ORIGINAL

THE SILVERSTEIN LAW FIRM
A Professional Corporation

215 NORTH MARENGO AVENUE, 3RD FLOOR
PASADENA, CALIFORNIA 91101-1504
PHONE: (626) 449-4200 FAX: (626) 449-4205
ROBERT@ROBERTSILVERSTEINLAW.COM
WWW.ROBERTSILVERSTEINLAW.COM

March 2, 2018

VIA HAND DELIVERY

Hon. Herb Wesson, President
Los Angeles City Council
c/o Los Angeles City Clerk
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Re: Agenda Item No. 8, City Council March 2, 2018 Regular Meeting, Agenda Item No. 14, City Council March 2, 2018 Special Meeting; CEQA Appeal and Objections to the Lorena Plaza Mixed Use Project, Located at 3407-3415 E. First Street; 114, 116, and 126 N. Lorena Street, Los Angeles; Case Numbers: ENV-2014-2392-MND; DIR-2015-1998-DB; Council File 16-0503

Honorable President Wesson and Los Angeles City Councilmembers:

This firm and the undersigned represent El Mercado de Los Angeles (hereinafter "El Mercado" or "Appellant"). Please keep this office on the list of interested persons to receive timely notice of all hearings, votes, determinations and official filings related to the proposed approval of a mixed-use building at 126 N. Lorena Street, commonly known as the Lorena Plaza Mixed Use Project (the "Project" or "Lorena Plaza"), submitted by project applicant A Community of Friends ("ACOF" or "Applicant").[1]

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[1] Although El Mercado is the appellant in this matter, the City never gave us formal notice of this March 2, 2018 regular meeting agenda item No. 8. Counsel for El Mercado only learned of it by happenstance when reviewing the City Council's agenda related to a different matter. Then, on the morning of March 1, 2018, counsel for El Mercado only learned via the City's email notification system of the City's scheduling of a special meeting for March 2, 2018, listing agenda item No. 14 as being for the purpose of: "IN THE ALTERNATIVE, HOLD A PUBLIC HEARING pursuant to CEQA Guidelines Section 15074.1(b), to consider substitution of mitigation measures in Mitigated Negative Declaration (ENV-2014-2392-MND) and adoption of written findings in support thereof; and DENY THE APPEAL and ADOPT the revised Mitigated Negative Declaration

As a preliminary matter, the one thing everyone on both sides of this matter can agree on is that appropriate housing for those most needy in our community is essential. However, that statement does not override laws that exist to protect the environment and the surrounding community from impacts of a proposed project. Whether the City wishes to ultimately approve this project must be a decision that occurs after there has been full and proper public notice, disclosure of potential environmental impacts, and mitigation of those impacts through a proper EIR process. Indeed, this City Council's own PLUM Committee at its August 15, 2017 hearing agreed with that point exactly.

Nothing has changed in terms of the "fair argument" that exists based upon substantial evidence in the record to show that this Project may have significant, unmitigable impacts, including in the areas of air quality and toxics, land use impacts, and impacts to public services including police, fire and paramedics. As a result, under the law, a Mitigated Negative Declaration ("MND") is not a legally valid document with which to approve the project.

Should the applicant and its consultants attempt to introduce yet further argument or evidence in an effort to respond to issues that have been part of this public record since at least August 2017, then we object on the additional ground that the City may not legally consider or rely on that evidence without recirculation of the MND and without a full and fair opportunity for Appellant and the public to respond. For the City Council to allow otherwise would be a further violation of CEQA. See, e.g., Save Our Peninsula v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 124 (late filing of information "occurred at the very end of the environmental review process, thus avoiding public scrutiny and precluding the meaningful comparison of preproject and postproject conditions required by CEQA").

