



The City of San Diego

Office of the City Attorney



SAN DIEGO CITY ATTORNEY'S

ANNUAL REPORT
2007



Michael J. Aguirre

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**Office of
The City Attorney
City of San Diego
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MEMORANDUM

DATE: April 4, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Michael J. Aguirre, City Attorney

SUBJECT: INTRODUCTION TO CITY ATTORNEY 2007 ANNUAL REPORT

I am pleased to present to you the *2007 City Attorney's Annual Report*, which reflects our accomplishments in both the Civil and Criminal Divisions.

Tremendous results have been achieved in spite of major budget cuts last year when 14 positions, which had been a part of the City Attorney's Office for more than a decade, were eliminated by the San Diego City Council. While these positions had historically been unbudgeted they should have been instated as permanent deputy city attorney positions during last year's budget session, as had been done previously for all other City Departments.

Moving forward, we viewed the circumstances as a continuing opportunity to transform the City Attorney's Office into a public interest municipal law firm solely committed to serving the public good and the people of San Diego.

In restructuring and reforming the City Attorney's Office, we have addressed the legal priorities of the City by reorganizing sections in the Civil Division to reflect expertise in the following areas—Public Finance, Securities and Disclosure; Redevelopment and Housing; Revenue Recovery; Employment & Labor; Resource Conservation & Management; Land Use Litigation; and Land Use & Environmental Law.

In a 1957 speech, Senator John F. Kennedy remarked that an “organization is something bigger and more important than the persons who temporarily hold office in it. The officers, like the officers of a corporation, are themselves only the servants of the broader membership.”

So it is for the City of San Diego. It should be a governmental organization that represents the people. And we, as elected officials, have been given the privilege to temporarily serve as public servants.

And so when I took the oath of office on December 6, 2004, I too pledged that we would abide by the wishes of our citizens who have long advocated for a transparent and responsible government.

CIVIL DIVISION



BUSINESS AND GOVERNMENTAL AFFAIRS UNIT



SCOPE OF WORK

The San Diego City Attorney's Business & Governmental Affairs Unit advises the City's elected and appointed officials to ensure government decision making is conducted in an open and lawful manner with public participation. Supervised by Chief Deputy City Attorney Catherine Bradley, this unit regularly provides opinions and analysis concerning core municipal functions relating to the City Charter, San Diego Municipal Code, open meeting laws, public records, ethics, boards and commissions.

The Business & Governmental Affairs Unit provides special advice and legal support to the Mayor's Office, City Council, City Clerk, Office of Ethics & Integrity, Library, Funds Commission, Civil Service Commission and the Family Justice Center. During 2007, the Unit prepared more than 340 resolutions, and drafted 10 ordinances and 13 memoranda of law and reports. The Unit also provided confidential legal memoranda to individual Council members throughout the year to advise on conflicts of interest and related issues.

The Unit's scope of work includes:

- Drafting ordinances creating new boards and commissions
- Drafting ordinances amending the Permanent Rules of Council
- Drafting ordinances amending the San Diego Municipal Code
- Advising on City Charter interpretation, including the Mayor-Council form of governance
- Advising on federal, state and local election laws
- Advising on state open meeting and public records laws
- Advising on conflicts of interest, including the City's conflict of interest code and state regulations, and drafting and revising conflicts of interest codes for departments and City boards
- Advising on state mass mailing laws
- Advising on civil service rules and procedures
- Drafting resolutions approving contracts, acceptance of grants, appointments to boards and commissions, and other Council actions
- Drafting reports to Council Committees

2007 HIGHLIGHTS

MAYOR AND CITY COUNCIL; STRONG MAYOR TRIAL FORM OF GOVERNMENT

On January 1, 2006, the City of San Diego changed from a Council-Manager form of governance to a Mayor-Council (Strong Mayor) form of governance. During 2007, the Business & Governmental Affairs Unit continued to provide regular advice to the Mayor and City Council on the authority and limitations of the new executive and legislative branches of the City. Some of the issues addressed in 2007 include:

- A series of comprehensive opinions regarding how consultants retained by the City or its departments should be required to file Statements of Economic Interests
- An opinion addressing the respective roles of the Mayor and City Council in budget decisions affecting the City's administration [LO-2007-1]
- A memorandum of law regarding how the City Council should address matters that had once failed to receive five affirmative votes [ML-2007-9]
- A memorandum of law concluding the City Council could appoint a commissioner to the San Diego Unified Port Commission for a third consecutive term [ML-2007-2]
- A memorandum of law concluding the City Attorney has authority to file civil actions under the California False Claims Act [ML-2007-8]
- A memorandum of law concluding that the opinion in *Copley Press v. Superior Court* does not apply to closed public Civil Service appeal hearings for San Diego Police Officers, or exempts from public disclosure certain records of the Commission the Charter requires to be public. [ML-2007-12]
- A memorandum of law concluding that meetings of the Affordable Housing Collaborative Executive Loan Committee are subject to the Ralph M. Brown Act. [ML -2007-18]
- Advice to the City Council regarding proposed changes to the City's Lobbying Ordinance as proposed by the City Ethics Commission [RC-2007-12]
- Advice to the City Council regarding the Separate Vote (Single Subject) Rule and its application, as it considered submitting multiple proposed ballot measures to the voters [RC-2007-17]

In addition, the Unit works with other attorneys in the office related to ongoing management issues including, reorganization, managed competition, fiscal issues, and transfer of department responsibilities.

CITY COUNCIL COMMITTEES; CHARTER COMMISSIONS; ELECTION TASK FORCE

The Business & Government Affairs Unit regularly provides advice to the City Council, Council committees, Charter-created commissions and City task forces including:

- Committee on Rules, Open Government, and Intergovernmental Relations
- Civil Service Commission
- Salary Setting Commission
- Funds Commission
- Elections Task Force
- Charter Review Commission

With regard to the Charter Review Commission, the Unit provided attorneys to advise the Commission and its three subcommittees in more than 50 meetings over 25 weeks. The Unit, with the assistance of attorneys from the Public Finance, Securities, and Disclosure Unit, advised subcommittees regarding issues related to the City Charter and the Interim Strong Mayor form of government, Duties of Elected Officials and Financial Reform.

Business & Government Affairs Unit attorneys are a resource during meetings and provide follow-up research and reporting on legal issues or concerns.

SUPPORT TO CITY CLERK; CITY DEPARTMENTS; BOARDS AND COMMISSIONS

Through research, advice, memoranda and reports from the Business & Government Unit, City officials, departments and the public are provided with legal advice on a variety of significant issues including:

- Drafting ordinances related to elections and placing matters on the ballot
- Drafting ballot measures initiated by the City Council
- Drafting the impartial analysis for ballot measures
- Advising on initiative measures and redistricting
- Advising on referenda issues
- Assisting boards and commissions with obligations under the open meeting laws (the Brown Act)
- Assisting with revisions to administrative regulations and other policies
- Advising on compliance with public records requests
- Advising on conflicts of interest and recusal from voting

The Unit continues to assist with examination of the need for, and preparation of, conflict of interest codes for new Boards and Commissions. These conflict of interest codes form the basis for determining appropriate reporting of financial interests by City employees and consultants on the annual Statement of Economic Interest forms. The Unit continues to advise Departments and City officials on these issues and the implementation of policies and procedures related to filing requirements for designated employees and consultants to the City.



LAND USE AND ENVIRONMENTAL UNIT



SCOPE OF WORK

The Land Use and Environment Unit is supervised by Chief Deputy City Attorney Shirley Edwards. The attorneys in the Unit provide the following legal services:

- Draft Ordinances and Resolutions
- Review Environmental Impact Statements, Negative Declarations and Mitigated Negative Declarations for legal sufficiency under the California Environmental Quality Act
- Assist Department staff on all matters relating to the Multiple Species Conservation Program under the Endangered Species Act
- Review and revise Consultant Agreements, Grant Applications, Deferred Improvement Agreements, Landscape and Maintenance Agreements, Permit language and conditions, mitigation monitoring and reporting programs, and other land use documents
- Respond to requests from City Departments, City Council and City Commissions and Committees for legal opinions on various land use and environmental issues

The Land Use and Environmental Unit is also the legal advisor to the following departments and entities: Development Services Department, City Planning and Community Investment Department, Natural Resources & Culture Committee, Planning Commission, Hearing Officer, Local Enforcement Agency, Building Official, and Historical Resources Board.

2007 HIGHLIGHTS

MEMORANDUM ON GLOBAL WARNING AND THE CITY'S GENERAL PLAN UPDATE

The City Attorney's Office advised the City Planning and Community Investment [CPCI] Department in preparation of the General Plan and the EIR for the General Plan. This involved advising the Department regarding a threatened lawsuit by the Attorney General's Office, as well as preparation of a published memorandum advising on the Plan and the EIR in relation to Global Warming. The General Plan was approved by the City Council in early in 2008.

RESOLUTION TO PROTECT TRESTLES (SAN ONOFRE STATE BEACH)

The Foothill/Eastern Transportation Corridor Agency has proposed construction of a multi-lane toll road--Foothill-South Toll Road--which is over four miles in length and carves through the heart of a nearly 1,200 acres inland portion of San Onofre State Beach. The loss of this portion of San Onofre State Beach for a toll road right-of-way would result in the park's fragmentation, adversely affecting the remaining acreage in the park, including the potential for additional recreational opportunities (e.g., hiking, equestrian use and camping) for residents of the City of San Diego and other users. San Onofre State Beach includes Trestles Beach, the only surfing World Championship Tour stop in the continental United States. The City Attorney's Office worked on a Resolution opposing this Toll Road through San Onofre State Beach until additional environmental review is completed. The Resolution was approved by the City Council in late 2007.

ORDINANCE CLARIFYING THE DEFINITION OF WATER AND LAND UNDER SECTION 55.1 OF THE CITY CHARTER

The City Attorney's Office drafted an ordinance amending the definition of water and land of Mission Bay in order to better assure the protection of wetlands. This ordinance was approved by the City Council in 2007.

MEMORANDUM OF LAW REGARDING DELTA SMELT COURT RULING

On August 31, 2007, U.S. District Court Judge Oliver W. Wanger, as a follow-up to his May 25, 2007 ruling, announced a series of severe restrictions on the operations of the massive pumps that supply water from the California Bay Sacramento-San Joaquin Delta [Bay-Delta] to two-thirds of all Californians, including 3 million San Diego County residents. Water is supplied or diverted to end-users by way of the Central Valley Project [CVP] and the State Water Project [SWP]. San Diegans get their Bay-Delta water from the City's Water Department, by way of arrangements with the San Diego County Water Authority [Water Authority], who obtains the water from the Metropolitan Water District [MWD] as supplied by the State Water Project. As a consequence of the ruling, the City Attorney's Office issued a public memorandum making recommendations on how to address the potential water shortfall, including a recommendation that the City implement its Water Re-Use Study, and consider taking action to implement a Temporary Development Moratorium on all future or proposed developments.

ROOMING HOUSE ORDINANCE

The City Attorney's Office drafted a rooming house ordinance to curtail excessive commercialization of single dwelling unit homes in residential neighborhoods. The ordinance was unanimously approved by the City Council in spring of 2008.

The Rooming House Ordinance addresses the improper conversion of dwelling units in residential-single unit zones into multiple dwelling units, which has become a chronic and growing problem adversely impacting neighborhood quality of life.



PUBLIC FINANCE, SECURITIES, AND DISCLOSURE UNIT



SCOPE OF WORK

The Public Finance, Securities, and Disclosure Unit provides structuring and legal advice to various City departments relative to the legal obligations with respect to the issuance by the City and its related entities of debt obligations, including the issuance of debt obligation by the Housing Authority, the Redevelopment Agency of the City of San Diego, the Wastewater Department, the Water Department and obligations payable from the City's General Fund. The Public Finance, Securities, and Disclosure Unit also advises the City Council regarding their due diligence obligations under federal securities laws relating to the approval of City financing.

The work of the Public Finance, Securities, and Disclosure Unit is supervised by Chief Deputy City Attorney Mark D. Blake. The unit also includes two Deputy City Attorneys who were added to the Public Finance, Securities, and Disclosure Unit as required by Ordinance No. 19320, as amended [Disclosure Ordinance]. The Public Finance, Securities, and Disclosure Unit provides structuring and legal advice to various other entities that have issued debt on behalf of the City including the Public Facilities Financing Authority, the San Diego Facilities and Equipment Leasing Corporation, the City of San Diego/Metropolitan Transit Development Board Authority, the Convention Center Expansion Authority, the Open Space Facilities District and the various community facilities districts and assessment districts.

The Public Finance, Securities, and Disclosure Unit also assists the City Attorney to carry out the requirements of the Disclosure Ordinance through the administration of the Disclosure Practices Working Group [DPWG] to ensure that all City financial disclosures, including financial disclosures contained in any disclosure documents, comply with federal and state securities laws.

The Public Finance, Securities, and Disclosure Unit also provides advice to the newly established Audit Committee (which assumes the responsibilities of the Financial Services Oversight Board) of the City.

2007 HIGHLIGHTS

During the 2007-08 Fiscal Year, the Public Finance, Securities and Disclosure Unit provided lead legal advice and support for the following financing activities of the City and its related entities:

DEBT FINANCING

- \$130,000,000 2007-08 Tax and Revenue Anticipation Notes (private placement with Bank of America, N.A.)
- \$156,650,000 Public Facilities Financing Authority Lease Revenue Refunding Bonds, Series 2007A (Ballpark Refunding)

CITY WASTEWATER ENTERPRISE FINANCING

- \$225,000,000 Subordinated Sewer Revenue Notes, Series 2007 (private placement with Citigroup Global Markets)
- \$57,000,000 Non-Transferable Subordinated Water Revenue Notes, Series 2007A (private placement with Morgan Stanley)

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

- \$17,230,000 Public Facilities Financing Authority of the City of San Diego, California Pooled Financing Bonds 2007 Series A (Taxable) (Southcrest, Central Imperial and Mount Hope Redevelopment Projects) (Public Offering)
- \$17,755,000 Public Facilities Financing Authority of the City of San Diego, California Pooled Financing Bonds 2007 Series B (Tax-Exempt) (Southcrest, Central Imperial and Mount Hope Redevelopment Projects) (Public Offering)

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

- \$5,808,006 Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (Alabama Manor Apartments) 2007 Series A (private placement with Wells Fargo Bank, N.A.)
- \$40,000,000 Housing Authority of the City of San Diego Multifamily Revenue Bond (16th and Market), 2007 Series B and 2007 Series C (private placement with U.S. Bank N.A.)
- \$6,050,000 Housing Authority of the City of San Diego Multifamily Housing Revenue Bonds (Redwood Villa Apartments Project) Series 2007 Series D (public offering) and Series E (private placement with Red Capital Markets)
- \$37,500,000 Housing Authority of the City of San Diego Multifamily Revenue Bond (Villa Nueva), 2007 Series F (public offering)

EQUIPMENT AND VEHICLE LEASE FINANCING PROGRAM

The Public Finance, Securities and Disclosure Unit also reviewed due diligence materials for several financing transactions related to the City's Equipment and Vehicle Lease Financing Program, including financings related to the acquisition of fire trucks and related equipment, and the acquisition of an Enterprise Resource Planning [ERP] System.

