



CITY ATTORNEY DENNIS HERRERA

NEWS RELEASE

FOR IMMEDIATE RELEASE
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Herrera, ACLU, Lawyers' Committee Reach Accord on Gang Injunction Opt Out Procedure

Administrative Removal Process is 'Fair, Transparent, Accessible, and Recognizes That Individuals Can and Do Change for the Better'

SAN FRANCISCO (March 24, 2008)—City Attorney Dennis Herrera today announced an agreement with the regional chapters of two of the nation's preeminent legal advocacy organizations for civil liberties and access to justice that establishes administrative "opt-out" procedures for individuals named in civil gang injunctions in San Francisco. According to the 12-page memorandum of understanding signed by Herrera and representatives from the American Civil Liberties Union of Northern California and the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, the administrative process by which individuals may be removed from the court ordered provisions "is fair, transparent, accessible, and recognizes that individuals can and do change for the better."

"I am very grateful to everyone who participated in negotiating an opt-out process that both maximizes civil liberties protections for alleged gang members and ensures the effectiveness of civil gang injunctions to protect San Francisco neighborhoods from violence and nuisance conduct," said Herrera. "For their tireless efforts to find common ground on these important issues, I am indebted to Alan Schlosser and Juniper Lesnik of the ACLU and Kendra Fox-Davis of the Lawyers' Committee for Civil Rights. From my office, Chief Deputy City Attorney Therese Stewart and Neighborhood and Resident Safety Division Chief Alex Tse were instrumental in working out the details."

The opt out process announced today provides that individual gang members against whom the City Attorney has obtained civil injunctions—and also alleged gang members whom the City Attorney is seeking to enjoin—may voluntarily apply to the City Attorney's Office for removal from the enforcement list. Individuals remain free to bypass the administrative process by proceeding directly to Superior Court to seek a modification of the injunction or to request exclusion or removal from the enforcement list.

The City Attorney will provide a copy of an opt out petition to each individual seeking removal, and will also make it available to the public on the office's Web site. Though use of the petition is optional, those seeking to opt out of injunction provisions are encouraged to provide any and all information to support their removal. Information provided by petitioners will be kept confidential to the extent required by law and will be used for the decision in the opt out process. The City Attorney's Office reserves the right to conduct its own investigation into the veracity of information submitted and may consider other information relevant to the request. Post-injunction opt out petitions that are approved by the City Attorney's Office must still be approved by the Court, though the City Attorney will represent to the

[MORE]

Court, in writing, that the City Attorney has no objection to the individual's request for removal from the enforcement list. Individuals pursuing pre-injunction opt out petitions must exercise reasonable diligence to provide information to the City Attorney before the last day to file an opposition to the preliminary injunction.

The City Attorney will give notice to the San Francisco Police Department, within no more than three days, of the names of individuals removed from the injunction enforcement list, and the City Attorney has committed to work closely with the Police Department to develop a Department Bulletin that addresses both the agreement and its enforcement to ensure the fullest, most effective compliance with the Court's order while protecting each individual's civil liberties.

Criteria for Removal From a Civil Gang Injunction

In deciding whether or not to approve or deny an individual's opt out request, the City Attorney will consider the totality of the circumstances and evidence when evaluating individual requests, the central criterion being whether the individual is currently an active gang member. Among other factors, the City Attorney will consider whether the individual is gainfully employed, pursuing an education, and any activities that demonstrate a willingness and desire not to engage or associate in gang related activities. The City Attorney will favorably consider evidence of an individual removing gang related tattoos, ceasing to wear gang colors, or ceasing to spend time with known gang members. The City Attorney will also consider relevant the length of time a person has disassociated himself or herself from the gang. Because the manner in which an individual disassociates from a gang will often be several and varied, the time factor may be different for different individuals, and it will be the totality of the evidence, including the time factor, that will be considered by the City Attorney.

The City Attorney will also conduct a review of each gang injunction every three years to determine whether the injunction should continue in effect and, if so, if any individual should be removed from the enforcement list. Should the City Attorney determine that an individual merits removal from an enforcement list as a result of that review, the City Attorney will seek a Court order modifying the injunction, and notice of removal will be issued to the affected individual. Parties to the opt out accord additionally agreed to meet and confer prior to the third anniversary of the memorandum of understanding to determine whether changes need to be made to its terms or scope.

