

BALTIMORE CITY LAW DEPARTMENT

2021 Annual Report

October 2021

I. Introduction

The Covid-19 Pandemic imposed unforeseen challenges on Baltimore City's government. For the City's Law Department, events that would have been unimaginable now seem routine in the era of remote work brought on by the Pandemic. Oral arguments are made into a webcam. Depositions are taken virtually from kitchen tables. Contracts are all signed electronically. Not only has the City's Law Department been forced to adapt to these challenges but as the City's legal advisor, the Department has taken on a key role in confronting the complex legal issues brought on by the Pandemic. And yet as much as things have changed, the Law Department's steady presence as the City's legal advisor remains the same. The Department continues to deliver legal representation of the highest quality to its client.

The Law Department is composed of twelve practice groups as well as the Minority and Women's Business Opportunity Office (MWBOO) that together act as the City's legal representative. It is led by the City Solicitor and the Solicitor's administrative team. Set forth below is the Law Department's annual report, providing an update on the Department's activities over the past two years.

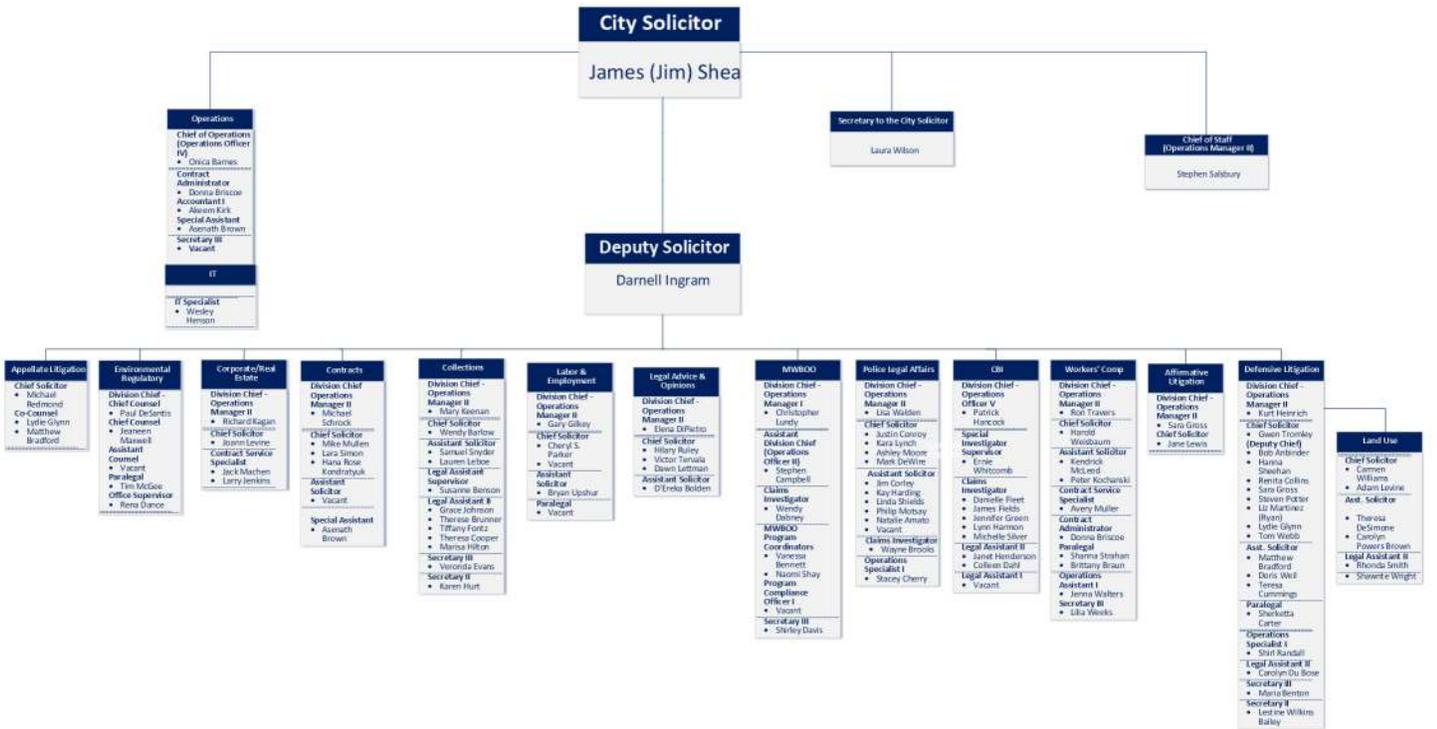
II. Administration

James L. (Jim) Shea was formally sworn in as Baltimore's City Solicitor on March 10, 2021, after serving for two months as Acting Solicitor. Solicitor Shea brings with him decades of experience, including both private practice and in the public sector. As City Solicitor, he has sought to lead the Law Department through the tumult of the Covid-19 pandemic and assist with the City's transition to a new Mayor. So far, the Solicitor has found himself right at home among the high-quality attorneys that have been carrying out the Department's functions since long before his arrival.

