

September 17, 1992
 REPORT TO THE COMMITTEE
 ON TRANSPORTATION, PLANNING AND THE ENVIRONMENT

CITY ATTORNEY'S CODE ENFORCEMENT UNIT-CASELOAD STATISTICS, FINES
 AND CIVIL PENALTIES

This Committee as part of its special session on code enforcement has requested information on the number of criminal and civil cases filed by the Code Enforcement Unit (CEU) and the amount of criminal fines and civil penalties assessed in these cases. Several statistical tables are incorporated in this report for your information.

CASES RECEIVED BY DEPARTMENT

	FY 90	FY 91	FY 92
Planning & Signs	33	69	61
Building Inspection (Housing-Building-Noise)	20	34	27
Litter Control	16	22	22
Fire Prevention	8	9	12
Other (Health-SDPD-Water Utilities)		9	11 12*
TOTAL	86	145	134

* All twelve cases were referred by San Diego Police Department (SDPD) for fiscal year (FY) 92.

Overall, the City's code enforcement divisions are referring cases to the CEU for judicial action at a similar rate as FY 91. Roughly half of the new cases for this fiscal year have been sent by the Planning Department. These 61 cases include zoning, planning and sign code violations. 57 of these 61 Planning Department cases were sent by Zoning Investigations.

Trends

The CEU noted a recent decline in the number of cases referred for judicial action during the last quarter of fiscal year 1992. (Average number of cases received per quarter was 33.5; only 15 cases were received in the fourth quarter of fiscal year 92.) This trend has also continued into the first quarter of this fiscal year. This decrease may be attributed in part to the energy devoted to the City Manager's reorganization of these existing divisions into the new Neighborhood Code Compliance Department.

Another variable which affects the number of case referrals is the increased availability of administrative remedies. The City's code enforcement system is more comprehensive today than it was three years ago. Instead of sending cases to the CEU for criminal or civil court action, the departments can also use various administrative remedies--i.e., administrative citations for minor violations like illegal parking or signs without permits. Therefore, many of the cases which involve minor violations are no longer sent to the CEU.

Where the department has been unable to gain compliance using an administrative remedy (i.e., administrative citation or mediation), the department can refer the case to the CEU for judicial action. Over the past six months, the CEU has seen an increase in the number of referrals where administrative remedies failed to gain compliance.

The CEU also has a vital role with respect to representing departments at administrative abatement and civil penalties hearings. Several complex administrative hearings were conducted during fiscal year 1992 involving abatement orders and permit revocations issued by the Building Inspection Department. One hearing lasted from January until September with an expenditure of approximately 300 hours of attorney and staff time.

CLOSED CASES			
	FY 90	FY 91	FY 92
TOTAL	344	127	164
AVERAGE PER QUARTER	86	32	41

Since its inception in August 1984, the CEU has obtained compliance in nearly 2,000 cases. In fiscal year 1992 the CEU increased the number of closed cases by 22.5% compared to fiscal year 1991.

Approximately 30% of CEU's cases were closed without litigation by merely sending a demand letter or conducting an office hearing. This represents a significant savings in time and money.

	FY 90	FY 91	FY 92
Demand Letters	137	64	52
Office Hearings	17	42	47

Litigation

The CEU's litigation track record in court is also noteworthy. Any violation of the Municipal Code can be filed as either a misdemeanor criminal prosecution or a civil injunction in Superior Court. Most of these misdemeanor prosecutions were resolved within less than four months from the date a complaint was filed. The 87 criminal complaints filed in fiscal year 1992 represents a 46% increase from fiscal year 1990.

	FY 90	FY 91	FY 92
Criminal Complaints	47	80	87
Civil Complaints	5	13	21

Civil litigation is generally reserved for the more complex offenses like substandard housing, drug abatement, continuous work without permits, or significant fire and building code violations that pose imminent threats to the public's health and safety. In fiscal year 1992 more civil complaints were filed than the combined total of fiscal years 1990 and 1991 (a 38% increase from fiscal year 1991).

FINES AND CIVIL PENALTIES--CLOSED CASES*

Fiscal Year 1990	\$ 69,575
Fiscal Year 1991	\$137,175
Fiscal Year 1992	\$152,225

* Reflects the date when the case was closed not the date when the fine was assessed.

These totals reflect the amount of criminal fines imposed via misdemeanor cases and the amount of civil penalties assessed by either superior court civil actions or administrative hearings conducted by CEU attorneys. We have incomplete information on the amount which has been actually collected since criminal fines are collected by the County.

Pursuant to the Penal Code, criminal fines are distributed between the County and the City according to a specified percentage. The City's percentage of criminal fines are deposited in the General Fund. Judicial civil penalties can be assessed pursuant to state law either by a Drug or Redlight Abatement action or under the Unfair Business Practices Act. Civil penalties assessed under the Unfair Business Practices Act are divided with half going to the County and half to the City's General Fund.

Effective January 1, 1992, the CEU can now use the new judicial civil penalties provision from our Municipal Code in its superior court injunction cases that involve violations of the Code. All civil penalties collected under this authority are deposited in the City's Code Enforcement Civil Penalties Fund instead of the County. In one noteworthy case, the CEU obtained a \$14,300 civil penalty where a property owner destroyed part of an historic structure without proper permits. In addition to the penalty, \$5,400 was awarded to the Planning Department for their investigation costs.

Respectfully submitted,
 JOHN W. WITT
 City Attorney

JWW:JMS:lmk(043.1)

RC-92-55
TOP
TOP