THE MELROSE HILL NEIGHBORHOOD ASSOCIATION

4928 WEST MELROSE HILL, HOLLYWOOD, CA 90029

September Subject: Proposed ACE Ordinance

Dear Chairperson Parks and Members of the Budget and Finance Committee of the Los Angeles City Council:

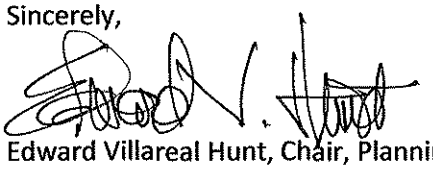
Our neighborhood is the some 100 acres bounded by Melrose, Western, Santa Monica and the 101 Freeway. We have about 4,500 residents on about 400 parcels, fire station 52, 3.4 acre Lemon Grove Park, the Melrose Hill HPOZ and its proposed expansion area, Preferential Parking District #67, official City neighborhood signs and we are surrounded by commercial streets and zoning on the south, west and north.

Our Melrose Hill Neighborhood Association was formed 32 years ago and attached is a copy of our Neighborhood Goals, unchanged in all that time. Our neighborhood has tried to encourage lawful, social behavior and to discourage scofflaw behavior including graffiti vandalism, dumping, drug dealing, prostitution, illegal construction and signage, paving over residential front lawns for vehicle parking, etc. Lately, our experience is that there is little to no effective enforcement of minor "broken window" violations, and what little enforcement is highly unequal and lacking any semblance of fairness. It is swallowing elephants and choking on fleas.

As you know, ACE provides and alternative to Criminal prosecution by authorizing police officers, code enforcement officers and other law enforcement officials to address "quality of Life" violations with real time enforcement in a cost effective manner by fining violators instead of dragging them into the criminal court system which the City rarely does. The current reality is effective enforcement for the cooperative and none for the dedicated scofflaws.

We urge you to move this ordinance on to the next level for ongoing debate and scrutiny and forever end Los Angeles recent sad history of non and highly unequal enforcement.

Sincerely,



Edward Villareal Hunt, Chair, Planning Committee

MELROSE HILL NEIGHBORHOOD GOALS

1. Maintain an organization, above all, responsive to the residents, property owners, business owners and customers of the Melrose Hill Neighborhood.
2. Provide a forum of communications for neighborhood residents, property owners, business owners and customers, City, County and State Governments, and the City of Los Angeles as a whole.
3. Establish and promote at least one annual neighborhood-wide celebration to reinforce friendship and a sense of neighborhood, as well as to promote cultural and recreational activities.
4. Continually survey the physical assets and liabilities of the neighborhood as well as the attitudes of its residents.
5. Utilize the input gained from these surveys as a basis for comprehensive planning. Constantly update that planning to accommodate future needs and inputs in order to continually improve the safety and quality of life within the neighborhood.
6. Encourage quality maintenance and conservation of homes, apartments and commercial structures in the neighborhoods and maintain the grace and scale of the tree-lined streets.
7. Conserve and reinforce the open, walkable, park-like character of the neighborhood by encouraging no to legal height fences, green residential front yards and parkways, planting and preservation of heritage trees and the planting of appropriate street trees and of flowering plants.
8. Work with the City and County of Los Angeles and the State of California for adequate nearby schools, parks and recreational facilities, as well as for adequate transit linking the neighborhood with the other parts of the City.
9. Encourage and support where possible the revitalization of the communities of Hollywood and East Hollywood.

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114 Cal.App.3d Supp. 8

170 Cal.Rptr. 773

PEOPLE, Plaintiff and Respondent,

v.

Ronald D. BACHRACH, Defendant and Appellant.

Cr. A. No. 17780.

Superior Court of California, Appellate Division, Los Angeles County

Nov. 4, 1980.

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Ronald D. Bachrach, in pro. per., for defendant and appellant.

Burt Pines, City Atty., Jack L. Brown and Pamela Victorine, Deputy City Attys., for plaintiff and respondent.

IBANEZ, Presiding Judge.

Defendant appeals from a judgment of conviction based upon jury verdicts. The defendant, a lawyer, was the owner of an apartment house. He was charged, and found guilty of, violating a number of provisions of the Los Angeles Municipal Code (LAMC) relating to public safety and fire prevention as applied to multiple residents' apartments. Numerous assignments of error are made by the defendant. We discuss these, as we must, in the light most favorable in support of the judgment of conviction. (People v. Johnson (1980) 26 Cal.3d 557, 562, 162 Cal.Rptr. 431; People v. Mulqueen (1970) 9 Cal.App.3d 532, 540, 88 Cal.Rptr. 235.)

