

City Council Memorandum

HONORABLE MAYOR AND CITY COUNCIL

DATE: June 7, 2005

ITEM NO: 22

SUBJECT: DANGEROUS OR SUBSTANDARD BUILDING DEMOLITION POLICY

ISSUE:

The issue for consideration by the City Council is the adoption of a policy governing the demolition of dangerous or substandard buildings on the basis of two independent criteria: failure of structural integrity or public nuisance conditions in conformance with the Uniform Code for the Abatement of Dangerous Buildings and the Uniform Housing Code.

RECOMMENDATION:

That the City Council approve and adopt the proposed policy for the abatement of dangerous or substandard buildings in conformance with the Uniform Code for the Abatement of Dangerous Buildings and Uniform Housing Code.

BACKGROUND:

The Uniform Code for the Abatement of Dangerous Buildings (UCADB) is adopted at Section 16.10.020 of the Riverside Municipal Code. The Uniform Housing Code (UHC) is adopted at Section 16.09.020 of the Riverside Municipal Code. UCADB Section 302 sets forth 18 conditions or defects, the existence of any one or more of which under circumstances constituting a danger to life, health, property, or safety of any occupant or the public, defines a "dangerous building." Many of these criteria relate to hazards posed by structural damage arising from various causes. Two criteria specifically relate to nuisance conditions, one of which refers specifically to a condition of deterioration that renders the structure an "attractive nuisance to children"; presents a "harbor for vagrants, criminals or immoral persons"; or enable such persons to use the structure for their unlawful activities.

Vacant/boarded-up properties within the City often reach such levels of deterioration. Typically, the property owner has failed or refused to maintain the vacant property in a responsible manner and has ignored the City's requests for cooperation. These owners often live outside the City and have no regard for the negative impacts which these properties have on the neighboring residents. To effectively address the public nuisance which these properties present, the Office of the City Attorney, in conjunction

with the Police, Planning and Building, and Public Works Departments, seek approval and adoption of the following policy:

Policy

1. It shall be the policy of City departments participating in the enforcement of the UCADB/UHC to consider demolition as an appropriate remedy for a specific vacant/board-up property, on a case-by-case basis. The totality of the circumstances regarding the public hazards present at a property subject to such enforcement will be considered with due regard for both the property rights of those persons affected, and the health and safety of the public. Each case shall be evaluated upon an analysis and assessment of the following criteria:
 - a.) The property presents a structural defect that constitutes a threat to public health or safety.
 - b.) The property is open and vacant, and the City is unable to keep the property secured.
 - c.) The property is open and vacant, and the owner has refused, failed, or is unable to keep the property secured.
 - d.) The property is boarded-up, but attracts transients or others who use, enter, or occupy the property to engage in criminal activity, including but not limited to, graffiti, vandalism, arson, unlawful drug use, prostitution, alcoholic beverage-related offenses, or utility theft; as documented by police incident, investigation, and arrest reports.
 - e.) The property is boarded-up, but attracts transients or others who use, enter, or occupy the property to engage in nuisance activity, including but not limited to, loud noise, littering, illegal dumping, or other code violations.
 - f.) The property is the situs for a significant number of calls-for-service to the Police Department.
 - g.) The property is the subject of substantiated complaints by neighboring residents and businesses.
2. It shall be the policy of City departments participating in the enforcement of the UCADB/UHC to pursue demolition of a vacant/board-up property where the requisite analysis and assessment shows that the property is a dangerous or substandard building due to structural defect conditions or public nuisance conditions in conformance with the UCADB/UHC.

Upon adoption of such a policy, the following steps will be undertaken to make the demolition remedy available in appropriate cases:

1. Development of a procedures protocol for use by City departments in identifying and abating those properties which satisfy the above-mentioned criteria. The protocol will detail the requirements for notice and appeal as well as abatement upon a court order.
2. Identification of those components of the demolition process that can be streamlined for greater effectiveness and efficiency; in order to prevent delay that otherwise allows further deterioration of a dangerous property resulting in an aggravated risk of harm to the public's health and safety.

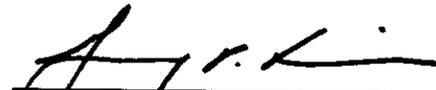
FISCAL IMPACT:

Currently, these nuisance properties create a negative fiscal impact due to repeated calls for service to the Police Department and the Code Compliance Division of the Public Works Department. It is anticipated that the adoption of this policy will reduce these costs by eliminating the nuisance. Also, the City will recover its administrative and demolition costs through liens on the property.

