

**STATEMENT OF CORPORATION COUNSEL EDWARD N. SISSEL
IN SUPPORT OF THE DEPARTMENT OF LAW'S
PROPOSED 2018 BUDGET**

November 3, 2017

Good morning Chairman Austin, members of the Budget Committee and other members of the City Council. On behalf of the Law Department, I want to thank you for the opportunity to testify in support of the Department of Law's proposed 2018 budget.

As you are aware, I was honored to begin leading the Department of Law in February of this year. Since that time, I have been fortunate to work with a group of exceptionally talented city employees whose dedication to public service is matched only by their command of the Law. Their hard work is evident in the important role the department plays in improving the lives of residents, supporting City Departments and the City Council, and defending our shared values in the courtroom.

While we have enjoyed some noteworthy successes, we recognize that there is much work to be done and are not going to slow down or get distracted by success. As part of our 2018 budget, along with minor changes, we are reinforcing our commitment to work with you and other city departments to have a positive impact on the lives of Chicago's residents.

Our proposed budget includes a modest increase of 1.5 percent, which reflects the fact that the Law Department continues to do more and more each year, but is also a reflection of the current environment, where the legal battles for our values and our residents are increasing.

Protecting Residents, Communities and Chicago's Values

When I first considered accepting this position, I recognized that, based on the rhetoric during the presidential campaign, there would likely be times when it was necessary to take legal action to protect the rights and values of our residents.

This has proven to be the case, as our recent successful lawsuit against the Attorney General Jeff Sessions and President Donald Trump's Justice Department have proven.

With the full support of Mayor Emanuel, we filed a lawsuit in August against the Trump Justice Department because we refused to accept the false choice presented by new requirements being placed on public safety grant funds. Instead of partnering with Chicago on crime-fighting efforts, the Trump Justice Department was forcing us to choose between our community policing strategy and our values as a Welcoming City. Our litigation was supported by 37 other cities and counties across the country, along with associations of law enforcement and professional government groups.

In September, a federal judge sided with the City of Chicago in our lawsuit and granted a nationwide preliminary injunction to prevent the Trump administration from attaching unlawful requirements that would have obligated Chicago to assist with federal immigration enforcement in order to receive essential public safety resources.

In his ruling, the judge agreed with the City that the federal government has no authority to require the City to provide 48 hours advanced notice to the federal government before releasing a suspected undocumented immigrant from custody, nor does the Attorney General have authority to require unlimited access to City lockups for federal immigration officials to interrogate suspected undocumented immigrants.

As part of our arguments, we explained that the trust between immigrant communities and state and local governments would be irreparably harmed by these conditions, and that a nationwide injunction is necessary to protect all grant applicants from the invalid and unconstitutional conditions placed on the grant.

This was a very significant ruling. It protects not only Chicago's grant but protected federal money for cities and counties across the nation. After the ruling, our attorneys received an outpouring of thanks from officials and other attorneys all across the country for the work that we did and the success we achieved. As important, it sent a strong message that we will not sacrifice our values as a Welcoming City, and that we will continue to fight if other demands are made in the future.

This work was done at no additional cost to the City and taxpayers. Attorneys from both RileySafer in Chicago and WilmerHale in Washington D.C. partnered pro bono with attorneys in the Law Department to work on this issue.

Fighting Discrimination from the Federal Government and Others

Our lawsuit was not the only legal action taken this year against the Trump administration. We helped draft and signed amicus briefs supporting the legal effort to overturn the Trump administration's ban on travel from majority-Muslim countries. This effort led to the courts preventing the ban from being enforced. The legal efforts of many municipalities across the country helped send a strong message to Washington that we will stand up for our values of religious tolerance and providing shelter to refugees.

We supported an amicus brief by Santa Clara County for filing in the Supreme Court in the Masterpiece Cakeshop case, which presents the question of whether a bakery can refuse to bake and sell a cake specifically for a same-sex wedding on the basis of the owner's religious beliefs. The amicus brief highlights the emotional and economic impact of discrimination against the LGBTQ community, including the financial and social impact on state and local governments. The Trump Administration has filed an amicus brief supporting the bake shop.

We also participated in amicus briefs in support of state and local governments challenging the termination of the DACA program, and in support of local government officials in Texas, who are resisting efforts by the State of Texas to force them to cooperate with the Federal government to enforce immigration laws.

These efforts send a strong message to our residents and communities across Chicago that we do not accept discrimination in any form.

Protecting Residents from Financial Fraud

Working with Chairman Burke and other Aldermen, the Department of Law recently filed a consumer protection lawsuit against Equifax to ensure that the company is held

accountable for its massive data breach and its failure to give timely notice to Chicago residents, as well as to force the company to offer remedies and restitution to those impacted by the breach.