Regarding the February 22, 2018 letter submitted by ACOF, the list of supposed mitigation measures is meaningless on several grounds. First, voluntarily offered conditions by a developer have been treated by the Los Angeles City Attorney's office as unenforceable. Accordingly, even if all of these supposed mitigation measures were: (1) clarified; and (2) expanded upon to actually and properly attempt to address impacts to the surrounding community, these voluntary conditions would still be nugatory and meaningless. See Pub. Res. Code § 21081.6(b) (mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures.") In fact, as written, they are vague, ambiguous, illusory and unenforceable. As such, ACOF's list of

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(ENV-2014-2392-MND) and revised Mitigation Monitoring Program, including to reflect the substituted mitigation measures as the environmental clearance. . . ."

proposed project changes (which, incidentally, are incorrectly presented by ACOF as the product of "negotiations" with Appellant and which in significant part misrepresent El Mercado's position, e.g., El Mercado does not seek to lease retail space from the Applicant) cannot be relied upon to support a finding that impacts are reduced to a less-than-significant level. They are, unfortunately, basically window dressing.

We suspect (but cannot know because the City's revisions have been concealed from us to date) that whatever supposed "substituted mitigation measures" the City will introduce will similarly suffer not only from being off-point and inadequate to address the substantial evidence of fair argument in the record, but vague and ambiguous, and therefore illusory and unenforceable. Accordingly, even if adopted by the City as conditions of approval and/or as part of a mitigation monitoring program, they are still inadequate, incomplete, illusory and in significant measure, unenforceable.

To provide a few illustrations of this problem, the ACOF letter states that "Although best practices indicate that two case managers will be sufficient for this tenant mix, ACOF commits to seeking additional funding to provide a third services staff." This is noncommital and illusory. There is no actual requirement to obtain the additional funding or to bring on a third staff member, or even if there were, there is no showing that this would mitigate impacts that have been identified. Similarly, the ACOF letter states that "Comprehensive surveillance system (cameras) and onsite security personnel will be provided." This is vague and in practice worthless. Does this mean a single doorbell camera and a day worker with a clip-board? What security personnel and cameras, how many, where, during what hours will things be monitored, will security be part of a bonded company trained to work in such circumstances, etc.?

In addition, the February 22, 2018 ACOF letter actually strengthens the fair argument requiring that the City prepare an EIR instead of approving this project based upon the MND. In part, that is because the ACOF letter references the preparation of a Phase II environmental review of the site related to the historic contamination/toxins issue and uncapped oil well, but only **after** this City Council would approve the MND, and supposedly before the issuance of any building permits. That is the classic putting the cart before the horse.

Indeed, in contrast to the after-the-fact proposition put forward now by ACOF, in an August 17, 2017 interview with the local NPR radio station KPCC, Councilman Huizar stated: "The environment consultant for the project had reviewed documentation – this is what's called phase one environmental – they recommended a phase two environmental, which would test the soil for environmental contamination. And none

was done, and in fact there is an old oil well there, that we don't know if the soil is in fact contaminated or not. So they need to do that extra work. . . . [¶] Well, when you have two different opinions on that, you err on the side of caution. I've chaired the Planning and Land Use Management Committee for some time now, and we always ask for phase two. . . ." See https://www.scpr.org/programs/take-two/2017/08/17/58642/l-a-city-councilman-jose-huizar-on-why-he-opposes/, incorporated herein by this reference.

It is proper to insist upon full environmental review of the potential toxic health hazards on the Project site and how their disturbance could affect the surrounding community. It is an undisputed fact that the Phase I Assessment prepared for the Initial Study specifically recommends a Phase II Environmental Site Assessment to study the potential presence of soil contamination. Yet no Phase II assessment was prepared. It is an undisputed fact that, as stated in the MND, "[a] former oil well is located onsite, approximately 154 feet north from the centerline of E. 1st Street and 162 feet east from the centerline of N. Lorena Street." The MND goes on to state that "The former oil well represents an environmental concern to the subject property due to the common practice during drill activities to deposit soil cuttings from the well into nearby pits or excavations" and that "it is likely that the abandonment of the oil-well in 1949 does not meet current abandonment standards." (MND, at p. 4.0-41.) The MND is sufficient evidence itself of a risk of contamination that remains undisclosed and unmitigated. CEQA does not allow studies and mitigation to be deferred until after project approval.

