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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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

Petitioner and Plaintiff,

v.

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

Respondents and Defendants.

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

Real Parties in Interest.

Case No. 20STCP03529
Related Case No. 19STCP03740
Related Case No. 20STCP01569

Assigned to Hon. Mitchell L. Beckloff

**FIRST AMENDED VERIFIED
PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

**(Code of Civil Procedure §§ 526, 1060,
and 1085.)**

Action Filed: October 26, 2020
Trial Date: February 25, 2022

1 **INTRODUCTION**

2 1. Fix the City brings this challenge to the May 19, 2020 approval by the City of Los
3 Angeles, through the Los Angeles City Planning Commission, of a 10-unit, 55-foot high building
4 located at 10757-10759 West Wilkins Avenue, in the City of Los Angeles (“the Project”)
5 adjacent to single family homes, a project that flagrantly violates a specific plan for multi-family
6 housing in Westwood. The approval of the Project was contrary to state and local laws, and is
7 premised upon the granting of improper incentives awarded pursuant to *ultra vires*, additional or
8 discretionary development incentives. The entitlements must be rescinded on these bases.

9 2. Fix the City seeks to enforce the mandates of the November 2016 ballot initiative
10 Measure JJJ, which establishes a program to award discretionary incentives to projects seeking
11 General Plan Amendments, zone and height district amendments that meet labor standards, and
12 specified ministerial incentives for the provision of affordable housing in projects located in
13 Transit Oriented Communities (“TOC”), the area one-half mile from a “major transit stop.” Fix
14 the City challenges the policy and practice of the City of Los Angeles of awarding
15 “additional/discretionary” incentives for the “Transient Oriented Communities Affordable
16 Housing Incentive Program,” (“TOC program”), which is limited to up to three ministerial
17 incentives in the measure approved by the voters, in the approval of the 10757-10759 West
18 Wilkins Avenue project and numerous other TOC projects like it.

19 3. While the voters approved certain incentives for the TOC program in Measure
20 JJJ, Section 6, the Project received incentives well in addition to those. These additional
21 discretionary incentives contradict numerous development standards in the City’s zoning code
22 and the Westwood Community Multi-Family Residential Specific Plan, and were not adopted by
23 the voters. The City has far exceeded the authority granted it by the voters, as well as its own
24 laws. The Project and numerous others throughout the City are regularly awarded development
25 “incentives” based on “TOC Tiers” that were not authorized by the voters enacting Measure JJJ,
26 and failed to provide for well-paid jobs adhering to the prevailing wage (“Labor Standard”) for
27 Los Angeles. The “discretionary” incentives awarded to 10757-10759 West Wilkins Avenue (22
28 additional feet in height (or two stories), reduced side yards, and reduced open space), constitute

1 vast departures from the provisions of the ballot measure approved by voters, in violation of City
2 Charter Section 464(a), which limits amendments and repeals of measures adopted by the voters.
3 The approval of “additional discretionary” incentives not included in Measure JJJ by the City
4 Planning Director and subsequently by the City Planning Commission, constitutes an improper
5 policy and practice of exceeding the bounds of the voters’ mandate in Section 6 of Measure JJJ.
6 Section 6 limits development incentives to three specific ministerial incentives: reduced parking,
7 increased FAR (Floor Area Ratio) and increased density, and does not authorize additional
8 discretionary incentives. The City must be ordered to cease granting *ultra vires* “discretionary”
9 TOC incentives as part of its policies and practices, to rescind the approval of *ultra vires*
10 “discretionary” incentives such as additional height, reduced side yards, etc.
11 (“additional/discretionary incentives”), and to refrain from approving such incentives for other
12 development projects until such time as incentives consistent with Measure JJJ are approved
13 using a process consistent with Measure JJJ, city and state law.

14 4. This 10757-10759 West Wilkins Avenues project is located in an area subject to
15 the Westwood Community Multi-Family Specific Plan, which has its own specific development
16 standards and requirements. The approval of this project allows for development well in excess
17 of these standards, without the requirement of a plan amendment to accommodate this scale of
18 development under LAMC 11.5.7 and while failing to provide affordable replacement affordable
19 housing as required by state and local laws. The TOC Guidelines do not and cannot authorize
20 development in excess of specific plan requirements.

21 5. In addition, the calculation of the incentives under Section 6 is based on the
22 property’s base zone and density (LAMC 12.22 A.31(b)(2)(i)). The Planning Director and City
23 Planning Commission abused their discretion and calculated the incentives based on “TOC
24 Tiers” rather than the clear language of Section 6, which requires applying *base zone and*
25 *density*. The TOC Tiers are not authorized by Section 6. Only the voters can amend this
26 initiative, pursuant to Charter section 464(a).

27 6. The Planning Director and the City Planning Commission consistently abuse their
28 authority each time they approve projects under the TOC program that seek more than the three

1 ministerial incentives authorized by the electorate. Measure JJJ only authorizes such incentives
2 when the applicant seeks discretionary approvals through Section 5 and complies with the Labor
3 Standard (prevailing wage). By granting these discretionary incentives to Section 6, the City
4 Planning Commission and the Director of Planning have entirely undercut the promise of
5 Measure JJJ and its implementing Ordinance No. 186483, to provide both more affordable
6 housing and good paying jobs.

