

Craig Lawson & Co., LLC

Land Use Consultants

Sept 9, 2015

Hon. Jose Huizar, Chair
Honorable Members of the Planning and Land Use Management Committee
200 N. Spring Street, Room 395
Los Angeles, CA 90012

RE: Draft Hybrid Industrial Live/Work (HI) zone (dated Sept 8, 2015)
CPC-2015-1938-CA
ENV-2015-1939-CE

President Ambrose and Members of the City Planning Commission,

I am writing to you today in **support** of the proposed Hybrid Industrial Live/Work Ordinance ("LW Ordinance") as referenced above. Over the years, Craig Lawson & Co., LLC, a land use consulting firm, has processed numerous entitlements in industrially-zoned areas, particularly within the Downtown Arts District¹, that facilitate the growth of Joint Living and Work Quarters units (JLWQ). These entitlements were appropriately approved by the City of Los Angeles because the areas had already transitioned away from typically noxious industrial uses and the existing buildings were becoming underutilized and economically depressed.

Allowing for JLWQ units in the Downtown Arts District has several distinct benefits to the City of Los Angeles:

- Many existing structures and vacant buildings have been subsequently rejuvenated as JLWQ residential uses, thus bringing residents to the area who have money to spend on local cafes, restaurants, and retail stores.
- New residents have opened boutique stores, art galleries, coffee shops, and other enterprises that attract visitors not just from Los Angeles, but from all over the world.
- The vibrancy and economic vitality of the Downtown Arts District has encouraged additional development, with recent interest from hotel developers and companies that specialize in creative office uses.
- The development of creative office, retail space, hotels and restaurants, has generated, and will continue to generate, more tax revenue to the City of Los Angeles.

¹ The Downtown Arts District is generally described as that area between 1st Street, Alameda Street, the Los Angeles River and Violet Street

The demand for the proposed LW Ordinance is generated not only by this area's rebirth, but by the region's short supply of housing and proximity to the Downtown Los Angeles jobs center, to numerous transit opportunities, and to the Los Angeles River. When this dynamic is combined with the economic collapse experienced by older industrially zoned areas no longer suitable for industrial purposes, these areas become prime locations to generate much-needed housing while also fostering economic growth with the job creation inherent in live/work units and the development of commercial uses that support the mix of uses in revitalized industrial areas. Consequently, the proposed LW Ordinance provides an important path towards reactivating our urban cores, meeting our housing goals and promoting our economic growth.

While we are supportive of the general parameters of the LW Ordinance, and we urge you to recommend its approval, we would like to highlight certain aspects of the current draft Ordinance we find counterproductive. The areas that warrant further scrutiny and revisions include:

- Section 4 A: Entitlement Process By subjecting each project to a General Plan Amendment and Zone Change process, the LW Ordinance places an onerous burden on every applicant that would result in the City's lengthiest entitlement process. This is contrary to the stated goal of creating a broader range of industrial zones that are responsive to the changing nature of work and people's desire to live and work in close proximity and often within the same space. The City's Industrial Land Use Policy project underscored this need by calling for new zones that address the full range of industrial areas found in the City, including industrial mixed use districts – areas that retain a jobs focus but which may support limited residential uses. This lengthy process seems needless, when, for example, it appears that the Hybrid Industrial Live/Work Zone is intended for areas that meet certain criteria, which for now only occur in the Central City North and Northeast Los Angeles Community Plan areas. It is already well-established that the Central City North Community Plan "encourages the continued and expanded development of a thriving artists-in-residence community in the plan and proposed redevelopment areas." Adding the requirement of a General Plan Amendment and Zone Change is not only cumbersome but redundant. The LW ordinance should be revised to allow the City Planning Commission to approve a proposed project through a Conditional Use Permit process with appeals to the City Council. This approach would simplify the process while protecting the public interest in the preservation of industrial land where it remains viable for its intended uses.
- Section 4. B 2 (b): Hotel: We support the inclusion of the hotel use in the LW Ordinance. The hotel guest room is a hybrid use similar to the JLWQ units that will also foster an area's growth. It generates economic benefit through commercial activity and tax revenue while also providing sleeping opportunities typical of residential uses. Related to this use, we would like to highlight:
 - We believe the 100 room limit suggested in the proposed LW Ordinance is arbitrary, and it is not clear that this limitation is based on any market analysis. A

market analysis should be prepared to define this number and determine overall compatibility with enhancing opportunities to generate these important visitor-serving uses.

