

The City of San Diego

AUDIT REPORT

***OFFICE OF THE CITY ATTORNEY
PROPOSITION 64 FUNDS AUDIT***

September 30, 2009

**Office of the City Auditor
Eduardo Luna, CIA, CGFM, City Auditor**

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THE CITY OF SAN DIEGO

DATE: September 30, 2009

TO: Honorable Mayor, City Council, and Audit Committee Members
City of San Diego, California

FROM: Eduardo Luna, City Auditor

SUBJECT: **Office of the City Attorney Proposition 64 Funds Audit**

Attached is our audit report regarding the former City Attorney, Michael Aguirre's, management of Proposition 64 Funds. All of the findings and recommendations issued in this report are a result of fieldwork conducted prior to the new City Attorney's administration assuming office. Our report covers the period July 1, 2006 through June 30, 2008 and does not reflect the efforts undertaken by the current City Attorney and his staff.

The current City Attorney, Jan Goldsmith, has provided a response to our report indicating the actions he has taken since taking office to correct the issues found within the Office of the City Attorney regarding the handling of Proposition 64 Funds. His response to our audit recommendations can be found after page 16 of the report as Attachment A. The audit staff responsible for this audit report are Danielle Knighten and Kyle Elser. We would like to thank the former and current City Attorney's staff for their assistance and cooperation during this audit.

Respectfully submitted,

Eduardo Luna
City Auditor

cc: Jan Goldsmith, City Attorney
Jay M. Goldstone, Chief Operating Officer
Mary Lewis, Chief Financial Officer
Andrea Tevlin, Independent Budget Analyst
Stanley Keller, Independent Oversight Monitor



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EXECUTIVE SUMMARY

Proposition 64 (Prop 64) requires that civil penalties awarded are to be used exclusively to strengthen enforcement of consumer protection laws. The Consumer and Environmental Protection Unit within the City Attorney's Criminal Division handles cases that fall under the jurisdiction of Prop 64. The purpose of our audit was to determine if the Prop 64 funds received by the City were properly recorded and utilized by the former City Attorney's Office administration, and to ascertain if the receipt and expenditure of Prop 64 funds were consistent with City policy, including the proper budgeting for these funds.

Our review of the former City Attorney's handling of Prop 64 funds found that the expenditures appeared to be reasonable and within state law parameters. However, as of June 30, 2008, our audit also revealed the following:

- The City Attorney's Office had not expended \$1.8 million of the Prop 64 funds;
- Some control weaknesses existed for the handling of funds including inadequate written policies and procedures and the lack of a case management system;
- The City Attorney's Office did not account for Prop 64 funds within its budget;
- The City Attorney's Office lacked adequate controls to ensure the proper accounting of Prop 64 funds;
- Deposits for Prop 64 funds were not being made timely; and
- The efforts to provide public consumer protection information could have been improved.

We made 7 recommendations to address the issues and control weaknesses identified, to help improve the handling of Prop 64 funds, and to increase the consumer protection information provided to the public.

BACKGROUND

The purpose of our audit was to determine if the Proposition 64 (Prop 64) funds received by the City were properly recorded and utilized by the former City Attorney's Office administration, and to ascertain if the receipt and expenditure of Proposition 64 funds were consistent with City policy, including the proper budgeting for these funds.

Prop 64, which passed in November 2004, placed restrictions on a public entity's use of civil penalties collected from unfair competition or false advertising cases. Prop 64 established that civil penalties should be used to strengthen the enforcement of consumer protection laws¹. However, Prop 64 did not provide any guidance on specific uses for the funds through the absence of any definition of "consumer protection laws. Absent any guidance on its use, prosecutors have interpreted the law² and recommend best practice for expending civil penalties. This includes following established City budget procedures and obtaining City council approval prior to any expenditures. Funds may be used for personnel and non-personnel expenditures as long as they relate to "consumer protecting laws."

The Consumer and Environmental Protection Unit (CEPU) is the specialized unit within the City Attorney's Criminal Division that handles cases that fall under the jurisdiction of Prop 64. The CEPU prosecutes cases concerning unlawful business practices, unapproved drugs, unapproved medical devices, and retailer price scanner violations. CEPU receives case referrals from City and County departments, state agencies, and the public. Additionally, CEPU deputies and staff generate cases by reporting consumer and environmental offenses they observe or become aware of. CEPU deputies are often members of prosecution teams in multi-jurisdictional civil consumer and environmental protection litigation. Table 1 represents the number of CEPU budgeted positions and associated personnel expenditures from fiscal year 2006 through 2008.