CEQA requires that the City present and analyze issues **before** approval of the CEQA document, not after. But instead, what is happening here is referred to as deferred study and deferred mitigation, which is a further violation of CEQA. Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, at 306-307. The Phase II is not to be deferred and delayed to a point in time after the City has approved the MND. As held in Sundstrom at 307:

> "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. (See Pub. Resources Code, § 21003.1; No Oil, Inc. v. City of Los Angeles, supra, 13 Cal.3d 68, 84.) In Bozung v. Local Agency Formation Com., supra, 13 Cal.3d 263, 282, the Supreme Court approved "the principle that the environmental impact should be assessed as early as possible in government planning." Environmental problems should be considered at a point in the planning process "'where genuine

> flexibility remains.'" (Mount Sutro Defense Committee v. Regents of University of California, supra, 77 Cal.App.3d 20, 34.) A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. (Id. at p. 35; No Oil, Inc. v. City of Los Angeles, supra, 13 Cal.3d 68, 81; Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 27 Cal.App.3d 695, 706 [104 Cal.Rptr. 197].)"

ACOF's own recognition of the Phase II issue is an admission that a study which can and should occur prior to any approval by the City has not yet occurred. This is a subversion of CEQA's fundamental information disclosure purposes. In any event, since ACOF states it is willing to perform the Phase II study, the City should require that it be performed now, and publicly disclosed as part of the City, other public agency (such as the DTSC, RWQCB and AQMD), and general public CEQA review process, prior to any decision by the City Council.

Turning to the documented potentially significant land use impacts and conflicts associated with violation of the Community Plan, and that Plan's recognition of El Mercado de Los Angeles as a cultural institution requiring compatible surrounding land uses, there is more than a fair argument in the record based upon substantial evidence to show that concentration of a population with significant drug and alcohol addiction and/or mental illness immediately adjacent to a community institution that sees thousands of visitors, including thousands of children, on a weekly basis is something that cannot simply be brushed aside as insignificant.

As stated at footnote 5 of our August 15, 2017 letter to the PLUM Committee, ACOF "attacks Appellant as being 'selfish' for opposing this Project, then attacks Appellant for being sensitive toward the future ACOF residents in its latest comments by focusing on Appellant's use of the phrase 'sensitive population' in reference to the potential mental health issues those residents might suffer. Appellant has reiterated its concerns about the **location** of the Project as not being suitable and has never opposed ACOF's overall purpose. Appellant's use of the term 'sensitive' in this regard was an effort to convey concerns in a sensitive way about impacts due to the introduction of residents with substance abuse and mental health concerns into an unsuitable area."

The issues we have raised that have gone unanswered by ACOF other than to attempt to castigate Appellant for its concerns about the health, safety and welfare of the thousands of patrons who visit the area, and the broader community, including issues we extensively raised and documented in our August 15, 2017 letter, *and including as recognized and confirmed by members of the City Council PLUM Committee*, all constitute substantial evidence to support a fair argument that the project may have significant, unmitigable land use impacts, thus requiring an EIR.

This is further strengthened by the fact that the operational record of other ACOF-owned or -managed properties is poor, and sometimes verging on dangerous. We respectfully refer you to Exhibits 4-6 of our August 15, 2017 letter, including documents obtained through Public Records Act requests showing demands on LAPD services for four residential projects of a similar type that are owned and/or developed by Appellant ACOF. Those have become a hotbed for criminal activity and other strains on public resources, with an extraordinarily high level of police and housing violation issues prompted by the operations and/or mismanagement of those ACOF facilities.

Simply put, despite ACOF's stated mission, the City cannot lawfully give a "free pass" on CEQA compliance because the project's stated goals are laudable. The many pages and hundreds of police incidents which we have previously documented support of a fair argument regarding impacts to public services such as police, yet ACOF has failed to address those issues in any meaningful manner. See Mani Brothers Real Estate Group v. City of Los Angeles (2007) 153 Cal.App.4th 1385, 1404-1405 (regarding increased demands on police services).