- An important distinction between the conversion of existing structures to a hotel use and new construction for hotel use should be established. The conversion of existing structures generates almost unanimous support from all concerned due to a project's ability to generate economic growth without changing the built-environment. Due to the similarities between the hybrid JLWQ use and the hotel use, we request that the City Planning Commission recommend to the City Council the modification of LAMC 12.24 X 13 to allow hotels this same entitlement path.
- Section 4.C 1 (b) 2: Floor Area reserved for Arts and Productive uses require 200 square feet for every live/work unit. This standard requires 200 square feet of space to be constructed and dedication to commercial or arts related activities for every LW unit constructed. While we believe the goal of this standard to foster job growth is laudable, we believe it is an onerous and unworkable constraint. This standard also ignores the fact that the mandated Type B Live Work units permit up to 5 employees on-site. Based on the underutilized nature of many of these industrially zoned buildings and sites, the Type B units will generate more jobs on these industrial sites than exist today. This standard also generates a building type that is not typical and we are concerned about the financial feasibility of a project combining these uses in these percentages. We suggest that the standard be eliminated or the LW Ordinance be amended to allow Type B units to count toward the goal.
- Section 4 C 1 (b) (3): The requirement for a Pedestrian Paseo assumes this standard is functional and practical for all sites. We agree the paseos should be provided when feasible and viable for a particular site, but also believe there needs to be a process incorporated into the Ordinance that allows for justified modifications to this regulation. We request the LW Ordinance be amended to permit the approving body to deviate from this standard when deemed appropriate.
- Section 4 C 3: Height: There is no planning or design rationale for limiting the height of buildings to 110 feet. It also appears to conflict with the desire to promote Type 1 construction as the increased cost of converting from a building type maxing out at 85 feet is so great that it cannot be overcome in the additional 25 foot height allowance permitted in the draft Ordinance. We request that this height limit be pushed to at least 175 feet.
- Section 4 C 14 (F): allows 50% of the parking to be located off-site within 1500 of the development site. The Ordinance is not clear if this parking is secured through a covenant and agreement or a simple lease agreement. This issue needs to be clarified in the Commission's recommendation to City Council

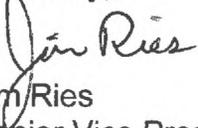
- Section 4 C 4 (b): This should be modified to allow the story height to be measured from floor to floor, not floor to ceiling. The floor to floor heights in the prior versions of the Ordinance allowed ample light and air in the units. It is not clear that the increased height gained from floor to ceiling measurements are critical to any use promoted within the Type B units, but it does result in increased construction costs and mandating building heights that exceed the comfort level of many existing residents. Please amend this requirement to measure the height of a story using floor to floor measurements

We appreciate the opportunity to comment on this important Ordinance. We urge you to consider our points and concerns with great care, and to make adjustments to the current draft of the LW Ordinance and recommend its approval to the City Council.

In the deliberations to be conducted by the City Planning Commission, our firm would be willing to discuss these issues in greater detail, if necessary or desired by the members. We look forward to the adoption of an ordinance that will facilitate the type of live/work projects that meet many of the City's stated goals to increase housing and promote economic development.

Thank you for your consideration of the issues raised by this letter.

Sincerely,



Jim Ries
Senior Vice President

cc:

The Honorable Jose Huizar, Council District 14 (Attention: Paul Habib/Kevin Ocubillo)

Los Angeles City Planning Department (Attention Patricia Diefenderfer/ Bryan Eck / Nicholas Maricich)

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August 3, 2015

Honorable City Planning Commission
City of Los Angeles
200 North Spring Street
Los Angeles, CA 90012-2601

Attention: James Williams, Commission Secretary

Re: Proposed HI Ordinance (Scheduled for the Commission's August 13, 2015 Meeting)

Dear Commissioners:

I, Fred Afari, on behalf of Elm Tree Investments, and as an Arts District property owner for over two years, have great interest in the changes that have taken place in our community. I support taking steps to ensure the thoughtful and continued growth and prosperity of the Los Angeles Arts District. I, along with other landowners and stakeholders, believe that this new zoning tool will do a great deal to uphold and promote the unique aspects of Arts District, as well as pave a sustainable way for new development to take place. I wish to commend Councilman Jose Huizar, his planning staff, and the Planning Department for their successful and collaborative community outreach efforts. The revised ordinance as drafted today, largely reflects a planning direction desired by a substantial majority of the community.