ALTERNATIVES:

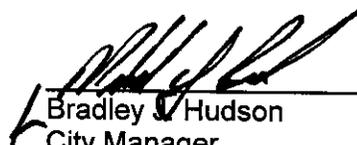
1. Take no action and continue with traditional code and law enforcement.
2. Refer the matter to the City Council's Land Use or Public Safety Standing Committees.

Prepared by:



Gregory P. Priamos
City Attorney

Approved by:



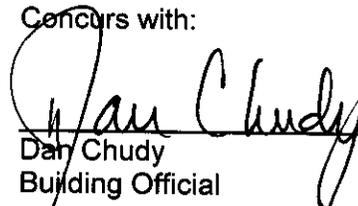
Bradley J. Hudson
City Manager

Concurs with:



Siobhan Foster
Deputy Public Works Director

Concurs with:



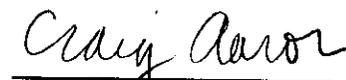
Dan Chudy
Building Official

Concurs with:



Russ Leach
Chief of Police

Concurs with:



Craig Aaron
Principal Planner

Letitia E. Pepper, J. D.

CIVIL & CRIMINAL CONTRACT
ASSISTANCE TO THE BAR:
APPEALS, LAW & MOTION,
APPEARANCES, MOOT COURTS,
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ADMITTED TO STATE COURTS OF
CALIFORNIA, CENTRAL &
SOUTHERN DISTRICT COURTS OF
CALIFORNIA, NINTH CIRCUIT
COURT OF APPEALS

City Council, City Manager, City Attorney
City of Riverside
3900 Main Street
Riverside, CA 92522
BY HAND DELIVERY to Each Office Noted Above

RECEIVED
JUN 6 2005
CITY OF RIVERSIDE
CITY CLERK'S OFFICE

March 23, 2005

Re: Agenda Item No. 22 on Consent Calendar for June 7, 2005

Honorable City Council Members, City Manager, City Attorney, and City Clerk:

I am writing on behalf of both David E. Kessinger, my client, and on behalf of all City of Riverside residents.

Agenda Item No. 22, among other things, would allow the City to punish real property owners based on the number of calls made to the police department from or about a particular residence. There are a number of serious problems with this concept.

First, no city should ever adopt a law that might deter a homeowner or tenant from calling the police when there is a perceived need to do so. A law that allows such calls to "add up" and then subject an owner or tenant to punishment for "too many" calls, would have a chilling effect on citizens' right and need to call for police assistance, rather than resorting to self-help or risking injury or death.

Second, the proposed law would give one or more persons a tool to use to harass or get even with a property owner, simply by calling the police as often as possible. Could this happen? Yes. In fact, it has happened to Mr. Kessinger.

As you know, many city residents object to the presence in their neighborhoods of group homes for parolees, the mentally and physically disabled, recovering drug and sex addicts. However, these groups of people have a constitutional right to live together in residential neighborhoods. The city cannot zone nor legislate them out of existence. Creating a law that allows the number of police calls to be used as a basis to abate and lien such properties is simply a barely disguised way to try to do what cannot be done directly, and, as such, it is constitutionally infirm. If neighbors think that by making enough calls to the police they could get rid of such residences, they *will* make lots of calls to the police – it's easier and more anonymous than picketing the homes.

This law could also be used against individual homeowners by a disgruntled neighbor, a former or current roommate, an ex-spouse, or anyone with an axe to grind. In Mr. Kessinger's case, his former roommate, Don Gallegos, made multiple early-morning calls to the Riverside Police Department to "report" that Mr. Kessinger was violating a "no occupancy" sign posted by City Code Compliance. At the same time, he was using these calls to try to extort Mr. Kessinger into allowing him and his 15 cats to continue to live in Mr. Kessinger's home without contributing anything to the household expenses, after Mr. Kessinger evicted him.

That Mr. Gallegos was doing this to harass Mr. Kessinger became apparent not only because of the repetitive and unsuccessful nature of such calls (Mr. Kessinger was never found in violation of the posted notice by the police), but because Mr. Gallegos was also making repeated telephone calls to City's private attorney, Samuel L. Emerson of the Sacramento office of Best, Best & Krieger, to try to talk to Mr. Emerson about Mr. Kessinger and to find out what was going on in the city's code compliance lawsuit against Mr. Kessinger. His calls were so repetitive that, according to Mr. Emerson, Mr. Emerson stopped taking them.

