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8/27/19 PLUM Agenda Item No. 6; Council File No. 13-1482-S3: Objections re Proposed Transfer of CRA/LA Land Use Plans and Functions

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Posted in group: **Clerk-PLUM-Committee**

Please see attached. Please confirm receipt.

Thank you.

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Los Angeles City Council
City of Los Angeles
200 N. Spring Street, Room 375
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Re: Objections re Proposed Transfer of CRA/LA Land Use Plans and Functions
Agenda Item No. 6; Council File No. 13-1482-S3

Hon. City Council Members:

I. INTRODUCTION.

This firm and the undersigned represent the La Mirada Avenue Neighborhood Association of Hollywood ("La Mirada"). We submit objections to the City's proposed actions regarding the City's proposed Transfer Resolution and Ordinance related to assuming duties of the CRA/LA land use plans and functions throughout the City (the "Project") on today's Planning and Land Use Management Committee meeting agenda.

II. INCORPORATION BY REFERENCE OF ALL PROJECT OBJECTIONS.

La Mirada hereby adopts all project objections filed by all persons to all versions of the Project from its inception.

III. THE CITY'S PROPOSED RESOLUTION IS VOID BECAUSE A SPONSORING CITY ASSUMING A FORMER RDA'S LAND USE PLANS AND FUNCTIONS IS STATUTORILY REQUIRED TO TAKE ALL OF THE PLANS AND FUNCTIONS, NOT PARTS OF THEM.

The City's proposed CRA/LA Land Use Transfer Resolution (the "Transfer Resolution") is inconsistent with Health & Safety Code § 34173(i), and therefore ultra vires and void. That section provides:

> "At the request of the city, county, or city and county, notwithstanding Section 33205, **all** land use related plans and functions of the former redevelopment agency are hereby transferred to the city, county, or city and county that authorized the creation of a redevelopment agency; provided, however, that the city, county, or city and county shall not create a new project area, add territory to, or expand or change the boundaries of a project area, or take any action that would increase the amount of obligated property tax (formerly tax increment) necessary to fulfill any existing enforceable obligation beyond what was authorized as of June 27, 2011." (Emphasis added.)

The Legislature has set forth the procedure for the transfer of ALL land use plans and functions to a city or county that originally sponsored its redevelopment agency. The city or county adopts a simple resolution, i.e., "The City of Los Angeles hereby requests pursuant to Health & Safety Code § 34173(i) that all land use plans and functions of the former Community Redevelopment Agency of Los Angeles be transferred to it by the CRA-LA, designated local agency and successor agency." Upon the adoption of the request for transfer, the Legislature used language indicating it happens by operation of law, i.e., "are hereby transferred." Thus, Los Angeles is authorized to adopt a resolution requesting transfer, but if it does, all plans and functions are transferred by operation of law.

Nowhere in the statute did the Legislature permit a city or county to pick and choose which plans or functions it would transfer, and which others it would choose to leave by the side of the road.

The Transfer Resolution contains this Orwellian phraseology: "Pursuant to the authority conferred upon the City by Health and Safety Code Section 34173(i), the City hereby requests that all land use related plans and functions of the Former Agency, **which**

are set forth in paragraphs A and B of this Section be transferred to the City." (Emphasis added.) Then in Paragraphs A and B, the City attempts to define away from itself portions of redevelopment plans and other related land use plans for which it does not prefer to enforce. Section 34173(i) does not authorize an a la carte menu. It must take all of the plans as they currently exist and implement then in good faith – the Legislature said so and the City may not adopt a resolution that purports to exercise authority it does not possess.