Please consider this letter to be a strong indication of stakeholder support for the proposed Hybrid Industrial ordinance and for thoughtful land use decisions in the Arts District. There are a few modifications, however, that we request that you make to the ordinance:

- * Measure Minimum Floor Heights from Floor to Floor, as Originally Proposed, and Not Floor to Ceiling. The current version of the ordinance requires 16' Floor-to-Ceiling measurements for ground floor spaces and 11' Floor to Ceiling heights in upper floors and all Live-Work units. The market does not demand this design. Further, a few extra inches in height per floor would not allow for any additional or different work activities in the units, but it would unnecessarily add to costs. Therefore, the ordinance should not dictate this design detail but should instead include the last draft's requirement for average floor to floor heights. In addition, the first floor height restriction should only apply to any retail/office structure within 40 feet of any property line abutting a public street and should not affect the portion of the property line that serves as ingress/egress to the property or used for other purposes
- * Increase the Building Height Limit to Incentivize Type I Construction. The ordinance seeks to incentivize type I construction by allowing more FAR. However, the proposed 110-foot height limit nullifies this incentive, as the added costs of Type I construction would offset the limited amount of additional floor area gained from increasing a project's height from the 85-foot

Item # 1

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September 8, 2015

Los Angeles City Council
Planning and Land Use Management Committee
Councilmember Jose Huizar, Chair
Councilmember Marqueece Harris-Dawson
Councilmember Gilbert A. Cedillo
Councilmember Mitchell Englander
Councilmember Felipe Fuentes
Los Angeles City Hall
200 North Spring Street
Los Angeles, CA 90012

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2015 SEP - 8 PM 2: 13
BY [Signature] CITY CLERK
DEPUTY

VIA HAND DELIVERY and E-MAIL to Leg. Asst. Sharon.Dickinson@lacity.org

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

Chairman Huizar and Honorable Councilmembers:

The following comments are made on behalf of Los Angeles River Artists and Business Association and Arts District Community Council, longtime community organizations in the Arts District representing businesses, artists, property owners, and stakeholders in the City of Los Angeles “Arts District” neighborhood, and Yuval Bar-Zemer, Paul Solomon, and Mark Borman, also longtime Arts District stakeholders, in response to the City Planning Commission’s recommendation that the City Council adopt the above-captioned Hybrid Industrial Live/Work Zone ordinance and certify its associated categorical exemption. This letter addresses the City’s complete failure to undertake even a preliminary review of environmental issues for the proposed zoning ordinance as required by the California Environmental Quality Act (“CEQA”), among other issues.

This zoning code proposal builds on a previous effort intended specifically for the Arts District, where its passage would have created an interim Live/Work Zone. My clients were among many community members and organizations that participated in all aspects of the public process for that proposal, including attending numerous community meetings and providing oral and written comments to the Planning Department with respect to both the broad underlying policy issues and the specific language of that proposed ordinance, as well as provided comments to the Department of City Planning and at the City Planning Commission hearing regarding the present ordinance. The Hybrid Industrial Live/Work zone is intended to be available citywide eventually but would initially only apply in the Central City North and Northeast Los Angeles Community Plan Areas. As part of the Central City North Community Plan, the Arts District and these

stakeholder individuals and organizations would be immediately impacted by passage of the ordinance.

I. The proposed Hybrid Industrial Live/Work Zone code amendment is a project under CEQA, and is not categorically exempt from environmental review.

A. Adoption of the City's proposed Hybrid Industrial Zone ordinance is a project under CEQA.

The first step in determining whether environmental review must be undertaken is for the lead agency to determine whether an action is a "project" subject to CEQA. "Whether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact." *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381. A project is "the whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." CEQA Guidelines § 15378(a). "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.*, 41 Cal. 4th at 382. "[E]nactment and amendment of zoning ordinances" and "adoption and amendment of local General Plans or elements thereof" are *specifically* listed as activities that are subject to CEQA in the CEQA Guidelines. CEQA Guidelines § 15378(a)(1). That further governmental decisions need to be made before a land use measure's actual environmental impacts can be determined with precision does not prevent the measure from qualifying as a project. *Muzzy Ranch Co.*, 41 Cal.4th at 383.

The City acknowledges the weakness of its argument that the zoning code amendment is not a project under CEQA by arguing in the alternative that even if the current proposal is a project, it is nonetheless exempt from CEQA, because "[t]he proposed project has no potential to cause a significant environmental impact." Categorical Exemption ("CE"), p.2.¹ As will be shown, the City's analysis of this question is entirely conclusory and flawed.

B. The HI Zone ordinance is not exempt from CEQA under the common-sense or any other exemption.

Even where an action constitutes a project under CEQA, a lead agency may nonetheless determine that the project is exempt. CEQA Guidelines § 15061(a). A project may be exempt by statute, per a categorical exemption, or because it does not have the potential for causing a significant effect on the environment. CEQA Guidelines § 15061(a)(1)-(3).

¹ The City's position is that "even if the new zone is found to be a project, then with certainty, there is no possibility that the proposed new zone would have a significant effect on the environment because the proposed project does not require any construction activities, does not rezone any parcel, does not change the use or intensity of any existing site to create a physical environmental impact and does not lead to any direct or reasonably foreseeable indirect physical environmental impacts." CE, p.2.

