



Memorandum No: 20-209

City Attorney's Office

To: Honorable Mayor and Commissioners

From: Alain E. Boileau, City Attorney 

Date: October 15, 2020

Re: **City Attorney's Annual Report**

INTRODUCTION

I continue to be privileged to serve as the City of Fort Lauderdale's City Attorney since my formal appointment on September 4, 2018, pursuant to Resolution No. 18-175, and previously as Interim City Attorney commencing March 20, 2018, and memorialized in Resolution No. 18-92.

As with most law firms, businesses, and local governments in the last seven months, COVID-19 has impacted the operations of the City Attorney's Office in both the volume and nature of the work the office typically processes and undertakes. Despite the delays experienced as a result of court closures, the temporary cessation of code enforcement board and special magistrate hearings, and cessation of other various functions and operations of the City, the City Attorney's Office has nonetheless adapted and continued to provide its full services in various formats, including remotely when necessary, and more recently since September 21, 2020, with full staff physically returning to City Hall and to our satellite offices. In addition to the typical work undertaken by this office and detailed in this Report, we have been tasked with unique COVID-19 related work including, for example, the drafting of license agreements for testing sites, assisting in implementing the Outdoor Business Expansion Revocable License, which enabled restaurants and businesses to expand their footprint to accommodate patrons, the drafting of 12 Emergency Declarations for the City, and interpreting and providing opinions to elected officials, management, staff, and citizens on voluminous COVID-19 regulations and prohibitions contained in approximately 37 executive orders issued by the Governor, 27 emergency orders issued by Broward County, and numerous emergency and executive orders issued by various entities, including the Florida Supreme Court, the Florida Division of Emergency Management, the Florida Department of Financial Services, the Florida Department of Business and

Professional Regulations, Florida Fish and Wildlife, as well as the U.S. Centers for Disease Control and the U.S. Department of Homeland Security. Our office has also assisted City Management and other departments and staff with the implementation and operation of remote and virtual public meetings, and ensuring adequate and appropriate notice and public participation as required by law.

Notwithstanding the challenges the City has faced, in reviewing the accomplishments of the City Attorney's Office for the undisputedly unusual fiscal year 2019-2020, I am again reminded of the depth, breadth and quality of the legal expertise and services provided by a highly qualified group of attorneys, paralegals, and administrative assistants. I remain committed in my belief that our City Attorney's Office provides a required and helpful service at a cost the private sector cannot equal. Our attorneys offer legal counseling services over a broad range of subject areas and are legal counsel to the City, its elected and appointed officials, boards, departments and agencies. I remain proud of my staff's ability to effectively represent the interests of the City on a daily basis by minimizing the City's liability and providing timely, cost-efficient, quality legal advice and drafting assistance to support the operations of the City and to accomplish the goals of the City Commission and City Management.

The following is a short overview of some of the more notable matters that the City Attorney's Office successfully and effectively handled and accomplished through its in-house assistant city attorneys and staff and appointed special counsel, from October 2019 through September 2020:

- Negotiated and reached a final settlement with over 100 named plaintiffs and putative class plaintiffs in the environmental tort claim cases of Walter Hinton, et al. v. City of Fort Lauderdale, and Ray Adderley, et al. v. City of Fort Lauderdale, which had been litigated for approximately 13 years.
- Successfully defended against all remaining legal challenges filed by Edgewater House Condominium in state and federal courts regarding the City's denial of its development application for the Alexan/Tarpon-River Project.
- Successfully defended against and obtained a dismissal, with prejudice, of the Aids Healthcare Foundation's (AHF) request for declaratory and injunctive relief filed in Federal court with regards to the denial of its development application, and continuing to defend against AHF's Petition for Writ of Certiorari filed in State court challenging the Board of Adjustment's decision regarding the same application.

