

(GENERAL)

COMPTROLLER  
FILE NUMBER

239857

ANNUAL REPORT OF THE LAW DEPARTMENT  
FOR THE YEAR 1979.

FILED AUGUST 27, 1980

Tim Hill, City Comptroller

BY *Virginia Miller* DEPUTY

**ACTION OF THE COUNCIL**

REFERRED

TO

REFERRED

TO

REFERRED

TO

REPORTED

DISPOSITION

RE-REFERRED

TO

REPORTED

DISPOSITION

# REPORT OF COMMITTEE

Mr. President:

Committee

Your

to which was referred the within

would respectfully report that we have considered the same and respectfully recommend that

CHAIRMAN

CHAIRMAN

TRANSMITTED HEREWITH IS THE 1979 ANNUAL REPORT  
OF THE LAW DEPARTMENT

289857

The Law Department continues to provide early, effective and responsive advice on programs, policies and issues in which The City of Seattle is involved. Several significant items were completed during 1979, including:

The publication of "Ordinance Drafting Style Manual."

Reorganization of the City Claims Investigation and Processing function.

Institutionalization of the Battered Women's Project initiated in 1978 with CETA funds.

Consolidation of the Claims Payment, Advanced Claims Payment, Officers and Employees Claims Payment and Judgment Funds.

Publication of an Internal Office Procedures Manual.

Revision of the City's Traffic Code.

Revision of the City's Criminal Code.

Organization of the Seattle Municipal Code, scheduled for distribution in September 1980.

During 1979 210 lawsuits were filed against the City, 133 lawsuits were initiated by the Law Department, and 1,180 claims for damages were filed against the City. In addition, the Law Department represented various City departments in 113 administrative hearings. The Department responded to 1,198 requests for ordinance drafting and other formal review, 198 formal opinion requests and over 17,000 verbal requests for assistance.

BUDGET AND STAFFING

The Law Department is entirely funded from the City's General Fund. The Department's 1979 expenditures included:

Personnel Services	\$1,695,387
Other Services and Supplies	213,293
Law Books and Remodeling	65,548
TOTAL	\$1,974,228

CITY OF SEATTLE  
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AND CITY CLERK

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CITY OF SEATTLE

This Budget supports a staff which includes 43 attorneys, legal interns, paralegals and Battered Women's Project personnel, three administrative personnel, 8 claims personnel and 10 clerical staff.

Collection activities and other revenue producing activities of the Department generated approximately \$200,000 as revenue to the City's General Fund.

1979

DOUGLAS N. JEWETT, CITY ATTORNEY  
DICKSY WINTERS, ADMINISTRATOR  
RUTH WOO, SECRETARY

ADMINISTRATION

MARTHA DELLASEGA, OFFICE MANAGER  
ARLENE McMILLAN, RECEPTIONIST  
KATHLEEN L. MEEGAN, WORD PROCESSING SUPERVISOR  
PATRICIA HARRIGAN, ASSISTANT WORD PROCESSING SUPERVISOR  
LINDA FARMER  
VIRGINIA FIELDS  
FRANCESCA HICKS  
ROBIN LYONS  
GERRY SELFRIDGE

ADVISORY DIVISION

DONALD H. STOUT, DIRECTOR

JORGEN G. BADER  
DONA M. CLOUD  
GORDON B. DAVIDSON  
P. STEPHEN DiJULIO  
ROD P. KASEGUMA  
SUSAN RAE SAMPSON  
BETTY NGAN, PARALEGAL  
DIANE KREMEN, LEGAL INTERN  
NOBEL MORIMOTO, LEGAL INTERN  
CAROL WARNER, LEGAL INTERN  
NADIYAH EASTON, SECRETARY

CRIMINAL DIVISION

PAUL J. BERNSTEIN, DIRECTOR

MARY V. BRENNAN  
GORDON CAMPBELL  
MYRON L. CORNELIUS  
PAUL A. CULLEN  
DARCY C. GOODMAN  
LINDA HALL  
DEBRA HANKINS  
DONNA B. HUBBARD

MICHAEL S. HURTADO  
ROBERT B. JOHNSON  
KATHERINE KURIYAMA  
DONNA LEONG  
SEAN SHEEHAN  
ANTIONETTE BROOKS, SECRETARY  
ANN KELSON, OFFICE AID

BATTERED WOMEN'S PROJECT

SALLY A. BUCKLEY, MANAGER  
BARBARA DANIELS, COUNSELOR  
SHARON EUSTER, COUNSELOR  
JOANNE PRITCHETT, COUNSELOR  
DANA FRANCIS, PARALEGAL

LAND USE DIVISION  
GORDON F. CRANDALL, DIRECTOR

JAMES E. FEARN, JR.  
ELLEN D. PETERSON  
ROSS A. RADLEY  
G. GRANT WILCOX  
ANDRE' S. WOOTEN  
JUDITH BARBOUR, PARALEGAL  
RANDALL ENSMINGER, LEGAL INTERN

LITIGATION DIVISION  
THOMAS J. WETZEL, DIRECTOR

CHARLES D. BROWN  
ELIZABETH A. HUNEKE  
PHILIP M. KING  
RICHARD E. MANN  
PHILIP D. MORTENSON  
J. ROGER NOWELL  
WILLIAM H. PATTON  
R. JAMES PIDDUCK, JR.  
LAURIE NEMZER, PARALEGAL  
ALICE VANDERMARTIN, PARALEGAL  
JACK JONES, LEGAL INTERN  
THERESA DILLON, SECRETARY

CLAIMS PERSONNEL

JAMES L. BAUGHMAN  
LIDO DILUCK  
RASHAD EL-AMIN  
WILLIAM G. HEURION  
CURTIS E. JACOBS  
T. WILLIAM LISTON  
MAURICE A. QUALE

UTILITIES DIVISION  
ARTHUR T. LANE, DIRECTOR

WALTER T. WILLIAMS  
JEANNETTE PFOTENHAUER

I.

During 1979 the Law Department prepared 198 formal opinions. A catalogue of these opinions indexed by subject matter are presented on the following pages.

