

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

0220-05201-0000

Date: November 20, 2015

To: Honorable Members of the Planning and Land Use Management Committee

From: Miguel A. Santana *MA*
City Administrative Officer *MA* Council File No: 15-1026

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Subject: **CLEAN UP GREEN UP ORDINANCE – PRO-ACTIVE CODE ENFORCEMENT, OMBUDSPERSON POSITION, & HEALTH IMPACT/RISK ASSESSMENT**

SUMMARY

On October 27, 2015, the Planning and Land Use Management (PLUM) Committee instructed the City Administrative Officer (CAO) and the Chief Legislative Analyst (CLA), in consultation with the Department of Building and Safety (DBS) and the City Attorney, to prepare a report in 30 days addressing three policy issues related to the draft 'Clean Up, Green Up' (CUGU) ordinance (Council File No. 15-1026), which amends various sections of the Municipal Code to create new development standards that aim to reduce cumulative impacts resulting from incompatible land uses, as follows:

- 1) Provide a staffing plan, budget, and funding source to develop a program of pro-active code enforcement in the three pilot areas, 1) Boyle Heights, 2) Pacoima/Sun Valley, and 3) Wilmington, to ensure compliance of current code and environmental regulations by existing businesses to tackle unpermitted and illegal operations in the pilot zones;
- 2) Provide a discussion of the Ombudsperson position and where the position should be located instead of the Mayor's office, the resources needed, and the pros and cons of the position beginning work on July 1, 2016, and how it relates to the start date of the proposed Clean Up, Green Up ordinance; and,
- 3) Provide a discussion on the differences of the Health Impact Assessment (HIA) and the Health Risk Assessment (HRA), examples of those environmental policy assessments, and a City Attorney opinion as to which of these is the most legally defensible.

Our Offices collaborated with the DBS, the Department of City Planning (DCP), and the City Attorney to develop the findings included in this report: 1) Establishing a pro-active code enforcement program in the pilot areas requires an additional eight positions and \$1.02 million in General Fund monies, 2) As part of the current year Adopted Budget, funding and resolution authority was provided to the Department of Public Works, Bureau of Sanitation for one Environmental Affairs Officer, and 3) the City can require applicants to provide a HIA, so long as any California Environmental Quality Act (CEQA) requirement (including the completion of an HRA) is also met. Our Offices recommend the PLUM Committee note and file this report as it is provided for informational purposes only.

FINDINGS

1. Pro-Active Code Enforcement Program

The DBS would require seven additional positions to survey the 977 businesses within the three pilot areas once per year for conformance with the Los Angeles Municipal Code (LAMC). The workload for the seven positions would consist of researching DBS records, review of DCP provided conditions of approval, travel time to sites, field inspections, complaint response inspections, database creation, managerial reporting, Order to Comply processing, pursuit of compliance, and customer service. All DCP approval documents and grants associated with planning actions, cases, determinations, variances, and other relevant information would also need to be provided by DCP for each property address prior to DBS inspection. Additionally, the City Attorney would require one additional Deputy City Attorney III to review and, if necessary, prosecute cases. The fully burdened General Fund cost to establish a Pro-Active Code Enforcement Program to support the Clean Up Green Up Program is approximately \$1.02 million. The on-going positions and annual funding are illustrated in the table below:

CLASS TITLE	POSITIONS REQUIRED	ANNUAL SALARIES	ANNUAL EXPENSES*	RELATED COSTS**	TOTAL
CLERK TYPIST	1	\$50,576	\$4,154	\$27,432	\$82,162
SENIOR CLERK TYPIST	1	63,987	4,154	31,469	99,610
BUILDING INSPECTOR	2	178,014	8,308	78,000	264,322
SENIOR BUILDING INSPECTOR	1	101,517	4,154	42,766	148,437
BUILDING MECHANICAL INSPECTOR	2	180,158	8,308	78,646	267,112
DEPUTY CITY ATTORNEY III	1	109,557	4,154	45,186	158,897
TOTAL	8	\$683,809	\$33,232	\$303,499	\$1,020,540

*Expense costs consist of contractual services, transportation, operating supplies, and equipment.

