From: **Stephanie Taylor** <staylor124@gmail.com>
Date: Tue, Feb 2, 2016 at 1:33 PM
Subject: Comment Letter - Clean Up Green Up - CF 15-1026 and CPC-2015-1462-CA
To: lacityatty@lacity.org
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Dear Mr. Feuer,

On behalf of the Los Angeles Collaborative for Environmental Health & Justice, please see attached our response to a letter on the proposed Clean Up Green Up Ordinance from the Los Angeles Area Chamber of Commerce. Their letter is dated January 19, 2016.

The points raised in the letter have been discussed and considered at several hearings and throughout a very public review process. The City Planning Commission considered and amended the ordinance after a public hearing on August 13, 2015; additional testimony was heard and considered at two meetings of the City Council Planning and Land Use Management (PLUM) Committee on October 27, 2015 and November 24, 2015 after which amendments were made before the draft ordinance was forwarded to City Council.

On December 8, 2015, the City Council requested your office to finalize the ordinance and return to City Council for further consideration.

The business community has participated in a series of working sessions and workshops with the staff of the Department of City Planning. The issues outlined in their recent letter have been raised, considered and addressed by the Department of City Planning and the PLUM Committee before the final draft was forwarded to City Council.

However, since these questions have been raised yet again, we wish to respond to them. Please see attached our response letter and two attachments.

We appreciate the opportunity to submit this letter for your consideration and are available at any time to answer any further questions. Thank you.

Very truly yours,

Elizabeth Blaney
Co-Director
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Veronica Padilla
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Jesse N. Marquez
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sent by Stephanie Taylor
for Los Angeles Collaborative for Environmental Health & Justice

Clean Up Green Up
por una ciudad limpia y verde

February 2, 2016

Honorable Mike Feuer
City Attorney
200 North Spring Street, Room 800
Los Angeles, CA 90012

RE: CF 15-1026 and CPC-2015-1462-CA

Dear Mr. Feuer,

We understand the Los Angeles Area Chamber of Commerce recently commented on the proposed Clean Up Green Up Ordinance in a letter dated January 19, 2016.

The points raised in the letter have been discussed and considered at several hearings and throughout a very public review process. The City Planning Commission considered and amended the ordinance after a public hearing on August 13, 2015; additional testimony was heard and considered at two meetings of the City Council Planning and Land Use Management (PLUM) Committee on October 27, 2015 and November 24, 2015 after which amendments were made before the draft ordinance was forwarded to City Council.

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However, since these questions have been raised yet again, we wish to respond to them.

<u>Failure to adhere to goals and direction of original Council action</u>

As we have often stated, we concur with our business colleagues that there is a critical need to address living conditions in many communities in Los Angeles, including those in the three pilot communities of Boyle Heights, Pacoima/Sun Valley and Wilmington that are the subject of the draft ordinance. But we disagree with their assertion that the goals expressed currently differ from those set forth in response to City Council's initiating motion of January 2011, or those that have been a part of the numerous meetings, work-sessions and hearings that have taken place since, including workshops for the business community added at the request of the business sector.

The City Council originally acted (CF 11-0112) in January 2011 to direct the Department of City Planning, among others, to develop and report back on "how to implement 'Clean Up Green Up' strategies in Boyle Heights (CD 14), Pacoima (CD 6/7) and Wilmington (CD 15)." The motion, in addition to stating, as the business community letter indicates, "[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," also called for "Design standards designed to mitigate the impacts of

land uses that create environmental hazards, while promoting economic development, public participation and community revitalization." The performance standards set forth in the draft ordinance clearly respond to that aspect of the motion, among others.

Conditional Use Permit

The Clean Up Green Up pilot initiative is a first step by DCP in addressing gaps in communities overburdened by environmental hazards. The fossil fuel industry has expressed strong opposition to modest requirements of this proposal based on the premise that their operations are safe, and there is no room for improvement. Based on the experience of our members and supporters and relying on experts in the field, we believe that the City of Los Angeles should exercise both its legal authority and ethical responsibility to create additional and expanded layers of oversight when it comes to operations of polluting operations, especially the oil refineries.

