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10 *Fix the City, Inc.*

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

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

14 Petitioner and Plaintiff,

15 v.

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

21 Respondents/Defendants.

22 ELLIOT NAYSSAN; ROBhana, INC.; NHD
23 TERRACE, LLC; and ROES 1 through 100, inclusive

24 Real Parties in Interest.

25 CASE NO. 19STCP03740

26 **VERIFIED PETITION FOR WRIT OF
27 MANDATE AND COMPLAINT FOR
28 INJUNCTIVE AND DECLARATORY
RELIEF**

(Code of Civil Procedure, §§ 526, 1060,
1085, 1094.5; Government Code, § 65009)

1 COMES NOW Petitioner and Plaintiff Fix the City, Inc., and alleges as follows:

2 **INTRODUCTION**

3 1. Fix the City brings this challenge to the June 3, 2019 approval by the City of Los
4 Angeles, through the Los Angeles City Planning Commission, of a seven-story, 120-unit residential
5 building located at 10400 Santa Monica Boulevard, in the City of Los Angeles (“the Project”). The
6 approval of the Project was contrary to state and local laws, and is premised upon the granting of
7 improper incentives awarded pursuant to an *ultra vires*, non-legislatively and improperly approved set
8 of guidelines. The entitlements must be rescinded on these bases.

9 2. Fix the City also challenges the policy and practice of the City of Los Angeles of
10 relying upon these improper guidelines, known as the “Transient Oriented Communities Affordable
11 Housing Incentive Program Guidelines” (“TOC Guidelines”), in approving the 10400 Santa Monica
12 Boulevard Project and numerous other projects like it. The City Planning Commission approved the
13 TOC Guidelines purportedly pursuant to a ballot measure known as Measure JJJ, the “Affordable
14 Housing and Labor Standards Related to City Planning” Initiative. In adopting the Guidelines outside
15 of the voter-approved processes and outside of the charter and municipal code, the City far exceeded
16 the authority granted it by the voters as well as its own laws and state laws. The Project and numerous
17 others throughout the City are regularly awarded development “incentives” that far exceed those
18 authorized by the voters enacting Measure JJJ, while failing to provide for well-paid jobs adhering to
19 the prevailing wage for Los Angeles. These incentives constitute vast departures from numerous
20 existing codified ordinances yet were never approved legislatively: not by the voters, nor by the City
21 Council, nor with a hearing before the public. The reliance upon these improper guidelines by the
22 City and the City Planning Commission constitutes an improper policy and practice of ignoring the
23 voters’ mandate in Measure JJJ and disregarding the proper legislative procedures for amending the
24 General Plan and the zoning ordinances. The City must be ordered to cease its improper policies and
25 practices and to rescind the improper TOC Guidelines, and to refrain from relying on such guidelines
26 in the approval of other development projects until such time as guidelines consistent with Measure
27 JJJ are approved using a process consistent with Measure JJJ, city and state law.

28 3. The June 3, 2019 approval is also invalid because the City has ignored its obligations

1 under the Alquist-Priolo Act. The Project site is located in a final mapped Alquist-Priolo Earthquake
2 Fault Zone, and therefore a site investigation both on and within 50-feet of the site is required by state
3 and city law and policies to ensure that no structure for human occupancy is constructed within 50-
4 feet of a fault trace.

5 4. The June 3, 2019 approval of the Project is also inconsistent with the General Plan
6 Framework Element and the mitigation measures adopted for the General Plan Framework because
7 the Project, and other projects approved in reliance on the TOC Guidelines, are approved without any
8 finding and substantial evidence that the City's infrastructure, especially first-responder response-
9 times, is adequate and capable of supporting the level of development in the Project Area and all other
10 similar projects being approved in reliance on the *ultra vires* TOC Guidelines throughout the City.

11 **PARTIES**

12 5. Petitioner and Plaintiff FIX THE CITY, INC. ("Fix the City" or "Petitioner") is a
13 California nonprofit public benefit corporation duly incorporated under the laws of the State of
14 California. Fix the City, Inc.'s mission is to improve neighborhoods and advocate for sufficient
15 critical infrastructure and public services throughout the City of Los Angeles. Fix the City
16 participated in the approval process for the Project, submitting written comments to the Planning
17 Commission and to the City Council as an appeal of the Project's CEQA exemption which remains
18 pending as of this filing. Petitioner's members are residents and taxpayers of the City of Los Angeles
19 and are filing this action as private attorney generals.

20 6. Respondent and Defendant CITY OF LOS ANGELES (the "City") is the public
21 governmental entity serving the people of the City of Los Angeles.

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

25 8. Respondent and Defendant LOS ANGELES CITY PLANNING COMMISSION (the
26 "Planning Commission") is the appointed body of the City of Los Angeles, that denied an appeal and
27 issued the final approval of the Project.

28 9. Real Party in Interest ELLIOT NAYSSAN is the agent for service of process of

1 Nayssan Properties, Inc., a California corporation. Elliot Nayssan is listed among the applicants on
2 the Letter of Determination approving the project.

3 10. Real Party in Interest ROBHANA, INC., is a California corporation listed among the
4 applicants on the Letter of Determination approving the project.

