

Communication from Public

Name: Faizah Malik

Date Submitted: 09/17/2019 03:12 PM

Council File No: 17-0090-S8

Comments for Public Posting: Public Counsel submits the attached testimony in relation to the Proposition HHH Fiscal Year 2018-19 Round 3 funding recommendations (CF# 17-0090-S8). We urge the Committee to approve the package in its entirety, without the removal of any specific project from consideration.



September 18, 2019

The Honorable Mitch O'Farrell
Chair, Homelessness and Poverty Committee
Councilmember, 13th District
200 N. Spring Street, Room 480
Los Angeles, CA 90012

RE: CF # 17-0090-S8: Proposition HHH Permanent Supportive Housing Loan Program Commitments, Fiscal Year (FY) 2018-19, Round 3 Call For Projects

Dear Chair O'Farrell and Members of the Homelessness and Poverty Committee:

Public Counsel submits this testimony in relation to the Proposition HHH Fiscal Year 2018-19 Round 3 funding recommendations (CF# 17-0090-S8). We urge the Committee to approve the package in its entirety, without the removal of any specific project from consideration.

Public Counsel is the nation's largest *pro bono* public interest law firm. Our Community Development Project builds strong foundations for healthy, vibrant, economically stable communities by providing free legal services to community-based organizations, affordable housing developers and low-income entrepreneurs.

We support the City of Los Angeles in its efforts to expeditiously build permanent supportive housing (PSH), as well as affordable housing and shelter. With the approval of the Round 3 funding recommendations, Proposition HHH will support the construction of 114 projects resulting in 5,873 supportive housing units. This housing cannot come soon enough.

Every Council District must do its fair share to build this desperately needed housing, as the affordable housing and homelessness crisis in the city affects every district. We are particularly alarmed by a recent report in the Daily News indicating that Councilmember John Lee opposes the approval of supportive housing at 10243 N. Topanga Canyon Blvd. (the Topanga Apartments).¹ This opposition is disappointing since Council District 12 is the only district in the city that has not built or approved a single unit of supporting housing under Proposition HHH. Councilmember Lee told the Daily News that he doesn't "think the site was really well thought out" and that he was eyeing another location for the project "that is going to work."² He also stated that the project was "pushed forward without adequate outreach to the businesses and families that will be most affected" and that "developers work with communities before pursuing" projects.³ As set forth below, these statements are extremely problematic. None of these statements are legally permitted to be acted upon during the funding stage for the project.

¹ <https://www.dailynews.com/2019/08/30/la-city-councilman-john-lee-opposes-proposed-homeless-housing-site-in-chatsworth/>.

² *Id.*

³ *Id.*

Neither the Proposition HHH Regulations nor the Housing and Community Investment Department's (HCID) competitive scoring criteria give individual councilmembers the power to unilaterally decide where and whether a supportive housing project will be sited.⁴ In fact, out of the 34 projects recommended for funding in Round 3, Topanga Apartments received the 10th highest score.⁵ According to HCID's own scoring criteria, it received a high score for "geographic distribution," meaning that it is a project that is located in a higher resource area and will advance the City's fair housing goals of integration and access to opportunity.⁶ As part of its threshold review, HCID also looked at overall project feasibility and viability. Councilmember Lee's statements about the project not being viable or well thought out conflict with HCID's own assessment of the project.

Removing a project from funding consideration due to the opinion of an individual councilmember after it has already been vetted and recommended by HCID, the Proposition HHH Administrative Oversight Committee, and the Prop HHH Citizens Oversight Committee is tantamount to an illegal pocket veto, similar to the former Letter of Acknowledgement policy.⁷ Such an action would be subject to scrutiny under federal and state fair housing laws, such as the Fair Housing Act, the Americans with Disabilities Act of 1990, the California Fair Employment and Housing Act (FEHA), and California Government Code section 65008, which prohibits discrimination by local governments against affordable housing.⁸ Section 65008 explicitly prohibits a local government from "impos[ing] different requirements on a residential development that is subsidized, financed, insured, or otherwise assisted by the federal or state government or by a local public entity... than those imposed on nonassisted developments."⁹ The law also prohibits a local government from imposing different requirements on residential developments based on age, sex, race, or disability.¹⁰

Furthermore, under the state Housing Accountability Act, qualifying projects cannot be denied unless certain objective findings can be made.¹¹ Similarly, Housing Element law requires supportive housing to be considered a residential use of property, "subject only to those restrictions that apply to other residential dwellings of the same type in the same zone."¹² Any decisions made about a proposed supportive housing project that are not supported by objective findings would be entirely inconsistent with state law. Likewise, any delays in approving supportive housing funding based on subjective concerns would be inconsistent with state law.

Finally, an action to remove a project from funding consideration at this stage would also conflict with AB 829, which prohibits the award of state assistance to developments that are subject to a requirement that the developer obtain approval from an individual councilmember.¹³

⁴ <https://hcidla.lacity.org/prop-hhh-sh-program-regulations>.

⁵ http://clkrep.lacity.org/onlinedocs/2017/17-0090-S8_rpt_CAO_09-09-2019.pdf.

⁶ *Id.*

⁷ The City removed the Letter of Acknowledgement and Letter of Support policies in 2018 after Public Counsel brought suit, and the State later passed AB 829 prohibiting state assistance to developments subject to threshold letter requirements.

⁸ *See* Cal. Gov. Code §§ 65008(b)(1)(C), §(d).

⁹ Cal. Gov. Code § 65008(d)(1).

¹⁰ Cal. Gov. Code § 65008(d)(2).

¹¹ Cal. Gov. Code § 65589.5, subd. (j).


¹² Cal. Gov. Code § 65583(a)(5).

¹³ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB829.

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In light of the foregoing, we urge the Committee not to delay, and to approve the funding recommendation package, which was scored and approved by HCID, **in its entirety today** so that Proposition HHH dollars can be committed in an objective, lawful manner. Any removal of a project at this stage would be highly suspect and cause for further legal scrutiny. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Faizah Malik". The signature is written in black ink and is positioned below the word "Sincerely,".

Faizah Malik
Staff Attorney
Community Development Project