

September 18, 1990

REPORT TO THE COMMITTEE ON PUBLIC SERVICES AND SAFETY
RE: FUNDING SOURCES FOR THE DRUG ABATEMENT RESPONSE TEAM (DART)

On June 20, 1990, The Public Services and Safety Committee approved the proposal to develop a full-time Drug Abatement Response Team (DART) and to fund this project from either increases in the Housing Permit Fee or the Business Tax on rental housing. At the September 5, 1990, meeting the Committee raised some concerns about the legality of funding DART from the Housing Permit Fee in the Building Inspection Enterprise Fund.

The legal issue is whether a reasonable relationship exists between the City's drug abatement efforts and the housing enforcement function sufficient to fund the DART proposal. As part of its police powers a municipality may enact a regulatory fee that imposes reasonable conditions upon the conduct of a business. In re Porterfield, 28 Cal. 2d 91, 101 (1946). Based on our analysis of the law as it pertains to the existing drug abatement program, a reasonable relationship is considered to exist should the Committee decide to increase the Housing Permit Fee to pay for DART's costs.

The relationship between the Building Inspection Department's housing enforcement function and drug abatement can be established through several aspects: 1) similar regulatory purposes and objectives; 2) statistics of drug abatement investigations; 3) the "Broken Window" Theory; and 4) the impact of drug activity upon the regulated industry - apartment rentals and real estate.

The Housing Permit Fee is a regulatory fee levied against property owners of three or more units pursuant to San Diego Municipal Code sections 98.0107 and 98.0111. (The Council will shortly consider a separate proposal to expand the scope of the Housing Permit Fee to include rental properties of less than three units - including single family dwellings.) Pursuant to its police powers, a municipality can levy a regulatory fee which will legitimately assist in achieving the regulatory purpose as long as it does not exceed the necessary or probable expenses of regulating the subject that it covers. 9 McQuillan, Municipal Corporations Section 26.15 (3d ed. rev.).

The regulatory purpose behind Building Inspection's housing enforcement program is to essentially police landlords to ensure they provide safe and sanitary rental housing. As the designated

local enforcement agency, the Building Inspection Department conducts periodic inspections of rental units and takes subsequent enforcement actions to ensure that such rental housing stock complies with the State Housing Law (California Health and Safety Code sections 17910 through 17995.5). California Health and Safety Code section 17920.3 enumerates a list of substandard conditions which must "endanger the life, limb, health, property, safety or welfare of the public or the occupants. . . ." These include inadequate sanitation, infestation of vermin, structural hazards, inadequate exit facilities and public nuisances.

Whenever a property owner fails to correct the substandard conditions, Building Inspection must initiate an administrative or judicial enforcement action to gain compliance. This necessarily places the City in the midst of the landlord-tenant relationship. Although the City's primary objective is to enforce the State Housing Law, it must also consider the tenants' basic need of having adequate shelter.

A regulatory permit fee cannot exceed the costs reasonably necessary to achieve the regulatory purpose, but such costs may include "all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." *United Business Com. v. City of San Diego*, 91 Cal. App. 3d 156, 165 (1979). Considerable latitude is necessarily permitted in determining regulatory costs. 9 *McQuillan, Municipal Corporations* Section 26.17 (3d ed. rev.). "There is a presumption in favor of the reasonableness of a fee imposed for a license." Rhyne, *The Law of Local Government Operation*, Section 20.7 (1980).

Over the last several years effective compliance with the State Housing Law has become more difficult to obtain where the apartments or other regulated buildings have both code violations as well as a pattern of illegal drug activities. Building Inspection often cannot safely inspect these drug houses without police escort. The property owner or manager is more difficult to identify and locate. Some hide behind sham corporations and partnerships while others are too afraid to visit their property because of intimidation by drug dealers. Before property owners can even submit plans to repair substandard conditions, they must first regain control of the property by abating the drug activities.

In many respects drug abatement and housing enforcement share the same basic objective - preservation of the quality of urban life via abatement of public nuisances and rehabilitation of the property. The primary thrust of drug abatement is to attack the physical environment of the drug dealer not to arrest individuals

for drug transactions. California Health and Safety Code section 11570 essentially places civil liability upon the property owner for the continuous drug activity on his or her property. The purpose of civil abatement proceedings is to "effect a reformation in the property itself." *People v. Bayside Land Co.*, 48 Cal. App. 257, 261 (1920).

