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VIA EMAIL AND U.S. MAIL

January 25, 2016

Date: 1-25-17
Submitted in PWGR Committee
Council File No: 14-1656-S1
Item No: Special 1
Deputy: Public

Los Angeles City Council
Public Works and Gang Reduction Committee
Councilmember Joe Buscaino, Chair, councilmember.buscaino@lacity.org
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Councilmember Mitch O'Farrell, councilmember.ofarrell@lacity.org
Councilmember David E. Ryu, david.ryu@lacity.org

RE: Proposed Amendment to Los Angeles Municipal Code Section 56.11

Dear Members of the Public Works and Gang Reduction Committee:

We write to express our concern regarding the draft amendments to Los Angeles Municipal Code Section 56.11, submitted by the City Attorney for the City Council's consideration and pending before the Public Works and Gang Reduction Committee. In particular, we are concerned that the amendments, if adopted as drafted, run contrary to the representation made by the Los Angeles Homeless Services Authority in the application for Continuum of Care (CoC) funding from the United States Department of Housing and Urban Development (HUD). In that application, LAHSA represented that the City of Los Angeles amended Los Angeles Municipal Code Section 56.11 to remove criminal penalties and sanctions.

While that representation alone was itself inaccurate because the City Council had not yet amended Los Angeles Municipal Code Section 56.11 to eliminate criminal penalties, the implication was that any amendment would remove all criminal penalties and sanctions. The amendments as proposed by the City Attorney do not such thing.

By taking actions that are contrary to the LAHSA's representation in the County's Continuum of Care application, the City will undermine its application for over \$110 million dollars in funding to provide housing and assistance to people who are homeless and at risk of homelessness. The City's actions would come at a time when the City and County are struggling to find desperately-needed funds to launch ambitious strategies to address homelessness. Neither the City nor the County can afford to lose a single dollar of federal funding. Unless the City of Los Angeles ensures that any amendment to LAMC 56.11 is consistent with LAHSA's representations to HUD about its efforts to decriminalize homelessness, the City places a significant part of \$110 million dollars in federal funding for the entire CoC in jeopardy.

Los Angeles's History of Criminalization

The City of Los Angeles has one of the largest homeless populations in the Country, and the number has increased in the last two years. However, for at least the past 26 years, the City of Los Angeles's primary response to this crisis has been criminalize otherwise innocent behavior and the most fundamental basic human activities if they occur in public. In 1989, after being sued for confiscating and destroying the personal property of homeless individuals on Skid Row, the City agreed to stop this practice. Little more than 10 years later, the City was sued again in *Justin v. City of Los Angeles*, 2002 U.S. Dist. LEXIS (C.D. Cal. 2002), for seizing and destroying the property of homeless individuals and for criminalizing merely standing on a public sidewalk in Skid Row, ordering homeless persons to "move along" under threat of arrest.

In 2003, the City was sued in *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006), *vacatur entered on settlement*, 505 F.3d 1006 (2007) for enforcement of Los Angeles Municipal Code §41.18(d), making it illegal to sit, lie, or sleep on a public sidewalk at any time of day anywhere in the City unless watching a permitted parade. The Ninth Circuit held that this practice violated the 8th Amendment, a position recently adopted by the U.S. Department of Justice in a Statement of Interest filed in *Bell v. City of Boise*, 09-cv-00540 REB (D. Id. 2015).

The City entered into a settlement in the *Jones* case that allowed individuals to sleep on the sidewalk from 9 p.m. to 6 a.m. until the City adds an additional 1,250 units for chronically homeless individuals. But that agreement has not ended the issue. The City now cites and arrests people if they sit down on a sidewalk even 5 or 10 minutes before 9 p.m. and if they are not packed up and awake at 6:05 a.m. Moreover, the City has announced its intention to restart enforcement of the 24-hour ban once the number of new units is fulfilled.

At the same time that the City was sued in the *Jones* case, another lawsuit was brought to challenge the Los Angeles Police Department's practice of warrantless and suspicionless stops of any individual on Skid Row who was perceived as being homeless. *Fitzgerald v. City of Los Angeles*, 2003 U.S. Dist. LEXIS 27382 (C.D. Cal. 2003). Primarily black males were stopped, searched and often arrested on purported parole or probation violations. Again, despite agreeing to an injunction to end this practice, the City renewed its unlawful activity just a few years later, warranting renewed litigation extending the injunction. 485 F.Supp.2d 1137 (C.D. Cal. 2008).

The City has been sued five times over 26 years to stop enforcement of Los Angeles Municipal Code §56.11 and similar provisions, criminalizing placing any personal property on any sidewalk. The most recent lawsuit filed in 2011, *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012), challenged the seizure and immediate destruction of personal property without adequate notice and with no opportunity to reclaim the property. The appeals court upheld the lower court's injunction that found that the law was totally devoid of any due process standards, violating the Fourth and Fourteenth Amendments.

