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7 FIX THE CITY, INC.

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

11
12 FIX THE CITY, INC., a California
13 Nonprofit Corporation,

14 Petitioner and Plaintiff,

15 vs.

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

20 Respondents and Defendants

Case No. 23STCP04410

**PETITIONER'S OPENING TRIAL
BRIEF; DECLARATION OF ROBERT P.
SILVERSTEIN**

**[Stipulation Regarding Authentication of
Petitioner's Exhibits for Opening Trial
Brief, and Request for Judicial Notice filed
concurrently herewith]**

Trial Date: November 14, 2024
Time: 9:30 a.m.
Dept.: 85

Hon. James C. Chalfant

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT.**

2 “As Oliver Wendell Holmes said: ‘Men must turn square corners when they deal with the
3 Government.’ [Citation.] Our own California Supreme Court remarked: ‘... “It is hard to see
4 why the government should not be held to a like standard of rectangular rectitude when dealing
5 with its citizens.” [Citation.] [Citations.]’ Ventura Foothill Neighbors v. County of Ventura
6 (2014) 232 Cal.App.4th 429, 431.

7 This lawsuit challenges a City project to install a 33-bed homeless residential facility with
8 supporting services at 2377 Midvale Ave./10901-10903 Pico Blvd. (Project). The Project removes
9 a City-owned public parking lot in West Los Angeles that provides the only off-street public
10 parking and only off-street public ADA parking spots used by patrons of dozens of businesses.
11 The Project is sited on two parcels. (Silverstein Decl., **Exhibit A** [aerial photo from City’s
12 ZIMAS site showing the parcels and their zoning].)¹ One of those parcels is zoned R1 residential,
13 located inside a single-family neighborhood just feet from single-family homes. (**Exhibit 11**, p. 4
14 of 25.) The Project began in secret and was illegally approved – in violation of State and City
15 laws, as well as Executive Directives issued by Mayor Karen Bass.

16 The Project proceeded through an abnormal process, including violating the controlling
17 specific plan. City Council District 5 announced the Project in a press release that disclosed a final
18 site selection and sole source vendor and service provider selection – all without any prior public
19 notice. Standard Council office and City Council files were not created. There was no motion,
20 resolution or ordinance. There were no staff reports from the Planning Dept. or LADBS. There
21 was no competitive bidding when the Project was announced. There were no findings made to
22 support Project approval.

23 Among other fatal flaws, the City failed to consider the Exposition Corridor Transit
24 Neighborhood Plan (Expo Specific Plan). That plan governs the Project site and expressly
25 supersedes any conflicting or less protective provisions of the Los Angeles Municipal Code. The

26 _____
27 ¹ Unless otherwise noted, Exhibit references are to the concurrently filed Stipulation
28 Regarding Authentication of Petitioner’s Exhibits for Opening Trial Brief. A Request for Judicial
Notice is also filed concurrently herewith. At the June 11, 2024 TSC, the Court allowed
Petitioner’s opening trial brief to be up to 18 pages. This brief is 16 pages.

1 Expo Specific Plan mandates an application, review and findings process, as well as multiple
2 construction and design requirements that were not followed or mentioned by the City.

3 As part of the abnormality of how the Project was pursued, the City has never stated or
4 committed to an alleged legal basis to approve the Project. There is a CEQA Notice of Exemption
5 and Narrative (NOE), but that document did not directly state the City or State law(s) upon which
6 the City purportedly relied for the approval.

7 Given the absence of any clear basis for the City’s authorization and approval of the
8 Project, Petitioner is in the position of presenting what *might* be the City’s claimed bases, and then
9 demonstrating the Project’s illegality as to each of those potential arguments. Those possible
10 grounds – hints of which are found in records obtained through the CPRA, but never committed to
11 by the City – are: (1) Los Angeles Municipal Code (LAMC) § 12.80; (2) Mayoral Executive
12 Directive (ED) 1; and (3) ED 3.

13 As a starting point, and casting a legal pall over any authority the City may claim to have
14 relied on to approve the Project, the Project is per se illegal because it must comply with the Expo
15 Specific Plan, but does not.

16 As discussed below, the Project is illegal and its approvals should be invalidated because:

17 (1) The Project and its approval violate the Expo Specific Plan’s mandatory
18 application, review, and findings of plan compliance.²

19 (2) LAMC § 12.80 – concerning the building of shelters for the homeless as a result of
20 a declared “shelter crisis” – cannot apply as the Expo Specific Plan explicitly supersedes the
21 LAMC. Further, the Project is not a shelter for the homeless as defined in LAMC § 12.03, which
22 LAMC § 12.80 relies on for the definition of a “shelter for the homeless.”³ More specifically,

23 (a) The Project is not a “shelter for the homeless” because there is no time
24 limit for stays at the Project – LAMC § 12.03 mandates stays not to exceed 6 months.

25 _____
26 ² The required review would have disclosed numerous violations of the Expo Specific Plan
including processes, procedures, zoning, use, design and building requirements.

27 ³ As stated above, the City cited no legal authority for approval of the Project. LAMC §
28 12.80 first surfaced in this matter in a City demurrer, and the EDs are noted on Project plans.

1 (b) The Project is not a “shelter for the homeless” because it is a “Community
2 Care Facility” excluded by LAMC § 12.03 from the definition of “shelter for the homeless”.

3 (c) The Project is not as “shelter for the homeless” because it fails to comply
4 with 25 Cal. Code Regs. (CCR) § 7950, which is also incorporated into the definition of “shelter
5 for the homeless” in LAMC § 12.03.

6 (3) The City violated the Mayor’s July 7, 2023 Executive Directive 1 (ED1). If ED1
7 is claimed by the City as the legal authority for approving the Project, it fails because,

8 (a) ED1 only allows the construction of LAMC § 12.03 “shelters for the
9 homeless”, but the Project, which is a “community care facility,” is expressly excluded.

10 (b) Even if the Project were to be deemed a “shelter for the homeless” under
11 LAMC § 12.03, ED1 specifically prohibits construction of a shelter on single family-zoned
12 property. The 2377 Midvale parcel is zoned R1, single family.