The City cites no specific exemption category under which the project might be exempt, and none applies. The City instead relies on the so-called “common-sense” exemption under CEQA Guidelines Section 15061(b)(3), as well as the City’s own comparable CEQA Guideline.² The City’s reliance on the common-sense exemption is misplaced.

The burden is on the agency to provide substantial evidence to support its conclusion that the project is categorically exempt. *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 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. “[I]f a reasonable argument is made to suggest a possibility that a project will cause a significant environmental impact, the agency must refute that claim *to a certainty* before finding that the exemption applies.” *Id.* at 118 (emphasis in original).

The Staff Recommendation Report states that adoption of the zone will not result in the rezoning of any particular parcel(s). Dept. of City Planning Recommendation Report (“RR”) at A-2. In its one paragraph environmental “analysis” the report merely restates the law that a common-sense exemption applies “where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.” RR at F-2. The report repeats its assertion there is “no development, change in land use, intensity or density proposed as part of this project” but produces no evidence, let alone substantial evidence, to support a conclusion that the common-sense exemption should apply. *Id.* Similarly, the language in the categorical exemption document cites the statute, states the law, and notes that the ordinance does not require construction or change the use or intensity of any existing site, but provides no evidence whatsoever to support a categorical exemption. CE, p.2.

On the other hand, a great deal of evidence, in the form of public testimony and submissions to the record, strongly suggests that the ordinance will be heavily utilized and will result in environmental impacts. At the Planning Department’s public outreach event in June, Planning staff introduced the proposal, fielded questions, and gauged community interest. RR at P-1. Attendees included “industrial property owners, developers, residents and business owners.” *Id.* As the Recommendation Report notes, “[m]any of the questions to staff were regarding the process for requesting the proposed zone upon adoption of the subject code amendment.” The report notes that attendees had a generally positive response to the proposal, with some expressing concerns about low maximum building heights and the potentially onerous requirement for non-residential Arts and Productive Use. *Id.* Taken at face value, the Recommendation Report evinces a strong interest in utilizing this new tool that the City has been studying for the better part of a decade.

² City Guideline, Article II, Section 2, class (m): “The adoption of ordinances that do not result in impacts on the physical environment.”

Further, testimony before the City Planning Commission (“CPC”) on August 13, 2015 by numerous development company representatives, whose companies own property in the Arts District neighborhood and throughout the City, makes very clear that a great deal of development can be reasonably anticipated to occur if the ordinance is adopted. In addition, senior City Planning officials testified that development was very likely. Senior City Planner Patricia Diefenderfer commented that “there is an identified need for this ordinance.” The City’s Director of Planning, Michael LoGrande, testified: “*I think it will be highly utilized, especially in the hot real estate market we are seeing.*”³

The City argues that because the project does not require any construction activities, does not rezone any particular parcel or change the use or intensity of any particular site, that it *cannot* have a direct or reasonably foreseeable indirect environmental impact. CE p.2. The project’s Categorical Exemption hides behind a thin façade of alleged uncertainty about the prospects for development under the ordinance (“it is unclear if and where this new zone will be used”). CE p.2. But given the expert views of the City’s own Senior Planning Department officials, including the Director of Planning, it is not at all speculative to conclude from the substantial evidence in the record that development is very likely to occur when the ordinance is adopted, even if the location and scope of that development cannot be precisely determined. If additional precision is desired, the Department of Planning could easily have surveyed the many interested development companies whose owners and executives communicated their strong support for the ordinance. But the City cannot use its complete failure to study the question as evidence to deny that development under the ordinance is virtually certain to occur.

In any event, the fact that future zone changes, General Plan amendments, or other entitlements might be required before the Hybrid Zone can be implemented does not excuse the failure to collect information about the direct and reasonably foreseeable indirect impacts of adopting the ordinance.⁴ “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. 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

³ CPC hearing audio for the August 13, 2015 CPC meeting is available at: <http://planning.lacity.org/InternetCalendar/pdf.aspx?Id=50591>.

⁴ It is not immediately clear that General Plan Amendments or zone changes would be needed in the large swathes of the Central City North and Northeast Los Angeles Community Plans where land use maps already show application of the Hybrid Industrial designation. In those communities, it appears that the new use would be available immediately upon application to the Department of Planning. *See* General Plan Land Use Map, Central City North Community Plan (Feb. 25, 2014), and General Plan Land Use Map, Northeast Los Angeles Community Plan (June 25, 2014), respectively available at: <http://planning.lacity.org/complan/central/PDF/ccnplanmap.pdf>, and <http://planning.lacity.org/complan/central/PDF/nlaplanmap.pdf>. The direct and reasonably foreseeable indirect environmental impacts from development of those many acres of parcels alone justifies much more detailed study.

