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July 16, 2026

Via Electronic Submission

Los Angeles County Public Works
Household Hazardous Waste EPR Ordinance
HHW-EPR@dpw.lacounty.gov

Re: Comments Opposing Proposed Household Hazardous Waste Extended Producer Responsibility Ordinance

Dear Los Angeles County Public Works:

The Auto Care Association submits these comments in opposition to Los Angeles County's May 14, 2026 draft Household Hazardous Waste Extended Producer Responsibility Ordinance (the "Draft Ordinance"). The Draft Ordinance would add Chapter 12.87 to Title 12 of the Los Angeles County Code and establish a local extended producer responsibility ("EPR") program for household hazardous waste ("HHW") products.

Auto Care is the national trade association representing the independent automotive aftermarket. Auto Care's members manufacture, distribute, sell, and install automotive parts, accessories, tools, equipment, materials, supplies, and services for every class of vehicle. The automotive aftermarket is a highly integrated national market. It includes manufacturers and brand owners, warehouse distributors, jobbers, retailers, e-commerce sellers, repair facilities, recyclers, and service providers who help keep vehicles safe, efficient, and operational. Auto Care members are environmental leaders, with extensive experience complying with environmental, waste-management, take-back, recycling, labeling, and consumer-information programs, including programs for used oil, batteries, refrigerants, and other automotive products.

The Draft Ordinance directly affects Auto Care members. The County's draft Covered Product List identifies "Automotive products and cleaners" as covered products, including antifreeze, lubricants, spent brake fluid, hydraulic fluids, radiator fluids, engine degreasers, and pre-mixed fuel plus oil. It also lists product categories that may be sold by automotive aftermarket businesses, including certain aerosols, adhesives and sealants, cleaning products, gas cylinders, flammable liquids and solids, light bulbs and tubes, pesticides and herbicides, e-cigarette and vapor devices, medical devices, and small electronic devices. [See the LA County HHW EPR Covered Product List (draft dated May 14, 2026), at 1.]

Auto Care recognizes the County's interest in safe HHW collection and proper management of hazardous materials, however the proposal raises serious legal and practical concerns including preemption, extraterritorial regulation, unlawful taxation, due process, interstate-commerce burdens, compelled speech, improper delegation, vagueness, and operational burdens to the automotive

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aftermarket and its customers, including many businesses with no meaningful nexus to the County's Service Area. For the reasons set forth below, the County should not adopt the Draft Ordinance.

Executive Summary

- Although the Draft Ordinance claims to cover HHW not already regulated by state law, its Covered Products list and operative provisions sweep in products already governed by federal and California programs, raising serious questions about preemption and leaving regulated businesses unsure of their obligations;
- The Draft Ordinance improperly uses the Stewardship Plan Approval process to reach downstream disposal infrastructure and product design decisions that may occur outside LA County or even outside California.
- The fee provisions attempt to shift County HHW program costs to producers and PROs in a manner that violates the restrictions on local taxes in Article XIIIC of the California Constitution.
- The Draft Ordinance violates due process by exposing manufacturers to liability for products introduced into the Service Area by unauthorized resellers or gray-market actors.
- The Draft Ordinance burdens interstate commerce by forcing national manufacturers and distributors to build LA County-specific compliance systems while also exposing out-of-jurisdiction disposal pathways to LA County oversight.
- The Draft Ordinance violates the First Amendment because it impermissibly conditions market access on compelled speech and compelled funding of speech.
- The Draft Ordinance delegates to the Director broad discretion over core policy and implementation aspects of the program without adequate standards or procedural safeguards.
- The Draft Ordinance is vague and fails to provide fair notice, because it leaves regulated parties unable to determine what products are covered and what conduct triggers penalties.

I. The Draft Ordinance creates duplicative local requirements for already-regulated products, exceeding local authority and raising potential preemption issues.

California Constitution article XI, section 7 authorizes counties and cities to "make and enforce within [their] limits local police, sanitary, and other ordinances and regulations not in conflict with general laws." (emphasis added). A local ordinance is preempted if it conflicts with state law, and California courts define conflict to include local legislation that "duplicates, contradicts, or enters an area fully occupied by general law." *Sherwin-Williams Co*. v. *City of Los Angeles*, 4 Cal. 4th 893, 897-98 (1993).

