

ERVIN COHEN & JESSUP WORKS WITH CITY OF L.A. TO PROTECT TOC INCENTIVES IN LEGAL

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The Land Use legal team at Ervin Cohen & Jessup LLP secured a huge win for Los Angeles housing developers, housing advocates and residents across the City. ECJ, representing developers of a 46-unit housing project at 5877-5891 West Olympic Boulevard (“The Olympic Project”), and the City of Los Angeles successfully defended a lawsuit filed by activist group Fix the City, Inc. alleging that two housing projects (the other was located at 10400 Santa Monica Boulevard (“Santa Monica Project”)) approved by the City Planning Department did not comply with Measure JJJ.

Under Measure JJJ, which was passed by the Los Angeles voters in 2016, the City drafted Transit Oriented Community (“TOC”) Guidelines and has approved a total of 1,952 dwelling units (including 362 affordable units) and development incentives for projects located within a half mile of public transit. The Court upheld the legality of the City’s TOC program and rejected all of Petitioner Fix the City’s claims. Honorable Mitchell Beckloff soundly disagreed with Petitioner’s interpretations of Measure JJJ. “There are four requirements for TOC incentive eligibility: The project (1) is located in a “TOC Affordable Housing Incentive Area”; (2) provides required percentages of affordable units; (3) meets replacement unit requirements ...and (4) is “not seeking or receiving” a development bonus under another state or local program...Nothing more is required for eligibility.” The Court also strongly disagreed with Petitioner’s other claim that the TOC Guidelines, which were drafted and approved by the City Planning Department in 2017, were somehow inconsistent with Measure JJJ - “Based on the foregoing, the Court finds the TOC Guidelines are consistent with and do not exceed the scope of Measure JJJ.”

Finally, the Court rejected Petitioner’s obvious facial challenge of Measure JJJ as untimely. Both the attorneys for the City and for the developers/Real Parties successfully argued that because Measure JJJ was passed by voters in November 2016 and the City approved the TOC Guidelines in September 2017, Petitioner was barred by the 90 day statute of limitation under Government Code section 65009 (c)(1). The Court concurred – “To the extent Petitioner challenges the CPC’s authority to have adopted and released the TOC Guidelines or the CPC’s authority to do so, Petitioner’s challenge must have

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been made within 90 days of September 27, 2017... It is clear Petitioner's challenge to the TOC Guidelines is a facial one. Accordingly, Petitioner's facial challenge brought years after the guidelines' adoption is time barred."

"The Court delivered a decisive win for housing developers, the City of Los Angeles, and the residents of Los Angeles who voted to increase housing opportunities in areas close to public transportation," stated Ellia Thompson, lead attorney for The Olympic Project. "Hopefully, now that this case has been so clearly determined by the Court, many more developers of TOC projects will move their projects forward and we can start delivering much-needed housing to Angelenos—that's the only way we can actually resolve our housing crisis."