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. For example, the growth-inducing impacts of an action are required to be considered in an EIR, even “though the extent of the growth is difficult to calculate.” *Id.*, see also CEQA Guidelines 15126(d).

The City is simply incorrect that where no specific project will be built that the ordinance is necessarily exempt under CEQA’s common-sense exemption. See *Napa Citizens for Honest Govt.*, 91 Cal. App. 4th 342. The City’s failure to support its assertion with substantial evidence makes its claim of categorical exemption invalid as a matter of law. *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 114.

C. Development under the ordinance will have potentially significant traffic, air quality, circulation, land use, and other impacts.

In the previously proposed interim ordinance that would have applied only to the Arts District, (see CPC-2014-5000-CA-GPA, referenced in the Recommendation Report at A-8 to A-9), the City capped prospective development with essentially similar development standards at 1,500 dwelling units and 600 hotel rooms. The City must have anticipated that development demand would approach or exceed those numbers, or it would not have needed to impose those caps in order to control growth the amount of growth under the ordinance. But even capping residential dwelling units and hotel rooms within the Arts District, as the previous ordinance would have done, that ordinance was necessarily one of “statewide, regional, or areawide significance” under CEQA. See CEQA Guideline § 15206.⁵ The currently proposed ordinance contains no such caps and is available within at least two current community plans, with thoughts of use in allegedly underutilized industrial areas throughout the City, making it likely that many more residential units and hotel rooms will be constructed under the ordinance. Numerous comments to the record, both in writing and in oral testimony, noted that the ordinance would be helpful in achieving Mayor Garcetti’s goal of 100,000 housing units.⁶ The Hybrid Industrial Live/Work Zone must be considered a project of “statewide, regional, or areawide significance” because it is likely to, and indeed is clearly intended to, result in the development of many thousands of residential live/work and hotel units in the Arts District and throughout the City.

⁵CEQA Guidelines Section 15206(b)(2) specifically requires that a project is subject to the subdivision if it proposes “residential development of more than 500 dwelling units,” or proposes “hotel/motel development of more than 500 rooms.” The interim Live/Work ordinance proposal exceeded both.

⁶ See, e.g., Fred Afari, Managing Partner, Elm Tree Investments, letter to City Planning Commission, Aug. 3, 2015, p.2 (attached as Exhibit 1): “The Mayor has called for the creation of 100,000 housing units to meet an existing shortfall. The underutilized industrial properties present excellent opportunities to create new housing without displacing existing residents.” There are numerous letters in the Planning Commission record repeating this assertion that the Hybrid Industrial Zone ordinance can be used to create a significant amount of new housing throughout the City.

Based on the above, it is entirely reasonable and logical to conclude that significant development under the ordinance is very likely, and that such development will result in traffic, air quality, circulation, land-use, and other direct and indirect physical impacts. In addition, the ordinance will almost certainly result in growth-inducing impacts. The City claims that these indirect impacts are necessarily speculative, but has provided no evidence whatsoever to support its own conclusion that there will be no such impacts. It is the City's burden to produce such evidence. *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106. It cannot, because it has failed to adequately and honestly pursue answers to the relevant questions.

II. Tiered environmental review is appropriate for the Hybrid Industrial Zone ordinance.

Tiered environmental review is strongly encouraged under CEQA when appropriate, to analyze and identify those environmental impacts associated with a proposal that can be identified at the time an action is taken, and leaving project-specific details for later review. *See, e.g.*, PUB. RES. CODE §§ 21068, 21093, CEQA Guidelines § 15152 (describing tiered EIRs); CEQA Guidelines § 15168(a) (program EIRs); PUB. RES. CODE §§ 21156-21157.6, CEQA Guidelines §§ 15175-15179 (master EIRs). “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'l Impact Report Coordinated Proceedings* (2008) 43 Cal 4th 1143, 1170 (internal quotes omitted). “Agencies are encouraged by the guidelines to tier their EIRs 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.

There are many excellent reasons to utilize tiered environmental review for the proposed Hybrid Industrial Zone ordinance. An initial policy-level review of environmental impacts, especially indirect impacts on citywide and regional transportation and other infrastructure, would be entirely consonant with one of the primary intentions of CEQA—to inform government decision-makers and members of the public about the potential significant environmental effects of proposed projects. CEQA Guidelines §§ 15002(a)(1), (a)(4); *see No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3rd 68.⁷

In addition, the CEQA Guidelines outline several benefits of a program EIR that would be very helpful to decision-makers and members of the public. Tiering would “[e]nsure consideration of cumulative impacts that might be slighted in a case-by-case analysis”, would “avoid duplicative consideration of basic policy considerations”, and would allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.” CEQA Guidelines §

⁷ “One major purpose of an EIR is to inform other government agencies, and the public generally, of the environmental impact of a proposed project, and to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action. A simple resolution or Negative Declaration, stating that the project will have no significant environmental effect, cannot serve this function.” *No Oil, Inc.*, 13 Cal.3d at 86 (citations omitted).

