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October 5, 2015

VIA Email and Hand Delivery

The Honorable Los Angeles City Council
Los Angeles City Hall
200 North Spring Street
Los Angeles, CA 90012

Attn: Patrice Lattimore, patrice.lattimore@lacity.org

RE: CF # 15-1013 – Hybrid Industrial (“HI”) Live/Work Zone Ordinance
CPC-2015-1938-CA; ENV-2015-1939-CE

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Dear Honorable Los Angeles City Council:

I represent the Los Angeles River Artists and Business Association, Arts District Community Council, and individual Arts District stakeholders Yuval Bar-Zemer, Paul Solomon, and Mark Borman. This letter supplements and briefly summarizes letters already in the record to the City Planning Commission and Council’s Planning and Land Use Management Committee regarding the Hybrid Industrial Live/Work Zone Ordinance.¹

I. The City has failed to perform adequate environmental review of the ordinance.

Per earlier and more detailed letters, these stakeholders maintain that the City cannot approve the Hybrid Industrial Zone ordinance without first undertaking the appropriate level of environmental review.

The City asserts that its adoption of the zoning ordinance is not a “project” under CEQA. This is incorrect. “Ordinances passed by cities are clearly activities undertaken by a public agency and thus “projects” under CEQA.” *Apt. Ass’n of Greater L.A. v. City of L.A.* (2001) 90 Cal App 4th 1162, 1169; *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal. 4th at 382. “[E]nactment and amendment of zoning ordinances” are *specific* examples of activities subject to environmental review in the CEQA Guidelines. CEQA Guidelines § 15378(a)(1).

In the alternative, the City argues that the “common-sense” categorical exemption applies. Even if the common sense exemption applied, and it does not, it is the City’s burden to provide substantial evidence to support such a conclusion. *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116-117. “Imposing the burden on members of the public in the first instance

¹ The letters to PLUM are available in the online council file management system at:
http://clkrep.lacity.org/onlinedocs/2015/15-1013_pc_9-8-15.pdf and http://clkrep.lacity.org/onlinedocs/2015/15-1013_misc_k_9-22-15.pdf

to prove a possibility for substantial adverse environmental impact would frustrate CEQA's fundamental purpose of ensuring that government officials make decisions with environmental consequences in mind." *Id.* (quoting *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 283)(internal quotation marks omitted). A conclusory recital of exemption is insufficient to justify its application. *Davidon Homes*, 54 Cal. App. 4th at 116-117. The City's analysis rests on a conclusory statement of the law, with no evidentiary support, let alone substantial evidence.

At best, the City can be said to have engaged in a trivial thought experiment resting on the false assumption that because no specific construction project is now considered, and no particular parcel being rezoned, that the action to adopt the ordinance will therefore lead to no physical change in the environment. But this is false. "An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus *on the secondary effects that can be expected to follow* from the adoption or amendment." CEQA Guidelines § 15146 (emphasis added). That review "need not be as detailed as an EIR on the specific construction projects that might follow." *Id.* The "effects" to be studied during environmental review include both the direct effects caused by the project, and the indirect, or secondary, effects caused by the project, even when they are later in time, so long as they are reasonably foreseeable. CEQA Guidelines 15064(d). The fact that a project will not itself "include action that will have a significant effect on the environment" does not preclude the necessity for EIR review of a project." *Napa Citizens for Honest Govt. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App. 4th 342, 368.

As discussed in earlier letters, tiered environmental review is strongly encouraged by CEQA where, as here, it can serve to analyze and identify those environmental impacts associated with the proposal that might be addressed now, and leaving only project-specific impact analysis to the future. "Tiering is proper when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports." *In re Bay-Delta Programmatic Env't Impact Report Coordinated Proceedings* (2008) 43 Cal 4th 1143, 1170 (internal quotes omitted). This sort of review will be beneficial to community members, decisionmakers, and also future project applicants under the ordinance, because review of common issues now is likely to "eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review." *Las Virgenes Homeowners Fed'n v. County of Los Angeles* (1986) 177 Cal. App. 3rd 300, 307.

