



Office of the City Attorney
Susana Alcalá Wood, City Attorney

Sandra G. Talbott
Chief Assistant City Attorney

Deputy City Attorneys

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Kourmey C. Bordick
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Paul A. Gale
David J. Gibson
Jennifer V. Gore
Göralp Y. Güver
Malia L. Hansen
Elizabeth A. Hawkins
Jeffrey C. Heeren
Aaron M. Israeli
Arvinder Kaur

Assistant City Attorneys

Matthew D. Ruyak
Brett M. Witter

Supervising Deputy City Attorneys

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Gustavo L. Martinez
Andrea Velasquez

Deputy City Attorneys

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November 22, 2023

Thien Ho, District Attorney
Sacramento County District Attorney's Office
901 G. Street
Sacramento, CA 95814

Re: Property address: 2225 Colfax Street
Parcel: 275-0072-001 and 275-0072-002

Dear Mr. Ho:

Consider this my first and only response to your letter dated November 14, 2023, which, frankly, amounts to nothing more than an abuse of your authority as an elected District Attorney. Instead of the compassionate treatment you publicly call for, you once again pivot to criminalize city officials who are leading the effort to meet the needs of the homeless and community at large.

Your letter threatens criminal charges, and I can only assume that you intend to charge me personally, since you addressed the letter to me and used the terms “you” and “your” throughout. Perhaps your plan is to also pursue a criminal action against other city officials as well, such as Mayor Darrell Steinberg, against whom it is no secret that you view as your political rival in a run for California Attorney General—because it is only in the theater of politics that your repeated attempts to penalize Mayor Steinberg and the City of Sacramento for its efforts to address the homeless crisis, including the exercise of some compassion, that any of these antics make sense. I can only surmise that this is the action you threatened to file when I declined your invitation to forego filing a demurrer to the civil action you filed against the City. You told me that if I did not file the demurrer then you would use your

considerable influence with the County of Sacramento to get them to do their job addressing the needs of the homeless community. In response, I informed you that my professional responsibility to my client obligated me to file a demurrer on its behalf under the circumstances. Your current actions are a clear threat to file criminal charges to gain an advantage in a civil lawsuit. I caution you to rethink your strategy. Whatever the motivation, on a professional and humane level, these latest actions border on being reprehensible. We are not moved by your threats.

You threaten with criminal charges the very people who are working day-in and day-out to address the homelessness crisis and all its impacts on the community. Are all the efforts perfect? Of course not. If one perfect solution existed, then homelessness would have already been solved nationwide. But rather than take the City up on its repeated requests that you (using the apparently considerable taxpayer-funded resources at your disposal) join the efforts of numerous leading members of the community trying to solve this urgent human crisis, your actions serve only to exacerbate, distract, and dilute. You offer no solutions, only threats. That you view your job as the ultimate arbiter of who is or is not doing enough to solve homelessness in the community is one thing, but it is quite another that you intend to use your position to violate the California Penal Code. Instead of upholding the law, you threaten to use it as a weapon to force others into compliance with your political views. We simply reject that notion in its entirety.

Before I respond to the baseless allegations and unashamed mischaracterizations in your letter, I will express again what my office has expressed numerous times in correspondence, legal filings, and in person, that threats such as these serve no practical purpose. They do nothing more than to distract our respective offices and, more pointedly, our hard-working employees, from representing the interests of Sacramentans. Every single time we receive one of your letters or demands or are made aware of your self-serving media comments, city staff, including my office and I, are forced to take time away from the numerous daily needs of the City to respond. Enough is enough. I thus ask—one last time—that you bring to a stop these pointless, politically-motivated endeavors so that we can all get back to focusing on problem-solving the homelessness crisis and doing our jobs for the community. While you and I may disagree on how to best address homelessness and where responsibility lies in doing the work, the only viable approach to solving this crisis is collaboratively. Not like this.

If, however, after reading this preamble you are still intent on pursuing your latest political crusade to hold criminally liable me and other city officials, you would be wise to consider the points set forth below.

First, it is unclear how you intend to charge me criminally when I do not own the subject property located at 2225 Colfax Street, Sacramento, CA 95815.

Penal Code section 373a provides, in pertinent part:

“Each person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and each person occupying or leasing the property or premises of another who maintains, permits, or allows a public nuisance to exist on the property, after reasonable notice in writing from a health officer, district attorney, city attorney, or city prosecutor to remove, discontinue, or abate the public nuisance has been served upon the person, is guilty of a misdemeanor...”

Penal Code section 7 defines a “person” to include “a corporation as well as a natural person,” but articulates no other entities and certainly not a public entity such as the City. This is reinforced in Penal Code sections 26 (“Persons capable of committing crime; exceptions”) and 27 (“Persons liable to punishment”), which refer only to “person” or “persons.”

Second, even assuming you could charge me or any other city official with a violation of Penal Code section 373a, your underlying factual predicate is woefully insufficient. Indeed, in your apparent rush to draft your November 14 letter you seem to have overlooked or misstated (perhaps intentionally) key events.

As you know, on August 4, 2021, Mayor Steinberg released his “Comprehensive Siting Plan to Address Homelessness.” As part of this plan, the City identified, *inter alia*, 2225 Colfax Street as a potential location for the unhoused. You are correct that the City was aware of the health concerns present at 2225 Colfax, as determined by third party testing at the direction of the Central Valley Regional Water Quality Control Board on July 21 and September 28, 2011. That is factually accurate. However, as you point out in your letter, the City applied on October 14, 2021, for a variance to the Land Use Covenant recorded on June 15, 2017. The variance was granted on January 13, 2022. The City subsequently opened 2225 Colfax for “Safe Parking” only—no tent camping.