The Draft Ordinance states that the County intends to establish an EPR program for HHW "not covered by State legislation." Further, section 20(c) states that the ordinance "would not apply to hazardous waste from businesses or industries already subject to federal or state regulations, such as those under the Resource Conservation and Recovery Act (RCRA) and the California Department of

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Toxic Substances Control (DTSC)." But the operative provisions of the Draft Ordinance do in fact sweep in household product categories already governed by federal and California laws.

The draft Covered Products list contains several product categories already subject to federal and California waste regulation, including "automotive products and cleaners," Small Electronic Devices (SMEDs), and "light bulbs and tubes." Many SMEDs are covered by California's Covered Electronic Waste Recycling program, including battery-embedded products brought within that program under SB 1215. *See* Cal. Pub. Res. Code section 42460 *et seq.* (imposing covered electronic waste recycling fees on consumers), *see also* 14 CCR § 18660 *et seq*. (requiring manufacturers to file annual reports for covered electronic devices, including information on recycled content, and regulating approved collectors and recyclers.) Further, the broadly worded "automotive products and cleaners" category can be interpreted to include used oil, which is governed by the California Oil Recycling Enhancement Act. *See* Cal. Pub. Res. Code section 48600 *et seq* (requiring, among other things, oil manufacturers to pay fees to CalRecycle, imposing reporting requirements for eligibility for recycling incentives, and regulating certification of used oil collection centers.). Additionally, household hazardous waste generally is already subject to various requirements. *See* Cal. Health & Safety Code § 25218 *et. seq*. (establishing permit and certification requirements for HHW collection facilities, and requirements for HHW transporters, setting quality-assurance plan requirements for reusable HHW placed in material exchange programs.)

The Ordinance has general language about removing products or categories that are subject to separate federal or state regulation, but that provision is discretionary and provides no assurance that the Ordinance will be administered in a way that does "not . .. conflict with general laws" as required by the California Constitution.

To the extent that the proposed ordinance conflicts with or interferes with these federal and State programs, it will be preempted, but the exact scope of that preemption will not be known until the Director acts to remove overlapping products and any disputes about those decisions are resolved. The Board should not adopt an ordinance that exposes businesses to penalties and leaves regulated entities guessing whether compliance with existing federal or California law is sufficient, or whether they have to comply with a second, overlapping EPR regime.

II. The Draft Ordinance improperly extends LA County control over HHW disposal beyond local borders.

The authority to enact police ordinances for sanitation or health "must be confined in their application only to the city or county adopting them." *Stanislaus County Dairymen's Protective Asso. v. County of Stanislaus,* 8 Cal. 2d 378, 384 (1937). However, this purportedly local draft HHW ordinance reaches far beyond LA County's borders and thereby violates Article XI, § 7 of the Constitution of California.

Section 5(k) authorizes the Director to audit records and request inspection of facilities, vehicles and equipment used in carrying out the Stewardship Plan. As a result, if Covered Products collected in LA County are transported to a recycler, treatment facility or hazardous waste disposal

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facility in Nevada, Arizona, Oregon or any other state, those out-of-County facilities, vehicles and equipment would become part of "the infrastructure "used in carrying out the Stewardship Plan" and thereby subject to any demand LA County may make to inspect them.

Similarly, Sections 6(c) to (d) require identification, of collectors, transporters and Hazardous Waste Disposal Facilities used to implement a Stewardship Plan, and the procedures used to collect, transport and dispose of HHW. Section 8 (a) requires identification of procedures used for recycling and disposal of Covered Products at Hazardous Waste Disposal Facilities. Sections 12 (a) to (c) empower the Director to approve or reject Stewardship Plans. HHW disposal infrastructure is often regional and may be located outside LA County and outside California. Yet the Draft Ordinance would give LA County a veto over these downstream disposal and recycling pathways, and impose penalties, if the Director disagrees with how HHW is being managed, even if the facilities or methods are lawful in the destination jurisdiction.

Further, Section 8(d) requires Stewardship Plans to describe initiatives for end-of-life management of Covered Products through product design innovations. Though these product design innovations are described as "voluntary," the effect of the Draft Ordinance is to regulate out-of-County product design because the design initiatives are embedded in Section 12's mandatory scheme for approval or rejection of Stewardship Plans.

