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April 17, 2008

The Honorable Martin J. O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: Senate Bills 496 and 584

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 496, "Baltimore City - Alcoholic Beverages Licenses - Restaurants in Business Planned Unit Development," and Senate Bill 584, "Baltimore City - Alcoholic Beverages Act of 2008." We write to discuss the interaction of the two bills.

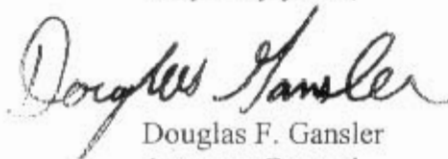
Senate Bill 496 amends Article 2B, § 9-204.1 to provide an additional exception to the prohibition on the issuance of new alcoholic beverages licenses in the 46th Alcoholic Beverages District. This new exception will allow the issuance of licenses for "not more than three restaurants in a business planned unit development in Ward 24, precinct 5 ..." Page 2, line 32 to page 3, line 4, amending § 9-204.1(c)(1)(iii)5. The bill also makes conforming changes in § 9-204.1(c)(2).

Senate Bill 584 makes changes in the alcoholic beverages laws applicable in Baltimore City, including changes to "[clarify] certain exemptions from the prohibitions against the issuance of new licenses and the transfer of licenses in certain areas of the City." Page 1, lines 6 to 8. It repeals existing § 9-204.1 in its entirety. However, the exceptions formerly created in § 9-204.1(c)(1)(iii) now appear in a new § 9-204.1(f)(2)(i) through (iii). Thus, it is our view that the language added to the old section 9-204.1(c)(1)(iii)5 by Senate Bill 496 should be added as § 9-204.1(f)(2)(iv). This can be confirmed in next year's corrective bill.

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Provisions equivalent to § 9-204.1(c)(2) appear in the new § 9-204.1(f)(3). These changes are not sufficiently similar to the prior provision to permit the insertion of the Senate Bill 496 amendment on the new language. However, the specific authorization of the issuance of licenses in this area should be read to prevail over the more general prohibition. *See State v. Ghajari*, 346 Md. 101, 116 (1997). Thus, the express authorization of the three additional licenses in Senate Bill 496 prevails over the general bar in new § 9-204.1(f)(3). While we believe that is sufficient, it can certainly also be clarified in next year's corrective bill.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable George W. Della, Jr.
The Honorable Dennis C. Schnepfe
Joseph Bryce
Karl Aro