DATE: October 18, 1989

TO: Bob Ferrier, Labor Relations Manager
FROM: City Attorney
SUBJECT: Locker Searches

Recently you asked this office for an opinion regarding restrictions on employee locker searches in light of the recent decision in American Postal Workers Union v. U.S. Postal Serv., 871 F.2d 556 (1989).

The general rule is that public employees are protected from unreasonable searches and seizures of their personal property by employers through the fourth amendment of the United States Constitution and by the California Constitution, article I, section 13. In O'Connor v. Ortega, 480 U.S. 709, 720 (1987), a case dealing with a search of a doctor's desk and file cabinet by hospital administrators, the Court said: "It is settled . . . that 'except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has been authorized by a valid search warrant.'" The Court did, however, indicate that the government, as an employer, may make reasonable intrusions into the personal property of an employee for specific articulable reasons. Whether a warrantless search may be deemed reasonable requires "balancing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." Id. at 724. Random, warrantless locker searches, not based on some reasonable suspicion of activity which is either criminal in nature or violative of job related rules or regulations would not withstand a challenge utilizing the Court's balancing test.

The facts in American Postal Workers Union did involve random unannounced searches. However, in that case each employee signed a waiver at the time a locker was assigned. The waiver permitted warrantless searches under conditions specified in the collective bargaining agreement. Random inspections were permitted pursuant to the agreement, even absent reasonable suspicion of criminal or job related problems, provided a steward and/or the employee was present at the inspection. The Court stated that under such narrowly drawn conditions, where a knowing and intelligent waiver had been signed by employee, random, warrantless locker searches did not violate an employee's reasonable expectation of privacy.

San Diego has no limiting conditions which would permit random locker searches. Employees sign no waivers before lockers are allocated and no provisions in any of the City's current

memorandums of understanding indicate random locker searches should be anticipated by employees. The one exception to this generalization is found in the memorandum of understanding with the Police Officers' Association in article 41, section XI which provides:

> XI. Inspections
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> No public safety officer shall have his locker, or other space for storage that may be assigned to him searched, except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

In light of the applicable case law and the City's current memorandums of understanding with its employee organizations, locker searches are permissible under specific conditions. Thus, searches conducted pursuant to a valid warrant, as well as searches based on a reasonable probability of criminal activity, or violations of job related regulations and searches conducted pursuant to the standards set forth in the Police Officers' Association memorandum of understanding will not violate an employee's right to privacy.

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