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July 29, 2021

VIA U.S. MAIL, EMAIL
Holly Wolcott, City Clerk
City of Los Angeles
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VIA U.S. MAIL, EMAIL
Hon. Samantha Millman, President
Los Angeles City Planning Commission
200 N. Spring Street, Rm. 430
Los Angeles, CA 90012
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Re: Intent to Sue For Brown Act and Due Process Violations
May 27, 2021 City Planning Commission Meeting, Items 9 & 10
City Pattern and Practices to Violate Brown Act and Fair Hearing Requirements

Dear Ms. Wolcott and Ms. Millman:

This firm represents Venice Vision ("Appellant" or "Association"). The Association is an organization dedicated to the protection of both the community and the environment in Los Angeles and the Venice area. We ask that the City Planner add this letter to the case files for the Reese Davidson Project (VTT-82288; CPC-2018-7344-GPAJ-VZCJ-HD-SP-SPP-CDP-MEL-WDI-SPR-PHP; ENV-2018-6667-SE.)

I. Venice Vision, As Representative Of Constitutionally Affected Persons, Is Entitled To Due Process.

Members and supporters of Venice Vision own property or are tenants directly within the area affected by the Reese Davidson Project located at 2102-2120 South Pacific, 116-302 E. North Venice Blvd, 2106-2116 South Canal, 319 E. South Venice ("Project"). Some of the members or supporters of Venice Vision reside across the street from the proposed Project site, or are tenants of affordable housing currently located on the site who may be evicted as a result of the Project.

Additionally, in accordance with the standard articulated by our California Supreme Court that the area of constitutional due process protection expands depending up the size and breadth of impacts from a Project, Venice Vision members, supporters and leaders reside within

the area impacted by the Project. (See *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 618 ("We do observe, however, that **depending on the magnitude of the project**, and the degree to which a particular landowner's interests may be affected, acceptable techniques might include notice by mail to the owners of record of property situate within a designated radius of the subject property, or by the posting of notice at or near the project site, or both. Notice must, of course, occur sufficiently prior to a final decision to permit a "meaningful" pre-deprivation hearing to affected landowners." Emphasis added.) This impact area includes, at a minimum, all persons owning property and living in the Venice Canal network, because replacement of the project site's open space with the Project's massive building would displace an area capable of holding flood water or tsunami inundation water and diverting flood and inundation waters into the Venice Canals at greater volumes than without the Project. It also includes those who would be affected by a diminution in parking availability and traffic flow due to the Project, as well as all persons who rely on Venice Boulevard and/or the existing surface parking lot at the proposed building site for access to Venice Beach.

Constitutional procedural due process requirements indisputably apply to quasi-judicial proceedings such as approval or appeal of a subdivision map. *Horn, supra* at 24 Cal. 3d 614. It also applies to all other quasi-judicial matters sought by the Applicant. Venice Vision, as Appellant in land use cases involving the Project represent the constitutional due process interests of all such persons described herein.

II. Venice Vision, As A Land Use Appellant, Is Also Entitled to Due Process.

Venice Vision has filed administrative land use appeals from the Advisory Agency decision to the City Planning Commission, and recently, from the Commission to the Los Angeles City Council. Provisions of the Subdivision Map Act and the City's municipal code set forth a right of persons aggrieved by land use decisions to file an appeal of the decision, and for that appeal to be heard in an administrative hearing process.

It goes without saying that a land use appellant who activates the City's administrative appeal process by the filing of an appeal is entitled to reasonable and timely notice of a hearing, and a meaningful public hearing separate and independent from any statutory obligations under the Brown Act. The Brown Act is not the measure of constitutional rights to a fair hearing, rather the U.S. and California constitutions as construed by applicable caselaw developed outside the Brown Act define the parameters of minimum due process of law. Indeed, if the Brown Act did not exist, constitutional due process would still mandate reasonable actual notice to affected property owners and tenants, and a fair and meaningful hearing before the City's decisionmakers.

The procedural due process right to an opportunity to be heard has been interpreted to encompass not only the right to a public hearing, but also the right to a fair hearing. *Nightlife Partners, Ltd. V. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90. Fair hearing requirements include unbiased decision makers, an opportunity to review the evidence considered by the agency, and the right to be actually heard by those who make the decision.

As detailed herein, the May 27, 2021 meeting of the City Planning Commission afforded virtually none of these procedural protections. At least two Planning Commission members are a Board member or Executive Director of LA-Más, Inc., an organization that receives monies directly from members of Los Angeles City Council to organize public engagement campaigns

on real estate development in the City, and has worked with Applicant Venice Housing Corporation during the pendency of the Project application at issue in the matter before them as Planning Commissioners. Venice Vision has been substantially denied access to non-exempt public records to submit to the administrative record for this case related to bias of City decision makers, environmental studies withheld from the public, and even accurate basic information about the Project. Additionally, when it was time for the Commission to listen to public comment, it lacked a staff report that accurately summarized who attended the due process hearing conducted by the Hearing Officer and the details of their testimony, the hearing process failed to identify persons within the Project impact zone to speak to the Commission so that some with a constitutional right to be heard were not heard at all, the Commission limited speaking time to only 1 minute per person, and as persons observing the Commission's Zoom virtual meeting space saw, many Commissioners were not shown as present during consideration of the Project, turned their cameras off, or simply walked away from their cameras showing an empty chair. Individually and cumulatively, these practices of the Commission and inherent bias of at least two of the Commission members failed to meet even minimal procedural due process requirements.

III. Commission Member Renee Dake Wilson Failed To Disclose Her Board Membership And Major Donor Status To Commission Member Helen Leung's Employer, LA-Más, Inc., An Organization That Has Worked On Issues, Possibly Linked To The Project, With Applicant Venice Housing Corporation.

