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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

17 FIX THE CITY, INC., a California nonprofit
18 corporation,

19 Petitioner and Plaintiff,

20 v.

21 CITY OF LOS ANGELES, a municipal
corporation; LOS ANGELES CITY
22 PLANNING COMMISSION; VINCENT P.
BERTONI, in his capacity as Director of City
23 Planning for the City of Los Angeles and
DOES 1 through 100, inclusive,

24 Respondents and Defendants.

25 530 NORTH FRANCISCA, LLC,
a California limited liability corporation;
26 BANARSI AGARWAL; and
27 ROES 1 through 100, inclusive,

28 Real Parties in Interest.

Case No. 20STCP03529
Related Case No. 19STCP03740 (Lead Case)
Related Case No. 20STCP01569

Assigned for All Purposes to:
Hon. Mitchell L. Beckloff, Dept. 86

JOINT OPPOSITION BRIEF

**[Submitted Herewith:
Request For Judicial Notice and
Objections to Palmer Declaration]**

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1 **I. INTRODUCTION**

2 Petitioner Fix the City, Inc. (“FTC”) asks the Court to overturn the approval of a 10-unit,
3 multi-family apartment building including two affordable units in the Westwood neighborhood of
4 the City of Los Angeles (“City”), sited less than one-half mile from LA Metro’s Westwood/UCLA
5 subway station. The City’s award of TOC Program Incentives and approval of the project at issue
6 is supported by both law and fact, and FTC has failed to establish any abuse of discretion.

7 First, the City’s Transit Oriented Communities (“TOC”) Affordable Housing Incentive
8 Program and implementing Guidelines expressly provide for the award of incentives to eligible
9 housing projects located in specific plan areas. FTC’s argument that the City’s award of TOC
10 development incentives cannot exceed development standards set forth in the Westwood
11 Community Multi-Family Specific Plan (“Specific Plan”) is contrary to the plain language of the
12 TOC Guidelines, and inconsistent with the TOC Program as approved by voters and codified in the
13 Los Angeles Municipal Code. FTC is incorrect that the Project is limited to the Specific Plan’s
14 development standards despite meeting the criteria for TOC Program incentives.

15 Second, the City fully complied with state law when it determined that no replacement rental
16 units are required for the project site. Substantial evidence supports the City’s approval, including
17 the determination of the City’s Housing and Community Investment Department that the property
18 is not subject to replacement requirements because the three existing units were withdrawn from
19 the rental market under the Ellis Act in 2003. FTC disputes the City’s conclusion by citing
20 information obtained from the City’s planning website and text messaging service, but such extra-
21 record sources are not legally binding and in fact are subject to their own disclaimers. The Opening
22 Brief also ignores evidence in the administrative record consistently confirming that City staff
23 undertook the necessary investigations of the Project site’s rental history and determined that no
24 replacement affordable housing units were required because the dwelling units on the site were not
25 “rental” units.

26 The Court’s prior ruling in the related cases disposes of FTC’s facial challenges to the
27 adoption and implementation of the TOC Program and Guidelines. FTC’s Opening Brief fails to
28 identify any new grounds for overturning the City’s approval of the Project. Accordingly,

1 Respondents and Defendants the City of Los Angeles, Los Angeles Planning Commission, and
2 Vincent P. Bertoni in his capacity as Director of City Planning (collectively, “Respondents”) and
3 Real Parties in Interest 530 North Francisca, LLC and Banarsi Agarwal (collectively, “Real Parties”)
4 respectfully request that the Petition be denied in its entirety.¹
5

6 **II. STATEMENT OF FACTS**

7 **A. The 10757-10759 West Wilkins Avenue Project**

8 In May 2019, Real Parties applied to the City seeking approval to construct a new five-story,
9 10-unit apartment complex at 10757-10759 West Wilkins Avenue (the “Project”) in the City’s
10 Westwood neighborhood. (AR 11-12.)² The Project entails the demolition of an existing three-unit
11 apartment building and garage on the site and construction of a new, 55-foot tall, 16,803 square feet
12 multi-family apartment building with one level of subterranean parking containing 21 parking stalls.
13 (AR 272.) Of the Project’s 10 total residential units, two units would be reserved for Very Low
14 Income households. (AR 273.) The Project site is less than one-half mile from the Metro Purple
15 Line Extension Westwood/UCLA Subway Station.