- Obtained a final judgment and successfully defended against a lawsuit filed by Sailboat Bend Sober Living, alleging that the City's Community Residence Ordinance, on its face and as applied to their property, was discriminatory and violated the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA).
- Successfully defended, and obtained a dismissal, with prejudice, in a lawsuit challenging the legality of the City's lease agreement with the War Memorial Benefit Corporation, for its leasing, development, refurbishment, and operation of the War Memorial property.
- Filed suit against Florida Power and Light to recover damages resulting from its subcontractors negligently drilling into the City's 42-inch water main at FXE, causing the declaration of a local state of emergency in July 2019.
- Assisted and participated in various labor negotiations, including in the drafting of collective bargaining agreements with the IAFF and the FOP.
- Continued to counsel and assist the City's implementation of the Police and Public Safety and Parks and Recreation general obligations bonds, which were successfully placed upon the ballot and approved by a majority of the voters in March of 2019.
- Assisted in the drafting of comprehensive amendments to the Historic Preservation Ordinance.
- Continued to provide prosecutorial services and other assistance essential to the current operation of the Community Court for the Seventeenth Judicial Circuit, here at City Hall, and now temporarily at Holiday Park.
- Prepared approximately 281 resolutions.
- Prepared approximately 83 ordinances.
- Prepared or reviewed over 723 contracts and agreements.
- Prepared or reviewed over 154 revocable licenses, leases, and easements.
- Assisted in the closing of a \$2,500,000 forgivable loan for the Jack and Jill Charter School

- Prepared closing documents for approved homebuyers for the Sweeting Estates Project for seven single family homes.
- Negotiated and drafted the Letter of Intent for the West Village Project, a \$103 Million mixed use and mixed income project.
- Prepared and processed 6 land acquisitions.
- Represented the City in 1,524 cases before the Special Magistrate.
- Represented the City in 228 cases before the Code Enforcement Board.
- Filed 1,158 municipal code violation cases in county court.
- Reviewed and assigned counsel for 36 new civil litigation cases, and retained 16 of those cases in our Litigation Division, bringing the total of in-house cases to 42, while continuing to manage and monitor approximately 109 total civil cases pending in state and federal courts.
- Collected \$59,298.12 in foreclosure sales and settlements.
- Collected \$76,416.44 in foreclosure surplus funds, and \$8,565.94 in tax deed surplus funds.
- Collected \$282,526.26 in forfeitures and \$19,195.27 in pre-litigation law enforcement seizures settlements.
- Collected \$246,020.95 in court costs, diversionary fees, spring break incentives, and community service buyouts.

CITY ATTORNEY'S OFFICE

Administration

Staff: Alain E. Boileau, City Attorney
Maureen Richards, Law Office Manager
Mayda Pineda, Legal Administrative Assistant

As set forth in the City's Charter, the City Attorney is an executive officer of the City of Fort Lauderdale. As City Attorney, I serve as the City's chief legal officer and legal advisor to the municipality and all of its officers and employees in matters relating

to their official duties and am also responsible for prosecuting all offenders of the City's Code of Ordinances. The foregoing responsibilities include:

- Advising the City Commission on all points of law and parliamentary procedures.
- Preparing all ordinances and resolutions required by the City Commission.
- Preparing and reviewing all contracts and other written instruments, and endorse on each my approval of the form and correctness thereof.
- Protecting and defending on behalf of the City all complaints, suits and controversies in which the City is a party, or when required to do so by the City Commission, filing any action on behalf of the City.
- Furnishing the City Commission or the City Manager, when requested to do so, my opinion on questions of law relating to any legal matter or to the powers, duties, obligations, or liability of any officer or employee of the City.
- Acting as the legal advisor to any city board or department.
- Performing such other professional duties as may be required of me by the City Charter or by ordinance or resolution of the City Commission.

The City Attorney appoints a group of assistant city attorneys to aid in the delivery of aforementioned legal services, and can also request the appointment of special counsel to assist in that effort. These attorneys and their professional legal support staff are equipped with a broad range of experience and specialization that are vital to the effective operation of the City Attorney's Office.