I

INTENT AS AN ELEMENT OF THE OFFENSES CHARGED.

The jury was instructed that the defendant was charged with crimes that did not require proof of guilty knowledge nor of intent. [1] The defendant, on the other hand, requested, and was denied an instruction

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proposed by him which provided, in pertinent part, "... there must be a joint operation of act or conduct and criminal intent." (Pen. Code, § 20.) The court correctly instructed the jury that intent was not an element of any of the offenses with which the defendant was charged. [2] These offenses being, as they are, against the public health and safety and against the public welfare, do not require proof of intent nor of criminal negligence, but are governed by rules of "strict liability." The rationale given for imposing strict liability to the proscribed acts include the following: Statutes of this nature are primarily concerned with the protection of the public and not with the punishment and correction of offenders. (People v. Travers (1975) 52 Cal.App.3d 111, 124 Cal.Rptr. 728; Brodsky v. California State Board of Pharmacy (1959) 173 Cal.App.2d 680; People v. McClennegen (1925) 195 Cal. 445; People v. Stuart (1956) 47 Cal.2d 167.)

Strict liability in the criminal law, meaning criminal responsibility without fault or without criminal mens rea, has been applied to conviction for misbranding and mislabeling motor oil (People v. Travers, supra, 52 Cal.App.3d 111, 124 Cal.Rptr. 728), to misbranding drugs (People v. Stuart, supra), and to maintaining unsanitary conditions in a nursing home (People v. Balmer (1961) 196 Cal.App.2d Supp. 874, 17 Cal.Rptr. 612). See cases collected in 1 Witkin, Cal.Crimes, Elements of Crime, section 62, pages 66-67.

Whether a legislative body intended the doctrine of strict liability to apply to a given statute is determined by the subject matter, the language, the evil sought to be prevented by the enactment of the statute. (Brodsky, supra.) From the subject matter, the language, the purpose of the laws which the jury found the defendant violated, the legislative intent in their enactment is clear. These laws were adopted to protect the lives and property of persons in crowded apartments. While these laws impose obligations upon apartment house owners such as the defendant "(he) ... is in a position to prevent (the violations) with no more care than society might reasonably expect and

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no more exertion than it might reasonably exact from one who assumed his responsibilities." (Morissette v. United States (1952) 342 U.S. 246, at p. 256, 72 S.Ct., at p. 240, 96 L.Ed. 288.)

We conclude from the nature of the laws in question, the societal demand to compel their observance for the safety of the lives and property of persons occupying their dwellings, the legislative intent that the doctrine of strict liability should apply to those laws is made manifest and clear. (See In re Marley (1946) 29 Cal.2d 525, at p. 529, quoting from State v. Weisberg (1943) 74 Ohio App. 91, 55 N.E.2d 870, at p. 872.)

Defendant notes, and correctly so, that strict liability offenses usually result in light sentences and are the type of crimes that do no damage to reputation. (People v. Vogel (1956) 46 Cal.2d 798, 801, fn. 2.) These factors do not define strict liability offenses. Defendant was convicted of seven separate offenses. He was placed on probation and ordered to pay a fine. We do not consider the sentence to be excessive, nor has the defendant supported by the record his claim that his reputation has been damaged.

In sum, we conclude that the trial court did not err in instructing the jury that the doctrine of strict liability applied and that therefore neither intent nor criminal negligence was an essential element of the offenses charged.

II

NOTICE TO THE DEFENDANT TO ABATE THE CONDITION.

We consider next defendant's contention that he was denied due process because he was not first given notice to correct or abate the hazardous conditions.

Notice to abate or correct a dangerous or hazardous condition, as defined by statute (except as provided for in LAMC, § 57.20.16), was not required.

In offenses, as here, where the doctrine of strict liability applies, due process does not require that notice be an element of the offense. (People v. Balmer (1961) 196 Cal.App.2d Supp. 874, 876-877, 17 Cal.Rptr. 612.)

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Defendant argues that fire department officials attempted to give him notice or discussed with him the subject of compliance with the statute; he also asserts that he was given an extension of the time to comply with the law. The record fails to disclose any evidence that extensions of time to comply with the law were given to the defendant; nor do we find any merit in the contention that the city was estopped from prosecuting.

Unlike the other offenses of which defendant was convicted, notice is a requirement for liability under LAMC, section 57.20.16, namely, a failure to correct a hazardous condition after notice. A review of the record discloses substantial evidence to support a finding that defendant did, in fact, receive notice. (See People v. Johnson, supra, 26 Cal.3d 557, 562, 162 Cal.Rptr. 431.)

III

JURY INSTRUCTIONS.

