



## CIVIL ACTION

### NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint & Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION  
Lawyer Referral & Information Service  
One Reading Center  
Phila., PA. 19107  
(215) 238-1701

### AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de s persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder u otros derechos importantes para usted. LLEVE ESTAS DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVAERIGUAR DONDE SE PAEDE CONSEGUIR ASISTENCIA LEGAL. ASOCIACION DE LICENCIADOS DE FILADELFIA  
Servico De Referencia E Informacion Legal  
One Reading Center, Filadelfia, PA. 19107  
(215) 238-1701



## **CIVIL ACTION COMPLAINT – ACTION FOR DECLARATORY JUDGMENT**

The above captioned Plaintiffs, by and through their attorney, Michael S. Henry, Esquire, hereby demand judgment upon the following cause of action:

### **I. PARTIES**

1. The above named Plaintiffs are various companies engaged in the business of providing towing services in Philadelphia. Together they comprise the Philadelphia Independent Towers and Salvors Association (“PITSA”), a non-profit trade association. Plaintiffs all have their principal places of business within the City of Philadelphia at the above-captioned addresses.

2. Defendant, City of Philadelphia (“City”), is a city of the First Class in the Commonwealth of Pennsylvania pursuant to 53 P.S. §101 that has framed and adopted a charter for its own government pursuant to Article IX, Section 2 of the Constitution of the Commonwealth of Pennsylvania and the First Class City Home Rule Act of 1949, 53 P.S. §13101 et seq (“Home Rule Act”).

3. Defendant, Philadelphia Parking Authority (“Authority”), is not a department of Defendant City, but is an agency of the Commonwealth, which exists for certain enumerated purposes and may exercise certain enumerated powers pursuant to its enabling act, 53 Pa.C.S., Chapter 55 (“the Parking Authorities Law”).

### **II. RELIEF SOUGHT**

4. Plaintiffs seek relief pursuant to Section 7532 of the Declaratory Judgments Act, 42 Pa.C.S. §7532, in the form of an order declaring that Defendant City’s passage of Bill No. 100536 (“the Bill”), which amended Section 9-605 of the Philadelphia Code pertaining to towing (“the Ordinance”), is an unlawful and unconstitutional exercise of power, and is invalid pursuant

to Pa. Const. art. IX, §2 and 53 P.S. 13133(b) to the extent it delegates administration and enforcement of the Ordinance to Defendant Authority, which is not permitted under Defendant Authority's enabling act.

5. Plaintiffs also seek an order declaring that Defendant City's passage of the Bill was an unlawful and unconstitutional exercise of power, and was invalid pursuant to Pa. Const. art I, §2 and 53 P.S. §13131 because it delegates legislative power to Defendant Authority.

6. Plaintiffs also seek preliminary and permanent injunctive relief to enjoin implementation of those portions of the Ordinance that pertain to Defendant Authority and any other relief the court deems appropriate.

### **III. JURISDICTION**

7. The Court of Common Pleas of the 1<sup>st</sup> Judicial District has jurisdiction over this matter pursuant to 42 Pa.C.S. §931 and the Declaratory Judgments Act, 42 Pa.C.S. §7531-7541.

8. The Court of Common Pleas has jurisdiction in equity to enjoin implementation of an unconstitutional or void ordinance pending judicial determination of the validity of the Ordinance, where implementation will cause irreparable harm to plaintiffs' property, either by effecting, if not a total suppression of their businesses, at least a grave interference therewith, or by forcing them to comply with standards established by an entity without legal authority to do so and enforced through the imposition of cumulative, exorbitant and oppressive penalties.

### **IV. FACTUAL ALLEGATIONS**

9. On February 3, 2011, the city council of Defendant City passed the Bill which amended the Ordinance and, on February 15, 2011, the Honorable Michael A. Nutter, mayor of Defendant City, signed the Bill into law.

10. The Bill amends the Ordinance by:

- (a) revising the provisions for the licensing of private towing companies;
- (b) revising the rotation system for towing certain vehicles;
- (c) providing for fines, penalties and license suspensions, and for administrative adjudication of certain violations by private towing companies; and,
- (d) delegating the administration and enforcement of the Ordinance to Defendant Authority.

