LAW OFFICE OF JOHN P. GIVEN
2309 Santa Monica Blvd., #438
Santa Monica, CA 90404
john@johngivenlaw.com
(310) 471-8485

March 1, 2021

Submitted via comment portal at https://cityclerk.lacity.org/publiccomment/

Honorable Marqueece Harris-Dawson, Chair
Members of the Planning and Land Use Management Committee
Los Angeles City Council
City Hall, Room 1010
200 N. Spring Street
Los Angeles, CA 90012

RE: Oppose Proposed Administrative Appeal Fee Increase Without Additional Public Review and Opportunity to be Heard
Council File 0-0969-S3, agenda item 10

Honorable Chair Harris-Dawson and PLUM Committee Members:

The City of Los Angeles periodically updates fees charged for what the Department of City Planning ("Planning") regards as "project planning services" through a "Comprehensive Fee Update."[1] The fees included in the update process are all those in Los Angeles Municipal Code (LAMC) Chapter I, Article 9, sections 19.00 through 19.12. The comprehensive fee update includes fees under LAMC section 19.01.B, subdivision (1)(b), for appeals made "by a person, other than the applicant, claiming to be aggrieved," which Planning refers to as "non-applicant initiated appeals." (Planning Report, supra note 1, pp. 4-5.)

This letter is submitted on behalf of all individuals and community organizations that have not had actual notice of the proposed Council action due to the faulty notice and complete lack of outreach to interested members of the public. Please take notice that any action on the item, other than hearing public comment and continuing the item to a future date following adequate public notice, would constitute a violation of the Brown Act under Government Code section 54954.2, in that the agenda does not reasonably apprise members of the public of the subject matter of the agenda item, the nature of actions to be taken, or the rights under the City Charter and federal and state constitutions that would be affected.

In addition, a frequent concern of community organizations and certified neighborhood councils is that important matters of citywide applicability often receive limited notice, and notice of less than 60 days generally does not provide sufficient time for interested community organizations and certified neighborhood councils to meet and confer and submit informed comments on the proposed item. This is particularly true where little, if any, outreach has been undertaken by relevant City agencies. I strongly urge the Council to continue the item for at least 60 days to

[1] Vincent P. Bertoni, Report from Department of City Planning re Comprehensive Fee Update (CF 09-0969-S3), Dec. 2, 2020, p. 1 (hereafter "Planning Report"); available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969-S3_rpt_PLAN_12-02-2020.pdf.

allow time for Planning to undertake outreach to community groups, neighborhood councils, and individual stakeholders, and for all those who may be interested to submit their informed public comment to the City Council before any action is taken.

As a preliminary matter, because the proposed action in Council File 09-0969-S3 is supplemental to the original action (in Council File 09-0969), the Clerk and City Council should consider the entirety of the original council file as part of the administrative record for the proposed action. This comment letter therefore adopts, as if fully set forth herein, all public comments and objections to the proposed action to increase non-applicant appeal fees under LAMC section 19.01.B from the entirety of Council File 09-0969 and Council File 09-0969-S3.[2]

Background

The City of Los Angeles hired consultant NBS to prepare a fee study, which was published in November 2016.[3] The Fee Study provided a "Cost of Service Analysis" estimating the total cost of each service provided for which the City charges a fee in Chapter I, article 9, and a "Cost Recovery Evaluation" of the percentage of costs recovered through then-current fees. (Fee study, p. 6.) The Fee Study also discussed important policy questions and factors the City should consider when determining "an appropriate cost recovery target" for each fee. (*Ibid*.) The questions asked include the following:

- To what degree does the public at large benefit from the service?
- To what degree does the individual or entity requesting, requiring, or causing the service benefit?
- Will increasing fees result in non-compliance or public safety problems?
- Are there desired behaviors or modifications to behaviors of the service population that could be helped or hindered through the degree of pricing for the activities?
- Could fee increases adversely affect City goals, priorities, or values?
- Does current demand for services support a fee increase without adverse impact to the citizenry served or current revenue levels? (In other words, would fee increases have the unintended consequence of driving away the population served?)
- Is there a good policy basis for differentiating between types of users?
- Are there broader City objectives that inform a less than full cost recover target from fees, such as economic development goals and local social values?

(*Id*., pp. 6-7.)