Civil Gang Injunction Cases Background

City Attorney Herrera obtained civil injunctions against five criminal street gangs that have long plagued three of San Francisco's most violence-prone neighborhoods. Named in the injunctions issued by the San Francisco Superior Court are: the Western Addition-based Eddy Rock, Chopper City and Knock Out Posse gangs; the Mission-based Norteño gang; and the Bayview/Hunters Point-based Oakdale Mob.

The civil gang injunction cases are: *People of the State of California v. Oakdale Mob*, S.F. County Superior Court No. 06-456517 (Judge Peter Busch), filed Sept. 27, 2006; *People of the State of California v. Chopper City, Eddy Rock and Knock Out Posse*, S.F. County Superior Court No. 07-464493 (Judge Peter Busch), filed June 21, 2007; *People of the State of California v. Norteño*, S.F. County Superior Court No. 07-464492 (Judge Patrick J. Mahoney), filed June 21, 2007.

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**MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO CITY
ATTORNEY'S OFFICE, THE AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, AND THE LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO BAY AREA REGARDING CIVIL GANG
INJUNCTIONS AND THE OPT OUT PROCESS**

This memorandum of understanding ("MOU") is between the San Francisco City Attorney acting in the name of the People of the State of California, the American Civil Liberties Union of Northern California ("ACLU-NC") and the Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR"). The City Attorney and the aforementioned organizations have reached an understanding and agreement regarding an opt out procedure to be instituted and implemented by the City Attorney's Office for persons identified in civil gang injunctions brought by the City Attorney that is fair, transparent, accessible, and recognizes that individuals can and do change for the better.

SECTION 1: Background.

At the time of this MOU, the City Attorney has obtained two permanent civil gang injunctions against four criminal street gangs and one preliminary injunction against a fifth criminal street gang. There is a permanent injunction in an area within the Bayview/Hunters Point neighborhood against the Oakdale Mob. There is also a permanent injunction in areas in the Western Addition against the KOP, Eddy Rock and Chopper City criminal street gangs. As of the date of this MOU, there is a preliminary injunction in an area within the Mission district against the Norteño criminal street gang.

A court hearing to determine whether a permanent injunction will be issued in the Norteño case will be scheduled following the execution of this MOU.

Although each injunction names the criminal street gang as the defendant, the injunction includes an enforcement list that identifies specific gang members against whom the injunction is enforceable. In order to be bound by the injunction, individuals on the enforcement list must be served with a copy of the injunction by the People. The enforcement list for each injunction has been adopted by the Court, based on evidence submitted by the City Attorney and findings made by the Court that the individuals on the list are active gang members. The enforcement list is a part of the Court-issued injunction, and the Court must therefore approve the removal of any person from the enforcement list.

In evaluating whether or not an individual should be considered for inclusion in a civil gang injunction, the City Attorney considers the following criteria. This list is not meant to be exclusive, nor prioritized in order of importance. Admissions by the individual to being a gang member; participation in gang related crimes or activities; affiliation with known gang members; evidence that the individual has been seen displaying gang affiliated symbols and/or hand signs; evidence that the individual has been seen wearing gang affiliated clothing; evidence that the individual has identifiable gang affiliated tattoos; and registration as a gang member under California Penal Code section 186.30.

SECTION 2: The City Attorney's Opt Out Process.

A. Effective on the date of this MOU, the City Attorney agrees to implement an opt out process in which individuals named in a civil complaint or a subsequent injunction (i.e., preliminary or permanent) may apply to the City Attorney for removal from an enforcement list. This opt out process is completely voluntary on the part of the individual. At any point in time, the individual named in any enforcement list may choose to bypass this opt out process and proceed directly to Court to seek a modification of the injunction and/or to request that the individual be excluded or removed from the enforcement list. In seeking a modification by the Court, the individual, is responsible for complying with all applicable rules of litigation unless otherwise ordered by the Court. The City Attorney appreciates that some individuals may be proceeding in pro per, and will therefore exercise his best judgment and take into account a litigant's need for access to the courts.