**Related costs consist of pensions, Medicare, and healthcare.

To ensure conformance with the LAMC within the pilot areas, the Ombudsperson can refer complaints to two existing funded programs within the DBS. The first program is the Annual Inspection and Monitoring (AIM) Program which requires an annual inspection of all auto repair facilities, auto dismantling yards, junk yards, scrap metal processing plants, used car lots, cargo containers, storage yards, and recycling centers for violations of both building and land use ordinances. The sites monitored under the AIM program are subject to fines and revocation of their Certificates of Occupancy if compliance with the mandated ordinances are not maintained. The second program is the Commercial and Residential Code Enforcement Program which is a complaint driven program. The City is currently in Phase Two of a three phase plan to restore the DBS to pre-recession staffing levels. To date, the City has added 29 full-time positions, 14 part-time positions, and over \$3 million funding to reduce the DBS' response time from 25 business days to 11 business days. The DBS is working with the Personnel Department to fill the positions that have been authorized since FY 2014-15. The Department is expected to submit a budget request for Phase Three which will include funding for 14 additional positions to further reduce the response time. In the near future, the DBS will have funded resources to work with the Ombudsperson to address complaint-based conformance issues that may arise in the

pilot zones. The PLUM Committee may wish to have the Ombudsperson report back in one year on the successfulness of the CUGU Program. If there is a demonstrated need for additional code enforcement resources at that time, the PLUM Committee could evaluate an interim budget request to add additional resources to the DBS and City Attorney.

2. Ombudsperson Position

As part of the FY 2015-16 Adopted Budget, the Mayor and Council authorized resolution authority and funding for an Environmental Affairs Officer, Class Code 7320, within the Department of Public Works, Bureau of Sanitation (BOS) to support and serve as the ombudsperson to the Clean Up Green Up Program. The existing resolution authority expires on June 30, 2016. The BOS is expected to submit a budget request to continue funding and resolution authority for the Environmental Affairs Officer for the FY 2016-17 Budget.

The City's former Environmental Affairs Department (EAD) was established to address environmental issues in a coordinated and centralized manner. These issues included the City's ability to deal with contaminated properties and hazardous wastes, and quality of life and health issues. As part of the FY 2010-11 Adopted Budget, the EAD's responsibilities were functionally transferred to the BOS (climate change, adaption and vulnerability assessment, sustainability, and administrative support), DBS (local enforcement activities), Department of Transportation (air quality), Department of Water and Power (American Recovery and Reinvestment Act grant management), and the Office of the Mayor (administrative support). It is appropriate for the Ombudsperson position to be allocated in the BOS since the former EAD's sustainability, adaption and vulnerability assessment responsibilities were functionally transferred to the BOS.

3. Differences of the 'Health Impact Assessment' and 'Health Risk Assessment'

The proposed CUGU ordinance requires new oil refineries and those expanding beyond their current physical boundary to obtain a Conditional Use Permit (CUP) to operate, and one of the new requirements is the "submittal of a health impact assessment of the project for the surrounding vicinity identifying the number of people affected, short term or permanent impacts, likelihood that impacts will occur, how the project will contribute to the existing disproportionate burdens, and recommended mitigation measures." A Health Impact Assessment (HIA) would be an additional analysis that is separate from the Health Risk Assessment (HRA) required by the California Environmental Quality Act (CEQA) when the project involves toxic air contaminants (TACs). Thus, if the City wants applicants to provide an HIA, that is fine, so long as any CEQA requirement (including the completion of an HRA) is also met. The decision to utilize HIAs in addition to HRAs is a policy decision. It doesn't appear that the two assessments would contradict one another.

The HIAs and HRAs take different approaches to examining proposed projects. A HRA is a quantitative estimate that calculates the probability of harm that may result from a project. By contrast, a HIA conducts a community needs assessment relative to the proposed project and analyzes both positive impacts and negative harms. It captures a more holistic picture of a proposed policy or process. The additional information provided by a HIA should be useful in understanding the externalities of the project and applying conditions that will lessen the health impacts on the surrounding community. With that said, the following is an overview of both the HIAs and HRAs.

