

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILADELPHIAN OWNERS	:	CIVIL ACTION
ASSOCIATION, ET AL.,	:	CLASS ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA,	:	NO. 00-3181
Defendant.	:	

MEMORANDUM AND ORDER

SCHILLER, J.

July , 2002

Plaintiffs commenced this action against the City of Philadelphia (the “City”), challenging: (1) the legality of a City ordinance that excludes buildings with more than six units from the City’s trash collection services; and (2) the City’s imposition of a license fee for buildings with more than two residential units. Subsequently, I certified two classes in this matter, and the members of those classes have been properly notified of the pendency of this action. On behalf of both classes, Plaintiffs moved for summary judgment. For the reasons set forth below, I find that the City’s ordinance is unconstitutional as applied to condominiums and cooperatives.

I. BACKGROUND

1. Parties and the Classes

Plaintiff Philadelphian Owners Association is a condominium association representing the unit owners of a large, multi-unit condominium building. The other named plaintiff in this matter, Welsh Walnut Associates, L.P. is the owner of a large, multi-unit apartment building. Certified pursuant to Federal Rule of Civil Procedure 23(b)(3), the first class (the “Waste Removal Class”)

was defined as follows: “All condominium associations and entities and all owners of buildings that each contain more than six (6) dwelling units (as that term is used in the City of Philadelphia Code), for which the City does not provide waste removal services.”

The second certified class (the “Dwelling Tax Class”) was defined as follows: “All condominium associations and entities and all owners of buildings that each contain more than two (2) dwelling units and are subject to the Multiple-family Dwelling License ordinance of the City, Philadelphia Code § A-906.2.”

The City does not dispute that the named Plaintiffs and the Waste Removal Class have expended substantial amounts of money on private waste removal services, nor does the City dispute that the named Plaintiffs and the members of the Dwelling Tax Class are subject to the license fee.

2. The City’s Waste Removal Regulations

Pursuant to Title 351 of the Philadelphia Home Rule Charter, the City’s Department of Streets has adopted regulations governing the municipal collection of garbage. *See* 351 PA. CODE § 8.8-407 (2002). These regulations specify, *inter alia*, who is eligible for city refuse and recycling collection. “[B]uilding[s] with more than 6 dwelling units, regardless of the form of ownership” are not eligible for the City’s trash collection services. SANITATION DIV. OF PHILA. DEP’T OF STS. REGULATIONS GOVERNING MUN. COLLECTION OF REFUSE § 8.5.E (1999). As a result of this ordinance, Plaintiffs and the Waste Removal Class must pay for the collection of their garbage.

In bringing their challenge to this ordinance, Plaintiffs sought appropriate discovery. Their requests, however, yielded next to nothing. Regarding the issue of trash collection, the City produced only one witness for deposition, Mr. Frank Leo, Program Administrator of the Sanitation Division of the City’s Streets Department. Upon questioning, Mr. Leo’s sole explanation for the

waste removal ordinance was that collecting trash from the larger buildings “would put a huge strain on our already strained resources.” (Leo. Dep. at 78; Pls.’ Mot. for Summ. J., Ex. 3.) Mr. Leo conceded that he was not aware of any analysis or calculations showing that individuals living in buildings with more than six units produce more trash than individuals residing in buildings with fewer units. (Leo Dep. at 80-81.) Like the deposition testimony of the City’s witness, the documents the City produced during discovery fail to even suggest that there is a basis for the waste removal ordinance’s validity.

3. Multiple-Family Dwelling License Fee

Plaintiffs also challenge a license fee the City charges annually to each unit in a multiple-family dwelling. The Philadelphia Administrative Code, as amended in June 1999, provides: “The annual license fee to operate a multiple-family dwelling shall be \$25.00 for each dwelling unit with a maximum annual fee of \$10,000 per dwelling.” PHILA. CODE § A-906.2. As defined in the Philadelphia Property Maintenance Code, a “multiple-family dwelling” is “[a] building containing more than two dwelling units.” PHILA. CODE § PM-202.0.