In response to this lethal combination of substandard buildings and illegal drug activity, the City Attorney and City Manager formed a special Drug Abatement Task Force in 1988 to coordinate the joint efforts of the Police Department, Building Inspection Department, Fire Department, Zoning Investigations and the City Attorney. The Task Force concentrates its efforts upon properties with continuous drug activities and the most egregious code violations. The drug abatement detective conducts joint inspections with the Building Inspection Department. A profile of the property's drug activities and substandard conditions is prepared by the abatement detective. He does not make arrests, but merely coordinates police and City resources to target those properties with a high incidence of drug activity and substandard conditions.

A profile of the properties' drug history and substandard conditions are generally shared with the property owner at a meeting with the police and City Attorney. A list of recommendations is developed to assist the owner in regaining control of the property as well as a time table to complete repairs. If the owner fails to abide by this agreement, the City Attorney files a civil complaint pursuant to the Drug Abatement Act. (California Health and Safety Code section 11570.) Thus, the Task Force uses a combination of drug abatement and housing enforcement to impose more leverage upon the property owner to abate both of these public nuisances. (Section 11580 imposes more severe penalties - a maximum civil penalty of \$25,000. The Drug Abatement Act also permits the closure of the property for one year.)

This joint effort illustrates the direct relationship between abating substandard properties and curbing illegal drug activities. In 100 cases processed by the City's Drug Abatement Task Force since April 1989, virtually every case involved some combination of housing, building, fire or health violations in differing degrees of severity and number. Approximately 75

percent of these cases involved rental properties - either multi-family or single family dwellings.

DART is designed to enhance the City's part-time efforts by providing more resources to investigate, identify and abate the housing violations and continuous drug activities. DART's

request for police investigative assistants will assist in the preparation of drug abatement investigations and provide the existing abatement detective with administrative and clerical support. This will result in more inspections which will be handled by the proposed building inspector. DART will generate more office hearings and court cases that will demand more legal resources in the City Attorney's Office. The creation of the new Community Resource Specialist will ensure rehabilitation of the dilapidated buildings and establish a network with active community and professional organizations.

DART is nothing more than a specialized task force which concentrates on properties with continuous drug activities and dilapidated buildings. This combination demands a special team to attack the most serious targets before they ignite deterioration throughout an entire neighborhood.

This relationship between crime and dilapidated property is not novel. Social psychologists have documented this connection as the "Broken Window Theory." Dilapidated buildings send a signal to the community that no one cares. This in turn attracts the criminal element to the dilapidated property. As Professor James Q. Wilson noted in his February 1989 article in the Atlantic Monthly, "Making Neighborhoods Safe:"

A lot of serious crime is adventitious, not the result of inexorable social forces or personal failings. A rash of burglaries may occur because drug users have found a back alley or an abandoned building in which to hang out. In their spare time, and in order to get money to buy drugs, they steal from their neighbors. If the back alleys are cleaned up and the abandoned buildings torn down, the drug users will go away. They may even use fewer drugs, because they will have difficulty finding convenient dealers and soft burglary targets.

One substandard building can have a cumulative impact upon an entire neighborhood regardless of whether it is subject to the Housing Permit Fee. When one substandard building is left unchecked or a neighborhood becomes infested with drugs, the entire rental and real estate market becomes adversely affected.

Neighboring apartment complexes find it more difficult to locate good tenants. Existing tenants move out once they are terrorized by drug dealers. Thus, the apartment and real estate industries are directly affected by this lethal combination of substandard buildings and drugs.

The San Diego Apartment Owner's Association responded to this

link when they formed their own Drug Abatement Task Force. During the past two years representatives from the City's Task Force have participated at education seminars on drug abatement sponsored by the Apartment Owner's Association and Board of Realtors. A Memorandum of Understanding between the City and Apartment Owner's Association has been developed to provide general guidelines about the City's drug abatement procedures. In a few serious cases the Association has worked directly with the besieged property owner and the City to abate the public nuisance and obtain compliance with applicable Housing Code regulations.

Although this combination adversely affects the regulated industries, the people who suffer the most are the tenants and neighbors that live next door to a drug house. As the United States Supreme Court noted in the case of *Berman v. Parker*, 348 U.S. 26, 32-33 (1954):

Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost unsufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn.

The misery of housing may despoil a community as an open sewer may ruin a river.

In conclusion, it is our opinion that Housing Permit Fees may be used to fund a full-time drug abatement team as a reasonable relationship exists between Building Inspection's housing enforcement function and the City's drug abatement efforts.

Respectfully submitted,
JOHN W. WITT
City Attorney

JWW:JMS:lja:551 (x043.1)

RC-90-44