

2013

CITY ATTORNEY'S OFFICE

City of Arlington, Texas

State of the City Attorney's Office
Annual Report to City Council
October 2012 – September 2013

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INTRODUCTION

The City Attorney's Office (CAO) provides legal counsel and advice to the Mayor, City Council, and all departments of the City of Arlington. The CAO is made up of the Citizen Services, Employment/Litigation, and Municipal Law sections. The following summarizes the CAO's activities for the time frame of October 2012 through September 2013. Some of the information contained in the report this year includes the CAO's role in revenue enhancement and cost recovery, strong neighborhood and community development initiatives, code enforcement, energy contracting, litigation, succession planning and law office systems, preservation of public property and local control, downtown redevelopment, gas well regulation, and leasing of City mineral interests.

LITIGATION



The CAO handles a wide variety of litigation against the City including but not limited to claims and lawsuits pursuant to the self-insurance (APFA) program. This includes personal injury cases, civil rights lawsuits, employment lawsuits, sexually oriented business litigation, condemnation and other real estate litigation. This year continues the upward trend with 13 new lawsuits filed against the City. Most of this litigation (approximately 75 percent) is handled by members of the litigation section. Those cases referred to outside counsel generally require significant support by the litigation section because of complexity, discovery volume and a desire to minimize the City's attorney's fees. The City currently has 22 pending lawsuits. Twenty-one lawsuits were closed during the last year continuing the upward trend indicative of the volume of lawsuits handled by the CAO litigation section. In fact, comparing case load volumes for the past three years to the three year period preceding, the litigation section is handling fifty-one percent higher volume with the same staffing levels. The average amount paid per settlement/judgment is \$19,001, which includes the substantial settlement in the Frame case. Fourteen cases were resolved by favorable disposition without any payment.

The CAO was actively involved in eminent domain litigation in FY2013. A major public works' initiative that utilized eminent domain was the expansion of Abrams Street from Collins Street to the east city limits involving numerous parcels of property. In total, CAO filed seven condemnation cases in county court at law against property owners when no agreement was reached on the monetary amount paid to the owner whose property would be impacted by the project. Four cases were successfully resolved in FY2013 and three currently remain in litigation. An additional two cases were settled with the assistance of CAO prior to litigation being filed.

In conjunction with the City's strong neighborhood initiatives and increased zoning enforcement, the CAO provides litigation support in Tarrant County District Courts. In one case, the CAO successfully defended a landlord's attempt to obtain a temporary restraining order against the City for enforcement of the City's code. The landlord attempted to file a civil lawsuit to block prosecution of nuisance and unclean premises citations. The CAO appeared in court the same day the suit was filed and obtained a denial of the temporary restraining order and a dismissal of the lawsuit. In another case involving the demolition of a dangerous and substandard residential property, the owner sued for monetary damages. However, the plaintiffs dismissed their lawsuit after the CAO deposed the plaintiffs and filed motions for summary judgment on plaintiffs' claims. In another dangerous and substandard buildings and structures (DSS) case, the CAO handled litigation that was filed by a property owner in conjunction with a temporary restraining order to prevent the demolition of her home, which had been

deemed a dangerous building. The CAO coordinated with Code Enforcement, Community Development and Planning, and opposing counsel to formulate a mutually agreeable solution for the rehabilitation of the property. The lawsuit was non-suited and presently the property has been removed from the DSS list.

CAO also successfully handled one appeal to the Zoning Board of Appeals (ZBA). A convenience store owner appealed the revocation of his certificate of occupancy. The CO was revoked by the City's building official after documentation that eight-liners were used in the store for gambling. At the start of the appeal to the ZBA, the owner agreed to withdraw the appeal, close the store for 30 days, and further that no eight liners or gambling devices would be on the premises in the future.

The City remains in the forefront of litigating important issues to local government both at the state and national level. Arlington was the lead plaintiff in a case against the FCC that was argued to the U.S. Supreme Court and discussed more thoroughly below in the Broadband section. Currently, Arlington filed suit against the Texas Attorney General seeking to reverse an open records ruling. Specifically, the Police Department received a request for records that included the personal cell phone numbers of command level police officers. The Attorney General's Office ruled that the phone numbers should be released if the officers received a stipend offsetting the costs of their cell phones. Because Texas law protects a police officer's home phone number and because the cell phones are the private property of the police officers, Arlington believes the cell phone numbers should not be disclosed and the AG ruling fails to understand the realities of the operations of local government with regard to the proliferation of private smartphones and tablets in the public workplace. Thus, Arlington brought a declaratory judgment lawsuit challenging the Attorney General's ruling.

The CAO, with assistance of outside counsel, continues to defend a declaratory judgment action by the Texas Oil & Gas Association attacking the fees assessed on gas wells through the Fire Prevention Code and Gas Drilling and Production Ordinance. The case is currently on appeal at the Fort Worth Court of Appeals on the issue of the Oil and Gas Associations standing to bring suit.

In addition, on August 5, 2013, the City, with the assistance of outside counsel, filed a lawsuit against Chesapeake alleging that Chesapeake failed to honor its mineral lease commitments to the City regarding 25 mineral leases of over 1,900 City-owned properties. More information on the lawsuit can be found on page seven of this report.

EMPLOYMENT APPEALS



The CAO is routinely involved in counseling managers on employee relations matters relating to performance, discipline and internal grievances. The CAO currently has one attorney who exclusively handles such matters and a supervising attorney that handles internal employment law situations as well as other litigation.

This year the CAO has actively reviewed and/or advised departments on more than 102 formal personnel investigations and disciplines. From these investigations the attorneys have handled over 17 formal employee disciplinary appeals presented to department heads. Of those individuals, one employee elected to appeal the discipline before a deputy city manager and three requested appeals before an arbitrator with one arbitration scheduled for the next fiscal year. The judicial review of an arbitration ruling reinstating an employee terminated for egregious misconduct is still pending in state district court. The City has successfully defended the counterclaim in the case and has completed a bench trial awaiting a ruling from the judge.