Public records obtained by Venice Vision show that during the time frame of this Project, City Planning Commissioner Helen Leung, in her capacity as Co-Executive Director of LA-Más, Inc., submitted a bid to Council Member Mike Bonin's office for economic development work along Venice Boulevard under the Great Streets Program, and that Commissioner Leung herself praised Mr. Bonin for his "progressive positions amidst a NIMBY constituency." This email betrays Commissioner Leung's public proclamations of objectivity. She stated as follows at the May 27, 2021 hearing regarding the Project:

> "Before I share my comments, I want to just clarify on the record, that neither I or the non-profit where I work, LA- Más has any conflict of interests with this project and LA- Más has collaborated in the past with Venice Community Housing over two years ago. I'm just doing resident outreach for an affordable housing program but no funds have ever been exchanged between our two organizations and we don't have any formal partnerships and we have no stake in this project."

Ms. Leung's comments raise more questions than answers regarding the nature of LA-Más's relationship with Applicant Venice Community Housing. The Project has been in development for well over five years. Commissioner Leung's admission that LA- Más has worked directly with the Applicant to advance affordable housing **in that timeframe** evidences a potential conflict, regardless of whether the Applicant compensated LA- Más directly or the extent to which Commissioner Leung fully and completely disclosed all aspects of the relationship between LA-Más and the Applicant.

The LA-Más website states that LA-Más has an "alternative housing program" aimed at "increas[ing] the number of neighborhood-scale affordable rental units in gentrifying urban neighborhoods" and that it serves as an "economic development consultant" in connection with

LA's Great Streets Program. In fact, substantial contributions have been made to LA-Más by Los Angeles City Council Members, but it is unclear if the source of funding of LA-Más is from City coffers or political campaign coffers. It therefore appears that Commissioner Leung has bias against residents of Council District 11, and may be using her position on the Planning Commission to advance the financial interests of LA-Más.

But there is an ever more troubling and blatant conflict of interest Ms. Leung failed to disclose. The LA-Más website also reveals that City Planning Commissioner Renee Dake Wilson's architecture firm was the highest financial donor to LA-Más within the last two years, and that Renee Dake Wilson serves as Vice President of the Board of Directors of LA-Más. While Ms. Leung at least disclosed something about her relationship with Venice Community Housing, Ms. Dake Wilson disclosed nothing to the public that she is Ms. Leung's direct work supervisor, sitting on the Board of Directors that makes decisions about Ms. Leung's compensation package, and performance evaluation. The existence of this relationship places Ms. Leung in a wildly inappropriate conflict. As a Commissioner, Ms. Leung is expected to exercise independent judgment in the public's interest, yet her employment relationship with another Commission member, undisclosed to the public, may impel her to vote in agreement with her direct employment supervisor, Renee Dake Wilson.

The existence of this troubling and undisclosed conflict of interest from both Commissioners Dake Wilson and Leung require intervention and remand of this case to the Advisory Agency and City Planning staff, and conduct of a fair hearing free of conflicts of interest.

IV. The Los Angeles City Planning Department Refused And Continues To Refuse To Produce To Venice Vision All Disclosable Public Records In Its Files Relevant To The Evaluation Of The Vesting Tentative Tract Map and Other Quasi-Judicial Land Use Entitlements.

Venice Vision has filed public records requests to obtain copies of records the City purposely excludes from its paper planning and environmental files it allows the public to view and copy. This firm has learned recently that the City Planning Department has a written policy to create a "shadow file" on an electronic drive used by City planners to save not only electronic versions of what the City shows the public as the "planning or environmental file", but also saved internal and external communications, staff meeting notes and memoranda, and draft versions of documents. As we understand the procedure, the assigned City planner is tasked with determining how much of the Project-related documents possessed electronically by the City will be printed out and fastened into the paper file made available to the public.

As a result of this City policy, unknown quantities of documents related to the Project are currently held by the City Planning Department but are not made available to members of the public for review, even though they are public records. Instead, the public is told it may only review the paper project files containing only documents a City Planner has determined should be made available to the public. The California Public Records Act does not operate this way. In enacting the Public Records Act, the Legislature declared: "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Govt. Code § 6250. Similarly, the State's open meeting law declares in part: "The people of this State do not yield their sovereignty to the agencies which

serve them. **The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know**. The people insist on remaining informed so that they may retain control over the instruments they have created." Govt. Code § 54950, emphasis added.

Under this City Planning Department policy, City planners are deciding what information will be good for the public to know about the Project and what information is not good for them to know. The City's policy is inconsistent with the goals of open and accountable government. With the series of federal indictments and guilty pleas of City of Los Angeles City Councilmembers, their staff, City Planning Commission members, the General Manager of LABDS and the Mayor's Economic Development advisor, there is more reason to end practices like the City Planning Department failing to disclose to the public that it holds significant other Project-related documents other than the paper files its planner assembles, and deems "good enough" for the public to know.

Venice Vision, since the outset of the Project has submitted several Public Records Act requests trying to obtain copies of non-exempt documents in possession of the City related to vital topics. These topics include the actual description of the Project, the actual plans for ownership of the property, who will own, construct and operate the parking garage to be erected to replace the existing surface parking lot, the environmental reviews conducted related to the Project site, the elements of the Project that do or do not qualify for any exemption from environmental review under CEQA, the selection of the Project over other proposals, the details of the Exclusive Negotiating Agreement ("ENA") between the City and Applicant, and the factual basis or lack thereof surrounding a public claim made by Council Member Bonin and corroborated by LAPD Chief Michel Moore that domestic terrorists planted bombs on the site of a related bridge housing project (and the extent any such claim was used to create a false narrative to discredit Venice Vision, its leaders and supporters).

The City has not produced all non-exempt public records so that Venice Vision, or any other records requester, could conduct a proper investigation of the Project or the parking garage to be erected to replace the existing surface parking lot. Further, the City has withheld documents necessary to rebut highly prejudicial allegations—coming from the highest level of City government—that Venice Vision and others legitimately concerned about the overconcentration of homeless shelters and housing in Venice, engage in domestic terrorism. The City's strategy seems to be to hide many key relevant documents so the public will not know or understand the Project or the replacement parking tower, and will therefore be unable to place into the record of proceedings evidence relevant to the Project and parking tower.

