



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 16 - 0 1 0 1

APR 0 1 2016

REPORT RE:

DRAFT ORDINANCE AMENDING SECTIONS 12.04, 12.20, 12.24 AND 12.32 OF ARTICLE 2 OF CHAPTER 1 OF THE LOS ANGELES MUNICIPAL CODE, AND SECTIONS 13.03, 13.18 AND 13.19 OF ARTICLE 3 OF CHAPTER 1 OF THE LOS ANGELES MUNICIPAL CODE TO AUTHORIZE THE ESTABLISHMENT OF A CLEAN UP GREEN UP SUPPLEMENTAL USE DISTRICT WITHIN BOYLE HEIGHTS, PACOIMA/SUN VALLEY AND WILMINGTON; AND DRAFT ORDINANCE ADDING SECTIONS 95.314.3 AND 99.04.504.6 TO THE LOS ANGELES MUNICIPAL CODE, AND AMENDING SECTION 99.05.504.5.3 OF THE LOS ANGELES MUNICIPAL CODE TO IMPLEMENT BUILDING STANDARDS AND REQUIREMENTS TO ADDRESS CUMULATIVE HEALTH IMPACTS RESULTING FROM INCOMPATIBLE LAND USES WITHIN THE CITY OF LOS ANGELES

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 15-1026

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinances, approved as to form and legality. The first draft ordinance amends Sections 12.04, 12.20, 12.24 and 12.32 of Article 2 of Chapter 1 of the Los Angeles Municipal Code (LAMC), and Sections 13.03, 13.18 and 13.19 of Article 3 of Chapter 1 of the Los Angeles Municipal Code in order to authorize the establishment of a Clean Up Green Up Supplemental Use District within Boyle Heights, Pacoima/Sun Valley and Wilmington to reduce cumulative health impacts resulting from incompatible land uses, establish a citywide Conditional Use for asphalt manufacturing and refinery facilities,

and increase the notification requirement for projects within a surface mining district (CUGU Ordinance). The second draft ordinance adds Sections 95.314.3 and 99.04.504.6 to the LAMC, and amends LAMC Section 99.05.504.5.3 to implement building requirements for air filtration and air circulation to lessen the impacts of incompatible uses on habitable spaces in the City (DBS Ordinance).

Background

On January 2011, the City Council initiated the Clean Up Green Up (CUGU) program (Huizar-Alarcon, et al., Council File 11-0112). The program was developed to address the disproportionate impact that low-income, minority communities often suffer due to the concentration of pollution sources in their neighborhoods through improved land use policy.

On May 15, 2012, the Planning and Land Use Management (PLUM) Committee, in consideration of two Council motions (Huizar-Alarcon, et al., Council File 11-0112) and (Huizar-Alarcon, Council File 11-0112-S1), instructed the Planning Department, with the assistance of the Departments of Public Works, Community Development Department, Fire Department, Building and Safety, and Office of Finance, and in consultation with the City Attorney, to prepare a report outlining the scheduling, personnel, and resource requirements necessary to implement the "Clean Up Green Up" (CUGU) program in Boyle Heights, Pacoima and Wilmington.

On June 19, 2013, the Council approved the CUGU work program developed by the Planning Department in consultation with the other City departments and adopted Ordinance No. 182,596, which created and provided for the administration of the CUGU Trust Fund. The Trust Fund was established to house funds for use in furtherance of the implementation of the CUGU program.

At a meeting on August 13, 2015, the City Planning Commission approved the Planning Department's proposed CUGU ordinance, which amended the LAMC to create new development standards to implement the CUGU program initiated by City Council. On September 22, 2015, the City Planning Commission issued a corrected Letter of Determination, which included the appropriate environmental findings, consistent with its action on August 13, 2015. On October 27, 2015, the Planning and Land Use Management (PLUM) Committee of the City Council considered the Planning Department's proposed ordinance, as well as a report and proposed ordinance from the Department of Building and Safety (DBS) adding standards to the LAMC to address air circulation and filtration in furtherance of the CUGU program's goals. The PLUM Committee continued the matter to allow the City Administrative Officer, the Chief Legislative Analyst and the Planning Department to report back with further information for the Committee.

On November 24, 2015, the PLUM Committee recommended the proposed ordinances with amendments to the City Council. On December 8, 2015, the Council adopted the PLUM Committee Report and requested that the City Attorney's Office prepare and transmit the final ordinances.

Summary of Ordinance Provisions

I. The Draft CUGU Ordinance

The draft CUGU ordinance amends several sections of the LAMC to authorize the establishment of CUGU Supplemental Use Districts (CUGU District) within Boyle Heights, Pacoima/Sun Valley and Wilmington to reduce cumulative health impacts resulting from incompatible land uses. These areas have long been subject to incompatible land uses, which has resulted in residential developments and dwelling units located in close proximity to pollution-generating uses. Through the establishment of this new type of supplemental use district, the City can impose development standards, including setbacks, enclosures and distancing requirements, on projects to alleviate the negative health impacts they might have on surrounding residents.