It is important to note that most communities in California (and elsewhere) in which oil refineries operate require a conditional use permit. This includes five of the seven cities in Southern California—all except El Segundo and Los Angeles. Thus the claim that such a limited conditional use permit as now proposed would be onerous or burdensome is difficult to sustain.

It should be noted that Los Angeles requires conditional use permits for a wide variety of uses, including liquor stores and drive-through restaurants, uses which are far smaller than refineries but that are considered potentially detrimental to their surroundings. To argue that oil refineries should not be subject to some limited land use controls to mitigate their impact on surrounding communities seems, in light of what other uses are subject to such controls, ludicrous.

In addition, it is suggested that since refineries are subject to conditions imposed by other agencies they should be exempted from further control by the City is contradicted by the fact that the City imposes conditional use requirements on several uses which also are subject to permitting and review by others (including SCAQMD, CPUC, CalRecycle, Regional Water Board, etc.). Such uses include electric power generating sites, green waste and wood waste recycling uses, hazardous waste facilities, and recycling centers and recycling materials processing/sorting facilities.

The argument that the conditional use permit adds "serious implementation questions" in relation to the Certified Unified Program Agency (CUPA) requirements is also overstated. As noted, the draft ordinance, stating "that California Environmental Reporting System (CERS) database submittals serving as proof of compliance" establishes that the Planning Department does not intend to "second guess" other agencies, including the Los Angeles Fire Department, so the uncertainty questions are, in our view, moot.

Lack of metrics

There were also comments made about the lack of metrics to determine the effectiveness of the Clean Up Green Up Program. Some metrics are easy to suggest—numbers of outreach efforts initiated, numbers of Guide to Green workshops held, numbers of businesses contacted, numbers of businesses participating, numbers and types of business assistance programs accessed, numbers of businesses that have cleaned up and greened up their operations and in what ways quickly come to mind. It is important, though, that the Ombudsperson position—called for in the report accompanying the draft ordinance, included in the City's General Plan Health and Wellness Element and in the Mayor's Sustainability Plan and budgeted in the FY 2015-2016 City Budget within the Bureau of Sanitation—participate in the formulation of appropriate metrics—a task that rightly will occur once the position is filled and operating, and a reason to proceed quickly to fill the position.

One role of the Ombudsperson is to coordinate the efforts of a variety of City and other departments that are involved in inspecting, interpreting and enforcing rules and regulations that affect businesses proposed to be covered by the Clean Up Green Up Policy. Another is to work with these departments to identify streamlining, simplifying and more effectively implementing both existing and new standards affected by the Policy. Thus this position is timely to meeting a key objective of the draft ordinance, and is consistent with the charge given by City Council in 2011.

Resource availability for enforcement

The letter comments that the City lacks resources to provide assistance to local businesses in these communities. As has been pointed out on a number of occasions, there are documented over fifty programs and sources of both funds and technical support available from City, regional, State and Federal sources that can be targeted to these communities. These programs are compiled in the Guide to Green, a document assembled by the Liberty Hill Foundation and made available both to local businesses and business entities, and to the various source agencies themselves, which have lauded their ability (as a result of the compilation of programs) to become aware of one another's resources. There was testimony from business operators at the PLUM Committee hearings of how they were able to identify and obtain funds to clean up and green up their businesses through these workshops.

In response to an inquiry by the PLUM Committee, the Chief Legislative Analyst and the Chief Administrative Officer addressed potential costs for an expanded enforcement program to implement the Clean Up Green Up program. Their estimated cost was $1.02 million to support 8 staff to annually inspect 977 businesses in the pilot communities, representing a fraction of the annual budget of the Department of Building and Safety which, incidentally, has been authorized to expand its enforcement staff in the current FY 2015-2016 budget. It is likely also that, as is the case with most inspection and enforcement actions, a substantial portion of the cost will be offset by fees collected by the Department.

