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November 9, 1998

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City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: City Attorney's Status Report on Code Enforcement

LOCATION AND COUNCIL DISTRICT: All Districts

RECOMMENDATION: This report is for information and direction.

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

FOR COUNCIL MEETING OF: November 17, 1998

SUMMARY: On August 11, 1998, the City Manager's Office and City Attorney's Office (CAO) provided the Council with reports on the Code Enforcement and Neighborhood Improvement Strategies plan (CENIS). Since August 11, the City Manager, CAO, Neighborhoods Planning and Development, Housing and Dangerous Buildings, Code Enforcement, and Police have all been working to achieve the objectives set forth on August 11. The following status report describes efforts made so far by the CAO, and the code enforcement advances that have occurred as a result of these efforts.

BACKGROUND: In September 1997, Council Members first raised several issues relating to code enforcement deficiencies. These concerns eventually developed into CENIS, a comprehensive code enforcement re-engineering plan prepared by City staff and submitted to the Council on August 11. In its present form CENIS encompasses a number of different projects, including the creation of code enforcement "action teams" (CAT), the development of neighborhood specific revitalization plans, increased citizen involvement with city code enforcement teams, the creation of a Code Enforcement Tools Notebook,

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and the recruitment and selection of code enforcement contract attorney, among other objectives and projects.

The Council directed staff to report periodically on code enforcement milestones until the objectives are met. The following is the first such status report by the CAO.

STATUS OF SPECIFIC PROJECTS

1. **Code Enforcement Review Committee:** The CAO established the Code Enforcement Review Committee (CERC) which consists of the Assistant City Attorney and the two Senior Deputy City Attorneys. CERC monitors the progress of all code enforcement assignments every 60 days. The review alternates between litigation and advisory assignments every 30 days. One of the tools used by CERC to monitor these assignments is our recently created "**AttornEase**"© 1998, the automated code enforcement assignment tracking system which tracks and provides reports on advisory assignments from intake until closure. CERC has made several recommendations to technical staff including a modification of the system to track litigation assignments in the same manner.

2. **AttornEase© 1998 (assignment tracking):** Originally developed to track the large volume of code enforcement advisory assignments handled by the CAO, the system is being modified to also track litigation cases. As is the case with advisory assignments, **AttornEase** © 1998 litigation actions will be tracked by date received, case name, court, opposing party names, outcome, closure date, and other related information. It will also be possible to link and retrieve information on any prior related advisory assignment. In addition, the advisory assignment reports now produced for the monthly CERC meetings will soon be generated for review of litigation cases as well. Currently, those cases are listed on the general litigation reports and must be manually culled out for review.

3. **Code Enforcement Tools Notebook:** Since August, the CAO has been working on the Code Enforcement Tools Notebook. The Notebook's principal goals are to provide a compilation and description of the code enforcement tools available to the City, the procedures and legal framework connected to a specific enforcement tool, and a discussion of the elements and circumstances relevant to the selection and employment of a particular tool. Further, the Notebook will facilitate a better understanding of the code enforcement process by all involved. It will also improve interaction between the CAO, the other code enforcement staff, and the public.

The notebook is substantially drafted and will be circulated to staff for their review and comment within the next thirty (30) days. The sections drafted to date include

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chapters on standard and summary abatement, the administrative enforcement tools of securement and demolition, graffiti abatement, REAP, and civil injunctions.

4. District Tours: Starting on September 14 and continuing to date, code enforcement tours have been conducted by Council Members in districts 2, 3, 4, 5, and 8, and by the AA for council district 1. Tours for council districts 6 and 7 were scheduled and pending when this report was prepared. The purpose of the tours is to view major nuisance problems which require immediate and concentrated abatement attention. After all tours have been completed, a list of the 5 worst nuisances in each district and a master nuisance list will be compiled. From the master list, the 5 worst nuisances in the City as a whole will be listed for immediate criminal, civil and /or administrative action. These matters will receive extra attention during monitoring cycles.