7 **PARTIES**

8 7. Petitioner and Plaintiff FIX THE CITY, INC. (“Fix the City” or “Petitioner”) is a
9 California nonprofit public benefit corporation duly incorporated under the laws of the State of
10 California. Fix the City’s mission is to improve neighborhoods and advocate for sufficient
11 critical infrastructure and public services throughout the City of Los Angeles. Fix the City
12 participated in the approval process for the Project, submitting written comments to the Planning
13 Commission. Petitioner’s members are residents and taxpayers of the City of Los Angeles and
14 are filing this action as private attorney generals. Petitioner also files this action pursuant to
15 Section 7 of Measure JJJ from the November 8, 2016 municipal election, which provides that
16 “[a]ny aggrieved person or resident of the City of Los Angeles shall have the right to maintain an
17 action for equitable relief to restrain any violation of this Ordinance, or City failure to enforce
18 the duties imposed on it by this Ordinance.”

19 8. Respondent and Defendant CITY OF LOS ANGELES (the “City”) is the public
20 governmental entity serving the people of the City of Los Angeles.

21 9. Respondent and Defendant VINCENT P. BERTONI is the Director of City
22 Planning for the City of Los Angeles, and is named in his official capacity only. Mr. Bertoni is
23 the appointed decision-maker who approved the Project.

24 10. Respondent and Defendant LOS ANGELES CITY PLANNING COMMISSION
25 (the “Planning Commission”) is the appointed body of the City of Los Angeles, that-issued the
26 final approval of the Project.

27 11. Real Party in Interest 530 NORTH FRANCISCA, LLC, is a California limited
28 liability corporation and is the applicant to construct the project at 10757-10759 West Wilkins

1 Avenue. The California Secretary of State contains no records for a limited liability company
2 with the exact name, but contains records of a canceled limited liability company known as 530
3 N Francisca LLC, with an agent for service of process by the name of Banarsi Agarwal.

4 12. Real Party in Interest BANARSI AGARWAL is identified as the
5 Applicant/Owner in the May 19, 2020, Letter of Determination and the January 13, 2020
6 Director's Determination for the Project.

7 13. Petitioner and Plaintiff is unaware of the true names and capacities of Respondent
8 DOES 1 through 100, inclusive, and they are therefore sued by fictitious names pursuant to Code
9 of Civil Procedure section 474. Petitioner alleges on information and belief that each such
10 fictitiously named Respondent is responsible or liable in some manner for the events and
11 happenings referred to herein, and Petitioner will seek leave to amend this Petition to allege their
12 true names and capacities after the same have been ascertained.

13 14. Petitioner and Plaintiff is unaware of the true names and capacities of Real Parties
14 in Interest ROES 1 through 100, inclusive, and they are therefore sued by fictitious names
15 pursuant to Code of Civil Procedure section 474. Petitioner alleges on information and belief
16 that each such fictitiously named Real Party in Interest is responsible or liable in some manner
17 for the events and happenings referred to herein, and Petitioner will seek leave to amend this
18 Petition to allege their true names and capacities after the same have been ascertained.

19 **JURISDICTION AND VENUE**

20 15. This Court has original jurisdiction over this matter pursuant to article VI, section
21 10 of the California Constitution, sections 1085 and 1094.5 of the Code of Civil Procedure.

22 16. Venue is proper in the County of Los Angeles pursuant to Code of Civil
23 Procedure section 394 in that Respondents/Defendants are government entities and/or agents of
24 the City of Los Angeles.

25 17. As required by Government Code section 65009, subdivision (c)(1), and as
26 permitted by California Judicial Council Emergency Rule 9(b), as effective May 29, 2020, this
27 action is commenced and will be served on the legislative body within 90 days of expiration of
28 the tolling of the statute of limitations on August 3, 2020.

1 **EXHAUSTION OF REMEDIES**

2 18. Fix the City has exhausted all available administrative remedies by commenting
3 on the approval of the project to the Westwood Design Review Board, the Department of City
4 Planning and the City Planning Commission.

5 **FACTUAL ALLEGATIONS**

6 **The 10757-10759 West Wilkins Avenue Project**

7 19. The Project consists of a 5-story, 10-unit apartment building, including 2 units
8 designated for very low-income households. The Project is located on 9,833.3 square feet of
9 property at 10757-10759 West Wilkins Avenue in the City of Los Angeles. The lot presently
10 contains a three-unit Rent-Stabilized Ordinance (“RSO”) apartment building built in 1937.

11 20. The zoning for the Project is RD1.5-1. Under that zoning, a maximum density of
12 6 residential units is permitted. There is no request for a zone change.