15168(b).

What the City should not do as a matter of good public policy, and under CEQA may not do as a matter of law, is pretend that no impacts are readily identifiable because no specific development project is under consideration. Such an approach is certain to lead to a failure to identify cumulative impacts associated with the zoning code amendment, 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 all environmental review on a discretionary agency action 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.

Under CEQA, entirely deferring environmental review and, thus, deferring any and all necessary mitigations is impermissible. “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 City cites CEQA Guideline Section 15064(b)(3) as cautioning against speculative analysis of impacts, and “considers it speculative to know where this new zone could be used in the City.” CE p.2. The cited statute does not “caution” against speculative impacts, however, it merely defines what constitutes a reasonably foreseeable indirect physical change to the environment: “An indirect physical change to the environment . . . which is speculative or unlikely to occur is not reasonably foreseeable.” CEQA Guidelines § 15064(d)(3). CEQA Guideline 15064(b)(3) relates only to indirect physical changes, while the ordinance would result in both direct (and intended) physical changes and also indirect physical changes. The Guideline does not say that the indirect physical changes *must* be caused by the project or that they are speculative, only that they *may* be caused. The Guidelines provide an example of an indirect physical change in the environment in the preceding subdivision of the Guidelines:

“An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.”

CEQA Guidelines §§ 15064(d)(2).

Under the City’s limited notion of foreseeability, it would consider the Guidelines example to be completely speculative and thus unforeseeable.

Fortunately, the City can also look to California courts for guidance to help understand whether the ordinance’s potential indirect impacts are foreseeable. The City acknowledges that for the

zone to apply to a specific parcel that is not already zoned as Hybrid Industrial that a General Plan amendment (and most likely also a zone change) is needed. RR at A-2. Our courts have determined that the “adoption or amendment of general plans perforce *have a potential for resulting in ultimate physical change in the environment.*” *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal. App. 3d 521, 532. That is true even though such an adoption or amendment does not call for the immediate construction of a particular project, but rather waits for a later development application. In addition, parts of two Community Plans already use the Hybrid Industrial designation. *See* footnote 3, *supra*.

Indeed, it is best of all for the numerous developers clamoring for immediate passage of the ordinance if the City undertakes an early high-level environmental review of the ordinance, because developers may then rely on the first-stage review, and will not be burdened with undertaking a much more extensive and more costly environmental review that later piecemeal review will necessarily impose if it is done only on a project-by-project basis.

III. There are conflicts between the proposed ordinance and existing City industrial land use policy and with the City charter that require additional consideration.

A. The Hybrid Industrial Live/Work Zone proposal conflicts with City policy on retaining industrial land for job producing uses.

A 2008 memorandum from Gail Goldberg, AICP, then Director of Planning for the City of Los Angeles, states that “*the City’s adopted policy is to retain industrial land for job producing uses.*” S. Gail Goldberg, Director of City Planning, *Staff Direction Regarding Industrial Land Use and Potential Conversion to Residential or Other Uses* (Jan. 3, 2008)(“ILUP Memo”)(all emphasis in original).⁸ The ILUP Memo describes four distinct typologies for industrial zoned land in Los Angeles: (1) Employment Protection Districts (“EMP”), (2) Industrial Mixed Use District (“IMU”), (3) Transition Districts, and (4) Correction Areas. *Id.* at pp. 3-4.

The first two typologies described in the ILUP Memo are intended to substantially restrict development of residential uses in industrial zones. The EMU district describes “[a]reas where industrial zoning should be maintained, and where adopted General Plan, Community Plan and Redevelopment Plan industrial land use designations should continue to be implemented. *Residential uses in these Districts are not appropriate.*” *Id.* at 3 (emphasis added). The IMU district describes “[a]reas that should remain predominantly industrial/employment districts, but which may support a *limited amount of residential use.*” *Id.* at 4 (emphasis added).