Further, it is not the obligation of the public to come forward with evidence, as much as it is the duty of the Applicant and the City to properly disclose such evidence as part of the MND. Now, in a March 1, 2018 letter from Meridian, a consultant for ACOF, Meridian claims there is no fair argument of a potential significant impact on police services because "the Lorena Plaza Project contains 49 residential units, well under the 75-unit screening criteria" that the City apparently uses. However, CEQA is clear that a lead agency's arbitrary threshold of significance is not always the end of the inquiry. Facts and reasonable assumptions based on facts still constitute a fair argument to show that an EIR is required. In this case, the 75-unit screening criteria utilized by the City would pertain to 75 ordinary units, not almost 50 units with all or a majority of its tenants having special mental health and/or substance abuse needs.

Based on a February 27, 2018 Los Angeles Time editorial entitled "Don't let NIMBYs – or weak-kneed politicians – stand in the way of homeless housing," Appellant

learned of the City Council's apparent reversal of its formal recommendation to require an EIR, as provided by its PLUM Committee. However, as discussed above, Appellant did not know the impending timing of such action.

The editorial describes the homelessness crisis in our city, but presents a false solution to the problem, namely, that the City should ignore state and city laws to override proper planning processes for the sake of rapid building. That view appears to have swayed the City Council's decision making here today. The editorial clearly shows that political pressure, not compliance with law, is governing the City Council's proposed flip-flop from its prior, unambiguous statements regarding the need for an EIR in this particular case. To quote directly, "Members of the City Council seem to be feeling the pressure for action as well. Cedillo put the Lincoln Heights parking lots back on the city-owned property housing list in December (after his reelection and a phone call from The Times asking why he'd taken them off). Huizar called The Times just before this series was put to bed to say he'd changed his mind and would urge the City Council to approve the Boyle Heights project as soon as possible."

The editorial acknowledges that "There are plenty of legitimate land-use questions to be asked," yet appears to advise pushing ahead, regardless of whether answers to those questions have been provided to the public, when and how the law mandates. Such "ends justify the means" considerations have apparently sufficiently pressured the City Council to reverse from its prior position via its PLUM Committee on this matter. Compliance with all laws, including CEQA, does not have to stand in the way of homeless housing generally or this project specifically. The laws that exist to protect the general public, and that require "informed decisionmaking," must coexist with the goals of responsibly providing more supportive housing. The City does not have the discretion to abdicate its legal obligations due to, as the Times describes, "feeling the pressure."

The record does not support the City Council approving this project based upon the MND before you. An EIR is required by law. The City must prepare an EIR "whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.'" Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal.4th 1112, 1123; see Pub. Res. Code §§ 21100, 21151; CEQA Guidelines, § 15064, subd. (f)(1). Explaining this standard, the Supreme Court has stated,

> "a reviewing court may not uphold an agency's decision [not to prepare an initial EIR under the fair argument test] 'merely because substantial evidence was presented that the project

> would not have [a significant environmental] impact. The [reviewing] court's function is to determine whether substantial evidence support[s] the agency's conclusion as to whether the prescribed "fair argument" could be made. If there [is] substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it [can] be "fairly argued" that the project might have a significant environmental impact. Stated another way, if the [reviewing] court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed "in a manner required by law."'" Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086, 1112 (citation omitted).

El Mercado and a multitude of surrounding community members have been outspoken about their concerns related to the environmental impacts and potential hazards (including air quality and health risk impacts from unmitigated contamination on site) of the project. In the time that these objections have been known, an EIR could long ago have been completed and satisfied the City decision makers and the public as to whether the project could legally move forward. But ACOF refused to conduct the necessary studies and analyses.

Indeed, as Councilman Huizar stated in the August 17, 2017 interview:

> "It's not dead. [We] just asked for additional environmental review. Now Community of Friends, the developer, has the choice to do the additional environmental review or not do the project. [¶] They should do the appropriate environmental review. They have their choice to do that whether they want to proceed or not. [¶] But aside from that, they have to do a lot more community outreach to get support. And I've always said, my own personal opinion is it's not the right location for planning principles." See full contents at link, supra, incorporated herein by reference.

