

JUSTICE COURT FACT SHEET

The responses and information offered in this fact sheet are meant to provide as much supplemental information to the City Council as possible regarding the City's Justice Court prior to the Council briefing on Tuesday, June 10, 2008. The responses include general Administration responses as well as comments by Presiding Judge Virginia Ward and City Prosecutor Sim Gill.

The following questions resulted from Council staff conversations with three Council Members:

Q. Is Justice Court meeting the original intent outlined in the report prepared by Kay Christensen?

A. Yes, to the extent possible. Council members who supported creating the Court believed generally that a municipal court would have a greater interest in the community and the "quality of life" cases that most impact the City than had been demonstrated by the Third District Court. One Council member said that the Justice Court would be "revenue neutral and service positive."

The City Council considered several factors when making the decision to create a justice court.: (1) Justice court judges would be more familiar with the needs of the local community than are district court judges; (2) Justice court could better address the "quality of life" cases such as nuisance, zoning, barking dog and other cases than the district court; (3) The justice court could do a better job imposing and collecting fines; (4) Through the justice court, the City could enhance public safety by instituting creative community justice (restorative justice) programs such as misdemeanor drug court, victim restitution, housing court and domestic violence court; (5) The City could better address court delays and miscommunication issues by providing an adequate number of trained staff and investing in information management systems; (6) The justice court could possibly schedule police officer appearances more efficiently to allow officers to be on the beat rather than waiting in court and could more effectively manage other public resources as well (see later response on this specific question); and (7) City prosecutors could function more efficiently without the need to coordinate schedules with the district court. Each of these factors is addressed extensively in the report which the Council received earlier this year and which was included again in their packets this week. The common element in each of these original intents is the belief that a city justice court would better serve the cause of justice and the citizens of Salt Lake City. Dissolving the Court would put all City cases back on equal footing with other jurisdictions' cases, either mixed in with higher level cases at the District Court or mixed in with cases from all over Salt Lake County.

City Prosecutor Sim Gill believes that to some extent the above listed original intents have not been met. His comments on this question are provided below:

Point 2: Quality of life

As noted in Kay's study, a justice court is limited by what relief it can provide in "civil nuisance" cases due to jurisdictional limitations (p.26 and 27). This leaves open the issue of criminal prosecution of similar cases. The prosecutor's office has prosecuted such serial offenders in quality of life/zoning cases. This prosecution has been long, protracted and labor/resource intensive. Subsequent to prosecution the matter has been appealed to District Court and the process was begun once again. The total time invested was approximately 2 ½ to 3 years. The consensus that emerges is that those offenders that we want to hold accountable and ultimately jail for their repeated violations we cannot hold because they will appeal to the District Court. This impacts not only our most serious quality of life offenders but other criminal defendants as well. Kay notes in her study "the Court is seen as a problem in getting closure on certain categories of "quality of life" cases when, in reality, the Justice Court may not be the best avenue of resolution" (p.28). The lack of finality of conviction and appeal out of justice court de novo for the most serious matters makes justice court not a desired option for prosecutors.

(Aside from the arguments made by Sim Gill, it should be noted that whether the City had a justice court or not, the majority of zoning cases would likely be pursued civilly in the District Court. In addition, DUI and domestic violence cases are also "quality of life" cases and those cases get maximum attention in the Justice Court. Judge Ward notes that whether the case is a zoning type of nuisance or other quality of life case, and whether it is in District or Justice Court, a defendant is not held pending an appeal unless a risk of flight or risk of danger to a victim or risk to the community is proven, so to say the Justice Court provides an inadequate response during appeals clouds the issues, because the standard for release pending appeal is identical in either court).

Point 4: "enhancing public safety"

The City Prosecutor's office along with various other city, non-city and county criminal justice services (Kay: p.32) have collaborated to create various "restorative justice" programs. Several programs were in place before the creation of Salt Lake City's Justice Court and several have continued on outside of justice court (for example, mental health court, misdemeanor drug court in both our Justice Court and the Third District Court high risk domestic violence offenders program etc.). We have also enjoyed the continuity of several programs in Justice Court as well. One program, Judge Baxter's "homeless court" is singularly unique to our Justice Court, and provides needed relief to the downtown community. Other programs, which are run through our collaboration with Salt Lake County criminal justice as probationary models work well in our Justice Court as they could in other jurisdictions as well. Our "restorative justice" models have been something the City can be collectively very proud of over the last several years. Most "restorative justice" models were created in collaboration with other agencies originally to limit the impact on the court. They would work well in either jurisdiction. There is no substantial advantage by virtue of being in Justice courts that could not be replicated in other jurisdictions. (Sim Gill may be correct that the restorative justice programs could work in other jurisdictions, but the distinction is that in other jurisdictions it would not be the City's decision to create and run a program—it would be up to the controlling

jurisdiction. It is not likely that a District Court Judge would participate in Homeless Court, for example, which takes court out into the community and dramatically reduces the costs of prosecution in that population while resulting in substantial community service).

Point 5: “court delays”

Addressing the issue of court delays becomes moot if there is no commitment to the resources necessary to effectuate that change as noted by Kay in her report (p.33). The prosecutor’s office has always supported the idea of providing adequate resources to all of the critical partners in the delivery of justice to our community. These partners are police, Legal Defenders, Justice Court and the prosecution.

The original idea that the City matters would be handled more expeditiously and in a timely manner has not been historically achieved. Currently, we have gotten a better handle on the matters but it has been at the price of not pursuing all matters, engaging in dismissals and de-prioritizing certain categories of offenses. In all fairness to the Justice Court and the prosecution, this is a resource issue. The Court needs more resources both in terms of staff and space.

Point 6: “police officers”- Sim Gill’s comments on this point are included when this issue is addressed in a specific Council question.

Point 7: City prosecutors would not need to coordinate with the District Court.

There is no net gain for the City Prosecutor’s office as a result of the creation of Justice Court. Trial de novo and hearings de novo contribute to an increased demand on prosecution resources. The appearances in two different jurisdictions where one is “on the record” and the other is not cannot be objectively be seen as a net gain by the prosecution.

(The prosecutor’s perspective should be balanced against the gains of having a community court responsive to City needs. While there is no gain to the prosecutor, there may be substantial gains to citizens and other justice partners affected by Court services, and for which there is not a monetary value).

Q. Have the issues raised in the audit been addressed?

A. Yes. A copy of the audit response report is attached. Subsequently, the Justice Court conducted an extensive external task force, with the assistance of the National Center for State Courts, engaging all partnering entities to address procedural issues and also has an ongoing internal task force to address organizational issues.

Q. Is the percentage of time spent on the bench by Judges reasonable/appropriate/standard?

A. The National Center for State Courts (NCSC) has told Court management that there is no national standard for time spent on the bench by judges. Each court has different caseload requirements, requiring more or less time on the bench and on follow up office

paperwork. Since our judges' caseloads are no longer being set further and further out, there is no reason to believe that the time spent on the bench is not reasonable and appropriate.

Judge Ward notes that the NCSC did not indicate that judicial bench time in the Salt Lake City Justice Court was deficient. All of the tasks were evaluated in the weighted caseload study which resulted in a finding that the court is under-resourced to provide necessary services. On a daily basis Salt Lake City's judges engage in records management, legal research, respond to email motions by both key agencies to facilitate scheduling or addressing legal issues, review probation reports, mental health and substance abuse evaluations, motions and other pleadings, pre-sentence reports, and issue warrants in batches. At the same time, judges monitor thousands of active cases assigned to each judge for probation compliance. Judge Ward also noted that during the time frame since the last audit, the prosecutors have received staff increases to allow them more time to draft or respond to motions, prepare probable cause statements, and seek warrants of arrest all creating additional work for the existing judges.

In a typical calendar month, the Court has 200 possible settings, (am and pm five days a week) and judges are on the bench for 136 of these settings, 68% of the time. Judge Ward inquires if the prosecutors should decide how much time the judges sit on the bench? This also raises the question of prosecutorial resources if judges spent even more time on the bench. For example, the Court regularly requests that a prosecutor be present at homeless court, to help facilitate closing more cases, but the prosecutor's office has said they do not have the resources to send someone. Judge Ward notes that while seeking a higher amount of bench time the prosecutor provides no alternative to allow non bench work to be performed since none of it may be delegated to non-judicial officers.

City Prosecutor Sim Gill responded that the prosecution interest in bench time correlates directly to having as many as workable calendars as possible and that from the prosecution perspective, four out of five days is a reasonable expectation for the City's caseload. He notes that there are a total of ten calendars available in a five day work week and that, currently, we use 18 out of 30 possible bench hours. He argues that the objective should be 80% and we should do everything to move towards that goal.

Q. Are some of the Judges still requiring Prosecutors to file Informations earlier in the process than other District Courts?

A. It was agreed upon in late 2004 that prosecutors would no longer be required to file Informations until after the pre trial. The exception to this is at the prosecutors' request on potentially "enhanceable charges" (DUI's, DV's). In those cases prosecutors have asked that an arraignment not be scheduled until the Information is filed so the prosecutors have a chance to review for previous violations. Sim Gill agrees that this issue has been resolved.

Q. Why was it so difficult to resolve that issue? What was the cost to the City taxpayers due to that requirement? Are there other requirements being imposed by the Judges that go beyond other courts? Does the difficulty in resolving that issue and the extensive use of resources caused by it point to a problem with the Court?

A. Presiding Judge Ward has responded to this question by noting that the problem may be better viewed as one of correctly assessing the role of the different branches of government. She argues that it is never appropriate for the executive branch or legislative branch to tell the court how to act when the issue is a core judicial function, as in this case. She said that the previous presiding judge acted on an interpretation of law which was supported by the Administrative Office of the Courts, in regards to when a formal Information must be filed. She further noted that this issue provides an example of the criticisms made of municipal courts, and the basis for some of the reforms attempted in last year's legislative session. When a court acts to give a purely legal interpretation on an issue, and one party disagrees with that interpretation, then that party may take an appeal, but should not, under the doctrine of separation of powers, ever retaliate against the separate branch of government. As the recent dialogue in this state demonstrated, when an executive branch agency is allowed to control court functions then public perception and confidence in the legal system can be severely compromised.

Judge Ward cites an example of a current concern raised by the prosecutor which she argues exposes this continuing conflict: the City prosecutor objects to having to file amended Informations in which the government changes the substantive offenses a defendant faces within a certain amount of time before trial, or having to mail or serve such pleadings on the defendants who are affected. She argues that this may be viewed by the prosecutor as "overly formal" but is viewed by the defendants as giving *actual notice of the charges one faces*, a fundamental right of due process.

Sim Gill comments that the requirement to file Informations at the beginning of the process did impose a systemic impact on the prosecutors office but he cannot attach a specific cost.

With regard to the question of whether there are additional requirements being imposed that go beyond other courts, he argues that the Justice Court requires that additional information is required on probable cause statements for warrants not required by the District Court, such as providing information on how the defendant was identified as the perpetrator of the offense. Prosecutor Gill argues that the Court should avoid unnecessary motions and require more specificity in the motions filed before it and that the current motion and historical motion practice in our Justice Court has been significantly higher than his experience in District Court. He argues that we need to focus on substantive issues where actual prejudice denies due process to the defendant and avoid "excessive formalism," for example, the ability to amend Informations down without having to beg leave from the Court. The Court's response is that the government may file whatever charges it wishes, but it must always give notice within applicable legal standards.

He added that, in his opinion, the Justice Court needs to consistently control its calendars and apply the rulings that have been given in District Court, and further that the Court needs to control defense counsels' motions and have cutoff dates so that cases don't languish without any action being taken.

In response to the question, "Does the difficulty in resolving that issue and the extensive use of resources caused by it point to a problem with the Court," he responds that the answer is in the affirmative for the reasons stated above.

Q. Why has the City never followed through on night court, but suggested instead adding new courtrooms?

A. Court Administration responded that the Court does not have enough staff at this time to consider the additional hours night court would require; however, with additional staffing the Court would be able to cover additional hours. A request for additional courtrooms was tied to a potential increase in judges. It should be noted that night court would affect other justice partner resources including private defense attorneys, police officers, prosecutors, and legal defenders. Judges and prosecutors agree with this assessment.

Q. It does not appear that the goal of efficient scheduling for Police Officers is being met.

A. Court scheduling is done by calendars. For example, the Court schedules jury trials, DUI pre-trials and domestic violence cases on specific calendars (times set with a judge). To the extent possible, these calendars are planned to provide the maximum efficiency in the use of police officers as witnesses, but a certain amount of waste is built into the system. For example, an officer may be summoned to be a witness in a trial, come to Court at the appointed time and learn after some time has passed that the defendant has decided to accept a plea at the last minute.

When an off-duty officer is notified to appear in court as a witness, he or she is paid time and a half and allowed 2 hours preparation time and the actual time in court (by union contract). When an on-duty officer is at court, there is not an additional cost to the City. The cost is in lost time in the field. On any given day, as many as 6 officers might be called to court for potential trials. Their time at court could vary from an hour for a dismissal to a full day (or rarely 2 days) for a complete trial.

In many cases, it is not possible to schedule police officers when they are on duty. For example, afternoon shifts and graveyard shifts will not coincide with court appearances. When it is possible to make the choice to schedule on duty, the cost of having the officer off the beat must be weighed against the cost of paying the officer time and a half.

The Police Department does not see a way to schedule officers more efficiently than is done in current practice. The recent audit of the Justice Court conducted for the City Council did not mention the scheduling of police officer witnesses as an issue to be

addressed specifically. However, the Administration continues to pursue any idea for more efficient scheduling of police witnesses. This goal was discussed in the external task force meetings with the Police Department. The Department was looking at new software that would make it possible for the prosecutor to be able to look at an individual officer's schedule while in court and ask the court to schedule accordingly. The Police Department said that software was not yet in place and that they would like to discuss the issue again. The court agreed to this request and will revisit the issue at such time as the software is available.

Sim Gill made the suggestion that one way to improve the use of police officers' time is to schedule all jury trials on, for example, Tuesdays and Thursdays. Four judges would have jury calendars on those days, for a potential of 8 jury calendars. This would give the police a predictable schedule for training and other court conflicts could be scheduled accordingly. Currently, law enforcement is theoretically on call for juries (the most important setting five days a week).

One problem with this schedule that would have to be overcome is the lack of sufficient space for the large group of potential jurors that would have to be called to fill 4 juries at a time and separate spaces for those jurors to deliberate. Additionally, up to 120 jurors called to the court on only two days per week would pose an enormous difficulty with available public parking near the Court, and would likely impact residents and businesses negatively. Currently the Court has 6 jury trials scheduled a week, scheduled throughout the week, and 3 to 5 bench trials (traffic bench trials are set every other week for two half day sessions). Jury trials are full days and bench trials are half days. The Court has five court rooms with the largest being the arraignment courtroom which can hold close to 100 people. The Court requires a large room to gather potential jurors (between 75 and 120 people). The remodel request in the FY 20078-2009 budget would not be large enough to hold 120 people. The Court would also need an additional jury deliberation room if trials were limited to two days a week. It would also need at least 2 additional bailiffs on the trial days since a bailiff has to be with the jury at all times.

Q. Council Members have had complaints that 'average citizens' have to wait longer if they are not represented by counsel.

A. The Court has worked with their justice partners to try to control the number of cases set on calendars to reduce overall waiting time. In the last customer satisfaction survey (copy of survey to follow) there was only one comment (out of 280 responses) regarding the waiting time. The current procedure is to hear defendants with private attorneys first, followed by any case that is ready to be called next, defendants with Legal Defenders and then defendants without legal counsel.

Judge Ward explains that private attorneys are handled early in the calendar because their costs are higher, and if they must wait in court for two hours for one client and cannot represent other clients concurrently, they will raise fees for each client and spread those high costs throughout the system. The court is not calling the cases of private attorneys first in order to give deference to the attorneys, but in order to keep the attorney costs

down for those defendants who are paying out of pocket for private counsel who need to appear in other courts. In addition, private attorneys will have already met with their attorneys and the attorney will be ready to proceed, while Legal Defenders can and must use the court time to meet with their clients often for the first time. In the meantime, defendants without counsel can be meeting outside the courtroom with a prosecutor and can often reach a plea agreement. The District Court and the Salt Lake County Justice Court also call matters handled by private counsel first to keep attorney costs at a minimum.

