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**To:** [McLoughlin, Mark](#); [Phan, V. Thai](#); [Garcia, Norma](#); [Nguyen, Ken](#); [Rivera, Felix](#); [Contreras-Leo, Cynthia](#); [eComment; New General Plan](#); [tmorrissey@santa-ana.org](mailto:tmorrissey@santa-ana.org)  
**Cc:** [Fregoso, Vince](#); [Thai, Minh](#)  
**Subject:** Planning Commission Public Comment for Agenda Item No. 2  
**Date:** Monday, November 09, 2020 12:51:20 PM  
**Attachments:** [MPNA Comment Letter on the GPU \(vFinal\).pdf](#)  
[sb1000-letter-santa-ana.pdf](#)

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To Planning Commission Members,

My name is Adolfo Sierra and on behalf of the Madison Park Neighborhood Association (MPNA), I am asking the Planning Commission's consideration regarding tonight's Agenda Item No. 2. For the reasons outlined in both letters, MPNA is opposed to staff's recommendations 2a and 2b, and urges the Commission to delay approving the GPU until appropriate community outreach, particularly with the City's environmental justice communities, can be conducted, and recently elected incoming City officials are able to participate in the adoption process.

The University of California, Irvine School of Law Environmental Law Clinic submitted a copy of MPNA's comment letter on the City of Santa Ana's General Plan Update provided to staff on October 30, 2020, and a copy of the California Department of Justice Bureau of Environmental Justice's letter on the GPU, for the Planning Commission's consideration regarding tonight's Agenda Item No. 2. For the reasons outlined in both letters, MPNA is opposed to staff's recommendations 2a and 2b, and urges the Commission to delay approving the GPU until appropriate community outreach, particularly with the City's environmental justice communities, and recently elected incoming City officials are able to participate in the adoption process.

Sincerely,

Adolfo Sierra  
Interim President MPNA



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October 29, 2020

**Sent Via Electronic Mail:** [newgeneralplan@santa-ana.org](mailto:newgeneralplan@santa-ana.org)

City of Santa Ana Planning and Building Agency  
20 Civic Center Plaza,  
Santa Ana, CA 92701

**Re: Comments on the City of Santa Ana's General Plan Update**

To Whom It May Concern:

Thank you for the opportunity to comment on the City of Santa Ana's ("the City's") General Plan Update ("GPU") on behalf of the Madison Park Neighborhood Association ("MPNA"). MPNA is a grassroots, resident-driven, non-profit organization that works to promote health, education, and quality of life among the approximately 10,000 residents of the Madison Park neighborhood in southeast Santa Ana, and in Santa Ana at large.<sup>1</sup>

As previously mentioned in MPNA's letter submitted to the City on October 6, 2020 commenting on the Draft Program Environmental Impact Report ("DPEIR") for the GPU, MPNA has repeatedly raised concerns about the City's inadequate outreach efforts to address environmental justice ("EJ") issues in the GPU. The residents that MPNA represents bear a disproportionate share of environmental burdens, including pollution from hazardous wastes, air emissions, and other sources.<sup>2</sup> As such, Madison Park is defined as a "disadvantaged community" under California environmental justice ("EJ") law.<sup>3</sup> MPNA welcomes the GPU as an opportunity for the City to address EJ concerns of its residents, and to reduce the impact of health risks caused by environmental pollution in Santa Ana's EJ communities.<sup>4</sup> The General

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<sup>1</sup> Madison Park Neighborhood Ass'n, *Our Mission*, <https://madisonparkna.webs.com/mission> (last visited Oct. 3, 2020).

<sup>2</sup> *Environmental Justice*, CITY OF SANTA ANA, <https://www.santa-ana.org/general-plan/environmental-justice> (last visited Oct. 29, 2020); see *Environmental Justice Communities in Santa Ana*, CITY OF SANTA ANA, [https://www.santa-ana.org/sites/default/files/pb/general-plan/documents/EJ%20Communities%20Map\\_20200519\\_pubdist.pdf](https://www.santa-ana.org/sites/default/files/pb/general-plan/documents/EJ%20Communities%20Map_20200519_pubdist.pdf) (last visited on Oct. 29, 2020).

<sup>3</sup> See Cal. Health & Safety Code § 39711; Cal. Gov't Code § 65040.12(e). The term "EJ community" is used interchangeably with "disadvantaged communities" for purposes of this letter.

<sup>4</sup> See Cal. GOV'T CODE § 65302(h).

Plan (“GP”) is like a Constitution for the City.<sup>5</sup> It influences, among other things, the City’s physical development,<sup>6</sup> and serves as an opportunity for the City to engage with the public to guide that long-term development.<sup>7</sup> In this letter, MPNA offers comments to address general EJ issues with the City’s draft policies (“Policies”) and implementation actions (“Actions”). Attachment A submitted with this letter addresses specific issues with the Policies and Actions in the GPU. MPNA urges the City to revise the GPU accordingly to incorporate EJ more robustly into the GPU. MPNA offers the following comments in response to the GPU, but is not limited to those in this letter or Attachment A. MPNA reserves the right to rely on any other comments made at public meetings, or submitted in response to the GPU.

## **I. SB 1000 REQUIRES THE CITY TO INCORPORATE ENVIRONMENTAL JUSTICE IN THE GENERAL PLAN UPDATE**

California law defines "environmental justice" as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies,” including the “meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.”<sup>8</sup> According to the California Environmental Protection Agency, “the aim [of environmental justice] is to lift the unfair burden of pollution from those most vulnerable to its effects.”<sup>9</sup>

In 2016, California enacted SB 1000, which requires local governments to incorporate EJ considerations into general plans updated after the beginning of 2018.<sup>10</sup> To satisfy this requirement, a GP must “identify objectives and policies,” such as reducing pollution exposure, improving air quality, and promoting physical activity, “to reduce the unique or compounded health risks in disadvantaged communities,” and to adopt, or at least review, these objectives and policies.<sup>11</sup> SB 1000 also requires the identification of policies that “promote civil engagement in the public decision-making process.”<sup>12</sup> Recently, the statutory definition of EJ was expanded to include “meaningful participation” of the communities most impacted by pollution in government decision-making.<sup>13</sup> Importantly, SB 1000 requires that EJ policies must “promote

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<sup>5</sup> For a discussion by City Planning Manager, Vince Fregoso, on how the GP is the City’s constitution and is critical to the development of the City, see City of Santa Ana, *City of Santa Ana Council Meeting Aug 18, 2020*, YOUTUBE (Aug. 19, 2020), [43:50 – 44:30],

[https://www.youtube.com/watch?v=F7TLqfeWnws&ab\\_channel=CityofSantaAna](https://www.youtube.com/watch?v=F7TLqfeWnws&ab_channel=CityofSantaAna).

<sup>6</sup> *Current Santa Ana General Plan*, CITY OF SANTA ANA, <https://www.santa-ana.org/general-plan/current-general-plan> (last visited Oct. 29, 2020).

<sup>7</sup> CAL. GOV’T CODE § 65351 (2020); *Current Santa Ana General Plan*, *supra* note 6.

<sup>8</sup> CAL. GOV. CODE, § 65040.12(c) (2020).

<sup>9</sup> *Environmental Justice Program*, CALEPA, <https://calepa.ca.gov/envjustice/> (last visited Oct. 29, 2020).

<sup>10</sup> GOV’T § 65302(h).

<sup>11</sup> GOV’T § 65302(h)(1)(A).

<sup>12</sup> GOV’T § 65302(h)(1)(B)-(C).

<sup>13</sup> In 2019, the California legislature passed AB 1628 which modified the state’s definition of “environmental justice.” CAL. GOV’T CODE § 65040.12(e) (2019) (modifying the definition to include: (1) the availability of a healthy environment for all people; (2) the deterrence, reduction, and elimination of pollution burdens for communities disproportionately experiencing the adverse effects of that pollution; (3) governmental entities engaging and providing technical assistance to communities most impacted by pollution to promote their meaningful

public engagement in the public decisionmaking process” and “prioritize improvements and programs that address the needs of disadvantaged communities.”<sup>14</sup>

## II. THE CITY SHOULD DELAY THE ADOPTION OF THE GENERAL PLAN UPDATE

In light of the compounding issues of the COVID-19 public health crisis, the civic unrest over racial inequality, and the pressures of the election season, the City has not been able to perform effective outreach to EJ communities and should therefore delay the adoption of the GPU. MPNA shares some of these concerns with the California Department of Justice Bureau of Environmental Justice (“DOJ”). In a letter commenting on the GPU, the DOJ stated that the City’s accelerated timeline “does not appear to allow for [the] meaningful community engagement [required by SB 1000] to occur.”<sup>15</sup> By insisting on adopting the GPU by the end of the year, the City is ignoring one of the basic purposes of SB 1000, “to provide [EJ] communities with a meaningful opportunity to engage in government decisions that affect them.”<sup>16</sup> Accordingly, the City should not complete the GPU process before the City fully engages with EJ communities.