13 (4) The City violated ED3’s mandatory compliance with State law in general, and
14 Govt. Code §§ 8698, *et seq.*, in particular, in two ways,

15 (a) The Project does not meet the requirements of Govt. Code § 8698.

16 (b) The Project’s modular home construction vendor contract with a company
17 named LifeArk was entered into in violation of State and local competitive bidding requirements.

18 **II. STATEMENT OF FACTS AND SUMMARY OF THE FAP.**

19 On December 16, 2022, Mayor Bass issued Executive Directive No. 1 (ED1) titled
20 “Expedition of Permits and Clearances for Temporary Shelters and Affordable Housing Types,”
21 pursuant to Los Angeles Administrative Code (LAAC) § 8.29. (**Exhibit 1**, p. 1.) On February
22 10, 2023, Mayor Bass promulgated Executive Directive No. 3 (ED3) titled “Emergency Use of
23 Viable City-Owned Property,” pursuant to LAAC § 8.29. (**Exhibit 2**, p. 1.)

24 On June 12, 2023, Mayor Bass re-issued ED1, maintaining its original title but adding the
25 following: “and in **no instance** shall the project be located in a **single family or more restrictive**
26 **zone.**” (**Exhibit 5**, p. 1; emphasis added.) On July 7, 2023, Mayor Bass amended ED1 under the
27 newly adopted LAAC § 8.33 (**Exhibit 19**), but kept the same title and single-family zoning
28

1 restriction. (**Exhibit 6**, p. 1.)

2 On August 2, 2023, Council District 5 (CD 5) announced the Project on the public parking
3 lot at 2377 Midvale Ave. CD 5 named LifeArk as the vendor to construct the facility and LA
4 Family Housing to operate it. The CD 5 press release stated: “The project will be constructed by
5 LifeArk, a Los Angeles-based company that creates innovative, high-quality modular structures.”
6 (**Exhibit 7**.)

7 The Project site is City public Parking Lot 707, which is in and governed by the Expo
8 Specific Plan. The Project site consists of two parcels bisected by an alley, with frontages along
9 Pico Blvd. and Midvale Ave.⁴ The parcel north of the alley at 2377 Midvale is zoned R1 – Single
10 Family, and the Pico parcel south of the alley is zoned NMU(EC)-POD. (City’s Answer to FAP
11 (Ans.) ¶¶ 9, 51.) The Pico parcel is also in the Westwood/Pico Neighborhood Oriented District,
12 which has a “Pedestrian Oriented District” (-POD designation). (**Exhibit 8**, pp. 16-17; **Exhibit 9**,
13 pp. 1-2 & 12-13.) Lot 707 was in active use (Ans. ¶¶ 85, 86) until a week ago, when the City on
14 August 19, 2024 fenced the property and terminated the public parking. (Silverstein Decl.,
15 **Exhibit B**.)

16 Lot 707 has/had 41 parking spaces, including two Americans with Disabilities Act (ADA)
17 spaces, and served as off-street parking for surrounding businesses. The Lot 707 parcels, i.e., what
18 has become the Project site, were acquired by the City through eminent domain on or about April
19 18, 1990 and paid for by using the Special Parking Revenue Fund (SPRF). (**Exhibit 12**.) The
20 City Council file on use of eminent domain for Lot 707 contains the following statement of
21 necessity: “public interest & necessity require the acquisition of real property in fee simple
22 absolute for public off-street parking facilities”. (**Exhibit 12**.) Other than Lot 707, there is no
23 other off-street public parking west of Westwood Blvd. and east of Sepulveda. (**Exhibit 10**, pp. 5,
24 62 [Attachments A & H].)

25 On October 4, 2023, the City Council’s Housing and Homelessness Committee
26 recommended that the full City Council approve reports from the Bureau of Engineering (BOE)

27 _____
28 ⁴ 2377 Midvale Ave. is Assessor’s Parcel Number (APN) 4322-004-903 and 10901-10909
Pico Blvd. is APN 4322-004-902. (**Exhibit 11**, p. 244.)

1 and City Administrative Officer (CAO) about the Project. (Ans. ¶ 15.) The BOE’s September 29,
2 2023 report recommended approval of a CEQA NOE for the Project, attaching the NOE and the
3 Exemption Narrative (discussed more fully below). (**Exhibit 13**, p. 1.) The CAO’s September 29,
4 2023 report recommended approval of the Project’s design, funding and construction. (**Exhibit**
5 **14**, p. 2.) The CAO report further recommended the General Services Department enter into
6 agreements with LADOT and LifeArk for the Project. (**Exhibit 14**, p. 4.)

7 On October 20, 2023, the City Council approved partial funding, construction, and
8 operation of the Project. (Ans. ¶¶ 9, 23, 28.) The Project would be constructed and operate as a
9 homeless residential facility with 33 beds and supporting services. (**Exhibit 11**, p. 4 of 25.)

10 On October 27, 2023, the Mayor approved the Project. That approval directed the General
11 Services Department to contract with LifeArk on a sole-source basis for the acquisition of
12 prefabricated modular units for an “interim housing” facility at 2377 Midvale Ave. (Ans. ¶ 28.)

13 On November 1, 2023, the BOE caused the CEQA NOE to be filed. (Ans. ¶ 31.) The
14 NOE appears to justify the CEQA exception in part by citing the Mayor’s Declarations of
15 Emergency on December 12, 2022 and July 7, 2023 and the City’s declared shelter crisis.
16 (**Exhibit 11**, p. 12 of 25.) Also, Project construction plans appear to justify the Project under
17 LAMC § 12.80, ED1, ED3 and ED7. (**Exhibit 15**, p. 2 [see homeless shelter box].)

18 Based on the facts above and additional facts discussed below, Petitioner’s SAP alleges:

19 (1) In the first cause of action, that Project approval violated the Expo Specific Plan
20 by failing to adhere to any of the Expo Specific Plan’s mandatory procedures. (FAP ¶¶ 43-51.)

21 (2) In the second cause of action, that the City incorrectly relied on LAMC § 12.80
22 because the Project is not a “shelter for the homeless” as defined in that ordinance. (FAP ¶¶ 52-
23 62.)