We provide one example of the extreme prejudice to Venice Vision in its effort to understand the Project and prepare materials to assist decision makers concerning the Project. This example is based upon the City deliberately withholding records related to environmental review that has already been performed for the Project. On December 18, 2018, the City issued a Notice of Preparation ("NOP") of an Environmental Impact Report (EIR) for the Project under the California Environmental Quality Act ("CEQA"). As part of the Notice of Preparation, an Initial Study was released to the public (https://planning.lacity.org/eir/nops/ReeseDavidson/InitialStudy.pdf) identifying the potential for significant environmental impacts in a number of environmental issue categories including: "Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality,

Land Use and Planning, Noise, Public Services, Transportation and Traffic, Tribal Cultural Resources, Utilities and Service Systems (including water and wastewater), and Energy Conservation and Infrastructure." As part of the initiation of environmental review, the City and/or Applicant hired numerous expert consultants to conduct environmental analysis of the Project and its potential impacts. These reports are in the possession of the City and/or environmental experts under the City's control.

At some point, the City decided to stop preparation of an EIR and instead claim that the entire project, including a separate parking tower to be constructed by the City and not the Applicant, is exempt from any environmental review at all on the basis of a statutory exemption from CEQA. On this apparent basis, the City has refused to produce for public inspection all of the environmental documents it possesses concerning investigations of potential environmental impacts of the Project.

However, the Subdivision Map Act has its own independent requirement to analyze a project's environmental impacts.

In *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, the court ruled that Government Code Section 66474(e), which requires a governmental agency to deny a map application if the agency finds that subdivision design or improvements are likely to cause substantial environmental damage, provides for an environmental review separate from and independent of CEQA. The court stated as follows: "Appellants argue that elimination of their CEQA causes of action does not foreclose an environmental challenge to the approval of the project because the Subdivision Map Act, in Government Code section 66474, subdivision (e), provides for environmental impact review **separate from and independent of the requirements [of] CEQA**. We agree." "[T]he finding required by section 66474, subdivision (e) **is in addition to the requirements for the preparation of an environmental impact report or negative declaration pursuant to the CEQA**. (59 Ops.Cal.Atty.Gen. 129, 130 (1976).") *Topanga Ass'n for a Scenic Cmty. v. County of L.A.* (1989) 214 Cal.App.3d 1348, 1355-1356 (emphasis added.)

Government Code section 66474.61, applicable to the City of Los Angeles as a city with a population exceeding 2.8 million people, applies the same legal requirements as those of Government Code section 66474, including the requirement that a subdivision not cause significant environmental damage, or harm fish and wildlife. Therefore, even with an exemption from CEQA, the **Project is not exempt from the independent environmental analysis required under the Subdivision Map Act**.

Venice Vision has filed several requests for copies of the contents of the City's environmental review files, including all expert studies and draft environmental documents. The City Planning Department has improperly refused to produce all of these documents, citing among other reasons that they are draft documents. These documents, even those that might be draft, are responsive public records to Venice Vision's requests. Even though the preparation of a CEQA administrative record does not include draft environmental documents not circulated to the public, the standard for preparation of an administrative record for CEQA litigation is NOT the standard for determining the right of Venice Vision to obtain these records, review them, and develop comments on environmental issues that are relevant to the separate environmental review of the Subdivision Map Act issues.

Additionally, the City Planning Department has a pattern and practice of withholding any and all draft documents, falsely claiming that the public interest in withholding such documents outweighs the public interest in their release. Often the City tries to make a claim that the public might be "confused" if draft documents that were not ultimately used by the City were released. This claim is bogus, and particularly bogus here because the Subdivision Map Act mandates that a full environmental review of the subdivision occur. Nevertheless, the City is refusing to release all of the documents it developed in conducting that review. Here there is a paramount public interest in release of all of the City's documents, including all studies, reports, drafts, staff meeting agendas/notes, internal emails communications, and communications with experts and other consultants to determine if potentially significant safety and environmental concerns (including concerns relating to the historic significance of the Venice Canals) were initially identified as significant, and then ignored by the City when it decided to wrap the Project, including the separately owned and constructed Parking Tower, with a CEQA exemption claim.

The improper withholding of environmental public records to prevent Venice Vision from fully developing the administrative record before the Advisory Agency, the City Planning Commission, and now the City Council denies procedural due process rights to the ability to have a fair hearing before City decision makers.

The prejudicial nature of the inability to submit environmental documents in the possession of the City is illustrated by statements made by City Planning Commissioner Dana Perlman at the hearing:

"This belongs as a categorically exempt project and **we have no evidence, zero, or any reasonable possibility that there would be any significant impact on the environment here**. It's all just conjecture people throw out while we're losing an open, a surface parking lot?" (Emphasis added.)

Mr. Perlman did not have attached to the Planning Department Recommendation Report the prior Initial Study of the Project identifying a slew of potentially significant environmental issues. The inability of Venice Vision to obtain and submit the City's own existing environmental studies to document those potential significant impacts illustrates the prejudice. The City's decision makers themselves were deprived of the information they needed to make an informed decision – rather one based upon an incomplete record.

The withholding of environmental records is only one example of prejudice. Similarly, the City has refused to produce records regarding submissions received in response to the RFQ/RFP for the development of the proposed building site and the selection of the Project, as necessary to address the destruction of four existing affordable housing units on the proposed building site; the Applicant's request for waiver of dedications and improvements required to comply with the City's Circulation Element of the General Plan (Mobility 2035) and other aspects of the General Plan; and the Applicant's public statement—contrary to the plain language of the RFQ/RFP itself—that development of the entire 2.65-acre parcel was required.

On many critical aspects of the Project, the City has used its power of possession of non-exempt public records to prevent Venice Vision from making a robust administrative record. These actions are prejudicial to a fair hearing, and warrant remand of the case to the Advisory Agency and Planning Department for full development of the record.

V. Venice Vision Was Denied The Opportunity To Submit The Withheld Documents To The Administrative Record Before The Advisory Agency In Order To Fully Develop All Issues, Including Environmental Impacts Of The Project.

