

Plaintiff Tuns kai Properties, LLC (“Tuns kai” or “Plaintiff”), by and through its undersigned counsel, on behalf of itself and all other persons similarly situated (collectively, the “Class Members”), allege the following facts and claims upon knowledge as to matters relating to themselves and upon information and belief as to all other matters and, by way of this Complaint, aver as follows:

**I.
INTRODUCTION AND SUMMARY OF THE ACTION**

1. The Philadelphia Department of Licenses and Inspections (“L&I” or “Department”) has long been infamous for its systematic corruption, incompetence and chronic underfunding, all of which tragically combined in the 2013 Salvation Army building collapse, killing 6 and injuring 13. That tragedy was supposed to usher in major changes, and many hoped that the once notoriously dysfunctional department would be subject to better oversight, properly managed, and that the safety of the citizens of Philadelphia would be its primary concern. That, however, never happened. Instead, the Department merely entered a new chapter of exploitation, with a primary focus on generating revenue by assessing excessive fines, facilitated by a vague and open-ended city ordinance. That law provides L&I the opportunity to improperly generate tens if not hundreds of millions of dollars of revenue by any means necessary – often by extorting unsuspecting victims and doling out fines as a punitive and retributive weapon. This conduct by the Department and the law permitting it are both unconstitutional, as violative of the Excessive Fines and Due Process protections of the Federal and Pennsylvania Constitutions. Accordingly, the illegal fines extracted from thousands of unsuspecting victims must be disgorged under the common law principle of unjust enrichment. What is more, because of the Department’s insatiable greed and the special circumstances of this wide-spreading litigation, an injunction must be issued staying all execution proceedings across the Commonwealth and halting the coercive scheme, once and for all.

II. JURISDICTION & VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 (federal question) based on its implications of the laws of the United States and violations of the United States Constitution. The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Venue is appropriate in the Eastern District of Pennsylvania because a majority of the events complained of occurred in this District and because at least one class representative is resident here.

3. This Court also has diversity jurisdiction over this action pursuant to 28 U.S.C. Sections 1332(d), 1453, and 1711–1715 (Class Action Fairness Act) because the aggregate amount in controversy exceeds \$5 million; the class comprises at least 100 Plaintiffs; and at least one Plaintiff class member is diverse from at least one of the Defendants.

III. PARTIES

Plaintiff

4. Tuns kai Properties, LLC, is a limited liability company with a principal place of business in Florida and owns the property located at 6200 Germantown Avenue, Philadelphia, PA (“Subject Property”).

Defendants

5. Defendant, the City of Philadelphia, is a municipal corporation of the first class situated within the Commonwealth of Pennsylvania, with a principal place of business located at 1515 Arch Street, Philadelphia, PA 19102. During the times relevant to this Complaint the City acted as a principal and or acted through its agents, employees, and contractors, including but not limited to employees, agents and the Philadelphia Department of Licenses & Inspections.

6. The Department of Licenses and Inspections is a subdivision of the City of Philadelphia.

**IV.
CLASS ACTION ALLEGATIONS**

7. Tuns kai bring this class action on behalf of itself and as a class action under Federal Rule of Civil Procedure 23 on behalf of the following Classes:

A) THE CLASS IS COMPRISED OF ALL INDIVIDUALS WHO HAVE BEEN FINED UNDER THE FINING SCHEME DESCRIBED ABOVE (THE “CLASS”)

B) THE SUB-CLASS IS COMPRISED OF ALL INDIVIDUALS WHO HAVE BEEN FINED UNDER THE FINING SCHEME DESCRIBED ABOVE AND WHO HAVE PAID ALL OR PART OF THE FINES THEY RECEIVED (THE “SUB-CLASS”, THE MEMBERS OF WHICH, TOGETHER WITH THE MEMBERS OF THE CLASS, KNOWN AS THE “CLASS MEMBERS”).

8. Excluded from the Class and Sub-Class are:

- a) Any Judge or Magistrate presiding over this action and members of their families;
- b) Defendants City of Philadelphia and Department of Licenses and Inspections.
- c) All persons who properly execute and file a timely request for exclusion from the Class or Sub-Class.

9. Numerosity: Upon information and belief, the Class and Sub-Class for whose benefit this action is brought both include thousands of people and entities and are both so numerous that joinder of all members is impracticable. The exact number and identities of the persons who fit within the proposed Class and Sub-Class are contained in Defendants’ records and can be easily ascertained from those records.

10. All claims in this action arise exclusively from uniform policies and procedures of Defendants as outlined below.

11. No violations alleged in this complaint are a result of any individualized oral

communications or individualized interaction of any kind between Class Members and Defendants or anyone else.

12. Commonality: There are common questions of law and fact affecting the rights of the Class Members, including, *inter alia*, the following:

- a) whether assessing a fine of between \$300 - \$2,000 per occurrence, per day violates the VIII Amendment to the U.S. Constitution; and
- b) whether assessing a fine of between \$300 - \$2,000 per occurrence, per day violates Article 1, Section 13 of the Pennsylvania Constitution; and
- c) whether assessing a fine of between \$300 - \$2,000 per occurrence, per day violates the XIV Amendment to the U.S. Constitution; and
- d) whether assessing a fine of between \$300 - \$2,000 per occurrence, per day violates Article 1, Sections 1, 9 and 11 of the Pennsylvania Constitution; and
- e) whether the Class Members are entitled to a declaration that Philadelphia Code, Sections 1-109(1), 1-109(2), 1-109(3), and/or Philadelphia Administrative Code, Section A-601.1 (Title 4) be revised to reflect a reasonable cap that does not deprive property owners of their entire property or otherwise infringe on the rights granted individuals pursuant to the United States Constitution and the Pennsylvania Constitution; and
- f) whether the Class Members are entitled to preliminary injunctive relief staying all execution proceedings pending resolution of this matter; and
- g) whether the Class Members are entitled to permanent injunctive relief setting aside all execution proceedings; and
- h) whether the Class Members are entitled to permanent injunctive relief opening all

judgments entered; and

- i) whether the Class Members are entitled to injunctive relief in the form of an order directing Defendants to send a court-approved notice to all Class Members, advising of the conduct alleged herein, as well as an order enjoining the conduct alleged herein and establishing a court-administered program to provide refunds of fines, fees or costs collected from Class Members.

13. Plaintiff is a member of the class it seeks to represent.

14. The claims of Plaintiff are not only typical of all Class Members, they are identical.

15. All claims of Plaintiff and the Class and Sub-Class all arise from the same course of conduct, policy and procedures as outlined herein.

16. All claims of Plaintiff and the Class and Sub-Class are based on the exact same legal theories.

17. Plaintiff seeks the same relief for themselves as for every other Class Member.

18. Plaintiff has no interest antagonistic to or in conflict with the Class or the Sub-Class.

19. Defendants have acted and/or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief for the Class and the Sub-Class as a whole.

20. Common questions will predominate, and there will be no unusual manageability issues.

21. Adequate Representation: Plaintiff will fairly and adequately protect the interests of the Class Members and have no interests antagonistic to those of the Class or the Sub-Class. Plaintiff has retained counsel experienced in the prosecution of complex class actions, including

but not limited to actions against municipalities and governmental entities.

22. Furthermore, pursuant to Federal Rule of Civil Procedure 23(b)(1), prosecuting separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members related to imposition and collection of fines, fees and charges pursuant to the code provisions at issue that would establish incompatible standards of conduct Defendants in enforcing such code provisions.

23. And prosecuting separate actions by individual Class Members would create a risk of adjudications with respect to individual Class Members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

24. Moreover, pursuant to Federal Rule of Civil Procedure 23(b)(2), the Defendants have acted or refused to act on grounds that apply generally to the Class and the Sub-Class in assessing and collecting fines, fees and charges pursuant to the relevant code provisions, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class and Sub-Class as a whole.

25. Predominance and Superiority: This class action is appropriate for certification because questions of law and fact common to the Class Members predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable.

26. Should individual Class Members be required to bring separate actions, this Court and/or courts throughout Pennsylvania would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory

judgments.

27. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

**V.
FACTS GIVING RISE TO THE CAUSES OF ACTION**

I. VIOLATION NOTICES

27. The Pennsylvania Legislature has authorized the City of Philadelphia to impose a fee of \$300.00 per day for each offense under the Philadelphia Code to “[a]ny person who violates any provision of [the] code or regulations adopted thereunder; or who fails to comply with any order issued pursuant to any Section thereof; or who erects, constructs, installs, removes, alters, or repairs a structure, equipment or system in violation of the approved construction documents or directive of the code official or of a permit or certificate issued under the provisions of [the] code or the technical codes.” Philadelphia Administrative Code, Section A-601.

