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Written by
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NO BROTHERLY LOVE FOR ENTREPRENEURS

It's Never Sunny for Philadelphia's Small Businesses



Cover Photos

Top—Aaron Ultimo found the process of dealing with city officials to open up his coffee bar like operating “in a different century.”

Bottom—Philadelphia enjoys a thriving street food-vending market even though the city’s laws make it unnecessarily difficult for new businesses to enter this trade.

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by Robert McNamara, Staff Attorney
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EXECUTIVE SUMMARY

The city of Philadelphia is governed by the ordinary things one finds in American cities: a mayor, a city council, various bureaucracies. But it is also governed by something else: the word “no.” At nearly every level, Philadelphia’s city government and related bureaucracies operate with a one-word vocabulary; whatever the question is, the answer is “No.” In field after field after field—from zoning to permitting to occupational licensing—would-be entrepreneurs hear that answer time and again.

But as anyone who has ever spent time around a toddler can attest, a one-word vocabulary quickly wears thin—and in this (as in many things) what is tolerable in a toddler makes for terrible public policy. Saying nothing but “no” eventually yields exactly what one would expect: nothing.

And nothing, unfortunately, is what Philadelphia has to look forward to unless it begins to reshape its approach to entrepreneurship. Three key areas cry out for reform:

Zoning

Philadelphia’s zoning code represents an almost insurmountable barrier to starting a new business in many (if not most) areas. Perhaps most significantly for people looking to start new businesses, in many of the city’s residential areas, it is flatly illegal to run a business from your home—even if you do not create a traffic problem or cause noise that would bother your neighbors. Not only does the city’s decades-old zoning code forbid most basic land uses in most areas, the only way to escape from the code’s strictures is to ask for a special variance from the city’s Zoning Board of Adjustments (also referred to as the Board of Appeals), a bureaucratic body that operates with essentially unlimited discretion—and acts like it.

Taxation

The city’s current system for raising revenue from businesses is stifling and perplexing. Philadelphia small businesses are faced with taxes that are not simply too high, but too many, creating innumerable chances for a business owner to inadvertently slip up and incur hefty fines.

Permitting & Licensing

As things stand, the mission of the city’s various offices and bureaucracies appears to be to stymie the creation of new businesses wherever possible. The city’s procedures themselves are fundamentally broken, to say nothing of the fact that,



for a wide variety of occupations, city and state laws—for no good reason at all—create tremendous barriers to entry.

The city's permitting and licensing codes are onerous enough in themselves, but city officials often seem hell-bent on treating the system as a perverse game: Entrepreneurs must successfully navigate the byzantine system of rules in order to “win.” This is backwards—where the city's laws get in the way of honest entrepreneurship, this has to be seen as a *bad thing*.

Moreover, city and state law collude to make some occupations all but off limits to new entrants. For some businesses these laws impose unnecessary and unrelated educational requirements that interfere with grassroots entrepreneurship. For others—like taxi services—new businesses are simply illegal altogether. Just a few examples of the unnecessary licensing burdens placed on would-be entrepreneurs:

State law makes it illegal to engage in landscape architecture—which in many cases simply means trimming shrubs—unless the would-be “architect” goes through an expensive process of education and licensure.

Similarly, hair styling, hair painting, traditional African hairbraiding and most other variants of what the law calls “beauty culture” require extensive training and education—training and education that is totally divorced from any public health or safety concerns.

Licensing requirements for new street vendors are often incomprehensible, at least in areas where new vendors are not functionally prohibited. Mobile vendors find it all but impossible to determine where it is legally permissible to vend.

State law flatly forbids new taxi businesses.

The city even requires a license even to close a business.

And the city government clearly does not recognize that all of these government-imposed barriers to honest enterprise are a problem: In 2008, the city council actually adopted an entire new regulation making it illegal to work as a tour guide without obtaining a special government-issued license. In the eyes of the city government, there is apparently nothing—including talking about the Liberty Bell—that citizens should be allowed to do without the government's say-so.

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INTRODUCTION

Philadelphia is one of the rare cities that inspires true passion in its residents. Philadelphians take pride in their city, and there's a strikingly large population of people in the area who want to make their community better off—people with ideas about new businesses or services Philadelphia might need. These people have questions: They want to know where they can start their business, what they need to do to get the city's permission and how much all of this will cost. Unfortunately, the Philadelphia city government does not have answers. And when it does have an answer, that answer is, almost invariably, "No."

The current state of city government—the rampant overregulation, the tremendous burdens placed on would-be entrepreneurs, and, above all, the pervasive culture of "no" that permeates every city office—is putting a stranglehold on entrepreneurial activity. Wracked by a budget crisis, the city inexplicably continues to expend extraordinary resources making it *more* difficult to start a business (and thereby generate more tax revenue). All Philadelphia needs to do in order to unleash growth, in order to unleash the creative energies of the literally thousands of would-be entrepreneurs within its borders—is to stop saying "no," and start saying "yes."

Entrepreneurial Activity in Philadelphia

Entrepreneurs are the heart of the American economy. Entrepreneurs create jobs, provide services, introduce new products and improve their neighbors' lives—all while paying taxes that pay for government services. Entrepreneurs provide the drive that makes local economies work.

They do that everywhere, that is, except for Philadelphia, where they are not allowed to. Philadelphia has the lowest rate of entrepreneurship of any major city in the United States. In April 2008, the nonprofit Kauffman Foundation of Entrepreneurship found that Philadelphia had the lowest rate of entrepreneurial activity of any of the 15 largest metropolitan areas in the country, with only 110 entrepreneurs per one hundred thousand adults.¹ That is only about one-third the national average rate, and less than one-fifth the rate the study found in Phoenix, Ariz.²

This paltry rate of entrepreneurship does not stem from a lack of local drive, or education or income.³ Indeed, talking to the average Philadelphian, one gets the sense that half the people in the city are walking around with a business plan in their back pocket. Given the drive and enthusiasm Philadelphians seem to have for entrepreneurship, the incredibly low rate of actual entrepreneurial activity in the city seems nothing short of shocking. There is nothing wrong with the *people* of Philadelphia—but there is unquestionably something wrong with *its government*.

It is important to bear in mind that the strikingly low rate of entrepreneurship measured by things like the Kauffman study measures only Philadelphia's rate of legal entrepreneurs—that is, small businesses that have all of the necessary permits, pay all of the necessary taxes and operate within the bounds of the city's legal system. For obvious reasons, it is difficult to quantify how many entrepreneurs are currently operating illegally and in secret, but the Institute for Justice has spoken with countless individuals running businesses outside the bounds of the law—driven to illegality by the complexity, expense or simple hostility of the city's regulatory system.

But even though these businesses continue to operate, to one degree or another, their impact is greatly lessened. Illegal businesses have less of a positive effect on their communities—because they cannot advertise, because it is difficult to hire employees and because concerns about being caught by government officials make the owners unwilling to grow the business. They also contribute nothing to the city’s tax base. For all these reasons, it often makes little practical difference whether the city government destroys a would-be business or simply forces it to operate in the shadows. Either way, it has prevented an entrepreneur from improving the quality of life in her community—and any reforms of city government should be directed as much at making it easier for businesses to step out of the shadows as at making it easier for new businesses to start from scratch.

Barriers to Entrepreneurship

There are plenty of reasons not to start a new business. It can be difficult to find financial backing, and for many people, the risks involved in starting a new venture are simply too terrifying. All of these reasons, though, hold true for entrepreneurs nationwide, in cities with three or five times as much entrepreneurial activity as Philadelphia. What entrepreneurs in those cities do not face, however, is the Philadelphia city government.

Philadelphia’s government is ruled, at a very basic level, by a culture of “no.” Entrepreneurs are told, at every turn, that they may not do anything without some government official’s permission. And that permission is rarely forthcoming, and sometimes flatly impossible to obtain. This defining problem hinders entrepreneurs in Philadelphia at every stage of their interaction with city government—from zoning, to taxation, to a wide assortment of licensing and permitting issues.

