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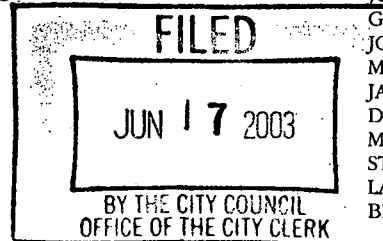
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June 6, 2003

CITY OF SACRAMENTO
CITY COUNCIL
Sacramento, California

Honorable Members in Session:



SUBJECT: City Attorney's Report Back on Questions Raised During the Budget Hearing on May 29, 2003

LOCATION AND COUNCIL DISTRICT: City-wide

RECOMMENDATION: This report is for Council direction on the FY 2003/2004 budget hearings.

CONTACT PERSON: Samuel L. Jackson, City Attorney, 264-5346

FOR COUNCIL MEETING OF: June 17, 2003

SUMMARY/ BACKGROUND: The attached report is intended to respond to questions raised by the Council to the City Attorney during the budget hearing on May 29, 2003.

1. LEGAL QUESTIONS

a. Uncontainerized Garden Refuse (Cohn)

Councilmember Steve Cohn requested a report on the city code language pertaining to uncontainerized garden refuse and any restrictions on changing collection services.

The matter of containerization was placed before the Sacramento voters in 1977. On September 27, 1977, city voters enacted an ordinance by initiative, known as Measure A, which stated *verbatim* as follows:

"BE IT ENACTED BY THE PEOPLE OF THE CITY OF SACRAMENTO."

Section 1. Yard and Garden Refuse; deposit and collection.

That yard and garden refuse deposit and collection shall be conducted consistent with Sections 19.401 et. seq. of the Code of the City Sacramento (Ord. 3685, Section 4, effective 6-24-76) to the end that mandatory containerization of yard and garden refuse shall not be required in the City of Sacramento.

Section 2. Yard and Garden refuse; deposit and collection voter approval.

That the ordinance enacted pursuant to Section 1 above shall not be repealed or amended except by a vote of the majority of the electors of the City of Sacramento at any municipal election.

When Measure A was enacted, Section 4 of Ordinance No. 3685 authorized the deposit of garden refuse in City streets and imposed an excise tax on residential properties for the privilege of depositing garden refuse in City streets, for periodic collection and removal by the City's Division of Waste Removal. This excise tax applied whether or not the owners of the properties actually exercised this privilege. Thus, the effect of Measure A was (1) to require the City to continue to comply with garden refuse deposit and collection consistent with the existing code provisions and (2) to prohibit mandatory containerization absent voter approval at a municipal election.

Subsequent to the adoption of Measure A, various ordinances amended and renumbered various provisions of Section 4 of Ordinance No. 3685, including a 1991 amendment that repealed the lawn and garden refuse excise tax and replaced it with a lawn and garden service fee to reflect the costs associated with garden refuse collection, disposal and street sweeping. (Ordinance No. 91-013, § 1). The lawn and garden service fee provision is currently set forth with no changes in City Code section 13.10.440. (Attached as Exhibit 1 are copies of Measure A, Ordinance No. 3685, § 4, and City Code §13.10.350 et seq. for your reference).

b. Minimum Administrative Penalty (Jones)

Councilmember Dave Jones asked whether the Council has discretion to establish mandatory minimum administrative penalties for certain code violations.

Pursuant to Chapter 1.28 of the City Code, administrative penalties ranging from \$100 to \$25,000 may be imposed unless the City Council has, by resolution or ordinance, adopted a separate and distinctive administrative penalty for the particular violation. Thus, it is clear the Council has the authority to set administrative penalties different from the ones indicated in Chapter 1.28, including a mandatory minimum amount.

City Code section 1.28.010 provides a schedule of the different categories of code violations and the corresponding penalties. (Attached as Exhibit 2 is a copy of City Code 1.28.010). The following is a brief summary of the schedule which may provide the Council some guidance should it choose to establish mandatory minimum administrative penalties.

- **Level A violations** are violations that present a substantial probability of death or physical harm to the public at large or persons. Level A violations are subject to a penalty of \$5,000.00 to \$25,000.00
 - **Level B violations** are violations that either (1) present a threat of serious physical harm to the public at large or persons; or (2) present circumstances likely to cause and/or do cause serious harm to the public or private property; or (3) present a conscious and willful disregard of a hearing examiner's orders or orders or notices of violation issued by any authorized agency or commission. Level B violations are subject to a penalty of \$2,500.00 to \$4,999.99.
 - **Level C violations** are violations that present circumstances that are either (1) likely to cause and/or do cause harm to the public or private property; or (2) show repeated or continuous noncompliance with a hearing examiner's orders or orders or notices of violation issued by any authorized agency or commission. Level C violations are subject to a penalty of \$1,000.00 to \$2,499.99.
 - **Level D violations** are violations other than Level A, B, or C violations. Level D violations are subject to a penalty of \$100.00 to \$999.99.
- c. **Development fees to cover operation and maintenance costs of development-related capital improvements (Jones)**

Councilmember Jones inquired as to whether the City has the ability to charge developers impact fees to cover the costs of operation and maintenance of development-related capital improvements.

The procedures by which a local agency may levy fees for construction or improvement of public facilities as a condition of approval of development projects are specified in the Mitigation Fee Act (*Gov. Code § 66000 et seq.*) The Act was passed by the legislature in response to concerns among developers that local agencies were imposing development fees

for purposes unrelated to development projects. A "fee" is defined as a monetary exaction, other than a tax or special assessment, which is charged by the local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. (*Gov. Code § 66000(b)*.) When a local agency imposes any fee or exaction as a condition of approval of a proposed development project, the fees or exactions cannot exceed the estimated reasonable costs of providing the service or facility for which the fee or exaction is imposed. (*Gov. Code § 66005(a)*.)

While fees can be charged to pay the acquisition and construction costs of public facilities that need to be constructed or enlarged because of the additional burdens created by the proposed development, such fees **cannot** include an amount for the maintenance or operation of an improvement when the fee is required as a condition of approval of a development project unless: (1) the improvement is designed to serve only a specific development of 19 or fewer lots or units and it is impracticable or infeasible to form a public entity to maintain the improvement; or (2) when the improvement is within a water, sewer, street lighting, or drainage district, a fee for the maintenance and operation of the improvement may be required for a period not to exceed 24 months if the improvement is annexed to a public entity that will finance the operation and maintenance or the local agency forms a public entity or assessment district to finance the operation and maintenance subsequent to the construction of the capital improvement. If there is substantial evidence that this time period is insufficient for the creation of, or annexation to, a public entity or an assessment district, the local agency may extend the fee once for whatever duration it deems reasonable beyond the 24-month period. (*Gov. Code § 65913.8*, a copy of which is attached as Exhibit 4).

As a practical matter, however, the operation and maintenance costs for recent public capital improvements do not come out of the City's funds. Since 2002, the City requires developers to create, or annex to, existing Community Facilities Districts (CFDs) as a condition to the approval of a tentative map. CFDs are created pursuant to the Mello-Roos Community Services Act of 1982 (*Gov. Code § 53311 et seq.*) CFDs are formed specifically for the purpose of financing the cost of maintenance services which are funded by the special tax assessed on property owners within the CFDs. Pursuant to City Code section 3.124.230, CFDs may provide the following types of services: maintenance of landscape corridors, medians, off-street bikeways, sewer and water easement areas, drainage and related facilities, roadways and road easement areas, and light rail transportation corridors. Accordingly, the property owners within the CFDs are the ones who ultimately bear the operation and maintenance costs of these projects.

It is our understanding, however, that there are some public capital improvements that lie outside the CFDs. In this case, the operation and maintenance costs come out of the City's funds. Shifting the maintenance costs to the property owners in these areas requires a two-thirds vote of the property owners. (*Gov. Code § 53326*).

2. INFORMATION ON COUNTY DISTRICT ATTORNEY'S CUTS ON CERTAIN MISDEMEANOR OFFENSES

Attached as Exhibit 4 to this report is a letter from Jan Scully, District Attorney, advising the City that due to budget cuts, the D.A.'s Office will only review the following misdemeanor cases: vehicular manslaughters, driving under the influence, child/elder/dependent adult abuse, domestic violence, and sex offenses. As a result, the D.A.'s Office will no longer review officer-involved shootings and prosecute misdemeanor drug offenses and general nuisance cases. The D.A. has proposed to temporarily deputize attorneys in the City Attorney's Office to prosecute state code misdemeanor offense that occur in our jurisdiction that the D.A.'s office will not be able to handle. The potential fiscal impact on the City is unknown. As of the end of May, the D.A.'s budget situation had not changed.