It was ACOF that prepared the Initial Study and chose to rely on an impermissible MND. ACOF cannot now complain that because it failed to provide sufficient environmental clearance, that it is unfair for the City to subject its project to the correct environmental review. In any event, as demonstrated in our previous submissions and further herein, the City's approval of the Project in reliance on an MND, including with whatever the supposed "substituted mitigation measures" are, would directly violate CEQA. See Pub. Res. Code § 21064.5 (an MND can be prepared for a project only when it can be shown that "clearly no significant effect on the environment would occur, and … there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.")

Multiple reasons are shown why the defective MND should be rejected and full environmental review required for the project, including following the advice of the Phase I ESA to require a Phase II ESA for the contamination issues at the project site. Guidelines §§ 15162, 15163(a)(2). Instead of addressing the legal requirements for the project, ACOF and its supporters attempt to circumvent the law and derail the public's right to full disclosure of the proposed project's environmental consequences, including by making false accusations of discrimination that are unsupported by the law and facts of this case. Such efforts to intimidate the City Council should be rejected.

The last-minute, *post hoc* attempt to present voluntary "mitigation measures" via a February 22, 2018 letter – which are illusory, vague, ambiguous and/or unenforceable because of their imprecise, conditional or precatory nature, and because the City does not treat such voluntary developer offers as binding in any event – or via a last-second adoption by the City Council at a special meeting, with no actual advance notice given to Appellant of what should have been at least 10 days actual notice and, showing the City's further abuse, as of less than 24 hours before such special meeting, no publication of any proposed substituted mitigation measures for review and analysis by Appellant or the public. The City is not only violating CEQA in this and other respects, but is violating Appellant's due process rights. What is abundantly clear is that the City is attempting to avoid a transparent process. The public and compliance with the law deserve better.

Although Appellant is placed at a severe disadvantage because the City failed to provide proper advance notice to El Mercado as an appellant,[2] and thus has violated the

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[2] See attached **Exhibit 1**, additional objection letter regarding the City's violation of Appellant's noticing rights, and demand that this hearing be rescheduled in accordance with law. See also attached **Exhibit 2**, request for a copy of the substituted mitigation

City's own laws and procedures, and because the alleged substituted mitigation measures have not been timely circulated to Appellant or the public sufficiently in advance of the special meeting – although undoubtedly they have been in the works for some time by the City – we also prophylactically object to these as-yet unseen substituted mitigation measures.

These are not merely "substituted" mitigation measures; some or all are new mitigation measures being introduced for the first time. In other words, this is not situation only of deleting old "mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective." Guidelines § 15074.1(a). Thus, they do not qualify for consideration, or appropriately fall under, Guidelines § 15074.1(b). As a result, this hasty and prejudicial City process is illegal on this further ground. In addition, any purported adoption of a "written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment" (Guidelines § 15074.1(b)(2)), will be void or voidable as lacking in support and/or failing to provide the analytical route from "evidence" to action.

For policy reasons,[3] you might seek to approve this project. However, the City Council could *lawfully* do so only after you, the decision makers, and the public have been fully informed of the adverse environmental impacts of the project, including regarding air quality, toxic substances, health risks, land use incompatibility and conflicts, and impacts to public services, including police, fire and paramedics. Because of choices made by ACOF and the City, that has not yet happened.

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measures and proposed findings.

[3] Were policy reasons alone an adequate basis for your intended action, which they are not, then we would add that it does not make sense for the City to shoe-horn projects onto sites like the subject property. Why should supportive housing be forced onto marginal properties like brownfields and their future residents shunted onto contaminated sites such as this, where, as ACOF has admitted, ACOF has not even done a Phase II environmental assessment of the admitted contaminants and hazards on site? The urgency to create housing for the homeless is real, but by defying laws and proper process, the City is actually slowing down the solution, not fast-tracking it. The City needs to do things right, not just right now.

