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CITY ATTORNEY

REPORT NO. R 21 - 0087
MAR 10 2021

REPORT RE:

**DRAFT ORDINANCE AMENDING SECTIONS 12.03, 12.21, 12.26, 14.4.2, AND
98.0402 OF THE LOS ANGELES MUNICIPAL CODE TO ESTABLISH
OPERATIONAL, AESTHETIC, AND MAINTENANCE REGULATIONS FOR
COLLECTION BINS**

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. 14-0611

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The ordinance would amend Sections 12.03, 12.21, 12.26, 14.4.2, and 98.0402 of the Los Angeles Municipal Code to establish operational, aesthetic, and maintenance regulations for collection bins.¹

Background

On May 9, 2014, a motion was introduced before the City Council (Price-Buscaino) requesting the City Attorney, in consultation with the Department of Building and Safety (DBS), to prepare and present an ordinance regulating unattended collection bins.

¹ "Collection bins" (sometimes referred to as "donation bins") are receptacles for salvageable personal property — such as clothing, shoes, books, or housewares — which are deposited in the bins and then typically resold for profit or to raise funds for charitable causes.

Following introduction of the motion, work on the ordinance was put on hold for an extended period in part due to pending federal court litigation over the City of Oakland's collection bin ordinance on which the City's ordinance is partially based. In May 2017, the Ninth Circuit Court of Appeals upheld Oakland's ordinance on First and Fourteenth Amendment grounds and work on the City's ordinance resumed.

In November 2017, following preparation of an initial draft ordinance by this office and discussions with DBS, the Department of City Planning released a draft of the ordinance to the public. On December 21, 2017, the City Planning Commission (CPC) considered the draft ordinance and recommended its adoption to the City Council.

On January 29, 2019, the Planning and Land Use Management (PLUM) Committee considered the CPC's recommendations and the draft ordinance, and recommended that the City Council request the City Attorney to prepare and present a revised ordinance containing additional provisions to require: removal of collection bins in a timely manner; posting of a schedule of pick up times on every bin; providing a copy of each collection bin permit application to the applicable Council office; and a penalty that property owners lose the ability to have collection bins on their property if multiple violations of the collection bin regulations have occurred. The PLUM Committee further recommended that the City Council instruct the Department of Public Works (DPW) to report back on bin removals on public property; how to ensure that fees and/or fines cover the high cost of removal of illegal bins in the public right-of-way; and reducing the time the City is required to hold a bin that has been removed from a public right-of-way before it can be destroyed.

On February 20, 2019, the City Council adopted the PLUM Committee's report and recommendations.

Summary of Ordinance Provisions

The PLUM Committee's transmittal report to the City Council, dated January 29, 2019, includes the Planning Department's staff report, which provides a detailed description of the LAMC amendments contained in the draft ordinance. Generally, the draft ordinance establishes operational, aesthetic, and maintenance regulations for collection bins located on private property. Currently no City regulations exist which, according to the Planning Department, has led to lack of regular maintenance or monitoring of the bins, overflow of donations, unauthorized access of donations, illegal dumping of trash, pests, vermin, and other nuisance, health, and safety problems. The draft ordinance addresses those issues by instituting a collection bin permit program, ensuring information about collection bin operators is publicly available and easily accessible, providing for annual inspections of bins by DBS, and establishing penalties for violations of the proposed regulations including but not limited to removal of bins.

The draft ordinance does not address collection bins located in the public right-of-way as such placement is already strictly prohibited under existing law, including but not limited to LAMC Sections 56.08 (regarding sidewalks, streets, and obstructions thereof), 56.11 (regarding storage of personal property), and 56.12 (regarding obstructions on streets and sidewalks). These regulations are enforced by DPW, Bureau of Street Services, and will be more fully addressed in a separate report on this matter by DPW.

With respect to the additional changes to the draft ordinance that the City Council requested this Office to prepare on February 20, 2019, the draft ordinance adds LAMC Section 12.21 A.23(f)(vii) to require that the pick-up schedule for a collection bin be posted on the exterior of the bin. The draft ordinance also adds LAMC Section 12.21 A.23(g) to require that each collection bin be emptied in accordance with the posted pick-up schedule and that the surrounding area be maintained free of overflow of donated items, litter, debris, dumped materials, posted bills, and graffiti at all times.

The remaining two provisions that the City Council requested are as follows: the draft ordinance adds LAMC Section 12.21 A.23(e) directing DBS to forward a copy of each building permit application for a collection bin to the City Council office for the Council District in which the collection bin will be contained; and the draft ordinance further amends LAMC Section 12.26 F.4 to authorize revocation of a collection bin building permit for violations of the building permit regulations, including permanent revocation for multiple violations.

Finally, the draft ordinance makes minor formatting changes to LAMC Section 98.0402(e) for clarity. The draft ordinance also updates LAMC Section 98.0402(f)(2) by changing the word “fee” to “fine” in order to ensure internal consistency within that section and with other LAMC sections, and avoid confusion over potential differences in the legal definitions of “fees” and “fines”. The draft ordinance relies on DBS’s current enforcement powers, set forth in LAMC Section 98.0402(f), to address repeat violations of the proposed collection bin regulations. However, the City Council has the option of revising the draft ordinance to instead utilize the Administrative Citation Enforcement program set forth in LAMC Section 11.02.01 – 11.2.13 for that purpose, which may result in an a more efficient enforcement process with all fines being collected by the City.

California Environmental Quality Act (CEQA)

The Department of City Planning recommends that the City Council, based on the whole of the administrative record, determine that the draft ordinance is exempt from the California Environmental Quality Act (CEQA) under California Public Resources Code Sections 15303 (categorical exemption for construction or conversion of small structures), 15308 (categorical exemption for protection of the environment), and 15311 (categorical exemption for accessory structures).

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.

Charter Findings Required

Charter Section 558(b)(3) requires the City 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 City Council to adopt an ordinance conforming to the CPC's recommendation of approval of the ordinance, if the CPC recommends such approval. Similarly, Charter Section 556 requires the City 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, or make its own.

Council Rule 38 Referral

Copies of the draft ordinance were sent, pursuant to Council Rule 38, to the Department of Building and Safety and the Department of Public Works with a request that all comments be presented 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 Len Aslanian at (213) 978-8195. He or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

DM:LA:mgm
Transmittal