The City Solicitor is aided by the Law Department's administrative team. The administrative team is led by Deputy Solicitor Darnell Ingram. Ingram formerly served as the City's Deputy Civil Rights Director and still maintains an active workload in the Law Department's Labor and Employment practice group. Chief of Operations Onica Barnes runs the day-to-day operations of the Law Department, handling the HR and recruiting as well as the management of the Law Department's budget. Chief of Staff Stephen Salsbury assists the Solicitor on specific cases and provides support throughout the Law Department. Laura Wilson serves as the Secretary to the Solicitor, handling the Solicitor's calendar and a host of other matters involved in the day-to-day operations of the Law Department.

Organizational Chart

Law Department
Current Org Chart
8/25/2021



III. Practice Groups

1. Affirmative Litigation

The Affirmative Litigation group brings claims on behalf of the City in a variety of areas including consumer protection and climate change and other matters where the City is a plaintiff. This year, the affirmative litigation division added a number of cases including cases against GlaxoSmithKline, et al. for selling Zantac and its generic brands of the heartburn medication despite their knowledge that the products contained harmful carcinogens. The City is also suing several other pharmaceutical companies for engaging in anti-competitive behavior in colluding to keep generic versions of drugs from the market.

The City continues to proceed in major litigation against numerous fossil fuel companies including British Petroleum for their deception about climate change – the effects of which may prove to be long term for the City and its residents.

Some of this year's successes include a \$4.1 million settlement against Transdev, the former operator of the City Circulator; and a settlement of \$225,000 with Firequip for defective fire hoses it sold to the Baltimore City Fire Department. Other victories for the City include a ruling that prevented the application of a law that would have denied Title X federal funds to any entity that presents abortion as a medical option. The appeal of the City's win in this case was dropped by the Biden administration. Another win included a resolution of the City's case against a Trump-era rule that would have denied immigration status to anyone who used or might use a government benefit such as public education or food stamps. The Biden administration repealed this rule. The City has also reached a settlement agreement with Monsanto, whose products leached PCB chemicals into the City's waterways, in the amount of \$7.5 million; the settlement is awaiting approval from the court.

Other matters include litigation against Juul Labs for marketing vape products to minors, opioid manufacturers, major financial institutions – including Bank of America and Citibank – for anti-trust conduct in setting the City's rate for VRBO bonds, and Ritz Carlton for water usage that was unbilled.

2. Appellate Litigation

The Appellate Practice Group, led by Michael Redmond, is responsible for representing the City in all state and federal appellate courts. Accordingly, Appellate works closely with Litigation and Police Legal Affairs to help best position the City in defending the appeals that come from our trial court victories and to strategically determine which of our trial court losses we should seek to reverse on appeal. Appellate also helps to identify amicus briefs that the City may wish to join regarding national litigation that may impact the City's interests.

The significant victories that Appellate achieved in the last year include at least two in the Maryland Court of Appeals, our state's highest court: *Mayor and City Council of Baltimore v. ProVen Management, Inc.*, and *Clear Channel Outdoor, Inc. v. Director*

of Finance of Baltimore City. In *ProVen*, Appellate successfully defended a seven-figure contract dispute by establishing that the appellate courts lacked jurisdiction to hear the company's claim. In *Clear Channel*, Appellate successfully defended the constitutionality of the City's billboard tax, and the billboard company is currently seeking review from the United States Supreme Court.

3. Collections

The primary focus of the Collections Practice Group ("CPG") is the collection of the Mayor and City Council's (the "City") outstanding invoices. CPG works with the Department of Finance on tax sale, bankruptcy and general collection issues and the Department of Public Works regarding the collection of delinquent water and sewer invoices. It has also worked with the Department of Housing and Community Development, Department of Transportation, Liquor Board, Environmental Control Board, Employee Retirement System and others with issues including unpaid invoices, bankruptcy, tax sale and general collection issues.

This year, the CPG confronted difficult legal issues involving tax sale including the distribution of bid balances, exceptions to the bankruptcy stay, exceptions to a bankruptcy discharge, assignment of tax sale judgments and the Servicemembers Civil Relief Act. There continues to be new legal theories or nuances when there is an interplay between local governmental interest, tax sale and bankruptcy that keeps our attorneys researching, engaged and intellectually challenged.

CPG is customer service oriented. It works every day with the public to explain often complex legal issues and/or the calculations used to determine the debt. It drafts payment agreements, working with the public to find terms that are acceptable to the City and work within the debtor's financial situation. CPG has referred the public to needed public assistance programs so that their quality of life can improve.

CPG often goes the extra mile to listen to the debtors when they believe there is an error in their bill and does the research to find the truth. If there is an error CPG works with the debtor and the agency to fix the records.