16 Based on the location of the Project site and the inclusion of two income-restricted affordable
17 housing units, Real Parties sought approval of the Project pursuant to the City’s Transit Oriented
18 Communities Affordable Housing Incentive Program (“TOC Program”). (AR 362-63.) The City’s
19 TOC Program, which was established with the passage of voter Initiative Measure JJJ in 2017,
20

21 ¹ On November 10, 2021, the Court ordered that the Court’s August 9, 2021 Interlocutory
22 Order (“TOC Ruling”) in *Fix The City, Inc. v. City of Los Angeles*, L.A. Super. Ct. Case No.
23 19SCP03740 (“Lead Action”) regarding the legal issues associated with the TOC Program shall
24 apply to this case. A true and correct copy of the TOC Ruling is attached as **Exhibit 1** to the Joint
25 Request For Judicial Notice (“JRJN”), submitted herewith. The City and Real Parties hereby
26 incorporate by reference all arguments on those claims, including as set forth in Respondents’
27 Opposition Brief On Issues Related To Transit Oriented Communities Program (“TOC Brief”),
28 attached as **Exhibit 2** to the JRJN. Respondents’ Request for Judicial Notice in the Lead Action is
attached as **Exhibit 3** to the JRJN.

² “AR XXX” refers to the administrative record for the Project, as certified on June 8, 2021.
“TOC AR XXX” refers to the administrative record for the adoption of the TOC Guidelines, as
certified on December 31, 2020.

1 allows certain housing projects located within one half mile of a “Major Transit Stop” to qualify for
2 development incentives based on the size of the project and the percentage of affordable units
3 included. (See TOC AR 18-21 [Measure JJJ, TOC Program], TOC AR 291 [TOC Guidelines].)
4 Incentives available under the TOC Program include increased density, height, and floor area, as
5 well as reduced setbacks, parking, and open space requirements. (AR 362.) The Project at issue is
6 a “Tier 3” housing development under the TOC program, and eligible for up to three Tier 3 Base
7 Incentives (increased density and floor area ratio and reduced parking), which are granted “by right”
8 to Tier 3 projects. (AR 363.) As at least 15 percent of the units are reserved for Very Low Income
9 households (2 of 10 units), the Project also applied and was deemed eligible for three “Additional
10 Incentives.” (AR 12, AR 245.) The Project proposes to utilize two of the three available Tier 3
11 Base Incentives: (1) a 40 percent increase in density, or 10 units as compared to 6.55 units otherwise
12 permitted under applicable zoning standards; and (2) a reduction in required parking from 32
13 parking spaces to 21. (AR 254, AR 250.) In addition, the Project requested three Tier 3 Additional
14 Incentives: (1) a 30 percent reduction in side yard (5.6 feet compared to the otherwise required 8
15 feet); (2) a 25 percent reduction in open space (2,625 square feet in lieu of 3,500 square feet); and
16 (3) a 22-foot increase in building height (maximum of 55 feet compared to 33 feet under the Specific
17 Plan). (AR 238-39.)

18 **B. The City’s Administrative Review Process**

19 Based on the Project’s zoning and location in the Westwood Community Multi-Family
20 Specific Plan Area, the City’s administrative review and approval process for the Project required a
21 public hearing before the Westwood Community Design Review Board (“DRB”). (AR 244.) An
22 initial hearing before the DRB was held on August 21, 2019, at which the DRB members received
23 public comment and considered the Project proposal. (AR 92-104.) The DRB held a second public
24 hearing on the Project on October 2, 2019, before eventually voting to recommend approval of the
25 Project on November 6, 2019. (AR 213.)

26 Following the DRB’s recommendation, on January 13, 2020, the City Planning Director
27 issued a determination approving TOC Program Compliance Review, Project Permit Compliance
28 Review, and Design Review for the Project. (AR 238-43.) With respect to the TOC Program

1 Compliance Review, the Director’s determination included a finding that the Project satisfies all
2 applicable criteria for Tier 3 development under the TOC Guidelines. (AR 245-46.) The Director’s
3 determination also included approval of the two by-right Base Incentives and three Additional
4 Incentives requested for the Project based on the inclusion of two Very Low Income units in the 10-
5 unit project and its proximity to a Major Transit Stop: (1) a 40 percent increase in density to 10
6 units; (2) a reduction in required parking to 21 parking spaces; (3) a 22-foot height increase; (4) a
7 reduction in side yard size to 5.6 feet; and (5) a 25 percent reduction in open space to 2,625 square
8 feet. (AR 238-41, AR 245-47.) The letter of determination included a table summarizing the
9 relevant provisions of the Specific Plan and the TOC Guidelines, as well as the specific incentives
10 requested and approved for the Project. (AR 246-47.)

