



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: February 9, 2016

FROM: CITY ATTORNEY WARDS: ALL

SUBJECT: ADOPTION OF RESOLUTIONS TO BE SUBMITTED FOR VOTER CONSIDERATION OF "THE RIVERSIDE CITY PROSECUTION AND CRIME REDUCTION MEASURE."

ISSUE:

The item for City Council consideration is adoption of resolutions to submit a ballot measure for voter consideration on June 7, 2016 entitled "The Riverside Criminal Prosecution and Crime Reduction Measure."

RECOMMENDATIONS:

That the City Council:

1. Adopt the attached Resolution proposing an amendment to the City Charter entitled "The Riverside Criminal Prosecution and Crime Reduction Measure";
2. Adopt the attached Resolution submitting to the qualified electors of the City of Riverside an amendment to the City Charter entitled "The Riverside Criminal Prosecution and Crime Reduction Measure" at the municipal election of June 7, 2016; and
3. Authorize expenditure of not-to-exceed \$80,000 for election services from the Registrar of Voters as requested by the City Clerk.

BACKGROUND:

Community livability is a priority for Riverside's residents and businesses. The City of Riverside already has in place programs to preserve the quality of life in our city, including beautification efforts, homeless outreach and public safety. What is currently lacking is the legal ability by the City Attorney's Office to prosecute crimes that erode the City's livability, and impact families, employees and businesses.

Misdemeanor crimes such as graffiti, vandalism, theft, assault and battery, and street prostitution affect the quality of life in cities across the nation. Riverside is no exception, and has seen a rise in these types of crimes over the last few years. One reason for this increase is that County District Attorney offices across the state are struggling to keep up with their

caseload of more violent crimes, like rape and murder.

Fortunately, there is a solution. Many of Riverside's neighbors – cities such as Pasadena and Anaheim, which value and protect quality of life in their communities - are already using their City Attorney's Offices to prosecute misdemeanor crimes. Riverside is proposing to establish a Criminal Prosecution and Crime Reduction Program. The proposed Program would help enhance the tools already available to the City to ensure that Riverside remains a safe and attractive community for residents, businesses and visitors.

The City Attorney's Office would partner with local police agencies like the Riverside Police Department and UCR's Campus Police to prosecute misdemeanor crimes. It would also have specialized prosecutors who would work on issues such as gang prevention and prosecution, parent accountability and chronic truancy, graffiti enforcement, domestic violence, and illegal dumping.

The program would also create a Neighborhood Prosecutor Program, which would involve prosecutors working out of neighborhood offices and community centers to aggressively and creatively combat crimes that reduce the quality of life in Riverside neighborhoods.

The Riverside Criminal Prosecution and Crime Reduction Program would help keep our community beautiful and safe, maintain and enhance property values, and encourage additional business activity. Implementation of the Program will require approval of the City's registered voters in June 2016. Below are details on the legal authority to establish the program, and additional details on the proposed effort and other cities' experiences.

Establishment of a City Prosecutor

A city charter may designate the City Attorney as the "city prosecutor," having the primary duty to prosecute all state misdemeanors committed within the jurisdictional limits of the city. Government Code Section 72193, which applies only to charter cities, states the following:

Whenever the charter of any city creates the office of city prosecutor . . . and charges such prosecutor with the duty, when authorized by law, of prosecuting misdemeanor offenses arising out of violations of state law . . .

(a) The city prosecutor shall prosecute all such misdemeanors committed within the city, and handle all appeals arising from it. . . .

When the provisions of section 72193 are implemented by a city charter, the city attorney has the primary duty of prosecuting state misdemeanors within the city, with the district attorney acting in a subsidiary or "backup" role. See *Menveg v. Municipal Court* (1964) 226 Cal. App 2d. 589, 571-72.

