

Communication from Public

Name: Fix The City

Date Submitted: 10/28/2023 10:17 AM

Council File No: 22-1545

Comments for Public Posting: Please find attached comments re item 23 on the 10/31/23 agenda for CF 22-1545. It appears the previous submission was for a different council file.

Los Angeles City Council

October 27, 2023

Dear Councilmembers,

Please accept this letter as [Fix The City's](#) comments concerning Item 23, CF 22-1545 on the [October 31, 2023 agenda](#).

Item 23 asks you to ratify the Mayor's already-expired [July 7, 2023, declaration of an emergency](#) – 116 days ago. It asks you to ignore state law regarding local emergencies and it asks you to unlawfully attempt to retroactively fix or simply ignore a clear violation of a mandatory duty under [Los Angeles Administrative Code \(LAAC\) 8.33](#).

We remind you that the validity of LAAC 8.33 is being challenged in court ([Los Angeles Superior Court Case # 23STCP03519](#)). The suit includes any executive directives, procedures, acquisitions, rules or other action taken under the authority of the Declaration.

There is clear evidence that the City not only passed an unlawful ordinance when it approved LAAC 8.33, but also that the City **knew of and ignored** the fact that LAAC 8.33 unambiguously requires that the Chief Legislative Analyst, with assistance of the City Attorney, prepare a resolution which the Mayor must present to the Council. This alone compels you to vote against 22-1545.

LAAC 8.33 states:

"Whenever the Mayor declares a local housing and/or homelessness emergency, the Chief Legislative Analyst's Office shall prepare, with the assistance of the City Attorney, a resolution ratifying the existence of a local housing and/or homelessness emergency. Such resolution shall be submitted by the Mayor to the City Clerk for presentation to the City Council. Within 30 days from the date of the original declaration by the Mayor, the City Council may consider the resolution and rescind it by majority vote."

No such resolution was presented by the Mayor, or anyone, as required and the declaration is therefore null and void. It is axiomatic that the council cannot renew a declaration that is null and void.

The conclusion that a resolution was mandatory was the conclusion of the City's own Chief Legislative Analyst's (CLA) office.

Fix The City issued a Public Records Request to the CLA on September 5, 2023. The CLA provided two separate responses which have been combined into [one file](#) on the Fix The City website. On page 66 of that file, there is a damning discussion that demonstrates that, without a doubt, the CLA understood that a resolution had to be presented to the council.

In that email, shown on the next page, the CLA's office stated (appropriately) that "The word SHALL either means something or it doesn't." CLA Tso responded "Hi. Just spoke to Council President's Office. They said the ordinance does not require a resolution now, but one may be required in 90 days for renewal."¹

This conclusively proves that the City knew a resolution was required, but that the Council President, not the City Attorney, for some reason ignored the clear language and opted against having a resolution prepared.

For this reason alone, a vote on 22-1545 is improper and without effect. As you will see in the rest of this comment letter, the underlying administrative code section, LAAC 8.33, clearly violates state law. You will also see that under state law, the declaration has already expired as well as the above failure to adhere to mandatory duties under LAAC 8.33.

¹ The email was written on 7/28/23. "In 90 days" would have been October 26, 2023, five days before this item will be heard.



Sharon Tso <sharon.tso@lacity.org>

Re: Mayor's Emergency Order on Homelessness

1 message

John Wickham <john.wickham@lacity.org>

Fri, Jul 28, 2023 at 9:41 AM

To: Sharon Tso <sharon.tso@lacity.org>

Cc: Chris Espinosa <Chris.Espinosa@lacity.org>

Here's the section of the Ordinance that matters.

(e) Whenever the Mayor declares a local housing and/or homelessness emergency, the Chief Legislative Analyst's Office shall prepare, with the assistance of the City Attorney, a resolution ratifying the existence of a local housing and/or homelessness emergency. Such resolution shall be submitted by the Mayor to the City Clerk for presentation to the City Council. Within 30 days from the date of the original declaration by the Mayor, the City Council may consider the resolution and rescind it by majority vote. Thereafter, the declaration shall expire unless the City Council renews it by majority vote every 90 calendar days.

SO....we have prepared a Resolution for presentation. We can submit it and the Council can do nothing with it to be compliant with the ordinance or hear it in 90 days. But it seems we are required to prepare and submit. The word "SHALL" either means something or it doesn't.

John Wickham
Office of the Chief Legislative Analyst
phone: (213) 473-5738
fax: (213) 620-9869

On Thu, Jul 27, 2023 at 2:19 PM Sharon Tso <sharon.tso@lacity.org> wrote:

Hi. Just spoke to Council President's Office. They said the ordinance does not require a resolution now, but one may be required in 90 days for renewal. Please review the ordinance for what we need to do for the renewal. CD2 asked we share with City Attorney as they will prepare language for the agenda. See me if you have questions. Thx.

Figure 1 Email obtained through a Public Records Request by Fix The City

[CA Govt Code 8680.9](#), part of the California Disaster Assistance Act, defines a local emergency as follows:

“8680.9. “Local emergency” means a condition of extreme peril to persons or property proclaimed as such by the governing body of the local agency affected, **in accordance with Section 8630**. “(emphasis added)

[Cal Govt Code Section 8630](#) reads:

8630. (a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.