11 The Planning Director’s determination also concludes that the Project complies with all
12 applicable housing replacement requirements under Government Code section 65915(c)(3).
13 (AR 247.) Specifically, as verified by the City Department of Housing and Community Investment
14 (“HCIDLA,” now known as the “Los Angeles Housing Department”): “no units are subject to
15 replacement under AB2256” (*Id.*)

16 Following the Planning Director’s approval of the TOC Program Incentives, FTC appealed
17 the Director’s decision to the City Planning Commission. (AR 883.) Notably, FTC did not address
18 the housing replacement requirement in its appeal of the Planning Director’s determination. (*See*
19 AR 319-29.) FTC’s appeal instead challenged the Project approvals on numerous other grounds
20 including (1) that the award of TOC Program Incentives was inconsistent with the voter initiative
21 authorizing the creation of the TOC Program; (2) that the approval of the Project violated the
22 California Environmental Quality Act; and (3) that the Project would result in significant shade
23 impacts in violation of the Specific Plan, among other arguments. (*See* AR 909-11.) Following a
24 hearing on May 14, 2020, the City Planning Commission voted to deny the appeal and uphold the
25 Project approvals. (AR 928-30.) A final letter of decision was issued on May 19, 2020. (AR 548.)
26 The instant litigation followed.

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1 **III. STANDARD OF REVIEW**

2 FTC’s First and Third Causes of Action challenge the City’s implementation of the TOC
3 Program and adoption of the TOC Guidelines, as well as the award of TOC Program incentives to
4 the Project based on an alleged conflict with the Specific Plan. (*See* Opening Br. at 6:13-7:28.) As
5 a charter city, the City of Los Angeles and its voters are entitled to enact zoning provisions in the
6 municipal code, like the TOC Program provisions at Los Angeles Municipal Code (“L.A.M.C.”)
7 Section 12.22.A.31. Charter cities have the power of “municipal home rule” with respect to all
8 matters of local concern. (*Lindell Co. v. Bd. of Permit Appeals of City & Cty. of San Francisco*
9 (1943) 23 Cal.2d 303, 310 [internal citations omitted].) The City’s TOC Program and application
10 thereof constitute the City’s interpretation of its zoning code, which “is entitled to great weight
11 unless it is clearly erroneous or unauthorized.” (*Berkeley Hills Watershed Coal. v. City of Berkeley*
12 (2019) 31 Cal.App.5th 880, 896, citing *Anderson First Coalition v. City of Anderson* (2005) 130
13 Cal.App.4th 1173, 1193. *See also* *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19
14 Cal.4th 1, 12.) “Greater deference is accorded an agency’s interpretation where the agency has
15 expertise and technical knowledge, especially where the legal text to be interpreted is ... entwined
16 with issues of fact, policy, and discretion.” (*Berkeley Hills Watershed Coal.*, 31 Cal.App.5th at 896
17 [substantial deference should be provided to city attorney’s interpretation of zoning ordinance, due
18 to technical expertise regarding zoning requirements, knowledge of impacts to neighborhoods and
19 local community, familiarity with rationale for the ordinance, responsibility for its implementation,
20 and special knowledge about practical implications of possible interpretations].)

21 By its Second Cause of Action, FTC challenges the City’s factual determination that no units
22 on the Project site are subject to the replacement requirements imposed by Government Code section
23 65915(c)(3). (*See* Opening Br. at 8:1-10:11.) The scope of the reviewing court’s inquiry in
24 administrative mandamus proceedings is limited to whether the agency in question prejudicially
25 abused its discretion. (Code Civ. Proc., § 1094.5; *Wollmer v. City of Berkeley* (2009) 179
26 Cal.App.4th 933, 938 [the grant of a land use permit or variance is subject to review by
27 administrative mandamus].) Under the prejudicial abuse of discretion standard, it is FTC’s burden
28 to establish that the City has not proceeded in the manner required by law, that the City’s decision

1 is not supported by the findings, or that the findings are not supported by the evidence. (Code Civ.
2 Proc., § 1094.5.) The Court’s inquiry is limited to whether the City’s determination is supported by
3 substantial evidence. (*See Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1338-39.)
4 The Court must presume that the City’s decision is supported by substantial evidence and it is
5 petitioner’s burden to demonstrate the contrary. (*Ibid.*) The Court may only overturn the agency’s
6 decision if, based on the evidence before it, a reasonable person could not have reached the same
7 conclusion. (*Ibid.*) The Second Cause of Action may also be deemed a request for traditional
8 mandamus pursuant to Code of Civil Procedure section 1085, because the City’s determination
9 regarding replacement rental units did not require an evidentiary hearing. (*See Better Alternatives*
10 *for Neighborhoods v. Heyman* (1989) 212 Cal.App.3d 663, 672, fn. 6; *Laurel Heights Improvement*
11 *Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 fn. 5.) Applying that standard
12 of review, FTC bears the burden to establish with substantial evidence that the City’s decision was
13 “arbitrary, capricious, or entirely lacking in evidentiary support.” (*California Oak Foundation v.*
14 *Regents of the University of California* (2010) 188 Cal.App.4th 227, 247.)