It was brought to the City’s attention, however, after a February 8, 2022, inspection by the Water Board, that the new occupants of 2225 Colfax were violating the terms of the variance by, namely, tent camping. After allowing a reasonable time for the occupants to bring themselves into compliance with the variance, the City determined it could no longer permit the violations since it could endanger the occupants’ health. Accordingly, the Sacramento Police Department cleared out the location on April 21, 2022, and locked the gate.

Months later, on September 30, 2022, in an apparent coordinated effort with homeless individuals and their advocates, a group of homeless individuals illegally cut the locks and broke into the location, thus committing trespass and proceeded to occupy 2225 Colfax without authorization from the City. On October 5, 2022, the Water Board informed the City of the break-in. City representatives immediately visited the site on October 6 and 7, 2022, to provide outreach and take enforcement action. This enforcement action was followed up by

a letter sent on October 20, 2022, by Assistant City Manager Mario Lara to SHU, who advised that they represented the homeless individuals at the site, directing them to leave the site (though the City never “promised future clearing of the site,” as you claim). This enforcement action by the City was met with significant outcry from the homeless community and advocates on behalf of the homeless and other community members who attended City Council meetings demanding that the Council stop the planned closure since winter weather had arrived and there were insufficient shelter beds. Unfortunately, the variance violations continued, as determined after another inspection by the Water Board on December 20, 2022.

In the middle of the outcry and hostility, the leadership of Sacramento Safeground offered to take responsibility for the site and work with the City and the homeless community to see if it was possible to hammer out a collaborative solution and turn what started out as a volatile criminal trespass into a potential temporary safe ground spot for this particular group of homeless people who were asking for the ability to help themselves. So, it was not the City’s idea as you incorrectly allege. In fact, the City was very hesitant to agree to any such discussion, in part given the documented health risks.

However, as I said previously, the homelessness crisis is being addressed by many community members, including non-profits, and Sacramento Safeground was proposing a potential temporary sheltering solution that had worked in other communities. In its relentless quest to do whatever it takes to get people off the streets, the City thus authorized me to negotiate with Sacramento Safeground on how such an agreement could be fashioned. SHU stepped in as attorneys and representatives for the particular group of homeless that were on site, and after a period of negotiations an agreement on the lease was reached, but only on the express condition that both Sacramento Safeground and SHU be aware of the associated health risks and purchase an insurance policy. SHU General Counsel was also tasked with holding meetings with the group of homeless individuals at the site and articulating the details of the Water Board’s environmental report so that they had the opportunity to ask questions, learn about the risks, and fully understand why the City was not allowing anyone to stay in a tent. This is why the Ground Lease Agreement for 2225 Colfax (referred to as “Camp Resolution” by Sacramento Safeground) contains numerous, detailed disclosures about the specific parameters of staying at that property. So, what you describe as the City’s attempt to “wash their hands” of the property, I call the City trying to do everything within its power in a whatever-it-takes approach for Sacramentans to not sleep on the ground near freeway overpasses where benzene exposure is constant and unavoidable.

To further aid in this transition from tents to trailers, District 2 Councilmember Loloee worked diligently to secure the transfer of the surplus FEMA trailers stored at the City’s corporation yard to the Colfax site in a literal “trade-in” for tents. All parties knew about the variance and that the Water Board has sole authority to modify it. If Safeground Sacramento and SHU and the occupants can maintain compliance (which they are currently endeavoring to do at the continued demand from the City), then the Colfax site can operate as a temporary “Safe Ground” site as described in the Lease.

Third and finally, your allegation that the City has violated Measure O, codified in pertinent part at Sacramento City Code, Chapter 12.100.020, is peculiar. You claim, "Camp Resolution is located within 1000 feet of both a licensed daycare and playground." However, no daycares or parks could be located within those parameters, and you identify none by name. It is thus unclear to what you are referring, though not altogether surprising that you attempt to add as many allegations as possible, no matter how spurious.

There is thus no legal basis nor evidence that can support criminal charges against any city official with respect to 2225 Colfax.

If despite the reasons articulated above you still think it prudent or wise to file criminal charges, then proceed as you see fit. It is now abundantly clear that you have no interest in collaborating, and that you have decided to ignore all logic and reason in your quest to pursue your political motives. Also abundantly clear is that despite your public claims that your current threat of filing criminal charges (potentially against me) has nothing to do with your existing and related civil action against the City, your actions are in fact retaliation for my decision to vigorously defend my client by filing a demurrer that sharply addressed the legal problems with your complaint.

For months you criticized my office and the City's efforts to address homelessness, arguing that we were not doing enough. Now, you argue we are not doing it correctly. If this were an ordinary meet-and-confer to discuss liability, I would ask follow-up questions. To do so, however, based on my past experiences with you, means that you would simply turn it into another media stunt. I therefore will not engage further, via writing or otherwise. But if you wish to really discuss the homelessness crisis and effect on the community and how we can work together on real solutions to address impacts, I will always find time in my calendar to meet with you and work with you collaboratively.

In the meantime, I've got to get back to work.

Sincerely,



SUSANA ALCALA WOOD
City Attorney

cc: Mayor Darrell Steinberg
Council Member Sean Loloee
City Manager Howard Chan