---

[2] See LA City Clerk Connect, Council File 09-0969, available at: https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=09-0969.

[3] NBS, Fee Study Final Report, Nov. 14, 2016 (hereafter "Fee Study"), available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969-S3_misc_12-02-2020.pdf.

In light of the multitude of policy considerations raised by these and other questions, Planning's December 2016 recommendation was to peg appeal fees under LAMC 19.01.B(1)(b) to 2% of the estimated cost of appeals.[4] The non-applicant initiated appeal fee was at that time set at $89. Increasing the fee to 2% would have approximately tripled the non-applicant initiated appeal fee to $271. (*Id*.) The documents were referred to the City Council's PLUM Committee, but no further action was immediately taken.[5]

In late July 2017, the City Administrative Officer submitted a report regarding the item, with recommendations for the Council to approve amending the code as recommended by Planning and to request the City Attorney to prepare the required ordinance.[6] On August 4, the item was scheduled for hearing at PLUM on August 8, 2017. On August 7, an additional CAO report was issued to clarify that the CAO recommendation was for 100% full cost recovery, including for non-applicant initiated appeals.[7] In other words, while Planning recommended a fee of $271 for non-applicant initiated appeals, the CAO recommended a fee of $13,538. On August 8, PLUM continued the item until August 15, 2017.

On August 14, 2017, the Director of Planning and Interim CAO issued a joint report with five additional alternatives for the Council to consider aside from the Full Cost Recovery model for fees under LAMC section 19.01.B.[8] Proposals to increase non-applicant initiated fees ranged from Planning's original proposal of 2% ($271) all the way up to the CAO's revised recommendation of Full Cost Recovery ($13,538).[9]

---

[4] Vincent P. Bertoni, Report from Department of City Planning re 2016 Comprehensive Fee Study and Recommended Fee Changes (CF 09-0969), Dec. 29, 2016, pp. 3-4, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_rpt_PLAN_12-29-2016.pdf; *see also* Department of City Planning, Estimated Cost of Service per Fee Activity, rev. 11/14/16, COS - Appx. A, p. 1, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_misc_1_12-29-2016.pdf.

[5] All action history for Council File 09-0969 referenced in this letter is available at the LA City Clerk Connect web page for Council File 09-0969, available at: https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=09-0969.

[6] Richard H. Lewellyn, Jr., CAO Report re City Planning Comprehensive Fee Study (CAO File No. 0220-04851-0014), July 26, 2017, p. 1, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_rpt_CAO_07-26-2017.pdf.

[7] Richard H. Lewellyn, Jr., CAO Report re City Planning Comprehensive Fee Study (CAO File No. 0220-04851-0017), August 7, 2017, Attachment 1, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_rpt_CAO_08-07-2017.pdf.

[8] Vincent Bertoni & Richard Lewellyn, Joint Report Back Regarding Appeal Fees and Fee Increases Included in the City Planning Comprehensive Fee Study, August 14, 2017, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_rpt_CAO_08-14-2017.pdf.

[9] *Id*., Attachment A.

On August 15, 2017, PLUM met and considered the Fee Study and various recommendations, and recommended approval of an ordinance except for those with respect to 19.01.B appeal fees.[10] The full City Council approved of the recommendations on August 23, 2017.

Community Protest and Subsequent Council Action

Based on the proposals the City was then considering to increase non-applicant appeal fees ranging from approximately 200% to more than 15,000%, many individuals and community groups submitted comments. As Irma Muñoz, Chairperson of the Santa Monica Mountains Conservancy wrote of the proposal to increase non-applicant appeal fees to a level providing "full cost recovery:"

> It is hard to see the "full-cost recovery" options currently recommended by the CAO as anything but a cynical attempt to deny public agencies and individual members of the public the opportunity to fully utilize their administrative options in opposing projects, and by extension, are an attempt to quash future litigation, regardless of the adverse impacts of a particular project.[11]

The Santa Monica Mountains Conservancy urged the Council to "keep the cost of filing appeals at a rate that is affordable by ordinary citizens and other public agencies."[12]

Noting that its members had "experienced mistakes that planning and building and safety have made in project approvals that needed correction through the appeal process," Hollywood Homeowners Association objected to full cost recovery because "[p]rohibitive fees will discourage citizens to appeal, making ordinances weak by setting precedents and allowing rights that others do not receive."[13]

A number of concerned citizens wrote letters including the following text or variations thereof:

> I am extremely concerned over the proposed action of increasing the Appeal Fee and urge the L.A. City Council to stay with the

---

[10] Planning and Land Use Management Committee Report, Aug. 15, 2017, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_rpt_plum_08-15-2017.pdf. Note that PLUM's report indicates that only fees under LAMC section "19.01-B.3" would be held over for further consideration, which appears to have been a typographical or clerical error based on subsequent Council actions relating to appeal fees.