15

16 **IV. THE WEST WILKINS PROJECT RECEIVED VALID TOC INCENTIVES**

17 No legal authority supports FTC’s claim that the award of TOC incentives to the Project
18 fatally conflicts with the terms of Measure JJJ. (*See* 1st Amd. Pet., ¶¶ 49-65 [First Cause of Action];
19 ¶¶ 78-81 [Third Cause of Action].) The Opening Brief reiterates arguments previously rejected by
20 the Court in the related actions that the City’s award of height, side yard and open space incentives
21 requires legislative approvals by the City Council, and also asserts that the incentive awards required
22 modification of Specific Plan standards. (*See* Opening Br. at 5:26-6:12.) Defendants incorporate
23 herein by reference the arguments set forth in Section IV(F) of the TOC Brief. (*See* JRJN, Ex. 2 at
24 24:12-27:23.) As this Court has concluded, the incentives provided by the TOC Guidelines are
25 consistent with and do not exceed the scope of Measure JJJ. (*See* TOC Ruling at 9-11.)

26 Notably, FTC does not contend that the incentives awarded to the Project were not
27 authorized by the TOC Guidelines. As explained in the City’s findings for the Project’s TOC
28 Program Compliance Review, the Project in this case meets all applicable criteria under the TOC

1 Guidelines for the Incentives it was awarded. First, the Project is located within one-half mile (2,640
2 feet) from the Metro Purple Line Extension, Westwood/UCLA Station, a qualifying “Major Transit
3 Stop.” (AR 245, TOC AR 294.) Second, the Project qualifies as an Eligible Housing Development
4 as it includes the construction of a 10-unit multi-family apartment building with two units restricted
5 for Very Low Income households. (AR 245-46.) As an eligible Tier 3 development with more than
6 15 percent of its units reserved for Very Low Income Households, the Project was eligible for an
7 award of up to three Tier 3 Base Incentives and three Tier 3 Additional Incentives. (AR 245-46.)
8 In this case, the Project requested and was awarded Base Incentives for increased density and
9 reduced parking, as well as three Tier 3 Additional Incentives for increased height, and reductions
10 in side yard and open space. (AR 246.)

11 FTC identifies no case law or other authority to support its argument that the grant of TOC
12 Incentives to the Project required legislative approvals. It is well-established that municipalities can
13 authorize exceptions to development standards without requiring re-zoning or other legislative
14 action. (*Tustin Heights Assn. v. Bd. of Supervisors of Orange Cty.* (1959) 170 Cal.App.2d 619, 633-
15 34, citing *Rubin v. Board of Directors* (1940) 16 Cal.2d 119, 124 [distinguishing “spot zoning” and
16 other zoning amendments from variances or exceptions, which allow administrative bodies to
17 authorize deviations from existing zoning standards]; accord, *San Diego Cty. v. McClurken* (1951)
18 37 Cal.2d 683, 691 [denying petitioner’s claim that the denial of a variance request was
19 discriminatory, and ruling that “the granting or denial of variances rests largely in the discretion of
20 the body designated by the zoning ordinance for that purpose, and a denial of a variance will not be
21 disturbed in the absence of a clear showing of abuse of discretion”].)

22 Here, the City appropriately determined, based on the TOC Guidelines, that the Additional
23 Incentives awarded to the Project, including increased height and open space, were to be calculated
24 based off the otherwise applicable standards in the Specific Plan. (AR 245-46.) The TOC
25 Guidelines specify that permitted Base or Additional Incentives “shall be based off the otherwise
26 allowable development standards for the property found in a zoning ordinance, Specific Plan, ... or
27 other local condition, law, policy, resolution or regulation.” (TOC AR 325.) Departures from
28 height, yard, and open space requirements clearly fall within the understanding of “incentives” in

1 the TOC Guidelines. (*See* TOC Ruling at 11.) The Menu of Additional Incentives in the TOC
2 Guidelines explicitly includes deviations, or exceptions from City development standards involving
3 yards, open space, and height among other specified types of development standards in specific
4 plans. (TOC AR 503-05 [TOC Guidelines, § VII].) As there is no requirement for the Project to
5 obtain legislative entitlements for the awarded incentives, FTC’s claim should be rejected.

