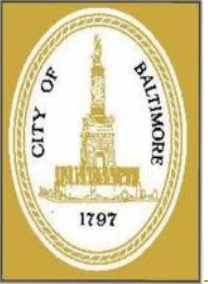


<b>FROM</b>	<b>NAME &amp; TITLE</b>	Matthew W. Garbark, Acting Director	CITY of BALTIMORE  <i>MEMO</i>	
	<b>AGENCY NAME &amp; ADDRESS</b>	Department of Public Works 600 Abel Wolman Municipal Building		
	<b>SUBJECT</b>	City Council Bill 20-0615		

September 30, 2020

**TO:**

Judiciary Committee

**INTRODUCTION**

I am herein reporting on City Council Bill 20-0615 introduced by Council Members Clarke, Burnett, Reisinger, Cohen, Middleton, and Dorsey.

**PURPOSE**

The purpose of the Bill is to prohibit Baltimore City from entering into any contracts that would authorize the use of incinerators or waste-to-fuel facilities; and provide for a special effective date.

**BRIEF HISTORY**

Ordinance 19-232, known as the Clean Air Act, established limits for certain pollutants emitted by commercial solid waste incinerators located within the boundaries of the City of Baltimore. These limits were more stringent than those established by the State of Maryland, and interim deadlines to meet the specified limits were set, with full compliance mandated by January 1, 2022. The two facilities impacted by this law were the Medical Waste Incinerator and the Baltimore Refuse Energy Systems Company (BRESKO) waste-to-energy facility owned and operated by Wheelabrator Technologies, Inc. The City of Baltimore has a contractual relationship with BRESKO for acceptance of municipal solid waste collected from City households, small businesses, small non-profits, municipal buildings, and some condominium regimes. Approximately 157,000 tons of City residential mixed refuse is disposed at BRESKO annually, which reduces the volume of this material by 90 percent. The mixed refuse that is not sent to BRESKO is taken to the City's Quarantine Road Landfill (QRL) for disposal. The ash generated by BRESKO is accepted at QRL, thus greatly reducing the amount of landfill capacity needed for managing the mixed refuse waste stream. This contract will expire on December 31, 2021.

The owners of the BRESKO facility challenged the legality of Ordinance 19-232 in U.S. District Court for the District of Maryland, on the premise that air quality limits were under the purview of the State of Maryland and the federal government, and therefore the City could not impose air quality limits more stringent than those set by the State. The court found in favor of the plaintiff, BRESKO, on March 27, 2020. As may occur in situations where the parties have an ongoing relationship, BRESKO reached out to negotiate settlement conditions with the City as a means of avoiding ongoing litigation.

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Subsequently, the Council passed City Council Resolution 20-0207R to formally request the City appeal the court decision, and followed with City Council Resolution 20-0243R requesting the City drop all negotiations and defend the Clean Air Act.

City Council Bill 20-0615, if enacted, would immediately prohibit the City or its contractors from entering into any contract that would authorize the incineration of mixed refuse, recycling or compostables, construction and demolition debris, or sewage sludge or biosolids, regardless of the incinerator's location. The Board of Estimates would be able to exempt a contractor from these prohibitions if it could be shown that State or federal law requires a certain waste stream to be incinerated.

### **FISCAL IMPACT**

The Department of Public Works completed its “Less Waste Better Baltimore” long term operational plan and issued the final report in July, 2020, which can be found at the top of the page at the following link: <https://publicworks.baltimorecity.gov/lesswaste>. The report analyzed the components of the mixed refuse the City collects in two waste sorts (one winter, one summer), examined all waste streams generated within Baltimore, and generally tracked the tonnages that are recycled, diverted, composted, landfilled, or incinerated. Utilizing this data and the goals of the Baltimore Sustainability Plan, among others, potential waste diversion/reuse methodologies were examined for their applicability to Baltimore, after benchmarking against cities that were in various stages of waste diversion implementation. The intent of the Less Waste Better Baltimore operational plan is to phase in diversion options that will grow over time to reach the anticipated 83% diversion of waste from disposal by 2040. Fulfilling this diversion rate requires investment in multiple approaches and facilities by all sectors of the City to achieve such efforts as citywide residential recycling, food recovery, composting, maximum commercial recycling and reuse through traditional and non-traditional programs and policies; new markets for construction and demolition debris; and upgrading the City's drop-off centers, to name just a few options.

The plan noted that preservation of airspace at QRL was a goal, but that expansion of the landfill would still be necessary to dispose of materials until diversion strategies were fully implemented and to manage disposal of materials that are not currently able to be diverted, recycled, or reused. An additional transfer station would also be necessary to manage the City's waste stream, as the Northwest Transfer Station is anticipated to reach its State permit capacity by 2022. A transfer facility would become even more necessary should interim or longer term circumstances require the City to transport some or all of its waste to facilities outside of the City. The plan also proposes the extension of the BRESKO contract by 5 or 10 years to cover the initial years' build up of waste diversion practices' capacities, and to ensure the City can dispose of its waste should the airspace at QRL fill before completion of its planned expansion.

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Fulfilling the Less Waste Better Baltimore operational plan will take sustained investment and strategic planning and implementation to ensure the success of waste reuse and diversion practices. Removing BRESKO from the waste disposal options will obviously impact the City's choices when planning its early investment strategies. Additionally, the City must be able to demonstrate to the State that it has the ability to manage its waste stream. Therefore, the City would need to expedite the QRL expansion funding and construction to lessen the gap in waste disposal capacity, as well as plan for any additional incurred costs for disposal outside of the City, should this contingency become necessary.

#### **AGENCY/DEPARTMENT POSITION**

The Department of Public Works has the responsibility to manage the portion of the City's waste stream it collects from its residents. However, to reach sustainable practices to reduce and divert from disposal options will take all sectors of the City to be successful. City Council Bill 20-0615, if enacted, would immediately remove incineration from the City's waste disposal options. The Department therefore defers to the Departments of Law and Finance on this legislation.



Matthew W. Garbark  
Acting Director

MWG:MMC