As the Mayor has stated, Chicago residents have been unnecessarily exposed to financial risks due to Equifax's irresponsible and reckless actions that prioritized profit over the privacy and safety of consumer data.

From at least March 7, 2017 through July 30, 2017, Equifax left at least 145 million – with more than five million in Illinois – consumers' sensitive and private information exposed and vulnerable to intruders by relying on certain open-source code that Equifax knew or should have known was insecure and subject to exploitation. Although fixes for the related vulnerability were available and known to Equifax, it failed to use these remedies, or to employ other security controls, such as encryption of data or multiple layers of security, that would help to protect consumers' personal data.

As a result, hackers were able to access Equifax's computer system. This data breach, which Equifax first disclosed to the public on September 7, 2017, exposed to still-unknown persons the most sensitive personal and financial data of Chicago residents, including full names, social security numbers, dates of birth, addresses, and for some consumers, credit card numbers, driver's license numbers, and/or other personally-identifiable information.

Recognizing the seriousness of these abuses, Chicago's Consumer Fraud Protection Ordinance provides substantial penalties and a powerful tool in going after fraud and abuse. In accordance with the ordinance, we are seeking civil penalties, restitution, and other available relief to address, remedy and prevent harm to Chicago residents resulting from Equifax's actions and inactions.

In fact, one of the new initiatives we are planning to start this year will be an affirmative litigation division. If our budget is approved, we plan to hire two attorneys and reassign one other to make sure the rights of our residents are proactively protected against any actions that could threaten them, whether taken by the federal government, private business or any other entity. While we will continue to work with outside firms on a pro bono basis for this work, there are outstanding lawyers throughout the DOL who engage in affirmative litigation and it is

important that we have an internal team that is focused on this initiative as a priority. I believe a relatively small increase in affirmative litigation will have a significant return on investment.

Continuing to Reform the Police Department

While I am proud of the success we have enjoyed in the courtroom, the work we are doing together with the Chicago Police Department (CPD) – and now with the Illinois Attorney General – will also have a long-lasting, positive impact on Chicago.

From the very beginning of the Department of Justice’s civil rights investigation, the Law Department has worked closely with the CPD to respond and to help draft reforms designed to improve the CPD’s use of force policies, training, transparency and accountability.

After the investigation was complete, we committed to negotiating a consent decree with the Department of Justice, and attempted to negotiate a consent decree with the United States Attorney General after the change in administration. However, because the Trump Administration would not commit to pursuing a consent decree, we explored a number of options and soon after began discussions with the Illinois Attorney General regarding the best method to ensure lasting reforms.

In August, we announced that we were working with the Illinois Attorney General’s Office to seek an enforceable consent decree to implement the numerous reforms outlined in the reports by the U.S. Department of Justice and the Police Accountability Task Force.

This consent decree will include an independent monitor that is overseen by a federal judge, and will include reforms that provide the support police officers need to implement constitutional policing practices and rebuild trust between community residents and police.

However, Chicago is not waiting for that agreement to be finalized to implement necessary reforms. Through new policies, training, and efforts to rebuild the relationship between the Police Department and the community, the City has made and is continuing to make substantial and meaningful reforms.

Law was instrumental in drafting and helping to train the members of the Police Department on the new use of force policy, and expanding the body-worn camera program,

ahead of schedule. Law also played a key role in drafting the ordinance that created the Civilian Oversight Police Agency.

Pursuing Damages from Opioids Manufacturers

The Department of Law continues its groundbreaking litigation against manufacturers and marketers of highly addictive opioid-based pain relievers, the usage of which fueled a national health crisis. Chicago's lawsuit – the first of its kind in the country – alleges that the defendant pharmaceutical companies misrepresented the benefits of opioids and concealed the serious addiction risks associated with their use, specifically targeting the elderly and veterans, and made false promises that opioids were unlikely to be addictive and would help improve patients' function and quality of life.

The use of these drugs has led to a dramatic rise in drug addiction, overdose and diversion in communities across the nation, including in Chicago. We continue to pursue our legal action to stop drug companies from deceptively and unlawfully marketing opioids and to hold these companies responsible for the harm their deception has caused, including serious damage to individuals, families and neighborhoods and the fueling of the heroin epidemic.

Since Chicago first filed this suit in 2014, we have defeated repeated attempts by the well-resourced defense teams representing the pharmaceutical companies to have the suit dismissed. We are now the only case in the country that is in the discovery portion of the suit.

