

MOTION

Tues Jun 29

There is an urgent need for the City of Los Angeles to adopt new laws regulating the use of shared public spaces. In 2016, the City Council adopted an ordinance amending LAMC 56.11, removing nearly all criminal penalties for blocking sidewalks, exceeding the 60-gallon limit on the storage of personal property, and building unsafe, unpermitted structures on the public right of way. This complete lack of rules and order has resulted in blocked sidewalks, encampment fires that frequently damage adjacent buildings and increases in both property and violent crime in the neighborhoods where encampments are located.

Currently pending in the Homelessness & Poverty Committee is a City Attorney report and Ordinance relative to specifying the particular times and locations where it shall be unlawful for a person to sit, lie, or sleep on public property. The draft ordinance also would amend Section 56.11 of the LAMC, which deals with storage of personal property in public areas, to align Section 56.11 with Section 41.18 and to note the suspension of two subdivisions in Section 56.11 pending the outcome of litigation relating to those subdivisions. (CF 20-1376).

The matter has been pending in Committee since November 30, 2020

Action is needed to withdraw this matter and place it before the Council for consideration and disposition.

I THEREFORE MOVE that pursuant to Rule 54 of the Rules of the City Council, the matter of the COMMUNICATION FROM THE CITY ATTORNEY and ORDINANCE FIRST CONSIDERATION,) relative to amending Los Angeles Municipal Code (LAMC) Section 41.18 to specify the particular times at which and the particular locations where it shall be unlawful for a person to sit, lie, or sleep upon public property, and amending LAMC Section 56.11 to align with Section 41.18, (CF 20-1376), currently pending in the Homelessness & Poverty Committee, BE WITHDRAWN from committee (8 votes required) and placed before the City Council for consideration. [A copy of the documents pending in Committee is attached].

I FURTHER MOVE that the Council thereupon present and adopt the draft ordinance, dated October 26, 2020



JUN 23 2021

PRESENTED BY:

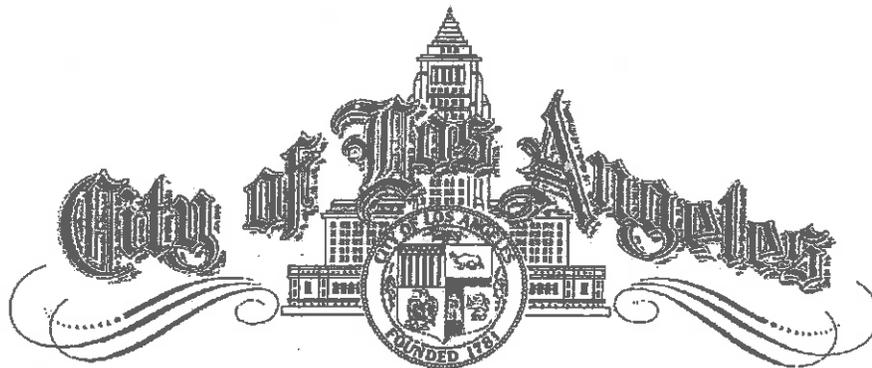


JOE BUSCAINO
Councilmember, 15th District

SECONDED BY:



ORIGINAL



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 20 - 0 3 0 6

REPORT RE:

OCT 26 2020

DRAFT ORDINANCE AMENDING SECTION 41.18 OF THE LOS ANGELES MUNICIPAL CODE TO SPECIFY THE PARTICULAR TIMES AND LOCATIONS WHERE IT SHALL BE UNLAWFUL FOR A PERSON TO SIT, LIE, OR SLEEP ON PUBLIC PROPERTY, AND AMENDING SECTION 56.11 OF THE LOS ANGELES MUNICIPAL CODE TO ALIGN SECTION 56.11 WITH SECTION 41.18 AND TO NOTE THE SUSPENSION OF TWO SUBDIVISIONS IN SECTION 56.11 PENDING THE OUTCOME OF LITIGATION RELATING TO THOSE SUBDIVISIONS

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:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality.¹ The draft ordinance would amend Section 41.18 of the Los Angeles Municipal Code (LAMC) to specify the particular times and locations where it shall be unlawful for a person to sit, lie, or sleep on public property. The draft ordinance also would amend Section 56.11 of the LAMC, which deals with storage of personal property in public areas, to align Section 56.11 with Section 41.18 and to note the suspension of two subdivisions in Section 56.11 pending the outcome of litigation relating to those subdivisions.