Highlights from the last year include the following:

- CPG Collected \$6,647,696.78 in Fiscal Year 21.
- Opened 399 new cases. These cases included post-judgment collection, city property damage, tax sale collection, merit trials and third-party claims.
- CPG tried or settled 61 cases and received judgments in the amount of \$77,003.50. These numbers were affected by the closure of the Courthouse due to Covid 19.
- The group filed 155 pleadings with the Courts including responsive motions and post judgment pleadings including oral exam requests and garnishments of wages and bank accounts.
- Reviewed and approved 296 tax sale deeds for form and legal sufficiency.

- Executed 170 repayment agreements

Looking ahead, CPG continues to reach out to agencies and the public to bring revenue to the City. Workers comp subrogation claims, parking tax and waste water permits and fines are just some of the types of cases that CPG has started to handle in house.

4. Contracts

The Contracts Practice Group, a team of five attorneys, negotiates, drafts and reviews agreements, memoranda of understanding, rights of entry, and other critical legal documents needed to protect the interests of the City. The Group advises management on strategies to best execute business/government transactions, to reduce the risks and potential liabilities, and to meet legal requirements. It provides training to City agencies on contracting, procurement, and other issues.

Over the past year, the Group has been a critical partner with City agencies in their response to the Covid-19 pandemic. Whether drafting contracts to provide healthcare, food, and shelter for City residents or collaborating with City agencies to create Covid-19 signs and releases for public events, the Group responded to a myriad of emergency requests. To increase the responsiveness and efficiency of responding to the requests, the Group created emergency standardized contracts on the Law Department website (<https://law.baltimorecity.gov/contracts-division-forms>) so City agencies could fill in the blanks and send the contract electronically to the Group for legal review. The Group has also worked on special projects such as reviewing the City's water meter contracts to determine if the City could use legal actions/remedies to recoup any portion of the money paid out to vendors.

5. Corporate / Real Estate

The Corporate / Real Estate Division is presently staffed by five individuals, two staff attorneys and two contract attorneys and one shared secretary. The Division is responsible for representing the City in its real estate, economic development and municipal finance matters. Our clients include the Mayor's Office, the City's Departments of Housing and Community Development, Transportation, Public Works, Recreation & Parks, Finance and Real Estate. Additionally, our attorneys provide legal services on certain City related matters to the City of Baltimore Development Corporation (BDC), Lexington Market, Baltimore Public Markets Corporation and the Convention Center.

The legal services provided by the Division include representation, drafting documents and advice on matters pertaining to the acquisition and disposition of real property, leases (whether the City is landlord or tenant), real estate and construction related loans and financing where City is the lender, issuance of all the City's General Obligation Bonds, Revenue Bonds, TIFs and Conditional Purchase Agreements, Payment In Lieu of Taxes Agreements (PILOTS), street closings, all deed recording and transfer tax issues, complex economic development Disposition and/or Development Agreements

and amendments thereto, documenting loans and agreements administered by BDC, Historic Easements, Utility and other easements the City may require and certain real estate related grant agreements. The work of the Division enables the City to provide standard municipal services to its citizens and to recreate and revitalize the City's physical and economic environments to foster the continued progress and success of the City, its businesses and its citizens.

Specific transactions the Division has completed include the following:

Economic Development:

1. Land swaps to allow for expansion of Pompeian Oil manufacturing facility.
2. Reconstruction of Pimlico Racetrack to ensure Preakness remains in Baltimore.
3. Renovation of Cross Street and Hollins Market.
4. Amend City financing to assist the Shoprite at Howard Park.
5. Resolution of Marion Street franchise claim to allow for the renovation of the former Hecht Company property.
6. Agreements with Developer of Port Covington concerning construction of a Park, Bulkheading, Promenade and City Utility infrastructure.
7. Finalize disbursements from Hency Estate to allow for renovation of former Mencken House property.
8. Sublease of East Baltimore Medical Center to a Hopkins affiliate to allow for renovations and continued use of the facility.
9. Reconstruction and Renovation of Lexington Market.
10. Financing Agreements with Chimes Solutions to allow for financing of high-tech call center.
11. Financing Agreements for Galen Robotics for expansion of its Research and Development facility.
12. Lakeside Project PILOT.
13. \$1,200,000 Sojourner Place HOME loan/project.
14. \$450,000 CDBG loan to the House of Ruth.
15. Continuing involvement in PILOTs for the Perkins – Somerset – Oldtown Transformation Initiative.

Real Estate:

1. License Agreement for Pimlico Parking Lot for Covid Testing Center.
2. Lease of 1100 Wicomico Avenue for Covid Contract Tracing Center.
3. Lease of a portion of the former Sun building for Police Department.
4. Reviewed and approved for Legal Sufficiency in connection with property acquisitions: 1 Fee Simple Option and 98 Ground Rent Options.
5. Reviewed and approved for Legal Sufficiency in connection with dispositions of property and associated functions: 65 Land Disposition Agreements, 10 Contracts of Sale, 40 Deeds, 65 Leases, 45 Certificates of Satisfaction, 63 Street Closing Titles, 7 Alley Gating Leases and 29

Declarations of Covenants for Stormwater Management.