3. INFORMATION ON STAFFING LEVELS AND RETENTION

Councilmember Jones requested a report back on the status of the staffing level and retention issues relative to the City Attorney's Office. During the City Attorney's annual appraisal, staffing and retention was discussed. The Mayor appointed an ad hoc committee consisting of herself and Councilmembers Cohn and Yee. The Committee has the charge of working with the City Attorney and the City Manager to address issues related to both staffing level and salary/benefits issues that have a severe adverse impact on staff retention.

On the staffing issue, the City Attorney was asked to work with the City Manager through the Department of Human Resources (HR) to develop a methodology for determining when and how much additional staffing is necessary when the City adds staffing to other departments. Adding staff to other departments generates increases in legal workloads without the addition of legal staff to address the increased workload. On the issue of compensation, the Committee will meet with the City Manager and the City Attorney to determine how to immediately address salary issues. The City Attorney is currently working with HR to address the salary issues. It is anticipated that most, if not all, of the salary issues will be addressed by working with HR.

HR is currently reviewing City-wide employee benefits. That study will include a review of benefit issues raised by the City Attorney's Office.

FINANCIAL CONSIDERATIONS: Financial considerations are governed by how the Council decides to respond to the issues raised above, especially the issue of expanding the City Attorney's role in criminal prosecution.

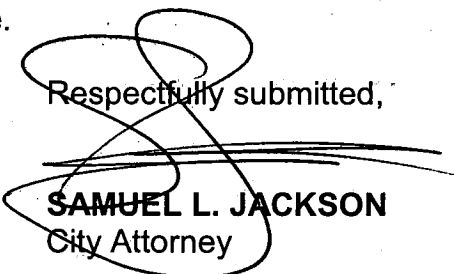
ENVIRONMENTAL CONSIDERATIONS: None.

POLICY CONSIDERATIONS:

1. Whether to modify City Code to impose minimum administrative penalties for certain types of code violation.
2. Whether to submit to the voters for approval language to modify the City Code garden refuse deposit and collection.
3. Whether to expand the City Attorney's role in criminal prosecution.

ESBD CONSIDERATIONS: Not applicable.

Respectfully submitted,


SAMUEL L. JACKSON
City Attorney

RECEIVE, FILE AND DIRECT STAFF
RECOMMENDATION APPROVED:



ROBERT THOMAS
City Manager

Attachments

1. Exhibit 1 - Measure A, Ordinance 3685, § 4 and City Code § 13.10.350 et seq.
2. Exhibit 2 - City Code § 1.28.010
3. Exhibit 3 - Government Code § 65913.8
4. Exhibit 4 - Letter from Jan Scully, D.A.

MEASURE A

The proposed ordinance reads as follow:

"BE IT ENACTED BY THE PEOPLE OF THE CITY OF SACRAMENTO."

Section 1. Yard and Garden Refuse; deposit and collection.

That yard and garden refuse deposit and collection shall be conducted consistent with Sections 19.401 et. seq. of the Code of the City of Sacramento (Ord. 3685, Section 4, effective 6-24-76) to the end that mandatory containerization of yard and garden refuse shall not be required in the City of Sacramento.

Section 2. Yard and Garden refuse; deposit and collection voter approval.

That the ordinance enacted pursuant to Section 1 above shall not be repealed or amended except by a vote of the majority of the electors of the City of Sacramento at any municipal election.

YES--26,162 NO--8,494
TOTAL VOTES--34,656

MEASURE B

Relating to City Charter Revision

Shall the Sacramento City Charter be amended by eliminating unnecessary and unclear language, reorganizing the charter and making minor revisions to make the charter consistent with modern city charters?

YES--19,345 NO--13,623
TOTAL VOTES--32,968

MEASURE C

Relating to the creation of an official salaries commission

Shall the Sacramento City Charter be amended to provide for the appointment of an Official Salaries Commission to determine, within specified maximum limits, the salaries of the mayor and council members and to recommend the salary for other agencies upon which the mayor and council serve as members, with limited annual adjustments as specified in the amendment?

YES--15,154 NO--17,638
TOTAL VOTES--32,792

filing with the city clerk within ten days after the date of the mailing of the decision a request that the matter be set for an appeal hearing by the city council.

The city clerk shall notify the city revenue and collections officer of the filing of such appeal and the city revenue and collections officer shall transmit to the council all records pertaining to the action being appealed. Notice of the hearing by the city council shall be given in writing by the city clerk at least five days prior to the date of the hearing and shall state the time and place where such hearing will be held. Such notice shall be served upon the appealing party by mailing it to his address as shown on the notice of appeal.

The city council may affirm, reverse or modify any action taken pursuant to the provisions of this article. This decision shall be final forthwith and the city revenue and collections officer shall act accordingly.

Secs. 19.324 to 19.400. Reserved.

SECTION 4.

Article IV is hereby added to Chapter 19 of the Sacramento City Code to read as follows:

Article IV - Garden Refuse

Sec. 19.401. Garden refuse--defined.

As used in this article the term "garden refuse" means leaves, grass cuttings and garden trimmings, weeds and roots from which all dirt has been removed, shrubbery and tree trimmings of which no single piece shall exceed thirty-six inches in length, six inches in diameter or forty pounds in weight.

Sec. 19.402. Legislative findings.

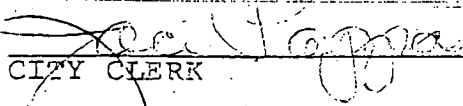
The city council finds and determines:

(a) That the public health, safety and welfare of all the citizens of the city requires that the accumulation and disposal of garden refuse from properties within the city be handled in a manner producing the greatest good and least public inconvenience, cost and maintenance to the city and its citizens.

(b) That the privilege of depositing garden refuse in the

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MAY 25 1976
ORDINANCE No. 3685


CITY CLERK

JUN -1 1976
ORDINANCE No. 3685

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streets in front of properties within the city for periodic collection and disposal by the division of waste removal is a privilege afforded by the city which is of substantial benefit to owners of all properties within the city to which the privilege is extended.

(c) That the costs to the city in providing for the periodic collection and disposal of garden refuse from the streets in front of properties within the city should be collectively borne by the owners of said properties through the imposition and collection of an appropriate excise tax upon the privilege afforded said owners.

(d) That the privilege of depositing garden refuse in the streets of the city in front of properties used primarily for residential purposes for periodic collection and disposal by the division of waste removal should be limited and restricted to the owners of those residential properties and that the privilege of depositing garden refuse in the streets of the city in front of commercial, industrial and agricultural properties should be restricted to those properties the owners of which are willing to pay the city an excise tax for the privilege extended to their properties which is based upon actual amounts of garden refuse deposited in city streets.

Sec. 19.403. Deposit of garbage prohibited.

It shall be unlawful and a misdemeanor for any person to deposit garbage in the streets of the city.

Sec. 19.404. Deposit of rubbish and waste matter regulated.

It shall be unlawful and an infraction for any person to deposit rubbish or waste matter in the streets of the city in a manner other than that expressly authorized by this article.

Sec. 19.405. Deposit of garden refuse authorized.

Garden refuse produced on properties used primarily for residential purposes may be deposited in the streets of the city at the times and in the manner prescribed by this article.

Sec. 19.406. Place of deposit.

Garden refuse shall be placed in the street in front of and contiguous to the residential properties from which the garden refuse is removed. Where there is no curb and gutter on the streets contiguous to the residential properties from which the garden refuse is removed, it shall be placed in containers or tied in bundles of which no single piece shall exceed thirty-six inches in length, six inches in diameter or forty pounds in weight, and shall be deposited contiguous to the travelled portions of the streets' right-of-ways.

Sec. 19.407. Manner of deposit.

All garden refuse deposited in the streets shall be placed and

maintained in as compact of a pile as possible, impeding neither the drainage channel of the streets nor the travelled portion of the roadway.

Sec. 19.408. Maximum amount of deposit.

The maximum amount of garden refuse that may be deposited in the streets during a calendar week is as follows:

- (a) For single and two-family residential structures 2 cubic yards
- (b) For multi-family residential structures containing three or more living units but less than six dwelling units 7 cubic yards
- (c) For multi-family residential structures containing six or more dwelling units but less than 11 living units 9 1/2 cubic yards
- (d) For multi-family residential structures containing 11 or more dwelling units the maximum shall be 9 1/2 cubic feet plus 2 1/4 cubic yards for each additional five units.