11. The Bill also amends Section 12-2406.1 of the Philadelphia Code relating to fees for towing and storage of immobilized or impounded vehicles.

12. The Bill also adds subsection (18)(b) to the Ordinance, which delegates to Defendant Authority the duty and power to administer and enforce all of the provisions of the Ordinance, upon execution by the Mayor, or his designee, of a Memorandum of Understanding with Defendant Authority detailing the financial arrangements between Defendant City and Defendant Authority.

13. Section 3 of the Bill provides that the amendments to the Ordinance will take effect on May 1, 2011 except with respect to the amendments pertaining to the rotation method of tow truck selection, which will take effect upon a “Transition Date” to be designated by regulation of Defendant Authority.

14. Section 3 of the Bill also specifically empowers Defendant Authority to promulgate all regulations necessary for administration and enforcement of the rotational method of tow truck selection before the “Transition Date.”

15. The Bill amends the Ordinance to give Defendant Authority specific power to promulgate regulations pertaining to:

- (a) equipment that towers in the rotation system must maintain: subsection (2)(j);
- (b) amounts of insurance that all towing licensees must maintain: subsection (3)(c)(.7);
- (c) standards for premises maintained by all towing licensees: subsection (3)(e)(.10);

- (d) records that all towing licensees must maintain: subsection (3)(e)(.13);
- (e) fines for violations of the Ordinance and the Authority's regulations: subsection (3)(e);

16. The Bill adds section (4) to the Ordinance, which gives Defendant Authority specific power to promulgate regulations pertaining to a rotational method of tow truck selection:

- (a) to require licensed towers to respond on a 24 hour basis and to specify the number of refusals that constitute a violation of the Ordinance: subparagraph (4)(d)(.1);
- (b) to require licensed towers to respond within 20 minutes after being contacted by the Authority for a towing assignment: subparagraph (4)(d)(.2);
- (c) to require licensed towers to tow vehicles to Authority facilities, unless otherwise directed by the owner of the vehicle: subparagraph (4)(d)(.3);
- (d) to limit the geographic area a vehicle owner may choose to have a vehicle towed by a licensed tower: subparagraph (4)(d)(.3);
- (e) to require licensed towers to supply vehicle owners with notice of their rights and the location of the facility where a vehicle will be towed: subparagraph (4)(d)(.4);
- (f) to require licensed towers to perform reasonable clean-up at accident scenes: subparagraph (4)(d)(.5);
- (g) to require a licensed tower to have a flat bed truck available to remove vehicles from an accident scene: subparagraph (4)(d)(.6);
- (h) to establish standards of ineligibility for participation in the rotational method of tow truck selection, including what constitutes a "satisfactory record" with regard to the operation of a licensed tower and what constitutes a "controlling interest" in a licensed tower or an "affiliated company": subparagraph (4)(d)(.7);
- (i) to establish which violations of the Ordinance may result in suspension of a towing license and the length of such suspension: subparagraph (4)(e);
- (j) to establish procedures for the operation of the rotational method of tow truck selection: subparagraph (4)(f);

## V. LEGAL ALLEGATIONS

### A. DEFENDANT CITY EXCEEDED ITS POWER UNDER OF THE CONSTITUTION OF THE COMMONWEALTH, THE HOME RULE ACT AND THE PARKING AUTHORITIES LAW BY DELEGATING ADMINISTRATION AND ENFORCEMENT OF THE ORDINANCE TO DEFENDANT AUTHORITY

17. Defendant City, as a creature of the Commonwealth, has no inherent powers of its own and possesses only such powers of government as are expressly granted to it and as are necessary to carry the same into effect.

18. Defendant City is therefore powerless to enact ordinances except as authorized by statute, and ordinances not in conformity with Defendant City's enabling statute are void.

19. As a home rule municipality, Defendant City's powers are largely constitutionally and statutorily determined.

20. Article IX, §2 of the Pennsylvania Constitution provides that "[m]unicipalities shall have the right and power to frame and adopt home rule charters" and that pursuant to such charters, a home rule municipality "may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time."