Additionally, while unemployment compensation claims are generally managed by Workforce Services, the CAO provides representation on behalf of the City in matters involving the threat of potential litigation or that are linked to more egregious acts of misconduct. The CAO participated in one unemployment compensation case hearing this year.

The CAO also provides representation to the City’s Meet and Confer management team. Representatives attended multiple Meet and Confer sessions during this year that resulted in significant policy development such as changes to the Fire Department drug testing policy and the implementation of random drug testing in the Police Department. Additionally, a petition was filed challenging the current sole and exclusive bargaining agent for the police department and a certification election has been ordered by the City Council. The CAO is assisting in implementation of the certification election.

Further, the CAO, in conjunction with Workforce Services, investigated nine discrimination harassment claims and responded to complaints with the EEOC on ADA and Title VII allegations. The CAO has also assisted with the investigation of two Ethics Point complaints, eight grievances and advised on several at-will/probationary dismissal matters.

CITY COUNCIL SUPPORT



The CAO prepares and reviews documents for City Council action, including ordinances, resolutions and minute orders. For every council meeting, the CAO reviews the staff report, agenda caption and support documents for each item on the agenda; and prepares a number of resolutions and ordinances. Please see the chart below for a history of the number of documents prepared and reviewed since Minute Orders were implemented in February 2008.

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Percent change since last FY |
|-------------------------------------|------|------|------|------|------|------|------------------------------|
| Ordinances | 58 | 52 | 66 | 37 | 34 | 25 | 26.5% decrease |
| Resolutions | 343 | 254 | 211 | 186 | 150 | 162 | 8% increase |
| Minute Orders | 204 | 265 | 263 | 285 | 311 | 264 | 15% decrease |
| Total Ord/Res/MO Prepared/ Reviewed | 605 | 571 | 540 | 508 | 495 | 451 | 9% decrease |
| Real Property Items Reviewed | NA | NA | NA | 141 | 71 | 84 | 18% increase |
| Late Ord/Res Submissions to CAO | 136 | 69 | 38 | 56 | 44 | 59 | 34% increase |

ARLINGTON TOMORROW FOUNDATION

Although the CAO does not serve as the Foundation’s attorney, the CAO continues to provide legal support for many aspects of the Arlington Tomorrow Foundation’s operations. During this past fiscal year the CAO provided legal support as the City Council explored various alterations to the Foundation’s structure and Board make up as well as the funding that flows from the City to the Foundation. The CAO worked to amend the Foundation’s Bylaws, the Tomorrow Foundation Program and the Grant Agreement between the City and the Foundation.



CONTRACTS

The CAO reviewed, negotiated and drafted over 1,385 contracts in fiscal year 2013, ranging from construction contracts and professional services contracts to grants and leases. This number represents a decrease of seven percent over fiscal year 2012. This year, one hundred percent of those contracts which were standard and routine were reviewed and routed from our office within five days. Non-standard documents are those requiring negotiation and drafting and are handled as expeditiously as possible. Examples of non-standard contracts handled this year include those for the Regional Connectivity Pilot Project (Metro Arlington Express) and the amended documents for Managed Print Services.

The CAO also handled the contracts for the second renovation at the Rangers Ballpark. After the season concluded in 2012, the Rangers desired to renovate an area near homeplate. The necessary contracts and resolutions were prepared and presented to the City Council and the Arlington Convention Center Development Corporation ("ACCDC") in the fall of 2012. The contracts allowed the ACCDC to enter into arrangements for the renovations and provided that the Rangers would manage construction of the renovations. The contracts included all construction, equipment and furnishings required for the renovations. In January, the contracts were then assigned to the Rangers in order to obligate them to maintain and manage the renovations



ECONOMIC DEVELOPMENT

This year the CAO provided legal support and drafted numerous economic development incentive agreements for developments throughout the City. These include; Project Sapphire/LEV Investments, Exeter Property Group and RCR Healthcare. The CAO has also worked throughout the past year on the East Lamar redevelopment project, often drafting agreements under very short deadlines from the developer.



LAND USE

The CAO worked closely with City Council, City boards and commissions, and Development Services Departments to achieve results beneficial to the City. The Land Use attorney advised departments during the adoption of the Unified Development Code. Several code and zoning changes relating to Viridian were adopted, including zoning amendments allowing paseo homes and code amendments to cure issued building permits. The CAO advised departments during the Sapphire maintenance agreement negotiations which included right-of-way abandonments and dedications, use agreements, and maintenance agreements allowing for the use while protecting the City and preserving adjacent property rights. A duct bank facilities use agreement was executed with UTA and Pantego allowing shared use of facilities. The CAO researched and drafted a short-term rental ordinance for a Council Committee. The CAO advised on platting issues related to Six Flags Mall and represented the City in related litigation. The CAO advised and provided orientation for new P&Z and ZBA members as well as other City boards and commissions. The CAO provided legal advice to City Council, P&Z, and the Development Services Group on zoning cases and land use issues related to hand-held signs, publication of GIS metadata, street maintenance obligations, drainage easements, special events, development plan approval, street tree requirements, administrative adjustment of SUP and landscape requirements, impact fees used with 380 agreement, building within gas well setback, recycling collection centers, maintenance of private parking facilities, adoption and implementation of neighborhood plans, retroactive code provisions, plat expiration, tree removal mitigation, allowable expenditures of impact fees, home-based businesses, zoning regulation of alcohol sales, private clubs under the zoning and smoking ordinances, access easement at City parks, sale of alcohol "to go" within the City, property rights when condemnation of land results in nonconforming use, transfer of

gas wells to new operator, abandonment of public roads, service and assessment plan for Downtown Business Improvement District, mobile food truck policy and application, occupancy limits, certification of legal nonconforming status, signs projecting into right-of-way, termination of nonconforming use at apartment complexes, rights of lienholders in condemnation proceedings, platting lots within different subdivision plats, screening dumpsters, land use on annexed property, vesting of flood elevations, outdoor storage in residential zoning, and requirements for revocation of certificate of occupancy.