6

7 **V. THE AWARDED TOC INCENTIVES ARE CONSISTENT WITH THE**
8 **WESTWOOD COMMUNITY MULTI-FAMILY SPECIFIC PLAN**

9 FTC’s second argument fails because the TOC Guidelines expressly authorize and
10 contemplate the granting of development incentives for eligible projects located within Specific
11 Plan areas in the City. The Opening Brief challenges the City’s approval of the Project on the
12 grounds that the requirements of the Westwood Community Multi-Family Specific Plan supersede
13 the TOC Program. (*See* Opening Br. at 6:13-7:28.) However, FTC cites no legal authority
14 supporting its contention that the City’s approval of the Project is invalid because the TOC
15 Incentives awarded to the Project allow the Project to deviate from the Specific Plan’s development
16 standards for height, setbacks, and open space.

17 The sole citation for FTC’s argument is to a single statement in the Specific Plan providing
18 that where its provisions differ from Chapter 1 of the L.A.M.C., “the Specific Plan shall prevail and
19 supersede the applicable provisions of that Code.” (Opening Br. at 6:27-7:2, citing RJN Ex. 1 at 10
20 [Specific Plan].) FTC’s argument completely ignores the express language of the TOC Guidelines
21 providing that incentives may be awarded to residential projects subject to a Specific Plan, as well
22 as the provisions of the L.A.M.C. establishing that TOC development incentives are available to
23 eligible housing projects in transit-proximate areas. In such cases, the TOC Guidelines provide that
24 Incentives “shall be based off” the standards found in a Specific Plan. (TOC AR 325.) That is
25 precisely the approach taken by the City in this case, and there is no inconsistency between the
26 Specific Plan and the TOC Program codified in the L.A.M.C.

27 ///

28 ///

1 **A. The TOC Program Authorizes Awarding Incentives in Specific Plan Areas.**

2 In approving Measure JJJ, the voters authorized the establishment of the TOC Program
3 providing for, among other things, the award of development incentives to all housing projects
4 meeting certain defined criteria, including new residential projects in specific plan areas.
5 (TOC AR 18–19.) Courts construe a local ordinance enacted by a citizens’ initiative, like Measure
6 JJJ, “under the same principles of construction applicable to statutes enacted by the Legislature.”
7 (*Farmers Ins. Exch. v. Superior Ct.* (2006) 137 Cal.App.4th 842, 851.) Courts first look to the plain
8 language to “examine the statutory language, giving the words of the statute their ordinary and usual
9 meaning and construing them in the context of the statute as a whole and the overall statutory
10 scheme.” (*Ibid.*) “Extrinsic materials, such as analyses and arguments contained in the official
11 ballot pamphlet, may be used to interpret ambiguous language or to confirm the plain meaning of
12 the provision.” (*Protect Our Benefits v. City & Cty. of San Francisco* (2015) 235 Cal.App.4th 619,
13 633.) Such materials, however, “may not be used to add to or rewrite the provision to conform to
14 an assumed intent that is not apparent in its language.” (*Id.* [internal citations omitted].)

15 As set forth in Measure JJJ and later codified in L.A.M.C. Section 12.22.A.31(b)(1), the
16 TOC Program specifies that all projects meeting the TOC Program eligibility requirements are
17 eligible to obtain TOC Incentives:

18 A Housing Development located within a TOC Affordable Housing Incentive Area
19 shall be eligible for TOC Incentives if it provides minimum required percentages of
20 On-Site Restricted Affordable Units, meets any applicable replacement requirements
21 of California Government Code Section 65915(c)(3), and is not seeking and receiving
a density or development bonus under the provisions of California Government Code
Section 65915 or any other State or local program. (TOC AR 19 [emphasis added].)

22 Further, the TOC Program makes clear TOC Incentives shall apply to all qualifying housing projects
23 within a half mile raise of a Major Transit, regardless of the project’s location within the City:

24 This Transit Oriented Communities Affordable Housing Incentives Program and the
25 provisions contained in the [TOC Guidelines], shall apply to all Housing Developments
26 that are located within one-half mile radius of a Major Transit Stop.... (TOC AR 19.)

27 The plain language of the TOC Program does not in any way limit the availability of
28 Incentives based on location other than the requirement that a project be located within a one-half

1 mile radius of a Major Transit Stop. (TOC AR 19.) As relevant here, nothing in the TOC Program
2 text prohibits or otherwise limits the availability of TOC Incentives for projects located in a Specific
3 Plan Area or elsewhere. The City’s interpretation of the TOC Program, codified in the L.A.M.C.,
4 is entitled to substantial deference by this Court and “entitled to great weight unless it is clearly
5 erroneous or unauthorized.” (*Berkeley Hills Watershed Coal., supra*, 31 Cal.App.5th at 896.)