The draft ordinance therefore uses its stewardship plan approval scheme to control conduct beyond LA County's borders, resulting in extraterritorial regulation in violation of Article XI, § 7 of the Constitution of California.

III. The proposed fees and reimbursements constitute unlawful taxes under Proposition 26 and federal law.

Article XIII C of the California Constitution prohibits local governments from imposing, extending or increasing taxes without voter approval, and broadly treats any local levy, charge or exaction as a tax unless the government proves that it falls within a specific constitutional exception. The Draft Ordinance unlawfully seeks to shift the costs of operating the HHW program to select producers and PROs without showing that these charges fall within any article XIIIC exception or bear a fair and reasonable relationship to each payor's burdens.

Section 9 (a) of the Draft Ordinance would require producers and PROs to pay extensive costs, including for reimbursement of County HHW program costs. Reimbursable costs include, but are not limited to, costs associated with temporary and permanent collection events, staffing, contractor services, transportation, treatment, recycling, disposal, public outreach, and program administration, "as determined by the Director." Section 9(e) further requires producers, through a PRO, to reimburse the Department for monitoring, enforcement, review, and audit costs. Section 16 separately requires "plan review" fees and annual operating fees.

Those provisions raise substantial issues under Proposition 26. Proposition 26 provides that the local government bears the burden of proving that a charge is not a tax, that the amount is no

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more than necessary to cover reasonable governmental costs, and that the manner in which those costs are allocated bears a fair or reasonable relationship to the payor's burdens on, or benefits from, the governmental activity. *See Zolly v. City of Oakland*, 13 Cal. 5th 780, 790-91 (2022).

The Draft Ordinance does not supply the information required to evaluate those constitutional requirements. It contains no fee study, no methodology for allocating costs among producers or product categories, no formula for attributing County HHW program costs to products covered by the chapter, no mechanism for excluding costs associated with products not covered by the chapter, and no method for handling products purchased outside the Service Area, products purchased before the ordinance takes effect, or products brought into the Service Area without the manufacturer's authorization. This is especially problematic because section 9(a)(4) would require producers to reimburse HHW program costs "to the extent such programs collect Covered Products," but a County HHW event may collect products already subject to state programs, products purchased outside the County, and products sold years before the ordinance took effect. Without a rigorous allocation formula, the Draft Ordinance would allow the County to shift costs of a broad public HHW program to selected product manufacturers and PROs without the fair relationship required by Proposition 26. This cost shifting does not bear a "fair and reasonable relationship" to any burdens caused by manufacturers of covered products.

Section 9(e)(2) also seeks reimbursement for enforcement costs associated with persistent noncompliance. Allocating enforcement costs to compliant producers or across a PRO membership would not bear the required fair relationship to the individual payor's burden or benefit. It would instead require some businesses to subsidize the County's enforcement activity against others.

Further, "it is not enough to show that the charge reflects the government's 'reasonable regulatory costs'; the government must also show that the costs are incurred in performing only permissible activities;" i.e., "issuing licenses and permits, performing investigations, inspections, and audits; or the administrative enforcement and adjudication thereof." *Sutter's Place, Inc. v. City of San Jose,* 104 Cal. App. 5th 855, 864-65 (2024). The Draft Ordinance goes well beyond these categories of "permissible activities" by requiring reimbursement for County HHW program operations including collection events, staffing, contractor services, transportation, treatment, recycling, disposal, public outreach, and program administration.

These provisions also violate federal law, to the extent the charges function as taxes or tax-like exactions imposed on interstate producers, without the safeguards required by the Commerce Clause. State and local taxes affecting interstate commerce must satisfy the four-part test of *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977): the tax must apply to an activity with substantial nexus to the taxing jurisdiction, be fairly apportioned, not discriminate against interstate commerce, and be fairly related to services provided. *See also South Dakota v. Wayfair*, 585 U.S. 162, 174 (2018). The Draft Ordinance lacks the necessary nexus and apportionment protections because it does not limit charges to products purposefully sold into the Service Area by the manufacturer, actually collected under the program, and actually imposing costs on the County.