Sim Gill confirms that courtrooms are packed and private attorneys and legal defenders fight to the head of the line. The reality is that someone will be last. Increased resources to create new calendars would help by reducing the numbers of matters set on a calendar. This is a resource challenge.

Q. Is there an issue with one or some of the judges not accepting some type of evidence in drunk driving cases that is accepted by other courts?

A. Sim Gill responds that the current DUI motions are over 2 ½ years old and have involved more than 40 appeals and the expenditure of an excessive amount of resources by the prosecution. He argues that there are judges who have narrowly interpreted rules of evidence in DUI cases (not done in the District Court) and that this continues to impact the ability to prosecute DUI cases. He adds that he believes the Court needs to follow precedent more closely and avoid arguing novel theories of law, because as a court not of record this creates a significant problem (no record of evidence or arguments) and begs to be taken up to the District Court. He argues that, overall, Justice Court judges are more restrictive than District Court judges.

Judge Ward notes the doctrine of separation of powers limits the scope of inquiry that the executive branch of government may give to purely legal decisions. Where prosecutors disagree with a legal ruling, they have rights of appeal. Inasmuch as prosecutors contend that these DUI trial issues involved our judges acting incorrectly, every defendant who raised these issues alleged a government act denied them due process, the most important lodestar of our fundamental freedoms. The fact that our judges disagree with prosecutors' legal interpretations, or even if a ruling is overturned in no way disparages the Court, but in fact demonstrates that the Salt Lake City Justice Court is independent, as certainly its citizens should expect it to be.

Judge Ward notes that the nature of the Court's role as independent and neutral requires it to limit responses and the Council is asked to consider that this Court has declined to raise in defense every issue on which the prosecution lost on appeal. Certain issues fall fully within the purview of the judicial branch, and may not be reasonably challenged except in the context of that system.

Presiding Judge Ward asks that on this issue and those of reviewing individual legal decisions, Council members remember the outside measures of the Justice Court's reputation, the customer service survey questions answered by members of the bar (copy

of survey to follow), and the lack of Judicial Conduct Commission findings against our judges. The Council is asked to note that if this Court truly functioned in a highly questionable fashion, more than one source would reveal that view, and that is not the present situation.

Q. Do judges spend time writing opinions and is this reasonable given the nature of the Justice Court?

A. Presiding Judge Ward notes that very few cases result in written opinions and that a decision to issue a written opinion is a purely judicial function and is outside the purview of executive or legislative branch review.

Q. Are their processes or approaches that are making our City's Justice Court more cumbersome than courts in other cities?

A. No. Presiding Judge Ward makes the point that in a court “not of record” it seems incumbent on all parties that a file be complete, and this court has therefore required that pleadings be complete and filed correctly, with certificates of service to show notice was given to all parties.

Q. What are the concerns of the Police and Prosecutors? Is there a way to address them with the Judges? It appears that some of the issues are not or cannot be addressed.

A. Court management notes that it has scheduled monthly meeting with the Police Department and prosecutor and is open to any concerns they may have, but that they have to bring those concerns to the attention of Court management and attend the meetings if a problem is to be addressed. Prosecutors have not been attending these meetings.

Sim Gill concurs and notes that the police should also be contacted at the rank and file level.

Q. System issues -- court of record, civil jurisdiction

A. The significance of a justice court not being a court of record is that when cases are appealed, the case starts over (de novo) as if no previous trial had been held. This requires City prosecutors to try the case again. The question to consider is the seriousness of this claim on City resources given the total number of case appealed. Last year, of 14,107 criminal cases, only 189 were appealed, and of 40,343 traffic cases, only 13 were appealed within one year.

An additional system issue is that a justice court does not have the authority to issue injunctions in civil cases. This issue is thoroughly discussed in Kay Christensen’s report. Judge Ward notes that the court has given customized sentencing in nuisance cases, such as banning family members from affected homes and sentencing absentee owners to be at an affected property.

City Attorney Ed Rutan notes that use of the Justice Court's "small claims" jurisdiction to enforce monetary fines in public nuisance cases may provide an enforcement benefit not anticipated at the time that the Justice Court was created and moreover, that recent experience with injunction actions in Third District Court indicates that the City's public nuisance enforcement efforts have not been hampered by the lack of an injunction remedy in the Justice Court.

Q. Would it be more efficient for the Prosecutors to practice in just District Court?

A. Judge Ward wonders why this question focuses solely on the prosecutors rather than on the Court as a whole or the public it serves. She argues that the Court is more accessible in every way excluding public parking to every other recipient of services, and that past audits and surveys so demonstrate. She notes that there are efficiencies for City prosecutors to remain in only one location, and for City witnesses to never have to appear for a second trial, but the number of cases in which this occurs is a scant .37% of our total caseload, 1.3% of criminal and .03% of traffic cases. The total impact affects approximately 200 total cases in a fiscal year, and data indicates that of cases appealed to District Court, by the court's random sampling, only 2 of 25 cases appealed had hearings requiring witnesses to appear, so to say this has a huge impact is incorrect. As noted previously, prosecutors have appealed a number of DUI cases, which are included within this year's appeal numbers, and even so, failed to change the regular percentage of appeals filed, which is always very low. This result is similar to that of every justice court in Utah, which is why, after a two year study, the State intends to keep the system in place. These 200 total cases need to be balanced against the 54,250 for which no additional resources are expended. There are costs, but they should be balanced against the gain to citizens of having speedy trials, to the City of not having District Court judges refuse to give due efforts to City cases, to having judges who will not deny the City's right to present misdemeanor cases.

Sim Gill argues that it would be more efficient for the prosecutors to practice solely in District Court for the previously stated reason that justice courts are not courts of record and that can require some cases to be tried a second time using prosecution resources.

This concludes the list of questions received from the City Council. Some additional information is offered to assist the Council.

Justice Court Performance Survey

The Justice Court Performance Survey has been referenced several times. The positive results are particularly remarkable because going to court is not a welcome experience for anyone. The survey was handed out by Court staff, collected by phone, and blank surveys were left in courtrooms and in the lobby. Hearing officers gave the survey to those whose number ended in a 5 to assure randomness. The survey has been compiled for five years and each year the satisfaction level has increased. The survey questionnaire is below followed by the results:

SALT LAKE CITY JUSTICE COURT
 333 S 200 E, Salt Lake City Utah 84111, 801-535-6300, Fax 801-535-6302

JUSTICE COURT PERFORMANCE SURVEY

Check the box(s) that best describes why you were here today.

<input type="checkbox"/> Arraignment Small Claims	<input type="checkbox"/> Pre-Trial	<input type="checkbox"/> Trial	<input type="checkbox"/>
<input type="checkbox"/> Traffic/Parking Hearing Interpreter	<input type="checkbox"/> Fine Payment	<input type="checkbox"/> Defendant	<input type="checkbox"/>
<input type="checkbox"/> Juror Witness	<input type="checkbox"/> Police Officer	<input type="checkbox"/> Plaintiff	<input type="checkbox"/>
<input type="checkbox"/> Treatment Provider	<input type="checkbox"/> Attorney	<input type="checkbox"/> Other: _____	

Please answer the following questions by circling the point on the scale which best describes your visit here today. The higher the number you circle the truer the statement.

1. The employees of the Justice Court are trained and knowledgeable in the services that you received today.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	
	<i>Strongly Agree</i>			

2. Judges and Court staff are courteous and responsive. All staff show respect to the public and other patrons of the court.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	
	<i>Strongly Agree</i>			

3. The process that you experienced today was efficient.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	
	<i>Strongly Agree</i>			

4. The Justice Court is accessible and easy to use.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	
	<i>Strongly Agree</i>			

5. What can we do to improve service at the Justice Court?

2007 PERFORMANCE SURVEY RESULTS

2007 PERFORMANCE SURVEY RESULTS															
Party	Responses	Question 1					Question 2					Question 3			
		1	2	3	4	5	1	2	3	4	5	1	2	3	
Arrestment	3	0	0	0	3	0	0	1	1	0	1	0	0	1	
Pre-Trial	14	1	0	0	4	9	2	0	0	6	7	3	1	0	
Trial	7	1	0	0	2	4	0	0	0	2	5	0	0	2	
Small Claims	5	0	0	0	2	3	0	0	0	2	3	0	0	1	
Traffic/Parking Hearing	151	5	1	10	40	95	5	1	12	38	94	6	3	8	
Fine Payment	29	0	0	1	4	24	1	0	1	6	21	1	1	2	
Defendant	5	0	0	1	2	2	0	0	0	2	3	0	0	0	
Interpreter	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Juror	26	0	0	0	12	14	0	0	0	6	20	0	0	4	
Police Officer	5	0	0	0	1	4	0	0	0	3	2	0	1	0	
Plaintiff	1	0	0	0	0	1	0	0	0	1	0	0	0	0	
Witness	2	0	0	1	0	1	0	0	0	1	1	0	0	1	
Treatment Provider	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Attorney	5	0	0	1	0	4	0	0	1	1	3	0	0	1	
Other	27	0	0	0	11	16	0	1	1	9	16	0	0	0	
Total Score per Response		7	2	42	324	885	8	6	48	308	880	10	12	60	
Total Score per Question		1260					1250					1217			
Total Respondents		280					214					214			
Total Valid Responses		280					280					279			
Average		4.5					4.46					4.36			
Total Resps. Dissatisfied		22					27					36			
Total Respondents Satisfied		258					253					252			
Percentage Satisfied		92%					90%					90%			
Total Percentage Satisfied		87%													

Justice Court Case Clearance Rates

Criminal Case Clearance Rates:

Time period: March 2005 through February 2006

<u>Cases filed</u>	<u>Cases Disposed</u>	<u>Warrants</u>	<u>Clearance Rate</u>
15,990	12,814	10,660	147%

Traffic Case Clearance Rates:

Time period: March 2005 through February 2006

<u>Cases filed</u>	<u>Cases Disposed</u>	<u>Warrants</u>	<u>Clearance Rate</u>
44,874	48,848	5,943	122%

Parking Ticket Clearance Rates:

Time period: March 2005 through February 2006

<u>Tickets Filed</u>	<u>Tickets Dismissed</u>	<u>Tickets Paid</u>	<u>Judgment Entered</u>
128,633	26,792	123,121	4478

Clearance Rate: 120%

Most Recent Clearance Rates

Clearance rates for traffic cases:

Fiscal year 07/08 Clearance Rates Traffic Cases

	Cases Filed	Cases Cleared	Warrants	Clearance Rate	
July	3129	3506	487		128%
August	4540	8271	942		203%
September	2855	3728	606		152%
October	2941	3310	738		138%
November	3710	4272	860		138%
December	3618	3252	711		110%
January	4469	3923	830		106%
February	3543	4501	650		145%
March	3547	5614	780		180%
April	4318	4365	668		117%
May				#DIV/0!	
June				#DIV/0!	
Total for year	36670	44742	7272		142%

Fiscal year 07/08 Clearance Rates Criminal Cases

	Cases Filed	Cases Cleared	Warrants	Clearance Rate	
July	1587	1318	1067		150%
August	1351	1412	1561		220%
September	1395	1390	1347		196%
October	1308	1538	1621		242%
November	1350	1194	1829		224%
December	1051	1438	1437		274%
January	1081	1361	834		203%
February	1104	1437	1290		247%
March	1416	2657	1916		323%
April	1265	2023	1325		265%
May				#DIV/0!	
June				#DIV/0!	
Total for year	12908	15768	14227		232%

Fiscal year 07/08 Clearance Rates Small Claims

	Cases Filed	Cases Cleared	Clearance Rate
July	485	327	67%
August	784	519	66%
September	713	1034	145%
October	689	744	108%
November	529	1008	191%
December	588	497	85%
January	767	564	74%
February	513	524	102%
March	556	571	103%
April	649	732	113%
May			#DIV/0!
June			#DIV/0!
Total for year	6273	6520	104%

Appeals filed in District Court from July 2007 through May 2008

The total appeals filed in F/Y 08 (including May) are 189 criminal cases and 13 traffic cases. Year to date cases filed are 40,343 traffic cases and 14,107 criminal cases. The criminal appeal rate is 1.3% and traffic appeal rate is .03%

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May
Criminal	24	27	19	17	17	18	22	11	11	11	12
Traffic	0	2	0	1	2	4	0	0	4	0	0

Time to Disposition

The following chart shows a significant decrease in the time to deposition.

	2005	2006	2007	2008
Disposition Rate/Pre-Disposition	74 days	72 days	49 days	
Time to Disposition				
30 days or less	47%	50%	66%	
60 days or less	60%	65%	76%	
90 days or less	71%	73%	86%	
Sample Size	454 cases out of 6817	300 out of 10,530	377 out of 15,570	

Issues Regarding Justice Court Dissolution

The City Council is considering whether the City should begin the process of dissolution of the Justice Court. On September 25, 2007, the Council received a memo written by Laura Kirwan outlining the process for dissolution of the Justice Court. The memo concludes that, if the City chose to dissolve the Justice Court, it is likely the City's Class B and C Misdemeanor cases and Infractions would fall to the Third District Court and, therefore, it would be necessary for the City to obtain legislative approval to dissolve the Court.

This memo was written prior to legislative action in the 2007-2008 Legislature which amended UCA 78A-5-02 (effective January 1, 2009). The relevant portion is in bold below. While the wording is not entirely clear, the Administrative Office of the Courts is very clear regarding the intent of the amendment. As an addition to the phrase, "has not formed." the legislation added the words "or formed and then dissolved, a justice court." In a conversation with Dan Becker, State Court Administrator, Kay Christensen was told that the Administrative Office of the Courts (AOC) is firm in the position that Salt Lake City's cases would not go to the District Court.

If the City wishes to dissolve the Court and sends the required notice by July 1 to the Judicial Council (the Administrative Office of the Courts is the administrative arm of the Council), it is likely the response will be that notice should also be sent to the County since that is where, in the opinion of the AOC, the cases will fall.

If the City's cases were to go to the County Justice Court, City prosecutors would have to appear in Third District Court on appeals and in the County Court which at this time is in the County Complex on 2100 South (although that space would not accommodate the increased caseload). It should also be noted that **the** statutory language defining the County Court's territorial jurisdiction has not changed and just because the Third District Court doesn't want our cases, does not necessarily mean the County is going to passively accept them.

This brief notation on the new legislative development affecting dissolution is not a legal opinion and is not intended to raise all the relevant issues that must be considered, but merely to make the point that the City cannot make the decision in the belief that the City's cases will go to the District Court.

78A-5-102 (Effective 01/01/09). Jurisdiction -- Appeals.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(4) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(5) The district court has appellate jurisdiction over judgments and orders of the justice court as outlined in Section **78A-7-118** and small claims appeals filed pursuant to Section **78A-8-106**.

(6) Appeals from the final orders, judgments, and decrees of the district court are under Sections **78A-3-102** and **78A-4-103**.

(7) The district court has jurisdiction to review:

(a) agency adjudicative proceedings as set forth in Title 63G, Chapter 4, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings; and

(b) municipal administrative proceedings in accordance with Section **10-3-703.7**.

(8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

(a) there is no justice court with territorial jurisdiction;

(b) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed, or formed and then dissolved, a justice court; or

(c) they are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

(9) If the district court has subject matter jurisdiction pursuant to Subsection (5) or (8), it also has jurisdiction over offenses listed in Section **78A-7-106** even if those offenses are committed by a person 16 years of age or older.

(10) The district court has jurisdiction of actions under Title 78B, Chapter 7, Part 2, Child Protective Orders, if the juvenile court transfers the case to the district court.