While the City has worked on this GPU for the past several years, it only began to consider EJ six months ago. The City has held only 15 meetings with the residents of Santa Ana since it began addressing EJ in outreach events.<sup>17</sup> However, these meetings have had relatively low turnout.<sup>18</sup> The City plans to take action after only having heard from a small fraction of residents from the City’s EJ communities. While several years spent on outreach for non-EJ concerns may be adequate for those purposes, the outcry from EJ communities to delay adopting the GPU indicates that the attempts over the past several months to address EJ concerns were entirely insufficient.

During the limited, unsuccessful outreach the City has conducted, the City has not sufficiently accommodated the needs of EJ communities. There have been multiple issues conducting community outreach events online, including the lack of translation services, technological difficulties, and a lack of necessary telecommunication services within EJ communities.<sup>19</sup> Furthermore, residents of EJ communities are more likely to be essential

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participation in all phases of the environmental and land use decision-making process; and (4) at a minimum, the meaningful consideration of recommendations from communities most impacted by pollution into environmental and land use decisions).

<sup>14</sup> CAL. GOV'T CODE § 65302 (h)(1)(b)-(c).

<sup>15</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *Letter from Rica Garcia, Deputy Attorney General, to Verny Carvajal, Principle Planner, City of Santa Ana*, 8 (Oct. 16, 2020), <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/sb1000-letter-santa-ana.pdf>.

<sup>16</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 15 at 8.

<sup>17</sup> *Meetings & Events*, CITY OF SANTA ANA, <https://www.santa-ana.org/general-plan/meetings> (last visited Oct. 29, 2020).

<sup>18</sup> The City’s largest meeting involved approximately 100 attendees, including City officials, but this event did not even address EJ concerns in the GPU. See City of Santa Ana, *City of Santa Ana General Plan Community Forum on Environmental Justice – October 19, 2020*, YOUTUBE (Oct. 20, 2020), [1:17:00], [https://www.youtube.com/watch?v=vxuBSmNJ9d4&list=PLJo7z4Yc7qKbnlTIQg0alYnFJ4i0LoWSm&index=1&ab\\_channel=CityofSantaAna](https://www.youtube.com/watch?v=vxuBSmNJ9d4&list=PLJo7z4Yc7qKbnlTIQg0alYnFJ4i0LoWSm&index=1&ab_channel=CityofSantaAna).

<sup>19</sup> Kathryn Cox, *Language and Technology Access Problems in Community Meetings on General Plan* (Aug. 1, 2020) (listing multiple issues and solutions related to public interaction performed by the City).

workers,<sup>20</sup> limiting the time they have available to engage in the outreach process. Now, the City requests residents, who already have to put their safety at risk to provide for their families,<sup>21</sup> prioritize commenting on the GPU so that it can be adopted in November when instead the City could wait until the public health crisis is resolved. Moreover, the intense demands of the civic unrest over racial inequality and the pressures of the election season have coalesced with the COVID-19 pandemic to diminish the already limited resources EJ communities can invest to comment on the GPU. The DOJ summarized this issue by stating, “[w]e recognize that robust community engagement will be difficult for the City to conduct when social distancing is still the norm. Thus, we urge the City to not rush through its General Plan Update before the City has opportunities to fully engage with the historically disadvantaged communities in its jurisdiction.”<sup>22</sup>

One of the basic purposes of SB 1000 is to provide EJ communities with opportunities to meaningfully engage in government decisions that materially affect their livelihood.<sup>23</sup> During the lackluster outreach attempts that the City has undertaken, residents have consistently and repeatedly asked the City to delay the GPU process. The Planning and Building Agency claims it has relayed this feedback to elected officials, but also insists that the City Council plans on voting to adopt the GPU on November 17, 2020.<sup>24</sup> Because there are so many issues regarding ineffective community engagement, vague and nonbinding Policies and Actions, and ill-defined timelines for the Implementation Actions, the City needs to comprehensively revise the GPU and its outreach methods before EJ communities can effectively comment on, let alone have their concerns addressed in, the GPU. If the City truly wishes to adopt a GPU which prioritizes the needs of EJ communities, the City should delay the vote to adopt the GPU to allow these various issues to be resolved, and allow residents adequate time to provide comments on the GPU.

### III. THE CITY’S GENERAL PLAN UPDATE SHOULD BETTER ADDRESS EJ CONCERNS

In recent attempts at virtual outreach with EJ communities, the City claimed to address 17 concerns of EJ communities. The City provided three documents describing what the City heard (“What We Heard”) and how the GPU Policies and Actions address these concerns.<sup>25</sup> However, in many instances these Policies and Actions only proffer vague, nonbinding aspirations. Moreover, many of the EJ Policies and Actions do not adequately address the

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<sup>20</sup> See Health Equity Considerations and Racial and Ethnic Minority Groups, CTR. FOR DISEASE CONTROL, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (last visited Oct. 29, 2020); FRANCINE D. BLAU, ET AL., *Essential and Frontline Workers in the COVID-19 Crisis*, ECONOFACT (Oct. 29, 2020), <https://econofact.org/essential-and-frontline-workers-in-the-covid-19-crisis>.

<sup>21</sup> Health Equity Considerations and Racial and Ethnic Minority Groups, *supra* note 20.

<sup>22</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 15 at 8.

<sup>23</sup> See Cal. GOV’T CODE § 65302(h).

<sup>24</sup> City of Santa Ana, *City of Santa Ana General Plan Community Forum on Environmental Justice - October 19, 2020*, YOUTUBE (Oct. 20, 2020), [1:40:00 – 1:42:00], <https://www.youtube.com/watch?v=vxuBSmNJ9d4>.

“We will continue to send that message internally here [to] staff. But also ensure that our decision maker[s] hear and understand that that message is being spoken. And we have communicated that in the past . . .”

<sup>25</sup> City of Santa Ana Planning and Building Agency, *City of Santa Ana General Plan Update Draft Environmental Justice Overview* (Sept. 14, 2020) (on file with author).

concerns of EJ communities. Generally, unresolved issues with the Policies and Actions can be summarized as:

1. The City's EJ Policies and Actions do not incorporate the feedback from EJ communities;
2. Many of the City's Policies and Actions are not specific or binding; and
3. The timelines associated with Actions proposed to address EJ concerns are too indefinite.

Sometimes these concerns are present in combination; that is, a Policy or Action may raise two or all three.

These concerns are not only expressed by MPNA but also echoed in the DOJ letter mentioned previously. The DOJ stated that the measures lack “specific information about how community organizations and stakeholders will be identified,” a “timeline for implementation of these programs,” and “benchmarks that the City has set to ensure implementation.”<sup>26</sup> These concerns are repeated throughout the DOJ's letter, specifically regarding the failure to engage with EJ communities to address lead contamination,<sup>27</sup> the failure to specifically address how pollution will be ameliorated in EJ communities,<sup>28</sup> and the failure to designate appropriate distances or standards for buffer zones between industrial uses and sensitive receptors.<sup>29</sup> An in-depth discussion of how the Policies and Actions fail EJ communities follows.<sup>30</sup>

- a. The City's EJ Policies and Actions do not incorporate the feedback from EJ communities.

The GPU Policies and Actions fail to adequately address the concerns raised by EJ communities through the limited feedback the City has solicited over the past six months. Failure to incorporate feedback from EJ communities will perpetuate the mistrust between the City and its EJ residents if not addressed before adopting a new GP.

Within Policy LU-3.2, the City commits to engage residents in improving programming and facilitating community engagement for decisions affecting land use and development.<sup>31</sup> While these goals are admirable, the relevant Policies and Actions do not commit the City to engage with EJ communities in ways repeatedly requested by these communities. For example, in "What We Heard," the City claims to address seven engagement concerns including access to technology, language barriers, more advanced notice for public meetings, and tailoring outreach

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<sup>26</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 15 at 5.

<sup>27</sup> *Id.* at 5–6 (“[A] particular resource available to the City in developing policies to address lead contamination is the impacted communities themselves. We recommend that the City consult with disadvantaged communities in its jurisdiction to solicit ideas on how to address the pollution burdens related to lead contamination.”).

<sup>28</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 15 at 6 (“[T]he Policy does not identify what types of regulations would be applied to facilities and does not provide conditions or thresholds that would trigger when such regulations would be applied.”).

<sup>29</sup> *Id.* at 6 (“[The City's] policies do not go on to designate appropriate distances or standards for buffer zones” and “do not identify what is considered ‘in close proximity’ or any standards for determining when a buffer should be established or even what an appropriate buffer is.”).