Defendant contends that the jury was incorrectly instructed as to the offense of failure to provide garbage bins with heat activated closing devices (LAMC, § 57.21.04A). The evidence shows that the trash dumpster was located only six inches from the apartment building and it did not have a heat activated self-closing device, but it did have a tightly fitted cover.

The jury instruction given on this subject was to the effect that there was a violation if the container did not have the heat activated self-closing lid and was closer than 10 feet from the building. The jury instruction did not tell the jurors, as the defendant asserts, that the cover must be tightly fitted. The violation of this section, supported by substantial evidence, was in the established fact that the lid of the dumpster was closer than 10 feet from the building and that it did not have a self-closing device.

In passing, and parenthetically, we find that there is sufficient evidence to support the implied finding that the defendant failed to secure a vacant building in violation of LAMC section 57.20.12. The record shows that there were two separate stores, that they were vacant, that they were not properly secured so as to deny access to vagrants and trespassers, thereby posing a fire hazard or threat. This was sufficient

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to support the conviction. (See People v. Johnson, supra, 26 Cal.3d 557, 562, 162 Cal.Rptr. 431.)

IV

CONTENTION THAT THE ORDINANCE IS VOID FOR VAGUENESS.

Defendant asserts that the ordinance in question is void for vagueness. We disagree. Its language is clear. A person of common understanding would have no difficulty in understanding it, and more specifically, in understanding the specific conduct and activity proscribed (Connally v. General Const. Co. (1926) 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322). As the conduct of the defendant fell within the proscribed conduct and activity described in the ordinance, he cannot complain that the law was vague. (Bowland v. Municipal Court (1976) 18 Cal.3d 479, 492, 134 Cal.Rptr. 630.)

V

OTHER CONTENTIONS MADE BY DEFENDANT.

Defendant complains that the trial court erred in permitting an expert to testify for the People, where the People failed to comply with a discovery order to disclose the names of potential expert witnesses. While this may have been error (see Thorens v. Johnston & Washer (1972) 29 Cal.App.3d 270, 273-274, 105 Cal.Rptr. 276), a review of the record does not disclose any prejudice to the defendant caused thereby. Applying the test of People v. Watson (1956) 46 Cal.2d 818, 836, we hold that it was not reasonably probable that a result more favorable to the defendant would have been reached but for the error.

The People allege in their brief that the court clarified the discovery order before trial. The record does not disclose this; hence we cannot consider it. (People v. Merriam (1967) 66 Cal.2d 390, 397, 58 Cal.Rptr. 1; People v. Jablon (1958) 165 Cal.App.2d 348, 350.)

The defendant states that the probation conditions and sentence were excessive, hence violative of article I, section 6, California Constitution (cruel or unusual punishment), Eighth Amendment, United States Constitution (cruel and unusual punishment). Defendant was

convicted of seven misdemeanors. He was sentenced to 180 days in jail for each offense, but execution of the sentences was suspended, and he was placed on summary probation for a period of 36 months. Probation conditions included a $500 fine and a requirement that he obey all laws and to cooperate with any building and safety or fire department or health inspector investigations. There is nothing about these probation conditions which shocks the conscience or offends any fundamental notion of human dignity. (In Re Lynch (1972) 8 Cal.3d 410, 424, 105 Cal.Rptr. 217.) The probation fine of $500 was not excessive. (2 Witkin, Cal. Crimes, § 935.)

We have considered the remaining contentions of defendant and find them to be without merit.

The judgment of conviction as to each count is affirmed.

BIGELOW, J., concurred.

NOTES:

[1]The jury was instructed as follows:

"The violations alleged in the complaint fall within that category of crimes wherein neither guilty knowledge nor intent of the defendant needs be shown. The mere omission to fulfill the required standard, if such be the case, constitutes the crime charged in each count.

"Criminal liability without fault has been applied to criminal statutes enacted for the public morals, health, peace and safety. Such statutes deal with offenses of a regulatory nature and are enforceable irrespective of criminal intent or criminal negligence."

[2]Defendant was convicted of failure to provide exit signs (LAMC, § 57.10.23A); failure to secure a vacant building (LAMC, § 57.20.12); failure to provide garbage bin with heat activated closing devices (LAMC, § 57.21.04A); maintaining an antenna less than seven feet high on an accessible roof (LAMC, § 57.10.06); failure to properly maintain a fire door (LAMC, § 57.01.35D); failure to correct hazardous conditions after notice (LAMC, § 57.20.16); failure to have a wet standpipe system tested within a five-year period (LAMC, § 57.03.09).

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Editorial

Fixing L.A.'s municipal code mess

It's time for the city to try a pilot program that treats some local criminal code violations the same way it treats parking tickets.