SECONDARY MARKET ANNUAL REPORTS

The Public Finance, Securities and Disclosure Unit assisted in the review of the continuing annual reports provided by the City and its related entities required to be filed annually under the provisions of continuing disclosure agreements entered into pursuant to Rule 15c-2-12 of the U.S. Securities and Exchange Commission. The obligation to provide certain financial information to the national repositories and the state repository, if any, arises from undertakings that the City and its related entities make in connection with most of their bond issuances. The continuing disclosure reports require the updating of certain tables contained in the offering documents, together with the audited financial statements for the year in question. Financial statements of the City were not available for the most current year, but an effort was made to provide continuing disclosure reports based upon the financial information available in the 2003 and 2004 financial reports.

DISCLOSURE PRACTICES WORKING GROUP (DPWG)

The Public Finance, Securities, and Disclosure Unit also assisted in the administration of the Disclosure Practices Working Group in accordance with the Disclosure Ordinance. In accordance therewith the Public Finance, Securities and Disclosure Unit assisted in the preparation and/or review of all matters coming before the DPWG, including the review of the City's 2003 and 2004 Comprehensive Annual Financial Reports, and assisted in the preparation of the DPWG's third annual report.

CITY GENERAL FUND FINANCINGS

In addition to the above financings, the Public Finance, Securities and Disclosure Unit reviewed City and related entity continuing disclosure reports required to be filed annually under the provisions of continuing disclosure agreements entered into pursuant to Rule 15c-2-12 of the Securities and Exchange Commission. The obligation to provide certain financial information to the national repositories and the state repository, if any, arises from undertakings that the City and its related entities make in connection with most of their bond issuances. The continuing disclosure reports require the updating of certain tables contained in the offering documents, together with the audited financial statements for the year in question. Financial statements of the City were not available for the past year, but an effort was made to provide financial information to the extent such information was available and reliable.

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PUBLIC INFRASTRUCTURE AND RESOURCE RESTORATION UNIT



SCOPE OF WORK

The Public Infrastructure and Resource Restoration Unit ("PIRRU") of the City Attorney's Office addresses legal issues arising from the construction and maintenance of City infrastructure such as streets, sidewalks, water and sewer pipelines and treatment plants, parks, libraries and other public buildings. PIRRU is supervised by Chief Deputy City Attorney Tom Zeleny.

Repairing and maintaining the City's infrastructure has become a priority. Improvements to the water and sewer systems are being mandated by state and federal authorities. Neglected for years, City streets and sidewalks are receiving additional funding for repairs. PIRRU supports these efforts by drafting and reviewing contracts, assisting in their award and administration, helping to resolve disputes with contractors, and navigating the maze of state and federal regulations that apply to water, sewer, and other City infrastructure.

2007 HIGHLIGHTS

WATER AND SEWER RATE ADJUSTMENTS

In 2006, the California Supreme Court ruled that Proposition 218, passed by California voters in 1996, applies to municipal water and sewer rates. Proposition 218 requires that property owners receive advance notice of proposed water or sewer rate increases, that the rates reflect the cost of providing the service, and that property owners have the opportunity to object to the rate increase. If a majority of property owners object to the proposed rate increase, the rate increase cannot be implemented.

In 2007, the City adopted multi-year increases in water and sewer rates. The additional revenue is necessary to comply with state and federal mandates to improve the City's water and sewer systems. The City also adjusted its rates to better reflect the actual cost of providing these services to ratepayers. With the assistance of PIRRU, nearly 275,000 affected residents and businesses received a detailed written explanation of the adjustments, but very few objected to the increases.

SEWAGE SPILLS LAWSUIT

PIRRU represented the City in this lawsuit, first filed in 2001 by San Diego Baykeeper and joined by the Federal Environmental Protection Agency in 2003, alleging that the

City's history of sewer spills violated federal law. Federal District Court Judge Rudi Brewster approved a Final Consent Decree on October 9, 2007, settling all the remaining issues in the case. The City avoided any additional fines or penalties for past sewage spills, allowing ratepayer money to be devoted to maintaining the City's sewer lines. Under the Final Consent Decree, the City must continue a robust sewer line cleaning and inspection program, and repair or replace 250 miles of sewer mains by July 1, 2013.

FEDERAL PRISON'S WATER USE

The City discovered that it was billing the downtown federal prison for only a small fraction of the water it was consuming, due to an issue with a water meter. PIRRU filed a claim with the prison seeking back-payment for the correct amount. PIRRU and Water Department staff met with prison officials, who ultimately agreed to pay the City over \$800,000 for past water and sewer use. The issue with the water meter was corrected.

HILLCREST AND MISSION HILLS ACCELERATED SEWER

A contractor asserted a claim against the City for \$1 million in additional costs on a sewer project due to difficulties encountered during construction. The claim included costs incurred in attempting, but not actually completing, a portion of the job. PIRRU represented the City at mediation, which concluded with a final settlement of only \$108,000.

U.S. OPEN GOLF TOURNAMENT

PIRRU worked with Park & Recreation Department Golf Operations staff on consultant and construction contracts to improve the Torrey Pines Golf Course greens, clubhouse, landscaping, and parking lot in anticipation of the City's hosting of the US Open in June, 2008. PIRRU also met with the USGA and its representatives to help ensure the tournament meets accessibility requirements under the Americans with Disabilities Act.

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PUBLIC SAFETY UNIT



SCOPE OF WORK

The Public Safety Unit is a subunit of the Business and Government Affairs Section of the Civil Division. The Unit is led by Deputy City Attorney Mary Nuesca and provides legal advice to the San Diego Police Department, the Fire Department, the Family Justice Center, the Commission on Gang Prevention and Intervention and the Ad Hoc Committee on Fire Prevention and Recovery.

Unit members work closely with the Police Chief and his Assistants, and with commanding officers, both sworn and civilian. Unit members respond to questions and assist with projects from all levels and members of the Department. The Unit's general practice includes the following subjects:

- Advising on discipline, labor, employment, equal opportunity, and disability issues
- Drafting ordinances, resolutions, memoranda of understanding and contracts
- Interpreting statutes, including the Public Safety Officers Procedural Bill of Rights Act, and other legal documents
- Responding to subpoenas and requests for public records
- Monitoring and advising on new case law and new legislation
- Litigating administrative matters involving police permits, discipline, alcohol license-related matters, and appeals from those hearings
- Representing the Department in *Pitchess* motions seeking access to confidential police personnel records, in motions seeking retention of seized firearms, and in motions seeking the return of seized property

2007 HIGHLIGHTS

MOTIONS

The Unit handled approximately 210 *Pitchess* motions, 53 firearms motions, several motions to quash subpoenas and motions to return property.

- San Diego Superior Court: *SDPOA v. State of California et al.*, Case No. 727415: The Unit filed a motion to allow the Chief to fire officers who can no longer carry a firearm because of a battery conviction. An injunction currently prevents the Chief from taking such action, even though state law allows it.

WRITS & APPEALS

- California Supreme Court: *Chambers v. Superior Court*, 42 Cal. 4th 673 (2007): The Unit briefed and argued this case before the California Supreme Court. The issue was whether public defenders could share confidential information from police personnel files obtained in a *Pitchess* motion with each other in unrelated cases. The Court ruled that they could with a court order, so long as a trial judge finds the information discoverable in the unrelated case. The City was joined by the League of California Cities as amicus curie, and the local Public Defenders Office argued for the defendant, joined by the L.A. County Public Defenders and the California Public Defenders Association.
- Fourth District Court of Appeal: *County of San Diego, et al v. San Diego NORML, et al and Wendy Christakes, et al*, D050333: On behalf of the City, the Unit filed an amicus curie brief at the Fourth District Court of Appeal in the above entitled case. The issue in the case is whether the State's medical marijuana laws are preempted by federal law. The City's brief supports the position of the State Attorney General which is that state medical marijuana laws are not preempted by federal law. A ruling is expected in the summer.
- *Pitchess* Appeals: The Unit handled several writs and appeals from *Pitchess* motions in both the Fourth District Court of Appeal and the Appellate Department of the Superior Court.

HEARINGS

- Massage Establishment License Revocation - *Yumi Ito and Ginza Oriental Spa v. San Diego Police Department*, OAH Case No. 2006120817: In front of an administrative hearing officer at the State Office of Administrative Hearings, the Unit successfully argued for the revocation of a massage establishment permit and a revocation of the owner's permit based on prostitution activity.
- Nude Entertainment Establishment Suspension - *In the matter of Cheetahs, Suzanne Coe*, OAH Case No. L2006090815: The Unit successfully obtained a temporary suspension of the police permit and a monetary fine against Cheetah's, a nude entertainment establishment, for violations of the no-touch rule.
- Alcohol Licensing Hearings: The Unit represented the Department at several hearings over whether particular alcohol establishments should be granted an ABC license.

ORDINANCES

- Tobacco Retailer Ordinance: After attempting for 4-5 years to regulate tobacco retailers, the Unit presented an Ordinance to the City Council which passed unanimously. It requires tobacco retailers to obtain a police permit, which can be suspended or revoked if the retailer violates any tobacco laws, including the sale of tobacco to minors.
- Graffiti Ordinance: The Unit has drafted an Ordinance strengthening the City's graffiti laws. It should be heard by the City Council in early 2008.
- Cardroom Ordinance: The Unit amended the City's cardroom Ordinance to comply with State law on setting wagering limits which will be determined by the City Council. The Unit had to obtain approval from the State Attorney General for the amendment, which has been given. The amendment is under consideration by the City Council.

OTHER INITIATIVES

- Medical Marijuana Dispensaries: The Unit issued Legal Opinion 2007-3, addressing the legality of medical marijuana dispensaries. The Unit also advised the Department in its efforts to arrest and prosecute individuals unlawfully selling and distributing marijuana under the guise of providing medical marijuana.
- Administrative Citation Program: The Unit assisted the Department in implementing the administrative citation program to address loud parties.
- Homeless Settlement: The Unit assisted in the implementation of the settlement agreement in *Spencer v. City of San Diego*, No. 04 cv-2314 BEN. Absent complaints, police officers should refrain from issuing citations to the homeless sleeping on public sidewalks from 9:00 p.m. to 5:30 a.m. This settlement was necessitated by the Ninth Circuit's ruling in *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir 2006), which struck down enforcement of Los Angeles' ordinance prohibiting sleeping on the sidewalk against the involuntarily homeless.
- Jessica's Law: The Unit monitored the legal challenges to Jessica's Law, the voter initiative which was passed in November 2006. Jessica's Law strengthened a number of penal code provisions aimed at sex offenders, prohibits registered sex offenders from residing within 2000 feet of a school or park where children regularly gather, requires lifetime GPS monitoring of registered sex offenders who are felons, and allows local jurisdictions to add locations to the 2000 foot restriction. Lawsuits were filed in both state and federal court, challenging the constitutionality of the 2000 foot restriction, and

the matter is currently pending before the California Supreme Court. It is unclear whether the residency restriction applies retroactively.

UPCOMING INITIATIVES

- Major events: The Unit is involved in the San Diego Police Department's preparations for the U.S. Open, the Bio-Tech Convention, the International Association of Chiefs of Police Convention, the Major Cities Chief's Convention, and the Women in Law Enforcement Conference.

SCOPE OF WORK EXPANDED

Four other areas of responsibility were assumed by the Public Safety Unit in 2007:

- **FIRE DEPARTMENT:** The implementation of the recently passed Firefighters Procedural Bill of Rights will be a major initiative for the year. The general practice includes:
 - Advising on discipline, labor, employment, equal opportunity and disability issues
 - Drafting ordinances, resolutions, memoranda of understanding and contracts
 - Interpreting statutes, including the Firefighters Procedural Bill of Rights Act
 - Responding to subpoenas and requests for public records
 - Monitoring and advising on new case law and new legislation
- **FAMILY JUSTICE CENTER:** Work in 2007 included a heavy emphasis on reviewing and updating the City's partnership agreements with the various service providers at the Family Justice Center and addressing confidentiality issues. The general practice includes:
 - Advising on discipline, labor, employment, equal opportunity and disability issues
 - Drafting ordinances, resolutions, memoranda of understanding and contracts
 - Interpreting statutes and other legal documents
 - Responding to subpoenas and requests for public records
 - Monitoring and advising on new case law and new legislation
- **COMMISSION ON GANG PREVENTION AND INTERVENTION:** The Unit drafted resolutions and other documents to assist in getting grant money for gang prevention and intervention, and is preparing amendments to the Municipal Code sections governing the Commission. The amendments address the composition of the Commission and meeting requirements. The amendments will be heard in early 2008. The Unit expects to assist the

Commission and the City to implement its strategic plan addressing gang issues adopted by the City Council at the end of 2007. The general practice includes:

- Advising on Brown Act issues
 - Drafting ordinances, resolutions, memoranda of understanding and contracts
 - Interpreting statutes and other legal documents
 - Monitoring and advising on new case law and new legislation
-
- **COMMITTEE ON FIRE PREVENTION AND RECOVERY:** This is a newly formed Ad Hoc Committee of the City Council, which will address and look for ways to both prepare for future wildfires, and assist in current recovery efforts. The Unit advises the Committee. The Committee met for the first time on January 14, 2008.

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REAL PROPERTY UNIT



SCOPE OF WORK

The Real Property Unit provides legal services on behalf of the citizens of San Diego to the Real Estate Assets Department, the Facilities Financing Division of the City Planning & Community Investment Department, the Park & Recreation Department, the Neighborhood Code Compliance Division of the Development Services Department, the Economic Development Department, the Major Gifts & Philanthropy Planning Program of the Department of Finance, the Airports Department and the Special Events Office of the Community & Legislative Services Department. The Real Property Section staffs the Park & Recreation Advisory Board, the QUALCOMM Stadium Advisory Board, the Airports Advisory Committee, and the Housing Advisory & Appeals Board.

The Real Property Unit performs due diligence analysis on hundreds of transactions each year and drafts legal documents for each transaction to protect the City from legal liability and assure compliance with the City Charter, the San Diego Municipal Code, City Council Policy, and State and Federal laws. In addition, the Unit drafted hundreds of contracts and other legal documents:

- Leases
- Purchase and sale agreements
- Deeds
- Park property usage agreements
- Grants and grant funds usage agreements
- Section 108 Loan Program agreements
- Joint use agreements for parks and schools
- Multi-jurisdictional agreements for the development and use of park land
- Responded to many Public Records Act requests on behalf of the City or assisted City staff in responding

The Real Property Unit of the City Attorney's Civil Advisory Division is supervised by Chief Deputy City Attorney Brock Ladewig.

