

City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: JANUARY 8, 2019
FROM: CITY ATTORNEY WARDS: ALL
SUBJECT: AUTHORIZATION TO REQUEST PUBLICATION OF APPELLATE COURT DECISION IN *PEOPLE OF THE STATE OF CALIFORNIA v. HOFFMAN*.

ISSUE:

Authorization to request publication of the opinion issued by the California Court of Appeal in *People of the State of California v. Judith Jean Hoffman* (Filed 12/20/18, California Court of Appeal, 4th District, Division 1, Case Number D073132).

RECOMMENDATION:

That the City Council:

1. Authorize the City Attorney to request publication of the opinion issued by the California Court of Appeal in *People of the State of California v. Judith Jean Hoffman*.

BACKGROUND:

Sunshine Ordinance Exception Findings

The City Council provides notice before any regular meeting no later than 12 days before the date of the meeting. (RMC 4.05.050(A)) However, the notice requirement is excused if the Mayor or a Council Member, with the concurrence of another Council Member, believe an item is urgent, and the failure to meet any additional notice requirements was due to the need to take immediate action, which came to the attention of the local body after the agenda was posted. (RMC 4.05.050(C)(3)) For this item and as established by their concurrence below, Councilmember Soubirous (Ward 3) and Councilmember Adams (Ward 7) have determined that this matter is urgent and the failure to meet any additional notice requirements was due to the need to take immediate action.

Court Decision

As reported in the facts of *People of the State of California v. Judith Jean Hoffman*, a San Diego resident owned property with a history of complaints and violations of various state and local laws regarding nuisance and substandard housing. This included a truck parked in the driveway with flat tires and filled with debris; items stacked in front of the garage and around the house; weeds and brush covering the front yard, blocking the public sidewalk and the path to the front door; a house interior smelling like feces and urine; rat droppings scattered on the floor; a living

room cluttered with boxes, paper, junk, and items; paths between rooms lined with storage and difficult to pass through; a kitchen, dining room, and bedrooms crowded with belongings and trash, making any movement through them difficult or impossible; and several dogs kenneled and in poor condition.

After numerous efforts at obtaining corrective action were unsuccessful, the City of San Diego initiated a lawsuit against the property owner requesting the appointment of a receiver and injunctions to prohibit the property owner from maintaining a "substandard property in violation of state and local ordinance provisions and as a public nuisance, which is a threat to the health, safety, and welfare of the public and its occupant."

The court entered an order confirming appointment of a receiver. The court directed the receiver to take full control and possession of the property and to take such actions as necessary to abate the public nuisance and to remedy the code violations.

Amongst the arguments presented on appeal, the homeowner contended the superior court lacked jurisdiction to enter the receiver order because a purported pending bankruptcy should have stayed proceedings. The Court of Appeal rejected this argument stating that the City's case was pursued in furtherance of the public health, safety and welfare are "classic exercises of the police power" which are excepted from the automatic bankruptcy stay.

DISCUSSION:

The Court of Appeal opinion was issued on December 20, 2018, which came to the attention of the City Attorney's Office one week later. Only opinions ordered officially published can be cited as authority before California courts. (California Rules of Court, Rules 976 et seq.) This opinion, however, was ordered not published.

Any person may request that an unpublished opinion be ordered published. (California Rules of Court, Rule 8.1120(a)(1)) The request must be made by a letter to the court that rendered the opinion, concisely stating the person's interest and the reason why the opinion meets a standard for publication. (California Rules of Court, Rule 8.1120(a)(2))

This opinion clarifies that a homeowner cannot obtain a stay of a receivership action simply by filing for bankruptcy. The City Attorney has concluded that this decision meets the standards for publication set forth in California Rules of Court, rule 8.1105(c) and contains sound legal principles that, if made available as citable precedent, would benefit the residents of Riverside.

A timely request for publication must be delivered to the rendering court within 20 days after the opinion is filed. (California Rules of Court, Rule 8.1120(a)(3)) Given that this decision was published on December 20, 2018, the deadline to deliver a request for publication is January 9, 2019. The Public Safety Division of the City Attorney's Office is prepared to timely submit the request.

FISCAL IMPACT:

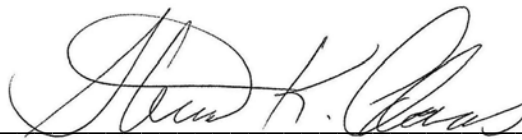
There is no fiscal impact associated with this report, as the recommended option will not impact the City Attorney's Office's current operating budget.

Prepared by: Gary G. Geuss, City Attorney

Concurs with:

A handwritten signature in black ink, appearing to read "Mike Soubirous", written over a horizontal line.

Mike Soubirous
Councilmember, Ward 3

A handwritten signature in black ink, appearing to read "Steven K. Adams", written over a horizontal line.

Steven K. Adams
Councilmember, Ward 7