Engaging in high-level environmental review at the outset will also help the City avoid piecemealing its environmental review, which is improper under CEQA. This is because piecemealing frequently leads to a failure to identify cumulative impacts, by "chopping up proposed projects into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment." *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal. App. 4th 1214; *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2005) 130 Cal. App. 4th 1491. The contention that environmental review may be deferred on a piecemeal basis has been rejected by California courts for decades. *See, e.g., Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal. 3d 263; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal. App. 3rd 229, 243. "While foreseeing the unforeseeable is

not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” CEQA Guidelines § 15144.

The ordinance is intended to, and will, result in substantial development citywide, but in particular within the Arts District. The type of development envisioned will result in potentially adverse impacts on traffic, circulation, air quality, land use, and other common impact areas. As discussed above, it is the City’s responsibility to consider potentially significant environmental effects of its actions, not community members’. Arts District stakeholders call on the City to not “frustrate CEQA’s fundamental purpose of ensuring that government officials make decisions with environmental consequences in mind.” *Davidon Homes*, 54 Cal.App.4th at 116-117.

II. The proposed zoning ordinance conflicts with the City’s stated policy to preserve industrial land for job producing uses.

In a 2008 memorandum, then-Director of Planning Gail Goldberg affirmed that “the City’s adopted policy is to retain industrial land for job producing uses.”² Much of the Arts District is comprised of two typologies identified by the ILUP Memo as Employment Protection (“EMP”) districts and Industrial Mixed Use (“IMU”) districts, which would be potentially subject to the development under the ordinance. In EMP areas, the ILUP Memo stated that “industrial zoning should be maintained,” and “[r]esidential uses in these Districts are not appropriate.” ILUP Memo at 3. IMU districts “may support a *limited* amount of residential use” but “should remain predominantly industrial/employment districts.” *Id.* at 4.

Many Arts District stakeholders, including my clients, objected to the City Planning Commission that what was originally intended to be an Arts District-specific interim zoning ordinance has been substituted with a citywide ordinance that is not sensitive to the concerns of Arts District constituents. That said, the ordinance as reviewed and recommended for approval by the CPC at least had considerably greater protections for preservation of industrial land for job-producing uses than the amended ordinance now pending before the Council.

Most notably, the CPC considered the 200 square feet per unit set aside for “Arts and Productive Uses” an appropriate balance struck by Planning among numerous competing interests. But following CPC approval of the ordinance, the PLUM Committee amended the ordinance to reduce Arts and Productive Uses to only a *third* of what the CPC found an appropriate balance. Moreover, PLUM’s tiering scheme favors the very largest projects even though, as Planning’s Patricia Diefenderfer noted to PLUM, those larger projects have greater options for siting non-residential space, including siting the space in multiple buildings. The CPC specifically rejected a proposal by developers to cut the set aside to 100 square feet per unit. The PLUM amendment thus goes far beyond what the CPC rejected, and destroys the most important job-creation

² S. Gail Goldberg, Director of City Planning, *Staff Direction Regarding Industrial Land Use and Potential Conversion to Residential or Other Uses* (Jan. 3, 2008)(*hereinafter* “ILUP Memo”)(emphasis deleted), available online at <http://planning.lacity.org>, by clicking on the following link sequence: Policy Initiatives → Industrial Planning Initiatives.

component of the ordinance. In addition, PLUM substantially increased the number of hotel rooms permissible under the ordinance, from 100 to 149. The Planning Commission also specifically rejected this proposal.

The Council is justifiably concerned about job-creation in Los Angeles, so much so that it recently created an Ad Hoc Committee on [a] Comprehensive Job Creation Plan.³ The City must not allow the residential development lobby to pressure a policy change that is at odds with both the City Planning Commission's vision for job-producing development and the City's long-standing policy to preserve industrial land for job-creation. The PLUM amendments largely convert the ordinance from one that promotes job-producing projects with ancillary housing benefits, to one that allows primarily residential and hotel uses.