ETHICS

In accordance with its role under the City's Ethics Code, the CAO reviewed and responded to an ethics complaint filed against several City officials. Upon review of the complaint, the CAO found the complaint failed to state sufficient facts which if true would constitute a violation of Section 12.02 of the Ethics Code. Therefore, pursuant to the Ethics Code, the complaint was dismissed. The CAO continues to serve as staff liaison for the Ethics Review Commission and provides an orientation session for all new members of the Commission.

ELECTION ISSUES



Relative to the November 5, 2013 local option election, the CAO provided a briefing and legal opinions to City Council on the local option process as well as the City's regulatory authority over alcoholic beverages. In addition, the CAO worked closely with the City Secretary's Office throughout the local option election process including providing a legal opinion on the local option election process and the City Secretary's responsibilities under state law; assisted in the review of the Application for Petition for a local option election, the required publication, petition issuance, and notification to appropriate state agencies; and drafted the ordinance ordering the November 5th local option election.

The CAO provided an informal staff report along with a presentation updating City Council on SB 100 and its implications for May election dates along with available election options.

GENERAL FUND ENHANCEMENT AND PROPERTY



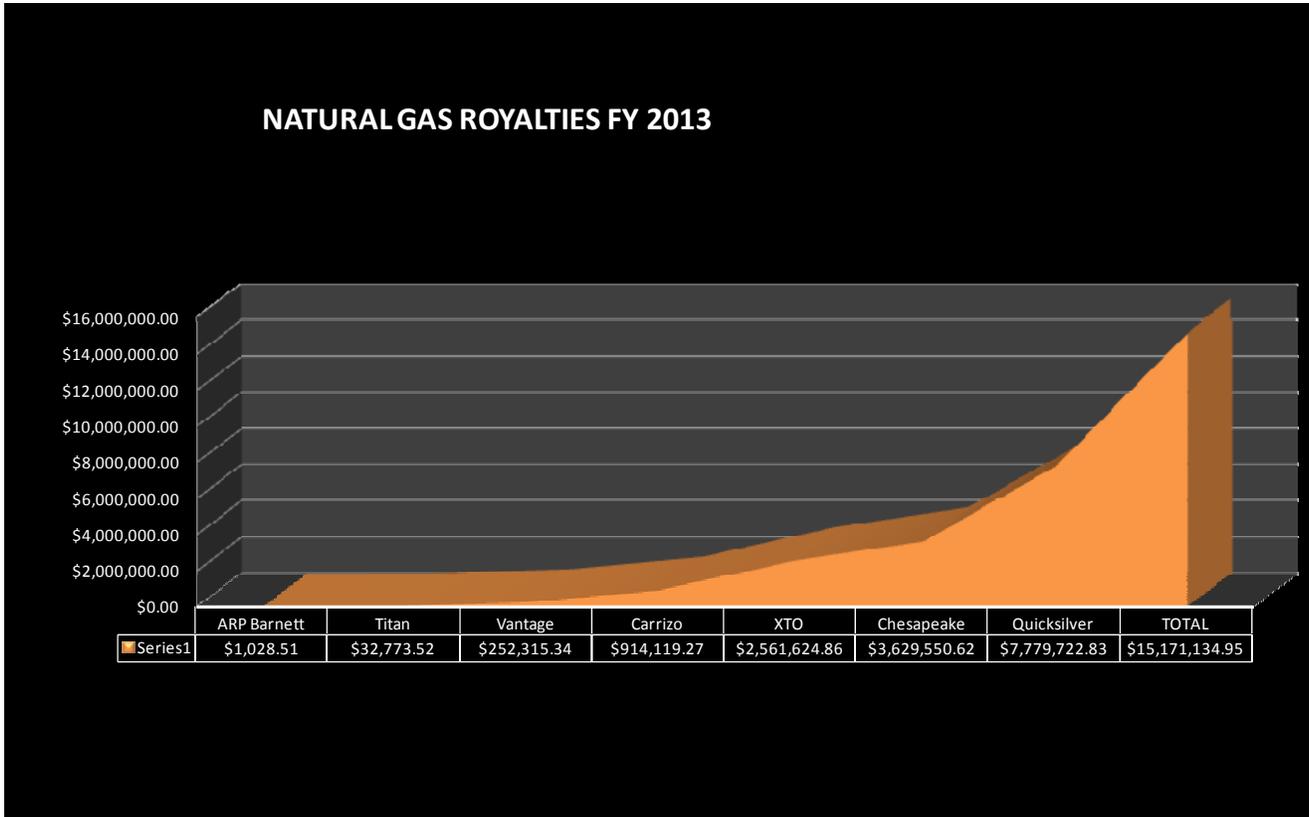
COLLECTIONS

The office added over \$7.7 million dollars to the general fund since 1994 due to collection efforts. Receipts due to collection actions for this fiscal year are \$853,232.79. This includes recovered debt owed to the City for the following: boat dock license fees; false alarm service fees; insufficient funds checks; damages to City property; code enforcement nuisance abatements; convention center facility and service charges; multifamily and extended stay inspection fees; fire inspection fees; library book fines and fees; educational assistance reimbursements; and delinquent water utility accounts. This year, collections also include settlement payments from participation in two class action lawsuits. One involved water pollution due to the pesticide atrazine in the amount of \$257,578. The other was a \$73,766 settlement with JPMorgan Chase regarding sports venue financing. The JP Morgan settlement dealt with the sale of municipal derivatives.



OIL AND GAS PROGRAM AND REAL ESTATE

The CAO, in concert with Real Estate Services, researches, investigates, negotiates, prepares, and reviews all oil and gas and real estate transaction documents. Currently, the City has 6,204 public property acres under oil and gas leases compared to 5,992 acres last year. Total natural gas program receipts to date are over \$144 million with less than one percent in expenses since the program began. This is a \$14.6 million increase over last year’s figure of \$129.4 million. This includes one new oil and gas lease, three lease amendments adding more subsurface mineral acres, and 11 assignments.



Oil and Gas Historical Receipts: Receipt categories are shown below.

Historical Receipts 2005-2013



Leases New oil and gas leases added 212 subsurface mineral acres to the City inventory. There were new natural gas transactions with Carrizo Oil and Gas; Chesapeake Exploration; XTO Energy; Newark Core Barnett, LLC; Edge Resources; and ARP Barnett as new operators.

