

September 14, 1993
REPORT TO THE COMMITTEE
ON PUBLIC SERVICES AND SAFETY

DRUG LOITERING ORDINANCE

BACKGROUND

Mayor Susan Golding and Councilmember Judy McCarty have urged the preparation of a draft ordinance, similar to one enacted by the City of Monrovia, which makes it unlawful for any person to loiter for the purpose of engaging in drug-related activities. This report submits for consideration by the Public Services and Safety Committee a draft ordinance based on the City of Monrovia's model.

DRAFT ORDINANCE

The attached draft ordinance would make it unlawful for any person to loiter with the specific intent of engaging in drug-related activities as defined under certain sections of the California Health and Safety Code. The two elements of the violation are: (1) loitering; and (2) specific intent to engage in drug-related activity.

The draft ordinance provides definite guidance for police because it lists actions which, if observed, would give rise to a legitimate inference of the prohibited activities. Specifically, the draft ordinance sets forth ten circumstances that may be considered in determining whether a suspect manifests the "purpose" of engaging in drug-related activity.

California courts have consistently upheld loitering laws requiring manifestation of a specific intent to do an illegal act. A violation of the ordinance is necessarily a "specific intent" crime. See, e.g., *People v. Superior Court (Caswell)*, 46 Cal. 3d 381, 390 (1988) (holding that loitering statute requires "specific intent" because the statute is "violated only when a person 'loiters . . . for the purpose of engaging in or soliciting any lewd, or lascivious or any unlawful act.'")

PROCEDURAL HISTORY OF MONROVIA ORDINANCE

In *Ramirez v. Superior Court*, S-026080, Second Appellate District No. B-063294, LASC No. BS-012452; Mct. No. 91MO1484 (1992), a City of Monrovia ordinance, virtually identical to the attached draft ordinance, was challenged by Defendant's demurrer

on grounds that the ordinance is preempted by State law and unconstitutionally vague and overbroad. When the demurrer was overruled, a Petition for Writ of Prohibition was filed in Superior Court and denied. Defendant filed a Petition for Writ of Mandate in Court of Appeal, Second Appellate District which was denied. A Petition for Review in California Supreme Court was denied in May 1992.

The City of Monrovia's successful Answer to Defendant's Petition for Review by the California Supreme Court presented persuasive arguments rebutting Defendant's contentions that the loitering ordinance was preempted by state law, vague and overbroad.

SUMMARY

1. The attached draft ordinance makes it unlawful to loiter with the specific intent of engaging in drug-related activities. It sets forth ten circumstances to guide police in determining whether a suspect manifests the purpose or specific intent of engaging in drug-related activity.
2. The attached draft ordinance is virtually identical to a Monrovia ordinance which has so far survived appellate review.

Respectfully submitted,
JOHN W. WITT
City Attorney
JMB:jp:hg:520.1(043.1)
Attachment
RC-93-41