

Communication from Public

Name: Jamie T. Hall

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Comments for Public Posting: This firm represents AIDS Healthcare Foundation (“AHF”). Please review the attached letter regarding the Housing, Safety and Health Element that will be considered tomorrow.

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November 23, 2021

VIA ELECTRONIC MAIL

Hon. Nury Martinez, President
Los Angeles City Council
c/o City Clerk
200 North Spring Street
Los Angeles, CA 90012
armando.bencomo@lacity.org

RE: Item Nos. 35, 36 and 43 Agenda for November 24, 2021 City Council Meeting
CPC-2020-1365-GPA; ENV-2020-6762-EIR; Council File No. 21-1230 (Housing Element Update); Council File No. 20-1213 (Safety Element); Council File No. 15-0103-S3 (Health Element)

Dear President Martinez and Members of City Council:

This firm represents AIDS Healthcare Foundation (“AHF”). AIDS Healthcare Foundation hereby adopts all project objections, comments, and all evidence/studies submitted in support thereof, and specifically requests that the City print out or attach to the Council file each and every hyperlinked document cited in all comment letters in the administrative record for this Project.

Additionally, please confirm that the City Clerk has placed an accurate and complete copy of all of our correspondence, including this letter, in each of the following City Council Files: Council File No. 21-1230 (Housing Element Update); Council File No. 20-1213 (Safety Element); Council File No. 15-0103-S3 (Health Element).

There continues to be a problem with the City Clerk’s staff NOT posting our letters as separate letters, mixing our letters into the middle of other comment letters, omitting or separating the exhibits from the letter, all of which makes it impossible for decision makers to review and comprehend our comments and concerns. The City’s Clerk has a duty to reproduce and maintain an accurate record of proceedings.

Please add this law firm to the **list of interested persons** to receive all notices related to this Project.

We bring to the City Council's attention the content and supporting evidence cited in and attached to the October 27, 2021 letter of this firm submitted to the Housing Committee of City Council, and in and attached to the November 2, 2021 letter of this firm submitted to the Planning and Land Use Management Committee of City Council. In addition to the issues raised in our previous correspondence, we have identified other defects in the City's compliance with applicable State Planning Law, the California Environmental Quality Act ("CEQA"), and the Brown Act open meeting law. Those issues are set forth in this correspondence.

As documented herein, the City is proposing to amend three elements of the General Plan, but its outreach and encouragement of public participation falls below that required by the State Planning Code, including Government Code Section 65351. Accordingly, the failures of public participation further require re-circulation and meaningful opportunities for the public, certified neighborhood councils, and interested parties to comment on the changes to City planning documents that will impact lives and property of owners for years to come.

1. **The Scheduling of Final Hearings On Three Elements Of The General Plan For The Wednesday Before Thanksgiving Tells The People Of Los Angeles That City Planning Officials Are Not Allowing Meaningful Public Participation On The City's Fundamental Planning Documents; The Council Must Refuse The Invitation To Violate Public Participation Mandates.**

Unfortunately, the City of Los Angeles Planning Department has gained a reputation over the years of scheduling critical public hearings and release of environmental review documents in the midst of the holiday season which results in suppression of public participation and ability to organize to educate the City Council regarding proposed City actions emerging from the bureaucracy. Those who watch City Council meetings have often seen the most controversial real estate development projects, the most problematic sole source contracts, the most anti-democratic policies proposed by City Planning go to hearing during the holidays when there would be the least press scrutiny.

However, even the most hardened cynics were stunned in disbelief when City staff scheduled the City Council's final hearing of the proposed amendments to the Housing Element, the Safety Element, and the Health Element on the Wednesday before Thanksgiving – a day well known as one of the busiest of the year for people to travel so that they may gather with their families the next day, on Thanksgiving. This is likely to be perceived as undermining the goals of public participation action, particularly because the City staff issued no 10-day hearing notice to the public but only gave Brown Act notice by posting a meeting agenda and sending out an email notice last Friday.

In its review of the City's Housing Element process, the State Department of Housing and Community Development was critical of previous actions in this process

where the City withheld draft documents and dropped them on the eve of public meetings, hearings and events so that few people had the opportunity to read and digest detailed planning documents and supporting studies. The Department observed that these actions were suppressing public participation. The City's response to the Department's criticism was to deny it. Further actions that undermine public participation mandates of state law are likely to imperil the City's goal of getting clearance from the State Department of Housing and Community Development.

Government Code 65351 imposes a mandatory duty upon the cities and counties to provide meaningful opportunities for public input and participation. While the City has latitude to establish public participation, it has less discretion when it comes to how and when to schedule the final (and only) public hearing before the full City Council. Even the most deferential State agency or reviewing court would be unlikely to find that the scheduling of the final hearing for three major elements of a city's general plan on the Wednesday before Thanksgiving was consistent with the City's statutory duty to provide for the public **a meaningful opportunity to participate in the City Council's decision making.** This is the opposite. It will result in suppression of participation at the most critical hearing prior to final decision making.

