



April 3, 2015

Honorable Jim Beall
Chairman, Transportation and Housing Committee
California State Senate
State Capitol
Sacramento, California

RE: SB 608 (Liu) Sponsor and Support – Response to League of Cities Opposition

Dear Senator Beall,

We are writing concerning SB 608: The California Right To Rest Act authored by Senator Carol Liu and co-sponsored by our organizations which is scheduled to be heard in Senate Transportation and Housing Committee on Tuesday April 7, 2015.

Specifically, we are writing in response to the formal opposition letter submitted by the League of California Cities this week. You should have already received a copy of our sponsor and support letter earlier this week. It should also be noted that, despite the invitation to meet with the League on several occasions by our lobbyist at the Western Center on Law and Poverty, we were not given the respect of an advanced conversation or opportunity to discuss their concerns prior to the date of this letter. We have been responsive to every request for information, materials and conversation made by the League.

League's Opposition to SB 608 Is Consistent with History of Support for Civil Rights Abuses

The League of California Cities has an unfortunate history of being on the wrong side of civil and human rights history in some critical times in our past and their opposition to SB 608 continues this historical pattern. SB 608 asserts the rights of every Californian to rest, sleep, share food, and pray in public human rights asserted by the United Nations.¹ Not only are the growing numbers of municipal laws allowing for the citation and arrest of someone for sitting and sharing food² reminiscent of California's historical hospitableness to Jim Crow , Chinese Exclusion, Japanese Internment and Sun-Down Town municipal laws of the past, the endorsement of these policies by cities and the League of California Cities is eerily similar. Examples include:

“Any person who is diseased, maimed, mutilated, or in any way de-formed so as to be an unsightly or disgusting object, or an improper person is not to be allowed in or on the streets, highways, thoroughfares or public places in the City and County of San Francisco. Any person who shall violate the provisions of this section shall be deemed guilty of ii misdemeanor; and on conviction thereof, shall be punished by a line not exceeding twenty-

¹ A letter from the Office of the United Nations High Commissioner of Human Rights to Mayor Kevin Johnson, available at: <http://www.scribd.com/doc/80310395/Letter-to-Mayor-Johnson-from-UN> - of sleep deprivation as torture for those too poor to afford housing would create social disorder and undermine the comfort and safety of their housed counterparts. Also see: <http://www.theguardian.com/law/2014/nov/28/un-condemns-sleep-deprivation-among-us-detainees>

² Research from UC Berkeley Law: http://wraphome.org/?p=4042&option=com_wordpress&Itemid=119

five dollars, or by imprisonment in the county jail not exceeding twenty-five days, or by both such fine and imprisonment.”³

In 1942, The League of California Cities sent a letter to all of its members urging them to pass resolutions declaring that local Japanese hampered defense of the area and that the federal government's removal and incarceration of Japanese aliens proved that they were dangerous and urging that the “alien Japanese and their families” be moved 100 miles inland.⁴

In the 1930's the Civilian Conservation Corps tried to locate a company of African-American workers in a large park that bordered Burbank and Glendale. Both cities refused them, each citing an old ordinance that prohibited African Americans within their city limits after sundown. It was in these same communities where Mayors would did not allow the 1958 “Miss Crown City” to ride in Rose Bowl Parade because she was black. ⁵

In the early 1900's mayors and city council members from throughout California gathered for the Chinese Exclusion Convention in order to urge the banishment of Chinese Americans who were called, in the document emanating from the convention, “an economic blight and danger to America.”⁶

League's Opposition to SB 608 Full of Mischaracterizations of Bill's Impact

The League's letter opposing SB 608 falls on the same kinds of scare tactics used throughout the last century to ban certain “undesirables” who were deemed to be an “economic blight” or danger on the street. But their opposition is also riddled with several mischaracterization of what the bill would require. These include:

(A). The League argues that SB 608 is a special set of exemptions, privileges and rights for the homeless. *This is very clearly not the case. SB 608 establishes that everyone, regardless of housing status (exact language in the bill) shall be protected from citation, harassment or arrest. The protections in the bill DO apply equally. Not only will homeless persons be protected by harassment by law enforcement, private security, or BIDS when this infringes on the right to rest, so will people with housing who may also need to rest in public - such as children, the elderly, persons of color or day laborers who are more likely to be targeted for being in public space, etc. Law enforcement or security personnel should not act in a way that "a reasonable person would consider alarming, threatening, tormenting or terrorizing" to anyone, homeless or housed. If a homeless person behaves in ways that are threatening, there are still laws and tools available to cities and law enforcement should they need to intervene.*⁷

(B) The League argues that SB 608 expansively defines “Homeless Person.” *This statement shows the League's lack of sincerity in understanding current law impacting their homeless residents. SB 608 adopts existing federal definitions.*

³ San Francisco, California, The General Orders of the Board of Supervisors, City and County of S.F., Ord. 783 (1869).

⁴ Source: La Mesa City Council Minutes, February 10, 1942

⁵ <http://www.pasadenastarnews.com/lifestyle/20141227/rose-parade-2015-woman-to-ride-float-60-years-after-she-was-denied-because-of-african-american-heritage>

⁶ <https://www.lib.washington.edu/subject/History/BI/hstaa230/ss.pdf>

⁷ Establishes a right to move freely in public spaces without time limitations based upon housing status. (Page 6, lines, 28-30.) Such a change would give anyone meeting the definitions in SB 608 an exemption from time, place and manner" laws and regulations that apply to all others. Also, the bill allows the right to rest in public spaces and protect oneself from the elements. (Page 6, lines 31-32). Collectively, these provisions appear to allow a homeless person to live in any public space for as long as they wish.

(C) The League argues that SB 608 repeals language in existing law that clarifies this anti-trespassing law applies to both public and private property. (Page 7, Lines 35-39.) *The League misinterprets this section of the bill. First, this bill does not impact private property rights. Penal Code section 647e is not a trespassing law; those laws prohibiting entrance on private property remain in full force. (See, e.g., Penal Code 602.) Second, these changes are consistent with existing case law and do not create special rights for homeless people. The amendment to the existing lodging law merely clarifies that it does not apply to the right to rest, and cannot be discriminatorily enforced. ("This subdivision does not apply to conduct that is protected pursuant to Section 53.81 of the Civil Code and cannot be discriminatorily enforced.") The lodging law has already been interpreted in many courts as not applicable to people who are simply sitting or sleeping. (See Attachment.) This clarification is needed to make court rulings consistent across the state, and establish that section 647e should not be interpreted to make resting a criminal offense.*

(D) The League suggests that decriminalizing the non-criminal act of rest is radical and removes their capacity to respond to homelessness. *The Federal government, through the US Interagency Council on Homelessness has asserted, in the first-ever Federal strategic plan prevent and end homelessness, that the creation of housing, the provision of supportive services, the promotion of economic security for homeless people, and the reduction of the criminalization of homelessness by municipalities as key themes in their Federal strategic plan to end homelessness. To quote directly from the plan, "People living on the streets, in cars, or staying in emergency shelters are often ticketed or arrested for activities that may be necessary for survival on the streets. As a result, they end up with a long list of violations that can become a barrier to employment or securing an apartment. Local communities have adopted a range of ordinances in response to citizen and business concerns about panhandling, loitering, and camping on public land. Criminalizing acts of survival is not a solution to homelessness and results in unnecessary public costs for police, courts, and jails. Development of alternative approaches should meet both the public's need for access to public streets, parks, and recreation areas and the ability of people experiencing homelessness to meet basic needs."⁸ SB 608 is that balanced alternative approach - it decriminalizes only the innocent behavior of sitting, lying down, praying, sharing food, or sleeping in public space without obstructing passage and does not undercut reasonable time, place, and manner restrictions.*

League's Critique of SB 608 Public Space Definition Is Flawed and Clarifying Amendments will be Taken in Committee

The League critiques SB 608's definition of "public space" suggests for being too broad. Though their letter incorrectly asserts that the bill would include property with an easement for public use including shopping centers and locations privately owned, they are correct that the bill as introduced would apply to public spaces even when that space is closed to the public during certain hours or requires a fee for entry or use. Senator Liu has agreed to the committee's recommendation to clarify this language and they will be taken coming out of committee. With these changes, it will be clear that SB 608's definition of public space does NOT undercut any laws that close, regulate, or manage these public spaces currently - these regulations will still apply to all Californians, including homeless Californians.