It is undisputed that the City’s imposition of the license fee is consistent with the City’s zoning and fire code classifications. Under the City’s zoning regulations, buildings with three or more dwelling units are classified as “R-2,” and single family homes and duplexes are zoned as “R-3.” *See* PHILA. CODE §§ 14-203, 204. The City’s Fire Prevention Code¹ – which is technical and complex – includes more stringent requirements for those buildings classified as R-2 as compared to those zoned as R-3. *Compare* PHILA. CODE § F-503.3.2-503.3.2.2.2 (detailing specific

¹With only limited exceptions, the Building Officials and Code Administrators International, Inc.’s National Fire Prevention Code, Ninth Edition was adopted as the City’s Fire Prevention Code. *See* PHILA. CODE. § F1.1.

requirements for automatic fire detection units required in R-2 buildings) *with* PHILA. CODE § F-503.3 (requiring smoke detectors in R-3 buildings); *see also* PHILA. CODE § F-503.4 (setting forth requirements for sprinkler systems in R-2, but not R-3, buildings). The City performs inspections to ensure that the buildings comply with the City’s Fire Prevention Code. (Lacey Dep. at 9-10; Def.’s Opp’n to Mot. for Summ. J., Ex. F.)²

II. STANDARD OF REVIEW

Summary judgment must be granted if the record, when viewed in a light most favorable to the non-moving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). When weighing the evidence offered by the parties on a motion for summary judgment, this Court must review the evidence and all inferences drawn from that evidence in the light most favorable to the party opposing the motion. *See Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Defendants, as the non-movant, may not rest on “mere allegations” but must demonstrate the existence of specific facts that create a genuine issue for trial. FED. R. CIV. P. 56(e).

III. DISCUSSION

A. Waste Removal Services

1. Properly Defining the Waste Removal Class

The Waste Removal Class previously certified in this matter includes owners of apartment

²Plaintiffs dispute the extent to which the City actually performs these inspections, but do not contend that the City fails to perform inspections altogether.

buildings, condominiums, and cooperatives. However, I find that the Waste Removal Class, as previously defined, is overly broad.³ Specifically, building owners who lease or rent apartments should not be included in the Waste Removal Class. Under the City's refuse collection regulations, commercial enterprises generally do not receive the City's waste removal services. *See* SANITATION DIV. OF PHILA. DEP'T OF STS. REGULATIONS GOVERNING MUN. COLLECTION OF REFUSE § 8.3-8.5.D. In this regard, the owners of apartment buildings are no different than the owners of other commercial buildings who must negotiate contracts for waste removal services. *See E & T Realty v. Strickland*, 830 F.2d 1107, 1109 (11th Cir. 1987) (“different treatment of dissimilarly situated persons does not violate the equal protection clause”). As such, the owners of apartment buildings are not entitled to relief and are excluded from the Waste Removal Class. Accordingly, the Waste Removal Class is properly defined as follows: “All condominium associations and similar entities (excluding owners of apartment buildings) and cooperatives for which the City of Philadelphia does not provide waste removal services pursuant to § 8.5.E of the Regulations Governing Municipal Collection of Refuse.”

2. Rational Basis Review⁴

Plaintiffs contend that the City's waste removal ordinance violates their right to equal protection of the laws, entitling them to relief pursuant to 42 U.S.C. § 1983. The Equal Protection Clause of the Fourteenth Amendment provides: “No State shall . . . deny to any person within its

³By Order dated February 4, 2002, I directed the parties to address whether, for the purposes of this litigation, condominiums and cooperatives are legally distinguishable from apartments. The parties submitted memoranda of law on this issue.

⁴In Count One of their Complaint, Plaintiffs claim that the City's waste removal ordinance violates the Uniformity Clause of the Pennsylvania Constitution, PA. CONST. art. 8, § 1. By Order dated September 21, 2000, I dismissed this claim.

jurisdiction the equal protection of the laws.” U.S. CONST. amend XIV, § 1. As the Supreme Court has stated, the Equal Protection Clause “is essentially a direction that all persons similarly situated should be treated alike.” *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). “Unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest.” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). Thus, because Plaintiffs do not contend that the City’s waste removal ordinance implicates a fundamental right or involves a suspect class, I apply the less rigorous rational basis standard of review. *See Leheny v. City of Pittsburgh*, 183 F.3d 220, 226 (3d Cir. 1999).⁵

“When faced with a challenge to a governmental classification under the rational basis test, a court should ask, first, whether at least one of the purposes of the classification involves a legitimate public interest and, second, whether the classification is rationally related to achievement of that purpose.” *Hancock Indus. v. Schaeffer*, 811 F.2d 225, 237 (3d Cir. 1986) (citation omitted). Under the rational basis test, even when similarly situated persons are treated differently, state action is presumed constitutional. *See McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961). Rational basis review in equal protection analysis “is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.” *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993).