Health Impact Assessment

Comments were raised about the proposal to employ a Health Impact Assessment process, which comments included claims that the Health Impact Assessment is not widely used in the United States, and that there is no proven model to follow in the use and evaluation of the Health Impact Assessment tool. A further question dealt with Health Impact Assessments (HIA) in relation to the narrower Health Risk Assessment (HRA). HIA and HRA and not contradictory methods of assessing impact, in fact they are complementary. HIA looks at impacts including risk and goes beyond that to analyze all the direct, indirect, cumulative exposure and impacts that are not captured through HRA. HIA is recognized by the World Health Organization, LA County Department of Public Health, the federal Center for Disease Control and many other planning entities as a more participatory, inclusive and comprehensive way to assess the impacts of a proposed project. The HIA process will create more successful projects because of its anticipatory and participatory approach.

Human Impact Partners, a national non-profit based in Oakland, CA, submitted a letter to the record regarding the Health Impact Analysis (attached). In that letter and the materials they submitted along with that correspondence they noted that over 300 Health Impact Analyses have been completed or are in process around the country, many conducted by government agencies including health departments, planning departments, and Metropolitan Planning Organizations. They noted that there exists considerable diversity in the practice and products of Health Impact Analyses due to the variety of policies, plans, programs, and projects assessed and the diverse settings in which decisions take place; and the evolution of the field. In comments before PLUM Committee, we also provided examples of a few Health Impact Assessments to staff to assist in their response to the Committee's inquiries about the roles and purposes of both types of analyses.

The PLUM Hearing also included testimony from Mr. Will Nicholas, (Director, Health Impact Evaluation Center, Policy Analysis Unit, Office of Health Assessment and Epidemiology, Los Angeles County Department of Public Health) and an official letter has been filed subsequently (attached). He described in testimony how an HIA is an analytic tool for assessing the potential health impacts of policies and plans outside of the traditional health sector and for providing evidence-based recommendations for mitigating potential harms and enhancing potential benefits to human health. He clarified that HIAs include both direct quantification of health impacts as well as consensus-based professional judgment about the magnitude of potential impacts based on systematic reviews of quantitative scientific literature.

Fundamentally, the purpose of Health Impact Analysis is to assess the health impacts (as opposed to projected illness results) of proposed projects and plans—including cumulative health impacts in communities experiencing disproportionate health hazards—and identify ways to mitigate any potential harms identified. In addition, engagement of community members throughout a Health Impact Analysis is a core part of the Health Impact Analysis process.

As written in the proposed Clean Up Green Up ordinance, the Health Impact Analysis requirement is in line with this purpose and is properly targeted to the type of projects that may benefit from Health Impact Analysis-type review. There are a number of available guidance documents for Health Impact Analysis that potential project sponsors who would be required to conduct a Health Impact Analysis can use. The *Minimum Elements and Practice Standards for Health Impact Assessment* (attached to the Health Impact Partners submittal, and in the Council file) provides guidance on what is required for a study to be considered a Health Impact Analysis and lists benchmarks for effective practice. Human Impact Partners was one of the primary authors of this document. In addition, the National Academy of Sciences published *Improving Health in the United States: The Role of Health Impact Assessment,* which describes the background of Health Impact Analysis, steps in the process, and offers guidance to officials in the public and private sectors on conducting Health Impact Analyses. UCLA is another local leader, and has developed manuals and check lists that are in use by entities conducting Health Impact Analyses.

A recently completed legal review of Health Impact Analyses concerning the use of Health Impact Analyses found that, *"Even in the absence of explicit legal authority to conduct Health Impact Analyses [such as in NEPA], government agencies and officials increasingly conduct Health Impact Analyses or consider the results of Health Impact Analyses conducted by other organizations to inform their decisions. This has been the most common method of Health Impact Analysis practice in the United States."*

Requirements for Health Impact Analyses can be found in Washington for several types of energy and environment proposals and Massachusetts for several types of transportation proposals. Several have been done in California, including both San Francisco and Los Angeles. In addition, numerous laws across the country *facilitate* the conduct of Health Impact Analyses by authorizing or requiring the functional equivalent of a Health Impact Analysis to inform programmatic, policy, or administrative decisions. Given this context, the requirement to conduct a Health Impact Analysis (limited in the proposed Ordinance to the Conditional Use process) is appropriate and would contribute to an expansion of the field.