Table 1: Budgeted CEPU positions and expenditures for FY 2006 - 2008

| Fiscal Year | Amount of Deputy City Attorney positions assigned to CEPU | Budgeted Personnel Expenditures |
|--------------------|--|--|
| 2006 | 5.78 ³ | \$ 778,465 |
| 2007 | 5.78 ³ | \$ 830,920 |
| 2008 | 5.78 | \$ 762,999 |

Source: City of San Diego Budget Documents as referenced

¹ Webster's New World Law Dictionary defines Consumer protection law as a state or federal law designed to protect consumers against improperly described, damaged, faulty, and dangerous goods and services as well as from unfair trade and credit practices.

² Based on memo drafted on behalf of the California District Attorneys Association (CDA) Consumer Protection Committee on March 28, 2005 by John E. Wilson, Deputy District Attorney In Charge, Consumer & Environmental Unit in San Mateo County, and Thomas A. Papageorge, Head Deputy District Attorney, Consumer Protection Division. in Los Angeles County, regarding the Impact of Proposition 64 on District Attorneys and City Attorneys.

³ The published budget states 13.88 positions inclusive of support staff totaling 8.1 positions.

The prior administration in the City Attorney's Office did not use Prop 64 funds to budget for any of the positions or expenditures shown in Table 1. These positions and expenditures were budgeted as General Fund expenditures.

Prior to the passing of Prop 64, to offset the cost of litigating Unfair Competition Law cases, the City Attorney's Office would apply for grants from the Consumer Protection Prosecution Trust Fund. To track revenue⁴ and expenses related to these cases, the City Attorney's office would establish a separate fund for each grant. Since the passing of Prop 64, the City Attorney's office has opened one fund to track the expenditures and awards for Prop 64 cases. The awards have a restricted use and can no longer be deposited into the City's General Fund. As the City wins awards from consumer protection Prop 64 cases, deposits are made into the Prop 64 Fund. The amounts of awards vary from year to year depending on the number of cases litigated and settled in any given fiscal year. Some cases can span over a fiscal year or longer. When a prosecutor is successful, the City Attorney's Office remedies include injunctive relief, restitution and civil penalties. As of June 30, 2008 the balance of the Prop 64 fund totaled \$1,821,275.

⁴ Original grant disbursements.

AUDIT OBJECTIVE, SCOPE AND METHODOLOGY

In accordance with the Office of the City Auditor's Fiscal Year 2009 Audit Work Plan, and at request from a former Councilmember and Audit Committee member, the Office of the City Auditor was asked to perform audit procedures on issues related to the City's use of Proposition 64 (Prop 64) funds. The City Auditor was specifically requested to determine whether or not allegations⁵ related to the use of Prop 64 funds were substantiated, and to make recommendations to ensure the proper use and tracking of these funds. Our audit period included Fiscal Year 2006 through Fiscal Year 2008, which was under the prior City Attorney's administration.

To accomplish our audit objectives, we performed the following audit procedures:

- Interviewed City Attorney staff to obtain an understanding of the Prop 64 process and how the City receives Prop 64 funding.
- Reviewed State requirements for expenditure of Prop 64 funds and discussed with City Attorney office management.
- Interviewed City Attorney staff and Financial Management staff to determine if there was a requirement either by the State or within City Policy to separately account for the funds in the departmental budget.
- Reviewed departmental policies related to Prop 64 activities and the management of Prop 64 funding.
- Discussed with City Attorney staff the processes for:
 - Tracking Prop 64 fund expenditures from both the State and related awards; and
 - Tracking employees' time charged in Prop 64 cases to ensure that only eligible activities are charged to the Prop 64 fund.
- Examined the general ledger transactions to determine how much Prop 64 funding had been spent during the period up to June 30, 2008.
- Examined and traced the supporting documentation for the expenditures related to Prop 64 funds.
- Examined and traced the awards to the supporting documentation for Prop 64 cases.

We evaluated internal controls related to our audit objectives. Our review was focused on controls related to the accounting and use of Prop 64 funds. Our conclusions on the effectiveness of controls are detailed in the audit results.

⁵ Allegations/concerns include: (1) Prop 64 funds have been used for pay raises, even for employees that are not involved in CEPU; (2) Funds are not spent consistently within State Law; (3) Funds are not part of the department budget.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT RESULTS

THE CITY ATTORNEY'S OFFICE SHOULD DEVELOP A STRATEGIC PLAN FOR ITS USE AND MONITORING OF PROPOSITION 64 FUNDS

Overall we found that the former City Attorney's Office administration spent Proposition 64 (Prop 64) funds appropriately and in accordance with State law. However, we found one instance of questionable use, and one instance that resulted in a duplicate payment. In the future, to ensure Prop 64 funds are spent appropriately, the City Attorney's Office needs to update its policies and procedures, and consider acquiring a case management system to better track cases.

