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Title:	Defending the Baltimore Clean Air Act For the purpose of requesting that the Mayor's Office and the Law Department drop all settlement negotiations and rigorously and zealously defend the Baltimore Clean Air Act in the City's appeal before the Fourth Circuit; and requesting further that the Mayor's Office not consider any new contract that calls for incinerating the City's trash and that the Mayor's Office enter into a good-faith dialogue with Zero Waste advocates to reaffirm the path forward outlined in Baltimore's Fair Development Plan for Zero Waste that does not rely on incinerating City waste after 2021.				
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*** Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore Council Bill R (Resolution)

Introduced by: Councilmember Reisinger, Councilmember Clarke, and Councilmember Burnett

A Resolution Entitled

A Council Resolution concerning

Defending the Baltimore Clean Air Act

For the purpose of requesting that the Mayor's Office and the Law Department drop all settlement negotiations and rigorously and zealously defend the Baltimore Clean Air Act in the City's appeal before the Fourth Circuit; and requesting further that the Mayor's Office not consider any new contract that calls for incinerating the City's trash and that the Mayor's Office enter into a good-faith dialogue with Zero Waste advocates to reaffirm the path forward outlined in Baltimore's Fair Development Plan for Zero Waste that does not rely on incinerating City waste after 2021.

Recitals

The Baltimore Clean Air Act was enacted by the Mayor and City Council on March 7, 2019. The Baltimore

Clean Air Act requires that, starting in September 2020, the 2 large waste incinerators in the City use modern technology to monitor and disclose their air pollution and that these incinerators meet modern requirements for controlling 4 major air pollutants.

One of the waste incinerators in question is the Wheelabrator Baltimore trash incinerator, which burns up to 2,250 tons per day of trash from the City, 6 Maryland counties, and 7 other states. The other waste incinerator is Curtis Bay Energy, the nation's largest medical waste incinerator, which accepts medical waste from 20 states, the District of Columbia, and Canada.

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

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

The Baltimore Clean Air Act was adopted with support from the Baltimore City Department of Health, and a coalition of 36 public health, environmental, labor, and community organizations, out of concern for public health. A study of just one of the many pollutants (fine particulate matter) released by Wheelabrator found that it causes an estimated \$55 million in annual health damage throughout several states, primarily by cutting people's lives short. Fine particulate matter is exacerbating deaths from COVID-19, which are disproportionately impacting black residents of Maryland.

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

In a 24-page decision, the Court upheld over half of the City's legal arguments, and dismissed the incinerator companies' claims that they were unfairly targeted. However, the Court struck down the Baltimore Clean Air Act entirely on the basis that the stricter requirements conflict with state law.

The City Council agrees with the Law Department's January 24, 2019 advice letter to the City Council, which described Wheelabrator's legal arguments as "demonstratively false." Attorneys for the City put forth a strong case, and the City should pursue its appeal to overturn the District Court's opinion. Federal and state law still clearly authorize local governments to have clean air laws stricter than the state and federal minimums. The rights of the City and of all county and municipal governments in Maryland are at stake, if the District Court opinion is not overturned.

As Baltimore's legislative body, the City Council is charged with setting policy for the City. Over the past 4 years, the City Council has made its views clear through the unanimous passage of the Baltimore Clean Air Act and several resolutions. These resolutions include Council Bills 17-0022R {"Moving Baltimore to Zero Waste"}, 17-0029R {"Supporting the Paris Accord"}, 17-0034R {"Set a Strong Nitrogen Oxides Limit for the Wheelabrator Baltimore Incinerator"} (this resolution requested the State impose the same limit later codified in the Baltimore Clean Air Act), 18-0086R (condemning the biased Solid Waste Management Master Plan study and setting the Zero Waste Hierarchy as guiding City policy), and 20-0207R (requesting that the Law Department appeal the decision of the District Court in the Clean Air Act case).

In addition to these measures, on April 6, 2020, the Council adopted Council Bill 20-0202R that called for the Mayor and all affected City agencies to begin implementation of Baltimore's Fair Development Plan for Zero Waste: 2020-2040 and Beyond. City Council called upon the Mayor and Public Works Director to work with the Plan's stakeholders to review and undertake the following Plan priorities in achieving this 90% Zero Waste goal:

1. Defend and enforce the Clean Air Act in Baltimore City, which holds polluting incinerators to higher standards than current and inadequate State and federal regulations.
2. Terminate the City's contract with BRESKO in 2021, thus allowing materials to be reclaimed using phasing-in Zero Waste infrastructure.
3. Implement a Zero Waste "bridge strategy" including:
 - expanded collections, increased processing capacity - and transfer capacity (if needed), including transfers outside of Baltimore, for example, possibly with Baltimore County;
 - expanded recycling and composting programs, including free recycling and composting carts to all City households, recycling for all households, along with education and outreach materials on a consistent basis;
 - collection contracts with existing Baltimore-based organics collection providers to support these City-based enterprises; and
 - community scale composting sites within the City and transfer of remaining organics to recycling facilities outside Baltimore if needed.
4. Issue Requests for Proposals to attract mission-based or worker-owned recycling and composting operators capable of meeting Baltimore's need for expanded collections into recycling for all and curbside compost collections, including provisions for:
 - contracts for lengthy terms to ensure consistency; and, local hiring, living wages, benefits, and career pathway requirements to promote local career opportunities; and
 - preference for local markets, recovery of quality materials; requiring that contractors report on the composition of material, the amount of residual, and the destination of sold material; and performance-based contracting incentives.