Even while the City is still subject to the federal injunction, in June 2015, the City Council passed Ordinance 183,762, which repealed and replaced Los Angeles Municipal Code Section 56.11 to prohibit the storage of personal property in public areas. The ordinance as

passed not only significantly increased the circumstances in which a person could be cited or arrested for having personal property in public spaces, but also created a new misdemeanor offense for keeping one's tent up during the day. The new ordinance also gave the City significant impound authority over individuals' personal property. The passage of the ordinance was only the latest in a series of strategies deployed by the City of Los Angeles to get around Federal Court rulings against the City of Los Angeles for criminalizing homelessness, including increasing the use of existing criminal codes to cite homeless people for having property on the sidewalk and increasing overnight parking bans.¹

HUD Continuum of Care Funding

The United States Department of Housing and Urban Development (HUD) provides billions of dollars annually to cities and localities throughout the United States to provide housing to low-income people in its communities. One of the largest funding streams is the Continuum of Care Program, which in FY2015 accounts for \$1.89 billion in federal funds to address housing and homelessness.²

The City of Los Angeles is part of the City and County of Los Angeles Continuum of Care.³ Funding through the Continuum of Care Program represents a significant portion of the funds counted on not only by the City of Los Angeles, but also jurisdictions throughout the County of Los Angeles, to provide housing to homeless and low-income individuals at risk of homelessness. In FY2014, the City and County of Los Angeles Continuum of Care received more than \$91 million dollars of funding from this one funding source alone. That funding went to programs like Shelter Plus Care, which provides permanent supportive housing to hundreds of chronically homeless individuals, and other programs that provide housing and reduce homelessness. It is without question that CoC funding is critical to the City and County's fight against homelessness.

FY2015 NOFA

In September 2015, the United States Department of Housing and Urban Development issued a revised Notice of Funds Available (NOFA) for Continuum of Care funding for the FY2015. The NOFA outlines scoring criteria and points allocations; HUD's priorities are

¹ In 2010, the City was also sued to enjoin citations and arrests of homeless individuals under a municipal ordinance prohibiting parking a vehicle on any public street or parking lot if the occupants were believed to be "living" in the vehicle at any time. *Desertrain v. City of Los Angeles*, 754 F.3d 1114 (9th Cir. 2014). The City is redrafting the ordinance to continue a criminal penalty on this activity, and has also increased bans on overnight parking. So far in 2015, the Los Angeles City Council has restricted parking of oversized vehicles overnight in 19 districts, more than twice the number it passed last year, and three times the number it passed in 2013. See Dakota Smith, "Los Angeles City Hall cracks down on homeless living in RVs", November 21, 2015, <http://www.dailynews.com/social-affairs/20151121/los-angeles-city-hall-cracks-down-on-homeless-living-in-rvs>

² FY 2015 CoC Program NOFA (revised), Published September 2015, at p. 2, available at <https://www.hudexchange.info/resource/4688/fy-2015-coc-program-nofa/>.

³ The City and County of Los Angeles Continuum of Care includes the City of Los Angeles, unincorporated Los Angeles County, and all other jurisdictions in Los Angeles County except Glendale, Pasadena, and Long Beach.

reflected in the points distribution throughout the application. As LAHSA's Executive Director has noted, the FY2015 NOFA is "fiercely competitive."⁴

This year, HUD took the unprecedented step of including the award of two points contingent in part on a Continuum of Care demonstrating that "recipients have implemented specific strategies that prevent criminalization of the homeless."⁵ The inclusion of this criterion indicates the increasing awareness of the Federal Government that "practices and laws that make it more difficult for people experiencing homelessness to exist in a community"⁶ are often unconstitutional⁷ and do not prevent or end homelessness. Rather, criminalization exasperates the causes of homelessness by making it harder for people to receive services ranging from medical and mental health care to housing. In doing so, it frustrates the very purpose of funding like the Continuum of Care Program, which is designed to promote a communitywide commitment to the goal of ending homelessness by promoting access to services that help people move out of homelessness.⁸

With the inclusion of these points, CoCs that need every point possible in this "fiercely competitive" funding cycle must "describe how they are reducing criminalization of homelessness",⁹ and the loss of one or two points in this category could result in the loss of millions of dollars in funding.

LA County Continuum of Care Application

As part of its FY2015 application for \$110,004,15.00 in funding for the City and County of Los Angeles, LAHSA was required to identify specific strategies implemented by the CoC to ensure that homeless is not criminalized in the CoC's geographic area. As one of its strategies, LAHSA referred to the City of Los Angeles's passage of the new LAMC Section 56.11. LAHSA represented that "on November 17, 2015, the LA City Council amended [LAMC Section 56.11] to remove sanctions and criminal penalties" for placing personal possessions on public property.¹⁰ The application also stated that the new amended ordinance reduces sanctions further than in the initial municipal code.

This section refers to a motion that was passed by the City Council on November 17, 2015; however, contrary to LAHSA's representation, the motion did not amend LAMC Section 56.11. Instead, the motion as passed simply instructed the City Attorney to draft an amendment to LAMC Section 56.11. While the instructions provided by the City Council to the City

⁴ Email from LAHSA to Continuum of Care Community, sent November 20, 2015.

⁵ FY 2015 CoC Program NOFA at p. 44.

