



# Oakland City Attorney Highlights



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## City Attorney Successfully Defends Car Seizures

Alameda County Superior Court Judge Henry J. Needham, Jr., rejected the American Civil Liberties Union challenge to Oakland's vehicle seizure ordinance that provides for the seizure and forfeiture of vehicles used to solicit acts of prostitution or purchase drugs.

The Court denied the ACLU's motion for a writ of mandate and injunction seeking to prohibit the City of Oakland from enforcing the ordinance adopted by the Oakland City Council last year.

The Court found that state law does not preempt the City's Ordinance and hence the ordinance is lawful.

Oakland is the first city in California to adopt such an ordinance.

City Attorney Jayne Williams is extremely satisfied with the court's ruling. She indicated her confidence that the ordinance is legally valid and serves as an extremely effective tool to combat the blight generated in the City of Oakland from "drive buy" drug and prostitution activity.

Chief of Police Joseph Samuels stated "With the Beat Feet Ordinance now validated and permissible we will be able to

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## City Revenues Increased by \$1,000,000

The City Attorney's Office has successfully pursued changes in the State's allocation of local sales taxes on jet fuel, increasing City revenues by an estimated \$700,000 to \$1,000,000 per year. Assembly Bill 66 (AB 66 Baca), was signed by Governor Wilson on September 30, 1998, after clearing the Senate by a 24-4 vote and the Assembly 58-8.

In 1997, the City Attorney's Office began representing the City before the State Board of Equalization, challenging an interpretation of the Board's "place of sale" rules which determined that sales of jet fuel took place at corporate offices rather than at the airports. The State Board's decision had resulted in a windfall for cities which do not contain airports, such as Laguna Hills, Walnut Creek and San Francisco, while cities such as Oakland, Ontario, San Diego, and San Jose received none of the local sales tax on the very substantial volume of jet fuel stored and delivered within those cities. While the Board of Equalization was unwilling to change its position directly, State Controller Kathleen Connell (a Board of Equalization member) suggested that a compromise measure be pursued through the State Legislature.

Assemblyman Baca agreed to carry the legislation. With the assistance of the City Attorney's Office, the Assembly committees substantially revised the Board of Equalization's proposal, which both simplified the legislation and increased Oakland's satisfaction and confidence in the measure.

As a result of more than a year of effort, and coordination with other cities and counties, particularly Ontario in Southern California, Oakland has successfully moved Assemblyman's Baca's bill through the legislature and obtained the Governor's approval. Oakland began receiving these revenues for the second quarter of fiscal 1998-1999. The impending expansion of the Oakland Airport will provide additional future growth in these revenues.

For further information, contact Deputy City Attorney Boyd Sprehn at (510) 238-6629. //

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## Message from the City Attorney

Jayne W. Williams



At the City Council's retreat on October 8, 1998, I presented the City Attorney's annual litigation report for fiscal 1997 - 98 to the Council and the public.

The purpose of the report was to provide the Council, City Manager and the public with statistical and management information about litigation in which the City is or was a party in Fiscal Year 1997 -98.

Over the years, litigation has increased as has its complexity. In addition, the City has expanded its operations into new areas as service demands and the needs of the community have changed. Behind every City action and program there are legal issues and resulting potential litigation. The City Attorney's Office litigates in a myriad of practice areas such as: civil rights and constitutional issues, labor and personnel, land use, employment discrimination (ADA and sexual harassment), tort (auto accident and personal injury), code enforcement, drug nuisance abatement, inverse condemnation, eminent domain, contract actions, construction matters, unlawful detainers, collections and bankruptcy.

Last year, the City Attorney's Office resolved 137 lawsuits either by trial, motion or settlement. Our results in these cases have resulted in significant savings for the City.

- **Thirty-eight percent (38%) of the cases were resolved with no payout.**
- **Eighty-four percent (84%) of the cases, which includes the above no payout cases, were resolved with payouts under \$25,000.**

We take justifiable pride in achieving a substantial and a dramatic reduction in the amount and number of payouts in the past three years. Since 1995 our total payouts have dropped **58%**.

In police conduct lawsuits, in particular, payouts have been reduced by **68%** over the past three years and by **75%** over a six-year period. We can attribute these positive results to the development of a (1) law and motion practice that has effectively narrowed the scope of many of the police conduct matters; (2) our reputation in the legal community as skilled and committed advocates; and (3) our effective joint Oakland Police Department/City Attorney litigation risk management program.