To provide a glimpse of the monumental effort on this case thus far, we have received approximately 10 million pages of documents, assembled a team of healthcare experts, and have conducted hundreds of interviews as part of discovery. In addition, there are multiple city agencies that had to document and quantify the impact opioids have had on Chicago.

Since the City's suit was filed, a growing body of medical research has brought an even greater spotlight to the crisis of opioid addiction and the related explosion of heroin use in the Chicago area and throughout the United States. Chicago's pioneering lawsuit against the deceptive and destructive marketing practices of the industry has drawn significant national

attention. Other jurisdictions across the country have filed similar cases to ours, with the same claims of misconduct.

Increasing Diversity in the Law Department

Increasing diversity within the DOL and retaining legal firms who are diverse are key goals for me and the leadership of the DOL. I continue to place a priority on diversifying the department and have gone to speak with diverse groups to recruit attorneys to the DOL.

We are employing a number of strategies to attract diverse candidates. We have increased our outreach to the minority bar associations and organizations, including the National Bar Association, Black Women Lawyers' Association of Greater Chicago, Cook County Bar Association, Chicago Committee on Minorities in Large Law Firms, LGBT Network, National Asian Pacific American Bar Association, Asian American Bar Association, Hispanic National Bar Association, Hispanic Lawyers Association of Illinois, Indian-American Bar Association of Chicago, Women's Bar Association of Illinois, Dominican Bar Association, and Arab American Bar Association of Illinois.

I, along with our Director of Legal Recruitment and our attorneys, will continue to meet with diverse bar associations and their memberships to talk about the benefits of working for the DOL and to encourage applications.

New to our efforts, we will be hosting a Diversity Bar Association Meet & Greet in the City Council Chamber to include a presentation by diverse attorneys to members of 10-12 diverse bar associations, the members of the Black and Latino Caucuses, and attorney Aldermen, followed by a networking hour with refreshments in the City Council Chamber Annex. I will present how diversity is a priority for the DOL in two ways: 1) We seek talented, promising individuals from a wide variety of backgrounds to work as attorney employees; and 2) We seek diverse counsel to help staff our cases and projects when we engage outside counsel.

Pursuing Revenue and Protecting City Finances

Law continues its effort to be vigilant in ensuring that the City of Chicago collects all of the revenues it is owed. We also take steps to proactively file litigation to ensure that companies cannot evade their responsibilities.

Collecting Tax Revenue from Hotel Booking Sites

We settled a 12-year lawsuit with Expedia for \$18 million that the City claimed it was owed for its hotel tax. The Circuit Court determined that online booking sites such as Expedia were required to apply the hotel tax on the entire transaction, not just what the sites collected for renting the rooms, and Expedia appealed.

However, the day before the Appellate Court issued its opinion, the city and Expedia agreed to settle the case as both parties believed it was in their best interest. The parties filed a joint motion with the court advising that a settlement had been reached and asking the court to dismiss the appeal without a ruling. The appellate court still issued its opinion, which was unfavorable to the City. The settlement agreement anticipated that a ruling might be issued despite the motion and provided that if it was, the settlement would remain in effect. The appellate court later vacated its ruling, and the City collected the \$18 million.

The tax code was amended several years ago to avoid any similar conflict in the future, and all defendants have agreed to collect and remit the hotel tax as required.

Recouping Funds in Harvey Water Case

The Law Department continues to pursue unpaid water bills from the City of Harvey.

We reached a consent decree with the City of Harvey requiring Harvey to make timely payments for water it receives from Chicago and to repay past due amounts. Harvey, however, failed to follow the terms of the consent agreement, and the City won several new court rulings that will allow Chicago to collect directly from five suburban municipalities. Harvey is responsible for paying \$21.7 million in overdue bills, which includes \$5.8 million in penalties that the city had conditionally waived as part of the consent decree.

Harvey is required to continue to run its water department, including reading the meters, billing residents and maintaining its infrastructure. In addition, in August, the court granted Chicago's motion to appoint a receiver as an independent monitor to oversee the operation of Harvey's water fund to ensure that it is run in accordance with the dictates of Illinois law and the consent decree. The court granted this relief after Chicago uncovered numerous transactions by Harvey that were in derogation of the consent decree and the law. These unauthorized

transactions included among other things, Harvey's failure to deposit \$5.98 million of water revenue into its water fund bank account in 2015 and another \$2.75 million between January and August 2016. The receiver's duties include taking all actions necessary to ensure that Harvey meets its obligations to Chicago under the consent decree.