Pipelines Since 2005, 65 pipeline license agreements have been accomplished with City receipts totaling over \$6 million. There are 190,475 linear feet of natural gas pipeline under public property and over 539,688 linear feet of total public and private property gas pipeline in the City of Arlington. This year, two new pipeline agreements were accomplished for the Overcoming Faith Lateral on the west side of Highway 287 and the Maharishi Lateral on the east side of the City.

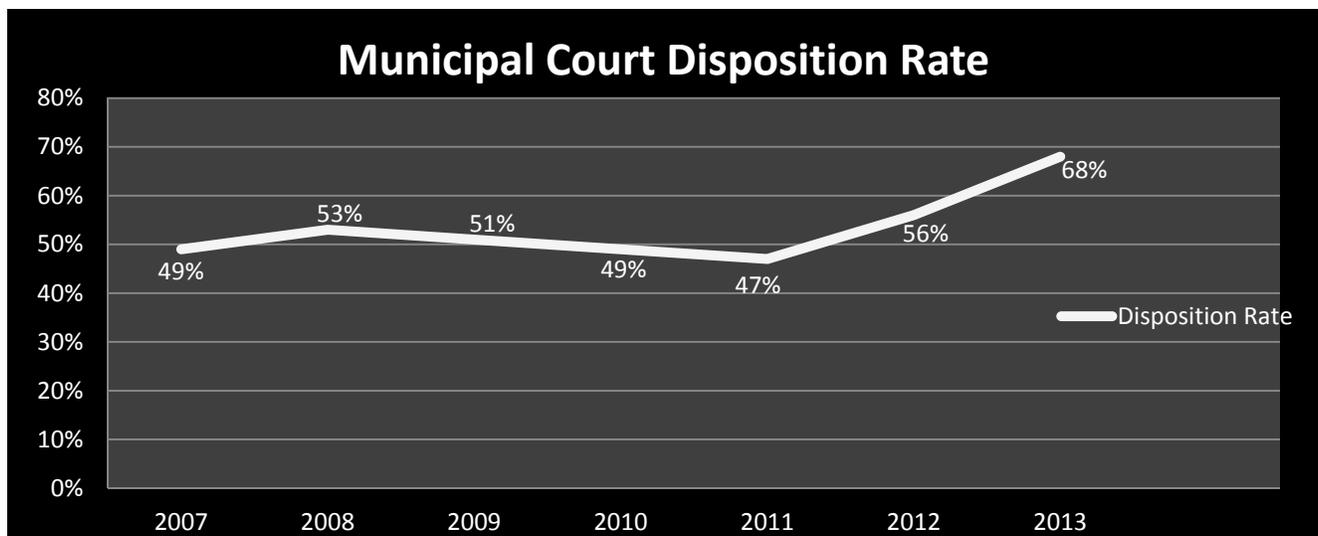
Oil and Gas Lease Audit Reviews To date, over \$2.1 million has been received from gas operators without litigation due to operational audits that uncovered discrepancies in royalty payments. Payments in the total amount of \$78,280 were added in this reporting period to correct overdue interest, late payments, and inaccurate royalty payments. Some payments were received after an appropriate City demand for payment was received by the operators. The City was unable to resolve royalty payment discrepancies with Chesapeake Exploration LLC and filed a lawsuit for failure to honor lease commitments in over 25 oil and gas leases that cover 1,908 acres of City-owned property. The lawsuit seeks at least \$700,000 in damages plus attorney fees. The City causes of actions against Chesapeake include: underpaying royalties; taking unauthorized and unreasonable deductions from the City's royalties; selling gas produced under the leases to affiliates without the City's permission in accordance with the leases; failing to properly calculate interest on delinquent royalty payments; failing to comply with certain pooling and continuous development obligations; failing to release acreage it has not retained or earned under the terms of certain leases; and failing to provide documents and information to which the City is entitled under the leases. There will continue to be a review to determine whether the gas operators are paying the highest price obtainable in accordance with lease language.

Real Estate The office worked closely with Real Estate Services throughout the year. It processed 118 real estate transactions valued at \$167,256 involving over 70 different owners. Several relocation

transactions were accomplished for the extensive Abram Street and bridge project. In 8 cases, over 5,157 square feet of land was dedicated at no cost for public projects.

PROSECUTION AND MUNICIPAL COURT

The prosecution team handled 121,841 new cases and contributed to City receipts of \$13.9 million. Receipts were up over \$283 thousand dollars even though the number of cases dropped by 18,991 compared to last year. The disposition rate of cases processed to completion compared to cases docketed for action rose for the second straight year to a record 68%. This was an increase in efficiency in the magnitude of 21% over last year. Since 2011, the disposition rate has increased almost 45% due to the reinstatement of a prosecutor position and the completion and updating of a new court management system. The number of court appearances rose by 15%, and the prosecution increased its disposition rate in part due to an increased number of court settings and hearings to resolve issues.



Note: From 2009 to 2011, the court was completing the transition of cases from “JEMS” to “Incode”, and one prosecutor was lost due to a challenge grant. The prosecutor position was reinstated in 2012.

| Year | Cases | Warrants | Court Appearances | City Receipts |
|------|---------|----------|-------------------|----------------|
| 2012 | 140,832 | 79,447 | 71,247 | \$13.7 million |
| 2013 | 121,841 | 76,229 | 83,206 | \$13.9 million |

| 2012 | COURT APPEARANCES | 2013 |
|---------------|--|---------------|
| 11,906 | Pre trials with defense attorneys | 30,135 |
| 35,163 | Miscellaneous case settings | 22,296 |
| 7,579 | Hearings for juveniles | 10,051 |
| 3,611 | Pre trials for defendants without attorneys | 5,766 |
| 2,940 | Pre trials for neighborhood integrity code enforcement cases | 4,513 |
| 2,453 | Bench trial settings | 2,694 |
| 2,330 | Jury trial settings | 2,095 |
| 1,857 | Animal services pre trials and burglar alarm cases | 1,869 |
| 1,161 | No motor vehicle liability insurance hearings | 1,370 |
| 830 | Motion hearings | 1,158 |
| 661 | Pre trials for domestic violence cases | 612 |
| 550 | Bond forfeiture hearings | 564 |
| 206 | Pre trials for sexually oriented business offenses | 83 |
| 71,247 | TOTALS | 83,206 |

New Initiatives

- Prosecutors designed and completed new court dockets that held defense attorneys to a three month deadline to resolve cases or go to trial.
- Prosecutors authored 116 new offense codes in support of commercial motor vehicle safety inspection and parking enforcement, lake safety, and traffic safety.
- Cost saving civil citations start in 2014. Ordinances were created to provide new options for civil administrative enforcement of many community based quality of life ordinance violations.
- New ordinances included citywide two-hour parking limitation for commercial motor vehicles, civil code violation enforcement ordinance and multifamily licensing ordinance.