Amended by Chapter 115, 2008 General Session

Amended by Chapter 93, 2008 General Session

Renumbered and Amended by Chapter 3, 2008 General Session

From: Christensen, Kay

To: Gust-Jenson, Cindy

Sent: Tue Jun 03 12:15:04 2008

Subject: FW: Court Survey

Cindy, this is a survey the Court has done for the last five years. Could we share this with the Council for tonight? Kay

From: Johnston, Mary

Sent: Tuesday, June 03, 2008 10:54 AM

To: Christensen, Kay

Cc: Fawcett, Steve; Graves, Marian; Sundbeck, Claudia; Nez, Sharon

Subject: Court Survey

Hi Kay,

I have attached a copy of the actual survey and the summary of the results. These were given out by staff, some were collected over the phone, and we had blank ones available in all of the court rooms and in the lobby. In the case of the hearing officers, they would give a survey to anyone whose number ended in a 5 so we could make sure we were not just giving it to the "happy customers". This was the fifth year of our survey and each year the satisfaction has increased.

Let me know if you have any questions.

Thanks,
Mary

SALT LAKE CITY JUSTICE COURT
333 S 200 E, Salt Lake City Utah 84111, 801-535-6300, Fax 801-535-6302

JUSTICE COURT PERFORMANCE SURVEY

Check the box(s) that best describes why you were here today.

- | | | | |
|--|---|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Arraignment | <input type="checkbox"/> Pre-Trial | <input type="checkbox"/> Trial | <input type="checkbox"/> Small Claims |
| <input type="checkbox"/> Traffic/Parking Hearing | <input type="checkbox"/> Fine Payment | <input type="checkbox"/> Defendant | <input type="checkbox"/> Interpreter |
| <input type="checkbox"/> Juror | <input type="checkbox"/> Police Officer | <input type="checkbox"/> Plaintiff | <input type="checkbox"/> Witness |
| <input type="checkbox"/> Treatment Provider | <input type="checkbox"/> Attorney | <input type="checkbox"/> Other: _____ | |

Please answer the following questions by circling the point on the scale which best describes your visit here today. The higher the number you circle the truer the statement.

1. The employees of the Justice Court are trained and knowledgeable in the services that you received today.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

2. Judges and Court staff are courteous and responsive. All staff show respect to the public and other patrons of the court.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

3. The process that you experienced today was efficient.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

4. The Justice Court is accessible and easy to use.

1	2	3	4	5
<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>

5. What can we do to improve service at the Justice Court? _____

JUN 05 2008

SALT LAKE LEGAL DEFENDER ASSOCIATION

Established in 1965

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Chair

D. Gilbert Athay

Vice Chair

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June 5, 2008

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Salt Lake City Council
Hand-delivered
Salt Lake City, UT 84111-3102


RE: Salt Lake City Justice Courts

Dear Ms. Love:

The Salt Lake Legal Defender Association has been contacted by the Presiding Judge, Virginia Ward, of the Salt Lake City Justice Court and requested to comment on our experience with that court. Judge Ward is aware that while this office has consistently favored courts of record, that our experience with Salt Lake City Justice Court has been an open and constructive working relationship. Based upon all of the justice courts that this office has appeared before and had dealings with, we find that the Salt Lake City Justice Court is truly interested in providing justice for all individuals who appear before it. Salt Lake City Justice Court does not forsake the interest of the citizens of Salt Lake City and the fundamental requirements of justice in the handling of its matters. We have also seen a substantial improvement in the expeditious handling of cases over the years the Court has been in operation.

I hope that this information will be helpful in your assessment of the Salt Lake City Justice Court.

Sincerely,



Patrick L. Anderson, Assistant Director
Salt Lake Legal Defender Association

cc: Virginia Ward, Presiding Judge

MEMORANDUM

DATE: May 30, 2008

TO: City Council Members

FROM: Sylvia Richards, Research & Policy Analyst

SUBJECT: Justice Court Policy Discussion

CC: David Everitt, Lyn Creswell, Ed Rutan, Steve Fawcett, Judge Virginia Ward, Mary Johnston, Marian Graves, Claudia Sundbeck, Kay Christensen, Gina Chamness

Some Council Members have inquired regarding the possibility of giving notice to the State that City would like to discontinue Justice Court services. The Administration indicates that because the Justice Court's caseload would fall to the district court, the Legislature would have to approve the dissolution, and the notice must be given by July 1st two years prior to the general session of the legislative session in which the City would seek dissolution. The Judicial Council can choose to shorten the time from notice to dissolution, but not the requirement to make the notice with the two year time frame in mind.

The State Statute outlining the dissolution of justice courts has been provided below:

78-5-140. Dissolution of justice courts.

(1) (a) The county or municipality shall obtain legislative approval to dissolve a justice court if the caseload from that court would fall to the district court upon dissolution.

(b) To obtain approval of the Legislature, the governing authority of the municipality or county shall petition the Legislature to adopt a joint resolution to approve the dissolution.

(c) The municipality or county shall provide notice to the Judicial Council.

(d) Notice of intent to dissolve a Class I or Class II justice court to the Judicial Council shall be given not later than July 1 two years prior to the general session in which the county or municipality intends to seek legislative approval.

(e) Notice of intent to dissolve a Class III or Class IV justice court to the Judicial Council shall be given not later than July 1 immediately prior to the general session in which the county or municipality intends to seek legislative approval.

(2) (a) A county or municipality shall give notice of intent to dissolve a justice court to the Judicial Council if the caseload of that court would fall to the county justice court. A municipality shall also give notice to the county of its intent to dissolve a justice court.

(b) Notice of intent to dissolve a Class I or Class II court shall be given by July 1 at least two years prior to the effective date of the dissolution.

(c) Notice of intent to dissolve a Class III or Class IV court shall be given by July 1 at least one year prior to the effective date of the dissolution.

(3) Upon request from a municipality or county seeking to dissolve a justice court, the Judicial Council may shorten the time required between the city's or county's notice of intent to dissolve a justice court and the effective date of the dissolution.

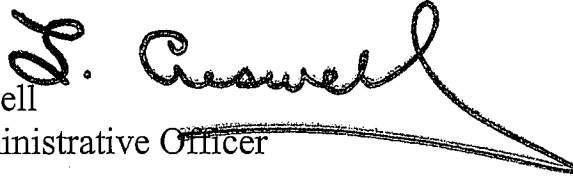
Enacted by Chapter 313, 1998 General Session

The Administration's review of the Justice Court and related functions has been attached for Council Members' reference.

COUNCIL TRANSMITTAL

TO:

Lyn Creswell
Chief Administrative Officer



FROM:

Kay Christensen

SUBJECT:

Salt Lake City Justice System Review

CONTACT:

Kay Christensen
535-7677

DOCUMENT TYPE: A review of Salt Lake City's Justice Court and related functions

BACKGROUND/DISCUSSION: This information is being submitted to the City Council by the Administration to provide a comprehensive review of the City's Justice Court, apart from budget requests or other requests for Council action.

This study reviews the City Council's intent in establishing the Justice Court and how well that intent has been realized. It also examines the internal and external constraints that might prevent or inhibit the Court's ability to meet those objectives.

This study includes a review of the role of the Court and the limitations placed on it by law that cannot be altered by the City without State legislative action. It also includes a look at Court procedures that are under the control of the City to determine if the Court is being utilized by the City to its maximum capacity for enforcement purposes. The City has many enforcement tools, civil and criminal. Our task is to use the correct tool in each situation. The Administration is currently examining the City's civil enforcement processes and relevant State statutes and City ordinances. That ongoing examination has raised numerous issues which may be the subject of subsequent submissions to the City Council. This document may serve to provide at least some of the information necessary to further that analysis.

SALT LAKE CITY JUSTICE SYSTEM REVIEW

I. PURPOSE AND SCOPE OF ANALYSIS

Salt Lake City recently completed an audit of the City's Justice Court. The audit made several recommendations for improving the operation of the Court. One finding of the audit was that the Court operated with a workload significantly higher than other courts. However, the audit firm recommended that, before any staffing adjustments are made, a weighted case study should be conducted. That study was concluded in April 2007 and the conclusion was that there is an imbalance between judicial workload and the staff required to meet the workload at an appropriate level of service. Recognizing the constraints of budget and space, the project team recommended the phased in addition of at least eight staff positions and at least one additional judge. It was that recommendation that triggered this review. It should be made clear at the outset that it is not now nor has it ever been the City's intent to link an increase in revenue to the prosecution of justice and that is not the purpose of this paper.

The City Council has exhibited a reluctance to increase Justice Court funding and a degree of skepticism about the efficiency and effectiveness of the Court. The Administration determined that those concerns had not been alleviated by the audit or the weighted case study. Interviews with individual Council members revealed that the core concern goes directly to the "original intent" of the Council in creating the Court and how well the Court is meeting the policy objectives that led to its creation. This study will review the City Council's intent in establishing the Court and how well that intent has been realized. It will also examine the internal and external constraints that might prevent or inhibit the Court's ability to meet those objectives.

The Justice Court is a central component of the City's justice system, but it cannot be studied in a vacuum. It is impacted by virtually every other component of the system including police enforcement, criminal prosecution, criminal defense, budgetary support and the passage of ordinances by the City Council. It is also affected from the outside by State statutes and legislative action.

This review will raise numerous policy level issues that must be addressed by the Administration and the City Council. For example, the

Administration is currently examining the City's civil enforcement processes and relevant State statutes and City ordinances. That ongoing examination has raised numerous issues which will be the subject of subsequent submissions to the City Council.

II. UNDERSTANDING THE JUSTICE COURT

A. Background

Thirty years ago, Salt Lake City had a city court that was a court "of record." Appeals were to the Third District Court on the factual record (the District Court decision was final, except on constitutional challenges which could, just as now, be appealed to the Supreme Court). In the mid 1970s, the Legislature created the circuit court to replace city courts, made the city court judges Utah State employees, but left support staff and courtrooms as the responsibility of the city. A few years later, the State also took over responsibility for staff support and courtrooms. These actions were funded out of a formula for splitting fines and forfeitures. The circuit court was a court of limited jurisdiction, but it remained a court of record and it had complete appellate review. The circuit court eliminated the city court. After some period of adjustment, the system seemed to work quite well through the 1980's.

In the 1990's, the Administrative Office of the Courts developed a plan to consolidate the courts into a new central building (the Scott M. Matheson Courthouse) and subsequently, in April 1998, full consolidation was implemented, the circuit court was eliminated and all cases were handled by the Third District Court. Some of the senior judges objected to handling the former circuit court misdemeanor cases and were excused from that duty. Some of the judges who did handle the cases often did not view them as significant. During the mid 90's, tensions grew between the City and the Administrative Office of the Courts as the City "quality of life" cases appeared to be marginalized. The City considered establishing a justice court to handle misdemeanor cases, but instead negotiated a Memorandum of Understanding with the Administrative Office of the Courts that contained commitments to make improvements in court services to the City. The justice court initiative was tabled.

The Salt Lake City Zoning Ordinance was revised by the City Council on April 12, 1995, allowing civil penalties (fines) for zoning violations.

Each day of violation was considered a separate offense with a separate penalty.

In September 1999, the City Council authorized the City to start an administrative court to handle traffic violations and some other civil ordinance violations. Under UCA 10-3-73 municipalities had the option to decriminalize their ordinances. The Court became effective in December 1999 and operated through the Treasurer's Office. The administrative enforcement program was intended to provide a less intimidating atmosphere and better service for people who were charged with violating City traffic laws. This allowed the City to retain all of the revenue generated by the traffic fines after surcharges were paid. Cases could be brought to either a hearing officer on a walk-in basis, or an administrative law judge, with trials scheduled within four or five weeks. Judge Zane Gill was appointed by Mayor Anderson as the Administrative Law Judge in March of 2000.

In the 2000 session, the Utah State Legislature passed Senate Bill 240 that prohibited the decriminalization of traffic offenses. Salt Lake City and West Valley City already had decriminalized traffic programs in place and, therefore, were allowed to continue their programs until the Legislature made a final determination about how to deal with municipalities that had already established administrative courts. The bill created a task force to study the programs and make recommendations. It also required Salt Lake City to pay the State \$504,700 in FY 2000-01 and \$580,400 in FY 2001-02 to offset the State's loss of revenue from City traffic violations. Subsequently, in March, 2003, legislation became effective that amended UCA 10-3-73 and took away the right of all municipalities to decriminalize their traffic ordinances. The Legislature was motivated, in part, by the desire to take back some of the revenue that was lost by the decriminalization and to avoid a checkerboard enforcement where in one city the same offense was criminal and in another civil.

In light of these developments, several cities decided to create their own justice courts and take back their case loads. Salt Lake City came to the same decision. On June 29, 2000, the City Council adopted a resolution on a 5-2 vote giving notice to the State of the intent to establish a justice court.

Prior to this decision, the City Council had numerous discussions about the pros and cons of creating a justice court. The Administration and

several Council members expressed the opinion that Third District Court judges were not taking City misdemeanor cases seriously and that with a City court, misdemeanor cases would not be diluted by felony and large civil cases. Council members wanted more attention paid to neighborhood “quality of life” cases. Council members wanted more accountability and more control.

In reaching the decision to create a Justice Court, the Administration and the City Council considered the following factors:

1. Justice court judges would be more familiar with the needs of the local community than are district court judges.
2. Justice court could better address the “quality of life” cases such as nuisance and zoning cases than the district court.
3. Justice court could do a better job imposing and collecting fines.
4. Through the justice court, the City could enhance public safety by instituting creative community justice programs such as a housing court (this initiative later became known as restorative justice and took the form of misdemeanor drug court, victim restitution, domestic violence court, etc.).
5. The City could better address court delays.
6. The justice court could possibly schedule police officer appearances more efficiently to allow officers to be on the beat rather than waiting in court and could more effectively manage other public resources as well.
7. City prosecutors could function more efficiently without the need to coordinate schedules with the district court.

In a later section of this paper, I will consider whether the Council’s expectations have been met and to what degree the expectations could be met by a justice court.

B. How the Justice Court Works-Ten Things to Know About the Salt Lake City Justice Court

1. Justice court jurisdiction

The Salt Lake City Justice Court began service On July 1, 2002 with jurisdiction over Class B and C misdemeanors, ordinance violations

and infractions occurring within the boundaries of Salt Lake City, regardless of the law enforcement agency involved (and sharing small claims jurisdiction with the District Court). Felonies and Class A misdemeanors fall under the jurisdiction of the district court. Jurisdiction of justice courts is set by Utah State Code:

78-5-104. Jurisdiction.

(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction, except those offenses over which the juvenile court has exclusive jurisdiction.

(2) Justice courts have jurisdiction of small claims cases under Title 78, Chapter 6, Small Claims Courts, if the defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

Justice court jurisdiction is further explained by Salt Lake City Ordinance:

2.84.060 Jurisdiction and Authority:

The justice court shall have jurisdiction over all matters as provided by law and state statute, including, but not limited to, jurisdiction and authority provided under Utah Code Annotated sections 78-5-104, 78-5-105, and 78-5-106, or their successors. In accordance with said jurisdiction, the justice court may hear civil violations of Salt Lake City ordinances, including, but not limited to, those civil violations which have been designated as civil penalty matters, having been converted by the city from criminal violations, unless city ordinances provide for a different procedure for handling such violations. Civil penalty matters shall be managed in accordance with simplified rules of procedure and evidence applicable to small claims courts.

There are two factors that limit what a justice court can do- the type of violation and where the violation occurs. These limits are subject matter jurisdiction (the type of violation) and territorial jurisdiction (where the violation occurred). Subject matter jurisdiction refers to the types of cases the court can hear (such as B and C misdemeanors), and territorial jurisdiction is the geographic area in which the case must arise. Salt Lake City Justice Court territorial jurisdiction is limited to the boundaries of the City, but the Court must handle violations occurring within the City boundaries and within their subject matter jurisdiction brought by any law enforcement agency.