6 Further, the TOC Program is codified in L.A.M.C. Section 12.22, titled “Exceptions.” (*See*
7 TOC AR 18.) The TOC Program provides housing development incentives, or exceptions to
8 development standards, for eligible residential projects who voluntarily choose to take advantage of
9 those exceptions. L.A.M.C. Section 12.22 includes other zoning exceptions, such as the City’s State
10 Law Density Bonus Program which exempts specified affordable housing projects from height
11 standards, setbacks, and other development standards. (*See* TOC AR 373, 379-82 [L.A.M.C.
12 § 12.22.A.25(e) – Incentives].) FTC identifies no section of the L.A.M.C. or other legal authority
13 to support its argument that the provisions of the Specific Plan supersede the exceptions authorized
14 by Section 12.22. The City has determined that the incentives provided by the TOC Program, as
15 approved by the voters, are available to eligible residential projects notwithstanding the restrictions
16 in any specific plan. That interpretation is entitled to judicial deference. (*See Berkeley Hills*
17 *Watershed Coal.*, 31 Cal.App.5th at 896.)

18 **B. The TOC Guidelines Expressly Allow Deviations from Specific Plan Standards.**

19 In addition to the text of TOC Program codified in the City’s zoning code, the City has also
20 adopted TOC Guidelines for the implementation of the TOC Incentives program. (TOC AR 324.)
21 The TOC Guidelines serve as the Department of City Planning’s interpretation of the TOC Program
22 codified at L.A.M.C. Section 12.22.A.31 and, as a result, it “is entitled to great weight unless it is
23 clearly erroneous or unauthorized.” (*Berkeley Hills Watershed Coal.*, 31 Cal.App.5th at 896, citing
24 *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1193.) “Greater
25 deference is accorded an agency’s interpretation where the agency has expertise and technical
26 knowledge, especially where the legal text to be interpreted is ... entwined with issues of fact,
27 policy, and discretion.” (*Id.*)

28 ///

1 FTC’s argument that the award of TOC Incentives is superseded by development standards
2 of the Westwood Community Multi-Family Specific Plan is directly refuted by the plain language
3 of the City’s TOC Guidelines. Section I of the TOC Guidelines squarely addresses the application
4 of TOC Incentives for projects located in a Specific Plan area. That section states, in relevant part:

5 In cases where Base or Additional Incentives are permitted, they shall be based off the
6 otherwise allowable development standards for the property found in a zoning
7 ordinance, Specific Plan, Community Plan Implementation Overlay (CPIO), overlay
district, or other local condition, law, policy, resolution, or regulation...(TOC AR 325.)

8 In adopting the TOC Guidelines, the City made clear its intent that TOC Incentives be made
9 available to projects otherwise subject to a Specific Plan. For example, Section VI (Base Incentives)
10 of the TOC Guidelines specify that Floor Area Ratio (“FAR”) increases are limited to 45% in
11 Specific Plan areas that regulate residential FAR. (TOC AR 355.) In Section V (Application and
12 Approvals), the TOC Guidelines note that projects seeking Additional Incentives are subject to
13 applicable Specific Plan design guidelines. (TOC AR 354.) These explicit references to Specific
14 Plans confirm that the TOC Guidelines were intended to be implemented in conjunction with
15 specific plan requirements where applicable. FTC’s assertion that the Specific Plan’s development
16 standards supersede the TOC Incentives is entirely inconsistent with the language of the TOC
17 Guidelines. (*Protect Our Benefits*, 235 Cal.App.4th at 633 [court cannot interpret statute “to
18 conform to an assumed intent that is not apparent in its language.”].)

19 As the Court has held, the TOC Guidelines were validly adopted by the Director of Planning
20 and the City Planning Commission, and are consistent with Measure JJJ as approved by the voters.
21 (*See* TOC Ruling at 6-11.) Further, the authorization of TOC Incentives in Specific Plan areas is
22 consistent with the fundamental policy of the voter initiative to incentivize development of new
23 housing in close proximity to public transportation. (*See* TOC AR 19 [TOC Program “shall apply
24 to all Housing Developments that are located within a one-half mile radius of a Major Transit
25 Stop.”].)