ZONING

Philadelphia’s zoning code is convoluted, outdated and horrendously restrictive. Although zoning presents a problem in many cities, the burden is particularly oppressive in Philadelphia for a few overlapping reasons:

The code—which is essentially a group of restrictions that have accreted over many years without even a coherent vision—is simply too restrictive. As a practical matter, in many regions, nearly any conceivable use for private property (other than whatever use happens to currently stand on that property) is simply prohibited.

Moreover, any attempt to get around the zoning code’s prohibition of particular activities sends a property owner into a dizzying bureaucratic maze. The only way to get around a zoning prohibition is to apply for a “zoning variance”—a process that can be shockingly arbitrary and so complicated as to discourage residents from even trying to apply.

Philadelphia’s government is ruled, at a very basic level, by a culture of “no.” This defining problem hinders entrepreneurs in Philadelphia at every stage of their interaction with city government—from zoning, to taxation, to a wide assortment of licensing and permitting issues.

“Essentially,” he said, “Philadelphia has 150 years of zoning history without ever revamping its zoning code. That creates 150 years worth of exceptions to the original zoning plan.” This outdated code (rife with exceptions and existing illegal uses) can create a nightmare for anyone who wants to open a new business.

And to make matters worse, the question of whether a zoning variance should be granted is a question on which everyone gets a say—neighbors, passersby and just general busybodies alike. Property owners seeking a variance all too often have to run a gauntlet of private objectors, each with their own set of idiosyncratic demands.

Indeed, experts in Philadelphia entrepreneurship routinely point to the city’s zoning code as a leading problem for would-be entrepreneurs. Praveen Kosuri, executive director of the University of Pennsylvania’s Entrepreneurship Legal Clinic—which lets top-flight law students help entrepreneurs navigate the various legal thickets of opening a business in Philadelphia—summarizes the problem succinctly: “Essentially,” he said, “Philadelphia has 150 years of zoning history without ever revamping its zoning code. That creates 150 years worth of exceptions to the original zoning plan.” This outdated code (rife with exceptions and existing illegal uses) can create a nightmare for anyone who wants to open a new business.

As with many of the problems identified in this report, city officials recognize—at least to an extent—that

the problem exists. The city has retained consultants to explore reforming its zoning code.⁴ As, however, with many problems the city acknowledges, there is no indication of when a solution will actually be enacted—or, more importantly, whether any “reforms” will actually address the true problem.

Even in those rare instances in which the city’s zoning code, on its face, allows an entrepreneur to use her property in a particular way, the culture of “no”—the presumption that the zoning code *must* forbid something, because the zoning code forbids nearly *everything*—still often stands in the way. It is all too often difficult to figure out what the zoning code allows—and even then, it can be difficult to convince city officials to obey the code as written.

There is no better example of the system’s consequences for ordinary would-be entrepreneurs than Debbi Ramsey, owner of Natural Wellness & Spa.⁵ Debbi never wanted to be self-employed. She liked working for someone else and getting a regular paycheck. But when she started taking massage-therapy classes at 52, she needed to practice different techniques on her friends and relatives. And once she finished school, her friends were unwilling to let the massages stop, and prevailed upon her to go into business for herself using her new training.

Her initial plan for her massage business was to start by operating out of the basement of her home, but—perhaps unfortunately—she is meticulous by nature. “I realized through my research that [a home-based business would be] illegal,” she said. “[And] I’m the type of person with a conscience. I like to do things right.” Although many entrepreneurs in her situation would simply have operated an illegal business, Debbi refused to break the law. (See *Home-Based Businesses*, below.)

Because she was unwilling to operate illegally, Debbi instead renovated a nearby commercial building owned by her mother-in-law—requiring tens of thousands of dollars in expenses before she had a penny of revenue.

Meanwhile, Debbi continued to dig into the city’s requirements for her new business, finding frustration at every turn. Even her efforts at finding out what the city’s requirements *were* met with frustration. “Everything I found,” she said, “I found by accident. Prayer and accident. [And] the more I dug, the more I cried.”



Praveen Kosuri, right, Director of the Entrepreneurship Legal Clinic at the University of Pennsylvania, works to help Philadelphia entrepreneurs navigate the city's regulatory thicket.

Digging, unfortunately, was not enough. Debbi discovered on a city government website that a special massage premises license would not be needed for massage done only at the direction of a doctor or physical therapist—which is all she intended to do (all of Debbi's clients have prescriptions from a physician). So she printed out the web page and triumphantly brought it downtown.

"No," said the customer service agent, "that's not the way we do it." That exemption, she was told, was only available to massage therapists physically located inside a physician's office. But Debbi persevered, eventually being routed to a supervisor, who hauled out the relevant code and found the same language Debbi had found on the Web, which on its face allows two different exemptions: one for massage therapy done *at the direction* of a physician, and a separate exemption for massage therapy done *in the office* of a physician.⁶

"Well," said the supervisor, "I've been here for 25 years, and that's not the way we do it." Despite Debbi's continued protestations, no one ever explained to her why the city did not believe the exemption applied to her. That just wasn't "the way [the city does] it," the text of the code notwithstanding.

"I'm a trained massage therapist," she said. "I can massage you anywhere in the world. I can take you out in the street right now and massage you there. [So why] can't [I] do it in this room?"

Although Debbi's hard fight eventually resulted in her being able to operate legally (due in part, she says, to changes in the zoning code), her eventual success came at the cost of literally months of effort.

Debbi's story is far from unique (except, perhaps, in her refusal to simply flout the law). Entrepreneurs are left to figure out a massively prohibitory zoning code all on their own—and then, even if they manage to sort through the requirements, are left at the mercy of a zoning bureaucracy that operates from a presumption that people can never do what they want to do with their own property.

And Debbi, it is worth pointing out, is in a relatively good position—the law actually allows her to do what she wants to do. Entrepreneurs who are not so lucky need to seek a zoning variance from the city's Zoning Board of Adjustments—a process in which, apparently, almost anything can happen.

The ZBA

The Zoning Board of Adjustments meets on the 18th floor of a Center City office building, in a sterile room festooned with blue chairs and elementary-school-style posters exhorting “Ethical Decision Making” and asking visitors whether they are following the “Golden Rule.” Based on what I observed directly, and countless stories heard from other people, there is literally no one who would want to have the zoning-variance process done unto them.

Individuals seeking a variance are expected to be flawlessly prepared. They must bring a copy of their deed or lease to the property with them (and a married applicant should not even think about trying for a variance without a signed letter from his spouse granting permission to do so). An applicant must also have photographs of the property—even if the variance requested has nothing to do with the exterior of the property. And organizations of any kind—even tiny nonprof-

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its—must be represented by an attorney—even though the members of the Zoning Board themselves do not have to be lawyers.

If an applicant is fully prepared to go before the board, she (or her attorney) must make a full presentation describing the variance sought. Three separate groups also address the Board, each of which has the power to stymie an application: community groups, city council members and the city’s Planning Board.

One might expect that objections to zoning variances would have to do with the nature of the variance—concerns that allowing a new use would create pollution or would interfere with nearby properties. Nothing could be further from the truth.

For example, at a recent board meeting, one real-estate professional (who declined to be interviewed for this report) came with what seemed like an eminently simple variance request: The building from which she operated her business already had a parking space set aside in the back, but the building wasn’t zoned to have onsite parking. She just wanted a variance to make it legal for her to use the space that already existed.

Rather than a discussion about the consequences to the neighborhood of allowing the use of an existing parking space, the ensuing meeting turned into a debate about where the real-estate business kept its trash—apparently, near a fence on the property. Although the city had never issued any citations for improper trash storage, this had apparently caused some consternation among the neighbors (or, at least, among the single neighbor who came to the hearing). It was not entirely clear whether it was legal to store trash by the fence, or what this had to do with the parking space—but no one seemed particularly to care.