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IV. The Draft Ordinance penalizes manufacturers for downstream sales they may not have authorized or controlled, violating the Due Process Clause of the Fourteenth Amendment.

A manufacturer should not face daily penalties merely because an independent reseller or gray-market actor brought a Covered Product into LA County without authorization, but this is exactly what the Draft Ordinance permits. Section 4(G) defines a Covered Product as an HHW product designated by the Director that is "sold or distributed within the Service Area." Section 4(T) then defines "Producer," with respect to a Covered Product sold, offered for sale, or distributed within the Service Area, first as the manufacturer of the Covered Product sold under the manufacturer's own name or brand. Only if no manufacturer is identified does the definition move to the brand or trademark owner, and only if neither applies does it move to the importer or distributor that first sells or distributes the product within the Service Area.

This structure can make a manufacturer responsible whenever its branded product is sold, offered for sale, or distributed within the Service Area, even if the manufacturer did not sell into the Service Area, did not authorize a sale into the Service Area, attempted to prohibit such sales, and lacks control over the third party that brought the product into the Service Area. The Draft Ordinance does not require that the manufacturer itself sold, shipped, authorized or otherwise purposely directed a Covered Product into LA County. A manufacturer may become a "Producer" responsible for an EPR program even if a Covered Product was introduced into the Service Area by a downstream seller, reseller, distributor or gray-market actor. Further, Section 14 (f) authorizes penalties up to $1,000 per day per violation. In other words, a manufacturer could face daily penalties for failing to participate in or fund the County's EPR program based solely on unauthorized downstream sales that it did not approve or control.

The Due Process Clause does not allow a local government to impose affirmative regulatory obligations, fees, audits, and penalties on a nonresident manufacturer based solely on the unilateral conduct of independent third parties. The Supreme Court has long restricted the authority of states to apply their law to nonresidents based on whether the forum has sufficient contacts with the conduct at issue, and whether defendant's conduct and connection with the forum are such that it should reasonably anticipate being subject to the forum's authority. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 814-23 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295-98 (1980). The Court has emphasized that the "unilateral activity" of others cannot satisfy the contact requirement. *Id.* at 298.

The Draft Ordinance contains no purposeful-availment limitation, authorization standard, knowledge standard, minimum sales threshold, marketplace safe harbor, distributor-control requirement, or defense for manufacturers that prohibit sales into the Service Area. It does not assign responsibility to the person that actually and knowingly sells, offers for sale, distributes, imports, or causes a product to enter the Service Area when the manufacturer has not authorized that sale. The County should not adopt a law that requires manufacturers to police all downstream commerce nationwide to avoid unexpected local EPR obligations in one County.

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The practical consequences would be severe. Automotive aftermarket products often move through multiple distribution layers, including national distributors, regional warehouses, retailers, online sellers, resellers, installers, and repair facilities. A manufacturer may sell only to authorized distributors outside the Service Area, impose territorial restrictions, or lack any direct relationship with the entity that eventually sells the product in the Service Area. The Draft Ordinance would nevertheless expose the manufacturer to plan-participation obligations, reporting duties, County reimbursements, fees, audits, and penalties.

V. The Draft Ordinance unduly burdens interstate commerce by forcing businesses to develop LA County-specific waste management programs and regulating out-of-state transactions.

The dormant Commerce Clause prohibits local measures that discriminate against or unduly burden interstate commerce. Even a facially evenhanded law is invalid if the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits. *Pike v. Bruce Church, Inc*., 397 U.S. 137, 142 (1970). The Draft Ordinance imposes burdens that extend well beyond the Service Area and expose out-of-jurisdiction disposal pathways to County oversight.

The Draft Ordinance would condition sales in the Service Area on participation in a County-approved stewardship plan, and compliance with reporting and recordkeeping requirements. *See* Draft Ordinance sections 5(a)-(d) and 10. Section 6 sets out extensive requirements for these stewardship plans. Each plan must include lists of covered products and producers, collection methods, participating retail businesses, collectors, transporters, disposal facilities, handling procedures, tracking mechanisms from collection through final disposal, education and promotional materials, and short-term and long-term plans. Section 9 requires Producers to fund collection, transportation, safe management, recycling, disposal and final processing, in addition to reimbursing the County for monitoring, enforcement and review and audit costs. These are not the only costs producers and PROs are required to pay – they are also required to pay plan review fees and annual operating fees under Section 16. Taken together, these provisions impose a substantial burden on interstate commerce by requiring producers and PROs to design and finance a County-specific waste management program as a condition of selling Covered Products in the Service Area.

