

November 16, 1993
REPORT TO THE COMMITTEE
ON PUBLIC SERVICES AND SAFETY

IMPLEMENTATION OF COLLECTION OF FINES AND WARRANTS

BACKGROUND

Coleman Conrad, Deputy City Manager, in a memorandum dated October 26, 1993, requested that the City Attorney research a suggestion by San Diego Municipal Court Judge Larry Stirling that as an "Executive Branch Agency" the City can enforce court orders, collect civil assessments and overdue fines related to offenses committed within the City's jurisdiction. A second question was also posed in later discussions between the offices of the City Manager and City Attorney: Can the City establish its own Municipal Court? This latter question will be addressed first.

A. Can The City Set Up Its Own Municipal Court?

This question arose from the experience in Houston, Texas, where the City runs its own court and is therefore able to directly collect fines and forfeitures. However, the City of San Diego cannot establish its own municipal court without a change in state law. If the City Council decides to sponsor a change to state law allowing the City to create its own municipal court, the City Attorney will draft appropriate legislation. It goes without saying that the economic feasibility of a separate City Municipal Court is problematic.

The California legislature has made the counties responsible for operating and maintaining the municipal court system. The state legislature has not granted cities any authority to operate or maintain a municipal court system. Under present state law, the operation and maintenance of the municipal court system is a county matter. The state legislature has made each county responsible for the financial affairs of superior and municipal courts by a delegation of power. Cal. Gov't Code Section 68073; Cal. Penal Code Section 1205.

Since the purpose of a city-operated and maintained municipal court would be to enhance revenues to the City from the court system, a threshold question involves costs. We would recommend that, if there is serious interest in a City-operated

Municipal Court, a study be conducted to determine whether the personnel and overhead costs would be excessive.

B. Can the City Increase its Revenue From the Criminal Justice System by Enforcing Court Orders, Collecting Civil Assessments and Fines or Collecting Other Fees Related to Offenses Committed Within the City's Jurisdiction ?

1. Enforcing Court Orders

Courts are empowered to issue orders on matters properly brought before them. These orders direct individuals or agencies to perform some act. If the City is included in the order it has the power to enforce it. The City has no power to enforce court orders that do not direct it or its employees to perform some act.

Warrants are one type of court order. Warrants direct any peace officer to conduct searches or make arrests. So peace officers employed by the City of San Diego can legally enforce them. Arrest warrants direct peace officers to bring the defendant named in the warrant before the court. Collection agents or private investigators cannot serve or enforce warrants. Only peace officers may serve warrants. Penal Code section 816. Simply arresting someone on a warrant generates no revenue. Revenue is only generated when the defendant forfeits bail, or pays a fine or civil assessment.

2. Collecting Civil Assessments

Penal Code section 1214.1 permits the court to impose a civil assessment of up to two hundred and fifty dollars (\$250.00) in lieu of an arrest warrant against any defendant who wrongfully fails to appear in court.

Unfortunately, only counties are designated to collect the two hundred and fifty dollar (\$250.00) civil assessment imposed upon defendants pursuant to Penal Code section 1214.1. Cities were allocated a percentage of civil assessments collected by the county under an expired pilot program provided for in now repealed Penal Code section 1214.3. The allocation to cities took into account the expenditure of funds by the City to pay the arresting officer(s). With the expiration of the pilot program, the City is no longer entitled to any portion of the funds.

A current proposal by Judge Stirling suggests that the City as an executive function has the power to collect such civil assessments. However, the law allowing for the imposition of such civil assessments does not provide for any such collection by cities.

A legislative amendment to Penal Code section 1214.1 that would allocate a portion of the two hundred and fifty dollar (\$250.00) civil assessment to cities for its expenditure of funds for the arresting officer(s), or would allow collection and

retention of the entire amount by cities, would provide the city with some revenue in the nature of cost recovery. This office is prepared to draft appropriate legislation to change the present distribution of civil assessments.

3. Collecting Fines and Forfeited Bail

Fines imposed by the San Diego Municipal Court and collected from defendants are a revenue source to the City limited by a distribution formula mandated by state law. Revenue distribution between the state, county and city is governed by California Penal Code section 1463. Penal Code section 1463 specifies that:

All fines and forfeitures imposed and collected for crimes . . . shall be distributed in accordance with Section 1463.001. . . . The following definitions shall apply to terms used in this chapter:

. . .

(h) 'Offense' means any infraction, misdemeanor, or felony, and any act by a juvenile leading to an order to pay a financial sanction by reason of the act being defined as an infraction, misdemeanor, or felony, whether defined in this or any other code Emphasis added.