<sup>30</sup> For comments on more EJ Policies and Actions, see Attachment A.

<sup>31</sup> CITY OF SANTA ANA, SANTA ANA GENERAL PLAN PUBLIC REVIEW DRAFT: LAND USE ELEMENT 6 (Sept. 28, 2020), [https://www.santa-ana.org/sites/default/files/pb/general-plan/documents/Draft%20General%20Plan/Sept%20Draft%20Elements/09\\_LandUse\\_draft\\_20200928.pdf](https://www.santa-ana.org/sites/default/files/pb/general-plan/documents/Draft%20General%20Plan/Sept%20Draft%20Elements/09_LandUse_draft_20200928.pdf).

efforts to EJ communities.<sup>32</sup> The City cites 12 Policies and Actions addressing these concerns;<sup>33</sup> however, the Policies and Actions do not rectify issues that EJ communities have raised *regarding the GPU process itself*. For example, EJ community residents have requested, among other items, professional, simultaneous interpretation services be available at public meetings, more advanced notice for community meetings, tailored outreach several weeks before scheduled meetings.<sup>34</sup> These recommendations have been absent from the GPU process. Furthermore, providing more time to solicit feedback from EJ communities and incorporating that feedback into the GPU will yield a GPU that better addresses EJ concerns. Therefore, the City should incorporate into the GPU the recommendations that EJ communities have already requested from the City, and the City should delay the vote to adopt the GPU so that EJ communities can provide more valuable feedback.

b. Many of the City's Policies and Actions are not specific or binding.

Many of the City's Policies and Actions in the GPU are ambiguous, and most Policies and Actions, on their face, do not seem to "reduce the unique and compounded health risks" and pollution burdens faced by EJ communities as required by SB 1000.<sup>35</sup>

One way the Policies and Actions are not specific is that they omit crucial information. For instance, Policies LU-3.8 and LU-3.11 call for buffer zones between areas of heavy emission sources and sensitive receptors, but the GPU fails to define what the size of the buffer zone would be.<sup>36</sup> The California Air Resources Board recommends a minimum distance of 1,000 feet for the buffer zone.<sup>37</sup> Because sensitive receptors such as children and the elderly are the most vulnerable members of the community, the City should offer them protections with the utmost care and attention to detail in the GPU. Similar ambiguity can be found in many other Policies and Actions.

Another form of ambiguity present in the Policies and Actions stems from the choice of language used. For example, Action 2.10 requires the City to "*evaluate* public open space and park requirements in the Zoning Code for residential and non-residential uses" and to "*consider* requirements and/or incentives to aggregate public open space areas required by two or more uses to form larger and more usable areas and facilities" (italics added).<sup>38</sup> However, this Action does not actually require the creation of incentives, the aggregation of public open space, or anything beyond mere evaluation and consideration. Not only is this discouraging to residents in EJ communities who already live in higher density neighborhoods and have less access to open space,<sup>39</sup> it is particularly problematic considering the lack of other Policies

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<sup>32</sup> See City of Santa Ana Planning and Building Agency, *supra* note 25.

<sup>33</sup> The City cites Policies LU-3.2, CM-1.2, OS-2.2, and Actions A, B, C, D, F, AA, CC, and DD. See City of Santa Ana Planning and Building Agency, *supra* note 25.

<sup>34</sup> Kathryn Cox, *supra* note 19.

<sup>35</sup> Cal. GOV'T CODE § 65302(h)(1)(A).

<sup>36</sup> CITY OF SANTA ANA, *supra* note 31 at 6–7.

<sup>37</sup> CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY & CALIFORNIA AIR RESOURCES BOARD, AIR QUALITY AND LAND USE HANDBOOK: A COMMUNITY HEALTH PERSPECTIVE 3–7 (Apr. 2005), <https://ww3.arb.ca.gov/ch/handbook.pdf>; STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 15 at 6.

<sup>38</sup> CITY OF SANTA ANA, *supra* note 31 at 71.

<sup>39</sup> Veniece Jennings et al., *Promoting Environmental Justice Through Urban Green Space Access: A Synopsis*, 5 Environmental Justice 1, 1 (2012), [https://www.srs.fs.fed.us/pubs/ja/2012/ja\\_2012\\_jennings\\_001.pdf](https://www.srs.fs.fed.us/pubs/ja/2012/ja_2012_jennings_001.pdf).

and Actions that would require the City to create more open space. Therefore, the City should revise the language in the Policies and Actions to meet the specific needs of EJ communities.

Accordingly, the City should revise its current EJ Policies and Actions within the GPU to be specific and binding, and the City should consider additional Policies and Actions to address the unique concerns facing its EJ communities.

- c. The timelines associated with Actions proposed to address EJ concerns are too indefinite.

In all but two Actions, the GPU only includes the starting year and the agency involved in the Actions, providing no real assurance that the proposed actions will be completed in a timely manner.

For example, pursuant to Action 3.6 of the Land Use Element, the City will establish a program to eliminate lead-based paint hazards, with priority given to EJ areas.<sup>40</sup> However, the Action does not estimate the time required to complete this action, only that the work will begin in 2022.<sup>41</sup> Plans like this may involve major changes and can take years to implement. By not providing clear, actionable timelines for the Policies and Actions, the City leaves EJ communities in the dark, not knowing when their concerns will even begin to be addressed.

Action 3.5 in the Economic Prosperity Element also illustrates the need for more detailed timelines. Action 3.5 provides that the City will “encourage existing businesses to invest in technology and best practice [sic] to transition to sustainable business practices.”<sup>42</sup> The absence of a specific timeline for this Action is troubling because the timely transition to sustainable business practices is particularly salient for EJ communities which already face disproportionate impacts from pollution exposure and climate change.<sup>43</sup> Moreover, MPNA and other EJ communities have repeatedly requested that the City do more to eliminate industrial sources and heavy emitters from their communities, especially in regard to the S. Main Industrial Corridor. Therefore, the City should seize the opportunity the GPU presents to include actionable timelines for the transition to sustainable business practices.

#### IV. CONCLUSION

For generations, EJ communities have been systematically marginalized and ignored by the City. The most heavily-impacted census tract in Santa Ana ranks in the 100<sup>th</sup> percentile

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<sup>40</sup> CITY OF SANTA ANA, *supra* note 31 at 72.

<sup>41</sup> *Id.*

<sup>42</sup> CITY OF SANTA ANA, SANTA ANA GENERAL PLAN PUBLIC REVIEW DRAFT: ECONOMIC PROSPERITY ELEMENT 16 (Sept. 28, 2020), [https://www.santa-ana.org/sites/default/files/pb/general-plan/documents/Draft%20General%20Plan/Sept%20Draft%20Elements/03\\_EconProsperity\\_draft\\_20200928.pdf](https://www.santa-ana.org/sites/default/files/pb/general-plan/documents/Draft%20General%20Plan/Sept%20Draft%20Elements/03_EconProsperity_draft_20200928.pdf).

<sup>43</sup> Yvette Cabrera, *Will COVID-19 give Santa Ana officials an excuse to ignore the city's lead crisis?*, GRIST, Oct. 26, 2020, <https://grist.org/justice/will-covid-19-give-santa-ana-officials-an-excuse-to-ignore-the-citys-lead-crisis/>; LINDA MAZUR, ET. AL., INDICATORS OF CLIMATE CHANGE IN CALIFORNIA: ENVIRONMENTAL JUSTICE IMPACTS 1-4, (Dec. 1, 2010), <https://oehha.ca.gov/media/downloads/climate-change/document/climatechangeej123110.pdf>.



statewide for toxic releases, the 99<sup>th</sup> percentile for cleanups, the 98<sup>th</sup> percentile for groundwater threats, the 95<sup>th</sup> percentile for traffic pollution, and 95<sup>th</sup> percentile for hazardous waste.<sup>44</sup> SB 1000 was enacted to address these and all of the environmental justice issues in Santa Ana, yet the City's unwillingness to listen to EJ communities or adequately address their concerns will lead to the adoption of a GPU that falls far short of the requirements and spirit of SB 1000. If the City wants to atone for its past mistakes, it must first learn how to listen to EJ communities and delay the process of adopting the GPU. MPNA urges the City to make changes to the GPU in accordance with the recommendations herein, in Attachment A, and provided in comments by EJ communities and other stakeholders. There is still time to conduct robust engagement with the City's EJ communities. MPNA urges the City to not squander the opportunity before it to right its past wrongs and develop a GPU the City and all of its residents can be proud of and trust to advance environmental justice in Santa Ana.