The stated long-term goal for EMP districts is to “prohibit non-industrial uses.” *Id.* Commensurate with that goal, planning staff are directed that “change of use or zone should not be made” and staff “should generally recommend that applications for residential uses be denied.” Similarly, in IMU districts, the short term direction to staff is to “generally recommend

⁸ The Staff Direction Memorandum and related materials are all available at the Department of City Planning website, <http://planning.lacity.org>, by clicking on the following link sequence: Policy Initiatives → Industrial Planning Initiatives.

denial of applications for conversion of industrial to other uses.” The other two typologies describe areas where “viability of industrial uses has been compromised” and “where earlier land use decisions resulted in inappropriate land use patterns” and thus justify lesser protection of industrially zoned land, but still maintain a strong policy preference to preserve uses that are consistent and complementary with industrial uses, such as live/work residential spaces. *Id.*

Much of the area of which the Arts District is comprised consists of areas that are identified in the ILUP Memo and supporting exhibits as either EMP or IMU Districts. *See, e.g.,* Alameda Preliminary Staff Recommendation Map, Analysis Area 3.⁹ Notwithstanding the earlier analysis that makes it clear that the ILUP supports no or only very limited residential uses in the greater part of the Arts District, Staff now fails to sufficiently distinguish between the EMP and IMU districts, giving City decision-makers and community members the false impression that use of the proposed ordinance throughout the Arts District area would be entirely consistent with the ILUP study and the underlying Community Plans. First, this impression is incorrect, and should be corrected. Second, a high-level review through proper environmental consideration of the land use impacts of the ordinance would disclose that the lion’s share of the Arts District is not appropriate for rezoning according to the ILUP, and that there would be significant and likely unmitigable land use impacts if essentially pure residential uses are permitted.

Hotel uses, in particular, even those not exceeding 100 units as proposed by the ordinance, would be particularly offensive to most of the existing industrial land use plan for the Arts District as discussed in the ILUP Memo and as shown on current General Plan maps. Once inherently incompatible uses such as hotels are permitted on industrially zoned land, the land will be forever lost to industrial use. As the Recommendation Report boasts, the Arts District interim ordinance was discussed for years before the interim Live/Work ordinance was finally proposed. Arts District community members were very surprised after their years of hard work to see a sudden policy shift toward lessened restriction within industrial zones compared to the previous ordinance in order to create a citywide policy more attractive to conventional residential construction types at the expense of their community.

Citywide, constituents generally have not participated in Arts District outreach unless they were already stakeholders, for example, property owners or private developers with holdings in the area. For others, the citywide initiative sprung suddenly into existence. Those non-Arts District constituents are entitled to considerably greater disclosure and discussion of this massive change on citywide industrial land use policy in their own communities. The citywide ordinance, which will have a more far-reaching impact than the previously proposed Interim Live/Work zone, was discussed for less only a number of months, and the level of community outreach pales in comparison to the outreach that was done with the Arts District community.

⁹ Available online as described in footnote 7, by clicking on the following link sequence: Policy Initiatives → Industrial Planning Initiatives → Recommendations. Note that the traditional Arts District area boundaries straddle zones within several of the Alameda Analysis areas.

As Planning Commission Vice President Renee Dake-Wilson eloquently commented at the CPC hearing: “My entire lens to look at this project, or this zoning revision, is that this is an industrial zone where we are creating and retaining jobs. Housing is currently a good investment so we are talking all about the housing. *I am very concerned with the industrial areas of Los Angeles being run over by housing, and I am very concerned with areas such as the Arts District being run over by high-end housing, pushing out the low-income live/work ordinance.*” Commissioner Dake-Wilson specifically noted the high probability that live/work units will be developed as residential housing: “When these units are developed as housing, *because that is going to happen*, I am very concerned with the density bonus provisions in this.”¹⁰ Community members share these concerns and urge the City to take a more thoughtful approach to the adoption of the ordinance than has been done to date.

Commissioner Segura raised concerns about enforcement of live/work restrictions, and wanted to ensure that the City would implement an enforcement mechanism to keep pure residential uses to protect the job creation component of the zone proposal. In response, Senior Planner Patricia Diefenderfer stated: “The City can’t obviously require that someone living in these units actually have a business and employ five people.” In fact, it may be challenging to implement such an enforcement mechanism, but there is virtually no evidence in the record to support the assertion. In fact, in the existing live/work statute for artists in residence, there *is* an enforcement mechanism, perhaps not properly enforced by the City, that requires live/work occupants to certify that they are engaged in business as an artist or artisan.¹¹ The City should not claim that no enforcement mechanism is possible unless and until it formally determines through proper environmental review of land use impacts that such a mechanism is actually infeasible.

B. The required finding under Los Angeles City Charter Section 558 cannot be made, because the proposed ordinance is not in conformity with good zoning practice.

Based on all of the foregoing, it is abundantly clear that the finding required under Los Angeles City Charter Section 558 for adoption, amendment, or repeal of ordinances concerning zoning or other land use regulations is unsupported by substantial evidence and cannot currently be made. The Charter requires the City Council to find that “adoption of the proposed ordinance . . . will be in conformity with public necessity, convenience, general welfare and good zoning practice.” Los Angeles City Charter § 558(b)(2). There is abundant evidence that the adoption of the proposed ordinance will not be in conformity with public necessity, convenience, and general welfare. Those items may be somewhat in dispute. But it cannot be disputed that good zoning practice requires compliance with CEQA, which makes clear as discussed above that this zoning

¹⁰ Notwithstanding those stated concerns, Commissioner Dake-Wilson was ultimately supportive of the ordinance.

