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FIX THE CITY, INC.

FILED
Superior Court of California
County of Los Angeles
02/23/2024
David W. Slayton, Executive Officer / Clerk of Court
By: C. Del Rio Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FIX THE CITY, INC., a California
Nonprofit Corporation,

Petitioner and Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal
corporation; the CITY OF LOS ANGELES
CITY COUNCIL; and DOES 1 through
10, inclusive,

Respondents and Defendants.

Case No. 23STCP04410

**FIRST AMENDED VERIFIED
PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Code Civ. Proc. §§ 1060, 1085;
California Environmental Quality Act
(CEQA), Pub. Res. Code § 21000, *et seq.*]

1 Petitioner and Plaintiff FIX THE CITY (hereinafter “Fix the City” or “Petitioner”)
2 seeks a writ of mandamus and declaratory relief against Respondents City of Los Angeles
3 and City of Los Angeles City Council (hereinafter “City” or “Respondents”), and alleges
4 as follows:

5 **INTRODUCTION**

6 1. This is a case about the City’s effort to force a secretive and blatantly illegal
7 project to place a low-barrier,¹ service-enriched interim housing project for 33 homeless
8 persons at 2377 Midvale Ave., on a single-family parcel abutting single-family homes
9 (“Project”). In doing so, the City violated state law, the City’s Charter, the City’s specific
10 plan for the area, the City’s ethics regulations, the City’s adopted financial policies, as well
11 as ignored impacts to small businesses, including because the Project would cause the loss
12 of critical Americans with Disabilities Act (ADA) parking.

13 2. Almost immediately upon taking office, the Councilmember in whose
14 district the Project is located secretly began – without an initiating motion, public hearing,
15 or application identifying the legal authority for the Project and any required discretionary
16 approvals – to pursue the Project. There was no process used to convert a City parking lot
17 at 2377 Midvale Avenue (Lot 707) to a “temporary” low-barrier interim housing facility
18 for ten years. No staff reports were presented to the City Council. As part of that secretive
19

20
21 ¹ “Low-barrier” definition: Low-barrier shelters are part of the City’s strategy to
22 address homelessness. They are designed to be accessible to as many homeless individuals
23 as possible, including those without identification or proof of homelessness; individuals
24 under the influence of alcohol or drugs, provided they do not pose a danger to themselves
25 or others; people with mental health issues who might not be able to comply with more
26 stringent shelter rules; homeless individuals with pets, as pets are often a significant barrier
27 to shelter access.

28 “‘Low-Barrier Navigation Center’ means a Housing First, low-barrier, service-
enriched shelter focused on moving people into permanent housing that provides
temporary living facilities while case managers connect individuals experiencing
homelessness to income, public benefits, health services, shelter, and housing.” (Govt.
Code 65660(a).)

1 effort, the Councilmember and her staff met with vendors and service providers without
2 adhering to City ethics, lobbying and bidder laws. The Project was kept from the public
3 until, per the Councilmember, the site, a vendor and a service provider were selected and
4 the Project was a “done deal.”

5 3. The Project, failed to identify any legal basis for the taking of a critical
6 parking lot that includes the only ADA-compliant parking for blocks. The Project also
7 violated the basic requirements of the Exposition Specific Plan for an application to be
8 submitted, and also violated the Mayor’s Executive Directive 1 (ED1), which prohibited
9 such facilities on single-family parcels.

10 4. Despite the Charter’s requirement that City Council action be taken by
11 ordinance or by order or resolution upon motion, the Councilmember failed to present a
12 motion for the project. A motion would have required a public hearing. By the time the
13 public learned of the Project, on July 24, 2023, the train had left the station without
14 community input of any kind and without consideration of a superior alternative site
15 proposed by Petitioner and supported by the community.

16 5. In violation of the Mayor’s own ED1, the Project calls for interim housing
17 and related services on property zoned single-family. In violation of the Mayor’s ED3, the
18 Project failed to use competitive bidding and also failed to provide substantial evidence of
19 underutilization of the parking lot by the General Services Department. Contrary to the
20 Councilmember’s own adopted motion for parking lot conversion to interim housing (CF
21 23-0360), the Project failed to use the City’s asset evaluation framework. It also failed to
22 evaluate impacts on the residential and business communities. Contrary to the City’s
23 adopted financial policies, the Project approvals failed to disclose the true financial
24 impacts of the Project on a special fund and the general fund, including, apparently, by the
25 Councilmember taking responsibility for restoration of the parking lot 10 years in the
26 future.

27 6. Seeking to avoid CEQA analysis, the City claims one statutory exemption
28 by characterizing homelessness, a chronic problem, as sudden and unexpected, when it is

1 tragically neither. The City also attempted to use another statutory exemption without any
2 findings made to support the exemption.

3 7. This is not a case involving an attempt to stop a shelter project by people
4 opposed to such projects. Petitioner, along with the broader community, proposed an
5 alternative site just 0.7 miles away that would house more people for less money, without
6 neighborhood impacts and without violating City and State laws.

7 **Background On The Midvale Project**

8 8. The Project is a proposed “low-barrier” interim housing project using 8 x 8
9 prefab plastic units to provide 33 sleeping cabins, on-site laundry facilities, storage bins
10 and a storage module, pet area, office/case management conferencing space, dining
11 area/community space, security fencing, additional “wrap-around” services,² and two staff
12 parking spaces, but without state-mandated “safe parking” for unhoused individuals.

13 9. The Project site is approximately 16,860 square feet and is actually two
14 small parcels³ bisected by a public alley, with frontages along Pico Boulevard and Midvale
15 Avenue. Parcel 2, north of the alley, is zoned R1 for single-family residential projects
16 only; Parcel 1, south of the alley, is zoned NMU(EC)-POD to be used for mixed- and
17 multi-family uses. The Project site is the only off-street parking facility for the nearby
18 businesses in the area and provides the only ADA parking for those businesses.

19 10. Parcel 2 abuts single-family homes to the east, west and north.

20 11. Specifically, on July 24, 2023, Council District 5 announced the Project
21 **after** site selection had been completed, and **after** a vendor and provider had already been
22 selected by the Councilmember. Unlike other homeless projects, the Midvale Project
23

24 _____
25 ² Per the Council Office: Case Management/Housing Navigation, Mental Health
26 Support, Participant Coordinators, 24/7 crisis intervention/doc readiness, Security 24/7 on
27 site, Employment Services, Pet Support Services, Connection to Department of Mental
28 Health, Substance Use Services, Physical Health Services.

³ APNs 4322-004-902 (Lot 1) and 4322-004-903 (Lot 2).

1 failed to abide by the required processes, namely there had been no prior Council file, no
2 Council motion to initiate the project, no City Administrative Office (CAO) site
3 assessment using established criteria, no Asset Management Assessment, and no Project
4 application prior to the approval.

5 12. On August 10, 2023, the Los Angeles Board of Transportation
6 Commissioners held an “informational” session on the Project. The informational session
7 did not provide the public with a staff report. The Board took no action at the
8 informational session.

9 13. On September 29, 2023, the Bureau of Engineering issued its CEQA
10 exemption report.

11 14. On September 29, 2023, the CAO issued a report recommending the use of
12 the lot for modular interim housing and partial funding for the Project, but only for site
13 preparation and the modular units, but not for operation expense or restoration of the
14 parking lot.

