

Last week, a Los Angeles slow-growth group, Fix the City, filed a lawsuit challenging a West Los Angeles development project on Santa Monica Boulevard. The project, a seven-story, 120-unit apartment building less than half a mile from the Century City mall, was approved using density bonus, height, and setback incentives through the City of Los Angeles' Transit Oriented Communities (TOC) Program (which I've written about before here and here). So Fix the City has decided to take on not just the project, but the entire TOC Program.

Fix the City has become known for suing the City of LA over its more ambitious development plans, including a transit-friendly update to the Hollywood Community Plan and the City's mobility plan designed, among other things, to boost transit options by adding bus-only and bike lanes to city streets. Now the group has TOC—a program the City has touted as its main driver of housing production, including affordable housing production—in its sights.

First, a brief refresher on TOC and what makes it unique from other density bonus programs. The TOC Program was established pursuant to authority from the voters after Measure JJJ was passed with an overwhelming 64 percent of the votes in November 2016. At the time of its passage, many were focused on one of Measure JJJ's components: it requires projects seeking general plan amendments or certain zone changes to include a set percentage of affordable housing or pay a fee to an affordable housing trust fund and to meet prevailing wage and labor standards. But separately—and critically, it turns out—the measure also required the City to create an affordable housing incentive program for developments located near major transit stops. The TOC Program was established pursuant to this mandate from the voters.

The TOC Program is a transit-oriented inclusionary housing program: its purpose is to site dense residential and mixed-use development projects close to transit, and to require that a significant percentage of housing units in those projects be affordable. This is what makes it different; other density bonus programs can apply no matter where a project is sited. It is also logical. Low-income communities drive transit ridership in Los Angeles County (and in California more generally), so putting affordable housing close to transit to ensure that low-income riders can live in transit-served neighborhoods is important. Another aim of siting dense development in areas with better transit access is to reduce overall vehicle miles traveled and the greenhouse gas emissions that come with them, a key step toward meeting California's ever more aggressive climate goals. In other words, the TOC Program is designed to promote better transit-oriented planning while also taking steps to address the City's housing shortage by bringing more, and more affordable, housing units online. City assessments show that the TOC Program has added about 20,000 housing units to the City's development pipeline, about 20 percent of which are affordable housing.

The TOC Program's structure is relatively straightforward. Depending on a parcel's distance from a qualifying "major transit stop"—the intersection of two frequent bus lines or a frequent bus and a rail line—certain density bonuses and alleviation of parking requirements will apply to a project built on the parcel. In exchange for meeting specific affordability requirements, projects can receive other incentives, like increased height or modified setbacks, by going through a discretionary approval process. But the TOC Program does not allow for by-right height increases or setback modifications.

Now, a bit more on the Fix the City lawsuit. The lawsuit challenges the TOC Program through the lens of one development project which, as noted above, is sited in a densely developed area of West Los Angeles, on a major thoroughfare and close to the skyscrapers and multi-story mall of Century City (i.e., right where we should want development to densify). The lawsuit contends that the project was improperly granted density, height, and setback incentives through the TOC Program—and that the incentives were improperly granted not because the City didn't apply the program's requirements correctly, but because the program itself is inconsistent with Measure JJJ. According to the lawsuit, the point of Measure JJJ was to require labor standards to apply to development projects that sought certain zone changes—the kinds of zone changes this project would have needed if it didn't use the TOC Program—and the TOC Program goes beyond what the voters

authorized by allowing incentives, like height and setback incentives, that aren't contemplated in Measure JJJ.

On a high level, Fix the City's lawsuit is problematic because it attacks the City's most successful driver of logically-sited affordable housing at a time when the City clearly needs more, not fewer, affordable housing units. Equally troubling is that the lawsuit uses the labor standards component of Measure JJJ as a façade, when the real challenge is to the project's density, height, and setback modifications. Fix the City isn't actually arguing for better labor standards to apply at the project. Nor is it likely that the project's density, height, or setback modifications would not be in issue if the project had used some other type of incentive program, like the Density Bonus Law, to achieve the same result. The lawsuit purports to be defending Measure JJJ's "true" purpose—better jobs for construction workers—but it ignores that a major focus of the measure was to boost production of affordable housing, and the remedy it seeks has nothing to do with improving labor conditions (or housing affordability, for that matter). It's a NIMBY suit dressed up in equity clothing.

The problems don't stop there. Drilling down to the specifics, there are several issues with the allegations in Fix the City's complaint.

First, it mischaracterizes the manner in which the program is implemented, alleging that "[w]hile Measure JJJ provides that the TOC Guidelines may allow a different level of density increase based upon a property's base zone and density, the TOC Guidelines utilize a system of Tiers based upon distance from a Major Transit Stop to award differing levels of density increase, regardless of a property's base zone or density." But that's not what Measure JJJ says. Instead, Measure JJJ specifically requires that eligible developments "shall be granted increased residential density at all rates that shall meet or exceed a 35% increase" regardless of where the project is located. Beyond that Measure JJJ authorizes the City to allow for increasing density based on a property's existing zoning. That's what the program does—all density increases are calculated using a parcel's base zoning.

Then, it contends that menu incentives like height increases and setback modifications fall outside the scope of Measure JJJ, saying the measure only authorized a residential density increase and parking reductions. In fact, Measure JJJ gives the City Planning Department broad authorization to define the "eligibility standards, incentives, and other necessary components" of the TOC Program. It defines specific requirements for residential density and parking incentives, but also

provides that eligible developments can get two or three other incentives or concessions based upon state law requirements. State law allows for other incentives—including height increases and setback modifications—to be granted if certain criteria are met. Following the direction of Measure JJJ, the TOC Program allows for residential density and parking incentives as a function of meeting set affordability criteria, and if additional affordability criteria are met, consistent with California law, the Planning Department has the discretion to award a project up to three additional incentives.

Finally, Fix the City says that the labor standards requirements of Measure JJJ are supposed to apply to projects that receive a general plan amendment or zone or height-district changes, but most projects approved since Measure JJJ passed have not had to meet those requirements. Fix the City says this is partially because TOC allows for alterations to a project's density, height, and setbacks that would otherwise be required to go through the general plan or zone change process. But the structure of Measure JJJ belies this argument. Requirements having to do with labor standards are found in a completely separate section of Measure JJJ from the provisions authorizing the TOC Program. And Measure JJJ mandates that the TOC Program cannot apply when a project is seeking the kind of zoning change that would subject it to labor standards requirements. In other words, Measure JJJ specifically designed the TOC Program to allow for density bonuses and other incentives separate from the kinds of zone change processes that would trigger labor standards obligations. Even if the TOC Program provides an "out" for projects to avoid labor standards requirements that would be triggered under other circumstances, that was exactly what the voters intended.

For the past two years, the TOC Program has been an important tool in the City's efforts to build more transit-oriented, and more affordable, development. The City has made no secret of its pride in the program's progress, or its intent to defend the program. This lawsuit has the potential to interfere with the production of thousands of affordable housing units at a time when the City desperately needs those units. Somehow, I don't think two fewer stories and bigger yards at one West LA apartment complex is worth the sacrifice.