### BORROWING

Allocation of bond funds to specific Seattle Center projects is in city council discretion if overall purposes accomplished. (6820-3/7/79)

Financing West Seattle bridge by LID assessments, special benefit district or excess levy. (6826-3/28/79)

Construction of new Seattle Center resident theater permissible with bond funds if funds for other projects reasonably expected. (6827-3/29/79)

Rights of city in cash deposited with fiscal agents. (6869-5/31/79)

Tax consequences of refunding LID notes - arbitrage. (6876-6/12/79)

Disposition of funds received for Fire Station 19, constructed with bond funds, if acquired for West Seattle bridge. (6928-10/11/79)

Questions regarding proposed 1980 bond issue: single subject rule, eligible projects, degree of detail required, environmental law compliance. (6954-12/12/79)

City's authority to establish endowment fund for arts with excess tax levy. (6955-12/12/79)

City's authority to issue excess levy bonds for housing programs. (6956-12/13/79)

### CONTRACTS

Contract between Randolph Carter Industrial Workshop and Senior Services and Centers for catering services complies with law and is valid. (6795-1/11/79)

Design/construct specifications for Cedar River bridge satisfy competitive bid requirements. (6819-3/7/79)

City's legal and contractual obligations to United Indians All Tribes at Discovery Park. (6828-3/30/79)

Construction and funding options for West Seattle Bridge project. (6830-4/10/79)

Contracting study prepared by OMB and legislative staff. (6850-5/2/79)

Prequalification requirement of purchasing ordinance (101432) not in conflict with competitive bid requirement of Charter. (6860-5/18/79)

Eligibility of recently resigned Design Commissioner to participate in city consultant contract. (6863-5/23/79)

City may contract with Corps of Engineers to review design of and award contracts for West Seattle Bridge. (6893-7/10/79)

Liability of city's catering contractor for wine and cheese service at King Tut Exhibit. (6897-7/20/79)

CONTRACTS (continued)

Proposed women and minority business utilization ordinance. (6901-8/1/79)

Legal implications of discontinuing city participation in WPPSS nuclear Projects 1, 2 and 3. (6902-8/1/79)

Alternative methods of requesting bids on West Seattle bridge project. (6929-10/16/79)

Determination of responsive bidder under proposed women and minority business enterprise ordinance. (6930-10/18/79)

Small public works roster under Ch. 89, 1 '79 (1st Ex. Sess.) would not obviate bid requirements of RCW 35.22.620 - disqualification of "poor" contractors. (6935-10/25/79)

Whether sales representative is agent or vendor who must pre-qualify depends on circumstances. (6942-11/8/79)

Rejection of bids on basis inconsistent with past practice regarding minority involvement vulnerable to legal action. (6944-11/13/79)

Proposed concession agreement for use of Gas Works Park West by United Indians of All Tribes. (6945-11/14/79)

Contract for emergency ambulance services should be made by competitive bidding, if possible. (6947-11/27/79)

DEPARTMENTS, COMMISSIONS  
AND BOARDS

Incorporation of advisory committee to P-Patch program for tax exemption, solicitation, newsletter, and sales of produce. (6794-1/10/79)

Authority of Seattle design commission and ethical concerns of members. (6801-2/1/79)

Authority of park board over expenditures for art in park improvements advisory only. (6803-2/5/79)

Application of open meetings law to first organizational meetings of Public Safety and Civil Service commission. (6817-3/6/79)

Appearance of fairness doctrine applies to quasi-judicial proceedings of multi-member boards. (6841-4/23/79)

Application of conflict of interest provisions of block grant contract with Pike Market Services community center. (6845-4/27/79)

Appearance of fairness doctrine applies to boundary review board annexation proceedings. (6851-5/3/79)

City council finance committee chairman's duties not inconsistent with duties as chairman of retirement board. (6857-5/16/79)

DEPARTMENTS, COMMISSIONS  
AND BOARDS (continued)

Eligibility of recently resigned Design Commissioner to participate in City consultant contract. (6863-5/23/79)

Personal liability of retirement board members and staff governed by ordinance 104526. (6864-5/23/79)

Effect of possible violation of appearance of fairness doctrine by boundary review board. (6877-6/13/79)

Members of board of public works must be city department heads. Human Rights director cannot delegate powers and duties under ordinance 101432 to Office of Human Rights. (6880-6/19/79)

Effect of withdrawal of King County on Seattle-King County Health department. (6883-6/25/79)

Quorum requirements of city planning commission. (6894-7/13/79)

Appearance of fairness applies to city planning commission in quasi-judicial hearings. (6895-7/17/79)

Financial reporting of library fund accounts; directing library fund investments; automatic transfers without vouchers. (6907-8/14/79)

City council can abolish municipal courts in excess of three established by RCW 35.20. (6932-10/22/79)

DEPARTMENTS, COMMISSIONS  
AND BOARDS (continued)

Officer of Pike Place Market PDA can serve on Market historical commission as "owner of property." (6962-12/20/79)

Open public meetings act inapplicable to advisory boards. (6963-12/26/79)

EMINENT DOMAIN

Financing West Seattle bridge by LID assessments, special benefit district or excess levy. (6826-3/28/79)

Construction and fundion options for West Seattle bridge project. (6830-4/10/79)

EXPENDITURES

City may pay cost of breakfast meeting to inform downtown employers of transportation benefits of flextime scheduling. (6791-1/3/79)

Authority of park board over expenditures for art in park improvements advisory only. (6803-2/5/79)

Light fund may not be used to pay cost of energy code enforcement. (6808-2/7/79)

Allocation of bond funds to specific Seattle Center projects is in city council discretion if overall purposes accomplished. (6820-3/7/79)

EXPENDITURES (continued)

Construction of new Seattle Center resident theater permissible with bond funds if funds for other projects reasonably expected. (6827-3/29/79)

Proposed relocation of Chapel on the Hill by city for religious use would violate state and federal constitutions. (6834-4/19/79)

Public expenditures for weatherization would primarily benefit low income tenants. (6843-4/26/79)

Rights of city in cash deposited with fiscal agents. (6869-5/31/79)

Legal authority to implement economic development activities using CBDG funds. (6870-6/1/79)

Tax consequences of refunding LID notes - arbitrage. (6876-6/12/79)

Rat abatement project using federal block grant funds permissible. (6879-6/15/79)

Forgiveness of LID assessment would constitute gift prohibited by state constitution. (6888-7/3/79)

Authority of budget director to require library board to submit base budget at specified level. (6905-8/9/79)

EXPENDITURES (continued)

Financial reporting of library fund accounts; directing library fund investments; automatic transfers without vouchers. (6907-8/14/79)

