



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 20 - 0316
NOV 19 2020

REPORT RE:

**DISCUSSION OF DRAFT ORDINANCE AMENDING LOS ANGELES MUNICIPAL
CODE SECTIONS 41.18 AND 56.11 TRANSMITTED TO COUNCIL
ON OCTOBER 26, 2020**

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. 20-1376

Honorable Members:

On October 21, 2020, seven Council members introduced a motion requesting my Office draft an ordinance to accomplish the following: (1) repeal the current version of Los Angeles Municipal Code (LAMC) Section 41.18 and replace it with an ordinance consistent with current City practice in enforcing Section 41.18 and the *Boise* decision; (2) allow the City Council, by resolution and after posting signage, to ban sitting, sleeping, or lying within up to 500 feet of designated freeway infrastructure, as well as any facilities opened after January 1, 2018, which provide housing, shelter, or services to people experiencing homelessness; (3) ban sitting, sleeping, or otherwise obstructing the public right-of-way that violates the American with Disabilities Act; and (4) align LAMC Section 56.11 with the new version of Section 41.18.

Given that Council members have begun efforts to house people experiencing homelessness near freeways, and in light of Judge Carter's imperative to relocate those residents soon, we provided a draft of the ordinance the following week.

The draft ordinance precipitated significant debate, reflecting potentially differing views among Council members as to the content of the motion and the ordinance. That discussion suggested the benefit of providing options for the Council to consider as it reaches consensus on policy goals.

There is broad agreement among City leadership to reject an “enforcement first” policy. I fully support an approach which recognizes that actual enforcement should be a very last resort, only after meaningful offers of shelter and services. However, even as crucial efforts are underway to provide urgently-needed housing and services, and to prevent homelessness in the first place, there will be occasions when the City requires a humane, lawful approach to assuring basic rules are followed on our streets and sidewalks.

This report offers the Council key options as it considers the draft ordinance and evaluates next steps. My Office is prepared to transmit an amended draft ordinance, if requested, when the Council establishes its policy goals.

LAMC Subsection 41.18(d) (prohibiting sleeping, lying, or sitting on a street, sidewalk, or public right-of-way):

Subsection 41.18(d), as it currently exists, does *not* require an offer of shelter before enforcement. The draft ordinance we previously transmitted included a requirement that the City offer shelter before taking any steps toward enforcement of Subsection 41.18(d). We believe that a pre-enforcement offer of appropriate and accessible shelter is consistent with best practices and important to assure compliance with the Ninth Circuit decision in *Boise*.

We also recommended that protocols around implementation and enforcement be developed *prior* to enforcement of Subsection 41.18(d). Whether to require such protocols and include that requirement in the ordinance itself are policy decisions for the Council. Should the Council determine to require protocols and include that requirement in the ordinance, the draft ordinance could be amended to add language along the following lines: *Before Subsection 41.18(d) is enforceable, the Council shall adopt protocols which establish: (1) parameters for what constitutes appropriate and accessible shelter; and (2) methods of implementing the ordinance in the field, including ensuring that offers of appropriate and accessible shelter are made prior to enforcement and what enforcement, as a last resort, would entail.*

We would not suggest similar protocols for Subsections 41.18(b) and (c). These subsections, especially if amended as discussed below, already contemplate at least two weeks of outreach efforts affording individuals ample opportunity to accept shelter or voluntarily comply by relocating — before enforcement is even allowable. Pre-enforcement protocols are more critical with regard to Subsection 41.18(d), which could

be utilized and enforced Citywide, outside of discrete, designated areas, potentially without the same level of previous intensive outreach and notice.

LAMC Subsections 41.18(b) and (c) (sitting, sleeping, lying in designated areas):

We would suggest the Council consider including language in the ordinance provisions related to designated areas (freeway infrastructure and housing and service sites) that would require that each resolution specify that the City had offered shelter to each person present in the area on a specified date two weeks prior to the Council's consideration of the resolution, and that temporary signs were posted advising that the location was being considered for designation as an area in which individuals would be precluded from lodging. Pursuant to this language, upon the adoption of the resolution, the City could limit the use of these areas for lodging, without relying on Subsection 41.18(d).

The draft ordinance contemplates extensive initial outreach to people experiencing homelessness, including providing individuals in the designated areas an offer of shelter, and, should they decline it, an opportunity to voluntarily relocate out of the designated area. The Council should consider whether the ordinance should allow individuals who later locate or relocate in a designated area added opportunities to voluntarily comply (i.e., by relocating out of the designated area) prior to enforcement. The more outreach, offers of housing and services, and/or opportunities for voluntary compliance, the more likely the ordinance could withstand legal challenge—however, such provisions could have an impact on the City's ability to ensure the area is not repopulated. As examples, here are three options the Council could consider:

1. Prior to enforcement, an individual shall have been provided at least one opportunity to relocate from the designated area in the past six months. This option would necessitate the ability to track when an individual is provided this opportunity to voluntarily comply.
2. On each occasion, prior to enforcement, an individual shall be provided an opportunity to voluntarily comply.
3. Not specify a voluntary compliance requirement in the ordinance--which would not preclude providing added opportunity for voluntary compliance through protocol or practice.

LAMC Subsection 56.11(i) (personnel property in designated areas):

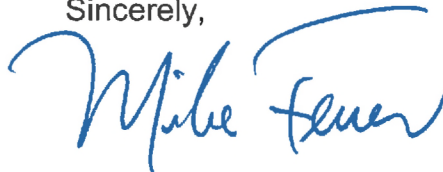
As with Subsections 41.18(c) and (d), the Council should consider whether to provide individuals who subsequently store personal property in a designated area added opportunity to voluntarily comply with Subsection 56.11(i) by allowing them reasonable time to relocate their personal property out of the designated area that is the

subject of a resolution under Section 41.18(b) or (c) prior to enforcement. While such a provision could have an impact on the City's ability to ensure that the designated area remains clear of personal property at all times, given the property rights involved, we recommend that an added opportunity for voluntary compliance be given. We suggest the Council consider one of the options discussed above (with respect to Subsections 41.18(b) and (c)):

1. Prior to enforcement, an individual shall have been provided at least one opportunity to remove their property from the designated area in the past six months. This option would necessitate the ability to track when an individual is provided this opportunity to voluntarily comply.
2. On each occasion, prior to enforcement, an individual shall be provided an opportunity to voluntarily comply.

If you have any questions regarding this matter, please contact Senior Assistant City Attorney Valerie Flores at (213) 978-8130. She or another member of my Office will be available when you consider this matter to answer questions you may have.

Sincerely,



MICHAEL N. FEUER
Los Angeles City Attorney

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