Even though the Draft Ordinance is framed as establishing local rules, it will require national manufacturers and distributors to build County-specific compliance systems, segment sales and distribution data, adjust contracts, monitor downstream sales, coordinate with PROs or operate individual plans, identify County-specific covered products, manage annual reporting, submit operational changes for prior approval, and absorb County costs. For companies selling products nationwide, local ordinances of this type create precisely the fragmentation that the Commerce Clause is designed to prevent.

The Draft Ordinance also violates the dormant Commerce Clause inasmuch as it allows LA County to inspect, approve, reject or penalize downstream collection, transportation and disposal arrangements that may occur outside the County or outside California. *See* supra at II. Under the dormant Commerce Clause, "the mere fact that some nexus to a state exists will not justify regulation

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of wholly out-of-state transactions." *Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608, 615 (9th Cir. 2018) (holding that officials of the California Department of Public Health likely violated the Commerce Clause in seeking to penalize medical waste disposal "in a manner that was perfectly legal in the states" where the disposal took place.) The court explained that California could not "reach beyond the borders of California and control transactions that occur wholly outside" the state after the waste had left California. *Id.*

The County should not adopt an ordinance that invites the same problem. Once covered HHW leaves the Service Area and is managed at a facility lawfully permitted under applicable federal law and the law of the destination jurisdiction, Los Angeles County may not use plan approval, technology approval, reporting, reimbursement, or enforcement provisions to impose County preferences on that out-of-jurisdiction transaction.

VI. The Draft Ordinance impermissibly conditions market access on compelled speech and compelled funding of speech

The First Amendment prohibits the enactment and enforcement of law that "abridg[e] the freedom of speech." The Draft Ordinance compels speech in violation of the First Amendment and the California Constitution's free speech provisions, by requiring regulated businesses to carry government-approved messages and requiring producers and PROs to fund and deliver County-directed outreach as a condition of selling Covered Products. The Draft Ordinance compels businesses to carry government-approved or government-prescribed messages. *See* Section 17(a) (requiring any person selling or offering Covered Products for sale to post display materials approved by the Director); Section 17(c) (prohibiting sale or offer for sale using any alternative means of compliance unless specifically authorized in advance in writing by the Director). Section 18 of The Draft Ordinance also requires each producer, group of producers, or PRO to develop a system of promotion, outreach, and public education, and dictates the contents of the outreach and educational materials.

Mandatory factual disclosures may be permissible in some circumstances, but the First Amendment does not give local governments unlimited power to require private businesses to disseminate government-approved messaging. *See Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985); *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755, 769-78 (2018). The Draft Ordinance is not limited to neutral, purely factual, noncontroversial point-of-disposal instructions. It requires Director-approved materials, mandatory messaging themes, and coordinated program-wide promotional systems. It also compels retailers and other sellers to post those materials as a condition of selling covered products.

The California Constitution's protection of free speech is "not only as broad and great as the First Amendment's" but "even broader and greater" in scope. *Gerawan Farming, Inc. v. Lyons*, 24 Cal. 4th 468, 491 (2000). The California Supreme Court has held that the right to freedom of speech is "put at risk" by compelled funding of speech. *Id.* The Draft Ordinance compels producers and retailers to fund and disseminate program speech. *See* Section 18 (requiring Producers and PROs to develop a system of promotion, outreach and public education to be included in the Stewardship Plan) and Section 9(a) (requiring Producers and PROs to implement Stewardship Plans at their own expense). It therefore raises both federal and California constitutional concerns.

