

## FIX THE CITY

October 14, 2019

Via Email: [CPC@lacity.org](mailto:CPC@lacity.org)

The Hon. Samantha Millman, Chair

Los Angeles City Planning Commission

200 North Spring Street, LA, CA 90012

**RE: OPPOSITION TO 2301 WESTWOOD BOULEVARD DIR 2018-6719-TOC-WDI,**  
**ENV-2018-6720-CE**

Dear CPC Commissioners:

*This letter supplements the timely appeal filed on this project by Fix The City (attached). To be clear, Fix The City is not challenging voter-approved JJJ. Instead Fix The City believes the City's implementation of JJJ via the TOC guidelines as applied to this project and others exceeds the authority provided in JJJ as well as violates several key mandates of JJJ.*

*Fix The City encourages a close reading of JJJ Section 6 before you vote on October 24, 2019. The language is very clear. There is no authority to provide additional incentives, incentives combined with other incentive programs, nor is there authority to create the TOC Tier system as used on this and other projects. Section 6 is limited to the incentives "herein" of Section 6: (1) additional residential FAR, (2) additional density and (3) reduced parking.*

TOC projects under JJJ Section 6 are intended to be ministerial and are not eligible for discretionary incentives absent voter approval.

The City Planning Commission must stay within the four corners of voter-approved JJJ **as written** which includes, but is not limited to require prevailing wages (Affordable Housing and Good Jobs) and limit incentives to those specified in Section 6 TOC, with incentives based on the underlying zone and not the Tiers as they were not in JJJ and have not been authorized by the voters.

Contrary to the express language of JJJ, The Director of Planning's Determination for 2301 Westwood Boulevard approved additional incentives that were not included in JJJ Section 6. In approving the project, the Director acted in an arbitrary and capricious manner.

The "Additional" discretionary incentives unlawfully awarded to 2301 Westwood Boulevard can only be granted to projects under **JJJ Section 5(e)**, not Section 6 projects.

**There is no exemption from Prevailing Wage.** This project has not agreed to the Labor Standard and therefore does not qualify for JJJ incentives. The City has failed to require the Labor Standard for this and virtually all other TOC projects. JJJ mandated prevailing wage for

BOTH GPA's and TOC projects. The **"Findings"** for **JJJ Section 2** clearly state the purpose of the initiative. These findings are for both Section 5 (GPA's) and Section 6 (TOC) projects:

"Now THEREFORE, based upon these findings the people declare that the City adopt the legislation contained herein in order to address our homeless and affordable housing crisis, **while also** creating good jobs with family-supporting wages." (Emphasis added.)

Finally, the implementation procedures for JJJ required and still require Council (legislative) approval under state law (California Govt. Code Section 65915(d)(1)(C)(3)).

JJJ TOC Section 6 does not authorize **increased height**, violation of **transitional height (LAMC 12.21.1 A.10)**, **yard reduction (LAMC 12.21.C.1(g))** or **open space reduction (LAMC 12.21G.2(b)(3))**, and it does not permit changing the threshold for **Site Plan Review** from an increase of 50 dwelling units above existing units to 50 units over the base zoning. The existing density is the baseline by which Site Plan Review determines the threshold.

We incorporate by reference our lawsuit and testimony challenging 10400 Santa Monica Boulevard based on granting of incentives not authorized by JJJ Section 6 for that and other TOC projects and failure to adhere to the labor standard of JJJ. We also incorporate by reference our testimony submitted on 10306 Santa Monica Boulevard and note that the day after submission, the public hearing on appeal was postponed while additional environmental analysis is being conducted. At issue is the fact that the project has Santa Monica Fault lines and trace faults running across the site, that the site is located on a scenic highway that is an historic resource, and that there are cumulative impacts from all the TOC projects proposed for the same area.

**FAILURE TO ACCEPT APPEAL BY FIX THE CITY AND TO INCLUDE IT IN THE RECORD**

Fix The City filed a timely appeal of the Director's Determination. The appeal addressed not just the Discretionary TOC Incentives, but also the street dedication determination and the Class 32 Categorical Exemption.