After a lengthy discussion of things other than the merits of allowing an existing parking space to be used for parking, the members of the board in attendance voted and deadlocked, 2 to 2.⁷ And, in yet another illustration of Philadelphia’s culture of “no,” a tie vote means the same thing as a unanimous “No.”

This was not an unusual case—the board regularly hears objections that are totally unrelated to the actual variance being sought.⁸ And the board regularly imposes requirements

A Word on Community Development Corporations

Philadelphia is blanketed by an interlocking web of community organizations, generally referred to as “Community Development Corporations,” nonprofits that purport to support neighborhood development. And, to be sure, these organizations can be helpful sources of funds for entrepreneurs. But they are just as often—if not more frequently—a hindrance. Most CDCs are simply independent nonprofit corporations—which means that anyone can (and, with apparent frequency, anyone does) simply start their own. Predictably, this leads to unresolvable turf wars in which different CDCs compete for limited government development funds and even over the “right” to particular territory. Sometimes CDCs even change their boundaries, increasing the amount of regulatory conflict.

Of course, it is usually no problem when two different charities seek to help people in the same area. But Philadelphia’s CDCs exercise what often amounts to full veto power over zoning decisions. And the method of resolving these turf wars in the zoning context is, sadly, perfectly in keeping with Philadelphia’s broader scheme: Where two CDCs claim the same piece of territory, but disagree over whether a particular zoning variance should be allowed, the dispute is all too frequently resolved with a simple “No.”

“If two [CDCs] overlap and one objects to the variance,” one city employee told me, “It puts [city council members] in a difficult position. You don’t want to be seen as disregarding the community’s wishes.” The result often means that each of the interlocking groups exercises an effective veto over any proposed property use inside its self-proclaimed boundaries.

Although all CDCs proclaim their mission is to promote community development (and while, to one degree or another, each does some things that advance that mission), there is a marked difference between organizations like the University of Pennsylvania’s Entrepreneurship Clinic—which seeks to help all entrepreneurs overcome the city’s barriers to starting or growing a business—and organizations like CDCs that, all too often, join hands with the government to create barriers to starting or growing a business.





Ramesh Naropanth spent \$8,000 on new security grates (see photo, right) so the city would grant him the privilege of selling sandwiches.

(sometimes called “provisos”) that variance seekers take steps and incur unrelated costs as a condition of granting any given variance.

One example of the costs of this system is Ramesh Naropanth, who owns the Cedar Street Supermarket. Ramesh is no stranger to business, holding his MBA in corporate finance from Farleigh Dickinson University.

The Cedar Street Supermarket plays a central role in its surrounding community. Ramesh calls it “one-stop shopping for convenience and value,” but anyone spending a couple of hours there would see customer after customer whose children greet Ramesh by name, who buy much-needed baby formula with a promise to pay when they can, and who clearly view the Supermarket as an important part of neighborhood life.

Ramesh wanted to build on this community spirit and sought a zoning variance that would allow him to sell sandwiches out of his market. He was already allowed to sell bread, and he was already allowed to sell deli meats—he just wanted to put the two together and let customers walk out with a cold sandwich. “If people have a choice between junk food and a sandwich, I want them to be able to take the healthy option,” he explained.

Ramesh’s first attempt at securing a variance went the way of most entrepreneurs’ applications: It was flatly rejected. Ramesh had assumed that, because there would be no real effect on his neighbors (he had no plans to serve hot food that might create smoke or to add outside seating), and since permitting the variance would give people in the neighborhood healthier food options without making anyone worse off, he would not have a problem. He could not have been more wrong: Community members showed up making outlandish demands that Ramesh make financial contributions to various local causes and, in keeping with the all-too-frequent practice of treating any community objection as a veto, Ramesh’s request for a variance was rejected.



Ramesh was shocked. After all, he had dealt with zoning authorities before—he went through a similar process when remodeling his home in New Jersey. The process was similar, that is, in that he needed a zoning variance; it was wildly different, however, in that it was “completely painless.” There was simply no comparison to the head-spinning experience he had before Philadelphia’s Zoning Board of Appeals.

Chagrined, he sought help from the University of Pennsylvania Law School’s Entrepreneurship Legal Clinic. Aided by a team of law students he praises as “methodical” and “very well-prepared,” Ramesh’s second application was granted—but only on the (unrelated) condition that he install brand-new security grates on his windows, a process that ended up costing about \$8,000. Ramesh does not object to having the new grates—one can never have too much security—but the fact remains that they are not legally required (none of the neighboring businesses have them) and it was yet another expense to layer on top of the zoning process, all just to let people buy a sandwich. If anything, Ramesh is glad he escaped without having to fulfill some community members’ more outrageous (and unrelated) demands, such as the request that he pay for an area play-

ground in exchange for the right to sell sandwiches.

The process has taught Ramesh a lesson: He owns the building housing his market outright, and he has a variety of ideas for expanding and possibly including some outside seating to give community members a place to congregate. But he is unsure whether the zoning process, with no way to predict the outcome, would be worth it. “I don’t want to be making a fool of myself,” he says.

Anyone spending a couple of hours there would see customer after customer whose children greet Ramesh by name, who buy much-needed baby formula with a promise to pay when they can, and who clearly view the Supermarket as an important part of neighborhood life.

Signs

One would not know it from walking down any street in the city, but commercial signs are illegal in Philadelphia. To put up a sign of nearly any kind requires a special permit from the city, which must specifically approve (to the smallest detail) each and every sign erected.⁹

For a typical store-identification sign (such as one that reads “Grocery”), typical production costs are between \$1,200 and \$1,500. At \$500, the *permit fee* for a simple sign can end up being more than one quarter of the total cost of adding the sign—to say nothing of the 30-day wait for the permit to be processed.

Faced with these costs, many merchants told me they just put up signs on their own, on the theory that city officials will only sporadically enforce the preposterously draconian ordinance. For the most part, these merchants seem to be making the right call—enforcement of the sign-permit requirement seems at best sporadic, and an admittedly unscientific sample of city businesses showed that the vast majority of signs are technically illegal under the code. As is the case with far too many city laws, the rules impose almost impossible burdens on merchants, and so the rules are (in many cases) simply disregarded.

Home-based Businesses

The broader problems with the city’s zoning regulations find specific expression in the way the law treats home-based businesses. As with commercial signs, in many areas of the city, home-based businesses are flatly prohibited without a zoning variance.¹⁰ And, given the documented difficulty of securing a zoning variance, this means that many entrepreneurs simply cannot afford to even try to operate legally out of their homes.

But operating out of the home is one of the only ways most entrepreneurs can afford to start their business. As the Enterprise Center’s Della Clark, who has more than two decades’ experience working with small businesses in Philadelphia, pointed out, “There are very few places in the city of Philadelphia that can give you free rent People don’t have the revenue [yet] to start that business outside their home.” Incurring huge upfront costs can be a killer for a startup business—as Debbi Ramsey (above) demonstrates.

Of course, as with signs, the legal prohibition does not mean that no one breaks the law—in fact, it means that *many* people break the law. Once again, by adopting a draconian prohibition, the city has accomplished nothing but driving some businesses into the shadows, and destroying others outright. The main function of the law, perversely, seems to be to punish the few people who are foolish enough to obey it.

Parking Requirements

The arbitrary and counterproductive requirements imposed by Philadelphia’s zoning code are so legion that it is difficult to choose one to highlight, lest this report seem to endorse the various provisions it fails to mention. That said, the minimum parking requirements imposed by the city’s zoning code serve as a useful microcosm of Philadelphia’s approach to zoning.¹¹ Put simply, if you want to build something—anything—new in Philadelphia, the city mandates that

you set aside a certain area to be used for no purpose other than vehicle parking.

As an initial matter, the code’s requirements are oppressively complex. As Bill Kramer, then acting division director of the Development Planning Division of the Philadelphia City Planning Commission, admitted in 2008, “Currently, the code requirements for parking are a little less than clear. It’s all the kind of thing that where you are is going to determine how much parking is required in that particular district.”¹² As with all of the city’s regulations, complexity here favors bigger businesses—the only people who will be able to function within this system are those with the money to buy teams of lawyers to ensure compliance or those with the courage of John Longacre (discussed later in this report) to simply start building without regard for the city code’s never-ending demands.