28. Section 1-109(1) of the Philadelphia Code states that “[u]nless otherwise provided, the penalty for violation of any provision of the Code or any regulation adopted under it is a fine not exceeding three hundred dollars (\$300) for each offense. Each day the violation continues is a separate offense.” Philadelphia Code, Section 1-109(1).

29. Section 1-109(2) of the Philadelphia Code states:

For violations that are designated elsewhere in this Code as “Class II” offenses, the maximum fine shall be as follows:

- (a) for any violation committed between January 1, 2005 and December 31, 2005, seven hundred dollars (\$700) for each violation; and
- (b) for any violation committed on January 1, 2006 or thereafter,

one thousand dollars (\$1,000) for each violation.

Philadelphia Code, Section 1-109(2).

30. Section 1-109(3) of the Philadelphia Code states:

For violations that are designated in this Code as "Class III" offenses, the maximum fine shall be as follows:

- (a) for any violation committed between January 1, 2005 and December 31, 2005, seven hundred dollars (\$700) for each violation;
- (b) for any violation committed between January 1, 2006 and December 31, 2006, one thousand one hundred dollars (\$1,100) for each violation;
- (c) for any violation committed between January 1, 2007 and December 31, 2007, one thousand five hundred dollars (\$1,500) for each violation;
- (d) for any violation committed between January 1, 2008 and December 31, 2008, one thousand nine hundred dollars (\$1,900) for each violation; and
- (e) for any violation committed on January 1, 2009 or thereafter, two thousand dollars (\$2,000) for each violation.

Philadelphia Code, Section 1-109(3).

31. On December 20, 2017, the Philadelphia Department of Licenses and Inspections began issuing notices to Tunsakai that its property was in violation of Title 4 of the Philadelphia Administrative Code, Section A-601.

32. Pursuant to Philadelphia Code, Section 1-109, L&I fined Tunsakai \$7,200 *per day*.

33. Plaintiff was cited and ordered to pay a total of \$2,045,100.

II. CREATION OF THE DEPARTMENT OF LICENSES AND INSPECTIONS

34. L&I is tasked with issuing construction permits, ensuring building safety and enforcement of related city ordinances and zoning regulations, through inspections and assessing fines and penalties for violations. (*See* L&I 2019-2021 Strategic Report at p. 4, attached hereto as Exhibit A).

35. The Department was formed in 1951 as part of the Home Rule Charter to “centralize licenses, inspections and control the fees out for those services.” (L&I Report at p. 8).

36. L&I was created in response to decade’s long corruption within Philadelphia’s City Hall, and to “put most licensing and regulatory enforcement in one place to *better guard against corruption.*” (L&I Report at p. 9).

37. Although L&I’s primary mission is to ensure building safety, the Department is better known for its systematic corruption, incompetence and chronic underfunding, as evidenced by numerous scandals involving extortion and bribery (among others) over the years.

38. In fact, according to reports, since the Department’s inception, more than 50 employees have been fired or arrested for some corruption or significant incompetence. (<https://billypenn.com/2015/07/14/bribes-strippers-corruption-and-red-tape-philadelphias-department-of-licenses-and-inspection/>) (last visited 8/6/20).

39. To that end, during L&I’s early years, “10 inspectors were fired for accepting bribes, two were arrested for accepting money from ‘permit expeditors’ ... and four others were fired for accepting payoffs from other businesses and individuals to overlook code violations.” (Id.)

40. In 1969, the Deputy Commissioner was charged with 22 counts of bribery and extortion after it was discovered he took money from businesses in exchange for favorable outcomes relating to code violations. (Id.)

41. In 1991, four L&I employees were charged with taking money from building contractors. It was reported that one of the employees was caught on tape by the FBI counting cash in his office. (Id.)

42. Scandal hit the department again in 2010 when Kenneth Gassman, an L&I inspector, was charged extortion for allegedly using his position “in an effort to compel the owner of a commercial property to sell the property to him.”

43. Gassman reportedly “engaged in conduct designed to inhibit the property owner’s ability to sell the property to others and to compel the owner to sell the property to him. Gassman caused other L&I inspectors to inspect the property and issue violations, including a bogus violation for operating an unlicensed auto repair business. Gassman is further alleged to have vandalized the property, removed for sale signs, and used aliases to contact the city’s 311 system with complaints that the property was unsafe. According to the indictment, Gassman’s conduct caused the owner of the property to spend money to make repairs and to contest the L&I violations. <https://archives.fbi.gov/archives/philadelphia/press-releases/2010/ph082410.htm> (last visited 8/7/20).

44. In addition to scandal, L&I’s reputation has been marred by incompetence.

45. For example, in 2010, a city inspector approved the unsafe installation of a security gate at a Rita’s Water Ice location. Five years later, a three year old was tragically killed when the gate fell on top of her. It was reported that L&I tried to cover up their mistake after the accident. <https://billypenn.com/2015/10/13/the-fbi-is-asking-around-are-phillys-licenses-and-inspections-officials-taking-bribes/> last visited 8/6/20

46. The Department has also consistently struggled with underfunding and was once referred to as “the underfed child of city government.” <https://www.phillymag.com/news/2016/06/04/this-was-no-accident/> last visited 8/7/20.

47. These systematic and long-standing issues at L&I ultimately culminated in the 2013 Salvation Army building collapse, which took the lives of six innocent people, injured 13 others, and resulted in the criminal indictment of a handful of individuals.

III. THE SALVATION ARMY TRAGEDY AND THE SUBSEQUENT L&I REPORT

48. On the morning of June 5, 2013, innocent donors, shoppers, and employees of the Philadelphia Salvation Army thrift stores (“Salvation Army”) were tragically buried alive when a neighboring wall fell while under demolition, crashing into the store, in a preventable tragedy (the “Salvation Army Tragedy”).

49. The contractor working on the demolition, who had a criminal record, was ultimately convicted of involuntary manslaughter. (L&I Report at p. 15).

50. L&I issued permits for the demolition without any due diligence and failed to properly ensure that proper safety measures were in place.

51. In fact, L&I knew that warnings of potential problems were ignored, short cuts were taken, and safety precautions were passed by.

52. Following the Salvation Army Tragedy, Philadelphia Mayor Michael A. Nutter (“Mayor Nutter”) formed the Special Independent Advisory Commission to Review and Evaluate the Philadelphia Department of Licenses and Inspections (the “Commission”), comprised of experts asked to examine the building collapse.

53. The Commission issued its final report to Mayor Nutter on September 25, 2014 (the “L&I Report”; a true and correct copy of which is attached hereto as Exhibit B).

54. The report found that “L&I is a department fragmented by divergent mandates accumulated over decades of mission expansion, chronic underfunding and leadership with differing goals and methods.” (L&I Report at p. 5).

55. The report further noted that L&I resources were inadequately used “with little lasting impact or focus on long-term safety or solutions.” (L&I Report at p. 5)

56. The L&I Report detailed significant deficiencies within L&I, including (1) inadequate regulatory controls, (2) lack of effective coordinated action (internally, as well as with the City Law Department), (3) lack of adequate safety regulations, including regulations relating to demolition, (4) insufficient staffing and proper training, and (5) weak financial controls. (Id. generally)

57. The Commission made 37 recommendations for important changes to L&I and Mayor Nutter created new positions including a Chief Safety Officer, and a new organizational placement of L&I under the Deputy Mayor for public safety. (2014 OIG Report at p. 24).

IV. CONTINUING MALFEASANCE AT THE DEPARTMENT

58. Unfortunately, L&I learned little from the Salvation Army Tragedy, and it continues to put the Department’s interest above the safety of the city and its residents.

59. The Salvation Army Tragedy was supposed to effectuate major change, with the hope that the once notoriously dysfunctional L&I would be reorganized, properly managed and staffed to carry out its mission to ensure the safety of Philadelphia residents.

60. Those noble objectives, however, were never achieved. Instead, corruption, greed, and manifest incompetence continue to plague L&I.