Sincerely,

/s/ \_\_\_\_\_ /s/ \_\_\_\_\_ /s/ \_\_\_\_\_

Adolfo Sierra  
Interim President, Madison Park Neighborhood Association  
Jose J. Rea  
Treasurer, Madison Park Neighborhood Association  
Leonel Flores  
GREEN Community Organizer, Madison Park Neighborhood Association

/s/ \_\_\_\_\_ /s/ \_\_\_\_\_

Ethan Licon  
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Certified Law Students  
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cc.           Brett Korte  
              Clinical Fellow  
              Environmental Law Clinic  
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<sup>44</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 15 at 4.

## Attachment A – MPNA Comments on the GPU

<b>Environmental Justice Draft Policies and Implementation Actions</b>		
<b>Policy ID</b>	<b>Draft Policy</b>	<b>Comments and Concerns</b>
M-1.1	Achieve zero fatalities from traffic collisions through education, enforcement, and infrastructure design.	The City should focus on no/low emission transportation options, such as public transit, pedestrian, and bicycle infrastructure.
M-1.3	Utilize technology to efficiently move people and vehicles and manage motor vehicle speeds.	The City should focus on no/low emission transportation options, such as public transit, pedestrian, and bicycle infrastructure.
M-1.5	Ensure that new development and City projects maintain or improve the current level of service for all modes of transportation.	The City should prioritize maintaining and improving the level of service in environmental justice ("EJ") areas.
M-1.7	Proactively mitigate potential air quality, noise, congestion, safety, and other impacts from the transportation network on residents and business.	The City should commit to mitigating both current and potential impacts from the transportation network. The mitigation should be substantial, and the City should describe methods for how it plans to mitigate these impacts within this policy. Moreover, schools should specifically be included with residents and businesses.
M-3.1	Expand and maintain a citywide network of nonmotorized travelways within both the public and private realms that create linkages between neighborhoods, recreational amenities, schools, employment centers, and activity centers.	The City should commit to prioritizing EJ areas in the expansion and maintenance of these travelways.
CM-1.2	Engage residents and community facility users to provide input for facility improvements and programming.	The City should prioritize engagement in EJ areas, and address barriers to participation, including language and technology barriers.

CM-3.2	Continue to support the creation of healthy neighborhoods by addressing public safety, mitigating incompatible uses, and maintaining building code standards.	The City should update this Policy to commit to "mitigating <i>and correcting</i> incompatible uses."
CM-3.6	Promote access to affordable, fresh, and healthy food options citywide through efforts such as community gardens, culinary classes, and neighborhood farmers markets.	The City should identify food deserts <sup>1</sup> and prioritize those areas, particularly where they overlap with EJ areas, in this Policy. This Policy should also be changed to "promote, <i>and provide where feasible</i> , access to . . ."
CM-3.8	Promote access to affordable, fresh, and healthy food. Repurpose underutilized spaces and City-owned vacant land as a strategy to improve community health and increase the number and accessibility of opportunities for health and recreation activities. Prioritize the redevelopment of such sites within environmental justice area boundaries that are also underserved by parks and recreation opportunities.	This Policy should be changed to "promote, <i>and where feasible provide</i> , access to . . . ."
CM-3.9	Coordinate with the County Health Care Agency to promote healthier communities through education, prevention, and intervention programs, and other activities that address the root causes of health disparities and inequities in Santa Ana.	The City should not only coordinate with Orange County Health Care Agency, but should also commit to soliciting recommendations from the Orange County Health Care Agency that prioritize the resolution of the disparities and inequities faced by EJ communities.
CN-1.2	Consistency with emission reduction goals highlighted in the Climate Action Plan shall be considered in all major decisions on land use and investments in public infrastructure.	The City should update this Policy to commit to considering <i>and prioritizing</i> the Climate Action Plan in all major decisions.

<sup>1</sup> See generally Jessica Caporuscio, What are food deserts, and how do they impact health?, MedicalNewsToday (Jun. 22, 2020), <https://www.medicalnewstoday.com/articles/what-are-food-deserts>.

CN-1.5	Consider potential impacts of stationary and nonstationary emission sources on existing and proposed sensitive uses and opportunities to minimize health and safety risks. Mitigate or apply special considerations and regulations on the siting of facilities that might significantly increase pollution near sensitive receptors within environmental justice area boundaries.	MPNA reiterates the California Department of Justice's comments on this Policy. <sup>2</sup> Neither this Policy nor others identify the types of regulations that will be considered or provide any conditions or thresholds that trigger the applications of these regulations. In addition, the DOJ states, "There also appears to be nothing in the Policy requiring implementation of identified regulations to reduce pollution exposure, or defining the types of pollution and identifying the timeframe for implementing such regulations."
CN-1.15	Collaborate with the South Coast Air Quality Management District and local stakeholders in advance of designation as a priority community for air monitoring and reduction, and implement measures and strategies identified in other air monitoring and emissions reduction plans that are applicable to and feasible for Santa Ana.	Local stakeholders should be defined to include school districts and members of EJ communities, among others.
EP-1.9	Avoid potential land use conflicts by prohibiting the location of sensitive receptors and noxious land uses in close proximity.	The City should define "close proximity." As also recommended by the Department of Justice, the City should commit to creating buffer zones of at least 1,000 feet between industrial uses and sensitive receptors. <sup>3</sup>
EP-3.3	Promote the development of sustainable and equitable new land use plans that proactively mitigates negative impacts on existing residents and businesses.	This City should commit to <i>developing</i> "sustainable and equitable new land use plans that proactively mitigate[] negative impacts on existing residents and businesses."
LU-1.3	Promote the creation of new open space and community serving amenities in park deficient areas, with priority given to those that are also within environmental justice area boundaries.	This Policy should be changed to "Promote the creation of, <i>and where feasible create</i> , new open space and community serving amenities in park deficient areas, with priority given to those that are also within environmental justice area boundaries."

<sup>2</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *Letter from Rica Garcia, Deputy Attorney General, to Verny Carvajal, Principle Planner, City of Santa Ana*, 6 (Oct. 16, 2020), <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/sb1000-letter-santa-ana.pdf>.

<sup>3</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 2 at 6.

LU-2.9	Establish and maintain public open space and recreation requirements for new residential and nonresidential uses to provide sufficient open space and recreational opportunities for Santa Ana residents and visitors.	The City should prioritize EJ areas in this Policy.
LU-3.2	Facilitate community engagement and dialogue in policy decisions and outcomes affecting land use and development, with supplemental opportunities for proposed planning activities within environmental justice area boundaries.	The City should commit to minimum requirements for how it will engage EJ communities. The City should incorporate the suggestions already provided for how it can facilitate this engagement. At minimum, the City should commit to addressing the problems of engagement it is already aware of including problems of technology access, language barriers, insufficient notice before meetings, and more.
LU-3.8	Avoid the development of sensitive receptors in close proximity to land uses that pose a hazard to human health and safety, due to the quantity, concentration, or physical or chemical characteristics of the hazardous materials that they utilize, or the hazardous waste that they generate or emit.	MPNA reiterates the California Department of Justice's comments on this Policy. <sup>4</sup> The City should designate appropriate distances between industrial land uses and sensitive receptors. This and other Policies should define "close proximity" and standards for determining when a buffer zone should be established. The California Air Resources Board recommends implementing at minimum a distance of 1,000 ft. between industrial uses and sensitive receptors. <sup>5</sup>
LU-3.9	Improve the health of residents, students, and workers by limiting the operation of noxious, hazardous, dangerous, and polluting uses that are in close proximity to sensitive receptors, with priority given to discontinuing such uses within environmental justice area boundaries.	MPNA reiterates the California Department of Justice's comments on this Policy. <sup>6</sup> The City should designate appropriate distances between industrial land uses and sensitive receptors. This and other Policies should define "close proximity" and standards for determining when a buffer zone should be established. The California Air Resources Board recommends implementing at minimum a distance of 1,000 ft between industrial uses and sensitive receptors. The City should include a plan for how it will limit these hazardous, dangerous, and polluting uses including when the uses will be discontinued. The City should also prioritize discontinuing such uses <i>adjacent to</i> EJ areas.

<sup>4</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 2 at 6.

<sup>5</sup> CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY & CALIFORNIA AIR RESOURCES BOARD, AIR QUALITY AND LAND USE HANDBOOK: A COMMUNITY HEALTH PERSPECTIVE 3–7 (Apr. 2005), <https://ww3.arb.ca.gov/ch/handbook.pdf>.

<sup>6</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 2 at 6.