Reserving all rights, including related to the City's violations of Appellant's due process and fair hearing rights, please consider these objections and grant Appellant's appeal or withdraw your alternative proposed approvals of the project and its MND.

Very truly yours,

ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM, APC

Attachments

THE SILVERSTEIN LAW FIRM
A Professional Corporation

215 NORTH MARENGO AVENUE, 3RD FLOOR
PASADENA, CALIFORNIA 91101-1504
PHONE: (626) 449-4200 FAX: (626) 449-4205
ROBERT@ROBERTSILVERSTEINLAW.COM
WWW.ROBERTSILVERSTEINLAW.COM

March 1, 2018

VIA EMAIL holly.wolcott@lacity.org AND FACSIMILE

Hon. Herb Wesson, President
Los Angeles City Council
c/o Los Angeles City Clerk
200 N. Spring Street, Room 395
Los Angeles, CA 90012

VIA EMAIL holly.wolcott@lacity.org AND FACSIMILE

Holly L. Wolcott
City Clerk
City of Los Angeles
200 N. Spring Street, Room 360
Los Angeles, CA 90012

Re: Objection to Lack of Hearing Notice for the Lorena Plaza Mixed Use Project, located at 3407-3415 E. First Street; 114, 116, and 126 N. Lorena Street, Los Angeles, Case Numbers: ENV-2014-2392-MND; DIR-2015-1998-DB; Council File No. 16-0503; Agenda Item No. 8, City Council Meeting and Agenda Item No. 14, Special Council Meeting on March 2, 2018

Honorable President Wesson and Los Angeles City Councilmembers:

This firm and the undersigned represent El Mercado de Los Angeles (hereinafter "El Mercado"). By this letter, we demand that the March 2, 2018 regular and special meeting agenda items on this matter be canceled and rescheduled due to the fact that neither our client, the Appellant in this matter, nor this firm was provided with actual notice by the City of this hearing. In violation of state law and the LAMC, we should have received at least 10 days advance actual notice. We have received no actual notice from the City, despite repeated written requests for same.

For example, in our January 4, 2017 letter to Planning Director Bertoni, we specifically asked for "advance written notice of any and all meetings, hearings and votes in any way related to the above-referenced proposed project and any related projects/entitlements/actions related to the above-referenced proposed project."

In our May 16, 2017 and August 15, 2017 separate letters to the Planning and Land Use Management Committee ("PLUM Committee"), we specifically asked to be notified of all hearings in the above-referenced matter:

EXHIBIT 1

> "Please keep this office on the list of interested persons to receive timely notice of all hearings, votes, determinations and official filings related to the proposed approval of a mixed-use building at 126 N. Lorena Street, commonly known as the Lorena Plaza Mixed Use Project (the "Project" or "Lorena Plaza"), submitted by project proponent A Community of Friends ("ACOF" or "Applicant"). (Silverstein Comment Letter dated May 16, 2017, p. 1.)

The City Clerk gave written notice of a public hearing on the Project on May 5, 2017 for a hearing scheduled for May 16, 2017. The Council File shows that the PLUM Committee on May 16, 2017 took action to declare it would continue the hearing to a future date to be determined.

Subsequently, without any notice to our client or us as Appellant's representative, the City Clerk scheduled the re-scheduled hearing for August 8, 2017. Upon our objection to the complete failure of notice of the re-scheduled hearing, it was moved to August 15, 2017.

On August 15, 2017, the PLUM Committee heard and weighed the evidence, and took action to recommend to the full City Council to grant this appeal, so that a proper environmental review of the Project could be conducted. On August 18, 2017, attorneys for the developer threatened the City with litigation and in a surprisingly swift response, the City Attorney, on the same day, issued a memo asking for closed session. Then for six months, nothing happened officially. The Clerk failed to carry out her ministerial duty to place the PLUM Committee Recommendation Report into the Council File. The item was not scheduled for full City Council.