24 (3) In the third cause of action, that declaratory relief should issue finding that the
25 Project is a low barrier navigation center that cannot be approved under LAMC § 12.80 because
26 low barrier navigation centers are not “shelters for the homeless” as defined in LAMC § 12.03.
27 (FAP ¶¶ 63-66.)
28

1 (4) In the fourth cause of action, that Project approval must be set aside to the extent it
2 relies on ED1 because ED1 does not apply, or in the alternative, if it is found to apply because the
3 Project is deemed to be a “shelter for the homeless” then ED1 expressly prohibits creation of a
4 “shelter for the homeless” on an R1-zoned location, and the Project site is partially zoned R1.
5 (FAP ¶¶ 67-73.)

6 (5) In the fifth cause of action, that the Project approval violates requirements of ED3
7 and State law. (FAP ¶¶ 74-83.)

8 (6) In the sixth cause of action, among other things, that the City entered into a
9 LifeArk design/fabrication contract for the Project that is unlawful because the contract was
10 awarded without competitive bidding. (FAP ¶¶ 74-83.)

11 On the seventh through tenth causes of action, the Court on May 28, 2024 sustained the
12 City’s demurrer without leave to amend.

13 **III. THE CITY MUST COMPLY WITH ITS OWN LAWS IN APPROVING A CITY**
14 **PROJECT; MANDAMUS AND DECLARATORY RELIEF SHOULD BE**
15 **GRANTED TO CORRECT THE CITY’S VIOLATIONS OF LAW.**

16 The City approved the Project without legal basis to do so. That the Project is a public
17 project does not exempt the City from compliance with its own and other laws.

18 Generally speaking, a petition for traditional mandamus is appropriate in all actions “to
19 compel the performance of an act which the law specially enjoins as a duty resulting from an
20 office, trust, or station. . . .” Code Civ. Proc. § 1085. A traditional writ of mandate under Section
21 1085 is the method for compelling the performance of a legal, ministerial duty. Pomona Police
22 Officers’ Assn. v. City of Pomona (1997) 58 Cal.App.4th 578, 583-584. Mandamus will lie when:
23 (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to
24 perform, and (3) the petitioner has a clear and beneficial right to performance. Id. at 584 (internal
25 citations omitted). **Whether a statute imposes a ministerial duty for which mandamus is**
26 **available, or a mere obligation to perform a discretionary function, is a question of statutory**
27 **interpretation.** AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health
28

1 (2011) 197 Cal.App.4th 693, 701.

2 A city has a mandatory duty to follow state law and its own law. “An agency often
3 exercises its discretion within the context of particular rules governing its purpose and authority.
4 Thus, a public entity’s discretion may be limited by law or by its own rules. [Citations.]” Bull
5 Field, LLC v. Merced Irrigation Dist. (2022) 85 Cal.App.5th 442, 458. “**A public entity has a**
6 **ministerial duty to comply with its own rules and regulations where they are valid and**
7 **unambiguous.**” Galzinski v. Somers (2016) 2 Cal.App.5th 1164, 1171 (emphasis added).

8 Our Supreme Court has made clear “It is well established that parties may seek
9 declaratory relief with respect to the interpretation and application of local ordinances.” Action
10 Apartment Assn., Inc. v. City of Santa Monica (2007) 41 Cal.4th 1232, 1250, fn. 5.

11 There is no dispute of fact in this case. The action centers on the plain meaning of the
12 mandatory statutory duties imposed on the City and the application of those duties. “‘The proper
13 interpretation of a statute, and its application to undisputed facts, presents a question of law that is
14 . . . subject to de novo review.’ [Citation.]” Canales v. Wells Fargo Bank, N.A. (2018) 23
15 Cal.App.5th 1262, 1269.

16 **IV. IN APPROVING THE PROJECT, THE CITY VIOLATED THE PREVAILING**
17 **EXPO SPECIFIC PLAN REQUIREMENTS; MANDAMUS AND DECLARATORY**
18 **RELIEF SHOULD ISSUE.**

19 Project approval is illegal because the City failed to comply with the Expo Specific Plan’s
20 mandatory requirements. The Expo Specific Plan provides:

21 “Pursuant to Los Angeles Municipal Code (LAMC) Section 11.5.7, the City
22 Council hereby establishes the Exposition Corridor Transit Neighborhood Plan
23 (‘Specific Plan’) **which shall apply to all lots** located in whole or in part within
24 the boundaries indicated on the Plan Boundary map (Map A) as specifically set
25 forth in this Specific Plan. This Specific Plan serves as both a policy and
regulatory document for future development within the Specific Plan boundaries.”
(**Exhibit 8**, Expo Specific Plan § 1.1.1; emphasis added)

26 The Project is within Map A’s boundaries. (**Exhibit 8**, pp. 15, 16. See also Exhibit 9, pp.
27 1, 12.) The Expo Specific Plan’s procedures supersede all conflicting or different Municipal Code
28 provisions concerning the Project:

1 “C. Conflicting Regulations. Wherever this Specific Plan contains
2 regulations that are different from, more restrictive, or more permissive than would
3 be allowed or required pursuant to the provisions contained in the LAMC or any
4 other relevant ordinances (including, but not limited to, standards such as heights,
5 uses, parking, open space, Setbacks or Building Lines, or landscape requirements),
6 **this Specific Plan shall prevail and supersede the applicable provisions of the**
7 **LAMC** and those relevant ordinances, unless otherwise stated in this Specific
8 Plan.” (**Exhibit 8**, Expo Specific Plan § 1.1.4; emphasis added.)