2007 HIGHLIGHTS

MUNICIPAL AIRPORTS

- Successfully coordinated a Request for Proposals to develop the southern portion of Brown Field, a project anticipated to be worth \$50 million

- Prepared and delivered an educational presentation on legal conflicts of interest to the members of the Airport Advisory Committee to continue to educate the members and the public on the applicable law
- Montgomery Field Airport has generated significant environmental concerns in the effort to develop portions of the airfield for a new helicopter port. The City Attorney's Office assisted in the negotiations for experts to conduct the evaluation of the environmental impacts from the proposed development, resulting in actions that will enable completion of the project

PETCO PARK

- Assisted in the negotiations for the terms of an ordinance bringing about an amendment to the Joint Use and Maintenance Agreement for PETCO Park, allowing the San Diego Police Department to provide police services inside the ballpark
- Provided analysis and evaluation for the entombed contaminated soil located below Tailgate Park. Successfully worked to obtain a covenant with the County Health Department for the regulation and control of the site

QUALCOMM STADIUM

- Analyzed the relationship of the Chargers to the stadium relating to their potential relocation
- Prepared the legal analysis of the fuel contamination at the stadium site and the adjoining water department resources. Coordinated the cleanup efforts, the water recovery plans and the efforts of the Regional Water Quality Control Board to obtain compensation for the damage. Secured the employment of better modalities for cleanup by the offending parties. Future efforts are expected to lead to the recovery of appropriate monetary damages and ensure a full cleanup of the stadium property

TELECOMMUNICATIONS

- Responded to industry challenges on certain provisions of City Council Policy 700-10 that require a site access fee for each antenna placed on City property. Working to revise the policy to negate potential lawsuits and economic loss to the City

OTHER PROJECTS

- *Mesa College*, negotiated the \$1.2 million sale of three parcels of land to the Community College District to enable the district to redesign the college's entrance and parking facilities

- *Homeless Emergency Winter Shelter*, assisted in locating the shelter at PETCO Park
- *Mobile Home Parks*, report to the Land Use and Housing Committee regarding sales of mobile home parks and the effect on tenants' rights to acquire the properties

MEMORANDA & OPINIONS ISSUED

- Protected the City from liability and kept skate parks safe by advising against changing operations at City skateboard parks to unsupervised
- Opposed the use of Special Park Fees for off-site road improvements required in connection with park development, reserving park funds for only necessary park facilities
- Allowable uses of dedicated park land determined that designated valet parking in Balboa Park violated the City Charter and was an improper park use because it removed park land from use by the general public. Designated valet parking was discontinued
- Revised the zoning ordinance notice procedures to cure defects relating to second readings and potential veto overrides
- Water/sewer capacities fees had to be discontinued because it violated Proposition 218, (passed by voters in 1996) which restricts government revenue raising without a vote of the people
- The waiver of Housing Impact Fees is illegal to the extent that prior authorizing resolutions conflicted with the Municipal Code
- Housing Impact Fees should properly be calculated by the Facilities Financing Division
- The City's sign regulations were updated in response to signage issues at the Children's Pool in La Jolla
- Compliance with the Americans with Disabilities Act related to the storage of residential trash receptacles
- Several legal issues related to the Children's Pool in La Jolla raised by the California Supreme Court's denial of an appeal of the Superior Court's ruling to dredge the beach and return it to its 1941 configuration, and the federal Marine Mammal Protection Act's prohibitions against harassment of seals

- Balboa Park is not a permissible site for the City’s homeless emergency winter shelter
- The applicability of Jessica’s Law to the City’s designation of a site for the City’s homeless emergency winter shelter
- The need for a substantial amendment to the City’s Consolidated Plan, and the procedural requirements to complete such an amendment

ORDINANCES

- ***Brush Management***, new law mandating procedures related to wildfire safety through brush management. Also, obtained conditional approval from the California Coastal Commission of amendments to brush management regulations in the coastal overlay zone in response to the recent wildfires
- ***Alcohol Beach Ban***, new law prohibiting consumption of alcohol on all beaches and certain coastal parks, bluffs and rights-of-way for a one-year trial period
- ***Newsrack Ordinance***, creating a permitting process and regulations for the placement of newsracks in the public right-of-way
- ***QUALCOMM Stadium***, new law regulating alcohol consumption in the stadium parking lot
- ***Parking Advisory Board***, new law creating a Parking Advisory Board to enhance the effectiveness of parking options and solutions
- ***Large Retail Ordinance***, to provide standards for the evaluation of large retail establishments relating to design, bulk, and scale to minimize the development footprint, create a pedestrian scale environment, and promote a diversity of uses in accordance with the General Plan Strategic Framework Element and City of Villages strategy
- ***Superstore Ordinance***, to prohibit large-scale discount stores that offer a diversity of consumer products and a sizable grocery department under one roof
- ***Linkage Fees***, amending housing impact fees to modify the waiver and variance provisions as needed for Enterprise Zones
- ***Zoning Ordinance***, proposed to conform the Municipal Code zoning practices to State law

- ***Condominium Conversions***, proposed amendments to the Condominium Conversion Regulations
- ***Vacation Rentals***, proposed permit-oriented ordinance
- ***Health & Safety Programs***, proposed Code update

RESOLUTIONS

- ***Open Space***, conversion of 6,600 acres of City-owned land to dedicated open space
- ***Torrey Pines City Park***, created a park advisory board to create this new park
- ***Social Services***, numerous actions to provide social services to protect, improve and enhance the quality of life for the people of San Diego
- ***Public Facilities Development***, numerous actions to create assessments and financing plans to provide public facilities and infrastructure, such as fire stations, parks and roadways related to new residential and commercial developments
- ***Business Improvement Districts***, numerous actions to create, fund and sustain efforts within specific areas to promote businesses in San Diego
- ***Maintenance Assessment Districts***, numerous actions to create, fund and sustain maintenance services within specific areas at a level above and beyond those generally provided by the City

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REDEVELOPMENT AND HOUSING UNIT



SCOPE OF WORK

The Redevelopment Agency of the City of San Diego was created by the City Council in 1958 to alleviate conditions of blight in older, urban areas. The City Attorney's Redevelopment and Housing Unit is supervised by Chief Deputy City Attorney Huston Carlyle.

The Unit works in conjunction with Agency Staff to accomplish redevelopment projects which are beneficial to the citizens of San Diego, whether they are located downtown or in outlying areas that have been designated as Redevelopment Areas.

Redevelopment of urban areas, if properly undertaken, induces efficient and optimal use of land. Redevelopment can play a crucial role in transforming blighted areas in the city, where property values are low, crime is prevalent, and financial incentive is weak with respect to investing development dollars.

If properly implemented, with meaningful public input and public participation, redevelopment will work to renovate and revitalize areas. In that vein, and in order to assist in the elimination of these negative conditions, this unit is also the legal advisor to the City Council's Public Safety and Neighborhood Services Committee.

The need for additional affordable housing is a continuing issue facing the City of San Diego. The City Attorney's Redevelopment and Housing Unit works cooperatively with the San Diego Housing Commission, as well as other stakeholders, to assist in the development of affordable housing projects.

The City gains from redevelopment, through the transformation of run down, unsightly and depressed areas into new and vibrant areas, the creation of housing, and the ultimate influx of tax dollars generated from the new growth, through property tax, sales tax, and transit occupancy tax. In addition, redevelopment creates the money it ultimately distributes to help projects, through a process called "tax increment" whereby a percentage of the increased tax revenues is directed back into the redevelopment funding mechanism. However, successful redevelopment is not merely defined as generating dollars, but must also include the critical components of public input and public participation, and a final project compatible with the vision shared by San Diegans.

The City Attorney's Office also advises the Housing Authority, which is made up of the eight members of the San Diego City Council sitting as the Housing Authority. The Authority is a state agency created pursuant to section 35200 et seq. of the California

Health and Safety Code. The City Attorney's Office advises the Authority on complex affordable housing financing proposals, investments in housing and first-time homebuyer programs, and on policies including the City's Inclusionary Housing Program and the Housing Trust Fund.

2007 HIGHLIGHTS

In the past year, the City Attorney's Redevelopment and Housing Unit has assisted the Centre City Development Corporation [CCDC], Southeastern Economic Development Corporation [SEDC], and the City's Planning and Community Investment Department – Redevelopment Agency Division [City Redevelopment], and the San Diego Housing Commission, in order to attract beneficial developer interest in blighted areas and to effect positive development and completion of meaningful redevelopment and housing projects:

EL PEDREGAL FAMILY APARTMENTS PROJECT, SAN YSIDRO

The Redevelopment Agency approved an Owner Participation Agreement with a developer to develop an affordable housing project on 2.24 acres, consisting of 45 rental units, 44 of which shall be rented to very low income and low income households, plus 1 manager's unit.

CITY HEIGHTS SQUARE OFFICE PROJECT, CITY HEIGHTS

The Redevelopment Agency approved a First Implementation Agreement to the Disposition and Development Agreement with Price Charities to develop a four story retail-office building consisting of up to 95,000 square feet, with approximately 23,000 square feet ground floor retail and lobby space and three levels of office space, and/or classrooms and/or meeting rooms above, with street level and underground parking.

PARKSIDE TERRACE PROJECT, CENTRE CITY

The Redevelopment Agency approved an Owner Participation Agreement with Parkside Terrace, LP to develop an affordable housing project consisting of 77 rental units, 76 of which shall be rented to very low and low income households.

VERBENA AFFORDABLE APARTMENTS PROJECT, SAN YSIDRO

The Redevelopment Agency approved an Owner Participation Agreement with Verbena San Ysidro, LP to develop an affordable housing project consisting of 80 rental units, 79 of which shall be rented to very low and low income households, plus 1 manager's unit, with attached one to two car garages, and recreational amenities.

BOULEVARD APARTMENTS PROJECT, NORTH PARK

The Redevelopment Agency approved an Owner Participation Agreement with S.V.D.P Management, Inc. to develop an affordable housing project consisting of 24 rental apartments, 23 of which shall be rented exclusively to extremely low income and very low income households, plus 1 manager's unit with approximately 2,063 square feet of community space, a 17-space above-grade parking garage, and recreational amenities.

CENTRE POINT PROJECT, CROSSROADS

The Redevelopment Agency approved a First Implementation Agreement to the Disposition and Development Agreement with CentrePoint LLC, to develop a pedestrian oriented mixed use project consisting of 312 for-sale residential units, 47 of which shall be designated exclusively for low-income households.

LOS VIENTOS PROJECT, BARRIO LOGAN

This project will provide 88 rental units affordable to families earning between 30 – 60% of the Area Median Income in the Barrio Logan Redevelopment Project Area.

VETERANS VILLAGE, NORTH BAY

The Redevelopment Agency contributed \$1,300,000 to the construction costs of Phase II of the Veterans Village project in the North Bay Redevelopment Project Area. This funding facilitated the project to proceed with the construction of 112 transitional beds for very low and low-income individuals. The Redevelopment Agency also contributed \$3,050,000 for the acquisition of property and relocation costs for Phase III of this project.

BALBOA THEATRE, CENTRE CITY

The Redevelopment Agency contributed the final funding and approved the management agreement for the opening and operation of the historic Balboa Theatre.

1050 B STREET, CENTRE CITY

This project is a 226-unit, 100% affordable, high-rise rental apartment project in the Centre City Redevelopment Project Area. The Redevelopment Agency entered into an Owner Participation Agreement with Affirmed Housing Group whereby the Agency anticipates lending \$33.975 million in low-moderate income redevelopment funds, with \$29.575 million to remain in place as permanent financing after construction. Additional funding will be derived from \$45 million in bond financing, \$4.9 million in Low Income Housing Tax Credits and \$2.4 million in private equity through the Proposition 1C program. Permanent financing will include \$10 million in State MHP funds and \$33.7 million in Low Income Housing Tax Credits. This is a mixed use project and will include two ground level retail condominiums.

RANCHO DEL RIO MOBILE HOME PARK, SAN YSIDRO

Rancho del Rio is a 130-space mobile home park located on City of San Diego Water Department lands. Of the 130 homes, 39 are rent-restricted to affordable families pursuant to a ground lease from the San Diego Housing Commission, on behalf of the City, and a private sector tenant, Rancho del Rio, LTD, which owned the rent-restricted units and operated the park. The lessee desired to sell its interest in the project, and found a willing buyer in Jackson Square Properties, LLC. The City Attorney's Office worked with the buyer, the seller, Housing Commission staff, Water Department and Real Estate Assets staff, and the counsel to the buyer's lender, Deutschebank, on closing a complex real estate transaction, valued at \$3 million, allowing Jackson Square to assume the remaining term of the leasehold. As part of the transaction, the San Diego Housing Authority received \$380,500.61 as part of a 50/50 equity share. The transaction was closed in November 2007.

CREATION OF A TOURISM MARKETING DISTRICT IN SAN DIEGO

A Tourism Marketing District (TMD) was created over the course of FY 2007. The involvement of the City Attorney's Office began during the summer of 2006. An implementing ordinance was drafted by the City Attorney's Office and enacted into the Municipal Code by the City Council over May and June, 2007. In September 2007, the lodging industry returned with petitions for the creation of the TMD and the City Council authorized the commencement of procedures for creation of the TMD. In December 2007, the City Council, upon an affirmative vote by the lodging industry, agreed to establish the TMD and to levy the assessments effective January 1, 2008. The City is currently in final negotiation with the lodging industry for a contract to enable a non-profit established by the industry to run the TMD. It is anticipated that the City will initially collect approximately \$25 million annually. On an ongoing basis, the City will be relieved of annual funding requirements of about \$10 million currently budgeted for the San Diego Convention and Visitors Bureau and other tourism-related entities.

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RESOURCE CONSERVATION AND MANAGEMENT UNIT



SCOPE OF WORK

The Civil Division’s Resource Conservation and Management (“RCM”) Unit is supervised by Chief Deputy City Attorney Michael Calabrese.

The RCM Unit provides advice and counsel, and produces and analyzes legislative, contractual, and other documents, for several City Departments, including Engineering and Capital Projects, Environmental Services, Purchasing and Contracting, General Services, and Equal Opportunity Contracting.

The mission of the RCM Unit is to preserve and enhance the City’s natural, physical, and fiscal resources in a manner that ensures a livable San Diego for future generations.

The Unit’s Attorneys are responsible for:

- drafting contracts and other legal instruments
- participating in litigation at the civil and administrative levels as needed
- drafting legislative documents for adoption by the City Council
- providing written advice to others in City Government to ensure that all of these activities proceed lawfully and ethically.

As they proceed through the new year, the attorneys in the RCM Unit look forward to continuing to serve the citizens of San Diego by providing legal services that will enhance the City’s sustainable use of resources in the most efficient and responsible manner possible, while maintaining the Office’s constant vigilance in matters of public integrity, ensuring a healthy, livable San Diego for both today and tomorrow.