The Planning Department erred in returning the appeal after accepting it and our payment, and then again erred in refusing to include that appeal as part of the record for this project. In addition, we incorporate by reference the opposition and appeal of other individuals and organizations regarding this project. *Anyone can appeal a CEQA determination.* This appeal right is not limited to abutting owners. The Planning Department acted in an arbitrary and capricious manner denying Fix The City due process by eliminating the right to appeal this project.

**NO COMPREHENSIVE ANALYSIS OF HOUSING AVAILABILITY AND MONITORING PROGRAM**

Measure JJJ requires that before TOC Guidelines can be adopted, a comprehensive analysis of housing availability must be conducted in for EACH unique area (JJJ Section 4.A). JJJ requires a

“program to create and monitor an inventory of units within the Community Plan Area that are: subject to a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of Lower or Very Low Income; subject to City Rent Stabilization Ordinance; and/or occupied by Lower-Income or Very Low-Income households.”

No such comprehensive study or monitoring program exists either for the Expo Specific Plan Area or the TOC areas, despite JJJ and specific instructions to the Planning Department from the City Council (CF 2016-0684-S1). Therefore, the approval of TOC incentives for 2301 Westwood Boulevard is *ultra vires*.

Instead, of following the Council’s January 24, 2017 directive regarding preparation of the TOC Guidelines, CPC and the Director of Planning defied the clear mandate of the City Council. They never conducted a comprehensive study, failed to report back to the City Council regarding the formulation of the Guidelines, and they did not obtain legislative approval for the implementation of JJJ as required by Cal Govt. Code Section 65915(d)(1)(c)(3).<sup>1</sup>

This rejection of the need for Council approval is in contrast with the pattern and practice of the Planning Department in its implementation of SB 1818 and other affordable housing programs such as RAS3 and RAS4. In those cases, the implementation plan, including incentives, was adopted as an ordinance approved by the City Council. Public notice was provided and public hearings were conducted.

Note that the City Council instructed the Planning Department to prepare and present such a report to the City Council immediately after JJJ passed. A motion by Mitch O’Farrell (CF 16-0684-S1) on November 22, 2016, two weeks after JJJ was approved by the voters, also ordered “preparation of a new affordable housing incentive program for developments near major transit stops.” It continued, “It is imperative that the implementation process of this ballot initiative be fully vetted and discussed by policy makers and all interested stakeholders.”

The November 22, 2016 motion (CF 2016-0684-S1) stated:

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<sup>1</sup> This state affordable housing statute clearly states: “The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.” Thus, the TOC Guidelines required City Council approval. In the absence of City Council approval, approval of incentives unauthorized by the City Council is in violation of state law. This would be true even if they did not include “Additional” Incentives or Concessions in violation of the clear language and intent of JJJ Section 6 to limit TOC projects to increased FAR, density and reduced parking. The only projects eligible for additional incentives are projects described in JJJ Section 5(e).

“**I THEREFORE MOVE** that the Council request the City Attorney, with the assistance of the Planning Department, and in consultation with the Bureau of Contract Administration, to prepare a report on the implementation, enforcement, resources needed, timeline to implement, and any other impacts of the *Affordable Housing and Labor Standards Related* to City Planning Initiative Ordinance JJJ (Council File No. 16-0684).”

CPC and the Director of Planning had ample time to follow the directive of the City Council motion, which was passed on January 24, 2017. *No material change in land use can occur until the completion of a comprehensive assessment of such proposed changes by the Planning Department*, as required by JJJ Section 4.A. The City Council merely repeated the mandate of JJJ. But CPC and the Planning Director chose to ignore both the Initiative and the City Council.

The incentives approved for 2301 Westwood Boulevard, and for that matter, across the city, violate the clear language of JJJ and could not be approved until the comprehensive analysis and monitoring programs are established.

#### **CONFLICT WITH THE GENERAL PLAN, COMMUNITY PLAN AND FRAMEWORK ELEMENT**

Many of the improperly granted incentives such as height and transitional height conflict with the General Plan and the West L.A. Community Plan. Failure to provide for adequate first-responder response-time conflicts with the West L.A. Community Plan and the Framework Element, including a binding commitment made by the City with regard to the provision of adequate public safety capacity. Public safety is job #1 per Section 35(a) of the California Constitution:

- “(1) Public safety services are critically important to the security and well-being of the State’s citizens and to the growth and revitalization of the State’s economic base.
- (2) The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services.”