Red Light Cameras Automated red light cameras recorded 93,781 infractions. Only 977 were challenged in civil hearings and 39 were appealed to Municipal Court where only five liable findings were overturned.

Animal Civil Hearings and Results

10 Animal cruelty hearings.....10 Animals taken from owner and awarded to City
 2 Dangerous dog hearings.....2 Dogs declared dangerous and regulations applied
 1 Dangerous dog noncompliance hearing...1 Dangerous Dog found to be out of compliance

Support for Quality Education

- Teen Court - 168 cases were diverted into this process. Three Prosecutors served as volunteer Teen Court Judges.
- Internship - One law student from Tulane University School of Law completed an internship with the Prosecution Office during the Summer.
- Visiting Attorney Program - Thirteen visiting attorneys who were new associates with two law firms handled jury trials once a week on a volunteer basis for about nine weeks gaining valuable trial experience and helping to clear cases.

- Teaching Opportunities - Two prosecutors delivered presentations at conferences to city attorneys, code compliance officers, judges, prosecutors, clerks, bailiffs and warrant officers. Topics included Drafting Enforceable Ordinances, Transportation Code, Legal Research, Probable Cause Affidavits, Citations, Complaints, Speeding and Speed Limits.

Key Cases Resolved

- Problem Apartment Properties:
 - Castle Pines was declared a dangerous building in 2010 in Municipal Court. The former owner had outstanding criminal citations and paid \$20,035 in fines.
 - La Joya was declared a dangerous building in 2013. The former owner was convicted on 154 property violations and has paid \$28,200 in fines towards a \$94,140 criminal judgment.
- Illegal Truck Parking Land Use Operation: A West Division property owner and tenant were unlawfully operating a vacant lot as a truck parking facility. At trial, the tenant and owner were found guilty of 42 violations and the judge assessed \$8,839 in fines. The illegal truck parking operation has ceased and the lot is now clear of vehicles.
- Game rooms: Three convenience stores operated illegal game rooms resulting in thirty-seven charges. All owners were convicted and paid \$6,066 in fines.
- Gas Drilling violations: Fifteen citations were issued for violations at several drill sites. After all violations were corrected, the gas drilling company paid \$5,382 in fines without a trial.

OPEN RECORDS



The City Attorney’s Office continues to assist all City departments in responding to open records requests in a timely manner. The Texas Government Code imposes a mandatory response time and process. The table below indicates the number of requests received, reviewed and processed by the CAO for FY2012 and FY2013.

| | 2012 | 2013 |
|---|-------------|-------------|
| Requests received by Police Department | 1,980 | 2,150 |
| Requests received by all other departments (excluding Police) | 1,679 | 1,648 |
| Police requests sent for Attorney General Ruling | 634 | 806 |
| Non-Police requests sent for Attorney General Ruling | 53 | 30 |

During fiscal year 2013 over 3,700 requests were received and answered by the City. The CAO responded to a number of time-consuming requests during this last fiscal year; including requests related to the incident at Six Flags where a woman fell from the Texas Giant, the termination and investigation into officers accused of steroid use, requests for a large number of emails sent or received by certain City employees, and crime records for offenses occurring at Wal-Mart since January 2010. The CAO was successful in receiving numerous favorable decisions from the Attorney General allowing the City to lawfully withhold certain responsive records from public disclosure; including requests related to pending law enforcement investigations, homeland security related information and personnel matters.

NEIGHBORHOOD INTEGRITY PROGRAMS



POLICE LEGAL ADVISORS

Office attorneys are responsible for legal issues, actions and initiatives surrounding the activities and functions of the public safety departments, Code Compliance Services, and the interdepartmental Nuisance Abatement Team. Police legal advisors routinely review the contracts, memorandums of understanding, and interlocal agreements that involve the police department. They also review all requests for information made of the police department to protect ongoing investigations and ensure compliance with privacy and other laws. Police Legal Advisors provide training to police recruit academy classes in constitutional law and courtroom demeanor. Legal advice and information is provided through in-service classes and roll calls as needed. Legal opinions and training were provided to police covering open records, penal code issues, constitutional law, municipal court prosecution and procedure, and nuisance abatement litigation consultation and advice. Police legal advisors also reviewed recent legislative changes and prepared legislative updates to ensure the police department was informed of those changes which have an operational impact.

Attorneys are on-call 24/7 and are frequently contacted for warrant review or legal advice after hours. Most of the warrants reviewed relate to narcotics or gambling operations which attract other crime. Police Legal Advisors have assisted in not only reviewing warrants, but also obtaining forfeiture orders related to illegal gambling operations. During the past year, Police Legal Advisors have been successful in getting over \$35,000 in gambling proceeds forfeited to the police department. An alcohol license protest for Half-Time Bar and Grill was filed. Due to the protest and pressure from the Nuisance Abatement Team, the owner of Half-Time chose not to renew their alcohol license and closed the business.



NUISANCE ABATEMENT TEAM

The Nuisance Abatement Team (NAT) continued its mission to proactively review properties to ensure a safe living environment for the community and curtail the use of real property as a base of operations for criminals. The team includes a Deputy Chief of Police; Police Lieutenants; investigative and field officers; Community Services Health, Housing and Code Compliance employees; and Community Development and Planning officials including the Building Official or Assistant Building Official; Water Department representatives; Police Legal Advisors, Prosecutors and other attorneys as needed. The team met with property owners and interest holders to identify problems, review police call frequency, make recommendations, and gain compliance with state and local law. The properties reviewed included clubs, motels, bars and apartment complexes where there is a high rate of criminal activity. During this year, the team reviewed and took action on 13 nuisance properties. The NAT achieved voluntary compliance from several property owners including the owners of Forrest Hills and Half-Time Bar and Grill.

