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REPORT NO. **R16-0068**

MAR 02 2016

REPORT RE:

DRAFT ORDINANCES AMENDING LOS ANGELES MUNICIPAL CODE SECTION 12.03, 12.80 AND 12.81 TO EXPAND AND CORRECT THE DEFINITION OF "SHELTER FOR THE HOMELESS" AND TO ALIGN THE CITY'S SHELTER CRISIS REGULATIONS WITH STATE LAW; AND ADDING SECTION 12.82 TO THE LOS ANGELES MUNICIPAL CODE TO PROVIDE FOR THE OPERATION AND ESTABLISHMENT OF TEMPORARY HOMELESS SHELTERS IN ANY ZONE DURING THE 2016 EL NIÑO WEATHER CYCLE

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

Council File Nos. 15-1138 and 15-1138-S7

Honorable Members:

As previously requested by the City Council, this Office has prepared and now transmits for your consideration the enclosed draft ordinances, approved as to form and legality. The first draft ordinance amends the definition of "shelter for the homeless" in Section 12.03 of the Los Angeles Municipal Code (LAMC) to expand the definition to include more types of facilities and providers, and to delete references to obsolete state code regulations. It also amends Sections 12.80 and 12.81 of the LAMC to align the City's regulations with state law in order to streamline the process for a declaration by the Mayor or City Council of a shelter crisis and to allow the swift establishment of temporary homeless shelters on public and private property in response to that declaration. The second draft ordinance adds Section 12.82 to the LAMC to impose the updated regulations found in the draft amendment of Section 12.81, as well as the updated definition of "shelter for the homeless" provided in the draft amendment of

Section 12.03, in all zones of the City. The provisions of Section 12.82, if adopted, would be in effect for a limited time, in order to provide temporary homeless shelters throughout the City during this year's El Niño weather cycle.

Background and Summary of Ordinance Provisions

On November 17, 2015, the City Council adopted a joint report from the Homelessness and Poverty Committees as amended by motion (Bonin-Cedillo), which included, in pertinent part, a request to the City Attorney's Office to prepare an ordinance amending the LAMC to "maximize the City's authority to provide for temporary shelter pursuant to the declaration of a shelter crisis."¹ Pursuant to that request, and in anticipation of the exacerbated need for temporary shelter throughout the City in the pending El Niño months, the City Attorney's Office prepared two ordinances: a draft ordinance amending LAMC Sections 12.03, 12.80 and 12.81 (the shelter crisis ordinance), and a draft ordinance adding Section 12.82 to the LAMC (the El Niño ordinance).

I. The Shelter Crisis Ordinance

The shelter crisis ordinance amends the definition of "shelter for the homeless" in LAMC Section 12.03 to include facilities that are not just residential, as well as to expand the definition of provider to include religious and non-profit, charitable organizations. It also replaces language referencing an obsolete state Administrative Code section that once set forth the standards for a homeless shelter, as well as other references to state standards in the California Health and Safety Code, with general language referencing any applicable state regulations. By generally referencing any applicable state standards, the City does not have to amend this section of the LAMC whenever there is a change in state law. Pursuant to a written request sent from the Housing and Community Investment Department (HCID) to the City Planning Commission prior to the Commission's consideration of the draft ordinances, the draft amendment also removes from the definition of "shelter for the homeless" a requirement that a provider be certified by HCID.

Additionally, the shelter crisis ordinance amends Sections 12.80 and 12.81 to allow the City's declaration of a shelter crisis to authorize expeditiously the establishment and operation of temporary homeless shelters on public and private property as needed, without seasonal constraints or unnecessary procedure.

Under California Government Code Sections 8698-8698.2, the City has the authority to declare a shelter crisis, based on a finding that "a significant number of persons within the jurisdiction of the governing body are without the ability to obtain

¹ The amending motion was further amended (Cedillo-Bonin) at the same meeting "to include an Opt-in program for the Council Districts." After clarifying that the intent of this amendment did not extend to the shelter crisis ordinances, this Office did not include that provision in the draft ordinances.

shelter, and that the situation has resulted in a threat to the health and safety of those persons." Cal. Govt. Code Sec. 8698.2(a)(1). The declaration of a shelter crisis allows the City to use designated public facilities as temporary homeless shelters during the crisis, while also guaranteeing the City immunity from liability (with some limitations) for ordinary negligence in its provision of emergency housing in public facilities. The declaration also suspends state and local regulatory laws establishing health, safety or housing standards "to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis." Cal. Govt. Code Sec. 8698.1(b). In place of those standards, the City may enact minimal health and safety standards to apply for the duration of the crisis.

