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**CITY OF SACRAMENTO  
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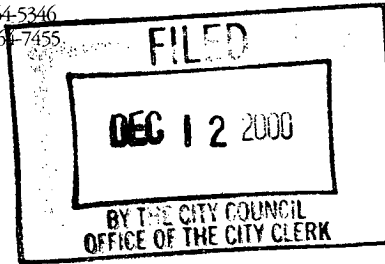
December 6, 2000

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CITY COUNCIL  
Sacramento, California

Honorable Members in Session:



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

**LOCATION AND COUNCIL DISTRICT:** City-wide

**RECOMMENDATION:** Receive and file this status report; provide further direction to staff regarding proposed guidelines for criminal prosecution of city code violations; provide further direction to staff regarding the Memorandum of Understanding which governs the prosecution of cases post-transition.

**CONTACT PERSON:** Samuel L. Jackson, City Attorney, 264-5346  
Sandra G. Talbott, Supervising Deputy City Attorney

**FOR COUNCIL MEETING OF:** December 12, 2000

**SUMMARY:** The City Attorney's Office is preparing to assume responsibility for handling all criminal prosecution of city code violations. This report provides the council with a summary of the status of this preparation. This report further provides information with respect to proposed guidelines for charging of criminal cases and with respect to county prosecutors working within the city limits. Finally, this report requests that the Council provide further direction to the City Attorney's Office regarding the above at a Council meeting scheduled for January 9, 2001.

**BACKGROUND:** On January 4, 2000, the council resolved that the City Attorney's Office should handle at least some of the city code violations as criminal matters. Upon notice to the District Attorney of the Council's decision, the District Attorney suggested that if the City Attorney's Office was going to commence handling some of the City Code violations as criminal prosecutions, it would be best for the City Attorney to handle all such violations. The

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recommendation was based on the fact that the handling of City Code violations by both agencies handling these matter could result potential conflicts. 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, where necessary. This team has met on several occasions to discuss the details of the transition, how to maintain as much consistency as possible with current prosecutorial and court policies and practices, and to plan for and take advantage of training opportunities. The District Attorney's Office has been extremely cooperative during the transition and is providing invaluable services to the City during this process, including training opportunities.

As part of the transition process, the City Attorney's Office has prepared a bail schedule to be used in the court system. The court will rely on the bail schedule as it sets punishment for city code violations. We anticipate the bail schedule will be available for review on the internet in the near future. Next, the City Attorney's Office met with Area Directors and attended the Area Directors' community meetings. The purpose of these meetings was to provide information to the Area Directors and the community on how the criminal justice system works and on methods for prosecuting city code violations. One Deputy City Attorney has completed a District Attorney training session which concluded with mock-trial exercises before a judge of the Sacramento County Superior Court. The District Attorney's Office has offered to train additional deputies as part of the ongoing transition process. These contributions by the District Attorney's Office will greatly enhance the success of the city prosecution of city code violations.

### **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 or criminally. Exhibit A identifies the guidelines for the city to follow when considering whether or not to criminally charge an individual with a violation of the city code. The proposed guidelines contain a list of violations that the City will focus on for criminal prosecution where the charging criteria are met. The proposed list of violations was developed by the City Attorney's Office with input from some Council members, Area Directors, enforcement departments and the community. Finally, the proposed guidelines 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 health and safety. The City Attorney's Office seeks further direction from the Council regarding filing criteria guidelines prior to implementation.

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## Memorandum of Understanding

The District Attorney and the City Attorney's Office are in the process of preparing a Memorandum of Understanding (MOU) to memorialize several principles which will guide our cooperative efforts for prosecution of City Code violations after the transition date. **(Exhibit B.)** As agreed with the District Attorney, the handling of violations by juveniles will remain under the jurisdiction of the District Attorney's Office for the present. In addition, there will occasionally be instances where the City Attorney's Office will work jointly with the District Attorney's Office. There will also be instances where we will defer to one of our respective offices for the sole prosecution of some matters which may involve both State Code and City Code violations. The primary objective in transferring these matters to the City Attorney's Office is to maximize the time both the City Attorney and the District Attorney are able to devote to handling misdemeanor matters committed within the City. The District Attorney will be afforded more staff time to handle State Code violations that occur within the jurisdiction of the City. The District Attorney currently has a grant from the federal government which places a one-half time Deputy District Attorney within the City of Sacramento's Avondale and Glen Elder neighborhoods. The District Attorney also has a similar grant placing a one-half time Deputy District Attorney in Sacramento Police Department Sector 2 **(Exhibit C)**. The duties of the deputy district attorney assigned to these areas are:

- Identify cases involving high-level drug dealers, and coordinate with the District Attorney's Major Narcotics Venders Prosecution Unit to refer those cases for prosecution and track the progress of the cases;
- Identify cases involving gang leaders, prepare search warrants to gather evidence and refer such cases to the District Attorney's Gang Prosecution Unit, and track progress of cases involving gang leaders;
- Prosecute nuisance actions involving buildings and places used by gang members for illegal activity;
- Prosecute violations of probation for probationers living in the target area, and seek parole revocation on parolees committing parole violations in the target area;
- File civil nuisance actions against owners of housing used for illegal activity;
- Prosecute property owners and/or tenants for building code violations; and
- Provide advice and assistance to law enforcement officers involved in the collection of evidence, preparation of search warrants, and the investigation and organization of cases to be submitted for prosecution.

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A part of the duties described above will necessarily involve the prosecution of Sacramento City Code violations. This creates a conflict with the manner in which Sacramento City Code violations will be prosecuted in the rest of the City. The City Attorney's Office requests direction from the Council with respect to the manner in which City Code violations will be handled in the areas affected by the federal grants.

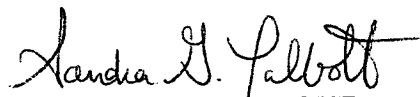
**FINANCIAL CONSIDERATIONS:** This report does not have a financial impact on the City's budget.

**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 are exempt from the requirements of CEQA under CEQA Guidelines, Sections 15061 (b) (1) and 15378 (b) (3).

**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 live in neighborhoods; and implementing a City Attorney Criminal Prosecution Program to achieve these objectives.

**ESBD CONSIDERATIONS:** Efforts will be undertaken to comply with the City's ESBD program when purchases of supplies and equipment for which requested expenditures are made.

Respectfully submitted,



**SANDRA G. TALBOTT**  
Supervising Deputy City Attorney

RECOMMENDATION APPROVED:



**ROBERT P. THOMAS**  
City Manager

Exhibits

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# EXHIBIT A

## **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
  
- 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 system
  
- 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

**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.



# EXHIBIT B

**PROSECUTION OF MISDEMEANORS AND INFRACTION ARISING  
FROM VIOLATIONS OF THE SACRAMENTO CITY CODE**

**MEMORANDUM OF UNDERSTANDING (MOU)**

**PREAMBLE**

The Sacramento District Attorney's Office currently prosecutes all Sacramento City Code misdemeanors and infractions at the request of the City of Sacramento. Effective February 5, 2001, such prosecutions will be transferred to the Sacramento City Attorney's Office for handling pursuant to Government Code section 36900. The District Attorney and City Attorney hereby enter into this MOU to memorialize several principles which will guide their cooperative efforts for prosecutions of City Code violations after the transition date.

**I. POLICY**

It is the policy of the Sacramento City Attorney's Office and the Sacramento County District Attorney's Office to prosecute violations of the Sacramento City Code (City Code) under the highest ethical integrity. Cases shall be prosecuted to achieve the greatest general and specific deterrence to criminal conduct.

Consent is hereby given by the City Attorney to District Attorney for the prosecution of City Code violations as specified in this document. When the District Attorney is prosecuting City Code violations pursuant to said consent, the City's policies, guidelines, and criteria relating to criminal prosecutions shall be adhered to.

Consent is hereby given by the District Attorney to City Attorney for the prosecution of State Code violations as specified in this document. When the City Attorney is prosecuting State Code violations pursuant to said consent, the District Attorney's policies, guidelines, and criteria relating to criminal prosecutions shall be adhered to.