Municipal Finance:

1. \$137,485,000 Port Covington Special Obligation (tax increment financing) Bonds (closed 12/20).
2. \$70,440,000 Consolidated Public Improvement (General Obligation) Bonds, Series 2021 A & B.
3. \$107,865,607 Wastewater Subordinate Project Revenue Bonds, 2021 Series, \$63,356,673 Water Subordinate Project Revenue Bonds, 2021 Series and \$9,546,741 Stormwater Subordinate Project Revenue Bonds, 2021 Series (MWQFA).
4. Equipment Lease \$9,867,770.00 Schedule #1 and Equipment Lease \$14,582,230.00 Schedule #2 under the Bank of America Master Lease.
5. Preparation of the Upton Renaissance Land Disposition and Development Agreement.
6. Ongoing conferences in connection with the transfer of “surplussed” school buildings and potential new uses
7. Purchase/financing of recycling carts/approval by the Board of Finance of the \$3,000,000 stormwater revenue system obligation.

6. Defensive Litigation

The Litigation Practice Group (“Litigation”), led by Kurt Heinrich, is highly successful in securing fiscal and legal protections for the City. During 2020, as the unpredictable course of COVID-19 demanded an even higher degree of flexibility and skill, Litigation maintained its excellent quality of practice and client service. Discussed below are some areas of significance for the Practice Group.

In 2020, Litigation continued to use a three-pronged approach to its work as the City’s lawyer: (1) It represents the City in lawsuits brought in state and federal courts (except those which arise out of employment disputes); (2) It engages in preventive lawyering, working directly with City leadership to reduce claims and liability, and supporting the City’s efforts to fight adverse legislative actions, such as limits upon immunity defenses; (3) It assists the Solicitor on any issues that arise. Below are some of Litigation’s accomplishments in 2020.

During 2020, Litigation received approximately 160 cases, a reduction from the more than 180 cases in 2019. The majority of Litigation’s cases are in *defense* of the City. Among these are complaints for declaratory and injunctive relief, mandamus actions, suits for personal injury and/or property damage, disputes of agency actions, breach of contract claims and statutory challenges (on constitutional or other grounds). Litigation attorneys assert any available and appropriate counterclaims and cross claims, if plaintiff actually has caused damage to the City.

In 2020, the then-Acting Solicitor merged the Law Department’s Land Use

practice group with Litigation, adding a new area of law (focused principally upon condemnation and other property acquisition) to Litigation's docket, as well as administrative responsibilities for the Land Use group's four attorneys and two non-legal staff.

As in prior years, Litigation is involved in unique and notable cases, including the following:

1. The City intervened in *Sons of Confederate Veterans v. Maryland Historical Trust*, 02-C-20-001193. Plaintiffs sought a writ of mandamus to force the MHT to display the Confederate statues that the City removed and placed into storage in 2017. They argued that a 1984 easement granted to MHT by the City required display. After informing opposing counsel that the City would be intervening in the case and seeking a change of venue from Anne Arundel County to Baltimore City, Plaintiffs voluntarily dismissed the case.
2. *Willowbrook Apartment Assoc., et al. v. MCCB, et al.* 1:20-cv-01818 A challenge by a group of landlords to the City's Rent Relief Act, which prohibits rent increases from taking effect during the COVID state of emergency and for 90 days thereafter. Litigation attorneys worked with their counterparts from Howard County and the City of Salisbury, which passed similar COVID-related ordinances, to defend the suit. The defendants jointly prevailed on the landlords' request for a temporary restraining order.
3. *Restaurant Assoc. of Maryland, et al. v. MCCB*. 24-C-20-005155. Restaurant Association and numerous restaurants sought TRO and preliminary injunction challenging the Mayor's executive order restricting in-person dining. Litigation attorneys worked to defeat the TRO and filed a request for a preliminary injunction, resulting in Plaintiffs dismissing the case.
4. *Gunther Bottle, LLC v. MCCB*, 24-C-19-000148. This was a dispute over use of a City-owned parking lot. The developer had a license to use the parking lot, but it had expired in 2013. The developer continued to use the lot despite the fact that in 2018 the City granted a new license to a different developer. Gunther ultimately paid the City \$250,000 and access rights were determined.
5. *Maryland Multi-Housing, et al. v. Mayor and City Council*, Case No.: 24-C-21-003263. Plaintiffs sought declaratory and injunctive relief to preclude enforcement of a COVID-related ordinance requiring landlords to offer a lease renewal under very limited circumstances. The Court denied plaintiffs' requested relief and plaintiffs have appealed.