B. An individual may request that he or she be removed from the enforcement list either before a preliminary or permanent injunction (or similar order) has been issued by the Court ("pre-injunction opt out request") or after a preliminary or permanent injunction (or similar order) has been issued by the Court ("post-injunction opt out request"). As a condition to the City Attorney's approval of any request for removal, the individual must agree that the City's agreement or stipulation to remove the individual from the enforcement list may be used to show only that the individual has been removed from the enforcement list.

C. If an individual invokes the City Attorney's opt out process, whether pre-injunction or post-injunction, he or she must initiate contact with the City Attorney's Office by telephone or in writing and request to be removed from the enforcement list. The individual seeking removal should contact Deputy City Attorney Alex G. Tse ("DCA Tse"), the supervisory attorney for the team responsible for civil gang injunctions, or his successor in that role. A Petition for Removal ("Petition"), attached to this MOU as Exhibit A, may be used to request an opt out from the City Attorney. The City Attorney will provide a copy of this Petition to each individual seeking removal. The Petition will also be made available to the public on the City Attorney's website, which is found at the following hyperlink: http://www.sfgov.org/site/cityattorney_index.asp. The use of the Petition is optional. Any written documents the individual would like to submit to the City Attorney for review, including the Petition, should be mailed or hand delivered to DCA Tse. DCA Tse may also be contacted by telephone at (415) 554-3800. The individual is encouraged to provide any and all information he or she believes would support removal from the enforcement list.

Unless there are exceptional circumstances, the City Attorney will require an interview of the individual prior to making any decision on the opt out request, and the individual may choose to have representatives at this interview. The interview shall take place at the City Attorney's Office on a mutually agreeable date and time and can be set up by calling DCA Tse or his successor as Team Leader for the Gang Injunction Team at (415) 554-3800.

D. The City Attorney agrees to consider any and all information, without limitation, so long as that information is true and accurate. The format of the information provided is not as critical as the content. Except as set forth in this paragraph, the City Attorney agrees that the information provided in the Petition will be kept confidential to the extent required by law and will be used solely for the decision in the opt out process. Notwithstanding the foregoing, if the City Attorney relies on any information provided by the individual that subsequently is determined to be false or misleading at the time made or to cease to be true thereafter, the City Attorney reserves the right to take any and all appropriate action, including, but not limited to, declining the request of the individual to be removed from the enforcement list, or requesting that the Court add the individual back on to the enforcement list, and the City Attorney may use the information provided in connection with the Petition in any court proceeding to add the individual back to the gang injunction enforcement list based on such false, misleading or no longer accurate information. The City Attorney will take into account any privacy concerns raised by the individual related to the information provided to the City Attorney.

E. The City Attorney's Office may conduct its own investigation into the veracity of any information submitted by an individual invoking the opt out process and may consider any other information that may be relevant to the request. Except as set forth in paragraph 2(D) above, the City Attorney will use information provided regarding employment and education only to confirm the factual accuracy of the information provided.

F. Once an individual requests an opt out, the City Attorney will give the individual a decision in writing if the individual provides the City Attorney with a valid current address to which the response may be sent. This decision will be provided within 30 days of the date the petition or request was made. For pre-injunction opt-outs, the City Attorney will exercise his best efforts to evaluate all requests for opt out prior to the hearing on the preliminary injunction. The purpose of the written response is solely to facilitate the individual's future efforts to disassociate from the gang and rehabilitate himself or herself and successfully invoke the opt out process at a later date. The individual will receive a written response regardless of the decision. If the decision is to decline the opt out request, the individual must agree that he or she will not use the written response in: (1) any other court proceeding; or (2) as the basis for or as evidence in any litigation or claim of any kind predicated in whole or in part on the City Attorney's acts or omissions in conjunction with the injunction or the opt out process. Except as set forth in paragraph 2(D) above, the City Attorney agrees that the information provided by individuals will not be used against them in any other court proceeding.

