

The “Ban the Burn” Act is legal.

Wheelabrator argues that the Ban the Burn at Every Turn Act (Bill #[20-0615](#)) would be illegal. Some things you should know about their main claims in two memos they shared with City Council:

Bill #20-0615 is not an incinerator ban, despite its cutesy name

Wheelabrator’s legal memo argues that an “effective ban” on incinerators is illegal. There is nothing about the Act that constitutes an incinerator ban in any form. It merely bans city contracts with waste incinerators. The Curtis Bay Energy medical waste incinerator would be untouched by the bill. Wheelabrator would be impacted to the extent that the city would choose to handle its waste without burning, leaving Wheelabrator a smaller customer base, but not banning them in any way. There is no merit to this line of legal argument.

The city, as a market participant, is free to use its own landfill as almost all Maryland Counties do, and is also free to contract with other waste facilities. There is no obligation to continue supporting Wheelabrator beyond the end of their contract in December 2021.

Bill #20-0615 does not contradict the city’s waste plan

City Council is in charge of setting policy for the city. City Council has unanimously passed [seven resolutions](#) since June 2017 aimed to move the city from incineration toward zero waste. A [March 9, 2020 resolution](#) endorsed the [Fair Development Plan for Zero Waste](#) as the city’s waste plan to provide a path away from incineration. Prior to the effort by DPW and the Northeast Maryland Waste Disposal Authority to come up with the July 2020 “City of Baltimore Recycling and Solid Waste Management Master Plan” that Wheelabrator cites, City Council passed a [resolution](#) on May 14, 2018 condemning the pro-incinerator study as [biased from the start](#), and calling on DPW not to waste nearly half a million of the city’s dollars on it. The May 2018 resolution specifically called for ending the use of incineration by 1/1/2022 and for following the [Zero Waste Hierarchy](#). If anything contradicts the direction of City Council, it’s this study designed by the Northeast Maryland Waste Disposal Authority and conducted by their consultant, Geosyntec. The Northeast Maryland Waste Disposal Authority is at the center of the [contracts](#) between the City and Wheelabrator and has never been a neutral party on the issue of incineration. The Authority has owned trash incinerators, continues to profit from the two that remain, and has tried to build additional waste incinerators in Maryland.

City Council can, and has, prohibited certain city contracts

Bill #20-0615 would add a fourth section to [Article 5, Subtitle 41](#) of the Baltimore City Code which is titled “Prohibited Contracts.” The first three sections prohibit contracts with:

§41-1 Persons in contempt for unfair labor practices.

§41-2 Persons owing delinquent taxes.

§41-3 Contracts using tropical hardwood.

The last of these three prohibited contract sections specifically lists 43 species of tropical hardwoods and declares that the “City of Baltimore may not purchase any tropical hardwood species listed in subsection (b) of this section, nor may any City-sponsored event utilize these products, nor may City public works contractors utilize these products.”

If the City Council can protect 43 species of tropical hardwoods through the city’s contracting power, surely it can protect the lungs of Baltimore residents by choosing not to contract to burn its waste.

Also instructive is the city’s Local Hiring law, [Article 5, Subtitle 27](#), added by Ordinance [13-142](#), effective December 22, 2013. Despite the Procurement powers granted to the Board of Estimates in the City Charter, [Article VI, §11](#) (the section cited by Wheelabrator’s attorneys), City Council adopted the Local Hiring Law, which [persists to this day](#). Before Council’s 14-0 passage of the Local Hiring Law, the Law Department used the same reasoning and cautioned that the law was illegal, [stating](#):

A program giving preference to local (and small) business restricts the Board of Estimates' authority to award contracts and determine the fiscal policy of the City. Section 11(a) of Article VI of the Charter states that "The Board of Estimates shall be responsible for awarding contracts and supervising all purchasing by the City as provided in this section and elsewhere in the Charter." A program giving preferences to businesses based on factors like residence and size would interfere with the authority of the Board of Estimates by dictating which bidders are qualified to work on certain projects. The City Council cannot by ordinance alter the authority granted in the Charter to the Board of Estimates. Furthermore, such programs could have a negative impact on the ability of minority businesses to bid on City work, decreasing the effectiveness of the MWBE law.

A vendor preference program would also interfere with the Charter's requirement that contracts be awarded to the lowest responsible bidder. Although there is an exception to the lowest responsible bidder standard in the Charter in Section 11(g)(1)(vi), which states that "notwithstanding the competitive bid provisions of this Charter, the Board of Estimates may adopt rules and regulations that establish uniform procedures for providing, on a neighborhood service, neighborhood public work, or neighborhood public improvement contract limited bid preferences to responsive and responsible bidders who are residents of, or have their principle places of business in, that neighborhood," this exception was provided by Charter amendment and lies within the discretion of the Board of Estimates.

When it’s come down to doing what is good for the people of the city, City Council has been willing to wield the city’s contracting powers despite the Law Department’s opinion that the Board of Estimates’ authority over contracting is exclusive.