Our analysis also revealed that, as of June 30, 2008, the former City Attorney's Office had spent \$362,130 of the \$2.2 million in Prop 64 funds that it received between fiscal years 2006 – 2008; leaving a balance of \$1.8 million unspent. The City Attorney's Office should develop a strategic plan to ensure its funds are spent enforcing consumer protection laws as prescribed by State law.

The City Attorney's Office Had Not Expended a Significant Amount of the Proposition 64 Fund as of June 30, 2008.

Our analysis of the proper use of Prop 64 Funds revealed that State law is extremely vague and provides no guidance or definitions for consumer laws. This allowed the City Attorney's Office a high level of discretion for its use of Prop 64 funds. According to the City Attorney's Office policies and procedures of the prior administration, the City Attorney may use Prop 64 funds for personnel and non-personnel expenses related to protecting consumer laws.

As shown in Table 2, of the \$362,130 charged by the former City Attorney's Office to Prop 64 funds from fiscal year 2006 through 2008, 93% percent were for personnel expenses and 7% were for non-personnel expenses. Non-personnel expenses included travel for attorneys who worked on multi-jurisdictional cases, promotional items for Consumer Protection Day⁶, Police lab fees, and out of town training for attorneys and investigators.

⁶An event held to teach individuals how to protect against fraud and scams that was sponsored by the City Attorney's Office and various other agencies.

Table 2: Fiscal Year 2006-2008 Prop 64 Expenditures

| Fiscal Year | Total Expenditures | Personnel ⁷ | Non-Personnel |
|--------------------|---------------------------|-------------------------------|----------------------|
| 2006 | \$ 151,832 | \$ 143,181 | \$ 8,651 |
| 2007 | \$ 200,261 | \$ 194,422 | \$ 5,839 |
| 2008 | \$ 10,037 | \$ --- | \$ 10,037 |
| Total | \$ 362,130 | \$ 337,603 | \$24,527 |

Source: Comptroller's Simpler Financial System

During our review, the prior City Attorney's staff was unable to provide supporting documentation for all personnel expenditures charged to the Prop 64 fund⁸. Our review found one instance of questionable use when a CEPU Attorney worked on a case that was settled under a different code section other than Business and Professions Code 17200, and charged his time directly to the Prop 64 fund. Although the case was "consumer protection prosecution" related under the environmental class, with the lack of policies and procedures by the former administration, it was difficult to determine if this case was acceptable or not. Additionally, the prior City Attorney's Office could not provide the number of hours spent on that case because only one job order was used. The employee charged all of his time to one job order instead of using a separate job order for each case⁹. This made it impossible to determine how much time was spent on each case, Prop 64 related or not.

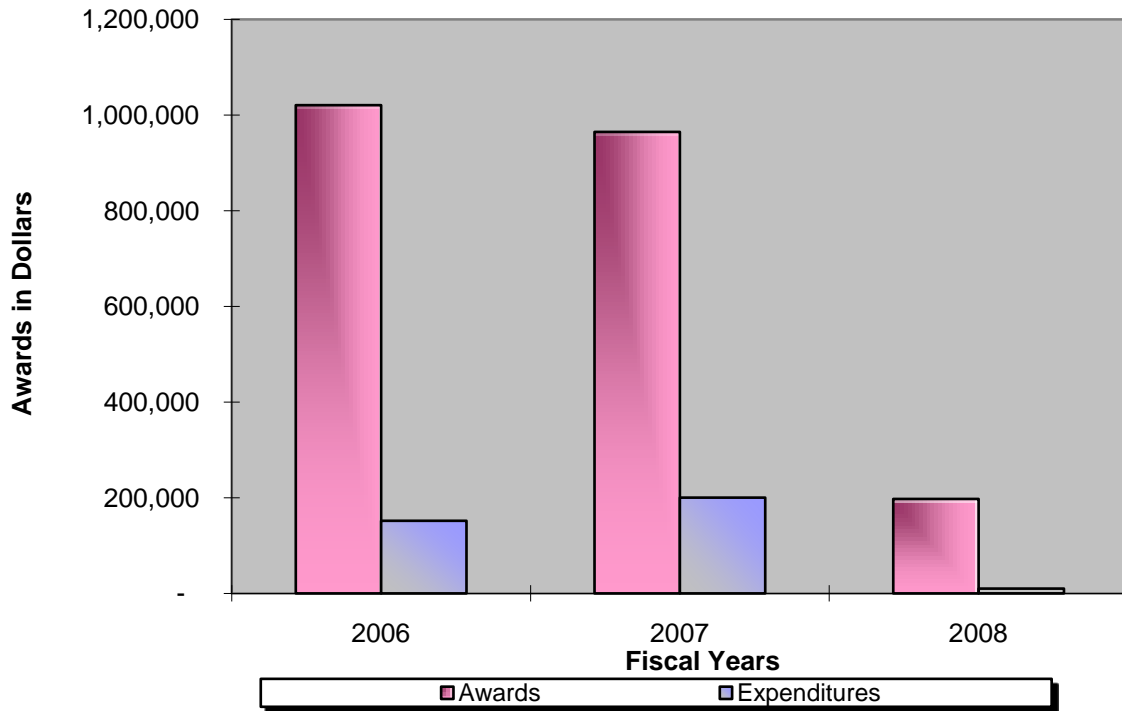
As seen in Figure 1, Prop 64 awards received by the prior City Attorney's Office over the course of the three fiscal years (2006-2008) had dropped significantly from \$1,020,901 to \$197,504 annually.