G. **Post-Injunction Opt Out Requests:** If an individual makes, and the City Attorney's Office approves, a post-injunction opt out request, the agreement by the City Attorney that the individual should be removed from the enforcement list must be approved by the Court. The City Attorney will provide the individual with written notice, consistent with Section F, above, that the individual will be responsible for applying to the Court for the removal from the enforcement list. The City Attorney will represent to

the Court, in writing, that, after conducting its investigation, the City Attorney has no objection to the individual's request to be removed from the enforcement list so long as that removal is without prejudice. A copy of this document will be served on the individual when it is filed with the Court. If the City Attorney denies the individual's request to be removed from the enforcement list of any injunction or other court order, the individual may nonetheless seek relief from the Court. By deciding to go to court, the individual is responsible for complying with all applicable rules of litigation unless otherwise ordered by the Court. The City Attorney appreciates that some individuals may be proceeding in pro per, and will therefore exercise his best judgment and take into account a litigant's need for access to the courts. The City Attorney will give notice to the San Francisco Police Department, within no more than three days, of the name of any individual who has been removed from the enforcement list and the name of the injunction from which they have been removed.

H. **Pre-Injunction Opt Out Requests:** If an individual makes a pre-injunction opt out request, the individual shall exercise reasonable diligence to provide all information to the City Attorney before the last day to file an opposition to the preliminary injunction. This MOU does not affect any deadline triggered by the filing of a gang injunction complaint unless otherwise ordered by the Court. While the City Attorney will exercise his best efforts to evaluate all requests for an opt out prior to the hearing on the preliminary injunction, if the request is made less than five days prior to the last day to file an opposition to the preliminary injunction, the City Attorney may

refuse to consider the request before the injunction proceeding is heard because he lacks sufficient time to evaluate the information provided by the individual. In that event, and as is always the case, the individual may request relief from enforcement from the Court or have the request considered as a post-injunction opt out request.

If the City Attorney approves an individual's pre-injunction opt out request prior to the hearing on the preliminary injunction, that individual will be removed by the City Attorney from the proposed enforcement list prior to the hearing on the preliminary injunction, and the individual will not need to file papers with the Court. Removal from the proposed enforcement list shall be without prejudice.

If the City Attorney denies an individual's pre-injunction opt out request to be removed from an injunction's enforcement list prior to the hearing on the preliminary injunction, that individual may oppose the injunction or his or her inclusion on the list or otherwise apply for relief from the Court. By deciding to go to court, the individual is responsible for complying with all applicable rules of litigation unless otherwise ordered by the Court. The City Attorney appreciates that some individuals may be proceeding in pro per, and will therefore exercise his best judgment and take into account a litigant's need for access to the courts.

SECTION 3: Criteria For Removal From A Civil Gang Injunction.

In deciding whether or not to approve or deny an individual's opt out request, the City Attorney will consider the totality of the circumstances and evidence when

evaluating the individual's request. The main overarching issue is whether the individual is currently an active gang member. The City Attorney will consider, among other factors, whether the individual is gainfully employed, pursuing an education, and any activities that demonstrate a willingness and desire not to engage or associate in gang related activities. The City Attorney will favorably consider evidence of an individual removing gang related tattoos, ceasing to wear gang colors, or ceasing to spend time with known gang members. The City Attorney will also consider relevant the length of time a person has disassociated himself or herself from the gang. Because the manner in which an individual disassociates from a gang will often be several and varied, the time factor may be different for different individuals, and it will be the totality of the evidence, including the time factor, that will be considered by the City Attorney.

SECTION 4: Notice Of The City Attorney's Opt Out Process.

The City Attorney will provide notice of the process described above in Sections 2 and 3 by issuing a press release and publishing and maintaining information related to the civil gang injunction and this opt out process on the City Attorney's website. In all civil gang injunction cases in which there is a permanent injunction in effect on the date this MOU is executed, the City Attorney will serve persons subject to the injunction by mail to the last known address notice of the opt out process. In any pending action (i.e., an action in which no permanent injunction has been issued) or any action initiated after the date of this MOU, the City Attorney will provide notice of the opt out process

described above in Sections 2 and 3 by serving written notice with any complaint and any subsequent injunction issued by the Court. This notice shall attach the Petition for Removal and clearly inform individuals of the following: 1) that the opt out process exists so that individuals who are not active gang members can petition the City Attorney for removal from a gang injunction enforcement list; 2) to initiate the opt-out process, individuals should contact Deputy City Attorney Alex G. Tse (or his successor) at (415) 554-3800; and 3) individuals may contact the Lawyers' Committee for Civil Rights at (415) 543-9444 for questions regarding the opt out process and for assistance in identifying relevant community organizations and service providers to support an opt out request. A copy of the notice is attached to this MOU as Exhibit B.