The vindictive nature of Mr. Gallegos' calls to the police was further evidenced by Mr. Gallegos' other conduct. He demanded that Mr. Kessinger pay him relocation benefits, and reimburse him for his filing fee to file an answer in the eviction proceedings, sums to which he had no legal right, but as to which he threatened Mr. Kessinger if Mr. Kessinger did not give him that money. He also arranged for an agent, Jeff Wright, to surreptitiously videotape Mr. Kessinger's property. This last event resulted in yet another call to the police from the property – this time by me, after I was battered by Mr. Wright, and another woman was battered by Mr. Gallegos, after I found the hidden video camera and was in the process of confiscating the tape.¹

I also understand that Mr. Kessinger's neighbors have called the police about his visitors or roommates from time to time. It sounds like one of the issues has been that some of his guests and/or roommates have been mentally ill, have dressed oddly or like poor people, have tattoos, and walk or bicycle to and from his home, instead of driving cars – again, like poor people. I myself spoke with a young man who had walked to Mr. Kessinger's home to help clean up the yard as a volunteer with his church. He told me that he had been accosted by one of the older neighbors, who had interrogated him – who was he, where was he going, what was he going to do – in a very unfriendly way. I believe that this occurred because the young man was on foot, had very visible tattoos and a shaved head, was a young man, and was dressed like a poor person. It would not surprise me to learn that merely upon seeing such a person, a neighbor might as easily call the police as interrogate the traveler him- or herself. In other words, a police call could be based not on

¹ In fact, I filed a police report about this incident the next morning. So, it, too, would show up unfairly as a "black mark" against Mr. Kessinger's property. If a property owner's privacy is invaded, and the property owner or his guest objects and is battered for their trouble, why should this be used against the property owner?

any illicit activity, but on fears based on an individual's age, gender, apparent socio-economic class and appearance.

If a homeowner is subjected to these kinds of vindictive or discriminatory police reports, there is nothing the homeowner can do about it. The source of such complaints is often kept anonymous by city departments. More to the point, complaining citizens have statutory immunity for making such complaints. (Civ. Code, § 47.) Thus, a victim of such complaints can neither obtain a restraining order to prevent them nor seek damages based on such calls. It is a crime to make a false police report – but a homeowner cannot prosecute crimes, nor insist that the District Attorney do so.

Because a homeowner has no power to control the making of calls to the police, this law, if adopted, will allow vindictive persons to use the power of the state as a tool for personal revenge. Accordingly, I ask, on behalf of Mr. Kessinger and all Riverside residents, that this portion of the proposed law be dropped.

Sincerely,

A handwritten signature in black ink that reads "Letitia E. Pepper". The signature is written in a cursive style with a large, prominent "L" and "P".

Letitia Pepper, for David E. Kessinger

enclosures: copies of

- (1) May 13, 2005 letter from Kevin T. Collins to Letitia E. Pepper w/ police report of May 5, 2005;
- (2) May 13, 2005 letter from Letitia E. Pepper to Kevin T. Collins responding to his letter of May 13, 2005

cc David E. Kessinger

BEST BEST & KRIEGER LLP

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KEVIN T. COLLINS
KEVIN.COLLINS@BBKLAW.COM
FILE No. 25155.10006

May 13, 2005

VIA FACSIMILE AND MAIL

Letitia E. Pepper
503 Highlander Dr.
Riverside, CA 92507-3131

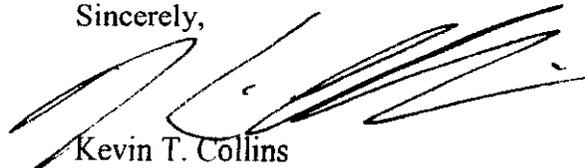
Re: *Riverside v. Kessinger, et al.*,
Riverside Superior Court Case No. RIC 426649

Dear Ms. Pepper:

I have reviewed your voice mail message dated May 10, 2005 and your letter regarding your supervision of the removal of the bed from the "red-tagged" area on Mr. Kessinger's property. I have attached for your review a police report that indicates that Mr. Kessinger was sleeping in the "red-tagged" area. In fact, the police report indicates there were no lights on inside of the basement, but when the police officer knocked on the door, the light was turned on and Mr. Kessinger was disheveled as if he had been sleeping. Additionally, based upon your voice mail of May 10, 2005, as well as your letter that was carbon copied to our office to Mr. Gallegos, it is our understanding that Mr. Gallegos will no longer be residing on the property.