13 21. The properties abutting the Project are zoned RD1.5-1, and developed with two-
14 story multi-family apartment complexes. Properties across the street and to the west are zoned
15 RD1.5-1 and developed with single-family residences and single, two, and three-story multi-
16 family residences. The Project also abuts to R1-1 zoned properties to the north and northeast
17 which are developed with single family homes

18 22. The Project is located in an area of the City subject to a specific plan, adopted as
19 ordinance by the City Council pursuant to Los Angeles Municipal Code section 11.5.7. The
20 Westwood Community Multi-Family Specific Plan (“Specific Plan”) was developed in order to
21 create a transition between the high-rise Westwood Regional Center and the Wilshire Corridor,
22 and the adjacent single-family neighborhood. The Specific Plan states among its purposes that
23 the plan will “establish[] coordinated and comprehensible standards for parking, height, design,
24 building massing, open space and landscaping for new projects in the area;” and “to enhance the
25 aesthetic qualities of multiple-family residential development so that it is more harmonious with
26 adjacent single-family neighborhoods,” and “to adequately buffer single-family residential uses
27 from adjacent multiple-family residential development to the greatest extent feasible.” It has
28 been a successful plan that has resulted in increased and yet compatible development.

1 23. The Specific Plan requirements are intended to prevail over other requirements of
2 the Municipal Code. “Whenever this Specific Plan contains provisions which differ from the
3 provisions contained in Chapter I of the Los Angeles Municipal Code, the Specific Plan shall
4 prevail and supersede the applicable provisions of that Code.” The Specific Plan may be
5 amended in accordance with the procedure of Los Angeles Municipal Code section 11.5.7.

6 24. In the area governed by the Specific Plan, if the average height of the single-
7 family houses within 100 feet of the subject property is less than 34 feet, the building height shall
8 be limited to a maximum of 33 feet in height. If the average height is between 34 and 45 feet,
9 the building height is limited to a maximum of 45 feet.

10 25. Projects that are across the street and within 200 feet of an R1 zone must provide
11 additional setbacks on the front elevation of the property. All levels above the first habitable
12 level must be set back 10 feet from the level below it. Setbacks are not required for structures
13 with a height of 33 feet or less. The project does not provide a setback of 10-feet above the
14 ground floor.

15 26. Under the Specific Plan and the zoning code, the Project is limited to 33 feet in
16 height and is required to provide 3,500 square feet of open space. The City approved the Project
17 allowing a 55-foot high structure and only 2,627 square feet of open space, roughly a 25 percent
18 reduction. Modifications or adjustments, upon request, are permitted under LAMC 11.5.7 if the
19 modification is less than 20 percent. No request was filed to modify the plan.

20 27. The Project exceeds these limitations in spite of the clear statement in the Specific
21 Plan that its provisions are to be applied in the face of contrary provisions in the Municipal Code.
22 Moreover, the incentives for increased height and reduced open space are not in the Municipal
23 Code, nor were these incentives approved by the voters.

24 28. The Project’s 55-foot height is 22-feet higher than permitted under the Specific
25 Plan and should have required an amendment to the Specific Plan, which would fall under
26 Section 5 of Measure JJJ. Measure JJJ does not provide for height increases under the incentives
27 specified in Section 6 for TOC projects like the Project.
28

1 29. No showing has been made by the Applicant that the modifications are required to
2 make the project economically feasible.

3 30. The current building provided three affordable units that were regulated by the
4 Rent Stabilization Ordinance. Under California 65915(c)(3), those units must be replaced as
5 affordable units. No replacement units were required by the Planning Director or CPC, despite
6 the request by Fix the City. Instead of three very low income units, the approved project is only
7 providing two very low income units.

8 31. The Project also violates other generally applicable zoning requirements. Instead
9 of an eight-foot side yard on its west, the Project will have a 5-foot 6-inch side yard. Measure
10 JJJ Section 6 does not include a discretionary incentive permitting reduced side yards.

11 32. The Project received three “discretionary” incentives not authorized by Measure
12 JJJ: (1) increased height of 22 additional feet for a total of 55 feet in height; (2) a 25 percent
13 reduction in open space and (3) 30 percent reduced side yards. None of these incentives are
14 authorized by Section 6 nor permitted under LAMC 11.5.7. Approving these incentives violates
15 Measure JJJ Section 6 as well as City Charter Section 464(a). Moreover, the calculation of the
16 FAR and density bonus under Measure JJJ Section 6 is required to be based on the base zone and
17 density, not on TOC tiers which were not authorized by the voters in Measure JJJ. Finally, the
18 project received three ministerial incentives: increased FAR and density (dwelling units) and
19 reduced parking. JJJ Section 6 permits a maximum of three ministerial incentives. It does not
20 state “additional” or discretionary incentives. The Project received in addition three *discretionary*
21 incentives, exceeding the maximum three incentives authorized in Measure JJJ.

22 33. The Project’s approval rests entirely upon the incentives provided by the Planning
23 Department, not the voters in Measure JJJ. Without these improperly applied incentives, in order
24 to construct at the requested density and height, the Project would have required a Specific Plan
25 amendment, and a variance for the side yard, reduced open space and reduced parking and relief
26 from the 10-foot step back for each floor above the ground-floor. This would have brought the
27 Project under JJJ Section 5(e), which would also require compliance with the initiative’s labor
28 standards. Some of these entitlements would be legislative acts that could only be approved by

1 the Los Angeles City Council with full due process, and all of these entitlements would require
2 due process (published notice, public hearings and environmental review, with the right to appeal
3 by any member of the public). The Project was not approved by the Los Angeles City Council
4 and was instead approved by the Director of the Department of City Planning and on appeal by
5 adjacent property owners and an adjacent tenant, by the City Planning Commission.