Environmental review

Finally, the Chamber's letter suggested their belief that a full Environmental Impact Report (EIR) might be, from their perspective, needed to support the adoption of the ordinance. A full Environmental Impact Report under the California Environmental Quality Act (CEQA) only is required for projects that will result in physical changes causing significant negative impacts to the environment. "[A] public agency pursuing or approving a project need not prepare an EIR unless the project may result in a significant effect on the environment." Pub. Res. Code §§ 21100(a), 21151(a). For this reason, regulatory actions such as the Clean Up Green Up Overlay District that are designed to protect the environment are typically CEQA exempt, and do not require either an EIR or Negative Declaration under CEQA. 14 Cal. Code Regs. § 15308. *Save the Plastic Bag Coalition v. County of Marin* (2013) 281 Cal.App.4th 209 (ordinance prohibiting plastic bags was categorically exempt from CEQA as a regulatory action designed to assure the maintenance, restoration, enhancement, or protection of natural resources and the environment.)

Despite the fact that the Clean Up Green Up Overlay District is plainly a regulatory action designed to protect the environment and likely CEQA exempt, the City out of an abundance of caution has prepared a Negative Declaration. Where "[t]here is no substantial evidence, in light of the whole record … that the project may have a significant effect on the environment," the agency may, as here, adopt a Negative Declaration. Pub. Res. Code § 21080(c)(1).

Not surprisingly, the Negative Declaration prepared for the Clean Up Green Up Overlay District project identified no impacts, or less than significant impacts, in every one of the required CEQA impact categories. The City's decision to prepare a Negative Declaration is reviewed for "prejudicial abuse of discretion," which is established only where "the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." Pub. Res. Code § 21168.5; *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319.

The letter makes a last minute argument, with no persuasive evidence, that an EIR is required because the Clean Up Green Up Overlay District may shift polluting development "to other neighborhoods" and "to new areas." This argument is speculative at best, and disingenuous at worst–it seems to concede that polluting industries in the Clean Up Green Up Overlay District may harm sensitive receptors, but insists that an EIR is required because this effort to protect the sensitive receptors would cause significant negative environmental impacts.

The City (which already went out of its way to prepare a Negative Declaration) should reject the letter's assertion that an EIR is required. There is no substantial evidence that the industries located in the Clean Up Green Up Overlay District, *particularly oil refineries* that are the subject of much of the rest of letter, will flee the environmental protection rules of the Clean Up Green Up Overlay District only to significantly pollute the rest of the region. Surely the business community would also reject this assertion.

CEQA challenges must be based on "substantial evidence,"[1] not speculative argument. Pub. Res. Code § 21080(e); *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal. App. 4th 556, 580

[1] Section 15384(a) of the CEQA Guidelines sets forth the definition of "substantial evidence," as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence."

(comment letter on MND does not constitute substantial evidence where it consists of mere argument and unsubstantiated opinion). The California Supreme Court has clarified that an agency's CEQA analysis cannot be overturned based on unsubstantiated speculation about impacts outside of the project area. *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155 (CEQA analysis for plastic bag ban upheld where impacts outside of project are "indirect and difficult to predict").

The City's action, taken out of an abundance of caution, to prepare a Negative Declaration is proper. The Negative Declaration for the Clean Up Green Up Overlay District – designed to protect the environment – identified no impacts, or less than significant impacts, in every one of the required CEQA impacts categories.

We appreciate the opportunity to submit this letter for your consideration and are available at any time to answer any further questions. Thank you.

Very truly yours,

Elizabeth Blaney
Co-Director
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Cc:

Greg Good, Office of the Mayor
Adrienne Khorasanee, Office of City Attorney
Matt Petersen, Office of the Mayor
Barbara Romero, Office of the Mayor
Martin Schlageter, Office of Councilman Huizar, CD 14
Hagu Solomon-Cary, Department of City Planning
Members, City Council Planning and Land Use Management Committee
Joe Buscaino, Los Angeles City Council

Attachments

1. Human Impact Partners Letter, July 10, 2015
2. LA County Department of Public Health Letter, January 29, 2016