Accordingly, we believe that to insure that Mr. Kessinger is not violating the preliminary injunction that the parties stipulate to modify it to allow him to occupy the "red-tagged" areas only during daylight hours. This will avoid any confusion or possible contempt of court by Mr. Kessinger. We believe that this course of action is appropriate given the fact that the bed has been removed and Mr. Gallegos is no longer residing on the property. Please let me know on or before May 19, 2005 whether you will stipulate to modifying the preliminary injunction. Otherwise, we will seek leave of court to amend as set forth above.

Sincerely,



Kevin T. Collins
of BEST BEST & KRIEGER LLP

Enclosure

cc: Gregory Priamos
S. Mark Strain
SACRAMENTO\KTC\23248.1

no file

Riverside Police Department

CA00331300

1. Dist. E04	2. Type Cr. RA	3. Type Cont. RA	UCR Code 26	Initial Report		4. File Number S P3-05-125-034
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5. Code Section/Classification Incident Report			6. Add Charges <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		7. Location of Occurrence 3240 Pachappa Hill Dr. Riverside, CA 92506	
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8. Julian date and time of occurrence 125 0351		9. Day 5	10. Date/Time Reported 05-05-05 / 0351		11. Date of Report 05-05-05	12. Type of Premises Residence
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13. Victim Name or Firm N/A			14. Residence Address			15. Res. Phone
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16. Sex/Race	Height	Weight	Hair	Eyes	17. D.O.B.	18. Business Address	18. Bus. Phone
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20. If treated for injuries, by whom?		21. If hospitalized, where?		22. Date/Time	23. Nature of Injuries	
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24. License Number		State	Color (Top/Bottom)	Year	Make/Model/Type	How was the vehicle involved?	Veh. Stored? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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FOR CODE USE: V- Victim DC- Discovered Crime RP- Reporting Party P- Parent O- Other

25. Code RP	Name (Last, First, Middle) Gallegos, Donald Collins	27. Residence Address 3240 Pachappa Hill Dr. Riverside, CA 92506	28. Res. Phone (951) 683-3296
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29. Sex/Race M / W	Height 5-08	Weight 200	Hair BLK	Eyes BRN	30. D.O.B. 03-22-60	31. Business Address None	32. Bus. Phone
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33. If treated for injuries, by whom?		34. If hospitalized, where?		35. Date/Time	36. Nature of Injuries	
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38. Pursuant to California Penal Code Section 293 (a), you are informed that your name will be a matter of public record unless you request that it not become a Public Record, pursuant to Section 6254 of the Government Code. Do you elect to exercise your right to privacy? QUALIFYING SECTION ONLY							Victim #1 <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
							Victim #2 <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

40. Name (Arrestee #1)							Saw/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Cited? <input type="checkbox"/> Bld?
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Address of Arrestee #1							<input type="checkbox"/> Prob <input type="checkbox"/> Parole	Gang Related <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	SS CDLP		Blq. or Cite number			
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42. Name (Arrestee #2)							Saw/Race	Height	Weight	Hair	Eyes	DOB or Age	Interviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Cited? <input type="checkbox"/> Bld?
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Address of Arrestee #2							<input type="checkbox"/> Prob <input type="checkbox"/> Parole	Gang Related <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	SS CDLP		Blq. or Cite number			
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43. License Number		State	Color (Top/Bottom)	Year	Make/Model/Type	Identifying Characteristics	Veh. Stored? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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45. Physical Evidence Present?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	46. Photographs Taken?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	47. Supplanted Rpts?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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48. Physical Evidence Seized?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	49. Weapon Seized?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	50. Gang Related?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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51. Fingerprint Search Made?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	52. Fingerprints Obtained?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	53. Narc. Field Tested?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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54. Type of Weapon, Force or Device Used N/A			55. Motive N/A			Type: N/A		Weight:
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56. Describe briefly how the offense occurred. See narrative.			56a. Audio Recording Available? No		56b. Incident Number:		
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57. Reporting Officer J. Ontko							ID. # 1351	118 Quality <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	58. Supervisor Approval	ID. # 122	59. Date Reviewed 5/6/05	60. Send copies of this report to: City Attorney Mark Strain	
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COPIES	RESTRICTED INFORMATION Dissemination, distribution or copying of this document for unauthorized purposes is prohibited and unlawful.		<input type="checkbox"/> INV <input type="checkbox"/> PMC <input type="checkbox"/> OPS <input type="checkbox"/> COR	<input type="checkbox"/> FBI <input type="checkbox"/> DOJ <input type="checkbox"/> DA <input type="checkbox"/> PROB	ENTERED STAT ARBK ANI	Dispatcher ID# APR/AFB sent DOJ/NCIC sent	cancelled cancelled	PAGE 1 OF 3
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DATE: **MAY 07 2005**
 TO: **City Atty - Mark Strain**
 BY: **SR 283**
RIVERSIDE POLICE DEPT.

