

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

LANDLORD SERVICE BUREAU, INC., et
al.,

Plaintiffs,

vs.

THE CITY OF PITTSBURGH, et al.,

Defendants.

REALTORS ASSOCIATION OF
METROPOLITAN PITTSBURGH,

Plaintiff,

vs.

THE CITY OF PITTSBURGH,

Defendant.

APARTMENT ASSOCIATION OF
METROPOLITAN PITTSBURGH,

Plaintiff,

vs.

THE CITY OF PITTSBURGH, a Home Rule
City,

Defendant.

No. GD 15-023074

No. GD 16-003277

No. GD 16-007082

(Consolidated at GD 15-023074)

Code 180 – Declaratory Judgment

FINDINGS OF FACT AND CONCLUSIONS OF LAW

James, J.

July 20, 2021

This case involves lawsuits filed by Plaintiffs Landlord Service Bureau, Inc., Realtors Association of Metropolitan Pittsburgh and Apartment Association of

Metropolitan Pittsburgh, hereinafter (“Plaintiffs”) seeking to invalidate an Ordinance passed by Pittsburgh City Council on December 15, 2015. Plaintiffs’ Complaints for Injunctive Relief and Declaratory Judgments have been consolidated against the Defendants City of Pittsburgh and Council of the City of Pittsburgh, hereinafter (“the City”). By Opinion and Order dated July 25, 2017, upon Plaintiffs’ Motion for Judgment on the Pleadings and the City’s Motion for Partial Judgment on the Pleadings, this Court held that the Ordinance was an appropriate exercise of police power and not in violation of the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. §2901-3171 (“HRC”). The only question remaining to be resolved is whether the fee to be charged is grossly disproportionate to the cost of maintaining the rental registration program. To resolve that question, this Court conducted a non-jury trial via Microsoft Teams from February 16th through February 19, 2021. The parties called witnesses and presented exhibits. After the transcript was completed, the parties submitted Proposed Findings of Fact and Conclusions of Law. After considering the testimony, exhibits and Proposed Findings, this Court makes the following Findings of Fact and Conclusions of Law.

Ordinance No. 2014-1020 establishes rental unit registration requirements in the City of Pittsburgh. Mayor William Peduto signed it into law on December 18, 2015. The Ordinance establishes requirements for landlords and owners of rental property including registration and inspection requirements, a fee schedule, implementation and enforcement requirements, penalties and a severability clause. To comply with the Ordinance, owners of rental property must adhere to the following fee schedule as provided in Section 781.05(b):

Fee Schedule:

- (i) Annual Rental Registration Permit Fee: \$65 (sixty five dollars) per for parcels that house 10 (ten) or fewer units; \$55 (fifty five dollars) per unit for parcels that house between 11 (eleven) and 100 (one hundred) units; and \$45 (forty five dollars) per unit for parcels that house more than 100 (one hundred) units (plus applicable charges);
- (ii) Three years after this law is initially implemented:
 - 1. Any unit that has passed its inspection shall be eligible to renew their Rental Registration Permit at half of the normally applicable fee. In addition, said units shall only be required to be inspected once every five years, other sections of this law notwithstanding;
 - 2. Any unit that has not passed its inspection shall be inspected at the discretion of the Department of Permits, Licenses, and Inspections until such time that it does pass an inspection;
- (iii) Affordable Housing properties shall be exempt from the Annual Rental Registration Permit Fee.

Registration Ordinance Section 781.05(b).

Plaintiffs presented expert testimony in an attempt to show that the fee is unreasonable. The City presented expert testimony in an attempt to justify the fee. Each expert based his number on factors including the number of rental units in the City, inspection intervals and direct and indirect costs associated with the rental registration process. The burden here is on the Plaintiffs, the party challenging the license fee, to prove that the fee is unreasonable. Thompson v. City of Altoona Code Appeals Board, 934 A.2d 130, 133 (Pa. Cmwlth. 2007).