2007 HIGHLIGHTS

- Created uniform contract templates for City consultants, transient occupancy tax allocations, and non-profit agencies
- Analyzed and drafted supporting documentation, including contracts, resolutions, and ordinances, for dozens of capital improvements to City transportation infrastructure
- Drafted a comprehensive review of the last ten years of developments in the law of Equal Opportunity Contracting, made extensive recommendations for the City to improve its performance in this area, and participated in extensive

working group sessions aimed at lawfully remedying historical discrimination in City contracting

- Addressed numerous complex issues involved in designing a controversial proposed bridge over Rose Canyon, including potential conflicts of interest arising when the same contractors proposed to both analyze whether a bridge should be built and then design that same bridge
- Litigated a Public Utilities Commission case regarding electric rates for commercial and industrial customers, and engineered a settlement among numerous parties, including San Diego Gas & Electric, that created a new tariff providing economic incentives for customer-owned renewable generation such as solar and wind power, including renewable projects that the City itself develops
- Revised the City's administrative rules implementing the Living Wage Ordinance, in order to bring them into compliance with the law and better accomplish the Ordinance's goal of protecting workers
- Initiated and drafted the San Diego's first ever City-wide recycling ordinance, expanding collection of recyclable material beyond single-family homes to businesses and multiple-family homes
- Guided the City through the difficult process of applying to the Federal Emergency Management Agency for assistance in response to the October 2007 Wildfires, drafting grant application language and analyzing complicated federal requirements to ensure that the City would be eligible for available assistance
- Assisted with amendments to San Diego's Stormwater Ordinance and Land Development Manual, in response to mandates from the Regional Water Quality Control Board that the City improve its ongoing efforts to prevent the discharge of pollutants into stormwater
- Conducted training sessions for Purchasing and Contracting personnel and City Council Staff, educating them on a uniform process for handling community requests for transient occupancy tax grants

CURRENT RCM UNIT PROJECTS

- Conducting assessments of City services that the Mayor's Office has proposed for possible outsourcing under the "Managed Competition" program, to ensure that proposed projects are eligible and that any implementation of Managed Competition complies with the law

- Developing recommendations for better implementation of the City’s Living Wage Ordinance, including changes to the Ordinance itself
- Arguing, in the California Supreme Court, in favor of requiring the Public Utilities Commission to perform environmental review of the importation of liquefied natural gas, and opposing a recent PUC decision that concluded that the potential health and safety impacts of such new imports need not be fully analyzed before approval
- Advising various City Parking Advisory Boards regarding their ethical and legal obligations with respect to avoiding conflicts of interest, reporting financial interests, and conducting their affairs in an open atmosphere that provides for public participation
- Cooperating with other City Departments in reviewing and revising Council Policy 100-03, which governs the allocation of transient occupancy tax funds to community groups
- Handling the City’s participation in developing a cleanup plan for the Campbell Shipyard, in cooperation with both the Regional Water Quality Control Board and various parties responsible for pollution at the site
- Negotiating for the deployment of one megawatt of solar power each at the City’s Otay and South Bay water reclamation plants, and 1.2 megawatts of fuel cell energy at the South Bay plant, which will be owned by the City and enhance the region’s renewable energy portfolio while also saving the City’s taxpayers on energy costs

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TRIAL UNIT



SCOPE OF WORK

The San Diego City Attorney's Trial Unit consists of the following sections: General Litigation, Land Use, Civil Revenue and Recovery, Construction Litigation, and Workers' Compensation. It was supervised by Assistant City Attorney Gene Gordon. The unit is responsible for providing a defense to the City of San Diego and its employees, officials and departments in civil actions. It also initiates civil lawsuits on behalf of the City.

The following are examples of the type of work performed by the Trial Unit:

- Defend the City in complex litigation and class action lawsuits
- Defend personal injury lawsuits based on allegations of negligence, dangerous condition of public property, traffic accidents involving City vehicles, and police misconduct cases, including allegations of violations of the state and federal constitutions, unlawful entries into homes, unlawful searches and seizures, false arrest, and excessive force
- Defend challenges to the constitutionality of City ordinances and City policies or practices
- Defend employment-related cases which include claims of discrimination, harassment, retaliation and FLSA wage and hour matters
- Defend and initiate land use lawsuits, including writs of mandamus and prohibition, CEQA writs, inverse condemnation actions, and property damage claims arising from floods, sewer backups, soil subsidence, etc.
- Defend other writs and challenges, including employment-related administrative writs, alleged Brown Act and Public Records Act violations, election challenges, and actions involving provisions in the City Charter and Municipal Code
- Defend and initiate breach of contract and construction claims which commonly involve issues of contract interpretation, changed conditions, extra work, differing site conditions, liquidated damages, delay and disruption, and stop notices
- Defend workers' compensation actions before the Workers' Compensation Appeals Board
- Represent various City departments in administrative hearings before the Civil Service Commission
- Prosecute revenue and recovery cases which include actions for false claims, unfair business practices, environmental contamination, overcharging, breach

of contract, breach of development agreements, liquidated damages, tax collection, unpaid rent, damage to City property, and various other matters. The Unit also seeks reimbursement from third parties for workers' compensation payments the City made to employees because of injuries caused by the third parties

2007 HIGHLIGHTS

Well over 300 civil lawsuits involving thousands of parties were filed against the City in 2007. Most of those cases were or will be resolved without any monetary payment by the City, or by the payment of a nominal sum. Many of those cases were or will be disposed of by court orders granting motions filed by the City, voluntary dismissals, or after trial. Other cases were or will be resolved after settlement negotiations between the parties, settlement conferences, mediation, or arbitration.

HIGH-PROFILE LITIGATION

- *Steve Trunk, et al. v. City of San Diego* aka Mt. Soledad Veterans War Memorial

On November 8, 2007, a federal court judge dismissed a lawsuit filed against the City of San Diego involving the Mt. Soledad Veterans War Memorial. Plaintiffs Steve Trunk and the late Philip Paulson sued the City and the federal government after the federal government acquired the memorial property from the City via eminent domain on August 14, 2006.

In their lawsuit, *Steve Trunk, et al. v. City of San Diego, et al.*, Case No. 06cv1597, Trunk and Paulson asked the federal court to order removal of the Mt. Soledad cross from the Mt. Soledad Veterans War Memorial. Trunk and Paulson also asked the federal court to declare the transfer of the property unconstitutional.

In addition, both plaintiffs claimed that the display of the cross on public property violated their state and federal constitutional rights because the cross is a religious symbol. In dismissing the lawsuit against the City, the federal court agreed with the City Attorney's position that the City should be dismissed from the lawsuit because the federal government took the property and now owns the memorial property. Now the lawsuit will proceed only against the federal government.

As a result of the dismissal of the case against the City, the City will not be responsible for payment of the plaintiffs' attorney's fees or costs in the pending case.

- *Philip K. Paulson v. Charles Abdelnour, et al.*, aka Mt. Soledad Litigation

On February 21, 2007, City voters who approved donating the Mt. Soledad Veteran's War Memorial to the federal government withstood another significant court challenge. The California Supreme Court declined to hear the case on behalf of the late Philip K. Paulson, who was seeking a reversal of a lower court's ruling by the Fourth District Court of Appeal.

In October 2005, San Diego Superior Court Judge Patricia Cowett invalidated Proposition A, which called for a donation of the Mt. Soledad Veteran's War Memorial to the federal government. Judge Cowett ruled that the land donation violated the State Constitution.

The City Attorney's Office appealed Judge Cowett's decision to the California Fourth District Court of Appeal in response to 76% of voters who passed Proposition A in July 2005.

On November 30, 2006, the California Fourth District Court of Appeal issued a unanimous decision reversing Judge Cowett's ruling and upholding the will of the people to donate the property to the federal government.

Critical to the Court action was the San Diego City Attorney's successful motion filed in July 2006, with U.S. Supreme Court Justice Anthony M. Kennedy, who agreed to suspend a federal court's ruling to remove the Mt. Soledad Cross by August 1, 2006, in order to allow the appeals to proceed without the threat of fines for not removing the cross. The Court was acting on the original federal lawsuit filed in 1989 by Paulson challenging the display of the cross on City property.

- *Border Business Park, Inc. vs. City of San Diego* aka De la Fuente Litigation

On May 15, 2007, in another major victory for San Diego taxpayers, the U.S. Supreme Court declined developer Roque de la Fuente's petition for certiorari in which he sought to have his \$94.5 million verdict reinstated against the City of San Diego.

With the inclusion of interest and fees, the original judgment had grown to \$150 million.

On January 3, 2007, the California Supreme Court declined to review a lower court's ruling which had overturned De la Fuente's \$94.5 million verdict against the City.

The majority of the 2001 multi-million dollar jury verdict against the City has now been permanently eliminated. De la Fuente had sued the City for allegedly breaching a development agreement with his Otay Mesa Border

Business Park and for taking property without compensation, seeking the following damages:

Airport Planning Claim -\$25.5 million
Truck Traffic Claim - \$39.8 million
Development Agreement Claim – \$29.2 million

The case was appealed by the City utilizing outside counsel Horvitz & Levy and Latham & Watkins, who lauded the City Attorney for providing critical strategic advice on the presentation and oral argument of the appeal.

The City Attorney and Latham & Watkins are now filing a motion to dispose of the remainder of the case.

- *National Enterprises, Inc., vs. City of San Diego and Otay Acquisitions LLC vs. City of San Diego* aka De La Fuente Litigation

The Superior Court dismissed two lawsuits filed by companies associated with developer Roque De la Fuente, alleging breach of contract and taking of property from his Otay Mesa Business Park. In rejecting the cases, the Court agreed with the City's arguments that each of the lawsuits, collectively seeking over \$100 million in damages, was flawed.

Superior Court Judge Linda Quinn ruled that the companies failed to file proper government claims, which were required prior to filing these lawsuits. She also found that the prior case the City had won barred these new lawsuits.

In that earlier case, *Border Business Park, Inc. vs. City of San Diego*, the California Court of Appeal overturned a \$94.5 million verdict against the City of San Diego, which raised many of the same arguments repeated in the rejected lawsuits.

CIVIL REVENUE AND RECOVERY AND CONSTRUCTION LITIGATION SECTIONS

Trial Unit attorneys also bring lawsuits on behalf of the City to recover money for the City. The Unit is supervised by Chief Deputy City Attorney Sim Von Kalinowski. In 2007, the Civil Division plaintiffs' litigation and recovery cases resulted in over \$2,260,000 in settlements, judgments, or other recoveries. Attorneys in the specialized Trial Unit sections of Civil Revenue and Recovery, Construction Litigation, and Workers' Compensation, in addition to the General Trial section, resolved approximately 45 plaintiffs' litigation or recovery cases in 2007. These cases include:

- Metropolitan Correctional Center (DOJ) matter - \$807,485 payment to the City for under-billed water fees during 2001-2006;
- *City v. Rob Hagey Productions* - \$243,946 payment to the City for unpaid police and fire special event fees for the 2006 Street Scene;
- TC Construction (Fiesta Island Interceptor Replacement Project) - \$210,000 payment to the City for defects in the construction of a sludge pipeline;
- *City v. Waste Management* - \$102,379 payment to the City for underpaid landfill fees for improper classification of material;
- *City v. Dickens* - \$95,000 payment to the City in settlement of an action seeking recovery of workers' compensation benefits resulting from a traffic accident;
- *City v. Means, ABS, et al.* - \$70,000 payment to the City in settlement of an action alleging that contracts were entered with City Airports in violation of City policies;
- *City v. Webcore* - \$65,000 payment to the City for coastal bluff erosion caused by private construction activities;
- *City v. BORSTAR* - (Dept. of Homeland Security) - \$63,000 payment to the City from the U.S. Government for back rent owed for the lease of City property at Brown Field;
- *City v. Archer Western Contractors* - \$60,000 payment to the City for underpaid MWWWD discharge fees for a construction project;
- In re Brown Field Bldg. #1220 - \$41,640 payment to the City from the U.S. Government for back rent owed for the lease of City property at Brown Field.

Additional plaintiffs' litigation matters being litigated in 2007 and continuing into 2008 include these potential million to multimillion dollar actions:

- *County of Santa Clara, et al v. ARCO et al* – the City joined with several other public entities in a public nuisance action against the lead paint industry to abate lead paint in public and private structures;
- *City v. Kinder Morgan* (Mission Valley Fuel Terminal) – the City brought an action against the owner/operator of the fuel terminal for underground contamination of the adjacent City property (Qualcomm Stadium and underground aquifers);

- *City of Los Angeles, et al v. Hotels.com et al* - the City joined with several other public entities in an action against internet travel booking companies to obtain payment of transit occupancy taxes (TOT);
- *City of San Diego v. Sempra Energy et al (Natural Gas 2000 Litigation)* – the City’s action, consolidated with several public entity actions, is against natural gas wholesalers for unfair business practices;
- *LADWP ex rel Armenta v. James Jones, et al* – the City joined with several other public entities in a False Claims action against manufacturers of water works parts;
- *City v. BNSF* – the City brought an action for underground soil contamination from railroad fuel storage tanks that caused increased costs to the City for construction of a sewer pump station.

LAND USE SECTION

The Land Use Section is supervised by Chief Deputy City Attorney Christine Fitzgerald. Successful litigation cases in 2007 included:

- *Rancho del Sol Nurseries v. City* – a property owner brought a \$25 million suit alleging inverse condemnation and violation of constitutional rights resulting from a City storm drain project. The federal district court granted the City’s motion to dismiss. The City paid \$0.
- *Barczewski v. City* – a \$25 million suit alleging that the City breached a settlement agreement and inverse condemnation. The City’s demurrer was sustained as to most of the causes of action, and Plaintiff dismissed the remaining claims after the City filed a motion for summary judgment. The City paid \$0.
- *Houlton v. City* – a multi-million dollar inverse condemnation suit by a homeowner arising from the City’s installation of storm drain panels on Plaintiff’s property. A preliminary injunction was denied and Plaintiff dismissed the case after the City filed a motion for summary judgment.
- *McCollum v. City* – a landside in the backyard of a residence caused several hundred thousand dollars in damage to the property. The City maintained an easement for utilities in the area of the slide. The homeowner dismissed the suit against the City after the City filed a motion for summary judgment.
- *J&J Properties, LLC v. San Diego Housing Commission* – this case involved the enforcement of Single Room Occupancy [SRO] hotel code regulations relating to the closure of the Hotel Churchill and the ejection of long-term residents. A favorable settlement was reached whereby the property owner

agreed to rehabilitate existing SRO rooms and pay the tenants relocation rent which had been withheld.

- *KB2S v. City* – Plaintiff brought a Fair Housing Act claim against the City alleging that the City unlawfully interfered with its low income housing development. Plaintiff claimed approximately \$3 million in damages. The City’s motion for summary judgment based on lack of standing was granted. The case is on appeal.