⁶ Detailed Instruction for Completing the FY 2015 Continuum of Care (CoC) Application, September 2015, Section 1C-6 at p. 16, available at <https://www.hudexchange.info/resource/3330/coc-application-detailed-instructions/>.

⁷ See also Statement of Interest of the United States, *Bell v. City of Boise*, Case No. 1:09-cv-540-REB (Dist. Ct. Idaho), Dkt. #276.

⁸ Continuum of Care (CoC Program), Department of Housing and Urban Development, available at <https://www.hudexchange.info/programs/coc/>

⁹ FY 2015 CoC Program NOFA at p. 44.

¹⁰ City and County of Los Angeles Continuum of Care application, at p. 10, available at documents.lahsa.org/programs/supernofa/2015/2015LosAngelesCoCApplication.pdf

Attorney were far from clear,¹¹ LAHSA's representation to HUD was explicit, that the City intended to remove all criminal penalties and sanctions from the ordinance.

The City Attorney's proposed drafts, made public on January 22, 2015, neither remove all criminal penalties nor do they remove all sanctions. Far from it. The draft ordinances retain a number of draconian provisions that allow for the impounding of individuals' personal property, none of which appeared in the original municipal code and none of which would withstand constitutional scrutiny. For example, under the proposed draft, if a person leaves their property unattended, even for a moment, the property can be tagged and then removed after 24 hours, even if the property is then attended or moved to another location. *See* Draft Ordinance Amending Los Angeles Municipal Code Section 56.11(3)(a), (4)(a)(5) ("Draft 56.11"). Other provisions allow the City to impound an individual's property without any notice, and other provisions allow for the impounding of attended personal property. For example, the draft also gives the City the right to immediately discard property it deems "evidence of a crime or contraband", without limitation or due process. *See* Draft 56.11(3)(h).

The impounding of a person's personal property not only raise considerable constitutional concerns, at the very least and contrary to LAHSA's representations in the Continuum of Care, these provision constitute significant sanctions against homeless individuals for having property in public. The ordinance gives no justification for the impounding of property, other than it remains in public in violation of the ordinance, and that constitutes a heavy sanction for a person who relies on these items to survive. And the impact of these sanctions are amplified by the City's continued failure to provide adequate voluntary storage or even to provide storage of impounded property within a reasonable distance of the location of the seizure.

The new draft ordinance also retains criminal penalties. For example, the new draft makes it a misdemeanor to interfere with the imposition of these sanctions by "resist[ing], delay[ing] or obstruct[ing] a City employee from moving, removing, impounding or discarding Personal Property Stored in a Public Area". Draft 56.11(10)(a). *See also* Draft 56.11 (d), (e), and (f) ("56.11"). It is also a misdemeanor to refuse to take down a tent or shelter between 6:00 a.m. and 9:00 p.m., even if that refusal occurs in the middle of a heat wave. Draft 56.11(10)(b), (c). Therefore, a person who disagrees with a City employee's determination that their property is evidence of a crime and can therefore be immediately discarded, or who holds onto their backpack after it has been tagged when unattended, can be charged with a misdemeanor and arrested.

Therefore, far from removing all sanctions and criminal penalties, the new draft ordinance retains significant elements that criminalize homelessness in Los Angeles. At present,

¹¹ The lack of clarity in the instructions was evidenced in a Los Angeles Times article immediately following the vote. As quoted in that article, the City Attorney's office indicated that homeless people could be ticketed, fined, or arrested and charged with a misdemeanor for violating the new rules. *See* Holland, Gale et al "L.A. Mayor Garcetti Rules out, For Now, Declaring Homelessness an Emergency", Los Angeles Times, November 18, 2015 (noting that "confusion remained over revisions to the law aimed at clearing homeless encampments and removing homeless people's belongings").

LAHSA's representation of the actions taken by the City Council to reduce criminalization is false and the amendments considered by the Committee today do not support the County's application for funding of the Continuum of Care.

There is no question that the City of Los Angeles and the rest of the Los Angeles County Continuum of Care rely heavily on the federal dollars the CoC receives from HUD. The communities in the Continuum of Care can ill afford to lose any of funding LAHSA has sought on their behalf, at a time when nearly 29,000 people in the CoC lack even basic shelter. The loss to the other cities in the County because of the Los Angeles City Council's actions would be unconscionable.

If the City does not wish to undermine the Continuum of Care's application for over \$100 million in federal funding for homelessness, the City Council must ensure that the amendment of LAMC 56.11 is consistent with LAHSA's representation in its CoC application. In order to be consistent with LAHSA's representation in the CoC application, LAMC 56.11 must be amended to remove all criminal penalties and sanctions against homeless individuals who are compelled to sleep in tents or makeshift shelters and to lay down beside them the possessions they need to survive. Either that, or LAHSA and the City must immediately inform HUD of the material misstatements in the City and County of Los Angeles's NOFA application and thereby jeopardize the City's relationship with HUD, which provides desperately needed resources to help, rather than punish, people who are homeless across Los Angeles County.

Sincerely,

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Enc.

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