Despite setting forth these detailed policy goals, the City Council has recently learned that the Law Department is engaged in settlement negotiations with Wheelabrator pertaining to "long-term solid waste management, air quality standards, and financial issues," as described in a July 14, 2020 court filing and subsequent reporting.

For the following reasons, the City Council does not support negotiating with Wheelabrator for extended use of incineration, or any sort of settlement in lieu of aggressive legal defense of the Baltimore Clean Air Act:

- Failing to overturn the District Court opinion means that Baltimore City and all local governments in Maryland will lose their right to adopt local clean air laws;
- Making any deal for continued use of incineration beyond 2021 contradicts the City Council's clear intent to move the City from incineration to Zero Waste and binds the hands of future administrations;
- No deal that involves new contracts for the City to burn trash at Wheelabrator makes any financial,

health, or environmental sense; and

- Wheelabrator would still be the City's largest air polluter even if they were to meet the significant pollution reduction requirements of the Baltimore Clean Air Act.

Indeed, Geosyntec's April 15, 2020 "Solid Waste Management Master Plan" report for the Baltimore City Department of Public Works states that Wheelabrator's compliance with the Baltimore Clean Air Act would cost \$95 million. The report recommends that City taxpayers would foot the bill for bringing Wheelabrator's trash incinerator up to modern standards and that a new 5-year contract to cover these costs would amount to an increase of approximately 50% over current disposal fees. The report also suggests new incineration contracts for 10 or 20 more years of burning City trash.

Wheelabrator Baltimore is 35 years old. The average lifetime of the 29 trash incinerators that have closed since 2000 is just 22 years old. Only one incinerator in the nation has been in operation for more than 40 years without having to be completely rebuilt, and that particular Wheelabrator incinerator near Boston is experiencing major noise problems impacting the community. One other incinerator has lasted past 40 only after being rebuilt in 2006 and has bankrupted Pennsylvania's capital city in the process. Just this month, Connecticut announced that it will be closing its largest incinerator because its aging state-run incinerator in Hartford is breaking down and would cost over \$300 million to refurbish.

The City Council believes that it is unreasonable to invest \$95 million in taxpayer money in an incinerator at the end of its life or to accept the risk of increasing operation and maintenance cost as the plant breaks down over the term of any new 5, 10, or 20-year contract.

With 36% of Wheelabrator's trash coming from outside the City, they will need to stay competitive and offer cheaper tipping fees to suburban areas to attract enough waste to stay at capacity. It's an unfair environmental injustice for City taxpayers to subsidize cheaper dumping for the suburbs.

For Wheelabrator to agree to invest \$95 million in new pollution monitoring and controls, any new contract would likely include a "put-or-pay" clause that guarantees that the City sends a minimum amount of waste to Wheelabrator or pay regardless. This clause is the basis for the current \$32 million lawsuit Wheelabrator filed against Baltimore County for not providing enough trash. Any guarantee of waste or money to Wheelabrator would undermine the City's Zero Waste efforts, penalizing the City for making less trash for as long as this type of incineration contract is extended.

In Connecticut's recent decision to close their incinerator, they chose to move forward on a Zero Waste path centered on unit pricing, recycling, composting, and other Zero Waste solutions. Baltimore can and should do the same. Doing so would cost much less, create more jobs, and prevent health and environmental damage.

Now, therefore, be it resolved by the City Council of Baltimore, That the Council requests that the Mayor's Office and the Law Department drop all settlement negotiations and rigorously and zealously defend the Baltimore Clean Air Act in the City's appeal before the Fourth Circuit.

And be it further resolved, That the Council requests the Mayor's Office not consider any new contract that calls for incinerating the City's trash and that the Mayor's Office enter into a good-faith dialogue with Zero Waste advocates to reaffirm the path forward outlined in Baltimore's Fair Development Plan for Zero Waste that does not rely on incinerating City waste after 2021.

And be it further resolved, That a copy of this Resolution be sent to Mayor, the Acting City Solicitor, the Acting Director of Public Works, the Baltimore City Health Commissioner, the Office of Sustainability's Sustainability Coordinator, and the Mayor's Legislative Liaison to the City Council.