5 11. Real Party in Interest NHD TERRACE, LLC is a California corporation and is listed
6 among the applicants on the Letter of Determination approving the project.

7 12. 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 of
9 Civil Procedure section 474. Petitioner alleges on information and belief that each such fictitiously
10 named Respondent is responsible or liable in some manner for the events and happenings referred to
11 herein, and Petitioner will seek leave to amend this Petition to allege their true names and capacities
12 after the same have been ascertained.

13 JURISDICTION AND VENUE

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

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

19 15. As required by Government Code section 65009, subdivision (c)(1), this action is
20 commenced and will be served on the legislative body within 90 days of the decision to approve the
21 10400 Santa Monica Boulevard project on June 3, 2019.

22 EXHAUSTION OF REMEDIES

23 16. Fix the City has exhausted all administrative remedies by commenting on the approval
24 of the project to the Department of City Planning, the City Council office, and the City Planning
25 Commission. No further appeals of the project's approval are permitted, other than the separate
26 determination to exempt the project from CEQA, which Fix the City has appealed to the Los Angeles
27 City Council. Fix the City specifically requested notice about determinations regarding the Project
28 from the assigned City Planner and from the Council Office, although such notice was not provided

1 and the Letter of Determination to approve the Project was not posted for months following the
2 approval, denying Fix the City the opportunity to file a timely appeal to the Planning Commission.
3 Fix the City may amend its Petition to allege any violations of CEQA that remain following resolution
4 of Fix the City's appeal to the City Council.

5 6 **FACTUAL ALLEGATIONS**

7 **The 10400 Santa Monica Boulevard Project**

8 1. The project consists of a seven-story, 120 unit residential building of 97,011 square
9 feet. Of the 120 units, 12 are set aside for Extremely Low Income households. The project is located
10 on 25,869 square feet of sloped property at 10400 – 10422 West Santa Monica Boulevard and 1800
11 South Pandora Avenue, in the City of Los Angeles. The project's height is approved to a maximum of
12 79 feet. The project is located in a final mapped Alquist-Priolo Earthquake Fault Zone (Beverly Hills
13 Quadrangle) and is close to many other "TOC" projects that have been approved or are pending. The
14 project is located on Santa Monica Boulevard, which is designated by the City as a scenic highway.
15 Santa Monica Boulevard is also historic Route 66 and is designated as an historic resource in the West
16 Los Angeles Community Plan.

17 2. The zoning for the project is C2-1VL. Under that zoning, a maximum density of 71
18 residential units is permitted. The height limit under the zoning is 45 feet (with possible increase of
19 12 feet to 57 feet because of the lot's topography). The Floor to Area Ratio (FAR) under the zoning is
20 limited to 1.5 to 1, which would permit just under 39,000 square feet of construction.

21 3. The project exceeds all of these limitations using incentives provided in the non-
22 legislatively approved TOC Guidelines, including a height incentive which was not contemplated by
23 Measure JJJ. It increases the permissible residential density by almost 70 percent. It will be
24 constructed at a FAR of 3.75:1, allowing over 97,000 square feet of construction. The project's 79
25 foot height is 22 feet higher than the extra height allowed under Los Angeles Municipal Code section
26 12.21.1 B.2. for sloping properties. This project will dwarf the 45-foot high properties south of the
27 project.

28 4. The project also violates other generally applicable zoning requirements. Instead of 10-

1 foot side yards, it will provide five-foot side yards; and instead of a 15-foot front yard on Beverly
2 Glen and on Pandora Avenue, it will provide zero front yards. The project also will reduce the
3 amount of open space provided by 25 percent.

4 5. The Project utilizes six incentives from the TOC Guidelines, plus a seventh concession
5 not in the Guidelines (zero front yards) a direct violation of the Guidelines which only provide for the
6 use of three specific incentives and no incentives from other bonus programs.

7 6. The project is not a “Labor Standards” project under Measure JJJ, and has not made an
8 agreement to utilize local labor paid at prevailing wages for the project’s construction.

9 7. The project’s approval rests entirely upon the incentives provided by the TOC
10 Guidelines. Without these improperly applied incentives, in order to construct at the requested density
11 and height, the project would have required a height district change and variances for sideyard and
12 open space reductions. Some of these entitlements would be legislative acts that could only be
13 approved by the Los Angeles City Council with full due process, and all of these entitlements would
14 require published notice, public hearings and environmental review, with the right to appeal by any
15 member of the public. The project was not approved by the Los Angeles City Council and was
16 instead approved by the Director of the Department of City Planning.

17 **The TOC Guidelines**

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

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

25 10. The ballot question for Measure JJJ read:

26 “Shall an ordinance: 1) requiring that certain residential development projects
27 provide for affordable housing and comply with prevailing wage, local hiring and other
28 labor standards; 2) requiring the City to assess the impacts of community plan changes

1 on affordable housing and local jobs; 3) creating an affordable housing incentive
2 program for developments near major transit stops; and 4) making other changes; be
3 adopted?”

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

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

11 13. Measure JJJ contains Section 6, which is titled “Transit Oriented Communities
12 Affordable Housing Overlay.” Section 6 establishes Los Angeles Municipal Code section 12.22. A
13 31, which is titled “Transit Oriented Communities Affordable Housing Incentive Program.”