**II. PURPOSE**

The purpose of this memorandum is to establish criteria for determining when the Sacramento City Attorney's Office and the Sacramento County District Attorney's Office will prosecute misdemeanors and infraction violations of the City Code after February 5, 2001. It is the intent of all parties to establish the City Attorney's Office as the prosecuting agency for all City Code violations whenever possible.

**III. JURISDICTION**

This Memorandum of Understanding affects all violations occurring within the City of Sacramento.

**IV. PENDING CASES**

All citations and arrests for City Code violations occurring prior to February 5, 2001, shall remain under the prosecutorial jurisdiction of the District Attorney.

In addition, all City Code cases filed and pending as of February 5, 2001, shall remain under the prosecutorial jurisdiction of the District Attorney. Finally, all City Code cases that have been adjudicated prior to February 5, 2001 with probation or other post adjudications proceedings pending shall remain under the prosecutorial jurisdiction of the District Attorney.

**V. JUVENILES**

Until otherwise determined, the District Attorney's Office shall retain prosecutorial jurisdiction over cases involving person(s) under the age of 18 at the time the City Code misdemeanor or infraction was committed.

**VI. PROSECUTION**

The term prosecution is understood to encompass responsibility for all steps undertaken for or associated with the criminal justice system after arrest.

**VII. REJECTED/DISMISSED CASES**

The District Attorney's Office will forward cases to the City Attorney's Office for review and filing decisions where the District Attorney has made a determination not to file on any state code violations leaving only City Code violation(s) as potential charges. All such cases will be forwarded to the City Attorney as soon as practicable but not later than thirty (30) after receipt.

Where cases involving state and city code violations are initially filed by the District Attorney and the District Attorney subsequently dismisses all state code violations, city code violations shall not be dismissed without prior consent of the City Attorney. In the absence of consent by the City Attorney, the District Attorney's Office shall transfer all such cases to the City Attorney's Office for continued prosecution.

In all instances where the District Attorney forwards or transfers a case to the City Attorney, the District Attorney shall notify the Court and parties that the case has been transferred to the City Attorney. THIS NOTICE PROCEDURE APPLIES ONLY WHEN THE COURT AND/OR PARTIES ARE AWARE OF PENDING CHARGES.

Where the District Attorney's Office rejects a case with violations of the State Code and City Code and the accused is in custody, the District Attorney will file charges if there is sufficient evidence for the City Code violation before sending the case to the City Attorney's Office for prosecution. Where the accused is not in custody, the District Attorney's Office will not file charges, instead sending the case to the City Attorney's Office so charges may be filed by the City Attorney.

**VIII. HEALTH AND SAFETY**

High priority shall be afforded cases involving violations of Title 8, Health and Safety, and Title 9, Public Peace, Morals and Welfare, of the City Code. This priority shall include the City Attorney's Office serving as the prosecuting agency for violations of Titles 8 and 9 whenever practical.

**IX. RESTITUTION**

Restitution for victims and for cost incurred by governmental agencies is a priority and a shared commitment by the City Attorney and the District Attorney. Accordingly, all guidelines for restitution and recovery of costs set forth by respective agencies or by statute shall be vigorously pursued where appropriate.

**X. PROCEDURE FOR DETERMINING THE INITIAL PROSECUTING AGENCY**

The Sacramento City Attorney and the Sacramento District Attorney agree that the following procedures shall be adhered to in determine which of the respective agencies shall assume prosecutorial jurisdictions for cases involving solely city code violations or state code and city code violations:

**A. City Code violation only.**

The City Attorney's Office shall be the prosecuting agency for cases involving a City Code violation only.

**B. City Code violation with an associated failure to appear on a City Code violation.**

The City Attorney's Office shall be the prosecuting agency for cases involving a City Code violation with an associated failure to appear on a City Code violation.

**C. City Code violation with an associated violation of probation.**

The initial prosecuting agency of the offense underlying the violation of probation shall be the prosecuting agency for cases involving a violation of probation.

**D. State Code violation only.**

The District Attorney's Office shall be the prosecuting agency for cases involving a State Code violation only occurring within the jurisdiction of the City of Sacramento.