15 15. On October 4, 2023, the Los Angeles Housing and Homeless Commission
16 held a public hearing to approve Project funding for the purchase of the sleeping huts.
17 There was no staff report from Los Angeles Housing Department, Los Angeles General
18 Services Department, or site suitability report from the CAO.

19 16. On October 10, 2023, the Governor signed AB 785 into law, which replaced
20 Public Resources Code Section 21080.27 in its entirety. The new Public Resources Code
21 Section 21080.27 took effect on January 1, 2024. The City co-sponsored AB 785. Even
22 though the City was a co-sponsor of AB 785, knew of its passage prior to approving the
23 Project, and knew it would seek to apply the exemption under new Section 21080.27 to the
24 Project on January 1, 2024, the City failed to make the new required findings for AB 785
25 as will be seen below.

26 17. On October 12, 2023, the Board of the Los Angeles Transportation
27 Commission held a public hearing on the Project. The Commission President continued
28

1 the item to October 18, 2023 due to lack of information on the Project, including lack of
2 information about and substantial questions concerning the CEQA exemptions.

3 18. On October 16, 2023, the Mayor fired the President of the Board of
4 Transportation Commissioners, whom she had just reappointed a month earlier.

5 19. In an October 17, 2023, article, the former president of the Board of
6 Transportation Commissioners is quoted saying: “I’ve never seen anything like this,”
7 Eisenberg said. ‘It’s sending a message of “You do what we tell you or we’re going to cut
8 you.” That’s the wrong message. That’s not the message you want to send when you’re in
9 a democracy.’”

10 20. On October 18, 2023, the Board of the Los Angeles Transportation
11 Commission held a public hearing on the Project and approved use of Lot 707 for the
12 Project and approved a CEQA statutory exemption under Pub. Res. Code § 21080(b)(4)
13 and CEQA Guidelines § 15269(c) as a purported specific action necessary to prevent or
14 mitigate an emergency, as well as based on Pub. Res. Code § 21080.27 (then AB 1179).
15 No staff report was presented or distributed to members of the public attending the hearing.

16 21. The Board report for October 18, 2023 was *not presented publicly*. It was
17 obtained on November 16, 2023, in a Public Records Act response from the Commission.
18 Neither the actions taken by the Commission, nor the Board report, were presented to the
19 City Council. They cannot be found in the Council File (23-1066) as of this filing. The
20 Commission report disclosed additional costs that were not included in the CAO partial
21 funding report such as a loss of revenue of \$530,000 for ten years to the Special Parking
22 Revenue Fund whose surplus is transferred to the General Fund. As a result, the CAO’s
23 report was incomplete and incorrect regarding impacts on the General Fund under City
24 Financial Policy 32.

25 22. Regarding the exemption claimed under Pub. Res. Code § 21080(b)(4),
26 CEQA defines an emergency as “**a sudden, unexpected occurrence**, involving a clear and
27 imminent danger, demanding immediate action to prevent or mitigate loss of, or damage
28 to, life, health, property, or essential public services.” (Pub. Res. Code § 21060.3;

1 emphasis added.) Further, emergencies are defined as occurrences such as fire, flood,
2 earthquake, landslide, riot, accident or sabotage. (*Id.*) The Pub. Res. Code § 21060.3
3 exemption only applies to a sudden, unexpected occurrence.

4 23. Pursuant to Pub. Res. Code § 21080.27, effective January 1, 2024, CEQA
5 does not apply to projects that are shown to be “activities undertaken by the City of Los
6 Angeles within the City of Los Angeles” that include the “issuance of an entitlement for, or
7 the approval of the construction of, an affordable housing project, a low-barrier navigation
8 center, a supportive housing project, or a transitional housing project for youth and young
9 adults.” Pub. Res. Code § 21080.27(b)(1). However, per the Legislative Digest: “The bill
10 would require the lead agency to ensure that those projects meet certain labor requirements
11 in order for the exemption to apply.” *See also*, Pub. Res. Code § 21080.27(e).

12 24. On October 20, 2023, the City Council approved the use of Lot 707 for a
13 low-barrier interim housing project, partial funding for the Project, and a CEQA statutory
14 exemption under Pub. Res. Code § 21080(b)(4) and CEQA Guidelines § 15269(c), as an
15 action necessary to prevent or mitigate an emergency; and also citing Pub. Res. Code §
16 21080.27 (then AB 1179) as a basis for exempting the Project from environmental review
17 under CEQA.

18 25. On November 1, 2023, the City’s Department of Public Works, Bureau of
19 Engineering, issued a CEQA Notice of Exemption (NOE), again citing Pub. Res. Code §§
20 21080(b)(4), 21080.27 and CEQA Guidelines § 15269(c).

21 26. Rather than conduct preliminary entitlement and environmental review to
22 assess whether the intensive new use was appropriate for or even legally allowed on the
23 Project site, and to inform the public of the Project’s potentially significant environmental
24 effects, the City invoked exemptions to CEQA based on AB 1197 and the declarations of
25 local emergencies, preventing environmental analysis for a proposal that has generated
26 considerable City-wide attention and serious public controversy.

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1 **Background On The Process Of Approval Of The Midvale Project**

2 27. There was no staff report, in writing or orally, responding to the objections
3 raised by Petitioner and the public at the City Council’s Housing and Homelessness
4 Committee on October 4, 2023, the Board of Transportation Commissioners on August 10,
5 2023, October 12 or 18, 2023, or before the City Council on October 20, 2023. There was
6 no Project application citing the authority to build the Project or the need for discretionary
7 approvals. There was no discussion in any Project document addressing the violation of
8 ED1 by placing the Project on an R1 lot.

9 28. Both the CAO and BOE issued reports on the project on September 29,
10 2023. Those reports did not disclose the financial impacts of the Project on the General
11 Fund due to loss of parking revenue for the Special Parking Revenue Fund whose surplus
12 is transferred to the General Fund, as well as the cost of site restoration. Site restoration is
13 not an eligible use of homeless grant funds.

14 29. With the Project vendor and provider being approved behind closed doors,
15 Petitioner alleges on information and belief that the City Council has awarded at least one
16 contract for the Project. Petitioner is informed and believes the City Council has approved
17 the appropriation for LifeArk module purchases for the Project, which is the essential
18 requirement in order to sign a contract, that is, money in hand. Based on references
19 relating to the selection of LA Family Housing as the operator, including in the NOE,
20 Petitioner is informed and believes that a contract has been signed or is imminent between
21 the City and LA Family Housing.

22 30. Petitioner and others objected to the Project during the limited process
23 provided by the City, including submitting detailed letters and testifying at public hearings,
24 thereby exhausting any administrative remedies.

25 31. The General Services Department did not conduct a study to determine if
26 the Project site was underutilized as part of asset management regulations, or if the Project
27 met the criteria for interim housing on City property per the CAO’s assessment protocol.

28

1 38. Respondent City of Los Angeles is a California charter city located in the
2 County of Los Angeles, California.

3 39. Respondent Los Angeles City Council is the elected governing body of the
4 City, and is the body responsible for decisions at issue herein.