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

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

24 16. Measure JJJ establishes that a Housing Development (containing five or more units) is
25 eligible for TOC Incentives “if it provides minimum required percentages of On-Site Restricted
26 affordable units,” is not seeking a density or development bonus under any other program, and meets
27 state law requirements regarding replacement units. The minimum required percentages “shall be
28 determined by the Department of City Planning and set forth in the TOC Guidelines at rates that meet

1 or exceed 11% of the total dwelling units affordable to Very Low Income households; or 20% of the
2 total number of dwelling units affordable to Lower Income Households;” as well as “no less than 7%”
3 for Extremely Low Income Households. The eligibility standards also provide that the TOC
4 Guidelines shall “identify incentives for projects that adhere to the labor standards required in Section
5 5 of this Ordinance, provided, that no such incentives will be created that have the effect of
6 undermining the affordable housing incentives contained herein.”

7 17. Measure JJJ Section 6 also provides that “an Eligible Housing Development shall be
8 granted TOC Incentives, as determined by the Department of City Planning consistent with the
9 following:

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

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

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

20 18. Section 6 of Measure JJJ provides that “The City Planning Commission shall review
21 the TOC Guidelines and shall by vote make a recommendation to adopt or reject the TOC
22 Guidelines.”

23 19. On September 27, 2017 the City Planning Commission released the TOC Guidelines
24 “developed pursuant to Measure JJJ.” These TOC Guidelines were clarified and updated on February
25 26, 2018.

26 20. The TOC Guidelines contend that they “provide the eligibility standards, incentives,
27 and other necessary components of the TOC Program consistent with [Los Angeles Municipal Code
28 section] 12.22 A.31 [which was enacted by Measure JJJ].”

1 21. In fact, the TOC Guidelines depart significantly from the parameters and requirements
2 of Measure JJJ in numerous respects.

3 22. While Measure JJJ provides that the TOC Guidelines may allow a different level of
4 density increase based upon a property's base zone and density, the TOC Guidelines utilize a system
5 of Tiers based upon distance from a Major Transit Stop to award differing levels of density increase,
6 regardless of a property's base zone or density.

7 23. Measure JJJ provides that the TOC Guidelines shall contain incentives "consistent with
8 the following" which include a residential density increase, adjustments to minimum square feet per
9 dwelling unit, floor area ratio, or both, as well as parking reductions. The TOC Guidelines include
10 *additional* incentives for reductions in required yards and setback, open space, and lot width;
11 increases in maximum lot coverage, height, and transitional height requirements. Each of these
12 "additional" incentives alters otherwise applicable limitations in the municipal code without
13 complying with the procedural requirements for zone changes, height district amendments and general
14 plan amendments or variances, all of which provide due process and full transparency.

15 24. Section 5 of Measure JJJ provides that projects with 10 or more residential dwelling
16 units must, in order to be eligible for "a discretionary General Plan amendment . . . or any zone change
17 or height-district change that results in increased allowable residential floor area, density or height, or
18 allows a residential use where previously not allowed," the project must comply with various
19 affordable housing requirements (including on or off site), and "shall comply with the job standards in
20 subdivision (i). The job standards require that all work be performed by licensed contractors, that at
21 least 30 percent of the workforce is a resident of the City, that 10 percent of the workforce is a
22 "transitional worker" living within a 5-mile radius of the project, and that the workers are paid the
23 standard prevailing wages in the project area. Parties who have analyzed the projects approved since
24 2016 have concluded that there have been very few labor standard projects approved under Measure
25 JJJ.

26 **FIRST CAUSE OF ACTION**

27 **Violation of Municipal Code, Initiative Measure JJJ, and Los Angeles General Plan**
28 **(Code of Civ. Proc., § 1085)**

25 25. Petitioner hereby re-alleges and incorporates by reference herein the allegations in the

1 preceding paragraphs.

2 26. In approving the Project and granting the incentives under the TOC Guidelines,
3 Respondents violated both the directive of the voters in enacting Measure JJJ and the requirements of
4 state law and municipal code.

5 27. Measure JJJ authorizes incentives for density increases and parking. In addition to
6 those incentives, the Project received improperly granted incentives under the TOC Guidelines for
7 height, reduced open space and side yards; and an incentive not included in the Guidelines, zero-foot
8 front yards on Beverly Glen and Pandora Avenue. All of the adjacent multi-family buildings on
9 Beverly Glen Boulevard and Pandora Avenue provide 15-foot front yards.

10 28. Nowhere does Measure JJJ authorize incentives for increased height, reduced open
11 space, or reduced side or front yards. Nor were the voters informed of such incentives by Measure
12 JJJ.

13 29. The TOC Guidelines overturn a significant number of municipal code provisions
14 regarding height and other planning standards, but the TOC Guidelines were never adopted by the
15 legislative body. Nor were the TOC Guidelines adopted by the voters. The TOC Guidelines
16 significantly depart from the framework approved by the voters and overturn the duly-adopted
17 ordinances passed by the Los Angeles City Council governing a variety of land use planning
18 standards. Nor were the “Tiers” allowing increased density with proximity to transit authorized by
19 Measure JJJ. The Tiers function as newly created zones, which were not adopted by ordinance nor
20 approved by the voters. Only the voters can amend Measure JJJ; the Council may only make non-
21 substantive amendments to the measure’s provisions. The TOC Guidelines significantly rewrite
22 Section 6 of Measure JJJ in numerous ways.