GENERAL LITIGATION SECTION

The attorneys in the General Litigation Section were highly successful in resolving numerous personal injury lawsuits that were favorable to the City. Many motions for dismissal or for entry of judgment in favor of the City were granted by the courts, including a multi-million dollar traffic accident case where the court ruled that no dangerous condition of City property contributed to the accident. The Unit is supervised by Chief Deputy City Attorney Maria (Mia) Severson. Examples are:

- *Guerrero v. City* – Plaintiffs’ personal injury action against the City alleged that a dangerous condition of a City roadway was a cause of an automobile—tractor/trailer accident that caused serious injuries to Plaintiffs. Plaintiffs’ medical expenses alone exceeded \$2.5 million. The City’s motion for summary judgment was granted and was affirmed on appeal. The City paid \$0.
- *Butler v. City* – Plaintiffs alleged they were entitled to millions because their civil rights were allegedly violated when they were arrested and convicted for killing a police officer. The convictions were overturned twelve years later. The City’s motion for summary judgment was granted. The City paid \$0.
- *Weisblat v. City* – Plaintiff challenged the constitutionality of a City ordinance that requires property owners who rent their property to pay a \$25 processing fee to the City to cover the cost of the tracking and billing of their taxes. Plaintiff contended that the charge was really a tax and not a cost recovery fee, and thus it was invalid. Plaintiff sought reimbursement to the property owners who had paid the fee (approximately \$5,000,000) and an injunction barring the City from collecting the fees in the future. He also sought attorney’s fees. The court granted the City’s motion for summary judgment. The City will pay \$0.
- *Casazza v. City* – Plaintiff suffered serious injuries when he lost control of his motorcycle on a City street. His lawsuit against the City alleged that the roadway was in a dangerous condition. The City’s motion for judgment on the pleadings was granted. The City paid \$0.

- *Bartley v. City* – Plaintiff suffered serious injuries when she tripped and fell on a City sidewalk. She claimed over \$675,000 in total damages. The court granted the City’s motion for summary judgment on the ground that the condition of the property was trivial and not a dangerous condition, and that the City did not have notice of the condition. The City paid \$0.
- *McDonald v. City* – Plaintiff was riding his bicycle to work when he collided with a large tree branch that had fallen in the street. Plaintiff suffered severe injuries. He filed a multi-million dollar action against the City alleging that the roadway constituted a dangerous condition of public property. The case settled for \$5,000.

WORKERS’ COMPENSATION SECTION

The Workers’ Compensation Section works closely with the Risk Management Department by providing advice to 17 claims adjustors and 5 claims representatives on workers’ compensation claims, and by handling litigation at the Workers’ Compensation Appeals Board. In addition, the Section litigates third party recovery cases.

The attorneys handle all aspects of litigation before the Workers’ Compensation Appeals Board, including trials, mandatory settlement conferences, expedited hearings, appeals, medical liens, death benefits, petitions to dismiss, and declarations of readiness. In 2007, the Section’s resolution of litigated files resulted in a savings of approximately \$1,950,000 from the amounts sought. The Section also handles third party recovery cases to recover workers’ compensation costs from outside parties. In 2007, the Section recovered \$252,759 in benefits previously paid by the City. As of December 2007, there were over 960 open, active workers’ compensation cases.

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**CRIMINAL
DIVISION**



APPELLATE UNIT



SCOPE OF WORK

The Appellate Unit provides legal support for the Criminal Division and is supervised by Head Deputy City Attorney Steve Hansen.

PRE-TRIAL MOTIONS

The Appellate Unit handles all pre-trial motions on behalf of the General Trial Unit. Typical motions include defense motions such as motions to suppress evidence and motions to dismiss based upon the Fifth and Sixth Amendments.

POST-TRIAL MOTIONS

The Appellate Unit handles all post-trial motions on behalf of the General Trial Unit as well as the Domestic Violence and Special Victims Unit. Typical motions include motions for new trial and motions to withdraw guilty pleas.

APPEALS

The Appellate Unit handles all appeal matters on behalf of the General Trial Unit, as well as the Domestic Violence and Special Victims Unit. Most appeals are filed by defendants after convictions, but the Appellate Unit also files appeals to correct judicial errors. The Unit handles appeals and writs before both the Appellate Division of the San Diego Superior Court and the Fourth District Court of Appeal.

TRAINING

The Appellate Unit takes part in training each new class of deputy city attorneys. The Unit trains new deputies on such topics as trial procedures, appellate issues, and Fourth Amendment issues.

LEGAL ADVICE

The Appellate Unit serves as a resource for deputies who have questions on criminal law and procedure. Trial deputies, issuing deputies, and arraignment court deputies seek legal advice on a daily basis.

The Appellate Unit also provides training, research, and trial support for the Criminal Division. Appellate deputies periodically provide the office with case law updates and legal memoranda. They also conduct training in the areas of constitutional law, criminal

procedure, and discovery. Deputy city attorneys assigned to the Unit also play a major role in training all new deputies. Law students gain extensive experience while interning or volunteering in Appellate, and in exchange help with the Unit's workload.

2007 HIGHLIGHTS

Typical motion issues included suppression of evidence, speedy trial, plea withdrawal, invalidation of prior convictions, and demurrers.

- The Appellate Unit handled the most pre-trial motions in its history, resolving over 820 motions – an increase of 32% over the previous record set last year. The Unit achieved more than a 93% success rate.
- The Appellate Unit handled more than 100 appeals and pre-trial writs. The Unit practiced primarily in the Appellate Division of the Superior Court but also handled cases in the California Court of Appeal. The Unit achieved more than a 92 % success rate.
- The Appellate Unit responded to over 1200 requests for assistance from deputy city attorneys regarding trial issues, arraignment court questions, and issuing questions.
- The Appellate Unit assisted in training two new classes of deputy city attorneys. The Unit trained new deputies on screening and arraignment issues, discovery issues, trial procedures, evidence rules, driving under the influence prosecutions, and constitutional issues.

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CODE ENFORCEMENT UNIT



SCOPE OF WORK

The Code Enforcement Unit prosecutes municipal and state code violations both criminally and civilly. The Unit is supervised by Head Deputy City Attorney Diane Silva-Martinez. Each attorney carries a caseload ranging from 35 to 45 cases, many of which are complex civil cases involving protracted litigation.

It is a specialized unit devoted to aggressively prosecuting a wide variety of code violations and public nuisances throughout San Diego. CEU deputies work in close partnership with code inspectors, community groups, the police, and other law enforcement agencies to improve the quality of life in San Diego's neighborhoods.

Types of violations referred to CEU include:

- substandard housing
- illegal businesses
- building and zoning violations
- public nuisance properties
- illegal grading
- fire hazards
- graffiti
- illegal dumping
- destruction of sensitive resources
- vacant structures

CEU's involvement in addressing code violations is essential so that violators are held accountable and problem properties are quickly put to legal productive use. Early involvement by CEU prosecutors ensures that code violations are timely and aggressively prosecuted so properties do not further deteriorate, attract crime, or diminish community pride.

CEU plays an integral role in maintaining a high quality of life for San Diegans by increasing public safety, preventing deterioration and blight in our neighborhoods, and protecting property values throughout the City. Cases prosecuted by CEU result in significant criminal fines and civil penalties, the recovery of investigative costs, and innovative creative sentencing terms.

In addition to prosecuting cases, deputies also attend meetings with the community, City Departments and Council Offices; draft ordinances; advise City Departments on

enforcement issues; work closely with the San Diego Police Department on identifying public nuisance properties; represent City Departments at administrative enforcement hearings; and serve on task forces and projects important to the community.

CEU investigators are essential to the prosecution of code enforcement cases. In addition to gathering evidence, investigators provide support to City code enforcement personnel in a number of ways, including: training inspectors on investigative techniques; verifying property ownership; obtaining evidence; and writing inspection warrants.

CEU also administers the City's "Spray and Pay Program" which offers rewards up to \$500 to citizens providing information leading to the conviction of graffiti vandals; provides training to City code enforcement personnel on topics such as "Search and Seizure," report writing, investigation techniques, and courtroom testimony; provides line-up training to police; participates in local, state and national conferences to provide expertise; represents the City as a Board member/adviser on the "National Vacant Properties Campaign" shares best practices and lends assistance to other cities; participates in "partnership meetings" with City Departments to improve the code enforcement process; and participates in community outreach to educate youth on graffiti issues.

2007 HIGHLIGHTS

Through aggressive civil and criminal prosecution, CEU obtained court orders requiring code violators to pay the following monies:

- \$165,200 in civil penalties paid directly to the City.
- \$5,500 in criminal fines with some monies stayed pending compliance.
- \$29,366 in investigative costs to reimburse.
- \$69,000 in donations to non-profits as restorative justice.
- \$4,468 in relocation costs to tenants living in substandard conditions.

Significant cases prosecuted by CEU this past year include:

SUBSTANDARD HOUSING

A top priority for all code enforcement personnel is to ensure that San Diego's residents are provided safe, decent housing. CEU works in partnership with inspectors, police, and the community to identify substandard housing and ensure that landlords are held accountable. A coordinated strategy is developed to relocate the tenants to decent housing when appropriate, and require the owner to rehabilitate the property. Below are some examples:

- *People v. Panado*

The owner of this substandard 14 unit complex, located in south San Diego was unresponsive to police reports of crime at the property and tenant requests

for repairs. Many units were vacant and occupied by transients and drug addicts who left drug paraphernalia, trash, and graffiti throughout the property. Sewage overflowed periodically, posing a health hazard.

As part of the settlement, the property owner was ordered to pay \$20,000 in civil penalties with \$15,000 stayed pending compliance, investigative costs of \$1,515; and a \$5,000 donation to a non-profit agency whose mission was to help the homeless. The owner was also required to pay tenant relocation costs in the amount of \$1,908.

- *In re Erez*

The landlord in this case rented out two substandard units in Mid-City with extensive code violations: roach and mice infestation; deteriorated foundations; electrical hazards; nonfunctioning plumbing, and frequent sewage back-up.

Tests revealed elevated lead levels, posing a hazard to the children. CEU represented the Neighborhood Code Compliance Department (NCCD) at an administrative hearing and the owner was required to pay relocation costs in the amount of \$4,400; investigative costs of \$3,626.17 and civil penalties of \$50,000 with \$40,000 suspended on the condition the owner make the required repairs.

- *People v. Cash*

A landlord sought to unlawfully evict his tenants by threats of violence and turning off their water service. Police were often called to the property, whereupon the landlord would become belligerent and uncooperative.

CEU filed a criminal complaint and the case went to trial, resulting in a misdemeanor conviction for battery. The conditions of the landlord's probation included a fine and an order not to violate landlord-tenant laws.

FIRE VIOLATIONS

CEU criminally prosecuted three night clubs for overcrowding violations and putting patrons at risk. Two of the clubs were located in the downtown area and one in Pacific Beach. The clubs paid fines, reimbursed the City for investigative costs, and are currently on probation prohibiting them from allowing overcrowding. As a creative sentencing term, the clubs agreed to donate monies to the San Diego Fire Rescue Foundation, for a total donation of \$10,500.

VACANT PROPERTIES

Vacant structures exist throughout San Diego creating fire hazards and attracting crime. Transients often break into the structures and police typically respond to incidents of drug and alcohol use or prostitution. CEU works closely with the City's Vacant Properties Coordinator, the police, and residents to quickly address crime at these properties and ensure they are properly secured. Equally as important is the timely rehabilitation of these properties which, in many cases, could otherwise provide affordable housing. Cases prosecuted include:

- *People v. Catton*

CEU civilly prosecuted the owner of this 1908 vacant structure in University Heights which is of special historical significance. It had been vacant since 1998 and was significantly deteriorating, attracting transients, and creating a public nuisance.

The settlement requires the owner to restore the structure as well as keep it properly weatherproofed. The owner was ordered to pay \$1,171 in investigative costs; \$20,000 in civil penalties with \$10,000 stayed pending compliance; and \$5,000 as a donation to a non-profit historical society.

RED LIGHT ABATEMENTS

- *People v. Club Expose*

Due to a "Redlight Abatement Action" filed by CEU, a strip club on Miramar Road was permanently shutdown and the property owners enjoined from allowing prostitution activity at the premises. The operators of the club were ordered to pay \$25,000 in civil penalties with \$10,000 stayed pending compliance and can have no further involvement with the property. The action was filed after Vice Detectives conducted a series of undercover investigations.

- *People v. Smith*

CEU filed criminally against a landlord and 3 tenants for operating a business out of a residence in Clairemont. Vice Detectives received complaints from neighbors of a possible brothel at that location.

Surveillance revealed a massage business was operating from the house and ads for "erotic sex" led to this address.

All pleaded guilty, the house was vacated, and the owner ordered not to allow this activity at the property.

ILLEGAL GRADING/DESTRUCTION OF ENVIRONMENTALLY SENSITIVE LAND

CEU continues to serve on the City's "Grading Violation Assessment Team" which was created in 2003 in response to complaints that San Diego's protected resources, canyons, wetlands, and sensitive land were being destroyed by unpermitted grading and development. Recent CEU cases include:

- *People v. Town and Country Hotel, et al.*

CEU reached a civil settlement with an asphalt contractor and hotel owner who allegedly graded and paved a parking lot without approval and required permits. The activity resulted in the destruction of sensitive vegetation adjacent to the San Diego River and in some locations, concrete and asphalt was pushed into the River.

As part of the settlement the owner was ordered to pay \$75,000 in civil penalties, of which \$15,000 were paid to the City Treasurer and repairs to the River valued at \$60,000, \$5,576 in investigative costs, and a \$15,000 donation to the San Diego River Park Foundation.

Additional penalties were reduced in favor of these creative sentencing terms: the dedication of approximately 7.1 acres to the City valued at \$125,000 per acre; and environmental projects valued at \$160,000. The contractor was required to perform 200 hours of service with the River Park Foundation.

- *People v. Strawberry Hut*

CEU civilly prosecuted the owner of an 18.52 acre property where substantial development was occurring without permits. Environmentally sensitive lands were impacted.

As part of the settlement the owner was ordered to pay \$100,000 in civil penalties with \$50,000 stayed pending compliance; and \$1,362.90 in investigative costs, and made a \$5,000 donation to the San Dieguito River Park. The owner must properly develop the property and provide mitigation, or restore it to its previous condition.

- *People v. CLL-Roselle, LLC*

CEU civilly prosecuted the owner and commercial lessee of a property in an agricultural zone for alleged zoning violations, as the property was being used as a truck driving training facility. Grading had occurred at the property, resulting in the destruction of sensitive lands.

As part of the settlement the owner was ordered to pay \$83,200 in civil penalties with \$48,000 stayed pending compliance; \$2,045 in investigative costs; and a donation to the “Community Forest Institute” to assist in efforts to restore habitat destroyed by the recent fires.

PROJECTS

- CEU worked with City staff and community representatives to evaluate and improve the City’s procedures and practices relating to the protection of Native American cultural resources. Several new processes were designed and implemented to better identify potential resources before they are unearthed, and to monitor projects with greater cultural sensitivity.
- In Linda Vista, CEU worked in partnership with NCCD, the Bayside Community Center (a nonprofit agency whose mission is to help low income tenants improve their living conditions) and various property owners to improve housing conditions in that area. More than 120 units at multiple housing developments were jointly inspected and numerous interior and exterior improvements were made by property owners.
- CEU, in partnership with NCCD and the police initiated a project to: 1) assist the community in understanding what types of independent living facilities exist in San Diego and what laws apply to them; and 2) hold property owners and operators of these facilities accountable to the community. Proper management of these facilities (group homes, sober living environments, half-way houses, residential care facilities, etc.) is essential to prevent activity incompatible with the residential character of neighborhoods and to prevent public nuisances from occurring. An educational brochure was produced to assist the community in understanding applicable regulations and to know where to refer concerns. In addition, a number of problem properties were investigated and the owners were required to correct zoning, building, and housing violations. In some cases, the independent living facility was required to relocate tenants due to substandard conditions, nuisance violations, or criminal activity.
- CEU continues to work closely with NCCD on two important projects: 1) the City’s Vacant Properties Program to proactively ensure that vacant abandoned properties are timely rehabilitated and are put to productive use; and 2) the Graffiti Abatement Program to ensure that graffiti is quickly removed from properties, as well as implement outreach programs targeted at educating juveniles on graffiti laws. This past year, CEU and NCCD participated in an educational project with seventh graders from Montgomery Middle School who designed a video on graffiti prevention.