6 34. The approval of the Project commenced with a hearing by the Westwood Design
7 Review Board at which Fix the City and community members provided testimony in opposition.
8 Fix the City specifically requested three (3) affordable replacement units as required by
9 65915(c)(3). No replacement units were required. The Design Review Board failed to make
10 required findings per the DRB Ordinance. The issuance of the Director’s Letter of
11 Determination (LOD) on January 13, 2020, which triggered a 15-day appeal period for property
12 owners and tenants within 100 feet.

13 35. Carl Shusterman, Helena Freeman, John Gaustad, and Cecelia Evans, neighboring
14 property owners or residents, filed an appeal that was accepted and heard by the City Planning
15 Commission on May 14, 2020. On May 19, 2020, the City Planning Commission’s Letter of
16 Decision was mailed. *Appellants never received the mailed decision letter.* The letter states that
17 “[t]he decision of the Los Angeles City Planning Commission is final and effective upon the
18 mailing of this determination letter and not further appealable.” Fix the City submitted written
19 testimony prior to the Director of Planning’s Determination and to the CPC to support the
20 appeal. In both instances, the staff reports failed to address the points raised by Fix the City.

21 **Measure JJJ Section 6 “Transit Oriented Communities Affordable Housing Program”**
22 **(LAMC 12.22 A.31)**

23 36. On November 8, 2016, voters in the City of Los Angeles approved a ballot
24 measure known as Measure JJJ. The ballot title of this measure was “Affordable Housing and
25 Labor Standards Related to City Planning.” The measure was titled by its proponents as the “The
26 Build Better LA Initiative.”

1 37. As the measure’s ballot title reveals, Measure JJJ was drafted to promote two
2 purposes: an increase in the amount of affordable housing constructed in the City and the
3 creation of local jobs paying adequate wages.

4 38. The ballot question for Measure JJJ read:

5 “Shall an ordinance: 1) requiring that certain residential development projects
6 provide for affordable housing and comply with prevailing wage, local hiring and
7 other labor standards; 2) requiring the City to assess the impacts of community
8 plan changes on affordable housing and local jobs; 3) creating an affordable
9 housing incentive program for developments near major transit stops; and 4)
10 making other changes; be adopted?”

11 39. The City’s Chief Legislative Analysis prepared an Impartial Analysis of Measure
12 JJJ, which provided that Measure JJJ “will amend City law to add affordable housing standards
13 and training, local hiring, and specific wage requirements for certain residential projects of 10 or
14 more units seeking General Plan amendments or zoning changes.”

15 40. The Impartial Analysis explained that “This measure also creates an affordable
16 housing incentive program with increased density and reduced parking requirements in areas
17 within a one-half mile radius around a major transit stop.”

18 41. Measure JJJ contains Section 6, which is titled “Transit Oriented Communities
19 Affordable Housing Overlay.” Section 6 establishes Los Angeles Municipal Code section 12.22
20 A.31, which is titled “Transit Oriented Communities Affordable Housing Incentive Program.”

21 42. Section 6 establishes a program for housing developments within a one-half mile
22 radius of a Major Transit Stop, as defined in Public Resources Code section 21155, subdivision
23 (b). As set forth in Section 6, “Each one-half mile radius around a Major Transit Stop shall
24 constitute a unique Transit Oriented Communities Affordable Housing Incentive Area.”

25 43. Section 6 (Los Angeles Municipal Code section 12.22 A. 31 (b) provides that
26 within 90 days of enactment, the Director of Planning “shall prepare TOC Affordable Housing
27 Incentive Program Guidelines (“TOC Guidelines”) that provide the eligibility standards,
28 incentives, and other necessary components of this TOC incentive program described herein.”
Measure JJJ provides that “[t]he TOC Guidelines shall be drafted consistent with the purposes of
this Subdivision and shall include the following” standards regarding eligibility and incentives.

1 The incentives are defined in Section 6: reduced parking, increased FAR and increased density
2 (units). The CPC was limited to determining how much affordable housing was required for
3 how much increased FAR and density.

4 44. Measure JJJ establishes that a Housing Development (containing five or more
5 units) is eligible for TOC Incentives “if it provides minimum required percentages of On-Site
6 Restricted affordable units,” is not seeking a density or development bonus under any other
7 program, *and meets state law requirements regarding replacement units*. The minimum required
8 percentages “shall be determined by the Department of City Planning and set forth in the TOC
9 Guidelines at rates that meet or exceed 11% of the total dwelling units affordable to Very Low
10 Income households; or 20% of the total number of dwelling units affordable to Lower Income
11 Households;” as well as “no less than 7%” for Extremely Low Income Households. The
12 eligibility standards also provide that the TOC Guidelines shall “identify incentives for projects
13 that adhere to the labor standards required in Section 5 of this Ordinance, provided, that no such
14 incentives will be created that have the effect of undermining the affordable housing incentives
15 contained herein.” Failure to require three affordable replacement units undermines the very
16 purpose of TOC incentives to preserve and increase affordable housing.