23 30. The TOC Guidelines are so sweeping they effectively constitute a general plan
24 amendment, vastly increasing permissible density and height for certain residential projects. Yet the
25 TOC Guidelines were not adopted consistent with the process for a general plan amendment. Further,
26 by impermissibly including height and other incentives not provided for in Measure JJJ, the city has
27 effectively rendered moot the general plan amendment process, thereby creating inconsistencies
28 within the general plan in violation of state law.

1 31. The TOC Guidelines undermine one of the two fundamental premises of Measure JJJ:
2 the requirement of projects to meet labor standard requirements to receive incentives under the TOC
3 Guidelines. Absent this requirement, the fundamental promise of Measure JJJ to provide “good jobs”
4 is undermined. While Measure JJJ Section 5 sets forth an elaborate set of requirements for projects
5 seeking general plan amendments, zone changes, or height district changes, and requires adherence to
6 labor standards in order to receive these entitlements, projects receiving incentives under the
7 improperly approved TOC Guidelines no longer need zone changes or height district changes, and so
8 do not comply with the labor standards or provide the public with notice and public hearings to make
9 these massive changes. The TOC guidelines as written and “approved” is nothing short of an attempt
10 to end-run the charter and the will of the voters

11 32. Voters adopted Measure JJJ being told that the measure would require projects seeking
12 zone changes or height district changes to abide by labor standards, and that the affordable housing
13 incentive program near transit would provide density increases and reduced parking. What voters got
14 are guidelines that sought to eliminate numerous generally-applicable laws which were never adopted
15 in a legislative process or presented to the voters, and which do not require the “good jobs” that
16 Measure JJJ promised. Projects that would have been required to meet labor standards under section 5
17 avoid those standards because the TOC Guidelines claim to obviate the need for zone changes and
18 height district changes in the many areas of the city that are a half mile from a major transit stop.

19 33. The Project at 10400 Santa Monica Boulevard is just one instance of the City’s
20 violating its own laws by application of the TOC Guidelines. Petitioner is informed and on the basis
21 of that information and belief, the City has a practice of awarding incentives pursuant to the TOC
22 Guidelines that far exceed the requirements of the zoning code and the general plan for the properties
23 on which the projects are sited. The TOC Guidelines are *ultra vires* and void.

24 34. In adopting the TOC Guidelines in conflict with JJJ, the Planning Department and City
25 Planning Commission abused their discretion, and promulgated TOC Guidelines in an arbitrary and
26 capricious manner that is not consistent with the requirements of Measure JJJ nor consistent with the
27 requirements of state and local law for the adoption of zoning ordinances and maintaining general plan
28 consistency.

1 35. Petitioner has a direct and beneficial interest in the action herein and has exhausted all
2 other available remedies.

3 36. Petitioner has a beneficial right to Respondents' performance of their respective duties
4 based on Petitioner's interest in maintaining and improving the quality of the urban infrastructure in
5 the City, as well as the interest of Petitioner's members in improving quality of life in their own city.

6 37. Respondents' actions in approving the Project and others like it on the basis of the *ultra*
7 *vires* TOC Guidelines threaten to cause Petitioner irreparable and substantial harm.

8 38. Petitioner has no plain, speedy, and adequate remedy at law, in that unless this Court
9 enjoins Respondents and the Real Parties, they will develop/approve the Project and other similar
10 projects consistent with the TOC Guidelines. No amount of monetary damages or other legal remedy
11 can adequately compensate Petitioner for the irreparable harm that Petitioner, its members, and the
12 residents of the City of Los Angeles will suffer from the violations of law described herein.

13 **SECOND CAUSE OF ACTION**
14 **VIOLATION OF ALQUIST-PRIOLO ACT**
15 **(Public Resources Code 2621.5, Code Civ. Proc., § 1085)**

16 39. Petitioner realleges and incorporates by reference the allegations set forth in the
17 preceding paragraphs.

18 40. The Alquist-Priolo Act is a state law that is intended to avoid the significant risk of
19 harm to life and loss of property from surface fault ruptures. Public Resources Code section 2621.5
20 provides that the purpose of the Act is "to provide policies and criteria to assist cities, counties, and
21 state agencies in the exercise of their responsibility to prohibit the location of development and
22 structures for human occupancy across the trace of active faults." While local jurisdictions can
23 impose more stringent standards, they are not permitted to impose weaker earthquake safety
24 regulations.

25 41. The Alquist-Priolo Act applies to "any project . . . which is located within a delineated
26 earthquake fault zone, upon issuance of the official earthquake fault zones maps to affected local
27 jurisdictions." (Pub. Resources Code, § 2621.5.)

28 42. A "project" under the Alquist-Priolo Act includes "structures for human occupancy,"
excluding some smaller single family dwellings. (Pub. Resources Code, § 2621.6, subd. (2).)