#### **CHALLENGE TO GUIDELINES IS NOT TIME-BARRED**

The incentives approved by the Director of Planning are based on an administrative regulation and not an ordinance (CPC Staff Report May 15, 2017, p. F-1). The Planning Department has incorrectly listed the TOC Guidelines as an Ordinance, but they are not. Guidelines are subject to court review at any time.

By bypassing the City Council, CPC substituted its advisory authority for the Council’s legislative authority. This was arbitrary and capricious and a prejudicial abuse of authority.

The previous pattern and practice of the City of Los Angeles in adopting new regulations is to publish notice and conduct a public hearing at CPC and then a referral to the City Council's Planning and Land Use Committee. In fact, that is what the City Council mandated in CF 2016-0684-S1. It instructed CPC to conduct a full public vetting and discussion with *policy-makers*. Elected officials are policy-makers; political appointees on CPC are not. Several affordable housing bonus programs were implemented through ordinance: SB 1818 and RAS3 and RAS4. TOC is the only bonus program to attempt implementation merely by administrative regulation.

The TOC Guidelines did not undergo any reasonable public scrutiny. In fact, only 16 letters were received regarding the Guidelines, mostly from the development community (Guidelines Staff Report). This is dispositive that the public was unaware of a major policy issue that would unilaterally change land use throughout the City. Adding insult to injury, the Agenda for the CPC Item 10 stated that no public hearing was required.<sup>2</sup>

The instructions of both JJJ and the Council were ignored.

- No comprehensive study was conducted on affordable housing impacts,
- No monitoring program exists to protect affordable housing and
- The implementation procedures for TOC were never vetted by the Council, the public at large, and were not adopted by a legislative body.

## **MEZZANINE**

It is not clear from the drawings provided whether the "Mezzanine" Floor complies with ZA 2019-2359 (ZAI) with regard to:

- Whether the stairs were included in the mezzanine floor area
- How much of the mezzanine is enclosed with a 42-inch-high wall, counter or guard rail?
- How much of the mezzanine is enclosed above 42-inches?
- Whether more than 10 percent of the floor area of the mezzanine level is enclosed with walls.
- Whether there are closets in the bedrooms on mezzanines. A bedroom is required to include a closet. The mezzanine is not a bedroom, as described in the application, without a closet.

The Director's Determination failed to make **required Site Plan Review findings** under LAMC 16.05. This project is an increase in 50 dwelling units over the current commercial use. It is

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<sup>2</sup> This process of implementation was expected to also occur for TOC Guidelines, as explained by Barbara Broide in her letter in opposition to 2301 Westwood Boulevard. She was present, but saw that the Agenda stated that no public hearing was required, and did not provide public comment. She expected outreach that never came.

therefore subject to Site Plan Review. JJJ did not authorize an exemption from Site Plan Review for TOC projects.

**CONCLUSION**

There are several violations of LAMC, the General Plan, and CEQA identified in the appeal that was unlawfully denied by the Planning Department AFTER it had accepted our timely appeal and payment. In brief:

- Increased height.
- Violation of the City’s Transitional Height Ordinance (LAMC 12.21.1 A.10
- Violation of Site Plan Review (the threshold formula for SPR cannot be changed by CPC in violation of an adopted ordinance and this was not an incentive permitted by JJJ.
- Violation of yard and open space requirements (note that a yard is defined by the city as from the ground up, not from the podium of a mixed-use building).
- The cumulative impacts of TOC projects in this area must be analyzed. The Planning Department’s recent map of TOC projects shows a large number of projects nearby.
- The premise of TOC/TOD is that people will take transit and not be in their cars. The LA Times stated that Expo Line is at 175% capacity and cannot have more trains added or longer trains. The premise of TOC/TOD therefore fails in the Expo plan area. Increased development in the area absent mass transit capacity will increase congestion.
- Metro has reported that bus ridership is down and use of individual cars is up. There is no capacity to accommodate densification. The Expo Line has been overcrowded and lacks the assumed capacity to carry more passengers due to densification near the corridor. Busses have been shunned by residents. Increased development in the area absent mass transit capacity will increase congestion.
- No study exists of the impacts of increased density, height and an increased homeless population on demand for first responder services, which were already inadequate as defined by the LAFD and PD. This includes specifically the first-in station (92s) for the project which was downgraded from a task force to a light force (loss of an engine) a decade ago.
- There is no monitoring or implementation plan to respond to changes in bus service that would downgrade a major transit stop to a non-major transit stop. And no remedy to stop an approved project after the major transit stop is removed.