The new management of Forrest Hills Apartments attended a NAT meeting in February 2013. The NAT made recommendations regarding lighting, running criminal background checks before leasing units, securing units, issuing criminal trespasses, and evicting problem tenants as well as other recommendations. The new management has implemented many of the changes recommended by the NAT which has reduced crime at Forrest Hills Apartments.



DANGEROUS AND SUBSTANDARD BUILDING PROGRAM

The office provided legal advice, researched title records and investigated and prepared cases in over 50 situations where specialized code inspectors provided evidence for office initiated civil lawsuits concerning dangerous and substandard buildings and structures. A significant amount of resources were devoted to multi-family properties and 24 hearings were held. Neighbors often attend the DSS hearings and comment on their satisfaction with the City's efforts to resolve problem properties. The DSS program first seeks voluntary compliance from property owners to repair, remove, or demolish any building or structure which has defects or conditions that endanger its occupants or the life, health, property or safety of the public. Many dilapidated and fire damaged homes within the City have been demolished or rehabilitated to become integral parts of their neighborhood through this process. Several multi-family structures have also been brought up to code ensuring the safety of the tenants including Sweet Home Apartments and Forrest Hills.

The office continues to advise departments when violations are observed at the properties and work with Code Compliance Services to recover costs for inspections at the properties as well as the cost of demolitions. The office filed DSS lawsuits on several properties with absent or neglectful owners, including properties on Bradley Lane, Raines Street, Perrin Street, Plaza St, and Overhill Drive. The City's action resulted in DSS judgments which encouraged the owners to become more involved or sell their properties to more involved and funded owners. Also, several hoarders' houses were cleaned or demolished by court order. The office was also successful in obtaining a DSS judgment on all nine buildings at La Joya Apartments. Although the owner has yet to bring the property into compliance, the City now has enforcement options available to encourage or obtain compliance. The office has also filed liens to recover funds expended on demolition for six different properties including American Inn, 1181 N Watson.

EMERGENCY MANAGEMENT



Emergency Management resources and systems were improved with updated resource books, flash drives, data banks and coordination with Police and Fire Department immediate and event consequence responders. Office policies were revised to deal with continuity of operations from remote locations, if necessary. A plan is in place to communicate, meet and continue legal work including advising all departments even if all normal communications are totally or partially disabled including scenarios when telephone, email and internet systems are down. The office incorporated text and Twitter into its annual recall exercise. The office emergency operations electronic "tool kit" is updated annually.

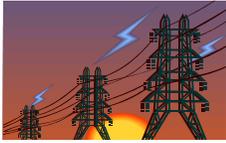
LEGISLATIVE MATTERS



The CAO provided input to the City's Texas Municipal League (TML) Legislative Policy Committee members during the 2013 Texas legislative session. City Attorneys appeared before a TML subcommittee on utilities and transportation and helped prepare testimony for TML witnesses before the Senate State Affairs Committee studying local right-of-way fees. That testimony was necessary to counter misleading and inaccurate information provided by utility industries that carry on a major part of their business within the local public rights-of-way. The CAO in cooperation with other city coalitions successfully defeated two bills (HB 1148 and HB 1149) which would have undermined the original ratemaking jurisdiction of cities and would have eroded their ability to

recover reasonable rate case expenses. These bills were intended to remove the most effective advocate for residential and commercial gas and electric ratepayers against unreasonable utility rates.

BROADBAND - ENERGY EFFICIENCY - GAS RATE REVIEW



BROADBAND

In 2009, the FCC, at the request of the broadband industry, issued a declaratory order to have the authority to impose uniform national deadlines for state and local government action on applications to site wireless service facilities (“Shot Clock” case). Arlington and a coalition of other local governments challenged the FCC’s authority to assert such jurisdiction contrary to an express limitation in the 1996 Federal Telecommunications Act. In March 2012, the Fifth Circuit denied the City’s petition for review but recognized a split among the circuits. On October 5, 2012, the United States Supreme Court granted the City’s Petition for Certiorari. On January 16, 2013, the Supreme Court heard oral argument. In May 2013 the Court by a 6 to 3 decision upheld the FCC jurisdiction to issue the “Shot Clock” order in spite of a strong federalism dissent by Chief Justice Roberts. Four months later the FCC ominously released a proposed rulemaking that the industry seeks to further preempt local government authority over modifications to wireless towers and base stations (NPRM – wireless). The CAO will cooperate with other local government organizations to avoid FCC adoption of arbitrarily broad definitions and rules that would undermine local land use policies.

ELECTRIC UTILITY

Through the Oncor Cities Steering Committee (OCSC), the City participated in PUC proceedings to hold down electric ratepayer costs sought by electric utilities for their (1) energy efficiency programs, (2) transmission line build out to relieve congestion areas, and (3) deployment of advance meters. The CAO is also working with ERCOT and the PUC to address statewide electric resource adequacy in the most economical manner. The CAO has been negotiating with Oncor Electric Delivery Company for a renewal of its electric franchise with the City.

The City is also participating with OCSC in monitoring the financial plight of Energy Future Holdings (EFH) in order to protect the financial and operational viability of Oncor to continue to provide electric service to North Texas ratepayers.

GAS UTILITY

In June 2013, through the Atmos Cities Steering Committee (ACSC), the City negotiated a renewed Rate Review Mechanism (RRM) to provide an expedited but more comprehensive review of Atmos Mid-Tex rate filings. In October 2013, the ACSC reached a settlement with Atmos that provides for a 1.75% average monthly residential bill increase effective November 1, 2013.