IV. THE CITY'S ATTEMPT TO IGNORE PARTS OF REDEVELOPMENT PLANS IT DOES NOT WANT TO ADMINISTER OR IMPLEMENT IS UNLAWFUL.

The Legislature's Dissolution Law took every redevelopment plan in the state out of the hands of former redevelopment agencies, and those former agencies were abolished. The Dissolution Law curtailed certain powers and provisions of those redevelopment plans, and then entrusted the plans to successor agencies to carry out until the end of each redevelopment plan term. Health & Safety Code § 34173(b) ("Except for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to the act adding this part, all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies."), Successor agencies are required to focus energies on carrying out the remaining terms of the plans, and mostly focus on winding down recognized obligations – which existing redevelopment plans are part of those obligations. Health & Safety Code § 34173(g)("As successor entities, successor agencies succeed to the organizational status of the former redevelopment agency, but without any legal authority to participate in redevelopment activities, except to complete any work related to an approved enforceable obligation.") Thus, successor agencies, including CRA/LA, the designated local agency for Los Angeles, is "without legal authority" to amend a redevelopment plan which is a redevelopment activity.

Redevelopment plans are enacted as a collective set of land regulations, including all of the mitigation measures adopted by former redevelopment agencies to protect communities from environmental harm. A redevelopment plan operates in the public interest as a balance of the blighted and low-income community's needs and the developers seeking to maximize profits. Successor agencies not only review and approve project applications after determining they are consistent with the redevelopment plan, they also include affirmative mitigation measures to prevent significant impacts on the environment from happening as a result of the expansion of development within the redevelopment plan area.

Contrary to these fundamental principles of redevelopment plans, even after their curtailment by the Dissolution Law, the Transfer Resolution, Section 2.A & B purport to restrict the meaning of the phrase "land use related plans" and "land use related functions," and then lists selected provisions of each of the City's current 21 redevelopment plans as the only portions transferred to the City. No. The City may not dictate the scope of the operative redevelopment plans to the State Legislature by adopting such a restrictive definition. The tail does not wag the dog.

Section 34173(i) says on "request" of the City, it gets all the land use related plans and functions. That means the City takes over as the administrator of each redevelopment plan, takes over reviewing every project proposed in the plan areas, signs off for redevelopment plan approvals, and is responsible for all environmental mitigation measures in the adopted EIRs for each of the plans, and their mitigation monitoring programs. The City's resolution does not expressly say that it is trying to evade those adopted mitigation measures, but that is precisely what the result will be, and it would leave the City's most vulnerable residents unprotected by no further enforcement of mitigation monitoring plan responsibilities.

The proposed Ordinance that accompanies the Transfer Resolution evidences the City does not comprehend its role and authority in a transfer under Section 34173(i), or refuses to those limits on its role and authority. As the City and CRA/LA have long acknowledged, each unexpired redevelopment plan of the City continues in force in accordance with its adopted language and procedures. The CRA/LA's website states:

> **"**Notice: ABx1-26 does not abolish the existing Redevelopment Plans. The land-use authorities in the Plans remain in effect and continue to be administered by the CRA/LA until transferred to the Department of City Planning."

What ought to be happening here is not happening. The City should acknowledge that during the life of each plan, it wears two reviewing hats. First, it reviews a project for compliance with the general plan and zoning, a City task referring to the Los Angeles Municipal Code ("LAMC") for guidance. Second, it reviews and makes approvals of redevelopment area projects as a separate review in accordance with existing redevelopment plan procedures.

The City's proposed ordinance would purport to amend all of the 21 redevelopment plans approval processes by putting the City's preferred process into the LAMC, and thereafter just ignoring the legally operative processes set forth in each of the redevelopment plans. Section 34173(i) in no way authorizes such backwards amendment

of redevelopment plans. The City is supposed to sit in the shoes of the Successor Agency and follow the redevelopment plans processes – not immediately try to tear them up like a school yard bully. Therefore, the entire concept and approach of the Ordinance is inconsistent with transfer authority in the Dissolution Law as a whole, and in Section 34173(i) specifically.

V. THE CITY OFFERS NO EXPLANATION HOW IT THINKS IT HAS THE POWER TO AMEND THE TRANSFERRED REDEVELOPMENT PLANS WHEN THE SUCCESSOR AGENCIES COULD NOT.

