

CITY OF BALTIMORE
COUNCIL BILL 20-0207R
(Resolution)

Introduced by: Councilmembers Reisinger, Clarke, Burnett, President Scott, Councilmembers
Bullock, Cohen, Dorsey, Henry, Middleton, Sneed, Pinkett, Stokes
Introduced and adopted: April 6, 2020

A COUNCIL RESOLUTION CONCERNING

1 City Council Seeks City Appeal to Preserve Baltimore’s Clean Air Act

2 FOR the purpose of formally requesting that the Baltimore City Law Department appeal the
3 March 27, 2020 decision of the U.S. District Court for the District of Maryland regarding the
4 Baltimore Clean Air Act.

5 Recitals

6 The Baltimore Clean Air Act was approved by City Council on February 11, 2019 and it was
7 signed into law by the Mayor on March 7, 2019. As enacted, the Baltimore Clean Air Act
8 requires that, starting in September 2020, any waste incinerators located within Baltimore use
9 modern technology to monitor and disclose their air pollution. In addition, these incinerators
10 must meet modern requirements for controlling 4 major air pollutants.

11 This law affects 2 waste incinerators: the Wheelabrator incinerator and the Curtis Bay Energy
12 incinerator. The Wheelabrator incinerator burns up to 2,250 tons per day of trash from the City, 6
13 Maryland Counties and 7 other states. The Curtis Bay Energy incinerator is the nation’s largest
14 medical waste incinerator and accepts medical waste from 20 states, DC, and Canada.

15 Wheelabrator is the city’s largest air polluter. According to the U.S. Environmental
16 Protection Agency, it is responsible for 43% of the greenhouse gases emitted by industry in the
17 city and 38% of the health-damaging industrial air pollution, including being the largest emitter
18 of arsenic, cadmium, carbon monoxide, chromium (IV), hydrochloric acid, hydrofluoric acid,
19 lead, mercury, nitrogen oxides, and sulfur dioxide.

20 Curtis Bay Energy is one of 3 medical waste processors in the City and the only to use
21 incineration. In 1988, there were 6,200 medical waste incinerators in the U.S. Today, there are
22 approximately 20, two of which are the units at Curtis Bay Energy. Most of the country has
23 closed down their medical waste incinerators, including 23 at hospitals in the City of Baltimore.
24 Safer, non-burn alternatives are widely used now. The 2 facilities in the City that process
25 medical waste using autoclaving have enough capacity to handle the volume of waste burned at
26 Curtis Bay Energy. Curtis Bay Energy has a history of emissions violations and is currently
27 under investigation by the Environmental Crimes Unit of the Maryland Office of Attorney
28 General.

EXPLANATION: Underlining indicates matter added by amendment.
~~Strike out~~ indicates matter deleted by amendment.

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1 Out of concern for public health, the Baltimore Clean Air Act was enacted with support from
2 the Baltimore City Department of Health and a coalition of 36 public health, environmental,
3 labor, and community organizations. A study of just one of the many pollutants (fine particulate
4 matter) released by Wheelabrator found that it causes an estimated \$55 million in annual health
5 damage throughout several states, primarily by cutting people's lives short.

6 The City's effort to rein in this air pollution was challenged in a court case initiated on April
7 30, 2019 by Wheelabrator, Curtis Bay Energy, and 2 industry trade associations. This case,
8 *Wheelabrator Baltimore, L.P. et al v. Mayor and City Council of Baltimore*, was decided on
9 March 27, 2020.

10 In a 24-page decision, the Court upheld over half of the city's legal arguments and dismissed
11 the incinerator companies' claims that they were unfairly targeted. However, the Court struck
12 down the Baltimore Clean Air Act on the basis that the stricter requirements conflict with State
13 law because they "prohibit" and "criminalize" activity that the State allows under State-issued air
14 pollution permits.

15 One of the reasons given by the Court is that the Baltimore Clean Air Act undermines the
16 State's authority to decide the best way to achieve compliance with ambient air quality standards.
17 Section 2-104 of the State Environment Article clearly authorizes local governments to "set
18 emission standards or ambient air quality standards" so long as the local standards are no less
19 stringent than the state. Further, the federal Clean Air Act, 42 U.S.C. § 7416, also specifically
20 authorizes state and local governments to have clean air laws that are no less strict than the
21 federal law.

22 A federal court interpretation that a local clean air law stricter than the state or federal
23 minimums is an illegal conflict that "second guesses" federal and state regulation not only
24 prevents the City of Baltimore from exercising its rights under these laws to protect public health
25 from air pollution, but prevents all county and municipal governments in Maryland from doing
26 the same.

27 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BALTIMORE**, That Council
28 formally requests that the Baltimore City Law Department appeal the March 27, 2020 decision of
29 the U.S. District Court for the District of Maryland regarding the Baltimore Clean Air Act.

30 **AND BE IT FURTHER RESOLVED**, That a copy of this Resolution be sent to the Mayor, the
31 Acting City Solicitor, the Acting Director of Public Works, the Health Commissioner, the Office
32 of Sustainability's Sustainability Coordinator, and the Mayor's Legislative Liaison to the City
33 Council.