1 43. The State Mining and Geology Board has promulgated regulations to implement the
2 Alquist-Priolo Act. Under these regulations, a structure for human occupancy is “any structure used
3 or intended for supporting or sheltering any use of occupancy, which is expected to have a human
4 occupancy rate of more than 2,000 person-hours per year.” (Cal. Code. Reg., tit. 14, § 3601, subd.
5 (e).)

6 44. The State Mining and Geology Board regulations also describe the prohibition on
7 placement of structures for human occupancy across the trace of an active surface fault: “No structure
8 for human occupancy . . . shall be permitted to be placed across the trace of an active fault.
9 Furthermore, as the area within fifty (50) feet of such active faults shall be *presumed* to be underlain
10 by active branches of that fault *unless proven otherwise* by an appropriate geologic investigation and
11 report . . . no such structures shall be permitted in this area.” (Cal. Code Reg., tit. 14, § 3603, subd.
12 (a) (emphasis added).)

13 45. The project is located in a mapped Earthquake Fault Zone and is subject to the
14 requirements of the Alquist-Priolo Act. The California Geological Survey includes this property on
15 the mapped Earthquake Zones of Required Investigation, Beverly Hills Quadrangle.

16 46. Geologic investigations conducted by LA Metro in connection with the construction of
17 the Purple Line Extension project reveal several fault traces that travel immediately south of Santa
18 Monica Boulevard in the area just west of Century Park West, blocks from the project site at Beverly
19 Glen Boulevard and Santa Monica Boulevard. Extending the trajectories of these fault traces leads
20 them directly north and south of the project site.

21 47. RPIs conducted geologic investigation under its property, but did not investigate any
22 off site areas for faulting. The geologic report prepared for RPIs stated that “Because of space
23 constraints, our fault investigation did not extend 50 feet north of the northern property boundary and
24 50 feet south of the southern property boundary, as is requested by the city and CGS for fault
25 investigations in general. . . . Since we were not able to distinguish or refute the existing evidence of
26 faulting within 50 feet of the property boundaries, as is required by the city, we must recognize the
27 possibility of the existence of the fault or fault splay within less than 50 feet of either property
28 boundary, or just beyond the explored areas.”

1 48. According to the Los Angeles Department of Building and Safety (“LADBS”) bulletin
2 “Surface Fault Rupture Hazard Investigations” (P/BC 2017-129): “Where exploration does not extend
3 50-feet beyond a property line within a fault investigation zone, an active trace at the property line
4 must be considered present, and require a setback. Data from adjacent or nearby sites can be used to
5 possibly reduce a property line setback.” No such data was provided in this case.

6 49. Respondents were aware of the limitations of RPIs’ geologic investigation. Yet no 50-
7 foot setback was required from either of the property lines of the project, in spite of the admission in
8 the geologic study that it could not “*distinguish or refute the existing evidence of faulting within 50-*
9 *feet of the property boundaries.*” (Emphasis added.) There is additional cause for concern for
10 seismic safety due to several recent earthquakes in the immediate vicinity of the project site.

11 50. Petitioner informed the City of these concerns and never received a reply, nor were its
12 concerns addressed in the City’s seismic evaluation.

13 51. The Alquist-Priolo Act and its implementing regulations do not contain any exemption
14 for structures with a reinforced foundation.

15 52. Respondents approved the project’s construction within fifty-feet of an active surface
16 fault without any geologic study immediately outside of the site boundary, permitting the construction
17 of a structure for human occupancy within fifty feet of an area that is presumed to be underlain with
18 traces of an active surface fault, contrary to the prohibitions of the Alquist-Priolo Act.

19 53. A writ must issue to correct Respondents’ abuse of their discretion in permitting
20 construction of a structure for human occupancy within fifty feet of an area presumed to be underlain
21 by trace of an active surface fault, in contradiction to the requirements of the Alquist-Priolo Act.

22 54. Petitioner has a direct and beneficial interest in the action herein and has exhausted all
23 other available remedies.

24 55. Petitioner has a beneficial right to Respondents’ performance of their respective duties
25 based on Petitioner’s interest in maintaining and improving the quality of the environment in the City
26 of Los Angeles as well as the integrity of the City’s local land use laws. Petitioner’s members have an
27 interest in safeguarding public safety and improving the quality of life in their own city.

28 56. Petitioner has no plain, speedy, and adequate remedy at law, in that unless this Court

1 enjoins the RPI, it will develop the project within fifty feet of an area presumed to be underlain with
2 traces of an active surface fault. No amount of monetary damages or other legal remedy can
3 adequately compensate Petitioner for the irreparable harm that Petitioner, its members, and the
4 residents of the City of Los Angeles will suffer from the violations of law described herein.

5 **THIRD CAUSE OF ACTION**

6 **Inconsistency between Zoning and General Plan Requirements**
7 **(Government Code, § 65860; Los Angeles City Charter, § § 556 & 558; Code Civ. Proc., § 1085)**

8 57. Petitioner incorporates by reference all the allegations contained in the previous
9 paragraphs as though fully set forth herein.

10 58. Government Code section 65860, subdivision (d) requires that zoning ordinances be
11 consistent with the adopted General Plan for a city, including specifically, charter cities.