200-50-2(R11/02)
City of Riverside (ISC 0/55)

RIVERSIDE POLICE DEPT. INITIAL REPORT M.O. SHEET

AGE NO: 2

FILE NO. P3-05-125-034

DATE 05-05-06 TYPE OF REPORT Incident Report REPORTING OFFICER J. Ontko #1351

FOR CODE USE V- Victim W- Witness DC- Discovered Crime RP- Reporting Party P- Parent O- Other

63. Name: Kessinger, David Edgar 64. Residence Address: 3240 Pachappa Hill Dr. Riverside, CA 92506 65. Res. Phone: (951) 686-2138 66. Sex/Race: M/W 67. D.O.B.: 02-06-42 68. Business Address: None 69. Bus. Phone: 70. Name: 71. Residence Address: 72. Res. Phone: 73. Sex/Race: 74. D.O.B.: 75. Business Address: 76. Bus. Phone:

PREMISES (BUSINESS), POINT OF ENTRY, PROPERTY TAKEN, APPROACH, SUSPECT REL/VICTIM, TYPE OF SECURITY, SOLVABILITY FACTOR, VICTIM PHYSICAL CONDITION, METHOD OF ENTRY, BURGLARY ONLY, VEHICLE ENTRY, VEHICLE TYPE

TOTAL AMOUNT STOLEN

TOTAL AMOUNT RECOVERED

**RIVERSIDE POLICE DEPT.
CONTINUATION PAGES**

PAGE NO: 3

FILE NO: P3-05-125-034

DATE 05/06/2005	TYPE OF REPORT Incident Report	INVESTIGATING OFFICER Joshua Ontko #1351
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NARRATIVE:

On 05-05-05, at 0351 hours, I was radio dispatched to the 7-11 located at 5958 Magnolia Ave. for an investigation of a civil problem. Upon arrival I contacted RP/Gallegos and he stated the following: RP/Gallegos lives at 3240 Pachappa Hill Dr. and the basement portion of the residence has been tagged as unsafe to occupy by The City of Riverside. RP/Gallegos believes his roommate, O/Kissinger, is continuing to sleep in the basement. RP/Gallegos saw O/Kissinger walk into the basement at approximately 0100 hours. RP/Gallegos never heard O/Kissinger leave and he heard snoring coming from the basement.

RP/Gallegos walked to the 7-11 located at 5958 Magnolia Ave. to call the police for assistance. RP/Gallegos wanted me to determine if O/Kissinger was sleeping inside the basement. RP/Gallegos wanted a report for documentation purposes.

I responded to the Pachappa Hill Dr. address and RP/Gallegos walked me to the door for the basement. On the door I saw a sign in plain view that said the area was unsafe to occupy. The sign was posted by The City of Riverside. I did not hear any noise coming from inside of the basement area. There were several holes in the door and I could see that there were no lights on inside of the basement. I knocked on the door and I saw a light turn on. O/Kissinger answered the door and I saw a bed on the east side of the door. There were clothes hanging from the ceiling.

I asked O/Kissinger if he was occupying the room and he said he was cleaning. O/Kissinger denied sleeping in the basement and said he was allowed in the basement if he was cleaning. I told O/Kissinger I saw that the lights were off before I knocked and he did not respond.

O/Kissinger gave me consent to enter the basement portion of the residence and take photographs. I took photographs of the sign posted on the door and of all the property inside of the residence. I asked O/Kissinger if he knew he was not allowed to occupy the basement and he said yes but he does not have anywhere else to stay. I gave RP/Gallegos and O/Kissinger a copy of the report number.