**E. City Code violation with an associated State Code violation arising out of the same transaction or occurrence as the city code violation.**

Subject to paragraph XI A hereof, the City Attorney hereby consents to the District Attorney's Office serving as the prosecuting agency for cases involving a City Code violation and State Code violation arising out of the same transaction or occurrence as the city code violation.

**F. Violations of Title 8, Health and Safety, or Title 9 , Public Peace, Morals and Welfare, of the City Code with an associated State Code violation arising out of the same transaction or occurrence as the city code violation.**

The District Attorney's Office consents to the City Attorney's Office serving as the prosecuting agency for cases involving a State Code violation associated with a violation arising out of the same transaction or occurrence as a violation of Title 8, Health and Safety, or Title 9, Public Peace, Morals and Welfare, of the City Code. The District Attorney's Office will balance the following factors in determining whether to consent to the City Attorney's Office serving as the prosecuting agency:

1. The nature and significance of the state and city code crimes or infractions involved;
2. The impact on and future threat to public safety;
3. The penalties for each crime or infraction involved;
4. The originating investigating agency; and
5. How justice may be best served.

Said decision shall be made by the District Attorney's intake division based on the above criteria.

**XII. AVONDALE / GLEN ELDER WEED AND SEED AREA AND SACRAMENTO POLICE DEPARTMENT SECTOR 2**

The City Attorney's Office shall be the prosecuting agency for cases involving a City Code violation only. The City Attorney's Office and District Attorney's Office shall otherwise follow the provisions set forth in this MOU.

**XIII. DURATION OF MOU**

This Memorandum of Understanding shall remain in effect until such time that with or without cause it is rescinded in writing by either of the signatories upon 30 days notice to the other.

\_\_\_\_\_  
Date

\_\_\_\_\_  
**Samuel L Jackson**  
**City Attorney of Sacramento**

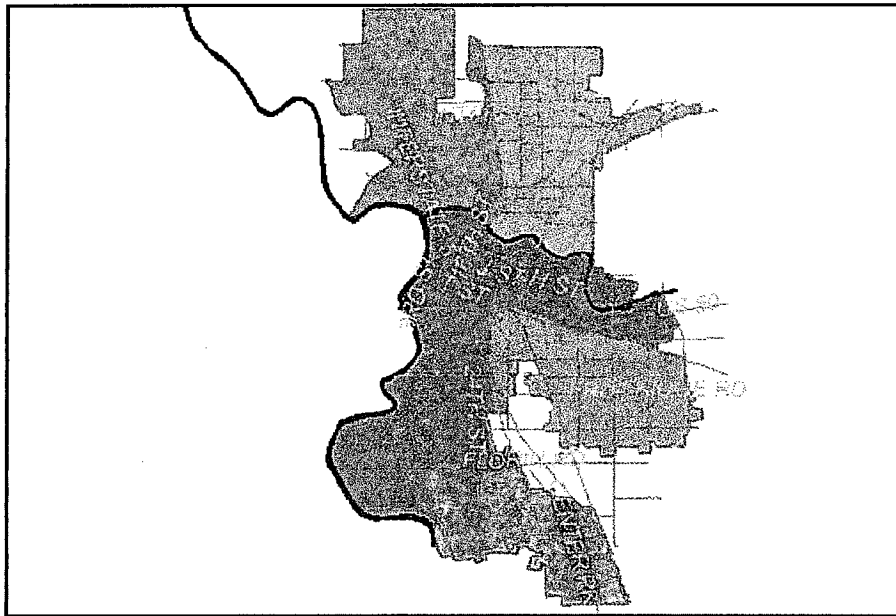
\_\_\_\_\_  
Date

\_\_\_\_\_  
**Jan Scully**  
**Sacramento County District Attorney**

# EXHIBIT C

# Crime Information Map

## legend



- Major Streets
- Rivers
- Police Sectors
- Central Sector, 3
- East Sector, 6
- Northeast Sector, 2
- Northwest Sector, 1
- South Sector, 5
- Southwest Sector, 4
- City Limits

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Data Source : City of Sacramento