LOS ANGELES AREA
CHAMBER OF COMMERCE

November 23, 2015

The Honorable Jose Huizar
Chair, Planning and Land Use Management Committee
Los Angeles City Council
200 North Spring Street
Los Angeles, Ca 90012

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

Dear Councilmember Huizar:

On behalf of the Los Angeles Area Chamber of Commerce, which represents more than 1,650 organizations and 650,000 employees in the region, I'm writing to express our concerns about Clean Up Green Up in its current drafted form. 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 requirements for a Conditional Use Permit be removed from the proposal or modified
- That better incentives and support for an ombudsman position be put in place
- That implementation be delayed that takes into account triggers like an enforcement plan and structure for the ombudsman.

**Conditional Use Permit (Subdivision 29, Subsection U, of Section 12.24 LAMC)**
Some of the more onerous submittals have been removed and the criteria for subject projects modified as they were duplicative of the powers granted to the city by other statutory regulators. 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 Unified Programs (CUPA) which monitors hazardous waste, with the California Environmental Reporting System database submittals serving as proof of compliance
- Submittal of a health impact assessment
- 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 level of government and 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 final document being issued and the project being 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. **We recommend that the conditional use permit be removed (proposed Subdivision 29 of Subsection U), or modified to allow the Zoning Administrator as the initial decision-maker (add Subdivision 31 to Subsection X of Section 12.24 LAMC).** The City Planning Commission is appointed as the initial decision-maker in the draft.

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***Unified Programs (CUPA) for 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 the California Environmental Reporting System (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 must remain.**

***Health Impact Assessment as an inappropriate requirement:*** We are also concerned that a health impact assessment (HIA) would be required for any applicant yet the City has provided no guidance in terms of scope, process, methodology, or intended purpose. When asked for details at a public hearing, planning staff responded that this would be established at a later date. When questioned by CPC and the PLUM committee, staff admitted that they may have confused HIAs with a Health Risk Assessment (HRA). HRA's 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 unchartered territory in regards to land use and zoning. They are mainly applied to projects in rural parts of developing nations where no equivalent of CEQA or NEPA exists, and where indirect effects of a project - impact on job creation, for example- can be easily separated out from other casual 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 health impacts are the goal of analyzing the environmental factors of a project, it is a poor substitute for the quantitative analysis of a HRA that measures impacts and mitigation.

While we cannot comment on the liability to the city in conducting a Health Impact Assessment, it's reliance on qualitative data for findings could result in protracted civil suits to stop projects regardless of impact on area public health. Unlike CEQA, HIAs explicitly have no established methodology or thresholds of significance, many times leaving it to stakeholders to determine 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**

**be removed from the draft, or if the CUP must remain, the HIA requirement should be replaced with a request for 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 are completely unrelated to the "cumulative environmental effects" rationale for the CUGU ordinance. There is no evidence showing that any of the requirements are necessary or have any environmental benefit. Planning staff will not demonstrate exactly how it reduces "cumulative impacts resulting from incompatible land uses" and "improves the impacts resulting from conflicting land uses." They say that will happen after passed, even though a requirement in the original ordinance was to show impact.

It is unreasonable for the Planning Department to suggest that "metrics… are a matter of regulation and are not effectuated in the Zoning Code" (page 12, August staff report) when policies are being put forward that have a significant impact on businesses and have no substantiation that they will reach their goal. The ordinance adds burdensome and unnecessary regulations on legitimate, tax-paying businesses that will increase their costs and in many cases, serve as a deterrent for establishments (established and new) to utilize environmentally friendly opportunities. Additionally, there is no added emphasis on enforcement for businesses that currently operate outside of current rules and regulations.