The draft CUGU ordinance also provides review procedures for proposed projects in a CUGU District, with an administrative clearance under the authority of the Director of the Planning Department (Planning Director). Moreover, the draft CUGU ordinance establishes a process for requests for adjustments and exceptions. Under the CUGU ordinance, the Planning Director may grant an adjustment, which is a deviation of no more than twenty percent from a quantitative development standard, based on specific findings. The appropriate Area Planning Commission hears appeals from the Planning Director's decision on adjustment requests. The local Area Planning Commission hears requests for exceptions from the CUGU District, and may grant an exception if it can make certain findings. The City Council hears appeals from an Area Planning Commission's decision on exception requests.

Finally, the CUGU ordinance establishes a citywide Conditional Use for asphalt manufacturing and refinery facilities, and increases the notification requirement for projects within a surface mining district.

II. The Draft DBS Ordinance

The draft DBS ordinance is a related ordinance that adds three new regulations to the LAMC to establish building standards to further the CUGU program's goal of reducing the impact of incompatible land uses on people living in the surrounding area. The draft DBS ordinance prohibits outside or return air from certain locations to be circulated into a building's heating or cooling system in order to prevent pollutants, including particulate matter, from circulating through buildings and negatively affecting the occupants inside.

The DBS ordinance also adds enhanced filtration requirements to the LAMC that are applicable to mechanically ventilated buildings, including those located within one thousand feet of a freeway. Buildings located near a freeway are required to install air filters for outside and return air that provides a Minimum Efficiency Reporting Value (MERV) of 13. Buildings located beyond one thousand feet of a freeway are required to install air filters that provide a MERV of 8.

California Environmental Quality Act (CEQA) Standard of Review

With regard to the proposed ordinances, the City Planning Commission recommends that the City Council find, based on the whole of the administrative record and the Initial Study completed for this project, that no significant impacts will result from the project's implementation, and, therefore, that the Council adopt a negative declaration for the project. Under CEQA, the City Council may only adopt the proposed negative declaration if the City Council finds on the basis of the whole record, including the initial study and any comments received, that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration reflects the City Council's independent judgment and analysis. (CEQA Guidelines, Section 15074(b).)

Charter Findings Required

Charter Section 558(b)(3) requires the Council to make the findings required in Subsection (b)(2) of the same section, namely whether adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. Charter Section 558(b)(3)(A) allows the Council to adopt an ordinance conforming to the City Planning Commission's recommendation of approval of the ordinance, if the City Planning Commission recommends such approval. Similarly, Charter Section 556 requires the Council to make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan. Council can either adopt the City Planning Commission's findings and recommendations or make its own.

On August 13, 2015, the City Planning Commission adopted the staff report and attached findings, approved the proposed ordinance and recommended its adoption by City Council. Specifically, the Commission made the following findings for the ordinance:

1. In accordance with Charter Section 556, the proposed ordinance is in substantial conformance with the purpose, intent and provisions of the General Plan in that the proposed ordinance would protect residents from manmade hazards and contribute to the physical health, safety and welfare of the people who live and work in the affected communities. Specifically, the ordinance standards on enclosure, storage, and signage and the Conditional

Use Permit help implement the Health and Wellness Element Objective 5.2 (“Reduce negative health impacts for people who live and work in close proximity to industrial uses and freeways through health promoting land uses and design solutions”) and Objective 5.4 [“Protect communities’ health and well-being from exposure to noxious activities (for example, oil and gas extraction) that emit odors, noise, toxic, hazardous, or contaminant substances, materials, vapors, and others”].

Through the setback, landscape, and distancing requirement standards, the proposed ordinance implements the Land Use Policy 3.13.4 of the Framework Element (“Provide adequate transitions where commercial and residential uses are located adjacent to one another”); the Urban Form and Neighborhood Design Policies 5.7.1 (“Establish standards for transitions in building height and for on-site landscape buffers”); and finally, Housing Element Policy 4.1.9 (“Whenever possible, assure adequate health-based buffer zones between new residential and emitting industries”).

Finally, the proposed ordinance addresses three communities in the City that suffer from a high pollution burden. Residents and non-profit organizations in the three communities have participated in outreach and the development of CUGU from its inception, which furthers the Air Quality Element Objective 6.1 (“It is the objective of the City of Los Angeles to make air quality education and citizen participation a priority in the city’s effort to achieve clean air standards”).

2. In accordance with Charter Section 558(b)(2), the proposed ordinance (Appendix A) is consistent with the General Plan. Specifically, the proposed ordinance substantially conforms with public necessity, convenience, general welfare and good zoning practice. In addition, the proposed ordinance does not modify any provisions of the General Plan and is consistent with City policies which promote protection from incompatible land uses and encourage suitable development standards which minimize impacts between incompatible and adjacent land uses.

As stated above, Charter Sections 556 and 558(b)(3) require City Council to make certain findings before adopting the proposed ordinance. The Council can adopt the City Planning Commission’s findings or make its own.

Council Rule 38 Referral

A copy of the draft ordinances were sent, pursuant to Council Rule 38, to the Department of Building and Safety with a request that all comments, if any, be presented directly to the City Council or its Committees when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Adrienne Khorasanee at (213) 978-8246. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

DM:ASK:zra
Transmittal