January 19, 2016

The Honorable Mike Feuer
Office of the City Attorney
City of Los Angeles
200 North Spring Street, Room 800
Los Angeles, Ca 90012

Re: Proposed Clean Up Green Up Ordinance CPC-2015-1462-CA

Dear Mr. Feuer:

This letter is submitted on behalf of a large coalition of regional businesses and business organizations, representing a broad swath of industries that drive the Los Angeles economy. We appreciate the opportunity to participate in the Clean Up Green Up (CUGU) stakeholder process, but have concerns about the CUGU ordinance drafted by the Department of City Planning. The business community has been contributing to the discussion in drafting this policy since its inception, with little impact.

The original Council motion stated "[T]here is an urgent need for municipal policies that streamline development, attract business and revitalize the local economy while promoting green enterprise and assisting the industrial sector to mitigate environmental impacts and encourage sustainable operational activities." But the draft proposal does not meet those goals.

We ask that the Conditional Use Permit requirement be removed from the proposal or modified and that implementation of the CUGU ordinance be delayed until and unless there is an enforcement plan in place.

Conditional Use Permit (Subdivision 29, Subsection U, of Section 12.24 LAMC)

We appreciate that the most recent draft of the ordinance has deleted some of the more onerous requirements and that the criteria for subject projects have been modified as they were duplicative of the powers granted to the City by other laws. However, the requirement for a discretionary approval (i.e. Conditional Use Permit) by the Planning Department for new refineries and existing refineries expanding operations beyond the current property line in M3 zones remains. Oil refineries are currently allowed by-right in M3 Zones. The proposed ordinance requires:

- Current compliance with Certified Unified Program Agency (CUPA) requirements, which includes hazardous waste management and other environmental programs, with the California Environmental Reporting System (CERS) database submittals serving as proof of compliance
- Submittal of a Health Impact Assessment (HIA)
- Submittal of a truck routing plan that minimizes contact with sensitive population areas (schools, hospitals, nursing homes, playgrounds…)

We believe that overlaying Planning's "approval" and the potential for arbitrary additional requirements is burdensome, unnecessary, and potentially expensive for ALL businesses that are already in compliance with every applicable legal requirement, especially when the City already has a voice in CEQA in that process. As an example, for projects requiring discretionary permits, environmental impacts are evaluated in a CEQA document. The City is provided the draft CEQA documents for review and comment, prior to a public draft, and prior to a final document being issued and the project approved. The City is already afforded a significant opportunity for affecting the evaluation and reduction of impacts. Thus, any additional review would be duplicative and unnecessarily burdensome. The City Planning Commission is appointed as the initial decision-maker in the draft, which is an inefficient means for managing administration. **We recommend that the conditional use permit requirement be removed (proposed Subdivision 29 of Subsection U), or modified to provide for the Zoning Administrator as the initial decision-maker (add Subdivision 31 to Subsection X of Section 12.24 LAMC).**

CUPA Hazardous Materials Review: It isn't clear how the limitations of Subdivision 29 of Subsection U would be enforced relative to the responsibilities of the Los Angeles Fire Department, which serves as the local CUPA, nor is it clear which of the many CUPA programs would be included as part of review by the Planning Department. Local CUPAs administer and enforce multiple environmental and emergency management programs on behalf of several state agencies, and under many statutory provisions. Submittal of a hazardous materials business plan through CERS is not evidence of compliance with CUPA requirements. Reporting through CERS is ministerial only; it does not even provide evidence that a submitted plan is correct, let alone prove that a facility is in compliance with all CUPA requirements across all applicable programs. Compliance can only be shown through regular inspections by the CUPA.