Sec. 19.409. Time of deposit.

In the period of each calendar year commencing on the first day of January and terminating on the last day of September, garden refuse may be deposited in the streets in front of the properties within the city no sooner than one calendar day prior to the regular date of collection and removal of garden refuse for those properties. During the months of October, November and December garden refuse may be deposited in the streets at any time in that collection by the division of waste removal will not normally be provided on a weekly basis.

The regular dates for collection and removal for all properties within the city in the months of January through September shall be fixed by the superintendent of the division of waste removal.

Sec. 19.410. Garden refuse from commercial, industrial or agricultural properties.

No person shall deposit garden refuse from properties used primarily for non-residential properties in the streets of the city without first obtaining the prior written authorization of the superintendent, but the failure of any person to obtain such authorization shall not absolve him from the liability imposed by section 19.412. The superintendent may refuse to authorize the deposit if he determines that the collection by the city could be impractical, uneconomic or otherwise create problems involving public health or safety.

MAY 25 1976

ORDINANCE No 3685

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Sec. 19.411. Same--conditions of deposit.

In authorizing the deposit in city streets of garden refuse from properties used primarily for non-residential purposes the superintendent shall specify the time, manner and place of the deposit.

Sec. 19.412. Excise tax imposed--residential properties.

It is hereby found and determined that the privilege of depositing garden refuse from residential properties in the streets of the city for the collection and removal by the division of waste removal is a benefit to the owners of all properties within the city used primarily for residential purposes and such owners are hereby made liable for the payment of the excise tax upon said privilege imposed by this article irrespective of their actual use of city streets for deposit of garden refuse.

Sec. 19.413. Rate of tax--residential properties.

The excise tax imposed upon the privilege of depositing garden refuse from residential properties in city streets shall be as follows:

(a) Single-family residences: The monthly tax for properties used primarily for single-family residential purposes shall be \$2.00.

(b) Two-family residences: The monthly tax for properties used primarily for two-family residential purposes shall be \$3.50.

(c) Multiple-family residences: The monthly tax for each property used primarily for residential purposes and having three or more dwelling units shall be according to the following rate:

<u>Number of Living Units</u>	<u>Excise Tax</u>
3 to 5	\$3.50 plus \$1.00 for each living unit in excess of two living units
6 to 10	\$6.50 plus \$0.50 for each living unit in excess of five living units
11 to 25	\$9.00 plus \$0.25 for each living unit in excess of ten living units, but not greater than
26 to 50	\$12.75 plus \$0.10 for each living unit in excess of 26 living units
50 and greater	Multiple family residence containing more than 50

dwelling units shall be considered as being property used primarily for non-residential purposes and shall be billed accordingly.

Sec. 19.414. Rate of tax--other properties.

The excise tax imposed upon the privilege of depositing garden refuse in city streets from any property used primarily for non-residential purposes shall be based upon the approximate average monthly quantity of garden refuse so deposited from the property.

The tax shall be computed according to the following rates:

<u>Average Monthly Quantity of Deposit</u>	<u>Monthly Excise Tax</u>
Two (2) cubic yards	\$4.50
Three (3) cubic yards	\$5.50
Additional for each cubic yard in excess of three cubic yards.	\$0.50

The approximate average monthly quantity of garden refuse deposit shall be determined by the superintendent and may be revised from time to time to reflect actual approximate average quantities deposited in the city streets from the properties to which the privilege is provided.

Sec. 19.415. Residential condominiums, planned developments, stock cooperatives, mobile home parks.

For purposes of this article any residential condominium, residential planned development, residential stock cooperatives or mobile home parks shall be considered to be a use of property for nonresidential purposes.

Sec. 19.416. Optional tax--multi-family residential properties.

The owner of any property used primarily for residential purposes on which three or more dwelling units are located may elect to have the property taxed under this article as if it were being used primarily for commercial purposes. Said election shall be filed with the superintendent on such form as he may prescribe and said election shall remain in effect until revoked in writing by the owner or his successors in interest.

Sec. 19.417. Same--collection of fees.

The excise tax for the privilege of depositing garden refuse in city streets for collection and removal by the division of waste removal shall be charged under the designation "garden refuse tax" on the bimonthly municipal service bills and shall be payable at the same time

and place and in the same manner and shall be subject to the penalty for delinquency as is presently in effect for city water and sewer services. Any closing bill rendered shall be due and payable when billed.

Sec. 19.418. Payment of tax by occupants.

A person who is an occupant of or in possession, charge or control of property which he does not own may pay the excise tax imposed by this article; provided, however, acceptance of any payment from such a person shall not relieve the owner of said property from liability or constitute any waiver of whatsoever nature for all subsequent payments of said tax.

Sec. 19.419. Delinquent fees--constitute lien.

If the excise tax for the privilege of depositing garden refuse on city streets remains unpaid for a period of 30 days following presentation such delinquent payments shall become a lien and a tax on the real property to which the privilege has been extended. The property owner shall be notified by the utility services supervisor of the city that the excise tax is delinquent and unpaid and that subsequent proceedings will be taken to make the tax a special assessment on the real property to which the privilege has been extended.

Sec. 19.420. Same--collected as special assessment.

Not less often than once a year, the utility services supervisor may initiate proceedings to make delinquent payments of excise taxes imposed by this article upon the privilege of depositing garden refuse in city streets a special assessment against the parcels of property to which the privilege has been extended.

Sec. 19.421. Same--report transmitted to council.

A report of delinquent payments of excise taxes imposed under this article shall be annually transmitted to the council by the utility services supervisor. Upon receipt by the council of the report, it shall fix a time, date and place for hearing the report and any protests or objections thereto.

Sec. 19.422. Same--notice of hearing.

The council shall cause notice of the hearing to be mailed to the owner of the real property to which the privilege was extended not less than ten days prior to the date of the hearing. For the purposes of this section, the owner of the property shall be conclusively deemed to be the person to which such property was assessed in the latest equalized assessment roll of the County of Sacramento unless the utility services supervisor shall have knowledge of the name of a person other than such assessee claiming record ownership of such parcel of real property. The notice shall be mailed to the address of the owner as shown on the latest equalized assessment roll or such

other address of the owner as may be known by the utility services supervisor.

Sec. 19.423. Same--hearing.

At the time fixed for consideration of the report, the council shall hear it with any objections of any property owners liable to be assessed for delinquent payments of the excise tax imposed by this article. The council may make such revisions, corrections, or modifications of the report as it may deem just; and in the event the council is satisfied with the correctness of the report (as submitted or as revised, corrected or modified), it shall be confirmed or rejected by resolution. The decision of the city council on the report and on all protests or objections thereto shall be final and conclusive.

Sec. 19.424. Same--manner of collection; applicability of other liens, laws, etc.

Upon confirmation of the report by the council, the delinquent payments of the excise tax imposed by this article contained therein shall constitute a special assessment against the property to which the privilege applies. Thereafter such assessment may be collected at the same time and in the same manner as ordinary ad valorem municipal taxes are collected and shall be subject to the same penalties and same procedure of sale as provided for delinquent ordinary ad valorem municipal taxes. The assessments shall be subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for state, county and municipal ad valorem taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and penalties due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal ad valorem taxes shall be applicable to such special assessments.

Sec. 19.425. Same--report to be transmitted to auditor.

A certified copy of the confirmed report shall be filed with the county auditor on or before August 15. The descriptions of the parcels subject to the special assessment shall be those used for the same parcels on the county assessor's map books for the current year.

Sec. 19.426. Neighborhood cleanup programs.

Rubbish and waste matter may be deposited in the city streets for collection and removal by the division of waste removal when such deposits are expressly authorized by the superintendent in connection with a neighborhood cleanup program. The time and manner of deposit, together with any limitation upon the nature and extent of materials to be deposited, shall be determined by the superintendent and shall be communicated by him to the neighborhood in which the program is to be conducted.

SECTION 5.

The excise tax imposed by this ordinance shall be charged for exercising the privilege of depositing garden refuse in city streets on and after July 1, 1976; provided, however, for purposes of implementing the collection of the tax the charge for the tax shall appear only on regular bimonthly municipal service bills presented for payment on or after July 1, 1976. The excise tax imposed by this ordinance shall be in effect only through June 30, 1977 and shall terminate after that date.