LU-3.11	Promote landscaping and other buffers to separate existing sensitive uses from rail lines, heavy industrial facilities, and other emissions sources. As feasible, apply more substantial buffers within environmental justice area boundaries.	MPNA reiterates the California Department of Justice's comments on this Policy. <sup>7</sup> The City should designate appropriate distances between industrial land uses and sensitive receptors. This and other Policies should define "close proximity" and standards for determining when a buffer zone should be established. The California Air Resources Board recommends implementing at minimum a distance of 1,000 ft between industrial uses and sensitive receptors.
LU-3.12	Require new sensitive land uses proposed in areas with high levels of localized air pollution to achieve good indoor air quality through landscaping, ventilation systems, or other measures.	The City should describe the conditions and thresholds that would trigger the implementation of the described measures.
OS-1.2	Support a comprehensive and integrated network of parks, open space, and recreational facilities that maintains and provides a variety of active and passive recreational opportunities that meets the needs of all Santa Ana residents, regardless of age, ability, or income.	The City should incorporate into this Policy a plan for how it will support this network, including how the needs of Santa Ana residents will be identified. This Policy should prioritize EJ areas.
OS-1.12	Consider unique neighborhood needs in the development of open spaces and programs.	The City should describe how it will determine these needs and should also prioritize the needs of EJ communities for the development of open spaces and programs.
OS-1.13	Encourage new development to provide indoor recreation space when located in areas with high levels of localized air pollution or if site is adjacent to freeways or heavy industrial uses.	The City should define "high levels of localized air pollution." Rather than just encourage the development, the City should commit, when feasible, to providing these spaces located in areas of high localized air pollution.

<sup>7</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 2 at 6.

OS-2.2	Encourage residents, neighborhood groups, businesses, schools, organizations, and public agencies to partner in the creation and maintenance of safe and well maintained publicly-owned park and recreation facilities.	This Policy should say " <i>Encourage and facilitate partnerships between residents, neighborhood groups, businesses, schools, organizations, and public agencies to create and maintain</i> safe and well maintained publicly-owned park and recreation facilities."
OS-2.5	Expand urban agriculture opportunities in private development and public spaces, including home gardens, community gardens, and urban farms.	The City should prioritize EJ areas in this Policy.
S-2.1	Consult and collaborate with federal, state, and regional agencies to identify and regulate the disposal and storage of hazardous materials, prevent the illegal transportation and disposal of hazardous waste, and facilitate the cleanup of contaminated sites.	The City should prioritize EJ areas in this Policy.
S-2.2	Collaborate with appropriate agencies to identify and inventory all users and handlers of hazardous materials to proactively mitigate potential impacts.	The City should prioritize EJ areas in this Policy.
S-2.3	Coordinate with the County of Orange, the California Department of Transportation, and other relevant parties to enforce state and local laws regulating the storage and transport of hazardous materials within the City of Santa Ana, and limit truck routes through the City to arterials streets away from natural habitats and sensitive land uses.	The City should prioritize EJ areas in this Policy.

S-2.4	Determine the presence of hazardous materials and/or waste contamination prior to approval of new uses and require that appropriate measures be taken to protect the health and safety of site users and the community.	The City should prioritize EJ areas in this Policy.
S-2.6	Partner and collaborate with property owners, businesses, and community groups to develop strategies to protect and minimize risks from existing hazardous material sites to existing nearby sensitive uses, with priority given to uses within environmental justice area boundaries.	The City should be specific in its plans for collaborating with these groups. The plans should elaborate on which property owners, businesses, and community groups will be included in this partnership. The plans should require more beyond developing strategies to minimize risks. The City should be required to implement feasible strategies to minimize these risks. Additionally, school districts should be explicitly included in the list of "property owners, businesses, and community groups."



<b>Environmental Justice Draft Policies and Implementation Actions</b>		
<b>Implementation Action ID</b>	<b>Implementation Action</b>	<b>Comments and Concerns</b>
Community Element Action 1.1 (A)	Establish an Ad Hoc Committee of community stakeholders to guide preparation of an ongoing EJ Community Engagement Program.	The Action should be written such that EJ communities should be able to decide how best to perform outreach to EJ communities.
Community Element Action 1.2 (B)	Plan for and conduct a Community Survey every three years related to community health, air quality concerns, parks, and community service needs, with focused outreach to Environmental Justice priority areas.	The Community Surveys should be performed <i>yearly</i> to ensure that the actions the City takes represent the issues which are concerning EJ communities the most. Furthermore, the surveys should be expanded to include other concerns that EJ communities have raised in the past, such as water quality and lead contamination, in addition to the "community health" listed in the Action.
Land Use Element Action 3.15 (D)	Explore tools for communication with residents and sensitive receptors when new industrial uses are proposed in their areas.	The Action should implement the tools that it explores, not merely explore tools. The City should prioritize EJ communities in this Action.
Community Element Action 1.4 (E)	Coordinate with community residents, property owners, and other stakeholders to identify vacant and potentially underutilized properties and strategize how such properties could be repurposed into public parks or commercial recreation facilities.	The Action should identify what "underutilized" would mean. Finally, if there are vacant and potentially underutilized properties available, the City should prioritize public facilities and the needs of EJ communities.
Land Use Element Action 3.14 (F)	Update City Sunshine Ordinance, incorporating best practices for outreach in Environmental Justice areas in Santa Ana.	The City should commit to working with EJ communities to update the provisions of the Sunshine Ordinance.
Community Element Action 3.3 (G)	Engage with Orange County Health Care Agency and other stakeholders to monitor key health indicators to measure success and outcome of General Plan policies and implementation plan.	This Action should be changed to ensure that the information gathered is communicated to EJ communities. The Action should be changed to include ". . . implementation plan, <i>and reevaluate if necessary.</i> "

<p>Community Element Action 1.6 (H)</p>	<p>To ensure residents of environmental justice area boundaries have access to recreational, cultural, and health and wellness programs, establish accessibility corridors that provide attractive, comfortable, and safe pedestrian and bike access to public recreational facilities in the Parks Master Plan (an implementation action of the Open Space Element). Identify public realm improvements needed to create these accessibility corridors. Prioritize investments for accessibility corridors in the city's capital investment program; include investments for accessibility corridors when investments are made in new parks and recreation facilities within environmental justice area boundaries.</p>	<p>The City should prioritize EJ areas in this Action, including pollution and safety issues at recreational facilities.</p>
<p>Community Element Action 3.1 (K)</p>	<p>Evaluate options to support existing and potential community health care facilities in environmental justice focus areas through a variety of mechanisms such as reduced permit fees, reduced impact fees, and tax incentives.</p>	<p>The Action should be changed to be "Evaluate <i>and, where feasible promote and implement</i>, options to . . . ." Additionally, this Action should apply to <i>all</i> EJ areas, not just those in "focus areas."</p>
<p>Community Element Action 3.2 (L)</p>	<p>Ensure that new or redeveloped health care facilities include pedestrian-friendly site amenities. In areas where mobile clinics are stationed, ensure the location is safe and accessible for pedestrians, cyclists, and transit users.</p>	<p>This Action should be changed to "Ensure that new or redeveloped health care facilities include pedestrian friendly site amenities. In areas where mobile clinics are stationed, ensure the location is safe, <i>healthy</i>, and accessible for pedestrians, cyclists, and transit users."</p>

<p>Community Element Action 3.4 (M)</p>	<p>Coordinate with the County Health Care Agency to identify the root causes of health disparities and inequities in Santa Ana, with additional detail for residents living within environmental justice area boundaries. Identify potential programmatic changes and resources to better address the root causes.</p>	<p>The Action should be changed to "Identify, <i>and where feasible implement</i>, potential programmatic . . . . "</p>
<p>Community Element Action 3.7 (P)</p>	<p>Collaborate with health care providers, health and wellness advocates, and other public health stakeholders to identify ways to improve the provision of and access to health and wellness services throughout the City; Include a discussion on areas within environmental justice area boundaries underserved by affordable health and wellness services.</p>	<p>The Action should prioritize providing services identified as priorities by EJ communities. Furthermore, the Action does not explain the timeline involved in these provisions, and by stating that this project is both ongoing and scheduled to begin in 2022, it is unclear what actions are ongoing and what actions will be taken in 2022.</p>
<p>Conservation Element Action 1.1 (Q)</p>	<p>Review existing and monitor the development of new air monitoring and emissions reduction plans prepared by the South Coast Air Quality Management District. Gather and evaluate measures and strategies in such plans for their applicability and feasibility for Santa Ana.</p>	<p>The Action should be changed to state ". . . for Santa Ana, <i>and implement them where feasible.</i>"</p>
<p>Conservation Element Action 1.2 (R)</p>	<p>Coordinate with the South Coast Air Quality Management District and local stakeholders to pursue a Priority Community designation for eligible environmental justice areas of the city. If such designation is not awarded, seek grant funds for activities such as local air quality monitoring.</p>	<p>The Action should be changed to state ". . . of the city, <i>particularly where industrial uses are within 1000 feet of schools.</i> If such designation . . . ."</p>

