 years old, require sellers to perform background checks and maintain a record of buyers. Md. Code, Crim. Law, §4-109. Therefore, passage of this bill will not result in the unfettered use and possession of stun guns. Rather, it will enact permissible regulations that will work in concert with existing state laws.

The Law Department requested this bill in response to a federal lawsuit filed against the Mayor and City Council of Baltimore, Baltimore County and Howard County, alleging that these jurisdictions' local bans on stun guns are unconstitutional under the 2nd Amendment to the United States Constitution. As indicated in the recitals of the bill, recent Supreme Court cases would likely lead a court to invalidate the City's existing ban. *See Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016)(vacated Massachusetts state ban on stun guns); *McDonald v. City of Chicago*, 561 U.S. 742 (2010)(applying 2nd Amendment to states); *District of Columbia v. Heller*, 554 U.S. 570 (2008)(2nd Amendment protects the right to possess weapons for traditionally lawful purposes, including self-defense in the home). However, certain reasonable restrictions are allowed. *See, e.g., Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017)(explaining judicial scrutiny for weapons restrictions); *Heller*, 554 U.S. at 626-27(upholding restrictions on possession by certain criminals, the mentally ill, or in sensitive places).

Howard and Baltimore counties have repealed their laws in response to this lawsuit. The Plaintiffs in the case have agreed to stay the lawsuit for 90 days to give the Mayor and City Council time to enact this bill into law. The Law Department approves the bill for form and legal sufficiency.

Fav /w comments

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: David E. Ralph, Acting City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalo, Chief Solicitor
Jennifer Landis, Assistant Solicitor