12 59. The City of Los Angeles General Plan includes a Framework Element. “The General
13 Plan Framework Element is a strategy for long-term growth that sets a citywide context to guide the
14 subsequent amendments of the City’s community plans, zoning ordinance, and other pertinent
15 programs.” The Framework Element “provides fundamental guidance regarding the City’s future.”

16 60. The Framework Element contains an Objective 3.3, which is to “[a]ccommodate
17 projected population and employment growth within the City and each community plan area and plan
18 for the provision of adequate supporting transportation and utility infrastructure and public services.”

19 61. This Objective is achieved by several Policies, including mandatory Policy 3.3.2,
20 which provides:

21 “Monitor population, development, and infrastructure and service capacities within the
22 City and each community plan area, or other pertinent service area. The results of this
23 monitoring effort will be annually reported to the City Council and shall be used in part as a
24 basis to:

25 a. Determine the need and establish programs for infrastructure and public service
26 investments to accommodate development in areas in which economic development is desired
27 and for which growth is focused by the General Plan Framework Element.

28 b. Change or increase the development forecast within the City and/or community
plan area as specified in Table 2-2 (see Chapter 2: Growth and Capacity) when it can be
demonstrated that (1) transportation improvements have been implemented or funded that
increase capacity and maintain the level of service, (2) demand management or behavioral
changes have reduced traffic volumes and maintained or improved levels of service, and (3) the
community character will not be significantly impacted by such increases.

Such modifications shall be considered as amendments to Table 2-2 and depicted on the
community plans.

1 c. Initiate a study to consider whether additional growth should be accommodated,
2 when 75 percent of the forecast of any one or more category listed in Table 2-2 (see Chapter 2:
3 Growth and Capacity) is attained within a community plan area. If a study is necessary,
4 determine the level of growth that should be accommodated and correlate that level with the
5 capital, facility, or service improvements and/or transportation demand reduction programs that
6 are necessary to accommodate that level.

7 d. Consider regulating the type, location, and/or timing of development, when all of
8 the preceding steps have been completed, additional infrastructure and services have been
9 provided, and there remains inadequate public infrastructure or service to support land use
10 development.”

11 62. When the City initially adopted the Framework Element in 1996, it contained Policy
12 3.3.2. The City was sued by the Federation of Hillside and Canyon Associations for failing to
13 adequately analyze and mitigate the environmental impacts of the adoption of the Framework Element
14 and its growth policies. In 2000, the Court of Appeal determined that the City’s environmental
15 analysis and subsequent approval was inadequate because the City had not “require[d] that the
16 mitigation measures be implemented as a condition of the development allowed under the [Framework
17 Element].” (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83
18 Cal.App.4th 1252, 1256; see also *id.* at p. 1261.) The Court of Appeal stated that “[t]he city may
19 comply with CEQA by amending the [Framework Element] so that effective mitigation measures are
20 required as a condition of the development allowed under the [Framework Element] or by restricting
21 the scope of development,” and making certain findings under CEQA. (*Id.* at p. 1266.)

22 63. In response to the Court of Appeal’s ruling, the City revised the Framework Element
23 EIR, Statement of Overriding Conditions and Findings, making the policy explicitly required as a
24 mandatory mitigation. The City was again sued by the Federation of Hillside and Canyon
25 Associations. In briefing to the Court of Appeal, the City explained its intent in adopting Policy 3.3.2
26 as well as its interpretation of the policy: “The GPF was designed to coordinate increased
27 development with the necessary infrastructure to maintain the quality of life ([citing Policy 3.3.2]).
28 The City concluded that the policies and goals would promote and facilitate this end. However, in
response to public concerns expressed during the administrative process about the feasibility of the
various mitigation measures, the GPF contains a specific provision which prevents amendment of
community plans to permit additional development until the supporting infrastructure is in place.”
(City Brief, p. 8.)

1 64. The City explained in its briefing the central role of Policy 3.3.2 in the operation of the
2 Framework Element: “First, the [Framework Element] itself specifically provides that the
3 development which triggers the need for transportation mitigation measures will only be allowed to
4 occur when the money is available for the infrastructure. If the TIMP’s preliminary projection is
5 correct and funds will not be available in sufficient amounts, then the City will not amend its
6 community plans to allow the intensification of development.” (City Brief, p. 27.)

7 65. The City told the Court of Appeal that it had adopted the Framework Element after
8 evaluating alternatives in the environmental review process specifically because the binding
9 mitigation measure of monitoring growth and correlating infrastructure availability with increased
10 development would mitigate the environmental impacts of that development: “What became clear
11 was that a crucial feature of dealing with growth impacts was contained in the [Framework Element]-
12 its program for timing allowable development with available infrastructure and frequent updating of
13 its data along with a formal monitoring program. For this reason, the City concluded that the
14 [Framework Element] was the environmentally desirable alternative, because it had the best
15 combination of land use policies tied to mitigation measures tied to annual reporting and selective
16 amendments of community plans only when consistent with the [Framework Element] policies.”
17 (City Brief, pp. 36-37.)