Transit pass subsidy to municipal employees is general benefit and accountancy act does not require utilities to reimburse general fund. (6914-8/29/79)

Authority of fire fighter's pension board to employ legal counsel to review city attorney's opinion. (6922-9/18/79)

Disposition of funds received for Fire Station 19, constructed with bond funds, if acquired for West Seattle bridge. (6928-10/11/79)

Reimbursement for departmental seminars, workshops or retreats. (6939-11/1/79)

Allocation of expenses of city council and mayor to utilities. (6946-11/14/79)

Questions regarding proposed 1980 bond issue: single subject rule, eligible projects, degree of detail required, environmental law compliance. (6954-12/12/79)

EXPENDITURES (continued)

City's authority to establish endowment fund for arts with excess tax levy. (6955-12/12/79)

City's authority to issue excess levy bonds for housing programs. (6956-12/13/79)

Potential liability for distribution of salary warrants prior to review by personnel director. (6957-12/17/79)

Loans for rehabilitation of multi-family building with federal block grant funds not prohibited by state constitution. (6960-12/19/79)

Authority to expend forward thrust NIP funds on temporary traffic control system in Harrison neighborhood. (6961-12/19/79)

EXTRATERRITORIAL POWERS AND RELATIONS

City not authorized to annex noncontiguous watersheds. (6837-4/19/79)

Apportionment of gross income for B & O tax for services rendered within and without city. (6865-5/29/79)

FEDERAL-CITY RELATIONS

Contractural

Federal certification acceptance procedure is permissible alternative for construction of West Seattle Bridge project. (6936-10/20/79)

Tax immunity

Income of city utilities not subject to federal tax under IRS letter ruling no. 7904006. (6823-3/19/79)

Regulatory

Federal public health cigarette smoking act precludes local regulation of billboard advertising of cigarettes. (6829-4/2/79)

Cooperation

Housing authority's scattered site program eligible for federal weatherization assistance. (6951-12/6/79)

LICENSING

Issuance, Revocation, etc.

Lease or franchise of taxicab licenses. (6814-2/28/79)

Lapse of taxi licenses -- grace period. (6849-4/30/79)

LICENSING (continued)

Operation

Sponsor, not caterer, required to obtain cabaret license at Seattle Center. (6884-6/26/79)

LOCAL GOVERNING BODY

Appearance of fairness doctrine applies to quasi-judicial proceedings of multi-member boards. (6841-4/23/79)

City council finance committee chairman's duties not inconsistent with duties as chairman of retirement board. (6857-5/16/79)

MUNICIPAL CORPORATIONS IN GENERAL

Creation, alteration, dissolution, etc.

Application of city construction codes in areas annexed to city. (6822-3/14/79)

City not authorized to annex noncontiguous watersheds. (6837-4/19/79)

Appearance of fairness doctrine applies to boundary review board annexation proceeding. (6851-5/3/79)

Annexation criteria added by H.B. 860 must be satisfied if city initiates annexation. (6855-5/15/79)

MUNICIPAL CORPORATIONS IN GENERAL (continued)

Effect of annexation of South Park area on utility rates, comprehensive plan, taxes, public improvements, codes, indebtedness, permits. (6873-6/7/79)

Annexation petition time constraints and SEPA requirements. (6899-07/26/79)

Different excise tax rates for newly-annexed areas permissible. (6952-12/7/79)

OFFICERS AND EMPLOYEES

General

Implementation of new personnel ordinance (107790) regarding temporary employees. (6858-5/16/79)

Application of Hatch Act to city employment. (6871-6/4/79)

Eligibility, etc.

Veterans preference for CETA positions. (6804-2/5/79)

Council confirmation of mayor's nominations of department heads. (6821-3/13/79)

Preferences for women and minorities in auto trades training and apprenticeship program to remedy discrimination permissible. (6874-6/8/79)

OFFICERS AND EMPLOYEES  
(continued)

Compensation and leave

Cash payout for accumulated vacation where civil service employee becomes appointed official with term of office. (6806-2/6/79)

Compensatory time earned but not used should be paid for as overtime. (6831-4/13/79)

City may share royalties of copyrighted work with employee if authorized by ordinance. (6840-4/23/79)

Effect of Ch. 126, 1. '79 (1st Ex. Sess.) on terms of office and compensation of incumbents and candidates. (6931-10/22/79)

Rights, duties and liabilities

Rights of temporary employees under personnel ordinance. (6789-1/2/79)

Disclosure of employees social security number for retirement system election voluntary, not mandatory. (6862-5/21/79)

Personal liability of retirement board members and staff governed by ordinance 104526. (6864-5/23/79)

Duty of officer to enforce zoning ordinance. (6934-10/25/79)

OFFICERS AND EMPLOYEES  
(continued)

Demotion, removal, etc.

Probationary employees do not have right of appeal from suspension or dismissal. (6938-10/31/79)

Veterans have preference in layoff under RCW 73.16.010. (6959-12/18/79)

Pension and retirement

Retirement board's responsibility for payment of benefits when member of system missing for ten years. (6790-1/3/79)

Death benefits payable to divorced wife on death of Harold Ireland. (6816-3/6/79)

Inclusion of military service period for service under LEFF act. (6859-5/17/79)

Disability leave benefits under LEFF system - Plan I. (6889-7/5/79)

Retired policeman entitled to join city retirement system upon being employed by city. (6910-8/27/79)

Retired fireman entitled to join city retirement system upon being employed by city. (6911-8/27/79)

OFFICERS AND EMPLOYEES  
(continued)

Pension and retirement  
(continued)

Application of three year statute of limitations to claims for pension benefits. (6921-9/11/79)

Pension benefits under RCW 41.18.100 for widows of fire fighters killed in line of duty or retired for service disability. (6920-9/17/79)

Excess benefits due to widow only pursuant to RCW Ch. 41.18. (6926-10/1/79)

Particular offices

Emergency powers of mayor and of city relating to gasoline shortages. (6878-6/14/79)

ORDINANCES AND RESOLUTIONS

Effect of adding "subject to city council approval" to ordinance granting privilege to construct overhead bridges. (6842-4/25/79)

Council president may execute ordinances both as mayor and city council president in absence of mayor. (6891-7/9/79)

City cannot reject proposed initiative to discourage new construction near Magnuson Park, though probably invalid. (6915-9/4/79)

ORDINANCES AND RESOLUTIONS  
(continued)

Public hearings required to adopt rules under administrative procedure ordinance (102228). (6949-11/28/79)

Time for filing initiative petition signatures. (6958-12/17/79)

PARKING AND PARKING FACILITIES

Off-street parking

Authority of city to fix maximum and minimum parking rates in lease of public parking facility to discourage all-day parking. (6844-4/27/79)

PARKS, PLAYGROUNDS, BEACHES, SWIMMING POOLS, STADIUMS, ETC.