61. Indeed, since the Salvation Army Tragedy, L&I has continued to have recurring scandals.

62. For example, according to the Office of Inspector General of Philadelphia’s 2014 Report (the “2014 OIG Report”; attached hereto as Exhibit C), an L&I inspector was caught extorting a Philadelphia homeowner who was having issues with a housing project. (Id. at p. 15)

The L&I inspector “asked for a cash payment in exchange for general contracting services and special treatment at L&I. (Id.) The Inspector also suggested that if the homeowner hired him as a ‘handyman,’ he could expedite the inspection and permitting processes.” (Id.)

63. Even more recently in 2019, Philadelphia City Councilman Bobby Henon was indicted on corruption charges, including a charge that he (along with the electric union), directed L&I inspectors to punish their political and business adversaries. <https://northeasttimes.com/2019/01/30/bobby-henon-charged-in-corruption-indictment/> (last visited 8/6/20)

64. Beyond scandal, the Department also continues to be plagued by dysfunction and incompetence.

65. The 2014 OIG Report noted that it received “many complaints from members of the public reporting unlicensed or uninsured contractors, unsafe construction or demolition practices and various forms of contractor fraud throughout the city.” (2014 OIG Report at p. 24)

66. L&I was the subject of a scathing article in 2015 that called the Department out for neglecting to follow new rules put in place following the Salvation Army Tragedy. The Department continued to take heat for failing to address the growing number of buildings that, according to the article, remained in imminent danger of collapse. (<https://billypenn.com/2015/11/10/carlton-williams-what-you-need-to-know-about-the-head-of-the-embattled-li/>) (last visited 8/6/20)

67. In 2015, the City’s Controller issued an investigative report finding that, despite the Salvation Army Tragedy, it appeared to be business as usual at L&I: “[s]ince taking office almost 10 years ago, the City Controller has issued several audits and reports that implicated major deficiencies and lack of controls for the functions, procedures and staffing levels within the

Department of Licenses and Inspections (L&I). It wasn't until after the deadly June 2013 Market Street building collapse that the City began to initiate new regulations and oversight standards for L&I in relation to demolitions and construction services. However, as revealed in a performance audit issued by the Controller one year after the collapse, many of these new procedures were not being followed."

68. In fact, according to the *Inquirer*, L&I failed to follow new inspection guidelines in more than 80 percent of demolitions throughout the first eight months of 2015. https://www.inquirer.com/philly/news/20151025_What_new_building_inspection_guidelines_.html last visited 8/6/20.

69. The City Controller's office also discovered in 2015 that L&I "allowed uncertified trainees to conduct inspections and that the computer system [it] used [] (called HANSEN) allowed staff to easily manipulate or overwrite inspection data at any time" (<https://billypenn.com/2015/10/13/the-fbi-is-asking-around-are-phillys-licenses-and-inspections-officials-taking-bribes/>) last visited 8/7/20

70. It was further reported that L&I gave preferential treatment to a contractor who performed illegal demolitions, who was placed on the City's preferred contractor list. (<https://billypenn.com/2015/10/13/the-fbi-is-asking-around-are-phillys-licenses-and-inspections-officials-taking-bribes/>) last visited 8/7/20

71. In an even greater demonstration of incompetence and complete indifference to its own rules, L&I reportedly allowed uncertified inspectors to conduct 600 inspections in one week. <https://www.phillymag.com/property/2015/03/23/philadelphia-licenses-and-inspections/> last visited 8/6/20

72. In that same report, unnamed veteran L&I employees were quoted as saying that “they can’t recall training in which new hires were ordered to assess unsafe buildings, which is often present complex and dangerous problems.” (Id.) One employee went as far as to call the entire thing a “cover up” so that “the commission could clean up the list of uninspected buildings.” (Id.)

73. Understaffing also persisted following the Salvation Army Tragedy. An April 2016 study by Temple University’s Beasley School of Law, “Strategies to Address Unsafe and Unhealthy Housing in Philadelphia” (the “Temple Study”; attached hereto as Exhibit D), highlighted the problem and the impact understaffing had on the quality of the Department noting that “[t]he fact that there are only 300 L&I employees for all of Philadelphia prevents the department from being as effective as they would like to be.” (Temple Study at p. 13).

74. And finally, underfunding continues to be a major problem for L&I, with the Department lacking proper budgetary support from the City.

75. The Temple Study notes: “The Department of Licenses and Inspections was one of the hardest hit by the economic downturn of 2008. L+I’s total budget and staff were greatly diminished in the years following. By 2013, L+I’s total budget was decreased by 30 percent and its staff drifted to barely above 300, a 20 percent drop.” (Temple Study at p. 11).

76. Although current Mayor Jim Kenny promised additional funding, upon information and belief, the level of funding supplied has not kept pace with the demands of the Department.

77. In 2019, L&I sought an additional \$2 million from the city to hire more inspectors. <https://www.nbcphiladelphia.com/news/local/philadelphia-licenses-and-inspections-department-seeks-2-million-in-new-funding-to-beef-up-investigations/186040/> Last visited 8/6/20

78. Unfortunately, L&I's well-documented systemic incompetence, chronic underfunding, and corruption was more recently combined with one more thing, *opportunity* – namely, the opportunity to use an open-ended and vague provision of the Philadelphia Code to extract excessive fines from the citizens and businesses of Philadelphia.

79. In so doing, L&I has created a lucrative scheme using the daily accruing fine provisions of the Philadelphia Code as a way to extort vast amounts of money.

80. Upon information and belief, in just the last four (4) years alone, L&I has generated at least tens of millions of dollars from this criminal enterprise.

V. L&I's ENFORCEMENT REGIME- PUNISH SO-CALLED "VIOLATORS" TO GENERATE ADDITIONAL REVENUES FOR ITSELF AND THE CITY

81. Section 109 of the Philadelphia Code and A-601.1 (Title 4) of the Philadelphia Administrative Code (collectively, the "*Code Provisions*") set forth a fine provision providing a daily fine, per violation, ranging from \$300 per day to \$2,000 per day. Philadelphia Code, Section 1-109; Philadelphia Administrative Code, Section A-601.1.

82. Although the maximum fine per violation per day is capped, there is no maximum cumulative fine under the Code Provisions.

83. Although L&I boasts that it's primary objective is to "... champion[] building safety in Philadelphia by enforcing compliance with City Codes ... [,]" its enforcement measures are clearly driven by an ulterior motive to generate money. (L&I 2019-2021 Strategic Plan at p. 5).

84. While L&I may claim that its primary focus is safety, in practice the Department imposes a financial obligation that must be satisfied before the unsafe condition giving rise to the violation can be remedied.

85. To that end, an alleged “violator” is unable to obtain necessary permits and licenses required to cure the deficiencies giving rise to the fine until *after* the fine is paid in full.

86. Despite claiming that it “achieves code compliance through *collaboration, education, and effective enforcement measures ...*” (see Exhibit A at p. 6), it is blatantly obvious that the objective of L&I’s code enforcement practice is to raise funds, and not deter non-compliance.

87. In sum, it is clear that L&I’s objective in assessing fines is not to remediate the so-called “violations” but rather to continue the extortionist conduct it has long been known for – coercing victims to hand over money, or else risk further damage to themselves and their properties.

88. This scheme has worked as evidenced by actual revenue figures reported by L&I in recent years, as well as City projections for non-tax revenues expected during the years 2020-2025.

89. For example, although total appropriations for the Department went down from \$39,244,283 in 2017 to \$36,517,288 in 2018, L&I more than made up for that gap in funding by reflecting an increase in “Non – Tax Revenue” – which is where violation fine revenue is recorded – of \$4,250,000 (\$59,211,000 in 2018 up from \$54,961,000 in 2017). (Annual Auditor’s Report on Philadelphia City Departments Fiscal Year 2017 and Annual Auditor’s Report on Philadelphia City Departments Fiscal Year 2018, attached hereto as Exhibits E and F.)