The first negative impact of the City's refusal to produce non-exempt public records about the Project occurred during the initial Project review at the Advisory Agency decision making level. While Venice Vision worked in good faith to develop and submit evidence relevant to the Advisory Agency's determination, there is no question that the City withheld environmental documents it possessed related to the Project, and in so doing prevented Venice Vision from fully investigating the Project and its potential significant environmental impacts, or to submit such relevant public documents to the public record.

The City Planning Department relied upon a claim that the Project was exempt from CEQA review in part as a basis to claim that the Project could not have potential significant environmental impacts. But as previously set forth, a CEQA exemption does not apply to the legally distinct environmental review required as part of a tract map approval under Government Code section 66474.61. The Subdivision Map Act imposes a comparable environmental review **for which no legal exemption is available**.

As a result of the City withholding the records related to the topics listed above, the City has denied Venice Vision the ability to develop a full administrative record to enable decision makers at the Advisory Agency to fully understand serious and legitimate concerns, including environmental concerns, about the Project. Those issues may be known to the City Planning Department but remain undisclosed to the public, including Venice Vision.

In so doing, Venice Vision did not receive a fair hearing before the Advisory Agency, and the Advisory Agency did not have the benefit of full environmental analysis because the City refused to perform it as part of the tract map review. Venice Vision was prevented from obtaining environmental documents that it could have submitted before the Advisory Agency hearing. And without fully informed decision making of the Advisory Agency, its decision was so fatally flawed that the taint of unfair hearing infects the ongoing administrative appellate process before the City. This fundamental unfairness of the City continues to this day as the City refuses to produce Project-related public records relevant to the development of a complete and fair record of proceedings.

VI. On Appeal Of The Tract Map To The City Planning Commission, The Commission Refused To Remand The Case To The Advisory Agency To Require Record Production And Fair Opportunity To Supplement The Administrative Record.

Given the faulty Advisory Agency decision, Venice Vision was forced to appeal approval of the tract map to the City Planning Commission. But because the City continued to refuse to produce all of the non-exempt public records which Venice Vision is entitled to review as it prepared for its appeal to the City Planning Commission, Appellant continued to be unable to fully develop an administrative record, particularly related to the environmental issues.

Despite this ongoing fatal gap in the administrative proceedings, the City Planning Commission ignored objections and denied the appeal which would have remanded the case back to the Advisory Agency to enable correction of the administrative record of proceedings with the missing public records.

VII. On The New Quasi-Judicial Entitlements Considered For The First Time, The City Planning Commission Itself Was Denied The Benefit Of A Complete Administrative Record Before It, Including An Ability Of Constitutionally Protected Persons To Impact Decision Making.

As outlined above, procedural due process attaches to all quasi-judicial proceedings. In addition to the tract map appeal, the City Planning Commission is responsible for considering and acting as the initial decision maker on other quasi-judicial matters such as Site Plan Review, and similar matters. The City Planning Commission does NOT conduct the hearing on such quasi-judicial matters. Instead, it delegates to a Hearing Officer the obligation to conduct a public hearing on the proposed quasi-judicial entitlements.

Inability Of Venice Vision To Obtain Public Records Impaired The Record.

Just like at the Advisory Agency level, at the City Planning Commission level, the ongoing refusal of the City to disclose project-related documents continued to impair the ability of Venice Vision to submit to the record of proceedings evidence and analysis regarding the true nature of the Project, its qualification for exemption from environmental review, and the adequacy of its environmental review in connection with the Site Review Process, which is also intended to identify, condition, and fully mitigate environmental impacts.

Accordingly, Venice Vision was deprived of the ability to assure a complete administrative record due to the City's own misconduct in continuing to refuse to produce non-exempt public records, including those related to potential significant environmental impacts, Mello Act determinations involving the displacement of four existing affordable housing units, and waivers of dedications and improvements for compliance with Mobility Plan 2035 and other aspects of the General Plan.

The Planning Commission Hearing Process Is Fundamentally Unfair.

Under the City Planning Commission hearing process, the Commission relies upon the Hearing Officer to summarize testimony at the public hearing. If the Hearing Officer fails to fully and accurately summarize the testimony for the City's decision makers, how has the City provided a right to be **heard** by the decision makers? Historically, City planners listed the names of organizations or persons testifying and summarized their testimony in the Planning Recommendation Report. The Commission relied upon the testimony summary as a key element of understanding the Project and issues of concern by persons constitutionally impacted by the Project. But in recent years, the City Planning Department has abandoned any identification of who testified at the public hearing or the substance of their testimony. Instead of summarizing testimony, the City Planner bullet point issues without any factual testimonial context.

Due to this practice, there is a fatal disconnect between the act of delegating the public hearing to a Hearing Officer, and the Commission's role as the constitutional decision maker. The Commission no longer is provided a written summary of who testified and what their particular testimony concerned. Instead, at best, the City planner might insert a list of topics raised at the hearing, often not even in full sentences. As a result of this significant change in procedure, the written report given to the Commission weighs heavily on the Planning staff's opinion and very little information about the hearing testimony is given to the Commission –

who is the decision maker who delegated the hearing and testimony summary task to the Hearing Officer.

This disconnect is illustrated by the Staff Recommendation Report prepared in this case. Forty-nine (49) people provided live testimony at the Hearing Officer Hearing in opposition to the Project and hundreds more submitted lengthy emails setting forth, in detail, why the Project should not be approved as proposed. All of that information was reduced to a handful of generic bullet points, completely stripped of underlying facts regarding the cost of the housing units, flood risk, parking, beach access and other matters of undeniable relevance to the Commission's consideration of the Project's compliance with basic laws and merits.

While lack of any detailed summary of who testified at the hearing and what the substance of their Project concerns were deprives Commission members of knowing the content of the constitutional hearing conducted by the Hearing Officer, this paucity of testimony is exacerbated at the public meeting conducted by the Commission itself on the proposed quasi-judicial entitlements. At the Commission's meeting, the agenda states that the Public Hearing has already been conducted, and the only thing the Commission is entertaining is public comment required by the state's opening meeting law, the Brown Act.