SECTION 6.

This ordinance shall be published once in the official newspaper of the City of Sacramento within ten days after its passage.

PASSED: May 25, 1976

EFFECTIVE: June 24, 1976

Philip L. Bentley
MAYOR

ATTEST:

Ma Pappas
CITY CLERK

Article III. Garden Refuse

13.10.350 "Garden refuse" defined.*

As used in this article, the term "garden refuse" means leaves, grass cuttings and garden trimmings, weeds and roots from which all dirt has been removed, shrubbery and tree trimmings of which no single piece shall exceed thirty-six (36) inches in length, four inches in diameter or forty (40) pounds in weight. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.401)

*Editor's Note: Measure A adopted 09-27-77 states this section cannot be amended or repealed without a majority vote of the electors of the city of Sacramento.

13.10.360 "Lawn and garden service" defined.

As used in this article, the term "lawn and garden service" means the periodic collection by the department of public works of garden refuse from city streets, the disposal of said garden refuse, and the periodic sweeping of those streets. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.402)

13.10.370 "Property classification" defined.

As used in this article, property is classified as follows:

A. Residential.

Single-family residences: each property where there is only one dwelling unit on one parcel of property which is used primarily for single-family purposes.

Two-family residences: each property used primarily for two-family residential purposes.

Multi-family residences: each property used primarily for residential purposes having more than two but less than fifty-one (51) dwelling units.

Multiple family residences containing more than fifty (50) dwelling units shall be considered as being property used primarily for nonresidential purposes.

B. Nonresidential. Each property used primarily for nonresidential purposes. For purposes of this article, any residential condominium, residential planned development, residential stock cooperative, or mobilehome park shall be classified as nonresidential property. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.403)

13.10.380 Legislative findings.

The city council finds and determines:

A. That the public health, safety and welfare of all the citizens of the city requires that the accumulation and disposal of garden refuse from properties within the city be handled in a manner producing the greatest good and least

public inconvenience, cost and maintenance to the city and its citizens.

B. That depositing garden refuse in the streets in front of properties within the city for periodic collection, disposal and street sweeping by the department of public works is a service afforded by the city which is of substantial benefit to owners of all properties within the city to which the service is extended.

C. That the costs to the city in providing for the periodic collection, disposal of garden refuse from the streets in front of properties within the city, and sweeping of said streets should be collectively borne by the owners of said properties through the collection of a lawn and garden service fee.

D. That depositing garden refuse in the streets of the city for periodic collection and disposal by city forces should be limited and restricted to:

1. The owners of those residential properties with concrete curbs and gutters.

2. The owners of those residential properties without concrete curbs and gutters, who have requested the service, been approved by the director of public works, and have agreed to pay the required fee.

3. The owners of those nonresidential properties with concrete curbs and gutters who have requested the service and have agreed to pay the required fee based upon the amount deposited in the street.

E. That depositing garden refuse in the streets of the city in front of properties not provided the periodic garden refuse collection and disposal services by city forces is prohibited.

F. That street sweeping services are to be continued for, and charged to, all properties, (residential and non-residential), having concrete curbs and gutters.

G. That the city manager, in order to promote the public health, safety and welfare, should have the authority to prohibit the placement of garden refuse in the streets and at curbside upon the occurrence of adverse environmental conditions. If the city manager determines that a prohibition on placement of garden refuse would facilitate effective drainage, storm water runoff, prevention of flooding, or other public interest, he or she should have the authority to accomplish the prohibition by publicly declaring that such adverse conditions have arisen. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.404)

13.10.390 Deposit of rubbish and waste matter on streets regulated.

It is unlawful and an infraction punishable by a fine not to exceed five hundred dollars (\$500.00) for any person to deposit rubbish, waste matter, or garden refuse in the

streets of the city in a manner other than that expressly authorized by this article. (Ord. 2001-046 § 4 (part); Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.405)

**13.10.400 Deposit of garden refuse
authorized—Residential property.**

A. Garden refuse produced on residential properties with concrete curbs and gutters may be deposited in the streets of the city at the times and in the manner prescribed by this chapter. Garden refuse from eligible residential property shall be placed in the street in front of and contiguous to the properties from which the garden refuse is removed. Any eligible residence on a corner parcel may place garden refuse in the street in front of or on the side of and contiguous to the property.

B. Service to Properties Without Concrete Curbs and Gutters.

1. Owners of residential properties without concrete curbs and gutters who wish to have periodic collection and disposal of garden refuse from the streets in front of their properties may petition the director of public works to have their property serviced. The director of public works will grant or deny the petition based on feasibility, cost, and efficiency requirements of the city. Any petition granted under this section will bind the property owner to continue the service for the remainder of time the property owner owns the property.

2. The director of public works will notify the property owner of the granting of the petition and of the irrevocability of the provision of service. Those owners of residential properties without concrete curbs and gutters whose petitions are approved by the director of public works under this section shall receive the service at the times and in the manner prescribed by this article for owners of residential properties with concrete curbs and gutters.

ters whose petitions are approved by the director of public works under this section shall receive the service at the times and in the manner prescribed by this article for owners of residential properties with concrete curbs and gutters, or in such other manner as mandated by the director of public works.

C. Garden refuse produced on residential properties not provided garden refuse collection and disposal services by city forces shall not be deposited in the streets of the city.

D. No garden refuse shall at any time be placed for collection in a manner which shall:

1. Impede traffic or constitute a hazard to traffic;
2. Impede the flow of water through any drainage channel or in any manner impede the drainage of water; or
3. Be on or impede any public sidewalk or other public walkway. All garden refuse placed in the streets will be placed and maintained in as compact a pile as possible.

E. No garden refuse shall be placed for collection within a set of undulations.

F. The placement of garden refuse in the street or at curbside shall be prohibited at the direction of the city manager if and when:

1. The city manager finds that such prohibition is reasonably necessary to facilitate effective storm drainage and runoff, to prevent flooding, to counteract adverse environmental conditions, or to promote other public interest;
2. The city manager issues a declaration of emergency specifying the condition or conditions necessitating such prohibition and describing the prohibited activities and the duration of the prohibition; and
3. The city manager distributes a press release containing said declaration of emergency to local broadcast media, the Sacramento Bee Newspaper, and local radio stations.

In addition to the foregoing prohibition, garden refuse in the street or at curbside at the time the city manager makes a declaration of emergency as set forth herein shall be removed from the street and curbside so as not to impede the flow and drainage of water. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.406)

13.10.410 Maximum amount of deposit.

The maximum amount of garden refuse that may be deposited in the streets during a calendar week is as follows:

- A. For single and two-family residential structures, two cubic yards;

- B. For multi-family residential structures containing at least three dwelling units and not more than fifty (50) dwelling units, one cubic yard per dwelling unit. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.407)

13.10.420 Time of deposit.

Garden refuse may be deposited in the streets in front of residential properties within the city at any time. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.408)

13.10.430 Garden refuse from nonresidential properties.

No person shall deposit garden refuse from nonresidential properties in the streets of the city without first obtaining the prior written authorization of the director of public works. The failure of any person to obtain such written authorization shall not absolve him or her from liability for any fee assessed for collection of unauthorized deposits of garden refuse. The director of public works may refuse to authorize the deposit of garden refuse for collection if a determination is made by the director of public works that the property lacks concrete curbs and gutters, or that the collection by the city could be impractical, uneconomic, or otherwise create problems involving public health or safety.

In authorizing the deposit in city streets of garden refuse from nonresidential properties the director of public works shall specify the time, manner, and place of the deposit. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.409)

13.10.440 Lawn and garden service fee established—Residential properties.

It is found and determined that availability of the service allowing the deposit of garden refuse from residential properties in the streets of the city for the collection, disposal, and street sweeping by city forces is a benefit to the owners of all eligible residential properties within the city and such owners are made liable for the payment of the lawn and garden service fee imposed by this chapter irrespective of their actual use of city streets for deposit of garden refuse.

A. Said fee shall be and is imposed on all properties within the city and on any newly constructed residence to commence at the beginning of the third full month after such newly constructed residence obtains garbage and water service.

