

Legislation Text

File #: 071032, **Version:** 0

Expressing Council's profound disappointment in the City Solicitor's decision to file a brief advising the Pennsylvania Supreme Court that the City did not object to the relief requested in a lawsuit filed by the for-profit limited partnership seeking to develop the SugarHouse casino on the Philadelphia waterfront, and calling upon the City Solicitor to take immediate action seeking to have that filing withdrawn.

WHEREAS, The City and City Council have been sued by a for-profit limited partnership seeking to develop the SugarHouse casino on the Philadelphia waterfront. That lawsuit seeks a judicial decree that legislation pending in City Council be deemed enacted; and

WHEREAS, The City and City Council have many procedural and substantive defenses to that suit, as more fully set forth in the brief filed in the matter on behalf of City Council and in a "friend of the court" brief filed on behalf of State Senator Vincent J. Fumo; and

WHEREAS, The City Solicitor embraced many of the arguments made by City Council and Senator Fumo in the City's response to a similar lawsuit filed by the for-profit limited partnership seeking to develop the Foxwoods casino on the Philadelphia waterfront; and

WHEREAS, Notwithstanding the legal views embraced by the City Solicitor in the Foxwoods case, and notwithstanding the numerous legal defenses the City Solicitor could and should have raised in defense of the City in the SugarHouse litigation, the City Solicitor instead filed a brief taking the position that "the City" had no objection to the relief being sought by the SugarHouse for-profit limited partnership; and

WHEREAS, Based on the City's prior position in the Foxwoods matter, Council believes it is beyond dispute that the City Solicitor's decision to "not object" to SugarHouse's requested relief was based not on the City Solicitor's best legal judgment as to whether the City had legally reasonable defenses to the suit, but was based on the City Solicitor's decision to advance the Mayor's desire that casino construction begin as soon as possible, regardless of the legitimate concerns of Philadelphia residents as to whether SugarHouse's Plan of Development adequately addresses the impact of such development on the City, and regardless of the terrible precedent that would be established if the relief requested by SugarHouse is granted; and

WHEREAS, The City Solicitor's "no objection" filing damages the legal interests of the City of Philadelphia, the very interests that it is the duty of the City Solicitor to protect. The pending legislation which SugarHouse would have a court "enact" by judicial fiat involves local zoning and land use control, matters which are unquestionably within the City's legislative powers, and which the General Assembly expressly reserved to the City's judgment when it deleted from the Gaming Act language that had preempted the City's local zoning powers. The City Solicitor should have defended the City's zoning and land use control powers, and taken a clear position that it is not the business of the judiciary to preempt decisions that under state law have been left to the discretionary judgment of the City. It is little consolation that the City Solicitor explained in his filing that this situation "may never again be presented"; undoubtedly, the City Solicitor's filing will be cited by future litigants seeking to have a court mandate City action in matters that legally should be left to the legislative and administrative discretion of the City; and

WHEREAS, The City Solicitor's "no objection" filing also threatens to damage irreparably the relationship between the City Solicitor and the Council. Although the City Solicitor authorized City Council to retain outside counsel to represent it in the matter, and the City Solicitor therefore was not representing the Council, nonetheless, the City Solicitor's decision to not raise available and reasonable legal defenses in response to the SugarHouse suit disregarded the legal interests of the City and of the City Council, not based upon the legal judgment of the City Solicitor, but based on the City Solicitor's desire to support the policy wishes of the Mayor; now, therefore,

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA,

THAT The Council hereby expresses its profound disappointment in the City Solicitor's decision to file a brief advising the Pennsylvania Supreme Court that the City did not object to the relief requested in a lawsuit filed by the for-profit limited partnership seeking to develop the SugarHouse casino on the Philadelphia waterfront, and calls upon the City Solicitor to take immediate action seeking to withdraw that filing.