[11] Irma Muñoz, Santa Monica Mountains Conservancy Chair, letter to City Council, Sept. 25, 2017, p. 1; available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_pc_09-25-2017.pdf.

[12] *Ibid.*

[13] Hollywood Homeowners Association, letter to PLUM Committee, Aug. 14, 2017, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_pc_08-14-2017.pdf.

> current fee of $89 with an annual COL increase, which is already beyond the reach of many of the city's residents. [¶] Any jump in the fee will reduce the ability of citizens to petition the government. A proposal to jack up the fee to $13,538 is a slap in the face of those who practice or believe in healthy civic questioning of our elected leaders — the very kind of questioning that has made the City Council a better, smarter and more fair entity (with more improvement still to come). [¶] Not only do residents make the City Council a better governmental body, but residents of LA are already covering these costs through their taxes to the city.[14]

A significant number of Neighborhood Councils submitted formal Community Impact Statements (CISs) to the record. For example, Bel Air-Beverly Crest Neighborhood Council's CIS focused on the important value of citizen and community organization appeals:

> The BABCNC is strongly opposed to the proposed fee increase. The fundamental flaw in the City's logic is premised on the assumption that these appeals serve no benefit or value. On the contrary, these appeals often result in better projects. Developers often modify their projects to address community concerns and/or agree to new conditions of approval as a result of appeals. This is a net positive for the community even if there are additional costs borne by the City to process the appeal. The mere fact that the City does not receive a financial benefit does not mean that the City and community does not ultimately benefit... Further, in many situations, errors explained in appeal justification letters often result in corrections. Certainly, compliance with the law is a good thing for the community and the City. Other times, appeals are granted in their entirety when particularly egregious mistakes are made… Increasing the appeal fees creates a giant barrier to entry and this is not beneficial to either the community or the City.[15]

Other Neighborhood Councils found an increase greater than that recommended by Planning as unreasonable.[16] For example, in adopting its position opposing the CAO's recommended

---

[14] See Robyn McNutt, Bernie Eisenberg, "Sandy," et al., emails to Los Angeles City Council, Feb. 14, 2018, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_pc_02-14-2018.pdf.

[15] Bel Air-Beverly Crest Neighborhood Council, Community Impact Statement re Council File 09-0969, Dec. 26, 2017, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_cis_12-26-17.pdf.

[16] *See, e.g.*, Arroyo Seco Neighborhood Council, CIS re Council File 09-0969, submitted Nov. 12, 2017; Empowerment Congress North Area and Development Council, CIS re Council File 09-0969, submitted Nov. 1, 2017; Northwest San Pedro Neighborhood Council, CIS re Council

increase, Arroyo Seco Neighborhood Council noted: "Any significant increase would serve as a financial barrier for the average resident. A significant increase would limit fair access to due process, suppress community involvement and have a negative impact upon the quality of planning and land use decisions."[17] Likewise, the Empowerment Congress North Area and Development Council (a certified Neighborhood Council) found "the recent proposals onerous and cost prohibitive and would silence community and stakeholder participation in the decision making process" and opposed an increase greater than $200 for non-applicant initiated appeals.[18]

The Porter Ranch Neighborhood Council's CIS stated:

> [T]he current fee of $89 is already beyond the reach of many of the City's residents, and any increase to the fee will take away the ability of more citizens to petition their government. The notion of increasing the Appeal Fee to the full cost of $13,538 is outrageous and is a clear message to the City's residents that the City government has no interest in hearing their opinion. It undermines the possibility of a fair and impartial review of buildings and projects in our neighborhoods… We wish to remind the City Council members that the residents of the City of Los Angeles already pay for the full cost of the appeal as part of the taxes we pay the City. Any increase in the fee represents an increase in City taxes on its residents without any justification.[19]