As set forth above, former redevelopment agencies are abolished and have no legal or corporate existence, and their successor agencies are expressly banned from engaging in redevelopment activities such as amending a redevelopment plan. Health& Safety Code § 34173(i) authorizing the transfer of the successor agencies authority and responsibilities to administer and enforce redevelopment plans cannot and does not transfer greater power if the City requests a transfer. The City can only obtain the authority that the CRA/LA successor agency had to give – and that did not include the power to amend the 21 redevelopment plans.

Yet, in the Transfer Resolution, Paragraph B, Parts i and ii, the City **purports** to exercise authority not given to it by law. For instance, it states: "Nothing herein shall be construed to prohibit the City, following the effective date of this Resolution, from doing any of the following: a. Updating and amending the Land Use Provisions or performing other actions pursuant to State law." In the proposed Ordinance, the City purports to grab authority to amend the redevelopment plans without bothering to disclose to the public or decision makers where it thinks it has more authority over unexpired plans than the CRA/LA whose authority it is requesting be transferred to itself.

The City can no longer find power to amend a redevelopment plan in Health & Safety Code § 33450-33458 either. Those provisions of the state redevelopment law only authorize amendment of redevelopment plans upon recommendation of "the agency." Under the Dissolution Law, "the agency" is the former redevelopment agencies that were abolished by the Legislature. (See Health & Safety Code § 34172(a)(1) & (b).) Because the required prerequisite cannot be fulfilled, the City Council has no authority under former law to amend a redevelopment plan. Additionally, as a community with an abolished former redevelopment agency, Los Angeles City is banned from forming a new redevelopment agency. Health & Safety Code § 34172(a)(2).

With respect to successor agencies who assumed former redevelopment agency functions, including Los Angeles' CRA/LA designated local agency, the Dissolution Law dramatically circumscribed their power. Successor Agencies carry out recognized obligations, and wind down the affairs (including administering the Redevelopment Plan until it expires). Since Legislature only permits the sponsoring city or county to take over all land use plans and functions as they exist in the hands of Successor Agency, the City may only assume the same authority. If the Legislature intended to allow the receiving city or county more authority than successor agencies, it would have said so. It did not. If the Legislature intended to allow redevelopment plans to be amended without the significant due process protections of the original law, it would have said so. It did not.

Accordingly, we know of no legal basis for the City to assume it can amend all the redevelopment plans as part of this ordinance or in the future, and, if it did (which it does not), without the formal notice processes of the original redevelopment plans. The City's hubris on this issue is stunning.

VI. THE TRANSFER RESOLUTION AND ORDINANCE IS A PROJECT.

Last week, the Supreme Court issued its opinion in Union of Medical Marijuana Patients, Inc. v. City of San Diego (August 19, 2019, No. S238563) ___Cal. 5th___. Based upon that opinion, which the City Attorney does not appear to have yet acknowledged, the prior assertions that the Transfer Resolution and Ordinance are not a project under the California Environmental Quality Act ("CEQA") is without merit. It is a project required to be analyzed for potential impacts.

VII. THE PROJECT DESCRIPTION MAKES MATERIAL MISREPRESENTATIONS OF FACT TO THE PUBLIC.

Our Supreme Court has said:

> "The EIR [that's an Environmental Impact report] is . . . intended 'to demonstrate to an **apprehensive citizenry** that the agency has, in fact, analyzed and considered the ecological implications of its action.' [Citations.] Because the EIR must be certified or rejected by public officials, it is a document of accountability. . . . The EIR process protects not only the environment but also informed self-government." Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392 (emphasis added).

"The fundamental goals of environmental review under CEQA are information, participation, mitigation, and accountability." Lincoln Place Tenants Ass'n. v. City of Los Angeles (2007) 155 Cal.App.4th 425, 443-444.

