

Legislation Text

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Authorizing City Council to retain legal counsel to file a lawsuit to require the Administration to implement and enforce Bill Number 200425, an ordinance duly enacted by the City Council of Philadelphia which became law on January 28, 2021.

WHEREAS, Bill No. 200425, entitled Healthy Outdoor Public Spaces (HOPS) was unanimously passed by City Council on December 3, 2020 and amended the Health Code by creating a new Chapter 6-1300 entitled "Healthy Outdoor Public Spaces," to promote a healthy environment that protects the public from the risks of toxic herbicides by prohibiting their use on all City-owned or used public grounds including but not limited to parks, trails, recreation centers, and playgrounds and established reporting requirements for all pesticides applied on City properties.; and

WHEREAS, On January 28, 2021, the Mayor returned HOPS without his signature and without exercising his veto power, which, pursuant to the provisions of Section 2-202 of the Philadelphia Home Rule Charter, made it as legal and binding as if he had signed it; and

WHEREAS, The Mayor stated in a letter, dated January 28, 2021, that he sent to the Council along with his return of HOPS that he would not enforce it because the City Solicitor advised him that the "prohibition . . . is an attempt by Council to exceed its authority under the City's Home Rule Charter," arguing that "Council cannot dictate how City properties are managed"; and the Mayor further stated, incorrectly, that the public health is already being protected based on his assumption, contrary to Council's findings, and expanding scientific evidence, that the City's use of toxic herbicides is already conducted in a safe manner; and

WHEREAS, Contrary to the Mayor's contention, HOPS does not violate the Charter's separation of powers, in that: (a) HOPS does not specifically affect or alter the Mayor's role in administering the manner in which to carry out the ordinance (b) it is well within the authority of Council's legislative and police powers under the Charter through duly enacted ordinances to set policies to protect the health of Philadelphians from the exposure to toxic herbicides; and

WHEREAS, The same kind of separation-of-powers argument the Mayor made in refusing to enforce HOPS was rejected by the Commonwealth Court in *Council v. Street*, 856 A.2d 893 (Pa. Cmnlwth. 2004), in the context of Council's passage of an ordinance enlarging the class of Philadelphia residents eligible for free garbage collection. In that opinion, the court observed that "Pennsylvania Supreme Court precedent has consistently held that Council 'may legislate as to municipal functions as fully as could the General Assembly.'" *Id.* at 898; and

WHEREAS, HOPS went through the formal public due diligence where all Council members agreed that past, current, and any future use of toxic herbicides on public grounds constitutes a substantial and immediate threat to the health and safety of the public, and that the lack of reporting and transparency by the Department of Parks and Recreation pertaining to the City's use of toxic herbicides poses additional risks to the public; and

WHEREAS, Under the Charter, Council is authorized to exercise the legislative function to make law and

policy that the Mayor is duty-bound to enforce; the Mayor does not have the authority to decide whether to implement or enforce a duly enacted ordinance; and

WHEREAS, There is no provision in the Charter that gives the Solicitor the power to advise or direct the Mayor not to enforce an ordinance duly enacted by the Council, nor does the Charter allow the Mayor to follow any such advice or direction if given; and

WHEREAS, The Mayor's withholding the enforcement of a duly enacted ordinance based on his opinion that an ordinance is not necessary to safeguard public health continues to ignore the mounting evidence and danger that such herbicides pose to all residents, children, pets and the environment, is contrary to the Charter and exceeds his defined duty to execute and administer the laws; and

WHEREAS, Such an undue concentration of power in the executive branch would violate the very essence of democratic governance as espoused by the drafters of the Philadelphia Home Rule Charter; now, therefore, be it

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That City Council is hereby authorized to retain legal counsel to file a lawsuit to require the Administration to implement and enforce Bill No. 200425, an Ordinance duly enacted by the City Council of Philadelphia which became law on January 28, 2021.