League Goes All Out - Warning Legislature of Doomsday Impact of Intent Language

⁸ United States Interagency Council on Homelessness, Opening Doors: Federal Strategic Plan to Prevent and End Homelessness. 2010. Available at http://usich.gov/opening_doors/the_plan/

The League's letter warns that, if enacted, the intent language on page six, that "civil and human rights that are amply protected in the home and in other private places be extended to the public areas in which homeless persons live" could undermine, "the right to protect one's "home" under the Second Amendment with a firearm (D. C v. Heller, 554 US 570), and raise questions about the ability to enforce other laws which regulate behavior in public as opposed to the home." The language merely explains the intent of the legislation to ensure that people experiencing homelessness have equal ability to exercise fundamental rights that people with housing take for granted – such as a place to rest without fear of harassment.⁹ SB 608 only extends those rights specifically enumerated in the bill and, of course do not include expanded firearm use in public.

League is Opposed to Fine For Breaking Law if Found to Harass a Member of Public

The League states concern that the bill would protect against "harassment" conducted by law enforcement, public or private security personnel, or a business improvement district (BID) agent that "a reasonable person would consider alarming, threatening, tormenting or terrorizing." They state, "This provision does not apply equally. Besides having a chilling effect on those who are charged with enforcing laws and protecting private property, this definition does not apply should the same conduct by a homeless person have such effects on other members of the public."

They are wrong. The protections in the bill DO apply equally. Not only will homeless persons be protected by harassment by law enforcement, private security, or BIDS when this infringes on the right to rest, so will people with housing who may also need to rest in public – such as children, the elderly, persons of color or day laborers who are more likely to be targeted for being in public space., etc. Law enforcement or security personnel should not act in a way that "a reasonable person would consider alarming, threatening, tormenting or terrorizing" to anyone, homeless or housed.

Additionally, the assertion that the definition should apply to "the same conduct by a homeless person," is offensive considering the very vulnerable reality of people who are homeless and underscores how out-of-touch the lobbyists for the League are with current law impacting this population. If a homeless person, or any person for that matter, behaves in a threatening or alarming way in public space, there are many existing still laws on the books that give permission for cities agents and law enforcement to intervene and none of these would be impacted by SB 608. In fact, if law enforcement has asked for increased authority to limit acts of rest and sharing of food in public space, there is no evidence of this request.

League's Opposition to SB 608 Scapegoats Federal & State Decision Makers

The League's letter opposing SB 608 suggests that their decisions to criminalize homeless and poor residents as a result of federal and state unresponsiveness to preventing homelessness, but fails to acknowledge how local governments have also failed to respond appropriately, in some cases even exacerbating the problem. Instead of leveraging local resources to supplement gaps in federal and state funding for housing, local governments have instead spent taxpayer dollars to pay law enforcement to remove the visibility of homelessness. Not only do these policies violate the civil and human rights of people experiencing homelessness, it is counterproductive and has been proven time and again to be the most costly response.

⁹ In a related case, in September of 2012, the United States Court of Appeals for the Ninth Circuit found that the Fourth Amendment's protection of possessions and the 14th Amendment's due-process prohibit confiscation of personal property by government, regardless of the housing status of the owner. <http://cdn.ca9.uscourts.gov/datastore/opinions/2012/09/05/11-56253.pdf>

Unfortunately, the misguided approach of citing, arresting, and incarcerating homeless people simply because of their status has resulted in a massive mis-allocation of resources away from real solutions. Continued investment in the enforcement of anti-homeless laws and prosecution of homeless people directly contradicts and undercuts investments in ending homelessness. Anti-homeless laws clearly increase the frequency and intensity of homeless people's entanglements with the criminal justice system, creating barriers to exiting homelessness.