9 The controlling Expo Specific Plan, §§ 1.3, *et seq.*, sets out specified review procedures
10 for projects in the Expo Specific Plan area: “These review procedures apply to all Projects, as
11 defined in Section 1.2.1., within the Specific Plan boundaries regardless of whether the Project is
12 located within a Specific Plan Subarea or is subject to Specific Plan ‘EC’ zoning classifications.”
13 (**Exhibit 8**, § 1.3.) Expo Specific Plan § 1.3.3 requires that an application must be filed with the
14 Department of City Planning. (*Id.*) Section 1.3.1 states the “Department of Building and Safety
15 shall not issue any building, grading, demolition, or change of use permit for any Project within
16 the Specific Plan boundaries (in whole or in part) unless the Project has been reviewed and
17 approved in accordance with this Specific Plan.” (*Id.*)

18 The City did not undertake – or even mention – any of the Expo Specific Plan’s review
19 procedures and design requirements applicable to the Project, even though the Project is a
20 “Project” as defined by Expo Specific Plan § 1.2.1:

21 “A Project in this Specific Plan is any of the following:

22 “A. Any activity on a lot located entirely or partially within the Specific Plan
23 boundaries (see Map A), which requires the issuance of a building, grading,
24 demolition, or change of use permit. . . .” (**Exhibit 8**, § 1.2.1.)

25 The Project takes critical public off-street parking and converts it with the construction of
26 33 sleeping units and a number of supporting facilities and services. (**Exhibit 11**, pp. 4 of 25 and
27 last page.) LAMC § 91.106.1.1 requires a building permit.⁵ The Project meets the definition of

28 ⁵ LAMC § 91.106.1.1 provides: “No person shall erect, construct, alter, repair, demolish,
remove or move any building or structure . . . unless said person has obtained a permit therefor
from the department. A separate permit shall be obtained for each separate building or structure
except that a group of temporary structures erected on one site for a limited period of time may be
included on one permit.” (**Exhibit 18**.)

1 “Project” in the Expo Specific Plan since a permit is required. (See **Exhibit 8**, Expo Specific Plan
2 §§ 1.2.1 [definition of “Project”] & 1.3.1 [LADBS “shall not issue any . . . permit for any Project .
3 . . unless the Project has been reviewed and approved in accordance with this Specific Plan.”])

4 In sum, being City-owned or City-sponsored does not immunize the Project from the
5 definition of “Project” in the Expo Specific Plan. Nor does it allow the City to approve the Project
6 in violation of the Specific Plan’s mandatory requirements. The City was and is obligated to
7 follow its own laws (see Section III, supra), including obtaining building permits for the Project
8 (LAMC § 91.106.1.1) *after* “the Project has been reviewed and approved in accordance with this
9 Specific Plan.” (**Exhibit 8**, Expo Specific Plan § 1.3.1.) The City violated those requirements.

10 The City’s approval of the Project in violation of the Expo Specific Plan is therefore
11 illegal. The City was and is obligated to follow its own laws. (See Section III, supra.) As a result,
12 a writ of mandate and/or declaratory relief should issue.

13 Further, the Westwood/Pico NOD establishes additional regulations and procedures that
14 the City was required to follow, but did not. Section 1.1.4(D) of the Expo Specific Plan provides:
15 “Where conflicting regulations exist between this Specific Plan and the Westwood/Pico NOD, the
16 regulations of the Westwood/Pico NOD shall take precedence.”

17 The City failed to analyze or address the NOD’s requirements. The NOD’s requirements
18 are binding and must be followed in conjunction with the requirements of the Expo Specific Plan.
19 The City’s actions in approving the Project violated these mandatory obligations.

20 As sought in the first cause of action, mandamus and declaratory relief should issue to
21 enjoin the City’s construction and operation of the Project, to invalidate all Project approvals, and
22 to return Lot 707 to its original and authorized public use.

23 With the City’s failure to comply with the Expo Specific Plan, no more need be said.
24 However, Petitioner proceeds forward only because we anticipate the City will make numerous
25 attempts to justify the Project on rationale they have yet to fully identify.

26 **V. LAMC § 12.80 DOES NOT ALLOW THE PROJECT.**

27 The City seemingly contends that LAMC § 12.80 authorized the Project. (Ans. ¶ 43;
28

1 **Exhibit 15**, p. 2 [see homeless shelter box].)

2 First, the Expo Specific Plan explicitly states that it supersedes the LAMC “[T]his
3 Specific Plan shall prevail and supersede the applicable provisions of the LAMC. . . .” (**Exhibit 8**,
4 Expo Specific Plan § 1.1.4.C.) No further analysis is necessary. But additional reasons why
5 LAMC § 12.80 does not apply to the Project are presented.

6 LAMC § 12.80 provides in relevant part: “during any period for which the Mayor and/or
7 the City Council have declared a shelter crisis within the meaning of Government Code Sections
8 8698, et seq., a shelter for the homeless (as defined in LAMC Section 12.03 of this Code) may be
9 established and operated on property owned or leased by the City of Los Angeles in any zone as a
10 matter of right without regard to the number of beds or number of persons served.” (**Exhibit 27**.)

11 To be a shelter for the homeless within the meaning of LAMC § 12.03, a facility must not
12 allow residence to continue for more than six months, must not be a “community care facility,”
13 and must meet the standards for shelters contained in the CCR. LAMC § 12.03. But the Project
14 and its approval violate all these conditions.

15 **A. The Project Violates The 6-Month Stay Limitation Of LAMC § 12.03.**

16 LAMC § 12.03 limits shelters for the homeless to stays “for a time period not to exceed
17 six months.” (**Exhibit 26**, p. 17.) (But see **Exhibit 17** [“There is no maximum time limit to a
18 participant/household’s term of stay in a shelter program.”]) Because the Project allows stays
19 longer than 6 months, it is not a “shelter for the homeless” within the meaning of LAMC § 12.03.
20 As discussed above, LAMC § 12.80 explicitly incorporates the definition of “shelter for the
21 homeless” from LAMC § 12.03, i.e., § 12.80 delineates the allowed “. . . shelter for the homeless
22 (as defined in Section 12.03 of this Code)”.

23 **B. The Project Is A “Community Care Facility”.**

24 LAMC § 12.03 defines “Shelter for the Homeless” as:

25 “A facility operated by a ‘provider’, **other than a ‘community care facility’** as
26 defined in California Health and Safety Code Section 1502, which provides
27 temporary accommodations to homeless persons and/or families **and which**
28 **meets the standards for shelters contained in Title 25, Division 1, Chapter 7**
of the California Code of Regulations.” (Emphasis added.)

