September 2, 1997

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PROCEDURE AT COUNCIL HEARING ON
PROPOSED SATURDAY NIGHT SPECIAL BAN

Last month, a number of questions were raised regarding Council action and the related City Attorney's advice on the Saturday Night Special discussion that was before the Council. This Report is intended to explain the ruling of the City Attorney that public testimony should be allowed on August 12, 1997 prior to voting on the resolution to support AB 488 and SB 500.

As you are aware, a discussion of the Saturday Night Special Ban was docketed for the City Council meeting of July 29, 1997 after the Public Safety and Neighborhood Services Committee voted 3-2 to send a "discussion" of the subject to the full Council. On July 29, 1997, the San Diego City Council took public testimony and debated the issues surrounding a ban on the sale of Saturday Night Specials. The notice for this item read in part: "Item S500 Notice - Subject: Prohibiting the Sale of Saturday Night Specials."

During the hearing, Council member George Stevens moved and Valerie Stallings seconded the following motion:

To direct the City Attorney to draft an ordinance prohibiting the sale of so called "Saturday night specials" as defined by the Bureau of Alcohol, Tobacco,

> and Firearms factoring in their criteria for weapons and safety, and to base this ordinance on an existing ordinance which has been passed in more than thirty cities in California.

(Minutes of the Council of the City of San Diego, July 29, 1997, enclosed as Attachment 1). After Council discussion and public testimony, the motion failed 5-4.

Council member Stallings then raised the issue of whether the Council could discuss the pending state legislation and provide direction to the City Attorney or City Manager on AB 488 and SB 500. The question arose whether such a discussion was permissible under the notice for Item S500. The City Attorney opined that such a discussion was permissible given the broad notice language contained in the docket for Item S500. The City Attorney also noted that, although there was established procedure for considering support or opposition to state or federal legislation, there was no prohibition on giving direction to the City Attorney or City Manager at a Council meeting.

After Council discussion, Council member Stallings made the following motion, which is reflected in the Minutes of the Council meeting:

> Motion by Stallings directing the Manager to bring back to Council on August 5, 1997, a resolution for the support of AB 488 and SB 500 supporting a statewide ban on the sale of handguns that do not meet Federal Importation Standards. Second by Kehoe. No vote taken.

The Council did not vote to give this direction to the Manager. The Clerk's minutes read:

> Direction by Mayor Golding to trail to August 5, 1997, the discussion on state legislation regarding gun control.

The matter was noticed for August 5, 1997 at 10:00 AM. The City Attorney was not consulted in the preparation of the docket notice for August 5, 1997. The notice read as Item S501:

SUBJECT: Two actions related to State Legislation on Handgun Safety (AB 488) and Firearms (SB500).

NOTE: It is anticipated that Items S500 and S501 will be trailed to the meeting of Monday, August 11, 1997.

TODAY'S ACTIONS ARE:

Subitem-A:

Discussion of State Legislation AB 488 (Caldera), Handgun Safety Standards Act of 1997, and SB 500 (Polanco), Firearms.

Subitem-B (R-98-162)

Adoption of a Resolution supporting passage of Assembly Bill 488 and Senate Bill 500 supporting a statewide ban on the sale of handguns that do not meet Federal Importation Standards.

This noticed item was significantly different from the original issue of giving direction to the Manager to prepare a resolution that the Council would then vote on. Indeed, this noticed item resulted in noticing a vote on an actual resolution although the Council had never voted to give such direction to the City Manager to prepare a resolution. A member of the public filed a written complaint with the City Attorney and raised the issue of the public's right to speak to the possible resolution to be adopted.

As noted earlier, the City Attorney was not consulted prior to the notice that was included in the docket, nor was the City Attorney consulted about the note at the bottom of the docket that said in part: "Hearing closed. Testimony taken on 7/29/97. . . ."

After reviewing the issues, it was clear that California's open meeting law, commonly known as the Brown Act, required that public testimony be allowed due to the newly noticed, very particular item now before the Council. Cal. Gov't Code Sections 54954.3. The Permanent Rules of the City Council, at Rule 9, also required that public testimony be allowed. San Diego Municipal Code Sections 22.0101, Rule 9. The City Attorney advised the City Clerk of this requirement prior to the noticing of the item for August 12, 1997, and the Council docket for that date did not preclude public testimony. Public testimony was taken consistent with the requirements of the Brown Act on August 12, 1997 prior to the Council's vote.

Although there was some discussion over whether public testimony needed to be allowed, because of the serious nature of Brown Act violations and for the protection of Council members, this Office has always interpreted the requirements of the Brown Act liberally. I trust you concur that our views on this matter were in your best interests. Please do not hesitate to contact me if you have any further questions.

Respectfully submitted,

CASEY GWINN
City Attorney

LJG:ljg(043.1)
Attachment
RC-97-20