Historically, the City Planning Commission followed the norms of other cities across this state affording public commenters (including those with constitutionally protected rights because of their proximity to the Project) up to three minutes each. Within the past few years, the City Council and its planning commissions, including the City Planning Commission, have adopted procedures allowing restrictions on the time persons can comment from 3 to 2 minutes, and now from 2 minutes down to just 1 minute.

Additionally, the Commission has set arbitrary time limits to limit the total number of persons it will even hear public testimony from. Making no effort to assure that persons whose constitutional property and other interests are given priority to speak before the Commission, instead persons are randomly called by City staff until the arbitrary time limit is exhausted, and even though others may be left without any opportunity to speak, including those who have a constitutional right to be heard.

Individually and collectively, these changes in City policy frustrate the ability of constitutionally affected owners and tenants from their right to heard by the decision making body. The City often claims that persons are also "heard" by the Commission in the form of written comments and evidence submitted, however, unless the Hearing Officer attaches to the Planning Recommendation Report all correspondence received so the Commission members have an opportunity to see it, constitutionally affected persons may not have their written materials seen at all by the Commissioners.

Collectively, the City's administrative processes have made it nearly impossible to affect the outcome of the constitutionally required hearing because (1) written materials of constitutionally affected persons are not routinely attached to the Planning Recommendation report, (2) each particular person who testified at the hearing conducted by the Hearing Officer is not identified and summarized in any reasonable way so that Commission members can know their testimony details, (3) public comment under the Brown Act is often restricted as to total time on an item, and reduced to one minute to those randomly selected to be allowed to speak, so that constitutionally affect persons may be denied any ability to speak at all. Under these

individual and collective circumstances, Venice Vision, its members and supporters, all entitled to procedural due process, were denied due process by the City Planning Commission procedures, and as actually implemented.

In this case, the Hearing Officer's Recommendation Report did not include written submissions of all persons with constitutional fair hearing rights and, as noted above, reduced extensive testimony and written submissions in opposition to the Project to a handful of generic bullet points, completely stripped of underlying facts. At the Commission meeting, the Planning Department's presentation before the Commission contained affirmative misrepresentations regarding the type and amount of parking that would be provided, as well as the height of the Project, and made use of Project plans known by the Planning Department to be out of date and inaccurate. These inaccuracies were compounded by similar inaccuracies in the Applicant's presentation, which also contained statements regarding the housing mix that were contradicted the very next day by a City Planning newsletter. Consequently, it is not currently known—to the public, at least—whether the Project (which is already half-way through the City approval process) will set aside 68 units for homeless housing with supportive services (as the Applicant claims) or whether 130 of the 136 affordable units will be pegged at 60% AMI (as the Planning Department has twice stated). This information is vital for a number of obvious reasons, including, of course, any CEQA exemption determination pursuant to A.B. 1197.

Further, the Brown Act public comment on the tract map appeal and other land use entitlements were combined into one public comment opportunity under the Brown Act. Then, despite knowing that the Project had tremendous public interest, the Commission President announced that the Commissioners would only hear one hour of public comment from each of the Project supporters and opponents, limited to one minute per person. The City gave no priority to persons whose property or other interests were directly affected, thus, one hour of testimony was accorded to Project supporters a significant portion of which were housing activists from other parts of the City with no constitutional rights to be heard. Moreover, there was no time on the agenda for comment regarding the parking tower to replace the existing surface parking lot, which is plainly a separate project unto itself.

Accordingly, the proceedings before the City Planning Commission were so fundamentally flawed, including the ongoing refusal to produce Project-related documents for inclusion in the record of proceedings, Venice Vision and its members and supporters were deprived of procedural due process.

VIII. During The City Planning Commission Meeting, Commissioners Violated Due Process And Their Own Rules By Failing To Demonstrate Their Objective Virtual Presence In The Online Meeting Room, Including Times When The Virtual Meeting Lacked A Quorum.

Venice Vision timely submitted a Brown Act cure and correct demand to the City related to the failure of the City to maintain all City Planning Commissioners on screen of the Zoom meeting during consideration of the two items related to the Project. Additionally, Venice Vision submitted a cease and desist demand to the City regarding the failure of its planning commissions, including the City Planning Commission, to maintain full objective virtual presence in the online meeting room in order to fully comply with the Brown Act as implemented during the pandemic by the Governor's Executive Order. The City on July 20, 2021 sent written notice from a Planning Department Management Analyst that the City does not

intend to take any action in response to the cure and correct demand or the cease and desist demand.

However, beyond the minimum requirements of the Brown Act as implemented under the authority of the Governor's Executive Order, the Commission also violated minimum due process requirements by (1) failing to maintain an online virtual presence of even a quorum of Planning Commissioners, and (2) even when a Commissioner's online screen was visible, some Commissioners had turned their cameras off so that their virtual presence in the online meeting room could not be objectively observed, or they visibly walked away from their computer/camera confirming they were not present to hear the case before them.

Under the Operating Rules of the City Planning Commission, commissioners are required to be present and to hear all of the case before them in order to vote upon the matter. Operating Rule 8.2 states:

> "Voting – A Member is not qualified to participate in, or be present for, a vote on an agenda item unless the Member **was present for the entire hearing before the Commission**, or has listened to the audio recordings of the prior relevant proceedings prior to his or her participation in a vote. If an agenda item is continued to, or scheduled for a motion to reconsider at, a future meeting, a Member who was absent from any portion of the Commission hearing on the agenda item when it was initially considered may participate in a subsequent vote provided he or she has listened to the audio recordings of the prior relevant proceedings. **These voting provisions shall only apply to quasi-judicial approvals.**"

The Commission's own rules acknowledge that the constitutional right to be heard in quasi-judicial proceedings requires Commissioners to be present for the "entire hearing."