1 In turn, Health & Safety Code § 1502 defines “community care facility” in relevant part as:

2 “(a) ‘Community care facility’ means any facility, place, or building that is
3 maintained and operated to provide nonmedical residential care, day treatment,
4 adult daycare, or foster family agency services for children, adults, or children and
5 adults, including, but not limited to, the physically handicapped, mentally
6 impaired, incompetent persons, and abused or neglected children, and includes the
7 following:

8 “(1) ‘Residential facility’ means any family home, group care facility, or
9 similar facility determined by the department, for 24-hour nonmedical care of
10 persons in need of personal services, supervision, or assistance essential for
11 sustaining the activities of daily living or for the protection of the individual.”

12 The Project’s NOE shows the Project is a “community care facility” and a residential
13 facility that will provide personal services. The NOE describes the Project as having a “Service-
14 Enriched Shelter with Case Managers Connecting to Services” and programs that include “Trauma
15 Informed Care” which “emphasizes physical, psychological and emotional safety for both families
16 and providers, and helps families rebuild a sense of control and empowerment.” (**Exhibit 11**, pp.
17 13-14 of 25.)

18 City references to “low barrier navigation” center (**Exhibit 11**, pp. 13-16 of 25) also show
19 the Project is not a “shelter for the homeless” as per LAMC § 12.03. A “‘Low Barrier Navigation
20 Center’ means a Housing First, low-barrier, *service-enriched* shelter focused on moving people
21 into permanent housing that provides temporary living facilities while case managers connect
22 individuals experiencing homelessness to income, public benefits, health services, shelter, and
23 housing.” Govt. Code § 65660(a) (italics added). A “low barrier navigation center” by definition
24 is service-enriched; it is a “community care facility.” As a “community care facility,” the Project
25 cannot be approved under LAMC § 12.80. (See also, **Exhibit 16**, pp. 2, 49, 50, 72.)

26 **C. The Project Also Fails to Comply With 25 CCR § 7950.**

27 Compliance with Title 25, Division 1, Chapter 7 of the CCR is also mandated by LAMC §
28 12.03. 25 CCR § 7950 provides: “‘Emergency shelter’ means housing with **minimal supportive
services** for homeless persons that is **limited to occupancy of six months or less** by a homeless
person and that is not withheld due to a client’s inability to pay.” (Emphasis added.)

The Project violates 25 CCR § 7950 because: (1) it is “service enriched” as shown under

1 Section V.B., supra, not a “minimal supportive services” shelter, and (2) allows for longer than a
2 six-month length of stay.

3 **D. Mandamus And Declaratory Relief Should Issue To Preclude The**
4 **Construction And Operation Of The Project, And To Restore The Site To Its**
5 **Original Public Use.**

6 When State and local laws are valid and unambiguous, the City “has a ministerial duty to
7 comply”. Galzinski v. Somers, supra, 2 Cal.App.5th at 1171. LAMC §§ 12.03 and 12.80, and the
8 State laws connected to them, are unambiguous. The City cannot argue that the City’s
9 interpretation must be given deference. “If the plain language of a statute is unambiguous, no
10 court need, or should, go beyond that pure expression of legislative intent.” Green v. State of
11 California (2007) 42 Cal.4th 254, 260. “If the words themselves are not ambiguous, we presume
12 the Legislature meant what it said, and the statute’s plain meaning governs.” Wells v. One2One
13 Learning Foundation (2006) 39 Cal.4th 1164, 1190. “When statutory language is unambiguous,
14 we must follow its plain meaning ““whatever may be thought of the wisdom, expediency, or
15 policy of the act, even if it appears probable that a different object was in the mind of the
16 legislature.”” [Citations.]” In re D.B. (2014) 58 Cal.4th 941, 948. The judiciary’s role in
17 determining the meaning of a statute ““is simply to ascertain and declare what is in terms or in
18 substance contained therein, not to insert what has been omitted or omit what has been inserted ...
19 .” [Citation.] We may not, under the guise of construction, rewrite the law or give the words an
20 effect different from the plain and direct import of the terms used.’ [Citation.]” People v. Leal
21 (2004) 33 Cal.4th 999, 1008.

22 Beyond the fact that analysis of LAMC § 12.80 should be unnecessary as the Expo
23 Specific Plan supersedes it, the Project independently cannot be approved under LAMC § 12.80.
24 A writ of mandate should issue directing the City to comply with City and State laws and to
25 invalidate the Project’s approval.

26 **VI. ED1 DOES NOT ALLOW THE PROJECT.**

27 If the City seeks to justify the Project based on ED1, that would also fail. In the NOE, the
28

1 City cited the Mayor’s Declarations of Emergency dated December 12, 2022 and July 7, 2023.
2 (**Exhibit 11**, p. 12 of 25.) At the same time, the Mayor also amended ED1. ED1 provides:

3 “Applications for 100% affordable housing projects, **or for Shelter as defined in**
4 **Section 12.03 of the Los Angeles Municipal Code (LAMC)** (hereinafter referred
5 to as Shelter), shall be, and hereby are deemed exempt from discretionary review
6 processes otherwise required by either the zoning provisions of Chapter 1 of the
7 LAMC or other Project Review including Site Plan Review as described in
8 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.” (**Exhibit 6**, p. 1 of 3; emphasis added.)

9 The Mayor’s ED1 edict purports to allow LAMC § 12.03 “shelters for the homeless” to be
10 built under certain circumstances. However, ED1 explicitly states that “in no instance shall the
11 project [a “shelter”] be located in a single family or more restrictive zone.” That means a shelter
12 for the homeless cannot be built on R1-zoned property. 2377 Midvale Ave. is an R1-single-family
13 zoned property.

14 As discussed in Section IV, the Project is not a “shelter for the homeless” within the
15 meaning of LAMC § 12.03. To further eliminate any doubt, the City’s ZIMAS parcel profile
16 report states that 2377 Midvale (Lot 2) is “not eligible” for ED1. (**Exhibit 9**, p. 13.) On that
17 ground alone, Project approval is not justified by ED1.