While DCP has no power to include 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 businesses that may have environmentally friendly practices from operating. 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 recommend that the City delay implementation of the ordinance until July 1, 2016, until 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. If no plan is in place by July 1, the implementation should be delayed until one exists.**

**Ombudsman and Incentives**
This ordinance falls short of the original intent of the CUGU initiative by neglecting to set the stage for an ombudsman and incentives to educate, motivate, and assist business owners toward more environmentally healthy practices. An ombudsman position has been added to the Mayor's office for FY 2015-16 as an Environmental Affairs Officer, funded out of the Bureau of Sanitation's budget, but a clear job description has not been provided to the public on what their duties will include. It is also important to note that while Clean Up Green Up if passed would live on in perpetuity, the ombudsman position is funded on a yearly basis with no guarantees that the position would continue on from year to year, or that their duties would stay dedicated toward matching businesses to Clean Up Green Up-focused incentives. **We recommend that the City delay implementation until July 1, 2016 of the ordinance until an independent structure and budget for the ombudsman is set in place. If no independent structure and budget is in place by July 1, the implementation should be delayed until one exists.**

Furthermore, no new incentives are being offered apart from ones already available from regulatory agencies and utilities. Repeatedly, members of the public have offered public comment in support of Clean Up Green Up based

on the idea sold to them that area businesses will receive assistance by way of incentives. Community groups in the pilot areas have shared information about existing incentives with area business already. The City can and should do more to incentive participation in Clean Up Green Up's program. **We also recommend that the City should delay implementation until July 1, 2016 of the ordinance until an incentive plan can be arranged and funded. If not incentive plan is in place by July 1, the implementation should be delayed until one exists.**

Some ideas for incentives could include:

- Microloan or Business Expansion Program - A partnership with local banks, and the City of Los Angeles, to provide loans to qualifying small businesses in the three target CUGU communities. The program would make loans available up to (specify an amount, e.g., $50,000), for businesses with annual gross revenues of less than (specify an amount, e.g., $1 or 2 million), and may not qualify for traditional financing.
- Property Tax Exemptions for Pollution Control Property - Property that is installed (or is being installed) wholly or partly for pollution control purposes would be eligible for determination purposes (e.g., baghouse, scrubber). Land would also be eligible for determination purposes, but only if acquired after the approval date of the CUGU ordinance. Examples could be 1) property that is purchased or set aside and used solely for pollution control, and 2) property acquired and used as a Buffer Zone.
- Fee Holiday – Businesses, especially small businesses, would be eligible for a one-year waiver of permit fees if they demonstrate a record of violation-free operation for a period of years.
- Discounts for Continuing Education and Certification – Working in concert with Los Angeles Community College/Los Angeles Trade Technical College, the City of Los Angeles could offer small businesses, and their eligible employees, access to education, training and certification (or certificate of completion) in such coursework as carpentry, electronics, computer-aided drafting/design, CNC machine, materials handling, and more, at discounted prices. The training would them more competitive in the local workplace.

In summary, within the draft ordinance there is no plan or budget for enforcement of unlawfully operating businesses; no plan for measuring cost/benefit or metrics for success; no independent structure or budget for the ombudsperson; no incentive plan for legally operating businesses; and arbitrary and burdensome mandates that create a disadvantage to CUGU participants including requirements for a Conditional Use Permit that relies on undefined Health Impact Assessments and CUPA participation. For the reasons outlined in this letter, I 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 me or Alycia Witzling, Public Policy Manager at (213) 580-7531 or awitzling@lachamber.com.

Thank you for your consideration.

Sincerely,

Gary Toebben

Gary Toebben
President & CEO

CC: Councilmember Gil Cedillo
Councilmember Felipe Fuentes
Mayor Eric Garcetti
Michael LoGrande, Dept. of City Planning
Greg Good, Office of the Mayor
Councilmember Mitch Englander
Councilmember Marqueece Harris-Dawson
Councilmember Joe Buscaino
Hagu Solomon-Cary, Dept. of City Planning

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**Re: HIAs in Clean Up Green Up Draft Ordinance (CPC-2015-1462-CA)**

Dear Councilmember Huizar:

On behalf of the Los Angeles Area Chamber of Commerce, which represents more than 1,650 organizations and 650,000 employees in the region, I'm writing to provide you with more information on the impact and effectiveness of HIAs vs. HRAs with regards to their possible inclusion in a future Clean Up Green Up ordinance.

