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August 15, 2017

Accepted by Hand Delivery @ 2:45p

Hon. Jose Huizar, Chair
Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street, Rm. 525
Los Angeles, CA 90012

Date: 8/15/17
Submitted in PLUM Committee
Council File No: 09-0969
Item No.: 3
Communication from Public

RE: Item 3 on PLUM Committee Meeting Agenda for August 15, 2017

Dear Mr. Huizar and Committee Members:

On behalf of individuals and community organizations adversely affected by proposals contained in Item 3 of today's Planning and Land Use Committee agenda, this firm interposes a strenuous objection to the procedure utilized by City officials, the utter lack of outreach to affected communities of interest, and the violation of the Brown Act by failing to disclose to the public the actual proposed actions of the City Council.

First, we object to the faulty meeting agenda description used by City officials for Item No. 3 of today's PLUM Committee meeting agenda. The meeting agenda uses the most generic and vague description of the actions proposed: "Reports from the Department of City Planning and City Administrative Officer relative to a comprehensive fee study and recommendations for cost recovery for project planning services." This description does not put a reasonable person on notice that the Chief Administrative Officer of the City is asking the City Council to direct the City Attorney to prepare an ordinance amending the Los Angeles Municipal Code to carry out significant increases in fees – not just for project planning services, but for land use appeals which by any definition is not a "project planning service."

Nowhere in the meeting agenda description is the public put on notice of the actual proposed action: Directing the City Attorney to prepare an ordinance to increase all fees listed in the comprehensive fee study by an outside consultant to 100% cost recovery and ignoring the City Planning Department's recommendations. For this reason alone, Council should take testimony from members of the public who appear at today's hearing as a result of action alerts sent out over the weekend, but no action should be taken.

Second, we object to the City's attempt to process significant fee increases without any outreach. We are informed and believe that the City Planning

Department and the Chief Administrative Officer (currently Richard Llewellyn, Mayor Garcetti's legal counsel in the Mayor's office acting as Interim CAO) thus far have only solicited input from certain real estate development groups. This is an ongoing problem with the current City Planning Director, and in this case, the City Administrative Officer – they function as if they believe that real estate developers are the only "customer" to which they are accountable. Maybe that's true as the insidious effects of the *Citizens United* case hollows out our democracy, and only monied contributors to campaign coffers and elected official's favorite non-profits have the ear of City officials. But such anti-democratic and elitist conduct as only meeting with lobbyists and shills of certain favored real estate development firms is not proper outreach in our elected democratic institutions.

Indeed, under Los Angeles City Charter Section 558, because fees for planning services literally affect the ability of some property owners to utilize land use provisions of the zoning code, proposals related to the fees must be referred to the Planning Commission for hearing and recommendations to the City Council. Currently, the Mayor and his attorney, and City Planning Director are trying to bypass the legitimate role of the Planning Commission to weigh the equities regarding enactment of a new fee structure without allowing meaningful and thoughtful input from Neighborhood Councils, all real estate community stakeholders (not just the big campaign contributors), historic preservation community, and various community advocacy groups on behalf of varied stakeholders in the City.

Thus, the PLUM Committee must refer this matter to the City Planning Commission for a recommendation of any amendment of this City's Zoning Code related to project planning services of the City, including a punitive fee structure the City's own cost study shows is at wild variance from other cities in California and the nation. All stakeholders in the real estate community and other affected communities ought to be heard before proceeded.

Third, land use appeals and Building and Safety Appeals should have never been included in the comprehensive cost study. We object to the City Planning Director and the Chief Administrative Officer lumping land use appeals, including Building and Safety Appeals under LAMC Section 12.26K as a "project planning service." For a person trying to protect his or her property, tenant, or other significant interests threatened by poor planning or zoning proposals, the payment of an appeal fee for the privilege of petitioning the City government for relief and project modification could not be fairly characterized as a "planning service" of the City given to that person. In fact, it is the City's constitutional duty – a concept that seems to be lost upon, or purposely ignored by, certain partisans in the City bureaucracy including the Mayor's office.

California's Supreme Court and its Courts of Appeal have recognized that property owners, tenants, and business owners whose significant interests may be

affected by a real estate development project have a constitutional right to notice and a right to be meaningfully heard before the government can act to affect those rights. Our Supreme Court counsels that the area of affected property owners, tenants, and business owners expands in size based upon the size of the proposed project and its possible impacts on people's significant interests.