90. And between its 2019 and 2020 annual review of the City’s Five Year Plan, the City Controller has miraculously projected staggering increased projections in “Locally Generated Non-Tax Revenue” (of which L&I violation fine revenue is a subset) of \$42,943,000 in 2021 (from \$314,947,000 to \$357,890,000), \$71,123,000 in 2022 (from \$316,376,000 to \$387,499,000),

\$34,435,000 in 2023 (from \$326,371,000 to \$360,806,000 and \$43,384,000 in 2024 (from \$319,587,000 to \$362,971,000), as follows:

City of Philadelphia - Office of the Director of Finance Forecasted General Fund Statements of Operations Fiscal Years Ending June 30, 2020 through June 30, 2024 (Amounts in thousands)						
NO.	ITEM	FY 2020 Adopted	FY 2021 Estimate	FY 2022 Estimate	FY 2023 Estimate	FY 2024 Estimate
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	OPERATIONS OF FISCAL YEAR REVENUES					
1	Taxes	3,636,492	3,766,841	3,877,365	3,985,106	4,077,837
2	Locally Generated Non-Tax Revenues	353,328	314,947	316,376	326,371	319,587
3	Revenue from Other Governments	847,172	877,139	899,389	935,426	980,943
4	Sub-Total (1 thru 3)	4,836,992	4,958,927	5,093,130	5,246,903	5,378,367
5	Revenue from Other Funds of City	81,011	63,879	65,410	65,883	66,264
6	Total Revenue and Other Sources (4)+(5)	4,918,003	5,022,806	5,158,540	5,312,786	5,444,631

City of Philadelphia - Office of the Director of Finance Forecasted General Fund Statements of Operations Fiscal Years Ending June 30, 2021 through June 30, 2025 (Amounts in thousands)						
NO.	ITEM	FY 2021 Adopted	FY 2022 Estimate	FY 2023 Estimate	FY 2024 Estimate	FY 2025 Estimate
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	OPERATIONS OF FISCAL YEAR REVENUES					
1	Taxes	3,330,098	3,699,848	3,903,572	4,049,008	4,193,105
2	Locally Generated Non-Tax Revenues	357,890	387,499	360,806	362,971	423,306
3	Revenue from Other Governments	768,197	832,395	882,596	929,647	953,808
4	Sub-Total (1 thru 3)	4,456,185	4,919,742	5,146,974	5,341,626	5,570,219
5	Revenue from Other Funds of City	125,608	61,772	63,315	63,801	64,311
6	Total Revenue and Other Sources (4)+(5)	4,581,793	4,981,514	5,210,289	5,405,427	5,634,530

91. This is a collective \$191,885,000 increase over the prior 2021-2024 projections.

92. Upon information and belief, a large subset of these vast increases is directly related to the anticipated collection of fine revenue by L&I.

93. In fact, between 2018 and 2019 the law department has noted an increase in fine and fees collections from \$2.1 million to \$3.35 and anticipates increases in subsequent years. (See, the City of Philadelphia Law Department 2018 and 2019 annual reports, attached hereto as Exhibits G and H.)

VI. THE SCHEME VISITED UPON PLAINTIFF – OVER \$2,000,000 IN EXCESSIVE FINES ENACTED AS A PUNISHMENT

94. Plaintiff owns certain real property located in Philadelphia known as 6200 Germantown Avenue, Philadelphia PA 19144 (the “Subject Property”).

95. As the result of a number of alleged violations at the Subject Property in late 2017 and 2018, the City filed an action against Plaintiff seeking monetary damages and injunctive relief, *City of Philadelphia v. Tunsakai Properties, LLC*, C.A. No. 190801541 (Ct. Com. Pl. Phila. Co.) (the “*Underlying Lawsuit*”).

96. In the Underlying Lawsuit, the City sought and was ultimately awarded a cumulative daily fine of \$7,200 for the alleged violations pursuant to the Code Provisions.

97. The Final Order in the Underlying Lawsuit calculated total fines of \$2,045,100 (the “*Excessive Fine*”) and judgment was later entered in that same amount.

98. The fair market value of the Subject Property is not greater than \$250,000, meaning that the Excessive Fine charged to Plaintiff is nearly 10 times the property value.

99. Both before and after the Excessive Fine was levied, Plaintiff has repeatedly and earnestly attempted to cure the alleged defaults, but Defendants have stymied those efforts while at the same time doggedly pursuing collection of the Excessive Fine.

100. After getting the runaround through usual channels at L&I, in December of 2019, a representative of Plaintiff, Ayal Keren, took the extraordinary and good faith action of flying to Philadelphia from Florida to attempt to meet with Deputy City Solicitor Brendan J. Philbin regarding curing the alleged violations. Mr. Keren requested a meeting with Mr. Philbin to address and, hopefully, remedy the issues.

101. Mr. Philbin refused to meet with Mr. Keren, however, and Plaintiff's efforts to cure the alleged violations continued to be thwarted by a bureaucratic regime focused on only one thing – collecting the Excessive Fine at all costs.

102. Indeed, although the City claims the Excessive Fine is warranted because of alleged imminently dangerous and life threatening conditions, the City has taken absolutely no remedial action, instead singularly focused on its collection efforts. For example, the Final Order in the Underlying Lawsuit permitted the City to take immediate action to cease operations at and secure the Subject Property, but the City has never done so. Clearly then, the health and wellbeing of the citizens of Philadelphia is of little importance to Defendants – all that appears to matter is that the fine spigot remains open with cash flowing back to L&I and to the City.

VI.
CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION:

42 U.S.C. § 1983

Violation of the Excessive Fines Clause of the VIII Amendment to the U.S. Constitution
(As Against All Defendants on behalf of the Class)

103. Plaintiff repeats and re-alleges each and every allegation contained above as though fully set forth herein.

104. The fines of between \$300 to \$2,000 per occurrence, per day plus fees and costs that the City of Philadelphia imposes on property owners under Philadelphia Code, Sections 1-

109(1), 1-109(2), 1-109(3), and/or Philadelphia Administrative Code, Section A-601.1 (Title 4), are grossly disproportionate to the amount of and severity of the underlying violation.

105. In light of the minor nature of the violations and their financial effect on members of the plaintiff Class, the aforementioned provisions provide for fines that are punitive in nature, and are grossly excessive and disproportionate, particularly when accumulated to an amount that surpasses the property value of a member of the class—forcing them to forego their entire property over a series of violations set out by the City of Philadelphia.

106. Moreover, the accumulation of fines can exceed the property value of a home or business in an unlimited capacity, even resulting in millions of dollars of fines related to a property worth less than \$10,000.00, which would force owners to turn over properties, place owners in bankruptcy and force them to sell all their assets and be indebted in an amount they simply cannot repay.

107. As a direct and proximate result of the outrageous fines and fees charged by the City of Philadelphia, Plaintiff and the Class Members have been deprived of their right to be free from the imposition of excessive fines as guaranteed to them under the VIII Amendment to the U.S. Constitution, which is hereby actionable pursuant to the Civil Rights Act, 42 U.S.C. § 1983.

108. Accordingly, Plaintiff and the Class Members have suffered damages and/or are entitled to restitution in an amount to be proven at trial.

109. Pursuant to 42 U.S.C. § 1988 Plaintiffs and the Class Members further seek their costs and attorneys' fees incurred as a result of this lawsuit.

SECOND CAUSE OF ACTION:

**Violation of the Excessive Fines Provision of Article 1, Section 13 of the
Pennsylvania Constitution
(As Against All Defendants on behalf of the Class)**

110. Plaintiff repeats and re-alleges each and every allegation contained above as though fully set forth herein.

111. The fines of between \$300 to \$2,000 per occurrence, per day plus fees and costs that the City of Philadelphia imposes on property owners under Philadelphia Code, Sections 1-109(1), 1-109(2), 1-109(3), and/or Philadelphia Administrative Code, Section A-601.1 (Title 4), are grossly disproportionate to the amount of and severity of the underlying violation.

112. In light of the minor nature of the violations and their financial effect on members of the plaintiff Class, the aforementioned provisions provide for fines that are punitive in nature, and are grossly excessive and disproportionate, particularly when accumulated to an amount that surpasses the property value of a member of the class—forcing them to forego their entire property over a series of violations set out by the City of Philadelphia.

113. Moreover, the accumulation of fines can exceed the property value of a home or business in an unlimited capacity, even resulting in millions of dollars of fines related to a property worth less than \$10,000.00, which would force owners to turn over properties, place owners in bankruptcy and force them to sell all their assets and be indebted in an amount they simply cannot repay.

114. As a direct and proximate result of the outrageous fees charged by the City of Philadelphia, Plaintiff and the Class Members have been deprived of their right to be free from the imposition of excessive fines as guaranteed to them under Article 1, Section 13 of the Pennsylvania Constitution.

115. Accordingly, Plaintiff and the Class Members have suffered damages and/or are entitled to restitution in an amount to be proven at trial.

116. Pursuant to Article 1, Section 13 of the Pennsylvania Constitution, Plaintiffs and the Class Members further seek their costs and attorneys' fees incurred as a result of this lawsuit.

