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TO: Honorable Mayor Napolitano and Members of the City Council
FROM: George Gabriel, Senior Management Analyst
SUBJECT: November 6, 2018 City Council Meeting, Agenda Item 13
DATE: November 5, 2018

SUPPLEMENTAL REPORT

BACKGROUND

Agenda Item 13 on the November 6, 2018 City Council agenda is consideration of two separate grants related to homelessness. One of the grants is a state grant for \$500 million in one-time funding to address homelessness through the Homeless Emergency Aid Program (HEAP). As a requirement to be eligible for HEAP grant funds, local jurisdictions must adopt a Resolution Declaring a "Shelter Crisis." Community members have posed the following questions as to whether, by adopting the Declaration,

- Will the City be obligated to construct homeless shelters?
- Will the City be obligated to allow homeless to occupy city facilities?
- Will the City's recent camping ordinance be suspended?

The short answer to each question is "No." The City Council is considering the Declaration in order to be eligible for HEAP grant funds. The state statute is clear that a local jurisdiction is not obligated to construct homeless shelters or allow homeless to occupy city facilities. The statute states that the jurisdiction "may" allow homeless to occupy public facilities, but there is no obligation to do so. In connection with allowing homeless to occupy public facilities, the jurisdiction shall "suspend" or relax ordinances and regulations "prescribing standards of housing, health, or safety ... to the extent that strict compliance [with those ordinances] would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis." This portion of the statute is designed to allow local jurisdictions to temporarily suspend building and safety standards so that homeless can occupy facilities that are not designed for human occupation. The statute is not intended to affect other provisions, such as the City's camping ordinance.

DISCUSSION

The State of California has adopted state statutes to address homelessness, and, as part of its Fiscal Year 2018-19 State Budget, authorized \$500 million in one-time funding to address homelessness through the Homeless Emergency Aid Program (HEAP). As a

requirement to be eligible for HEAP grant funds, the state is requiring local jurisdictions to adopt a Resolution Declaring a “Shelter Crisis.”

California Government Code Section 8698.2 provides:

“(a) (1) The governing body may declare a shelter crisis, and may take such action as is necessary to carry out the provisions of this chapter, upon a finding by that governing body that a significant number of persons within the jurisdiction of the governing body are without the ability to obtain shelter, and that the situation has resulted in a threat to the health and safety of those persons.”

(2) For purposes of this chapter, the governing body of the state, in making a declaration of a shelter crisis pursuant to paragraph (1), may limit that declaration to any geographical portion of the state.

(b) Upon a declaration of a shelter crisis pursuant to subdivision (a), the political subdivision may allow persons unable to obtain housing to occupy designated public facilities during the duration of the state of emergency.”

California Government Code Section 8698.1 provides that: (1) upon declaring a shelter crisis; (2) making the findings required by Section 8698.2(a)(1) underscored above; and (3) allowing homeless to occupy a public facility during the duration of the emergency in accordance with Section 8698.2(b), a local jurisdiction shall be immune from liability for ordinary negligence and shall suspend any ordinance or regulation “prescribing standards of housing, health, or safety to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis”:

“Upon a declaration of a shelter crisis, the following provisions shall apply during the period of the emergency.

(a) The political subdivision shall be immune from liability for ordinary negligence in the provision of emergency housing pursuant to Section 8698.2. This limitation of liability shall apply only to conditions, acts, or omissions directly related to, and which would not occur but for, the provision of emergency housing. This section does not limit liability for grossly negligent, reckless, or intentional conduct which causes injury.

(b) The provisions of any state or local regulatory statute, regulation, or ordinance prescribing standards of housing, health, or safety shall be suspended to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis. Political subdivisions may, in place of such standards, enact municipal health and safety standards to be operative during the housing emergency consistent with ensuring minimal public health and safety. The provisions of this

section apply only to additional public facilities open to the homeless pursuant to this chapter.”

Accordingly, a local jurisdiction that makes the declaration may allow those without shelter to temporarily occupy public facilities. Any regulation or ordinance prescribing standards of housing, health, or safety that would hinder the ability of the jurisdiction to provide such emergency shelter in a public facility shall be suspended. This would include any building and safety regulation that would require construction to adapt the facility for human occupancy, but would not include the City’s camping ordinance, which is neither an ordinance prescribing standards of housing, health, or safety or a hindrance in the City’s ability to offer temporary shelter, if the City so chooses.

In October, Sacramento County declared a shelter crisis in order to be eligible for the HEAP finds. According to the Sacramento Bee article linked below, the County counted 3665 persons “living on the streets” in 2017. According to a survey done in 2018, Manhattan Beach has 41 homeless persons.

<https://www.sacbee.com/news/local/homeless/article220066220.html>

If the Council adopts the Declaration, staff, with the assistance of the Homeless Task force, will carefully review the terms and conditions of the grant application. If LAHSA attempts to impose conditions that exceed the terms of the statute, staff will seek direction from the Council prior to applying for the grant, which could include not applying for the grant.

CONCLUSION

By adopting the Declaration, the City will not be obligated (1) to construct shelters or (2) allow homeless to occupy public facilities. As stated in the staff report, "under the terms of the state statute governing the grant program, approving the Resolution as a condition to be eligible to seek grant funds does not obligate the City to construct shelters or allow homeless to occupy public facilities."

Section 8698.2 authorizes a jurisdiction that has declared a shelter crisis to "allow persons unable to obtain housing to occupy designated public facilities during the duration of the state of emergency." Subsection 8698.1(b) (above) mandates that the jurisdiction shall suspend building codes or other safety regulations at public facilities, if compliance with those standards would prevent the jurisdiction from using those public sites for homeless shelters. Subsection 8698.1(b) does not provide the City with authority to relax building code or other safety regulations for any shelters on private property. In addition, the camping ordinance, while it relates to housing, health, and safety, does not include or "prescribe" standards of housing, health, or safety. In sum, 8698.1(b) adoption of the Declaration would not suspend the camping ordinance.