Recouping Damages from Red Light Camera Company

Law this year obtained a \$20 million settlement from Redflex Traffic Systems, and its Australian parent company, Redflex Holdings Ltd., and after filing a civil lawsuit alleging fraud and making false statements while obtaining the contract in 2003 and during the subsequent expansion of the program. The Law Department vigorously pursued this matter and received a favorable recovery for the City that holds Redflex accountable for its misconduct in obtaining the contract.

The settlement will be paid in installments during the next six years, with \$10 million to be paid before December 31, 2017. The remaining \$10 million will be paid in increasing annual installments, starting at \$1 million in both 2018 and 2019, \$1.5 million in both 2020 and 2021 and \$2.5 million for the final two years of the settlement, ending in 2023.

Helping to Stabilize Finances and Fund Government

Our work protecting taxpayers and is not limited to simply pursuing money that is owed to the City. We also work with both the Budget and Finance Departments to play a key role to help improve the City's financial outlook. In addition to providing legal counsel and helping close \$1.8 trillion in bond transactions as well as providing TIF funds to 12 Chicago Public Schools, Law helped draft the ordinance recently approved by the City Council which creates a securitization structure for the City of Chicago, which is expected to achieve higher credit ratings and reduce debt service costs for taxpayers.

This revenue securitization structure helps address the City's legacy liabilities, eliminate unsustainable financial practices of the past, and improve the City's long-term financial health. It also provides an important opportunity for the City and the financial security of our taxpayers. Through this financing tool, Chicago will achieve lower debt service costs for taxpayers and improve the City's long-term fiscal health.

Enforcing “Quality of Life” Ordinances

Law also continues to aggressively enforce “quality of life” ordinances and to take other steps to make our communities safer and otherwise improve the lives of Chicago residents. This includes defending the food truck ordinances and the homesharing ordinance, both of which have come under recent legal challenges this past year. Law also continues to use all of the prosecutorial tools at its disposal to close nuisance businesses and eliminate drug and crime hot spots.

Successfully Defending New Regulations

Chicago’s food trucks are a vital part of our world-renowned culinary industry and culture, and in 2012 the City Council adopted regulations designed to help them thrive while maintaining a fair marketplace for existing businesses. When the new rules were challenged in court as too restrictive, Law successfully defended them. The court agreed with our arguments, and reaffirmed that the ordinance strikes the right balance between the interests of food trucks and those of restaurants.

Law is also defending the City’s new homesharing ordinance in three separate lawsuits, and while this litigation is ongoing, we have been able to obtain rulings that allow the ordinance to be enforced. Chicago’s ordinance remains among the strongest in the country, and enables the City to monitor rental activity and directly enforce against hosts that operate units in violation of the ordinance. Chicago is the first city in the nation to obtain data on the full universe of shared housings listings on websites like Airbnb and the first city to require companies to establish an agreed upon plan to work with the City to address quality of life concerns.

Closing Nuisance Businesses / Eliminating Drug Sale and Crime Hot Spots

Law continues to work with the Police Department and the Department of Buildings (DOB) to rapidly and effectively reduce narcotic trafficking by criminal street gangs through its Drug and Gang House Enforcement Section and its License Enforcement Unit. Law, CPD and DOB proceed on multiple fronts in targeting problem businesses, and start by eliminating from the outset the "cover" and the extra income that would be allowed by the continued operation of

the establishment. As a result, the drug business is stopped immediately and financial pressure is placed on the licensee to ensure that the drug business is eliminated permanently.

Several years ago, Law attorneys also began prosecuting businesses that cause a community nuisance under the recently-revised public nuisance ordinance. The ordinance revisions were prompted by Law, and these revisions expand the scope of the ordinance from liquor-only to include non-liquor businesses. Based on police reports of criminal activity at or around these businesses, and on input and testimony from community members, Law seeks the revocation of licenses of problem businesses. So far in 2017, we have prosecuted more than 350 cases in Circuit Court and the Department of Administrative Hearings , and litigated more than 450 cases, most of which are license revocation proceedings. Law continues to work to obtain closures and revocations of liquor licenses of businesses being used by street gangs as locations for narcotics trafficking and other illegal activities.

As in past years, several establishments have been closed as a result, and Law continues to develop strategies for many on-going investigations and resulting prosecutions. Aggressively targeting these nuisance businesses improves public safety for business patrons and neighbors. Law routinely assists Police in determining when use of the Summary Closure ordinance is appropriate in the wake of violent incidents occurring at business establishments with a history of criminal activity or nuisance related activity. During 2017, Law has assisted in seven summary closures, successfully defended a challenge to the closure decision made regarding the Green Dolphin/Rio Chicago Nightclub, and has helped craft strong nuisance abatement plans that have proven effective in forcing businesses to address chronic problems at violence prone locations.