THIRD CAUSE OF ACTION:

**VIOLATION OF THE RIGHT UNDER THE FOURTEENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION TO DUE PROCESS
(As Against All Defendants on behalf of the Class)**

117. Plaintiff repeats and re-alleges each and every allegation contained above as though fully set forth herein.

118. The Fourteenth Amendment of the United States Constitution, section 1, prohibits states from depriving any person of life, liberty, or property, without due process of law.

119. The Defendants' excessive fines scheme and their enforcement, as well as the execution proceedings that result from the same, as alleged above, have deprived Plaintiff and the Class Members of their property in violation of due process, resulting in a wide reach into their personal and real property.

120. As a direct result of such violation of due process, Plaintiff and the Class Members have been damaged.

121. The Plaintiff and the Class Members are entitled to the recovery of damages, and appropriate injunctive and declaratory relief, as alleged herein.

FOURTH CAUSE OF ACTION:

**VIOLATION OF THE RIGHT UNDER ARTICLE 1, SECTIONS 1, 9, AND 11 OF THE
PENNSYLVANIA CONSTITUTION TO DUE PROCESS
(As Against All Defendants on behalf of the Class)**

115. Plaintiff repeats and re-alleges each and every allegation contained above as though fully set forth herein.

116. Article 1, Sections 1, 9, and 11 of the Pennsylvania Constitution, prohibit the deprivation of a property right or other interest that is constitutionally protected.

117. The Defendants' excessive fines scheme and their enforcement, as well as the execution proceedings that result from the same, as alleged above, have deprived Plaintiff and the Class Members of their property in violation of due process, resulting in a wide reach into their personal and real property.

118. As a direct result of such violation of due process, Plaintiff and the Class Members have been damaged.

119. The Plaintiff and the Class Members are entitled to the recovery of damages, and appropriate injunctive and declaratory relief, as alleged herein.

FIFTH CAUSE OF ACTION:

**Unjust Enrichment/Disgorgement – Creation of a Common Fund
(As Against All Defendants on behalf of the Sub-Class)**

120. Plaintiff repeats and re-alleges each and every allegation contained above as though fully set forth herein.

121. Plaintiff and the Class Members assert a common law claim for unjust enrichment.

122. By means of the Defendants' wrongful conduct alleged herein, the City of Philadelphia and the Department of Licenses and Inspections knowingly imposed fines, fees and charges on Plaintiff that were unfair, unconscionable, oppressive, and in violation of federal and Pennsylvania law.

123. The Defendants knowingly received and intends to further receive and retain funds from fines imposed Plaintiff and all other individuals that paid per occurrence, per day fines ranging from \$300 - \$2,000, and cumulatively exceeding their property value. In so doing, the Defendants acted with conscious disregard for the rights of Plaintiff and each of the individual property owners.

124. As a result of the Defendants' wrongful conduct as alleged herein, the Defendants have been unjustly enriched at the expense of, and to the detriment of, Plaintiff and each of the property owners.

125. The Defendants' unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

126. It is inequitable for the Defendants to be permitted to retain tens, if not hundreds, of millions of dollars from fines they have extorted from property owners whose properties are worth a fraction of those fines.

127. The financial benefits derived by the Defendants rightfully belong to Plaintiff and each of the individual property owners. Accordingly, the Defendants should be compelled to disgorge in a common fund for the benefit of Plaintiff and each of the individual property owners all wrongful or inequitable proceeds received by it.

128. A constructive trust should also be imposed upon all wrongful or inequitable sums received by the Defendants traceable to Plaintiff and each of the individual property owners.

129. Plaintiff and each of the individual property owners have no adequate remedy at law.

130. There is no basis in law and it is legally indefensible for the Defendants to retain any of the sums it has received from collecting fines in an unlimited capacity.

131. If allowed to retain the millions worth of fines, fees and charges from property owners, the Defendants would be unjustly enriched.

SIXTH CAUSE OF ACTION:

**PRELIMINARY AND PERMANENT INJUNCTION TO STAY AND SET ASIDE EXECUTION AND
OPEN ALL JUDGMENTS ENTERED
PURSUANT TO THE ALL WRITS ACT
(As Against All Defendants on behalf of the Class and Sub-Class)**

132. The All Writs Act, 28 U.S.C. Sec. 1651(a), authorizes the Supreme Court and all courts established by Act of Congress to issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

133. Among other things, the All Writs Act grants the Supreme Court and all courts established by Act of Congress the power to stay state court judgments pending review.

134. The Third Circuit has repeatedly recognized that district courts have authority to issue injunctions under the All Writs Act when confronted with a pattern of conduct that is abusive and when the district court believes that the abusive conduct will continue if not restrained.

135. Furthermore, the Third Circuit considers the nature of the federal action, the actions of the state court, as well as principles of federalism and comity in exercising the power to issue injunctions under the All Writs Act and the related Anti-Injunction Act, 28 U.S.C. Sec. 2283.

136. District Courts in our Circuit have issued injunctions staying state execution proceedings when faced with class actions challenging the lawfulness of the underlying law upon which those execution proceedings are based.

137. A preliminary injunction staying execution proceedings involving Class Members is required because Plaintiff and the Class Members have no other adequate means to attain the relief they desire, and because issuing such an injunction would comply with the requirements of the All Writs Act and the Anti-Injunction Act.

138. A preliminary injunction is further appropriate under the circumstances to maintain the *status quo* until a full hearing and determination on the merits of Plaintiff's constitutional claims, and without such an order staying proceedings thousands of Class Members would be faced with excessive and otherwise unconstitutional fines, and the related deprivation of property ensuing from same

139. A permanent injunction setting aside execution proceedings and opening judgments entered against Class Members is also required because Plaintiff and the Class Members have no other adequate means to attain the relief they desire, and because issuing such an injunction would comply with the requirements of the All Writs Act and the Anti-Injunction Act.

140. Plaintiff's right to issuance of the writ requested herein is clear and indisputable based on the clear unconstitutionality of the Code Provisions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and all other similarly situated, pray for a judgment against Defendants as follows:

1. For an order certifying the Class and the Sub-Class, pursuant to Rule 23, appointing Plaintiff as representative of the Class, and appointing the law firm representing Plaintiff as counsel for the Class and the Sub-Class;
2. For a writ issuing preliminary injunctive relief staying all execution proceedings against Class Members pending resolution of this matter;
3. For a declaration that Philadelphia Code, Sections 1-109(1), 1-109(2), 1-109(3), and/or Philadelphia Administrative Code, Section A-601.1 (Title 4) is invalid on its face and as applied by the Defendants pursuant to 28 U.S.C. § 2201;
4. For a declaration that Philadelphia Code, Sections 1-109(1), 1-109(2), 1-109(3), and/or Philadelphia Administrative Code, Section A-601.1 (Title 4) be revised to reflect a reasonable cap that does not deprive property owners of their entire property or otherwise infringe on the rights granted individuals pursuant to the United States Constitution and the Pennsylvania Constitution;
5. For a writ issuing permanent injunctive relief setting aside all execution

- proceedings against Class Members;
6. For a writ issuing permanent injunctive relief opening all judgments entered against Class Members;
 7. For an Order requiring a refund to the Class Members of all fines, fees and charges collected by Defendants on account of the Code Provisions;
 8. For an Order requiring disgorgement of all of the ill-gotten gains derived by the Defendants from its aforementioned misconduct into a common fund for the benefit of Plaintiff and the Class Members;
 9. For an award of pre-judgment interest at the maximum rate permitted by applicable law;
 10. For an award of the costs incurred in pursuing this action, including, but not limited to, reasonable attorney's fees pursuant to applicable law, contract, and/or equitable principles; and
 11. For such other relief as deemed just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Royer Cooper Cohen Braunfeld LLC

By: /s/ Joshua Upin

Joshua Upin, Esquire
Matthew Faranda-Diedrich, Esquire
Id. Nos. 308457/203541
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Dated: August 17, 2020

EXHIBIT H



Law Department

CITY OF PHILADELPHIA

2019: A Year in Review





About the Law Department

The City of Philadelphia Law Department acts as general counsel for the entire City government structure. We provide legal advice to all City officials, employees, departments, agencies, boards, and commissions concerning any matter related to the exercise of their official powers. Our responsibilities include:

- Representing the City and its officials and employees in all litigation, including tort, commercial, employment, civil rights, affirmative, and code enforcement matters;
- Negotiating, drafting, and approving City contracts for commercial, real estate, and finance transactions;
- Collecting unpaid taxes, fines, and other debts owed to the City;
- Advising the City on compliance with regulatory law, including environmental, transportation, and public utility matters;
- Representing the City in social services matters, including child welfare and health matters; and
- Analyzing and drafting legislation for introduction in City Council.

