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**CITY OF OAKLAND**  
**AGENDA REPORT**

08 JUN -5 PM 4:02

TO: Oakland City Council  
ATTN: President Ignacio De La Fuente  
FROM: Vice Mayor Larry Reid, Chief of Police and City Attorney  
DATE: June 11, 2008

**RE: SUPPLEMENTAL REPORT RE: A PROPOSED RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO IMPLEMENT THE INFRACTION AND MISDEMEANOR PROSECUTION PROGRAM AS PART OF THE CITY'S CRIME FIGHTING STRATEGIC PLAN; AUTHORIZING ITS FUNDING IN AN AMOUNT NOT TO EXCEED SIX HUNDRED FIFTY EIGHT THOUSAND FOUR HUNDRED AND FIFTY FIVE DOLLARS (\$658,455); AND AUTHORIZING ITS IMPLEMENTATION TO BEGIN IMMEDIATELY TO HELP REMEDY THE CRIMINAL CONDITIONS ADVERSELY IMPACTING THE QUALITY OF LIFE OF OAKLAND RESIDENTS**

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**SUMMARY**

The resolution authorizing the implementation of the City's Infraction and Misdemeanor Prosecution has been introduced by Vice-Mayor Larry Reid with the co-sponsorship of Council President Ignacio De La Fuente and Mayor Ronald V. Dellums. This item was heard by Council on April 24, 2008 during the Midcycle Budget meeting, on May 13, 2008 during the Public Safety Committee meeting, and on May 29, 2008 during Council's consideration of the Mayor's FY 2008-09 Midcycle Budget Changes for the City of Oakland and Oakland Redevelopment Agency.

This supplemental report responds to questions the Council raised during its May 29, 2008 Special Midcycle Budget meeting. We will attempt to answer any further questions the Council might have at the meeting of June 11, 2008.

**QUESTIONS AND ANSWERS**

1. What will be the actual number of cases that each of the City Prosecutors will handle?

The Infraction and Misdemeanor Program is a new and innovative program of the City Council. Therefore, it is difficult to provide a firm estimate on the number of cases the City Prosecutors will handle per year. Nevertheless, given the newness of the program, the Implementation Plan submitted to Council provides for a range of 150 – 300 cases per City Prosecutor per Police Area for the first year.

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## Infraction and Misdemeanor Prosecution Program

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This projected number takes into consideration that in the first year the City will devote time to hire the attorneys, train them in prosecuting criminal cases in Alameda County and update the Oakland Municipal Code provisions related to infractions and misdemeanors. Moreover, we anticipate the program will include a variety of cases, both short and long term case projects, and these cases will differ in their degree of complexity.

We will return to Council with additional information on the caseload capacity of this program once we've had the opportunity to establish the program and begin its implementation. In the interim, the number of cases and how they're handled will be tracked and the information will be presented to Council in a subsequent report.

2. What are the programs and agencies available in Oakland that can provide intervention, community service and restorative justice opportunities and do these programs have openings for new participants?

As mentioned in previous reports, the City of Oakland has two options for restorative justice, intervention, and community service programs for qualified youth. These programs include the McCullum Youth Court (MYC) and the Oakland Artist Graffiti Abatement Program.

The mission of McCullum Youth Court is to offer youth offenders a second chance through restorative justice, peer accountability, and empowering opportunities; and to engage all youth - especially those at risk for entering the juvenile justice system - in empowering experiences related to law and justice with the aim of changing young lives and impacting communities. The basic premise of the program is that eligible youth are adjudicated by their peers. As such, youth are involved throughout the process as jurors, public defenders, and prosecutors all with the guidance and assistance of professional district attorneys and public defenders. The consequences and requirements imposed on the youth are binding and a required condition of diversion. These range from community service, restorative justice, fines, etc. Currently, the McCullum Youth Court has openings for an additional ten (10) young people per month or one hundred twenty (120) youth a year. However, with additional funding they will be able to accept more young people.

The Oakland Artist Graffiti Abatement Program is a new program that is funded by the Oakland Redevelopment Agency (ORA) and was developed through contributions from Councilmember Nadel and ORA. The program partners youth with professional mural artist and together the artist and the youth create and execute a mural. Throughout the process the youth are actively engaged. As such they not only paint over the graffiti plagued property, but also learn mural arts skills in the process.

Currently, the program has been funded to produce six (6) murals in the Coliseum and Central City East Redevelopment Area. This program is in its pilot phase and is set to begin implementation in June 2008. The organizers of the program have agreed to take twelve (12) young people accused of vandalism during its pilot phase. However, once the program graduates beyond the pilot phase in the summer of 2009, it will have more openings, many of which will be exclusively for young people accused of vandalism. Additionally, the program will be more closely modeled after the Philadelphia Mural Arts Program which serves as a diversion program for eligible youth.

3. How can the City be assured the courts in Alameda County will extend adequate resources to guarantee the City's cases will be heard by a judge or a commissioner?

