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REPORT NO. R 17 - 0 0 7 1
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REPORT RE:

**DRAFT ORDINANCE AMENDING LOS ANGELES MUNICIPAL CODE
SECTIONS 12.03, 12.80 AND 12.81 TO EXPAND THE DEFINITION OF
"SHELTER FOR THE HOMELESS" AND TO ALIGN THE CITY'S
SHELTER CRISIS REGULATIONS WITH STATE LAW**

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-S6

Honorable Members:

On March 2, 2016, this Office transmitted two draft ordinances, approved as to form and legality, amending the City's shelter crisis regulations. The first draft ordinance expanded the definition of "shelter for the homeless" in Section 12.03 of the Los Angeles Municipal Code (LAMC) to include more types of facilities and providers and deleted references to obsolete state code regulations. It also amended 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 added Section 12.82 to the LAMC to utilize the expanded definition of "shelter for the homeless" and to impose the regulations found in the draft amendment of Section 12.81 in all zones of the City, for a limited time, in order to provide temporary homeless shelters throughout the City during the 2016 El Niño weather cycle. (City Attorney Report No. 16-0068.)

On March 15, 2016, the Planning and Land Use Management (PLUM) Committee of the City Council only recommended the adoption of an ordinance adding Section 12.82 to the LAMC to provide temporary homeless shelters in all zones throughout the City during the 2016 El Niño weather cycle. On March 16, 2016, the City Council held a discussion on the draft ordinance and referred the matter back to the PLUM Committee for further consideration. On March 22, 2016, the PLUM Committee voted to recommend the adoption of a revised ordinance adding Section 12.82 to the LAMC, which now included additional registration and noticing requirements for temporary homeless shelters, as well as a regulation pertaining to compliance with safety measures promulgated by the Los Angeles Fire Department (LAFD). On March 30, 2016, the City Council voted to approve the revised ordinance adding Section 12.82 to the LAMC.

On November 29, 2016, the PLUM Committee considered the draft ordinance transmitted by this Office amending Sections 12.03, 12.80 and 12.81 of the LAMC. The PLUM Committee requested that this Office transmit a revised ordinance to incorporate the provisions that were included in Section 12.82 of the LAMC; namely, the registration and noticing requirements, as well as the regulation requiring compliance with the regulations promulgated by the LAFD.

Background and Summary of Ordinance Provisions

The draft 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 draft 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

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 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 draft 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.¹ The Government Code does not provide the City with authority to relax state building code regulations for shelters located on *private* property, absent the City employing the more drawn out process of

¹ 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.

amending the applicable building code provisions by adopting suitable findings justifying the deviation from the state building code.

The draft 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. Without waiting for designation by resolution, sites can be operational as soon as they comply with the requirements of LAMC Section 91.8605² and the provisions that were included in Section 12.82 of the LAMC; namely, registration and noticing requirements, as well as compliance with the "Cold/Wet Weather Temporary Shelter" requirements promulgated by the LAFD's Fire Prevention and Public Safety Bureau.

Pursuant to the PLUM Committee's request, the draft ordinance removes the seasonal limitations currently imposed by Section 12.81 but limits the duration of a shelter crisis to a period of 365 days from the date of the declaration. However, under the draft ordinance, a new shelter crisis declaration may be made by the City Council pursuant to Government Code Section 8698, et seq., upon the expiration of the previous year's declaration. Additionally, although the communication from HCID to the City Planning Commission 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 draft ordinance also removes the HCID certification requirement from the language in 12.81 for consistency.

Under the draft 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.

As this Office explained in City Attorney Report Number 16-0068, the declaration of a shelter crisis under Government Code Sections 8698, et seq., and LAMC Sections 12.80 and 12.81 is a legislative act. Therefore, it is reviewable by ordinary mandate under California Code of Civil Procedure Section 1085 and limited to a 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). Thus, 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

² 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.

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. Supporting facts may also relate to exacerbating circumstances like weather conditions, air quality and other environmental considerations.

The draft ordinance includes 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 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. This urgent need for additional shelters is further exacerbated by the unexpected and unprecedented rainfall experienced in Los Angeles this winter. The draft ordinance includes 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. The City Council can either adopt the CPC's findings and recommendations as set forth in the CPC's transmittal report to the City Council on this matter, dated February 12, 2016, or make its own.

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 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 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) and 15332 (categorical exemption for in-fill development projects), 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 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 Khorasanee 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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DM:ASK:mgm
Transmittal