The HRAs are a regulatory science tool designed to estimate the risk of chemical exposures on a broad population. HRAs are applied when projects involve exposure to toxic air contaminant (TAC). This risk assessment estimates cancer risks and non-cancer effects from TAC emissions on nearby residents and other sensitive receptors. In other words, HRAs attempt to quantify risk to human health by using existing data from available academic studies and exposure estimates to arrive at a probability of risk resulting from a project as compared to what would normally occur in a broader population. It asks the question "how many people will get sick due to the biophysical changes that will result from this activity". As such, it is a narrowly defined tool triggered under CEQA. Projects undergoing CEQA are required to complete a HRA when TACs are involved. Therefore, if new or expanding oil refineries are compliant with their CEQA documentation they will be required to conduct an HRA. The process of risk assessment, which assesses risk facility-by-facility and chemical-by-chemical, has been identified as an inadequate tool to deal with persistent environmental justice (EJ) issues and have been criticized as being partially responsible for perpetuating cumulative health impacts. Furthermore, there are statistical assumptions embedded in HRAs that result in HRA dispersion models. These models can be manipulated to suit a desired outcome and are often difficult to identify once the quantitative estimate is published, particularly for those that do not have the requisite scientific and technical knowledge. The singular nature of the assessment does not account for existing sources of harm when making new risk estimates, i.e. it does not account for multiple or cumulative burdens or issues such as poverty that EJ communities face. The State of California recognized these arguments and over the past decade developed CalEnviroScreen, a recognized analytical method that forms the backbone of CUGU in the identification of impacted communities.

By contrast, HIAs have emerged as a bottom-up process that can be applied to projects or policies more broadly. HIAs describe community need at the onset and examine projects and policies in that context. HIAs are recognized by the World Health Organization, the Centers for Disease Control, other Public Health Departments, and other major institutional entities as a holistic process to consider impacts of a policy or project based on a broader range of data and community health needs. Typically, HIAs determine the potential effects on the health of a population; consider input from stakeholders; use different types of evidence and analytical methods; are flexible based on available time and resources; and provide evidence and recommendations to decision-makers in non-scientific terms but often building on quantitative data. HIAs consider the full range of potential impacts of the proposed project – both positive and negative. The HIA for new and physically expanding oil refineries will provide the type of information that is useful in determining what conditions are appropriate for the project in the cumulative community context. The DCP recommends the HIA for this particular CUP.

The differences in the programs are outlined below:

Health Risk Assessment (HRA)

- Scientific tool which attempts to estimate the impacts of chemical exposures on a board population (9-year, 30-year, and 70- year residential scenario).
- Quantitative risk to human health (ex: cancer risk in excess of 10 per one million) the results of which are more appropriate for practitioners in the technical community.
- Models based on assumptions which can be either implicit or explicit.
- Required under CEQA for projects that either produce toxic air contaminants (TAC) or project that are impacted by nearby toxic air contaminants.
- Guidelines for how to conduct a HRA are provided by multiple regulatory agencies.

Health Impact Assessment (HIA)

- Qualitative tool analyzing social determinants of health that can stand alone or build off of quantitative data analysis, the results of which are more appropriate for the context of public policy and public decision making.
- Results in recommendations that address any identified harms.
- No one single standard; rather a systematic process of analyzing health impacts that can be tailored to specific needs of a project.
- Conducted for large land use projects that may have multiple external impacts beyond the toxic air contaminants and considers existing social economic and environmental conditions.
- Provides insight into mitigation options useful for a CUP decision-maker.

The DCP recommends the following minimum elements be included in a HIA to provide direction, clarity and useful information for the City Planning Commission when considering a proposed Conditional Use Permit (CUP):

- 1) Potential impact of the project on surrounding vicinity;
- 2) Number of people potentially affected (short term or permanent impacts);
- 3) Likelihood that impacts will occur;
- 4) Projects contribution to the existing disproportionate burden, if applicable; and
- 5) Recommended mitigation measures.

FISCAL IMPACT STATEMENT

There are no General Fund or Special Fund impacts as this report is provided for informational purposes only.