

Communication from Public

Name: Friends of Waverly, Inc. (by its counsel Noel Weiss)

Date Submitted: 02/13/2020 04:36 PM

Council File No: 19-0126

Comments for Public Posting: As per the enclosed letter dated February 13, 2020 to the City Council, were the Council to approve the motion, the Council would be acting contrary to law. First, the Council lacks the power under the Charter to "borrow" funds from the Contingency Reserve Portion of the Reserve Fund under Section 340 of the City Charter. No funds have been budgeted for this project in the FY 2019-2020 budget; and the motion does not seek an appropriation from any unappropriated balance of the general fund. Secondly, park property can only be used for park and recreational purposes under Section 590 of the Charter. Only the Department of Rec and Parks can operate facilities located within a public park. Both of these conditions are absent. The proposed use is for non-park purposes; and the Department of Rec and Parks has neither the funds nor the expertise to operate a bridge shelter project. To expect the state of California to gift or grant money to the City when the use is unlawful under the Charter is bad public policy as a Court battle will ensue to ask the Court to enjoin granting any funds to the City to facilitate an unlawful purpose. Thirdly, the project has not been considered by the City Planning Commission as required under the Charter; nor has the project been considered by the Cultural Heritage Commission as mandated by the Charter. Fourth, there has been no discussion on whether the cutting down of five trees is lawful under LAMC Section 46.01. Fifth, the proposed design and construction budget has gone from an estimate of 4.6 Million in September, 2019, to \$6.5 million in November, 2019, to \$7.0 Million in January, 2020. Why the increase? Councilmen Ryu, Krekorian, and O'Farrell have never asked. These are funds which should be redirected elsewhere given that they are being unlawfully "appropriated" as an unlawful "loan" against an expectancy of the state reimbursing the City for monies the City is unlawfully expending and authorizing. This is not competent governance. It is a waste of precious monies needed for the homeless. Misapplying or unlawfully approving of the expenditures of monies for what amounts to a "tent" and supporting infrastructure on park-lands under the exclusive jurisdiction of the Department of Recreation of Parks is political malpractice. This bridge shelter is very close to playgrounds and a children's nursery How the community's health and safety concerns are to be competently managed has not

been addressed. The identity and competence of the operator is a complete unknown. It is simply not competent business practice to spend \$7 Million on a facility where the costs of operation or the identity of the operator are completely unknown. This is virtue signalling of the worst order. A seriously large opportunity cost is being created here where these monies can be more effectively spent on other homeless services. It is possible that the cost will double because it is possible that if the state determines that the funds were misapplied, they will have to be returned. It is clear from this entire sequence of events, that the City does not have the money. So instead of being out \$7 Million (which should be applied elsewhere) the City will lose the opportunity to spend \$7 Million elsewhere, while being obligated to return any monies to the state which the will have improvidently granted to the City were it to be determined by a Court that the state lacks the power to fund or reimburse the City for illegal or unlawful expenditures.

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February 11, 2020

VIA EMAIL

MEMBERS OF THE LOS ANGELES CITY COUNCIL

Los Angeles City Hall
200 North Spring Street
Los Angeles, California 90012

**RE: COUNCL FILE NO. 19-0126 – AGENDA ITEM NO. 8 – COUNCIL
AGENDA FOR FEBRUARY 14, 2020 - DAVID RYU MOTION TO APPROVE
\$5.631235 IN CONSTRUCTION FUNDING FOR TEMPORARY BRIDGE
SHELTER TENT LOCATED IN GRIFFIT PARK – 3210/3248 RIVERSIDE
DRIVE – EXHAUSTION OF ADMINISTRATIVE REMEDIES LETTER**

Dear Members of the City Council:

This letter is being submitted on behalf of Friends of Waverly, Inc. *in opposition* to the motion of Councilman David Ryu (**Council File No.19-00126 – Item 8** on the Council’s Agenda for its meeting of **February 14, 2020**) asking the Council to “appropriate” the sum of \$5,631,255 to be used for the construction of the a 10,800 sq. foot “tent” and related items noted below in Griffith Park on 3.3 acres (two lots of approx.. 28,500 sq. ft.):