¹ Council Members are referred to confidential Report No. R20-0284, dated October 15, 2020 issued by our office when considering the draft ordinance.

The determination of what conduct is subject to criminal enforcement is one of policy for the Council. In preparing the draft ordinance, based on the motion introduced by Councilmember Blumenfield, we maintained the criminal enforcement structure of the current Sections 41.18 and 56.11, except as specified herein.

Summary of Changes to LAMC Section 41.18

The draft ordinance would make several changes to LAMC Section 41.18. Specifically, the draft ordinance would repeal Subsections (b) and (c) and restructure and amend the remaining subsections consistent with the discussion in confidential Report No. R18-0310, dated October 10, 2018.

The amendment to LAMC Section 41.18 contains four distinct subsections:

Subsection (a) addresses obstruction of the public right-of-way by (1) banning sitting, lying, sleeping, or placing personal property on pedestrian rights-of-way in a manner that would not allow for passage under the Americans with Disabilities Act (ADA), and (2) banning sitting, lying, sleeping, or placing personal property within 10 feet of any operational and utilizable entrance, exit, driveway, or loading dock.

Subsection (b) would authorize the Council, by resolution and posting of signage, to ban sitting, lying, sleeping, or placing of personal property within up to 500 feet of a facility opened after January 1, 2018, providing housing, shelter, supportive services, safe parking, or storage to homeless persons, upon findings that the ban serves the public health, safety, or welfare.

Subsection (c) would authorize the Council, by resolution and posting of signage, to ban sitting, lying, sleeping, or placing of personal property within up to 500 feet of a freeway overpass, underpass, ramp, tunnel, or pedestrian subway, upon findings that the ban serves the public health, safety, or welfare.

Subsection (d) would allow the City to enforce a ban on sitting, lying, or sleeping in any public area -- Citywide -- provided that an offer of shelter is provided before enforcement occurs.

The Council motion requested that we address these scenarios in the replacement for Section 41.18. As Section 41.18 has always been subject to criminal enforcement, the draft ordinance provides that violations of LAMC Section 41.18 would be enforceable as provided in Section 11.00 of the LAMC, including misdemeanor prosecution, infraction or referral to an appropriate prosecutorial-led diversion program.

To ensure effective and appropriate implementation of the new version of Section 41.18, this Office recommends that a working group comprised of all involved City and other agencies be convened to define the role of each agency, assure seamless

communication and coordination among the agencies, and develop implementation and enforcement protocols that are sensitive to the specific needs and circumstances of homeless individuals. This is critical not only to advance these objectives, but to assure that the ordinance is applied in a manner that can survive judicial scrutiny.

Summary of Changes to LAMC Section 56.11

While Section 41.18 focuses on when and where individuals may lodge, Section 56.11 regulates where and how people may store their personal property in public spaces. The draft ordinance would amend LAMC Section 56.11 to align with the new provisions of LAMC Section 41.18. Specifically, the draft ordinance would add a new subsection (j) to ban the storage of personal property in any area where, pursuant to the new version of LAMC Section 41.18, Council bans sitting, lying or sleeping-- namely, within up to 500 feet of any designated facility serving homeless persons or a designated freeway overpass, underpass, ramp, tunnel or pedestrian subway. Former Subsection (j) (which allows the City to limit the amount of personal property stored near homeless storage facilities opened after January 1, 2018) is deleted as superfluous, given that the Council would be able to designate an area adjacent to a homeless storage facility opened after January 1, 2018, as an area where *no* personal property may be stored.

The draft ordinance also leaves intact the Bulky Item provisions, Subsections 3(i) and 10(d), but notes that enforcement of these provisions is suspended pending the outcome of the *Garcia* litigation.