26 In such situations, the TOC Guidelines expressly provide that the Incentives are to be applied
27 based off the Specific Plan’s standards. This is precisely the approach taken by the City in this case.
28 As the Opening Brief acknowledges, the three Additional Incentives requested and approved for the

1 Project were based on the Specific Plan’s development standards: (1) a 30 percent reduction in side
2 yard (5.6 feet compared to the Specific Plan standard of 8 feet); (2) a 25 percent reduction in open
3 space (2,625 square feet in lieu of 3,500 square feet); and (3) a 22-foot increase in building height
4 (maximum of 55 feet compared to 33 feet allowed under the Specific Plan). (AR 238-39.) The
5 Base Incentives for increased density and parking reductions similarly were based off the standards
6 in the Specific Plan. (AR 245-46.) The City’s interpretation of the TOC Program that the Project
7 was eligible for TOC Incentives notwithstanding the site’s location in the Specific Plan area should
8 not be disturbed. (*See Berkeley Hills Watershed Coal.*, 31 Cal.App.5th at 896.)
9

10 **VI. SUBSTANTIAL EVIDENCE ESTABLISHES THAT THE PROJECT’S APPROVAL**
11 **COMPLIES WITH STATE REQUIREMENTS FOR REPLACEMENT UNITS**

12 FTC’s argument that the Project was required by state law to provide three rent-controlled
13 affordable units is factually baseless because the existing dwelling units on the Project site were
14 withdrawn from the rental market in 2003 and, therefore, do not constitute “rental” units that require
15 replacement. FTC’s Second Cause of Action is based on the erroneous premise that the existing
16 building at the Project site includes three rental units and is subject to the City’s Rent Stabilization
17 Ordinance (“RSO”). (*See* 1st Amd. Pet., ¶¶ 68-37; Opening Br. at 8:21-26.) However, the
18 Administrative Record demonstrates that no rental units triggering the replacement requirement are
19 present on the Project site, as the three existing units were withdrawn from the rental market under
20 the Ellis Act in 2003. The City thus correctly found that the replacement unit requirements of
21 Assembly Bill 2256, codified in Government Code section 65915, do not apply to the Project.
22 (AR 247, AR 545.) FTC’s argument ignores the substantial evidence in the record supporting the
23 City’s determination that no units requiring replacement exist on the Project site. Moreover, FTC
24 fails to identify any admissible evidence establishing that the City’s review and subsequent approval
25 of the Project was arbitrary, capricious, or entirely lacking in evidentiary support.

26 The TOC Program requires that eligible housing development projects meet “any applicable
27 replacement requirements of California Government Code section 65915(c)(3)” prior to the issuance
28 of any building permit. (L.A.M.C. § 12.22.A.31(b)(1) [RJN, Ex. 6 at 1].) Government Code section

1 65915(c)(3) in turn provides that housing development projects seeking a density bonus or other
2 incentives must replace all “rental dwelling units” existing on the property that are subject to rent
3 control at the time the application is submitted, as well as any rent-controlled units that have been
4 vacated or demolished in the preceding five years.

5 Replacement units are not required if the previously rent-controlled units on the property
6 have been withdrawn from the rental market in accordance with the Ellis Act and local regulations.
7 (*See* Gov. Code, § 65915(c)(3).) The Ellis Act governs the removal of rent-controlled units from
8 the rental market and authorizes municipalities to adopt procedures for the withdrawal of such units
9 and restrictions on the return of such units to the rental market. (*See* Gov. Code, § 7060.4.) Under
10 the City’s Ellis Act provisions, landlords of rental units subject to the RSO may withdraw rental
11 units from the rental market in accordance with City procedures, namely, by filing a Notice of Intent
12 to Withdraw units from rent or lease. (L.A.M.C. § 151.23.A [RJN, Ex. 7 at 29-30].) Upon filing
13 the notice, those units are no longer considered “rental dwelling units” for purposes of the
14 replacement requirements in Government Code section 65915(c)(3) unless and until the withdrawn
15 units are returned to the rental market, even though the site remains designated as an RSO property.

16 During the administrative review process at issue, FTC submitted a comment letter to the
17 Westwood Design Review Board asserting that the Project was required to replace three rental units
18 pursuant to Government Code section 65915. (AR 99.) HCIDLA undertook an investigation of the
19 Project site’s rental history and on July 5, 2019 determined that the three units on the property were
20 no longer were considered “rental dwelling units” after having been withdrawn from the rental
21 market under the Ellis Act by the filing of a Notice of Intent to Withdraw in 2003. (AR 545. *See*
22 *also* JRJN, Ex. 4 [Notice of Intention to Withdraw].)³ Further, no residential units were built or
23 demolished on the site within the previous five years. HCIDLA thus concluded that “[n]o AB 2556
24 replacement affordable units are required.” (AR 545. *See also* Gov. Code, § 65915(c)(3) [limiting

25 _____
26 ³ Judicial notice of the Notice of Intention to Withdraw is proper here, where no evidentiary
27 hearing on the replacement housing determination was held, “to establish whether the agency
28 fulfilled its duties in making the decision, or to assist the trial court in understanding the agency’s
decision.” (*Outfitter Properties, LLC v. Wildlife Conservation Bd.* (2012) 207 Cal.App.4th 237,
251, citing *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578-79.)