Despite our three prior written requests on behalf of Appellant, the City has failed to provide proper advance notice of tomorrow's City Council hearing of this appeal. We only learned of the regular meeting by happenstance, and only learned of the special meeting this morning via a generalized email notification.

We would particularly note that on Tuesday, February 27, 2018, the City Clerk posted the meeting agenda for City Council's regular meeting on Friday, March 2, 2018. Item 8 of that meeting agenda, under the heading "Items for Which Hearings Have Been Held," the Council told the public that it would consider the August 15, 2017 PLUM Committee's recommendation to grant the appeal. Such a posting would signal the interested public that the City Council proposed to adopt the recommendation of the

PLUM Committee to grant the appeal in summary vote under its Rules, most likely without entertaining further public comment or hearing, since it was an "Item for Which Public Hearing Has Been Held."

But today, we learned that the City Clerk posted a 24-hour special meeting agenda purporting to "add" Items 13 and 14 to the agenda for a gathering of the City Council that is supposed to only be a regular meeting. While the City Clerk styles this as the calling of a special meeting of the City Council, it is Orwellian that a separate and distinct public meeting has been called as the first item on the meeting agenda is Item No. 13 and the numbering proceeds sequentially from there. These facts demonstrate that City Council is abusing the special meeting process authorized under the Brown Act because Government Code Section 54956 specifically prohibits the City from conducting other business at the gathering for the special meeting (in this case, Items 1 to 12 on the regular meeting the Council proposed to conduct at the same time).

If the City Council goes forward tomorrow with a hearing on the Lorena Plaza project, our client will have received neither adequate notice nor sufficient time to review and respond to the significant new materials that have been submitted to the Council File. Under the current conditions, the City has not even complied with its usual LAMC requirements regarding notice to an appellant, much less constitutional notice requirements.

Because the City has violated noticing requirements to El Mercado as the Appellant in this matter, we demand that the City cancel and reschedule the March 2, 2018 hearing(s) so as to comply with our client's due process rights as an appellant, which means formal notice by the City to our client and us at least 10 days before the actual scheduled event. Please immediately reply, and please include this letter in the administrative record for this matter. Thank you.

Very truly yours,

Robert Silverstein /VL

ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM, APC

RPS/vl
cc: Jose.Huizar@lacity.org and via facsimile
Terry.Kaufmann-Macias@lacity.org
katheryn.phelan@lacity.org
Ken.Fong@lacity.org

Veronica Lebron - 3/2/18 Lorena Plaza Mixed Use Project; Special Agenda Item No. 14 & Regular Agenda Item No. 8

From: Robert Silverstein
To: greg.shoop@lacity.org; holly.wolcott@lacity.org; nuri.cho@lacity.org; shannon.hoppes@lacity.org ; vince.bertoni@lacity.org
Date: 3/1/2018 3:00 PM
Subject: 3/2/18 Lorena Plaza Mixed Use Project; Special Agenda Item No. 14 & Regular Agenda Item No. 8
CC: Dan Wright; EK - Kornfeld, Esther; VL - Veronica Lebron

Dear Mr. Shoop and Ms. Cho:

It has come to our attention today that tomorrow, Friday March 2, 2018, the City Council at a special meeting will consider substitute mitigation measures for the above-referenced project.

Reserving all objections to the City's failure to provide actual or proper advance notice of this new hearing to Appellant and this office, we object that the City has not released to us or the public the proposed substituted mitigation measures or related findings.

Please immediately provide those to all on this email. Given the failure to circulate the proposed mitigation measures or to schedule a hearing in compliance with the LAMC and Appellant's ordinary rights to proper advance notice, it is extremely doubtful that Appellant can review and provide full rebuttal to these new proposals. Nonetheless, we ask that you immediately forward them to us.

Please also include this communication in the administrative record for this matter. Thank you.

Robert P. Silverstein, Esq.
The Silverstein Law Firm, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504
Telephone: (626) 449-4200
Facsimile: (626) 449-4205
Email: Robert@RobertSilversteinLaw.com
Website: www.RobertSilversteinLaw.com
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EXHIBIT 2