21. Section 13131 of the Home Rule Act, 53 P.S. §13131, provides that a city "taking advantage of this act and...amending its charter thereunder shall have and may exercise all powers and authority of local self-government and shall have complete powers of legislation and administration in relation to its municipal functions...[,]" subject to certain enumerated limitations.

22. One of these limitations is set forth in Section 13133(b) of the Home Rule Act, 53 P.S. §13133, which provides that "no city shall exercise powers contrary to, or in limitation or enlargement of, powers granted by acts of the General Assembly which are ... [a]pplicable in every part of the Commonwealth."

23. Consequently, ordinances enacted by home rule municipalities are negated when they conflict with, limit or enlarge, powers granted under statute the General Assembly has enacted concerning "substantive matters of statewide concern."

24. The Parking Authorities Law, 53 Pa.C.S., §5501 et seq, is a statute the General Assembly has enacted that is “applicable in every part of the Commonwealth” and concerns “substantive matters of statewide concern” (i.e. traffic congestion caused by on street parking).

25. Section 5502(10) of the Parking Authorities Law declares the General Assembly’s policy to promote “[t]he safety and welfare of the inhabitants of this Commonwealth” through “the creation in municipalities of [parking] authorities *which shall exist and operate for the purposes contained in this chapter.*” (emphasis added)

26. Section 5504 provides that, “[i]f a legislative body desires to organize an authority under this chapter, it shall adopt a resolution or ordinance signifying intention to do so.”

27. Section 5505(a) provides that parking authorities created under the act “shall constitute a public body corporate and politic, exercising public powers of the Commonwealth as an agency of the Commonwealth” and “*shall not be deemed to be an instrumentality of the municipality.*” (emphasis added).

28. Section 5505(a) also provides that parking authorities created under the act “may not engage in the performance of a municipal function except a function delegated to it by municipal ordinance or resolution.”

29. Section 5505(b) sets forth the purposes for which a parking authority created under the act may exist, which relate solely to the administration and enforcement of “an efficient and coordinated system of on-street parking regulations” and to the establishment of “a permanent, coordinated system of parking and parking terminal facilities,” but only “where authorized by municipal ordinance or resolution.”

30. These purposes do not include administration and enforcement of regulations pertaining to private towing companies.

31. Section 5505(d) gives parking authorities created under the act “all powers necessary or convenient for the carrying out of the purposes under this section.”

32. In addition to general powers conferred by Section 5505(d), a parking authority created under the act has the specific power “to administer, supervise and enforce an efficient system of on-street parking regulation,” but only “if authorized by resolution or ordinance of the legislative body of the parent municipality.”

33. Section 5505(d) does not give a parking authority created under the act power to administer and enforce regulations pertaining to private towing companies.

34. In addition to the powers given to other parking authorities created under the act, the General Assembly has given Defendant Authority other powers particular to it, which do not require the passage of a local ordinance, including the power:

- (a) to serve as the exclusive impoundment official, exclusive impounding agent or exclusive towing agent for the enforcement of impoundment orders pursuant to 75 Pa.C.S. Ch. 63 (relating to enforcement) and to authorize towing and storage of vehicles and combinations by private towing agents for such purpose as necessary;
- (b) to act as an independent administrative commission for the regulation of taxicabs and limousine service;
- (c) to investigate and examine the condition and management of any entity providing taxicab and limousine service;
- (d) to appoint and fix the compensation of chief counsel and assistant counsel to provide it with legal assistance. The provisions of the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act, shall not apply to parking authorities in cities of the first class; and,
- (e) to pledge, hypothecate or otherwise encumber all or any of the real or personal property of the authority as security for all or any of the obligations of the authority.

35. But these powers do not include the power to administer and enforce regulations pertaining to private towing companies.

36. Defendant Authority's powers pursuant to 75 Pa.C.S. Ch. 63 pertain to a program known as "Live Stop", which authorizes the immobilization, impoundment and towing of vehicles driven without operating privileges or vehicle registration and to the impoundment of vehicles for the nonpayment of fines, but do not pertain to other towing activities, such as the towing of damaged or disabled vehicles and clearly does not pertain to the licensing of private towing companies or the administration and enforcement of regulations pertaining to private towing companies.