The most important fact to understand about justice court jurisdiction that is not apparent from a reading of the laws, is that **justice courts cannot provide equitable relief**. The most important distinction between law and equity is the set of remedies each offers. The most common remedies a court

of law can award are money damages, fines and imprisonment. Equitable relief directs someone either to act or to refrain from acting.

Justice courts, for example, cannot order abatement in a civil nuisance or zoning case. A justice court judge can only order a defendant to clean up their property as a term of their criminal probation, not as a direct sentence. The court can impose and collect fines in civil cases, and can order fines, jail sentences and community service in criminal cases. As a further explanation, justice courts have no jurisdiction over real estate, only over a person. There is no probation involved in civil cases. As a result, justice court is not usually the court of choice in civil nuisance and civil zoning cases where someone must be ordered to act or refrain from acting. The ability of the Court to fulfill this particular expectation is limited by the nature of the Court.

Salt Lake City Code describes the penalties for violation of City ordinances. If an ordinance does not specify the class, it becomes a Class B misdemeanor, by default:

1.12.050 Violation-Penalty:

Any person convicted of violating any provision of the city ordinances codified, shall be guilty of a class B misdemeanor, unless otherwise specified in such ordinance or interpreted by the court as a class C misdemeanor, infraction, or civil violation, and such violations shall be punished as follows:

A. In the case of a class B misdemeanor, by a fine in any sum not exceeding one thousand dollars (\$1,000.00) or by imprisonment for a term not longer than six (6) months, or by both such fine and imprisonment;

B. In the case of a class C misdemeanor, by a fine in any sum not exceeding seven hundred fifty dollars (\$750.00) or by imprisonment for a term not longer than ninety (90) days, or by both such fine and imprisonment;

C. In the case of an infraction, by a fine in any sum not exceeding seven hundred fifty dollars (\$750.00);

D. In the case of a civil penalty violation, by a total assessment not in excess of one thousand dollars (\$1,000.00);

2. Justice courts are not "courts of record"

U.C.A. 78-5-101. Creation of justice court -- Not of record.

Under Article VIII, Section 1, Utah Constitution, there is created a court not of record known as the justice court. The judges of this court are justice court judges.

Court proceedings are not recorded, although there are records kept on case dispositions (minute entries). This can lead to the perception that

the court is not to be respected and can, potentially, lead to comments on the part of a judge, prosecutor or defense attorney that might not be appropriate and would likely not be said in a court of record. Ultimately, the most significant result of the lack of written record is that there is a direct appeal available to any defendant for whatever reason. As a result, a person dissatisfied with a justice court decision, can have a whole new trial at district court (a trial de novo).

3. Justice court appeals are trials de novo

The term “de novo” is Latin and means “beginning again” or “new.” Appeals from the decisions of a justice court are not true appeals, but rather requests for a trial de novo in the district court (a whole new trial). The practical impact of this is that the most important cases (cases where the prosecution or the court may want to hold the person to a significant punishment) are often tried twice. This means that our prosecutors and our police officers have two trials to prepare for and attend instead of just one. For example, in a Driving under the Influence (DUI) case, a defendant could have two motion hearings and two trials as well as a license revocation hearing that would require the testimony of the arresting officer.

In a criminal case, a defendant is entitled to a trial de novo in the district court if the defendant files a notice of appeal within 30 days of sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting in a finding or verdict of guilt, or a plea of guilty in the justice court that is held in abeyance. A plea in abeyance means that the defendant’s guilty plea will not be entered on his or her record pending the defendant satisfactory completion of a mutually agreed upon action or set of actions. As an example, a plea in abeyance in a moving traffic violation case might be an agreement to attend traffic school, a one hour class held three times a week at the Scott Matheson Courthouse with attendance of approximately 10,000 people yearly.

This duplication of resources (witnesses, prosecutors, etc.) is an unavoidable reality of the justice court. It would certainly be preferable if the Salt Lake City Justice Court were a court of record but, as noted above, a change in the Utah State Constitution would be necessary if justice courts are to become courts of record.

Another appeal from the justice court is the “hearing de novo” which was introduced to try and get a hearing on the record for controversial legal matters that may not be settled by the current law. A defendant convicted and sentenced in justice court can have a hearing de novo in the district court on an order revoking probation, an order entering a judgment of guilt pursuant to the person's failure to fulfill the terms of a plea in abeyance agreement and a few other matters. This process, although theoretically enacted to bring consistency to lower courts, nonetheless adds additional process and demand for resources from the prosecution.

Finally, the rulings in Third District Court are not uniform and the judges in Salt Lake City Justice Court have not adopted them as controlling in all similar cases. The prosecution cannot appeal to get clarity from the higher courts unless there is a constitutional issue involved. This lack of meaningful appellate review removes clarity, uniformity and an important check and balance on the rulings of justice court judges on legal issues.

Historically, the percentage of appeals of justice court decisions filed statewide, for any reason, is less than 1% of the total number of cases heard. However, Salt Lake City Justice Court has the largest municipal criminal caseload in the State. It also has one of the finest legal defender organizations in the State as well as a more experienced and available criminal defense Bar. As a result, more cases are appealed (an average of 1.4% a year). For example, in the last year, there have been 225 criminal appeals and 10 traffic appeals to the Third District Court. In these cases, the Salt Lake City Prosecutor’s office must prosecute the case all over again.

4. The Salt Lake City Justice Court **must** handle the State (Salt Lake County District Attorney) infraction and Class B and C misdemeanor cases and **has elected** to prosecute the cases

When Salt Lake City established a justice court, the Court became obligated to adjudicate the State infraction and Class B and C misdemeanor cases that occur within the territorial boundaries of the City. Salt Lake City was not obligated to prosecute the cases, only to process the cases through the Justice Court. If these cases are heard in the Justice Court but prosecuted by the State, through the District Attorney, the City must split the fines and forfeitures (after surcharges) with the State. This also would require a separate calendar in the Justice Court for the State, as well as separate financial accounting of the cases. If the City prosecutes the cases, all of these

issues are avoided. In December 2002, the City Council signed a Memorandum of Understanding with Salt Lake County to allow the City to take over the prosecution of Utah State cases occurring within the territorial jurisdiction of Salt Lake City. As a result, the cases are now adjudicated and prosecuted by the City. This results in approximately 10,000 additional cases a year filed by Utah State agencies, which would include traffic and misdemeanor cases (the majority of the cases are traffic and issued by Utah Highway Patrol). Of this number, approximately 2,500 to 3,000 cases are handled by the prosecutors (the rest are settled without prosecutors involved). While prosecution of the State cases increases the burden on the prosecution, it actually decreases the burden on the Court because it is not required to make a separate accounting or to set up separate calendars for the State cases.

The City Prosecutors also handle City Class A misdemeanor cases at the District Court (Class A misdemeanors are not within the jurisdiction of the Justice Court). This is an optional caseload of approximately 1,000 to 1,500 cases a year. State law (U.C.A. 10-3-928) provides for concurrent jurisdiction for City Prosecutors with the district or county attorney on Class A cases. These are primarily DUI and domestic violence cases. Three prosecutors handle these cases at the District Court at least part of their work day.

The City Prosecutor explains that it is to the City's benefit to prosecute these cases because they are a priority for the City and would fall behind felonies in priority for the District Attorney. For example, a DUI case might be a Class A misdemeanor if it involves injury to another or driving under the influence with a minor in the vehicle. A domestic violence case might be a Class A misdemeanor if the defendant has a prior conviction for domestic violence or violates a protective order. Other Class A misdemeanors Salt Lake City prosecutors might pursue at the Third District Court are assaults on police officers, assaults with bodily injury, prostitution with prior convictions, sex solicitation with prior convictions, theft under \$1,000, some drug cases, and vehicle burglary. In some cases, the charge is increased from a Class B misdemeanor and dropped at the Justice Court so it can be pursued at the District Court as a Class A misdemeanor.

These cases are brought to the City prosecutors by the police. When prosecuted in Third District Court, the City recovers 50% of any fines received, after surcharges are paid.

5. Justice courts are part of the State judicial system, although the Salt Lake City Justice Court is a municipal institution

The State Judicial Council has the responsibility for setting the requirements for the creation of a justice court and for recertifying a justice court every four years if the court continues to meet the requirements for operation.

Justice court judges are subject to operational, training (30 hours a year) and ethical standards created and enforced by the State Court Administrator's Office, the Judicial Conduct Commission, and the Judicial Council. When a justice court judge is appointed by the Mayor and confirmed by the City Council, the name is forwarded to the Judicial Council. The Judicial Council certifies that a judge is qualified to hold office upon successful completion of the orientation program and upon the written opinion of the municipal attorney that the judge meets the statutory qualifications for office. A justice court judge may not perform judicial duties until certified by the Judicial Council. Upon the expiration of a municipal justice court judge's term of office, a municipal justice court judge is required to be reappointed unless there is a good cause showing not to reappoint. In that case the facts are presented at a formal hearing of the City Council and the Council determines by majority vote whether good cause exists not to reappoint the municipal justice court judge. The decision is not subject to appeal.

The authority of justice court judges is set by Utah State Code (78-5-106). Justice court judges have the same authority regarding matters within their jurisdiction as judges of courts of record. They may issue search warrants and warrants of arrest upon a finding of probable cause, and they may determine probable cause for any case within their jurisdiction.

While judges are City employees but also subject to State oversight, the City Court Director is a Division Director in the Department of Management Services and reports directly to the Department Director. Some Court clerks are assigned to support individual judges, but all Court staff members, including cashiers, report directly to the Court Director and are employees of the Management Services Department. The City Prosecutors are employees of the Office of the City Attorney and subject to the management of that Office.

It should be noted that there is another element of management involved with the Justice Court, the Salt Lake Legal Defenders Association. The Association contracts with Salt Lake City Corporation to provide defense to low income defendants who come before the Justice Court. The Court must provide defense in cases where the defendant cannot afford counsel and where the offense is punishable by incarceration. That contract is managed by the Department of Management Services.

This mix of management responsibilities creates a challenge to the City justice system that would not exist if there were a true judicial branch of government, a third branch. This issue was raised by at least one Council member in my interviews, expressing the sense that there was no ownership of the whole process. However, given the nature of the justice court, this divided management system is a reality and the task is to make the various roles, responsibilities and lines of authority as clear and understandable as possible.

6. The Salt Lake City Justice Court caseload

The Salt Lake City Justice Court handles 12% of the overall judicial caseload in Utah and 24% of the DUI cases (averaging 1,543 cases a year).

The Justice Court handles approximately 220,000 cases a year, including parking, civil, criminal and small claims. Many of those cases do not involve prosecutors, defense attorneys or judges (parking tickets, for example), since most will only require handling the ticket and receipt of the fine payment (possibly including time with a hearing officer), and will not require time on a court calendar (see the parking process chart on page 16). In addition, some traffic cases (approximately 10-12,000 a year) are handled without taking court time when the defendant agrees at the beginning of the process to a plea in abeyance. This does require the time of the prosecutor, who must sign the plea, but the cases are not counted as part of the prosecution workload.

Approximately 55,000 of the cases that are filed could require the involvement of the prosecutors, and approximately 5,000 of those cases could also require the assignment of a legal defender. As a rule, an average of 30,000 of these potential prosecutorial cases are settled with the payment

of a fine, leaving approximately 25,000 cases that are calendared in the Justice Court and would require a prosecutor, even if it is just to review and sign or agree to a plea in abeyance agreement, which also requires the agreement or signature of a judge (these cases differ from the traffic plea in abeyance cases mentioned above, because they occur later in the process after they have taken Court time). All of these cases are entered into the Court as well as the prosecution stream.

<u>Justice Court Case Load</u>	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>
Criminal cases filed (non-traffic)	15,870	17,498	15,844	15,263
Traffic tickets logged in	49,735	47,355	45,091	45,551
Parking/Civil ordinance	148,437	165,864	148,574	40,194
Small Claims cases filed	<u>15,907</u>	<u>11,724</u>	<u>9,532</u>	<u>8,243 *</u>
Totals	229,949	242,441	229,041	209,251

*Note: Small claims cases are down because prior to 2004, when traffic cases were not criminal, they were heard in the Small Claims Court, which is the civil arm of the Justice Court. Because traffic cases were criminalized by State law, they can no longer be heard in Small Claims Court.

In addition to the new cases filed each year, the Court has a backlog of cases carried over from the previous year. It is difficult to put a specific number on case backlog because each case is unique and obviously a more serious offense may take longer to resolve than a minor offense. One measure the Court uses is "time to disposition," and the Court strives to improve that number. The Court expects that measures undertaken as a result of the work of the external task force will result in improvements not reflected in the numbers below. The chart reveals that 25% of the cases are taking over 90 days to reach a disposition (the American Bar Association standard for misdemeanor cases is 100% within 90 days). A handful of cases have been ongoing for more than a year and a half and a few as long as three years.

Salt Lake City Justice Court Disposition Rates

	2005	2006
30 days or less	47%	50%
60 days or less	60%	65%
90 days or less	71%	73%

In addition to backlogged cases, there are also cases that are considered “stale” because a warrant has been issued and the defendant has not been in Court for various reasons (cases out on warrant are not considered part of the “backlog”).” This spring, the Court began a new plan to deal with these “stale” cases. The Court sent the Prosecutors Office a list of cases with outstanding warrants two years or older and ask them to determine if they wished to reissue the warrants or dismiss them. The list included the date and description of the charge and the severity of the charge (there could be multiple charges with a single case).

The Court sent approximately 2,000 traffic cases and 5,000 criminal cases. The Prosecutors dismissed about 80% of the traffic and 70% of the criminal cases. The Court plans to submit such a list to the Prosecutors twice a year, and if resources permit, quarterly. The Court and the Prosecutors are making a serious effort to deal with the backlog of cases and are willing to dismiss those cases that have little or no chance of being prosecuted.

7. The Justice Court schedule is organized in calendars

The court time of judges is organized by calendars. This schedule also drives the schedule of prosecutors, police officers and legal defenders. Calendars are simply set times for a certain type of case to be heard. Calendars are set several months in advance to allow for the maximum use of time and available space. Several issues limit what calendars can be set and when. There are 5 courtrooms, but one must be available, as described later, for jurors to gather. Courtroom space is one limitation on how quickly and efficiently cases can be adjudicated.

Types of calendars include arraignments, traffic pre-trial conferences, DUI pre-trial conferences, general pre-trial conferences, domestic violence reviews, court alternative treatment reviews, bench warrant and motion sessions, bench trials, jury trials and homeless court.

Court management sets two juries a day on one day a week and a single jury setting on the other four days. A judge cannot be scheduled for two or three jury trials in a row because of prosecutor and legal defender resources. A jury calendar is much easier for the court to manage than for the attorneys because a jury calendar is much smaller than, for example, a

pre-trial setting that will have as many as 40-70 defendants, takes less time to pull the records, only requires one clerk (in addition to the jury clerk), and that clerk can actually update other cases while sitting in the jury trial. Both the defense and prosecution have to have time to prepare for the cases, including interviewing witnesses, reviewing police case reports, making sure subpoenas were sent out and all the proper paperwork has been filed. If the prosecution and defense don't have at least half a day to prepare before the trial, the case may have to be continued, adding to the backlog. In consideration of the prosecutors and legal defenders, jury trials are set with at least half of the day previous to a jury trial open for preparation.

Prosecutors assign two attorneys to each judge which allows for vertical prosecution (the same prosecutor throughout the life of the case) and gives consistency to the court hearings. Prosecutors actually use a hybrid of vertical and horizontal prosecution (various prosecutors involved with a case). For example, two attorneys are assigned to one judge. The caseload is vertical as to the two attorneys and the one judge but it is also horizontal because the two attorneys share the same caseload. The caseload is also horizontal with respect to screening. The screening attorneys do not necessarily handle the cases they screen.

Legal defenders do not have enough attorneys to cover five judges in five courtrooms consistently, but they are not appointed in every case (on occasion, they use legal defenders assigned to the county or to the district court when they are available).

In addition, calendars are limited by the number of clerks available to pull files, manage cases and answer phones.