We employ over 300 public servants—including approximately 225 attorneys and 100 professional staff. The department is led by the City Solicitor, who is appointed by the Mayor with the advice and consent of City Council.

Our mission is to serve the residents of Philadelphia by providing legal counsel of the highest quality to all City of Philadelphia officials, employees, departments, agencies, boards, and commissions. Our office proudly celebrates the rich diversity of our staff, the City's workforce, and the residents whom we serve.

The Executive Team of the Law Department:

CITY SOLICITOR

Marcel S. Pratt

FIRST DEPUTY CITY
SOLICITOR

Craig M. Straw

CHAIR, CORPORATE & TAX

Valerie M. Robinson

CHAIR, SOCIAL SERVICES

Clay Cauley, Sr.

CHAIR, LITIGATION

Diana P. Cortes

ADMINISTRATIVE SERVICES
DIRECTOR

Steve Ludovico

CHIEF OF STAFF TO THE
SOLICITOR

Andrew Richman

Letter from the City Solicitor

The Law Department's *Year in Review* presents an opportunity for our office to reflect on the many successes of the previous year. Most importantly, it allows us to share our success stories with our many stakeholders, including our clients across City government, members of the local legal community, and the residents of Philadelphia.

As one of the largest municipal law departments in the United States, we offer expertise in a wide range of subject matters and provide counsel on countless projects and initiatives. Looking back on 2019, several themes emerged from our biggest accomplishments. We vigorously protected *public health and safety*—whether responding to unexpected emergencies affecting the public welfare or working with City officials as they explored creative measures to address public problems. We supported the City's commitment to advancing economic, social, and racial *equity* through advising on cutting-edge initiatives and defeating legal challenges to our antidiscrimination laws and policies. And, we advised our clients on significant commercial transactions and economic development projects that amplified Philadelphia's reputation as a city of *innovation and growth*.

The success stories in this report are only possible because of the hard work and dedication of our talented lawyers and staff, who are highly valued in City government and recognized as leaders in the Philadelphia legal community.

Finally, we remain grateful to our clients—the many City officials, departments, boards, and agencies—for their tremendous support and confidence in our lawyers and staff.

Marcel S. Pratt

MARCEL S. PRATT, CITY SOLICITOR



Quick Facts

The Law Department has 15 units in 3 practice groups:

Litigation

Affirmative & Special
Litigation
Appeals
Civil Rights
Code & Public
Nuisance Litigation
Labor & Employment
Tort Litigation

Corporate

Commercial Law
Property Assessment
Real Estate &
Development
Regulatory Law
Tax & Revenue

Social Services

Child Welfare
Health & Adult
Services
HIPAA & Privacy Law

Legislation & Legal Counsel

(not in a practice group)

The Law Department has three department-wide committees:

- ▶ Diversity Committee
- ▶ Professional Development Committee
- ▶ Public Service Committee

The majority of our department leaders—practice group chairs and unit chiefs—are women; and the majority of our executive team is diverse.

In 2019, three Law Department attorneys received awards at the Annual International Municipal Lawyers Association Conference: Valerie Robinson, Rachel Rosser, and Ed Jefferson



Law Department attorneys are active leaders in the Philadelphia legal community as exemplified by the dedication of the following attorneys:

JULIE ASSIS

International Association of
Privacy Professionals
Advisory Board Member

CLAUDIA M. BECKER

Philadelphia Bar Association
*Executive Committee Member of
Real Property Section*

LAURA BONNINGTON

American Bar Association
*Advisory Board of Paralegal
Professional Certificate Program*

CLAY CAULEY

Philadelphia Bar Association
*Executive Committee Member of
Family Law Section*

MEGHAN CLAIBORNE

Philadelphia Bar Association
Board of Governors

ADAM COLEMAN

Philadelphia Bar Association
*Communications Officer of the
Executive Committee of the
Business Law Section*

DEBORAH CUNNINGHAM

Philadelphia Association
of Paralegals
Board of Directors

R. IAN EVANS

Philadelphia Bar Association
*Co-Chair of LGBTQ Rights
Committee*

BRADFORD HAM

Philadelphia Bar Association
*Co-Chair of Government & Public
Service Lawyers Committee*

MEGAN HARPER

Philadelphia Bar Association
*Co-Chair of the Bankruptcy
Committee*

EUGENE HSUE

Philadelphia Bar Association
*Vice-Chair of Government
and Public Service Lawyers
Committee*

KIA GHEE

Foundation of the National
Bar Association–Women
Lawyers Division
Recording Secretary

JOANNA KLEIN

Philadelphia Bar Association–
Young Lawyers Division
Executive Committee Member

PATRICK O'NEIL

Delaware Valley
Environmental Inn of Court
Membership Committee

LINDA MEDLEY

Foundation of the National
Bar Association–Women
Lawyers Division
Board Member

MARISSA O'CONNELL

Philadelphia Bar Association
Tax Section Council

NDIDIAMAKA ONEJEME

Barristers' Association of
Philadelphia
Scholarship Committee Member

JULIA PARK

Asian Pacific American Bar
Association of Pennsylvania
Board of Directors

RAINA YANCEY

Barristers' Association
Scholarship Committee Member

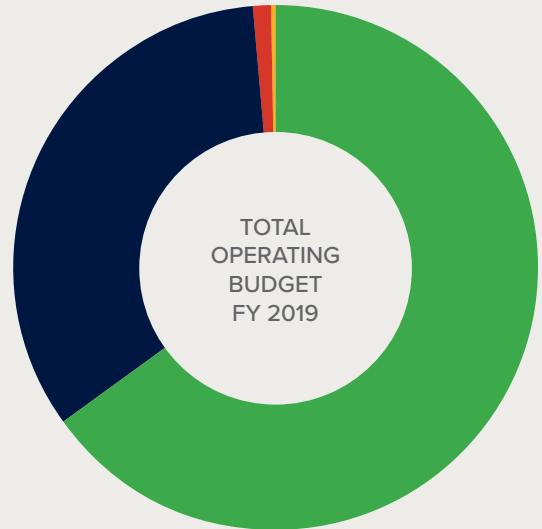


By the Numbers

TOTAL OPERATING BUDGET

\$21.19 million

- PERSONAL SERVICES (SALARIES)
\$13.8 million
- PURCHASE OF SERVICES
\$7.1 million
- MATERIALS AND SUPPLIES
\$241K
- EQUIPMENT
\$50.5K



\$50.7 million

Delinquent real estate taxes collected by the Tax

& Revenue Unit; **\$37.7 million** in other delinquent taxes, and **\$10.2 million** in delinquent water debt in FY 2019.



\$3.35 million

Fines, fees, and court costs collected by the Code & Public Nuisance Litigation

Unit. In addition, the Code & Public Nuisance Litigation Unit obtained **\$4.53 million** in judgments for outstanding fines, fees, and court costs.

6,079

CODE ENFORCEMENT CASES litigated in FY 2019

6,932

Cases handled by the HEALTH AND ADULT SERVICES UNIT in FY 2019



\$50.25 Million

Amount the City expended on claims, settlements, and judgments in FY 2019

225

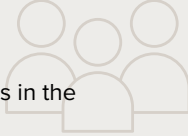
Number of attorneys in the Law Department

2,397

Total number of Right To Know Requests processed in 2019


347

Total Number of employees in the Law Department



3,826

Number of CLE Hours awarded through in-house training programs



42%


Percentage of Law Department employees who identify as racially diverse

150

Real estate transactions closed by the Real Estate & Development Unit in FY2019 with square footage amounts in excess of **1.5 million square feet**, valued at nearly **\$35 million**

\$948 Million

Value of bond transactions completed in 2019



\$14.65 Million

Affirmative litigation recoveries

2019: A YEAR IN REVIEW



Impact Issues

The Law Department works at the forefront on many issues that have a significant impact on the health, safety, and equity for Philadelphia residents. This year was no exception, and the work described below showcases some of the high-impact issues that we worked on.