17 45. Measure JJJ provides that the TOC incentives shall contain incentives “consistent
18 with the following” which include a residential density increase, adjustments to minimum square
19 feet per dwelling unit, floor area ratio, or both, as well as parking reductions. The Director of
20 Planning and CPC have consistently awarded *additional discretionary* incentives for reductions
21 in required yards and setback, open space, and lot width; increases in maximum lot coverage,
22 height, and transitional height requirements. Each of these “additional” incentives alters
23 otherwise applicable limitations in the municipal code without complying with the procedural
24 requirements for zone changes, height district amendments and general plan amendments or
25 variances, all of which provide due process and full transparency. None of these additional
26 incentives are authorized by the provisions of Measure JJJ.

1 46. Measure JJJ Section 6 also provides that “an Eligible Housing Development shall
2 be granted TOC Incentives, as determined by the Department of City Planning consistent with
3 the following:

4 “(i) Residential Density Increase. An Eligible Housing Development shall be
5 granted increased residential density at rates that shall meet or exceed a 35%
6 increase. In establishing the density allowances, the Department of City Planning
7 may allow adjustments to minimum square feet per dwelling unit, floor area ratio,
8 or both, and may allow different levels of density increase depending on the
9 Project’s base zone and density.

10 “(ii) Parking. An Eligible Housing Development shall be granted parking
11 reductions consistent with California Government Code Section 65915(p).
12

13 “(iii) Incentives and Concessions. An Eligible Housing Development may be
14 granted up to **either two or three incentives** or concessions based upon the
15 requirements set forth in California Government Code Section 65915(d)(2).”
16 (Emphasis added.)
17

18 47. Measure JJJ Section 6 limits the number of incentives up to two or three
19 ministerial incentives (FAR, density and reduced parking). By contrast, under Measure JJJ
20 Section 5(e), a project applying for a General Plan Amendment, zone or height district change is
21 eligible for three additional concessions/incentives that provide for relief from development
22 standards such as height and side yards, The pattern and practice of approving incentives that
23 only Section 5 projects could obtain is a flagrant violation of Measure JJJ, an end-run on the
24 good jobs promised by Measure JJJ, and elimination of a transparent public process to review
25 major entitlement changes (height, open space, etc.). Section 6 authorizes up to three ministerial
26 incentives. Since they are ministerial, they do not require a public process. But the
27 “discretionary” TOC incentives are only available under Section 5. As a result, only a handful of
28 Measure JJJ projects in the entire city have complied with the Labor Standard. The good jobs
voters supported have been unlawfully sabotaged by the Planning Department.

 48. Section 5 of Measure JJJ provides that projects with 10 or more residential
dwelling units must, in order to be eligible for “a discretionary General Plan amendment . . . or
any zone change or height-district change that results in increased allowable residential floor
area, density or height, or allows a residential use where previously not allowed,” the project

1 must comply with various affordable housing requirements (including on or off site), and “shall
2 comply with the job standards in subdivision (i). The job standards require that all work be
3 performed by licensed contractors, that at least 30 percent of the workforce is a resident of the
4 City, that 10 percent of the workforce is a “transitional worker” living within a 5-mile radius of
5 the project, and that the workers are paid the standard prevailing wages in the project area.
6 Parties who have analyzed the projects approved since 2016 have concluded that there have been
7 very few labor standard projects approved under Measure JJJ. Mayor Garcetti’s June 6, 2018
8 report to the PLUM Committee on implementing the Labor Standard, now enacted as Ordinance
9 186,483, repeatedly states the Labor Standard be required “on any project awarded subject to
10 Measure JJJ.” He went on to recommend “an ordinance for the administration of any project
11 subject to Measure JJJ.” This corresponds with the intent of the measure as established in
12 Measure JJJ Section 2, Findings: “Now THEREFORE, based upon these findings the people
13 declare that the City adopt the legislation contained herein in order to address our homeless and
14 affordable housing crisis, while also creating good jobs with family supporting wages.” This
15 twin goal was for the “legislation herein,” and not limited to Section 5 projects.

16 **FIRST CAUSE OF ACTION**

17 **Violation of Municipal Code, Initiative Measure JJJ, Los Angeles General Plan, and** 18 **Westwood Community Multi-Family Specific Plan** 19 **(Code of Civ. Proc., § 1085)**

20 49. Petitioner hereby re-alleges and incorporates by reference herein the allegations in
21 the preceding paragraphs.

22 50. In approving the Project and granting the TOC incentives under JJJ Section 6,
23 Respondents violated both the directive of the voters in enacting Measure JJJ and the
24 requirements of state law and municipal code, most clearly, Charter Section 464(a).

25 51. Measure JJJ authorizes incentives for FAR, density increases, and parking. In
26 addition to those incentives, the Project received improperly granted incentives for increased
27 height and reduced open space and side yard and failed to provide 3 affordable replacement
28 dwelling units

1 52. Nowhere does Measure JJJ authorize incentives for increased height or reduced
2 open space or side yards. Nor were the voters informed of such incentives by Measure JJJ. The
3 voters also did not approve any changes to the Westwood Community Multi-Family Specific
4 Plan, nor were any exceptions, modifications, adjustments or amendments for the Specific Plan
5 requested.