We attach the following documents and recordings as evidence for this appeal:



190816\_Appeal  
Application\_Filed.pc



2301 WW Blvd.  
Appeal Final.pdf




























































1. FTC Appeal to CPC for 2301 WW Blvd.

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## 2. [www.Firestatla.org](http://www.Firestatla.org) response times for LAFD Station 92, the first-in station for 2301 Westwood Boulevard.

























				
FTC Testimony 10306 SMB.docx.pdf	TOC PRESS RELEASE AND PETITION FINAL	Class 32 Categorical Exemption.pdf	BALLOT_Measure JJJ 2016 November Cou	190816_Appeal Application_Filed.pc
				
4052TOC FAQ.pdf	2301 WW Blvd. Appeal Final.pdf	2019_Q2 TOC Project Map p. 5.pdf	16-0684-S2_sc_05-1 5-2018.pdf	16-0684-s2_mot_04- 17-2018 notice to ne
				
16-0684-S2_CA_05-2 5-2018.pdf	16-0684-S1_PLUM RPT_1-10-17.pdf	16-0684-s1_PLUM mot_11-22-2016.pdf	Transit-Oriented Communities (TOC)	TRANSITIONAL HEIGHT ORDINANCE
				
West Los Angeles Community Plan.pdf	Transit verification form 4051.pdf	Transit Referral Form 4050.pdf	TRANSCRIPT_CLEAN _ TOC GUIDELINES A	TRANSCRIPT TOC_CPC_DIR-2017-
				
TRAF.02_LAMC Section 12.21 Yards,	05def.pdf	TOCGuidelines REVISED FEB. 26, 20	TOCGuidelines Clean Copy.pdf	TOC_FAQ.pdf
				
TOC_FAQ Form 4052.pdf	sum_of_zone.pdf	TOC Incentives Los Angeles Transit Ori	TOC Guidelines-SEPT. 22,	TOC GUIDELINES PLANNING 2017 Fall
				
TOC Application.pdf	SITE PLAN REVIEW LAMC 16.docx.pdf	RAS Ord. 174,999.pdf	REPORT FROM CITY PLANNING.pdf	Proposed Guidelines March 13
				
Planning Department Staff Re	Planning Commission Rules a	NIELSEN DECLARATION.pdf	Minutes CPC 5-25-17.pdf~RF5f11	LAMC 12.22 A.31.pdf
				
16-0684_misc_08-28 -19.pdf	16-0684_rpt_08-28- 19.pdf	JJJ Ordinance.pdf	JJJ MOTION.pdf	JJJ BCA administration for L
				
Govt. Code 65943 Timing for processir	GOV_65915. 2019.pdf	2019_Q2.pdf	CPC Agenda May 11, 2017.pdf	Attachment B - TOC email notice.pdf
				
Attachment A - TOC Comment Letters.pdf	TOCGuidelines REVISED FEB. 26, 20	FireStatLA - Stations _ Los Angel	FireStatLA - Stations _ Los Angel	FireStatLA - Stations _ Los Angel