¹¹ See Los Angeles Municipal Code, Section 12.24.X.13(b)(1), which states that a Zoning Administrator shall require “that the authorized use shall be of no force and effect unless and until satisfactory evidence is presented to the Zoning Administrator for review and attachment to the file that a business tax registration certificate has been issued to each tenant by the Office of Finance pursuant to Los Angeles Administrative Code Section 21.03 permitting those persons to engage in business as artists or artisans.

ordinance proposal is a project not exempt from CEQA, and best reviewed through some form of tiered environmental review.

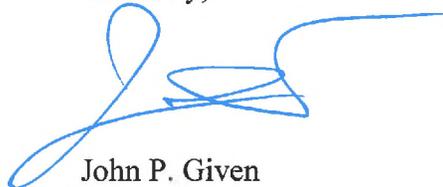
There is no contrary evidence, substantial or otherwise, other than the City's conclusory statement that the finding is met. Thus the finding cannot be made. *See Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515-516.

IV. Conclusion.

In short, it is evident that implementation of the proposed ordinance would result in both intended direct environmental impacts as well as non-speculative indirect physical changes to the environment. As discussed at length in Part I.B, the common-sense exception does not apply to this action. The City cannot evade appropriate environmental review now by chopping this project into discrete subparts under the incorrect theory that later construction projects will all require their own environmental review anyway. The best environmental and planning practice is for the City to identify the appropriate tiered environmental review process for the ordinance to identify and address those potentially significant impacts that can be known and studied now, and where necessary, adopt appropriate mitigations and processes to ensure future development is consistent with General Plans, Community Plans, Specific Plans, and good planning practices. Further review *will* be required on a project-by-project basis later, but that later review does not excuse the City's inaction now.

The City should note that its complete failure to investigate those potentially significant environmental impacts that it can does not inoculate it from a fair argument that an EIR for the zoning code amendment project should be prepared. Quite the contrary is true. "If the local agency has failed to study an area of possible environmental impact, a fair argument [that an EIR is required] may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 311 (1988).

Sincerely,



John P. Given

Cc (by email only):

Honorable Jose Huizar (CD14)
Members of the PLUM Committee
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

EXHIBIT 1

maximum for Type III and Type V construction to the proposed 110-foot maximum. The maximum height in the ordinance should be increased to allow property owners to offset the increased costs of Type I construction and truly incentivize such construction.

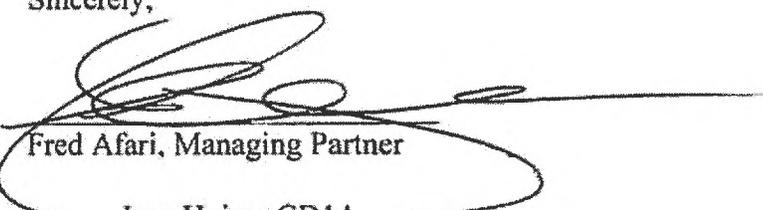
- Require 100 Square Feet per Unit of Arts/ Productive Uses Instead of 200 Square Feet per Unit. One of the Planning Department's stated objectives of the ordinance is to retain the jobs focus in industrial areas. Therefore, the current draft of the ordinance includes minimum workspace requirements for live/work units and requires that units be of an occupancy type that can accommodate up to five employees. However, the current draft also doubles the amount of Encouraged Arts/Productive Uses (for example, creative office and light manufacturing uses) to 200 square feet per unit. This is excessive; it will reduce the amount of live/work units, and will make it more difficult for projects to obtain financing. It is also unnecessary, since the live/work units themselves by their nature will produce jobs. The Planning Commission should reduce the Arts/Productive Use requirement to 100 square feet per unit, as originally proposed. In addition, live work units with an F, M or B occupancy should count toward this requirement, as in the prior draft.

*
[The Mayor has called for the creation of 100,000 housing units to meet an existing shortfall. The underutilized industrial properties present excellent opportunities to create new housing without displacing existing residents. However, it is important to formulate development standards that assure that new development will be of high quality and compatible with existing development, create jobs, and attract new businesses. With the proposed revisions, the HI Ordinance will provide a new zoning tool to achieve all of these important objectives.]

I hereby offer my strong support for the ordinance and request that you approve it with the above revisions.

Thank you for your consideration of these points.

Sincerely,



Fred Afari, Managing Partner

cc. Jose Huizar CD14
Paul Habib
Kevin Ocubillo
Claire Eberle Planning Staff / Patricia Diefenderfer/ Bryan Eck / Nicholas Maricich/
Los Angeles Department of City Planning