Accordingly, the City Council is authorized to approve a resolution asking voters to vote upon an amendment to the City Charter to designate that the City Attorney shall prosecute state law misdemeanors occurring in the City of Riverside, which would have the effect of transferring those duties to the City from County government. Based upon the statutory authority afforded by section 72193, this Charter Amendment would designate that the Office of City Prosecutor would be created within the City Attorney's Office, and the City Attorney

would act as City Prosecutor and charged with the duty on behalf of the people of prosecuting misdemeanor offenses arising out of violations of the Charter, City ordinances, and misdemeanor offenses arising out of violations of state law. The City Attorney would oversee the prosecution of misdemeanor offenses in the City of Riverside and the delivery of victim services through a victim advocacy program.

California Cities Prosecuting State Misdemeanor Violations

Other cities that prosecute state law misdemeanors include Anaheim, Burbank, Hawthorne, Inglewood, Long Beach, Los Angeles, Pasadena, Redondo Beach, San Diego, Santa Monica, and Torrance. In looking at these cities, three cities serve as the best for comparison purposes:

CITY	YEARLY AVERAGE CASELOAD	BUDGET	EMPLOYEES (Attorneys/Overall)
ANAHEIM	8,875	\$2,305,509	10 attorneys, 14 overall
SANTA MONICA	7,000	\$2,507,500 (estimate)	6-7 attorneys, 11-12 overall
LONG BEACH	12,000	\$4,371,653	16.7 attorneys / 37.38 overall

It is difficult to project the number of misdemeanors that will be committed in the City each year. Based upon historical data, one might expect that the City Attorney's Office would prosecute between 7,000 and 9,000 cases per year. Part of the difficulty in projecting into the future is that crime rates fluctuate over time. But more importantly, the passage of Proposition 47 a year ago changed possession of drugs and five property crimes from felonies into misdemeanors. This includes possession of heroin, cocaine, date-rape drugs, and thefts of handguns valued at less than \$950. The impacts of Proposition 47 are still playing out, but Riverside County District Attorney Mike Hestrin has indicated that crime has risen in the County as a result of the new law. For the first half of 2015, the District Attorney reported that the City of Riverside has had an increase of 14 percent in robberies, 21.5 percent in shoplifting from our local businesses, and a 6 percent overall increase in crime.

Mr. Hestrin, in an August 21, 2015 op-ed piece in the *Press Enterprise*, wrote that Riverside County faces the risk that "if current trends continue, business owners and families will instead choose to invest their money and raise their children elsewhere." This proposal will put the interests of the City of Riverside first by having city prosecutors work with law enforcement partners and community stakeholders in coordinating strategies to reducing crime in our communities and neighborhoods. This, in turn, moves Riverside forward in fulfilling the promise of attracting new businesses and investments, boosting the local economy and real estate market, and fostering greater community involvement and pride.

Types of Cases Subject to Misdemeanor Prosecution

This Charter Amendment would place responsibility in the City Attorney to prosecute misdemeanor offenses in the Riverside Superior Court and to deliver victim services through the Victim Advocacy Program. City prosecutors would prosecute misdemeanor cases arising out of arrests made by the Riverside Police Department, UCR Police Department, RCC Campus Police, and other allied agencies. The following is a small sampling of crimes that would be prosecuted by the City Attorney's Office upon passage of a Charter Amendment:

- Assault and Battery
- Prostitution
- Vehicular Manslaughter
- Commercial Burglary
- Failing to Register as a Sex Offender
- Child and Elder Abuse
- Resisting a Police Officer
- Animal Cruelty
- Trespassing
- Vandalism and Graffiti
- Public Intoxication
- Domestic Violence
- Lewd Conduct
- Contributing to Delinquency of a Minor
- Disturbing the Peace

The ability to prosecute a wide range of misdemeanors would enable the City to establish special prosecution programs for the City of Riverside in areas of particular concern:

- Gang Prosecution
- Parent Accountability/Chronic Truancy
- Prostitution Enforcement
- Graffiti Enforcement
- Illegal Dumping
- Habitual Offender
- Domestic Violence Unit
- Main Street Mall Prosecution Program
- Public Resource Code Prosecution

Neighborhood Prosecution Unit

The City Attorney's Office seeks to fully establish a neighborhood prosecution unit to combat crimes that reduce the quality of life in Riverside neighborhoods. Working out of neighborhood offices and policing centers, these prosecutors would have a responsibility not only to prosecute cases but to solve public safety problems, prevent crime and improve public confidence in the justice system. They would collaborate with others (including residents, community groups and other government agencies) in developing problem-solving initiatives. At times, this allows community stakeholders to actually help set the crime-fighting agenda and participate in the solutions. Instead of tallying conviction rates, community prosecutors would measure their success by evaluating neighborhood quality of life, community attitudes and overall crime suppression.