18 However, were this Court to deem the Project a “shelter for the homeless,” the Project
19 would still be illegal because it would be located on single family-zoned property. The NOE
20 confirms: “The Project site consists of two parcels, APNs 4322-004-902 (Lot 1) and 4322-004-
21 903 (Lot 2), bisected by an alley and with an area of approximately 16,860 square feet with
22 frontages along Pico Boulevard and Midvale Avenue. Lot 1 is zoned NMU(EC)-POD which is a
23 mixed-use zone that allows for multi-family uses. Lot 2 is zoned R1-1 which is a residential
24 zone”. (**Exhibit 11**, p. 4 of 25.) (See also City’s official ZIMAS property profile at **Exhibit 9**,
25 and ZIMAS aerial photo at Silverstein Decl., **Exhibit A**.)

26 If ED1 indeed is the City’s justification for the Project, and the Court were to deem the
27 Project a “shelter for the homeless,” then the Project is illegal anyway because it violates the ED1
28

1 prohibition on locating a “shelter for the homeless (as defined in Section 12.03 of this Code)” on
2 R1 single-family property, i.e., “in no instance shall the project be located in a single family or
3 more restrictive zone.” (**Exhibit 6**, p. 1 of 3.) But also, as discussed above, it is not a shelter for
4 the homeless under LAMC § 12.03.

5 As requested in the fourth cause of action, mandamus and declaratory relief should issue
6 to preclude the City’s construction and operation of the Project, and to restore the property to its
7 original public use. The City has a ministerial duty to follow law and, one may say, especially its
8 own law. (See Section III, *supra*.)

9 **VII. ED3 DOES NOT ALLOW THE PROJECT.**

10 The NOE does not mention ED3. However, ED3 is noted on the most recent set of
11 Project plans. (**Exhibit 15** [*see* homeless shelter box].) ED3 is titled “Emergency Use of Viable
12 City-Owned Property.” If the City argues ED3, then that directive provides in relevant part:

13 “5. The construction, emergency installation, use, and operation of temporary
14 or permanent housing on such designated sites shall be and hereby are deemed
15 exempt for the duration of this order from discretionary review otherwise required
16 by either the zoning provisions of Chapter I of the LAMC or Project Review as
17 described in LAMC Section 16.05 and LAMC Section; or other ordinance;
18 provided, however, that any temporary or permanent housing **shall comply with
19 applicable state law including Government Code Section 8698, et seq.**, to the
20 extent those sections apply.” (**Exhibit 2**, p. 2; emphasis added.)

21 ED3 requires compliance with Govt. Code §§ 8698, *et seq.* The Project does not meet
22 Govt. Code § 8698(c)’s definition of “public facility”, which is “any facility of a political
23 subdivision including parks, schools, and vacant or underutilized facilities which are owned,
24 operated, leased, or maintained, or any combination thereof, by the political subdivision **through
25 money derived by taxation or assessment.**” (Emphasis added.) Lot 707, the site of the Project,
26 was purchased, operated and maintained using parking revenue (user fees) rather than taxes or
27 assessments. (**Exhibit 12** & Silverstein Decl., **Exhibit C** [LAAC § 5.117].) By definition, it is
28 not a public facility and therefore cannot comply with Govt. Code §§ 8698, *et seq.*

Finally, even if the Project could be considered a public facility, the City admits it
contracted with LifeArk on a sole source basis – no competitive bidding. (Ans. ¶ 28.) This

1 disregard of competitive bidding requirements for the Project vendor violates Pub. Contract Code
2 § 20162. That section provides: “When the expenditure required for a public project exceeds five
3 thousand dollars (\$5,000), it shall be contracted for and let to the lowest responsible bidder after
4 notice.” At \$2 million, the contract with LifeArk well exceeded \$5,000. (**Exhibit 20.**)

5 State law provides a limited exception to competitive bidding: “In case of an emergency,
6 the legislative body may pass a resolution by a four-fifths vote of its members declaring that the
7 public interest and necessity demand the immediate expenditure of public money to safeguard life,
8 health, or property. Upon adoption of the resolution, it may expend any sum required in the
9 emergency without complying with this chapter. If notice for bids to let contracts will not be
10 given, the legislative body shall comply with Chapter 2.5 (commencing with Section 22050).”
11 Pub. Contract Code § 20168.

12 No resolution suspending competitive bidding was passed for the July 7, 2023 Declaration
13 of Local Housing And Homelessness Emergency⁶, and neither ED1 nor ED3 suspended
14 competitive bidding. (**Exhibits 6 & 2.**) Further, there was no immediacy to safeguard life, health,
15 or property for the public expenditure.

16 The City may argue that its laws, as a charter city, control over the State competitive
17 bidding laws. But ED3 makes State law applicable to the Project, which in turn establishes the
18 applicability of State competitive bidding law. Further, and in any event, the local laws are the
19 same. Los Angeles Charter § 371(a) requires competitive bidding as established by the charter and
20 City codes. The Charter does not contain a threshold amount. (**Exhibit 21.**) LAAC §§
21 10.15(a)(1) and (b) set the expenditure threshold at \$25,000. (**Exhibit 22.**)

22 Charter § 371, like Pub. Contract Code § 20168, allows for emergency exceptions: “(e)
23 Exceptions. The restrictions of this section shall not apply to: . . . (6) Contracts entered into
24 during time of war or national, state or local emergency declared in accordance with federal, state
25 or local law, where the Council, by resolution adopted by two-thirds vote and approved by the
26

27 ⁶ The “Declaration Of Local Housing And Homelessness Emergency” issued by the Mayor
28 on July 7, 2023 was made pursuant to “Section 231(i) of the Los Angeles City Charter and Section
8.33 of the Los Angeles Administrative Code.” (**Exhibit 28**, pp. 1, 3.)

1 Mayor, suspends any or all of the restrictions of this section or their applicability to specific
2 boards, officers or employees.” (**Exhibit 21, Exhibit 22** [LAAC § 10.15(a)(6), similar language].)