During the tours of districts 4 and 5 a nuisance was discovered in each district (both consisted of unprecedented piles of junk and debris) which would have been placed on the 5 worst list. However, we felt that abatement could not wait until the tours were completed. These matters were reported to the head of the newly formed CAT team for immediate action. The nuisance in district 5 was abated in about a week and the nuisance in district 4 was abated within a few days. Monitoring of both sites continues for other code violations and removal of a very small amount of remaining unsightly debris.

5. Contract Attorney Recruitment and Selection: Several steps have been taken in the recruiting and hiring process of a code enforcement contract attorney. The scope of work and duties was drafted and circulated to other City staff and to Council Members Cohn, Hammond, Kerth and Steinberg for review and comment. The completed scope of work draft was then forwarded to the RFP team, and was included in the RFP, which is now "on the street." The consultant agreement form to be used for the contract attorney has been reviewed and approved.

Proposals are due December 4, 1998, and the selection process is expected to be complete by the end of December. The attorney will commence work shortly after January 1, 1999.

6. Staff Training: A memorandum prepared by the CAO on file organization and file status was recently distributed to code enforcement personnel. Concentrated case preparation training of code enforcement personnel by the CAO is expected to begin in earnest after the Code Enforcement Notebook is completed and the contract attorney has been hired.

7. Ordinance Research and Development: This office has been asked to investigate and, as appropriate, examine legislation reportedly enacted and used by other

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jurisdictions to address code enforcement issues, and to report back to the Council on the City's potential use of such legislation. The cited legislation includes: legislation establishing a regulatory permit system for residential rental properties; the City of Oakland's ordinance authorizing the seizure of vehicles used by persons who solicit acts of prostitution. Following is a brief update on the status of this research.

A. **Regulatory Permit system for residential rental properties:** During our August 11, 1998 presentation, Council Member Robbie Waters requested that we research the law to determine whether it is legally permissible to enact a regulatory ordinance requiring all renters of residential units, whether single family or multi-family, to obtain a license with conditions. We have learned that the City of Vallejo is currently researching the same issue.

While this office has been advised that a number of jurisdictions have such regulations, a check with the cited jurisdictions revealed that most have a business license requirement similar to the City's, which is designed to be a revenue, and not regulatory, measure. This office has been advised that two jurisdictions (Los Angeles County and Long Beach) do in fact have regulatory ordinances, and we are in the process of obtaining copies of their ordinances and contacting their attorneys to discuss their ordinances. One issue that will require legal analysis is whether such an ordinance is covered by Proposition 218 and therefore requires approval by the affected property owners before any fee or charge (to cover the costs of the program) may be assessed. It is our understanding that a Proposition 218 challenge has been or will be made to the inspection fee that the City of Los Angeles imposes pursuant to its ordinance calling for periodic inspection of rental units within that city.

B. **Prostitution Abatement:** Subsequent to the August 11, 1998 meeting, Council Member Hammond requested that we review what the City of Oakland is doing with regard to seizure of vehicles used by persons who solicit acts of prostitution. We have contacted the Oakland CAO and are now reviewing what they are doing. A separate report on this subject will be presented to the Council in the near future.

8. **Gang Injunction:** We continue to work with SPD to determine whether there are areas within the City where the use of the gang injunction is appropriate. To date we have not received a filing package from SPD. However, we have been informed that there is a possibility that one case might be forthcoming in the near future. In addition, we continue to monitor the use of gang injunctions throughout the State of California. The most recent case (from San Diego) decided during the month of October upheld the use of standard gang injunction provisions including the one which prohibits gang members from associating with each other. However, the court ruled that cities may not prohibit the

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use of pagers and cell phones even if they are used to communicate with other gang members.

9. **Simultaneous civil, criminal and administrative actions:** At the conclusion of the district tours and the establishment of a list of the 5 worst nuisance cases within the City at large, we intend to institute simultaneous civil, criminal and administrative abatement actions against each of these nuisances and aggressively prosecute those actions until the nuisances are permanently abated.