Accordingly, AIDS Healthcare Foundation respectfully suggests that the City Council inform City staff that no final hearings on Elements of the General Plan shall be heard on the day before Thanksgiving.¹

2. **This Is A Matter Where The Charter/LAMC Require A Public Hearing Be Placed On The Portion Of City Council Meeting Agendas Designated "Council Hearings Required By Law."**

Los Angeles voters have enacted into the Los Angeles City Charter at Section 555, entitled "General Plan – Procedures for Adoption," a specific and non-delegable duty: "d. **Council Action.** The Council shall conduct a public hearing before taking action on a proposed amendment to the General Plan." This particular section imposes a specific duty when it comes to the City Council considering and adopting proposed amendments to the City's fundamental planning documents.²

¹ Before the PLUM Committee, City Planning officials asserted that the State's housing element deadlines on or about February 12, 2022, and possible sanctions, required prompt processing of the Housing Element. While we agree that good faith progress must be made, the scheduling of final City Council hearings of three general plan elements on the Wednesday before Thanksgiving are not required despite the City's current grace period to adopt the Housing Element and related elements. If the City shows State officials it is making good faith progress toward completion, the sanctions described by City Planning are not as certain as was suggested at the PLUM Committee meeting. There simply is no "right way" to do such a wrong think as scheduling an important public hearing the day before Thanksgiving.

² Similarly, Government Code Section 65355, applicable to general law cities and counties, requires that the legislative body conduct at least one public hearing

City Council Rule 16 provides: “The Presiding Officer shall cause all matters filed with, or presented to the Council to be referred to the appropriate Council Committee, **except** as otherwise provided by the Rules or **where required by law to be first presented to the Council.**” City Council Rule 22 explicitly acknowledges that there is a substantive legal difference between public hearing testimony required by a law other than the Brown Act, and mere Brown Act opening meeting law public comment. When the character of the public’s appearance at City Council is public hearing testimony, Rule 22 mandates that the City Clerk schedule the item in the section of the City Council meeting agenda called “Council Hearings Required By Law.” Public hearings required by the City Charter to adopt any amendment of the general plan are required to be placed in this section. **However, this was not done for tomorrow’s meeting.**

The City staff, we understand to be pushing this Council, scheduled the items related to amendment of the City’s General Plan Housing, Safety and Health Elements under a section of the City Council’s agenda entitled “Items For Which Required Public Hearings Have Been Held.” (See next section.) The two sections entitled “Items For Which Required Public Hearings Have Been Held” and “Items For Which Required Public Hearings Have Not Been Held”, are portions of the City Council’s meeting agenda structured to take advantage of the Brown Act’s provision permitting public comment to be denied if the same item of business was placed on the meeting agenda of a committee of the legislative body solely composed of its members and every person who appears at the committee meeting seeking to speak, is permitted to speak. If Brown Act public comment was permitted at a Committee of the Los Angeles City Council and all who wanted to speak were permitted to speak, then under Government Code Section 54954.3(a), no further opportunity to speak before the City Council need be provided if the item of business remains unchanged. Items placed directly on the City Council meeting agenda that have had no Brown Act public comment are placed in the section entitled “Items For Which Required Public Hearings Have Not Been Held.”³

Because the City Clerk was not told to place the items related to amending three General Plan elements on the meeting agenda under the section entitled “Council

before approving a proposed amendment of the general plan. Also similar to the Los Angeles City Charter, this code section provides no express authorization for the public hearing requirement to be delegated to less than a quorum of the legislative body. In fact, just like the Los Angeles City Charter, state law requires the amendment of the general plan to be adopted by a majority of the legislative body. This can hardly be done without the entire legislative body sitting to hear from the public. In fact, it is the central duty of the legislative body of any governmental entity.

³ The City Council’s use of the nomenclature of “public hearings” to refer to Brown Act public comment, is a misnomer, and it allows the City staff to conflate the Brown Act’s right of public comment on any item of business at a public meeting, and the more rare occurrence of a public hearing where testimony is taken pursuant to a law other than the Brown Act. A more accurate title of these sections would be “Items For Which Public Comment Occurred At Committee” and “Items For Which Public Comment Did Not Occur At A Committee”.

Hearings Required By Law,” the meeting agenda issued last Friday night does not inform the public that, even if they were not traveling on the Wednesday before Thanksgiving, they would be allowed to testify if they attended the meeting. For this independent reason, AIDS Healthcare Foundation respectfully suggests that the City Council direct the City Clerk to place these items in the proper meeting agenda section, or that the City Council announce and hold a special meeting for only considering these General Plan amendments -- with adequate advance notice to the public of at least 72 hours.