6 53. In this instance, the TOC “discretionary” incentives effectively overturn specific
7 standards set out in a Specific Plan for height and other planning standards. The incentives
8 approved by the Director of Planning and CPC were never adopted by the legislative body as
9 required by California Government Code 65915(d)(3). More importantly, the incentives granted
10 to 10757-10759 West Wilkins Avenue were not adopted by the voters, as required by LA City
11 Charter Section 464(a). The TOC incentives granted to 10757-10759 West Wilkins Avenue
12 significantly depart from the framework approved by the voters and overturn the duly-adopted
13 ordinances passed by the Los Angeles City Council governing a variety of land use planning
14 standards. Nor were the “Tiers” allowing increased density with proximity to transit authorized
15 by Measure JJJ. The Tiers function as newly created zones, which were not adopted by
16 ordinance nor approved by the voters. Pursuant to Los Angeles City Charter section 464(a), only
17 the voters can amend Measure JJJ; according to the measure itself (Section 5.A), the Council
18 may only make non-substantive amendments to the measure’s provisions. The pattern and
19 practice of approving TOC incentives significantly rewrites Section 6 of Measure JJJ in
20 numerous ways.

21 54. Under Measure JJJ Section 6, residential density increases are determined by “the
22 project’s base zone and density,” not TOC Tiers. (LAMC 12.22 A.31(b)(2)(i).) The density
23 increase granted to 10757-10759 West Wilkins Avenue was based on TOC Tier 3. The Tiers set
24 up four levels of incentives based on proximity to rapid transit. Section 6 established one set of
25 incentives within a half mile of the major transit stop. Granting Tier 3 incentives to 10757-
26 10759 West Wilkins Avenue was therefore inconsistent with the voters’ mandate in Measure JJJ.
27 The Planning Department did not calculate density bonuses using the base zone and density, as
28 required by Measure JJJ Section 6.

1 55. Measure JJJ Section 6 limits the number of incentives up to two or three
2 ministerial incentives (FAR, density and reduced parking). 10757-10759 West Wilkins Avenue
3 received a total of five, not three incentives: (1) extra density; (2) reduced parking; (3) a 22-foot
4 increase in height; (4) reduced open space and (5) reduced side yard. There is no authority to
5 grant extra height or reduced open space or side yards in Section 6.

6 56. The TOC incentives granted to 10757-10759 West Wilkins Avenue effectively
7 override the Specific Plan, vastly increasing permissible height for residential projects in this
8 area. Yet the TOC Tiers and Discretionary Incentives granted to 10757-10759 West Wilkins
9 Avenue were not adopted consistent with the process for a specific plan amendment. Further, by
10 impermissibly including height and other incentives not provided for in Measure JJJ Section 6,
11 the city has effectively rendered moot the specific plan amendment process. Approval of the
12 Project is inconsistent with the land use planning hierarchy, in which the Specific Plan must be
13 consistent with the General Plan, and the zoning must be consistent with both the Specific Plan
14 and General Plan. The Project’s zoning was consistent with the Specific Plan and the approval
15 overrides that zoning without following any of the legal processes required to change or depart
16 from zoning.

17 57. The TOC incentives approved by the City undermine one of the two fundamental
18 premises of Measure JJJ: the requirement of projects to meet labor standard requirements to
19 receive incentives under Section 6. Absent this requirement, the fundamental promise of
20 Measure JJJ to provide “good jobs” is cast aside. While Measure JJJ Section 5 sets forth an
21 elaborate set of requirements for projects seeking general plan amendments, zone changes, or
22 height district changes, and requires adherence to labor standards in order to receive these
23 entitlements, projects receiving incentives under the improperly approved TOC incentives no
24 longer need zone changes or height district changes, and so do not comply with the labor
25 standards or provide the public with notice and public hearings to make these massive changes.
26 The “discretionary” TOC incentives “approved” are nothing short of an attempt to end-run the
27 charter and the will of the voters.

28

1 58. Voters adopted Measure JJJ being told that the measure would require projects
2 seeking zone changes or height district changes to abide by labor standards, and that the
3 affordable housing incentive program near transit would provide density increases and reduced
4 parking. What voters got are incentives that eliminate numerous generally-applicable laws, and
5 which were never adopted in a legislative process or presented to the voters, and which do not
6 require the “good jobs” that Measure JJJ promised. Projects that would have been required to
7 meet labor standards under Section 5 avoid those standards because the “discretionary” Section 6
8 incentives claim to obviate the need for zone changes and height district changes in the many
9 areas of the city that are a half mile from a major transit stop.

10 59. The Project at 10757-10759 West Wilkins Avenue is just one instance of the City
11 violating its own laws by application of the TOC Guidelines through the awarding of incentives
12 that exceed the scope of Measure JJJ. Petitioner is informed and on the basis of that information
13 and belief, believes the City has a practice of awarding incentives pursuant to the TOC
14 Guidelines that far exceed the requirements of the zoning code and the general plan for the
15 properties on which the projects are sited. The TOC Incentives are *ultra vires* and void.

16 60. In approving TOC incentives in conflict with JJJ, the Planning Department and
17 City Planning Commission prejudicially abused their discretion, and approved TOC incentives in
18 an arbitrary and capricious manner that is not consistent with the requirements of Measure JJJ
19 nor consistent with the requirements of state and local law for the adoption of zoning ordinances
20 and maintaining general plan consistency. Most troubling, this pattern and practice of inventing
21 additional discretionary incentives and waiving the Labor Standard, and failing to replace
22 demolished RSO units, betray the electorate. If changes are required, the City must return to the
23 voters and make their case, or Real Party can seek a Specific Plan Amendment under Section 5
24 of Measure JJJ.