- i. 10,800 sq. ft. “tent” to house a temporary bridge shelter;
- ii. 1,800 sq. ft. “hygiene trailer”;
- iii. 1,080 sq. ft. administrative trailer;
- iv. 3,500 sq. ft. of elevated deck with stairs and ramps;
- v. 680 sq. foot outdoor pet area;
- vi. New utilities, including water, electrical, and sewer;
- vii. 700 linear feet of fencing (type unknown);
- viii. Removal of up to five trees.

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A rendering of the project is reprinted below:

**RENDERING OF PROPOSED BRIDGE SHELTER TO BE
CONSTRUCTED IN GRIFFITH PARK AT 3210/3248 W. RIVERSIDE DRIVE**



This letter shall constitute the attempt by Friends of Waverly, Inc. to exhaust its administrative remedies prior to commencing suit challenging the legality of the Council’s action in “appropriating” the \$5,631,255 referenced in the motion. The specific legal grounds are noted below.

Legal Grounds in Support of The Council’s Voting Down the Requested Funding

- 1. The Council Lacks the Power under the Charter to “Borrow” Funds Against the Expectancy of Receiving a One-Time State Grant to the City Under HHAP (the State’s Homeless, Housing, Assistance and Planning Program)*

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The City has officially budgeted zero dollars (\$0) for the construction and operation of this Griffith Park Bridge Shelter project in its FY 2019-2020 budget.¹ Nor does the proposed motion seek an appropriation out of the unappropriated balance (if there is any) of the general fund for the FY 2019-2020. The \$5,631,255 referenced in the motion is instead billed as a “loan” from the Contingency Reserve portion of the Reserve Fund.² This “loan” is slated to be “repaid” from the proceeds of a one-time state grant of \$117,562,500 of state funds from the HHAP Program authorized last fall by the State of California. The state is not set to fund the grant until April 1, 2020, at the earliest.

Borrowing funds from the Contingency Reserve Fund portion of the Reserve Fund is not authorized anywhere in the City’s Charter. The Contingency Reserve Fund is not a slush fund to be tapped into to serve Council Members’ political interests. Under Section 340 of the Charter, “temporary transfers” in accordance with procedures authorized by law can be made from one fund to another only “as may be necessary to provide funds for meeting the obligations of the City”. The Griffith Park Bridge Shelter Project is not “an obligation of the City”. It represents a policy choice which the City Council may want to fund; but the manner and mode of funding is proscribed by the Charter so that the possibility of waste and mismanagement is mitigated. Here,

¹ Under Charter Section 594, management and control of all property and facilities in City Parks is granted exclusively to the Department of Recreation and Parks. Under Charter Section 593, funds to operate the public parks must come from either Recreation and Parks Fund (funded by at least .0325% of City property tax assessments) or appropriations made from the general fund. The City’s Current Year Budget (FY 2019-2020) does not appropriate any sums for this “tent” (aka the proposed temporary (three year) Griffith Park Bridge Shelter). Therefore, by definition, no revenue shortfall or unanticipated expenses exist with respect to the Griffith Park Bridge Shelter Project. Under Section 340 of the Charter, the *only* funds from the *Contingency Reserve* which can be *lawfully* appropriated are funds to bridge the gap between expenses and revenues with respect to *programs approved in the current year’s budget*, or funds in the “*unappropriated balance*” category of the General Fund. Because the Griffith Park Bridge Shelter Project was *never* an “*appropriated item*” in the current 2019-2020 City (Fiscal Year) Budget, no funds can be taken from the Contingency Reserve to support its funding. Because the funds sought in this motion are not part of the “unappropriated balance” of the general fund (assuming there currently exists an unappropriated balance in the general fund), they cannot be lawfully “appropriated” for any purpose under Section 340 of the Charter. What the City Council is being asked to approve is a “loan” from the Contingency Reserve Fund to be repaid against a future expectancy consisting of the State’s grant to the City of state funds under the HHAP Program. The \$5,631,255 referenced in this motion is part of an anticipated \$117,562,500 one-time grant to be awarded to the City by the State come April 1, 2020. The City’s application for these funds was submitted to the state on or about January 31, 2020.