5 40. Petitioner is ignorant of the true names of respondents sued herein as DOES
6 1 through 10, inclusive, and therefore sues said respondents by those fictitious names.
7 Petitioner will amend the petition to allege their true names and capacities when the same
8 have been ascertained. Petitioner is informed and believes, and based thereon alleges, that
9 each of these fictitiously named respondents is in some manner responsible for the
10 wrongful conduct alleged in this petition. Petitioner is informed and believes, and based
11 thereon alleges, that these fictitiously named respondents were, at all times mentioned in
12 this petition, the supervisors, agents, servants, and/or employees of their co-respondents
13 and were acting within their authority as such with the consent and permission of their co-
14 respondents.

15 **JURISDICTION AND VENUE**

16 41. Jurisdiction over Respondents, and each of them, exists because each of the
17 Respondents named in this litigation are present and operating within the jurisdictional
18 limits of the County of Los Angeles.

19 42. Venue is proper because all of the acts and omissions complained of in this
20 litigation took place within this judicial district.

21 **FIRST CAUSE OF ACTION**

22 **(Violation of Exposition Specific Plan Requirements)**

23 43. Petitioner realleges and incorporates herein by reference the allegations of
24 Paragraphs 1 through 42, inclusive, of this Petition and Complaint.

25 44. The Project was not exempt from discretionary review because the Project is
26 inconsistent with the requirements of the Exposition Corridor Transit Neighborhood Plan
27 (Exposition Specific Plan), an adopted specific plan of the City.

28 45. The Exposition Specific Plan in its Sections 1.14.A, 1.14.E, 1.31, 1.32, and

1 1.5.1 require specific review procedures for construction in the plan area, including but not
2 limited to the application requirements and procedures of LAMC Section 11.5.7, review
3 and approval of any building, grading, demolition, or change of use permit in accordance
4 with the Exposition Specific Plan, and environmental scope review as set forth in Section 5
5 of the Exposition Specific Plan, and demonstrated compliance with all applicable
6 environmental standards.

7 46. Fundamentally, the Exposition Specific Plan requires in Section 1.3.3: “All
8 Project applicants shall file an application with the Department of City Planning, on a form
9 provided by the Department, and shall include all information required by the instructions
10 on the application. The application requirements and procedures of LAMC Section 11.5.7
11 shall apply to all Projects (as defined in Section 1.2.1) within the Specific Plan boundaries
12 unless otherwise stated in this Specific Plan.”

13 47. The City is a Project applicant within the meaning of the Exposition
14 Specific Plan. The Specific Plan requires filing of an application. “Project applicants **shall**
15 **file an application** with the Department of City Planning, on a form provided by the
16 Department, and shall include all information required by the instructions on the
17 application. The application requirements and procedures of LAMC Section 11.5.7 shall
18 apply to all Projects (as defined in Section 1.2.1) within the Specific Plan boundaries
19 unless otherwise stated in this Specific Plan.” (Specific Plan, Section 1.3.3; emphasis
20 added.)

21 48. Nothing in the record for the Project shows the City’s filing of an
22 application with the Department of City Planning for review, processing, consideration or
23 approval of the Project.

24 49. An actual and present controversy has arisen and now exists between
25 Petitioner and citizens of the City of Los Angeles on the one hand, and the City on the
26 other, respecting the legality of the application of City codes and the Exposition City Plan
27 to the Project. Petitioner seeks a declaratory judgment from this Court invalidating the
28 Project and all contracts and approvals based thereon.

1 50. Petitioner has no plain, speedy, and adequate remedy at law. An injunction
2 is necessary to enjoin Respondents from development and construction of the Project, and
3 to enjoin all contracts and approvals based thereon.

4 51. A clear, present and ministerial duty exists for Respondents to act in
5 compliance with it. Petitioner has no plain, speedy or adequate remedy available to it in
6 the ordinary course of law to redress the claims alleged in this Petition. Petitioner and the
7 public generally will suffer irreparable harm if the Court does not issue mandamus
8 directing the City to revoke its approvals of the Project and all contracts and approvals
9 based thereon.

10 SECOND CAUSE OF ACTION

11 **(Petition for Writ of Mandamus re LAMC 12.80)**

12 52. Petitioner realleges and incorporates herein by reference the allegations of
13 Paragraphs 1 through 51, inclusive, of this Petition and Complaint.

14 53. According to the City's demurrer filed on January 23, 2024 (at p. 15), the
15 Project met the requirements for approval of the Project pursuant LAMC 12.80.

16 54. If Section 12.80 is now the basis for the approval of the Project, the City
17 could not have approved the Project as a low-barrier navigation center because the Project
18 is not a homeless shelter, but a service-rich interim housing/community care facility. This
19 is because: (1) LAMC 12.80 is limited to shelters for the homeless with minimal services;
20 (2) the Project is a "community care facility," which LAMC 12.03 prohibits; (3) the
21 Project violates Govt. Code Section 8698, *et seq.* (including because it lacks "safe
22 parking;" it is not a "public facility" because Lot 707 was purchased with user fees
23 [parking revenue] and not a tax or assessment; and because the City altered the standards
24 for a shelter and therefore could not issue a permit after January 1, 2023).

25 55. LAMC Section 12.80 provides: "Notwithstanding any provisions of this
26 article to the contrary, during any period for which the Mayor and/or the City Council have
27 declared a shelter crisis within the meaning of Government Code Sections 8698, *et seq.*, a
28 shelter for the homeless (as defined in Section 12.03 of this Code) may be established and

1 operated on property owned or leased by the City of Los Angeles in any zone as a matter
2 of right without regard to the number of beds or number of persons served. Facilities used
3 as a shelter for the homeless under this section must comply with the minimum building
4 regulations set forth in Section 91.8605 of this Code, as it is currently written or as it may
5 be amended in the future. If the lot on which any such shelter is located does not have
6 sufficient area to provide the number of parking spaces required by Section 12.21 A.4.(w)
7 of this Code, then the number of spaces required shall be the number for which adequate
8 area exists. If insufficient area for any parking spaces exists on the lot, no spaces shall be
9 required.”

10 56. LAMC Section 12.80 is limited to a project that is a “shelter for the
11 homeless” as defined by LAMC Section 12.03, which is not a low-barrier navigation
12 center. LAMC Section 12.03 provides: “A facility operated by a ‘provider,’ other than a
13 ‘community care facility’ as defined in California Health and Safety Code Section 1502,
14 which provides temporary accommodations to homeless persons and/or families and which
15 meets the standards for shelters contained in Title 25, Division 1, Chapter 7 of the
16 California Code of Regulations: “‘Emergency shelter’ means housing with *minimal*
17 *supportive services* for homeless persons that is limited to occupancy of six months or less
18 by a homeless person and that is not withheld due to a client's inability to pay.” Cal. Code
19 Regs. tit. 25, § 7950. (Emphasis added.)

20 57. *The low-barrier navigation center Project is not a shelter as defined in*
21 *LAMC 12.80.* To the contrary, the Project is described in the NOE as a “**service-enriched**
22 **shelter** focused on moving people into permanent housing that provides temporary living
23 facilities, while case managers connect families experiencing homelessness to income,
24 public benefits, health services, shelter and housing.”

25 58. The minimal service for a shelter corresponds with the other state law cited
26 in LAMC Section 12.03: Cal. Code of Regulations, Title 25, Div. 1, Section 7950:
27 “‘Emergency shelter’ means housing with minimal supportive services for homeless
28 persons that is limited to occupancy of six months or less by a homeless person and that is

1 not withheld due to a client’s inability to pay.” Emergency shelters are not low-barrier
2 interim housing.