37. The Ordinance conflicts with the Parking Authorities Law because it delegates a municipal function to Defendant Authority that is not one of the enumerated purposes for which a parking authority may exist pursuant to Section 5505(b) and gives it powers that are not among the enumerated powers contained in Section 5505(d) and, to the extent the Parking Authorities Law gives powers to Defendant Authority pertaining to towing, the Ordinance impermissibly enlarges those powers.

38. Accordingly, Defendant City has exceeded its power under Pa. Const. art. IX, §2 and 53 P.S. §§13131 and 13133(b) by enacting an ordinance that delegates the administration and enforcement of regulations pertaining to private towing companies to Defendant Authority in violation of the Parking Authorities Law and its Ordinance is therefore void.

**B. DEFENDANT CITY EXCEEDED ITS POWER UNDER OF THE CONSTITUTION OF THE COMMONWEALTH, THE HOME RULE ACT, AND ITS HOME RULE CHARTER BY DELEGATING LEGISLATIVE POWER TO THE DEFENDANT AUTHORITY**

39. Pa. Const. art I, §1 provides that the Legislative power of the Commonwealth shall be vested in a General Assembly and applies, by analogy to municipalities.

40. It is well established that a municipality may not delegate legislative power to an administrative agency, although a municipality may delegate to such an agency the duty to

determine whether the facts exist to which an enactment applies and the duty to effectuate the terms, purpose or policy of an enactment if definite standards delimit the agency's power.

41. By delegating specific power to Defendant Authority to promulgate all regulations necessary for administration and enforcement of the rotational method of tow truck selection, the Ordinance violates Pa. Const. art I, §1 and to the extent it is contrary to the Constitution it also violates 53 P.S. §13131.

42. Likewise, the Ordinance violates Pa. Const. art I, §1 by delegating specific power to Defendant Authority to promulgate regulations pertaining to equipment, records, insurance, and premises maintained by towing licensees, and the power to establish fines for violations of the Ordinance and Defendant Authority's regulations.

43. The Ordinance also violates these provisions by delegating specific power to Defendant Authority to promulgate regulations pertaining to a rotational method of tow truck selection, including the power to determine standards for ineligibility for a towing license and the power to determine what violations constitute grounds for suspension of a towing license and the length of any such suspension.

44. Accordingly, Defendant City has exceeded its powers under Pa. Const. art. IX, §2 and 53 P.S. §13131 by enacting an ordinance that delegates legislative powers to Defendant Authority in violation of Pa. Const. art. I, and its Ordinance it therefore void.

C. PLAINTIFFS ARE ENTITLED TO EQUITABLE RELIEF

45. Plaintiffs seek a declaration that the Ordinance is void and unconstitutional and to enjoin its implementation and enforcement.

46. Implementation and enforcement of the void and unconstitutional Ordinance will cause immediate and irreparable harm which cannot be compensated by an award of damages.

47. Greater injury will result from refusing Plaintiffs request to enjoin implementation and enforcement of the void and unconstitutional Ordinance than in granting it.

48. Enjoining implementation and enforcement of the void and unconstitutional Ordinance properly restores the parties to their status as it existed immediately prior to the enactment of the Ordinance.

49. Implementation and enforcement of a void and unconstitutional Ordinance is actionable and enjoining its implementation and enforcement is reasonably suited to abate the harm it will cause.

50. Plaintiffs' right is clear and the wrong to be remedied is manifest.

51. It is onerous, unduly burdensome, and unreasonable to require Plaintiffs to comply with standards that are legislated, enforced and adjudicated by an entity that does not have statutory authority to exercise such powers.

52. The legislative powers illegally delegated to Defendant Authority under the void and unconstitutional Ordinance are not subject to any constitutional or statutory rulemaking procedures and will cause grave interference with, if not complete suppression of, Plaintiff's businesses.

53. The void and unconstitutional Ordinance illegally delegates unlimited power to Defendant Authority to determine eligibility standards for initial licensing and renewal of towing licenses.

54. It is onerous, unduly burdensome, and unreasonable to subject Plaintiffs to illegally promulgated standards of eligibility that will affect their right to continue operating their businesses.

55. The void and unconstitutional Ordinance illegally delegates unlimited power to Defendant Authority to define offenses and establish penalties for such offenses, in addition to the power to initiate and adjudicate enforcement actions.

