

## Legislation Text

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January 23, 2013

### **To The President and Members of The Council of the City of Philadelphia:**

For the following reasons - largely the same reasons that I returned disapproved the nearly identical Bill No. 110563 - I am returning herewith to your Honorable Body as disapproved Bill No. 120920, which was passed by Council at its session on December 13, 2011.

As explained in letters from the Federal Highway Administration, PennDOT and the City Solicitor attached hereto, adoption of this bill would put the City in violation of an agreement with PennDOT to exercise specific controls over outdoor advertising in the vicinity of a federal highway, and subject the City to a significant reduction in funding for City street and highway funding.

The bill would allow a very large outdoor advertising sign, up to ten thousand square feet in size, to be hung on any building in the area bounded by 6<sup>th</sup>, Spring Garden, 7<sup>th</sup> and Willow Streets. The bill specifically authorizes the sign to be “digital,” meaning able to transmit an electronic picture like a television screen. The bill also establishes rules regarding where the sign can be placed. As a practical matter, the bill would be used to hang a sign on a building that houses the Electric Factory music venue and that is commonly known as the Electric Factory building, facing the Vine Street Expressway.

Attached to the bill is a document entitled “Community Benefits Agreement,” which purports to provide as a gift to several public school home and school associations and one CDC a portion of the profits made on the advertising from the sign. The City is not a party to this agreement, its enforceability has not been made a condition of the authorization in the ordinance and I am advised by the City Solicitor that it is not enforceable by the City. The Solicitor has not determined whether the commitment is enforceable by the community groups.

I have disapproved this bill for several reasons. First, expressions of public sentiment have overwhelmingly been opposed to the bill. Representatives of numerous civic organizations from neighborhoods within a few miles of the sign testified at Council and have written letters opposing this bill. They did so generally on grounds, with which I am in agreement, that the impairment to the skyline and intrusion into the view from people’s homes of a large, illuminated sign that will have a changing picture, and which will be visible from miles away, is simply not worth whatever benefit may be provided to the home and school associations. Many also objected to how such a sign, in a prominent highway location and so close to the City’s main historic and tourist area, affects the City’s image. The only public support in favor of this bill has come from those who stand to benefit monetarily from the sign. While I am obviously sensitive to the needs of our public schools, in my view financial contributions to a select few, based on an impact that will affect many, should not control this policy-making decision and does not justify permission for the placement of a giant digital sign at this location.

Moreover, in my view, permission for large-scale signs should not be granted on a one-off basis, but should be

considered on a City-wide basis, as part of a larger planning process, with broader development goals in mind. Council is still considering the recommendations of the Philadelphia City Planning Commission with respect to changes to the non-accessory (advertising) signs portion of the Zoning Code. Just this past December, proposed new non-accessory sign regulations were removed from Bill 120430-A, which dealt with broad changes to sign regulation in the Code, in order to allow more extensive discussion of how to regulate outdoor advertising in the City. The issue of extraordinarily large advertising signs, and potential conditions on the development and use of the associated properties as part of the authorization of such signs, should be taken up, as a City-wide matter, within the context of that process.

Lastly, because this sign would place the City in violation of the state and federal government's delegation of authority to the City to regulate billboards in the near vicinity of federal highways, this bill would jeopardize federal highway funding that the City receives through PennDOT.

The building at issue is within 660 feet of the Vine Street Expressway, which is part of the interstate highway system, thereby subjecting it to federal and state regulatory controls. By agreement with the Federal Highway Administration, PennDOT regulates advertising in areas adjacent to federal highways. In turn, pursuant to an agreement with PennDOT, the City was certified by PennDOT in 1974 as exercising "effective control" of advertising signs on commercially and industrially zoned properties. The City maintains such control, as required by federal law, only to the extent the rules establish a "customary use" and that any particular new rules are not designed merely to authorize outdoor advertising. If the City provides this authorization, it would allow a sign well in excess of the normal controls for advertising signs set forth in the Code and would specifically allow one particular outdoor advertising sign within 660 feet of the Expressway.

Federal, state and local officials have all explained, in writing, that since the sign does not conform with the City's customary regulation of signs at the time of the 1974 agreement, the sign will put the City in violation of the PennDOT agreement and the FHWA's delegation of authority to PennDOT. Attached is a January 22, 2013 letter from the FHWA, explaining that Pennsylvania, and ultimately the City, would be subject to a loss of federal streets and highway funding because of the bill. Also attached is a January 23, 2013 letter from PennDOT's District Executive opposing the bill for these same reasons (as well as his December 1, 2011, letter sent in connection with Bill 110563). The City Solicitor has also provided a letter (copying a detailed letter regarding the earlier bill) explaining why the City likely would be determined not to be exhibiting "effective control" as required under the City's certification and federal law. I note that a letter provided by a lawyer representing one of the Council President and parties that stands to benefit financially from this authorization, which claims the bill does not violate federal law, simply ignores these issues.

If the federal government were to reduce highway funding to PennDOT as a result of this bill (up to 10 percent of all such funding could be withheld), PennDOT would surely allocate all of that loss to Philadelphia projects. The Federal Highway Administration currently funds a variety of City projects including paving of City Streets, intersection upgrades, traffic signal improvements, reconstruction of City owned bridges and many other projects. Between Fiscal Year 2013 and Fiscal Year 2016 upwards of \$100 million are planned for city projects. A significant reduction in these projects would far outweigh any potential (and perhaps unrealizable) benefits to local home and school associations associated with this proposal.

Because I do not believe allowance of this sign itself is good public policy, because of my concerns about how the regulation of large-scale outdoor advertising should be handled generally, and in particular because of the serious risk to federal highway funding this bill would create, I am returning to you disapproved Bill No. 120920.

Respectfully,  
Michael A. Nutter,  
Mayor