Communication from Public

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Comments for Public Posting:	Please see the attached comment letter on Agenda Item No. 32 of the November 22, 2022 City Council meeting, submitted on behalf of the California Independent Petroleum Association.

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November 22, 2022

VIA COUNCIL FILE MANAGEMENT SYSTEM

The Honorable Paul Krekorian
President, City Council
City of Los Angeles
200 N Spring Street, Suite 435
Los Angeles, CA 90012

Re: Proposed Oil Ordinance, CF No. 17-0447; Mitigated Negative Declaration, Environmental Case No. ENV-2022-4685-MND

Dear President Krekorian and City Councilmembers:

This firm represents the California Independent Petroleum Association ("CIPA"). On CIPA's behalf, we submit the below comments on the City's proposed Oil Ordinance, CF No. 17-0447 ("Ordinance"), and the Mitigated Negative Declaration ("MND") for the Ordinance, Environmental Case No. ENV-2022-4685-MND.

If enacted, the Ordinance would be an unconstitutional taking of CIPA's members' private property without just compensation, in violation of state and federal law. We therefore urge the City Council to reject the Ordinance.

The state and federal Constitutions prohibit government from taking private property for public use without just compensation. Cal. Const., art. I, ß 19; U.S. Const., 5th Amend.; *Chicago, Burlington &c. R'd v. Chicago* (1897) 166 U.S. 226, 239 (applying the federal takings clause to the states). In *Penna. Coal Co. v. Mahon* (1922) 260 U.S. 393, 415 (*Penna. Coal*), the United States Supreme Court recognized that a regulation of property that "goes too far" may effect a taking of that property. When a regulation does not result in a physical invasion and does not deprive the property owner of all economic use of the property, a reviewing court must evaluate the regulation in light of the "factors" the high court discussed in *Penn Central Transp. Co. v. New York City* and subsequent cases. *Penn Central* emphasized three factors in particular: (1) "[t]he economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment-backed expectations"; and (3) "the character of the governmental action." *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 124. Subsequent cases, as well as a close reading of *Penn Central*, indicate other relevant factors such as whether the regulation affects the existing or traditional use of the property and thus interferes with the property owner's "primary expectation" (*Id.*, at 125, 136), and whether the regulation "permit[s the property owner] . . . to profit [and] . . . to obtain a 'reasonable return' on . . . investment." *Id*., at 136.

The Ordinance would give rise to a claim for just compensation by oil well operators and owners as well as royalty holders. The Ordinance would severely restrict the use of existing wells and property by make existing extraction activities a nonconforming use in all zones and by requiring the abandonment of existing wells after an amortization period, leading to a loss of value in the City's oil producing properties for which the well owner must be compensated under well-established law. In particular, regardless of the amortization period – which in itself is an unlawful deprivation of the use of private property – the Ordinance's eventual prohibition on the use of private property constitutes an unlawful taking.

The long-running litigation between the City of Hermosa Beach and MacPherson Oil demonstrates how a regulatory overreach can result in repercussions with significant impacts to a municipality. Using standard industry valuation techniques, Macpherson Oil was able to show that the financial loss resulting from the actions of Hermosa Beach could be as much as $850,000,000. When a court confirmed that Hermosa could be liable for that amount of compensation, the City agreed to settle the matter. The reserves at issue in Hermosa Beach had not yet been developed. By contrast, actual production in the City of Los Angeles is long-standing, substantial and widespread. The financial exposure of the City of Los Angeles to damages from a taking claim by all impacted well owners and operators within the City would be massive, because the level of current production in the City is five to six times higher than the estimated production figures used to establish damages in the Hermosa Beach case. Accordingly, the City of Los Angeles could be subject to a claim for billions of dollars.

In addition to the lost production, there are thousands of Los Angeles residents that are royalty holders with a financial interest in these wells, so any action that results in a decrease in current production could financially harm thousands of the City Council's own constituents, many who are elderly and rely on royalty payments to make ends meet. Finally, any proposal that causes a large decrease in oil production where previously allowed would result in a severe diminution of property value with a concurrent drop in property tax assessments leading to less revenue for the City.

The proposed Ordinance will have the effect of stopping or impacting oil production at wells currently in service and would give rise to claims for compensation from both well owners and royalty holders, leading to a damage claim in the billions.

CIPA appreciates the opportunity to provide our input on this topic and looks forward to addressing this issue cooperatively. Should you have any questions regarding the above analysis, please give me a call at (310) 312-4353.

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Sincerely,

Craig A. Moyer
Manatt, Phelps & Phillips, LLP

CC: Councilmember Gil Cedillo
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