To accomplish this approach, we wish to work with the District Attorney regarding the criminal prosecutions. Although this office has the legal authority to prosecute such actions, we lack the required staffing. We met with the District Attorney's representative on August 12, 1998 to discuss our goals, our proposed approach for reaching those goals and whether that office is willing to join our efforts. The District Attorney is supportive and has already agreed to handle some of our major nuisance problems as criminal cases. They are not certain as to how many new matters they will be able to prosecute on our behalf because the position dedicated to these cases is part time. The District Attorney expressed some reservations regarding the effectiveness of having three different type actions open on the same file due to potential problems that are likely to arise as a result of some differences in the way cases are processed in the three arenas. We met again with the District Attorney's representative and interested Council Members on September 3, 1998 for further discussion of the District Attorney's concerns. It is the District Attorney's preference that those matters worthy of criminal prosecutions not be simultaneously filed as administrative and civil matters. We have not agreed as to how these matters will be handled. However, the District Attorney agreed to establish criminal filing criteria so we will be able to determine in advance whether a certain nuisance is likely to be filed as a criminal matter.

After the list of worst cases has been established, we will work with the District Attorney to jointly determine which cases will be prosecuted criminally and whether any additional action is warranted during the pendency of the criminal action. Every effort will be made to support the District Attorney's attempt to obtain a timely and effective abatement resolution to the nuisance prior to instituting one of the other abatement actions.

Joint Efforts with HR&FH:

The contract attorney for the Human Rights and Fair Housing Commission (HR&FH) is currently handling one substandard housing case on a trial basis, which is being closely monitored by the CAO. For budgetary reasons, that agency does not currently employ a

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staff attorney to handle such cases. The CAO does not anticipate referring a significant number of cases to the HR&FH until such time as a permanent staff attorney has been added.

Litigation Update

A. **USA Tire:** In our August report, we listed three cases of interest to the council. Of those cases only USA Tire remains open in the Litigation Section of the office. The CAO has advised the owners of USA Tire by letter that certain aspects of their business are being conducted illegally. Further, City code enforcement officers are checking on the legality of some of the equipment located on the property. The CAO expects to file a complaint against USA Tire in early November if compliance with the City Code has still not been achieved. We are keeping Council Members Hammond and Steinberg informed of the status of this matter.

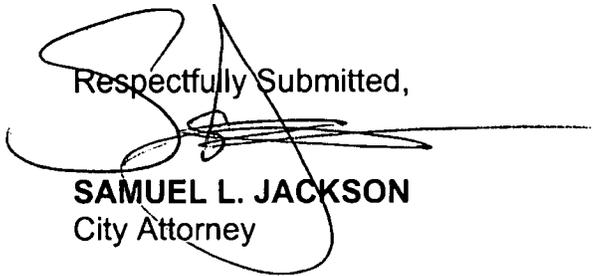
FINANCIAL CONSIDERATIONS: This report does not have a financial impact on the City's budget.

ENVIRONMENTAL CONSIDERATIONS: The subject of this report does not involve a project that requires compliance with the California Environmental Quality Act (CEQA), inasmuch as it does not involve an activity which may cause a direct or indirect change in the environment. (Public Resources Code Section 21065).

POLICY CONSIDERATIONS: This report is consistent with Council policy of promoting and supporting neighborhood reclamation.

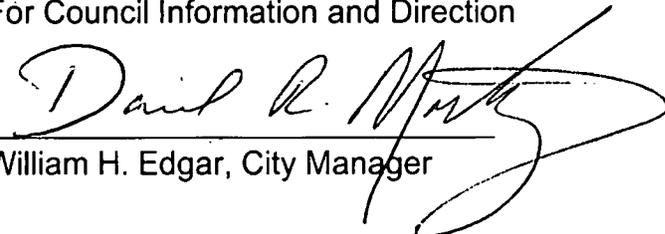
MBE/WBE: Since no goods or services are being purchased, this report does not impact the City's MBE/WBE policies.

Respectfully Submitted,



SAMUEL L. JACKSON
City Attorney

For Council Information and Direction


for: William H. Edgar, City Manager