⁵In Count Three of their Complaint, Plaintiffs and the Dwelling Tax Class allege that the City has violated their procedural due process rights. (Compl. ¶ 70.) This claim was all but abandoned as litigation proceeded. In any event, this claim is unsupported. *See Kahn v. United States*, 753 F.2d 1208, 1218 (3d Cir. 1985) (legislation authorizing collection of revenue does not require notice or other pre-enactment procedural safeguards).

“That being said, rational basis review is not a rubber stamp of all legislative action, as discrimination that can only be viewed as arbitrary and irrational will violate the Equal Protection Clause.” *Hadix v. Johnson*, 230 F.3d 840, 843 (6th Cir. 2000). Likewise, “[a] classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.” *Reed v. Reed*, 404 U.S. 71, 76 (1971) (quotation omitted).

As its overriding contention in support of upholding the waste removal ordinance, the City argues that the ordinance is not arbitrarily discriminatory, and therefore constitutional, because it will save the City money. This argument fails. Almost any discriminatory measure denying individuals some benefit – for example, waste removal services – will reduce certain costs. Consequently, “a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources.” *Plyer v. Doe*, 457 U.S. 202, 227-28 (1982). Simply, the City’s cost-savings argument, without more, could be used to justify an array of arbitrary and discriminatory classifications.

In *Plyer*, the Supreme Court invalidated a statute that denied illegal aliens access to public education. *See* 457 U.S. at 230. Although the *Plyer* Court may have been applying “heightened scrutiny,” *Brian B. v. Pennsylvania Department of Education*, 230 F.3d 582, 586 (3d Cir. 2000), the Court’s reasoning with respect to the insufficiency of financial savings as a rationale is nonetheless applicable to the instant case. As with law enforcement and fire protection, the City’s provision of trash collection services “protect[s] the public health, safety and welfare.” PHILA. CODE § PM 101.2. Particularly when one considers that the City’s cost-savings rationale could readily be extended to,

for example, a decision to selectively provide police or fire services, the inadequacy of the City's reasoning becomes clear.

In addition, the City's minimal responses to Plaintiffs' discovery requests point in only one direction: the City's waste removal ordinance was an unprincipled and arbitrary measure to cut costs. There is no indication that the City's waste removal ordinance is the reflection of reasoned legislative decisionmaking. Put another way, there is not a scintilla of evidence that the City's waste removal ordinance has a rational basis.

Moreover, even the limited evidence produced by the City during discovery reveals the inadequacy of two lines of reasoning that might be advanced in support of the City's ordinance. First, the City's ordinance might be justified on that ground that the occupants of those residential units denied waste removal services generate a greater volume of refuse, rendering collection from those units inefficient. However, the City's deponent opined that units in the larger buildings actually produce less waste per unit (*Id.* at 81), negating this as a possible ground for upholding the ordinance. Second, it is conceivable that the City's garbage trucks are unequipped for removing waste contained in dumpsters. This suggestion fails in light of the fact that the City already has trucks properly equipped for emptying dumpsters. (*Id.* at 73.)

Lastly, the authorities relied on by the City fail to support its position. For example, the City cites *Ramsgate Court Townhome Association v. West Chester Borough*, Civ. A. No. 01-1864 (E.D. Pa. June 22, 2001), but this case is inapposite. *Ramsgate* involved a challenge to an ordinance limiting free collection of trash from residential properties to those residences generating less than six thirty-gallon containers per week. Whereas the ordinance in *Ramsgate* allows for free trash collection up to a certain volume, the City's ordinance denies collection without respect to the

volume of trash generated. *See id.* at 2-3. More importantly, there is a rational relationship between efficient sanitation and limiting the provision of trash collection based on the volume of trash generated. The City's ordinance, in contrast, arbitrarily discriminates against those persons residing in condominiums and cooperatives. The City also relies on *Goldstein v. City of Chicago*, 504 F.2d 989 (7th Cir. 1974). Because *Goldstein* involved a challenge to an ordinance differentiating residents on the basis of volume of trash produced, this case as well fails to show the rationality of the City's waste removal practices.⁶

For all of these reasons, the City's waste removal ordinance is unconstitutional as applied to condominiums and cooperatives.