B. The fee shall not exceed the cost of making available and providing the service, as determined by the director of public works, utilizing normal and reasonable

accounting procedures, and taking into account the future needs of the division responsible for garden refuse collection. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.410)

13.10.450 Rate of tax—Residential properties.

Notwithstanding any provision of this chapter or any other provision of this code to the contrary, the rates, fees, and charges for residential purposes as established or provided for in this chapter shall hereafter be established by resolution of the city council. In establishing the said rates, fees, and charges, the portion of the lawn and garden service fee attributable to street sweeping shall be separately set forth and established. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.411)

13.10.460 Rate of fee—Nonresidential property.

The lawn and garden service fee imposed upon depositing garden refuse in city streets from any nonresidential property, where authorized by the director of public works pursuant to Section 13.10.430 of this chapter, shall be based upon the approximate average monthly quantity of garden refuse so deposited from the property. All nonresidential properties shall be liable for the portion of the lawn and garden service fee attributable to street sweeping, as established from time to time in accordance with the provisions of this section.

The approximate average monthly quantity of garden refuse deposit shall be determined by the director of public works and may be revised from time to time to reflect actual approximate average quantities deposited in the city streets from the properties to which the service is provided. Any garden refuse placed for collection pursuant to this section shall be subject to the chapters herein specifying the time, manner and place for placement for collection of garden refuse from residential properties.

Notwithstanding any provision of this chapter or any other provision of this code to the contrary, the rates, fees, and charges established or provided for in this chapter shall hereafter be established by resolution of the city council. In establishing the said rates, fees and charges, the portion of the lawn and garden service fee attributable to street sweeping shall be separately set forth and established. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.412)

13.10.470 Optional fee—Multi-family residential properties.

The owner of any residential property on which three

or more dwelling units are located may elect to be charged the lawn and garden service fee as if it were being used primarily for nonresidential purposes for the sole purpose of establishing the rate to be paid for such property; provided, in no event shall any such election establish an exemption from the lawn and garden service fee. Said election shall be filed with the director of public works on such form as may be prescribed by the director of public works and said election shall remain in effect until revoked in writing by the owner or the owner's successors in interest. Provided further that said election shall not exempt the owner from payment of the portion of the fee attributable to street sweeping, which portion shall be billed to and paid by the owner. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.413)

13.10.480 Option fee—Collection of fees.

The lawn and garden service fee shall be billed and collected in accordance with the provisions of Chapter 13.12 of this code. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.414)

13.10.490 Neighborhood cleanup programs.

Rubbish and waste matter may be deposited in the city streets for collection and removal by city forces when such deposits are expressly authorized by the director of public works in connection with a neighborhood cleanup program. The time and manner of deposit, together with any limitation upon the nature and extent of materials to be deposited, shall be determined by the director of public works and shall be communicated by the director of public works to the neighborhood in which the program is to be conducted. (Ord. 2000-036 § 2(a) (part); Ord. 2000-017 § 3 (part); prior code § 19.04.415)

13.10.500 Bare lot and multiple use property classifications—Fees—Lawn and garden service fees—Lawn and garden service fee classification board.

A. Definition. For the purpose of this section only, the term "residential property" shall mean and refer to residential property classified for the purposes of this article in a classification established by Section 13.10.370 of this chapter excluding multiple family dwelling units having fifty-one (51) and greater dwelling units.

B. Application. Any owner of residential property may apply for reclassification of such property according to the procedures set forth in this section. Any such application shall be filed on forms provided by the city and shall be filed with the revenue division of the city.

C. **Lawn and Garden Service Fee Classification Board.** The lawn and garden service fee classification board shall be composed of two members, one of whom shall be from the department of finance and one of whom shall be from the department of public works. The membership of the board shall be appointed by, and shall serve at the pleasure of the city manager. The board shall process all applications under and make the classifications of property described by this section.

D. **Classifications.** In addition to the classifications established by Section 13.10.370(A) of this chapter, there shall be two additional classifications of residential property. These two classifications shall be:

Bare lot: the bare lot classification shall include only residential property which, by virtue of the fact that it has no vegetation outside the dwelling unit, will not produce any garden refuse. The term "outside the dwelling unit" means outside the surface of the exterior surfaces. The term "exterior surfaces" means those surfaces of the dwelling unit on the exterior perimeter through at least one of which persons customarily and reasonably enter or exit the dwelling unit.

Multiple use lot: the multiple use lot classification shall include only parcels of residential property on which different types of use occur (e.g., residential and commercial) such that two or more different lawn and garden service fees according to classification rather than rate are collected on the property. No property exceeding one-quarter acre shall be classified in this classification.

In no event shall classification in either of these classes qualify any property for any other classification or fee.

E. **Fees.** Any property classified on the bare lot classification shall pay the lawn and garden service fee imposed by this chapter of \$0.00 per month. Any property classified in the multiple use lot classification shall pay the lawn and garden service fee imposed by this chapter equal to the single highest fee which would be imposed on any one structure located on the property according to the other classifications in this chapter. Such fee shall be charged to the owner of the entire parcel of property.

F. **Processing Applications and Classifications.** The board shall process all applications for classification in the bare lot and multiple use lot classifications. Each application shall initially be referred to the department of public works which shall inspect the property and report the results of such inspection to the board. The board shall evaluate each application based on the information contained in such application and the department of public works report and shall determine the proper classification for each such property. In the event the board determines that the proper classification for such property is either the bare lot or the multiple use lot classification,

regardless of the date such determination is made, the effective date of the classification shall be the date the application was submitted to the revenue division. In the event the lawn and garden service fee collected by the city after the effective date of the classification exceeds the fee prescribed by this chapter, such excess shall be refunded to the then owner of the property as shown on the records of the revenue division as of the date of the refund.

G. **Notices and Hearings.** In the event a property for which application for classifications is made pursuant to this section is not reclassified, notice shall be given to the applicant which shall briefly specify the reason for the decision of the board. Any applicant who receives such notice who desires to have the application reconsidered by the board may apply for a hearing before the board. Any such application must be filed with the revenue division within fifteen (15) calendar days of the date of the notice that the property was not reclassified. The board shall within thirty (30) calendar days after an application for hearing schedule a hearing upon ten (10) days written notice to the applicant. The applicant may be present at such hearing and may present any evidence relevant to the classification of the property. The board shall reevaluate the classification and shall classify the property in the classification which it shall deem proper in light of the application, the report of the department of public works and the evidence submitted by the applicant at the hearing. In considering the application on rehearing the board may obtain a supplemental inspection report from the department of public works. Written notice of the action of the board shall be given to the applicant and the classification established by the board shall be final except as herein otherwise provided.

H. **Reclassification Upon Changed Circumstances.** In the event the nature of any property classified in the bare lot or multiple use lot classifications changes such that it is no longer properly classified in such classification, the board may reclassify the property into an appropriate classification after written notice to the property owner and a reasonable opportunity to the property owner to be heard on such reclassification. (Ord. 2000-036 § 2(a) (part); prior code § 19.04.416)

Article IV. Downtown Collection Area

13.10.510 Purpose and findings.

The purpose of this article is to protect and maintain the health, safety and welfare of the downtown area by establishing special requirements and procedures applicable to garbage and refuse collection service received or

Chapter 1.28

GENERAL PENALTY

Sections:

- 1.28.010 General penalty—Continuing violations—Imposition of administrative penalties.
- 1.28.020 Criminal sanctions—
- 1.28.030 Misdemeanors and infractions. Prohibited acts—Includes causing, maintaining, permitting or suffering.

1.28.010 General penalty—Continuing violations—Imposition of administrative penalties.

A. Criminal Sanctions. Criminal sanctions for violations of mandatory provisions of this code shall be as set forth in Sections 1.28.020 and 1.28.030 and elsewhere in this code.

B. Civil Actions. The city attorney may bring an action in a court of competent jurisdiction to enjoin a violation of any provision of this code or any other ordinance of the city, or to enforce administrative penalties imposed.

C. Administrative Penalties.

1. The purpose of this subsection relating to administrative penalties is to provide alternative remedies to address acts or omissions set forth in subsection (C)(2) of this section. Violations may be corrected, abated or addressed in a number of ways. It is the intent of this subsection to provide the city with additional remedies to correct violations and, where necessary, to penalize violators for failure to comply with city codes and ordinances. The city council hereby finds and determines that enforcement of this code, other ordinances adopted by the city, conditions on entitlements and terms of city agreements are matters of local concern and serve important public purposes. Consistent with its powers as a charter city, the city adopts this administrative penalty provision in order to achieve the following goals:

- a. To protect the public health, safety and welfare of the city;
- b. To provide for an administrative process that has objective criteria for the imposition of penalties and provides for a fair process to appeal the imposition of administrative penalties;
- c. To provide a method to penalize responsible parties who fail or refuse to comply with provisions of this code, ordinances, agreements, or conditions on entitlements in the city;

d. To minimize the expense and delay where the sole remedy is to pursue responsible parties in the civil or criminal justice system.