For this reason, Charter Sections 563 and 564 expressly provides for a right of appeal of the many types of quasi-judicial administrative decisions of the City. The provision of a right to appeal land use decisions of the City that may affect significant interests is therefore not a "planning service," it is a Charter-imposed duty upon the City Planning Director, the Zoning Administrator, the City's planning commissions, and the City Council. These appeal duties are often spelled out in various provisions of the municipal code, confirming that the City Council has implemented the appeal rights of residents and businesses of the City. For the foregoing reasons, the conduct of land use and Building and Safety Appeals are constitutionally mandated basic government functions.

Fourth, even if somehow it might be appropriate to study the cost of processing appeals, the Planning Department and Chief Administrative Officer's "study" and data is seriously flawed. The consultant who prepared the cost study stated that the estimated number of hours for each "planning service" was provided by the Planning Department staff and the consultant undertook no effort to verify the legitimacy of these estimates. Thus, we challenge the entire basis of the proposed "full cost recovery fee" for land use appeals which is based upon an unverified Planning Department staff "estimate" of 70.68 hours.

Essentially, the City is claiming that it takes, on average, the equivalent of one staff member to spend nearly two work weeks to process and attend a hearing on a land use appeal. This estimate has no credibility. Often the City Planner responding to an appeal prepares a recommendation report that summarizes appeal points and provides a brief staff response. Once the staff report comes out, the Planning staff attends the appeal hearing to present the City's position and answer questions. Occasionally, staff needs to conduct some research of issues raised in appeals, and often the staff changes project conditions in response to legitimate concerns raised by appellants. In our experience, it would be hard to conceive a planner spending more than a few hours on an appeal and associated hearings. Because the City's "study" is unsupported with substantial evidence, it lacks the required data to justify the claim that on average a land use appeal requires 70.68 hours to process.

Additionally, the City's cost study lacks the back up information on how the blended hourly rate of $192 per planner was derived. The failure of the City to provide its cost data for public review means that the hourly rate is also not supported with substantial evidence that is capable of public review. For this reason as well, the matter should be referred to the City Planning Commission for public hearing and an opportunity of the public to test the legitimacy of the City's

hourly rate determinations and estimated hours to conduct a land use appeal. Additionally, the real estate development community and historic preservation communities need to review the legitimacy of the data allegedly supporting fees for those "planning services."

Fifth, based upon the fact that land use appeals are constitutionally and Charter mandated duties of the City, there is no rational basis for "full cost recovery" as recommended by the Mayor and his attorney. Even if the $13,538 were a lawfully derived number, which it is not, full cost recovery is unlawful if it would erect a barrier to an average property owner, tenant or small business person from exercising those constitutional rights. In so doing, the Mayor and his attorney seem to have forgotten about the federal and state constitutions that provide for a right of due process. If the City follows Mr. Llewellyn's unconstitutional recommendation of "full cost recovery," it raises the inference that the Mayor seeks to silence those who are merely trying to protect important rights possibly impaired by ill-conceived development projects.

And land use appeals protect important public interests. The community of Kagel Canyon was alarmed when disgraced Councilmember Richard Alarcon pushed the Department of Sanitation to allow the conduct of a semi-truck driving school on top of a methane-filled Lopez Canyon landfill. The project would have subjected the community to intolerable noise, diesel exhaust, and safety risks. Equally important, it would have broken a promise of the City to develop parkland on top of the landfill after the required years of land settlement. That community filed appeals to raise objections to the crazy truck driving school proposal, making a record of deficient environmental review and land use inconsistency. The Los Angeles Superior Court invalidated the City's unlawful decision, and the community successful protected itself from the impacts of a project proposal that should have been laughed out of the Council office, but was not. The Project was shelved by the City – as it should have been from the start.

With the appeal fees raised from a non-frivolous level of $89 to $13,538 for two levels of appeal, it is doubtful that Kagel Canyon community members could have fought off the dumb idea of running diesel-trucks around on top of a methane infused landfill. Any maybe that is the goal of Mayor Garcetti and his attorney Richard Llewellyn. Perhaps the purpose of the Mayor's proposed land use appeal fee is to squelch the right of affected individuals to petition their government for redress. If so, the City risks Section 1983 litigation for imposing the "full recovery fee" for the real purpose of punishing First Amendment protected speech it does not care to address. The proposal of this fee by the Mayor and his attorney amounts to nothing less than trying to tell the citizens of this City that they no longer have a voice, and that they should sit quietly as campaign contributors are allowed to trash the City with nonsense like truck-driving schools where parkland was promised to the people. No. "Full cost recovery" is not only unconstitutional in this context, it is wildly undemocratic.