III. The PLUM amendments substantially change the ordinance in conflict with its stated purpose and require further review by the City Planning Commission per Los Angeles City Charter Section 558.

Los Angeles City Charter Section 558 controls the adoption of zoning ordinances such as the Hybrid Industrial Zone Live/Work ordinance. Charter § 558(a)(1)-(2). The Charter requires that when a land use ordinance is initiated that the City Planning Commission be provided an opportunity to review and report, including making a recommendation of approval or disapproval along with making specific findings. Charter § 558(b)(2). Because the Planning Commission's recommendation changes the procedure for adoption by the Council, it is the City's practice, consistent with its Charter, that when an ordinance has been substantially changed by amendment in a manner conflicting with the version approved by the Planning Commission to provide the Planning Commission an additional opportunity to review and comment. *See, e.g.,* CPC-2015-3059.⁴

As discussed above, Arts District stakeholders submit that PLUM amendments have substantially changed the ordinance compared to the version considered and approved by the Planning Commission. Additional review of the ordinance by the CPC is thus required by Charter Section 558.

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³ It is unclear why the Ad Hoc Committee has not been given an opportunity to review the pending ordinance in the first instance, given the purpose of the ordinance "to regulate Live/Work and Arts and Productive Uses in areas of the City with a General Plan land use designation of Hybrid Industrial *as a means to preserve land for jobs and to foster job creation.*" Draft Ordinance Section 4 (emphasis added).

⁴ The CPC recently re-reviewed the proposed Citywide sign ordinance due to modifications made by the PLUM Committee. That ordinance was reviewed by the CPC in March 2009, but after numerous hearings and amendments made at PLUM, was heard again by the CPC on Thursday, September 24, 2015. Thus, the City's own interpretation of Charter Section 558 clearly requires further review of the HI Zone ordinance by the CPC since, like the amended sign ordinance, it is a significant departure from the ordinance previously considered and approved.

IV. Conclusion.

The City has received hundreds of pages of letters and other documents in opposition to its application of the proposed Hybrid Industrial Zone Live/Work ordinance to the Arts District. Many of these communications come from persons with longstanding ties to the community, some of them the very people who are most responsible for making the Arts District what it is today. Where Arts District community groups have weighed in, including the Historic Cultural Neighborhood Council Urban Design & Land Use Committee, Arts District Community Council LA, and Los Angeles River Artists' and Business Association, they oppose the HI Zone's application to the Arts District. In addition, more than 300 Arts District residents and stakeholders, including urban and civic leaders, business owners, architects, urban planners, developers, and academics signed a statement opposing the HI Zone and proposing an alternative ordinance specifically tailored to the Arts District.⁵ At the September 22, 2015, PLUM hearing, four dozen of these concerned stakeholders spoke in opposition to the ordinance.

Based on all of the above, my clients urge the Council not to adopt the ordinance, or in the alternative to exempt the Arts District from its application, until the City first studies the environmental and economic impacts of the ordinance on the Arts District, and provides an opportunity for the Planning Commission to review the substantial changes that have been made. In addition, they request that the ordinance be reviewed by the Council's newly formed Ad Hoc Committee on Comprehensive Job Creation Plan to ensure that it is consistent with that committee's vision for promoting long-term, high-quality job creation in the City.

Sincerely,



John P. Given

Cc (by email only):

Los Angeles City Councilmembers

Michael LoGrande, Director of City Planning

Christopher Fudurich, President, LARABA

Dr. Ran Boytner, President, Arts District Community Council LA

Yuval Bar-Zemer

Paul Solomon

Mark Borman

⁵ See <http://www.weareheartsdistrict.com/our-ordinance/>.