


City of San Bernardino
San Bernardino Police Department
Interoffice Memorandum

CONFIDENTIAL

Date: August 16, 2011
To: Charles McNeely, City Manager
From: 
Keith L. Kilmer, Chief of Police
Subject: Red Light Camera Program – Comments re: Employee Conduct
Copies: Mayor Patrick J. Morris; City Attorney James Penman

As we discussed, I read with disappointment two articles (attached) recently published in our local newspapers concerning the Red Light Camera Program in San Bernardino. In reading the articles, negative remarks were incorrectly made by city officials about the work product of police department employee(s).

Prior to each article being published, myself or members of my staff were contacted by reporters from both the Press Enterprise and the San Bernardino Sun seeking comment on an **error made in determining the costs to terminate the contract** with the vendor currently providing the service. Since there were, and are, ongoing discussions with the vendor, and their attorneys, I instructed staff to avoid commenting on the error, believing that the matter should not be publicly discussed due to the potential for litigation.

However, somewhat to my surprise, City Attorney's Office officials did make statements to these newspapers, not only admitting to errors on the part of the city, but incorrectly attributing errors to another city department. The mistakes were attributed to some unknown "staff" person(s) in the police department. However, the council report and documents reflect that this area of the analysis, the termination of a contract for the red light camera program, rested with the City Attorney's Office.

After reading these news reports about a police department "staff" member (i.e. employee) making an error in this process, we checked further and have determined that the statements attributed to the City Attorney's Office cannot be supported by the facts.

A non-confidential memo prepared by the City Attorney's Office (copy attached), specifically prepared for the purpose of determining cancellation costs that were ultimately presented to the Common Council for their decision making, simply and incorrectly calculated the costs based on the terminology provided for within the contract itself. The word "approach" was incorrectly assumed to mean the same as the word "intersection." Even though the language "Installed Approach" was used within the February 1, 2011 memo from the Assistant City Attorney to the City Attorney, the memo, in the same paragraph begins to use the term "intersection." This is apparently where the error was made.

This information about contract terminology was not provided by the police department. It was within the contract document itself, which I would assume that the City Attorney's Office had some hand in preparing and reviewing on multiple occasions.

In further attempts to clarify this matter with the City Attorney's Office both the City Attorney and Assistant City Attorney were contacted to determine the source or rationale for their comments to the papers. The Assistant City Attorney indicated that the information she received from the department "was not really about approaches and intersections, there were a lot of numbers involved, it was mostly about when the locations went active and the operational period started."

The City Attorney was contacted as well about this matter. He stated the comments were made because the Assistant City Attorney was attacked in the paper. He surmised that the information was leaked to make him look bad. The City Attorney was informed that a police department employee error had not been determined after looking into the matter.

The purpose in filing this memorandum is to set the record straight on this matter which involved negative comments about the work of an employee. These comments cannot be substantiated and the rationale for publicly making such comments cannot be determined.

I have discussed this matter with the staff involved and there will be no further action taken by the police department on this issue.



CONFIDENTIAL

INTER OFFICE MEMORANDUM
OFFICE OF THE CITY ATTORNEY
CITY OF SAN BERNARDINO

TO: Mayor and Common Council

FROM: James F. Penman, City Attorney

DATE: August 17, 2011

RE: **Response to Chief Kilmer's memorandum to City Manager of August 16, 2011 re: Red Light Camera Program-Comments re: Employee Conduct**

cc: Charles McNeely, City Manager, Police Chief Keith Kilmer, Andrea Travis-Miller, Assistant City Manager, Jolena E. Grider, Assistant City Attorney


Attachments 2

Attached please find Assistant City Attorney Jolena E. Grider's response to Police Chief Kilmer's memorandum of August 16, 2011 (also attached) regarding the Red Light Camera Program.

Chief Kilmer's memorandum is replete with inaccuracies and although he was notified of the existence of emails documenting the exchange between Ms. Grider and his staff he did not request copies of them. Instead he chose to reach an incorrect conclusion which apparently fueled his above-referenced memorandum.

Chief Kilmer should apologize to Ms. Grider for impugning her integrity and for erroneously assuming that statements made in local newspapers, outside of actual quotes, were accurate paraphrasing of statements actually made to reporters.

In addition, the Chief's rephrasing of statements made to him by Ms. Grider and myself in the memorandum referenced above are not accurate to the best of our recollections.


James F. Penman
City Attorney