Preventive Lawyering

As a result of their litigation-related work with various agency officials, many attorneys in the Litigation Practice Group provide informal guidance on issues that have not yet evolved into a lawsuit. This type of guidance, e.g., to take certain steps, not to

take certain steps, or how to achieve a desired result, often prevents a potential or active dispute from becoming a lawsuit. This is viewed as an important tool in avoiding the burden and expense of litigation, adverse publicity and in achieving fiscal and legal protections for the City.

Collaboration with Other Practice Groups

Members of the Litigation Practice Group regularly collaborate with other practice groups (e.g., Contracts, Labor and Employment, Collections¹). Litigation also works closely with the Central Bureau of Investigation (CBI), which investigates pre-litigation claims asserted against the City pursuant to the Local Government Tort Claims Act. Three members of the Litigation Practice Group (the Chief, Deputy Chief and a senior attorney) serve with the Solicitor and Deputy Solicitor on the Law Department's Settlement Committee, reviewing and approving the weekly docket of requests for settlement approval. The Litigation Practice Group often consults with General Counsel on interpretations of City Code and Charter provisions at issue in litigation, especially for newly enacted local laws. The partnership with General Counsel is also required for cases involving the City's response to Maryland Public Information Act requests, which General Counsel lawyers assist City employees in answering.

Response to COVID-19 in 2020

With the onset of COVID-19, litigation attorneys and non-legal staff quickly adapted to the Pandemic's uncommon challenges. Attorneys have been actively involved in supporting the City's response, including volunteering for shifts to be "on call" by telephone for the City's Emergency Operations Center. Additionally, Litigation has successfully defended the City in the lawsuits that have grown out of the COVID emergency.

Teleworking was highly successful in 2020 and continues to be so, with attorneys working remotely, taking virtual depositions, mediations, pre-trial conferences and hearings. The Chief of Litigation assured continuity of operations by assigning non-legal staff to manage mail flow, court filings, and other document-related tasks on a schedule designed to preserve the necessary social distancing in the office.

All attorneys have maintained their robust commitment to pro bono work, and have sought free continuing legal education opportunities offered by the Bar Associations, the International Municipal Lawyers Association and in-house. Each attorney participates in Litigation's monthly in-house continuing legal education meeting.

Developments and Trends in 2020

In 2020, Litigation saw shifts in the quantity and type of cases that were filed against the City. Limited access to the courts temporarily reduced the number of incoming cases for most of the year, but October saw the start of a significant uptick as

¹ When necessary and appropriate, Litigation also assists the Police Legal Affairs Practice Group with matters that it is handling.

the courts began to resume full operations. Suits against the City under the Maryland Public Information Act have increased, and these have been defended successfully. Water billing disputes are increasingly the subject of litigation and these have been resolved successfully.

Teams, Zoom, Web-Ex and other secure video platforms have helped Litigation attorneys to bridge the gap between the need to be socially distant and traditional in-person communications with colleagues, opposing counsel and the courts. This increased reliance upon electronic communication made it especially important that Litigation took the lead in the 2020 hiring of an electronic discovery coordinator for the Law Department. The Coordinator has begun a complete review of the Department's e-discovery needs and, on at least one contract, has negotiated more favorable terms for the City.

7. Labor and Employment

The Labor and Employment Practice Group, led by Gary Gilkey, represents the City in all employment related matters; advises agencies on personnel issues; serves on the City's Policy Committee; reviews and provides advice on labor contracts, and works closely with the Labor Commissioner's Office and Department of Human Resources. It represents the City in state and federal court in all employment disputes; prepares responses to charges of discrimination with the Equal Employment Opportunity Commission, the Baltimore City Office of Equity and Civil Rights and the Maryland Civil Rights Commission; represents City agencies before the Civil Service Commission and during arbitration proceedings on employment discipline cases involving suspension, demotion, and termination; and advises the Department of Human Resources and other City agencies on employment-related matters.

The past fiscal year presented many challenges as well as opportunities. In many respects, COVID-19 changed how city government operates. Court closures and teleworking policies resulted in this division focusing less on litigation and more on advice of counsel. From the beginning, the Labor & Employment Division helped navigate the City through uncertain times. Some of the contributions from this Division includes, but are not limited to, the following:

1. Restoring of Service Oversight Committee ("RSOC") – As a group member, provides advice on when and how agencies restore in-person services as well as employee-related issues, and compliance with OSHA's Emergency Temporary Standards.
2. Essential Employee Travel – In response to Governor Hogan's travel ban, prepared letter for Mayor's signature authorizing essential employees to travel to and from work during early phase of pandemic;
3. COVID-19 Workgroup – Provided legal advice and assisted preparing FAQ's on city's obligations under the Family First Coronavirus Response Act ("FFRCA"), the Emergency Paid Sick Leave Act ("EPSLA") and the Emergency Family Medical Leave Act ("EFMLA");