Hahnemann Closure & Bankruptcy

In late June, the sudden closure of Hahnemann University Hospital presented the City with a dire public health emergency. On behalf of the Department of Public Health (DPH), we took immediate legal action in state court to ensure that Hahnemann's closure was conducted in a safe and orderly manner. We succeeded in obtaining a preliminary injunction prohibiting Hahnemann from closing or reducing emergency room services without a closure plan authorized by the City's Health Commissioner. Throughout Hahnemann's bankruptcy process, the Law Department vigorously represented the City's legal interests, including ensuring that public safety remained a priority, protecting the City's priority lien position on the hospital real estate which was threatened by the hospitals' proposed financing agreement and giving the City a voice during the sale of St. Christopher's Hospital for Children. Through these efforts and others, we supported DPH's goal to ensure continuity and quality of care. We also drafted legislation that provides the City with more tools to address future hospital closures.

PES Refinery Explosion

Following the PES refinery explosion on June 21, 2019, the Law Department supported the City of Philadelphia's Managing Director and the City's Refinery Advisory Group during PES's subsequent bankruptcy. Law's work ensured the City's goals of maintaining an environmentally safe and protective plan for the remediation of the Sunoco-owned portions of the refinery site were being met. Attorneys from the Regulatory Law Unit also worked to counsel Air Management Services regarding the response actions to the refinery explosion; provided staffing to the Refinery Advisory Group (RAG); attended public meetings and assisted in the editing of the RAG report.

Wells Fargo Fair Housing Settlement

The City of Philadelphia and Wells Fargo Bank agreed to a settlement of the litigation *City of Philadelphia v. Wells Fargo & Co., et al., No. 2:17-2203-AB (E.D. Pa.)*. In the lawsuit brought by the City of Philadelphia against Wells Fargo, the City alleged that Wells Fargo originated residential mortgage loans to minority borrowers in Philadelphia in violation of the Fair Housing Act. The City and Wells Fargo reached a settlement agreement under which the company will contribute \$10 million for sustainable housing-related programs to promote and preserve home ownership for low-and moderate-income residents in the following manner:

- \$8.5 million will be used to provide grants for down payment and closing cost assistance to low- and moderate- income persons and households purchasing homes within the City.
- Another \$1 million will be divided among up to three non-profit organizations that implement the City's Residential Mortgage Foreclosure Prevention Program.
- An additional \$500,000 in grants will be available to the City's land care program, aimed at revitalizing vacant land through clean-up and greening efforts.
- Finally, the City and Wells Fargo will collaborate to conduct a program entitled "Understanding Philadelphia" for employees who work at Wells Fargo Home Mortgage in the Philadelphia community, and will include City and PHDC officials and external subject matter experts.

Purdue Pharma Bankruptcy

Purdue is the manufacturer of Oxycontin and a significant contributor to the current opioid crisis. On September 15-16, 2019, Purdue Pharma and its affiliated

The City is involved in three high profile bankruptcies—Hahnemann University Hospital, the Philadelphia Energy Solutions refinery, and the attempt to reach a national opioid settlement with Purdue Pharmaceuticals. **Megan Harper and Pamela Thurmond**, the responsible attorneys, are able to bring not only years of bankruptcy experience, but also a deep understanding of and vigorous advocacy for the City’s non-financial interests in those important controversies.”

—FRANCES BECKLEY—CHIEF REVENUE COUNSEL, LAW DEPT.

companies filed for bankruptcy protection in White Plains, NY. Representatives from the Law Department serve as the City’s representative to the Ad Hoc Committee (“AHC”) of supporting governmental entities and other claimants. At an early stage of the bankruptcy proceedings, the AHC has achieved significant milestones, including finalization of a Summary Term Sheet providing for, among other things: (1) the entirety of the Purdue companies to be turned over to a public benefit trust for the benefit of all claimants; and (2) for its owners to exit the domestic and international opioid markets and contribute at least \$3 billion to the settlement framework.

Wage Equity

Following rigorous litigation spanning 2018 and 2019, the Court of Appeals for the Third Circuit reinstated the City’s law banning employers from asking for job applicants’ salary history (the “Wage Equity Ordinance”), an effort by the City to help close the undisputed wage gap for women and people of color. In 2018, the federal district court issued a preliminary injunction finding that the City failed to meet its evidentiary burden under the First Amendment to justify banning salary-history inquiries. The Third Circuit disagreed, finding that the City made a reasonable judgment, based on substantial evidence, that a salary history ban would further the City’s goal of closing the pay gap and combatting the discrimination inherent in disparate wages. The case had national implications; following the passage of Philadelphia’s law in 2017, jurisdictions across the country passed similar legislation. *Greater Phila. Chamber of Commerce v. City of Phila.*, No. 18-2175 (3d Cir. Feb. 6, 2020).

Lost & Stolen Gun Litigation

In November of 2019, the Law Department filed the first enforcement action of the City’s Lost or Stolen Firearm Ordinance, which requires that owners of firearms promptly



report missing weapons to the Philadelphia Police Department. The enforcement action came about after collaboratively working with our law enforcement partners in the Philadelphia District Attorney’s Office, the Philadelphia Police Department, and the Managing Director’s Office.

The Lost or Stolen Firearm Ordinance seeks to improve public safety by focusing on the accountability and behavior of gun owners when they no longer possess their guns. It requires that lost or stolen guns be reported to police within 24 hours after discovering the loss or theft. The sooner the Police Department is notified of a missing firearm, the more likely the weapon can be taken off the streets and prevented from being used in a subsequent crime. The Commonwealth currently has no law requiring the reporting of lost and stolen guns.

2019: A YEAR IN REVIEW



Success Stories

The Law Department helped our clients achieve major victories in 2019 that will have lasting impacts for the City and its residents. Here are some of these successes and updates on other significant projects and litigation that we worked on:

LITIGATION VICTORIES FOR LABOR & EMPLOYMENT

The Labor and Employment Unit secured defense verdicts in 5 jury trials and had 2 wins before the Pennsylvania Labor Relations Board on challenges to different Police Department policies (restrictions regarding tattoos and body art and Directive 10 regarding use of force).

APPELLATE SUCCESS

The Appeals Unit was successful in overturning two major verdicts in Pennsylvania's Commonwealth Court. In *Allen v. City of Philadelphia*, the court overturned a large verdict in a whistleblower action and in *Degliomini v. ESM Prods., Inc.*, a multi-million dollar verdict was reversed in a tort litigation matter.

IMPROVING TIME FOR ADOPTIONS

The Child Welfare Unit implemented a new targeted approach and policy to reduce the time it takes for children to be adopted. This approach led to an almost 40% reduction in the number of children waiting to be adopted, from 1,600 to just slightly over 1,000.

ANTIDISCRIMINATION IN FOSTER CARE

In *Fulton v. City of Philadelphia*, the Court of Appeals for the Third Circuit affirmed that the City has the right to require contractors who provide City-funded child welfare services to comply with its non-discrimination requirements. Thus, Catholic Social Services could not demand a religious exception to avoid working with qualified same sex couples because of its religious objections. The U.S. Supreme Court granted certiorari recently and will hear the case next term.

Bartram Gardens



TAX SEQUESTRATION SUCCESS

The Tax and Revenue Unit's sequestration programs crossed the \$100 million mark for Real Estate Tax collected in December, 2019, five years after it was re-introduced as an enforcement strategy. The Real Estate Sequestration process allows the City to collect commercial real estate revenues in the form of rent and put the money towards the unpaid real estate taxes. Most recently, the Tax and Revenue Unit has collected more than \$3 million in past due water debt after expanding the sequestration program in March 2019.

SOLAR POWER PURCHASE AGREEMENT

The Regulatory Law Unit provided the legal services for the City's purchase of 22% of current electricity requirements from solar energy. The City has committed to a fixed price 20-year contract at very competitive rates that ensures major progress toward the City's goal of using renewable resource generation for all the City's electricity. The electricity will be produced at an 800 acre "solar farm" which will be the largest solar installation in Pennsylvania.

SALE OF NE PHILADELPHIA AIRPORT LAND

The Regulatory Law Unit's Transportation Division helped the City structure a deal in August, 2019 to sell approximately 8.36 acres of land located at Northeast Philadelphia Airport to an affiliate of The Union League of Philadelphia. Part of the work on this transaction included securing a deed of release from the Federal Aviation Administration and placement of an aviation easement on the property.

COBBS CREEK RESTORATION

The Real Estate & Development Unit completed a long-term lease to the Cobbs Creek Restoration and Community Foundation (Foundation) in June of 2019. Under the lease, the Foundation will perform \$25 million dollars of improvements to the City's Cobbs Creek Golf Club to raise it to the quality standard of the best public courses in the country. Additionally, the lease commits the Foundation to undertake significant community benefit programs, including: supporting golf programs at West Philadelphia high schools; hiring and training students in high-level landscape management, agronomy, and golf course management; charging reduced fees to Philadelphia residents; and providing a college scholarship program.