City's title to undeveloped parts of Gasworks Park and harbor patrol site. (6797-1/17/79)

Admission charges to Lake Washington Park would not risk reversion of property if enabling act passed. (6810-1/17/79)

Authority of park board over expenditures for art in park improvements advisory only. (6803-2/5/79)

Adoption of Fort Lawton landmark district not exempt from SEPA, but need not wait on EIS on Discovery Park master plan. Appeals by nonproperty owners permissible. (6807-2/7/79)

PARKS, PLAYGROUNDS, BEACHES,  
SWIMMING POOLS, STADIUMS, ETC.

(continued)

Proposed concession agreement with United Indians of All Tribes at Gas Works Park West. (6809-2/14/79)

Analysis of City's legal and contractual obligations to United Indians of All Tribes at Discovery Park. (6828-3/30/79)

Proposed relocation of Chapel on the Hill by city for religious use would violate state and federal constitutions. (6834-4/19/79)

Effect of proposed Arboretum master plan update on initiative ordinance 103667 prohibiting restriction of access, admission charges or entrance fees. (6917-9/6/79)

Procedure for transfer of Good Shepherd center from Historic Seattle to new public corporation. (6927-10/3/79)

Proposed concession agreement for use of Gas Works Park West by United Indians of All Tribes. (6945-11/14/79)

POLICE POWER

General

Adoption of HB 76 would introduce municipal/state-wide concern distinction in police power authority of cities. (6796-1/17/79)

Emergency powers of mayor and of city relating to gasoline shortages. (6878-6/14/79)

POLICE POWER (continued)

Confiscation of illegal gasoline containers. (6882-6/22/79)

Authority of city to cite and impound vehicles in public housing projects. (6885-6/26/79)

Enforcement

Traffic offender who refuses to sign citation must be arrested, even though fine is only penalty. (6813-2/26/79)

Application of city construction codes in areas annexed to city. (6822-3/14/79)

Enforcement of unit pricing ordinance. (6832-4/13/79)

Nuisances

Towing contractor not entitled to expenses of preparing abandoned car for sale if car redeemed. Disposition of personalty. (6815-3/5/79)

Regulation of buildings and other private property

City may charge fees to cover cost of administering energy code. (6811-2/23/79)

Regulation of trade and industry

Federal public health cigarette smoking act precludes local regulations of billboard advertising of cigarettes. (6829-4/2/79)

POLICE POWER (continued)

Regulation of trade and industry (continued)

Towing operator must usually accept payee checks and may not insist on checks for cash. (6848-4/16/79)

Regulation of business of collecting and distributing data for directories for commercial purposes. (6838-4/20/79)

Civil liberties

Body cavity searches of prisoners. (6861-5/18/79)

POWERS AND FUNCTIONS OF MUNICIPAL CORPORATION GENERALLY

Generally

City construction of newstands. (6868-5/31/79)

Legal authority to implement economic development activities using CBDG funds. (6870-6/1/79)

Preferences for women and minorities in auto trades training and apprenticeship program to remedy discrimination permissible. (6874-6/8/79)

Emergency powers of mayor and of city relating to gasoline shortages. (6878-6/14/79)

POWERS AND FUNCTIONS OF MUNICIPAL CORPORATION GENERALLY (continued)

City may sell gas to van pools allocated by United States -- federal tax must be allocated between commuting and pleasure driving. (6881-6/21/79)

Levy for emergency medical care or services authorized by Ch. 200, L '79 (1st Ex. Sess.). (6909-8/23/79)

Authority of city to participate in federal grants for economic development. (6919-9/7/79)

City may accept donation for construction of pedestrian overpass but can't reimburse for construction of public works. (6924-9/20/79)

City council can abolish municipal courts in excess of three established by RCW 35.20. (6932-10/22/79)

City's authority to issue excess levy bonds for housing programs. (6956-12/13/79)

City's authority to provide and assist public transportation systems -- pending litigation. (6964-12/28/79)

POWERS AND FUNCTIONS OF MUNI-  
CIPAL CORPORATION GENERALLY

(continued)

Public records

Public disclosure of fire code violation records. (6824-3/20/79)

Preservation of city planning commission records under RCW 40.14.070. (6835-4/19/79)

Disclosure of record of interviews of witnesses requesting anonymity in confirmation proceedings. (6839-4/20/79)

Disclosure of confidential interviews for council confirmation hearings. (6852-5/3/79)

Discovery and admissibility of departmental disciplinary actions in civil actions. (6853-5/14/79)

Public disclosure of CETA monitoring records. (6875-6/11/79)

Disclosure of police pension board's file on member's physical and mental condition to police department. (6896-7/18/79)

Privacy and requests for information from law enforcement agencies. (6908-8/20/79)

Management of city's public records. (6937-10/31/79)

Release of medic one reports for medical research permissible with consent of patient or representative. (6943-11/9/79)

SEPA

Approval of fireworks display for July 4th at Green Lake exempt from EIS requirement of SEPA. (6798-1/31/79)

Adoption of Fort Lawton landmark district not exempt from SEPA, but need not wait for EIS on Discovery Park master plan. Appeals by nonproperty owners permissible. (6807-2/7/79)

Annexation petition time constraints and SEPA requirements. (6899-7/26/79)

Questions regarding proposed 1980 bond issue: single subject rule, eligible projects, degree of detail required, environmental law compliance. (6954-12/12/79)

Action of superintendent of buildings following remand of SEPA appeal not subject to further appeal if ministerial. (6963-12/26/79)

PROPERTY

Acquisition

Property exchange or street vacation permissible for construction of Lucille Street bridge. (6918-9/7/79)

PROPERTY (continued)

Title, use and control

City's title to undeveloped parts of Gas Works Park and harbor patrol site. (6797-1/17/79)

Proposed concession agreement with United Indians of All Tribes at Gas Works Park West. (6809-2/14/79)

City may share royalties of copyrighted work with employee if authorized by ordinance. (6840-4/23/79)

