AHF AIDS HEALTHCARE FOUNDATION

August 27, 2019

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Los Angeles City Council
Planning and Land Use Management Committee
200 North Spring St.
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Also posted to: https://cityclerk.lacity.org/publiccomment/

Re: August 27, 2019 Agenda item 6, Transfer of CRA/LA Authority (CF 13-1482-S3)

Dear Chair Councilmember Harris-Dawson and the Members of the PLUM Committee:

The Resolution, Ordinance, and Negative Declaration concerning the transfer of land use planning authority from the Community Redevelopment Agency to the City Planning Department are fatally and fundamentally flawed. Do not approve these items: they should be sent back to Planning for significant revision to ensure that the full protections in the City's Redevelopment Plans, including the mitigation measures adopted in the Environmental Impact Reports for those plans, are not stripped out and reduced into insignificance.

The public has had minimal opportunity to review the final Resolution and Ordinance.

Additional time is necessary to ensure a full and adequate review and consideration by the public and this Council.

The AIDS Healthcare Foundation hereby incorporates as its own the comments in opposition to the proposed Resolution, Ordinance, and Negative Declaration made by members of the public.

Non-Compliance with California Environmental Quality Act

Initially, the City attempted to claim that the ordinances and resolutions were exempt from analysis under CEQA as they were not a "project." The July 18, 2019 Supplemental

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Transmission, and the August 22, 2019 Technical Corrections from the Planning Department maintain that the Council should find these actions exempt from CEQA as not constituting a "project."

The Council should be aware that the California Supreme Court recently ruled in *Union of Medical Marijuana Patients v. City of San Diego* (S238563, Aug. 19, 2019) that:

> "A proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur. Consistent with this standard, a 'reasonably foreseeable' indirect physical change is one that the activity is capable, at least in theory, of causing".

It would be a direct violation of the Supreme Court's opinion to conclude that the adoption of the proposed resolution and ordinance is not a "project" as the July 18, 2019 transmission requests.

Moreover, the Negative Declaration is itself inadequate. Specifically, the Negative Declaration fails to disclose the limitations in the Resolution transferring authority, which do not in fact transfer the entirety of the land use and development functions in the various redevelopment plans, but only a specifically identified carve out. Nowhere in the Resolution is it specified that the transfer of land use authority also includes a binding commitment to carry out the mitigation measures committed to during the adoption of the various Redevelopment Plans, including specifically the Hollywood Redevelopment Plan. Some of these mitigation measures involve on-going monitoring and the identification of historically significant structures. These functions are carried on by CRA/LA, but it is not clear in the Resolution or the Negative Declaration that these non-development functions are to be transferred to the responsibility of Planning.

If the implementation of these mitigation measures is not clearly established and articulated, the transfer of land use authority *will* have significant environment effects. These mitigation measures were imposed to mitigate the impacts of development under the Redevelopment Plans and must be implemented to avoid a significant effect. Removal of mitigation measures requires analysis which has not been performed. While the Negative Declaration purports that the City will abide by prior mitigation measures, the Negative Declaration itself does not include those measures (otherwise, it would be a mitigated negative declaration). The Negative Declaration is premised on the faulty assumption that the transfer of authority will have no impact, but that premise only applies if the mitigation measures in *other* environmental documents are adhered to. The Negative Declaration doesn't even contain a mitigation measure requiring the adherence to these other mitigation measures. Nor does the

Resolution transferring authority have such a commitment. Indeed, the Negative Declaration imposes a significant caveat on the City's "intent" to assume responsibility for the CRA's mitigation measures – it will do so only "if the measure falls within a traditional land use function." What are those? It is not specified in the Negative Declaration.

These issues in the Negative Declaration are compounded by the failure to provide the public with access to the Resolution or the Ordinance at the time the Negative Declaration was circulated for comment. The public could not meaningfully comment on the absence of protective measures in the Resolution and Ordinance if those documents were not made available for review. The Negative Declaration states, for instance, that the proposed Resolution claims that the "City will develop guidelines to monitor and enforce mitigation measures." This language is not actually in the Resolution, nor is the commitment to develop such guidelines adequate as a mitigation measure in the first place. But the public would not have known of this glaring deficiency until the Resolution itself was released for public review.

Non-Compliance With State Law Governing Transfer of Redevelopment Plan Authority

The Resolution does not comply with the requirements of Health and Safety Code section 34173, subdivision (i). The Resolution does not transfer "all land use related plans and functions" of the former redevelopment agency. Instead, the Resolution specifically transfers only *part* of the land use plans, and does not speak to the redevelopment agency's "functions" other than review of proposed projects. The Resolution also does not make clear whether the CRA/LA's implementing mechanisms for various redevelopment plans, such as Design for Development regulations in Hollywood, are to be assumed by the City. The Redevelopment Plan is not the full extent of "land use related plans and functions" and the City is not entitled to carve out aspects of the plan that it wants to transfer and ignore aspects that it doesn't want to transfer.

Moreover, the City is not entitled to amend the land use plans adopted under the redevelopment law. Those plans can only be amended by approval of the "agency," which is defined as the Redevelopment Agency – an agency that no longer exists. State law is clear that successor agencies have very limited power with respect to redevelopment plans. By transferring the redevelopment plan's land use related provisions and functions to the City, the City has only the powers of the successor agency and does not have more expansive authority than that.

The Resolution must be revised in significant part to comply with state law, making clear that it is the full plans and functions of the CRA/LA that are being transferred.

Implementing Ordinance Lacks Specificity and Contains Errors

The implementing Ordinance circulated to the public for the first time on Friday, August 23, is troubling in several respects.

Most critically, the major part of the ordinance – establishing new municipal code section 11.5.14, the procedures for the implementation of the redevelopment plans – lacks necessary detail and does not present a firm commitment to apply the design and development guidelines that are part of some Redevelopment Plans. This portion of the municipal code establishes requirements for submission and approval of all of the necessary compliance documents for projects in redevelopment plan areas. By definition, the ordinance defines "Redevelopment Regulations" as "all the land use provisions of the Redevelopment Plans and design or development guidelines adopted pursuant to such Redevelopment Plans that govern land use or development that were transferred to the City pursuant to California Health and Safety Code section 34173(i)." But by Resolution, the entirety of the Redevelopment Plan are not transferred, and there is no reference to the design or development guidelines. The definition allows for a "bait & switch" argument wherein all appears to be covered but in reality, the transfer only includes *portions* of the Redevelopment Plans.

In areas such as Hollywood, where significant work has been done by CRA/LA to identify historic resources, it is critical that the limitations in the Redevelopment Plan on redevelopment of historic structures be incorporated into the City's review process. The Ordinance does not include any specific provisions for projects impacting historic resources.

The Ordinance does not include adequate appellate process. Ministerial projects have no right of appeal. An improper grant or denial of a ministerial approval should be reviewable on appeal. On other appeals, the ordinance requires the appellant to provide a statement "why the decision should be upheld." Plainly, an appellant does not believe that the decision should be upheld. The Ordinance should be revised to fix this obvious drafting error which appears in multiple places.

The Ordinance also references section 12.36 of the Code but fails to amend that section to include appeals from matters arising out of newly added section 11.5.14.

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