18 66. Consistent with its statements regarding the Framework Element, the City has included
19 policies in Community Plans that reflect the Framework Element’s approach correlating infrastructure
20 and increased development density. The 35 Community Plans constitute the required Land Use
21 Element of the City of Los Angeles General Plan.

22 67. The West Los Angeles Community Plan, in which the 10400 Santa Monica Boulevard
23 project is located, contains numerous references to the monitoring policies of the Framework Element
24 and adopts those policies as part of the Community Plan. The West Los Angeles Community Plan
25 states that the plan has “three fundamental premises,” one of which is “monitoring of population
26 growth and infrastructure improvements,” and another of which is “if this monitoring finds that
27 population in the Plan area is occurring faster than projected; and that infrastructure resource
28 capacities are threatened, particularly critical ones such as water and sewerage; and, there is not a

1 clear commitment to at least begin the necessary improvements within twelve months; then building
2 controls should¹ be put into effect, for all or portions of the West Los Angeles Community, until land
3 use designations for the Community Plan and corresponding zoning are revised to limit development.”

4 68. The West Los Angeles Community Plan also provides that decision makers shall “not
5 increase residential densities beyond those permitted in the Plan unless the necessary infrastructure
6 and transportation systems are available to accommodate the increase,” and requires a finding on “the
7 availability and adequacy of infrastructure as part of any decision relating to an increase in residential
8 density.”

9 69. The West Los Angeles Community Plan also provides that the City must “ensure that
10 the location, intensity, and timing of development is consistent with the provision of adequate
11 transportation infrastructure.” The West Los Angeles Community Plan states that “No increase in
12 density shall be effected by zone change, plan amendment, subdivision, *or other discretionary action*,
13 unless it is determined that the transportation infrastructure serving the property can accommodate the
14 traffic generated.²” (Emphasis added.) “Decision makers shall adopt a finding with regards to
15 infrastructure adequacy as part of their action on discretionary approvals resulting in increased density
16 or intensity.”

17 70. The Court of Appeal has opined in an unpublished decision that the City Planning
18 Department has discretion as to how it implements the policies of the Framework Element, including
19 the timing and manner of implementation. The Court of Appeal did not find that the City was not
20 bound by the policies in the Framework Element or entitled to ignore those policies when approving
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23 ¹ The ‘should’ here refers to a discretionary ability to limit development until such limits are
24 codified in the Plan. It does not refer to the need for the mandatory mitigation.

25 ² This is not a new concept. In 1975, prior to tens of millions of square feet of new
26 development, the City Department of Transportation stated: “Briefly, the report concludes that the
27 street system now serving Century City and the surrounding area does not meet the needs of the area,
28 nor will it in the future. As a consequence, it is recommended that further intensification of land use
in Century City and the surrounding area be halted or that alternate uses be found that do not add to
the existing peak hour congestion.” (Letter from H.M. Gilman, Los Angeles Department of
Transportation, to Cal Hamilton, Director of Planning (Dec. 4, 1975).)

1 broad-scale increases to density by General Plan Amendment and certainly not when those policies
2 were elevated to mandatory mitigations under CEQA.

3 71. In spite of the requirements in the Framework Element and applicable Community
4 Plans to correlate infrastructure availability with increases in density by amendments to the General
5 Plan or zone changes, the City adopted the TOC Guidelines without making such findings. As set
6 forth above, Measure JJJ did not compel the significant increases to density included in the TOC
7 Guidelines. Nor did Measure JJJ authorize the additional incentives included in the TOC Guidelines
8 that enabled projects to utilize the increased density well beyond that required in Measure JJJ.
9 Without the additional height, yard, and open space reductions, projects would not be able to achieved
10 the density authorized in the TOC Guidelines without discretionary General Plan amendments or zone
11 or height district changes involving a public process. The additional incentives granted to the Project
12 were *de facto* general plan amendments without notice, due process, and legislative approval, or the
13 required findings of adequacy.

14 72. The City abused its discretion by adopting the TOC Guidelines and approving projects
15 like the 10400 Santa Monica Boulevard Project in reliance upon them. The adoption of the TOC
16 Guidelines was in violation of the Government Code, because it creates an inconsistency between the
17 General Plan and the sweeping entitlements in the TOC Guidelines. At least one agency, the
18 Community Redevelopment Agency Los Angeles, has refused to implement the TOC Guidelines
19 because the density increases far exceed what is permitted under the Redevelopment Plans. By this
20 rationale, the density increases well in excess of the General Plan are also impermissible. In adopting
21 the TOC Guidelines and in approving projects such as the 10400 Santa Monica Boulevard Project, the
22 City Planning Commission made the required findings that the Guidelines or entitlement is “in
23 substantial conformance with the purposes, intent, and provisions of the General Plan” without
24 substantial evidence to support the findings. Such findings cannot be made because the City has
25 failed to ensure adequate infrastructure prior to approving the increased density in the TOC
26 Guidelines, as required by the Framework Element. A writ of mandate may issue to correct this abuse
27 of discretion by requiring the City Planning Commission to rescind its approval of the TOC
28

1 Guidelines and projects like the 10400 Santa Monica Boulevard Project that rely upon those
2 guidelines.

3 73. Petitioner has a direct and beneficial interest in the action herein and has exhausted all
4 other available remedies.

