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March 4, 2019

Honorable Members of the City Council
Los Angeles City Hall
200 N. Spring Street
Los Angeles, CA 90012

Delivered via electronic mail

**Re: Transit Oriented Communities (TOC) Affordable Housing Incentive Program
Guidelines / Notice of Development Project Site – CF 16-0684-S2**

Dear Honorable Members,

Public Counsel writes to express our serious legal concerns regarding the City Council's April 17, 2018 motion seeking options to amend the Transit Oriented Communities Affordable Housing Incentive Program (TOC). The proposed amendments are directly inconsistent with voter-approved Measure JJJ.

Public Counsel is the nation's largest pro bono public interest law firm, and the Southern California affiliate of the Lawyers Committee for Civil Rights Under Law. Our Community Development Project maintains a specific focus on producing and preserving affordable housing. In this capacity, we have been deeply involved in the development of state and local policy aimed at aligning density with affordability, including but not limited to state density bonus law, the South and Southeast LA Community Plans, and Measure JJJ. We played a lead role in developing the TOC framework, and we have worked with ACT-LA, in collaboration with the Department of City Planning, to inform the development of the TOC Program Guidelines.

The TOC has become one of the City's most important and impactful tools to address an unconscionable affordable housing crisis. Through December, 2018 the TOC Program had resulted in nearly 13,305 new units and 2,377 new affordable housing units in the pipeline. In the last quarter, the TOC program accounted for nearly 1/3 of the City's proposed new housing developments.¹ Many of these TOC projects are 100% affordable and/or supportive housing projects that play a crucial role in reducing homelessness. As required by Measure JJJ, the TOC creates much-needed affordable housing by offering certain incentives, including the same ministerial or expedited approval procedures available to density bonus projects.

The April 17, 2018 City Council motion instructs the Planning Department, in consultation with the City Attorney, to "prepare a report with options to provide notice to either the abutting neighbor, or to neighbors within 100 feet or more of a development projects site subject to the [TOC Program Guidelines]." The motion states that "development projects, whether they are discretionary or *by-right*, must be noticed for a public hearing...." For the reasons described below, the proposed changes to TOC procedures raise significant legal and policy concerns.

¹ City of Los Angeles, Department of City Planning, Housing Progress Report, December, 2018. Available at, https://planning.lacity.org/Documents/ExternalAffairs/HousingProgressRpt/2018_Q4.pdf

Changes to TOC notice procedures are prohibited by Los Angeles Charter Section 464.

Los Angeles City Charter Section 464(a) provides that “any ordinance adopted by a vote of the electors of the City pursuant to an initiative petition cannot be amended or repealed, except by an ordinance proposed either by petition or by the Council at its own instance and adopted by a vote of the electors, or by an amendment of the Charter superseding the ordinance.”

The TOC Program is a requirement of Measure JJJ, a citizen sponsored ballot initiative that was approved by Los Angeles voters on November 8, 2016. Even though Measure JJJ empowers the Director of Planning to prepare TOC Program Guidelines, there are certain standards that are required to be included. These requirements are spelled out explicitly in the initiative, and include the procedures for approval of TOC projects. Measure JJJ explicitly states that “Application for the TOC incentives... shall follow the procedures outlined in Los Angeles Municipal Code Section 12.22.A.25(g).”² LAMC 12.22.A.25(g) requires projects seeking only density bonuses and parking reductions to be considered ministerial, and projects seeking on-menu incentives to be considered by the initial decision-maker *without notice and hearing*. Therefore, adding a notice and/or hearing requirement to TOC projects seeking only density increases, parking reductions, FAR, or the on-menu “Additional Incentives” would be inconsistent with LAMC 12.22.A.25(g) and an amendment to an express provision of Measure JJJ. This cannot be done except by an ordinance adopted by a vote of the electors, or by an amendment of the Charter.

Changes to TOC notice procedures may violate Government Code Section 65008 and the California Fair Employment and Housing Act (FEHA).

Under California law, local agencies may not take any action that serves to prohibit or discriminate against a residential development based on its intended occupancy by very low, low, moderate or middle income persons or families; the lawful occupation, age, race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, or disability of the intended occupants; or the method of financing of the housing.³ Significantly, Section 65008 prohibits discrimination not only on the basis of race and other protected classes, but also on the basis of income. Additionally, FEHA specifically prohibits discrimination through land use decisions, including denials of use permits that make housing opportunities unavailable. (Cal. Gov. Code § 12955(l).)

TOC developments by definition will house occupants protected by Government Code 65008 and FEHA, as a percentage of occupants of TOC developments must always be lower-income households in order to qualify for the program. As the TOC Program is being used extensively by developers of primarily affordable and supportive housing, such developments disproportionately provide homes to those protected by the fair housing laws.

Adding notice and hearing requirements for TOC projects in the manner proposed may have a chilling effect on the use of TOC to create affordable and supportive housing in neighborhoods where there are vocal opponents of affordable and supportive housing, often based on unfounded stereotypes of the proposed project’s intended residents. The City’s own Assessment of Fair Housing (dated October 2017) acknowledges that community opposition and site selection policies are barriers to fair housing in Los Angeles. The Assessment cited “community opposition” as a contributing factor to segregation in LA. “In recent years, community opposition has played a role in hindering the development of

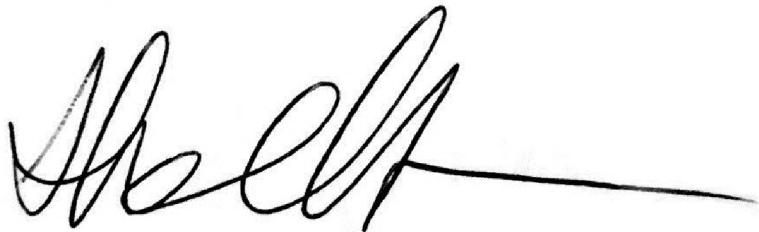
² Measure JJJ Section 6, adding a new a new Subdivision 31 to Subsection A of Section 12.22 of the Los Angeles Municipal Code.

³ Government Code Section 65008

high-density or affordable housing, both of which are disproportionately occupied by people of color.”⁴ Accordingly, adding additional arbitrary notice and hearing requirements on TOC developments that other similar projects are not subject to may directly conflict both with Government Code Section 65008 and FEHA.

As described above, we have significant legal concerns with the actions contemplated by the April 17, 2018 motion. We urge you to halt any action that would change the TOC Program Guidelines in a manner inconsistent with Measure JJJ. Any such action is subject to potential legal challenge as inconsistent with the City’s charter and fair housing laws.

Sincerely,



Shashi Hanuman
Directing Attorney, Community Development
Public Counsel

cc: City Attorney Mike Feuer

⁴ City of Los Angeles Assessment of Fair Housing at 78 and 297.