² The Reserve Fund is composed of an Emergency Reserve Account (not at issue here because no funds are sought from the Emergency Reserve Account) and a Contingency Reserve Account.

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the estimate for the cost of the “tent” went from \$4,647,000 on September 4, 2019,³ to \$6,570,000 on November 22, 2019⁴, to now \$7,096,255⁵. As noted in the Agenda, neither the CAO nor the Chief Legislative Analyst has done a financial work-up on this proposed \$5,631,255 proposed “appropriation” request (i.e. “loan”). Councilman Ryu has not inquired of the CAO why the estimate went from \$4.6 Million to \$7.0 Million; nor has Councilman Krekorian; nor has Councilman O’Farrell. With the homeless crisis being as severe as it is, it is imprudent for the Council to allow for a 52.17% increase in construction costs for this “tent” (from \$4.6 million to \$7.0 million) without some sort of explanation.

2. The Project Has Not Been Considered by the City Planning Commission as Mandated by the Charter

³ Report of General Manager of the Department of Recreation & Parks to the Board of Recreation and Parks Commissioners dated September 4, 2019.

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⁵ \$7,096,255 is the sum of \$5,6321,255 sought by this motion, and the \$1,465,000 “appropriated” (i.e. borrowed) from the Contingency Reserve portion of the City’s Reserve Fund) by the Council’s action on December 10, 2020. ***No funds have been set aside for operation of the facility***; nor has an operator been chosen; nor have any metrics been set to measure the effectiveness of the operation. This is all very problematic because under Charter Section 594, management of all park assets is exclusively vested in the Department of Recreation and Parks; and no park sites can be used for any other purpose other than recreational and park purposes; nor has the Council passed any Ordinance authorizing the use of the Griffith Park lots for these non-park purposes (Section 594(c) of the Charter states that “all lands heretofore or hereafter set apart or dedicated as a public park shall forever remain for the use of the public inviolate”. . . and can only be used for “any park purpose”. A temporary bridge shelter facility is not a valid “park purpose”. Needless to say, the Recreation and Parks Department lacks the expertise to operate a bridge shelter facility; and is not authorized under the Charter to operate a bridge shelter facility even it possessed the expertise to operate one. Nor can the Board lease the site since it is not being set aside for recreation purposes and Section 595 of the Charter limits the lease of park lands to recreational park uses. Under Section 591 of the Charter, the control of monies in the Recreation and Parks Fund is with the Board of Recreation and Park Commissioners. While general appropriates may be made to the Recreation and Parks Fund, this motion does not make any such appropriation. Rather the use of monies borrowed from the Contingency Reserve to fund the construction of a “tent” in Griffith Park to be used as a bridge shelter facility violates very relevant provision of the Charter as it pertains the rights, privileges, powers, and duties of the Recreation and Parks Department, and as it relates to the power of the City Council to borrow money out of the Contingency Reserve Fund against the future expectancy of a state grant versus making a lawful appropriation from either the general fund (as to budgeted items) or the unappropriated portion of the general fund. (FUBAR).

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Charter Section 564 mandates that all development projects requiring *quasi-legislative*⁶ or *quasi-judicial* approvals and LAMC §12.32 and §12.36 be heard by the City Planning Commission. Before the Griffith Park Bridge Shelter Project can be constructed and used, there must be a hearing before the City Planning Commission where the public is given adequate and fair notice, where the Planning Department weighs in with its thoughts, recommendations, and views, and where the Commission makes a decision on whether to approve the project and project entitlements. That was not done in this case. The expenditure of funds, even if lawful, on a project which has not been lawfully approved is both imprudent and problematic because it puts at risk the state grant, at least to the extent of the \$7 Million contemplated (as of now) to design and construct the project. It cannot be assumed that the State of California will consent to its grant monies being used where (i) the funds have not been lawfully appropriated, or (ii) where the project itself has not been lawfully approved.