During hearing of the Project before the Commission, at least one commenter confronted the Commission President with the fact that not all of the Commissioners were present in the virtual meeting and that some whose screens were observable showed the Commissioner had turned off the camera such that the Commissioner's presence for the "entire hearing" could not be observed, or Commissioners left the camera on and just walked away for periods of time.

The President claimed that the Commission had "maintained" a quorum throughout the meeting. The Planning Commission has failed to substantiate that assertion, despite being given three opportunities to do so, and in any event, mere quorum is not the standard set by the Commission's own rules. The rules require presence throughout the entire meeting. This meeting could not be conducted with Commissioners trading in and out of the room merely to keep a bare quorum present. They were all required to be present for the "entire meeting." In fact, the online display of City Planning Commissioners' screens failed to show all of the Commissioners present for the "entire meeting," but at the end of consideration of the item, the screen filled with all of the Commissioners' screens for a vote. This demonstrated to the observing public that the City had the technology to display the virtual presence of all Commissioners throughout the meeting, but failed to do so consistent with its own Operating Rules, and principles of due process.

At times, documented with screen shots of the meeting, there was not even a quorum of City Planning Commissioners visible to the public in the virtual meeting. Where were they during consideration of the items? The Commission President had no credible explanation.

The Commissioner President expressly admitted that some Commissioners had turned off their cameras or walked away in order, she said, to use the bathroom. How the Commission President from her own home could definitively know that multiple commissioners were gone from the meeting for overlapping periods of time merely for bathroom breaks was not revealed. Were they in the bathroom or conducting other business, or talking to each other off line? Any of these scenarios are equally plausible because the commissioners failed to maintain consistent virtual presence in the online meeting room provided by the City.

There is no "bathroom exception" in the Commission's rules or the due process right to be heard. Due process and the rules require a Commissioner to be present for the "entire hearing." In other cities of this state, planning commissions take brief recesses for such comfort purposes. But in the practice of the Los Angeles City Planning Commission, such breaks rarely occur, and did not occur during the hearing of the items related to the Project.

In response to Venice Vision's cure and correct letter of June 25, 2021, the City offered some kind of log for the Zoom Commission meeting showing the log on and log out time for various Commissioners to the Commission's Zoom meeting. It hardly requires observation that logging into a meeting is not evidence of virtual presence of the commissioners themselves.

Accordingly, the failure of the City Planning Commission to maintain a bare quorum during consideration of the items related to the Project, the failure of the Commission to maintain online virtual presence of all Commissioners voting on the item, and the multiple acts of Commissioners stepping away from or turning their cameras off, individually and cumulatively with all over unfairness outlined herein, that Venice Vision, its members and supporters with constitutional interests were systematically deprived of a fair hearing in accordance with fundamental due process of law, including violation of minimum meeting presence requirements of Government Code Section 54953 and the Governor's Executive Order directing virtual meetings replicate in person meetings as closely as feasible.

IX. City Planning Staff Engaged In Misconduct In The Proceedings Before The City Planning Commission By, After Confrontation By Venice Vision, Knowingly Misrepresenting To The Commission The Number of Letters of Support; Misrepresenting Design Review By Volunteer Architects; Such Misrepresentation Is Fraud On The Commission And Denied A Fair Hearing.

During the proceedings before the Advisory Agency on January 13, 2021, Ira Brown of the City Planning staff stated that there had been fewer than 500 submissions in opposition to the Project and 2,000 submissions in support of the Project.

In response to the City Planning staff's statements regarding this alleged support for the Project, Venice Vision filed a Public Records Act request on January 14, 2021 seeking copies of all letters of support for the Project. The City Planning Department produced only about 1,000 non-duplicative letters of support.

On January 23, 2021, Venice Vision brought to the City Planning Department's attention that it had significantly overstated the number of letters of support for the Project in the proceedings before the Advisory Agency by about 1,000 more letters than the City Planning Department could actually produce. Venice Vision said:

> "Mr. Brown stated that there were 2,000 letters in support of the project.
>
> You only sent me about 1,000 letters (some of which may be duplicates).
>
> Also, as you can see from the attached letter, Venice Community Housing Corporation only claims to have collected -- and submitted -- 1,048 letters in support of the project as of January 13, 2021, and you did not provide me with letters from any other source.
>
> Moreover, you failed to produce "[t]he documents labeled 'RDC Supporter Tracking- Venice,' 'RDC Supporter Tracking- Non-Venice,' and 'RDC Supporter Tracking- Letterhead' including the names and addresses of every individual who submitted a letter."
>
> Please send me those, as well as all other records (including all documents and communications) in the possession of Los Angeles City Planning regarding the receipt, processing, review and tabulation of letters, emails and phone calls in support of or opposition to the Reese-Davidson Community.
>
> Finally, I would like all letters and emails submitted in opposition to the project so I can check them against our records and get the confusion sorted out."

This specific and particularized notice that the previous City Planning reports and oral statements of the planner contained demonstrably false and misleading information was sent to Ira Brown, as well as the City's custodian of Public Records, Beatrice Pacheco.

On appeal of the tract map to the City Planning Commission, the Planners who signed the Staff Recommendation Report, repeated this false information before the City Planning Commission. The Report said: "Over 2,000 letters were received stating support for the proposed project" and that "[o]ver 1,000 emails/letters were received stating opposition to the proposed project." This Report or document was signed by Ira Brown, Faisal Roble, Juliet Oh, Elizabeth Gallardo and Vincent Bertoni of the City Planning Department. Therefore, this official City Planning Department report, which is filed by the Planner in charge into the official Planning Department case file, relied upon by the City Planning Commission as the principal source of case information to inform its decisionmaking, and should litigation occur, becomes part of the City's certified administrative record of proceedings before a reviewing court, contained information these City Planners knew or had good cause to know was materially false.