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| Attachment B - TOC<br>email notice.pdf  | Attachment A - TOC<br>Comment Letters.pdezzanine-1edxopf-1                          | ZA-2019-2359ZAI-M<br>MAY 25, 2017 CPC   | AGENDA GUIDELINE   | 16-0684-S1_CA_01-2<br>5-2017.pdf  |
|    |    |    |    |    |
| 16-0684_misc_2_06-<br>15-2016.pdf   | City Council<br>Meeting - Tuesday -   | 01242017_cal.htm  | 16-0684-S2_pc_03-0<br>5-19.pdf~RF4087ed  | 16-0684-S2_pc_03-0<br>5-19 Public Counsel.  |
|    |    |    |    |    |
| 16-0684-s2_mot_04-<br>17-2018.pdf   | 16-0684-S2_CA_05-2<br>5-2018.pdf  | 16-0684-S1_rpt_plu<br>m_1-10-17.pdf   | 16-0684-s1_mot_11-<br>22-2016.pdf  | Planning<br>Department Staff Re   |
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| 7828 Categorical<br>Exemption Class 32.i  | 2019_Q2 (1).pdf   | 05def.pdf   | sum_of_zone.pdf  | RAS Ord.<br>174,999.pdf   |
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| 4. ZIMAS PARCEL<br>PROFILE REPORTS.p  | 3b. 300 RADIUS<br>MAP.pdf   | 3a. ABUTTING<br>PROPERTIES MAP.pc   | 2. VICINITY MAP.pdf  | 1b. INDEX MAP.pdf   |
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| 1a.<br>PHOTOGRAPHS.pdf  | Exhibit A – Project<br>Plans.pdf  | attachment_project<br>description.pdf   | 8. WDI PLANS<br>SET.pdf  | 7. ALTA-TOPO<br>SURVEY.pdf  |
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| 6h. LANDSCAPE &<br>OPEN SPACE PLANS.  | 6g. SECTIONS.pdf  | 6e. ELEVATIONS.pdf  | 6d.<br>ARCHITECTURAL PL  | LOA golbahar trust<br>to westwood llc.pdf   |
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| LOA the westwood<br>llc to noah riley.pdf   | LOA golbahar<br>trusts to noah riley.   | Opposition Letter<br>prior to Determinati   | Opposition letter<br>before Determinatio   | 07_BOE Planning<br>Case Referral Form_  |
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| Neighbor's Appeal<br>2301 Westwood Re   | LOD<br>DIR-2018-6719-TOC-t  | CP-7325<br>TRANSITIONAL HEIG  | 2301 WW LOD<br>clean copy.pdf  | 05_AB 2556<br>Determination Appli   |
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| 02_Environmental<br>Assessment Form.pc  | Findings.docx   | Case Numbers.docx   | 07_BOE Planning<br>Case Referral Form.   | 2301 Westwood<br>CITY FILE - Part 1.pdf   |



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|    |    |    |    |    |
| 2301 Westwood<br>CITY FILE - Part 2.pdf   | LAMC 12.32<br>Legislative Approval  | LAMC 12.36<br>Multiple Approvals--  | 04_Geographic<br>Project Planning Ref  | 03_Transit-Oriented<br>Communities Referr   |
|    |    |    |    |    |
| 02_Environmental<br>Assessment Form.pc  | 01_Department of<br>City Planning Applic  | Findings.pdf  | Findings.docx  | 9. LID Referral<br>Form.pdf   |
|    |    |    |    |    |
| 08_Citywide Urban<br>Design Guidelines  | 07_BOE Planning<br>Case Referral Form_  | 07_BOE Planning<br>Case Referral Form_  | 06_Supplemental<br>Waiver of Dedicatio   | 05_AB 2556<br>Determination Appli   |
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| 5. PUBLIC NOTICING<br>2.pdf   | 5. PUBLIC NOTICING<br>1.pdf   | 4. ZIMAS PARCEL<br>PROFILE REPORTS.p  | 3b. 300 RADIUS<br>MAP.pdf  | 3a. ABUTTING<br>PROPERTIES MAP.pc   |
|  |  |  |  |  |
| 2. VICINITY MAP.pdf   | 1b. INDEX MAP.pdf   | 1a.<br>PHOTOGRAPHS.pdf  | Exhibit A – Project<br>Plans.pdf   | attachment_project<br>description.pdf   |

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8. WDI PLANS  
SET.pdf



7. ALTA-TOPO  
SURVEY.pdf



6h. LANDSCAPE &  
OPEN SPACE PLANS.



6g. SECTIONS.pdf



6e. ELEVATIONS.pdf



6d.  
ARCHITECTURAL PLANS  
West Los Angeles  
Community Plan.pdf



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Sincerely yours,  
*Laura Lake*  
Laura Lake, Ph.D.  
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