Date

To: Councilmember Mike Bonin, CD 11

200 N. Spring Street, #475

Los Angeles, CA 90012

Re: Waiver/Estoppel and Pre-Emption

Dear Councilmember Bonin,

We, the Board Members of the Venice Neighborhood Council (VNC), are writing to express our objection to the City Attorney Office’s positions that:

1. “Voluntary,” or “negotiated,” conditions are unenforceable, cannot be included in new CUBs and must be stripped from existing CUBs at an applicant’s will; and
2. The City is prohibited (“pre-empted”) by State law from imposing conditions that relate to the direct regulation of alcohol.

This relatively new interpretation of the law by the City Attorney’s Office represents an about-face in a decades-long approach to entitlements, during which time the City, applicants and communities have countless times successfully agreed upon negotiated conditions which were subsequently incorporated into CUPs/CUBs and enforced. Through this process, community members and those seeking CUPs/CUBs have amicably resolved hundreds of disputes in Los Angeles.

We, the members of the VNC, believe there is substantial legal precedent to counter the City Attorney’s Office aforementioned positions.

In regard to “voluntary,” or “agreed upon” conditions, there is ample case law that makes clear objections from permit holders to such conditions are waived by ‘acquiescence.’ In other words, when a permit applicant accepts the benefits of a permit, they also must accept its burdens. When pressed with the question, courts have accepted as unquestionable that a voluntarily accepted condition creates a waiver/estoppel of the right to object to the burdens associated with the condition. The courts have even made it clear that there is *also* a waiver/estoppel when permit conditions are not voluntarily accepted but the applicant still enjoys the benefits of the permit.

The City Attorney’s stated requirement that community members draft supporting findings for each voluntary condition in order to render it enforceable not only places an undue and unfair burden on the community, it is not legally justified, as such conditions are enforceable because of waiver/estoppel. Under the City Attorney’s newly revealed interpretation, the applicant could retract its consent to negotiated conditions at any time after the community has waived its rights to oppose the project. As a result, communities would be subjected to the adverse environmental impacts intended to be addressed with the negotiated conditions.

Equally as significant, the VNC Board believes the City Attorney Office’s position that the City is “pre-empted” by State law from placing conditions on the sale of alcohol is erroneous. A further examination of legal precedent makes clear this position overstates the breadth of the state’s alcohol licensing authority, ignores recent case law, and disregards the practices of multiple other California jurisdictions.

For a more thorough examination, please refer to the attached legal opinion, authored by James Mosher, J.D., a specialist in California alcohol policy. In Mosher’s opinion, he identifies substantial legal precedent for local jurisdictions’ ability to impose conditions restricting or impacting the sale, use or distribution of alcohol *if* the conditions are reasonably tailored to address legitimate zoning/land use impacts. It also identifies specific instances of local governments throughout California imposing alcohol-specific conditions on alcohol retailers.

We believe not only that the City Attorney’s position on ‘pre-emption’ is untenable, but also that it significantly undermines local communities’ ability to prevent and abate public nuisances associated with the sale of alcohol by restricting the placement of conditions on, among other examples, hours of sale of alcohol, happy hours (rules and regulations), container sizes, and types of alcohol sold.

The City Attorney’s recent shift in legal philosophy (e.g. the enforceability of negotiated conditions and the inability of local jurisdictions to condition the sale of alcohol) are having a dramatic impact that must be reversed. Municipal bodies like the West Los Angeles Area Planning Commission and City Zoning Administrators are improperly removing previously imposed conditions and refusing to incorporate new negotiated conditions in CUBs and CUPs. CUBs are regularly being granted without local communities’ ability to determine the specifics of how alcohol is sold.

Therefore, we ask you, Councilmember Bonin, to take immediate action to advocate for a shift in the City Attorney Office’s interpretation of the law. More specifically, we ask you to champion that the City Attorney’s Office:

1. Articulate that nuisance activities can be directly related to alcohol sales, thus establishing a clear nexus between local police/zoning powers and alcohol sales and thereby rendering admissible the placement of conditions restricting or impacting the sale of alcohol;
2. Articulate that objections to “voluntary” or “negotiated” conditions are waived by “acquiescence;”
3. Advise all City Personnel to cease stripping existing voluntary conditions from CUBs and CUPs.

We ask for your immediate support in conveying this to the City Attorney’s Office. We appreciate your taking this crucial action to protect the sanctity of the entitlement process.

Sincerely,

The Venice Neighborhood Council Board

CC: Trisha Keane, Director of Planning, CD 11

Chris Robertson, Deputy Director of Land Use and Planning, CD 11