League Opposition Complains that Savings from Decriminalization Cannot Be Used by Cities

In their letter, the League complains that the bill's declaration that "decriminalization of rest allows municipal government to redirect resources from local enforcement activities to activities that address the root causes of homelessness and poverty," reveals "a fundamental misunderstanding of the role and function of cities in California." They state that social service programs and housing supports are provided by Federal, State and County Governments, not cities.

They are wrong - and the fact that they are unaware of the tremendous investment that many of their own member cities make in housing and social services is revealing and should raise concerns about their ability to accurately represent cities on issues of homelessness.

Cities in California do, in fact, have use municipal resources to address homelessness and many of them do. Cities have spent municipal funds on eviction defense, permanent supportive housing, affordable housing, emergency shelters, drop-in services (like showers and rest areas), library programs, etc. What they don't invest directly in homelessness services, many cities invest indirectly in services like emergency soup kitchens. Eliminating redevelopment agencies did not eliminate local governments authority or interest in creating housing resources. Cities can use law enforcement savings to supplement housing-resources available through other sources.

In fact, we believe that this critique is an intentional red herring planted in order to divert the attention away from the findings of research documenting that SB 608 would save cities money by limiting the amount they spend on criminal justice and jail costs. Cost studies conducted in 13 cities and states reveal that on average cities spend \$87/day to jail someone compared to \$28/day for shelter. Similarly, a Utah study showed that providing a disabled, homeless person with permanent supportive housing was significantly cheaper than cycling that person through the criminal justice system. When cities rely on law enforcement to "solve" homelessness, people experiencing homelessness are subject to laws they have no hope of complying with. As a result they often develop criminal records that make it even more difficult for them to access much-needed housing, employment and benefits, prolonging their homelessness.

We are pleased that the League of Cities is supporting AB 35 (Chiu) and AB 1335 (Atkins), legislation that we also support. A "Housing First" approach requires an end to the criminalization of life-sustaining activities like resting in public, and re-allocation of resources to permanent solutions. We support these efforts too. But these ability of homeless families to access these options become narrowed when they have received a citation or criminal record as a result of the criminalization of homelessness.

SB 608 Repeals the Ability of Municipal Laws that Criminalize Non-Criminal Act - Rest

We thank you for your commitment to our communities and for the opportunity to be a voice in this momentous policy decision that will be in front of you Tuesday April 7th. We hope we can count on you to support our efforts towards ending homelessness and the suffering attached to it.

The human indignity of homelessness impacts over hundreds of thousands of Californians and their communities, but it doesn't have to. SB 608 will not reduce the number of people who are homeless, but it will protect people living on the street from citations and imprisonment which will only worsen their condition and opportunities to escape homelessness and invites us all to seek real, lasting and humane responses to homelessness.¹⁰ The costs for preventing the violation of people's basic human rights must be weighed against the costs, both fiscal and qualitative, of not doing so. We are grateful for your consideration urge your 'Aye' vote for SB 608.

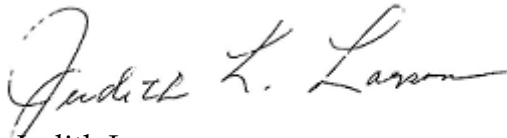
Sincerely,



Jessica Bartholow
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cc: Honorable Carol Liu (Author)
Members of the Senate Committee on Transportation and Housing
Honorable Kevin de León, President pro Tempore of the State Senate
Honorable Speaker Atkins, Speaker California State Assembly (Cited in letter)
Honorable David Chiu, Member of the California State Assembly (Cited in Letter)

¹⁰ <http://www.nlchp.org/content/pubs/11.14.11%20Criminalization%20Report%20&%20Advocacy%20Manual,%20FINAL1.pdf>