Lastly, as the Council motion requested us to align Section 56.11 with the replacement version of Section 41.18, the draft ordinance provides consistency in enforcement between the two Sections. Specifically, Section 56.11 now would provide that the storage of personal property that blocks ADA passage, entrances, exits, driveways or loading docks, or the storage of personal property near a designated homeless facility or freeway infrastructure would be enforceable as provided in LAMC Section 11.00, including misdemeanor prosecution, infraction or referral to an appropriate prosecutorial-led diversion program.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Los Angeles Police Department and the Bureau of Sanitation with a request that all comments, if any, be presented directly to the City Council when this matter is considered.

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 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:VF:ac
Transmittal

ORDINANCE NO. _____

An ordinance amending Section 41.18 of the Los Angeles Municipal Code (LAMC) to specify the particular times and locations where it shall be unlawful for a person to sit, lie, or sleep on public property, and amending Section 56.11 of the LAMC to align Section 56.11 with LAMC Section 41.18 and to note the suspension of two subdivisions in Section 56.11 pending the outcome of the judicial appeal relating to those subdivisions.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 41.18 of the Los Angeles Municipal Code is amended in its entirety to read as follows:

SEC. 41.18. SITTING, LYING, AND SLEEPING IN PUBLIC AREAS.

(a) At no time shall any person obstruct a street, sidewalk or other public right-of-way open for pedestrian travel:

(1) by sitting, lying or sleeping, or by storing, using, maintaining or placing personal property in a manner that does not allow for passage as required by the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990), as amended from time to time; or

(2) by sitting, lying or sleeping, or by storing, using, maintaining or placing personal property within ten feet of any operational or utilizable entrance, exit, driveway, or loading dock.

(b) Upon resolution adopted by the City Council and posting of signage, at no time shall any person sit, lie, sleep or store, use, maintain, or place personal property in or upon any street, sidewalk, public right-of-way, or public property within the radius specified in the resolution (up to a maximum of 500 feet) of a designated facility, opened after January 1, 2018, that provides housing shelter, supportive services, safe parking, or storage to homeless persons where the City Council determines that the public health, safety, or welfare is served by the prohibition, including without limitation by finding that public lodging and storage of personal property adjacent to the designated facility is incompatible with the best interests of the facility, its occupants or users, or neighboring uses.

(c) Upon resolution adopted by the City Council and the posting of signage, at no time shall any person sit, lie, sleep or store, use, maintain, or place personal property in or upon any street, sidewalk, public right-of-way, or public property within the radius specified in the resolution (up to a maximum of 500 feet) of a designated freeway overpass, underpass, ramp, tunnel, or pedestrian subway where the City Council determines that the public health, safety, or welfare is served by the prohibition,

including without limitation by finding that lodging unsheltered, in tents, or in makeshift shelters and storage of personal property near freeways is unsafe or incompatible with the critical route provided by the designated infrastructure.

(d) At no time shall any person who has been offered shelter sit, lie or sleep in or upon any street, sidewalk, or other public right-of-way, or publicly owned property.

Violations of this section may be eligible for referral to any applicable prosecutorial-led diversion program.

Sec. 2. Subsection 56.11.3(i) of the Los Angeles Municipal Code is amended to read as follows:

(i) No Person shall Store any Bulky Item in a Public Area. Without prior notice, the City may remove and may discard any Bulky Item, whether Attended or Unattended, Stored in a Public Area unless the Bulky Item is designed to be used as a shelter. For any Bulky Item that is designed to be used as a shelter but does not constitute a Tent as defined in Subsection 2(q), with pre-removal notice as specified in Subsection 4(a), the City may remove and discard the Bulky Item, whether Attended or Unattended. If the Bulky Item violates Subsection 3(d)-(h) herein, even if it is designed to be used as a shelter, without prior notice, the City may remove and discard the Bulky Item, whether Attended or Unattended.

Note: Enforcement of this subdivision is currently suspended, pending the outcome of the City's appeal of the preliminary injunction issued in the case entitled *Garcia v. City of Los Angeles*, United States District Court, Central District of California, case number 2:19-cv-06182-DSF-PLA.