The City Attorney's Office is organized into four divisions: **(1) General Government and Transactional Services**; **(2) Police Legal Services**; **(3) City Prosecutor's Office**; and **(4) Litigation Division**. Each operates from separate locations for efficiency and due to space limitations at City Hall. In addition to the City Attorney, the City Attorney's Office currently employs a total of 27 employees, consisting of the following personnel compliment: 1 Senior Assistant City Attorney, 12 Assistant City Attorneys, 1 Legal Administrative Assistant, 1 Law Office Manager, 5 Paralegals, 5 Senior Legal Assistants, and 2 Legal Assistants.

The City Attorney's total budget was \$5,597,121.00 for fiscal year 2019, \$5,669,895 for fiscal year 2020, and our projected fiscal year 2021 budget is \$5,911,196. My salary at the time of my appointment was \$210,000.00, and as a result of two city-wide cost of living increases, my base salary increased to \$214,302.00 in 2018, and to \$216,444.80 in 2019. I was approved for a 3% merit increase on October 15, 2019, bringing my current base salary to \$222,938.04.

I continue to maintain an open-door policy for any and all city employees to be able to access our attorneys, including me personally, and staff for any legal issues that arise or need to be discussed. All inquiries are welcome and we strive to provide thorough and timely counsel for any issues brought to our attention. Our goal is to ensure that any and all employees feel comfortable and confident in contacting our office and approaching and conversing with our attorneys and staff regarding any issues they wish to discuss and to achieve solutions rather than solely identifying problems or issues. I have also made it a priority to personally engage with citizens, civic groups, stakeholders, and various counsel and business leaders, that wish to discuss or resolve issues involving the City and any business coming before the City Commission. This critical and important interaction typically occurs in personal meetings, telephone conferences, and attendance at civic association and community agenda meetings. This enhanced access to the City Attorney and the City Attorney's Office has continuously proven to mitigate problems early and assist in resolving issues more efficiently.

General Government and Transactional Services

Staff: Paul Bangel, Senior Assistant City Attorney
Robert Duncel, Assistant City Attorney
Rhonda Hasan, Assistant City Attorney
Kimberly Mosley, Assistant City Attorney
D'Wayne Spence, Assistant City Attorney
Lynn Solomon, Assistant City Attorney
Shari Wallen, Assistant City Attorney
Glynis Burney, Paralegal
Jolene Chism, Paralegal
Sonia Sierra, Paralegal
Jennifer Larregui, Senior Legal Assistant
Erica Keiper, Senior Legal Assistant
Kathryn Nembhard, Senior Legal Assistant

The transactional portion of our practice focuses on the application of law to the various business transactions of the City. The most familiar aspects of this practice area are contracts, agreements, purchase orders, change orders, employment agreements, real estate agreements, and numerous other legal instruments generated by the City's numerous business and proprietary functions. Our office negotiates, reviews and drafts numerous legal documents on behalf of city departments. For example, last fiscal year, the City Attorney's Office drafted or reviewed over 877 contracts, agreements, easements, leases, and revocable licenses. Assuring that the terms of these legal instruments are in the best interest of, and protect, the City is paramount when expending public funds.

The General Government portion of our practice prepares, both in response to requests and proactively, numerous ordinances and resolutions setting forth and establishing the policies and goals of the City Commission and City Management. Last fiscal year approximately 83 ordinances and 281 resolutions were drafted. A substantial amount of time is also dedicated in responding to inquiries from various departments throughout the City. Each business day our office responds to a wide variety of legal issues and requests. Some of these matters are specifically related to the function of the requesting department or individual employees, and others are more commonly related to the operation of government. Our office also reviews various departments' rules, regulations, and standard operating procedures, including the Fort Lauderdale Fire-Rescue Department and the Fort Lauderdale Police Department, which contributes to each department's ability to remain accredited.