1 replacement to properties presently containing rent-controlled rental dwelling units or units vacated
2 or demolished in the preceding five year period].) This issue was expressly addressed in the
3 Planning Director’s Determination Letter approving the Project’s TOC incentives. The
4 Determination Letter states: “Pursuant to the Determination made by the Los Angeles Housing and
5 Community Investment Department (“HCIDLA”) dated July 5, 2019, AB 2556 [sic] determined
6 that no units are subject to replacement under AB2256, provisional and subject to verification by
7 HCIDLA’s Rent Division.” (AR 247.)

8 The housing replacement requirement was also addressed in the Appeal Recommendation
9 Report to the Planning Commission.⁴ That Report summarized the HCIDLA investigation and
10 concluded that no units are subject to replacement under AB2256. (*See* AR 364.) Planning Staff
11 also noted the July 2019 determination made by HCIDLA that no units were subject to replacement
12 under AB 2556. The City Planning Commission ultimately adopted the Planning Director’s
13 Determination, Findings and Conditions of Approval regarding the housing replacement issue. (*See*
14 AR 548.) The HCIDLA letter, the Planning Director’s Determination Letter, the Appeal
15 Recommendation Report and the City Planning Commission’s Letter of Determination all provide
16 consistent substantial evidence that no replacement unit requirements apply to the Project.

17 FTC identifies no competent and admissible evidence to the contrary, and cites to the
18 findings in the HCIDLA letter. The only other documents cited in the Opening Brief are a printout
19 from the City Planning Department’s ZIMAS website dated November 19, 2018 and a declaration
20 of FTC’s counsel purporting to contain December 2021 screenshots from the City’s text-based
21 service regarding the status of the Project site under the RSO. (*See* Opening Br. at 8:21-26; AR 38-
22 40.) First, neither the City’s website nor its text-based service purport to guarantee that any
23 information provided is up-to-date or accurate. (*See* JRJN, Ex. 5 [ZIMAS Terms and Conditions:
24 “Due to the dynamic nature of the information contained within this web site and the reliance on
25

26 ⁴ FTC did not address the housing replacement requirement in its appeal of the Planning
27 Director’s Determination and thus failed to exhaust administrative remedies on this issue. (*See*
28 AR 319-29.) Exhaustion of available remedies is a jurisdictional prerequisite. (*See Mani Brothers
Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1394.)

1 information from outside sources, the City of Los Angeles, Department of City Planning does not
2 guarantee the accuracy or reliability of the information transmitted from this web site.”]; Ex. 6
3 [LAHD Website Disclaimer].) More importantly, the mere fact the City’s website or text-
4 based service indicates the property is subject to the RSO does not undermine the City’s well-
5 supported replacement housing determination. The City concluded, based on HCIDLA’s
6 investigation, that no qualifying “rental dwelling units” triggering Government Code section
7 65915(c)(3)’s replacement requirements were located on the site. (AR 545.) Under the substantial
8 evidence standard of review, it is not the responsibility of the court to weigh conflicting evidence.
9 The Court’s inquiry “begins and ends with a determination as to whether, on the entire record, there
10 is any substantial evidence” in support of the agency decision. (*ASP Properties Group, L.P. v. Fard,*
11 *Inc.* (2005) 133 Cal.App.4th 1257, 1266.)

12 Here, the City department tasked with implementing State and local housing laws undertook
13 an investigation of the property and determined that no replacement units were required for the
14 Project based on the Ellis Act withdrawal. (AR 545.) As substantial evidence supports the City’s
15 determination and FTC has failed to provide any competent evidence to the contrary, the Court
16 should not second-guess the City’s decision, and FTC’s claim should be denied.

17

18 **VII. CONCLUSION**

19 For the reasons set forth above, Respondents and Real Parties respectfully request that the
20 Court deny the Petition in its entirety, and grant such further relief as the Court may deem necessary
21 and proper.

22

23 DATED: January 26, 2022

MEYERS NAVE

24

By: 

25

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1 DATED: January 26, 2022

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By: /s/ Elisa L. Paster [email authorization provided]
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PROOF OF SERVICE

Fix the City, Inc., v. City of Los Angeles, et al.
Case No. 20STCP03529

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 707 Wilshire Blvd., 24th Floor, Los Angeles, CA 90017.

On January 26, 2022, I served true copies of the following document(s) described as **JOINT OPPOSITION BRIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address tstephens@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 26, 2022, at Los Angeles, California.



Teresa Stephens

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SERVICE LIST

Fix the City, Inc., v. City of Los Angeles, et al.
Case No. 20STCP03529

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