By having responsibility for specific neighborhoods, the prosecutors in this unit would become well acquainted with the area, social characteristics, crimes, and repeat offenders that burden the residents. Those residents, in turn, would gain personal familiarity with the neighborhood prosecutors. This is in contrast to the more traditional model of county prosecutors near or at county courthouses who have little need to maintain continuing contacts with citizens after criminal cases are closed out. The neighborhood prosecution model would enable community residents to become familiar with individual prosecutors by working together to develop creative solutions to neighborhood challenges and coordinate communications with police officers and other city department staff members.

Victim Advocacy Program

A Victim Services Coordinator would assist Riverside crime victims and ensure their rights are protected under California law. The coordinator would explain victims' rights, how to exercise those rights, and how the criminal justice systems works as it relates to crime victims. The Coordinator would also direct victims to other agencies and services available to them.

Authority to Prosecute Violations of California's Unfair Competition Law

The Unfair Competition Law is California's most frequently used consumer protection statute. For the first time, the City would have standing under state law to file such actions as "a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California." Unfair competition is defined as encompassing business acts and practices that are unlawful, unfair or fraudulent. This would enable the City to protect consumers in select egregious cases such as mortgage fraud, deceptive marketers, and ponzi schemes.

Proposed Ballot Measure

In order to establish the Office of the City Prosecutor within the City Attorney's Office, the City Attorney is recommending that voters be provided a ballot measure at the June 7, 2016 election which would add the following to section 702 of the Riverside City Charter as follows:

Sec. 702. Eligibility, powers and duties of City Attorney.

. . .

The Office of City Prosecutor shall be created within the City Attorney's Office, and effective January 1, 2017, the City Attorney shall act as city prosecutor and be charged with the duty on behalf of the people of prosecuting misdemeanor offenses arising out of violations of state law in addition to misdemeanor offenses arising out of violations of the Charter and City ordinances. The city prosecutor shall prosecute all such misdemeanors committed within the City, and handle all appeals arising from it. The city prosecutor shall draw complaints for such misdemeanors, and shall prosecute all recognizances or bail bond forfeitures arising from or resulting from the commission of such offenses. Whenever any person applying for a writ of habeas corpus is held in custody charged with having committed within the City any misdemeanor, a copy of the application for such writ shall be served upon the city prosecutor at the time and in the manner provided by law for the service of writs of habeas corpus upon district attorneys. On behalf of the people, the city prosecutor shall conduct all proceedings relating to such application.

Provisions for Elections on Charter Amendments

California Constitution, Article 11, Section 3(b) states that "[t]he governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body." Elections Code 1415 (a)(1) allows the Council to place charter amendments on the ballot "at the next regularly scheduled general municipal election . . . or at any established statewide general or statewide primary election" as long as the proposed amendment "does not alter any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree or of any local government employee organization." Because this amendment to expand the duties of the City Attorney would not change any protections for employees, retirees or any local governmental organization, the Council may place the proposed amendment on the ballot at the June 2016 municipal election.

Riverside City Charter Section 1404 states as follows: “This Charter, and any of its provisions, may be amended in accordance with Constitution and laws of the State of California.”

FISCAL IMPACT:

The City Clerk estimates the cost to place the ballot measure on the June ballot is \$68,000. Sufficient funds are available in the City Attorney’s Office budget for this expenditure.

Prepared by: Gary G. Geuss, City Attorney
Concurs with: Colleen J. Nicol, City Clerk

Certified as to
Availability of funds: Brent A. Mason, Finance Director/Treasurer

Approved by: John A. Russo, City Manager

Attachments:

- A. Resolution Proposing an Amendment to the City Charter
- B. Resolution Submitting City Charter Amendment to voters