The record here demonstrates that there was very apprehensive citizenry at the previous PLUM hearing on this proposal; so much so that the City prepared the ND, including a special discussion in the Project Description section at pages 21-26. In violation of Lincoln Place's principles of accurate information and accountability, in this section that is ***supposed to be*** an objective and complete description of the Project, the City is less than forthcoming.

In footnotes 1 and 2 on page 21, the City hints to the public that instead of taking all the 19 redevelopment plans in total, it will only assume responsibility for what it defines are "land use plans" and "land use functions". This is sophistry because redevelopment plans as a whole are land use plans. And the functions involved were not just some perfunctory permit review. It included all tasks necessary to implement the mitigation measures that go hand in hand with the entitlements developers receive under the redevelopment plan.

The City did not attach either the proposed Transfer Resolution or the Ordinance to the ND posted on the City's website, so the reviewing public could see the critical details. And nowhere in the ND did the City include a chart listing for each redevelopment plan in the single series of sections it claimed were "land use related." (But it produced numerous other charts of dubious use to the reader.) That list ***was*** in the Transfer Resolution, and ***it could have easily been listed in the ND***. The City evaded doing so because it would be an admission that, for instance, for the Hollywood Redevelopment Plan, it was only defining the 500 series as land use related. Thus, the 100, 200, 300, 400, 600, 700, 800 etc. series would not be considered transferred to the City, ostensibly because they do not have the title "Land Use" in front of the series.

On page 22 the City makes material misrepresentations of fact about the Transfer Resolution. It said as to the fate of the 19 redevelopment plans:

> "The proposed Project will not affect the land use plans and functions of the 19 unexpired Redevelopment Plans, with the limited exception that the City will be interpreting the land use provisions instead of the CRA/LA-DLA staff.
>
> * * *
>
> The proposed actions are limited to the following:

> Authorize the City to administer the 19 unexpired Redevelopment Plans by resolution. . . ."

This anodyne phraseology might reassure for a moment. However, it is also simply false. The Transfer Resolution defines out of each of the plans all of the text except the one section the City says contains the "land use provisions." As extensively discussed in the substantive violations of the Dissolution Law above, the City purports to redefine most of the 19 redevelopment plans into the dust bin, does not disclose that fact to the public in the ND, and then many pages later in the Land Use Section asserts there is less than significant impact. On pages 22-23, in numerous redundant ways, the City repeats the misrepresentation there is no "intent" to change administration of the plans compared to when CRA/LA administered them. Having good intentions does not clearly establish there will be no significant impact. The record is not established with substantial evidence by assertions of good intentions.

Although this is supposed to be the Project Description section of the ND, the City makes unsubstantiated claims of no indirect impacts, which is hardly belongs in the description. Then the discussion veers further from the Project Description, into a substantive response to objections raised at the prior PLUM Hearing about impacts on historic resources, mitigation measures, and TOCs. The purpose of presenting this information here is readily transparent: the City wants the ND to have a response to these issues somewhere, but it does not want the weak assertions of "intent" to carry out the 19 redevelopment plans to be juxtaposed against CEQA's thresholds of significance in the Land Use section. Good intentions do not clearly show no possibility of a significant impact to meet CEQA stringent ND standards of review.

A Project Description that skirts important issues violates CEQA. The preparation of a truthful project description is critical to the integrity of the CEQA public participation and mitigation development process. StopTheMillenniumHollywood.com v. City of Los Angeles (2019) __ Cal.App.5th __ (B282319) (City's use of an amorphous impact envelope as a project description was "fatally flawed"). The public is equally entitled to information about a project that the agency has, and is just as entitled to examine, question, and probe that information. Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn., supra, 42 Cal.3d at 936; Environmental Protection Information Center v. California Dept. of Forestry (2008) 44 Cal.4th 459, 486.