The Chamber is concerned that a health impact assessment (HIA) would be required for any applicant for a conditional use permit as part of the Clean Up Green Up program. The City has provided no guidance in the draft in terms of scope, process, methodology, or intended purpose. When asked for details at a public hearing, planning staff responded that this would be established at a later date. It has come to our attention through public hearing comments by staff that HIAs may have been confused with Health Risk Assessments (HRA). 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.

According to the National Research Council of the National Academies, HIAs are "A systematic process that uses an array of data sources and analytic methods and considers input from stakeholders to determine the potential effects of a proposed policy, plan, program or project on the health of a population and the distribution of those effects within the population. HIA provides recommendations on monitoring and managing those effects."

HIAs are largely unused in decision making in regards to land use and zoning in California. They are mainly applied by parties like the World Health Organization (WHO) to projects in rural parts of developing nations where no equivalent of CEQA or NEPA exists, and where indirect effects of a project -impact on job creation, for example- can be easily separated out from other casual data. Evaluation criteria may be qualitative or quantitative, and usually a combination of both. The relationship between exposure and outcomes may be direct or indirect, and relies on best available evidence. Significance criteria, like that evaluated by CEQA, may not be defined within an HIA process. And as previously alluded to, regulatory acceptance is relatively new and continuing to develop as a field of analysis.

A Health Risk Assessment as defined by the EPA is "the process to estimate the nature and probability of adverse health effects in humans who may be exposed to chemicals in contaminated environmental media, now or in the future." It examines whether a stressor has the potential to cause harm; the numerical relationship between exposure and effects; what is known about the frequency, timing, and levels of contact with a stressor; as well as how well the data support conclusions about the nature and extent of the risk from exposure to environmental stressors.

HRAs are regularly used in practice in California, including by local agencies like the South Coast Air Quality Management District, and can be used as part of a CEQA analysis to measure the direct effects of a project separated out from casual data. Evaluation criteria is strictly quantitative data driven. The relationship between

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exposure and outcomes is direct, and is married to cause and effect. Significance criteria is defined and known. And, as previously alluded to, regulatory acceptance is widely accepted by public agencies.

Factors that make HIAs usable in a rural setting are deterrents when applied in urban areas. For example, in a HIA analysis using qualitative data it would be hard to separate out whether an impact is caused by the proposed project or another unrelated factor that may be in the vicinity. If health impacts are the goal of analyzing the environmental factors of a project, HIAs are a poor substitute for the quantitative analysis of a HRA that analyzes impacts, risk, and mitigation.

While there have been cases of select projects or policies voluntarily undertaking HIAs, as mentioned, 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. In a recent case of a HIA attempt, a third party, the Gateway Cities Council of Governments, offered to conduct one for Caltrans as part of the EIR of the 710 expansion project. Caltrans however ultimately decided not to admit the study into the EIR. Findings included in the study included indirect qualitative outcomes, like noise could lead to negative changes in health like annoyance, sleep disturbance, cardiovascular disease, and learning and education outcomes.

Questions have also arisen about liabilities in using a HIA. While we cannot comment on the liability to the city in conducting a Health Impact Assessment, it's reliance on qualitative data for findings could result in protracted civil suits to stop projects regardless of impact on area public health. Unlike CEQA, HIAs explicitly have no established methodology or thresholds of significance, many times leaving it to stakeholders to determine 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 also be tantamount to requiring EIRs that would change what elements would or should be evaluated with each and every application.

Due to the qualitative and subjective nature of HIAs, we are concerned about their use in policy and decision making. We hope you take this analysis into consideration as you evaluate the policy in PLUM committee. If you have any questions, please feel free to contact Alycia Witzling, Public Policy Manager at 213.580.7573 or awitzling@lachamber.com. Thank you for leadership and consideration in this matter.

Sincerely,

Gary Toebben

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