⁷ Expenses for one employee were transferred into CEPU on a limited basis to help with the case load.

⁸ For City Attorney time and Investigator time.

⁹ The job order number is specific to CEPU.

Figure 1: Fiscal Year 2006-2008 Expenditures and Awards



Source: Comptroller’s Simpler Financial System Report

Our analysis also revealed a spending gap between FY 2006 – 2008. As seen in Figure 1, the prior City Attorney’s Office received \$2.2 million in Prop 64 funds, but spent \$362,130 during the same period leaving a balance of \$ 1.8 million unspent. Table 3 provides a breakdown of the percentage of Prop 64 awards expended by each fiscal year.

Table 3: Percentage of Prop 64 Awards Expended for Fiscal Years 2006-2008

| Fiscal Year | Percentage of Revenue Expended |
|-------------|--------------------------------|
| 2006 | 15 % |
| 2007 | 21% |
| 2008 | 5% |

Source: Comptroller’s Simpler Financial System

Of the \$362,130 expended, 93% was related to personnel expenditures charged directly to the Prop 64 fund. The expenditure increase in FY 2007 was attributed primarily to 12 months of personnel expenditures, whereas in FY 2006 approximately 9 months were expended. No personnel expenditures were charged to the fund in FY 2008.

Inadequate policies and procedures and lack of a case management system posed a greater risk of improper Proposition 64 fund administration and monitoring.

To ensure Prop 64 funds are appropriately spent in the future, the City Attorney's Office needs to update its policies and procedures and should consider a strategy to incorporate a case management system into their business to help enforce consumer protection laws. The prior Office of the City Attorney did not have adequate policies or procedures to ensure the proper accounting and use of Prop 64 funding. The policies and procedures were vague and did not provide adequate details regarding the processes used to ensure that Proposition 64 cases could be identified regardless of their status. The policies and procedures also lacked guidance on what would be acceptable use for expenditures, for example whether personnel or non-personnel expenditures were allowable. If personnel expenditures were allowable, there was no specific guidance as to how to appropriately track employee time that was charged to Prop 64 funds.

The former administration of the City Attorney's Office determined that State law was sufficient to document the policies and procedures for expending and receiving Proposition 64 funding. However, State law provides general terms with no specific details. Prop 64 requires that civil penalties are used exclusively for the enforcement of consumer protection laws, but fails to provide definition(s) for consumer protection laws. In many California laws, "consumer protection" is widely used in various contexts and often lacking any definition. Therefore, it would appear that the City Attorney's enforcement of any law protecting the interest of the public, as consumers, would be an appropriate use of Prop 64 funds. Written policies and procedures are more critical to ensure consistency and appropriateness of fund administration in order to appropriately enforce these laws.

Policies and procedures should be documented to formalize the process to ensure consistency and compliance with State law in the processing of revenues received and funds expended for Prop 64 activities. Due to the lack of documented and enforced policies and procedures by the prior administration, there was a higher risk of funds being used inappropriately or without proper authorization or documentation. Additionally, there was a greater risk of award monies not being deposited into the proper fund without adequate supporting documentation to verify the accuracy and completeness of the deposits.

Lack of Centralized Case Management System

The prior Office of the City Attorney did not have a centralized process for the maintenance of documentation for its cases including Proposition 64 related cases with proper supporting documentation (i.e. Final judgments)¹⁰. The City Attorney's Office had a manual process for reconciling partial payments received, but fiscal personnel within the former City Attorney's Office were not aware of this process. Only the

¹⁰ Final Settlement Judgments are the court orders which detail the monetary relief and describe the monetary breakdown for civil penalties v. cost recovery.

prosecuting attorney and the deputy city attorney in charge of the unit were knowledgeable of this type of arrangement.

During our audit, we reviewed court documentation of an amount awarded to the City. In this case, the defendant made 7 partial payments. Staff from the former administration of the City Attorney's office could not provide a reconciliation of the account to ensure all monies awarded to the City were received. Subsequently, City Attorney staff did provide documents showing a reconciliation had occurred. However, we determined that in this case the City did not receive the total amount awarded. Although these amounts were immaterial, instances such as these could have been avoided if policies and procedures were documented, enforced and communicated to the City Attorney's fiscal personnel.

