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CITY ATTORNEY

REPORT NO. R 18-0104
APR 13 2018

REPORT RE:

**DRAFT ORDINANCE AMENDING LOS ANGELES MUNICIPAL CODE
SECTION 91.8605 TO UPDATE THE STANDARDS APPLICABLE TO
TEMPORARY EMERGENCY HOMELESS SHELTERS ESTABLISHED
IN RESPONSE TO A SHELTER CRISIS DECLARATION**

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. 15-1138-S30

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance amends Section 91.8605 of the Los Angeles Municipal Code (LAMC) to update the standards applicable to temporary emergency homeless shelters established in response to the City's declaration of a shelter crisis pursuant to California Government Code Section 8698, et seq.

Background and Summary of Ordinance Provisions

On January 1, 2018, Government Code Section 8698.4 (also known as AB932), a special statute designed to address the problem of homelessness in Los Angeles and other cities¹, became effective. This statute amended the Government Code to allow

¹ The full list includes the cities of Berkeley, Emeryville, Los Angeles, Oakland and San Diego, the County of Santa Clara, and the City and County of San Francisco.

the City, upon its declaration of a shelter crisis, to locate or construct homeless shelters on any land owned or leased by the City. Previously, the establishment of emergency shelters under Government Code Section 8698, et seq., was limited to existing government owned or leased buildings. Furthermore, Government Code Section 8698.4 exempts the City from complying with certain state and local regulations, to the extent that these laws hinder or delay the City's ability to mitigate the shelter crisis, so long as the City adopts, by ordinance, reasonable standards and procedures for the design, site development, and operation of homeless shelters. Gov. Code Section 8694(a)(2)(A)(i). The City's ordinance is subject to review and approval by the State's Department of Housing and Community Development (HCD) to ensure that the ordinance addresses minimum health and safety standards. Gov. Code Section 8698.4(a)(2)(A)(i). HCD must provide its findings to the Senate Committee on Transportation and Housing, and Assembly Committee on Housing and Community Development within 30 days of receiving the draft ordinance.

On February 9, 2018, a motion (Huizar-Harris-Dawson) was introduced directing the Department of Building and Safety (LADBS), the Los Angeles Fire Department (LAFD) and the Housing and Community Investment Department (HCID), with the assistance of the City Attorney, to draft an amendment to LAMC Section 91.8605 as provided by Government Code Section 8698.4, in order to expand opportunities to create additional emergency shelters in the City.

At its meeting on March 7, 2018, the Homelessness and Poverty (H&P) Committee of the City Council considered the motion, as well as a report and proposed ordinance presented by LADBS in response to the motion. As explained by LADBS in its report dated February 16, 2018, the proposed ordinance expands the current building and safety standards imposed on temporary emergency homeless shelters to address a wider variety of emergency homeless shelters available today, and to facilitate and expedite the permitting and construction process of these shelters. The proposed ordinance was developed in collaboration with LAFD and includes updated requirements for automatic sprinklers, fire separation between shelter structures and existing buildings, minimum regulations for membrane structures, and additional miscellaneous provisions to maintain the structural integrity of all proposed emergency homeless shelter structures.

The H&P Committee voted to recommend that the Council approve the LADBS report and proposed ordinance, thereby instructing LADBS to transmit the proposed ordinance to HCD for approval, as required by Government Code Section 8698.4. The H&P Committee also voted to recommend that the City Council simultaneously request this Office to prepare and present the final draft ordinance once the State approved the proposed ordinance, in order for the City Council to adopt the ordinance at the same

time it renews the City's shelter crisis declaration.² On March 9, 2018, the City Council adopted the H&P Committee's recommendations. On that same day, the Mayor's office transmitted the proposed ordinance amending LAMC Section 91.8605 to HCD.

The City, through the Mayor's office, received a communication from HCD on March 29, 2018, explaining that two provisions in the proposed ordinance were not drafted to HCD's satisfaction. The first involved the maximum occupant load allowed in temporary emergency shelters. HCD cited existing provisions in State law that require 70 square feet for single occupants, as opposed to the City's regulations which allow 50 square feet for single occupants. See Government Code Section 8698.3(h); see also the 1997 Uniform Housing Code, Section 503.2. HCD explained that in order for the City's ordinance to be approved, it would have to be amended to require that the maximum occupancy load be computed at a rate of 70 square feet per occupant for single occupants, and 50 feet for additional occupants thereafter. The second provision involved kitchen facilities. HCD wanted the language of the proposed ordinance to be amended to clarify that kitchen facilities are required in a temporary emergency shelter, unless food is delivered to the site.

LADBS incorporated those changes into an updated proposed ordinance, and on April 10, 2018, the City Council approved the updated ordinance and authorized LADBS to resubmit the ordinance to HCD for approval. On April 10, 2018, HCD notified the Mayor's office that the City's ordinance was approved with no further comments.

This ordinance now transmitted by this Office, which was reviewed as to form and legality, has been amended to include an urgency clause so that, if adopted by Council and approved by the Mayor, it can become effective upon publication. Given the dire homeless shelter situation that gave rise to the City Council's declaration of a homeless shelter crisis last year and that led to the City Council's motion requesting this Office to transmit this draft ordinance, the utilization of an urgency clause pursuant to Charter Section 253 is legally appropriate. The draft ordinance is required for "the immediate preservation of the public peace, health or safety" insofar as it provides for additional shelters to be established throughout Los Angeles to alleviate the shortage of beds that currently exists in the City in order to accommodate the many homeless in Los Angeles. The draft ordinance includes a statement describing the urgency as required by Charter Section 253. Urgency ordinances require a three-fourths vote of the City Council in order to pass.

California Environmental Quality Act Standard of Review

The Department of City Planning recommends that the City Council, based on the whole of the administrative record, determine that the draft ordinance amending

² LAMC Sections 12.80 and 12.81 require the City Council to renew its shelter crisis declaration on an annual basis. The City Council last declared a shelter crisis on April 19, 2017.

LAMC Section 91.8605 is exempt from the California Environmental Quality Act (CEQA) under California Public Resources Code Sections 15268 (statutory exemption for ministerial projects), 15269 (statutory exemption for emergency projects), 15301 (categorical exemption for existing facilities), 15302 (categorical exemption for replacement or reconstruction of existing structures and facilities), 15303 (categorical exemption for new construction or conversion of small structures), 15304 (categorical exemption for minor alterations to land), 15311 (categorical exemption for accessory structures), 15323 (categorical exemption for normal operations of facilities for public gatherings), 15327 (categorical exemption for leasing new facilities), 15332 (categorical exemption for in-fill development projects), and 15378 (definition of a project), and that none of the exceptions under 15300.2 apply.

Reliance on these categorical exemptions is appropriate when substantial evidence in the record supports the use of the categorical exemptions and none of the exceptions in CEQA Guidelines Section 15300.2 applies.


Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to LADBS, LAFD, HCID, the Police Department and the Office of the City Administrative Officer with a request that all comments, if any, be presented directly to the City Council or its Committees when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Adrienne Khorasane at (213) 978-8246. She or another member of this Office will be present when you consider this matter to answer questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 
DAVID MICHAELSON
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DM:ASK:mgm
Transmittal