But more importantly, these requirements seem to have been imposed without giving any thought to what the city is accomplishing through these burdensome regulations. Surely, developers building new condos or shopping centers can be trusted to construct enough parking to lure residents or customers to their development. Mandating that developers include a minimum number of parking spaces seems to make no more sense than mandating that hot-dog stands stock a minimum number of buns. What reason do we have to believe that, absent this legal mandate, condominium developers would somehow forget that residents looking to buy a condo will, frequently, want to be able to park there?

Instead, the effect of the minimum-parking requirements (like much of the city’s zoning code) seems to be entirely pernicious.¹³ The complicated regulations impose compliance costs, and (where the code requires more spaces than the developer would otherwise have included) require valuable real estate to be turned into essentially empty space. The only real impact for the city’s residents is to require developers to build *more parking spaces than people want*. Unless city officials can present a compelling argument for using government power to artificially encourage Philadelphians to drive more frequently, the city’s minimum-parking requirements should simply be scrapped.

TAXATION

The culture of “no” is at the very heart of the city’s tax system, which envisions the mere act of being in business as a “privilege” for which would-be entrepreneurs must pay a business privilege fee.¹⁴ One of the most basic American rights—the right to earn an honest living—is a special privilege in Philadelphia, and one you must purchase from the government.

This point bears emphasis: Philadelphia literally makes it illegal to earn *any* money outside of an employer-employee relationship without first paying the city a special fee. For big business, of course, the fee (\$50/year or \$300 for a permanent license) is no major obstacle. For small startups, it can be fatal.

The outrageousness of the law is only compounded by the fact that it makes nearly everyone in Philadelphia—or, at least, everyone who has ever earned a dollar through babysitting or mowing lawns or any of a thousand other everyday pursuits—into a lawbreaker. And that is no exaggeration—Philadelphia seems intent on enforcing the law to the letter, to the

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extent that in August 2010 it cracked down on unlicensed hobbyist blogger Marilyn Bess, whose blog yielded an estimated \$50 in profits.¹⁵

Once an entrepreneur has secured the “privilege” of going into business for herself, she is faced with a truly bewildering array of separate taxes—including a business-privilege tax (which is based on both gross income and net profits), an additional tax on net profits (separate from the net-profits tax paid for the “privilege” of being in business), a “use and occupancy” tax for the additional privilege of occupying a building within the city, and further special taxes on specific things like parking services or car rentals—with all this falling on top of the additional cost of hiring employees who are burdened by a separate city wage tax.¹⁶

And these, of course, are just taxes. The city demands additional money from entrepreneurs in the form of “fees”—fees to do everything from just opening your business (as noted above) to putting up a simple sign telling people what you sell. Although not styled as “taxes,” these fees serve the same purpose—raising city revenue—

and have the same effect—making it more expensive to run a business.

The array of taxes, credits and fees raise the cost of doing business both directly (by taking money from businesses) and indirectly (by imposing tremendous compliance costs through the sheer complexity of the tax system). Every single tax and fee imposed by the city creates an additional opportunity for a business owner to slip up and incur hundreds or even thousands of dollars in fines.

Even if completed perfectly, however, the array of taxes and fees is daunting. A fledgling entrepreneur in Philadelphia can find himself handing over more than one tenth of his profits to the city, all before he even begins to pay state and federal taxes on his income.

As Praveen Kosuri, of the University of Pennsylvania, wryly noted, when the city wants to attract *big* businesses, all of these taxes are frequently waived, leaving the burden on small businesses. And many of those businesses respond predictably: “It’s a real decision [for them],” Praveen said, “to open up here in Philadelphia or to cross City Line Avenue and set up shop in Conshohocken.”

It is worth noting, once again, that these requirements drive any number of businesses into the underground economy. The city is rife with individuals operating illegally, simply because the burden of paying the city’s business-privilege tax is too high—especially for businesses that are operated part-time by their owners or for individuals who operate as independent contractors within the city limits.

Philadelphia seems intent on enforcing the law to the letter, to the extent that in August 2010 it cracked down on unlicensed hobbyist blogger Marilyn Bess, whose blog yielded an estimated \$50 in profits.

LICENSING

Board of Health, Licensing and Inspections

Unlike many of the rules and regulations referenced in this report, the Board of Health finds few detractors on substance—few if any entrepreneurs say that the government needs to get out of the business of protecting consumers from insanitary food. But on procedure, the Health Department,



Aaron Ultimo found the process of dealing with city officials to open up his coffee bar like operating “in a different century.” When the Board of Health lost his paperwork, the agency simply sent him away rather than help sort out the problem.

like the Department of Licensing and Inspections—and like essentially every arm of the Philadelphia bureaucracy—seems to be nothing short of a nightmare: inflexible, incomprehensible and uncompromising.

A large part of the problem is simply a tremendous division of authority. Just as, in the zoning context, a huge number of groups can exercise an effective veto over any new business, a multitude of city and state offices can independently stymie a new business venture. And there is simply no central authority to tell new businesses where they need to go, or in what order these permits need to be secured. A new restaurateur, for example, would have to go to the Philadelphia Board of Health, the Pennsylvania Liquor Control Board, the Department of Licensing and Inspection, and the Zoning Board of Adjustment, as well as settling tax issues with the Department of Revenue. Each of these steps can, in and of itself, be a time-consuming nightmare.

“Everything here is backwards,” said coffee-shop owner Aaron Ultimo, “It’s quaint sometimes, but sometimes you want to actually get stuff done.” Having worked in the coffee business in Arlington, Va., Aaron noted the stark difference between Arlington (where rules were clear and answers relatively easy to obtain) and Philadelphia, which Ultimo (employing a phrase that a surprising number of entrepreneurs used regularly) said seems like it is operating “in a different century.”

At one point, Ultimo went to the Board of Health’s offices to get the business’s permit to handle food, but “something had fallen through the cracks on their end,” he said, and a necessary piece of paperwork had gone missing. Rather than being able to sort things out there or even being able to refile the missing form, he was “just sent away.”

Area entrepreneur John Longacre, Aaron Ultimo’s business partner and an entrepreneur with years of experience in both business and city government, said problems are rife at every possible city office. After spending a while interacting with city departments, he said, “You really get a sense of what’s set up to help and what’s not. And right now none of them are [set up to help].”

“I’m Philadelphia’s biggest cheerleader,” Longacre continued, “but from the perspective of owning a business, it couldn’t be more difficult.”

Take, for example, Kate Carrara, whose Buttercream Philadelphia is the



Erin Anderson, Fringe Salon

“City Hall just assumes you should automatically know stuff. It’s a battle.”

Erin Anderson owns the Fringe Salon, a brightly lit space on Passyunk Avenue, where you can get your haircut, grab a massage, pet a cat and buy a new painting, all in one visit.

Being both meticulous and entrepreneurial, Erin originally wanted to pay her taxes in person, but when she went to the Department of Revenue, she was, she said, essentially scolded and turned away—all of her payments could be (must be) handled through the mail. But when Erin stopped receiving her tax paperwork in the mail, resulting in her missing a single payment, fees piled up far more quickly than she would have expected.

The alacrity with which late fees are assessed is not unusual—indeed, a surprising number of small-business owners related similar stories of huge fines racking up from what seemed like an innocent paperwork error. Asked what he suspected was behind the perceived increase in fines, John Longacre echoed the sentiments of many of area business owners: “Now that the city’s broke, they’re doing everything they can to collect revenue.”



Like countless other entrepreneurs across Philadelphia, Debbi Ramsey, owner of Natural Wellness & Spa, fought a pitched battle with local zoning officials.

city’s first cupcake truck—like an ice cream truck, but instead delivering professionally baked cupcakes to grateful pedestrians.