As part of this division, our office also responds to questions from the City Commission, departments, employees, and advisory board members pertaining to standards of conduct for public officers and employees pursuant to Florida Statutes Chapter 112. Such issues generally involve conditions of employment, travel expenses, retirement, and pensions, voting conflicts, disclosure of financial interests and gifts. In various instances, legal opinions were prepared in response to these types of inquiries and in accordance with Broward County ordinances.

Our office also works hand-in-hand with the City Clerk's Office and assists in the review of public record requests made to departments for records statutorily designated as "exempt" or "confidential." Florida Public Records Law provides a public right to inspect and copy public records, and in preserving the public's right of access there remains a duty to protect confidential and exempt information from disclosure under Florida Statutes. The Government-in-the-Sunshine Law, commonly referred to as "The Sunshine Law," works in tandem with the Public Records Law to ensure the openness

of government. Our office advises staff, administration, advisory boards, and the City Commission on Government-in-the-Sunshine issues, including matters pertaining to legal requirements for open meetings, notice of meetings, and closed-door sessions in which labor negotiations and litigation is discussed. We respond to questions from the City Commission, departments, and City boards regarding the applicability of the Sunshine Law. We also provide two separate trainings for City Commissioners on both Sunshine Law and the public records law to assist in satisfying state and county training requirements for elected officials.

An important and critical aspect of management of the City Attorney's Office is interaction with citizens. Our office often responds to inquiries from the City Commission and the City Manager's Office concerning issues affecting citizens. Citizens play an important role in the function of our municipal government and community so we make every effort to ensure a timely resolution of these issues. This often requires extensive research involving various aspects of law. Our responses are often in the form of correspondence, legal opinions, telephone conferences, or in-person meetings with me or with a member of my staff.

Police Legal Services

Staff: Brad Weissman, Assistant City Attorney, Police Legal Advisor
Haydee Martinez, Paralegal
Aneka Ackbersingh-Lewis, Senior Legal Assistant

Due to the breadth of legal issues encountered by law enforcement on a daily basis, our office has a dedicated full-time staff on location at the police department consisting of an attorney, paralegal, and senior legal assistant. The Police Legal Advisor has been a critical factor in maintaining cooperation and open communications between the City Attorney's Office and the Fort Lauderdale Police Department. I, along with the Police Legal Advisor, work hand-in-hand with the Police Chief and command staff in order to ensure the best possible resolution of all legal issues that arise and to ensure that the City's police officers have all the legal information they need to accomplish their duties and responsibilities in a lawful and professional manner.

In the last fiscal year, the Police Legal Services have also processed and handled 47 seized vehicles, filed 13 forfeiture actions totaling \$282,526.26 in assets, secured 6 pre-litigation settlements in the amount of \$19,195.27, collected \$458,963 in revenue from 2 previously filed forfeiture actions, and drafted and reviewed over 96 police-related contracts and Memoranda of Understanding. Notably, the Police Legal Advisor has been an integral component of the operation of Seventeenth Judicial Circuit's Community Court, held at City Hall once a week, and now temporarily at

Holiday Park due to COVID-19. As you are aware, this court acts as a diversionary program to provide needed wrap-around social services to persons in need of social services, including the City's homeless, while at the same time providing a more compassionate level of accountability for the violation of various laws the defendants have committed. In addition to assisting in the operation of the Community Court, the Police Legal Advisor has represented the City in 43 cases therein this year, and over 200 cases since the inception of the court. Furthermore, in accordance with the Marjory Stoneman Douglas High School Public Safety Act, the Police Legal Advisor has prepared, filed, and prosecuted 5 Risk Protection Orders this last fiscal year.