The addition of Subdivision 29 also raises serious implementation questions in relation to CUPA:

- Is the Planning Department merely seeking proof that a submittal occurred on time or would a facility need to submit to the City all data that was reported through CERS?
- What authority does the Planning Department have to determine whether a facility is in compliance with CUPA requirements, and what happens when the City Fire Department disagrees?
- Information reported through CERS is confidential and Cal/EPA has robust and tested protocols in place to protect data and ensure public safety. If the City had access to this data, what safeguards would be put into place to protect the confidentiality and to prevent against disclosure which could facilitate a terrorist attack or other unintended public harm?
- What if a facility was compliant in meeting all reporting requirements but failed a CUPA inspection or had an accidental release?

This section is confusing and appears to conflict with CUPA oversight, and could lead to serious unintended consequences. **For these reasons, we recommend that the CUPA-related limitation be removed from the Conditional Use Permit plan of the draft if the CUP requirement must remain.**

Health Impact Assessment should not be required: We are also concerned that a health impact assessment (HIA) would be required in connection with any CUP application,, yet the City has provided no guidance in terms of scope, process, methodology, or intended purpose. Health **Impact** Assessments are poorly defined and highly unreliable tools to assess qualitative perceptions of health impacts, rather than to measure any particular data.

Health **Risk** Assessments (HRAs) are not the same as HIAs. HRAs are occasionally used under CEQA to quantitatively analyze relationships between a contaminant and a single health outcome. HIAs are usually much broader and utilize qualitative analysis.

HIAs are largely uncharted territory in the context of land use and zoning decisions. They are mainly undertaken where projects are being proposed in rural parts of developing nations where no equivalent of CEQA or NEPA exists, and where indirect effects of a project's -impact on job creation, for example- can be easily separated out from other causal data. In a qualitative analysis, it would be hard to separate out whether the impact is caused by the proposed project or another unrelated factor. While there have been cases of select projects or policies voluntarily undertaking HIAs, no agency, law, or regulation in California mandates the use of an HIA, and no business or facility that we know of in any of the pilot communities has had direct experience developing an HIA. If the goal of analyzing the environmental impacts of a project is to determine health effects, an HIA is a poor substitute for a quantitative HRA, which measures impacts and proposes mitigation where it is warranted.

While we cannot comment on any exposure the City may have should it continue down the HIA path, an HIA's reliance on qualitative data for findings could provide the basis for protracted civil suits to stop projects regardless of impact on area public health. Unlike CEQA, there is no established methodology or thresholds of significance for HIAs. The result is that stakeholders are left to determine on an ad hoc basis what should be analyzed and what is considered an impact. Having no guidelines, methodology, or thresholds of significance established before HIAs are adopted into policy would be tantamount to requiring EIRs without any details of what elements would or should be evaluated. The inclusion of the HIA is just another example of an incomplete policy directive. **We recommend that the Conditional Use Permit requirement be removed from the draft, or if the CUP requirement must remain, that the HIA requirement be replaced with a requirement to prepare a Health Risk Assessment when required by and in accordance with SCAQMD Rule 1401 and "Risk Assessment Procedures for Rules 1401 & 212".**

Environmental Effects and Outcomes

The proposal does little to address pollution in the City. Most of the requirements in the ordinance like fencing and noise control are completely unrelated to the "cumulative environmental effects" rationale for the CUGU ordinance. <u>There is no evidence demonstrating that any of the requirements contained in the current draft of the ordinance are necessary or will have any environmental benefit</u>. On the contrary, small businesses could be severely burdened by this ordinance, as currently written, inasmuch as some landlords may be unwilling to pay for these new requirements or even allow their small business tenants to pay for them. Impasses such as these could also make it impossible for a small business to expand its operations, or site new operations, in these pilot communities. Planning staff does not plan to demonstrate exactly how the ordinance reduces "cumulative impacts resulting from incompatible land uses" and "improves the impacts resulting from conflicting land uses," prior to its adoption. Instead, staff concludes that the showing will be made at some point after the ordinance's effective date. This is inconsistent with the original City Council motion, which required that such a showing be made." They say that will happen after the ordinance is passed.