LAMC Section 12.80 codifies the provisions of the state law in the City's local regulations. As currently written, Section 12.80 only allows shelters to operate in *public* facilities for no more than 120 days between November 1 and March 31, and imposes notice and hearing requirements in excess of the Brown Act's 72-hour notice requirements. Government Code Section 8698, et seq., unlike LAMC Section 12.80, does not impose any specific notice and hearing requirements on local legislative bodies, nor does it restrict the declaration of a shelter crisis to a certain time period.

LAMC Section 12.81 applies the declaration of a shelter crisis under Government Code Section 8698, et seq., to certain *private* property throughout the City. Similar to Section 12.80, Section 12.81 currently limits the operation of shelters on sites owned or leased by non-profit, charitable organizations to no more than 120 days between November 1 and March 31. It also imposes notice and hearing requirements in excess of the Brown Act's requirements. Moreover, it requires the Council to authorize specifically, by resolution and accompanied by a series of findings, the establishment and operation of *each* shelter pursuant to this regulation. Section 12.81 currently requires interested organizations to submit an application to the Housing and Community Investment Department (HCID) to operate a shelter prior to the requisite public hearing. The origin of LAMC Section 12.81 is different from Section 12.80, as its legal underpinning is not based on the authority granted by the state in Government Code Sections 8698 et seq. Instead, the Council enacted LAMC Section 12.81 as a direct use of the City's police powers.

The shelter crisis ordinance amends LAMC Sections 12.80 and 12.81 to provide virtually the same process for the use of public *and* private sites as locations for homeless shelters as would be triggered under a declaration of shelter crisis. The only difference, as reflected in the draft ordinance language, is that Government Code Section 8698.1(b) expressly allows cities to relax local and state building and safety regulations for facilities used as homeless shelters on *public* sites.² The Government Code does not provide the City with authority to relax state building code regulations for

² The reduced building and safety regulations that apply to public facilities pursuant to the declaration of a shelter crisis under LAMC Section 12.80 are currently codified in LAMC Section 91 8605. The Council may amend those minimal standards as it sees fit.

shelters located on *private* property, absent the City employing the more drawn out process of amending the applicable building code provisions by adopting suitable findings justifying the deviation from the state building code.

The shelter crisis ordinance also removes application, notice and hearing requirements and seasonal limitations not required or imposed by law. For example, a resolution designating a public facility or privately owned site for the operation of a shelter under the current LAMC provisions is not legally required. If the Council dispenses with that practice, there would be no further notice and hearing requirements for the operation and establishment of temporary homeless shelters pursuant to a shelter crisis declaration. Sites can be operational as soon as they comply with the requirements of LAMC Section 91.8605³, without waiting for designation by resolution.⁴ Additionally, although the communication from HCID to Planning referenced earlier in this report requested only that references to HCID (in relation to the certification requirement) be removed from the definition of 12.03, the first draft ordinance also removes the HCID certification requirement from the language in 12.81.

Under the shelter crisis ordinance, the amended Section 12.81 still would only apply to properties located in the R3, RAS3, R4, RAS4, R5, C2, C4, C5, CM, M1, M2, and M3 Zones, which are the same zones to which Section 12.81 currently applies.

II. The El Niño Ordinance

The El Niño ordinance incorporates the provisions of the draft amendment of LAMC Section 12.81, as well as the updated definition of “shelter for the homeless” in the draft amendment of LAMC Section 12.03, into one standalone ordinance that provides for temporary shelters to be established during this year’s El Niño season. The difference between the proposed Section 12.82 and the proposed amendment of LAMC Section 12.81 is that the provisions of Section 12.82 would apply in any zone in the City, whereas Section 12.81 will continue to apply in the same zones as it currently does. Moreover, Section 12.82 sunsets 120 days after it goes into effect.

Legal Analysis

As a legislative act, the declaration of a shelter crisis under Government Code Sections 8698, et seq., and LAMC Sections 12.80 and 12.81 is reviewable by ordinary mandate under California Code of Civil Procedure Section 1085 and limited to a

³ After the City declares a crisis, the basic building standards in LAMC Section 91.8605 go into effect for sites that establish homeless shelters under Sections 12.80 and 12.81.