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Section 9(b) creates a separate First Amendment violation. The First Amendment "embraces…the liberty" to "discuss publicly and truthfully all matters of public concern." *Thornhill v. Alabama*, 310 U.S. 88, 101–02 (1940). Further, under the California Constitution, "[c]ontent-based restrictions are 'presumptively invalid' and are subject to strict scrutiny." *Ctr. for Bio-Ethical Reform, Inc. v. Irvine Co., LLC*, 37 Cal. App. 5th 97, 105 (2019). In prohibiting point-of-sale fees to recoup stewardship-plan costs, the provision could be read to bar sellers from telling consumers – on receipts, invoices, signs, product pages, or other communications - that product prices reflect County-mandated EPR costs. This would suppress truthful commercial speech. At minimum, Section 9(b) ensures that consumers will see higher prices without a transparent explanation of the source of those costs. The County should not adopt a proposal that suppresses or obscures the cost consequences of its own ordinance.

VII. The Draft ordinance delegates core policy decisions to the Director without adequate standards or safeguards.

Under California law, an unconstitutional delegation occurs when the legislative body leaves fundamental policy issues to others or fails to provide adequate direction for the implementation of that policy. *People ex rel. Lockyer v. Sun Pacific Farming Co*., 77 Cal. App. 4th 619, 632-35 (2000); *Carson Mobilehome Park Owners' Assn. v. City of Carson*, 35 Cal. 3d 184, 190 (1983).

The Draft Ordinance fails these standards. It gives the Director or Department sweeping discretion over core elements of the program, without meaningful legislative standards to guide those decisions, including:

- what products and product categories are covered or not covered (Sections 4(G) and 15(e));
- what constitutes equitable geographic distribution, material disparity, disproportionate adverse impact, or inconsistency with environmental-justice and equity objectives (Sections 7(f)-(g));
- whether disposal technologies provide equivalent or superior protection (Section 8(c));
- what County costs are reimbursable and how phased reimbursement may proceed, (Section 9(a)(4));
- whether proposed changes substantively alter plan operations and therefore require the Director's prior approval(Section 13 (a));
- what regulations and guidelines are necessary to implement, administer, and enforce the chapter, (Section 15(a));
- what annual goals and performance requirements apply to Stewardship Plans, including collection amounts, education, and promotion (Section 15(b)); and
- what plan review and annual operating fees apply (Section 16).

These are not merely ministerial implementation details. They define the regulated products, the regulated parties, the scope of the program, the performance standards, the costs, the availability of collection infrastructure, the disposal pathways, and the consequences for noncompliance.

The Draft Ordinance grants the Director expansive discretion without procedural safeguards necessary to prevent arbitrary or inconsistent decision making. Notably and unusually, there are no

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notice and comment procedures for key decisions that the Director is empowered to make. For instance, the Director has the far-reaching authority to determine whether a product is a Covered Product, but the Draft Ordinance does not require a notice and comment process on product category designations.

The lack of procedural safeguards extends to the Director's broad authority in relation to Stewardship Plans. Section 12(e) permits the Director to deem a producer or PRO out of compliance, without any mechanism to appeal plan rejection. Section 12(g) states only that the Director "shall reserve the right' to make all or part of proposed or approved stewardship plans available for public review and comment, excluding confidential business information and trade secrets. This language makes public review optional and not required. The Draft Ordinance does not define standards for withholding information, specify a comment period, require responses to comments, or require public notice of plan review.

The Draft Ordinance also raises private delegation concerns by allowing private entities to shape compliance obligations for their competitors. Private parties may not be given governmental power to regulate competitors without adequate standards and oversight. *See Carter v. Carter Coal Co*., 298 U.S. 238, 311 (1936); *People ex. rel. Lockyer v. Sun Pacific*, 77 Cal. App. 4th at 634. "[M]ore stringent and specific standards are required where representatives from private industry serve on administrative boards with power to make rules affecting competitors." *Sun Pacific*, 77 Cal. App. 4th at 634. Under Section 5(g), a PRO may negotiate with producers seeking to participate, reject producers, and report rejected producers to the Director. Section 5(i) requires a PRO to notify the Director if it becomes aware of HHW being sold or offered for sale in or into the Service Area by a producer not participating in a plan. If multiple plans are approved, they must coordinate a single promotion and education system to the extent feasible. Draft Ordinance section 18(c). Depending on the structure of any PRO, these provisions could allow competitors to influence access to compliance pathways, information systems, cost allocations, and public messaging.