Saving Troubled Buildings

The City's Troubled Building Initiative is a multi-department program designed to preserve properties by stabilizing the property and halting blight in our communities. Working with the designated community groups, Community Investment Corporation and Neighborhood Housing Services, Law works to preserve multi-unit properties. Law will continue these efforts in 2017 and beyond.

So far this year under the Troubled Buildings Initiative, Law has initiated more than 161 cases in Circuit Court, impacting 1,158 residential units. In another 81 cases, we successfully had an independent receiver appointed, resulting in the stabilization of 466 additional residential units. During the same period, DOL concluded litigation on an additional 35 properties, impacting 953 residential units, and these buildings are either under rehabilitation or available as affordable housing in the City's neighborhoods. During this same period, Law continues to maintain cases with active receiverships on 104 buildings, impacting 206 units, preserving these properties as viable housing.

Prosecuting Illegal Signs

Law continues to aggressively prosecute illegal on- and off-premise signs, as they can have a negative impact on residents quality of life. This year, we have prosecuted almost 398 cases against buildings that have posted almost 965 illegal signs. This includes violations at 19 buildings where illegal billboards, or off-premise signs, have been posted, and 939 signs at 379 buildings.

Our sign enforcement is not limited to waiting until signs are installed before taking action. Law has worked with the Department of Buildings and the Department of Planning and Development's Zoning Section to review and draft permit denial letters for 20 sign permit applications, where the sign companies used the wrong version of a City Council order, which is required under MCC 13-20-680. The permit applicants used a draft order with "Notwithstanding" language that would circumvent the Zoning Ordinance, because they knew the signs would not otherwise be allowed under zoning. Ten of the 20 permit applicants appealed the permit denials to the Department of Administrative Hearings, and Law is now aggressively defending these appeals.

Our attorneys continue to attend meetings as needed with the Department of Buildings, Zoning, and the Department of Business Affairs and Consumer Protection) to review sign permit issues, and to implement amendments to the sign regulations in Titles 13 and 17 of the Municipal Code. Law's aggressive prosecution of illegal signs will continue in 2017 and beyond.

Collecting on Overdue Debts

Oftentimes, enforcing these and other ordinances leads to fines and other penalties. If landlords, business owners and others refuse to pay, Law is charged with helping to collect these revenues. Overall, Law continued to be a major revenue generator for the City. This year, we collected \$133 million in fines, assessments, and other debts owed to the City, and we expect to exceed more than \$170 million this year.

This is after our Collections Division collected more than \$173 million in overdue monies owed the City during 2016.

Improving Legal Services and Reducing Legal Costs

During the past year, Law has continued to implement a number of initiatives to improve the delivery of legal services and reduce the City's legal costs. On the delivery of legal services front, this included implementing numerous reforms and improvements in how Law defends police misconduct cases, particularly with respect to discovery and training. On the cost reduction front, it includes making an early assessment whether cases should be settled or tried, and continuing our efforts: (1) to bring more legal work in-house; (2) to take non-meritorious cases to trial and win; (3) to reduce the number of new cases filed against the City; and (4) to enlist some of the City's leading lawyers and law firms to represent the City at no or reduced cost pursuant to the pro bono program we initiated when the current administration first took office.

Early Assessment

DOL continues to follow its policy whereby cases are investigated and evaluated promptly after they are filed. A determination is then made regarding whether the case is one that should be tried or settled, and if settled, the settlement value of the case. If the City is likely to lose the case, and further litigation would only increase the City's exposure (including by generating attorney's fees that the City would ultimately be responsible for), we will attempt to settle the case at an amount at or below the estimated value of the case. If a reasonable settlement cannot be reached, and the City believes it has a reasonable prospect of winning, or if further litigation is likely to reduce the City's exposure, we will aggressively defend and, if necessary, try the case.

This early assessment strategy continues to achieve significant cost savings for taxpayers. By promptly evaluating and moving to settle the most difficult cases before potential damages and attorneys' fees proliferate.

Pro Bono Program

Another ongoing initiative is the Department's partnership with a number of leading Chicago law firms to represent the City in significant matters on a pro bono basis. The total savings from this program, as well as the number of firms participating, have continued to grow. This year, we received pro bono support from Kirkland & Ellis, and, as I mentioned, we worked with Riley Safer and Wilmer Hale on the lawsuit against the Trump Justice Department to protect our values and not forfeit public safety grants.

As in the past, we want to personally thank each of these firms for their efforts on behalf of the City.

As I stated in the beginning, it has been an honor leading the DOL for most of 2017, and I look forward to working with all of you on behalf of Chicago residents in 2018. Once again, thank you Chairman Austin. I look forward to answering your questions.