Management of Good Shepherd Center by Historic Seattle. (6854-5/15/79)

Permissible uses of Martha Washington School property. (6890-7/6/79)

Procedure for transfer of Good Shepherd Center from Historic Seattle to new public corporation. (6927-10/3/79)

Use of trade name here of business on east coast would not be infringement, unless trademark registered. (6933-10/25/79)

Disposition and loss

Admission charges to Lake Washington Park would not risk reversion of property if enabling act passed. (6810-1/17/79)

Authority of city to sell or lease Martha Washington property acquired with forward thrust park bond funds. (6818-3/7/79)

PUBLIC UTILITIES

Relocation of public utilities in streets necessitated by public improvements is responsibility of utility. (6825-3/20/79)

REMEDIES AND ACTIONS INVOLVING MUNICIPAL CORPORATIONS

Discovery and admissibility of departmental disciplinary actions in civil actions. (6853-5/14/79)

Application of three year statute of limitations to claims for pension benefits. (6921-9/11/79)

Application of rules of evidentiary privilege, confidential communications and privacy to citizen dispute settlement mediation. (6950-11/29/79)

SPECIAL ASSESSMENTS

Financing West Seattle bridge by LID assessments, special benefit district or excess levy. (6826-3/28/79)

Construction and funding options for West Seattle bridge project. (6830-4/10/79)

Forgiveness of LID assessment would constitute gift prohibited by state constitution. (6888-7/3/79)

STATE-CITY RELATIONS

King County airport exempt from city's B & O tax under RCW 14.08.330. (6793-1/10/79)

STATE-CITY RELATIONS (continued)

City authorized to support and assist school district in desegregation of schools -- no liability exposure. (6812-2/26/79)

Responsibility for fishway construction at water department's Landsburg Diversion dam under RCW 75.20.060. (6836-4/19/79)

Appearance of fairness doctrine applies to boundary review board annexation proceedings. (6851-5/3/79)

Effect of possible violation of appearance of fairness doctrine by boundary review board. (6877-6/13/79)

Effect of withdrawal of King County on Seattle-King County health department. (6883-6/25/69)

Levy for emergency medical care or services authorized by Ch. 200, L '79 (1st Ex. Sess.). (6909-8/23/79)

King County not barred by state or county charter from assuming metro's functions. (6923-9/19/79)

Department of revenue lien release must be obtained for supplemental public works contracts pursuant to RCW 60.28. (6948-11/28/79)

STREETS, ALLEYS AND SIDEWALKS

Opening, paving, repair, change

City construction of newsstands. (6868-5/31/79)

City may accept donation for construction of pedestrian overpass but can't reimburse for construction of public works. (6924-9/20/79)

Duty of city to light streets depends upon circumstances. (6925-9/27/79)

Title and control

Advertising banners and signs from upraised West Seattle bridge unauthorized. (6802-2/5/79)

City may not lease unused street area, but may permit private use under term permit providing for fees comparable to rent. (6805-2/6/79)

Board of public works cannot restrict newspapers in kiosks in University Tract to daily and financial newspapers. (6866-5/29/79)

Rights of Burke Industrial Center in land under Aurora Bridge. (6887-6/28/79)

Duty of city to light streets in arboretum. (6892-7/9/79)

Waterways are not subject to sale or lease, but may be vacated. (6940-11/6/79)

STREETS, ALLEYS AND SIDEWALKS  
(continued)

Obstructions and encroachments

Relocation of public utilities in streets necessitated by public improvements is responsibility of utility. (6825-3/20/79)

Enclosure of sidewalk cafe would exceed authority of street use ordinance, and unless temporary would violate rights of public. (6833-4/18/79)

Effect of adding "subject to city council approval" to ordinance granting privilege to construct overhead bridges. (6842-4/25/79)

TAXATION

King County airport exempt from city's B & O tax under RCW 14.08.330. (6793-1/10/79)

Utility sales tax imposed by County under SB 3144 would result in revenue loss to city. (6846-3/8/79)

Financing West Seattle bridge by LID assessments, special benefit district or excess levy. (6826-3/28/79)

Leasehold excise tax applicable to contract rent, though janitorial services, etc. included, at Seattle Center. (6847-4/9/79)

TAXATION (continued)

Apportionment of gross income for B & O tax for services rendered within and without city. (6865-5/29/79)

B. & O tax liability of Chinatown I.D. preservation and development authority. (6867-5/30/79)

Application of B & O tax to dues collected by Better Business Bureau. (6898-7/24/79)

Levy for emergency medical care or services authorized by Ch. 200, L '79 (1st Ex. Sess.). (6909-8/23/79)

Deductibility from utilities tax of certain taxes paid by city light. (6913-8/28/79)

Application of city business tax to contractor with office in city and site offices at projects. (6941-11/7/79)

Department of revenue lien release must be obtained for supplemental public works contracts pursuant to RCW 60.28. (6948-11/28/79)

Different excise tax rates for newly-annexed areas permissible. (6952-12/7/79)

Admission tax applies to fee for dinner/dance restricted to members of private organization. (6953-12/10/79)

TORT LIABILITY

Generally

Discovery and admissibility of departmental disciplinary actions in civil actions. (6853-5/14/79)

City not liable for personal injury as result of passing open housing ordinance. (6886-6/26/79)

Public ways

Duty of city to light streets in arboretum. (6892-7/9/79)

Liability of city for sidewalk and sewer damage from privately planted street trees. (6904-8/3/79)

Duty of city to light streets depends upon circumstances. (6925-9/27/79)

Other public facilities and activities

City authorized to support and assist school district in desegregation of schools -- no liability exposure. (6812-2/26/79)

Liability to volunteers in animal control ride-along program. (6900-7/25/79)

UTILITIES, MUNICIPALLY-OWNED

Light fund may not be used to pay cost of energy code enforcement. (6808-2/7/79)

UTILITIES, MUNICIPALLY-OWNED  
(continued)

Relocation of public utilities in streets necessitated by public improvements is responsibility of utility. (6825-3/20/79)

Responsibility for fishway construction at water department's Landsburg Diversion dam under RCW 75.20.060. (6836-4/19/79)

Legal implications of discontinuing city participation in WPPSS nuclear projects 1, 2 and 3. (6902-8/1/79)

City can allow or refuse to allow connection of private water line at 1500 Logan Ave. West. (6906-8/29/79)