The City's expert, Bruce Cowans, performed a fee study to determine an appropriate rental registration fee. He prepared an expert report dated January 19, 2021 for the City setting forth explanations for his results. See Exhibit D3. In his testimony, Mr. Cowans explained the rental registration process and how he came up with the \$65 per

unit fee. Mr. Cowans determined that the entire rental registration process would take 1.25 hours per unit. He estimated that it would take 15 minutes to review an application, process payment and respond to questions. He concluded it would take another 15 minutes to review the rules and the history of the property. He stated it would take 30 minutes to inspect each unit and finally another 15 minutes to complete the review. Trial Transcript (Tr.) at 332-333. Mr. Cowans' conclusions relied on the City's estimation of 40,000 rental units in the City. Tr. at 41. Maura Kennedy, the former Director of PLI, testified that there are approximately 40,000 rental units in the City and 90% of them will comply with the Ordinance and register. Tr. at 42. Mr. Cowans' conclusions were also based on Ms. Kennedy's estimation that she would spend six minutes per unit or a total of 3,600 hours in a single year supervising rental license applications. Tr. at 83. Mr. Cowans considered the PLI departmental hourly rate of \$54.04 and multiplied that by 1.25 hours. This resulted in a proposed per unit fee of \$67.56 which was rounded down to \$65 per unit. Tr. at 343-345.

This Court finds the Plaintiffs' expert, Nicholas F. Hiriak, to be more credible than Mr. Cowans. Mr. Hiriak testified that his analysis calculated \$10.82 in direct costs per unit attributable to the rental registration program. Tr. at 204. He also determined the indirect costs to be \$1.88 per unit. Tr. at 212. He opined that the City's calculation of \$50.73 for direct costs and \$17.21 for indirect costs per unit, are flawed and overstated. Tr. at 213. He explained that he found no basis for the City's allocation of permit application costs per unit when a permit application or license application is made for a building and not for each unit. Tr. at 223. He also explained given that the average governmental employee works 2,080 hours per year, allocating 3,600 working hours per year for a single

governmental employee is unreasonable. Tr. at 225. Mr. Hiriak also noted that the City's direct cost calculations assume that the inspection of each unit will take 30 minutes per year but the Ordinance schedules inspections either once every three or five years. Tr. at 42-43. Regarding the number of rental units in the City, Mr. Hiriak assumed 68,883 rental units within the City. He testified that he reviewed the American Community Survey data for 2007 and 2010-2019. Tr. at 218. Mr. Hiriak opined that the City's proposed \$65 fee is grossly disproportionate the cost of the rental registration program. The evidence demonstrates that the City's assumptions regarding the number of rental units within the City, interval of inspections and percentage of compliance are not supported by the evidence of record.

The Ordinance's charges are an impermissible tax. Although municipalities are permitted to charge fees for privileges, the fees must be commensurate with both the issuance and the supervision of the license/privilege. Thompson, 934 A.2d 130, *citing* Mastrangelo v. Buckley, 250 A.2d 447, 464 (Pa. 1969). A license fee is distinguishable from a tax which is a revenue producing measure characterized by the production of a high proportion of income relative to the costs of collection and supervision. Thompson at 133. To make the determination of whether a municipality's charge is a tax, the Court must analyze both the direct and indirect costs of the Ordinance and the assumptions underlying the City's calculations of the same. Costa v. City of Allentown, 153 A.3d 1159 (Pa. Cmwlth. 2017). In the Simpson v. City of New Castle, 740 A.2d 287, 292 (Pa. Cmwlth. 1999) case, the Commonwealth Court determined that because the uncontradicted evidence that the cost of regulation for the residential rental program was roughly equivalent to the amount raised from the biennial \$30 fee, it was a regulatory fee and not

a tax. Here, however, the evidence demonstrated that the Ordinance's charges will produce a high proportion of income relative to the costs of collection and supervision. A fee will be struck down if the amount is "grossly disproportionate to the sum required to pay the cost of the due regulation of the business." Flynn v. Horst, 51 A.2d 54, 60 (Pa. 1947).

Based upon the testimony and evidence, this Court finds that the City's proposed rental registration fee is excessive and that it is an impermissible tax. Plaintiffs demonstrated that the \$65 fee does not correlate to the actual direct or indirect costs that the City claims in connection with the Ordinance's implementation and application. Plaintiffs also demonstrated that all of the City's calculations of income and allocation of expenses across all rental units are flawed because they are based upon a speculative number far below the unit numbers reflected in the data used by the City. Therefore, the City is prohibited from enforcing the Ordinance until they set a fee that is fair, reasonable and not grossly disproportionate to the cost of maintaining the program.

Joseph M. James