

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, CITY SOLICITOR
100 N. Holliday Street
Suite 101, City Hall
Baltimore, Maryland 21202

January 25, 2018

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 17-0152 – Food Service Facilities – Healthy Beverages
for Children’s Meals

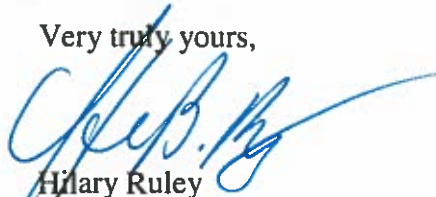
Dear President and City Council Members:

The Law Department has reviewed City Council Bill 17-0152 for form and legal sufficiency. The bill would amend two sections in the Health Code and the corresponding section in Section 40 of Article 1 of the City Code concerning regulations of food service facilities in Baltimore City. The bill would prevent those facilities from offering Children’s Meals (as it defines them) with beverages unless those beverages are one of the types listed in the bill. Although the food service facility could offer any lawful beverage if requested by the customer, it cannot offer a beverage as part of a Children’s Meal unless that beverage was of a certain type.

The City has the general police and welfare powers to legislate in this area and to preserve the health of all people in the City. *See* City Charter, Art. II, §§ 11, 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). *See* City Charter, Art. II, §§(11), (47). 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). This bill would likely withstand a Commerce Clause challenge because it does not discriminate against out of state interests and the City could make a plausible argument that the burdens on interstate commerce are incidental and do not outweigh the significant local environmental benefits produced by the legislation. Certainly it would behoove the Council to elicit testimony at the hearing to describe the benefits that this law would provide and the fact that it would be only an incidental burden to commerce, if at all.

The Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, 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 Tervalá, Chief Solicitor
Jennifer Landis, Assistant Solicitor