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CONSUMER AND ENVIRONMENTAL PROTECTION UNIT



SCOPE OF WORK

The Consumer and Environmental Protection Unit (CEPU) prosecutes a wide range of criminal and civil consumer fraud and environmental offenses. CEPU is supervised by Head Deputy City Attorney David Karlin.

CEPU receives cases directly from numerous law enforcement and licensing agencies, including the San Diego Police Department, National Internet Crime Complaint Center, California Department of Consumer Affairs, Contractors State Licensing Board, State Bureau of Automotive Repair, State Department of Fish and Game, County Department of Agriculture Weights and Measures, County Department of Environmental Health, and City Storm Water Pollution Prevention Unit.

CEPU received 622 written consumer complaints from San Diegans last year. Each complaint was screened by an investigator and an attorney before it was investigated and/or prosecuted, referred to another agency, or kept for future reference. In addition to written complaints, CEPU also operates a Consumer and Environmental Helpline which enables members of the public to report complaints directly to CEPU attorneys and staff. In 2007, the Helpline received more than 1,000 calls.

Because of their proven expertise, CEPU deputies are often invited to join other law enforcement offices throughout the state in multi-jurisdictional, civil consumer and environmental protection litigation. The offices benefit through shared resources and statewide judgments. In addition, CEPU members and office staff generate cases by reporting consumer and environmental offenses they observe or become aware of.

2007 HIGHLIGHTS

- In 2007, CEPU obtained court orders totaling:
 - Nearly \$1 million in costs and civil penalties
 - More than \$100,000 in restitution for consumer victims
 - More than \$12,000 in criminal fines
- CEPU processed more than 100 internet fraud complaints. Many of the complaints were successfully resolved by the City Attorney's Dispute Resolution Office. The remaining complaints were investigated and/or

prosecuted by CEPU, referred to the appropriate agency, or kept for future reference.

- CEPU continues to successfully prosecute a high volume of cases involving unlicensed home improvement contractors.
- CEPU focused on illegal activities taking place along the international border with Mexico and the surrounding area. Cases were pursued addressing illegal transportation and unlicensed vendor activities.
- In the aftermath of October 2007 wildfires, CEPU issued consumer advisories relating to common disaster-related scams and investigated complaints of illegal price gouging in the affected areas.

CASE HIGHLIGHTS

- ***VLP Enterprises/Great Expectations:*** Dating Service Contracts

CEPU prosecuted the recidivist owner of a local dating service for grand theft and for violating a prior court order aimed at prohibiting unlawful business practices. CEPU was successful in convincing the Court to award \$65,000 in restitution for twenty-one victims.

- ***Alicia Ofelia Villanueva-Garcia:*** Unlicensed Dentist

CEPU prosecuted Alicia Ofelia Villanueva-Garcia for the unlicensed practice of dentistry. Villanueva-Garcia performed her dental work in various private homes under unsanitary conditions throughout San Diego. The California Dental Board of California received and investigated complaints against Villanueva-Garcia for several years.

Villanueva-Garcia was convicted and ordered to forfeit thousands of dollars of dental equipment, pay a \$1,000 fine, and complete 240 hours volunteer work service.

- ***Vinny J. Johnson, a.k.a. John Zawatski:*** Unlicensed Electronic Repair

In cooperation with the California Bureau of Electronic and Appliance Repair, CEPU prosecuted Vinny J. Johnson for unlicensed television repair for a second time.

Recently released from prison from his first offense, Johnson immediately began defrauding consumers again by taking victims' televisions for repair and never returning them. CEPU charged Johnson with several counts of theft with a prior, unlicensed electronic repair, and false advertising.

When additional county victims came forward, CEPU's case was consolidated with a felony case brought by the District Attorney. Johnson pleaded guilty to residential burglary and theft and is expected to be sentenced to over 4 years in prison.

- ***Longs Drug Stores, California, Inc.:*** Inaccurate Price Scanning

In a joint prosecution between four District Attorney's offices and CEPU, Longs Drug Stores, California, Inc., agreed to pay \$1 million in penalties, costs and restitution for overcharging customers. The City of San Diego received \$160,000 in penalties from the settlement amount.

- ***Dennis Sherman LaPlante:*** Unlicensed Nursing

The California Board of Registered Nursing received a complaint that Dennis Sherman LaPlante, a home care provider for elderly patients, was holding himself out to be a Registered Nurse and a Licensed Vocational Nurse. An investigation revealed that LaPlante had no formal nursing education and possessed none of the required licenses.

A criminal complaint was brought by CEPU for misdemeanor violations of the California Business & Professions Code. LaPlante was convicted of unlicensed nursing, placed on probation and ordered to pay a \$400 fine.

- ***Cuong Ngoc Vo:*** Lobster Poaching

California Fish & Game Wardens approached Cuong Ngoc Vo who was illegally taking twenty lobsters from the La Jolla State Marine Conservation Area.

A majority of the lobsters were undersized females laden with thousands of eggs that will never hatch to repopulate our local waters. When approached, Vo attempted to destroy the lobsters by throwing them from a bluff. CEPU charged Vo with various California Fish & Game Code violations.

He was convicted of taking lobster out of the season, placed on probation, ordered to pay a \$1,000 fine, and ordered to pay restitution to the California Department of Fish & Game.

- ***Adam Powell and John Ruth:*** Illegal Curb Painting

Numerous citizen complaints were received concerning solicitations left by Adam Powell and John Ruth, doing business as "San Diego Curbside Addresses." The solicitations led residents to believe the City of San Diego mandated curbside number painting.

CEPU pursued a civil enforcement action against Powell and Ruth for their misleading materials. Ruth and Powell agreed to pay \$6,000 in penalties and costs and are permanently enjoined from continuing their deceptive business practices.

- ***Wal-Mart Stores, Inc.:*** False Advertising

In a multi-jurisdictional enforcement action generated by CEPU, Wal-Mart, Inc., and the manufacturer of certain over-the-counter medications agreed to pay \$150,000 in penalties, costs and restitution for falsely marketing various over-the-counter medications.

Wal-Mart marketed and sold “Equate Severe Allergy & Sinus Headache” medication as having greater strength and potency than “Equate Allergy & Sinus Headache” medication when both medications contained the exact same quantity of common active ingredients.

The City of San Diego received \$14,300 in penalties and costs.



DOMESTIC VIOLENCE AND SPECIAL VICTIMS UNIT



SCOPE OF WORK

The Domestic Violence and Special Victims Unit, supervised by Head Deputy City Attorney Gina Rippel, is responsible for the vertical prosecution of all misdemeanor domestic violence (including same sex cases):

- Stalking
- Elder abuse
- Child abuse and neglect
- Molestation
- Child pornography
- Sexual battery
- Statutory rape

The Unit actively participates in training, outreach and prevention efforts.

The Domestic Violence and Special Victims Unit provides aggressive, comprehensive and early prosecution of domestic violence, elder abuse and child abuse cases with the goal of reducing the escalation of violence and homicides in the City of San Diego. The Unit uses the criminal justice system to modify abusive behavior and promote healthy relationships and families. Our main concern is to maintain victim safety while holding batterers accountable for their actions.

The Domestic Violence and Special Victims Unit is a founding partner of the San Diego Family Justice Center (FJC), America's first comprehensive center for families who are dealing with domestic violence. The FJC was established in 2002 after the domestic violence units of both the City Attorney's Office and the San Diego Police Department came together under one roof, along with more than twenty-five social service agencies to provide consolidated and coordinated legal, social, and health services to more than 15,000 victims per year. The San Diego FJC is the model for the development of other family justice centers throughout the nation, as well as internationally.

2007 HIGHLIGHTS

TEEN RELATIONSHIP VIOLENCE

The Domestic Violence and Special Victims Unit maintains a special focus on domestic violence involving teenagers, both as victims and batterers. A specially trained deputy handles each of these cases. This deputy is trained to understand the dynamics present in

teen relationships given the young age and ongoing development of teens. Early and appropriate intervention is essential to help both victims and perpetrators learn at an early age that violence in relationships is not tolerated and to give them the skills to build healthy relationships in the future.

Further, the Unit does outreach to local high schools to inform teenagers about teen relationship violence. This early intervention is aimed at educating teenagers about the dynamics of abusive relationships and resources to escape or prevent involvement in violent relationships.

Deputy City Attorneys made six presentations to local high schools in 2007. These schools included: Mission Bay High School, Madison High School, Patrick Henry High School, Metro High School, and Monarch High School.

Additionally, the Unit serves as a member of the San Diego Teen Relationship Violence Committee in 2007. The committee is comprised of individuals from Probation, Law Enforcement, City Schools, County Schools, District and City Attorney's Office, Office of Violence Prevention, SANDAG, and local community based organizations.

ELDER ABUSE

The Domestic Violence and Special Victims Unit also focuses on the prevention of elder abuse. Through prosecution, as well as active participation on the Elder Abuse Fatality Review Team, a multi-disciplinary team that examines elder homicides in an effort to prevent future fatalities, safety of elders in our community is at the forefront. The Unit ensures that elders are educated about services that could aid in their safety and well-being.

The Unit participates on the Hope Team, which was created with a grant from the Archstone Foundation. It addresses the needs of elderly victims of physical abuse, neglect and financial exploitation within San Diego. The team screens potential victims for participation in the program and provides opportunities for victims who need a more significant intervention than criminal prosecution, to obtain the social, legal, and mental health services they need.

SAN DIEGO FAMILY JUSTICE CENTER

The Domestic Violence and Special Victim's Unit works closely with the San Diego Family Justice Center to ensure that victims of domestic violence have access to social services, which address safety issues, shelter, restraining orders, as well as information to lessen the emotional toll of being a victim and going through the court process.

Partnering onsite with the FJC allows frequent contact with the Domestic Violence and Elder Abuse Units of the San Diego Police Department. This communication enables the City Attorney's office to quickly receive investigative reports, learn vital information, and secure the necessary response if a victim is in imminent harm. In addition, the Unit

attends “site committee” meetings with the FJC and SDPD to continue to improve communication amongst partners, which ultimately leads to improved victim safety and more successful prosecution of cases.

SIGNIFICANT CASES

- *People v. Josue Williams:*

In this case, the victim was 18 years old and pregnant. She reported the violent incident to her aunt, but initially refused to give a statement to the police.

During the incident the defendant pulled the victim around the room by her hair. When the victim tried to escape from the room, the defendant whipped the victim’s legs with a belt – the victim had to turn her body to protect her stomach from the beating. Defendant then grabbed her by the throat and threw her onto the bed. Defendant threatened to hurt the baby if she tried to move.

Following a three day jury trial, the jury convicted the defendant of spousal battery with injury; false imprisonment and; battery on a significant other.

Defendant was sentenced to public work service, three years probation, and a 52 week batterer’s treatment program, as well as parenting classes. Additionally, he was ordered to have no negative contact with the victim and is barred from owning or possessing a firearm.

- *People v. Weimortz:*

The victim in this case was 74 and the defendant was 79. They had been married for 43 years. The victim and her adult children reported the defendant had been abusive to the family for years.

During this incident, the defendant grabbed the victim and threatened to kill her and then himself. The victim was terrified because of past abuse by her spouse and because she knew the defendant owned guns.

The jury convicted the defendant of criminal threats; battery on a significant other; and elder abuse. The court sentenced the defendant to three years probation, 30 days of custody (stayed) and ordered him to complete a 52 week batterer’s treatment program. Further, he was ordered to have no contact with the victim and is barred from owning or possessing a firearm.

The victim and her adult children commended the hard work done by the City Attorney’s Domestic Violence and Special Victim’s Unit in ensuring that justice was secured after years of torment and isolation.

SARB (SCHOOL ATTENDANCE REVIEW BOARD)

The Domestic Violence and Special Victim's Unit also focuses on improving the lives of children through participation in the School Attendance Review Board (SARB) and the Teen Relationship Violence Council.

The Unit files Education Code violations arising out of referrals from San Diego City Schools. These cases involve parents who have not been complying with compulsory education laws which require parents to have children less than 12 years of age attend school regularly.

If there have been numerous unexcused absences, and the parents have failed to cooperate with the School District's efforts to improve the attendance problem, the case will be referred to the City Attorney's Office for prosecution. Deputy City Attorneys attend review hearings in juvenile court to ensure the parents are complying with all court orders and that the minor's school attendance has improved.

Filing of these cases has resulted in positive results for several families. This intervention has helped families understand the importance of regular school attendance for their children and has given them the tools to remove barriers that were preventing their child from attending school. Through the success of these cases a child is being given an opportunity for a bright and productive future.

SIGNIFICANT CASES

- *People v. K.:*

This child became a serious school attendance concern during the 2005-2006 school year when he was a third grader. He had 93 absences from the classroom and when he made it to school, he was tardy 31 times. The school reached out to the parent offering services to the family focusing on the fact that the child had been diagnosed with a mild form of autism.

There were home visits, phone contacts, meetings arranged with an Autism Specialist, and conferences set up with the parent. Unfortunately, the parent cancelled a number of these conferences and also failed to keep in contact with the school. The school principal called the mother to tell her that a Behavior Support Specialist would assist her child at school.

According to the mother, her child had severe anxiety issues which kept him awake all night and because of that she did not want to force him to go to school. However, no anxiety issues were observed when the child was in school.

The parents were brought in for a SARB hearing where more recommendations were made to help the family ensure the child would attend

school and thrive in a learning environment. Despite these interventions, this child continued to have unexcused absences.

The parent was cited and the City Attorney's Office filed a case with the juvenile court. The mother admitted in court that she was in violation of Education Code 48291 and 48293.

She was ordered to attend a parenting class and get her son to school everyday. She was also ordered to follow the recommendations given during the SARB hearing. Although the child's attendance is still not satisfactory, the mother is finally complying with the orders of the court.

The City Attorney's Office continues to work with this family by encouraging the mother to utilize the services available for the child and to reiterate how vital it is for her son to get educated.

- *People v. M:*

This case involved a young, single mother with five children. She was cited by the school police and our office filed a case against her for the chronic unexcused absences of two of her school age children under the age of twelve.

As a result of not being in school the children suffered socially and their reading and math skills were very low for their age level.

When one child was interviewed, he said he sat at home all day with nothing to do. The children were often left alone without any adult supervision and the mother always had excuses for her children not getting to school. One excuse the mother used was the lack of transportation. The elementary school made every effort to help her get the children on the bus in time to get to school. The school even moved their bus stops to accommodate the family when they moved residences. Still, attendance did not improve.