3 The City Council did not suspend competitive bidding and the Mayor did not do so by
4 executive directive. The City and Council District 5 rejected the calls for competitive bidding for
5 the Project, even from City Bureau of Engineering employees who urged a competitive bidding
6 process, citing the feasibility and financial prudence of such an approach. (**Exhibit 23.**)

7 The award of the sole source contract violates ED3. Assuming there were any legal basis
8 for the Project’s approval, which there is not, mandamus and declaratory relief as requested in the
9 sixth cause of action should issue to preclude the City from undertaking the Project without
10 competitive bidding for the Project vendor. ED3 cannot justify the Project.

11 **VIII. CONCLUSION.**

12 The Project must comply with all applicable laws, including the controlling Expo Specific
13 Plan. In approving the Project, the City did not cite any exemption allowing non-compliance, or
14 any legal basis at all. Hidden away in a demurrer and Project plans are three hints at a possible
15 claim of legal basis by the City, albeit after the fact. They are LAMC § 12.80, ED1 and ED3.
16 Each has been shown to be inapplicable. Lacking any legal basis, the Project approval must be
17 invalidated and Lot 707 restored.

18 The City has repeatedly failed to “turn square corners” “with its citizens” in this case.
19 Ventura Foothill Neighbors, supra, 232 Cal.App.4th at 431. Petitioner respectfully requests that
20 mandamus and declaratory relief issue as prayed.

21
22 Dated: August 27, 2024

THE SILVERSTEIN LAW FIRM, APC

23
24 By: /s/ Robert P. Silverstein
25 ROBERT P. SILVERSTEIN
26 JAMES S. LINK
27 Attorneys for Petitioner FIX THE CITY, INC.
28

DECLARATION OF ROBERT P. SILVERSTEIN

I, Robert P. Silverstein, declare and state as follows:

1. I am an attorney licensed to practice in all courts of the State of California, and am an attorney with The Silverstein Law Firm, APC, and am counsel of record for Petitioner Fix the City, Inc. (“Petitioner”) in this case. I make this declaration in support of Petitioner’s Opening Trial Brief. I am personally familiar with the facts stated in this declaration, unless otherwise noted. If called as a witness, I could and would competently testify to thereto.

2. Attached hereto at **Exhibit A** is a true and correct copy of a color aerial photo map of the Project site at Pico Blvd. and Midvale Ave., generated on the City’s ZIMAS website at zimas.lacity.org, and sent to me by a Petitioner representative to assist the Court in seeing the Property parcels, their zoning, and the surrounding street names. I am informed that Petitioner’s representative generated this map on the City’s ZIMAS website by clicking on the Select Parcels tool, highlighting the parcels that comprise the Property site, using the zoom in feature, clicking on the Mini Parcel Bubble tool, clicking on the 2377 Midvale parcel to show the black mini window, and taking a screen shot.

3. Attached hereto at **Exhibit B** is a true and correct copy of a series of emails from August 13, 14, 15 and 16, 2024 between Los Angeles Deputy City Attorney Robert Mahlowitz and myself regarding the City’s removal of Lot 707 from its public parking use.

4. Attached hereto at **Exhibit C** is a true and correct copy of Los Angeles Administrative Code § 5.117.

5. Petitioner has also requested that the Court take judicial notice of these documents for the reasons stated in the concurrently filed Request for Judicial Notice.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of August, 2024.



ROBERT P. SILVERSTEIN

EXHIBIT A

2377 S MIDVALE AVE
PIN: 126B157 966
APN: 4322004903
Zone: R1-1
GPLU: Low Residential

NMUKECIPD



EXHIBIT B

Midvale site activities

From: Robert Silverstein
To: Robert Mahlowitz <robert.mahlowitz@lacity.org>
Date: 8/16/2024 3:02 PM
Subject: Midvale site activities
Cc: EK - Kornfeld, Esther; GP - Gabby Piceno; Link, James

Bob:

Thank you for this information, which is rather shocking considering the lack of any real notice prior to the intended closure of the parking lot and loss of the public parking spaces, including ADA-compliant parking spaces. I understand that neither the general public, nor more particularly, the immediately adjacent and impacted business owners, were notified.

I would note that CD5 had assured the public numerous times that the Midvale lot would not be closed until nearby replacement parking had been identified and made available, including ADA spaces. That has not occurred.

To our dismay, and contrary to your email below, I was just informed that the pay stations have already been removed. There are also no notices posted at the site informing the public or neighboring businesses of the loss of this critical parking lot, contrary to the promises made by CD5.

I would ask that the City delay eliminating these public parking spaces for at least another week, including so that members of the public can take appropriate action.

If the City proceeds nonetheless, it does so at its own peril. Please advise. Thank you.

Robert P. Silverstein, Esq.
 The Silverstein Law Firm, APC
 215 North Marengo Avenue, 3rd Floor
 Pasadena, CA 91101-1504
 Telephone: [\(626\) 449-4200](tel:(626)449-4200)
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 Website: www.RobertSilversteinLaw.com

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From:	Robert Mahlowitz < robert.mahlowitz@lacity.org >
To:	Robert Silverstein < robert@robertsilversteinlaw.com >
CC:	James Link < james.s.link@att.net >, Esther Kornfeld < Esther@robertsilversteinlaw.com >, Gabby Piceno < Gabby@robertsilversteinlaw.com >
Date:	8/15/2024 10:14 AM
Subject:	Re: Midvale site activities

Robert, the latest information I have is as follows: LADOT will be removing all parking equipment on Sunday, August 18th. Parking will not be available as of 6am Monday the 19th.

On Wed, Aug 14, 2024 at 8:07 AM Robert Silverstein <robert@robertsilversteinlaw.com> wrote:

Bob:

Please clarify if the fencing you describe will prevent public parking.

When is public parking scheduled or expected to be cut off?

Thank you.

Sent from my iPhone

On Aug 13, 2024, at 9:17 AM, Robert Mahlowitz <robert.mahlowitz@lacity.org> wrote:

Robert and James

I had stated I would update you when I learned the construction contractor's activities were more firmly set. I have been informed that the contractor intends to install fencing around the Midvale lots as of August 19th to enable it to mobilize for future work in the coming weeks and months to enable the temporary, mobile and modular shelter facilities to be installed atop the existing parking lot surface. You may wish to inform your clients that, unless there are delays, they may see fencing going up Monday.

