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John Ferraro Council Chamber
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200 N. Spring St., Room 340
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Re: Objections to June 22, 2021 Council Agenda Item 13 (Exemption)
Council File 12-0460-S4; Proposed Processes and Procedures Ordinance

Honorable Mayor Garcetti and City Councilmembers:

This firm represents various stakeholders in the City of Los Angeles. We incorporate by reference objections made by other concerned groups and residents to the proposed Processes and Procedures Ordinance; CF 12-0460-S4 Ordinance (hereinafter, "Ordinance").

In addition, we object to the City's claimed CEQA exemptions in connection with the Ordinance. The City has not met its burden to support those exemptions with substantial evidence in the record. The invoked exemptions are inapplicable, including as detailed below.

First, Guidelines § 15378(b)(5) applies to: "organization or administrative activities of governments that will **not result** in direct or **indirect** physical changes in the environment." (Emph. added.) The Ordinance does not qualify for this exemption since the Ordinance will indeed result in indirect physical changes in the environment. The Staff Report dated 5/25/21 re "Technical Correction" provides:

> "The Ordinance is the **first component** of a **larger** Department of City Planning (Department) initiative to comprehensively update the City's Zoning Code **as part** of the **Community Plan Update** program. The Ordinance focuses on creating a clear set of administrative procedures that will be used to consider and process

> requests for Zoning Code entitlements. As such, this Ordinance is meant to lay the groundwork for a more user friendly, transparent, and **predictable set** of zoning regulations and is also of important utility for the new Zoning Code to come. The Ordinance will maintain long-standing opportunities for public participation, while also making it easier for both applicants and the public to clearly understand how the Department considers land use and development proposals and how to navigate the decision-making process. The Ordinance achieves this by consolidating and **standardizing** the **processes** and **procedures** for **project review**; locating the processes and procedures in one central location – Article 13 of Chapter 1A of the LAMC; and establishing a standard visual format with flowcharts." (Emph. added.)

The emphasized language demonstrates that the Ordinance is proposed as part of a larger project involving Community Plan updates; therefore, its impacts must not be viewed in isolation but as part of the "whole of the project." Further, although the Ordinance itself does not – on its face – turn discretionary projects into non-discretionary, the Community Plan updates that are part of the same project as the Ordinance and that allow higher density and changed zoning designations will, apparently, effect that change (this also includes various CEQA exemptions that are triggered by the update of Community Plans, such as an infill exemption).

The record contains evidence that the Ordinance – either individually or cumulatively with the larger project of Community Updates of which it is a part – will have a significant impact on the environment and does not qualify for an exemption under Guidelines § 15378(b)(5).

Further, the "common sense exemption" Guidelines § 15061(b)(3) may only apply where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." There is no such *certainty* in the Ordinance and notice of exemption or staff reports. Instead, the administrative record contains evidence that – either individually or cumulatively with the Community Plan updates – that the Ordinance will have significant impacts. The law is clear that with common sense exemptions, the City has the burden of showing such certainty. Davidon Homes v. City of San Jose (1997) 54 Cal.App.4th 106, 117. The City has not met its burden to show with certainty that the Ordinance will have no significant impacts. Therefore, the common sense exemption is inapplicable here.

Finally, City invoked the Class 8 exemption under Guidelines § 15308, which states: "Class 8 consists of actions taken by **regulatory agencies**, as **authorized** by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment. Construction activities and **relaxation of standards** allowing **environmental degradation** are not included in this exemption." (Emph. added.) The City – in its findings or Notice of Exemption in 2018 – does not even analyze how this Class 8 exemption applies. Neither can it analyze applicability of the exemption in good faith because the City of Los Angeles is not a "regulatory agency" to assure the protection of the environment – it is merely a lead agency that must *comply* with CEQA's environmental mandates. Citizens for a Responsible Caltrans Decision v. Department of Transportation (2020) 46 Cal.App.5th 1103, 1125–1126 (distinguishes Caltrans (a lead agency) from a regulatory agency). The distinction is critical because regulatory agencies themselves must comply with notice, public hearing, and other requirements under Pub. Res. Code § 21080.5 (including but not limited to the requirement to identify alternatives).

Further, the staff report claiming that the Ordinance is merely reorganizing the zoning code is by definition not covered by Class 8 since, to be a qualifying regulatory program, the Ordinance must include the "protection of the environment among its principal purposes" and should contain authority "to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation" under Pub. Res. Code § 21080.5(d)(1)(A)-(B), which the Ordinance and the City lack.

To the extent the Ordinance seeks to "standardize" the zoning ordinance and effectively deprive various projects of CEQA review or public hearing process, a Class 8 exemption does not apply because it weakens standards, thus encouraging environmental degradation, contrary to the express language in the Class 8 Guidelines.

None of the City's claimed exemptions apply to the Ordinance or are supported by evidence, rather than the City's conclusory assertions. To comply with CEQA, the Ordinance must be reviewed along with the Community Plan updates, and its effects must be studied in the environmental document prepared for each Community Plan update it is to apply to. This is also mandated by CEQA's prohibition against piecemealing and segmentation, as well as under the provisions applicable for phased projects (Guidelines §§ 15165, 15378), as the Ordinance is expressly stated in the 5-25-21 Staff Report to be the *first phase* of a much larger City initiative along with Community Plan updates.

Lastly, to the extent the Ordinance replaces notice of public hearing from "The **owners** and **occupants** of all property within and outside the City **within 300 feet** of the exterior boundaries of the area subject to the application (or the expanded area described below)" to "**Owners** of all properties **abutting**, **across** the **street** or alley from or having a **common corner** with the subject property" (emph. added), the Ordinance is both facially and as-applied unconstitutional as it deprives property occupants within a 300 foot radius – who will be actually impacted – from the right to be notified about projects and their impacts. This is especially critical in multi-unit *rental* areas, where owners (mostly remote) may not be affected by (or interested in) project impacts, but where the actually impacted community may be deprived of notice and opportunity to comment and request mitigation of those impacts. Thus, the Ordinance runs counter to public participation requirements, as well as to Environmental Justice mandates under both CEQA (as part of a mandatory general plan element and consistency analysis) and State Planning and Zoning Laws. The proposed change is improper as it limits notice to only a relatively few owners, whereas a project's environmental impacts are not so limited. Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263, 272 ("Effects of environmental abuse are not contained by political lines; strict rules of standing that might be appropriate in other contexts have no application where broad and long-term effects are involved. (See United States v. SCRAP, supra, 412 U.S. at pp. 687—688, 93 S.Ct. at pp. 2415—2416, 37 L.Ed.2d at pp. 269-270.)"); see also Horn v. County of Ventura (1979) 24 Cal.3d 605, 617.

Therefore, we request that any such references in the Ordinance limiting public hearing or any other notice to only the abutting or adjacent property owners be removed and the prior notice requirements to property owners *and occupants* within a 300-foot radius be reinstated.

Thank you.

Very truly yours,

/s/ Robert P. Silverstein
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