During 2013, as a result of the merger of Cities Aggregation Power Project (CAPP) with South Texas Aggregation Project (STAP) into Texas Coalition for Affordable Power (TCAP), the City received \$59,670 as a reimbursement of CAPP equity accumulated as a result of favorable terms of the CAPP electricity contract with Next Era. The money is available for use toward energy efficiency upgrades in City facilities and to purchase additional renewable energy credits.

The City through TCAP negotiated a blend and extend modification to the existing five-year electric supply contract to extend the contract through 2017 and to lower electric rates for the remaining three years of the existing contract whereby savings of approximately 1 cent per kWh over those years could be realized (approximately \$800,000 to \$1 million each year.)

NETWORKING EFFORTS AND TRAINING

The Arlington City Attorney's Office continues to enjoy a superior reputation as a municipal law office. The Texas City Attorney's Association has recognized the Prosecution office for satisfying the requirements for Merit Certification in Municipal Court Prosecution; and Prosecutors David Johnson, Matt Dixon and Ava Mathis are certified Municipal Court Prosecutors.



Our office is very active in The International Municipal Lawyer's Association (IMLA) and has enjoyed many accolades from IMLA throughout the years. In October 2013, IMLA recognized Robert Fugate, Pamela Hutson-Johnson, and Eddie Martin for meeting the strenuous requirements of a Local Government Fellow. In the United States and Canada, the Arlington City Attorney's Office outnumbers by far any other city attorney's office for the number of attorneys who have earned the prestigious designation of Local Government Fellow. Over

the past 13 years, 16 attorneys in the Arlington City Attorney's Office have completed the rigorous certification process. IMLA Fellows certification helps local governments and the public identify those lawyers who possess special knowledge, skill, and proficiency in the field of local government law. City Attorney Jay Doegey served as Past President of IMLA during Fiscal Year 2013. Melinda Barlow served on IMLA's Advocacy Committee, and David Barber served on IMLA's Fellows Committee.

Arlington and its City Attorney's Office provide substantial networking influence among other cities in Texas and internationally, far beyond that which might be commensurate to its size. Arlington is recognized as *the leader* in a variety of subjects, including utility regulation, franchising, land use, wireless antenna siting, employment law, police legal services, procurement, sports facilities development, eminent domain, impact fees, emergency management, nuisance abatement, self insurance funding and risk management support, to name just a few. Our employees are highly active in many community and legal organizations and repeatedly provide speakers, instructors, panelists, committee members, and articles for publication:

- American Bar Association members
- Arlington Bar Association members
- Arlington Young Lawyers Association Board Member
- Atmos Gas Cities Steering Committee (ACSC) Co-Chair
- ACSC Treasurer
- Building Professional Institute instructor
- City of Colleyville instructor - Sexual Harassment Prevention Training
- City of Dallas – co-authored an Amicus Brief to the Texas Supreme Court
- City of Trophy Club – ZBA member
- Dallas Bar Association members
- Dallas Bar Association speaker – “Federalism, Zoning, and Chevron: A Discussion of *City of Arlington v. FCC “Shot Clock” case*”

- IMLA Board of Directors member, Executive Committee, and Past President
- IMLA Advocacy Committee member
- IMLA Awards Committee member
- IMLA Budget and Finance Committee member
- IMLA Litigation Committee member (approves amicus brief submission)
- IMLA Personnel Committee member
- IMLA Local Government Fellows (13)
- IMLA Local Government Fellows Committee member
- Oncor Cities Steering Committee (OCSC) Chair
- OCSC Treasurer
- State Bar of Texas speaker - Texas Perspectives on E-Discovery – “Social Media and Your Case: From Pleadings to Closing”
- Tarrant County Bar Association members
- Tarrant County Bar Brown Bag CLE Committee member
- TCAP Board of Directors and President
- Texas Board of Legal Specialization, Civil Appellate Law – Board Certified Attorney
- Texas Board of Legal Specialization, Personal Injury Trial Law – Board Certified Attorney
- Texas Coalition of Cities for Utilities Issues (TCCFUI) Board of Directors member and Treasurer
- TCCFUI Telecommunications Committee Chair/Board of Directors member
- Texas District and County Attorneys Association members
- Texas Municipal Court Education Center (TMCEC) members
- TMCEC speakers - “Transportation Code and Navigating the State Law Codes”, “Complaints: Class C Misdemeanor Charging Instruments”, “Citations and Complaints”, and “Speeding and Speed Limits”
- Texas Municipal League speaker – “iPads, Smartphones and Tablets...(Oh My!)”
- Texas Municipal League Riley Fletcher Basic Municipal Law Seminar speaker – “Drafting Enforceable Ordinances”



Citywide Training Conducted:

This year the following training was conducted for other City departments, Boards and Commissions:

- Arlington Code Academy – “Probable Cause Affidavits”, “Preparing, Proving, and Prevailing in Your Code Case”, “Fourth Amendment Search and Seizure”, and “Inspection / Abatement Warrants”
- Being a Lawyer – Career Day presentations
- Code Compliance
- Constitutional Law to new Police recruits
- Council/Support Staff relations training
- Court Procedure for new Police recruits - Case Preparation and Presentation
- EEOC and The Law Training – Public Works Supervision Program
- Enforcement Officials Training for Police, Fire, and Health and Safety Officers
- Ethical Crossroads of Civil Litigation and Criminal Prosecution training to municipal attorneys at Irving Code Summit
- Legal Orientation for all new City board members
- Nuisance Abatement and Dangerous Buildings
- Open Records
- Orientation for new Planning and Zoning Commissioners
- Orientation training for City Ethics Commission new members

- Orientation training for City License and Amortization Appeals Board new members
- Sexual Harassment Prevention training - Police Academy, Fire Academy
- TCLEOSE legislative update for Police

In-house Training Conducted:

The CAO also provides in-house training for our attorneys and staff on municipal law. This year's program covered:

- Supreme Court Preview
- Ethics: What You Need to Know to Take a City Council Meeting
- Drafting Enforceable Ordinances
- CPR / AED Skills
- Competitive Bidding
- What "Debt" Means in Texas
- What's New with Westlaw Next
- Open Meetings/Open Records and Today's Technology
- Parliamentary Procedure: Everything You Need to Know for Meetings of City Council, Boards and Commissions
- Substandard and Dangerous Buildings and Due Process
- Recent State Cases
- This is Your Brain on Ethics
- Emergency Operations
- Performance, Payment and Maintenance Bonds
- Giving Away City Personal Property-The General Rules
- Federal Preemption: Can the FCC really do that?