“Getting the truck wasn’t hard,” Kate said. “Having the idea wasn’t hard. Finding a location wasn’t hard. The piece that was hard was the licensing.”

A former attorney, Kate is nothing short of tenacious, but even a career in litigation failed to prepare her for the burden of starting a simple business in Philadelphia. As Kate explained the process, “I went to [the licensing authorities] and asked them what I should do. They said, ‘We don’t do it that way.’ They said, ‘You should tell us what you want to do and we’ll tell you what’s wrong [with your proposal].’ . . . It was a hassle every step of the way. Law school had nothing on this.”

Philadelphia regulations, for example, require that any vehicle from which food is sold must contain a sink and a hot-water heater. Even though Buttercream sells only premade, packaged cupcakes—which Kate bakes in a government-licensed commercial kitchen before heading out in the truck—there was no way around this requirement, requiring more than \$5,000 to refit the company’s truck. Kate does not dispute the need for these requirements for *some* types of food businesses—but applying them to prepackaged foods simply defies logic. The insanity of the system is only heightened by the fact that, all too often, the precise way each regulation applies hinges entirely on which city inspector an entrepreneur happens to be dealing with on a particular day.

“From what people tell me, and I experienced it myself, it all comes down to who’s reviewing you that day,” Kate explained. “Your whole business is going to turn on ‘Oh, we said a 12-gallon tank, and you have a 13-gallon tank.’ That makes you feel like you’re at [their mercy].”

Kate’s circumstances are unusual, in that her licensing process was almost impossibly easy: She only languished for only one month waiting for permission to operate after she had invested in all the things necessary to make her business run. That kind of speed is unheard of (and almost surely due to the leftover aura of litigator’s authority Kate carries).

A former attorney, Kate is nothing short of tenacious, but even a career in litigation failed to prepare her for the burden of starting a simple business in Philadelphia.

All told, Kate's simple idea required four separate city licenses: (1) a business license, (2) a catering license, (3) a mobile-vehicle food license, and (4) a license to operate out of a caterer's kitchen—even though the caterer from whom Kate rents kitchen space already has a valid commercial-kitchen license for the space.

And despite her doggedness, Kate's problems did not end there: On August 24, 2010, just before this report went to press, her truck was confiscated by the city's Department of Licensing and Inspections for "vending in a prohibited area."¹⁷ As Kate correctly pointed out to *Philadelphia Inquirer* reporter Robert Moran, however, the city's regulations regarding where exactly she is allowed to park are—as with so many city regulations—totally opaque, leaving her (like other entrepreneurs) almost entirely at the mercy of city officials.¹⁸

As is the case with the rest of Philadelphia's insurmountable barriers, the only way to get past them, in many cases, is to ignore them. "For my first restaurant, we just started building until we got in trouble," Longacre confesses. "Then we immediately corrected [the problem] and complied and got the permit [we needed]."

Taxis

There is no better example of the way regulations contribute to the Philadelphia shadow economy than the city's taxi industry.

Taxi service in the city is regulated by the Philadelphia Parking Authority,

which took over the job from the state Public Utility Commission in spring of 2005 as the PUC was mired in scandal over its officials allegedly accepting bribes in South Philadelphia.¹⁹

On their face, the city's laws make it illegal to start a new taxi business.²⁰ And, as far as the city's official records indicate, the city *has* no new taxi businesses. But a simple walk along the Market-Frankford line in West Philadelphia during rush hour indicates something far different: men with cars in various states of repair, inquiring whether returning commuters "need a hack." Faced with a clear market need for more taxis and a legal system that forbids them from meeting that need, these men do what Philadelphians from many other walks of life have been forced to do, and simply ignore the law.

"People need a ride," one illegal operator from West Philadelphia (who, for obvious reasons, did not want to be specifically identified) said. "[Licensed cabs] won't come out here to take them to the grocery store, to take them home from work."

Even though the U.S. Federal Trade Commission has repeatedly found that entry restrictions like these do nothing to help taxi consumers,²¹ and even though no serious case can be made that these entry restrictions are being rigorously enforced, the city of Philadelphia continues to respond to any attempt to create a new *legal* taxi business with a word that has become all too familiar: "No."

In order to operate a legal taxi service in Philadelphia—that is, to be able to pick people up on the street and then drop them off where they want to go—you are required to have a special permit, called a "medallion," issued by the Philadelphia Parking Authority.²² In order to *obtain* a medallion, you must first obtain a "certificate of public convenience."²³ In other words, you may not open a new taxi business unless the Authority first determines the city *needs* a new taxi business.

Take a second to imagine this policy applied to any other business. That is, imagine if, before an entrepreneur could start a new hamburger stand, he first had to prove that the city *needed* one—that the city's hamburger needs were not being sufficiently met by McDonald's or Burger King. If that were the law, Philadelphians in need of a high-quality burger would often end up going hungry—just as Philadelphians in need of a taxi all too often go rideless.

And, to make matters even worse, the law does not stop there. In fact, the Authority is only permitted to issue a total of 1,600 certificates of public convenience for taxi service—no



Philadelphians are justly proud of the city's street vendors, including the vegetarian offerings from University City's Magic Carpet Foods.

matter how many people might need taxi service.²⁴ And because the city already has 1,600 authorized taxis, this means that it is literally impossible to start a brand-new taxi business, no matter how hard you work or how much consumers need additional taxi service. The bottom line is this: Drivers and the riding public—not government officials—are in the best position to decide if more cabs are needed on the streets of Philadelphia. If new cab companies start up and there is no demand, those businesses will go out of business. But if there is demand, the public's need will be met.

Street Vendors

Philadelphians are justly proud of the quality of the food the city's vendors sell from street carts. Unfortunately for any Philadelphians who want to *add* to that quality, the city strictly delimits the areas in which stationary vendors can operate, and the fact that established vendors have largely taken up all of the legally available space makes it difficult—in some areas impossible—for new entrants to compete with pre-existing businesses.²⁵

Philadelphia regulates street vending in several different categories—"curb markets," where vendors may sell an almost

comically limited set of things (fresh fruits and vegetables, boxed fresh eggs, frankfurter sandwiches, shoes and dry goods) from a wheeled cart, "street vendors," who may sell essentially anything from a conveyance that takes them from place to place,²⁶ and a variety of different types of "sidewalk" vending, which is sharply circumscribed and goes by different names in different areas. The upshot is that it is impossible to break into any kind of vending except "street vend[ing]"—that is, selling from a mobile vehicle—but even there the regulations are so preposterously specific (there are more than 300 areas specified in the city code, for example, where vending is prohibited) that essentially every mobile vendor I talked to said they generally pull over and sell things wherever they want and just leave if a city inspector or police officer happens by.²⁷

Business Closing

Apparently not content to make it illegal to *open* a business, the city of Philadelphia has made it illegal to *close* one without giving the city government advance notice. Anyone with any employees who wishes to close his business must provide the city's Director of Commerce (as well as all employees) with a statement of his intent to close and an "impact statement" detailing the consequences of the proposed closure.²⁸ The law even gives city officials the authority to obtain a court order mandating that a business stay open if the city receives insufficient notice.²⁹

Tour Guides

As mentioned above, city officials are not oblivious to the problems identified in this report. Indeed, nearly every obstacle identified above either has been or is currently the subject of a task force or committee considering whether the burden on entrepreneurs should be lightened. But while city officials consider the possibility of taking steps to make things better in the future, they persist in *actually* taking steps to make things worse right now.

This is probably best illustrated by the city's plan to make it illegal for anyone to give a tour of the city without first obtaining a special tour-guide license. This new requirement—which would place significant financial burdens on

the small companies and independent contractors that make up the bulk of the city's tourism industry—was not a considered response to any consumer complaints or an attempt to prevent injuries. Instead, the city responded to complaints from a single officious guide, who believed his competitors were insufficiently educated, and to Councilman Frank Rizzo's concern that impudent guides sometimes "mak[e] fun of [Philadelphia's] artwork" by imposing new licensing, testing, insurance and permit-fee requirements on the entire tour-guide industry.³⁰ As seems almost always to be the case in Philadelphia, the urge to say "no" (in this case, to say, "No, you cannot talk about the Liberty Bell,") prevailed over all else.