During the prior City Attorney's administration, each attorney maintained their own case file and reported the outcome of these cases to the head Deputy City Attorney for that particular unit; the prosecuting attorney then filed the court documentation in the judgment book once the case had been closed. With this type of system, most staff were not aware of case dispositions of other attorneys until the judgment book was updated. For example, we discovered one case where monetary relief was granted, but stayed¹¹ because of another court proceeding; however there was no follow up indicated on the case settlement report indicating the outcome of the other proceeding and the prosecuting Deputy City Attorney is no longer with the City. Therefore, the prior City Attorney's Office could not provide evidence that the City received the monetary relief that was granted, and they did not know the outcome of the other proceeding.

If the prior Office of the City Attorney utilized a central database of all cases it litigated, each attorney could have updated the case status when appropriate and documented the awarded amount. Former City Attorney staff could have reconciled the awarded amounts to the payments received to ensure all funds due to the City were received. By not having a centralized process for recording, tracking and reconciling awards, money due to the City was not collected and the risk of theft was increased.

Recommendations:

1. The City Attorney's Office should review and revise the current policies and procedures for the management of Proposition 64 funds. The policies and procedures should include details on how the funds will be properly recorded, tracked, and expended.
2. The City Attorney's Office should develop a centralized case management system, with detailed policies and procedures, to record, document and reconcile awards received.

¹¹ The term *stay* may also be used to describe any number of legal measures taken by a legislature to provide temporary relief to debtors. For example, under section 362(a) of the Bankruptcy Code, a debtor who files for bankruptcy receives an automatic stay immediately upon filing a voluntary bankruptcy petition. Used in this sense, the term *stay* refers to the right of the debtor to keep creditors at bay during the resolution of the bankruptcy case.

THE CITY ATTORNEY’S OFFICE DID NOT ACCOUNT FOR PROP 64 FUNDS WITHIN ITS BUDGET

We found that the former City Attorney’s Office did not account for Prop 64 awards and expenditures within its departmental budget as of June 30, 2008. Although there is neither a state law nor a City policy that requires the City Attorney’s Office to budget or account for Prop 64 funds, the lack of a departmental budget for these funds was questioned. In the past, during budget preparation when City management and City Council were considering their approval of a department’s operating budget, the City Attorney could have potentially received more in its operating budget than needed.

According to the California District Attorney’s Association Ethics Committee, it would be inappropriate to budget any anticipated awards¹², however the City Attorney’s Office could budget for Prop 64 expenditures using the existing fund balance, which totaled \$1,821,275 as of June 30, 2008. By doing so the department could reduce its dependence on General Fund appropriations, henceforth providing more General Fund money for other purposes or redirection into other areas of its own department.

Historically, the City Attorney’s Office has not budgeted Prop 64 funds. Table 4 represents the number of budgeted positions in the CEPU for Fiscal Years 2006 - 2008 and the budgeted non personnel expenditures, none of which are related to the Prop 64 fund.

Table 4: Budgeted positions in CEPU for FY 2006 - 2008

| Budgeted Fiscal Year | Number of Deputy City Attorneys | Budgeted Personnel Expenditures |
|----------------------|---------------------------------|---------------------------------|
| 2006 | 5.78 ¹³ | \$ 815,621 |
| 2007 | 5.78 ¹³ | \$ 835,324 |
| 2008 | 5.78 | \$ 517,461 |

Source: City of San Diego Budget Documents as referenced

During FY 2006 - 2008, CEPU had approximately 5 budgeted positions, none of which directly charged personnel expenditures to the Prop 64 fund. During our audit period a sixth attorney was added to the unit to help with cases, however, this attorney did charge his/her time directly to the Prop 64 fund.

Prior to the enactment of Prop 64, to offset the cost of litigating unfair competition legal cases, the City Attorney’s Office would apply for grants from the Consumer Protection Prosecution Trust Fund (CPPTF). To track CPPTF related revenues and expenses the City Attorney’s office would open a separate fund for each grant.

¹² California District Attorney’s Association Ethics Committee’s guide for prosecutors entitled *Professionalism*, pg. XI-4.

¹³ The published budget states 13.88 positions inclusive of support staff totaling 8.1 positions.

Since the enactment of Prop 64, the former City Attorney's office utilized one fund to track the expenditures and awards for Prop 64 related cases. The awards have a restricted use and can no longer be deposited into the City's General Fund. As the City won awards from Prop 64 cases, deposits were made into the Prop 64 Fund. Annual award amounts varied depending on the number of cases litigated and settled during the year. Some cases spanned over the course of multiple fiscal years.

Additionally, Financial Management staff stated only Propositions 42 and 1B are required (by law) to be budgeted for specific purposes because they are related to capital improvement projects. At this time no other funds (as a result of any Propositions) were required by law to be budgeted, and the Proposition 64 fund was not included as a revenue source in the prior City Attorney's budget.