Veteran Los Angeles land use and environmental attorney Daniel Wright submitted a letter voicing substantial and detailed legal objections to the previously proposed increase in non-applicant appeal fees.[20] Mr. Wright's objections included the following points, among others:

File 09-0969, submitted Nov. 28, 2017; and Porter Ranch Neighborhood Council, CIS re Council File 09-0969, submitted Oct. 15, 2017; respectively available at:
https://clkrep.lacity.org/onlinedocs/2009/09-0969_cis_11-12-17.pdf,
https://clkrep.lacity.org/onlinedocs/2009/09-0969_cis_11-1-17.pdf,
https://clkrep.lacity.org/onlinedocs/2009/09-0969_cis_11-28-17.pdf,
https://clkrep.lacity.org/onlinedocs/2009/09-0969_cis_12-16-17.pdf,
https://clkrep.lacity.org/onlinedocs/2009/09-0969_cis_10-15-17.pdf.

[17] Arroyo Seco Neighborhood Council, CIS re Council File 09-0969, submitted Nov. 12, 2017, supra note 16.

[18] Empowerment Congress North Area and Development Council, CIS re Council File 09-0969, submitted Nov. 12, 2017, supra note 16.

[19] Porter Ranch Neighborhood Council, CIS re Council File 09-0969, submitted Oct. 15, 2017, supra note 16.

[20] Daniel Wright, letter to Planning and Land Use Management Committee, Aug. 15, 2017, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969_pc_plum_08-15-2017.pdf; for convenience, the letter is attached as an Exhibit to this submission.

- The City's inadequate notice used a "generic and vague description" which "does not put a reasonable person on notice" that fees for land use appeals could be increased;
- The City's proposed action was taken without significant public outreach;
- Land use appeals and appeals taken from actions by the Department of Building and Safety do not constitute "project planning services" but rather are Charter-mandated quasi-judicial administrative actions the City has a ministerial duty to perform, in furtherance of constitutional rights afforded to citizens' rights to redress grievances;
- The basis underlying the full-cost recovery for land use appeals is based on unverified staff estimates, not an actual study of time spent on appeals, and is not supported by substantial evidence, including substantial evidence to support the blended hourly rate for staff that reviews appeals;
- There is no rational basis to allow for "full cost recovery" as recommended by the Interim City Administrative Officer because it would erect a barrier to the exercise of constitutionally protected rights;
- Full cost recovery constitutes "an effort to silence the people of the City."[21]

Based on the strong public policy arguments submitted by many community stakeholders opposed to the proposed non-applicant appeal fee increase, when the City Council finally took action on its Comprehensive Fee Update, the non-applicant initiated appeal fee remained at $89. (*See* Los Angeles Ordinance 185432, as codified at LAMC section 19.01.B, subdiv. (1)(b).)

The Current Proposal

Unfortunately, the proposal now being contemplated by the City suffers from largely the same defects as the 2016-2018 fee update proposal.

The City process began with a report from Planning and has had virtually no public outreach before being scheduled before the Council's PLUM Committee. Unsurprisingly, having conducted virtually no outreach, the City has once again received virtually no feedback from interested stakeholders, even though based on public comment received during 2017 and 2018 the City should have expected to receive dozens if not hundreds of comments from individuals, community groups, and certified neighborhood councils interested in the issue had the item been properly noticed and preceded by reasonable agency outreach. Stakeholders cannot be expected to comment on agenda items that are not reasonably calculated to provide them with actual notice, particularly during the ongoing COVID-19 pandemic that limits the ability of citizen groups to meet. Moreover, due to COVID-related public facility closures (for example, of the City's many public libraries, where many Los Angeles stakeholders previously could utilize computer and online services) collateral impacts are even greater for socioeconomically disadvantaged communities.[22]

---

[21] *Ibid.*

[22] The Los Angeles Public Library's home page still includes a banner notice stating: "All libraries remain closed to the public until further notice." *See* https://www.lapl.org (last checked, March 1, 2021.)

As discussed in Mr. Wright's letter regarding the previous fee update effort, the current agenda item "does not put a reasonable person on notice" that fees for land use appeals could be increased on the basis of the agenda entry, because a reasonable person would not interpret vague references to the provision of "planning and land use services" as implicating their constitutional right to redress grievances to the City of Los Angeles. As a result, any action taken beyond taking public comment and continuing the item following proper notice would constitute a violation of the Brown Act. (See note 20, supra.)

