CORRESPONDENCE FROM MAY 15, 2017 COUNCIL MEETING

Iraheta, Alba

Subject: FW: Utility Suspension Ordinance (May 15 Council Agenda)

Council Member Wilson:

As your constituent, I write to share my concerns with the proposed ordinance, item 19 on Monday's City Council agenda, which would allow the City to suspend water and power services to commercial or industrial customers who are alleged to be violating the Municipal Code.

This ordinance has been offered as a response to problems with marijuana-related businesses, so let me be clear: I have no use for those businesses and no connection with any of them, in Pasadena or elsewhere. If they are operating here unlawfully, I wish the City every success in closing them.

I am concerned, however, that the ordinance--like many broad laws written to solve narrow problems--could be misapplied in the future, harming legitimate business and industry in Pasadena.

As you consider the ordinance, I urge you to keep in mind the irreversible consequences of a loss of water or electric service, rightly or wrongly imposed, especially for small businesses that are thinly capitalized and unable to afford litigation. The uninsurable loss of sales or production, if it does not cause total failure, would often be far more severe than any penalty otherwise likely to be imposed, not only for owners, but also for employees, suppliers, and customers.

These consequences--together with the fact that the ordinance, as drafted, would allow utility suspension for any building or zoning violation, no matter how trivial or insignificant, the summary nature of the suspension process, and the possibility that it could occur in parallel with other civil or criminal proceedings--make it extraordinarily important to provide adequate safeguards, consistent with Constitutional guarantees of due process.

If the City Council wishes to enact the ordinance, I respectfully suggest that it should be amended along these lines:

- If the objective is compliance, not punishment, the ordinance should state clearly that utility suspension is allowed only when there are uncorrected violations, or a continuing pattern or practice of violations, existing not only when the Notice of Utility Suspension is issued but also at the time of any hearing and during the suspension itself. After violations have ceased or been corrected, they would remain punishable under other laws, but not by utility suspension.

- Threats of utility suspension should not become a routine part of code

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enforcement. Authority to issue a Notice should be limited to the City Manager and the Director of Planning and Community Development, with no further delegation. Utility suspension is a serious measure, and it should not be needed so often that requiring personal approval by one of these officials would be impractical.

- The right to a hearing, and to appear and present evidence at the hearing, should be available not only to persons receiving the City's Notice, but also to anyone who might be affected by the proposed suspension. This would address cases in which the City has incorrect information about who uses a particular service, for example.

- The City's Notice and other documents should not be given special weight as prima facie evidence. In a summary process with serious interests at stake, it is only fair that each party should be held to the same standard of proof.

  Unlike routine code enforcement proceedings, in serious cases where an extraordinary remedy like utility suspension is truly necessary, the City should have no trouble making its case through Code Compliance Officers or other witnesses with personal knowledge of the alleged violations, who would also be subject to cross-examination.

  No one should be put at risk of losing a business because someone marked the wrong box on a form or confused one address with another.

- In addition to the evidence listed in the draft ordinance, the hearing officer should be allowed to consider evidence concerning the likely effects, including monetary losses, of the proposed suspension, and each affected party's obligation, ability, and previous efforts or refusal to correct the alleged violations.

  Allowing the hearing officer to consider a broader range of evidence would help to validate that each suspension is genuinely warranted under the circumstances, and that the likely results--which may at times include the permanent closure of an establishment--are proportionate to the violations and consistent with the penalties and other remedies otherwise available to the City.

- The ordinance should consistently use either "administrative review" or "appeal" to refer to the hearing process, unless it is intended to provide for more than one level of review, as with parking violations under the Vehicle Code.

The proposed ordinance, if amended as described above, could still be effective for the City's immediate purpose and in other difficult cases, but it would do more to promote public confidence in reasonable, firm, and impartial enforcement, hallmarks of the Pasadena Way.

[Thank you for considering my comments. I realize that this e-mail may become a public record when you receive it, but I ask that it not be

published on the City's website.]

Respectfully,

William Hooper