In summary, expansion of the number of calendar settings is limited first by a lack of clerk resources, and second by prosecutor resources. An increase of these resources should permit an increase in the number of calendars. Currently, the court calendars only 60% of available space at any given time.

8. The Justice Court has specific processes established for each type of case

There are four basic types of cases processed through the Justice Court: parking, traffic, criminal and small claims/civil. The vast majority of

parking, traffic and criminal cases begin with the receipt of a citation (at least 98%).

For example, when someone receives a ticket for speeding, the agency that issues the ticket must, by law, forward a copy to the court within 5 days. Once received, the ticket is entered into the system (in the majority of cases this happens as a "computer download" from the police case management system) and a physical file is created (approximately 60 a day). When the physical ticket and/or an Information is received from the prosecutor, the clerk must sign and swear to each one, enter that the Court has received the citation, scan the documents, and place them in the file. An Information lists the offense for which the defendant is being prosecuted and describes the offense in sufficient terms that the defendant can understand the charge. An Information may contain a statement of facts sufficient to make out probable cause to sustain the offense charged.

The defendant is then sent a courtesy bail notice identifying the amount necessary to close the case or notification that it will be necessary to appear in court (within 14 days). Some cases involve a mandatory appearance. If the defendant chooses to contest the issue, an arraignment will be scheduled. This is the formal time in court when the defendant will plead guilty or not guilty and ask for a trial. The traffic process chart on page 17 shows the various outcomes at that point.

One or two days before the arraignment, a clerk prints out the dockets (lists of cases scheduled), which should have all cases that have been set for arraignment on that specific date and time (approximately 100 to 150 cases a day). A clerk pulls all the files and reviews to verify that all documents are in the file. In the case of an enhanceable charge (in DUI and domestic violence cases only, a Class B misdemeanor could be upgraded to a Class A), the clerk verifies that the prosecutor's office has filed an Information. If there is not an Information (list of charges) in the file as required, the arraignment is cancelled (at the request of the prosecutor). The clerk prints out case histories and minute entries (case information on a form the judge will use to write the order) and attaches them to each file.

At the arraignment, the clerk will take roll call to see who has appeared and who has not. At the end of the calendar, all failure to appear files (approximately 40% of the cases requiring an appearance) are given to the judge who will review and make an order. If there is a signed document

(ticket, summons) indicating that the defendant was notified of the time and place of their hearing, the judge will enter an order, such as a bench warrant, or a failure to appear notice. If there is no written confirmation that the defendant was notified of their hearing date, the prosecutor will receive a copy of the minute entry and notification to the office that they need to prepare a probable cause statement or a summons. The files are then returned to the clerk who will update the order into the case management system, send the paperwork to the proper party, and then place the cases back in the files.

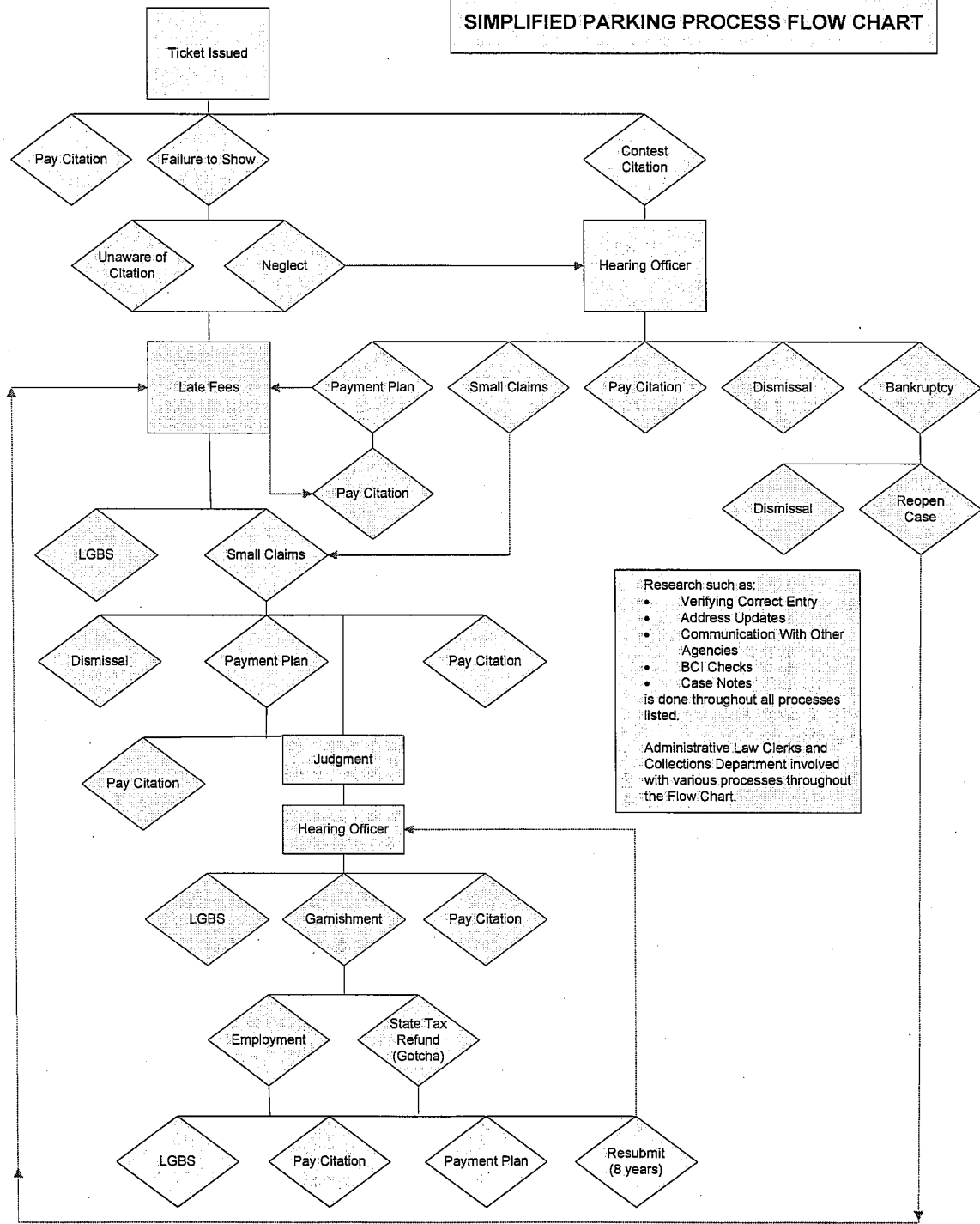
Some cases, such as a domestic violence case, may begin when screened by the City Prosecutor. For example, the police may investigate a domestic violence case and bring their report directly to the City Prosecutor. The Prosecutor will determine if an Information should be filed. If an Information is filed, the defendant will be notified by a summons to appear in court for arraignment. The City Prosecutor will file an Information even when a citation has been issued if they intend to pursue the charge or if they believe the charge should be enhanced. Pre-trial hearings and trials are held just as they are in district court, following the Rules of Criminal Procedure, except that juries consist of only four members and no record of the proceedings is kept. The chart on page 18 shows the process in a criminal proceeding and the various outcomes.

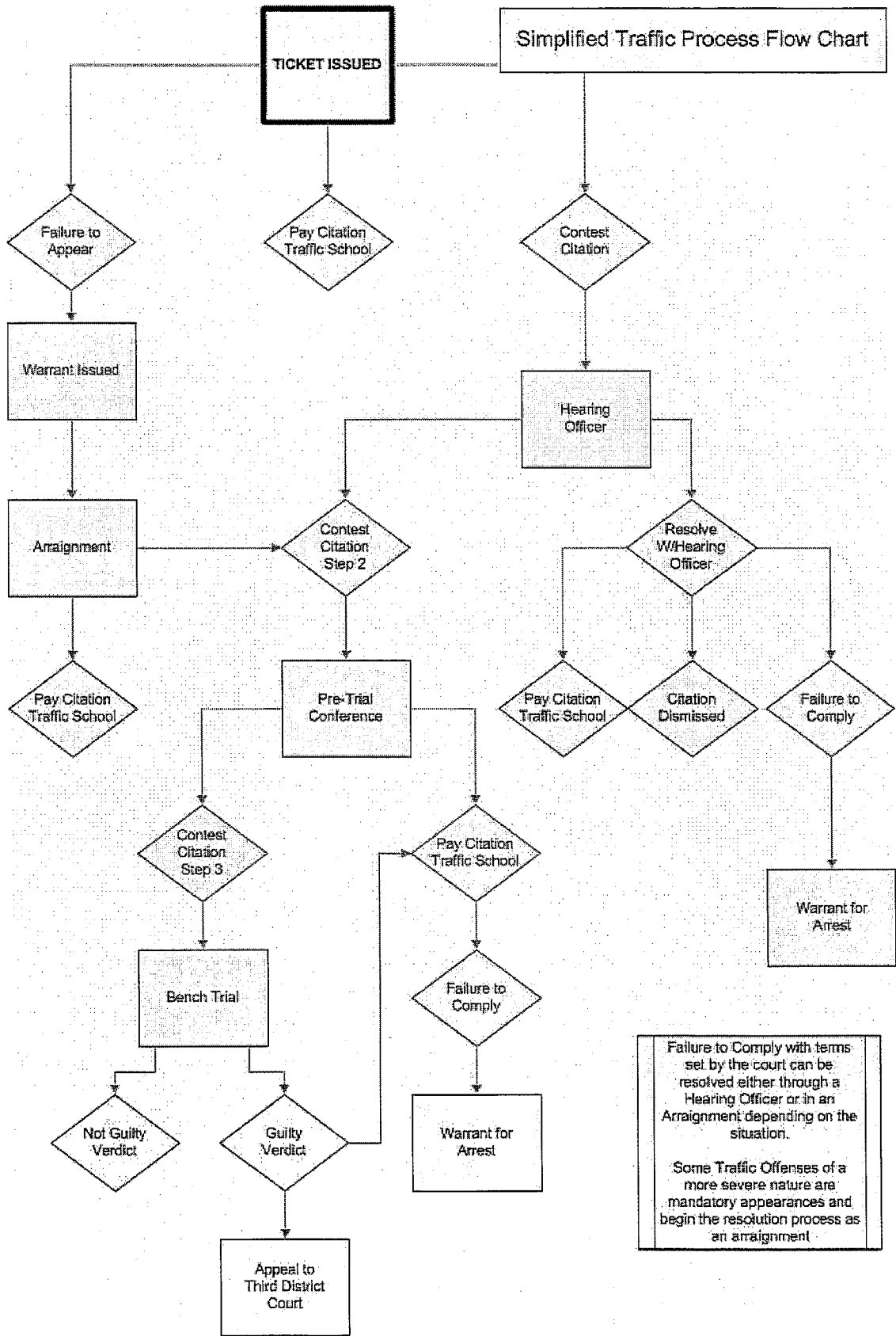
Among the most serious criminal cases considered by the Court are Class B and C misdemeanor DUI and domestic violence cases. (See Attachment for written descriptions of the process in such cases)

Simplified Justice Court Process Charts

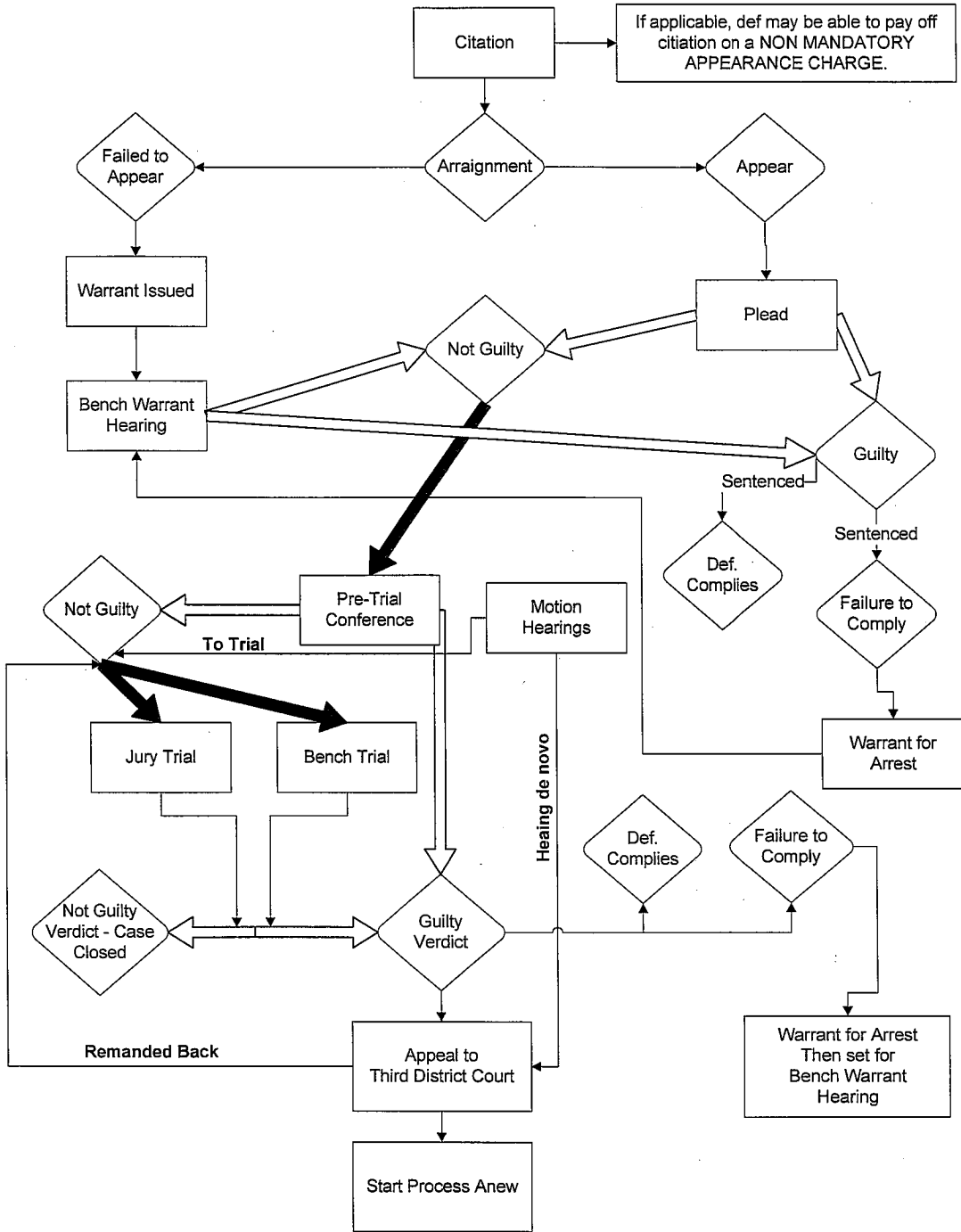
The following charts track the process of a case through the Court assuming various outcomes at stages along the way:

SIMPLIFIED PARKING PROCESS FLOW CHART

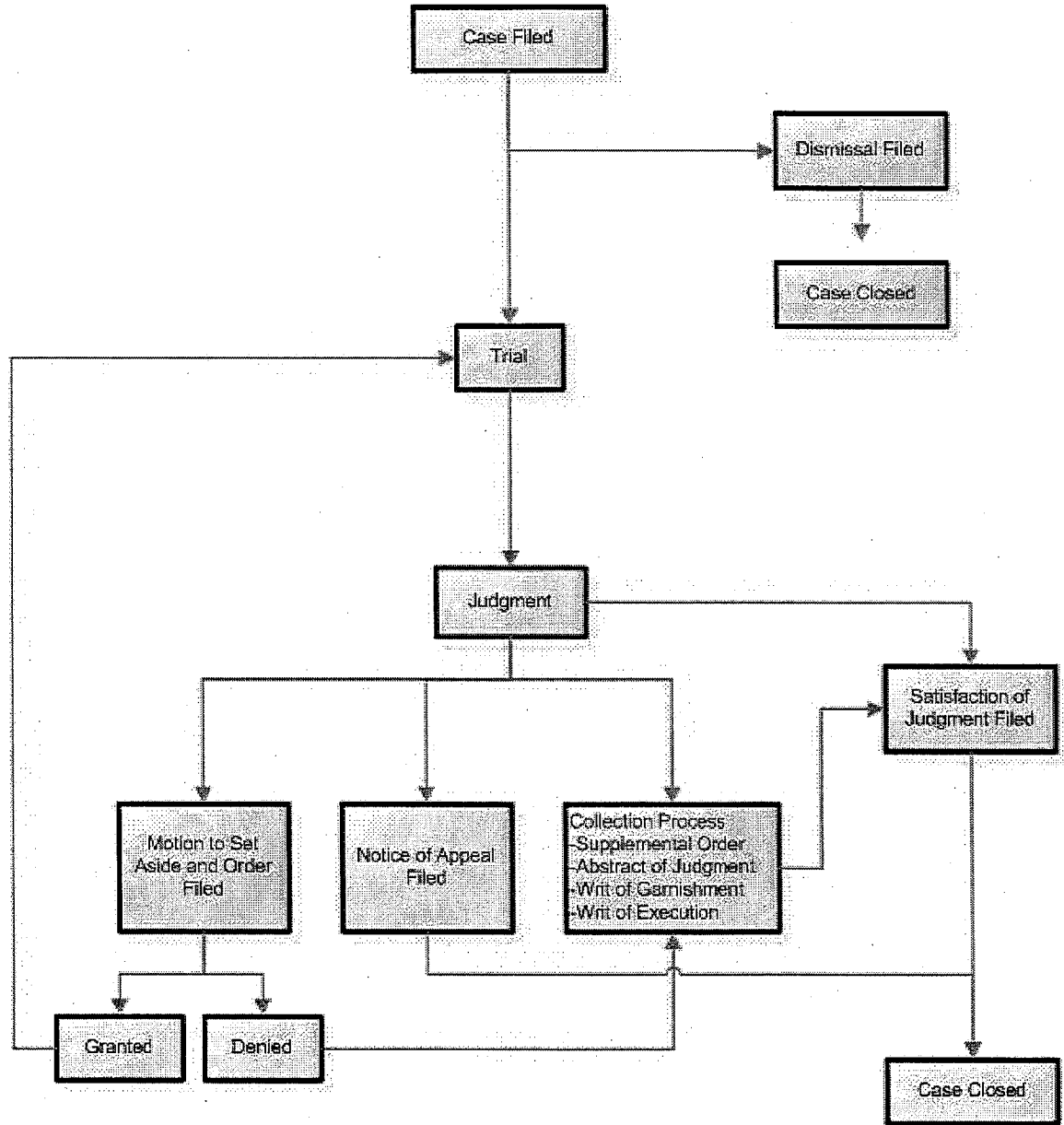




Simplified Criminal Process Flow Chart



Small Claims Process



Small claims cases are the only civil cases, other than parking, that the Court handles. At night, volunteer (pro tem) judges hear cases brought by individuals to cover money damages (up to \$7,500). There are two different small claims settings. On Tuesday and Wednesday evenings pro tem judges hear public small claims cases, and also some City cases. The City ordinance cases that are handled at night in small claims include:

Parking Tickets
Alarm Violations
Returned Checks
Snow Removals
Ground Transportation
Animal Control (barking dog, not on leash, license violation)

On these cases, a hearing officer appears and talks to the defendants who appear. The officer has a copy of the ticket and the file. If the hearing officer can't resolve the case, it will be heard before a pro tem judge that night. In the majority of these cases (approx 90%), the defendant does not appear and City gets a Default Judgment. If the case goes to trial, the judge hears the case, makes a decision and either dismisses the case or enters a judgment against the defendant. The hearing officers then update the case and proceed with collection.

A civil small claims calendar set once a month handles zoning cases, but cases are seldom filed. In the beginning of the Court, some civil animal control nuisance cases were filed, but none have been filed for at least two years. These cases are heard during the day before one of the full time judges. When zoning cases are filed, a representative from the Housing and Zoning Division appears and presents the case, the judge enters a judgment or dismisses the case and the Housing and Zoning Division proceeds with collection, if appropriate. At the present time, the civil calendar is empty and only two or three zoning cases are filed monthly. Additional civil small claims calendars could be set if needed.

The Salt Lake City Zoning Ordinance was changed on April 12, 1995, allowing daily civil fines to be levied for zoning violations. Section 21A.20.040 A states that "Violations of the provisions of this Title or failure to comply with any of its requirements shall be punishable as a Class B misdemeanor upon conviction." Section 21A.20.040 B also states that "This title may also be enforced by injunction, mandamus, abatement, civil fines, or any other appropriate action in law or equity."

Previous to passage of this ordinance change allowing civil enforcement, all enforcement activities were sent through the criminal system. Officials of the Housing and Zoning Division report that the criminal process seemed to take a long time because of court calendars,

delays and extensions. The Housing/Zoning Inspector was, in most cases, bound by the timeframe set by the Court.

The Housing and Zoning Division has determined that the civil process offers greater flexibility. Fines can be started more quickly when warranted due to the condition of the property or when working with a repeat offender. The vast majority of offenders pay attention as soon as they realize that they are being fined on a daily basis. The civil process also allows the Housing/Zoning Officer greater flexibility in working with the property owner to make the necessary corrections or repairs to the property. When enforcing through the civil process, the City can obtain a civil judgment against the property owner or tenant and an abatement order from the Third District Court. This abatement order allows the City to enter a property and remove the zoning violations, usually junk and junk cars.

9. Cases are “screened” by the City Prosecutor to determine how the case will be handled

The issue of screening has been somewhat controversial. It has been suggested that more cases could be screened out of the system sooner than is currently the practice and that the failure to do so is clogging the Court with unnecessary cases. Screening means that a case is evaluated to determine the strength of the case, to determine if a crime has occurred, what type of crime it is, and what is the quality and quantity of evidence to support the prosecution. This process can occur either before an Information (a formal written complaint) is created and a case is filed, or when a case is reviewed for disposition at arraignment or pre-trial. It should be noted that the decision to issue a citation is not a decision that is controlled by the prosecution. Citations are issued by police officers responding to calls for service in the field. However, the task of reviewing if the charges in the citation are warranted and sufficiently articulated is a continuing process.

Pre-Screening (prior to filing)

In the first instance, the Prosecutor’s Office screens all domestic violence, DUI¹, jail, officer requests and citizen screenings (described below), approximately 15-20% of cases that go to the Prosecutors for any purpose. Jail screenings are those matters where an officer has booked a

¹ DUI cases require the prosecution to certify, under a new State law, that the DUI case is not enhanceable to a felony. Thus this practice which was done for the purposes of making sure nothing was missed by the City Prosecutor’s office is now a mandatory requirement for all other jurisdictions.

person into jail on a charge. These matters must be screened for charges within 72 hours or the defendant will be released. Another type of officer request involves those matters where the officer either did not file or does not know what charges to file and may request a screening for charges. Finally, citizen screenings may be matters where officers have responded and did not articulate any charges and have left the matter for the prosecution to sort out or where they have refused to file charges for one reason or another and the citizen is upset and wants to have the matter reviewed for filing. The City Prosecutor's office will still screen some 14,400 such matters annually.

Post-filing Screenings

All other cases, approximately 80% of the cases where a Prosecutor is involved, are not pre-screened and enter into the Court's data base when a citation is issued and forwarded to the Court. When this happens, the defendant will be mailed a notice to appear for arraignment with the Court. The prosecution will get notice of the scheduled appearance, and will make an offer to resolve the charge at the appearance or arraignment. If the matter cannot be resolved, it will be set for pre-trial. At that time, if the matter cannot be resolved, the screening team in the Prosecutors Office will screen the matter to determine if it should be pursued further. If it is to be pursued, a formal Information will be filed at that time. When this procedure is followed, those matters that are resolved at arraignment do not have to be screened. If the matter is resolved at arraignment, there is not any paper generated even if a plea in abeyance is reached because the City Prosecutor's office has developed a paperless model. However, there are still resources expended for review and data entry.

All cases technically require that an Information be filed unless the requirement is affirmatively waived by the defendant and allowed by the Court. Previously, judges had required that all matters had to have an Information filed at the beginning of the criminal process. The current process of screening and formal filing after arraignments or pre-trials in the majority of cases alleviates that undue burden on the prosecution and results in cases being removed from the Court's purview in the timeliest and most efficient manner and most importantly, with the proper attention being paid to a case based on its importance to the community.

10. Justice Court has both bench trial and jury trials

Individuals who have been charged with an infraction are limited to a bench trial (the verdict is rendered by the judge), while those charged with Class B and C misdemeanors can choose a bench trial or a jury trial. This is because an infraction is not punishable by incarceration.

It is the policy of the City Prosecutor to aggressively amend down, where appropriate, charges to limit the number of matters that may be potentially set for a jury trial. Therefore, a Class C misdemeanor might be amended down to an infraction. Counsel is not required to be appointed when the charge is an infraction and there will not be a jury trial. This practice conserves resources by reducing the number of potential jury trials and the need for appointing counsel.

Justice courts have four person juries. Jury questionnaires are sent out to approximately 25,000 registered voters a year (from a list created by the Administrative Office of the Courts) to create a pool of potential jurors and to obtain the approximately 2,800 jurors the Salt Lake City Justice Court requires per year.

The Court averages 2.5 juries a week, but there could be as many as 6 a week (288 a year). A jury trial calendar is scheduled every day, with 13-18 potential jury trials on each setting. It is necessary to schedule that many to be certain that one trial will go forward and the time and effort to form a jury will not be wasted. An additional jury trial is scheduled on Monday to assist with cutting the backlog of cases. There is a potential for approximately 4,000 jury trials a year, but the majority are resolved either because the defendant decides to accept the original plea offer or the prosecutor makes a better offer than the one made at the pre-trial conference based upon a change of circumstances.

As the time for trial draws closer, it will become apparent that most of the cases on a given calendar will not move forward (for a variety of reasons), so witnesses, including police officers, will not be summoned. As a rule, judges talk to the prosecution and defense attorneys at least the day before a case is scheduled for trial to make certain that at least two or three of the cases are ready to go, (usually the oldest cases) so that a jury trial setting will not be wasted.

Jurors are directed to appear at 8:30 a.m. and they will be assembled in an unused courtroom, away from the public. It is necessary to keep one courtroom free for this purpose because up to 30 jurors may be called to appear on any given day and the courtrooms are the only space large enough to accommodate them (this is a space limitation that impacts the ability of the Court to schedule more trials- all five courtrooms cannot be scheduled for trials in the mornings).

A court clerk takes a roll, plays a video which explains what the jurors duties are, pays the jurors for their service (jurors are paid if they show up- \$18.50 for the first day and \$49 for a rarely needed second day), and then prepares a random seating chart and places the jurors in a specific order. All of the jurors are asked certain questions, and with this information the attorneys can make a decision on which jurors they feel may have some kind of a conflict. This effort is called *voir dire*, the process by which the prosecution and defense attorneys select or reject certain jurors. Each attorney has two challenges, and other jurors can be dismissed with the consensus of both attorneys and the court. These are called preemptory challenges.

The day of the trial, the court will work with the attorneys to see which cases are ready to go. If a witness, an officer, or most often a defendant fails to appear the court must decide whether to dismiss the case or continue it. If there are legitimate reasons, such as sickness or other emergencies, the case may be continued to the next available setting, probably three months later. If at the time of trial, a witness decides not to cooperate (such as in a domestic violence case), the case might be dismissed.

C. The City Council's Intent in Creating the Justice Court

As mentioned previously, the Salt Lake City Council decided on June 29, 2000 to create a Justice Court by a 5-2 vote. In preparation for this paper, I interviewed current Council members and reviewed the minutes of Council meetings at the time the creation of the Justice Court was discussed. Council members who supported creating the Court believed generally that a municipal court would have a greater interest in the community and the "quality of life" cases that most impact the City than had been demonstrated by the Third District Court. One Council member said that the Justice Court would be "revenue neutral and service positive." There is no indication in

Council discussions or briefings from the Administration that anyone supported the Court as a revenue producer for the City, although several Council members expressed the concern that a justice court would be a revenue drain on the City. There was also significant concern about the cost of providing facilities adequate for the long-term needs of the court and whether the proposal from the Administration for a building was the best choice possible.

As mentioned previously (see page 4), the City Council considered several factors when making the decision to create a justice court. It is important to consider whether these expectations have been met, to what degree the expectations could be met if policies or procedures were to be altered, and to what extent the expectations cannot be met because of the very nature of the justice court. The following factors were considered:

1. Justice court judges would be more familiar with the needs of the local community than are district court judges.

Justice court judges are appointed by the Mayor and the appointment is confirmed by the City Council. This process alone is likely to result in a judge representative of the community and familiar with the community. Three of the current judges in the Salt Lake City Justice Court are former City prosecutors, two of whom worked as Community Action Team attorneys committed to problem solving at the neighborhood level. Five of the six judges are Salt Lake City residents and property owners living in three different City council districts, while a sixth judge lives in Salt Lake County.

Salt Lake City Justice Court Judges are involved with community court projects, such as the domestic violence court or the homeless court that reflect the needs of Salt Lake City specifically.

2. Justice court could better address the “quality of life” cases such as nuisance, zoning, barking dog and other cases than the district court.

It is certainly true that the judges in Justice Court will have a greater community interest in hearing and resolving such cases than will the Third District Court. The only limitations on that statement are the jurisdictional limitations placed on the Court.

As stated earlier in this paper, the most important fact to understand about justice court jurisdiction that is not apparent from a reading of the laws, is that **justice courts cannot provide equitable relief**. Equitable relief directs someone either to act or to refrain from acting. Justice courts, for example, cannot order abatement in a civil nuisance or zoning case. The court can only impose and collect fines in civil cases, and can order fines, jail sentences and community service in criminal cases. The court can order someone to clean up their property in a criminal case after conviction as a function of their probation. As a further explanation, justice courts have no jurisdiction over real estate, only over a person. Therefore, a justice court judge can only order a defendant to clean up their property as a term of their probation, not as a direct sentence, and there is no probation involved in civil cases. As a result, justice court is not usually the court of choice in civil nuisance and civil zoning cases where someone must be ordered to act or refrain from acting. The ability of the Court to fulfill this particular expectation is limited by the nature of the Court.

Since the Court's inception five years ago, fewer than 50 civil animal control cases and fewer than 50 civil zoning cases have been filed. These cases are set on a "civil calendar" basically as small claims cases. Approximately 1,000 criminal animal control cases and 70 criminal zoning cases have also been filed during the five years the Court has been in place. These cases are set on calendars along with other ordinance violations and other criminal cases.

Within the jurisdictional limitations placed on the Court, the judges are aware of the impact violations have on the community and try to sentence in ways that will bring relief. For example:

- A defendant who had zoning violations going back 20 years was sentenced to jail (but this defendant appealed trial de novo and the case had to be tried once again in District Court where he was finally jailed. This case took over two and a half years to prosecute).
- Pleas in abeyance are offered to give incentives to a criminal defendant to clean up property as part of the plea.
- A judge issued a no trespass order to a defendant who visited a family in a Salt Lake City neighborhood and contributed to a public nuisance at that location.

- A judge sentenced a defendant in a DUI case to community service at Aging Services because he was the main caregiver for his elderly mother in the hope that he would learn other coping techniques and create less negative community impact.
- Credits are given against fines for compliance/property clean up.
- As part of probation, a judge ordered that a defendant reside at the affected residence to avoid having the property rented to non-law abiding renters.

These sentencing options are also available in District Court and similarly applied where appropriate.

As mentioned, the follow-up to this paper will be a complete study of Salt Lake City's civil enforcement processes, including the efficiency and effectiveness of the processes to determine if civil enforcement procedures need to be reformed. It will also include a review of City ordinances to determine if certain violations should be decriminalized. To some extent, the Court is seen as a problem in getting to closure on certain categories of "quality of life" cases when, in reality, the Justice Court may not be the best avenue of resolution.