VIII. The Draft Ordinance is vague and fails to provide fair notice.

"Government regulation must be sufficiently clear so that ordinary people can understand what conduct is being prohibited and so that the regulation does not encourage arbitrary and discriminatory enforcement." *Chalmers v. City of Los Angeles,* 762 F.2d 753, 757 (9th Cir. 1985). The Draft Ordinance is impermissibly vague because regulated parties cannot determine from its text what products will be covered and when covered product categories will be changed.

The central definition in the Draft Ordinance – that of a 'Covered Product' depends entirely on designation by the Director and Section 15(e) gives the Director broad authority to maintain and update Covered Products categories. Further, Section 20(c) states that the ordinance "would not apply to hazardous waste from businesses or industries already subject to federal or state regulations" but the draft list of Covered Products does include products already subject to existing regulations. This leaves stakeholders guessing as to what, if any, their obligations under the Draft Ordinance are.

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Those ambiguities are highly concerning, because the Draft Ordinance attaches significant consequences to noncompliance. Section 14 (c) of the Draft Ordinance provides that the Director may impose administrative fines after a warning and 45-day cure period, Per Section 14(d) the County Counsel or the District Attorney may bring civil actions to enjoin violations, compel compliance, recover civil penalties, and recover attorney's fees and costs. Civil penalties may reach $1,000 per day per violation, with each day constituting a separate violation.

Further, several provisions concerning key decision making powers vested with the Department similarly suffer from vagueness, leading to risks of arbitrary enforcement. This includes the authority to define covered products, define which entities are covered producers, establish cost allocations, review plans, determine what changes trigger plan revisions, establish performance goals, and the like. For instance, Section 12(e) permits the Director to deem a producer/PRO out of compliance, and subject to the enforcement provisions, after rejecting revised Stewardship Plans, but the draft does not specify an appeal process for plan rejection.

Taken together, these provisions leave regulated entities exposed to the Director or Department's ad hoc judgment without clear standards and procedural safeguards.

IX. The Draft Ordinance will harm automotive aftermarket businesses and consumers.

The automotive aftermarket depends on efficient national and regional distribution in which products move through manufacturers, distributors, warehouse networks, retailers, independent repair shops, fleets, e-commerce channels, installers, and consumers. Compliance with a local EPR ordinance of this scope would require companies to build County-specific systems across a supply chain that was not designed around County boundaries.

As a practical matter, the Draft Ordinance would harm automotive aftermarket businesses in at least the following ways:

1. Fragmented local compliance: A manufacturer selling nationally could be required to identify which products are covered in Los Angeles County, join or form a PRO, submit or fund a stewardship plan, report County-specific data, monitor downstream sales, and seek prior approval for plan changes. If other counties or cities adopt different HHW EPR ordinances, compliance will become fragmented and unmanageable.
2. Higher consumer costs: The Draft Ordinance shifts County program costs and local compliance costs onto producers and retailers. Those costs will be reflected in product prices, reduced product availability, or both.
3. Reduced product availability: Manufacturers and retailers may rationally limit sales into the Service Area rather than assume open-ended local EPR duties, County reimbursement obligations, reporting, audits, and penalties. That would reduce consumer choice and could make vehicle maintenance more expensive.
4. Operational burdens: Manufacturers and retailers that continue to sell covered products will encounter substantial operational burdens, including participation in one or more PROs,

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involvement with collection systems for covered HHW, and the other substantial burdens of the program.

5. Disruption of existing waste-management systems: Automotive fluids, refrigerants, batteries, lamps, electronics, and related products are already addressed through existing federal, state, and local programs. A local EPR overlay will create duplicative reporting and collection, inconsistent consumer messaging, and conflict over who pays for what waste stream.

X. Conclusion.

Auto Care members are committed to environmental responsibility and participate in a wide range of existing environmental stewardship programs. But for the reasons set forth above, Auto Care respectfully urges Los Angeles County not to adopt the Draft Ordinance. The proposal exceeds local authority, invites preemption conflicts, imposes constitutionally vulnerable fees and cost-shifting, lacks adequate nexus protections, burdens interstate commerce, compels speech, delegates core decisions without adequate safeguards, and will harm automotive aftermarket businesses and consumers.

Auto Care appreciates the opportunity to provide these comments.

Sincerely,



Grant B. MacIntyre

Director, Regulatory Affairs and Senior Attorney

Auto Care Association