25 61. In addition, the Project’s approval should be overturned because the Project is
26 inconsistent with the specific requirements of the Specific Plan, as to height, open space, step
27 backs, and side yards.

28

1 68. Housing developments are only eligible for TOC Incentives if they “meet[] any
2 applicable replacement requirements of California Government Code section 65915(c)(3).”
3 (LAMC 12.22 A.31 (b)(1).)

4 69. The City’s records for 10757 W. Wilkins show that the property contained three
5 units subject to the City’s Rent Stabilization Ordinance (RSO), which is the rent control program
6 of the City of Los Angeles and that there were no exemptions for those units

7 70. The Los Angeles Housing & Community Investment Department (HCIDLA)
8 determined that no replacement units were required because “Per the Rent Stabilizaiton
9 Ordinance (RSO) Unit, the property received an exemption from the RSO because it was Ellis’d
10 in 2003.”

11 71. Based on the statement that units were “Ellis’d,” or removed from the rental
12 market, “HCIDLA has determined that there were no residential units built or demolished on the
13 properties within the last five (5) years. No AB 2556 replacement affordable units are required.”

14 72. The three RSO units that were rented at 10757 W. Wilkins were subject to rent
15 control and thus all must be replaced. Pursuant to the rebuttable presumption, because 73
16 percent of rental housing in Los Angeles is occupied by low income households, according to the
17 most recent HUD database, *all 3 units were required to be replaced.*

18 73. The Project has only two units set aside for very low income housing, so does not
19 satisfy the applicable replacement requirement.

20 74. Petitioner has a direct and beneficial interest in the action herein and has
21 exhausted all other available remedies.

22 75. Petitioner has a beneficial right to Respondents’ performance of their respective
23 duties based on Petitioner’s interest in maintaining and improving the quality of the urban
24 infrastructure in the City, and ensuring that density bonus awards result in the appropriate
25 quantity of affordable units, as well as the interest of Petitioner’s members in improving quality
26 of life in their own city, including by the provision of affordable housing.

27 76. Respondents’ actions in approving the Project without adequate replacement units
28 threaten to cause Petitioner irreparable and substantial harm.

1 77. Petitioner has no plain, speedy, and adequate remedy at law, in that unless this
2 Court enjoins Respondents and the Real Parties, they will develop/approve the Project without
3 including sufficient replacement units required by AB 2556. No amount of monetary damages
4 or other legal remedy can adequately compensate Petitioner for the irreparable harm that
5 Petitioner, its members, and the residents of the City of Los Angeles will suffer from the
6 violations of law described herein.

7 **THIRD CAUSE OF ACTION**

8 **DECLARATORY RELIEF**

9 **(Code Civ. Proc., § 1060)**

10 78. Petitioner incorporates by reference all the allegations contained in the previous
11 paragraphs as though fully set forth herein.

12 79. A dispute has arisen between Petitioner and Respondents, in that Petitioner
13 believes and contends, for the reasons set forth in the cause of action above, that Respondents'
14 actions as set forth above were unlawful and invalid. Petitioner is informed and believes, and on
15 that basis contends, that Respondents contend in all respects to the contrary.

16 80. Petitioner contends that the TOC Incentives approved for 10757-10759 West
17 Wilkins Avenue are *ultra vires* for the reasons outlined above, including specifically that these
18 Incentives far exceeded the authority of the City and the City Planning Commission under
19 Measure JJJ, and were outside the power of the City Planning Commission to approve for 10757-
20 10759 West Wilkins Avenue. Petitioner is informed and believes that in response to Petitioner
21 having identified these issues for Respondents, Respondents have disagreed with Petitioner's
22 contentions, and continue to rely upon the TOC Guidelines and their incentives in reviewing and
23 approving other projects.

24 81. A judicial declaration as to the legality of Respondents' actions, as set forth
25 above, is therefore necessary and appropriate to determine the respective rights and duties of the
26 parties.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, the Petitioner and Plaintiff pray for judgment as follows:

1 1. That the Court issue a peremptory writ of mandate, requiring Respondents to set
2 aside the approval for the 10757-10759 West Wilkins Avenue project, and to set aside the *ultra*
3 *vires* TOC Incentives permitted by the Planning Department, and to cease any future reliance on
4 TOC discretionary Incentives and TOC Tiers until and unless incentives consistent with Measure
5 JJJ are adopted by Respondents;

6 2. That this Court enjoin Respondents from taking any action to further the
7 construction of the 10757-10759 West Wilkins Avenue project and from relying upon the TOC
8 discretionary incentives and TOC tiers to approve other projects, and to enjoin Real Parties from
9 any activity in furtherance of the construction of the 10757-10759 West Wilkins Avenue project;
10 and that this Court enjoin Respondents to rescind, revoke, and invalidate all approvals issued in
11 support of the Project until such time as the approvals comply with Measure JJJ;

12 3. That this Court issue declaratory relief finding that

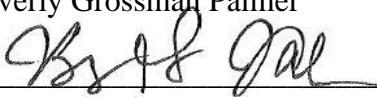
13 a. the TOC incentives awarded to applicants are *ultra vires*, because they
14 exceed what the voters authorized in Measure JJJ in number and type, and
15 were not adopted as ordinance by the City Council as required by
16 California Government Code Section 65915(d)(C)(3);

17 b. the 10757-10759 West Wilkins Avenue project is inconsistent with the
18 municipal code, General Plan, City Charter, replacement affordable
19 housing requirements and Measure JJJ;

20 4. That this Court award Petitioner costs and attorneys' fees pursuant to Code of
21 Civil Procedure section 1021.5 or other applicable law; and

22 5. That this Court grant Petitioner such other, different, or further relief as the Court
23 may deem just and proper.