4. Emergency Operations Center (“EOC”) – Staffed the EOC on a weekly basis and provided advice on legal issues as they arose;
5. Screening Automation Process for Employees (“SAPE”) – As a workgroup member, assisted on policies, procedures and legal challenges on collecting, screening, aggregating and retaining medical information obtained through use of the *e-mocha* app;
6. FEMA Medical Pods – Advised the Concenter on the use of its facilities to store FEMA medical PODs and its obligations under OSHA to protect the health and welfare of its employees;
7. Civil Service Commission Hearings – Advised central DHR on options for conducting remote hearings to finalize terminations;
8. OSHA’s Emergency Temporary Standards (“ETS”) – Prepared legal memo on agencies required to comply with new OSHA regulations

8. Opinions and Advice

The Opinions and Advice Practice Group consists of four full-time attorneys (one dedicated to MPIA work), and one part-time attorney. The attorneys of the Opinions and Advice Practice Group are the primary legal advisors for the Mayor and City Council of Baltimore.

The Group provides legal advice and opinions to the Mayor’s Office, the City Council, all City agencies, boards and commissions. It drafts Executive Orders, reviews City and State legislation for legality and assists at all phases of the City Council legislative process. The Mayor does not sign any bills until the Practice Group approves them. The Group provides advice on the entire range of legal issues affecting City entities. A representative from this group also serves on the Mayor’s Legislative Task Force during the General Assembly session. The Group also counsels all City entities on Open Meetings Act and Public Information Act compliance and assists in responding to MPIA requests when needed.

The Practice Group has referred 5-10 new bills each City Council meeting. Reports on these bills are drafted and the attorneys attend hearings, work sessions and voting sessions on referred bills as they are scheduled. The Group is also required to provide advice to the Mayor’s Office of Government Relations in connection with General Assembly legislation. The Practice Group participates in the preparation of the City’s legislative agenda for the General Assembly session and during the session, attends the Legislative Task Force meetings, reviews bills at the request of the Office of Government Relations and provides input for the purpose of informing the Department of Legislative Services, Office of Policy Analysis of the policy, legal and fiscal issues that the City identifies in a bill so it can effectively prepare the Fiscal and Policy Notes.

The following are some of highlights of the Groups work over the past year.

1. Provided extensive guidance as the City navigated a host of regulations and orders related to the Covid-19 pandemic.

2. Participated in Electric Vehicle Charging Stations - an internal work group that seeks to bring and have installed EV chargers throughout the City.
3. Created a program to implement the new Administrative Procedures Act.
4. Worked on City Council COVID relief measures including COVID Employee recall bill, the Renter's Relief Act and resulting litigation, and the non-evictions for Tenants holding over and the resulting litigation.
5. Analyzed Bainbridge Tax credit dispute and draft settlement agreement that was approved by the BOE.
6. Assisted City Council in amending the Record Retentions Bill to conform with state record retention laws 20-0496.
7. Worked on several bills concerning the Water Equity Act and its implementation, including assisting ECB in creating its hearing process, and its impact on Baltimore County.
8. Participated as a central member of the City's Data Workgroup, including analysis for creation of the Open Baltimore Checkbook platform online.
9. Analyzed differences between LGBTQ business preferences and a small business preference and explain same to City Councilmembers.
10. Played an active role in the Pandemic response by drafting executive orders and interpreting the Governor's executive orders.
11. Advised the Mayor's office on the nature of the city's emergency powers.
12. Assisted Contracts in deploying City property for use as COVID testing sites and temporary field hospital.
13. Answered a multitude of legal questions related to the City's operations under the pandemic restrictions including how to hold the inaugural ceremonies and how to swear-in officials under various circumstances.
14. Advised on the authority to set the date of the tax sale.
15. Advised finance on the applicability of the manufacture's tax exemption.
16. Helped the Local Hiring Advisory Committee apply the law and draft rules and regulations.
17. Advised the Affordable Housing Trust Fund commission on its powers, various open meetings issues and general questions about implementation.

9. Police Legal Affairs

The Police Legal Affairs Practice Group, headed by Lisa Walden, is responsible for the full spectrum of diverse legal requirements of the Baltimore Police Department (BPD). It represents the BPD and its members in a wide variety of civil litigation, in both federal and state court, on diverse legal theories ranging from civil rights to employment law to state statutory claims. It also supports BPD's accountability function by providing guidance to detectives investigating alleged misconduct and, where policy violations are found, prosecuting accused officers in administrative hearings and related proceedings. Legal Affairs drafts and reviews contracts and memoranda of understanding for BPD and assists in certain procurements.

The Practice Group also provides timely, accurate and useful answers to request for legal advice from the BPD executive staff on both routine operational matters and new strategic initiatives. Legal Affairs advises the BPD's Document Compliance Unit,

which is responsible for BPD's responses to Public Information Act requests and subpoenas, and facilitates the process outlined in BPD's Memorandum of Understanding with the Fraternal Order of Police ("FOP") for raising and resolving grievances when FOP members believe their contractual rights have been violated. Finally, Legal Affairs represents BPD in the ongoing Consent Decree litigation, including assisting in reform implementation by providing guidance on policy development and training.

