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REPORT NO. R 17 - 0 0 4 5
FEB 1 0 2017

REPORT RE:

**DRAFT ORDINANCES AMENDING SECTION 42.00(b) OF THE LOS ANGELES
MUNICIPAL CODE TO LIMIT ENFORCEMENT OF VIOLATIONS FOR
STREET VENDING TO ISSUANCE OF CITATIONS UNDER THE ADMINISTRATIVE
CITATION ENFORCEMENT PROGRAM AND AMENDING SECTION 11.00 TO
REMOVE THE POTENTIAL TO USE A CRIMINAL REMEDY AGAINST A PERSON
WHO FAILS TO PAY A CITATION**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 13-1493

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. This draft ordinance amends Section 42.00(b) of the Los Angeles Municipal Code (LAMC) to limit enforcement of a violation for street vending to issuance of a citation under the City's Administrative Citation Enforcement (ACE) program. Although not requested by the City Council, but consistent with the intent of the City Council in relying upon the City's ACE program to decriminalize certain violations of the LAMC, we have included a second draft ordinance amending Section 11.00 of the LAMC to delete the potential to use a criminal remedy against a person who fails to pay an ACE administrative fine.

The City Council also requested that this Office report on the feasibility of the City establishing amnesty for a person previously charged with a misdemeanor for violating

the City's street vending law. In the past year, approximately 22 people were convicted or pled guilty to a misdemeanor for engaging in illegal street vending. Approximately 13 cases are pending where a misdemeanor has been charged for illegal street vending. In addition, there are cases where misdemeanor charges were filed for illegal street vending where the defendant failed to appear in court.

Charter Section 271(c) gives the City Attorney – acting as the Chief Prosecutor - the power and duty to "...prosecute on behalf of the people all criminal cases and related proceedings arising from violation of the provisions of the Charter and City ordinances, and all misdemeanor offenses arising from violations of the laws of the state occurring within the City." The City Charter is consistent with state law that grants charter city attorneys with the independent authority to prosecute state law misdemeanors. Government Code Sections 72193 and 41803.5.

Prosecutors in the City Attorney's Office file criminal charges against a defendant on behalf of the people of the State of California, not on behalf of the municipality. Once criminal charges are filed against a person, the City as a municipality has no legal ability to alter the course of that prosecution. Moreover, once an individual is convicted or pleads guilty, the City Attorney has no authority to grant amnesty.

However, a person convicted of a crime can petition to the court to have his or her case expunged. Notice is provided to the prosecutor who has the opportunity to make a recommendation to the court. In reviewing a request for expungement, the prosecutor and the court consider the individual facts of the criminal case.

Urgency Clause

The draft ordinance amending LAMC 42.00(b) contains an urgency clause which will make the ordinance effective upon publication, pursuant to Charter Section 253. When the City Council considers this ordinance, it should make findings that the ordinance is required for the immediate preservation of the public peace, health or safety.

Council Rule 38 Referral

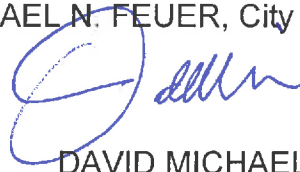
A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Bureau of Street Services, Department of Public Works and the Los Angeles Police Department with a request that all comments, if any, be presented directly to the City Council when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Basia Jankowski at (213) 978-8130. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

DM:BJ:ac
Transmittal