3. **Items 35, 36 and 43 Are Erroneously Noticed On The City Council’s Meeting Agenda As “Items For Which Hearings Have Been Held” When Not Everyone Who Appeared At The PLUM Committee or the Housing Committee Were Allowed To Speak.**

The City’s entire Committee hearing system is tailored under the Rules of City Council to place as much of the City’s business as possible onto a consent-like section of the City Council agenda called “Items For Which Required Public Hearings Have Been Held.” The City Council’s Committee Structure is premised on the wording of Government Code Section 54954.3(a) which includes:

“However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, **at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item**, before or during the committee’s consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body.” (Emphasis added.)

Thus, all of the City Council’s committees are solely composed of Council Members in order to fall within this rule. Historically, items of business were called at Committee meetings based upon submitted requests to speak. Every person who submitted a request to speak were permitted to speak on the item at the Committee level hearing. So long as the item of business was not changed significantly between the Committee meeting and the placement of the item on the City Council agenda, the City Council could deny the public any right of Brown Act public comment at the full City Council meeting.

It appears that City officials in the City Clerk’s office have erroneously placed Items 35, 36, and 43 on the section of the City Council agenda that tells members of the public that even if they appear at the meeting, the City Council will likely approve these items without allowing any Brown Act public comment at all. Thus, the damage is done because the public has already been told: “Don’t bother to come to the meeting because we do not have to allow you to speak under this section of the agenda.”

However, the record in this proceeding establishes that for each of these items the underlying Committee meetings held at the Housing Committee and the PLUM Committee did not permit every person who wished to speak on the General Plan Amendments to speak on them. We have documented several persons who sought to

speak on these items at both the Housing Committee and the PLUM Committee, and who were not called on to speak at all. We know of persons who attended both meetings, asked to speak, and were denied the opportunity to speak both times.

Given that the City failed to comply with the prerequisite to **allow all persons who wish to speak on the item at the Committee level to participate**, the City Clerk has no legal basis to schedule this item on the portion of the City Council's meeting agenda entitled: "Items For Which Public Hearing Has Been Held." Therefore, City officials have failed to proceed in accordance with Section 54954.3(a) of the Government Code, and the three General Plan element items are improperly listed in this section of the City Council's agenda.

4. **The Agenda Descriptions for All Three General Plan Elements Are Deficient Because They Affirmatively Point The Public To Inapplicable CEQA Guidelines.**

Beginning first with a flawed City Planning Recommendation report to the Housing and PLUM Committees, the City Planning Department began recommending that those Committees adopt findings that if the Council has previously adopted a resolution certifying the Final EIR for the three General Plan element amendments, that no subsequent EIR is required under CEQA Guidelines Section 15162 and that no addendum to the Final EIR is required under CEQA Guidelines Section 15164. References to these sections are incorrect, and are likely to confuse the public into believing that the City Council has already adopted a resolution to certify the Final EIR for the Housing, Safety and Health amendments, when it has not. Yesterday, this office sent an email to Mr. Bertoni and his staff asking for an explanation of why this confusing language appears in the City Council's meeting agenda for each element. As of the sending of this letter to City Council, Mr. Bertoni and his staff have offered no explanation or justification for these erroneous citations of CEQA Guidelines.

On the basis that the City Planning Department has cited incorrect sections of the CEQA Guidelines in Reports to the Housing and PLUM Committee, asked the Committee to issue reports containing erroneous recommendations to inapplicable CEQA Guideline sections, and because these erroneous action recommendations now appear within the agenda descriptions of the proposed amendments to the Housing, Safety and Health elements to tomorrow's City Council meeting agenda, AIDS Healthcare Foundation urges the City Council to immediately withdraw and publicly announce these items will not be heard by the City Council tomorrow, the Wednesday before Thanksgiving.

5. **Documents Proposed For Adoption By The City Council Still Have Not Been Made Available For Public Review; The Interested Public Are Unable To Intelligently Submit Written Comments, Even If Oral Comments Will Be Denied.**

In correspondence from this office on November 2, 2021, we pointed out that the key documents the City keeps revising for the Housing, Safety and Health elements have

not been uploaded and made available to the public to review in advance of the City Council's vote on any of these critical documents. As we have pointed out, some of the links in the City's council file simply take members of the public on a digital circle back to the starting point without providing access to the document. If the public cannot access these documents, neither can members of City Council. Therefore, there is evidence overcoming any presumption of regularity that Council members even had access to review the documents they are asked to approve tomorrow.

For all of these reasons and legal infirmities, the City Council is asked to set aside the City staff proposal to conduct the final hearings on three General Plan elements on the day before Thanksgiving. The State Department of Housing and Community Development will not penalize this City Council for waiting for a more appropriate time to conduct these final public hearings.

Most sincerely,

A handwritten signature in black ink, appearing to read "Jamie T. Hall". The signature is fluid and cursive, with the first name "Jamie" being the most prominent part.

Jamie T. Hall

cc: Vince Bertoni, Planning Director (vince.bertoni@lacity.org)
Nicolas Maricich, Principal Planner (Nicholas.maricich@lacity.org)