Sec. 3. Subsection 3(j) of Section 56.11 of the Los Angeles Municipal Code is amended to read as follows:

(j) No Person shall Store any Personal Property in any area designated by resolution adopted by the City Council and upon which signage has been posted pursuant to Los Angeles Municipal Code Section 41.18(b) or (c) as an area where at no time shall any person sit, lie, sleep, or Store, use, maintain, or place Personal Property in or upon any Street, Sidewalk, public right-of-way, or public property. Without the prior notice specified in Subsection 4(a), the City may impound Personal Property Stored in violation of this subsection. Post-removal notice shall be provided as set forth in Subsection 4(b), below.

Sec. 4. Subsection 10 of Section 56.11 of the Los Angeles Municipal Code is amended to read as follows:

10. Unlawful Conduct.

Los Angeles Municipal Code Section 11.00 shall not apply to violations of this section except as follows:

(a) No Person shall willfully resist, delay, or obstruct a City employee from moving, removing, impounding, or discarding Personal Property Stored in a Public Area in violation of Subsections 3(a), (b), (c), (f), (g), or (h).

(b) No Person shall refuse to take down, fold, deconstruct or put away any Tent that exists in its configured or erected state between the hours of 6:00 a.m. and 9:00 p.m., in violation of Subsection 7, or willfully resist, delay, or obstruct a City employee from taking down, folding, deconstructing, putting away, moving, removing, impounding, or discarding the Tent, including by refusing to retreat from the Tent.

(c) No Person shall refuse to remove any barrier, string, wire, rope, chain, or other attachment that violates Subsection 8, or willfully resist, delay, or obstruct a City employee from deconstructing, taking down, moving, removing, impounding, or discarding the barrier, string, wire, rope chain, or other attachment, including by refusing to vacate or retreat from an obscured area created by the attachment.

(d) No Person shall willfully resist, delay or obstruct a City employee from removing or discarding a Bulky Item Stored in violation of Subsection 3(i), including by refusing to vacate or retreat from within the Bulky Item or from an obscured area created by the Bulky Item.

Note: Enforcement of this subdivision is currently suspended, pending the outcome of the City's appeal of the preliminary injunction issued in the case entitled *Garcia v. City of Los Angeles*, United States District Court, Central District of California, case number 2:19-cv-06182-DSF-PLA.

(e) A violation of Subsection 3(d), prohibiting Storage of Personal Property in a manner that does not allow for passage as required by the ADA.

(f) A violation of Subsection 3(e), prohibiting Storage of Personal Property within ten feet of any operational and utilizable entrance, exit, driveway or loading dock.

(g) A violation of Subsection 3(j), prohibiting Storage of Personal Property within any area designated by City Council resolution and posting of signage as an area where the public health, safety or welfare is served by the prohibition of sitting, lying, sleeping or the Storage of Personal Property.

- (h) A violation of Subsection 9, prohibiting illegal dumping.

Violations of Section 56.11 may be eligible for referral to any applicable prosecutorial-led diversion program.

Sec. 5. Urgency Clause: The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reasons: The City has declared a shelter emergency and a massive effort is underway to increase the availability of new housing and shelter for the City's homeless residents. In order to ensure the success of the effort to site, construct, and encourage sheltering of homeless residents and to lawfully meet the priority established by a United States District Court, the City needs to amend the laws used to help meet those goals. The City also must immediately strengthen its laws that promote accessible public rights-of-way under the Americans with Disabilities Act. For all of these reasons, the ordinance shall become effective upon publication pursuant to Los Angeles City Charter Section 253.

Sec. 6. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality.

MICHAEL N. FEUER, City Attorney

By 
VALERIE L. FLORES
Senior Assistant City Attorney

Date 10-26-2020

File No. 20-1376

M:\GENERAL COUNSEL DIVISION\ORDINANCES AND REPORTS\ORDINANCES - FINAL YELLOW\LAMC 41.18 and 56.11 (10.26.20).docx

The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than three-fourths of all its members.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____