REPORT TO THE COMMITTEE ON PUBLIC SERVICES AND SAFETY
SURVEY OF STATE DRUG ENFORCEMENT STATUTES

At your meeting of August 5, 1987, the Committee requested the City Attorney to provide a brief report regarding state statutes which could assist the City in its efforts to combat the proliferation of illegal drugs. This report does not address the provisions of the Penal Code and Health and Safety Code which create specific criminal offenses and penalties enforced by law enforcement agencies. Instead the report concentrates on unusual and extraordinary civil remedies which the City may employ as part of its anti-drug efforts. These state statutes can be essentially divided into two groups: (1) Drug Abatement and (2) Property Forfeitures & Cost Recovery.

DRUG ABATEMENT STATUTES

California Health and Safety Code . 11570 et seq. empowers the City Attorney to abate buildings and premises which cause public nuisances by the involvement of illegal drugs or controlled substances. Essentially, these state laws allow the city to obtain court orders against the landowners for illegal drug conduct by their tenants.

Modeled after the "Redlight Abatement Laws", these statutes permit municipalities to file civil complaints to abate public nuisances caused by the ". . . selling, serving, storing, keeping or giving away of controlled substances. . . ." Health and Safety Code . 11570. This highly specialized public nuisance statute allows municipalities to obtain temporary restraining orders and preliminary and permanent injunctions against the landowner. Section 11581 authorizes abatement orders which could direct the removal and sale of all fixtures and moveable property used in conducting the nuisance. The court could also close the building for any use or purpose for up to one year. In 1986, the Legislature amended this statute to provide for damages in lieu of closing the building.

COST RECOVERY AND FORFEITURE STATUTES

Health and Safety Code . 11470 lists the various types of property which can be forfeited when used in connection with the sale, manufacturing and distribution of controlled substances. For example, boats, airplanes, vehicles, negotiable instruments and real property could be forfeited to the state. In some instances, a criminal conviction is necessary. Unfortunately, Health and Safety Code . 11488.4 permits only the Attorney

General or District Attorney to file such forfeiture actions. See also Health and Safety Code . 11488.1. Thus, the District Attorney would need to temporarily appoint deputy city attorneys to act as district attorneys for the City to maintain such an action.

Health and Safety Code . 11470.1, however, expressly authorizes the City Attorney to file a civil action to recover expenses incurred in the seizure, eradication and clean up of illegal drug labs and marijuana farms. This applies only when the City incurs reasonable expenses proximately caused by the defendant's illegal manufacturing or cultivation of controlled substances or its precursors. It would not apply to standard arrests for mere possession or use of controlled substances. This civil action can be maintained against a defendant in addition to a pending criminal complaint. All expenses shall be remitted to the law enforcement agency which incurred them.

Copies of these statutes are attached to this report for the Committee's information.

Respectfully submitted,
JOHN W. WITT
City Attorney

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Attachments
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