<p>Conservation Element Action 1.3 (S)</p>	<p>Collaborate with the South Coast Air Quality Management District and local stakeholders in environmental justice area experiencing local air pollutions issues to outline objectives and strategies for monitoring air pollution in advance of the establishment of a community emissions reduction and/or air monitoring plan.</p>	<p>The Action should be changed to prioritize implementation of air pollution monitoring strategies.</p>
<p>Conservation Element Action 1.5 (U)</p>	<p>Monitor the South Coast Air Quality Management District permitting and inspection process to identify businesses in Santa Ana with potential hazardous materials or by-products, with a special focus on environmental justice communities. Serve as a liaison for residents to identify potential emission violations.</p>	<p>The Action should prioritize EJ communities by addressing incompatible land uses.</p>
<p>Conservation Element Action 1.6 (V)</p>	<p>Coordinate with the South Coast Air Quality Management District to monitor existing air measurements and recommend new air measurements and locations.</p>	<p>The Action should prioritize EJ areas.</p>
<p>Conservation Element Action 1.9 (X)</p>	<p>Evaluate and implement strategies to reduce truck idling found or reported in areas with sensitive receptors, with a priority placed on environmental justice areas.</p>	<p>The Action should be changed to ". . . environmental justice areas <i>and schools.</i>"</p>
<p>Conservation Element 1.13 (BB)</p>	<p>Augment existing programs to improve public awareness of State, regional and local agencies and resources to assist with air quality and other environmental quality concerns.</p>	<p>The Action should prioritize EJ areas.</p>

<p>Conservation Element Action 1.14 (CC)</p>	<p>Coordinate with the South Coast Air Quality Management District to explore ways to initiate data collection efforts for a community emissions reduction and/or community air monitoring plan, including the identification of information needed (new or updated), potential data sources and the resources needed, and strategies to engage residents and collect information.</p>	<p>The Action should be changed to " . . . to explore ways to initiate, <i>and where feasible initiate</i>, data collection . . . ." The Action should prioritize EJ communities.</p>
<p>Conservation Element Action 1.16 (EE)</p>	<p>Identify opportunities to expand regular attendance of City staff and decision-makers at meetings for neighborhoods within environmental justice area boundaries, so that residents and businesses can more easily communicate their unique issues and needs. Include a translator(s) at these meetings so that all residents can engage.</p>	<p>The Action should be changed to "Identify <i>and implement</i> opportunities to expand . . . ."</p>
<p>Conservation Element Action 1.17 (FF)</p>	<p>Expand representation of residents from neighborhoods within environmental justice area boundaries by extending residents from such areas to become board, commission, and task force members as openings occur.</p>	<p>The City should consider expanding the number of positions to make positions available immediately for residents of EJ communities so EJ communities have representation on these boards, commissions, and task forces.</p>
<p>Economic Prosperity Element Action 3.5 (HH)</p>	<p>Continue to promote and market the Recycling Market Development Zone. Develop an Incentive Program to encourage non-polluting industry and clean green technology companies to locate to the City that reduce environmental impacts and the carbon footprint. Encourage existing businesses to invest in technology and best practice to transition to sustainable business practices.</p>	<p>The Action should provide a definitive, aggressive timeline for the implementation of the Incentive Program. The Action should prioritize EJ areas.</p>

<p>Land Use Element Action 2.10 (II)</p>	<p>Evaluate public open space and park requirements in the Zoning Code for residential and non-residential uses. Consider requirements and/or incentives to aggregate public open space areas required by two or more uses to form larger and more usable areas and facilities.</p>	<p>The Action should prioritize EJ areas.</p>
<p>Land Use Element Action 3.2 (JJ)</p>	<p>Update the Zoning Code development and operational standards for industrial zones to address incompatibility between adjacent residential uses, including minimum distance requirements to buffer heavy industrial uses from sensitive receptors.</p>	<p>MPNA reiterates the California Department of Justice's comments on this Action.<sup>8</sup></p>
<p>Land Use Element Action 3.3 (KK)</p>	<p>Collaborate with residents and industry stakeholders to create a program to incentivize and amortization the removal of existing heavy industrial uses adjacent to sensitive uses.</p>	<p>This action should be revised to say "amortize" rather than "amortization." The Action should prioritize EJ areas.</p>
<p>Land Use Element Action 3.4 (LL)</p>	<p>Seek funding from South Coast Air Quality Management District and other regional sources for the installation of high-efficiency air filtration systems in buildings, homes, and schools located in areas with high levels of localized air pollution, especially for those within environmental justice area boundaries.</p>	<p>The Action should be changed to ". . . and other regional sources for <i>air monitors</i>, and the installation of . . ."</p>
<p>Land Use Element Action 3.5 (MM)</p>	<p>Explore economic development incentives and grant funding to encourage existing or draw new business investments in the industrial zones to incorporate more environmentally sustainable practices.</p>	<p>The Action should prioritize EJ areas.</p>

<sup>8</sup> STATE OF CALIFORNIA DEPARTMENT OF JUSTICE, *supra* note 2 at 6.

<p>Land Use Element Action 3.6 (NN)</p>	<p>Establish and maintain a program to eliminate lead-based paint hazards, with priority given to residential buildings located within environmental justice area boundaries.</p>	<p>The Action should be implemented on a more aggressive timeline.</p>
<p>Public Services Element Action 1.4 (PP)</p>	<p>Identify City fiscal and operational procedures and potential thresholds involved in the prioritization of general funds for public programming, service, or infrastructure improvements for residents living within environmental justice area boundaries.</p>	<p>The Action is unclear as to what it is attempting to accomplish. The City should define "thresholds" and "operational procedures." The City should commit to allocating these funds to prioritize the needs of EJ communities.</p>
<p>Safety Element Action 2.4 (QQ)</p>	<p>Work with community organizations and regional partners to understand the prevalence, sources, and implications of lead contamination across Santa Ana's soil. Collaborate with environmental justice stakeholders in proposing solutions to remove hazardous lead soils in the city.</p>	<p>The Action should commit to implement solutions to outreach barriers proposed by EJ communities during these outreach events.</p>



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October 16, 2020

***Via E-mail***

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**RE: City of Santa Ana Draft General Plan Update**

Dear Mr. Carvajal:

It is our understanding that the City of Santa Ana is currently drafting environmental justice policies for its General Plan pursuant to Senate Bill 1000 (“SB 1000”). We recognize the difficulties facing the City of Santa Ana and its communities during the current public health crisis caused by COVID-19. The California Department of Justice’s Bureau of Environmental Justice would like to serve as a resource for the City of Santa Ana as it updates its General Plan during this difficult time. Therefore, we are writing to provide information on SB 1000, our initial feedback on the City’s plans for its General Plan Update, and resources for engaging with community members and developing environmental justice policies.<sup>1</sup>

**I. Background on Environmental Justice and SB 1000**

Low-income communities and communities of color often bear a disproportionate burden of pollution and associated health risks when compared to their more affluent neighbors. Similar to health risks that are connected to pollution exposures, evidence shows that the risks associated with COVID-19 are inequitably distributed among community members.<sup>2</sup> Further, recent studies

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<sup>1</sup> The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of California. *See* Cal. Const., art. V, § 13; Gov. Code §§ 12511, 12600-12612; *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 1415.

<sup>2</sup> *See e.g.*, “Younger blacks and Latinos are dying of COVID-19 at higher rates in California, *Los Angeles Times* (April 15, 2020), <https://www.latimes.com/california/story/2020-04-25/coronavirus-takes-a-larger-toll-on-younger-african-americans-and-latinos-in-california>



indicate that exposures to industrial pollution significantly increase the likelihood of suffering serious health consequences, including death, from the COVID-19 virus.<sup>3</sup>

Environmental justice can address some of the longstanding disparate impacts in a community, and is defined as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adopting, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code, § 65040.12, subd. (e)(1).) California law further states that environmental justice includes, but is not limited to:

- (1) the availability of a healthy environment for all people;
- (2) the deterrence, reduction, and elimination of pollution burdens for communities disproportionately experiencing the adverse effects of that pollution;
- (3) governmental entities engaging and providing technical assistance to communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision-making process; and
- (4) at a minimum, the meaningful consideration of recommendations from communities most impacted by pollution into environmental and land use decisions.

(Gov. Code, § 65040.12, subd. (e)(2).)

In 2016, the California Legislature passed SB 1000 to incorporate environmental justice into the local land use planning process. SB 1000 requires local governments to address pollution and other hazards that disproportionately impact low-income communities and communities of color in their jurisdiction. The law intends to make environmental justice a real and vital part of the planning process by encouraging transparency and public engagement during all stages of a general plan update, requiring local governments to identify environmental justice issues in their communities, and ensuring that local governments adopt environmental justice policies that address the specific needs of disadvantaged communities.