Fortunately, in this case, the city's effort to say "no" has been stymied. Faced with a lawsuit by three brave local guides who sought to protect their First Amendment right to speak for a living, the city has so far been unable to enforce its new guide-licensing scheme. Those guides—Michael Tait, Ann Boulais and Josh Silver—continue to give honest, entertaining and unlicensed tours of the city to this day.³¹

Landscape Architects

Unreasonable prohibitions on operating reasonable businesses do not end at the city-government level. There is perhaps no better example of this than Pennsylvania's landscape-architect registration requirements.³² Although the law spends more than 200 words defining what it means by "landscape architecture,"³³ the simplest way to explain it is that landscape architects design (or consult about or supervise) land uses—they design things like gardens, trim the hedges and arrange the shrubs.

In order to design a garden in Pennsylvania, a would-be entrepreneur must demonstrate either eight years' experience as a landscape architect or two years' experience combined with a degree from an approved college or school of landscape architecture.³⁴ Once licensed, they must complete 24 hours of continuing education every two years.³⁵

Pennsylvania is not unusual in requiring "landscape architects" to obtain a government license.³⁶ But one cannot



Philadelphia-area tour guide Josh Silver, left, talks to reporters. Silver sued Philadelphia after the city passed a law making it illegal for him to talk about the Liberty Bell or other Philadelphia sights without first obtaining a special government license.

Hairbraiding

help but wonder what purpose is served by imposing these burdens on would-be entrepreneurs—what threat to the public health and safety is being staved off by a law that, by its literal terms, prevents anyone from opining on the proper shape of a hedge without the proper government credentials. It is useful to contrast the limits imposed on “landscape architects” with those imposed on another group—actual architects—who could create genuine safety concerns by performing their jobs incompetently. Pennsylvania’s architect-licensing law only prohibits unlicensed individuals from providing studies or design documents (or supervising related construction) in connection with the “design and construction of a structure or group of structures which have as their principal purpose human habitation or use” or certain interior or surrounding spaces.³⁷ In other words, an unlicensed architect cannot design or supervise the building of a house—because a poorly designed house could collapse and kill people. An unlicensed *landscape* architect cannot provide a “consultation . . . [about] natural land features.”³⁸ It may be that there are compelling reasons that the public needs to be protected from uneducated consultations about their natural land features—but there is no telling what those reasons might be, and no indication that the state legislature considered them before shutting would-be landscape architects out of the market.

Although Pennsylvania law often imposes wholly unnecessary burdens on entrepreneurs, there is nothing stopping the legislature from lifting or lessening those burdens. And, indeed, sometimes it does—even if it fails to go far enough.

An excellent example of this is the state’s treatment of traditional African hairbraiding. African braiding—an ancient art involving the intricate twisting, weaving, extending or locking of natural hair—has for years been the subject of legal controversy, as government officials looked at the art, did not quite understand it, and made it illegal to practice it without first obtaining a (wholly unrelated) license in other kinds of hair-care or cosmetology.³⁹

Pennsylvania was no different, for years levying hundreds or thousands of dollars of fines on braiders for not being licensed cosmetologists (even though they didn’t cut or color hair, or

do anything other than braid it, and even though most cosmetology schools did not teach braiding).⁴⁰ The state finally changed that in 2006, at the urging of the Institute for Justice,⁴¹ removing the requirement that braiders be licensed cosmetologists and substituting a regime that required braiders to obtain a license that required education in braiding (rather than in everything but that).⁴² Under the new law, braiders are required to complete 300 hours of education in “sanitation, scalp care, anatomy and natural hair braiding” in a cosmetology school.⁴³

Even this requirement (although more sensible) is born out of a faulty assumption—the assumption that anyone who wants to do anything should be presumptively forbidden. The state of Pennsylvania was not faced with the complaints of hordes of victims of under-qualified braiders. What harm would there have been in requiring only 100 hours of classes? Or 50? Or none? The state should not regulate just for the sake of regulation—should not say “no” just for the joy of the word—and, in the absence of a true threat to public health or safety, there is simply no reason why consumers should not be entrusted with their own hair-care decisions.

Under the new law, braiders are required to complete 300 hours of education in “sanitation, scalp care, anatomy and natural hair braiding” in a cosmetology school.

Cosmetology

Besides hairbraiding, Pennsylvania imposes burdensome requirements on an impressive array of occupations in the field of what state law calls “beauty culture.”⁴⁴ “Nail technicians”—a term that encompasses not just manicurists, but also people who apply false fingernails of the type that literally anyone can buy from a drugstore—must undergo 200 hours of training.⁴⁵ Estheticians, who practice the not-so-dangerous art of makeup application and the tweezing of unwanted hair, are required to have 300 hours of education.⁴⁶

These requirements can seem reasonable at first blush—after all, one expects one’s manicurist to know how to manicure. But the burdens these laws impose are substantial. Three hundred hours of education, even if one goes to school in lieu of a full-time job, would take almost two months—two months in which a would-be “nail technician” must forgo any income, to say nothing of having to pay tuition.

Against this burden, one has to measure the benefits produced by these laws: protection, perhaps, against bad makeup jobs.⁴⁷ But faced with the choice between trusting consumers to decide whether they want a particular person to do their makeup and imposing huge burdens on would-be entrepreneurs—between saying “yes” and saying “no”—Pennsylvania law nearly always errs on the side of “no.” The legislature errs on the side of requiring a license—and just a couple hundred hours of education—even when it cannot point to any real danger posed by unlicensed individuals. These burdens, which may seem small on paper and surely seem small in the halls of the legislature, can be enormous to an individual of modest means, and they should not blithely be tolerated in the complete absence of any evidence that they are necessary.

A Brewing Controversy

The slogan greeting visitors to Ultimo Coffee Bar in South Philadelphia—"Beer and coffee, together at last"—encapsulates the shop's mission, providing high-end coffee drinks and carryout specialty beer. Unfortunately, it also (at the moment) tells a lie, at least if the Pennsylvania Liquor Control Board has anything to say about it. While the coffee business has been open since May 2009, the shop's application for a license to provide beer had been pending (when last we spoke) for one full year.

"It doesn't make a lot of sense," Ultimo said. "Every week that goes by is less revenue in the government's pocket."

The source of the problem, as seems all too often the case with Philadelphia's small businesses, is the objection of a single neighbor, said Ultimo and his business partner, John Longacre. Even though hundreds of neighbors signed a petition in favor of the new business and a visit to the shop on a weekday afternoon reveals a healthy customer base, the fact that someone in the neighborhood would rather not have fancy beer sold nearby has stymied Aaron's brainchild.

This is not, it is important to note, a delay in Ultimo's efforts to obtain a new license to sell beer. The state does not issue new licenses—ever. Instead, entrepreneurs must (as Aaron and John did) purchase an existing license. In other words, they face this delay despite having been extraordinarily lucky. The unusual number of Philadelphia restaurants (even high-end restaurants) that operate with a BYOB policy is a testament to the fact that many small businesses are not nearly as lucky—a fact for which Philadelphia's diners regularly pay the price.

Aaron and John's business has already obtained all of its other permits and completed its renovations—including a dividing wall between the "coffee" and "beer" segments of the shop because, apparently, the state disagrees that coffee and beer need to be brought together at all.



Aaron Ultimo has waited more than one year for a government-issued license to sell beer. "Every week that goes by is less revenue in the government's pocket," he points out.

RECOMMENDATIONS

City and state officials should take immediate steps to correct these problems that are choking Philadelphia entrepreneurship off at the source:

Zoning

Zoning Code: Philadelphia's zoning code needs to be scrapped and rewritten from scratch, expanding the number of permitted uses of *all* property and reducing the wildly inconsistent zoning that makes one's ability to start a business literally depend on which block one's property is in.