Bob Mahlowitz

--

Robert (Bob) Mahlowitz
Deputy City Attorney
City of Los Angeles, City Attorney's Office
[213-978-8205](tel:213-978-8205) (work cell)

*****Confidentiality Notice*****

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--

Robert (Bob) Mahlowitz
Deputy City Attorney
City of Los Angeles, City Attorney's Office
[213-978-8205](tel:213-978-8205) (work cell)

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EXHIBIT C

Sec. 5.117. Use of Money Deposited in Parking Meters and Revenue from Public Off-Street Parking Facilities.

All money collected from parking meters and revenue from public off-street parking facilities of the City of Los Angeles, administered by the Department of Transportation or under its direction, shall be placed in a separate fund which shall be a special fund to be known as the “**Special Parking Revenue Fund**”, which fund is hereby created and which fund together with all interest accruing thereon shall be devoted exclusively to the following purposes:

1. For the purchasing, leasing, installing, repairing, maintaining, operating, removing, regulating and policing of parking meters and parking meter spaces in the City of Los Angeles, for the collection of the receipts therefrom and for the payment of any and all expenses relating or incidental thereto. For purposes of this section, the policing of parking meters shall not include the routine and customary issuance of parking citations.

2. For the purchasing, leasing, acquiring, designing, constructing, improving, operating and maintaining of off-street parking facilities in the City of Los Angeles for the provision of parking for the public and for City employees; consistent with the purpose of the regulation of traffic and the prevention of congestion of the city streets, it is the intention of the City that off-street parking facilities be acquired or constructed within or in close proximity to the business district which parking meter zones are established, and paid for from the receipts of the off-street parking facilities and the parking meters installed on streets within or in proximity to said business districts; provided, that notwithstanding such intent, the City may pledge any and all funds in the Special Parking Revenue Fund to fund the acquisition, design, construction, operation and maintenance of a particular off-street parking facility within a parking meter zone anywhere in the City.

3. For the painting and marking of streets and curbs required for the parking of motor vehicles within parking meter zones.

4. For the repayment of any money borrowed from any other fund, or any money which has been advanced or which may be advanced by the City Council from any other fund with the intent that reimbursement be made from the Special Parking Revenue Fund.

5. For the payments of principal, interest, redemption premiums, prepayments, reserve fund replenishments, and certificate payments on any bonds, notes, other evidences of indebtedness, and certificates of participation (collectively, Financings) issued or incurred for the purposes specified in this Article and for the purpose of paying any related financing costs, including, but not limited to, bond insurance, credit enhancement, and costs of issuance. While any Financings are outstanding, first consideration for the use of money in the Special Parking Revenue Fund shall be given to the payments for the Financings, and second consideration to payments of the costs of operations and maintenance.

6. After paying, or setting aside cash for the payments of, the: (a) Financings as provided in subsection 5.; (b) costs of operations and maintenance and costs of activities in the preceding subsections 1. through 4., including the funding required for a 5-year Parking Operations and Maintenance Plan, proposed and updated annually or more often by the Department of Transportation and approved by Council, that includes the necessary maintenance, upgrades, technology and repairs of parking structures, meters, and related assets; and (c) establishment and replenishment of a contingency account for the Special Parking Revenue Fund, any residual money in the Special Parking Revenue Fund may be determined by the Council to be surplus funds for the fiscal year, beginning with Fiscal Year 2007-08, and at the direction of the Council may be transferred immediately to the Reserve Fund for any general governmental purposes. The Council shall make a determination of a surplus, if any, no later than the end of the third quarter of the subsequent fiscal year.

Notwithstanding any other provision of this section to the contrary, all fees paid to the City by City employees for parking privileges at off-street parking facilities shall be deposited in the City Employees Ridesharing Fund, as established by section 5.344 of this Code.*

* **Note:** This paragraph, added by Ord. No. 174,054 in 2001, was inadvertently removed from this section when the Administrative Code was republished in 2002.

SECTION HISTORY

Based on Municipal Code, Secs. 88.09 and 88.59.

Added by Ord. No. 143,157, Eff. 5-4-72.

Amended by: New Para. 5 added, former Para. 5 number changed to Para. 6, Ord. No. 148,168, Eff. 5-3-76; Para. 5, Ord. No. 149,963, Eff. 8-20-77; First Para., Ord. No. 165,007, Eff. 8-5-89. Renumbers Subsec. 6 as 8 and Subsecs. 6 and 7. added, Ord. No. 168,235, Eff. 10-16-92; Item 9 added, Ord. No. 170,606, Eff. 8-17-95; Para. 2 amended, Para. 10 added, Ord. No. 172,281, Eff. 12-14-98; In Entirety, Ord. No. 172,695, Eff. 8-9-99, Oper. 7-1-00; Para. 2, amended, Last Unnumbered Para. added, Ord. No. 174,054, Eff. 8-6-01; Subsec. 6. added, Ord. No. 176,072, Eff. 8-10-04; First Unnumbered Para. and Subsec. 5. amended, Subsec. 7 added, Ord. No. 180,460, Eff. 2-8-09; Subsec. 7 amended, Ord. No. 180,723, Eff. 7-13-09, Oper. 6-30-09; Subsec. 7 amended, Ord. No. 181,337, Eff. 11-12-10; Subsec. 7 amended, Ord. No. 182,145, Eff. 7-12-12; Subsec. 6 deleted and former Subsec. 7 amended and renumbered as Subsec. 6, Ord. No. 182,251, Eff. 10-23-12.

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 August 27, 2024, I served the within document(s):

PETITIONER’S OPENING TRIAL BRIEF

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., a California Nonprofit Corporation v. CITY OF LOS ANGELES, a municipal corporation; 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 August 27, 2024, at Pasadena, California.

/s/ Gabby Piceno
GABBY PICENO

SEE ATTACHED SERVICE LIST

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*ATTORNEYS FOR CITY OF LOS
ANGELES AND CITY OF LOS ANGELES
CITY COUNCIL*

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