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March 4, 2004

CITY COUNCIL  
Sacramento, California

CONTINUED  
FROM 03-16-04  
TO 03-30-04

Honorable Members in Session:

**SUBJECT: Criminal Prosecution of City Code Violations**

**LOCATION AND COUNCIL DISTRICT:** City Wide

**STAFF RECOMMENDATION:** Receive and file this status report; provide direction to staff regarding modifications to the guidelines for criminal prosecution of City Code violations.

**CONTACT PERSON:** Samuel L. Jackson, City Attorney, 808-5346  
Sandra G. Talbott, Assistant City Attorney, 808-5346

**FOR COUNCIL MEETING OF:** March 16, 2004

**SUMMARY:** The City Attorney's Office assumed responsibility in the year 2000 for handling criminal prosecution of City Code violations and commenced handling them on February 5, 2001. This report requests that the Council review the prosecution guidelines and provide further direction to the City Attorney's Office regarding modification of the guidelines for charging of criminal offenses.

**BACKGROUND:** On January 4, 2000, the Council resolved that the City Attorney's Office should handle at least some City Code violations as criminal matters. After several months of investigation into how a complete transition of criminal prosecution of City Code violations could occur, the transition process commenced in July 2000. A transition team was established, consisting of the City Attorney's Office, the District Attorney's Office, the Court, Probation, Police, Code Enforcement and the Public Defender. The City Attorney's Office began prosecuting City Code violations on February 5, 2001.

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**Screening and Charging Guidelines**

Attached as **Exhibit A** is a document entitled "Sacramento City Attorney's Office Screening and Charging Guidelines." The City has the option of pursuing code violations administratively, civilly and/or criminally. The City Attorney's Office follows the guidelines when considering whether or not to criminally charge an individual with a violation of the City Code. The guidelines contain a list of violations that the City currently focuses on for criminal prosecution where the charging criteria are met. The guidelines also identify the circumstances that balance in favor of prosecution such as repeat violations, prior convictions, the magnitude of the violation and the magnitude of the threat to public health and safety. The list of violations was presented to the Council on December 12, 2000, and received Council approval on January 3, 2001.

**Common Sacramento City Code Violations**

Below is a chart entitled "Most Common Sacramento City Code Violations Cited." This chart reflects the types of citations commonly forwarded to the City Attorney's Office from the inception of the program in fiscal year 2000-01 to fiscal year 2002-03. The figures provide a general idea of the type of criminal activity currently cited by departments and prosecuted by the City Attorney's Office.

**MOST COMMON SCC VIOLATIONS CITED**

<b>Violation Charged</b>	<b>Referring Department</b>	<b>Total Cases FY 00-01</b>	<b>Total Cases FY 01-02</b>	<b>Total Cases FY 02-03</b>
Unlawful Camping	Police Department	70	844	613
Unlawful Camping	County	N/A <sup>1</sup>	N/A <sup>1</sup>	135
Illegal Dumping	Neighborhood Services	N/A <sup>1</sup>	N/A <sup>1</sup>	9
Drinking in Public	Police Department	6	96	84
Loitering	Police Department	4	1	27
Jaywalking/Entering Crosswalks	Police Department	2	167/20	128/107

<sup>1</sup> Information not tracked during this fiscal year

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Loud Stereo	Police Department	4	113	77
<b>Violation Charged</b>	<b>Referring Department</b>	<b>Total Cases FY 00-01</b>	<b>Total Cases FY 01-02</b>	<b>Total Cases FY 02-03</b>
Animal Barking Unlicensed Dog	Public Works Control	9	27/27	6/6
Violating Notice to Vacate	Neighborhood Services	5	3	1
Violation of Dangerous Buildings	Neighborhood Services	3	1	7
Illegal Activity Detrimental to Life and Health	Neighborhood Services	3	4	2

**Council Direction**

The criminal prosecution guidelines were established and approved in January 2001. Since that time, the City Attorney's Office and departments with citation authority have gained insight into the types of crimes that most affect the community. As a result, there have been requests from the Council to review the guidelines for possible additions or modifications. For example, there has been a request to address the practice of business owners starting up a business without first complying with code requirements. In addition, Council Members have raised concerns regarding what certain other zoning code violations should be handled initially as criminal violations. The City Attorney's Office requests direction from the Council in making appropriate changes to the Criminal Prosecution Guidelines that reflect the Council's goal in promoting a quality of life for the neighborhoods and holding code violators responsible for actions that negatively impact City neighborhoods.