City's obligation to deliver water to wholesale purveyors. (6914-8/14/79)

Allocation of expense of city council and mayor to utilities. (6946-11/14/79)

ZONING AND PLANNING

Zoning

Zoning code amendments to regulate adult entertainment centers. (6799-1/31/79)

Guarantee of permanent retention of open space in planned unit development. (6847A-4/10/79)

ZONING AND PLANNING  
(continued)

Zoning (continued)

Pleasure boat moorage is accessory to houseboat moorage, and fees may be charged tenants. (6872-6/5/79)

Street improvements may be required for conditional use permit if need therefor caused by use. (6917-9/6/79)

Duty of officer to enforce zoning ordinance. (6934-10/25/79)

Landmarks and historic preservation

Proposal for First Hill historic district not barred by landmarks preservation ordinance. (5800-1/31/79)

Adoption of Fort Lawton landmark district not exempt from SEPA, but need not wait for EIS on Discovery Park master plan. Appeals by nonproperty owners permissible. (6807-2/7/79)

II.

REVIEW OF SIGNIFICANT CASES

The Law Department of the City under Charter supervises all litigation in which the City has an interest. On the following pages is presented a summary of those cases resolved during 1979 which are deemed to be most significant.

REVIEW OF SIGNIFICANT CASES 1979

DAMAGES

The City of Seattle v. Union Oil Company of California, et al.;  
King County Superior Court No. 853363

This case arose out of the crash of a gasoline tanker truck and trailer and the resulting fire which occurred on the lower level of the Alaskan Way Viaduct on December 4, 1975.

The major damage sustained by the City was to its two 115KV primary electrical transmission lines which were suspended along the viaduct structure. Because the fire destroyed a length of each of these oil-filled electrical cables, power to the central business district of downtown Seattle was at first interrupted and then had to be furnished by a single underground transmission line.

The City claimed damages in connection with the repair and replacement of the damaged cables, the construction and subsequent removal of a temporary backup transmission line, along with additional costs incurred by City Light and several other City departments.

Following lengthy and detailed settlement negotiations, the case was settled prior to trial by the payment of the sum of \$500,000 to the City.

Base, Inc. v. The City of Seattle and Arango Construction Company;  
King County Superior Court Cause No. 839165

This action involved claims totaling \$84,519.57 against the City by both a subcontractor (Base) and the prime contractor (Arango) on City Light's Viewland-Hoffman Receiving Substation project (B.P.W. No. 76-90). Base's claim of approximately \$64,000 arose over the information included in the contract plans concerning soil conditions at the construction site.

Abbreviated test boring logs shown on the plans did not sufficiently indicate the results of those tests - that the soil was extremely hard at that location. Arango, in addition to claiming against the prime contractor, also sought some \$20,000 in extra compensation for several items.

The case was settled shortly prior to trial, when the City agreed to pay \$20,000 to Base on its claim in return for a release of all claims against the City by both Base and Arango.

Dong v. City;  
King County Superior Court No. 843347

In this case a 11-year old girl had been struck by a car and killed as she crossed 15th Avenue South in an unmarked crosswalk

at South Bayview Street. The intersection at such location was peculiarly aligned which, plaintiff contended, created an extra hazardous condition for pedestrians. The parents of the girl sued the City for failing to have posted signs to prevent pedestrians from crossing at such location. A jury found that the City had not been negligent and returned a verdict for the City.

Brady v. City;

King County Superior Court No. 831766

In this case a 13-year old girl had been struck by a car while crossing Lake City Way in a marked crosswalk near N.E. 123rd Street. She sustained serious leg injuries and in the suit brought on her behalf it was claimed the alignment of the streets made the location an extra hazardous crossing for pedestrians. The plaintiffs contended the City was negligent in having a marked crosswalk there, and in failing adequately to sign and maintain the crosswalk. The case was tried to a jury which determined the City had not been negligent and returned a verdict for the City.

Ochampaugh v. City;

Washington State Supreme Court No. 45492

In this sad proceeding two brothers, age 6 and 8, had drowned in a pond on City Light transmission line property in a semi-rural area of Snohomish County. Their father sued for wrongful death claiming that the pond was an attractive nuisance which the City, as landowner, was required to fence.

The Snohomish County Superior Court dismissed the case on motion by the City for summary judgment. Plaintiff appealed to the State Supreme Court which affirmed the dismissal. The Court held that a body of water having natural characteristics in a semi-rural area cannot constitute an attractive nuisance as a matter of law.

Malone v. City;

Washington State Court of Appeals No. 6240-I

In this case a Superior Court jury had found that City Fire Department paramedics had not been negligent in treating and transporting plaintiff to a hospital following a nocturnal car crash. Plaintiff appealed alleging that the trial court had erred in instructing the jury that a state statute rendered paramedics and their employers immune from liability in certain circumstances. The Court of Appeals ruled there had been no error and the jury's verdict for the City was affirmed.

Schneider v. City;

Washington State Court of Appeals No. 6729-I

This case involved a 10-year old boy who ignored a "danger - keep off" sign and climbed a generator tower at the construction

site of the Gasworks Park. The boy fell off and was injured. His parents sued the City alleging the tower was an attractive nuisance, and that the City was negligent in failing to prevent young children from playing on it. After a lengthy trial in Superior Court, a verdict was rendered in favor of the City. However, the trial judge ruled that the jury had been erroneously instructed on the law of attractive nuisance, and he granted plaintiffs a new trial. The City appealed said ruling to the Court of Appeals which held that the jury had not been erroneously instructed. The order granting a new trial was reversed, and the jury verdict in favor of the City was reinstated.

Wainey v. City;  
King County Superior Court No. 822461

This case arose out of a fire in a basement apartment in which plaintiff, a young, single woman sustained third degree burns over much of her upper body. The apartment was illegal in that it had been bootlegged into a single family residency zone. It also was in violation of several sections of the Housing Code and its electrical wiring was inadequate, requiring plaintiff to utilize extension cords, one of which was the source of the fire. Plaintiff claimed the City knew or should have known of all these conditions because a City Building Inspector had been in the house three years previous. The inspector was on another assignment, however. The jury found there had been no negligence on the part of the City and returned a verdict in favor of the City.