Recommendation:

3. The City Attorney's Office should work with Financial Management to develop a strategy to incorporate the Prop 64 funds in their departmental budget to help enforce consumer protection laws.

THE CITY ATTORNEY’S OFFICE DID NOT HAVE ADEQUATE CONTROLS IN PLACE FOR THE ADMINISTRATION OF PROP 64 FUNDS

During our audit, we also reviewed the controls that were in place to administer the Prop 64 funds. We noted a lack of documentation when funds were created by or for the City Attorney’s Office, and deposits were not timely as required by the City Charter.

The City Attorney’s Office Lacked Adequate Controls to Ensure Proper Accounting of Proposition 64 Funds.

To account for funds related to specific activities or functions, the City often establishes a special fund. During our meeting with former City Attorney’s staff, they expressed a concern regarding some funds that were established prior to Proposition 64. These funds retained positive balances, but the former City Attorney’s Office could not readily identify them due to a lack of any significant activity for at least a couple of years. According to former City Attorney staff, a settlement with the State¹⁴ had been reached in early 2008, which stated that after the payment was made the City could keep any of the remaining monies with no restrictions. During our review, two funds were identified with balances of \$4,800 and \$31,980, for a total of \$36,780. Since a settlement was reached and payment was made, the City was allowed to keep the balances in those accounts.

Former City Attorney staff stated that there was no documentation for many of the funds/accounts created for the City Attorney’s office, so staff within the prior administration were not aware of the reasons for the account creation and in some cases were unaware that these accounts even existed. Due to this discovery, former City Attorney Management showed concern that there may be additional dormant funds that they were unaware of.

If the former City Attorney administration had enforced written policies and procedures over the establishment of accounts available this would have reduced the risk of such event from happening and put controls in place to ensure that funds were managed appropriately and efficiently.

Recommendations:

4. City Attorney management should review the disposition of dormant funds and determine how they should be used and if related funds should be closed. Include the proper management and documentation of funds in your detailed written policies and procedures.
5. Consult with City Comptroller to determine if there are any other funds with inactive balances that could be used by the department and subsequently closed.

¹⁴ Several grants were received from the Consumer Protection Prosecution Trust and individual funds were opened for each of these grants since the City was required to reimburse the Trust for any unused funds.

Some Awards Related to Proposition 64 Cases Were Not Deposited Timely.

Section 85 of the City Charter states that all monies received from any source and all moneys directed by law or by this Charter shall be paid into the treasury daily, except for those exceptions identified in the San Diego Municipal Code §22.0706. During our testing of award deposits received for Prop 64 cases, we found that the former administration of the City Attorney's Office violated the City Charter with regard to the timely deposit of funds received by the City.

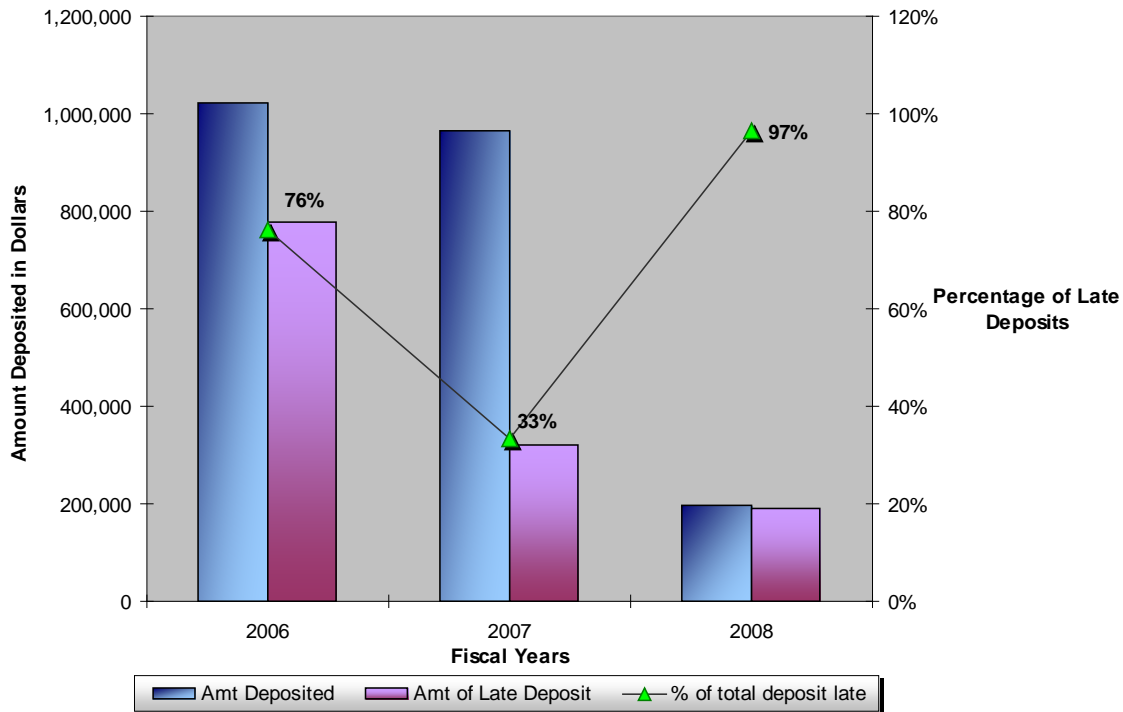
We traced all 34 deposit amounts back to the summary judgments, however there were four discrepancies between the judgment fund delegation and the actual fund and amount deposited. In these four cases, more monies (approximately \$102,606) were deposited into the Proposition 64 fund, which is for restricted use vs. the CEPU fund, which is not restricted; and former City Attorney staff could not provide any explanations for the differences. Due to the lack of established policies and procedures, there was a greater risk that these types of instances would occur.