⁴ It is a policy decision for the Council whether to retain the practice of separately designating public and private sites by way of resolution for the operation of shelters under LAMC Sections 12.80 and 12.81. It is important to note that those resolutions would be subject to review by the City Planning Commission under Charter Section 558, and would consequently be entitled to notice and hearing pursuant to LAMC Section 12.32.

determination of whether the City's actions were arbitrary, capricious or entirely lacking in evidentiary support, or whether the City failed to follow the procedure and give the notices required by law. See *Swanson v. Marin Municipal Water District*, 56 Cal.App.3d 512, 519 (1976); see also *Strumsky v. San Diego County Employees Retirement Association*, 11 Cal.3d 28, 34, fn. 2 (1974). Therefore, the Council's declaration of a shelter crisis should be based on facts sufficient to satisfy the standard of review under ordinary mandate, such as information and statistics relating to the number of beds currently available in homeless shelters throughout the City versus the estimated number of homeless people without lodging.⁵ Supporting facts may also relate to exacerbating circumstances like weather conditions, air quality and other environmental considerations.

Both ordinances include urgency clauses so that, if adopted by Council, they can become effective upon publication. Given the dire homeless shelter situation that gave rise to the City Council's declaration of a homeless shelter at the end of last year and led to Council's motion requesting this Office to transmit these draft ordinances, the utilization of an urgency clause pursuant to Charter Section 253 is appropriate. These draft ordinances are required for "the immediate preservation of the public peace, health or safety" insofar as they provide 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. This urgent need for additional shelters is further exacerbated by the anticipated inclement weather that is part of the El Niño phenomenon. The ordinances both include a statement describing the urgency as required by Charter Section 253. Urgency ordinances require a three-fourths vote of the Council in order to pass.

Charter Findings Required

Charter Section 558(b)(3) requires the Council to make the findings required in Subsection (b)(2) of the same section; namely, whether adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. Charter Section 558(b)(3)(A) allows the Council to adopt an ordinance conforming to the City Planning Commission's recommendation of approval of the ordinance, if the City Planning Commission recommends such approval. Similarly, Charter Section 556 requires the Council to make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan. Council can either adopt the City Planning Commission's findings and recommendations or make its own.

⁵ For purposes of keeping track of the shelter crisis and the number of people served by institutions and organizations providing housing pursuant to this Section, the Council may consider requiring those entities to file some sort of documentation with HCID. This need not be a permit or discretionary application, but rather a form that includes basic information such as location, capacity, etc.

On February 11, 2016, the City Planning Commission adopted the staff report and attached findings, approved the proposed ordinances and recommended their adoption by City Council. Specifically, the Commission made the following findings for both ordinances:

1. In accordance with Charter Section 556, the proposed ordinances are in substantial conformance with the purposes, intent, and provisions of the General Plan in that they would facilitate the provision of emergency shelters for the homeless in a timely manner to help alleviate hardship and alleviate potential tragic situations that are at risk of occurring through the City as a result of inclement weather and shelter crisis. The City's General Plan includes an overarching goal of preventing and ending homelessness, as well as a number of related objectives and policies around the provision of short-term emergency housing and planning for natural disasters. The proposed ordinances are consistent with and help to accomplish Goal 4A of the General Plan Framework ("an equitable distribution of housing opportunities by type and cost accessible to all residents of the City"), and in particular Objective 4.4 of that goal: to "[r]educe regulatory and procedural barriers to increase housing production and capacity in appropriate locations." The proposed ordinances are also consistent with and help further Goal 4 of the General Plan's Housing Element, namely Objective 4.1 (to provide an adequate supply of short-term and permanent housing and services that meet the needs of those who are homeless or at risk of homelessness). Three policies under Objective 4.1 are also consistent with and furthered by these draft ordinances: Policy 4.1.1 (to ensure an adequate supply of emergency and temporary housing for the homeless or at risk of homelessness, including people with disabilities); Policy 4.1.5 (to plan for emergency housing needs resulting from natural or man-made disasters); and Policy 4.1.6 (to provide housing and supportive services for the homeless and special needs populations throughout the City, and to reduce zoning and other regulatory barriers to their placement and operation in appropriate locations). More information about the ways the proposed ordinance furthers the policies mentioned here can be found in the City Planning Commission's Determination transmitted on February 12, 2016, as well as in the Planning Department's Recommendation Report prepared in advance of the City Planning Commission meeting on February 11, 2016.
2. In accordance with Charter Section 558(b)(2), the adoption of the proposed ordinances will be in conformity with public necessity, convenience, general welfare and good zoning practice because their measures are needed to ensure that adequate emergency shelters can be established during a shelter crisis when quick action is needed most.