3 59. Further, the low-barrier navigation center is a “*community care facility*”.
4 Health and Safety Code Section 1502 defines “community care facility” as “any facility,
5 place, or building that is maintained and operated to provide nonmedical residential care,
6 day treatment, adult daycare, or foster family agency services for children, adults, or
7 children and adults, including, but not limited to, the physically handicapped, mentally
8 impaired, incompetent persons, and abused or neglected children, and includes the
9 following: (1) ‘Residential facility’ means any family home, group care facility, or similar
10 facility determined by the department, for 24-hour nonmedical care of persons in need of
11 personal services, supervision, or assistance essential for sustaining the activities of daily
12 living or for the protection of the individual.”

13 60. The Project is a community care facility as established in the Project
14 description, which provides in pertinent part: “This interim housing facility will provide
15 emergency shelter, hygiene, storage, food services and case management for
16 approximately 33 individuals experiencing homelessness. Additional services may include
17 job training, group therapy, resume building and other workshops. Project operations will
18 include approximately six to eight employees scheduled in shifts throughout the day,
19 approximately three employees on site at one time; with site security provided on a 24/7
20 basis or per a security plan consistent with the Los Angeles Homeless Services Authority’s
21 (LAHSA) standards.”

22 61. The Project’s requirements to use LAHSA program requirements align with
23 a “residential facility” under Section 1502. According to the City, residential facility
24 means any family home, group care facility, or similar facility determined by the director,
25 for 24-hour nonmedical care of persons in need of personal services [case management,
26 crisis intervention], supervision [residential supervision], or assistance essential for
27 sustaining the activities of daily living [meals, restrooms, showers] or for the protection of
28 the individual [security].

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FOURTH CAUSE OF ACTION

(Violation of ED1’s Prohibition Against Approving a Homeless Shelter on Single Family-Zoned Property)

67. Petitioner realleges and incorporates herein by reference the allegations of Paragraphs 1 through 66, inclusive, of this Petition and Complaint.

68. ED1 issued by Mayor Bass, which the City represents is valid and binding, was revised on July 7, 2023. Revised ED1 provides: “Applications for 100% affordable housing projects, or for Shelter as defined in Section 12.03 of the Los Angeles Municipal Code (LAMC) (hereinafter referred to as Shelter), shall be, and hereby are deemed exempt from discretionary review processes otherwise required by either the zoning provisions of Chapter 1 of the LAMC or other Project Review including Site Plan Review as described in LAMC Section 16.05 and LAMC Section 13B.2.4, **as long as such plans do not require any zoning change, variance, or General Plan amendment, and in no instance shall the project be located in a single family or more restrictive zone.**” (Emphasis added.)

69. The Project site is 16,860 square-feet and is actually two parcels bisected by an alley, with frontages along Pico Boulevard and Midvale Avenue. Parcel 2 is zoned R1 (single-family projects only), and Parcel 1 is zoned NMU(EC)-POD (mixed- and multi-family uses).

70. The City Council’s approval of the Project violated an express prohibition in ED1 because the Project is located partly on single family-zoned property, i.e., Parcel 2.

71. An actual and present controversy has arisen and now exists between Petitioner and citizens of the City of Los Angeles on the one hand, and the City on the other, respecting the legality of the application of City codes, Executive Directives and City policies to the Project. Petitioner seeks a declaratory judgment from this Court invalidating the Project and all contracts and approvals based thereon.

72. Petitioner has no plain, speedy, and adequate remedy at law. An injunction is necessary to enjoin Respondents from development and construction of the Project, and

1 to enjoy all contracts and approvals based thereon.

2 73. A clear, present and ministerial duty exists for Respondents to act in
3 compliance with ED1 and its express prohibition against locating the Project “in a single
4 family or more restrictive zone.” Petitioner has no plain, speedy or adequate remedy
5 available to it in the ordinary course of law to redress the claims alleged in this Petition.
6 Petitioner and the public generally will suffer irreparable harm if the Court does not issue
7 mandamus directing the City to revoke its approvals of the Project and all contracts and
8 approvals based thereon.

9 **FIFTH CAUSE OF ACTION**

10 **(Violation of ED3’s Requirement of Compliance with State and Local Law)**

11 74. Petitioner realleges and incorporates herein by reference the allegations of
12 Paragraphs 1 through 73, inclusive, of this Petition and Complaint.

13 75. ED3, which the City represents is valid and binding, provides in pertinent
14 part: “The construction, emergency installation, use, and operation of temporary or
15 permanent housing on such designated sites shall be and hereby are deemed exempt for the
16 duration of this order from discretionary review processes otherwise required by either the
17 zoning provisions of Chapter I of the LAMC or Project Review as described in LAMC
18 Section 16.05 and LAMC Section 13B.2.4; **or other ordinance; provided, however, that**
19 **any temporary or permanent housing shall comply with applicable state law** including
20 Government Code Section 8698, *et seq.*, to the extent those sections apply.” (Emphasis
21 added.)

22 76. Govt. Code Section 8698(a)(2)(A)(i) provides: “The city, county, or city
23 and county, **in lieu of compliance with local building approval procedures** or state
24 housing, health, habitability, planning and zoning, or safety standards, procedures, and
25 laws, **may adopt by ordinance reasonable local standards and procedures for the**
26 **design, site development, and operation of homeless shelters and the structures and**
27 **facilities therein**, to the extent that it is determined at the time of adoption that strict
28 compliance with state and local standards or laws in existence at the time of that adoption

1 would in any way prevent, hinder, or delay the mitigation of the effects of the shelter
2 crisis.” (Emphasis added.)

3 77. As part of the binding requirements of the Government Code, Section
4 8698.4(c)(1) requires: “A ‘homeless shelter’ shall include a parking lot owned or leased
5 by a city, county, or city and county specifically identified as one allowed for safe parking
6 by homeless and unstably housed individuals.”

7 78. The City adopted by ordinance such local standards.

8 79. The Project does not include safe parking for the homeless and thus fails to
9 comply with the requirements of applicable state law.

10 80. Additionally, no permit is allowed pursuant to Govt. Code Section
11 8698(c)(5), which states: “No new permits shall be authorized pursuant to this subdivision
12 on and after January 1, 2023.”

13 81. An actual and present controversy has arisen and now exists between
14 Petitioner and citizens of the City of Los Angeles on the one hand, and the City on the
15 other, respecting the legality of the application of City codes, Executive Directives and
16 City policies to the Project. Petitioner seeks a declaratory judgment from this Court
17 invalidating the Project and all contracts and approvals based thereon.

18 82. Petitioner has no plain, speedy, and adequate remedy at law. An injunction
19 is necessary to enjoin Respondents from development and construction of the Project, and
20 to enjoin all contracts and approvals based thereon.

21 83. A clear, present and ministerial duty exists for Respondents to act in
22 compliance with ED3, assuming it is otherwise legal, which it is not, with Govt. Code
23 Section 8698(a)(2)(A)(i) and Govt. Code Section 8698(c)(5). Petitioner has no plain,
24 speedy or adequate remedy available to it in the ordinary course of law to redress the
25 claims alleged in this Petition. Petitioner and the public generally will suffer irreparable
26 harm if the Court does not issue mandamus directing the City to revoke its approvals of the
27 Project and all contracts and approvals based thereon.

