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City's got right to enact law on air

Houston's effort to target polluters should be backed

By VICTOR FLATT

The city of Houston has not been idle in the months following the release of major reports documenting the high levels of benzene and other hazardous air pollutants in the Houston area. On Feb. 12, the city will host a pivotal hearing to decide if specific harmful air toxics should be listed as a "public nuisance," thereby giving the city the power to fine and prosecute sources that endanger public health.

If our leaders vote "yes," Houston will become one of the first U.S. cities to make the bold move to tackle its own pollution problems with a powerful new law. Mayor Bill White's administration will be properly hailed as one that stepped forward to make the tough decisions needed to protect the city and its citizens.

But let's not get ahead of ourselves. Major opposition to this proposal is already brewing, and the city's powers to take these actions will undoubtedly be challenged. But given the scope of our pollution problems, and the language of prevailing law, I believe Houston is standing on firm ground in declaring air toxics a public nuisance.

In general, cities rely on the federal Clean Air Act to control harmful air pollutants, but the law is less effective in areas with high concentrations of toxic sources— areas such as the Gulf Coast of Texas. The Texas Commission on Environmental Quality has attempted to identify the worst problem spots in the Houston area and reduce the impact of these pollutants. But because of limited financial support for TCEQ initiatives, and statewide resistance to stricter controls, these efforts have not eliminated our problem.

Houston's efforts to go after the polluters may not completely solve our problem either, but our "public nuisance" declaration would give the city an important weapon in the ongoing battle to improve our air. The city can continue to work with the state to decide the best ways to reduce toxic air pollutants and use its new powers to pressure pollutant sources to make significant reductions.

Privately, some local interests are already complaining about the potential effect of this new law, and have begun working to defeat its passage or overturn it in the future. But these folks are on the wrong side of history. If we ever want to solve this problem, our approach has got to change.

Right now, sources of hazardous air pollutants that cause or contribute to residual risk are in the driver's seat, since merely contributing to a health risk has not been specified as an "actionable harm" by the state or federal government. Without fear of penalty, sources have had no incentive to monitor or improve their own emissions or to press others to do so. The results of this mind-set take shape in our ozone alerts and our fog of toxic air pollutants.

The rules of the game are about to change. Our city is now deciding to protect its residents from harm, regardless of the "hardship" new laws will impose on local sources. For the first time, we do not need to "convince" sources of harmful pollutants to protect public health; we can look these sources in the eye and tell them they have no right to harm public health. Will it be hard to achieve these reductions? Certainly. But unless sources are prodded to take action, significant reductions may never happen.

A local government's most important responsibility is to protect the health and well-being of its

citizens, and common law recognizes a city's ability to regulate harms through its police power. (Texas has codified this right as well.) The city of Houston is well within its rights to enact this new law and fulfill its responsibilities to its residents.

Stronger state laws might be a preferable means of improving our air quality, and the Houston Endowment's recent report on air toxics outlines potential avenues for the state to pursue. But until stronger state action is taken, we should applaud White's administration for stepping up to protect Houstonians from harm. It's time to support this important action.

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