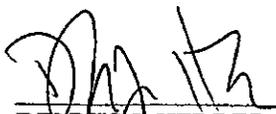
SECTION 5: Periodic Review.

The City Attorney shall conduct a review of each gang injunction every three years from the date in which a permanent injunction has issued to determine whether the injunction should continue in effect and, if so, if any individual should be removed from the enforcement list. If, as a result of such a periodic review, the City Attorney determines that an individual should be removed from an enforcement list, the City Attorney will seek a Court order modifying the injunction, and notice of removal will be given to that affected individual consistent with the law, unless otherwise ordered by the Court. Any removal of an individual initiated by the City Attorney must be approved the Court, and is without prejudice. Moreover, any removal of an individual is inadmissible

SECTION 6: Review and Renewal of the MOU.

The City Attorney, ACLU-NC and LCCR shall meet and confer prior to the third anniversary of this MOU to determine whether changes need to be made to the terms or scope of this MOU. If after five years there is no unanimous agreement to continue under this MOU, it shall expire.

OFFICE OF THE CITY ATTORNEY
THE CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
CITY ATTORNEY
ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA

Dated: 3/24/08

ACLU-NORTHERN CALIFORNIA

ALAN L. SCHLOSSER, ESQ.
JUNIPER LESNIK, ESQ.

Dated: _____

LAWYERS' COMMITTEE FOR CIVIL RIGHTS

KENDRA FOX-DAVIS, ESQ.

Dated: _____

SECTION 6: Review and Renewal of the MOU.

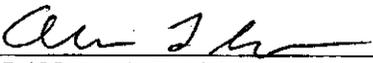
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THE CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
CITY ATTORNEY
ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA

Dated: _____

ACLU-NORTHERN CALIFORNIA



ALAN L. SCHLOSSER, ESQ.
JUNIPER LESNIK, ESQ.

Dated: 3/24/08

LAWYERS' COMMITTEE FOR CIVIL RIGHTS

KENDRA FOX-DAVIS, ESQ.

Dated: _____

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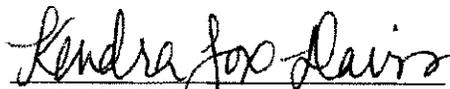
Dated: _____

ACLU-NORTHERN CALIFORNIA

ALAN L. SCHLOSSER, ESQ.
JUNIPER LESNIK, ESQ.

Dated: _____

LAWYERS' COMMITTEE FOR CIVIL RIGHTS


KENDRA FOX DAVIS, ESQ.

Dated: 3/24/08

NOTICE OF OPT OUT PROCESS FOR SAN FRANCISCO GANG INJUNCTIONS

- **There is an administrative opt out process for this gang injunction. Individuals who can establish that they are not active gang members can petition the City Attorney for removal from the gang injunction enforcement list.**
- **To initiate this administrative opt-out process, individuals should contact Deputy City Attorney Alex G. Tse (or his successor) at (415) 554-3800.**
- **Individuals may contact the Lawyers' Committee for Civil Rights at (415) 543-9444 for questions regarding the opt out process and for assistance in identifying relevant community organizations and service providers to support an opt out request.**
- **Individuals always have the right to ask San Francisco Superior Court to remove them from the injunction. If you do not want to use the administrative opt out process, but believe you should be removed from the gang injunction, you can appear to contest the injunction or file a motion for removal with the Court.**
- **See the attached Petition for Removal for more information about the types of information the City Attorney will consider in evaluating your opt out request.**

SAN FRANCISCO CITY ATTORNEY'S OFFICE

PETITION FOR REMOVAL FROM GANG INJUNCTION

This form is for use by persons living in the City of San Francisco who have been served with a Gang Injunction and who want the opportunity to demonstrate that they should not be restrained by the Gang Injunction because they are not active gang members. A Gang Injunction will be enforced against you only if you have been personally served with it. If you are on a gang injunction enforcement list and have been personally served with the injunction, you must provide sufficient information for the City Attorney's Office to show that: 1) You are not an active gang member; and 2) You are not participating in any of the activities prohibited by the Gang Injunction.