3. Plaintiffs' Remedies

Regarding the equitable powers of district courts, the Supreme Court has announced that "once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971); *see also Temple Univ. v. White*, 941 F.2d 201, 214-15 (3d Cir. 1991) (elements considered in decreeing permanent injunction consist of showing of success on the merits, inadequacy of legal remedies, irreparable harm, and balancing of competing claims of injury and public interest). Here, the Philadelphian Owners Association and the members of the Waste Removal Class are suffering a continuing constitutional violation, requiring appropriate injunctive relief.

⁶The City also cites *Beauclerc Lakes Condominium Association v. City of Jacksonville*, 115 F.3d 934 (11th Cir. 1997). Because the waste removal practices at issue in *Beauclerc Lakes* were not clearly defined, this case is unpersuasive as it relates to the facts of the instant case, and, in any event, is not controlling authority. *See id.* at 935.

In addition, an award of compensatory damages is warranted. *See Owen v. Independence*, 445 U.S. 622, 638, 657 (1980) (compensatory damages are an available remedy under 42 U.S.C. § 1983). In the context of a violation of constitutional rights, the purpose of damages is to provide compensation for injuries caused by that violation. *See Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 307 (1986). Cities are not immune from such awards. *See Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). Because the City's waste removal ordinance has forced the Philadelphian Owners Association and members of the Waste Removal Class to incur considerable costs in securing private waste removal, they are entitled to be compensated for those expenses if they can show proof of actual injury. *See Jolivet v. Deland*, 966 F.2d 573, 576 (10th Cir. 1992).

B. Multiple-Family Dwelling License Fee

1. Equal Protection Claim

Plaintiffs and the Dwelling Tax Class contend that the \$25.00 license fee imposed by the City violates the Equal Protection Clause of the Fourteenth Amendment.⁷ As with their equal protection challenge to the waste removal ordinance, Plaintiffs do not contend that the imposition of the license fee is based on a suspect classification or that it burdens a fundamental right. Consequently, I apply the rational basis standard. *See Anders v. Borough of Norristown*, Civ. A. No. 97-2026, 1997 U.S.

⁷If the amount of a license fee grossly exceeds related regulatory costs, it is considered a tax. Although the parties have not addressed this issue, to the extent the City's license fee is a tax it appears that the Tax Injunction Act, 28 U.S.C. § 1341, prevents me from considering its lawfulness. *See Behe v. Chester County Bd. of Assessment Appeals*, 952 F.2d 66, 67 (3d Cir. 1991); *Anders v. Borough of Norristown*, Civ. A. No. 97-2026, 1997 U.S. Dist. LEXIS 16321, at *12 (E.D. Pa. Oct. 22, 1997).

Dist. LEXIS 16321, at *12 (E.D. Pa. Oct. 22, 1997) (applying rational basis test to challenged ordinance subjecting owners of rental properties to license fee).

It is clear that the City has a legitimate interest in protecting the public health, safety, and welfare. *See, e.g., Fisher v. Berkeley*, 475 U.S. 260, 264 (1986). As one component of protecting the public health, safety, and welfare, the City has a legitimate interest in fire prevention. Enactment of a fire code is consistent with this legitimate interest. Plaintiffs do not object to the fact that the City's Fire Prevention Code provides that three or more residential units are subject to heightened fire prevention requirements. Moreover, in view of the increased economic and safety risks posed by fires in larger buildings, such heightened requirements are more than reasonable. It is also eminently reasonable to conclude that the enforcement of the code provisions that impose substantial requirements on a particular category of building owners will also impose significant inspection and enforcement costs. Thus, requiring payment of a license fee to defray such costs is rationally related to a legitimate interest. In light of these considerations, and the deference accorded by the rational basis standard of review, the City's license fee does not deprive Plaintiffs of the equal protection of the laws. *See Anders*, 1997 U.S. Dist. LEXIS 16321 at *8-9.

Viewed as a whole, Plaintiffs' claims with respect to the license fee are premised on the contention that they are paying a fee without receiving commensurate services, namely, inspections and certifications. Whether or not this contention is factually accurate, Plaintiffs do not have a claim under the Equal Protection Clause. Simply, Plaintiffs cannot show that the City's classification scheme is irrational. At most, Plaintiffs may have a cause of action arising from the City's failure to perform the services at issue or for a refund of the license fees. Such actions are better suited for resolution in another forum.