While the NBS Fee Study still stands as the primary basis for the Comprehensive Fee Update, estimated costs have been updated. The full cost recovery of non-applicant initiated appeals, however, still appears to be unsupported by substantial evidence to justify the number of hours spent per appeal (now 79.5) or the resulting total cost per appeal (now $15,811).[23] Planning's current recommendation is to increase the cost of non-applicant initiated appeals to 1% (down from 2% in the previous proposal) of the estimated cost, or $158.[24] The City Administrative Officer has "adjusted" the costs provided by Planning, resulting in a slightly higher suggested full cost recovery for non-applicant initiated appeals of $16,097. The CAO continues to recommend an unconscionably high non-applicant initiated appeal of $16,097 to reflect full cost recovery, notwithstanding the obvious constitutional and other infirmities in such a position, as reflected in numerous comments to the record during consideration of the previous fee update.[25]

According to Planning's updated Fee Analysis (see note 22), the City expected to process approximately 210 non-applicant initiated appeals in fiscal year 2019-2020 (approximately a 5% increase since the original fee study published in November 2016). But whether "full cost recovery" is calculated as $15,811 or $16,097, it is absurd to suggest that all appeals ought to cost appellants the same fee. One appeal might be for a simple issue, say the appeal of an over-in-height fence that would take at most an hour or two of staff time to review and consider. Another might be for a complex skyscraper with multiple entitlements, which could reasonably be expected to take a little more time than a fence height variance. To treat both types of appeals as equivalent is entirely irrational, and would render fees for simple appeals unlawful on an as-applied basis to the extent a legislative action to adopt increased fees would not already be unlawful for being arbitrary, capricious, or wholly lacking in evidentiary support. (See *Baldwin v. City of L.A.* (1999) 70 Cal.App.4th 819, 836.)

Even assuming that a full cost recovery on appeal fees is legally permissible and the administrative record provided sufficient evidence to withstand judicial scrutiny, there can be little doubt that the result would be a substantial decrease in the ability of community groups and individuals to ensure that the City's charter and municipal codes are followed. While that may not be intended effect, most community members would likely share Ms. Muñoz's view that full

---

[23] Department of City Planning, Fee Analysis, November 2020, p. 1, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969-S3_misc_1_12-02-2020.pdf.
[24] *Ibid.*
[25] Richard H. Lewellyn, Jr., CAO Report re City Planning Comprehensive Fee Study (CAO File No. 0220-04851-0019), February 24, 2021, Attachment, p. 1, available at: https://clkrep.lacity.org/onlinedocs/2009/09-0969-S3_rpt_CAO_02-24-2021.pdf.

cost recovery constitutes "a cynical attempt to deny public agencies and individual members of the public the opportunity to fully utilize their administrative options in opposing projects . . . regardless of the adverse impacts of a particular project." (Muñoz letter, supra note 11.) As numerous commenters in the previous round noted, even the fairly nominal $89 fee represents a significant barrier to participation for many individuals and community groups. Before considering further increases in non-applicant appeal fees, the City should therefore undertake a more thorough policy review, including:

- Whether the current non-applicant appeal fee represents a barrier to public participation for non-applicants and what can be done to remove or mitigate this barrier;
- The actual cost to process different categories of non-applicant appeals per entitlement or permit type; and,
- Whether certain categories of appeals (for example, for large individual projects or policies with citywide or communitywide impacts) should be funded entirely from the general fund, as opposed to with individual non-applicant appeal fees.

Conclusion

To conclude, while Planning's proposed non-applicant initiated appeal fee increase to $158 is obviously more palatable than the City Administrative Officer's proposal to increase such fees to the outlandish sum of $16,097, the City should take no further action on the proposal until after Planning has done additional policy work to determine whether non-applicant appeal fees represent a significant barrier to individuals and community groups, and if so, how to remove or mitigate this barrier. In addition, the City should allow time for Planning to undertake adequate outreach to stakeholders so community groups and neighborhood councils have an opportunity to meet to discuss the proposed action and those groups and individuals have an opportunity to provide their informed public comment to the Council.

A reasonable time to allow community group and neighborhood council participation is minimally 60 days. While the COVID-19 pandemic appears to be abating in some respects, the City may want to provide a greater amount of time to ensure that all interested stakeholders, including those adversely affected by the pandemic, have an opportunity to participate.