The city council establishes an administrative penalty procedure. All final administrative orders made pursuant to the procedures set forth in this subsection shall be subject to review only as provided in California Code of Civil Procedure Sections 1094.5 and 1094.6. Should any court of competent jurisdiction determine that the city must provide an appeal of any final administrative order in a manner other than set forth in Sections 1094.5 and 1094.6, then it is the intent of the city council that the administrative penalty process remain as provided herein and to provide that any appeal which is timely requested follow the procedures set forth in Government Code Section 53069.4.

2. Imposition of Administrative Penalties. In addition to criminal sanctions and other remedies set forth in this code, the city may impose administrative penalties for any of the acts or omissions set forth in this subsection. Administrative penalties shall be imposed, enforced, collected and reviewed in compliance with the provisions of this section. Administrative penalties may be imposed for any of the following acts or omissions:

- a. All violations of this code;
- b. All violations of the city charter and other codes or ordinances adopted by the city, including but not limited to the zoning ordinance;
- c. All violations of uniform codes adopted by the city;
- d. Failing to comply with any order issued by a commission, board, hearing officer or examiner or other body appointed by the city council and authorized to issue orders, including, but not limited to, the planning

commission, the housing code advisory and appeals board, and the design review and preservation board;

e. Failing to comply with any condition or requirement imposed on or by any entitlement, permit, contract or environmental document issued or approved by the city.

3. Alternative Remedy. Nothing in this subsection shall prevent the city from using one or more other remedies to address violations. When the violation upon which the administrative penalty is based pertains to building, plumbing, electrical, structural or zoning provisions, the responsible party shall be provided a reasonable period of time to correct the violation prior to imposition of the administrative penalty, except in those cases in which there is an immediate danger to health or safety.

4. Definitions. For purposes of this chapter, the term "responsible party" shall refer to any person, business, company or entity, and the parent or legal guardian of any person under the age of eighteen (18) years, who has done any act for which an administrative penalty may be imposed.

D. Imposition of Administrative Penalties.

1. Notice. Where the city has determined that any responsible party has violated this code or other provisions as set forth in subsection (C)(2) of this section, the city may commence an administrative proceeding to impose administrative penalties. Any department in the city responsible for enforcement of codes or ordinances may initiate administrative penalty proceedings. To commence such proceedings, the department head or designee shall issue an order imposing administrative penalties. The order shall contain:

a. The name and address of the responsible party in violation. If the administrative penalty results from events occurring on, or the status or condition of, property, the order shall also contain the address of the property;

b. A statement from the city official responsible for issuing the order of the acts or conditions which violate this code or other provisions as set forth in subsections (C)(2) of this section and the specific code or provisions which have been violated;

c. The amount of the administrative penalty the city imposes for the violation;

d. A statement that the responsible party in violation may appeal the imposition of the administrative penalty within twenty (20) days of the date the order is served;

e. A statement that if the responsible party fails to request an appeal of the imposition of the administrative penalty, the order imposing the penalty shall be final;

f. A statement that any responsible party upon whom a final administrative penalty has been imposed

may seek review of the order imposing the penalty pursuant to California Code of Civil Procedures Sections 1094.5 and 1094.6.

2. Service of Administrative Penalty Order.

a. Persons Entitled to Service. The administrative penalty order shall be served upon the responsible party in violation. The failure of the city official issuing the order to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her.

b. If the violation is the result of a condition existing on property in the city and the city proposes to impose a lien on the property, one copy of the administrative penalty order shall also be served on each of the following if known to the city official issuing the order or disclosed from official public records: (a) the holder of any mortgage or deed of trust or other lien or encumbrance of record; and (b) the owner or holder of any lease of record. The failure of the city official issuing the order to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her.

c. Method of Service. Service of an administrative penalty order may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service on any owner in violation is deemed complete when it is served at the address listed by the owner on the latest equalized assessment roll of Sacramento County, or as known to the city official issuing the order. In lieu of personally serving the responsible party by personal delivery or certified mail, service of the administrative penalty order and any amended or supplemental order may be made as follows:

i. In the event that service by certified return receipt mail cannot be effected or the recipient cannot be personally served, service may be made by substituted service. Substituted service may be accomplished as follows:

(A) By leaving a copy during usual business hours in the recipient's business with the person who is apparently in charge, and by thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left;

(B) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, and thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left.

ii. In the event the violation results from an event occurring on, or a condition existing on, property in the

city and the recipient cannot be served by certified return receipt mail or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be made as set forth in subsection (D)(2)(c)(i)(A) of this section upon the property manager or rental agency.

iii. If the responsible party resides or has his, her or its business address out of state and service cannot be effected by certified return receipt mail, then service may be made by first-class mail.

iv. In the event the violation relates to a condition on a property in the city, substituted service may be effected by posting the property with the administrative penalty order and mailing a copy of the order to the responsible party in violation, at the address of the property on which the violation has occurred or is occurring.

v. If the responsible party in violation or other person entitled to service cannot be located or service cannot be effected as set forth in this section, service may be made by publication in a Sacramento newspaper of general circulation which is most likely to give actual notice to the owner. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

The failure of any person to receive such administrative penalty order shall not affect the validity of any proceedings taken under this section against any other responsible party. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

3. Amount of Administrative Penalty. Unless the city council has by resolution or by ordinance adopted a separate and distinct administrative penalty for the particular violation, the amount of the administrative penalty to be imposed shall be set by the department head or his or her designee responsible for issuing the administrative penalty order. Each day a violation continues or occurs constitutes a separate violation. Unless otherwise provided in this code, administrative penalties may be imposed in any amount not less than one hundred dollars (\$100.00) nor more than twenty-five thousand dollars (\$25,000.00) per violation. In determining the amount of the administrative penalty to be imposed, the city official shall consider factors including but not limited to the seriousness of the violation, the responsible party's efforts to correct the violation, the injury/damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, the amount of city staff time which was expended investigating or addressing the violation, and the amount of administrative penalties which have been imposed in similar situations.

The amount of the administrative penalty shall be set according to the following schedule:

a. Level A violations are violations that present a substantial probability that death or serious physical harm to the public at large or person(s) would result therefrom. Level A violations shall be subject to an administrative penalty of five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000.00);

b. Level B violations are violations that either (1) present the threat, but not substantial probability, that serious physical harm to the public at large or person(s) would result therefrom; or (2) present circumstances that are likely to cause and/or do cause serious harm to public or private property; or (3) present a conscious and willful disregard of (i) a hearing examiner's order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level B violations shall be subject to an administrative penalty of two thousand five hundred dollars (\$2,500.00) to four thousand nine hundred ninety-nine dollars and ninety-nine cents (\$4,999.99);

c. Level C violations are violations that present circumstances that either (1) are likely to cause and/or do cause harm to public or private property; or (2) show repeated or continuous noncompliance with (i) a hearing examiner's order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level C violations shall be subject to an administrative penalty of one thousand dollars (\$1,000.00) to two thousand four hundred ninety-nine dollars and ninety-nine cents (\$2,499.99);

d. Level D violations are violations other than Level A, B, or C violations. Level D violations shall be subject to an administrative penalty of one hundred dollars (\$100.00) to nine hundred dollars and ninety-nine cents (\$999.99).