28

1 **SIXTH CAUSE OF ACTION**

2 **(Violation of the Competitive Bidding Mandates of ED3, Public Contracts Code**
3 **Section 20162, City Charter Section 371(e)(6), LAAC Sections 10.15 and 10.17, And**
4 **LAAC Section 8.333(d)(v)(2))**

5 84. Petitioner realleges and incorporates herein by reference the allegations of
6 Paragraphs 1 through 83, inclusive, of this Petition and Complaint.

7 85. The approval of the Project violates ED3 and applicable state law, including
8 Public Contracts Code Section 20162, which requires competitive bidding for contracts
9 over \$5,000. The Project failed to include or implement competitive bidding. Petitioner is
10 informed and believes and based thereon alleges that the City never issued Requests for
11 Proposals or Requests for Qualifications for the Project.

12 86. As a result, the failure to require competitive bidding as part of the Project
13 approvals violated City requirements for competitive bidding under City Charter Section
14 371(e)(6), and LAAC Sections 10.15 and 10.17, as well as Public Contracts Code Section
15 20162.

16 87. Petitioner is informed and believes that the City failed to proceed with the
17 competitive bidding process with LifeArk and LA Family Housing, which Petitioner is
18 informed and believes the City has selected as the provider of the housing and operator,
19 respectively.

20 88. City Charter Section 371(a) requires contracts to be awarded through
21 competitive bidding, except in specified exceptions not applicable here.

22 89. LAAC 10.15 and Public Contracts Code Section 20162 necessitate
23 competitive bidding for public project expenditures over \$100,000 and \$5,000,
24 respectively. LAAC 10.17 further provides: "Except as otherwise provided by ordinance,
25 in all cases where bids are not required by the Charter, competitive proposals or bids shall
26 be obtained as far as reasonably practicable and compatible with the City's interests. In all
27 cases, a public record of these proposals and agreements shall be kept. The right to reject
28 any and all proposals or bids shall be reserved in all cases." Petitioner is informed and

1 believes and based thereon alleges that the procurement of tiny homes for the Project
2 surpasses those thresholds. Any decision by the City to procure tiny homes without
3 competitive bidding, and in disregard of the recommendations for competitive bidding by
4 various City employees, is a further violation of the law.

5 90. The City and Council District 5 rejected the calls for competitive bidding for
6 the Project by City employees from the Bureau of Engineering (BOE), including Jose
7 Fuentes, Deborah Weintraub, and Erik Villanueva. They recommended a competitive
8 bidding process, citing the feasibility and financial prudence of such an approach.

9 91. Jose Fuentes from BOE, in an email obtained through a Public Records Act
10 request, recommended following the CD1 Cypress project's process, which did not involve
11 sole-sourcing; he emphasized the feasibility of competitive bidding: "We should be
12 following the same process we used for the CD1 Cypress (New Beginnings) project...."

13 92. Marina Quinones of BOE, in a further email obtained through a Public
14 Records Act request, highlighted CD5's prioritization of expediency over proper
15 procedure: "CD5 would like to take advantage of the ordinance to sole source, **they did**
16 **not want to spend the time in advertising.**" (Emphasis added.)

17 93. Fuentes responded to Quinones, emphasizing the financial prudence of
18 competitive bidding: "Honestly, we are better off letting the small group of contractors
19 compete for the project. **A sole source proposal will come with a significant premium.**"
20 (Emphasis added.)

21 94. In an email obtained through a Public Records Act request, Deborah
22 Weintraub of BOE echoed these concerns: "As we still have to do 30% design drawings,
23 isn't it possible the current emergency authorization will expire? I am asking re: sole
24 sourcing the design/build contractor. I do agree with Jose that the City is better served by a
25 short competitive bidding period from our list of approved contractors. It will mean the
26 contractors and their associated architects & engineers will give competitive pricing. I
27 think you need the CAO's support to discuss this with the Council office. From the
28 perspective of the Council office, **the units they are using are already more costly per**

1 **bed than the tiny homes**, and if there is no competition for design/build, they could end
2 up with **very high costs per bed.**” (Emphasis added.)

3 95. In an email obtained through a Public Records Act request, Erik Villanueva
4 recommended competitive bidding on August 8, 2023: “BOE reviewed the motion. . . .
5 BOE’s main comment is to recommend a short competitive bidding period from our list of
6 approved contractors rather than sole sourcing the construction contract. This will better
7 serve the City, providing us a better competitive price without jeopardizing any schedule.”

8 96. The lack of competitive bidding risks significantly higher costs due to the
9 absence of market competition. The approach taken by the City and CD5 violates both
10 City and state law pertaining to public procurement practices, further rendering the Project
11 and its approvals illegal.

12 97. Further increasing improprieties with regard to the Project, current CD5
13 Homeless and Housing Deputy Zachary Warma was hired by CD5 in January 2023.
14 Petitioner is informed and believes and based thereon alleges that immediately prior to
15 joining CD5, Warma was a Policy Director for L.A. Family Housing. Starting in January
16 2023, Warma was extensively involved in interactions with his prior employer, L.A.
17 Family Housing, as a services provider for the Project. If L.A. Family Housing has been,
18 or will be, awarded a contract related to the Project, this may give rise to yet another
19 violation of the law. LAMC Section 49.5.6.B states: “In the first 12 months of City
20 service, a City official or agency employee shall not knowingly make, participate in
21 making, or attempt to use his or her official position to influence a City decision directly
22 relating to a contract when a party to the contract is a person by whom the individual was
23 employed in the 12 months immediately prior to entering City service.”

24 98. In addition, Petitioner is informed and believes and based thereon alleges
25 that the City and/or CD5 intend that the service contract for the Project will continue for as
26 long as 10 years. LAAC Section 8.333(d)(v)(2) precludes sole source contracting where
27 the contact may be for a term longer than one year: “Contracts using the suspended
28 competitive bidding restrictions specified in this subsection may be for a term no longer

1 than one year; thereafter, further contracting for the same need shall be accomplished by
2 competitive bidding whenever applicable.”

3 99. An actual and present controversy has arisen and now exists between
4 Petitioner and citizens of the City of Los Angeles on the one hand, and the City on the
5 other, respecting the legality of the application of City codes, Executive Directives and
6 City policies to the Project. Petitioner seeks a declaratory judgment from this Court
7 invalidating the Project and all contracts and approvals based thereon.

8 100. Petitioner has no plain, speedy, and adequate remedy at law. An injunction
9 is necessary to enjoin Respondents from development and construction of the Project, and
10 to enjoin all contracts and approvals based thereon.

11 101. A clear, present and ministerial duty exists for Respondents to act in
12 compliance with ED3 and other state and local laws requiring competitive bidding for the
13 Project. Petitioner has no plain, speedy or adequate remedy available to it in the ordinary
14 course of law to redress the claims alleged in this Petition. Petitioner and the public
15 generally will suffer irreparable harm if the Court does not issue mandamus directing the
16 City to revoke its approvals of the Project and all contracts and approvals based thereon.