Sixth, the fee for land use appeals must be a relatively nominal amount to permit all stakeholders of the City to participate in the constitutionally mandated and City Charter provided land use appeal process. As shown in the City's own fee study, the City of San Jose imposes an appeal fee of $100. By comparison, the Mayor and his attorney proposes $13,538 to be leveled upon persons most vulnerable to harm imposed by the City's land use process. This is precisely the sort of governmental duty that has always been and always should be paid out of the taxpayer's general fund. It is a classic governmental function like police and fire.

Seventh, even if cost shifting away from the General Fund was even appropriate, it is quite ironic that the Mayor and his attorney have not considered or proposed recovering the estimated cost of processing appeals from those who cause the need to conduct them – the real estate development community. Right now the City is levying a surcharge on all real estate development permits to create a subsidy fund to pay for "maintenance" of the City's General Plan. Is there a legitimate basis to cross-subsidize the cost of appeals that arise out of the real estate development activities in the City by levying a surcharge to pay for it in a way similar to the General Fund maintenance fee? We don't know, because the Mayor and his attorney have not studied it. Either the cost of land use appeals should be borne as a legitimate general fund expense, because it is a fundamental municipal duty, or cross-subsidy ought to be explored. But the Mayor and his attorney's proposal for "full cost recovery" ought to be unmasked for what it really is: an effort to silence the people of the City.

Eighth, the fee proposal should also be sent back to the City Planning Commission to consider necessary reforms to the City's fundamentally flawed Building and Safety Appeal process. Judge James Chalfant of the Los Angeles Superior Court has declared that the City's Building and Safety Appeal process is so slow, cumbersome, and ineffective that he will unlikely ever require someone to exhaust the Building and Safety Appeal before suing the City over building permits. He concluded that the process is neither prompt nor effective.

Due to drafting flaws in the City's current fee ordinance, the Building and Safety Department has unlimited discretion to determine the appeal fee for the initial level of review, and unlimited time to make the initial decision. This has resulted in huge delays in processing Building and Safety Appeals which led Judge Chalfant to question its efficacy. It is simply unlawful to have no set fee or time limit to act for the first level of appeal. At the second level of appeal, the fee currently is inappropriately set at $500 per appeal, a remnant of the City Council's failure to deal with the fee inconsistencies for Building and Safety Appeals in 2009.

Additionally, the multiple layers of review of a Building and Safety Appeal assures that it can never protect affected communities because City officials allow

construction to occur during the extremely long review process, resulting in harmful projects being turned into a *fait accompli*.

Building and Safety Appeals ought to carry with them a high priority of very fast review and impartial administration of the City's laws to stop illegal projects. The recent mega mansion project built by flaunting the City's laws serves as a cautionary tale of how impotent the City is when it comes to enforcing its own project conditions and zoning laws. A revised Building and Safety Appeal process ought to be an additional outcome of this review process of the fees.

For this reason, both the fee structure and the Building and Safety Appeal process should be referred to the Planning Commission to conduct a hearing on how to improve this fatally flawed process that does little to protect the City's residents from open defiance of the City's laws, conditions, and mitigation intended to protect affected communities.

In conclusion, Item 3 on today's PLUM Committee meeting agenda is a violation of the Brown Act, a violation of constitutional rights of affected persons to petition their government for redress of harmful projects proposed before the City, and requires much closer study at the City Planning Commission level before the City Council proceeds to implement such a punitive fee structure for both the real estate development community, the historic preservation community, and the communities affected by the land use decision making of City officials.

Most sincerely,

Daniel Wright

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Date: 8/15/17

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8/15/17 ITEM 3 PLUM written Comment

TO LA City Council -

FROM: Coalition to Preserve LA
AIDS Healthcare Foundation

6500 Sunset Blvd
L.A., Ca 90028

We object to the raising of any and all fees on appeals and any other citizen actions and participation in Planning, building and related matters of the City of LA. In fact fees that in any way limit the participation of citizens in the process, decisions, actions and/or business conducted by the City of LA. The city government is paid for by the taxes of the residents of the city - to further ask for citizens to pay for services already paid for by the public is absurd and

amounts to double charging the public.
We hereby adopt all comments both written & verbal on this issue.
Item 3 on "PLUM" Committee agenda 8/15/17 and any related matters.

Marijane Jackson
CPLA ANF

8/15/17