The advisory functions of this office include the following:

- Review and revise FLPD policies and standard operating procedures.
- Provide annual training on 4th, 5th, and 6th Amendment issues, Rachel's Law, Marsy's Law, and all other laws pertinent to criminal procedure and evidentiary matters.
- Provide legal advice concerning state and federal statutes and municipal ordinances as they relate to law enforcement issues.
- Consult with Internal Affairs, Special Investigations Division, Detective Bureau and other specialized police units.
- Serve as Legal Advisor to the Chief of Police concerning Departmental policies and legal issues.
- Available on 24-hour basis for Police emergency situations.
- Meet with police administration on a regular basis to discuss contracts and agreements, police programs, employee issues, ordinance drafting, ordinance interpretation, and ordinance enforcement.
- Consult with municipal prosecutors on law enforcement issues and municipal criminal prosecutions.
- Research and complete numerous assignments affecting the department - completion could be preparation of a letter, preparation of a legal opinion, conducting research, preparation or negotiation of an agreement, or acquisition of information.
- Attend conferences and consult with police administrators and officers concerning action plans and on-going police operations.

- Police liaison to the State Attorney's Office, the Broward County Office of the Inspector General and other local, state and federal law enforcement agencies.
- Assist the department in disposing of unclaimed, lost, and/or abandoned property, in accordance with Florida Statutes, Chapter 705.
- Prepare Legal Bulletins for department personnel.
- Prepare and review law enforcement related ordinances.
- Prepare and review contracts, interlocal agreements, task force agreements, mutual aid agreements, grant agreements, leases and license agreements concerning police department activities.
- Acts as liaison to the State Attorney's Office and petitions the court for authorization for evidence destruction, thereby assisting the police evidence unit in purging evidence related to closed investigations and prosecutions.

The litigation functions of this office include the following:

- Litigate Rule to Show Cause motions directed at police officers.
- Litigate motions to quash subpoenas.
- Litigate all forfeiture cases at the trial and appellate levels, prepare necessary pleadings and notices, represent City at court hearings, depositions and trials.
- Litigate all police-related public records matters at the trial and appellate levels, prepare necessary pleadings and notices, attend court hearings, depositions and trials.
- Litigate all cases to recover property held by the Police.

City Prosecutor's Office

Staff: Dina Kaizen, Assistant City Attorney, Municipal Prosecutor
Donald Londeree, Assistant City Attorney, Municipal Prosecutor
Priya Sooknanan, Senior Legal Assistant
Ellen O'Connor, Legal Assistant
Semele Williams, Legal Assistant

The City Prosecutor is responsible for the prosecution of all criminal violations of the City's code of ordinances. The number of cases presented to our office by the Fort Lauderdale Police Department determines our workload. When cases are presented to the City prosecutor for filing, each case is reviewed and a determination is made as to whether to prosecute the case. There are generally four ways a case is disposed of; by plea agreement, *nolle prossed*, verdict at trial, or dismissal.

In the period from October 2019 through September 2020, the City Prosecutor's Office filed 1,158 new cases and declined to file 51 cases. In the same period of time, 229 cases were *nolle prossed* mostly due to the completion of diversion programs, 483 were adjudicated, and 910 case resulting in a withhold of adjudication. Only 2 cases proceeded to trial, both resulting in a guilty verdict. The remaining cases are pending. The monetary disposition for this fiscal year was as follows:

Court Costs Due: \$ 165,263.00

Fines: \$ 600.00

Bond Estreatures: \$ 325.00

Misc/Community
Service Buyout &
City Diversion Fees,
Including Spring
Break Incentive: \$ 78,635.00

Community Service
Hours: 50 Hours
Victim Restitution: \$ 1,197.95

TOTAL RECOVERY FOR CITY: \$ 246,020.95

The City Prosecutor's Office's responsibilities include:

- Provide legal advice to police officers in municipal investigations.
- Review and make filing decisions on all municipal ordinance arrests.
- Review case filing and intake from citizens and victims requesting municipal cases to be filed on alleged violations of the law not occurring in a police officer's presence.