**FINANCIAL CONSIDERATIONS:** This report does not have a financial impact on the City's budget. However, a significant increase in the number of cases filed as a result of revision of the Criminal Prosecution Guidelines may have financial impact on the City Attorney's Office and its ability to prosecute other types of cases currently prosecuted. We are currently working with Human Resources to address staffing issues.

**ENVIRONMENTAL CONSIDERATIONS:** This report involves ongoing administrative and maintenance activities of the City Attorney's Office and does not constitute a project within the meaning of the California Environmental Quality Act (CEQA) and is exempt from the requirements of CEQA under CEQA Guidelines, Sections 15061 (b) (1) and 15378 (b) (3).

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**POLICY CONSIDERATIONS:** This report is consistent with the City's policy requiring accountability of all City departments; promoting livable neighborhoods; holding violators responsible for their conduct that reduces the quality of life in neighborhoods; and implementing a City Attorney Criminal Prosecution Program to achieve these objectives.

**ESBD CONSIDERATIONS:** Not applicable to this report.

Respectfully submitted,



**SAMUEL L. JACKSON**  
City Attorney

RECOMMENDATION APPROVED:



**ROBERT P. THOMAS**  
City Manager

Exhibit

## SACRAMENTO CITY ATTORNEY'S OFFICE SCREENING AND CHARGING GUIDELINES

The charging decision is at the core of the prosecutor's function in the criminal justice system. Society has afforded the prosecutor broad discretion in deciding to bring charges and in choosing which charges to bring. Therefore, it is imperative that this discretion be used in a manner that leads to a fair and uniform application of the criminal laws. The following is designed to help the deputy in the execution of his or her screening and charging duties. These guidelines apply to prosecutions by the City Attorney's Office and to those matters where the City Attorney's Office has consented to the District Attorney's Office for handling.

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### **I. CHARGING CRITERIA:**

The following should be adhered to prior to the initiation of criminal charges.

- A. The deputy is satisfied that evidence shows that the accused is guilty of a crime to be charged after a complete investigation and thorough consideration of all pertinent data that is readily available;
- B. There is legally sufficient, admissible evidence of a corpus delicti;
- C. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged; and
- D. The deputy has considered the probability of conviction by an objective fact finder after hearing the admissible evidence. The admissible evidence on the crime charged should be of such convincing force that it would warrant conviction by a reasonable and objective fact finder after hearing all of the evidence available to the deputy at the time of charging and after hearing the most, plausible, reasonably foreseeable defense that could be raised under the evidence presented to the deputy.

### **II. VIOLATIONS THAT ARE APPROPRIATE FOR PROSECUTION WHERE THE CHARGING CRITERIA ARE MET:**

- A. Administrative and Personnel
  - 1. Unlawful financial interest in public contract
  - 2. Hindering emergency personnel
- B. Revenue and Financial
  - 1. Submitting false information for public contract
  - 2. Collusion with bidder
- C. Business Licenses and Regulations

1. Illegal adult-related enterprises
  2. Illegal tapping of a cable television system
  3. Selling or transferring firearms/ammunition without a license
- D. Health and Safety
1. Failure to install smoke detectors
  2. Storage of hazardous substances
  3. Housing code violations
  4. Illegal dumping
  5. Repeat noise violations
  6. Unsanitary conditions creating a health hazard
- E. Public Peace, Morals and Welfare
1. Urinating/defecating in public
  2. Drug offenses/activity
  3. Graffiti
  4. All weapons and explosives offenses
  5. Unvaccinated dog
  6. Harbor or hide a vicious animal
- F. Streets, Sidewalks and Public Places
1. Unlawful camping
  2. All weapons offenses
- G. Public Services
1. Prohibited discharges into the sewer or drainage system
  2. Tampering or illegal hook up to the public water supply
- H. Buildings and Construction
1. Interference at fire scenes
  2. Unlawful continuance of a hazard
  3. Noncompliance with a condemnation tag
  4. Continuing work after a stop work notice
  5. Building code violations resulting in injury or serious threat to life
  6. Noncompliance with zoning regulations
  7. Noncompliance with abatement order
  8. Grading in violation of a stop work notice

**III. CIRCUMSTANCES THAT BALANCE IN FAVOR OF PROSECUTION:**

-Repeat violations of the same code section.

- Repeat code violations generally.
- Prior criminal convictions, recent enough in time to be relevant to the present behavior.
- Intentional disregard for the law and the rights of others.
- Magnitude of the violation justifies punishment and swift abatement.
- Magnitude of threat to health and safety justifies punishment and swift abatement.
- Indifference or lack of response to prior opportunity to correct.
- Violator attempts to scapegoat others.