Based on the foregoing, the Project Description in the ND fails to explain the substantive context of the City's Transfer Ordinance. In failing to disclose that vast portions of the existing 19 redevelopment plans are proposed to be discarded by the City – even though development and land use regulations are indisputably in sections of the

plans the City plans to ignore – the City has failed to provide an accurate Project Description. In the words of Yogi Berra, "It's déjà vu all over again." Rancho de Calistoga v. City of Calistoga (9th Cir. 2015) 800 F.3d 1083, 1086; Araiza, et al., The Jurisprudence of Yogi Berra (1997) 46 Emory L.J. 697, 714.

VIII. THE PROJECT WILL HAVE SIGNIFICANT LAND USE IMPACTS.

The Land Use Section of the ND observes a significant impact would occur if the Project is inconsistent with any land use law, regulation, or policy adopted for the purpose of avoiding or reducing environmental impacts. The City's checklist for this item asserts that the impact would be "less than significant." ND at p. 65. The supporting "analysis" however fails to demonstrate that there is no possibility the Project will cause a direct or indirect impact.

In the Land Use Section of the ND, the City does not accurately disclose that it seeks to selectively assume only limited sections of redevelopment plans (and no mitigation monitoring programs at all), leaving vast portions of the plans, including goals, definitions, non-discrimination clauses (which likely violate HUD or other funding source laws), and density limits without a City obligation to review and enforce.

Historic resources in Hollywood remain at grave risk. When the City adopted the 2003 update to the Hollywood Redevelopment Plan,[1] the EIR expressly identified a list of mitigation measures to protect historic resources. An important mitigation measure appears in the Hollywood Redevelopment Plan's 400 Series of sections, not the 500 Series the City proposes to selectively "define" as containing all land use provisions. As adopted mitigation measures, the CRA/LA has faithfully executed these 400 Series measures to protect Hollywood historic resources.

In its strange response on historic resources in the Project Description section, the City claimed that it "intended" to enforce these mitigation measures. That is not demonstrated with substantial evidence. The ND on page 23 proposes many needed procedures which might help mitigate threats to landmarks, **but these only appear in the environmental document in aspirational language** — not in the Transfer Resolution or Ordinance where they would be legally committed to implementation. Describing possible mitigation measures in the environmental document, without making them legally enforceable is fatal.

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[1] We will submit to the Council File supporting Hollywood Redevelopment Plan and EIR documents and other related exhibits via a separate submittal.

Moreover, the Hollywood Community Plan draft **proposes to abandon these historic resource mitigation measures**, a fact the City acknowledges. Then the City claims it need not comment on a "draft" plan, betraying the City's true intention: it seeks to evade a legal obligation to enforce all mitigation measures in the redevelopment plans across the City, including the historic resources measures in Hollywood.

If the Project is adopted as actually proposed and the ND does not include these former historic resources mitigation measures, there would be fair argument the Project may have a significant historic resource impacts as a result of evading the current measures that are legally enforceable on the CRA/LA.

In 2014, the City prepared a different Staff Report and proposed Transfer Resolution. In contrast to the current one, the 2014 Staff Report acknowledged the City's historic resources protection obligations. The proposed 2014 Transfer Resolution language merely requested transfer of all land use related plans and functions from the CRA/LA. It contained no effort, like now, to define vast portions of the redevelopment plans and mitigation monitoring plans out of the City's enforcement obligations.

None of this is disclosed in the ND Land Use analysis and for this historic resources example alone, there is a fair argument that implementation of the Project will permit the City to evade transfer of adopted CEQA mitigation measures to itself. Under the low fair argument standard, a significant impact may occur, and the City is required to prepare an environmental impact report, or substantially revise the Project documents to reduce impacts beneath the level of significance.

IX. <u>CONCLUSION.</u>

The Project as proposed is without legal authority. There is substantial evidence of a fair argument that negative impacts would occur if the proposed project is permitted to evade ongoing enforcement of all adopted mitigation measures in all redevelopment plans across the City.

Very truly yours,

Daniel Wright
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FOR
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DEW:vl