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VIA EMAIL AND HAND DELIVERY

March 18, 2016

Councilmember Herb J. Wesson Jr., President
Los Angeles City Council
Los Angeles City Hall
200 N. Spring Street
Los Angeles, CA 90012

RE: Proposed Amendment to Los Angeles Municipal Code Section 56.11

Dear Council President Wesson and Members of the Los Angeles City Council:

On Monday, March 14, our clients, the Los Angeles Catholic Worker, Los Angeles Community Action Network, and four individuals, filed a lawsuit against the City of Los Angeles for the illegal seizure and destruction of homeless people's property. *See Mitchell v. City of Los Angeles*, 2:16-cv-01750 (attached). We write on behalf of our clients to express our grave concern that the passage of these amendments and the ensuing enforcement will simply entrench the constitutional violations at issue in this litigation. Moreover, the passage and enforcement jeopardizes millions of dollars in federal funds from the United States Department of Housing and Urban Development to house the homeless, including our clients.

The amendments as drafted create significant sanctions against homeless people and gives unprecedented authority to City employees and contractors to seize and ultimately destroy homeless people's property. The seizures and destruction described in the current litigation, and even worse, the devastating consequences for homeless residents of this City serve to foreshadow what will occur if the City moves forward with the proposed Los Angeles Municipal Code Section 56.11. The amendments proposed today give broad-sweeping impounding authority to the same agencies and departments responsible for the unconstitutional and discriminatory actions in this case. The same departments and agencies that are seizing and destroying property today are the ones given the explicit authority to impound and confiscate property under the revised Los Angeles Municipal Code Section 56.11.

The adoption of the proposed ordinance and the inevitable enforcement creates significant sanctions against homeless people and gives unprecedented authority to City employees and contractors to seize and destroy homeless individuals' property. In doing so, it violates the United States Constitution. To be clear, giving City departments explicit authority under a municipal ordinance will not render these actions constitutional. The City has routinely made such arguments, and the arguments have uniformly been rejected. As the Ninth Circuit

held in *Lavan v. City of Los Angeles*, “violation of a City ordinance does not vitiate the [Constitutional] protection of one’s property.” 693 F.3d 1022, 1029 (9th Cir. 2012).

Numerous provisions in the ordinance as amended constitute unreasonable seizures in violation of the Fourth Amendment or provide insufficient due process protections, in violation of the Fourteenth Amendment. 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 moved to another location. *See* Draft Ordinance Amending Los Angeles Municipal Code Section 56.11(3)(a), (4)(a)(5) (“Draft 56.11”). It provides no mechanism for an individual to cure the violation before the property can be seized. This makes the subsequent seizure unreasonable. Other provisions allow the City to impound an individual’s property without any notice, and to discard property the City or its contractors¹ deems “evidence of a crime or contraband”. These provisions provide no limitations on this authority or provide any due process of any kind. *See* Draft 56.11(3)(h).

The City’s current practices violate homeless people’s constitutional rights and lead to the destruction of tents, blankets, clothing, and other critical items necessary for a person to survive on the street. They passage and subsequent enforcement of Los Angeles Municipal Code 56.11 as drafted will simply serve to entrench these unconstitutional policies regarding the seizure and destruction of homeless people’s property.

In addition, the passage of this draft of Los Angeles Municipal Code Section 56.11 jeopardizes tens of millions of dollars in federal funding from the United States Department of Housing and Urban Development. The new ordinance, if adopted as drafted, runs 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 November 2015 that the City of Los Angeles had amended Los Angeles Municipal Code Section 56.11 to remove sanctions and criminal penalties.

Continuum of Care funds from HUD account for a significant portion of the funds available for the City and County to provide housing to people who are homeless. In September 2015, HUD issued a Notice of Funds Available (NOFA) for Continuum of Care funding for the FY2015 and took the unprecedented step of conditioning the award of points in part on a Continuum of Care demonstrating that “recipients have implemented specific strategies that prevent criminalization of the homeless.”²

As part of its FY2015 application for \$110,004,000.00 in funding for the City and County of Los Angeles, 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

¹ An amendment at the March 16, 2016 Homelessness and Poverty Committee meeting included giving City contractors the same authority as city employees. As the ordinance is currently constructed, this includes giving City contractors the authority to seize and destroy property.

² FY 2015 CoC Program NOFA at p. 44.

possessions on public property.³ The application also stated that the new amended ordinance reduces sanctions further than in the initial municipal code.

As discussed above, the new ordinance does not remove sanctions and criminal penalties. 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. 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 and creates new misdemeanor crimes. 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). 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 or contractor'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.

Numerous departments and agencies within the Federal Government have indicated that criminalization is no longer an acceptable strategy to address homelessness, and HUD's position on this issue is very clearly reflected in the NOFA. Funding for Continuum of Care programs is divided into two tiers, and although the Los Angeles County Continuum of Care received funding in the Tier I funding cycle from HUD, the Tier II funding cycle is significantly more competitive. The loss of 2 points could significantly undercut the City and County's request for over 24 million dollars in federal funding for housing, at a time when the City and County can scarcely afford to lose a single dollar in federal funding for homelessness.

Council members expressed concern at the March 16, 2016 Homelessness and Poverty Committee meeting that failing to amend LAMC Section 56.11 would be more problematic to HUD than leaving the ordinance as drafted. Passing an amendment to the ordinance that fundamentally contradicts the statement made in the County's Continuum of Care application and that continues to criminalize homelessness, is undoubtedly far worse than keeping the

³ City and County of Los Angeles Continuum of Care application, at p. 10, available at documents.lahsa.org/programs/supernofa/2015/2015LosAngelesCoCAApplication.pdf

ordinance passed in June 2015 at bay while this Council attempts to come up with an equitable and constitutional solution to the issues facing the City of Los Angeles, without criminalizing homelessness..

The passage and enforcement of these amendments creates a double bind for the City, of prolonging the Constitutional violations, while removing the funds necessary to solve the underlying homeless crisis that has led to these violations. It provides no legal or humane way forward for the City to resolve the years of litigation that have preceded the filing of our lawsuit and that continue with our client's case. As the City struggles to find the money to pay for its plan to reduce homelessness, it is anathema to this Council's financial obligations to residents of this City, both housed and homeless, for the Council to take an action today that potentially jeopardizes tens of millions of dollars in Federal Funding, and will undoubtedly cost the City a significant amount in litigation costs.

Sincerely,

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Enc.

CC: **Councilmember Gilbert Cedillo**
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