Thank you for your consideration of these comments.

Sincerely,

John Given

Law Office of Daniel Wright

467 Crane Boulevard
Los Angeles, CA 90065
(323) 223-4797

Room 395

#3

ORIGINAL

August 15, 2017

Accepted by Hand Delivery @ 2:45p

Hon. Jose Huizar, Chair
Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street, Rm. 525
Los Angeles, CA 90012

Date: 8/15/17
Submitted in PLUM Committee
Council File No: 09-0969
Item No.: 3
Communication from Public

RE: Item 3 on PLUM Committee Meeting Agenda for August 15, 2017

Dear Mr. Huizar and Committee Members:

On behalf of individuals and community organizations adversely affected by proposals contained in Item 3 of today's Planning and Land Use Committee agenda, this firm interposes a strenuous objection to the procedure utilized by City officials, the utter lack of outreach to affected communities of interest, and the violation of the Brown Act by failing to disclose to the public the actual proposed actions of the City Council.

First, we object to the faulty meeting agenda description used by City officials for Item No. 3 of today's PLUM Committee meeting agenda. The meeting agenda uses the most generic and vague description of the actions proposed: "Reports from the Department of City Planning and City Administrative Officer relative to a comprehensive fee study and recommendations for cost recovery for project planning services." This description does not put a reasonable person on notice that the Chief Administrative Officer of the City is asking the City Council to direct the City Attorney to prepare an ordinance amending the Los Angeles Municipal Code to carry out significant increases in fees – not just for project planning services, but for land use appeals which by any definition is not a "project planning service."

Nowhere in the meeting agenda description is the public put on notice of the actual proposed action: Directing the City Attorney to prepare an ordinance to increase all fees listed in the comprehensive fee study by an outside consultant to 100% cost recovery and ignoring the City Planning Department's recommendations. For this reason alone, Council should take testimony from members of the public who appear at today's hearing as a result of action alerts sent out over the weekend, but no action should be taken.

Second, we object to the City's attempt to process significant fee increases without any outreach. We are informed and believe that the City Planning

Department and the Chief Administrative Officer (currently Richard Llewellyn, Mayor Garcetti's legal counsel in the Mayor's office acting as Interim CAO) thus far have only solicited input from certain real estate development groups. This is an ongoing problem with the current City Planning Director, and in this case, the City Administrative Officer – they function as if they believe that real estate developers are the only "customer" to which they are accountable. Maybe that's true as the insidious effects of the *Citizens United* case hollows out our democracy, and only monied contributors to campaign coffers and elected official's favorite non-profits have the ear of City officials. But such anti-democratic and elitist conduct as only meeting with lobbyists and shills of certain favored real estate development firms is not proper outreach in our elected democratic institutions.

Indeed, under Los Angeles City Charter Section 558, because fees for planning services literally affect the ability of some property owners to utilize land use provisions of the zoning code, proposals related to the fees must be referred to the Planning Commission for hearing and recommendations to the City Council. Currently, the Mayor and his attorney, and City Planning Director are trying to bypass the legitimate role of the Planning Commission to weigh the equities regarding enactment of a new fee structure without allowing meaningful and thoughtful input from Neighborhood Councils, all real estate community stakeholders (not just the big campaign contributors), historic preservation community, and various community advocacy groups on behalf of varied stakeholders in the City.

Thus, the PLUM Committee must refer this matter to the City Planning Commission for a recommendation of any amendment of this City's Zoning Code related to project planning services of the City, including a punitive fee structure the City's own cost study shows is at wild variance from other cities in California and the nation. All stakeholders in the real estate community and other affected communities ought to be heard before proceeded.

Third, land use appeals and Building and Safety Appeals should have never been included in the comprehensive cost study. We object to the City Planning Director and the Chief Administrative Officer lumping land use appeals, including Building and Safety Appeals under LAMC Section 12.26K as a "project planning service." For a person trying to protect his or her property, tenant, or other significant interests threatened by poor planning or zoning proposals, the payment of an appeal fee for the privilege of petitioning the City government for relief and project modification could not be fairly characterized as a "planning service" of the City given to that person. In fact, it is the City's constitutional duty – a concept that seems to be lost upon, or purposely ignored by, certain partisans in the City bureaucracy including the Mayor's office.