We identified that in Fiscal Year 2006, two award payments received in March 2005 for a total of \$96,000 were not deposited until May 31, 2006¹⁵. In Fiscal Year 2006 a \$70,000 award check was lost by a former Deputy City Attorney and had to be reissued, and even after it was reissued it was still deposited late. As evidenced by these examples, internal controls regarding the depositing of award monies were weak and stronger policies needed to be implemented.

Figure 2 demonstrates that over a three year period (FY 2006-2008) the former Office of the City Attorney had deposited a total of \$2,183,405 into the Proposition 64 fund. Of the nearly \$2.2 million deposited, \$1,290,784 or 59% were deposited late (more than 14 days from the check date). Fiscal Year 2007 had the highest average number of days late with 98 days. Furthermore, there was a lack of controls, which resulted in checks being lost or not deposited for almost a year after receiving them.

¹⁵ The deposit was made after a staff member contacted the bank to confirm that the checks would still be honored.

Figure 2: Total Amount Deposited and Amount Deposited Late



Former City Attorney staff stated that most of the time CEPU was not aware of pending settlements until a letter and check was received and sometimes only a check was received with no other supporting documentation; therefore, staff had to research to determine which case it belonged to and which fund the money should have been deposited in attributing to the delay.

In not making timely deposits, the City loses interest for each day that the money is not deposited. If the City has cash that is readily available and has not been deposited, the financial reporting of cash is not accurate or complete. Furthermore, internal controls were lacking thus putting the COSO financial assertions at risk (existence, rights and obligations, valuation, presentation and disclosure, occurrence, and completeness of an asset and all transactions).

This issue was a result of not having documented policies and procedures for processing award monies received for cases, and ensuring the City Charter provisions requiring daily deposits were followed. The City Attorney’s Office is not identified in San Diego Municipal Code §22.0706 as having an exception to the daily deposit requirement as some other City Departments.

Recommendation:

6. Include a requirement that money received be deposited daily in your written policies and procedures, or take action to amend the San Diego Municipal Code §22.0706 to include an exception for the City Attorney’s Office, so as to not violate the City Charter’s requirement for daily deposits.

ADDITIONAL OPPORTUNITIES FOR IMPROVEMENT: EFFORTS TO PROVIDE THE PUBLIC CONSUMER PROTECTION INFORMATION COULD HAVE BEEN IMPROVED

We found that the public education materials provided by the prior administration of the City Attorney’s Office were lacking compared to other agencies. While the former City Attorney’s website provided consumer hotline contact and referral information, the City did not provide as much information as compared to the County of San Diego’s Consumer Fraud Website. Table 5 shows the comparison between the two sites as to what was available to Consumers.

Table 5: Comparison of City and County of San Diego Consumer Fraud Protection Websites

| Consumer Protection Website Information Available | City of San Diego | County of San Diego |
|--|--------------------------|----------------------------|
| Hotline Contact Information | ✓ | ✓ |
| Referral Number to Outside Agencies | ✓ | ✓ |
| Newsletters (Monthly or Quarterly) | N/A ¹⁶ | ✓ |
| Department Highlights | N/A | ✓ ¹⁷ |
| Consumer Tips/Alerts | N/A | ✓ |
| Legislative Updates | N/A | ✓ |

One of the best protections for consumers is the availability of information. The Internet has become an important forum for information and opinions on products, businesses, and services.

Recommendation:

7. The City Attorney’s Office should provide additional consumer protection information via the City’s website and other means such distributing newsletters and/or consumer tips and alerts.

¹⁶ Information is only available in the City Attorney’s Departmental Annual Report or Annual Budget.

¹⁷ Results of Lawsuits and Judgments.