10. Workers Compensation

The Workers' Compensation Division handles all aspects of claims filed by injured City workers. Worker's Compensation has approximately 1,800 open files at any given time and another 17,000 closed files that could potentially be reopened. The group works closely with the contractual Third-Party Administrator (Sedgwick) that handles and provides adjusting services for the City workers' compensation claims to ensure that City employees are properly cared for following an occupational injury at a fair and reasonable cost to the City. Workers Compensation makes every effort to pay the appropriate benefits under the law and to avoid paying for non-compensable claims, unrelated conditions, exaggerated symptoms and unnecessary treatment.

The Workers' Compensation staff opens approximately 5-20 new files daily. They file documents, physically and electronically, and provide support work for attorneys on all preparations for hearings and/or trials. Attorneys confer daily with the adjusters at Sedgwick regarding the myriad of issues that arise in workers' compensation claims. This includes daily discussions with attorneys for City employees in efforts to resolve claims or refine and clarify issues that must go to hearing. Disputes regarding such issues are resolved in hearings before the Maryland Workers' Compensation Commission. The office represents the City at these hearings on a daily basis with multiple hearings scheduled each day (the number of daily hearings had been reduced due to the COVID-19 pandemic, but we still handled 3-10 hearings each day).

When parties are aggrieved by a decision of the Commission, an appeal may be filed with the Circuit Court where the disputed issue is retried in its entirety and, unlike in hearings before the Commission where medical documents are accepted as evidence in lieu of live testimony, physicians must testify at the appeal trial. The majority of the appeals are jury trials that require extensive preparation given the heightened evidentiary standard required due to the need for live expert witnesses. The office generally has approximately 60-70 appeals pending at any given time but more recently this number has been averaging about 75 because of back-ups resulting from COVID delays.

In addition to the litigation responsibilities, attorneys participate in periodic liaison meetings with the City agencies to discuss pending workers' compensation claims. These meetings are attended by representatives of the respective Agency, Mercy Hospital and Sedgwick and involve a "roundtable" discussion regarding the current and future handling of those claims. The group also meets weekly with Sedgwick to discuss various claims and claims handling issues. Attorneys prepare and present to the Sedgwick staff educational programs on numerous topics involving the handling of workers' compensation claims and on developments within the Maryland Workers'

Compensation community. The group provides updates on appellate decisions affecting workers' compensation claims and we discuss how to improve our processes and claims handling capabilities.

During this past fiscal year, the office handled or consulted on 2,805 matters, including 131 appeals. The group was successful in contesting compensability issues, causation issues, medical necessity issues and other issues not involving permanent partial impairment on over 38% of cases which were tried involving such issues. With the Maryland Workers' Compensation Commission historically being Claimant oriented, this is an impressive success rate. Among those claims where the City prevailed were several "presumption" claims involving police and fire employees claiming that hypertension, heart disease or various cancers were causally related to their occupation. The standard requires the Workers Compensation Commission to presume a causal relationship, making it difficult to prevail. Our group prevailed on 10 such claims this past fiscal year.

On any given day, the attorneys for the Workers' Compensation Division will conduct multiple hearings before the Maryland Workers' Compensation Commission, prepare claims for future hearings, attend agency meetings to discuss claims and handle an appellate case load. We do this with a dedicated staff of support personnel and a keen interest in representing the City of Baltimore in a fair and reasonable manner.

11. Central Bureau of Investigation

The Central Bureau of Investigation (CBI) is tasked with the investigation and adjustment of a range of claims that are asserted against the City of Baltimore, including general liability and automobile claims. The CBI practice group is staffed by a division chief, six claim investigators, and three legal assistants. Automobile claims for accidents caused by City-owned vehicles account for the greatest number of bodily injury and physical damage claims. The majority of automobile accident claims filed are a result of accidents involving the Department of Police, Department of Transportation, Department of Fire, and Department of Public Works. General liability claims are those in which the City is alleged to be liable and include sewer backup claims, slips and falls, potholes, and water main breaks. Investigators request and collect records from City agencies, visit locations of accidents as needed, and respond to claimants. CBI works to evaluate all claims in order to make a liability determination, and whether to recommend a monetary settlement for damages.

Claim settlements are approved at increasing levels of authority up to the City Solicitor's Law Department Large Loss Settlement Committee and the City's Board of Estimates, consistent with the administrative manual. The CBI practice group works closely with Law Department attorneys on claims that involve litigation and provide assistance in court proceedings, when necessary. The CBI practice group also maintains claim information to help respond to public information act requests, requests from the Mayor's office and City Council, and requests from other departments regarding their losses. Between July 1, 2019 and June 30, 2021, CBI received and investigated 3,206 automobile liability and general liability claims against the City of Baltimore.