24 DATED: December 6, 2021

25 Respectfully Submitted,
26 STRUMWASSER & WOOCHELLP
27 Fredric D. Woocher
28 Beverly Grossman Palmer
By 
 Beverly Grossman Palmer
 Attorneys for Petitioner Fix the City, Inc.

VERIFICATION

I, Laura Lake, declare:

I am a Director of Fix the City, Inc., and a resident of the City of Los Angeles. I am authorized to make this verification for Petitioner and Plaintiff. I have read the foregoing FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF. I am informed and believe that the contents thereof are true, and on that ground I allege that the matters stated therein are true.

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

Executed this 6th day of December, 2021 at Los Angeles, California.

Laura Lake, Director
Fix the City

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 Re: *Fix The City v. City of Los Angeles et al.*
5 L.A.S.C. Case No. 20STCP03529
6 Related Case No. 20STCP01569
7 Related Case No. 19STCP03740

8 I am employed in the County of Los Angeles, State of California. I am over the age of
9 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard,
10 Suite 2000, Los Angeles, California 90024. My electronic mail address is
11 jthomson@strumwooch.com.

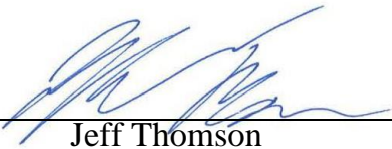
12 On **December 6, 2021**, I served the foregoing document(s) described as **FIRST**
13 **AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT**
14 **FOR INJUNCTIVE AND DECLARATORY RELIEF** on all appropriate parties in this
15 action, as listed on the attached Service List, by the method stated:

16 If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with
17 the Clerk of the Court by causing the documents to be sent to One Legal, the Court's Electronic Filing
18 Services Provider for electronic filing and service. Electronic service will be effected by One Legal's
19 case-filing system at the electronic mail addresses indicated on the attached Service List.

20 If U.S. Mail service is indicated, by placing this date for collection for mailing
21 true copies in sealed envelopes, first-class postage prepaid, addressed to each person as
22 indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the
23 firm's practice of collection and processing correspondence for mailing. Under that practice,
24 it would be deposited with the U.S. Postal Service on that same day with postage thereon fully
25 prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on
26 motion of the party served, service is presumed invalid if postal cancellation date or postage
27 meter date is more than one day after date of deposit for mailing contained in the affidavit.

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

Executed on **December 6, 2021**, at Los Angeles, California.

23 
24 _____
25 Jeff Thomson

SERVICE LIST

Fix The City v. City of Los Angeles et al.
L.A.S.C. Case No. 20STCP03529
Related Case No. 20STCP01569
Related Case No. 19STCP03740

<p><u>Via EFS</u></p> <p>Michael N. Feuer Terry K. Macias Donna Wong Morgan Hector Kimberly A. Huangfu 200 North Main Street City Hall East Room 701 Los Angeles, California 90012-4131 Telephone: (213) 978-7121 Facsimile: (213) 978-8090 Email: morgan.hector@lacity.org kimberly.huangfu@lacity.org</p> <p><i>Attorneys for Respondents City of Los Angeles, Vincent P. Bertoni, in his capacity as Director of City Planning for the City of Los Angeles, and Los Angeles City Planning Commission</i></p>	<p><u>Via EFS</u></p> <p>ELISA L. PASTER Glaser Weil Fink Howard Avchen & Shaprio LLP 10250 Constellation Boulevard, 19th Floor Los Angeles, California 90067 Telephone: (310) 553-3000 Facsimile: (310) 556-2920 Email: epaster@glaserweil.com</p> <p>Attorneys for Real Parties in Interest 530 North Francisca, LLC, and Banarsi Agarwal</p>
<p><u>Via EFS</u></p> <p>Ellia M. Thompson Ervin, Cohen & Jessup, LLP 9401 Wilshire Boulevard, 9th Floor Beverly Hills, California 90212-2974 Email: ethompson@ecjlaw.com</p> <p><i>Attorney for Real Party in Interest 5891 Boulevard LP</i></p>	<p><u>Via EFS</u></p> <p>Andrew K. Fogg Alexander M. DeGood Adam Z. Bierman Cox, Castle & Nicholson, LLP 2029 Century Park East, Suite 2100 Los Angeles, California 90067 Telephone: (310) 284-2205 Facsimile: (310) 284-2100 Email: adegood@coxcastle.com</p> <p><i>Attorneys for Real Parties in Interest Elliot Nayssan, Robhana, Inc., NHD Terrace, LLC</i></p>