Accordingly, any fine collected for any criminal offense, including those in the San Diego Municipal Code, is subject to this provision. The language of this section also applies to bail forfeitures.

Bail is a deposit the defendant posts with the court to ensure the scheduled court appearance. In certain cases the defendant can elect to forfeit the bail in lieu of appearing in court. In those cases the forfeited bail serves as the fine. The distribution formula under Penal Code section 1463 applies to any bail that is posted and later forfeited. In more serious cases, the defendant will be required to appear in court without the option of simply posting and forfeiting bail.

4. Collecting Other Criminal Justice Fees

A. Incarceration Fees

California Penal code section 1203.1 would allow the City of San Diego to enact an ordinance imposing incarceration fees upon convicted defendants sentenced to the San Diego Pre-arraignment Detention Center ("City Jail"). The City Jail has a present capacity to hold sixty-four (64) sentenced prisoners.

In order to collect incarceration fees, Penal Code section 1203.1c(a) requires the court to conduct a hearing to determine if the defendant can pay all or a portion of the costs of incarceration. The incarceration fees shall not exceed the actual average per-day cost of incarceration. The statute allows strictly for cost recovery.

The Presiding Judge of the San Diego Municipal Court, H. Ronald Domnitz, has expressed his belief that the financial costs of the hearings would exceed incarceration fee revenues. He noted that the number of defendants who would be determined at these hearings to be able to pay incarceration fees would be minimal. In support of his belief he notes that approximately 91% of criminal defendants receive appointed counsel based on their inability to pay attorney fees.

The City Attorney is prepared to draft an ordinance which would allow the City to seek collection of incarceration fees in accordance with Penal Code section 1203.1. In view of Judge Domnitz's observations, it is recommended that the City Manager inquire into the feasibility of incarceration fees as a revenue source before the ordinance is proposed.

B. Booking Fees

Government Code section 29550 provides that a county may impose a fee upon a city (or other entities) for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city.

The County of San Diego has enacted an ordinance imposing criminal justice administration fees Booking Fees upon cities in San Diego County in the amount of one hundred and fifty-four dollars (\$154.00) pursuant to the authority of Government Code section 29550. The City Manager of the City of San Diego has negotiated two memoranda of understanding with the County of San Diego which are being relied upon as a basis for the City's exemption from the payment of booking fees.

The cities in San Diego County, with the exception of the City of San Diego, joined in litigation against the County contesting the imposition and amount of the booking fees. The cities were unsuccessful in contesting the imposition of the booking fees but are engaged in negotiation as to the amount.

Despite the existing memoranda of understanding negotiated by the City Manager and the County relied upon as a basis for City exemption from booking fees, there are recent indications the County will seek collection of booking fees from the City.

Other cities in San Diego County are in the process of enacting ordinances pursuant to California Government Code section 29500.1 authorizing cities to seek recovery of booking fees from defendants.

The City Attorney is prepared to draft an ordinance to recover booking fees from defendants upon receipt of a City Manager's Request for Council Action (Form 1472).

C. Can City Revenue be Increased by Adding Civil Fines and Penalties to Additional San Diego Municipal Code Violations?

Government Code section 36901 permits the City Council to impose civil fines, penalties and forfeitures in an amount not to exceed one thousand dollars (\$1,000.00) for violations of its ordinances.

Recent amendments to Chapter I of the San Diego Municipal Code initiated by the City Attorney's Code Enforcement Unit authorize the City of San Diego to impose administrative civil penalties for any violations related to the use, development or conditions of real property. The civil penalty is in addition to criminal penalties and is paid directly to the City. If the violations are processed criminally through the municipal court system, then the fines are distributed pursuant to Penal Code section 1463 between the state, county and city. Such civil penalties could also be imposed for additional Municipal Code violations.

People against whom civil penalties are assessed have administrative due process rights that include notice of the alleged violation, an opportunity for a hearing, and a right to appeal to the courts. Such a system began in July 1993 for parking violators. The City Treasurer's Office has been collecting money due on parking violations through an administrative process since parking citations were decriminalized. Parking violators have administrative due process rights and the opportunity of appeal to the municipal court pursuant to California Vehicle Section 40230.

Statistics on Municipal Code violations involving citations and arrests during the most recent six (6) month period have been received from the San Diego Police Department Crime Analysis Unit. Those statistics will be reviewed with the City Manager to determine whether adding civil fines and penalties to more sections of the Municipal Code to gain additional revenue would be appropriate.

Respectfully submitted,

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