## **II. Legal Requirements of SB 1000**

If a local government adopts or updates two or more elements of its general plan after January 1, 2018, SB 1000 requires the local government to identify any “disadvantaged communities” within its planning area. (Gov. Code, § 65302, subds. (h)(1)-(2).) This identification must be done in the general plan itself. (Gov. Code, § 65302, subd. (h)(1).) SB 1000’s definition for “disadvantaged communities” includes two identification methods: (1) “an

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<sup>3</sup> Wu & Nethery, “Exposure to Air Pollution and COVID-19 Mortality in the United States,” Dept. of Biostatistics, Harvard T.H. Chan School of Public Health, <https://www.medrxiv.org/content/10.1101/2020.04.05.20054502v2.full.pdf>; E&E News, “Study Links Higher NO2 Levels to More Coronavirus Deaths,” (April 23, 2020), <https://www.eenews.net/eenewspm/2020/04/23/stories/1062953127>; “New Research Links Air Pollution to Higher Coronavirus Death Rates,” *New York Times* (April 7, 2020), <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

area identified by the California Environmental Protection Agency (CalEPA) pursuant to Section 39711 of the Health and Safety Code”; or (2) “an area that is low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.” (Gov. Code, § 65302, subd. (h)(4)(A).)

Under the first method for identifying disadvantaged communities, an area is a disadvantaged community if it scores at or above 75 percent on CalEPA’s California Communities Environmental Health Screening Tool (“CalEnviroScreen”).<sup>4</sup> The CalEnviroScreen tool and additional information regarding how it works are available on CalEPA’s website.<sup>5</sup> Generally speaking, CalEnviroScreen identifies the communities in California that are burdened by multiple sources of pollution and most vulnerable to its effects, taking into account the socioeconomic status and health conditions of people living in these communities. Every census tract in California is ranked by combining the scores for 21 different indicators that relate to pollution burdens and population characteristics. The census tracts that score the highest are the most burdened and most vulnerable to pollution in California.

The second identification method requires a local government to first determine whether low-income areas exist in its jurisdiction. SB 1000 defines a “low-income area” as (1) “an area with household incomes at or below 80 percent of the statewide median income,” or (2) an area with “household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s (HCD) list of state income limits adopted pursuant to Section 50093 of the Health and Safety Code.” (Gov. Code, § 65302, subd. (h)(4)(c).) After identifying low-income areas, a local government must then evaluate if these areas are disproportionately affected by environmental pollution that can lead to negative health impacts, pollution exposures, or environmental degradation. (Gov. Code, § 65302, subd. (h)(4)(a).) There are various data sets that can be used for the second part of this analysis, including CalEnviroScreen, that contain specific information about pollution sources.

If a local government identifies one or more disadvantaged communities in its planning area, its general plan must have either an “environmental justice element” or “related goals, policies, and objectives integrated in other elements” (collectively, “EJ policies”) that address eight different topics. (Gov. Code, § 65302, subd. (h)(1).) A general plan’s EJ policies must “reduce the unique or compounded health risks in disadvantaged communities” by doing at least the following:

- (1) Reduce pollution exposure;

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<sup>4</sup> For a map of all disadvantaged communities in CalEnviroScreen, *see* CalEPA, Designation of Disadvantaged Communities, <https://oehha.ca.gov/calenviroscreen/sb535>

<sup>5</sup> CalEPA and Office of Health Hazard Assessment (“OEHHA”), CalEnviroScreen 3.0, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>; CalEPA and OEHHA, CalEnviroScreen 3.0 Report (Jan. 2017), <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

- (2) Improve air quality;
- (3) Promote facilities (SB 1000 defines “public facilities” as facilities that include “public improvements, public services, and community amenities.” (Gov. Code, § 65302, subd. (h)(4)(B));
- (4) Promote food access;
- (5) Promote safe and sanitary homes; and
- (6) Promote physical activity.

(Gov. Code, § 65302, subd. (h)(1)(a).) SB 1000 also requires EJ policies that “promote public engagement in the public decisionmaking process” and “prioritize improvements and programs that address the needs of disadvantaged communities.” (Gov. Code, § 65302, subds. (h)(1)(b)-(c).)

### **III. City of Santa Ana’s General Plan Update**

#### **A. Drafting Tailored EJ Policies**

As described above, local governments that identify disadvantaged communities in their jurisdiction must include EJ policies in their general plan that address specific issues. (Gov. Code, § 65302, subd. (h)(1).) SB 1000 requires these policies to be either incorporated into General Plans as a separate EJ element or integrated into other elements throughout the Plan. (Gov. Code § 65302, subd. (h)(1).) The City has chosen the latter alternative. We appreciate the City’s efforts to address environmental justice in its General Plan through inclusion of EJ policies. However, we are concerned that the EJ policies are not sufficient to reduce the unique and compounded health risks to EJ communities as required by SB 1000, nor do they adequately address the specific requirements of SB 1000.

The City’s EJ policies should match the pollution burdens and unique needs of the disadvantaged communities in its jurisdiction. According to CalEnviroScreen, there are 17 census tracts in the City of Santa Ana that are designated as disadvantaged communities. For example, the highest ranking census tract in the City ranks worse than 97 percent of the rest of the state for pollution burden and worse than 67 percent for population vulnerability. This census tract is in the 100th percentile for toxic releases, 99th percentile for cleanups, 98th percentile for groundwater threats, 95th percentile for traffic pollution, and 95th percentile for hazardous waste. Not only are these communities exposed to more pollution, they are also some of the most vulnerable communities of color in the state. For example, in the worst ranking census tract under the CalEnviroScreen, 76 percent of the community identifies as Latinx and 10 percent identifies as Asian American. They are also relatively low-income with approximately 60 percent of the population with incomes less than to two times the federal poverty level. These communities are undeniably disadvantaged and continue to suffer from environmental racism.

To its credit, the City has conducted a detailed assessment of health risks in Santa Ana in the Environmental Justice Background and Analysis (“EJ Background Report”) for the General Plan Update. For example, the EJ Background report identifies communities in east and south

Santa Ana, including the neighborhoods of Delhi, Cedar Evergreen, Cornerstone Village, Lyon St., Madison Park, and Memorial Park, that suffer from pollution exposure in the form of groundwater threats. Thus, the City's EJ policies should include specific commitments to address the top pollution burdens identified in CalEnviroScreen and in the EJ Background report, including pollution related to toxic releases, groundwater threats, and hazardous waste.

Further, although not identified in the CalEnviroScreen nor in the EJ Background report, our Office understands that disadvantaged communities in Santa Ana are significantly impacted by lead contamination.<sup>6</sup> We commend the City for including two implementation actions in its most recent draft General aimed at addressing lead contamination. However, we recommend the City consider strengthening these measures and add additional measures to address lead contamination. Action 2.4 in the Safety Element states that the City will “[w]ork with community organizations and regional partners to understand the prevalence, sources, and implications of lead contamination across Santa Ana's soil,” and to “[c]ollaborate with environmental justice stakeholders in proposing solutions to remove hazardous lead soils in the city.” Similarly, Action 3.6 in the Land Use Element states that the City will “[c]oordinate with the County of Orange Health Care Agency to establish and maintain a program to eliminate lead-based paint hazards, with priority given to residential buildings located within environmental justice area boundaries.” Because these measures lack specific information about how community organizations and stakeholders will be identified, the timeline for implementation of these programs, and benchmarks that the City has set to ensure implementation, it is unclear how the community can be involved in the programs and track the effectiveness of these measures. In addition, the City should consider additional measures focused on addressing lead contamination. As an example, the City of Richmond adopted a series of policies to address toxic and hazardous waste in their Community Health and Wellness Element that could provide a model for Santa Ana to use to address lead contamination. In particular, Policy HL-40 requires the City to ensure that contaminated sites are adequately remediated before allowing new development and to develop a response plan to address existing contaminated sites in the City. This policy also requires the City to develop guidelines for convening an oversight committee with community representation to advise and oversee toxic site cleanup and remediation. Further, Action HW9.K requires the City adopt standards for the safe management of hazardous substances, including standards that require soil testing at development sites where contamination is suspected. Finally, a particular resource available to the City in developing policies to address lead contamination is the impacted communities themselves. We recommend