Zoning Board of Adjustments: The Zoning Board of Adjustments' free-for-all system of deciding zoning-variance requests should be replaced by a simple system based on two simple principles: (1) If a proposed use would not create

a public nuisance, there should be a presumption in favor of granting a variance; and (2) Public objections to proposed variances should only be entertained to the extent they assert that the proposed use would itself create a specific harm to neighboring properties.


Signs: Philadelphia should abandon any permitting requirements for window signs—Philadelphia's entrepreneurs have a right to communicate with their neighbors.

Home-based businesses: The city's new zoning code should make clear that Philadelphians are permitted to start small businesses in their homes. Since Philadelphians already *do* this, changing the law would do nothing more than bring these productive businesses out of the shadows.

Parking requirements: Philadelphia should simply abolish all parking requirements for new construction in the city.

Taxation

Philadelphia should scrap its maddening array of taxes and replace it with a single, uniform tax on net income that can be easily understood by small entrepreneurs.



City officials' mission should be finding ways to say yes to entrepreneurship, and that can be accomplished by reducing inspection requirements to simple, clear and publicly available forms that spell out all legal requirements and yield definitive answers.

Licensing

Board of Health, Licensing, and Inspections: Licensing and inspection requirements should be simplified and made uniform. Right now, far too much power lies in the discretion of individual inspectors or bureaucrats. City officials' mission should be finding ways to say yes to entrepreneurship, and that can be accomplished by reducing inspection requirements to simple, clear and publicly available forms that spell out all legal requirements and yield definitive answers. Leaving discretion to city employees all too often means leaving entrepreneurs out in the cold.

Taxis: Would-be taxi entrepreneurs should be able to start a business as long as they are fit, willing and able to do so and their vehicles are inspected and insured. By following the example of Minneapolis, Minn.,⁴⁸ which recently opened its market to nothing but good effect, Philadelphia can improve service for the city's taxi consumers while improving opportunities for the city's entrepreneurs.

Street vendors: Philadelphia has a truly impressive street-food scene—for those lucky enough to be on the inside. More areas need to be opened to vending, and more competition needs to be allowed within them. Regulations should be designed to facilitate orderly competition—not to make competition illegal.


Business-closing license: It is neither sensible nor constitutional for the city to require a business to obtain its permission before closing, and the business-closing licensing law should simply be repealed. If we make it more difficult to close a busi-

ness, smart entrepreneurs will think twice before they open one.

Tour guides: Philadelphia should repeal its unnecessary and unconstitutional tour-guide licensing law, and replace it with the same legal regime it uses to protect its citizens from any other kind of speech: No regulation at all.

Landscape architects: Similarly, there is no reason for the state to require eight years' experience in order to arrange shrubs. The best people to decide who is qualified to design a garden in Pennsylvania are the consumers hiring people to design their gardens.

Hairbraiding and other cosmetology licensing: The state's hairbraiding regulations are another solution in search of a problem. In the absence of evidence that unqualified braiders were actually hurting people—and there is no such evidence—the state's hairbraiding-licensing requirement does exactly one thing: prevent competition by stifling entrepreneurship. It should be repealed entirely.

A silhouette of the Philadelphia skyline is shown against a bright, hazy sky at sunset or sunrise. The sun is positioned behind a tall skyscraper on the right side of the frame, creating a lens flare effect. The buildings are dark against the lighter sky, and the water in the foreground reflects the light from the sun.

John Longacre summed up the first lesson that every would-be entrepreneur in Philadelphia should internalize: “In Philadelphia, your entrepreneurial will is challenged on a daily basis, because never ever will you get the answer you’re looking for or [have someone] help you get ahead of the curve.”



CONCLUSION

In an economic climate where every city should be welcoming every new business with open arms, the city of Philadelphia does the opposite. In a nation where the default response from government should be “Yes, you can” rather than “No, you can’t,” Philadelphia does the opposite. In a city that prides itself on “Brotherly Love,” where self-starters should be helped with their problems rather than simply sent away regretting they had any entrepreneurial ambition, the city of Philadelphia, most emphatically, does the opposite.

John Longacre summed up the first lesson that every would-be entrepreneur in Philadelphia should internalize: “In Philadelphia, your entrepreneurial will is challenged on a daily basis, because never ever will you get the answer you’re looking for or [have someone] help you get ahead of the curve.”

Philadelphia—and Philadelphians—do not need to put up with an anti-entrepreneurship culture. Philadelphia does not need to assume that the default answer is no—that you cannot put up a sign or open a simple business without moving heaven and earth to get its permission. But it does assume that—and until it stops, until the city government makes a conscious decision to abandon its raw hostility to small businesses, it is difficult to imagine the city’s rate of entrepreneurship climbing out of the basement in which it currently languishes.

ENDNOTES

(All Internet content was current as of September 15, 2010.)

- 1 Robert W. Fairlie, *Kauffman Index of Entrepreneurial Activity* 15 (April 2008), available at http://www.kauffman.org/uploadedFiles/KIEA_041408.pdf
- 2 *Id.* pp. 2, 15.
- 3 See Philadelphia Demographics, available at <http://philadelphia.pennsylvania.com/demographics.html>.
- 4 See “Imagining Philadelphia: Laying the Foundation,” <http://www.zoningmatters.org/issues/foundation>.
- 5 Debbi’s business was previously (and for many of the events discussed here) known as “One Touch Wellness & Spa.”
- 6 The relevant licensing code reads, in relevant part:
The provisions of this ordinance shall not apply to massage treatments given
 - (a) in the office of a licensed physician, osteopath, chiropractor, or a physical therapist;
 - (b) in a regularly established medical center, hospital, or sanitarium;
 - (c) in a residence of a person under doctor’s care by the direction of the doctor;
 - (d) upon the order of a licensed physician, osteopath, chiropractor, or physical therapist.
- 7 The Board has six voting members, not all of which need to sit at any given meeting. Phila. Code § 14-1805(2). In a way, the realtor in this example was lucky to even have four members attending—any fewer and the Board would not have had a proper quorum, meaning her application would simply have been continued for months without any answer at all. See Jeff Shields, *Nutter Tiring of Lack of ZBA Quorum*, Philadelphia Inquirer, Nov. 23, 2009.
- 8 The difficulties imposed by the city’s Zoning Board of Appeals have been well-covered by the local media. See, e.g., Paul Davies, “City to Business: Drop Dead,” *Philadelphia Inquirer*, Nov. 20, 2009.
- 9 Phila. Code §§ 14-1903, 14-1904.
- 10 In some special areas, certain businesses can be run out of one’s home without a zoning variance. See Phila. Code § 14-205.
- 11 Phila. Code §§ 14-1401 *et seq.*
- 12 Seth Budick, “Building for Transit-Based Living,” available at <http://planphilly.com/node/2848>.
- 13 See generally Donald C. Shoup, *The High Cost of Free Parking* (2005).
- 14 As of 2009, the fee to simply start a business was \$300.
- 15 See Tanya Roth, “Bloggers Must Purchase Business License in Philly,” available at <http://www.reuters.com/article/idUS157926431520100824>.
- 16 See generally City of Philadelphia Revenue Department, *Tax Types, Rates & Codes*, available at http://www.phila.gov/revenue/Tax_Types_and_Codes.html (summarizing 15 separate taxes levied by the city).
- 17 Robert Moran, “A cupcake controversy in Philly,” *Philadelphia Inquirer*, August 25, 2010, available at http://www.philly.com/inquirer/local/20100825_A_cupcake_controversy_in_Philly.html.
- 18 *Id.*
- 19 See Don Russell, “PUC probed for alleged taxicab payoffs,” *Philadelphia Daily News*, May 2, 2005.
- 20 By statute, the Parking Authority may issue licenses for no more than 1,600 taxis to operate in the city. Philadelphia Parking Authority Regulations for Taxicab and Limousine Service in the City of Philadelphia § 9.
- 21 See generally Mark A. Frankena & Paul A. Pautler, “An Economic Analysis of Taxicab Regulation,” (1984) *FTC Bureau of Economics Staff Report*, available at <http://www.ftc.gov/be/econrpt/233832.pdf>.
- 22 4 PPA Regs. § b.i.
- 23 4 PPA Regs. § a.i.
- 24 9 PPA Regs. § a.i.
- 25 Phila. Code § 9-201(3).
- 26 Mobile vendors in Philadelphia must also operate from a “commissary”—a centralized location where all food is prepared and stored.
- 27 The city’s specific regulations can be found at Phila. Code §§ 9-201 *et seq.*
- 28 Phila. Code § 9-5102. These requirements do not apply to certain types of business closures, such as those caused by fire. Section 9-5101(4).
- 29 Phila. Code § 9-5104.
- 30 This licensing scheme, currently the subject of a legal challenge by the Institute for Justice, has not yet been enforced.
- 31 The Institute for Justice is lead counsel in the lawsuit challenging the city’s unconstitutional attempts to require guides to get a license to talk. The case, *Tait v. City of Philadelphia*, is currently on appeal in the 3rd U.S. Circuit Court of Appeals.
- 32 Landscape Architects Registration Law, 63 P.S. §§ 901-913.
- 33 63 P.S. § 902(4).
- 34 63 P.S. § 906(a), (b).
- 35 63 P.S. § 909.1(b).
- 36 See Bureau of Labor Statistics, “Landscape Architects,” *Occupational Outlook Handbook* 2010-11 Edition, available at <http://www.bls.gov/oco/ocos039.htm>.
- 37 63 P.S. § 34.3.
- 38 63 P.S. § 902. The law also provides that “This provision shall not be construed to prohibit those engaged in nursery occupations or as gardeners or landscape contractors from preparing planting plans and items incidental thereto.” *Id.*
- 39 See Valerie Bayham, *Legal Barriers to African Hairbraiding Nationwide*, available at <http://www.ij.org/1631>.
- 40 “New state regulations cut hair braiders some slack,” *Philadelphia Tribune*, August 11, 2006.
- 41 See “Are hair-braiders locked up by laws?” *New Pittsburgh Courier (Pennsylvania)*, Dec. 28, 2005-January 3, 2006.
- 42 *Id.*
- 43 63 P.S. § 511.
- 44 63 P.S. §§ 507-527.
- 45 63 P.S. § 511(b)(2).
- 46 63 P.S. § 511(b)(1).
- 47 It is important to note that these licensing requirements are not directed solely at public health and safety—at issues like sanitation—but are typically focused primarily on improving the overall beauty with which one performs the “beauty culture.”
- 48 See <http://www.ij.org/664>.