California's Supreme Court and its Courts of Appeal have recognized that property owners, tenants, and business owners whose significant interests may be

affected by a real estate development project have a constitutional right to notice and a right to be meaningfully heard before the government can act to affect those rights. Our Supreme Court counsels that the area of affected property owners, tenants, and business owners expands in size based upon the size of the proposed project and its possible impacts on people's significant interests.

For this reason, Charter Sections 563 and 564 expressly provides for a right of appeal of the many types of quasi-judicial administrative decisions of the City. The provision of a right to appeal land use decisions of the City that may affect significant interests is therefore not a "planning service," it is a Charter-imposed duty upon the City Planning Director, the Zoning Administrator, the City's planning commissions, and the City Council. These appeal duties are often spelled out in various provisions of the municipal code, confirming that the City Council has implemented the appeal rights of residents and businesses of the City. For the foregoing reasons, the conduct of land use and Building and Safety Appeals are constitutionally mandated basic government functions.

Fourth, even if somehow it might be appropriate to study the cost of processing appeals, the Planning Department and Chief Administrative Officer's "study" and data is seriously flawed. The consultant who prepared the cost study stated that the estimated number of hours for each "planning service" was provided by the Planning Department staff and the consultant undertook no effort to verify the legitimacy of these estimates. Thus, we challenge the entire basis of the proposed "full cost recovery fee" for land use appeals which is based upon an unverified Planning Department staff "estimate" of 70.68 hours.

Essentially, the City is claiming that it takes, on average, the equivalent of one staff member to spend nearly two work weeks to process and attend a hearing on a land use appeal. This estimate has no credibility. Often the City Planner responding to an appeal prepares a recommendation report that summarizes appeal points and provides a brief staff response. Once the staff report comes out, the Planning staff attends the appeal hearing to present the City's position and answer questions. Occasionally, staff needs to conduct some research of issues raised in appeals, and often the staff changes project conditions in response to legitimate concerns raised by appellants. In our experience, it would be hard to conceive a planner spending more than a few hours on an appeal and associated hearings. Because the City's "study" is unsupported with substantial evidence, it lacks the required data to justify the claim that on average a land use appeal requires 70.68 hours to process.

Additionally, the City's cost study lacks the back up information on how the blended hourly rate of $192 per planner was derived. The failure of the City to provide its cost data for public review means that the hourly rate is also not supported with substantial evidence that is capable of public review. For this reason as well, the matter should be referred to the City Planning Commission for public hearing and an opportunity of the public to test the legitimacy of the City's

hourly rate determinations and estimated hours to conduct a land use appeal. Additionally, the real estate development community and historic preservation communities need to review the legitimacy of the data allegedly supporting fees for those "planning services."

Fifth, based upon the fact that land use appeals are constitutionally and Charter mandated duties of the City, there is no rational basis for "full cost recovery" as recommended by the Mayor and his attorney. Even if the $13,538 were a lawfully derived number, which it is not, full cost recovery is unlawful if it would erect a barrier to an average property owner, tenant or small business person from exercising those constitutional rights. In so doing, the Mayor and his attorney seem to have forgotten about the federal and state constitutions that provide for a right of due process. If the City follows Mr. Llewellyn's unconstitutional recommendation of "full cost recovery," it raises the inference that the Mayor seeks to silence those who are merely trying to protect important rights possibly impaired by ill-conceived development projects.

And land use appeals protect important public interests. The community of Kagel Canyon was alarmed when disgraced Councilmember Richard Alarcon pushed the Department of Sanitation to allow the conduct of a semi-truck driving school on top of a methane-filled Lopez Canyon landfill. The project would have subjected the community to intolerable noise, diesel exhaust, and safety risks. Equally important, it would have broken a promise of the City to develop parkland on top of the landfill after the required years of land settlement. That community filed appeals to raise objections to the crazy truck driving school proposal, making a record of deficient environmental review and land use inconsistency. The Los Angeles Superior Court invalidated the City's unlawful decision, and the community successful protected itself from the impacts of a project proposal that should have been laughed out of the Council office, but was not. The Project was shelved by the City – as it should have been from the start.