Virginia Kyreacos v. David Smith, et al.;  
King County Superior Court Cause No. 783539

Plaintiff alleged that The City of Seattle negligently hired and retained David Smith, a police officer who murdered plaintiff's husband, and also alleged that a fellow police officer and friend of Smith, negligently loaned his personal gun to Smith while the police officer was acting within the course and scope of his employment. Judge Frank Howard dismissed the cause of action as to the City. The Court's ruling found no evidence to support the negligent retention allegation nor to show that the hiring and retention of Smith proximately caused plaintiff's injuries. The court also held that the friend's negligence, if any, did not occur while acting on behalf of the City, that the City was immune from liability because it had no duty to protect the decedent, and that there was no evidence to establish that the loan of the gun proximately caused the murder. The Supreme Court previously held that the City could not be held liable for a premeditated murder committed by a police officer, and Judge Hunter had dismissed plaintiff's allegations pertaining to the violation of the decedent's civil rights.

Thomas v. City;  
King County Superior Court Cause No. 842634

This was a personal injury suit by a 65-year old woman who claimed she fell into a hole dug by the Seattle Water Department.

The Water Department had dug the hole at the function of the City's pipe and the property owner's pipe the day before the accident. The hole had been filled and, according to the Water Department witnesses barricaded. The barricades were apparently removed overnight and the woman fell in the hole the next morning. The plaintiff claimed that her knee had been sprained in the fall and this had aggravated a pre-existing arthritic condition which needed restorative surgery.

This was a jury trial with the jury awarding \$69,750 in damages and reducing the City's share to \$34,875 due to contributory negligence on the part of the plaintiff.

A motion for a new trial based on the excessiveness of the damages was denied.

Wallace v. City, et al.;  
King County Superior Court Cause No. 820880

This complaint sought \$250,000 as damages because the Health Department banned the sale of raw milk. Plaintiff claimed the ban was without justification and based on bad data. The City requested a motion for summary judgment on the basis of the immunity of City employees when performing discretionary acts such as analyzing data and imposing a ban. This motion was granted.

Capiello v. City;  
King County Superior Court Cause No. 830852

This suit was against a city prosecutor for slander because the prosecutor told a Seattle Times reporter that Capiello nailed a razor blade to a yard sign. The plaintiff claimed the razor blades were put in the sign by plaintiff for gardening purposes only. The prayer was for \$500,000. After two days of jury trial, the case was dismissed on our motion for failure to make a prima facie case on proof of special damages and failure to prove malice since a qualified privilege to make false statements existed. A cause of action for malicious prosecution was also dismissed. \$100 was paid by the City to dismiss the appeal with prejudice.

Its About Time v. City, et al.;  
King County Superior Court Cause No. 830452

This case involved multiple plaintiffs who brought a suit under the Public Disclosure Law to inspect and copy police intelligence records. Damages sought were \$25 per day for the 42 plaintiffs as well as costs and attorney's fees. There were many meetings between the parties and extensive formal and informal discovery. As a result of this case, the police department has devised guidelines for editing its records. The case was settled in November, 1979, for \$23,428 which includes attorney's fees and costs.

ENVIRONMENTAL, LAND USE AND ZONING

Apple Theater v. Seattle;  
90 Wn.2d 709, U.S. S.Ct. No. 78-1460

In February of 1979, the United States Supreme Court denied a request for certiorari by Apple Theater and Northend Theater. There, the petitioners had challenged the City's zoning of adult motion picture theaters and their confinement to downtown zones, claiming such zoning laws were vague, overbroad, too restrictive and underinclusive and, therefore, violated their rights to equal protection, due process and freedom of expression. The Washington State Supreme Court had earlier upheld the City's ordinance as a legitimate and reasonable regulation of place in the interests of preserving the character and quality of the City's residential communities and the business districts which served them.

Concerned Citizens Against The East Central Precinct  
v. The City of Seattle  
Before the Hearing Examiner

This case involved a coalition of central area citizens who challenged the adequacy of the EIS, which was prepared for siting the precinct in the East Central area. The EIS considered three sites and the challenge was directed solely at the 23rd and Yesler site. The Hearing Examiner remanded the case on the basis that traffic portion of the Environmental Impact wasn't adequate. The impact statement was re-done, following the directions of the Hearing Examiner and the appeal period has run without any challenge.

Displacement Coalition v. Sato and The Building Department  
Before the Hearing Examiner

This case involves an appeal by the Displacement Coalition of a DNS granted for a 52 unit condominium on Beacon Hill which would have resulted in a demolition of 8 single family houses representing 10 dwelling units. Prior to this administrative hearing the Displacement Coalition had successfully sued Sato in court and required a \$750.00 per dwelling unit relocation fee. The declaration of nonsignificance was upheld by the Hearing Examiner and the Displacement Coalition appealed that decision to the City Council on the basis of the fact that there were no conditions placed on the Use Permit. That appeal was rejected by the City Council as being improper and the Council found they had no jurisdiction to hear such an appeal. There have been no further appeals filed in this case.

The Matter of the Appeal of Morris Piha  
Before the Hearing Examiner

This appeal involved a developer who wanted to construct an office building on lower Queen Anne which would have resulted in the demolition of a 36 unit low income elderly structure. The

City was joined in the defense of this suit by the Displacement Coalition and it was the first attempt to use the SEPA policy ordinance relating to housing. The City Building Department issued a declaration of significance based upon the destruction of the housing. The Hearing Examiner granted the appeal of the appellant on the basis that the houses were not capable of rehabilitation and therefore were never in the housing stock, and could not properly be the basis for requiring an Environmental Impact Statement. This case is significant because it was the first case involving the SEPA city ordinance policy on housing, and because it has been the foundation upon which the Building Department has based most of their other decisions regarding housing, particularly cases like Sato.

Portage Bay - Roanoke Park Community Council, et al. v. Shoreline Hearings Board of The State of Washington, et al.;  
92 Wn.2d (April, 1979)

This case arose out of a waterfront property owner's 1973 application to the City for a shoreline substantial development permit for a houseboat moorage and related service facilities for twelve floating homes on Lake Union's Portage Bay. In order to reduce the proposed project's impacts on views, navigation and other public water related activities, the City imposed conditions on the permit substantially reducing the length of the moorage deck and reducing the permitted number of houseboats to six.

The applicant appealed to the Shoreline Hearings Board, and the neighborhood community council and a number of neighboring property owners cross-appealed, claiming that no houseboats should have been permitted and that any reduction of public rights in navigable waters must be offset by an equal public benefit. Following a lengthy evidentiary hearing, the Shorelines Hearings Board substantially affirmed the City's determination, retaining the City's limitation on the length of the moorage dock and increasing the number of permitted houseboats from six to eight.