THE REVIEW PROCESS:

The San Francisco City Attorney's Office has put in place a review process for those persons living in the City of San Francisco who believe they (a) have been wrongly included on a Gang Injunction enforcement list and want to petition for removal before an injunction is issued; or (b) were enjoined and placed on a gang injunction list by a court but are not now an active gang member.

The review process is intended to provide individuals a fair and accessible way to establish that they are not an active gang member and so should be removed from the Gang Injunction enforcement list.

An individual always has the right to file a motion directly in Court seeking removal from a gang injunction. You can file such a motion in San Francisco Superior Court and bypass this administrative process, if you prefer.

The steps of the review and removal process are:

1. **FILING YOUR PETITION:** You can complete this form, or submit other documentation, as evidence that you are not an active gang member. Instructions on where to file your petition are below.
2. **REVIEW OF YOUR PETITION AND DECISION BY THE CITY ATTORNEY:** The City Attorney will contact you to schedule an interview with you to discuss your petition. You have the right to representation at that meeting. The City Attorney will also consider any other available and reliable information concerning your past and present membership in or involvement with criminal street gangs.
3. **DECISION BY THE CITY ATTORNEY:** After the City Attorney meets with you and reviews the evidence, he will make a determination as to whether he will support or deny your request for removal. You will be given a written decision, within 30 days, granting or denying your petition to be removed from the Gang

Injunction and stating the reasons for that decision. This decision will be mailed to your home address, or, if you prefer for safety or convenience reasons, to another address. If you are denied, you may submit a new Petition to the City Attorney when you have new information to report supporting your claim that you are not an active gang member.

4. **PETITIONING THE COURT FOR REMOVAL:** If your request for removal is granted by the City and you have been enjoined by the Court in an injunction, you still must file a motion with San Francisco Superior Court to officially get your name removed from the enforcement list. The City Attorney will file papers with the Court saying that, after conducting his own investigation, he does not oppose your removal from the gang injunction. If your petition was granted prior to the hearing and you have not been enjoined by the Court, the City Attorney will simply remove you from the enforcement list.

If the City Attorney denies your request for removal, you still have the option of going to court and filing papers requesting removal directly from the Court. The City Attorney may oppose such individuals in court.

5. **OPT OUT ASSISTANCE:** You may contact Lawyers Committee for Civil Rights at (415) 543-9444 with questions regarding the opt out process and for assistance in identifying relevant community organizations and service providers to support your Petition.

CONFIDENTIALITY:

The City Attorney's Office will keep the information you provide in this Petition confidential to the extent required by law and will only use the information you provide to make a decision in this opt out process, unless the information contained herein is false or misleading at the time it was presented to the City Attorney's Office or ceases to be true thereafter. The City Attorney's Office will take into account any privacy concerns raised by you related to the information provided to us

As a condition of filing this request for opt-out, you must agree not to use the City Attorney's response other than in an opt out motion to the court or to show that you have been removed from the gang injunction enforcement list.

REPRESENTATION BY COUNSEL:

Are you currently represented by an attorney (which includes a Public Defender) in any legal proceeding involving the Gang Injunction, including (but not limited to) a proceeding in which you are accused of violating the Gang Injunction: Yes No

Because of ethical rules applicable to all attorneys, if you answered yes, your Petition cannot be considered unless **your attorney** completes and signs Addendum No. 1 at the end of this Petition. *You are not required to have an attorney in order to apply for removal from a gang injunction.*

INFORMATION IN SUPPORT OF YOUR PETITION:

EDUCATION:

Please provide the following information regarding any schools you have attended, including middle school, high school, a trade school, or college. Please start with your most recent school and work your way backward in time. The City Attorney will use this information only to confirm the factual accuracy of the information you provide. Attach a separate sheet if you need more space.

1. _____
Name of School

Location

_____ Completed/Graduated: ___ Yes ___ No
Time Period Attended

2. _____
Name of School

Location

_____ Completed/Graduated: ___ Yes ___ No
Time Period Attended

3. _____
Name of School

Location

_____ Completed/Graduated: ___ Yes ___ No
Time Period Attended

By signing below, you will be confirming that all of the information provided in or with this form is, to the best of your knowledge, true and correct.

Signature

Date