Oftentimes, in the case of controversial projects, City decision makers place a lot of significance on the levels of support compared to the levels of opposition to a Project as an important factor in decision-making. "A letter-writing tactic that can be particularly effective is a letter-writing campaign, where dozens, hundreds, or even thousands of people write either to the same official (if they're all in, or somehow represent people who are in, her district) or to many

officials about a specific vote, policy, or budget item. This can be extremely effective, especially when the letter-writers are people who don't usually contact their elected officials." (https://ctb.ku.edu/en/table-of-contents/advocacy/direct-action/letters-to-elected-officials/main, Accessed 7-22-21.) The City planners know this fact. The City planners were on notice of the glaring inaccuracy regarding material information they placed before the Advisory Agency. **Despite notice of this inaccuracy, the City planners presented the same false information, that they knew or had reason to know was false, to the City Planning Commission.**

Similarly, the City Planning Recommendation Report to the City Planning Commission summarized the findings from the design review conducted for the Project by the Professional Volunteer Program ("PVP") as follows:

> **PROFESSIONAL VOLUNTEER PROGRAM**
>
> The project was presented to the Professional Volunteer Program (PVP) on September 3, 2019. The following comments were made on the project design:
>
> **Pedestrian First:**
>
> - In west building, consider (if N Venice and S Venice Boulevards. are not one-way) if a single driveway/curb cut to access parking is possible.
> - Add access to east bicycle room and could natural light be provided?
> - Maintain existing access conditions with stairs and ramp from sidewalk down to canals (yes, these are gated-off currently but we don't want to force passersby to enter building should these re-open in the future)
>
> **360° Design:**
>
> - Work out transformer locations, explore with LADWP if in-ground vaults will be acceptable (they usually give this as an option, may even be placed under driveways as long as access if maintained).
> - Provide more details on materials, consider if lighter colors may be used (i.e. check solar reflectivity index of those proposed)

On May 27, 2021, Venice Vision submitted a public records request stating that this characterization of PVP notes was "materially misleading as to the design attributes of the [P]roject" and seeking "all records of any kind … regarding the PVP review of the Reese-Davidson Community."

The production in response to that request showed the actual PVP comments in the 360° Design review of the Project were, in their entirety, as follows:

360° Design:

- Very aggressive, harsh and bunker-like design for Venice, rejecting surrounding neighborhood
- Project very dormitory-like in expression, or like a large barge come ashore
- A looming mass carved by voids and small windows *is* the design concept
- Window sizes and shapes seem an afterthought and don't feel residential
- Difficult to judge if windows' placement is more related to spaces and uses inside (vs. random); would like to see views from interior
- Check that window sizes and sill heights comply with egress requirements
- Should *play* more with communication with parking (i.e. vs. simply walling it off); would like to see representation of what this experience is like
- It could feel like a Venice project, maybe by recessing windows or adding and playing with color? Or retaining toughness of concrete base but lighter, more color above?
- Could the voids that are notched out for open space become opportunities for blocks of color to be introduced
- Should celebrate the central feature of the Grand Canal more; retail spaces west of canal are very shallow
- Parking faces canal, where these would be prime units with their views
- Submittal set should include views that show both long elevations connected, to better understand scale of the whole

The overall architectural review of the Project was damning, yet the Staff Report gave the City Planning Commissioners a completely inaccurate summary. The dramatic incongruity between the PVP's professional assessment of the Project and the flagrantly false and misleading information the Planning Department gave to its City Planning Commission is shocking. It appears without explanation of City Planning to be a fabrication. Why have a review program if its results are not accurately conveyed to City decision makers?

The insertion of materially false information into an official City Planning Recommendation Report to the City Planning Commission constitutes clear civil misconduct. For the City Planning staff to have deliberately misrepresented several of the most important metrics of public support or opposition to the Project is a serious deprivation of the right to be treated fairly as a land use appellant. Misrepresenting (and, indeed, reversing) the findings of the City's own volunteer professional architects panel, as reached in a process convened and managed by the City, is equally grave. This is not a game that can be rigged with false information, known to be false, as some City officials seem to treat it. Serious constitutional issues are at stake.

Deliberate misrepresentation of material facts before the Commission constitutes such serious staff misconduct as to require setting aside the Commission's administrative proceedings, correcting the administrative record with the critical support/opposition data and professional architects review, so that the City Planning Commission may make a decision untainted by prejudicial staff misconduct. A minimum standard of truth before the Commission requires consequences to discourage future intentional misrepresentation of facts before key City decision makers. Additionally, these fundamental fairness issues at the lower levels of the administrative hearing process must be corrected now before the City Council hears and makes a final administrative decision.

X. Due To The Fatal Due Process Flaws In The Underlying Administrative Proceedings, Venice Vision Remains Unable To Correct The Administrative Record At The Final Level Of Administrative Appeal And The City Council Risks Making Final Decisions Without Evidence Venice Vision Requires To Have A Fair Hearing Before The Final Decisionmaking Body.

Venice Vision has documented ongoing refusals of the City to produce Project-related documents necessary for analysis of the scope of the Project and its potential significant environmental impacts. The City persists in its refusal to produce these records. The City may not properly withhold documents to enable full analysis and a complete administrative record, and then later assert that Venice Vision failed to raise potential issues of which it is currently unaware because the City's knowledge of those issues are being improperly withheld.

The cumulative unfairness of both the Advisory Agency and City Planning Commission levels of the administrative process impermissibly taint the fairness of Venice Vision's administrative appeal of the City Planning Commission's decisions to the City Council. Venice Vision demands that the City, through its City Council and other elected and Planning Department officials reconsider its refusal to produce Project-related documents and remand this case back to the Planning Department to correct the administrative record, and conduct new administrative hearings consistent with its own rules, and fundamental procedural due process of law.

XI. The City Council Is Poised To Deny Venice Vision A Procedurally Fair Hearing Of Its Land Use Appeals.

As stated at the outset of this letter, hearing before unbiased decision makers is a critical element of a constitutionally fair hearing. As outlined above, the City Planning Commission hearing was tainted by two of the Commissioners who voted on the Project, whose organization has prior working relationships with Applicant Venice Community Housing Corporation during the pendency of the Project application, and an undisclosed employer-employee relationship.

