



CITY OF ATLANTA

55 TRINITY AVE, S.W.
ATLANTA, GEORGIA 30303-0300

TEL (404) 330-6100

KEISHA LANCE BOTTOMS
MAYOR

July 15, 2020

Council President Felicia A. Moore
Members of the Atlanta City Council
City Hall 2nd Floor, Suite 2900
55 Trinity Avenue, SW
Atlanta, Georgia 30303

Re: 20-O-1449

Dear President Moore and Members of the Atlanta City Council:

On July 6, 2020, the Atlanta City Council adopted Ordinance 20-O-1449, via which the Atlanta City Council requests that the Atlanta Police Department (APD) to pursue amendments to its standard operating procedures to incorporate certain principles regarding alternatives to the use of force.

Recent incidents of persons needlessly facing injury or death at the hands of APD officers have illuminated the urgent need for reform within APD to rebuild the trust so desperately needed throughout the community. Accordingly, I agree that there exists a need to examine the City of Atlanta's use of force policies and procedures. However, the City of Atlanta must ensure that it advances these policies in a manner likely to withstand legal scrutiny.

Pursuant to Section 2-401 of the City of Atlanta Charter, official acts of the Atlanta City Council which have the force and effect of law shall be by ordinance. Accordingly, acts not intended to have the force and effect of law, such as those requesting that certain action be taken by the executive branch, or those otherwise setting forth nonbinding statements of policy, are properly expressed by the Atlanta City Council through the passage of a resolution, rather than the passage of an ordinance. The purpose of the City of Atlanta Charter's ordinance/resolution dichotomy is to provide a mechanism for the Atlanta City Council to express its policy preferences concerning the exercise of powers constitutionally delegated to the executive branch, while ensuring that the City of Atlanta's actions remain in compliance with the separation of powers doctrine established in the Georgia Constitution.

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The Georgia Constitution provides expressly for separate executive and legislative branches, and thus, establishes the separation of powers doctrine. Perdue v. Baker, 277 Ga. 1, 13, 586 S.E.2d 606, 615 (2003). A legislative enactment violates separation of powers when it increases legislative powers at the expense of the executive branch, or when the enactment “prevent[s] the Executive Branch from accomplishing its constitutionally assigned functions”. Perdue v. Baker, 277 Ga. 1, 13, 586 S.E.2d 606, 615 (2003). The core legislative function is the establishment of public policy through the enactment of laws, while the function of law enforcement, is per se an executive function. Perdue v. Baker, 277 Ga. 1, 14, 586 S.E.2d 606, 615 (2003); Brown v. Scott, 266 Ga. 44, 46, 464 S.E.2d 607, 609 (1995).

While it was not the intent of the Atlanta City Council to provide unconstitutional direction concerning the operations of the executive branch pursuant to Ordinance 20-O-1449; because the position of the Atlanta City Council is expressed in the form of a legally binding ordinance, it remains vulnerable to a constitutional challenge.

The effective implementation of the reforms of the standard operating procedures and work rules of APD requires doing so in a manner devoid of constitutional controversy. Thus, while the Georgia Constitution prohibits the Atlanta City Council from taking legislative action to direct the law enforcement operations of APD, I, through a series of Administrative Orders¹, have required the implementation of the police reform measures described in Section 2 of Ordinance 20-O-1449; and have ordered a comprehensive review of policing techniques, which shall include the consideration of the additional measures described in Sections 3 and 4 thereof.

Accordingly, I request that you sustain my veto of Ordinance Number 20-O-1449.

Sincerely,



Keisha Lance Bottoms

¹ Administrative Orders, 2020-18; 2020-19; 2020-22; 2020-23; and 2020-28.