5 74. Petitioner has a beneficial right to Respondents' performance of their respective duties
6 based on Petitioner's interest in maintaining and improving the quality of the urban infrastructure in
7 the City of Los Angeles, as well as the interest of Petitioner's members in improving quality of life in
8 their own city.

9 75. Respondents' approval of the 10400 Santa Monica Boulevard Project and others like it
10 in reliance on the TOC Guidelines threatens to cause Petitioner irreparable and substantial harm by
11 allowing substantial increases in allowable density on without the existence of adequate infrastructure
12 and services. So long as the TOC Guidelines remain in effect, proposals consistent with the TOC
13 Guidelines can be approved by Respondents/Defendants which will exacerbate the deficient
14 infrastructure contrary to the requirements of policy 3.3.2 that allow increases in density only after a
15 finding, based on substantial evidence, that the infrastructure is adequate. Respondent's approval
16 utilized a claim of the site being served by existing infrastructure and public services, which is not the
17 same as adequately served, and no substantial evidence was provided to support the claim.

18 76. Petitioners provided testimony to the City regarding the mandatory nature of Policy
19 3.3.2 and flagged inadequate emergency response times and infrastructure deficiencies.

20 77. Petitioners have no plain, speedy, and adequate remedy at law, in that unless
21 Respondents/Defendants are enjoined by this Court to rescind the TOC Guidelines, the 10400 Santa
22 Monica Boulevard project, and other projects improved in reliance upon those guidelines. No amount
23 of monetary damages or other legal remedy can adequately compensate Petitioner and all residents of
24 the City of Los Angeles for the irreparable harm that they will suffer from the violations of law
25 described herein.

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FOURTH CAUSE OF ACTION
DECLARATORY RELIEF
(Code Civ. Proc., § 1060)

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

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

9 80. Petitioner contends that the TOC Guidelines are *ultra vires* for the reasons outlined
10 above, including specifically that these Guidelines far exceeded the authority of the City and the City
11 Planning Commission under Measure JJJ, and were outside the power of the City Planning
12 Commission to adopt. Petitioner is informed and believes that in response to Petitioner having
13 identified these issues for Respondents, Respondents have disagreed with Petitioner's contentions, and
14 continue to rely upon the TOC Guidelines in reviewing and approving other projects.

15 81. Petitioner contends that the Alquist-Priolo Act prohibits the construction of any
16 structure for human occupancy in area that is within fifty feet of mapped surface fault without a study
17 of the area immediately offsite. Petitioner informed Respondents of this contention and Respondents
18 disagreed in their public analysis. Respondents approved the project in spite of Petitioner's
19 objections.

20 82. Petitioner contends that the project's approval and the adoption of the TOC Guidelines
21 violate the Framework Element, because these approvals were entered into without compliance with
22 Framework Element Policy 3.3.2, including an assessment of the adequacy of the City's infrastructure
23 to support the increased density. Petitioner is informed and believes that in response to Petitioner
24 having identified these issues for Respondents, Respondents have disagreed with Petitioner's
25 contentions.

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

28 //

1 **PRAYER FOR RELIEF**

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

3 1. That the Court issue a peremptory writ of mandate, requiring Respondents to set aside
4 the approval for the 10400 Santa Monica Boulevard project, and to set aside the ultra vires TOC
5 Guidelines, and to cease any future reliance on the TOC Guidelines until and unless guidelines
6 consistent with Measure JJJ are adopted by Respondents, and until the approval for the 10400 Santa
7 Monica Boulevard project is designed with setbacks consistent with the requirements of the Alquist-
8 Priolo Act;

9 2. That this Court enjoin Respondents from taking any action to further the construction
10 of the 10400 Santa Monica Boulevard project and from relying upon the TOC Guidelines to approve
11 other projects, and to enjoin Real Parties from any activity in furtherance of the construction of the
12 10400 Santa Monica Boulevard project; and that this Court enjoin Respondents to rescind, revoke, and
13 invalidate all approvals issued in support of the Project until such time as the approvals comply with
14 Measure JJJ, the General Plan, and the Alquist-Priolo Act;

15 3. That this Court issue declaratory relief finding that

- 16 a. the TOC Guidelines are *ultra vires*, because they exceed what the voters authorized
17 in Measure JJJ and were not adopted as ordinance by the City Council;
- 18 b. the 10400 Santa Monica Boulevard project is inconsistent with the municipal code,
19 General Plan, and Measure JJJ;
- 20 c. the Alquist-Priolo Act requires a 50-foot exclusion zone on properties in a mapped
21 Alquist-Priolo Earthquake Fault Zone if no study has been performed to determine
22 the presence of surface faulting within 50 feet of the site's boundaries; and
- 23 d. the TOC Guidelines and the Project are inconsistent with the requirements of
24 General Plan policy 3.3.2.

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

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

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DATED: August 29, 2019

Respectfully submitted,

STRUMWASSER & WOOCHEER LLP
Fredric D. Woocher
Beverly Grossman Palmer

By: 
Beverly Grossman Palmer

*Attorneys for Petitioner and Plaintiff
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 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 29 day of August, 2019, at Los Angeles, California.



Laura Lake, Director
Fix the City

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