2. Plaintiffs' Remaining State Law Claims

Plaintiffs also contend, based on several different theories, that the lie nse fee violates Pennsylvania law. I am mindful that a federal court's decision to exercise supplemental jurisdiction over state law claims is a matter of discretion, and should be guided by the goal of avoiding "needless decisions of state law . . . both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966); *see also* 28 U.S.C. § 1367 (supplemental jurisdiction statute). Furthermore, in deciding whether to dismiss pendent state law claims, a district court must take into account principles of judicial economy, convenience, fairness, and comity. *See Trump Hotels & Casino Resorts v. Mirage Resorts* 963 F. Supp. 395, 408 (D.N.J. 1997). Principles of comity, in particular, counsel that federal courts should adopt a hands-off approach with respect to a state's revenue collection. *See National Private Truck Council v. Oklahoma Tax Comm'n*, 515 U.S. 582, 586 (1995); *Trading Co. of N. Am., Inc. v. Bristol Twp. Auth.*, 47 F. Supp.2d 563, 566 (E.D. Pa. 1999). Accordingly, I decline to decide Plaintiffs' state law claims.

IV. CONCLUSION

For the foregoing reasons, Plaintiff Philadelphian Owners Association and the Waste Removal Class have succeeded on their claim that the City's waste removal ordinance violates the Equal Protection Clause of the Fourteenth Amendment. Summary judgment is granted in favor of

the City⁸ on Plaintiffs' and the Dwelling Tax Class's federal claims, and their state law claims are dismissed. An appropriate Order follows.

⁸A district court may grant summary judgment sua sponte. *See Otis Elevator Co. v. George Wash. Hotel Corp.*, 27 F.3d 903, 910 (3d Cir. 1994). Because of the nature of the issues presented in this case, the parties agreed that it was unlikely, if not impossible, that this case would proceed to trial, and instead would be resolved at the summary judgment stage. Plaintiffs had more than adequate opportunity to address the merits of all of their claims, and have done so in their various briefs related to their summary judgment motion.

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PHILADELPHIAN OWNERS	:	CIVIL ACTION
ASSOCIATION, ET AL.,	:	CLASS ACTION
Plaintiffs,	:	
	:	
v.	:	
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CITY OF PHILADELPHIA,	:	NO. 00-3181
Defendant.	:	

ORDER

AND NOW, this day of July, 2002, upon consideration of Plaintiffs' Motion for Summary Judgment, the response thereto, and related briefing, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Plaintiffs' Motion for Summary Judgment (Document No. 20) is **GRANTED IN PART AND DENIED IN PART**.
2. Summary Judgment is **GRANTED** in favor of Plaintiff Philadelphian Owners Association and the Waste Removal Class (as defined in Section III.A.1 of the foregoing Memorandum) and against the City of Philadelphia on their claim (Complaint, Count One) that the City of Philadelphia's waste removal ordinance denies them of equal protection of the laws, and **DENIED** in all other respects.
3. Summary Judgment is **GRANTED** in favor of the City of Philadelphia and against Plaintiffs and the Dwelling Tax Class on their federal law claims (Counts Two and Three).
4. The remaining state law claims (Counts Four and Five) are **DISMISSED** without prejudice to their re-filing in state court.

5. The City of Philadelphia shall establish a plan for the collection of waste from the Waste Removal Class. Such plan shall be in place and implemented by **September 3, 2002**.
6. By **August 5, 2002**, counsel for Plaintiffs and the Waste Removal Class shall submit a proposed Notice and Claim Form for members of the Waste Removal Class, requiring those class members entitled to compensatory damages to submit proof of direct costs associated with the collection of waste. The City of Philadelphia shall have fourteen days to file any objections thereto. Plaintiffs' and the Waste Removal Class's counsel shall submit a proposed schedule for the issuance, return, and processing of the Notices and Claims Forms. The City of Philadelphia shall have fourteen days to file any objections thereto.
7. By **September 9, 2002**, counsel for Plaintiffs' and the Waste Removal Class shall file their petition for attorneys' fees and costs. The City of Philadelphia shall have fourteen days to file any objections thereto.

BY THE COURT:

Berle M. Schiller, J.