While the Department of City Planning has no power to impose a retroactive enforcement strategy on existing businesses that do not abide by rules and regulations, LADBS does have the ability to expand the Annual Inspection and Monitoring program. LADBS has chosen not to expand the monitoring program, even though the August staff report states that many of the businesses it monitors like auto dismantling yards contribute to "cumulative impacts when located in close proximity to one another and to Publicly Habitable Space (pages 112-3, August staff report). If the City doesn't have the means to enforce effectively its current policy, how can it be expected to enforce new policy under CUGU?

The proposal also penalizes large and small businesses that may have environmentally friendly practices. For example, smog test stations will not be able to expand or open new businesses within 500 feet of a residential area in the pilot areas, with other restrictions put on any smog test station's property. A smog station's main purpose is to improve air quality in the city.

We also are concerned about the lack of environmental review of the proposed ordinance's effects. The proposal has moved from a Categorical Exemption to a Negative Declaration, but the impact it will have on the environment throughout the city –positive or negative- is unknown because the City has stated its intention to delay analysis until after the policy takes effect. If businesses necessary to the health of Los Angeles shift away from the pilot areas it could have significant impacts to other areas. The potential impacts should be fully vetted under CEQA. While a Negative Declaration for a proposed ordinance can defer consideration of information that may not be feasibly reviewed at the ordinance level, this tiering approach "does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier"; see CEQA Guidelines § 15152(b). The cursory Negative Declaration presented to the Planning Commission relies on the fact that the ordinance itself "does not propose any additional development or ground-disturbing activities", together with the existing built-out nature of the covered neighborhoods, as the basis for concluding that 'there will be no foreseeable impact" for each impact category. However, the City cannot simultaneously assert that the impacts of future development projects are sufficiently certain to justify adopting the ordinance in the first place, and yet are too uncertain to consider for CEQA purposes.

The Negative Declaration fails to consider the reasonably foreseeable environmental consequences of diverting impacts of future development to other locations *outside* the Project area. By adding significant new procedural burdens and development standards in the covered neighborhoods only, it is reasonably foreseeable that development will be shifted to other neighborhoods that are not covered. As a result, implementing the ordinance will relocate the same environmental impacts on air and water quality from industrial land use and transportation-related emissions, that the ordinance seeks to address, to new areas. New areas of relocated development may be less built-out than the neighborhoods covered by the ordinance, and may include sensitive receptors and land uses. Relocating development may also increase total vehicle-miles-traveled (VMT) and vehicle emissions, by moving jobs further from the workers' residences. Even though the ordinance is intended to be environmentally beneficial for the covered areas, it is well-settled that adverse environmental side-effects of such beneficial programs must be studied under CEQA prior to adoption.

Finally, it is likely that achieving the environmental benefits of the ordinance will not be possible without accepting some unavoidable shifting of environmental burdens to other neighborhoods, with impacts on new sensitive receptors and increased VMT. While the City has the discretion to balance such benefits and burdens, CEQA does not allow it to do so in a Negative Declaration. Rather, the City must perform a full Environmental Impact Report to evaluate significant and unavoidable impacts, and must adopt a statement of overriding considerations.

We recommend that the City implement the ordinance, if adopted, no sooner than July 1, 2016 or when an enforcement plan is in place that targets those violating CUGU policy, as well as unpermitted and potentially illegally operating businesses of any type with known environmental and public health impacts, with the aim to bring these businesses into compliance, whichever is later. We further recommend that the City conduct a full Environmental Impact Review to vet the ordinance.

In summary, within the draft ordinance there is no plan or budget for enforcement; no plan for measuring cost/benefit or metrics for success; and arbitrary and burdensome mandates that create a disadvantage to CUGU participants including a Conditional Use Permit requirement that relies on undefined Health Impact Assessments and CUPA participation. For the reasons outlined in this letter, we respectfully urge you to change the Clean Up Green Up draft ordinance as recommended. If you have any questions or would like to discuss this matter further, please contact Alycia Witzling, Public Policy Manager for the Los Angeles Area Chamber of Commerce at (213) 580-7531 or awitzling@lachamber.com.

Thank you for your consideration.

Regards,

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