Response from the Current City Attorney via Email

Thank you for sending over a second draft of your report. We identified these and other management issues when our Administration took office on December 8, 2008, and we took action to attempt to correct them, including each of the recommendations you are now making. We would welcome your input on the steps we have taken and any recommendations for improvement.

We will not comment on my predecessor's management practices. We have a completely new management team with new management practices.

We will comment below as to what we have already done that fall within your recommendations.

Thank you,

Jan Goldsmith

- 1. Review and revise the current policies and procedures for the management of Proposition 64 funds. The policies and procedures should include details on how the funds will be properly recorded, tracked and expended.**

We have implemented policies and procedures for management of Proposition 64 funds and supplied you with a copy. Tricia Pummill can provide you with an updated copy.

- 2. Develop a centralized case management system, with detailed policies and procedures, to record, document and reconcile awards received.**

We began working on a centralized case management system for the criminal divisions (including consumer protection) within one week of taking office in December 2008. We identified approximately \$350,000 in funding, developed a budget, identified software and hardware needs, went out to bid, purchased the hardware and acquired software through the DA's office, negotiated an MOU with the County for coordinated software with the DA's office, and have been training our personnel. We will have our new case management system up and running within 30 days.

Initiating such a new software for an operation involving hundreds of employees and over 40,000 cases can take years and cost much more than \$350,000. We achieved it in 9 months and came in under budget. The reason is that we are using the DA's office case management system. The taxpayers saved a lot because DA Bonnie Dumanis helped us out.

Now, we are beginning the same approach for our civil division. We have already found the funding, developed our software needs and have an RFP outstanding. (We need completely separate case management systems for our civil and criminal divisions due to the ethical "wall" that exists between them).

Response from the Current City Attorney via Email

Our new case management system will help us with many management issues and coordination of cases, including Proposition 64 fund management.

3. Work with Financial Management to develop a strategy to incorporate the Prop. 64 funds in their department budget to help enforce consumer protection laws.

We also began this in December within weeks of taking office. We reviewed accounts and determined that we could incorporate Prop. 64 into our department budget. We began with Financial Management who understood and agreed with our approach. Our use of Prop 64 funds was a part of every budget presentation we made, including the one at City Council last Spring. It is now included in our budget as an assumption of revenue.

Prop 64 funds allowed us to expand and enhance our Consumer Protection Unit, including addition of a deputy city attorney focused on environment consumer protection. That is an area of need that was not being met elsewhere.

There are two caveats, however, in use of these funds.

First, we do not plan our budget anticipating any future recoveries. The reason is that prosecutors may not have a financial interest in recovery of penalties. Thus, we only plan our budget using **existing** funds.

Second, we have decided to plan to use existing funds for a two year budget cycle. This ensures that we can have some level of staff stability. It means that we will use no more than 50% of our existing funds in any one year.

4. Management should review the disposition of dormant funds and determine how they should be used and if related funds should be closed. Include the proper management documentation of funds in your detailed written policies and procedures.

Our office began the effort to investigate dormant accounts in December 2008. We found accounts that were apparently long forgotten. We cleared at least 3 accounts and corrected problems with some of those accounts.

5. Consult with City Comptroller to determine if there are any other funds with inactive balances that could be used by the department and subsequently closed.

See #4 above.

6. Include a requirement that money received be deposited daily in your written policies and procedures.

Response from the Current City Attorney via Email

Checks should be deposited within 24 hours. The only exception is that we are not authorized to cash a check provided by the defendant until the Judge signs the Judgment. If there is a delay in signing the Judgment, there will be a delay in cashing the check. In those circumstances, we are holding the check without authority to endorse it until the Judgment is signed. Accordingly, the check does not become a negotiable instrument unless and until the Judgment is signed.

7. Provide additional consumer protection information via the City’s website and other means such as distributing newsletters and/or consumer tips and alerts.

The Consumer Protection Unit is one of the few areas where we have sought media exposure. We have more than doubled our media exposure in order to deliver consumer protection information..

We have developed a video public service announcement; developed a monthly newsletter on topics of interest to consumers; issued regular press releases, some jointly with other prosecuting authorities; issued consumer alert warnings; purchased pens printed with our consumer hotline number; expanded the number of hours our hotline is answered; provided a Spanish-speaker to answer the hotline; obtained handouts from other agencies; and participated in consumer fairs where we provided information to members of the public. We are currently working with the Better Business Bureau and the District Attorney’s Office to set up a Scam Jam free program on consumer protection for the public in early 2010.

We would be pleased to receive any recommendation for a specific improvement in delivering consumer protection information. What additional effort are you recommending over and above what we are doing?

City Auditor’s Response

The Office of the City Auditor will follow-up on all audit report recommendations to determine if they have been adequately implemented. We will report on any deficiencies found during our follow-up process.