The City Attorney's Office has been consistently working with this mother since her hearing date in March 2006. The mother continued to give excuses for why her children continued to miss school, why their medical needs were not attended to, and why she could not complete a parenting class.

Finally, the children's attendance records improved to near perfection. The mother was enthusiastic about her children going to school and said she finally realized that she needed to step up and actually be a parent. This mother was very grateful for all of the support she received from the court, SARB, the City Attorney's Office, and Community Interface Services. Her children are now doing well in school and most importantly they enjoy being at school.

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DRUG ABATEMENT RESPONSE TEAM



SCOPE OF WORK

The mission of the Drug Abatement Response Team (DART) is to address public nuisance properties and businesses throughout the City of San Diego where the public nuisance is primarily caused by drugs, alcohol, prostitution, or gang activity. DART is a multi-agency task force coordinated by DART prosecutors in the City Attorney's Office. The Unit is supervised by Head Deputy City Attorney Makini Hammond.

DART prosecutors work closely with the San Diego Police Department, Neighborhood Code Compliance Division, Fire Department and other agencies and groups to fashion comprehensive remedies. When negotiation and diplomacy fail to achieve the abatement of a public nuisance, DART community prosecutors utilize a variety of legal enforcement remedies to achieve successful outcomes. Although criminal and administrative judicial remedies are utilized when appropriate, DART prosecutors primarily rely on civil nuisance abatement actions to obtain court-ordered injunctive relief.

The types of problems DART prosecutors typically handle include:

- Gang houses
- Drug houses
- Houses of prostitution
- Nuisance motels
- "Smoke" shops
- Nuisance public pay phones
- Problem nightclubs and bars
- Gang abatement

2007 HIGHLIGHTS

In 2007, DART prosecutors were especially active in addressing a number of community grass root issues. Among these has been the "Smoke Shop" or drug paraphernalia issue. DART prosecutors responded to community concern regarding the proliferation of retail establishments selling illegal drug paraphernalia. Other special projects and organizations DART prosecutors currently partner with include the City of San Diego Gang Commission, the Attorney General's Safe Passage Initiative with several local schools, the Problem Liquor Establishment Task Force, and the Clean Syringe Needle Exchange Committee.

The following cases and projects illustrate the range of problems and public nuisances that DART prosecutors confront:

PROBLEM SWAPMEET

City of San Diego v. Kyoung Soo Lee, dba Fam Mart

In May 2007, DART prosecutors reached a stipulated final judgment with the owner of a local indoor swap meet known as Fam Mart that addressed the rampant sales of counterfeit and pirated goods, as well as the proliferation of gang-related activity and violence.

The settlement required the owner of Fam Mart to pay \$150,000 in civil penalties and to make numerous changes to the operation of their business including, but not limited, to the retention of professional security guards and the installation of surveillance cameras throughout the interior and exterior of their business operation.

PROBLEM INDEPENDENT LIVING FACILITY

City of San Diego v. Pamela Guzman et seq. dba Masingale Independent Living:

In November 2007, DART prosecutors filed a civil public nuisance complaint against the owners of a problem independent living facility.

DART's investigation uncovered the fact that there had been four deaths at the facility in the past four years which were alleged to be from the mismanagement of the facility and a proper lack of supervision.

The mentally ill residents required substantial oversight and supervision which was not provided. In addition, there was illegal drug use, assaults and batteries, and other disturbances at the facility.

As a result of DART's intervention, a stipulated final judgment was obtained in December 2007 which required the facility to be vacated, and permanently prohibited the owners from operating any type of group home or residential care facility in the City of San Diego in the future.

SMOKE SHOP/DRUG PARAPHERNALIA INITIATIVE

In response to community concern, DART prosecutors continued to aggressively prosecute those involved in the illegal sale of drug paraphernalia. In November 2007, DART prosecutors distributed formal cease-and-desist notices to over 50 smoke shops and other local businesses throughout the City of San Diego known by police or identified by the community to be selling illegal narcotic paraphernalia.

In December 2007, the San Diego Police Department conducted a city-wide follow-up enforcement operation.

As a result of “Operation I am Not an Oil Burner” SDPD seized over 1600 narcotic pipes and arrested the owners and clerks of two smoke shops who refused to stop selling illegal narcotic paraphernalia. These cases are currently being prosecuted.

PROBLEM NIGHTCLUBS

Problem Liquor Establishment Task Force

DART prosecutors work in close partnership with the San Diego Police Vice Unit, the City’s Fire Marshal, the Department of Alcoholic Beverage Control (ABC), and other agencies in an ongoing effort to address a variety of public nuisances tied primarily to problem nightclubs and bars.

Through this collaborative effort, the Task Force identifies and deals with negative business practices that contribute to assaults, batteries, public urination, drunkenness, noise disturbances, rapes, and even homicides at and around these establishments.

These business practices typically involve the chronic over-service of alcohol, severe overcrowding, and the illegal expansion of premises without proper permits and approvals. When voluntary efforts do not result in compliance, DART prosecutors initiate formal legal action.

People v. Alma & Rick Felan dba Hot Monkey Love

In May 2007, DART prosecutors met with the owners of a local nightclub at the request of community residents who were distressed over loud music and other disturbances, which had been occurring for months on a regular basis.

When the efforts did not result in full compliance, the City Attorney’s Office filed misdemeanor charges and successfully prosecuted the nightclub owners for violating a local noise ordinance.

This was the first time the ordinance was used to prosecute the owners of a commercial establishment.

PROBLEMS WITH GANGS

Ongoing Enforcement of Gang Injunctions

Throughout the year, DART prosecutors vigorously prosecuted documented gang defendants who had violated the terms and conditions of various gang injunctions.

In addition to the imposition of custody time and other deterrents for future violations, DART prosecutors have imposed job training, job placement, and completion of GED as part of the terms and conditions of probation.

In this way, DART prosecutors are using the gang injunction violation as an opportunity to intervene, change, and in some cases, save the lives of gang members by requiring these individuals to avail themselves of resources and support systems that can assist them in choosing a productive, law-abiding lifestyle.

Safe Passage Initiative at Local San Diego Schools

In partnership with the California Attorney General's Crime and Violence Prevention Center, the Commission on Gang Intervention and Prevention and concerned school principals, DART prosecutors are helping to implement the Safe Passage Initiative in San Diego.

The primary goal is to prevent students from being targeted and/or recruited for gang-related activity on the way to and from school at Montgomery Middle School in Linda Vista and Gompers Charter Middle School in Southeast San Diego.

At the request of principals, this initiative is now being expanded to several additional schools in San Diego. Existing city, county and community resources are used to provide safe passage for school children to and from school by addressing gang-related issues and hotspots.



NEIGHBORHOOD PROSECUTION UNIT



SCOPE OF WORK

The Neighborhood Prosecution Unit (NPU) partners with the San Diego Police Department (SDPD), and community organizations and leaders to aggressively and creatively combat crimes that impact the quality of life in our neighborhoods.

NPU's goals are to:

- Improve quality of life in targeted neighborhoods
- Build partnerships to solve community crime problems
- Expand prosecutorial tools to more effectively address neighborhood crime priorities
- Hold offenders accountable in the criminal justice system and to the harmed community

NPU is supervised by Head Deputy City Attorney Regan Savalla. Neighborhood Prosecutors are assigned to the Central, Mid-City, Northern, and Western Divisions of the SDPD. Each Neighborhood Prosecutor conducts regular line-up trainings at each assigned division, providing information on prosecution issues and ensuring successful prosecution of misdemeanor crimes in the City of San Diego.

Neighborhood prosecutors serve as liaisons to the police commands and to the communities they are assigned. They attend community meetings and events to relay information on quality of life crime problems to the SDPD and the City Attorney's Office. Neighborhood Prosecutors also serve as resources to community prosecutors throughout California and the nation.

Neighborhood Prosecutors screen and issue cases, revoke probation, and take cases to trial on chronic offenders in their areas and/or cases that need special attention or alternative sentencing options.

NPU operates four problem solving courts using restorative justice principles to address quality of life crimes: Beach Area Community Court (BACC); Mid-City Community Court (MCCC); Downtown Community Court (DCC); and Homeless Court (HC).

NPU also implements the Prostitution Impact Panel (PIP), an educational community-based victim impact panel designed to inform offenders who solicit or agree to engage in prostitution activity about the far-reaching impacts of prostitution on a community. Finally, NPU created and conducts Juveniles and Justice, an innovative program teaching

students about the criminal justice system and encouraging active participation in their community.

2007 HIGHLIGHTS

PROBLEM SOLVING COURTS

Beach Area Community Court:

The Beach Area Community Court (BACC) is a pre-filing court that educates low level offenders with a community impact panel, and requires offenders to restore the harmed community through community service.

- Launched in 2006, BACC serves the Pacific Beach, Mission Beach, and Mission Bay Park communities.
- BACC hosted 16 court sessions, addressed 442 participants, and facilitated 1768 hours of community service in the beach area.
- \$13,153 of labor was given back to the beach communities in 2007.
- The City of Plattsburg, New York plans to replicate BACC in the next few months.

Mid-City Community Court:

The Mid-City Community Court (MCCC) is a pre-filing court addressing cases that NPU regularly handles, such as loud parties in the College area and prostitution activity on El Cajon Blvd.

- Launched in 2003, MCCC serves all of the 22 communities located within the Mid City Division of the San Diego Police Department, including the neighborhoods of Azalea/Hollywood Park, Castle, Cherokee Point, Chollas Creek, Colina del Sol, College Area East, College Area West, Corridor, Darnall, El Cerrito, Fairmount Village, Fox Canyon, Gateway, Islenair, Kensington, Normal Heights, Oak Park, Rolando, Swan Canyon, Talmadge, Teralta East, Teralta West, and Webster.
- MCCC hosted 12 court sessions, addressed 93 participants, facilitated 322 hours of community service, and collected \$9,100 in administrative fees.
- \$2,382 of labor was given back to the mid-city communities in 2007.

Downtown Community Court:

Launched in 2002, the Downtown Community Court (DCC) is a post-filing court, requiring offenders who commit specific misdemeanor offenses downtown to perform community service as a means of restorative justice. It operates daily from Department 1 of the downtown San Diego Superior Court.

- This year 175 cases were eligible for DCC; the court addressed 89 offenders, and facilitated 1128 hours of community service.
- \$8,347 of labor was given back to the downtown communities in 2007.

Homeless Court and Stand Down:

NPU partners with various agencies to clear warrants and efficiently process cases for homeless individuals with low-level misdemeanor and infraction offenses. Homeless Court (HC) is held monthly at two local homeless shelters. NPU does the same for homeless veterans at the annual Stand Down event in July.

- In 2007, HC addressed 1034 defendants with a total of 3698 cases.
- 302 homeless veterans registered to participate in the Stand Down court proceedings, resulting in 1010 cases addressed by NPU. Of those defendants, 164 actually participated in the court proceedings, resulting in a total of 608 cases adjudicated in one weekend.

PROSTITUTION IMPACT PANEL (PIP)

- 53 defendants attended the Prostitution Impact Panel
- \$10,000 in administrative fees was collected

PROBATION REVOCATION

NPU works with SDPD to monitor compliance of chronic offenders with probationary conditions, including stay away orders, and files probation revocation motions when appropriate.

- NPU revoked probation on 69 defendants.
- 95% of defendants admitted they violated their probation and served custody.
- The custody ordered ranged from 30-180 days per case.

PROSTITUTION AND GENERAL CRIME DETERRENT: THE CAMERA PROJECT

El Cajon Boulevard is an area in Mid-City where prostitution, drug sales and paraphernalia, and other quality-of-life crimes prevail. In September 2005, the Mid-City Neighborhood Prosecutor and the Mid-City Prostitution Task Force brought service providers, community groups, and law enforcement together to examine the use of cameras on El Cajon Boulevard to monitor the area as an enforcement tool. The appropriate camera system was researched and funding was ultimately secured through a grant from Price Charities.

In June of 2006, two cameras were installed across the street from the Mid-City police substation and within a day three arrests were made. In addition, signs were posted indicating the area was being monitored. It has assisted in several arrests and a second

phase has been approved to install cameras along the entire problematic area of El Cajon Boulevard. Throughout 2006, seven cameras were added throughout Mid-City. This project serves as a model to other area police commands for potential use in their communities.

- In April, 2007, the project expanded in District 3 to include two additional cameras in the Mid-City area at Teralta Park in City Heights.
- On June 30, 2007, the camera project expanded to District 2. Five parking lot cameras were installed at Belmont Park in South Mission Beach.
- The Mid-City and Northern Division Neighborhood Prosecutors created the partnerships to develop this project and trained officers on report-writing related to camera-generated or camera-assisted cases.

SUCCESSFUL PROSECUTION OF CHRONIC OFFENDERS

NPU vertically prosecutes chronic offenders to ensure they are aggressively prosecuted, convicted, and sentenced appropriately, including but not limited to stay away orders from the impacted community.

- *People v. Paulette Radcliffe, East Village*

This defendant was on probation for multiple convictions, some involving violence, and was ordered to stay away from the entire East Village. The defendant suffers from chemical dependency and other mental illnesses. She harassed businesses and generated constant complaints from the residents in the Core-Columbia Business District of downtown. She was convicted of resisting arrest, when she started a fight in a local dentist office.

Neighborhood Prosecutors arranged for the Homeless Outreach Team and defendant's case manager to be present in court at each proceeding to give a full report of her history, progress and prognosis. Defendant was sentenced to three years formal probation, 180 days custody, court ordered psychiatric evaluation and a stay away order from the entirety of the Core-Columbia Business District.

Neighborhood Prosecutors worked with the coordinated team to find housing, treatment, and ensure her success. Defendant is clean and sober a year later and is currently in a program in Chula Vista.

- *People v. Chham Chhat, Mid-City*

This defendant is a 68-year old man arrested 17 times between December 31, 2006 and August 17, 2007. The Court continually had difficulty processing his cases because he speaks Cambodian and neither the Court nor the Sheriff's Department had a translator available.

His crimes included being drunk in public and other quality-of-life crimes. On his eighteenth arrest, his behavior escalated into conduct that approached an attempted kidnapping of an infant; Neighborhood Prosecutors were notified and coordinated efforts with SDPD.

Neighborhood Prosecutors researched his history, arranged for an interpreter at court, pulled all of his open cases and created a global offer to hold him accountable and get him the services he needed.

Defendant was sentenced to nearly two years of custody, with the option of “serving” that time in a residential rehabilitation facility through SDPD’s Serial Inebriate Program. If he does not complete his program, he will serve nearly two years in jail, remain on probation, and be subject to a no victim contact order and an expansive stay-away order from several locations.

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SCREENING AND ARRAIGNMENT UNIT



SCOPE OF WORK

The Screening and Arraignment Unit operates within the General Unit of the Criminal Division of the San Diego City Attorney's Office. The Unit is supervised by Head Deputy City Attorney Michelle Garland.