17 **SEVENTH CAUSE OF ACTION**

18 **(Violation of City Financial Policy 32)**

19 102. Petitioner realleges and incorporates herein by reference the allegations of
20 Paragraphs 1 through 101, inclusive, of this Petition and Complaint.

21 103. Approval of the Project also violates City of Los Angeles Financial Policy
22 32, which provides: “Reports to the Mayor and City Council shall include Fiscal Impact
23 Statements that include the full cost of the program or service in the current year, plus the
24 future annual costs.” The City Administrative Office fiscal report dated September 29,
25 2023 states: “The recommendations in this report will be funded with the City’s General
26 Fund previously approved for homelessness interventions and the Homeless Housing,
27 Assistance, and Prevention Round 1 funds. There is no additional impact to the General
28 Fund as a result of the recommendations in this report. **Funding for operations of the site**

1 **will be programmed in a future funding report.”** (Emphasis added.) The Project’s
2 approval violates the legal requirements set forth in Policy 32 for full disclosure of the
3 budget, including operations. Policy 32, adopted as a City ordinance, establishes a
4 mandatory legal requirement that reports to the Mayor and City Council shall include
5 Fiscal Impact Statements covering the full cost of a program or service in the current year,
6 *as well as future annual costs.* Shall is mandatory under LAMC Section 11.1. Approval of
7 the Project without accounting for its operational expenses constitutes a breach of the legal
8 obligation to provide a complete financial picture to the City Council and the public,
9 further rendering the Project and its approvals illegal.

10 104. According to a staff report prepared by the Department of Transportation,
11 but not submitted to the City Council or provided to the public prior to the City Council
12 action on October 20, 2023, “The operation and maintenance of Lot No. 707 while used for
13 the MIHF will be the **sole responsibility of CD5.**” (Emphasis added.) The costs
14 associated with this responsibility were not disclosed and the DOT staff report was never
15 presented to the City Council.

16 105. In the same report, it is disclosed that CD5 “**shall be responsible for the**
17 **restoration of Lot No. 707 back to its existing condition as a parking lot,** or better,
18 prior to the construction of the MIHF; or, in the alternative, **CD5 shall compensate the**
19 **SPRF for costs associated with restoring the parking lot** by the Department, or other
20 City agency, or independent contractor selected by the Department to perform the work.”
21 (Emphasis added.) The costs associated with this responsibility were not disclosed and the
22 DOT staff report was never presented to the City Council. Homeless Housing, Assistance
23 and Prevent Program grant funds do not list site restoration as an eligible use.

24 106. In the same report, it is disclosed that “Should the Board approve the
25 conversion of Lot No. 707 to a MIHF, LADOT expects an annual loss of \$53,000 to the
26 SPRF based on pre-pandemic revenue. With the MIHF expected to remain in place for the
27 next 10 years, the cumulative estimated SPRF revenue impact is a loss of \$530,000.” The
28 losses to the SPRF were not disclosed to the City Council. Surplus funds in the SPRF

1 Trust Fund are routinely transferred to the General Fund. Thus, the loss of revenue for Lot
2 707 will reduce the surplus transfer and impact the General Fund.

3 107. An actual and present controversy has arisen and now exists between
4 Petitioner and citizens of the City of Los Angeles on the one hand, and the City on the
5 other, respecting the legality of the application of City codes, Executive Directives and
6 City policies to the Project. Petitioner seeks a declaratory judgment from this Court
7 invalidating the Project and all contracts and approvals based thereon.

8 108. Petitioner has no plain, speedy, and adequate remedy at law. An injunction
9 is necessary to enjoin Respondents from development and construction of the Project, and
10 to enjoin all contracts and approvals based thereon.

11 109. A clear, present and ministerial duty exists for Respondents to act in
12 compliance with Los Angeles Financial Policy 32. Petitioner has no plain, speedy or
13 adequate remedy available to it in the ordinary course of law to redress the claims alleged
14 in this Petition. Petitioner and the public generally will suffer irreparable harm if the Court
15 does not issue mandamus directing the City to revoke its approvals of the Project and all
16 contracts and approvals based thereon.

17 **EIGHTH CAUSE OF ACTION**

18 **(Violation of Los Angeles Administrative Code Section 8.59)**

19 110. Petitioner realleges and incorporates herein by reference the allegations of
20 Paragraphs 1 through 109, inclusive, of this Petition and Complaint.

21 111. The Project violates LAAC Section 8.59. The City’s Public Welfare and
22 Shelter Division reads: “The Public Welfare and Shelter Division shall be under and
23 subject to the control of the Department of Recreation and Parks of the City of Los
24 Angeles. The Chief of this division shall be the General Manager of the Department. The
25 chief shall be responsible for arranging, directing and coordinating sheltering services for
26 persons rendered homeless as a result of a local emergency.”

27 112. Petitioner is informed and believes and based thereon alleges that the
28 General Manager of the Department of Recreation and Parks Project was not consulted for

1 the planning or implementation of the Project. CD5 and the City exceeded their authority
2 and otherwise committed *ultra vires* acts by planning and implementing a homeless shelter
3 project without following the established and required procedures proscribed in LAAC
4 Section 8.59. LAAC Section 8.59 exists to ensure efficient and organized responses to
5 such situations. The bypassing of the General Manager of the Department of Recreation
6 and Parks as the responsible authority for coordinating sheltering services is a further
7 violation of a mandatory provision in the LAAC, which further renders the Project and its
8 approvals illegal.

9 113. An actual and present controversy has arisen and now exists between
10 Petitioner and citizens of the City of Los Angeles on the one hand, and the City on the
11 other, respecting the legality of the application of City codes, Executive Directives and
12 City policies to the Project. Petitioner seeks a declaratory judgment from this Court
13 invalidating the Project and all contracts and approvals based thereon.

14 114. Petitioner has no plain, speedy, and adequate remedy at law. An injunction
15 is necessary to enjoin Respondents from development and construction of the Project, and
16 to enjoin all contracts and approvals based thereon.

17 115. A clear, present and ministerial duty exists for Respondents to act in
18 compliance with LAAC 8.59. Petitioner has no plain, speedy or adequate remedy available
19 to it in the ordinary course of law to redress the claims alleged in this Petition. Petitioner
20 and the public generally will suffer irreparable harm if the Court does not issue mandamus
21 directing the City to revoke its approvals of the Project and all contracts and approvals
22 based thereon.

23 **NINTH CAUSE OF ACTION**

24 **(Violation of the City’s Asset Evaluation Framework Mandate – CF 23-0360)**

25 116. Petitioner realleges and incorporates herein by reference the allegations of
26 Paragraphs 1 through 115, inclusive, of this Petition and Complaint.

27 117. The City failed to undertake the required evaluation for the repurposing of
28 City Parking Lot 707 for the Project. The City’s Asset Evaluation Framework (C.F. 12-

1 1549-S3) advances the City’s economic development and housing efforts by establishing a
2 uniform procedure to evaluate and designate City-owned properties for economic
3 development, housing opportunities, and/or other City purposes. Another goal of the Asset
4 Evaluation Framework is to identify higher and better uses for such properties in order to
5 maximize the value of City-owned assets and to address priority concerns such as job
6 creation and affordable housing.