4. Administrative Hearing Appeal.

a. Notice of Appeal. Any responsible party upon whom an administrative penalty has been imposed may appeal the administrative penalty by filing with the office of the city clerk a written notice of appeal within twenty (20) calendar days of service of the administrative penalty order. The written notice of appeal shall contain:

i. A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;

ii. A brief statement, in ordinary and concise language, of the material facts which the appellant claims support his, her or its contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted; and

iii. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by first class mail.

b. Payment of Appeal Fee. Any responsible party appealing the imposition of an administrative penalty shall be required to pay to the city clerk, at the time the written notice of appeal is filed, an appeal fee as herein provided. The appeal fee is intended to cover the costs, expenses and city employees' time incurred by the city in processing, preparation for, and hearing of the appeal, and shall be refunded to the appellant if the hearing examiner determines that imposition of the penalty is not warranted or is not in the interest of justice. No notice of appeal is valid unless accompanied by the appeal fee, unless otherwise waived pursuant to Section 1.24.100 of this code. In the event an appeal fee is waived and the violation results in a lien against the appellant's property, the appeal fee which was waived shall be added to the amount of the lien. The appeal fee shall be:

- i. Level A violation, five hundred dollars (\$500.00);
- ii. Level B violation, two hundred fifty dollars (\$250.00);
- iii. Level C violation, one hundred dollars (\$100.00);
- iv. Level D violation, fifty dollars (\$50.00).

c. Hearing Examiner. The administrative penalty appeal shall be heard by a hearing examiner appointed by the city council to hear administrative appeals. The hearing examiner shall not be a city employee.

d. Setting Administrative Penalty Appeal Hearing. The administrative penalty appeal hearing shall be set by the city clerk or his or her designee, and notice of the appeal hearing shall be sent to the appellant by first class mail at the address provided with the written notice of appeal. The hearing shall be held no sooner than twenty (20) days after the notice of appeal is filed. Notice of the appeal hearing shall be mailed to the appellant at least fifteen (15) days before the hearing date.

e. Conduct of the Administrative Penalty Appeal Hearing.

i. Testimony at the Hearing. At the time set for the administrative penalty appeal hearing the hearing examiner shall proceed to hear testimony from the representative of the city, the appellant and any other competent persons with respect to imposition of an administrative penalty.

ii. Record of Oral Evidence at Hearing. The proceedings at the hearing shall be reported by a tape recording. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense.

iii. Continuances. The hearing examiner may, upon request of the appellant or the city, or upon his or her

own motion, grant continuances from time to time for good cause shown.

iv. Oaths—Certification. The hearing examiner shall administer the oath or affirmation.

v. Evidence Rules. Government Code Section 11513, subsections (a), (b) and (c), as it exists on the effective date of the ordinance codified in this section, these provisions, or as hereafter amended, shall apply to all administrative penalty hearings.

vi. Rights of Parties.

(A) Parties may represent themselves, or be represented by any person of their choice.

(B) If a party does not proficiently speak or understand the English language, he or she may provide an interpreter, at that party's own cost, to translate for the party. An interpreter shall not have had any personal involvement in the issues of the case prior to the hearing.

vii. Official Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or county, or any of their departments.

viii. Inspection of Premises.

(A) In the case of a violation related to real property in the city, the hearing examiner may inspect the property prior to, during, or after the hearing, provided that:

(1) Notice of the inspection shall be given to the parties before the inspection is made;

(2) The parties consent and are given an opportunity to be present during the inspection; and

(3) Upon completion of the inspection, the hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, the material facts observed and the conclusion drawn therefrom.

(B) Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

(C) Notice to the parties, or the owner(s)' consent to inspect the property is not required if the property can be inspected from areas to which the general public has access or with permission of other persons authorized to provide access to the property and/or buildings located on the property.

(D) Subpoenas. The hearing examiner shall have the authority to issue subpoenas compelling witnesses to appear and provide testimony or subpoena duces tecum compelling witnesses to produce documents. The hearing examiner shall issue a subpoena only upon a showing of

reasonable necessity by the requesting party. Failure of either party to comply with any subpoena may be considered by the hearing examiner in making his/her decision regarding the imposition of administrative penalties.

f. Imposition of the Administrative Penalty—Form and Contents of Decision—Finality of Decision.

i. Factors in Hearing Examiner's Decision. The hearing examiner may affirm the administrative penalty imposed by the city, reduce the penalty to a lower amount within the charged level of violation, reduce the level of violation and reduce the penalty to an amount within the new level of violation, or find that imposition of the penalty is not warranted or is not in the interest of justice. The hearing examiner shall have the discretion to impose a lower, but not a higher, level of violation and/or penalty amount. In making his or her decision regarding the administrative penalty, the hearing examiner shall consider evidence presented by all witnesses, the seriousness of the violation, the responsible party's efforts to correct the violation, the injury or damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, and the amount of city staff time which was expended investigating and addressing the violation.

ii. Hearing Examiner's Decision. The decision of the hearing examiner shall be issued within thirty (30) days of the hearing, shall be in writing, and shall contain findings of fact and a determination of the issues presented. The decision shall require the administrative penalty to be paid within twenty-five (25) calendar days of the date of service of the decision. The decision shall inform the responsible party that if the administrative penalty is not paid within the time specified, it may be made a personal obligation of the responsible party, and if applicable may also be made a lien against the property on which the violation occurred, and may be made a special assessment collected at the same time and in the same manner as ordinary secured property taxes are collected. The hearing examiner's decision shall also inform the responsible party that any judicial review of the hearing examiner's decision shall be pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

iii. Service of the Hearing Examiner's Decision. Upon issuance of the decision, the city shall serve a copy on the appellant by first class mail to the address provided by appellant in the written notice of appeal. The hearing examiner's decision shall be deemed served two days after the date it is mailed to the address provided by the appellant.

iv. Any judicial action taken to set aside, annul or vacate the decision of the hearing examiner shall be filed in the manner and within the time provided in California Code of Civil Procedure Sections 1094.5 and 1094.6.

g. Payment and Collection of the Administrative Penalty.

i. Any responsible party upon whom an administrative penalty has been imposed shall pay the administrative penalty within twenty-five (25) days after service of a final order or decision of a hearing examiner. The city may take the actions set forth in this subsection g to collect the unpaid penalty.

ii. Attorney's Fees and Costs. In the event a civil action is commenced to collect the administrative penalty, the city shall be entitled to recover reasonable attorney's fees and all costs associated with collection of the penalty. Costs include, but are not limited to, staff time incurred in the collection of the penalty and those costs set forth in Code of Civil Procedure Section 1033.5.

iii. Interest on Administrative Penalties. An administrative penalty shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the twenty-sixth day following service of a final order or the hearing officer's decision.

iv. Liens. The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided in this section, may be made a lien on the real property on which the violation occurred.

(A) Notice shall be given to the responsible party prior to the recordation of the lien, and shall be served in the same manner as a summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(B) The lien shall attach when the city manager or his or her designee records a lien listing delinquent unpaid administrative penalties with the county recorder's office. The lien shall specify the amount of the lien, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel.

(C) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in b. above shall be recorded by the city clerk.

v. Special Assessments. The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided in this section, may be made a special assessment against the real property on which the violation occurred. The procedure established by the city council to

specially assess delinquent utility billings shall be used to specially assess unpaid administrative penalties.

vi. Other Enforcement Procedures. The city may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgments Law, California Code of Civil Procedure Sections 680.010 et seq. (Ord. 2001-046 § 2 (part); Ord. 98-038 § 1; Ord. 97-065 § 1; prior code § 1.01.070)

1.28.020 Criminal sanctions—Misdemeanors and infractions.

A. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this code, including any administrative order issued hereunder. Any person violating any of the provisions, or failing to comply with any of the requirements of this code, including an administrative order, shall be guilty of a misdemeanor, except where it has been provided by state law or this code that the violator shall be guilty of an infraction. Any person convicted of a misdemeanor under the provisions of this code shall be punishable by a fine of not more than one thousand dollars (\$1,000.00), or not less than five hundred dollars (\$500.00), or by imprisonment in the county jail for a period not exceeding six months, or by both fine and imprisonment; provided that violations of Chapter 13.10 of this code regarding unlawful dumping shall be punishable by a fine of not less than five hundred dollars (\$500.00), or by imprisonment in the county jail for a period not exceeding six months, or by both fine and imprisonment.

B. Notwithstanding the above provisions, a violation of any provision of this code is an infraction when the prosecutor files a complaint charging the offense as an infraction or reduces the charge to an infraction.

C. Whenever in this code, or in any other ordinance of the city, any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required, or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefore, the violation of any provision of this code, any adopted code, administrative order or any other ordinance of the city shall be deemed to be a misdemeanor and shall be punished as set forth in subsection (A) above.

D. Multiple Convictions of an Infraction. Any offense which would otherwise be an infraction is a misdemeanor if the defendant has been convicted of the same offense three or more times within the twelve (12) month period immediately preceding the commission of the offense and the convictions are alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed a conviction of the offense charged.

E. Separate Offenses. Any person that violates any provision or fails to comply with any of the requirements under this code shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continues, is maintained or permitted by the person, and may be punishable as such. (Ord. 2001-047 § 1; Ord. 2001-046 § 2 (part)).