As stated above, Charter Sections 556 and 558(b)(3) require City Council to make certain findings before adopting the proposed ordinance. The Council can adopt the City Planning Commission's findings or make its own.

California Environmental Quality Act Standard of Review

The City Planning Commission recommends that the City Council, based on the whole of the administrative record, determine that the shelter crisis ordinance amending LAMC Sections 12.03, 12.80 and 12.81 is not a project pursuant to the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378) and/or that the ordinances are exempt under California Public Resources Code Sections 21080(b)(4) ("Specific actions necessary to prevent or mitigate an emergency") and 21060.3 (definition of "emergency" under CEQA); and CEQA Guidelines Sections 15269 (statutory exemption for emergency projects) and 15359 (definition of "emergency" under CEQA), 15301 (categorical exemption for existing facilities), 15303 (categorical exemption for new construction or conversion of small structures), 15304 (categorical exemption for minor alterations to land), 15306 (categorical exemption for information collection), and 15332 (categorical exemption for in-fill development projects), and that none of the exceptions under 15300.2 apply.

For the El Niño ordinance adding Section 12.82 to the LAMC, the City Planning Commission recommends that the City Council, based on the whole of the administrative record, determine that it is not a project pursuant to the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378) and/or that the ordinances are exempt under California Public Resources Code Sections 21080(b)(4) ("Specific actions necessary to prevent or mitigate an emergency") and 21060.3 (definition of "emergency" under CEQA); and CEQA Guidelines Sections 15269 (statutory exemption for emergency projects) and 15359 (definition of "emergency" under CEQA).

In the event of a CEQA challenge to the City's use of CEQA exemptions for the ordinances at hand, the standard of review applied by a court turns on two questions: 1) whether substantial evidence exists in the record to support the local agency's decision, and 2) whether the agency abused its discretion by failing to proceed in the matter required by law. California Public Resources Code Sections 21168 and 21168.5; *see also Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal.4th 1086, 1109-1110 (2015); *Association for Protection of Environmental Values v. City of Ukiah*, 2 Cal.App.4th 720, 727 (1991); *Laurel Heights Improvement Association v. Regents of University of California*, 47 Cal.3d 376, 392 (1988).

A court will uphold the use of a statutory exemption or categorical exemption if it finds substantial evidence in the record to demonstrate that the project fits within the language of the exemption, and, in the case of a categorical exemption, that none of the exceptions to the exemptions in CEQA Guideline Section 15300.2 apply. *Napa Valley*

Wine Train, Inc. v. PUC, 50 Cal.3d 370 (1990). Similarly, a court will uphold a finding that a project is not a "project" as defined by CEQA if it is supported by substantial evidence in the record. Categorical exemptions are narrowly construed by the courts. See *Western Municipal Water District v. Superior Court*, 187 Cal.App.3d 1104, 1111 (1986). See also *Los Osos Valley Associates v. City of San Luis Obispo*, 30 Cal.App.4th 1670, 1682 (1994); *Dehne v. County of Santa Clara*, 115 Cal.App.3d 827, 835 (1981); *Wildlife Alive v. Chickering, supra*.

Therefore, if the City Council finds that substantial evidence in the administrative record supports the use of the recommended statutory and categorical exemptions and/or that the project is not a "project" under CEQA, it may adopt the recommendations of the City Planning Commission.

Council Rule 38 Referral

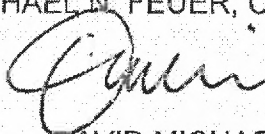
A copy of the draft ordinances were sent, pursuant to Council Rule 38, to the Department of Building and Safety, the Housing and Community Investment Department, the Fire Department, the Police Department and the Office of the City Administrative Officer with a request that all comments, if any, be presented 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 any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
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Transmittal