

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Michael J. Aguirre
CITY ATTORNEY

MEMORANDUM

DATE: February 13, 2007

TO: The Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: Retention of Outside Counsel by a City Department

INTRODUCTION

On February 7, 2007, the City's Real Estate Assets Department [READ] presented the findings and recommendations of Grubb & Ellis' "Best Practices Methodology for Real Estate Assets Department" report to the Land Use & Housing Committee. At that meeting, Mr. Jim Waring, the Mayor's Deputy Chief of Land Use and Economic Development, announced to the Committee that in response to Grubb & Ellis' finding that READ had "no definitive library of legal forms" and "multiple standard forms for leases," he intends to outsource the development of "standardized legal documents" to private law firms who will do the work on a *pro bono* basis.

QUESTION PRESENTED

Can a City Department unilaterally retain outside legal counsel on a *pro bono* basis for the preparation of standardized legal documents?

SHORT ANSWER

No. No authority exists that would allow any City Department to unilaterally retain outside legal counsel for any purpose, regardless of whether or not compensation is paid.

ANALYSIS

The San Diego City Charter section 40 clearly delineates the authority of the City Attorney:

"The City Attorney shall be the chief legal advisor of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties..."

The Honorable Mayor and
City Council

-2-

“It shall be the City Attorney’s duty...to perform all services incident to the legal department; ...to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned...”

Such authority is absolute. The preparation of “standardized legal documents” clearly falls within the exclusive purview of the City Attorney.

CONCLUSION

The City Charter delegates to the City Attorney all authority for the provision of legal services to the City and all of its Departments, including without limitation the preparation of contracts. Only the City Attorney may retain outside counsel. Therefore, the Mayor’s retention of outside legal counsel, on a *pro bono* basis or not, for the purpose of preparing standardized legal documents for the City’s Real Estate Assets Department, or for any other purpose, would be illegal.

MICHAEL J. AGUIRRE, City Attorney

By

The City Attorney