The applicant and the cross-appellants then commenced suit against the City and the Board in Superior Court. King County court Judge Nancy Ann Holman affirmed the Board's decision but required the Board to reimburse the appellants for the cost of preparing the transcript of the testimony before the Board.

On appeal the Washington Supreme Court held that the State Shoreline Management Act of 1971 supersedes any prior common-law public benefit doctrine and affirmed the decision of the Shorelines Hearings Board. The Supreme Court reversed Judge Holman's ruling regarding the costs of transcription and held that the party appealing to the courts from a decision of a quasi-judicial tribunal such as the Shorelines Hearings Board is responsible for paying the costs of transcribing the testimony.

## DISCRIMINATION

Seattle Newspaper-WEB Pressmen's Union, Local No. 26 v. City of Seattle;  
Court of Appeals No. 6728-I

Plaintiff alleged that the Seattle Fair Employment Practices Ordinance was unconstitutional for reasons that the State had preempted the field of employment discrimination and that the ordinance conflicted with state law. The trial court and the Court of Appeals held that the State had not preempted the field, that no conflict existed regarding one specifically alleged issue and that plaintiff had no standing to claim the existence of a conflict on other specific issues.

Maehren, et al. v. Seattle, et al.; Church, et al. v. Seattle, et al.;  
92 Wn.2d 480

Another significant reverse discrimination case was decided by the Washington State Supreme Court this year in favor of Seattle. Selective certification of minority males for positions as Fire Lieutenant and Fire Battalion Chief in the Seattle Fire Department to implement the City's affirmative action program was at issue in these consolidated cases. On August 10, 1979, the Washington Supreme Court held that selective certification as used was Constitutional, determining that the City's interest in eliminating racial imbalance in its employment was compelling and justified use of selective certification granting a racial preference. It further held that use by the City of its geographical boundaries as a statistical base for comparisons of its employment profile for affirmative action purposes was legitimate and reasonable; and that proof of personal victimization under the circumstances demonstrated in the Seattle Fire Department was not a prerequisite to affirmative action in the form of selective certification. The plaintiffs there have petitioned the United States Supreme Court for certiorari to review the State Court's decision. That petition is pending as of this writing.

## MISCELLANEOUS

The City of Seattle v. Stuart N. Donaldson;  
Court of Appeals No. 5819-I. Petition for review  
denied by Supreme Court.

The Seattle Police Department recovered several hundred pieces of apparently stolen electronic equipment and other miscellaneous items from Donaldson's home, but was unsuccessful in locating owners of all of the property, and it prepared to auction the property in accordance with RCW 63.32. Defendant Donaldson claimed a superior right to the property by reason of prior possession. The Court of Appeals affirmed the trial court decision which authorized the auction.

## UTILITIES

City of Seattle v. The United States of America;  
Armed Services Board of Contracts Appeals No. 22486,  
The United States Court of Claims No. 393-77

In its appeal to the Armed Services Board of Contracts Appeals and its complaint to the United States Court of Claims, The City of Seattle claimed entitlement to payment for electric services to Fort Lawton representing the difference between a lower industrial rate schedule and a higher commercial rate schedule.

An Administrative Judge of the Armed Services Board of Contract Appeals, after prehearing conference, issued a Prehearing Memorandum and Order which resulted in a negotiated settlement of the dispute wherein the United States Government (United States Army) would pay to The City of Seattle the difference between the industrial rate schedule and the commercial rate schedule from April 1, 1974 through November, 1979. On November 26, 1979, the contract for electrical services to the Ft. Lawton facility was terminated and the Government agreed to pay the sum of \$44,254.54. Both the Appeal before the Armed Services Board of Contracts Appeals and the complaint before the U.S. Court of Claims have since been dismissed by the City.

### III.

#### STATISTICS

The following charts are a compilation of statistics summarizing the activities of the Law Department.

320 civil cases were filed against the City in 1979. During the same period the City filed as plaintiff 136 civil cases.

Court	Type of Case	City Defendant	City Plaintiff	Total
U.S. District	Discrimination	1		1
	Environmental		1	1
	Extraordinary Remedy		1	1
	Property Damage	2		2
	Quiet Title	1		1
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Total		4	2	6
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Superior	Abatement	1		1
	Collections		21	21
	Condemnation	4		4
	Contract disputes	6	1	7
	Declaratory Judgments	5	2	7
	Discrimination	5		5
	Environmental	7		7
	Extraordinary Remedies	12		12
	False Arrest/Imprisonment	30		30
	House Boat Equity		3	3
	Housing Code Violations		1	1
	Injunctive Relief	2		2
	Interpleader		2	2
	Labor	9	1	10
	LEOFF/Retirement	1		1
	Libel	1		1
	License Revocations	2		2
	Mortgage Foreclosure/ Liens		7	7
	Ordinance Challenges	2		2
	Personal Injury	52		52
	Property Damage	8	4	12
	Property Exchange	3		3
	Public Disclosure	3		3
	Quiet Title	1	1	2
	Street Use Vacation	1		1
	Stolen Vehicle Sale		1	1
	Subpoena	2		2
	Tax	1	1	2
	Utilities	1		1
	Workmen's Compensation	1		1
	Writ of Certiorari	1		1
	Wrongful Death	1		1
Zoning/Subdivision	22		22	
<hr/>				
Total		184	45	229

Municipal	Building Code Violations		2	2
	Collections		1	1
	Discrimination	1	1	2
	Environmental	1		1
	Housing Code Violations		70	70
	License Revocations		10	10
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Total		2	84	86
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District/ Justice	Collections		2	2
	Property Damage	17		17
	Property Exchange	2		2
	Zoning	1		1
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Total		20	2	22
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Administrative Proceedings				
	Civil Service	15		15
	Discrimination	12		12
	Environmental Procedures	43		43
	Labor	20		20
	License Revocations		2	2
	Noise Ordinance		1	1
	Retirement	2		2
	Workmen's Compensation	5		5
	Zoning/Subdivision	13		13
<hr/>				
Total		110	3	113
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Grand Total		320	136	456

During 1979 the City prosecuted 94,361 defendants in Municipal Court. Approximately 1,140 cases were prosecuted in De Novo appeals to Superior Court.

During 1979 1,180 claims against the City were filed.