3. The justice court could do a better job imposing and collecting fines.

City judges follow all Utah State and Salt Lake City mandated minimum fine requirements and fine in accordance with the standard bail schedule, varying up or down based on the aggravating or mitigating circumstances in the case. Justice Court Hearing Officers follow the Utah State bail schedule and have only limited authority to reduce fines for traffic and parking cases.

Collection of fines is accomplished through enforcement of court probation orders. Failure to pay fines can result in a bench warrant, but court resources for follow-up are limited and the City lacks a credible threat because of the limited number of jail beds available. The use of the threat of jail in order to collect fines raises both ethical and political questions. The use of jail as a debtor's prison is universally rejected and the cost of housing inmates is often prohibitive. The County Council and the County jail have restricted jail beds based on the perception of justice court abuse.

4. Through the justice court, the City could enhance public safety by instituting creative community justice (restorative justice) programs such as misdemeanor drug court, victim restitution, housing court and domestic violence court.

The City Prosecutor's office, the Police Department and Salt Lake County have created several programs that focus on making things better for victims, offenders, their families, taxpayers, and the community at large, rather than focusing solely on punishment. These programs have been implemented at the Salt Lake City Justice Court, including the Homeless Court begun by Judge Baxter. The question that must be considered in the case of each program is if it is achieving the desired results and if it is worth the resources expended. Following is a description of the programs:

Domestic Violence Court

Misdemeanor domestic violence offenders accept a plea and then they are routed into a closely supervised treatment program to monitor their performance and ensure compliance. The Court requires offenders to undergo domestic violence assessment and counseling, and attend regular status reviews. Seventy-five percent of participants have completed the program. Treatment programs have been funded through the Safe at Home Coalition in conjunction with the YWCA.

Drunk Driving Court

Drunk Driving Court mandates close supervision of misdemeanor drunk driving offenders who accept a plea rather than go to trial and agree to enter the treatment program. Offenders complete a 12 month probation period called Focus, during which time the focus is on treatment and compliance. Offenders are subject to fines, provide restitution to victims, and receive assessment and counseling. Importantly, offenders meet with a panel of citizens from the community who have been affected by drunk driving to fully grasp how their behavior poses a significant risk to others. From 2004 to 2006, 572 offenders went to DUI Court, which boasts a 75% completion rate. The Court has saved taxpayers \$490,000 in adjudication costs during that period.

Misdemeanor Drug Court

Salt Lake City's Misdemeanor Drug Court offers drug abusers an opportunity to keep their criminal records clean if they successfully complete the program. Offenders receive individually-tailored therapy and

coursework. The offender's progress is monitored by a mandatory review panel. As of the end of 2006, 446 offenders had successfully completed the program, which has saved over 80,000 jail days.

Johns Offender Program

The objective of the Johns Offender Program and the Spanish Johns Program is to change the conduct of men who are charged with soliciting prostitutes through an education program. Through the program, offenders develop insight into the behavior patterns and stereotypes that form the background of their decision to solicit prostitutes. The program has served over 600 people at this point. Fewer than 10% of program participants have been rearrested for the same offense. The program also saved the court system over \$500,000 in trial costs because offenders agreed to accept a plea and enter the program.

Public Sex Crimes Program

The Public Sex Crimes Program seeks to impact the unlawful sexual conduct of individuals in public places. Almost all participants in the program have engaged in same-gender sexual activity in public places, but are self-described heterosexuals with families. The offender accepts a plea and agrees to enter the program which includes a comprehensive intake evaluation, treatment and counseling on a group and individual basis. Offenders remain in the program for one year. Over 325 offenders have participated in the program and only six have been arrested again for the same crime.

Passages Program

The Passages Program deals with misdemeanor offenders who commit crimes such as simple assault, theft, and vandalism. Offenders meet with a panel of citizens who seek restitution for victims and the community. Some victims meet with offenders to emphasize the negative consequences created by their conduct. The Passages Program has had 242 defendants with an average annual program completion rate of over 78%.

Homeless Court

A citation is usually issued to a transient for a minor infraction such as public intoxication, smoking in a public place, trespass or public urination. It is possible for the same person to get several similar citations in the period of a week or even a day and each must go through the same process. Since many of these violations are infractions, the Court cannot issue a bench

warrant if the defendant does not appear in court so the court sends out a Failure to Appear notice. If the transient actually gets booked in jail on a misdemeanor charge, the jail may notify the Court and then the Court will try to set up an appearance by video and address all the defendants open cases at once, oftentimes sentencing to time served, and clearing the cases. However, if the jail releases the defendant before their appearance, the process must be started over. Through the external task force the Justice Court management has facilitated, the Court has been able to form a relationship with the jail and they have been willing to contact the Court before someone who may have a large number of outstanding cases is released so that a judge can see the defendant through the court com video conferencing tool. This allows the Court to resolve possibly 20 or 30 cases on one defendant at an earlier stage, helping to lessen the impact of those cases that are referred to as "frequent fliers."

Another tool to deal with such cases is the Homeless Court, conducted by Judge Baxter one afternoon a week at The Road Home shelter. The Court is being proactive in trying to address the transient cases described above in different ways. Defendants can come before the Judge in a setting in which they are more comfortable and, without fear of being jailed, can resolve their outstanding cases. Most commonly they are sentenced to community service and then the Court can close those cases.

The Court aims to use community service as a sentencing option rather than unrealistic fines and primarily works with homeless defendants who have a large number of minor violations. The Court educates homeless offenders about the impacts of their behavior, holding them accountable while assisting them in obtaining housing and social services. By removing homeless offenders from the mainstream criminal justice process, the City's Homeless Court decreases the use of jail beds and the burden on the criminal justice system. The Court decreases the cost of adjudicating offenders from \$465 to \$25 per offender.

Mental Health Court

Salt Lake City began its Mental Health Court in 2001. The Court focuses on providing medical support, comprehensive counseling services, and transitional housing for those individuals suffering from severe mental illness, and addresses root causes of their afflictions. When it is obvious that a defendant has mental health issues, the case is diverted to the Mental Health Court for adjudication. As of the end of 2006, the Mental Health

Court had 331 current or former participants. Fifty-five offenders had completed the program, which lasts between twelve and thirty-six months. Participation in Mental Health Court decreased incarceration costs for each of these offenders from \$190,000 to \$39,000—a 78% reduction. Overall costs for participants decreased 61%. Furthermore, inpatient treatment costs for those who completed the program decreased 95%, as graduates began to seek care from community providers rather than in an emergency setting.

The Criminal Justice Services Division of Salt Lake County provides the treatment programs and case management services for Misdemeanor Drug Court, Mental Health Court, the John's Program, and Healthy Self Expressions. These programs represent a collaborative effort involving the Third District Court, Salt Lake County Justice Courts, the Salt Lake County District Attorney, the Salt Lake City Prosecutor, the Salt Lake Legal Defenders Association, the Salt Lake County Sheriff, and substance abuse treatment providers. The City is not charged for participation in these programs, but the City's ability to participate is limited by the financial resources available to the County to staff and administer the programs (the City pursues federal and other grants to assist with the costs).

The Criminal Justice Advisory Council commissioned a study, published in April 2004, which looked at the County justice system. Alan Kalmanoff, of the Institute of Law and Policy, was the consultant for the study. Impetus for the study was the severe shortage of jail beds in the County. The study concluded that the programs initiated by the Salt Lake City Prosecutors Office could serve as a model of the best practices in seeking alternatives to incarceration and aiding in lessening the need for incarceration.

There are 4,000 potential jail beds in the County, but today, because of budget constraints, only 1,850 are used. The only B and C misdemeanor offenders the jail will accept when first arrested or on warrants are those charged with DUI or domestic violence. When drug dealers are arrested, at Pioneer Park for example, unless violence is involved, they are usually off the street for only a day or two (72 hours at the most) and then the jail will release them. Later, it will often be necessary to find the defendant again to serve a warrant for failure to appear in court.

The jail will take offenders sentenced by Justice Court judges, but may release those offenders early if beds are needed for more serious offenders.

As a result, the alternatives to incarceration that have been instituted through our Court are essential to the functioning of our justice system.

5. The City could better address court delays and miscommunication issues by providing an adequate number of trained staff and investing in information management systems.

The initial premise was that a city justice court would have more interest in pursuing Class B and C misdemeanor cases and infractions expeditiously than would district court judges who would give a higher priority to felony cases. That was the City's experience in Third District Court. However, that factor becomes a moot point if the Justice Court does not have the resources to handle cases expeditiously even if the Court has every desire and intent to do so. Two audits conducted on the Justice Court for the City Council have confirmed that there is an "imbalance between workload and staff available to handle it at an appropriate level of service". The Workload Assessment Study concluded that the Court needs to add 8.59 FTEs to court staff (page 14-*NCSC Judicial and Court Staff Workload Assessment for the Salt Lake City Justice Court, Final Report-April 2007*). Since the audit, 4 temporary clerks have been made permanent, so the imbalance now is 4.59 FTEs.

If the Court were staffed at levels recommended by the audits, the Court would be better able to meet national standards for case management including standards pertaining to time to disposition, and age of pending caseload. Clerks could review cases for compliance monthly and make contact with the defendants in a more timely manner which certainly would increase both fine and probation compliance.

JEMS (Judicial Electronic Case Management), the Court's electronic case management system, is available in-house at the key partnering agencies, including Salt Lake City Prosecutor, Salt Lake Legal Defenders' Association, and Salt Lake County Probation. Attorneys, members of the public, and employees of City departments may access the system in a read only capacity over the internet. Despite many early criticisms of the JEMS case management system, there are several significant advantages offered by the program. First, JEMS is capable of holding scanned case files input directly into the system which helps the Court move towards its paperless program goal and allows easy access to case files. Attaching scanned files also enables the Court to save on storage space and clerk time because once

cases are closed they are scanned and destroyed instead of taking up file space and requiring a clerk to have to review them for destruction years later. Secondly, JEMS allows internet access so the Court can offer viewing only access to justice partners and also to the public. This has been extremely beneficial to attorneys who frequently have cases at the Court and to Court staff by reducing the number of calls for information. Bill Haight, Acting Information Management Services Director, has confirmed that JEMS has a robust search capacity. ALE (Administrative Law Enforcement) is the electronic program that handles parking and civil cases.

6. The justice court could possibly schedule police officer appearances more efficiently to allow officers to be on the beat rather than waiting in court and could more effectively manage other public resources as well.

Court scheduling is done by calendars, as explained beginning on page 12. For example, the Court schedules jury trials, DUI pre-trials and domestic violence cases on specific calendars (times set with a judge). To the extent possible, these calendars are planned to provide the maximum efficiency in the use of police officers as witnesses, but a certain amount of waste is built into the system. For example, an officer may be summoned to be a witness in a trial, come to Court at the appointed time and learn after some time has passed that the defendant has decided to accept a plea at the last minute.

When an off-duty officer is notified to appear in court as a witness, he or she is paid time and a half and allowed 2 hours preparation time and the actual time in court (by union contract). When an on-duty officer is at court, there is not an additional cost to the City. The cost is in lost time in the field. On any given day, as many as 6 officers might be called to court for potential trials. Their time at court could vary from an hour for a dismissal to a full day (or rarely 2 days) for a complete trial.

In many cases, it is not possible to schedule police officers when they are on duty. For example, afternoon shifts and graveyard shifts will not coincide with court appearances. When it is possible to make the choice to schedule on duty, the cost of having the officer off the beat must be weighed against the cost of paying the officer time and a half.

One suggestion to improve the use of police officers' time involves having a computerized list of officers and their real time schedules. A light

duty officer could come to Court and compare officers' schedules to trial schedules, making certain that when a trial is scheduled, the required officer is available and could then work with Court clerks to schedule trials accordingly. This effort could provide some help, but so many other factors are involved it seems unlikely to make a significant difference. Since police officers schedules are rotated every 3 months and trials are scheduled far in advance, it would be very difficult to coordinate the two. Another suggestion to alleviate the problems with scheduling police officers is to schedule all jury trials on, for example, Tuesdays and Thursdays. Four judges would have jury calendars on those days, for a potential of 8 jury calendars. This would give the police a predictable schedule and training and other court conflicts could be scheduled accordingly. One problem with this schedule that would have to be overcome is the lack of sufficient space for the large group of potential jurors that would have to be called to fill 4 juries at a time and separate spaces for those jurors to deliberate.

The Police Department does not see a way to schedule officers more efficiently than is done in current practice. The recent audit of the Justice Court conducted for the City Council did not mention the scheduling of police officer witnesses as an issue to be addressed specifically.

7. City prosecutors could function more efficiently without the need to coordinate schedules with the district court.

Salt Lake City prosecutors still appear at Third District Court on Class A misdemeanor cases, as explained previously. The District Court has agreed to send cases that will be prosecuted by Salt Lake City to only three of the nine judges, so the City only needs to have three prosecutors at District Court.

In addition, because appeals from the Justice Court go to District Court, it will always be necessary for City prosecutors to appear in District Court.

III. EXTERNAL INITIATIVES INVOLVING JUSTICE COURTS

In the past few years, the Utah State Legislature and the Utah Supreme Court have raised specific concerns that some municipal justice courts may be motivated by revenue concerns and that lack of structural independence might put undue pressure on justice court judges and influence

the outcome of cases heard by the judges. This is the current statute governing appointment and retention of justice court judges:

78-5-134. Justice court judges to be appointed -- Procedure -- Report to Judicial Council -- Retention election -- Vacancy..

(2) Justice court judges shall be appointed by the appointing authority and confirmed by a majority vote of the local legislative body.

(3) (a) After a newly appointed justice court judge has been confirmed, the local legislative body shall report the confirmed judge's name to the Judicial Council.

(b) The Judicial Council shall certify the judge as qualified to hold office upon successful completion of the orientation program and upon the written opinion of the county or municipal attorney that the judge meets the statutory qualifications for office.

(c) A justice court judge may not perform judicial duties until certified by the Judicial Council.

(4) Upon the expiration of a county justice court judge's term of office the judge shall be subject to an unopposed retention election in accordance with the procedures set forth in Section **20A-12-201**.

(5) Upon the expiration of a municipal justice court judge's term of office a municipal justice court judge shall be reappointed absent a showing of good cause by the appointing authority.

(a) If an appointing authority asserts good cause to not reappoint a municipal justice court judge, at the request of the judge, the good cause shall be presented at a formal hearing of the local legislative body.

(b) The local legislative body shall determine by majority vote whether good cause exists not to reappoint the municipal justice court judge.

(c) The decision of the local legislative body is not subject to appeal.

(d) In determining whether good cause exists to not reappoint a municipal justice court judge, the appointing authority and local legislative body shall consider:

(i) whether or not the judge has been certified as meeting the evaluation criteria for judicial performance established by the Judicial Council; and

(ii) any other factors considered relevant by the appointing authority.

(6) Before reappointment or retention election, each justice court judge shall be evaluated in accordance with the performance evaluation program established in Subsection **78-3-21(4)**.