BARTRAM GARDENS / HORSE STABLE TRANSACTION

The Real Estate & Development Unit drafted a first-of-its-kind license agreement for the renowned Concrete Cowboys of Southwest Philadelphia (CCSWP) to locate a temporary two-horse stable on a portion of Bartram's Mile. The Law Department also drafted a Memorandum of Understanding with our nonprofit partner, the John Bartram's Association (JBA) under which JBA will ensure that the stable supports community programs and is operated in accordance with the license. These transactions are significant because horseback riding through the streets is a uniquely Philadelphia tradition. However, as the City rapidly grows and changes, we are tasked with finding creative ways to balance development and cherished traditions.

FRAUDULENT CONVEYANCE TASK FORCE

The Real Estate & Development Unit's members are active participants in the Fraudulent Conveyance Task Force, created under the auspices of the Philadelphia Bar Association, which was reconvened in 2019. Charged with finding an array of legal and administrative solutions to the unique crime of deed and mortgage fraud, the Task Force brings together stakeholders throughout the City and Commonwealth. The Task Force is seeking to identify those areas of the system that are vulnerable to fraud and to offer recommendations to bolster the system while balancing the need to have an efficient system that the citizens and businesses of Philadelphia can rely upon when buying and selling real estate.

VRDO ANTITRUST

In February 2019, the City filed a federal class action lawsuit against seven banks, alleging that from 2008 through 2016 the banks colluded to fix the prices of and manipulate the market for variable rate demand obligations ("VRDOs"), a form of floating rate bonds frequently used by municipalities such as the City to finance public works. VRDO issuers contract with banks to act as remarketing agents, and the issuers pay them fees to reset the interest rate at the lowest possible rate each week given market conditions, and to actively remarket VRDOs tendered by investors to other investors at the lowest rate. The suit alleges that instead, the banks kept rates artificially high by agreeing not to compete against each other. As a result, VRDO issuers such as the City were required to pay above-market interest rates for years and had less funding available for critical projects and services.

VISIONQUEST LITIGATION

The Code & Public Nuisance Litigation Unit and the Appeals Unit worked together to ensure that a facility which was going to house unaccompanied immigrant youths obtained proper zoning permits. These Units defeated the facility's attempts to bypass the zoning requirements in Federal Court, before the Zoning Board of Adjustments, the Court of Common Pleas and Commonwealth Court. These Units' combined efforts ensured that the facility did not open in violation of the zoning requirements in Philadelphia. The case is currently on appeal.

NUISANCE BUSINESSES

The Code & Public Nuisance Litigation Unit increased its enforcement efforts against long-standing nuisance businesses. Those efforts have directly led to the closure of nuisance hotels, stop-and-go's, and other businesses that were being improperly used to conduct criminal activity.



Raina Yancey, Commercial Law Unit

PROFESSIONAL DEVELOPMENT

- In addition to our annual summertime CLE, the Law Department continues to host and promote additional learning opportunities throughout the year. The highlight of our in-house training this year was the presentation of the comprehensive history of African American Lawyers in Philadelphia by Raina Yancey of the Commercial Law Unit. Raina's presentation detailed how African American lawyers in Philadelphia overcame tremendous obstacles, fought relentlessly against racial injustice, and achieved extraordinary success in the legal profession. Raina's passion for showcasing her extensive historical research made this CLE a resounding success.
- Four attorneys, Adam Coleman, Katie Holland, MJ Markle and Laurice Smith participated in Drexel University's 2019 Leading for Change Fellowship. The Fellows were selected by Drexel University through a selective process including essays, recommendations, and interviews. The Leading for Change Fellowship is an intensive and experiential leadership development 12-month program that integrates the latest insights in business, leadership, public policy and innovation to strengthen leadership capacity and networks among



Solar bill signing

Q&A

WITH CHAIR OF THE SOCIAL SERVICES GROUP Clay Cauley, Sr.

Clay Cauley, Sr. joined the Law Department as the Chair of the Social Services Group in September 2018.

Before joining the Law Department Clay worked as a Hearing Officer in West Chester, Pa. Clay was responsible for hearing dependency matters to include but not limited to adjudicatory hearings and permanency reviews and resolving contested custody disputes.

What does success look like for the Social Services Group in 2020?

In my office I keep reminders posted on a board with the words “vision”, “excellence”, “punctual”, “improve data analysis”, and “efficient”. My goal for the Social Services Group is to continue to exhibit excellence in all that we touch. Whether it is a brief, a matter to be litigated, or providing a legal opinion to a client, I want to not only meet expectations but exceed expectations. In 2019, I drove a big initiative to have our practice groups memorialize the data that reflects the hard work that they do on a daily basis. Along with DHS, we focus on finding permanent homes for children. In 2019 there were 966 finalizations versus 880 finalizations in calendar year 2018. In 2020, I will continue utilizing data to identify areas for improvement.

How is the Law Department looking to expand its HIPAA and Privacy practice?

The HIPAA and Privacy practice, despite having the fewest attorneys in the Social Services Group, remains extremely busy addressing the City’s privacy concerns and implementing comprehensive strategies. Part of our goal is to increase responsiveness from our partners to mandatory online training of HIPAA and privacy policies. We will continue to promote the need to report incidents and provide timely feedback. In order to improve efficiency in 2020, we are expecting to roll out a new online submission process to centralize requests from clients.

What do you find most rewarding about your role?

There is a certain amount of joy that comes with knowing what I do on a daily basis and the decisions made will hopefully make someone’s life a little brighter. Whether it is a dependent child, a person needing mental health treatment intervention, or a person not yet born that will benefit from a policy decision.



What ways have you engaged new attorneys and staff in the Unit?

Part of my focus has been staff engagement, increasing proficiencies and professional development. Due to having a very large staff comprised of three distinct units, my first charge was to learn everyone’s name. Beyond names, I tried to learn something about everyone and, more importantly, to share some things about myself. Being a leader and sharing too much can create some vulnerabilities, but the traction that you gain by being available, accessible, and transparent outweighs any downside.

What are the most influential books you read in 2019?

Two of the most interesting and insightful books that I have read in 2019 were *Fans! Not Customers. How to Create Growth Companies in a No Growth World* by Vernon Hill and *Never Eat Alone: And Other Secrets to Success, One Relationship at a Time* by Keith Ferrazzi .

My big take-away from Hill’s book is that you really should focus your energy on being amazing every day and devoting time to exceeding client expectations. Keith Ferrazzi’s book reinforced the idea that we learn from our mistakes.

Favorite movie: E.T.

Goals for 2020

○ **Build on Diversity and Inclusion Efforts**

The Law Department will participate in the Mansfield Rule Legal Department Edition, a national certification process recognizing the department's commitment to Diversity and Inclusion efforts. As a result, the Law Department will consider at least 50% historically underrepresented lawyers for 70% or more of its leadership positions.

The Law Department will continue to work to increase contracting with M/W/DSBE firms and will continue its practice of encouraging firms who do not qualify as M/W/DSBE to assign minority partners and associates to City contracts through its outside counsel policy.

○ **Affirmative Litigation**

The Law Department will continue to identify affirmative litigation opportunities to advance the City's policy and legal interests, combat systemic public nuisances, and challenge any conduct of any entity that threatens public welfare, health or safety.

○ **Risk Mitigation**

The Law Department will continue implementation of its Action Review Policy, which utilizes our experiences and lessons from litigation to proactively counsel City clients on strategies for risk management and limiting legal liability in the future.

○ **New Case Management System**

In 2020, the Law Department will explore ways to upgrade its Case Management System in order to better track and report on litigation, centralize storage of attorney work product, analyze data, and increase efficiency for drafting legal pleadings, contracts, memoranda and other legal documents.

○ **Minimize the Funds Spent on Outside Counsel**

The Law Department will continue to minimize outside counsel fees by limiting contracting to circumstances involving legal conflicts or requiring specialized expertise. Last year, the Law Department spent \$473,370 less on outside counsel fees than it did the previous year.

○ **Continue to Build Leaders in the Legal Community**

The Law Department will continue pursuing its initiative to raise its professional profile in the City and legal community through: increased membership and participation in local bar and affinity organizations; improving the Law Department's web presence; and generating informative materials about the Law Department.

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Philadelphia Department of Licenses and Inspections Hit with Class Action Over 'Unconstitutional' Daily Accruing Fines](#)