7 118. CD5 and the City failed to undertake the required City Asset Evaluation
8 Framework evaluation, as expressly detailed in CD5’s adopted Amending Motion 3D in
9 CF 23-0360. CD5 and the City’s failure contradicts the directives outlined in adopted
10 Motion CF 23-0360, including Amending Motion 3D proposed by CD5. The City Asset
11 Evaluation Framework involves several vital elements, including fiscal impact
12 assessments, comprehensive reporting on existing parking agreements (such as parking
13 covenants and affidavits) and the imperative consideration of the mobility, livability, and
14 commercial needs of the surrounding community. Although Petitioner submitted evidence
15 of parking covenants and affidavits for Lot 707, these were never disclosed or addressed
16 by the Board of Transportation Commissioners, thereby denying due process and
17 committing other violations of law as to those property rights. There is no evidence of
18 informing the covenant and affidavit owners of the loss of their recorded rights.

19 119. The conversion of City Parking Lot 707 into a homeless shelter site has far-
20 reaching and deleterious implications for local businesses. The general lack of street
21 parking after 4 PM in the vicinity could inflict significant harm on commerce. The
22 planned establishment of a low-barrier homeless shelter essentially surrounded on three
23 sides by a single-family neighborhood and business district also raises genuine concerns
24 about safety and community compatibility. The loss of Parking Lot 707 will also result in
25 the unavailability of the only street-level Americans with Disability Act (ADA) parking in
26 the vicinity. The availability of ADA parking at Lot 707 will be removed as a resource for
27 businesses, new and old, needing to prove ADA accessibility. The City’s failure to
28 conduct the required City Asset Evaluation Framework on these critical issues further

1 127. The Project would construct and operate a low-barrier navigation center, a
2 service-enriched facility with 33 sleeping units, two of which would be Americans with
3 Disabilities Act accessible. It is not known if the project is in compliance with federal and
4 state disability regulations for common areas.

5 128. The Project would result in an intensive use of the single-family-zoned site
6 by providing 24-hour services such as emergency shelter, hygiene, storage, food services
7 and case management. Project operations will include approximately six to eight
8 employees scheduled in shifts throughout the day, approximately three employees onsite at
9 one time; with site security provided on a 24/7 basis or per a security plan consistent with
10 Los Angeles Homeless Services Authority's (LAHSA) standards.

11 129. According to the CEQA Notice of Exemption (NOE) and its narrative, a
12 third-party service provider would operate the Project for the City and it is anticipated that
13 a 10-year lease or similar operating and/or funding agreements may be executed in the
14 future with the service provider, County, and/or LAHSA. In the future, the City may
15 execute a lease or similar operating and/or funding agreements with the service provider,
16 County, and/or LAHSA. The Project would be operated under LAHSA's program
17 requirements for crisis and bridge shelters.

18 **CEQA Procedures And Requirements**

19 130. CEQA and its implementing regulations (Cal. Code Regs., tit.14, § 15000 *et*
20 *seq.* ("CEQA Guidelines")) embody California's strong public policy of protecting the
21 environment. The basic purposes of CEQA are to: (1) Inform governmental decision
22 makers and the public about the potential, significant environmental effects of proposed
23 activities. (2) Identify ways that environmental damage can be avoided or significantly
24 reduced. (3) Prevent significant, avoidable damage to the environment by requiring
25 changes in projects through the use of alternatives or mitigation measures when the
26 governmental agency finds the changes to be feasible. (4) Disclose to the public the
27 reasons why a governmental agency approved the project in the manner the agency chose
28 if significant environmental effects are involved. (5) Consider alternative sites.

1 (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285-286; CEQA Guidelines §
2 15002.)

3 131. To achieve these goals, CEQA provides a three-step process. In the first
4 step, the public agency must determine whether the proposed development is a “project,”
5 that is, “an activity which may cause either a direct physical change in the environment, or
6 a reasonably foreseeable indirect physical change in the environment” undertaken,
7 supported, or approved by a public agency. (*Tomlinson*, 54 Cal.4th at 286, citing Pub. Res.
8 Code § 21065.) If the proposed activity is a “project,” the second step requires the public
9 agency to decide whether it is exempt from compliance with CEQA **under narrow**
10 **circumstances**. (*Id.*, citing Pub. Res. Code §§ 21080, 21084(a); Guidelines § 15300.) “If
11 a project does not fall within a CEQA exemption, the lead agency conducts an initial study
12 to determine whether the project may have a significant impact on the environment.
13 (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380;
14 CEQA Guidelines §§ 15063(a); 15002(k)(2).)

15 132. CEQA contains both “categorical” and “statutory exemptions.” The
16 California Legislature has deemed certain projects statutorily exempt from CEQA
17 requirements. Among CEQA’s statutory exemptions, and the two cited in the NOE, is
18 Pub. Res. Code § 21080(b)(4), which provides that the Act does apply to “specific actions
19 necessary to prevent or mitigate an emergency,” and statutory exemption at Pub. Res. Code
20 § 21080.27, which pertains only to the City of Los Angeles’ activities in furtherance of
21 emergency shelters and support housing.

22 133. Before invoking a statutory exemption pursuant to the Public Resources
23 Code, the City needed to provide substantial evidence showing it had met all elements of
24 the exemption. This it failed to do. Without a project application, it is infeasible to
25 conclude that the Project is actually exempt.

26
27
28

1 **CEQA Statutory Emergency Exemption Pub. Res. Code § 21080(b)(4)**

2 134. Regarding the exemption claimed under § 21080(b)(4), the administrative
3 record does not contain substantial evidence that supports each element of the definition of
4 an “emergency.”

5 135. CEQA defines an emergency as “**a sudden, unexpected occurrence,**
6 involving a clear and imminent danger, demanding immediate action to prevent or mitigate
7 loss of, or damage to, life, health, property, or essential public services.” (Pub. Res. Code
8 § 21060.3; emphasis added.) Further, emergencies are defined as occurrences such as fire,
9 flood, earthquake, landslide, riot, accident or sabotage. (*Id.*) The § 21060.3 exemption
10 only applies to a sudden, unexpected occurrence.

11 136. The exemption does not extend to correction of an ongoing chronic
12 socioeconomic condition when there is no sudden, unexpected occurrence and no
13 immediate action in response to imminent danger from that occurrence, i.e., a specific
14 event such as an earthquake or fire, even if corrections might assist those experiencing that
15 condition.

16 137. While tragic, homelessness is neither sudden nor unexpected. It is a
17 chronic, long-standing condition. Homelessness has existed in the City for decades, and is
18 thus not a “sudden, unexpected occurrence” in the way of a natural disaster, riot or
19 sabotage.⁴

20 138. The NOE and its narrative cite two exemptions, one under Pub. Res. Code §
21 21080.27 (then AB 1197—shelter crisis) and one for an emergency per Pub. Res. Code §
22 21080(b)(4). The simple fact that the NOE and its narrative cited an exemption related to a
23 shelter crisis that has been officially recognized for at least nine years precludes the
24

25 _____
26 ⁴ In a motion on January 24, 2012, Los Angeles County Supervisors Zev
27 Yaroslavsky and Mark Ridley-Thomas stated that “Los Angeles County remains the
28 homeless capital of the country.”

1 concept that homelessness is “sudden and unexpected” within the meaning of Pub. Res.
2 Code § 21080(b)(4).