A. Justice Court Study Committee

The Utah Judicial Council, under the direction of Associate Supreme Court Justice Ronald E. Nehring commissioned a study group that made recommendations to the legislature. The recommendations included:

- Make all judges full-time, state employees
- Establish salary and benefits by statute
- Select judges through a process similar to the state judicial selection process

- Implement retention elections, rather than re-appointment for all justice courts
- Judges should be required to have at least a four year degree (not an issue for Salt Lake City since our judges are attorneys)

B. Proposed Resolution

In response to the proposal of the Justice Court Study Committee the League of Cities and Towns proposed a resolution, supported by Salt Lake City, and passed at their annual convention:

Resolution 2007-003

2007 Utah League of Cities and Towns Resolution – Justice Court Modifications

Whereas: *Municipalities of the state of Utah value the ability to operate and maintain a local justice court and;*

Whereas: *Municipal officials are committed to providing fair and equitable justice in matters heard before municipal justice courts and;*

Whereas: *There is a perception that some municipal justice courts are motivated by the financial aspects of the municipal justice court operation at the expense of fair justice and;*

Whereas: *The Utah Supreme Court in its opinion on the “Goodman” case raised specific concerns regarding the perceptions that municipal revenue pressures, as well as the lack of structural independence, were potentially compromising the role of an independent judiciary and unduly influencing the outcome of issues heard before municipal justice courts and;*

Whereas: *The Utah Judicial Council, under the direction of Associate Supreme Court Justice Ronald E. Nehring has commissioned a study group and has made specific recommendations by which the municipal revenues can be separated from the administration of justice and greater professionalism can be attained by way of changes in the current system and;*

Whereas: The municipalities of Utah believe that the goals set forth by the study group are laudable, but wishes to attain such goals in a different fashion than that which was originally proposed by the Utah Judicial Council

Now Therefore Let It Be Resolved: The Utah League of Cities and Towns' position on legislative efforts to amend the municipal justice court system is as follows:

- (1) Cities and towns continue to be allowed to select their own judge and the judge will remain a city employee;*
- (2) Potential municipal justice court judges will be reviewed by a local nominating committee; recommendations from the nominating committee will be submitted to the governing body of the municipality/county in which the judge will preside, and the governing body will grant final approval of the nominee;*
- (3) Justice court judges will continue to be part-time or full-time as the caseload dictates;*
- (4) After selection by the governing body, the judges would be subject to retention elections every four years within the jurisdiction where the judge presides; and retention elections will be held in conjunction with the election cycle for the jurisdiction in which the judge presides.*
- (5) Justice court judge's salary would be initially set by the municipality or county employing the judge, but raises would be based on an average of the annual pay increase for all city employees within the jurisdiction. The raise/pay increase would be dictated in statute to ensure "isolation" from "political pressure" regarding future pay increase. In addition, statutorily guided salary increases would only apply to those municipal judges that are not at the current statutory pay limit of 85% of the salary of district court judges. Municipal justice court judges would still maintain a statutory cap of 85% of the district court judge pay scale.*

(6) Municipal justice court judges will be required to have at least a four-year college degree, and all currently sitting judges would be exempt from this provision.

(7) Additional efforts will be made to harmonize the software and information sharing concerns that have been raised by the Supreme Court by pursuing a revenue tool and process by which all justice courts would be able to share information within a given period of time.

This Resolution will be presented to the Legislature and will be the League and the City's lobbying position if that is necessary. It is possible that the issues can be resolved with the Judicial Council and legislative action will not be necessary.

IV. JUSTICE SYSTEM RECOMMENDATIONS

The Justice Court has been the subject of two audits within the five years of its existence. The first audit was authorized by the City Council on February 1, 2005. Matrix Consulting Group was the contractor for the audit and the National Center for State Courts was the subcontractor. Justice Court management has responded to the recommendations and action has been taken on 41 of the 45 recommendations. Some of those responses are works in progress, but the Court is trying to be responsive to every recommendation that resources permit. The second audit was a workload assessment conducted by the same parties. The conclusion of that assessment is that additional personnel are needed to allow the Court to operate at maximum efficiency.

In the letter sent to Matrix confirming their contract for the 2005 audit, the Council tasked them to "determine the extent to which the original goals (when the Court was established) bring focus to issues that are important to City neighborhoods and the extent to which control over scheduling of police officer and prosecutor time is being achieved." The audit did not specifically address the question of "original intent," but that has been a major focus of this paper.

As a result of my interviews with Council members and my review of previous Council statements, I make the following observation: The

concerns raised by current members of the City Council are related more to the jurisdictional limitations of the Court and the nature of City ordinances than to the day to day functioning of the Court. For example, Council members want faster response on neighborhood nuisance cases. One Council member said specifically the major concern was getting cases adjudicated- "we were told our cases would be a priority." As stated previously, the Justice Court **cannot provide equitable relief**. The Justice Court can impose and collect fines in civil cases, and can order fines, jail sentences and community service in criminal cases. A justice court judge can only order a defendant to clean up their property as a term of their probation, not as a direct sentence, and there is no probation involved in civil cases. As a result, justice court is not usually the court of choice in civil nuisance and civil zoning cases where someone must be ordered to act or refrain from acting. **The ability of the Court to substantially fulfill this particular expectation is limited by the nature of the Court and City ordinances.**

Council members also want reassurance that they are getting what they are paying for with the Justice Court. It is clear that the expectations created for the City Council at the time the Justice Court was recommended by the Administration were overly optimistic.

The recommendations to follow are based on the observations stated above:

A. Conduct a thorough review of City ordinances and enforcement processes

As a follow-up to this paper, a review of all City ordinances is being conducted to determine if certain ordinances should be decriminalized, criminalized or amended to allow enforcement to be pursued with either option (state law has removed the option to decriminalize traffic). In conjunction with this effort, a review is also being conducted of the City's civil enforcement processes to determine how enforcement can be streamlined and handled with maximum speed and efficiency (the majority of housing and zoning cases and other cases originating in the Community Development Department are civil enforcement). The result of this study will be recommendations regarding internal management of civil enforcement and the City's use of the Third District Court and the Justice Court. As a result of this work, the City should have procedural bright lines

to follow in the pursuit of both criminal and civil enforcement of City ordinances.

B. Consider an ongoing Internal Justice Court Coordination Committee

The Justice Court conducted several meetings with an external working group to improve City processes with outside entities such as the Salt Lake County jail. This effort was very successful and resulted in several improvements. The Justice Court is now conducting a similar process in house. I recommend that this process be continued on an ongoing basis, perhaps facilitated, and attendance perhaps expanded. This Committee could function to alert Court management to internal issues and as a clearing house for process improvement recommendations.

C. Calendars

As previously described, the Court is organized on the basis of calendars. Calendars are set for jury trials, hearings, pre-trial conferences and other matters. If the resources recommended for the Court itself and for the prosecutors are forthcoming, it would be possible to schedule additional calendars. At the present time, only about 60% of potential calendar time is used. I recommend that the Court consider adding additional calendars as most needed.

Along with the addition of calendars, the Court could gain another functioning day by coordinating the holiday time of the Court and the prosecutors. The Court, by State law, must follow the State holiday schedule, while the prosecutors follow the City schedule. This creates a problem since the City no longer includes Columbus Day as a holiday and does include the day after Thanksgiving. As a result, prosecutors are working on Columbus Day when the Court is closed (along with the Third District Court) and not working on the day after Thanksgiving when the Court is open.

D. Add additional staff as recommended by the Council audit

I recommend adding 4 additional clerks for the Justice Court. The data necessary to justify the hiring has already been published in the Council audit. The Administration held off asking for additional staff until its own organizational review could confirm that the additional clerks were, without question, necessary for the Court to function efficiently and at a capacity that

will allow it to meet the expectations of the Administration, the City Council and the public. One of the clerks will be dedicated full time to small claims cases and another will serve as a lead criminal clerk, an area the Administration has identified as a serious staffing gap. This addition of staff will require a minor remodeling of the Court facility.

E. Remodel Court to accommodate additional staff

The addition of 4 more clerks will require a minor remodeling of the existing Court building. For a cost of approximately \$120,000, an area of 250 square feet can be partitioned into a room for jury preparation and another room currently used for attorney/client meetings can be used for the clerks.

F. Consider adding prosecution resources

The addition of two part-time judges has created an increase of one judge without an increase in prosecutors. Additional attorneys and staff (along with those recommended for the Court) will make it possible for the Court to handle additional calendars, lessen the caseload per prosecutor, and allow more focus on motion hearings and case preparation.

G. Management Challenges

The mix of management responsibilities described above creates a challenge to the City justice system that would not exist if there were a true judicial branch of government, a third branch. This issue was raised by at least one Council member in my interviews, expressing the sense that there was no ownership of the whole process. However, given the nature of the justice court, this divided management system is a reality and the task is to make the various roles, responsibilities and lines of authority as clear and understandable as possible. In particular, I recommend an effort to create some policies and procedures to clarify the role of clerks and other Justice Court staff as to lines of authority and responsibility.

H. City Council visits to the Justice Court

Based on my own experience in preparing this paper, I recommend that members of the City Council, either individually or in groups of two or three, visit the Justice Court. Council members could speak with clerks, judges, prosecutors and other as they wish. They could also sit in on a Court calendar session to observe the formal functioning of the Court.

I. City Council audit response in six months

The Justice Court has completed or is in the process of enacting nearly all of the recommendations of the audit. I recommend that the Court provide a progress report in 6 months to the City Council. At that time, the Court can also report on the improvements that have been possible if the Council provides additional staff support.

J. City Council caseload evaluation in one year

The caseload has stabilized, but the Court has to manage a substantial backlog of cases as well. I recommend an evaluation of the caseload in one year. If additional staff resources have been added, the Court can report on the impact of that support on the case backlog.

V. CONCLUSION

The Salt Lake City Justice Court was created for valid and important reasons. Some expectations created for the Court and expressed to the City Council were beyond the jurisdictional limits of the Court or the practical uses of the Justice Court. This reality has created some frustration on the City Council and some degree of hesitancy to support resource requests from the Court.

It is the intent of this paper to clarify the role of the Court and the limitations placed on it by law that cannot be altered by the City. It is also the intent of this paper to look at the role of the Court and Court procedures that are under the control of the City and determine if the Court is being utilized by the City to its maximum capacity for enforcement purposes. Further, it is the intent of this paper to determine if there are procedural or organizational changes that could enhance the enforcement value of the Court to the City. The City has many enforcement tools, civil and criminal. Our task is to use the correct tool in each situation. The recommendations just listed are those that, I believe, would allow the Court to best serve the City.

ATTACHMENT

Driving Under the Influences Cases

Citations

People issued a citation for DUI are scheduled for arraignment on the 14th business day after the citation is issued. Typically, the defendant will call the Court to arrange or check on a time. If the citation is issued by an agency other than the Salt Lake City Police Department (for example, the Highway Patrol), a copy of the citation may not reach the Court in time. In that case, the arraignment cannot go forward and, when the citation arrives, it is forwarded to the Prosecutors Office so that a summons can be issued, or a probable cause statement written for an arrest warrant.

Bookings

People booked into the jail on DUIs are scheduled to be arraigned within one to two business days depending on the time they are booked. They may be released before being arraigned.

Arraignments

Most DUI offenders do not plead guilty at arraignments because they do not have an attorney present, or the attorney has not yet received documentation on the charge (discovery). If the defendant wishes to plead guilty at arraignment without an attorney the judge must, in accordance with the ruling in the U.S. Supreme Court case of Alabama v. Shelton, advise them that it is not in their interest to plead guilty without being represented and that the judge strongly urges them not to plead guilty. Therefore, there are few guilty pleas on DUIs at arraignment.

Pre-Trial Conferences

DUI pre-trial conferences are set on dedicated DUI pre-trial conference settings to keep the number of defendants no higher than 25, with the intent that the smaller setting will allow the prosecutor and defense attorney time to have a meaningful opportunity to resolve the case instead of just setting it over for another pre-trial conference. Nevertheless, approximately 50% of all DUI pre-trial conferences are set over for a second conference (this could be because the defense attorney was just retained and has not yet filed an appearance and requested discovery, because there is supplemental discovery that the attorney is requesting and the prosecutor

needs time to produce, or the defendant wants to check with his employer to see what affect the plea offer might have on his or her employment, etc.).

Motion Hearings

About 25% of DUI cases are set for motion hearings when the defense attorney challenges some part of the case. Motion hearings are labor and resource intensive, requiring research and filing of responsive memorandum, the subpoenaing of witnesses and taking evidence from witnesses. Defense attorneys might challenge whether the officer had the necessary reasonable suspicion to stop the vehicle in the first place, whether they had sufficient probable cause to arrest, or might challenge the admissibility of the breath or blood test on a myriad of grounds. The judge's ruling on the motion could be appealed, either by the defense or the prosecution, to the Third District Court.

Trials

About 25-30 % of all DUI cases filed with the court are set for trial (almost exclusively jury trials). Of those, only about 5-7% are actually tried. This 5-7% represents some 125-150 jury trials annually.

Sentencing

When a defendant pleads guilty to a DUI or to a related offense such as alcohol related reckless driving, or when a defendant is found guilty at trial, he or she has the right, by State law, not to be sentenced at the time of conviction. If the defendant requests that sentencing be set at a different time, the Court must agree. Approximately 10-20% set the matter over for a later sentencing date.

Bench Warrant Hearings

After sentencing, a large number of the defendants fail to fully comply with the terms of the probation or other requirements set at sentencing and the Court issues a warrant for failure to comply. When the defendant either calls in to request a bench warrant hearing or is arrested on the warrant, the Court schedules a bench warrant hearing to clear the warrant.

Orders to Show Cause

At the bench warrant hearing, the defendant, as required, is given written notice of the allegations of non compliance and the matter is set for an order to show cause hearing.

Evidentiary Hearings on Orders to Show Cause

At the order to show cause hearing, if the defendant denies the allegation that he or she failed to comply with the terms of probation, then the matter must be set for an evidentiary hearing on the order to show cause.

Appeals

About 5 percent of DUI convictions are appealed. Some of these appeals are dismissed by the District Court and the matter is remanded back to the Justice Court. A remand hearing must be scheduled and the defendant must appear back before the court to have the original sentence imposed.

Domestic Violence Cases

Through the arraignment phase, the domestic violence process is similar to that for DUI cases. All charges of domestic violence are screened by the Salt Lake City Prosecutor's Office prior to the filing of a formal charging document known as the Information.

Pre-Trial Conferences

A pre-trial conference is scheduled between 30-60 days from the date of the arraignment depending on the judges' calendars. Pre-trial calendars typically have 40-70 matters scheduled on them. About 25-30% of domestic violence matters are resolved at the pre-trial stage. However, about 50% of all domestic violence cases are set for a second pre-trial conference prior to resolution, primarily because defense attorneys have just been hired and have not yet received discovery from the prosecutor or because the parties are waiting for additional discovery such as photographs or 911 tapes, etc.

Motion Hearings

Few domestic violence matters (only about 5%) are set for motion hearings, usually for the purpose of suppressing statements made by the defendant or motions to suppress statements of other witnesses as hearsay.

Final Pre-Trial Conference

If at the first pre-trial conference, the defendant requests a trial, the matter is scheduled for a trial date as well as for a final pre-trial conference. At the final pre-trial conference, set approximately 30 days before the trial date, the parties must represent that they are ready to proceed with trial or the trial date will be struck. This requirement is part of the Justice Court case-flow management plan put in place because the majority of domestic

violence matters set for trial do not go to trial. This procedure allows the trial to be struck 30 days before the scheduled trial instead of on the day of trial.

Trials

About 50% of all domestic violence cases filed with the Court are set for trial (the majority are set for jury trials), but only about 1% of those cases actually go to trial. The majority of domestic violence cases set for trial are resolved with the charges being dismissed on the date of trial. This is usually because the witnesses are not cooperative and the City is unable to go forward on the date of trial. Cases are occasionally resolved on the day of trial when the witnesses are cooperative and the defendant chooses to accept a plea resolution that was previously rejected.

Sentencing

Of those who pled guilty or were found guilty on a domestic violence charge, about 5% set the matter over for a different sentencing date. Just as in DUI cases, this option is afforded the convicted person by State law.

Reviews

Judge John Baxter oversees a special domestic violence program and all domestic violence offenders are scheduled before him for regular reviews. The first review is set about 30 days from the date of sentencing.

Bench Warrant Hearings and Order to Show Cause Hearings

After sentencing, a large number of the defendants fail to fully comply with the terms of their probation and the court issues a warrant for failure to comply. This process and the order to show cause process is similar to that described above for DUI cases. When the Defendant either calls in to request a bench warrant hearing or is arrested on the warrant, the court schedules a bench warrant hearing to clear the warrant

Appeals

About 2% of domestic violence convictions are appealed. The process is the same as described for DUI cases.