(b) Whenever a local emergency is proclaimed by an official designated by ordinance, **the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified** by the governing body.

(c) The governing body shall review the need for continuing the local emergency **at least once every 60 days** until the governing body terminates the local emergency.

(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

[Los Angeles Administrative Code \(LAAC\) 8.33 is Fatally Flawed.](#)

The [Mayor’s emergency declaration](#) was based on and derives its authority from [LAAC 8.33](#). The validity of LAAC 8.33 is being litigated via [Los Angeles Superior Court Case # 23STCP03519](#). This suit describes in more detail why LAAC 8.33 is unlawful.

LAAC 8.33 is in violation of [Cal. Gov. Code 8630](#) which states: “If proclaimed by an official designated by ordinance, the proclamation **must be ratified by the governing body within seven (7) days.**” LAAC 8.33 does not require ratification as required by Cal. Govt. Code 8630. Instead, it merely requires presentation of a resolution that the council may rescind within 30 days. The failure to require ratification renders LAAC 8.33 fatally flawed.

LAAC 8.33 goes on to require renewal every 90 days. This too runs afoul of Cal. Govt. Code 8630 which requires the governing body to “review the need for continuing the local emergency **at least once every 60 days.** “

[The Declaration Is Null and Void as The Required Resolution Was Not Presented.](#)

As discussed above, even assuming LAAC 8.33 was valid, the Mayor’s declaration is null and void because the Mayor failed to provide a resolution to the council as required. LAAC 8.33(e) contains a requirement for presentation of a resolution as follows:

“Whenever the Mayor declares a local housing and/or homelessness emergency, the **Chief Legislative Analyst's Office shall prepare, with the assistance of the City Attorney, a resolution ratifying the existence of a local housing and/or homelessness emergency.** Such resolution **shall be submitted** by the Mayor to the City Clerk for presentation to the City Council. **Within 30 days** from the date of the original declaration by the Mayor, the City Council may consider the resolution and rescind it by majority vote. **Thereafter, the declaration shall expire unless the City Council renews it by majority vote every 90 calendar days.**” (emphasis added)

No such resolution was provided by the CLA or City Attorney. Due to a failure to abide by the requirements of LAAC 8.33, the declaration therefore became null and void due to non-compliance with LAAC 8.33 no more than 30 days after the declaration, on August 6, 2023.

The Declaration Expired After Seven Days Under the Clear Terms of Cal. Gov. Code 8630.

Cal Gov. Code 8630(e) clearly specifies that a local emergency **shall not remain in effect** for a period in excess of seven days unless it has been ratified by the governing body.

No such ratification occurred. This would result in expiration seven days after the declaration, or on July 14, 2023.

The Declaration Expired By its Own Terms for Non-Renewal under LAAC 8.33.

LAAC Section 8.33(e) clearly states: "Thereafter, the declaration shall expire unless the City Council renews it by majority vote every 90 calendar days."

LAAC 8.33 is unfortunately poorly written in that the 90-day period's starting point is ambiguous. However, the intent of LAAC 8.33 as well as [LAAC 8.27](#) and Cal. Gov. Code 8630 is that the renewal would be measured from the day of the last ratification. In the present matter, there was no resolution presented and there was no ratification. The start date could only then be measured from the date of the declaration. The declaration was made on July 7, 2023. This would result in an expiration 90 days later, on October 5, 2023. We must also point out that the 90-day period is in violation of Cal. Govt. Code 8630.

The Declaration Expired for Non-renewal Under Cal. Gov. Code 8630.

Cal. Gov. Code 8630(e) clearly states: "The governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency."

Again, because LAAC 8.33 is poorly written and no resolution was presented as required, the 60-day period's starting point is ambiguous. However, the intent of Cal. Gov. Code 8630 is that the renewal would be measured from the day of the last ratification. In the present matter, there was no ratification. The start date could only then be measured from the date of the declaration. The declaration was made on July 7, 2023. This would result in an expiration 60 days later, on August 6, 2023.

Even if the 60-day period began immediately **after** the 30-day resolution period, despite the fact that there was no resolution presented, the declaration would have expired 60 days later - on October 5, 2023.

Inclusion of Public Records Requests, Linked Files.

We hereby include by reference the Public Records Requests and other documents listed on the [Fix The City web page](#) related to this Project as well as our previously submitted comments. We also include by reference those documents hyperlinked in this document. We also reserve the right to supplement the record as new information from already-issued public records requests is produced.

Conclusion

For each of the above reasons, you cannot vote on 22-1545. You cannot renew something which has expired and also is based on a fatally flawed section of the administrative code – LAAC 8.33.

Should the council pass this motion, Fix The City will be forced to amend its complaint to include this clearly unlawful act.

We must also point out that this item was agendaized late Friday for a Tuesday vote. This seems to be an intentional effort to reduce the number of stakeholders, including neighborhood councils, that have the ability to weigh in

Sincerely,



Fix The City.