IV. The Minority and Women's Business Opportunity Office (MWBOO)

The Minority and Women's Business Opportunity Office (MWBOO) oversees compliance with Baltimore City Code Article 5, Subtitle 28 governing Minority Business Enterprises (MBE), Women's Business Enterprises (WBE); and Small Local Business Enterprises (SLBE). MWBOO reviews the budgets and sets participation goals on all contracts greater than \$50,000 and private projects receiving a benefit from the City of \$50,000 or more. MWBOO also sets MBE/WBE participation goals on the contract and reviews compliance with these goals. All waivers, post bid substitutions of contractors, and reallocation of subcontractor utilizations must be reviewed and approved by MWBOO. All matters that are considered by the Board of Estimates are reviewed for compliance, including: bids, contract renewals, increases, extensions, amendments, change orders over 10%, and emergency procurements. As such, MWBOO works and collaborates with the Bureau of Purchasing, Department of Public Works, Baltimore City Office of Information & Technology, Department of Housing and Community Development, Department of Transportation, Recreation and Parks, Baltimore Police Department, Health Department, Finance Department, and the Mayor's Minority and Women-Owned Business Development Office. Enterprises are certified as an MBE/WBE pursuant to City Code, which sets forth guidelines for the certification of MBE/WBE compliance. City Code Art. 5, § 28-79.

MWBOO is tasked with evaluating applications for certification or renewal as an MBE/WBE. To ensure that only qualified applicant enterprises are certified, MWBOO reviews all applications and conducts investigations to determine if the enterprise is in fact controlled by a minority or woman owner, that the business has been in operation, and that the market area office is in accordance with industry standards, easily identified as the business, and is engaged in active business operations. These investigations can include visits to the applicant's work site and interviews with business owners to confirm majority ownership (minority/woman). MWBOO additionally undertakes site visits to verify that subcontractors are actually performing on the contract, investigating the basis of payment disputes between prime contractors and subcontractors, conducts contract reviews when a prime requests a substitution of a subcontractor, change in subcontractor utilization, or decrease in participation goals, contracts reviews when there is an allegation of non-compliance with MBE/WBE participation goals, completes compliance reviews and interviews for release of retainage requests. MWBOO will be increasing the use of enforcement mechanisms by recommendations to the Board of Estimates and assessing civil penalties.

The disparity study that serves as the legal foundation for the MBE/WBE certification program is currently ongoing. This is the first since the March 11, 2014 disparity study. To survive the strict scrutiny standard, a remedial race-conscious program must be based on a compelling governmental interest. The compelling government interest in the case of the MBE/WBE certification program is established by past or present racial and/or gender-based discrimination requiring remedial attention. The disparity study provides the statistical evidentiary basis to support the MBE/WBE certification program as a means of remedying discrimination in the Baltimore City Market Area.

The MWBOO team has continued to work hard throughout this challenging time. MWBOO strives to be a resource for the contractor community when they need assistance with the certification or renewal process, how to meet goals on a contract, or in identifying certified enterprises that are needed for a particular project. MWBOO processed an average of 90 certifications monthly last year. There were 1,606 active minority and women owned businesses as of December 2020. The 2020 statistics, as detailed in the MWBOO 2020 Annual Report, are below:

2020 MBE/WBE Data Statistics	
TOTAL CERTIFIED BUSINESSES	281
TOTAL MBE'S	138
TOTAL WBE'S	95
TOTAL M/WBE'S	48
TOTAL MDOT	42
TOTAL NEW APPLICATIONS	69
TOTAL RENEWAL APPLICATIONS	175
TOTAL EXPANSION OF SERVICES	4

Following the Comptroller's Audit evaluation of November 5, 2020 to January 3, 2021, MWBOO has implemented numerous process improvements. MWBOO converted all previous Excel data to Smartsheet, a cloud-based spreadsheet program with a plethora of features that has the capability to perform multiple calculations, generate reports, create forms, and is accessible via the Internet at all times. MWBOO created an online PDF checklist that now reflects each phase and step of the application review process. This online form replaced two manual paper-based methods previously used by the department. In January 2020, the use of Trello replaced the written, paper-based, execution. This system allows staff to record all actions associated with the evaluation of applications.

MWBOO in coordination with BCIT and our agency partners is working towards the implementation of the B2G contract compliance software. This will enable the agency to better monitor compliance throughout the contract and MWBOO to more efficiently conduct compliance reviews. This will eliminate the need for MWBOO Compliance Officers to search, contact prime and subcontractors via email and phone to compile payment information. MWBOO continues to move towards full digitization of the application and compliance process. The fillable certification application and renewal application can now both be found online at: <https://law.baltimorecity.gov/mwboo>. This has eliminated the need to print and submit a paper application via email or in person.

MWBOO may be contacted at: MWBOO@baltimorecity.gov or via phone at (410) 396-4355.

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