Rather than risk the loss of these funds, or the City's having to repay them back to the State should the state err in granting the City monies on a project the City has not lawfully approved or funded, the prudent thing to do is to reject the motion and use the monies for lawful activities following their lawful expenditure. Wasting \$7 Million in needed homeless monies is not the way to solve the homeless crisis.

3. Approval of the Cultural Heritage Commission is Required Before the Project Can be Built or Used. No Such Approval Has Been Obtained.

Griffith Park is an official cultural-historical monument. Under Section 22.171 of the Los Angeles Administrative Code, and Section 22.171.14 in particular, no permit may issue for any construction of the project on the Griffith Park lands until the Cultural Heritage Commission has passed on the project and the permit. In the case of the Griffith Park Bridge Shelter Project, no hearings whatsoever have been held before the Cultural Heritage Commission.

The Council should not act on this item until the Cultural Heritage Commission has weighed in.

⁶ The approval of any operator of this facility other than the Department of Recreation and Parks must come by way of Ordinance as per Section 594d)(1) of the City Charter. No such Ordinance has been proposed, considered, or passed. So why is the City Council approving funding (even if legal, which it is not) for a facility which cannot be lawfully operated when built?

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Practical Grounds to Disapprove Motion

There is no operator for this bridge shelter which has been chosen, or approved. First, the CAO has stated there are no funds to operate the shelter which have been identified, approved, appropriated, or set aside. This raises a core question of why the State of California would approve funds for a bridge shelter where the City has not even identified an operator.

Secondly, under the Charter, exclusive jurisdiction over park properties is vested in the Department of Recreation and Parks; and park properties can only be used for park and recreational purposes. A temporary homeless bridge shelter is not a recreational purpose and cannot be lawfully put into a park. While the City Attorney likes to cite the circumstance back in the late 1940's when Roger Young Village was set up in Griffith Park to create a temporary housing community of 1,500 dwellings and 6,000 people for returning World War II GIs, which a Court approved, there are some important distinctions between then and now.

First, the "houses" were funded and provided for by the Federal government. No City "operator" or "operation" was involved beyond placing the federally donated Quonset huts on park property. These were temporary homes which were occupied by the returning GIs. What is being proposed here is a bridge shelter homeless facility to be operated and maintained by some unknown bridge-shelter operator whose credentials and operational metrics are unknown. There were no City funds involved in the operation or upkeep of the homes in Roger Young Village. The upkeep was maintained by the GIs and their families.

The Charter was also different in 1945 than it is today. There was no specific requirement for hearings before the City Planning Commission on projects of the type and protocol we now have.

It is not an apt analogy to compare de facto single-family residences with a bridge shelter containing up to 100 beds, where the occupancy, by definition, is limited to 6 months maximum per bed. No money exists in the Department of Recreation and Parks budget to operate such a facility; and the Charter directs that monies to operate the parks can only be used for park purposes; not for non-park purposes; and by definition, a temporary bridge-shelter facility is a non-park purpose.

Up to five trees are being cut-down to develop this project. No discussion and no questions have been raised as to the types of trees being cut down, and if doing so is legal under the City's Ordinance (LAMC §46.01) which prohibits the cutting down of certain types of trees.