The report additionally highlights the results achieved from our aggressive code enforcement efforts. The City Attorney's Office is in the forefront of developing and implementing "first of its kind" legislation to address issues such as neighborhood and commercial blight, drug and alcohol related nuisances, prostitution and vacant and abandoned housing issues. Last year, drug nuisance abatement prosecution efforts led to the closure of several properties engaged in active drug activity including the Farmhouse Motel and the Townhouse Travel Inn. Twenty-two code enforcement actions were initiated with many successful results, including the closure of the Silver Dollar and the Royal Hotels and the demolition of the Ebony Plaza Hotel and the Farmhouse Motel.

The *Deemed Approved Program*, which was designed to combat nuisances around liquor stores, was launched into full gear along with the *Receivership Program*, which is designed to take control of residential properties that are physically substandard and vacant and bring them back up to code and into the City's productive housing stock. The City's innovative "*Beat Feet*" blight ordinance succeeded in getting the attention of persons who use their vehicles in connection with illegal drug and prostitution activities. Since January 1, 1998, over 100 vehicles have been seized and over \$100,000 in settlements and fees have been collected. As described more fully on page 1, we successfully defended a recent Court challenge to the validity of the ordinance.

The City Attorney's Office has maintained an excellent defense record on land use cases, winning almost all cases in the past 15 years. The office works proactively in the early stages of land use matters in drafting appropriate land use legislation, preparing zoning appeals for the City Council and advising the decision making bodies so that disputes can be avoided. In the event disputes arise, we encourage the use of alternative dispute mechanisms such as mediation and informal settlement to prevent expensive and protracted litigation whenever possible.

Our litigation management philosophy is to:

- ❑ **Be Proactive.... minimize risks before they arise;**
- ❑ **Be a Team... attorneys and non-attorney technical staff working together can achieve better results;**

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- ❑ **Be Tactical and Strategic ... through the use of motions and trial techniques one can win the case;**
- ❑ **Be Informed ... keeping abreast of changes in the law and improving practice skills through continuing education and training is a daily task.**

I am very proud of the results that were accomplished in 1997 - 98 as shown in the report we presented to the City Council. In today's legal environment, litigation is no easy task. It takes a committed team of top rate experts and professionals to be effective advocates. The staff of the City Attorney's Office is just such a team. But for the excellent work that was and is performed by the attorneys, paralegals, claims investigators, legal secretaries, and clerical support, working together with a common philosophy, mission and dedication to the City, we would not have had the victories and successes that we had. //

### Zero Tolerance for Code Violators Leads to Demolition of Farmhouse Motel

After the City Attorney's Office obtained an injunction on September 22, 1998, the City was able to demolish the Farmhouse Motel on November 2, 1998. Alameda County Superior Court Judge Henry Needham's grant of an injunction against the owners of the Farmhouse Motel sent a strong message to motel and hotel owners that the City will not tolerate public nuisance business establishments.

The Farmhouse Motel was located at 10451 MacArthur Boulevard and it had been the site of numerous narcotics and prostitution complaints over the last five years. It was a severe blight on the community. The court order closing the property was effective as of Monday, September 28, 1998.

The evidence that the City Attorney used in its drug nuisance, code enforcement, and redlight abatement actions against the motel's owners was compiled by the Code Compliance Unit of the Office of Building and Planning and the Beat Health Unit of the Oakland Police Department.

In May of 1998, the City Attorney obtained an injunction against the motel's owners and operators. In June of 1998, the City Attorney filed for closure of the property based upon evidence of numerous violations of the court order. The City Attorney also filed a separate action in August of 1998, based upon extensive building, housing and blight code violations at the motel.

For further information, contact Deputy City Attorney Patrick Tang at (510) 238-6523. //

run with it."

Residents of East Oakland, who lobbied the City Council to enact the Ordinance, cheered the decision. According to the residents, many of whom were present at the hearing, the ordinance has significantly reduced street-level drug trafficking and prostitution in their neighborhoods. The urban decay and blight resulting from the "drive buy" purchase of drugs and prostitutes has degraded the quality of life in many of the less affluent neighborhoods of Oakland. The ordinance is designed to attack the problem and improve the quality of life in the neighborhoods degraded by this unlawful activity.

To date the Oakland police department has conducted numerous operations under the ordinance using undercover police officers posing as drug dealers and prostitutes, and seized over one hundred vehicles used to purchase drugs or solicit prostitution.

