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November 9, 2015

The Honorable Jose Huizar, Mike Bonin, Marqueece Harris-Dawson, Paul Koretz
Gilbert Cedillo, Mitchell Englander, Felipe Fuentes, Nury Martinez, and David Ryu
Los Angeles City Council Planning and Land Use Management and Transportation Committees
200 North Spring Street
Los Angeles, California 90012

Via email to sharon.dickinson@lacity.org and adam.lid@lacity.org

RE: Council File 15-0719-S11, MP2035
November 10, 2015, Joint Committee Hearing, Agenda Item No. 2

Dear Councilmembers,

I write on behalf of Fix the City, Inc., which is Petitioner in a lawsuit presently challenging the City Council's determination on August 11, 2015, to adopt Mobility Plan 2035 (MP2035) and certify its Environmental Impact Report (EIR) along with adopting a Statement of Overriding Considerations for the unmitigable impacts of the implementation of MP2035. Fix the City objects to the Motion in Item No. 2 for several reasons: (1) it increases, rather than cures, the City's violation of its own procedures; (2) it creates new violations of the California Environmental Quality Act; and (3) it rescinds beneficial amendments rather than following appropriate procedures to enact MP2035 with such amendments, and others, included.

The City Council is faced with the Motion because it disregarded its own Charter and provisions regarding the approval of General Plan amendments. The Charter establishes procedures for the adoption of the General Plan or any amendments. The Council, the City Planning Commission or the Director of Planning may propose an amendment. The Planning Commission and Mayor must make recommendations on such General Plan amendment, and the City Council may act upon those recommendations. The City Council may make changes to a General Plan amendment reviewed by City Planning Commission and the Mayor, but "[i]f the Council proposes any modification to the amendment approved by the City Planning Commission, that proposed modification shall be referred to the City Planning Commission and the Mayor for their recommendations." (Los Angeles City Charter, § 555, subd. (d).) The Charter specifies that the Council's amendments must be reviewed as the original plan was reviewed by the City Planning Commission. (*Id.*, subd. (c).) In the course of the City Council's August 2015 review of MP2035, it made three substantive modifications to the plan: (1) to amend MP2035 to require that equity is an important factor in prioritizing projects for implementation; (2) to designate the City Council as an implementing agency for MP2035, in addition to the already-designated

Office of the Mayor; and (3) to add public safety as a criterion to evaluate implementation of the projects set forth in MP2035. The City Council failed to abide by these procedures when it approved MP2035 because it did not refer the amendments to the Planning Commission or the Mayor for their review.

Now, the Council concedes that its prior approval was improper. However, the Council is not following an appropriate path to remedy its errors. The Council cannot simply act as if it has the power to erase its blunder by simply acting as though it had never made it. First, the rescission (or elimination) of a portion of the General Plan requires review by the Planning Commission and the Mayor, as such an action effectively amends the General Plan by *removing* content of the General Plan. Moreover, the Council has already adopted MP2035 as it amended it, so it no longer has the power to adopt the version referred by City Planning Commission and the Mayor. The Los Angeles Municipal Code, section 11.5.6, subd. (e), provides a process by which General Plan amendments must be adopted. These provisions specifically require that the Council take action within 75 days of receiving the City Planning Commission and Mayoral recommendations on the proposed General Plan amendment. If the City Council does not act within the 75-day period, the General Plan amendment is deemed denied.

The City Planning Commission and Mayoral recommendation on MP2035 were transmitted to the City Council on May 18, 2015. Well over 75 days has elapsed since that time. The City Council never acted on MP2035 as recommended by the City Planning Commission and Mayor. Instead, it amended MP2035 and took action on the version that it amended. Because the City Council did not act on the version of MP2035 that the City Planning Commission and the Mayor reviewed within 75 days, that version of MP2035 is legally deemed denied by the operation of the Municipal Code. Therefore, Council cannot simply rescind the adoption of the amended MP2035 and replace it with the unamended version. The unamended MP2035 is now new to the Council and must go through the same process that any General Plan amendment would: hearing before the City Planning Commission, review and recommendation by the Mayor, and hearing before the City Council.

Beyond the procedural issues, the decision to rescind MP2035 and adopt a different version of the plan raises a number of issues with respect to compliance with CEQA. First, MP2035 — as amended by the City Council — *was* adopted and is now part of the City's General Plan. Rescinding MP2035 *changes* the baseline from what it is at present. The City does not appear to have conducted any environmental review of the impacts of rescinding the version of MP2035 that it had adopted in August, to consider, for example, whether the removal of amendments regarding consideration of equity or public safety would have an adverse impact on the environment in the City or have any environmental justice implications. The City simply appears intent on re-certifying the existing EIR without conducting any further review or addressing any of the many issues raised by community members.

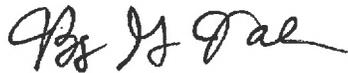
The City Council has recourse, of course, but it must follow appropriate procedures. Fix the City suggests that the City voluntarily stipulate to a court finding that MP2035's adoption did not follow appropriate procedures and ordering the City Council to remove MP2035 as amended. Fix The City then suggests that the City Council properly evaluate MP2035 as amended

Honorable City Councilmembers
November 9, 2015
Page 3

including all amendments proposed by City Council members. The Council could then quickly transmit the *amended* version of MP2035 to the City Planning Commission and Mayor for their review and recommendation as required, but only once any necessary additional environmental work was completed.

Fix The City additionally must point out that resolution of the procedural flaws during the approval process does not resolve the fatal CEQA flaws that exist in the MP2035 EIR. To truly resolve this issue in full, the City must prepare a proper updated study, recirculate it for public comment and then proceed as it sees fit — within the City Charter's procedural requirements.

Cordially,

A handwritten signature in black ink, appearing to read "Beverly Grossman Palmer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Beverly Grossman Palmer