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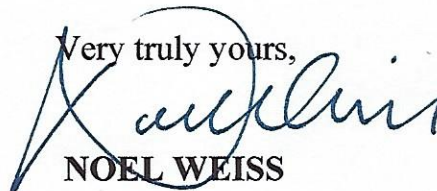
The proposed location, contrary to Mr. Ryu's representation to the Council, does not have the support of vast portions of the community. The location is far too close to playgrounds and a children's nursery. Nothing has been communicated as to how the public health and safety is going to be protected from nearby encampments cropping up near the shelter. LAPD lacks any significant presence because there is only one mobile unit to service the area near the proposed location, and that mobile unit is dispatched from downtown. The Griffith Park Rangers are not equipped to handle safety issues; nor is the security force from the Department of Water & Power.

In short, the City has not provided the public with any detailed information on the operator, site security, maintenance, area protection, resident selection, screening, health services, and the true duration of the shelter's operations. Metrics on how to gauge the effectiveness of the operation are totally lacking. Will that state even fund such a calamity, absent any details or specifics, assuming the proposed funding mechanism and protocol is lawful (which Friends of Waverly, Inc. strongly dispute).

If the City Council wants to ask the voters to amend the Charter, then the City Council is free to do so. But until the Charter is amended, the Charter must be respected.

It is respectfully requested that the City Council vote down Councilman Ryu's proposal. Should the Council proceed despite the legal and practical infirmities which infect this proposal, my client will challenge the building permit in Court as well as sue the State and seek a declaration that any monies contained in the state grant to fund this project be withheld; and if they are not withheld, then refunded back to the state after the Court renders an opinion on whether they have been lawfully expended.

Very truly yours,



NOEL WEISS

NW: nww
0213-CC

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**RE: COUNCL FILE NO. 19-0126 – AGENDA ITEM NO. 8 – COUNCIL
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\$5.631235 IN CONSTRUCTION FUNDING FOR TEMPORARY BRIDGE
SHELTER TENT LOCATED IN GRIFFIT PARK – 3210/3248 RIVERSIDE
DRIVE – EXHAUSTION OF ADMINISTRATIVE REMEDIES LETTER**

Dear Members of the City Council:

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CONSTRUCTED IN GRIFFITH PARK AT 3210/3248 W. RIVERSIDE DRIVE**



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2. The Project Has Not Been Considered by the City Planning Commission as Mandated by the Charter

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Charter Section 564 mandates that all development projects requiring *quasi-legislative*⁶ or *quasi-judicial* approvals and LAMC §12.32 and §12.36 be heard by the City Planning Commission. Before the Griffith Park Bridge Shelter Project can be constructed and used, there must be a hearing before the City Planning Commission where the public is given adequate and fair notice, where the Planning Department weighs in with its thoughts, recommendations, and views, and where the Commission makes a decision on whether to approve the project and project entitlements. That was not done in this case. The expenditure of funds, even if lawful, on a project which has not been lawfully approved is both imprudent and problematic because it puts at risk the state grant, at least to the extent of the \$7 Million contemplated (as of now) to design and construct the project. It cannot be assumed that the State of California will consent to its grant monies being used where (i) the funds have not been lawfully appropriated, or (ii) where the project itself has not been lawfully approved.

Rather than risk the loss of these funds, or the City's having to repay them back to the State should the state err in granting the City monies on a project the City has not lawfully approved or funded, the prudent thing to do is to reject the motion and use the monies for lawful activities following their lawful expenditure. Wasting \$7 Million in needed homeless monies is not the way to solve the homeless crisis.

3. Approval of the Cultural Heritage Commission is Required Before the Project Can be Built or Used. No Such Approval Has Been Obtained.

Griffith Park is an official cultural-historical monument. Under Section 22.171 of the Los Angeles Administrative Code, and Section 22.171.14 in particular, no permit may issue for any construction of the project on the Griffith Park lands until the Cultural Heritage Commission has passed on the project and the permit. In the case of the Griffith Park Bridge Shelter Project, no hearings whatsoever have been held before the Cultural Heritage Commission.

The Council should not act on this item until the Cultural Heritage Commission has weighed in.