Based on my observations it appeared O/Kissinger is residing in the basement. NFD

CIVIL & CRIMINAL CONTRACT
ASSISTANCE TO THE BAR:
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APPEARANCES, MOOT COURTS,
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ADMITTED TO STATE COURTS OF
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COURT OF APPEALS

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Sacramento, CA 95814
BY FAX (916) 325-4010

May 13, 2005

Re: *City of Riverside v. Kessinger, et al.*, Riv. Sup. Ct. Case No. RIC 426649
Your letter of today's date about May 5, 2005 police report

Dear Mr. Collins:

Thank you very much for sharing the May 5, 2005 police report with me. I have read the narrative. Based on its contents, as well as the fact that I personally saw to the removal of the bed from the red-tagged area on May 10, as well as the on-going problems with Mr. Gallegos and a remaining roommate, Frank Espada (I'm not sure if this last name is correct), I prefer not to stipulate to amend the preliminary injunction. Here are my reasons.

First, the police report states that Mr. Gallegos said he could hear snoring from the downstairs guest quarters, yet the police officer heard nothing when he listened at the door. Second, the police report does not say that Mr. Kessinger was disheveled or that he was not dressed when he answered the officer's knock.¹ In addition, it does not appear there was any delay between the officer's knock and a light turning on and the door being opened. In other words, it doesn't sound like Mr. Kessinger took the time to comb his hair or put on street clothes.

Third, although I can understand the conclusion anyone could reasonably draw from the fact that the officer said he could see no lights in the "basement" until he knocked, the fact that a light appeared when the officer knocked at the door does not indicate to me that Mr. Kessinger was not, in fact, working on his papers as he has been telling and showing me. This is because I have become intimately, perhaps even painfully, familiar with the area in question while supervising the removal of excess materials.

The room is a long open space. As one faces the front door into it, the area where Mr. Kessinger's bed used to be is to the immediate left. The bed took up almost the entire width of that end of the long room, and the head of the bed would have been within a few inches of the door, so any snoring would have been readily audible. To the right, there are (or were until I caused the removal and repositioning of such furniture), two large, tall dressers that created an extremely narrow opening into the second part of the long space.

¹ Perhaps you drew this conclusion from the fact that the police report does say there were clothes hanging from the ceiling. However there are, and have always been, clothes hanging from the ceiling, since that is where Mr. Kessinger stores his jackets and suits.

Past the narrow opening created by the dressers is the office portion of the room, in which Mr. Kessinger has been working to sort papers in file drawers. There are separate light fixtures for the bedroom area and for the office area. On May 5, 2005, there were no exterior windows from which light from the office would show. As of May 10, however, I supervised the removal of items that were blocking a sliding glass door at the far left right side of the office space, which lies to the back of the house.

In other words, the fact that the officer did not hear any snoring, that Mr. Kessinger opened the door promptly and in street clothes, that the office area would not have produced any light visible from the exterior of the home, and that Mr. Gallegos has been trying to use his calls to the police to extort continued residency, leads me to conclude that Mr. Kessinger was not sleeping, but was working on sorting his papers when Mr. Gallegos called the police.

In addition to the facts related to the May 5, 2005 visit by the police officer, I am loathe to stipulate to amending the preliminary injunction because to do so would only encourage Mr. Gallegos, as to whom I myself called the police earlier today. Mr. Kessinger filed a request for a civil restraining order against Mr. Gallegos yesterday, and is awaiting the issuance of a temporary restraining order so he can arrange to serve Mr. Gallegos, who continues to appear on the property to incite Frank to yell at Mr. Kessinger and threaten him if he doesn't stop trying to keep Mr. Gallegos off the property.

I personally have found Mr. Gallegos to be untrustworthy. I do not believe his claims that he heard Mr. Kessinger snoring, particularly because he told Mr. Kessinger he would stop calling the police if Mr. Kessinger would let him stay. When I refused to negotiate with him over Mr. Kessinger's plans to evict him, he called and told me that his attorney, Mark Blankenship, had invited me to attend a meeting to that effect. When I checked on this, Mr. Blankenship said he was not Mr. Gallegos's attorney, and he had not invited me to his office.

As I have already noted, there is no longer a bed or anywhere else to sleep in the guestroom. The bed is now in the living room (as are a sofa and sofa bed). Mr. Gallegos continues to drop by unannounced, including today, and to cause trouble, so Mr. Kessinger continues to want to avoid him. Therefore, rather than modify the preliminary injunction at this point, I'm willing to agree that the fire marshal can inspect the guestroom and the adjacent, downstairs area early next week. I believe that be then Mr. Kessinger will have sufficiently removed the excess materials to satisfy the concerns about a fire safety hazard, so that the no occupancy sign can be removed as to that area.

Again, thank you for sending me a copy of the police report.

Sincerely,



Letitia Pepper, for David Kessinger

cc David E. Kessinger

Distributed to: Mayor
City Council
City Manager
City Attorney