The Screening and Arraignment Unit is responsible for receiving, processing, and reviewing all citations, arrest reports, and crime reports submitted by local law enforcement agencies. Staff members and attorneys in the Unit process and review misdemeanor and infraction violations occurring within the City of San Diego, and certain misdemeanors occurring within the City of Poway. The Unit is responsible for ensuring the proper arraignment of each individual charged with various violations of state, county, and municipal law, including:

- Theft cases
- Sex crimes
- Gangs/graffiti
- Driving under the influence
- Vehicular manslaughter
- Hate crimes
- Fraud cases
- Identity theft cases
- Drug cases
- Battery/assault cases
- Vandalism cases
- Trespass cases
- Driver's license cases
- Weapons cases

In addition, certain types of crimes need specialized attention for several reasons, including victim-witness considerations, evidentiary issues, and complexity of facts and charges. These cases are assigned to specific deputies to address the unique needs of each case and to handle all cases in a consistent manner.

Charges requiring special case assignments include fraud/forgery cases, fish and game cases, gang/graffiti cases, tuberculosis cases, prescription fraud cases, harassing telephone call cases, animal control cases, sex crime cases, vehicular manslaughter cases, hate crime cases and restraining order violation cases.

Deputy city attorneys assigned to these cases issue charges and seek penalties in accord with the unique circumstances of each type of case. For instance, in graffiti cases, defendants are ordered to pay restitution and make a payment to the Graffiti Reward Fund in addition to the standard criminal fine. Additionally, graffiti defendants must perform community service and attend an anti-graffiti class through the Corrective Behavior Institute.

Special programs and resources are also offered by the Screening and Arraignment Unit, including the Dispute Resolution Office, the San Diego Traffic Offender Program (STOP) and the Victim Services Coordinator.

Finally, the supervisors within the Unit are responsible for the training and development of new attorneys and staff members. Attorneys are trained in the legal requirements of reviewing cases and issuing appropriate charges against an individual, as well as the appropriate handling of the case in court. Staff members are trained to understand the office and court procedures used in order to correctly file a case in court. Some staff members are also trained to work in Department 1 of the San Diego Superior Court, the Misdemeanor Arraignment Court, as vital assistants to the attorneys and courtroom personnel.

COOPERATION WITH LAW ENFORCEMENT AGENCIES

The Screening and Arraignment Unit receives cases from a variety of law enforcement agencies. The City Attorney's Office works closely with each agency to ensure successful prosecution of each viable case submitted. These agencies include:

San Diego Police Department, San Diego County Sheriff, California Highway Patrol, Harbor Police, San Diego State University Police, University of California San Diego Police, San Diego Community College Police, San Diego City School Police, Department of Animal Control, Department of Health Services, Department of Fish and Game, Park Rangers, San Diego Lifeguards, MTDB, and the Department of Alcoholic Beverage Control.

2007 HIGHLIGHTS

- The Criminal Division of the City Attorney's Office received approximately 41,586 cases for processing and review.
- Charges were filed in approximately 31,364 cases. This included 5,410 driving under the influence cases, 1,764 felony wobbler cases, 35 firearm charges, and 201 charges involving possession of non-firearm weapons. In any weapons case, the City Attorney's Office seeks court orders forfeiting the weapon in an effort to improve public safety.

DISPUTE RESOLUTION OFFICE

Many cases received by the Screening and Arraignment Unit are resolved without a formal complaint ever being filed and are referred to the Dispute Resolution Office (DRO).

Founded in 1977, the Dispute Resolution Office manages cases where the interests of justice, the victims, and often the defendants, are better served by resolving the case outside of the courtroom.

Headed by Dispute Resolution Officer Mike Littlefield, the Dispute Resolution Office (DRO) receives many types of cases, including:

- Battery
- Vandalism
- Restraining order violations
- City permit cases
- Harassing telephone calls cases
- Animal control cases
- Consumer fraud cases
- Minor hit and run cases
- Family disputes
- Neighbor disputes

Defendants are asked to complete various tasks in an effort to address the issues and resolve the case. If the assigned tasks are successfully completed, the case is closed and no charges are filed. Defendants may be required, for example, to attend anger management classes, driving classes, Alcoholics Anonymous meetings, and animal safety classes, perform community service, or pay restitution.

2007 DRO HIGHLIGHTS

- A total of 868 cases were referred to the Dispute Resolution Office in 2007.
- Ninety-nine percent of the cases referred were resolved or otherwise closed without further action, representing a slight increase over 2006.
- Where appropriate, suspects completed anger management, substance abuse driver safety classes, and/or completed community service hours.
- Victims received over \$14,800 in restitution.
- Additionally, the Dispute Resolution Office received 65 consumer fraud complaints from the Consumer and Environmental Protection Unit in 2007.
- Complainants received over \$7,000 in credits or refunds.¹

¹ In some cases complainants were made whole due to their own efforts or as a result of filing the complaint.

SAN DIEGO TRAFFIC OFFENDER PROGRAM (STOP)

The San Diego Traffic Offender Program (STOP) Team is recognized throughout the state as the premier law enforcement agency in combating the problem of suspended, revoked, and unlicensed drivers, which is a public health and safety risk.

The San Diego Traffic Offender Program (STOP) was established in 1997 when the California Office of Traffic Safety (OTS) awarded a two-year \$635,000 grant to the San Diego Police Department to create and support a full-time unit to proactively enforce driver's license laws.

The STOP Team is comprised of one Sergeant, five motor officers, one officer in a vehicle, one code compliance officer, one administrative aide and a full-time San Diego Deputy City Attorney.

The STOP Team:

- Identifies and arrests habitual traffic offenders
- Investigates citizen complaints about suspended, revoked, and unlicensed drivers
- Conducts driver license checkpoints, stings and surveillances
- Conducts follow-up investigations of illegal drivers
- Initiates forfeiture proceedings when a vehicle is operated by a repeat driver's license offender who also meets certain statutory criteria

STOP Team officers train and assist other officers throughout the department, and county wide, on driver's license offenses and enforcement. STOP Team officers are also cross-trained in commercial vehicle enforcement and regularly participate in special enforcement details to target commercial operators who violate the law.

The STOP deputy city attorney issues and prosecutes the STOP Team misdemeanor cases, defends the San Diego Police Department's 30-day impounds, litigates all forfeiture matters and assists in related efforts of the San Diego Police Department (e.g., Red Light Camera cases, Dragnet).

2007 STOP HIGHLIGHTS

DRIVER'S LICENSE OFFENSES

Statistics show that of all drivers involved in fatal accidents, more than 20 percent are not licensed to drive. Moreover, a driver with a suspended license is four times as likely to be involved in a fatal crash as a properly licensed driver. The DMV estimates that 75 percent of all drivers whose driving privilege is withdrawn continue to drive, regardless of the law.

- Throughout 2007, law enforcement agencies forwarded 7,545 misdemeanor driver's license cases to the City Attorney's Office for prosecution.

- Of that number, approximately 68 percent, or 5,115 cases, were initiated by the San Diego Police Department.

VEHICLE FORFEITURES AND REVENUE GENERATION

A person caught driving their own vehicle without a valid license who has suffered a prior misdemeanor conviction for similar conduct is subject to having their vehicle forfeited. The STOP Team continued to focus on such problem drivers in 2007. This year, the STOP Team forfeited 204 vehicles from repeat traffic offenders. These forfeitures generated approximately \$96,552 in revenue for the city's general fund and an equal amount generated for the state's general fund. Although the number of forfeitures actually decreased slightly from 209 vehicles in 2006, the amount of revenue actually increased significantly from the \$80,514 generated in 2006.

DUI FORFEITURES

A person convicted of a third DUI within seven years may have his or her vehicle declared a nuisance and forfeited to the state. During 2007, there were 18 new DUI vehicle forfeiture cases initiated. Although many of these cases are still pending, the City Attorney's office received court orders declaring 4 vehicles a nuisance and one vehicle was ordered forfeited and sold at auction. The proceeds from this auction yielded \$270.50, which was then transferred to San Diego Youth & Community Services, Mid-City Communities Center, to be used for community-based adolescent substance abuse treatment services. This distribution of funds is mandated by the California Vehicle Code.

ILLEGAL STREET RACING

During 2007, the City Attorney's Office prosecuted 30 cases for illegal speed contests, mostly involving "impromptu" races. Although this is a slight increase from the 26 cases prosecuted in 2006, the City Attorney's Office has seen a steady decline since 2001, when racing prosecutions peaked at 290 cases.

VC 10751 FORFEITURES

California Vehicle Code section 10751(b) authorizes law enforcement officers to take possession of and destroy a motor vehicle when any number used for registration purposes, that is affixed by the manufacturer to the vehicle or component part, has been removed, defaced, altered, or destroyed. A person in possession of a vehicle or parts of a vehicle missing its VIN number can be charged with a misdemeanor under section 10751 of the Vehicle Code (via section 40000.9) or a civil action may be brought to have the vehicle forfeited. The City Attorney's Office works directly with the San Diego Police Department's Auto Theft Unit to either prosecute criminal cases or initiate civil proceedings pursuant to this statute.

- In 2007, the City Attorney's Office initiated 14 civil and 4 criminal proceedings to forfeit and destroy vehicles in violation of this statute.

- Of the 18 cases brought forth for vehicle destruction in 2007, the Court ordered 9 vehicles destroyed and one vehicle “not to be returned to the owner.”

VICTIM SERVICES COORDINATOR

The Screening and Arraignment Unit also offers services to crime victims through our Victim Services Coordinator. The Coordinator, Lori Wheeler, makes contact with crime victims during the case review process. She ensures that each victim is willing to testify in court, explains the criminal case process, and helps victims to determine their out of pocket expenses incurred as a result of the criminal offense in order to recover restitution.

In some cases, the Coordinator also conducts victim interviews in order to clarify factual questions affecting the nature of the charges filed. Additionally, the Coordinator makes contact with witnesses in order to obtain additional information or evidence necessary for a thorough case evaluation by the deputy city attorneys. In 2007, 758 cases were referred to the Victim Services Coordinator for victim services.

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TRIAL UNIT



SCOPE OF WORK

The Trial Unit conducts all the post-arraignment courtroom proceedings, including negotiating offers on the cases, reviewing each case to determine its provability at trial, trying the cases, and ascertaining what sentencing parameters are appropriate based on the defendant's conduct and any aggravating or mitigating circumstances. Once a case is filed, the Trial Unit's role is that of an advocate for the People.

The Trial Unit is supervised by Head Deputy City Attorney Karen Li.

The cases prosecuted and tried by the Trial Unit impact the public in their daily lives, and effective prosecution of these cases is vital to the quality of life in San Diego.

Cases that made up the work of the Trial Unit in 2007 included:

- Driving under the influence of alcohol and/or drugs
- Resisting arrest
- Hit-and-run
- Shoplifting and other forms of theft
- Fraud and forgery
- Assaults and batteries
- Brandishing or possessing illegal weapons
- Vandalism
- Under the influence of or possessing illegal drugs
- Prostitution
- Indecent exposure and other sexual crimes
- Hate crimes
- Driver's license-related offenses
- Reckless driving
- Illegal street racing
- Vehicular manslaughter

Other types of cases contributing to the Trial Unit's caseload included various Municipal Code violations, Fish and Game violations, illegal lodging, drunk in public, trespass, failures to appear, furnishing alcohol to minors, and minors in possession of alcohol.

2007 HIGHLIGHTS

VERTICAL PROSECUTION

Prior to 2005, the Trial Unit was based on a horizontal prosecution model in which the deputies did not receive their assigned trials until the day before. In 2005, the City Attorney's Office transitioned to a vertical system, and 2007 was the second full year in which the Trial Unit prosecuted all the cases vertically. In the vertical system mode, a core group of Screening and Arraignment deputies issued the cases. As soon as the defendants plead not guilty and the cases are set for trial, Trial deputies are assigned. Upon receipt of their cases, Trial deputies are responsible for preparing the case for trial, which includes developing the evidence and exhibits, negotiating the terms of any possible settlement, and trying the case. Having a core group of issuing deputies has provided more consistency in the process, and assigning the cases as early as possible has resulted in better management of each case.

TRIAL STATISTICS

Most of the cases handled by the Trial Unit resulted in a criminal conviction based on a guilty or no contest plea before trial. The Trial deputies appeared at plea and sentencing hearings to ensure the correct plea was entered and to argue for appropriate sentencing terms based on the defendant's conduct. In addition, each month, over 150 cases were set for trial. The process of trial preparation includes subpoenaing and interviewing witnesses, preparation of exhibits, and securing the presence of physical evidence such as photographs, 911 tapes, weapons, and blood vials. Once this preparation was completed, many cases were resolved with a guilty or no contest plea on the eve or day of trial.

- In 2007, 215 cases went to trial, with 198 going to a jury trial.
- 561 cases went from the Trial Setting Department to the Presiding Department ready for trial on the day set for trial. Of the 561 cases, 490 were assigned to a Trial Department.
- About 26% resulted in a guilty verdict on at least one count of the case;
- About 41% pleaded guilty or no contest;
- Less than 7% of the cases resulted in a dismissal for various reasons;
- About 6% resulted in a verdict of not guilty on all counts of the case;
- About 20% of the cases were continued for different reasons or had a mistrial declared.

VICTIM RESTITUTION

A critical component of the work of the Trial Unit involves seeking restitution for persons victimized by crime. Often, a "Restitution Hearing" was held even if the defendant pleaded guilty because the dollar amount of the harm to the victim may be difficult to ascertain. Trial deputies appeared regularly at these hearings to argue for orders that required convicted defendants to compensate those whom they have victimized. In 2007, the Trial Unit was able to recuperate over \$335,000 for victims of

crime by employing the assistance of the Victim Compensation and Government Claims Board.

MONEY SAVED

In cooperation with the San Diego Police Department (SDPD), the City Attorney's Office continues to utilize a money-saving procedure for police officers who are subpoenaed as witnesses in trials. This procedure saves the City money and keeps officers on the streets. In 2007, by not having all the police officers associated with the case appear on the first day of trial, this collaborative resource-saving process allowed 131 SDPD officers (almost twice the number saved from 2006) to be on the streets enforcing laws and protecting the public instead of sitting in the officers' waiting room for a few hours just to be told to come back the next day or that the case had resolved. This also prevented the City from having to pay overtime for those second-day-subpoena officers who were on the night shift and who would have had to come straight to court on the first day.

The procedure was first implemented in 2004 after it was recognized that the jury trial process does not provide a prosecutor enough time on the first day of trial to call to the witness stand more than two law enforcement witnesses. On the first day of trial, prosecutors are usually arguing pre-trial motions, presenting evidence during pre-trial evidentiary hearings, conducting jury selection, and issuing their opening statements before the first witness testifies. Furthermore, on the day of trial, many defendants plead guilty or no contest, fail to appear, or have the case continued.

SIGNIFICANT CASES

- *People v. Temericus Jones*

Successful conviction of a defendant who was charged with several counts of sex crimes, trespass, and resisting arrest; the defendant had already been on probation for similar charges; defendant was remanded into custody for almost four years.

- *People v. Patricia Parker*

Successful conviction of a defendant for animal neglect and cruelty; the defendant received guilty verdicts on this 11-count animal abuse case; the animals were removed from their deplorable conditions.