⁶ The approval of any operator of this facility other than the Department of Recreation and Parks must come by way of Ordinance as per Section 594d)(1) of the City Charter. No such Ordinance has been proposed, considered, or passed. So why is the City Council approving funding (even if legal, which it is not) for a facility which cannot be lawfully operated when built?

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Practical Grounds to Disapprove Motion

There is no operator for this bridge shelter which has been chosen, or approved. First, the CAO has stated there are no funds to operate the shelter which have been identified, approved, appropriated, or set aside. This raises a core question of why the State of California would approve funds for a bridge shelter where the City has not even identified an operator.

Secondly, under the Charter, exclusive jurisdiction over park properties is vested in the Department of Recreation and Parks; and park properties can only be used for park and recreational purposes. A temporary homeless bridge shelter is not a recreational purpose and cannot be lawfully put into a park. While the City Attorney likes to cite the circumstance back in the late 1940's when Roger Young Village was set up in Griffith Park to create a temporary housing community of 1,500 dwellings and 6,000 people for returning World War II GIs, which a Court approved, there are some important distinctions between then and now.

First, the "houses" were funded and provided for by the Federal government. No City "operator" or "operation" was involved beyond placing the federally donated Quonset huts on park property. These were temporary homes which were occupied by the returning GIs. What is being proposed here is a bridge shelter homeless facility to be operated and maintained by some unknown bridge-shelter operator whose credentials and operational metrics are unknown. There were no City funds involved in the operation or upkeep of the homes in Roger Young Village. The upkeep was maintained by the GIs and their families.

The Charter was also different in 1945 than it is today. There was no specific requirement for hearings before the City Planning Commission on projects of the type and protocol we now have.

It is not an apt analogy to compare de facto single-family residences with a bridge shelter containing up to 100 beds, where the occupancy, by definition, is limited to 6 months maximum per bed. No money exists in the Department of Recreation and Parks budget to operate such a facility; and the Charter directs that monies to operate the parks can only be used for park purposes; not for non-park purposes; and by definition, a temporary bridge-shelter facility is a non-park purpose.

Up to five trees are being cut-down to develop this project. No discussion and no questions have been raised as to the types of trees being cut down, and if doing so is legal under the City's Ordinance (LAMC §46.01) which prohibits the cutting down of certain types of trees.

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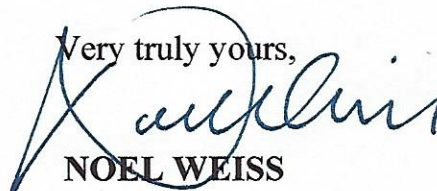
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The proposed location, contrary to Mr. Ryu's representation to the Council, does not have the support of vast portions of the community. The location is far too close to playgrounds and a children's nursery. Nothing has been communicated as to how the public health and safety is going to be protected from nearby encampments cropping up near the shelter. LAPD lacks any significant presence because there is only one mobile unit to service the area near the proposed location, and that mobile unit is dispatched from downtown. The Griffith Park Rangers are not equipped to handle safety issues; nor is the security force from the Department of Water & Power.

In short, the City has not provided the public with any detailed information on the operator, site security, maintenance, area protection, resident selection, screening, health services, and the true duration of the shelter's operations. Metrics on how to gauge the effectiveness of the operation are totally lacking. Will that state even fund such a calamity, absent any details or specifics, assuming the proposed funding mechanism and protocol is lawful (which Friends of Waverly, Inc. strongly dispute).

If the City Council wants to ask the voters to amend the Charter, then the City Council is free to do so. But until the Charter is amended, the Charter must be respected.

It is respectfully requested that the City Council vote down Councilman Ryu's proposal. Should the Council proceed despite the legal and practical infirmities which infect this proposal, my client will challenge the building permit in Court as well as sue the State and seek a declaration that any monies contained in the state grant to fund this project be withheld; and if they are not withheld, then refunded back to the state after the Court renders an opinion on whether they have been lawfully expended.

Very truly yours,

NOEL WEISS

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