The offices of the Mayor, the Police Department and the City Attorney have had various meetings with the District Attorney's Office to confirm that the City's cases will be charged and prosecuted within the working structure that currently exists between the Alameda County Superior Court and the District Attorney. We have also had meetings and discussions with the Alameda County Superior Court in which the court's cooperation and support of the City's program has been established.

Offenses declared to be misdemeanors under the California Penal Code are heard by a judge and offenders are entitled to a trial by jury. Misdemeanor offenses are punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both. *Cal. Penal Code § 19*. If convicted or as a condition of probation, the one year maximum confinement can be provided in a county jail, work camp, or other county adult detention facility, or committed to the sheriff for placement in any county adult detention facility. *Cal. Penal Code §19.2*. Offenses declared to be infractions under the California Penal Code are not punishable by imprisonment and offenders are not entitled to a trial by jury. *Cal. Penal Code §19.6*. Unless otherwise provided by a specific statute, infractions are punishable by a fine not exceeding two hundred fifty dollars. Offenses identified as infractions can be heard by a commissioner.

In addition to the information contained in the Implementation Plan submitted to Council, we will return to Council once the program is establish and will provide more specific information on how the City's cases are being handled in the Alameda County Superior Court.

4. How does the City intend to measure the program's outcomes and deliverables?

In the initial Implementation Plan submitted to Council we identified several projected outcomes associated with various aspects of the program. For example, we identified "*adopting new local laws and strengthening existing provisions of the Oakland Municipal Code*" as one of the objectives of the program and identified as a measurable deliverable having stronger municipal code provisions that enable officers to issue appropriate citations and the City Prosecutors to prosecute violations. In the context of this deliverable, we anticipate measuring its success by tracking the number of OMC provisions adopted or amended, the number of citations issued by the officers, and the number of infractions or misdemeanors charged and prosecuted by the attorneys.

Depending on the public safety and quality of life needs of each community, the program's outcomes and deliverables are expected to be different. For example, the various communities in Police Area 2 may require a greater program focus on reducing low-level offenses involving prostitution activities. The public safety needs in Police Area 1 may require more prosecutions dealing with truancy and loitering offenses, whereas Police Area 3 may require more prosecutions for drug offenses. Therefore, we intend to measure deliverables and their success per Police Area and based on a combination of factors that include: (1) the number of cases charged, (2) how those cases support the community policing projects of the Police Department, (3) whether calls for service are reduced due in part to the prosecution of crimes, and (4) whether the crime and offenses targeted by this program have helped

Infraction and Misdemeanor Prosecution Program

reduce or eliminate the offensive conduct and improve the livability and safety of the neighborhoods. As the program continues to develop, other deliverables and ways to measure them will be incorporated into the program's goals.

5. How will the cases be prioritized by the City Prosecutors and is it necessary for the attorneys to attend community meetings?

The City Prosecutors will prioritize the cases and determine whether to bring criminal charges based on the public safety needs of the community and the "readiness" of the case. As indicated in the Implementation Plan, the case must be sufficiently developed to establish the elements of a crime before charges can be brought. The City Prosecutors will assess the public safety needs of the community by meeting regularly with OPD commanders from the Bureau of Field Operations. The City Prosecutors will review and work with Patrol Officers, Problem Solving Officers and Crime Reduction Teams to identify the community policing projects taking place in each Police Area and identify ways in which criminal prosecutions of misdemeanor and infraction offenses can enhance the success of community policing projects. Also, the City Prosecutors will review crime statistics, police reports, field incidents and other crime data to ascertain the type and level of crime occurring in each Police Area and the best ways to address it through the Prosecution Program. The Oakland Police Department will designate the three Special Resource Lieutenants currently assigned to each of the Police Areas to work with the City Prosecutors in identifying, developing and tracking these cases. The City Prosecutors will not engage in community organizing activities.


**RECOMMENDATION AND RATIONALE**

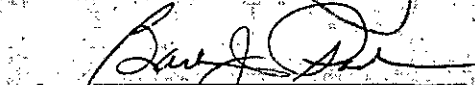
We recommend that Council approve the City's Infraction and Misdemeanor Community Prosecution Program. The program will become part of the city's crime fighting strategic plan and will be implemented in order to improve the safety and livability of Oakland neighborhoods.

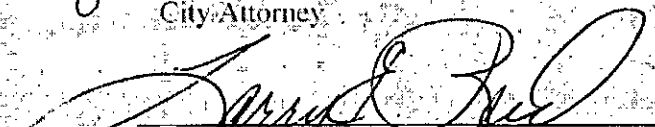
**ACTION REQUESTED OF THE CITY COUNCIL**

Vice Mayor Larry Reid, with the sponsorship of Council President Ignacio De La Fuente and Oakland Mayor Ron Dellums, request that the City Council approve the action proposed in this report.

Respectfully submitted:

 (for WGT)  
Wayne Tucker  
Chief of Police

  
for John Russo  
City Attorney

  
Vice Mayor Larry Reid  
Oakland City Council

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