IMLA Teleconferences:

In calendar year 2013, the CAO worked in concert with the City of El Paso and IMLA in order to provide the opportunity for attorneys in the El Paso and Arlington City Attorney's Offices to obtain up to 39 hours of continuing legal education to meet state licensing requirements by listening to teleconferences arranged by IMLA. This is the second year a cost effective method of obtaining CLE credit for the teleconferences has been formulated and implemented. The CAO participated in approximately 39 teleconferences presented by IMLA on the following municipal law topics. Employees from several other City departments were invited to many of these teleconferences.

- 2012 Land Use - The Year in Review
- Giving Thanks for Good Employees: Legal Aspects of Incentives, Promotions, and Recognition Programs
- Municipal Bankruptcy
- Defending Attorney Fees and Cost Petitions
- Do What the Judge Tells You - Round Table with Three Judges
- Healthcare Reform: How It Changes Your Plans
- ADA-AA: Whither Goest Reasonable Accommodation?
- First Amendment Issues of the Day
- Cell Tower Leases, Extensions and Buyouts: Protecting Your Municipality While Maximizing Revenues
- Healthcare Reform: Fees and Reporting Requirements
- Sex, Sex, and More Sex... Regulating Adult Entertainment
- Religious Expression in the Municipal Workplace
- Practical Considerations in Dealing with Difficult Employees under FMLA and ADAAA

- Hybrid Codes: What Happens When you Mix and Match Zoning?
- Healthcare Reform: Wellness Plans
- Social Media - Ethics for Lawyers
- Utility Franchises: Do you Know What's in the Ground in Your City?
- Cost Savings for E-Discovery
- Federal Law of Cell Tower Zoning for Municipal Attorneys
- Iowa League of Cities v. EPA
- Up to Our Eyeballs in Wetlands
- Courts Make Employment Law, Too
- The Regulations Continue to Flow: Recent Developments in Water Quality Law
- Eminent Domain: Do you Dare Even Say Those Words After Kelo?
- Election Law Update: Section 2 Vote Dilution Litigation & Preclearance Post-*Shelby County*
- Takings - The 2012 Trilogy: The Truth Be Told
- The Latest on Employment Retaliation and Harassment
- Workplace Conduct: Fraternalization, Nepotism and More
- Up to Our Eyeballs in Wetlands-Part 2
- Job Descriptions: What? When? Where, and How? But Mostly WHY?
- Cell Tower Leasing for Municipal Attorneys
- How Not to Fall on the Sword of Procedural Due Process
- Telecommuting in Municipal Employment
- ecoATMs (kiosks that purchase cell phones for cash)
- Taming the Beast: Managing Big Box and Formula Retail
- FLSA-FAQs and More
- Federal Law of Cell Tower Zoning for Municipal Attorneys
- Land Use Regulation by Contract: How to Draft, Negotiate, and Defend Development Agreements
- State and Federal Legislative Update

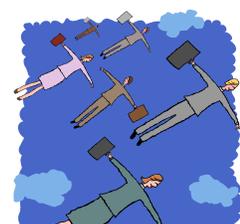
SAFETY



The CAO continues to monitor work spaces to provide ergonomic accommodations for all employees, as funding allows, with adjustments provided based on individual need. Safety remains a priority, both in the workplace to prevent injury and in performing job duties to protect City equipment and information. Annual training is provided to all of our employees in this area, including CPR and AED (Automated External Defibrillator);

CAO Evacuation Plan Policy and Procedures; and CAO Emergency Management role.

DIVERSITY AND SUCCESSION PLANNING



The CAO is a leader in hiring and promoting women and minorities. As of the end of FY 2013, the CAO employed 22 attorneys and 14 administrative staff. Of the 22 attorneys, 13 are women and nine are men. Three attorneys are African-American. One attorney is Hispanic and one attorney is of other minority descent. Of the three attorney section heads, two are women. Of the 14 female administrative staff, three are African American and four are Hispanic. The CAO is also age diversified. Twelve CAO personnel are age 50 or older, nine are age 40 to 49, eleven are age 30 to 39, and four are younger than age 30. Seven employees have been with the CAO for over 20 years. While these statistics reflect a veteran, highly productive work force, they

also indicate a rapidly approaching retirement horizon. Much effort has been made to train qualified replacements. The CAO has and continues to carry out an aggressive succession training program, including the execution of succession plans, and ongoing municipal law training. As a result of the CAO's succession training program, this fiscal year several promotions occurred and vacancies in upper level positions were filled by promoting qualified internal applicants. During 2013, five attorneys – Steven Meyer, Regina Vasquez-Espinosa, Sarah Martin, Christina Weber and Matt Dixon - completed City Attorney's training, culminating with each person sitting a City Council meeting and acting as City Attorney.

MILITARY RESERVIST SUPPORT



The CAO has been a longstanding supporter of the military reservist program and earned recognition for its support of the military reserves and National Guard. One attorney is a retired senior Naval Reserve officer. Another attorney is a retired senior Air Force Reserve officer who recently served as Emergency Preparedness Liaison Officer for the Federal Emergency Management Agency and the Pentagon.

CONCLUDING REMARKS

While a big asset of the CAO is its experience level, its ongoing aggressive succession training program is equipping a new generation of employees to assume even greater responsibilities and instill the desire to remain in the public sector. During 2014, it is anticipated that two to four very experienced long-term employees will retire. We will miss them very much. While the loss of these key employees will be felt, there is a cadre of well trained and very capable successors. It will be important to fill the vacancies created with capable replacements. Emphasis will continue to be on (1) reinvigorating neighborhoods (including redevelopment, code enforcement, municipal court prosecution, crime control, and economic development), (2) energy procurement, conservation and sustainability, (3) enhanced strategic support (including professional development through succession planning, training and qualification and modernization of document management systems), and (4) technological advancements in electronic legal research, document and case management, and e-discovery systems.