For further information, contact Deputy City Attorney Marcia Meyers at (510) 238-3837. //

### Litigation Forces D.C. Metals to Cease Illegal Scrap Metal Business

Faced with a January 29, 1999, trial date in litigation initiated by the City Attorney, D.C. Metals entered into a settlement agreement with the City on November 10, 1998 to cease operating its scrap metal business as of that date. D.C. Metals agreed to remove all scrap metal and scrap metal processing equipment from the site by November 24, 1998. In addition D.C. Metals stipulated to a judgment in the action including a permanent injunction prohibiting any unlawful business or the maintenance of a public nuisance. The judgement has been entered by the court and recorded against the property. The injunction applies to the current owners and any future owners or tenants of the property. In addition D.C. Metals has signed a good neighbor agreement with the Chester Street Neighborhood Association.

The City Attorney's Office filed suit against D.C. Metals on March 26, 1997, for operating an illegal public nuisance scrap metal business on Center and Third Streets in West Oakland. In April, 1997, the Superior Court enjoined a portion of that business from continuing to operate.

D.C. Metals applied for a conditional use permit to legalize its scrap metal business. The City Planning Commission denied the permit. D.C. Metals appealed the decision to the City Council. The Council upheld the Commission's decision at a September 15, 1998 public hearing, and denied the appeal.

For further information, contact Deputy City Attorney Charles Vose at (510) 238-2961. //

## ARRIVALS

**Laura Guerrero**, formerly a legal secretary at the firm Bennett, Samuelsen, Reynolds & Allard, has joined the City Attorney's Office as Legal Secretary II. Laura had been employed with Bennett, et. al., as a legal secretary since December 1991. Prior to that, she was an Eligibility Technician II for the Alameda County Social Services Department for 3 years. ↵

**Nicole Varela** joined the City Attorney staff as Paralegal on October 12, 1998. She is providing paralegal support in Oakland Housing Authority matters.

Nicole has worked as a paralegal since 1985 and has extensive experience in the areas of public benefits and bankruptcy. Her responsibilities ranged from interviewing clients, assessing clients' claims of ineligibility and/or non-receipt of benefits, representing clients at administrative hearings (under the supervision of attorneys), maintaining client files, drafting legal documents, etc.

Nicole earned her ABA Paralegal certificate from the Long Island University in Brooklyn, New York, and a B.A. in Political Science from Brooklyn College. //

### LEGAL TERMS

- 1. Demurrer** - a motion filed by a defendant in which it is argued that even if all of the plaintiff's facts as alleged in a Complaint are true, the defendant cannot be held liable. Quite often, demurrers are filed in cases where the Complaint is filed past the statute of limitations, the plaintiff has not complied with the claims filing requirements, or the defendant is afforded immunity under a statute.
- 2. Deposition** - a deposition is your testimony under oath. Questions are asked by the opposing attorney and in some cases by your attorney. The answers are recorded by an official court reporter. Although the deposition is taken in the attorney's office and is usually less formal, it has the same importance as testifying in a courtroom.
- 3. Discovery** - discovery consists of all the pre-trial devices that a party may use to obtain facts and information about the case. The different tools of discovery include interrogatories (written questions and answers), document requests, requests for admissions, physical and mental examinations, and depositions.
- 4. Injunction** - A Court order which requires someone to refrain from doing or to do a particular act.
- 5. Motion for Summary Judgment/Summary Adjudication of Issues** - A motion where a party claims that there are no material issues of fact to be decided by a jury and that she is entitled to prevail as a matter of law. A plaintiff or a defendant may bring a MSJ/MSAI.
- 6. Stipulation** - an agreement entered into between attorneys for opposing parties, regarding a matter that is the subject of a judicial proceeding.

- 7. Stipulated Judgment** - A judgment entered into by consent of the parties in a pending action. In a stipulated judgment, a party allows a judgment to be entered against him or her without opposition by agreeing in writing to do so. A judge then enters the judgment unless its conditions are contrary to public policy or are in error under the law. (Witkin California Procedure, Volume 6, 4<sup>th</sup> Ed., section 92.)
- 8. Vexatious Litigant** - a person who, while acting as her own attorney: (1) in the past 7 years, has filed at least 5 lawsuits (other than small claims) that have been decided against her or have been unjustifiably permitted to remain pending for at least 2 years without being brought to trial; (2) after a lawsuit has been decided against her, repeatedly relitigates or attempts to relitigate the same case/issues against the same defendant; or (3) repeatedly files unmeritorious motions, pleadings, lawsuits, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.
- 9. Writ of Mandamus** - a Court order that commands the performance of an act by a lower court, corporation, board, or person. A writ of mandate may be issued by a Court of Appeal to the Superior Court to take some action (i.e. reverse a decision on a motion which is not otherwise appealable at the time), or by the Superior Court to a City to perform a purely ministerial duty imposed by law.

For further information, contact Supervising Deputy City Attorney Karen Rodrigue at (510) 238-3539. //

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