With the appeal fees raised from a non-frivolous level of $89 to $13,538 for two levels of appeal, it is doubtful that Kagel Canyon community members could have fought off the dumb idea of running diesel-trucks around on top of a methane infused landfill. Any maybe that is the goal of Mayor Garcetti and his attorney Richard Llewellyn. Perhaps the purpose of the Mayor's proposed land use appeal fee is to squelch the right of affected individuals to petition their government for redress. If so, the City risks Section 1983 litigation for imposing the "full recovery fee" for the real purpose of punishing First Amendment protected speech it does not care to address. The proposal of this fee by the Mayor and his attorney amounts to nothing less than trying to tell the citizens of this City that they no longer have a voice, and that they should sit quietly as campaign contributors are allowed to trash the City with nonsense like truck-driving schools where parkland was promised to the people. No. "Full cost recovery" is not only unconstitutional in this context, it is wildly undemocratic.

Sixth, the fee for land use appeals must be a relatively nominal amount to permit all stakeholders of the City to participate in the constitutionally mandated and City Charter provided land use appeal process. As shown in the City's own fee study, the City of San Jose imposes an appeal fee of $100. By comparison, the Mayor and his attorney proposes $13,538 to be leveled upon persons most vulnerable to harm imposed by the City's land use process. This is precisely the sort of governmental duty that has always been and always should be paid out of the taxpayer's general fund. It is a classic governmental function like police and fire.

Seventh, even if cost shifting away from the General Fund was even appropriate, it is quite ironic that the Mayor and his attorney have not considered or proposed recovering the estimated cost of processing appeals from those who cause the need to conduct them – the real estate development community. Right now the City is levying a surcharge on all real estate development permits to create a subsidy fund to pay for "maintenance" of the City's General Plan. Is there a legitimate basis to cross-subsidize the cost of appeals that arise out of the real estate development activities in the City by levying a surcharge to pay for it in a way similar to the General Fund maintenance fee? We don't know, because the Mayor and his attorney have not studied it. Either the cost of land use appeals should be borne as a legitimate general fund expense, because it is a fundamental municipal duty, or cross-subsidy ought to be explored. But the Mayor and his attorney's proposal for "full cost recovery" ought to be unmasked for what it really is: an effort to silence the people of the City.

Eighth, the fee proposal should also be sent back to the City Planning Commission to consider necessary reforms to the City's fundamentally flawed Building and Safety Appeal process. Judge James Chalfant of the Los Angeles Superior Court has declared that the City's Building and Safety Appeal process is so slow, cumbersome, and ineffective that he will unlikely ever require someone to exhaust the Building and Safety Appeal before suing the City over building permits. He concluded that the process is neither prompt nor effective.

Due to drafting flaws in the City's current fee ordinance, the Building and Safety Department has unlimited discretion to determine the appeal fee for the initial level of review, and unlimited time to make the initial decision. This has resulted in huge delays in processing Building and Safety Appeals which led Judge Chalfant to question its efficacy. It is simply unlawful to have no set fee or time limit to act for the first level of appeal. At the second level of appeal, the fee currently is inappropriately set at $500 per appeal, a remnant of the City Council's failure to deal with the fee inconsistencies for Building and Safety Appeals in 2009.

Additionally, the multiple layers of review of a Building and Safety Appeal assures that it can never protect affected communities because City officials allow

construction to occur during the extremely long review process, resulting in harmful projects being turned into a *fait accompli*.

Building and Safety Appeals ought to carry with them a high priority of very fast review and impartial administration of the City's laws to stop illegal projects. The recent mega mansion project built by flaunting the City's laws serves as a cautionary tale of how impotent the City is when it comes to enforcing its own project conditions and zoning laws. A revised Building and Safety Appeal process ought to be an additional outcome of this review process of the fees.

For this reason, both the fee structure and the Building and Safety Appeal process should be referred to the Planning Commission to conduct a hearing on how to improve this fatally flawed process that does little to protect the City's residents from open defiance of the City's laws, conditions, and mitigation intended to protect affected communities.

In conclusion, Item 3 on today's PLUM Committee meeting agenda is a violation of the Brown Act, a violation of constitutional rights of affected persons to petition their government for redress of harmful projects proposed before the City, and requires much closer study at the City Planning Commission level before the City Council proceeds to implement such a punitive fee structure for both the real estate development community, the historic preservation community, and the communities affected by the land use decision making of City officials.

Most sincerely,

Daniel Wright

Daniel Wright