1.28.030 Prohibited acts—Includes causing, maintaining, permitting or suffering.

Whenever in this code any act or omission is made unlawful, it shall include causing, maintaining, permitting, aiding, abetting, suffering or concealing the fact of such act or omission. (Ord. 2001-046 § 2 (part))

§ 65913.1

purposes of determining compliance with the least cost zoning law under Gov. Code, § 65913.1. The statute specifically contemplates giving consideration to such factors when estab-

lishing appropriate standards. *Hernandez v City of Encinitas* (1994, 4th Dist) 28 Cal App 4th 1048, 33 Cal Rptr 2d 875.

§ 65913.2. Duties

Collateral References:

Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence. 87 ALR4th 294.

§ 65913.3. [Section repealed 1993.]

Amended Stats 1987 ch 1430 § 1. Repealed Stats 1993 ch 56 § 22.2 (AB 2351). See § 15399.51.

§ 65913.4. [Section repealed 1990.]

Amended Stats 1989 ch 842 § 2. Repealed Stats 1990 ch 31 § 2 (AB 1259), effective March 26, 1990. The repealed section related to reservation of units for lower income households, and regulatory concessions and incentives.

§ 65913.5. [Section repealed 2001.]

Added Stats 1990 ch 1304 § 5 (SB 2559). Repealed Stats 2001 ch 115 § 13 (SB 153). The repealed section related to density bonus.

Former Sections:

Former § 65913.5 was added by Stats 1984 ch 653 § 1; Amended Stats 1985 ch 186 § 2, ch 671 § 1; Stats 1986 ch 1102 § 39.5, effective September 24, 1986, and renumbered § 66008 Stats 1988 ch 418 § 4.

Editor's Notes—For legislative findings and declarations, see the 1990 note following Gov C § 65083.

Law Revision Commission Comments:

2001— Section 65913.5 is repealed as obsolete. The section implements a pilot project that has expired.

NOTES OF DECISIONS

A proceeding by a developer for a writ of mandate to compel a school district to vacate a resolution imposing a "school facilities fee" on new commercial and industrial construction within the district and to refund the fees it had imposed on the developer's developments was governed by the four-year catch-all statute of limitations period of Code Civ. Proc., § 343, not by former Gov. Code, § 65913.5 (180-day period commencing from date fee is paid under protest), as determined by the trial court, and not by Gov. Code, § 54995 (action attacking ordinance or resolution must be

brought within 120 days of effective date of measure), as contended by the district. Until the 1989 enactment of Gov. Code, § 53080.1, subd. (d), former Gov. Code, § 65913.5 (now Gov. Code, § 66008), applied only to fees imposed on residential housing developments. Further, Gov. Code, § 54995, applies narrowly to suits challenging fees imposed by Gov. Code, tit. 5, div. 2, ch. 13 (local agency service fees and charges). *Balch Enterprises, Inc. v New Haven Unified School Dist.* (1990, 1st Dist) 219 Cal App 3d 783.

§.65913.8. Payment for maintenance and operation of public capital facility improvement.

A fee, charge, or other form of payment imposed by a governing body of a local agency for a public capital facility improvement related to a development project may not include an amount for the maintenance or operation of an improvement when the fee, charge, or other form of payment is required as a condition of the approval of a development project, or required to fulfill a condition of the approval. However, a fee, charge, or other form of payment may be required for the maintenance and operation of an improvement meeting the criteria of either subdivision (a) or (b), as follows:

(a) The improvement is (1) designed and installed to serve only the specific development project on which the fee, charge, or other form of payment is imposed, (2) the improvement serves 19 or fewer lots or units, and (3) the local agency makes a finding, based upon substantial evidence, that it is infeasible or impractical to form a public entity for maintenance of the improvement or to annex the property served by the improvement to an entity as described in subdivision (b).

(b) The improvement is within a water district, sewer maintenance district, street lighting district, or drainage district. In these circumstances, a payment for maintenance or operation may be required for a period not to exceed 24 months when, subsequent to the construction of the improvement, either the local agency forms a public entity or assessment district to finance the maintenance or operation, or the area containing the improvement is annexed to a public entity that will finance the maintenance or operation, whichever is earlier. The local agency may extend a fee, charge, or other form of payment pursuant to this section once for whatever duration it deems reasonable beyond the 24-month period upon making a finding, based upon substantial evidence, that this time period is insufficient for creation of, or annexation to, a public entity or an assessment district that would finance the maintenance or operation.

As used in this section, "development project" and "local agency" have the same meaning as provided in subdivisions (a) and (c) of Section 66000.

Added Stats 1988 ch 1309 § 1.

Collateral References:

Miller & Starr, Cal Real Estate 2d § 20:115.

Infrastructure Finance: Developer Fees. 1 Land Use Forum 170 (CEB, spring 1992).

Taking a closer look: significant new California legislation enacted in 1988. 12 CEB Real Prop L & Dev 10.

Impact fees in California after *Nollan v California Coastal Commission*. 7 Cal Real Prop J 43.

§ 65915. Requi

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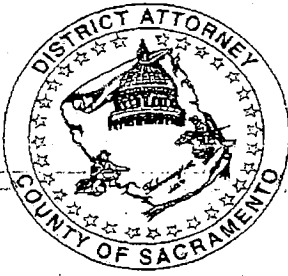
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EXHIBIT "3"



OFFICE OF THE
DISTRICT ATTORNEY
SACRAMENTO COUNTY

JAN SCULLY
District Attorney

CYNTHIA G. BESEMER
Chief Deputy

April 24, 2003

Heather Fargo
Mayor
915 - I Street
Sacramento, CA 95814

Robert Thomas
City Manager
915 - I Street
Sacramento, CA 95814

Albert Najera
Chief of Police
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

Dear Mayor Fargo, Mr. Thomas and Chief Najera:

This past February, the County Executive's Office established a recommended base budget allocation for my office for Fiscal Year 03/04. That allocation was approximately **\$6 million less** than needed to maintain a "status quo" budget for my operations. In order to balance my budget, therefore, it will be necessary for me to make programmatic cuts to our operations, reduce personnel and restructure the office. For you, these cut backs mean a reduction in the types of cases we will file and service we provide.

Beginning July 1, 2003, my office will only review the following misdemeanor cases:

- Vehicular manslaughter
- Driving under the influence
- Child/Elder/Dependent Adult abuse
- Domestic violence
- Sex offenses against adults and children

Beginning July 1, 2003, my office will no longer review officer-involved shootings nor send our criminal investigators to those shooting scenes. Criminalists from my Crime Laboratory will not respond to crime scenes. Because my office will not handle misdemeanor drug offenses, my Crime Lab will not analyze samples for these drug offenses, including violations of Health & Safety Code section 11550 (being under the influence of controlled substances).

To announce the above reductions in our operations is, to say the least, troubling and disappointing. At a time when the many law enforcement agencies we serve will not be reducing any enforcement efforts, it is disastrous that my office will not have adequate resources to meet your agency's needs. This is particularly true for misdemeanor offenses.

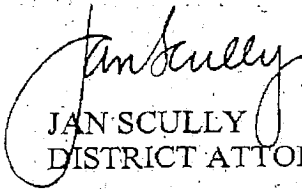
During the time my budget is insufficient to support the prosecution of all misdemeanor offenses, I am willing to temporarily deputize attorneys in your City Attorney's Office to prosecute those state code misdemeanor offenses that occur in your jurisdiction that we will be unable to handle. If you are interested in this limited and temporary prosecutorial authority, we can discuss the matter further.

Although it is possible that my budget allocation will change during the Board of Supervisors final budget hearings in June, I cannot wait until that time to bring my expenditures in line with the 03/04 proposed budget.

On Wednesday, April 30, 2003, at 3:30 p.m., I will be presenting to the Board of Supervisors the consequences of the reduced allocation of general funding to my office and to the citizens of Sacramento. Obviously, it is my hope that the Board will recognize the risks to public safety created by their cuts to my budget and find additional money to restore these necessary functions. Any support for our programs you can offer would be greatly appreciated.

I am greatly disappointed that it is necessary to take the steps outlined above but, at this time, I have no other viable options. If you have any questions or would like to discuss this matter further, don't hesitate to contact Chief Deputy Cindy Besemer or me at 874-6555.

Sincerely,



JAN SCULLY
DISTRICT ATTORNEY

JS:gf

cc: Sam Jackson