Now the matter will come before the City Council, including the Council member Mike Bonin. Normally, the elected representative of the area where a project is located may constitutionally participate in decision making. In fact, in the City of Los Angeles, there is a troubling practice of City Council members being expected to defer to the desires of the Council member for the location of a Project. Critics have characterized this practice as a dereliction of the Council's collective duty to make decision making, including on land use appeals, based upon the facts and general public interest, and not upon the personal preferences of a single Council member. Indeed, there have been calls for the FBI, as part of its ongoing investigation of City Hall corruption in real estate matters, to examine the legality of this practice.

But even a City Council member can express such open hostility to the viewpoints of land use appellants that it becomes necessary for the Council member to withdraw from the decision based upon bias toward a hearing participant. The record shows that Council member Bonin has crossed that line, taking extraordinary steps to demonize residents of Venice who have exercised their constitutional free speech rights to express concern about growing over concentration of homeless facilities within the community.

On January 3, 2020, Councilmember Bonin generated a Facebook post stating that "three separate devices … designed to look like explosive devices" were planted by a disturbed and cowardly person or persons" at the future site of a large homeless shelter in Venice in an attempt to "frighten" Venice residents and to "slow or halt" construction of the shelter. See https://www.facebook.com/MikeBoninCD11/photos/last-night-the-los-angeles-police-department-responded-to-a-report-of-suspicious/2943919072293282/ (available as of July 27, 2021). Bonin's deputy, Allison Wilhite, then released an official statement duplicating Bonin's Facebook post in its entirety and stating that although it turned out "there were no explosives," the "incident was unsettling" and that proponents of the shelter would not be "deterred by this senseless act."

The Los Angeles Police Department issued a press release stating, in pertinent part, as follows:

> "The devices were found on and near the construction site of a new bridge housing facility and an adjoining street. All were rendered safe and removed from the area. While the motive is unclear the department continues to work to identify if the bridge home site or the homeless community was a target."

Sensing a motive to create false allegations of domestic terrorism against some of Bonin's constituents, a member of the Venice Neighborhood Council asked LAPD Chief Michael Moore to defuse the situation by going public with the truth, but Chief Moore instead corroborated Bonin's false assertions of domestic terrorism in Venice, stating that Bonin's Facebook post was "accurate and fair." Further, LAPD Captain Steven Embrich told a local paper, *The Argonaut*, on January 6, 2021 that an email blast sent by Venice Vision stating that there were never any explosive devices at the shelter site was "not true," adding, "I do not have any idea why they would say that."

The episode triggered a rash of ugly coverage in print and television news, not only reinforcing Venice's reputation as a homeless hub but also stigmatizing opponents of the overconcentration of homeless resources in Venice by linking them to Bonin's false claim that an act of domestic terrorism occurred in connection with opposition to homeless housing.

Despite heavy redactions (which are themselves unlawful), documents secured by Venice Vision through public records requests show that the devices in question were known by Councilmember Bonin and the LAPD —from the beginning — to be harmless (and old) C02 cartridges and that only one of the 3 or 4 cartridges in question was actually found at the shelter site. Further, they show that Bonin himself was directly involved in drafting the LAPD news release in connection with the incident and, more specifically, deliberately changed language in the release to misrepresent what transpired and elevate alarm. Venice Vision public records request reveal that the full-scale investigation Chief Moore vowed to launch fizzled immediately, with no meaningful investment of manpower and no follow up from Bonin. This evidence suggests that Bonin and Moore intended to use the hoax to generate public opprobrium toward Venice Vision and others who publicly expressed concerns about such project, including the Project in this case.

Name-calling is, unfortunately, par for the course in Los Angeles politics, but even in Los Angeles, a coordinated effort by a sitting council member and the chief of police to use their official positions and public agency resources to smear and hobble a distinct and identifiable

group of constituents who have exercised free speech rights, demonstrates that for Mr. Bonin the defeat of any Venice Vision land use appeal is personal.

The character of those concerned about the overconcentration of homeless housing in Venice, including the Project in this case, has been put at issue in every public hearing to date regarding projects in Venice. Moreover, the LAPD has refused to remove redactions from relevant documents and Bonin has failed to respond to public records requests at all, making it impossible for Venice Vision to fully investigate Mr. Bonin's personal animus and bias. No hearings regarding the Project can be conducted fairly until facts surrounding the Bonin / Moore domestic terrorism hoax are produced so that Mr. Bonin's City Council colleagues can judge the level of his potential bias against Venice Vision and its leaders. At this point, there is a substantial risk that Mr. Bonin's personal bias against Venice Vision will taint the City Council hearing process, particularly if he uses his lobbying resources to ask his colleagues outside the quasi-judicial hearing, to deny the pending appeals without consideration of the facts in the record.

All of the foregoing issues with respect to bias and conflicts of interest must be resolved fully before any further action is taken by the City with respect to the Project.

NOTICE OF INTENT TO SUE.

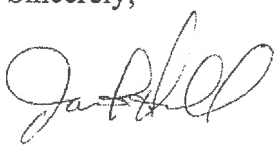
The City has until noon on Monday, **August 2, 2021**, to provide notice it will unconditionally cure and correct the due process violations recounted in this demand letter by:

1. Taking immediate action to set aside the City Planning Commission Letter of Determinations and remanding these cases to the City Planning Department and Advisory Agency;
2. End its unlawful withholding of Project-related documents so that in the remedial administrative proceeding, Venice Vision may fully analyze and submit public records related to the Project.

In the absence of an unconditional agreement and tolling of appropriate statutes of limitation, it will be necessary for Venice Vision to commence litigation to protect the constitutional due process, Brown Act and Public Records Act rights of Venice Vision, its members and supporters, and the general public affected by the Project.

Thank you for your prompt attention to this urgent matter. I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com.

Sincerely,



Jamie T. Hall

cc: Raoul Mendoza, Chief Management Analyst (raoul.mendoza@lacity.org)
cc: Ira Brown, Department of City Planning (ira.brown@lacity.org)
cc: Michael Feuer, City Attorney (mike.feuer@lacity.org)