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<sup>6</sup> S. Masri et al., *Social and spatial distribution of soil lead concentrations in the City of Santa Ana, California: Implications for health inequities*, 743 *SCI. OF THE TOTAL ENV'T* (2020), available at <https://doi.org/10.1016/j.scitotenv.2020.140764>; “Low-income and predominately Latino neighborhoods in Santa Ana affected by toxic lead, report says,” *L.A. Times* (September 10, 2020), <https://www.latimes.com/socal/daily-pilot/entertainment/story/2020-09-10/low-income-and-predominately-latino-neighborhoods-in-santa-ana-affected-by-toxic-lead-report-says>; “The hidden toxic threat in America's backyards,” *Think Progress* (July 12, 2017), <https://thinkprogress.org/the-hidden-toxic-threat-in-americas-backyards-aa580bbf61e1/>

that the City consult with disadvantaged communities in its jurisdiction to solicit ideas on how to address the pollution burdens related to lead contamination.<sup>7</sup>

Moreover, the General Plan contains several policies that attempt to address exposure to pollution as identified in the CalEnviroScreen, but many do not appear designed to affirmatively reduce the unique and compounded health risks and pollution burdens facing environmental justice communities as required by SB 1000. For instance, Policy CN-1.5 states that the City should “[c]onsider potential impacts of stationary and non-stationary emission sources on existing and proposed sensitive uses and opportunities to minimize health and safety risks” and “[a]pply special considerations and regulations on the siting of facilities that might significantly increase pollution near sensitive receptors within environmental justice area boundaries.” However, the Policy does not identify what types of regulations would be applied to facilities and does not provide conditions or thresholds that would trigger when such regulations would be applied. There also appears to be nothing in the Policy requiring implementation of identified regulations to reduce pollution exposure, or defining the types of pollution and identifying the timeframe for implementing such regulations.

Further, several policies encourage the City to develop buffers between industrial uses and sensitive receptors. This is a positive step, but it is of questionable efficacy because the policies do not go on to designate appropriate distances or standards for buffer zones. This concern is exemplified by Policy LU-3.8, which states that the City should “[a]void the development of sensitive receptors in close proximity to land uses that pose a hazard to human health and safety, due to the quantity, concentration, or physical or chemical characteristics of the hazardous materials that they utilize, or the hazardous waste that they generate or emit.” Similarly, Policy LU-3.11 states that the City should “[p]romote landscaping and other buffers to separate existing sensitive uses from rail lines, heavy industrial facilities, and other emissions sources.” However, such policies do not identify what is considered “in close proximity” or any standards for determining when a buffer should be established or even what an appropriate buffer is. We recommend the City define these requirements more clearly and consider establishing affirmative requirements for separation between industrial uses and sensitive receptors in the City’s disadvantaged communities. CARB suggests that sensitive land uses be separated from industrial uses by at least 1,000 feet. Indeed, data from CARB demonstrates that localized air pollution drops off by 80 percent about 1,000 feet away. Thus, the City should consider establishing at least 1,000 feet separation between industrial uses and sensitive receptors to adequately protect communities.

We also recommend the City consider additional enforceable policies that would adequately reduce pollution burdens experienced by the identified environmental justice communities. There are many examples of EJ policies from other local governments that the City can reference as it develops its own policies. OPR’s General Plan Guidelines includes a collection of example EJ policies from adopted general plans that address various environmental

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<sup>7</sup> See e.g., Orange County Environmental Justice Letter to City of Santa Ana (July 13, 2020).

justice challenges.<sup>8</sup> As an example, to address groundwater contamination, Marin County implemented several policies designed to improve water quality, including a groundwater monitoring program for unincorporated areas (Action WR-2.0) and a requirement that all County facilities use the least toxic pest control methods (Action WR-2.n). Moreover, in a recently adopted general plan not included in OPR's General Plan Guidelines the City of Placentia adopted strong EJ policies that could also serve as a model for the City.<sup>9</sup> Placentia's Environmental Justice Element provides nuanced discussions of specific disadvantaged communities in Placentia's jurisdiction, identifies strong and unique EJ policies to address the needs of these communities, and commits to prioritizing environmental justice-related program.<sup>10</sup>

Other policies intended to address the requirements of SB 1000 can also be strengthened to reduce the health risks experienced by the identified environmental justice communities. For example, Policy HE-3.2 states that the City will "[c]ontinue to support the creation of healthy neighborhoods by addressing public safety, improving the built environment, and maintaining building code standards." However, the policy does not identify how such public safety issues will be identified and addressed. Similarly, Policy CM-1.2 does not seem like it fully ensures that community members will be adequately engaged. Policy CM-1.2 states that the City will "[e]ngage residents and community facility users to provide input for facility improvements and programming." This would be a laudable course of action, but the policy does not provide a method for engagement or a timeline for engagement, making it unenforceable.

In sum, we encourage the City to strengthen the City's EJ policies and supplement with new policies designed to reduce the risks already identified in the EJ Background report. We recommend the City review resources prepared by OPR and the California Air Resources Board.<sup>11</sup> We also encourage the City to consider identifying in some way all EJ policies in the General Plan, for example by color coding or copying them into an appendix. We believe such identification is a best practice for ensuring the City's EJ policies are clear and accessible.

## **B. Timeline for Developing and Adopting the General Plan Update and Community Engagement Process**

The City of Santa Ana released a Draft Environmental Impact Report (DEIR) and draft General Plan Update in August 2020. The City subsequently released a second draft of the General Plan Update on September 28, 2020. The staff anticipates the hearing process for the General Plan and the Final Environmental Impact Report (FEIR) to begin in October 2020, with

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<sup>8</sup> "Model Environmental Justice Policies for General Plans," *Office of Planning and Research* (June 2020), [https://opr.ca.gov/docs/20200624-Model EJ Policies for General Plans.pdf](https://opr.ca.gov/docs/20200624-Model_EJ_Policies_for_General_Plans.pdf).

<sup>9</sup> "General Plan Update," *Placentia*, <https://www.placentia.org/166/General-Plan-Update>.

<sup>10</sup> *Id.* at 10-8 to 10-15, 10-32 to 10-49.

<sup>11</sup> "General Plan Guidelines Chapter 4, Section 8," *Office of Planning and Research* (June 2020), [https://opr.ca.gov/docs/20200706-GPG Chapter 4 EJ.pdf](https://opr.ca.gov/docs/20200706-GPG_Chapter_4_EJ.pdf); CARB, Options for Cities to Mitigate Heavy-duty Vehicle Idling (May 5, 2016), [https://ww3.arb.ca.gov/enf/arb\\_options\\_cities\\_mitigate\\_idling.pdf](https://ww3.arb.ca.gov/enf/arb_options_cities_mitigate_idling.pdf).

adoption in late 2020. We understand and support the City's desire to continue the important work of updating its General Plan during the pandemic, but we are concerned that the City's goal to adopt the General Plan update by the end of this year may be unrealistic, especially when in-person meetings may not be feasible or safe. One of the basic purposes of SB 1000 is to provide environmental justice communities with a meaningful opportunity to engage in government decisions that affect them. The City's accelerated timeline does not appear to allow for this meaningful community engagement process to occur.

The City began its General Plan update process in 2016. However, it is our understanding that the City's strategy for engagement with environmental justice communities began three months prior to the release of the draft General Plan Update and DEIR. While we applaud the City's various initiatives to reach out to environmental justice communities, we are concerned that the City has not allowed enough time or opportunity for community engagement since releasing the draft General Plan Update. These concerns are more pronounced because all of the City's outreach to environmental justice communities has occurred during the COVID-19 pandemic. There are several ways that the City can improve its strategy for engaging with community members. The City could prepare an online survey to determine the top environmental justice-related priorities in the identified environmental justice communities. It City could also partner with organizers from local environmental justice groups to identify the most effective ways to communicate with residents of disadvantaged communities that may lack access to the internet. Finally, the City might form an environmental justice advisory committee to evaluate the needs of environmental justice communities in Santa Ana and draft the City's EJ policies.

We recognize that robust community engagement will be difficult for the City to conduct when social distancing is still the norm. Thus, we urge the City to not rush through its General Plan Update before the City has opportunities to fully engage with the historically disadvantaged communities in its jurisdiction.

#### **IV. Conclusion**

Thank you for considering our suggestions for strong community engagement and environmental justice policies in the City's General Plan Update. To supplement the resources described above and the information the City collects from community members, we encourage the City to visit the Attorney General's SB 1000 website to identify tools and data sources that may be relevant to the City's specific needs and circumstances.<sup>12</sup> Please do not hesitate to reach out to me if you have any questions throughout the remainder of your planning process. We look forward to serving as a resource for the City as it continues its General Plan Update.

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<sup>12</sup> "SB 1000 -- Environmental Justice in Local Land Use Planning," *State of California Department of Justice*, <https://oag.ca.gov/environment/sb1000>.)

Sincerely,

A handwritten signature in black ink, appearing to read "R. Garcia", with a horizontal line extending to the right.

RICA V. GARCIA  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General