3 139. The NOE and its narrative omitted any evidence that the homelessness crisis
4 is equivalent to the sudden occurrences enumerated in Pub. Res. Code § 21060.3 such as
5 fire, flood or earthquake. Rather, as if to prove the opposite, the BOE report cited articles
6 and studies from 1988, 2003, 2009, 2014, 2015, 2016, 2017, 2018, 2019, 2020 showing
7 that homelessness is a chronic rather than sudden and unexpected occurrence. While much
8 of the data presented is distressing, the studies show the conditions do not qualify as an
9 “emergency” under CEQA sufficient to exempt agency actions from CEQA analysis. The
10 BOE report also cited an expired Covid emergency declaration for the Project.

11 140. The City’s proposed measures to reduce homelessness are attempted
12 corrective actions for an ongoing condition, but the CEQA definition limits an emergency
13 to an “occurrence,” not a condition, and that the occurrence must involve an “imminent
14 danger” due to a “sudden, unexpected occurrence.”

15 141. The City’s record does not contain substantial evidence sufficient to support
16 CEQA’s emergency exemption under Pub. Res. Code § 21080(b)(4), including because the
17 relied-upon Emergency Declaration had expired prior to the date that the City approved the
18 Project. Moreover, the City’s reliance on an emergency CEQA exemption for the Project
19 was required to have been, but was not, supported by lawful factual and legal
20 underpinnings and findings as conditions precedent to justifying the existence of an
21 emergency as defined in the first place.

22 **CEQA’s Statutory Los Angeles-Specific Exemption,**

23 **Pub. Res. Code § 21080.27 (Effective January 1, 2024, AB785)**

24 142. The City’s administrative record must contain substantial evidence
25 supporting every element of the asserted statutory exemption, here Pub. Res. Code §
26 21080.27.

27 143. Under this exemption, CEQA does not apply to projects that are shown to be
28 “activities undertaken by the City of Los Angeles within the City of Los Angeles” that

1 include the “issuance of an entitlement for, or the approval of the construction of, an
2 affordable housing project, a low-barrier navigation center, a supportive housing project, or
3 a transitional housing project for youth and young adults.” Pub. Res. Code §
4 21080.27(b)(1).

5 144. The exemption does not apply unless the terms of subdivision (e) of section
6 21080.27 have been met. Subdivision (e)(1)(A) provides: “For an affordable housing
7 project, low-barrier navigation center, supportive housing project, or transition housing
8 project for youth and young adults, that is not in its entirety a public work or purposes of
9 Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, this
10 section applies only if the project sponsor certifies to the lead agency that all of the
11 following [labor and wages requirements] will be met for any construction or rehabilitation
12 work”.

13 145. The Project is not entirely a public work. Petitioner is informed and
14 believes and based thereon alleged that the operation of the shelter is not a public work.
15 Petitioner is informed and believes and based thereon alleges that dismantlement of the
16 Project and restoration of the parking lot is not a “public work” and not a valid use of
17 Homeless Housing, Assistance and Prevention Program funding. Therefore, the labor and
18 wages requirements of subdivision (e) of section 21080.27 apply.

19 146. The City did not make any findings in the record that the labor and wages
20 requirements of Section 21080.27(e) will be met. Despite knowing about AB 785, the City
21 made findings only applicable to AB 1197, the former version of Section 21080.27.

22 147. The purported approval of the Project by the City, as the City now argues,
23 fails because the Project cannot qualify as a homeless shelter.

24 148. The City record does not contain substantial evidence for the application of
25 the Sections 21080(b)(4) and 21080.27 exemptions from CEQA.

26 149. An actual and present controversy has arisen and now exists between
27 Petitioner and citizens of the City of Los Angeles on the one hand, and the City on the
28 other, respecting the City claim of exemption from CEQA. Petitioner seeks a declaratory

1 judgment from this Court that the City’s NOE is invalid.

2 150. A clear, present and ministerial duty exists for the City to act in compliance
3 with the California Environmental Quality Act, Pub. Res. Code §§ 21000, *et seq.*
4 Petitioner has no plain, speedy or adequate remedy available to it in the ordinary course of
5 law to redress the claims alleged in this Petition. Petitioner and the public generally will
6 suffer irreparable harm if the court does not issue mandamus directing the City to comply
7 with CEQA, and to invalidate the Project approvals, which were illegally based upon
8 inapplicable CEQA exemptions.

9 **PRAYER**

10 WHEREFORE, Petitioner prays for judgment as follows:

11 1. For a peremptory writ of mandamus requiring the City to comply with the
12 mandatory and ministerial duties under state and local laws, requiring it to void the Project
13 and all contracts, approvals, entitlements and permits that may have been issued by the
14 City for or in furtherance of the Project.

15 2. For declaratory relief establishing the Project violates state and local laws
16 and declaring the invalidity the Project and all contracts and approvals based thereon.

17 3. For an injunction to enjoin Respondents from development and construction
18 of the Project, and to enjoin all contracts and approvals based thereon for the violation of
19 state and local laws.

20 4. As to the CEQA causes of action, Petitioner further respectfully prays that
21 the Court issue a writ of mandamus ordering Respondents, and each of them:

22 (a) To set aside and void the Notice of Exemption, the Project, and all
23 related approvals that rely thereon.

24 (b) To conduct a fully legal and proper CEQA review for the Project.

25 (c) To take all further specific actions as shall be necessary to bring
26 Respondents’ decisions, determinations and findings into full compliance with CEQA, the
27 CEQA Guidelines, LAMC, LAAC, as well as all other laws applicable to any Project
28 activity.

1 5. That the Court preliminarily and permanently enjoin Respondents, and each
2 of them, from granting or issuing any discretionary or ministerial entitlements relating to
3 the Project, and further enjoin any Project construction, funding, contracts or other
4 approvals pursuant to the City’s purported approval of the CEQA exemptions and any
5 other Project approvals, until Respondents have taken all actions as shall be necessary to
6 bring their environmental review, decisions, determinations and findings into full
7 compliance with CEQA and the CEQA Guidelines, as well as all other laws applicable to
8 any Project activity and the Project site.

9 6. For attorney fees, including pursuant to Code of Civil Procedure § 1021.5.

10 7. For costs of suit; and

11 8. For such other and further relief as the Court may deem just and proper.

12
13
14 Dated: February 23, 2024

THE SILVERSTEIN LAW FIRM, APC

15
16 By: /s/ Robert P. Silverstein
17 ROBERT P. SILVERSTEIN
18 Attorneys for Petitioner
19 FIX THE CITY, INC.

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PROOF OF SERVICE

I, GABBY PICENO, declare:

I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is The Silverstein Law Firm, 215 North Marengo Ave, Third Floor, Pasadena, California 91101-1504. On February 23, 2024, I served the within document(s):

FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

by transmitting the document(s) listed above via e-mail to the person(s) named below at the respective e-mail addresses and receiving confirmed transmission reports indicating that the document(s) were successfully transmitted.

CASE NAME: FIX THE CITY, INC. V. CITY OF LOS ANGELES, ET AL.
CASE NO.: 23STCP04410

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 23, 2024, at Pasadena, CA.

/s/ Gabby Piceno

GABBY PICENO

SEE ATTACHED SERVICE LIST

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*ON BEHALF OF CITY OF LOS ANGELES AND
CITY OF LOS ANGELES CITY COUNCIL*

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