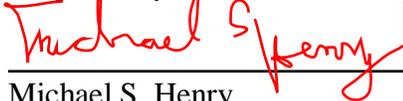
56. It is onerous, unduly burdensome, and unreasonable to subject Plaintiffs to cumulative, exorbitant and oppressive penalties for violations of the Ordinance and the regulations Defendant Authority illegally promulgates.

57. Enjoining implementation and enforcement of the provisions of the Ordinance that relate to Defendant Authority will not harm the public in that the Ordinance provides for administration and enforcement of the Ordinance by the Department of Licenses and Inspections as an alternative to Defendant Authority.

WHEREFORE, plaintiffs respectfully request this Honorable Court to grant the following relief:

- (a) An order declaring that Defendant City's passage of Bill No. 100536 ("the Bill"), which amended Section 9-605 of the Philadelphia Code pertaining to towing ("the Ordinance"), is an unlawful and unconstitutional exercise of power, and is invalid pursuant to Pa. Const. art. IX, §2 and 53 P.S. 13133(b) to the extent it delegates administration and enforcement of the Ordinance to Defendant Authority, which is not permitted under Defendant Authority's enabling act;
- (b) An order declaring that Defendant City's passage of the Bill was an unlawful and unconstitutional exercise of power, and was invalid pursuant to Pa. Const. art I, §2 and 53 P.S. §13131 because it delegates legislative power to Defendant Authority;
- (c) Preliminary and permanent injunctive relief; and,
- (d) Other relief this Honorable Court deems necessary or appropriate.

Respectfully submitted,



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**IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA**

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<b>PHILADELPHIA INDEPENDENT</b>	:	
<b>TOWERS AND SALVORS</b>	:	
<b>ASSOCIATION</b>	:	DOCKET NO.
3227 N. Stokely Avenue	:	
Philadelphia, Pennsylvania	:	
and	:	
<b>K&amp;A AUTO SALVAGE, INC.</b>	:	
2160-66 E. Somerset Street	:	
Philadelphia, PA 19134	:	
and	:	
<b>STEFFA METALS CO., INC.</b>	:	
2180 Church Street	:	
Philadelphia, PA 19124	:	
and	:	
<b>DERKAS AUTO BODY, INC.</b>	:	
2204 Aramingo Avenue	:	
Philadelphia, PA 19125	:	
and	:	
<b>MORTON TOWING &amp; RECOVERY</b>	:	
1950 W. Rockland Street	:	
Philadelphia, PA 19141	:	
and	:	
<b>NORTON'S TOW SQUAD, INC.</b>	:	
51 E. Cosgrove Street	:	
Philadelphia, PA 19144	:	
Plaintiffs	:	
v.	:	
	:	
<b>CITY OF PHILADELPHIA</b>	:	
and	:	
<b>PHILADELPHIA PARKING AUTHORITY</b>	:	
Defendants	:	

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**AFFIDAVIT**



**NORTON'S TOW SQUAD, INC.** :  
51 E. Cosgrove Street :  
Philadelphia, PA 19144 :

v. :  
:

**CITY OF PHILADELPHIA**  
Broad and Market Streets  
Philadelphia, PA 19107

And

**PHILADELPHIA PARKING AUTHORITY**  
3101 Market Street, 2<sup>nd</sup> Floor :  
Philadelphia, PA 19104 :

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**CERTIFICATE OF SERVICE**

I, Michael S. Henry, Esquire, hereby certify that I have served a true and correct copy of the foregoing Civil Complaint – Action for Declaratory Judgment via U.S Mail postage prepaid to:

Shelley R. Smith  
City Solicitor  
City Hall  
Broad and Market Street  
Philadelphia, PA 19107

Dennis Weldon, Esquire  
General Counsel  
Philadelphia Parking Authority  
3101 Market Street, West Wing  
Second Floor  
Philadelphia, PA 19104

BY: 

MICHAEL S. HENRY, ESQUIRE  
2336 South Broad Street  
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Phone: (215) 218-9800  
Fax: (215) 218-9249  
mshenry@mshenrylaw.com

Dated: March 25, 2011