- Represent the City before all Magistrate Judges at all first appearance hearings on municipal ordinance arrests.
- Represent the City in all County Court arraignments on all City prosecutions.
- Represent the City at all Calendar Call hearings and plea negotiations.
- Serve as the prosecuting trial attorney for all criminal prosecutions in County Court on cases filed by the City.
- Represent the City on all municipal criminal appeals.
- Represent the City at all Veterans Court proceedings.
- Represent the City on all municipal violations of probation hearings.
- Seek to recover costs of prosecutions through jail-time sentences, fines, court costs, bond estreatures and community service buyouts.
- Recover restitution on behalf of victims in municipal prosecutions.
- Assist in regulating and ensuring compliance in community service work program.
- Represent the City at Mental Health Court proceedings.
- Represent the City at all misdemeanor drug court proceedings.
- Meet with witnesses; prepare for and represent the City on all prosecutions before the Nuisance Abatement Board, including appeals.
- Responsible for all lien filings in cases of non-compliance with Nuisance Abatement Board orders.

Litigation Division

Staff: Tania Amar, Assistant City Attorney
Michael Bostick, Assistant City Attorney
Rhonda Hasan, Assistant City Attorney
Shari Wallen, Assistant City Attorney
Robert Oldershaw, Assistant City Attorney, Chief Litigation Counsel
Glynis Burney, Paralegal

Jennie Torres, Paralegal
Jolene Chism, Paralegal
Erica Keiper, Senior Legal Assistant
Angela Mozzott, Senior Legal Assistant

The Litigation Division of the City Attorney's Office processes and handles numerous civil proceedings, including state and federal lawsuits, foreclosures, code enforcement cases, bankruptcy, garnishments, and probate. With the large number of services provided to our residents, the numerous agreements and contracts entered into, and ordinances to enforce, including building and quality of life codes, the City is often involved in litigation, either defensively or proactively. Our office, either through our in-house attorneys or through special counsel, represents the City in civil court and administrative actions, including appeals, and special magistrate and code enforcement board proceedings. The types of civil actions involving the City typically include, but are not limited to, matters pertaining to slip and falls, vehicle accidents, professional police liability, breach of contracts and leases, foreclosures, code enforcement, declaratory actions, and extraordinary writs (usually land use related). The Litigation Division also offer counseling and deposition and trial testimony preparation services for employees who have been subpoenaed for testimony in criminal or civil cases.

From October 2019 through September 2020, our office reviewed and assigned counsel for 36 new civil litigation cases, and retained 16 of those cases in-house, bringing the total number of in-house cases to 42, while continuing to manage and monitor approximately 109 total pending civil cases. Due to COVID-19, all jury trials from March 2020 through December 2020 were continued to 2021. As such, we expect 2021 will be a busy year with 11 cases currently set for trial between January and August of 2021, with more to be re-set and noticed for trial in 2021. Additional accomplishments of the Litigation Division are as follows:

- Represented the City in 1,524 Special Magistrate hearings.
- Represented the City in 228 Code Enforcement Board hearings.
- Represented the City in 45 bankruptcy cases, resulting in the collection \$10,615.20.
- Processed 16 garnishment cases and requests.
- Represented the City in 12 probate cases, resulting in the collection of \$470.70.

- Received 31 foreclosure referrals, 12 of which could not be prosecuted due to the existence of superior interests.
- 9 foreclosure complaints filed and prosecuted, with a resulting 3 final judgments.
- 2 foreclosure sales held, and 4 foreclosure settlements reached, resulting in the collection of \$59,298.12 in lien settlement funds.
- Defended the City in 44 foreclosure actions, resulting in the collection of \$76,416.44 in foreclosure surplus funds, and \$8,565.94 in tax deed surplus funds.

In addition to the work of the Litigation Division, due to the volume of lawsuits filed against the City, special outside counsel are appointed by the City Commission pursuant to the City Charter and are assigned various litigation matters by the City Attorney. Notwithstanding, special outside counsel consult with me regarding key litigation strategies. We have endeavored to retain the best attorneys and law firms for the subject matters and practice areas at issue in each case, but also at the best value. The cases assigned and the fees and costs expended on each case are monitored by our office and Risk Management, and reported to the City Commission via the Litigation Report.