September 26, 2011

For months now, city officials have been mulling whether to try out an alternative system for enforcing the Los Angeles Municipal Code — the register of offenses that includes nuisances and quality-of-life crimes such as parties that are too loud, and public safety violations such as construction without permits. It takes too long and costs prosecutors too much to go to court on each violation. Can't Los Angeles decriminalize many of these offenses and issue administrative citations much like parking tickets?

That's the idea behind the Administrative Citation Enforcement program, which has been shaped by City Atty. Carmen Trutanich and brought to the City Council on a motion by Councilman Paul Koretz. In its original concept, the program would result in resolution of cases more swiftly. It would treat residents more equally. It would produce more revenue for the city, because the largest cut of administrative fines would be paid into city coffers, unlike criminal fines that go through the court system and are paid to the state. It would provide an alternative to the byzantine and bureaucratic maze of hearings and appeals, differing from offense to offense mostly because of arcane rules about which city department handles the problem (does the appeal go first to the director of the Department of Building and Safety, and then to the obscure board of commissioners, or to a zoning administrator, or to the planning director and one of the many area planning commissions?). It would make better and more efficient use of city personnel, and would help unclog the overburdened and underfunded court system by eliminating criminal hearings in favor of an administrative process.

So what's taking so long? At first, the city departments that would be responsible for processing citations were uninterested and failed to offer any help in shaping the program. Some residents — especially those who have learned to master the current system, and who know which codes will never actually be enforced and which fines will never actually be imposed — opposed any changes. Some council members dismissed the program, inexplicably, as a power grab by Trutanich. Some neighborhood council leaders thought they should be the ones to make decisions about which neighbors are the troublemakers who ought to get cited for fences that are too high and which are the put-upon victims of overzealous code enforcers.

Then, upon crunching some numbers and checking with California's many other cities that have a similar program, officials discovered that there really wouldn't be much new revenue. The concern was rather that the fines collected might not even cover the new costs of administrative law judges and other program expenses. Experience suggests that many city departments — most, perhaps — might not be up to the task of keeping records and examining data to determine whether the program was a success. And as much as politicians, bureaucrats and residents love to gripe about the status quo, no one is really all that fond of change, especially when it requires some effort. So why bother?

There can be only one answer to all the frustrating shoulder-shrugging: Get on with it.

The Administrative Citation Program — ACE, for short — is a good idea. It works in many cities that have their bureaucratic acts together, and it can work in Los Angeles too, especially with some badly needed leadership and administrative competence.

By the time the council's Budget and Finance Committee has finished with the ACE proposal Monday, it may be whittled down to a pilot program that covers only citations issued by the Los Angeles Police Department. The Building and Safety, Animal Services and other departments that respond to public safety and nuisance complaints will probably stick to the broken old ways for now, and that's fine. The LAPD is almost unique among city departments in that it can actually keep records and track data.

Some skeptical council members may demand monthly reports, and that's fine too. The LAPD is up to it. Police officers will still spend the bulk of their time protecting residents against threats of violent crime, but officers who in the course of their duties have the time to respond to noisy parties and similar problems would be able to issue administrative citations. The LAPD can demonstrate for the rest of City Hall that problems can be addressed without resort to criminal filings and court hearings (although residents who have exhausted their administrative appeals would still be able to appeal to the court).

In the short term, costs will be held down by Trutanich's office, which will recruit volunteers to serve as hearing officers. Once the city attorney and the LAPD demonstrate that the program can work, and can produce at least some revenue, the city will have to hire administrative law judges. The pilot program does not tie the city to any later expenses.

Trying out an administrative enforcement program is, almost literally, the least City Hall can do. Much more is required. Los Angeles' enforcement of basic quality-of-life and public safety violations is a mess. People who know how to work the system, or who hire expediters and fixers who know, get special treatment. A Gold Card desk at the Transportation Department, ostensibly open to all, provided privileged service to a select group of knowledgeable parking violators before the city shut it down earlier this year. Drivers caught by so-called red-light

cameras either paid the tickets they got in the mail, if they didn't know any better, or ignored them, if they realized there were virtually no consequences for refusing to pay. An extensive federal probe has resulted, so far, in guilty pleas from two building inspectors, and about a dozen more are being investigated.

The crucial ingredient is leadership. Mayor Antonio Villaraigosa must set a tone of fairness, efficiency and professionalism in the city's operations, and not merely fire general managers when their departments have proved embarrassing. He must not allow City Hall to remain merely a collection of departments, each scrambling to survive budget cuts while sticking to its operating comfort zone.

Better code enforcement can't solve the city's problems by itself, especially on such a modest scale. But it is a step. It is a start. Get on with it.