ROBERT MCNAMARA

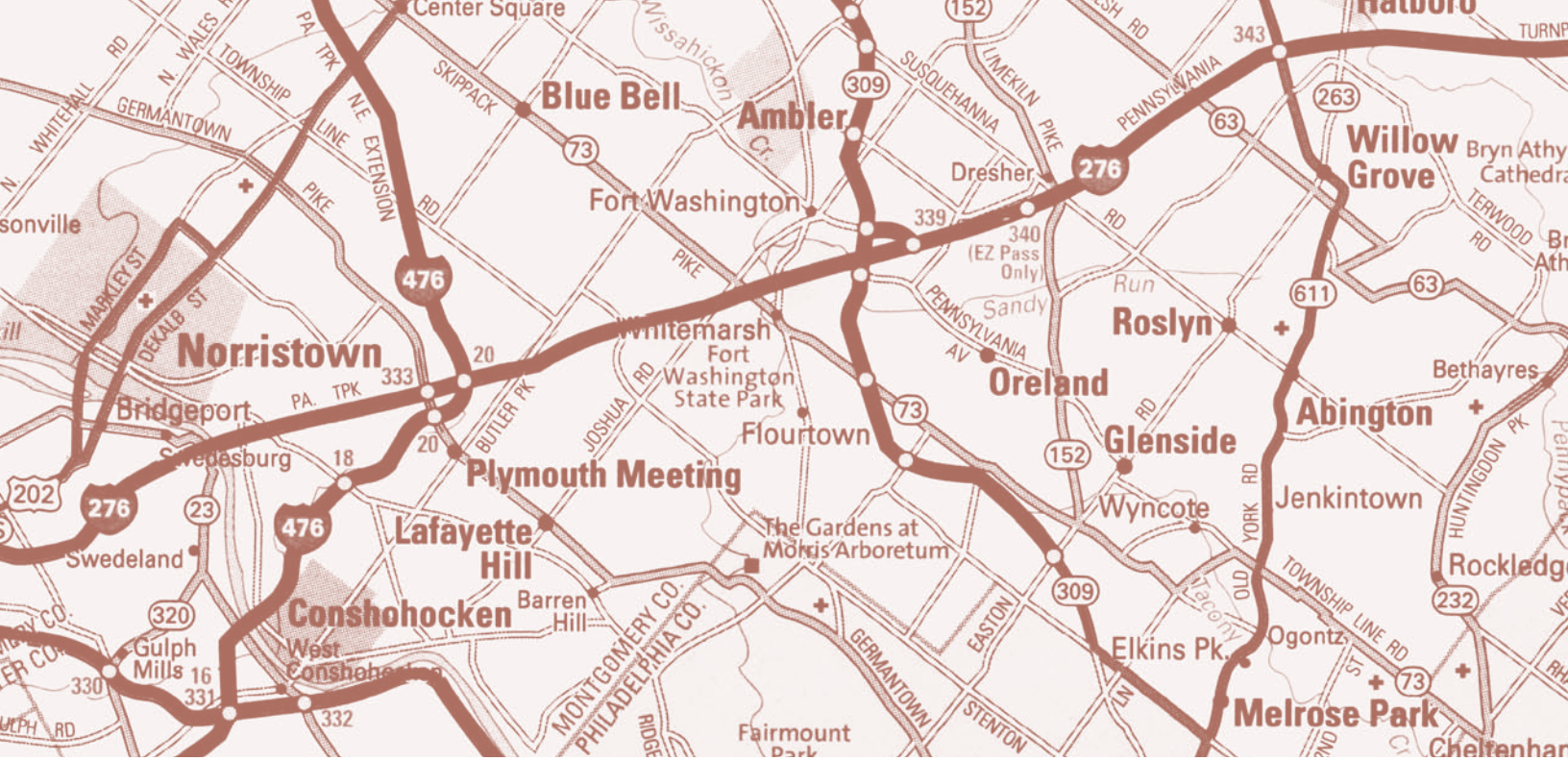
Robert McNamara serves as a staff attorney with the Institute for Justice. He joined the Institute in August 2006 and litigates cutting-edge constitutional cases protecting First Amendment, property rights, economic liberty and other individual liberties in both federal and state courts.

Currently, Robert is lead counsel representing a group of Philadelphia tour guides challenging a law that would make it illegal for them to give tours without first obtaining a special license from the city government—literally making it illegal for them to talk about the Liberty Bell for compensation. His practice has also included representing Bill Brody, a Westchester County, N.Y., property owner who fought against his state's outrageously unfair eminent domain procedures and a group of Colorado homeowners in their fight to be able to speak freely about politics without subjecting themselves to the threat of lawsuits from their political opponents.

Robert's written work has appeared in popular publications like the *Philadelphia Inquirer* and the *Washington Post*, as well as academic publications including the *Texas Review of Law and Politics* and the Federalist Society journal *Engage*. Robert's opinions on constitutional issues have been featured nationwide in media outlets including the *The Wall Street Journal*, *Air America*, National Public Radio's *All Things Considered*, and *Fox News Channel*.

In 2006, Robert received his law degree from the New York University School of Law. While at NYU, he served as Editor-in-Chief of the *NYU Journal of Law & Liberty*, a scholarly publication dedicated to the critical examination of classical liberal ideas. In 2003, he earned a dual degree in Communications and Political Science from Boston University.





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The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government.

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