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FIX THE CITY, INC.

**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  
  
**PETITIONER’S REPLY TO CITY’S  
OBJECTIONS TO PETITIONER’S  
SUPPLEMENTAL REQUEST FOR  
JUDICIAL NOTICE**  
  
Trial Date: December 5, 2024  
Time: 9:30 a.m.  
Dept.: 85  
  
[Hon. James C. Chalfant]

1 **I. INTRODUCTION.**

2 Until the filing of its Opposition Trial Brief, the City had *never* stated or committed  
3 to an alleged legal basis for its approval of the Midvale Project. There is a CEQA Notice  
4 of Exemption and Narrative (“NOE”), but that document did not directly state the City or  
5 State law(s) upon which the City purportedly relied for the approval. Given the absence of  
6 any clearly stated rationale for the City’s approval of the Project, Petitioner in its Opening  
7 Trial Brief was placed in the unusual position of presenting what might be the City’s  
8 claimed bases, as distilled from hints found in records obtained through the CPRA, but that  
9 the City never publicly committed to. Those were: (1) Los Angeles Municipal Code  
10 (“LAMC”) § 12.80; (2) Mayoral Executive Directive (“ED”) 1; and (3) ED3.

11 In the City’s Opposition Brief, the City raises *new* grounds and arguments for  
12 approval of Midvale that it fully admits in its Objections to Petitioner’s Supplemental  
13 Request for Judicial Notice are new. Yet it seeks to deny to Petitioner the right to reply to  
14 the City’s new arguments through Petitioner’s Supp. RJN documents. The City not only  
15 objects that new evidence has been presented in the Reply Trial Brief, it also claims the  
16 new and supplemental evidence lacks foundation, and is not relevant to the new issues  
17 raised by the City for the first time in its Opposition Brief.<sup>1</sup> The City’s objections are  
18 unfounded and should be overruled.

19 **A. The City’s Objections Are Inappropriate And Misleading.**

20 “It is true, of course, that ‘[t]he general rule of motion practice ... is that new  
21 evidence is not permitted with reply papers.’ [Citation.] **However, a recognized**  
22 **exception is for points ‘strictly responsive’ to arguments made for the first time in the**  
23 **opposition.** [Citation.] (Emphasis added.)” Golden Door Properties, LLC v. Superior  
24 Court (2020) 53 Cal.App.5th 733, 774. And, “[w]here ‘supplemental’ evidence submitted  
25 for the first time with a reply brief ‘raise[s] no new theories or arguments,’ ‘[i]t [is] well  
26

27 <sup>1</sup> The City also interposes an Evidence Code § 352 objection to Exhibit 87, which is  
28 an email by Maria Quinonez, the City staffer with direct oversight of Midvale. This Court  
will not be confused by the information contained in the Exhibit.

1 within the court’s discretion to consider it.’ [Citation.]” Savea v. YRC Inc. (2019) 34  
2 Cal.App.5th 173, 182.

3 In the following statement, the City admits it raises arguments for the first time in  
4 its trial brief: “The City’s **new and additional argument** here that approval need not be  
5 consistent with LAMC 12.03 or 12.08 [*sic.*, 12.80] is also correct based upon application  
6 of ED-3 which the Mayor adopted in 2023, clearing the deck of the very type of issues Fix  
7 attempts to assert in this action.” (Emphasis added.) (Obj. To Supp RJN, p. 3, lines 2-5.)  
8 That admission is only a part of the story of new arguments from the City. The entirety of  
9 the City’s Opposition Trial Brief is actually new argument since the City had never  
10 specified the state or local laws upon which it purportedly approved Midvale.

11 All exhibits submitted in Petitioner’s Supplemental Request for Judicial Notice  
12 speak directly to the issues raised by the City in its Opposition Trial Brief where the City  
13 attempts to posit various *post hoc* rationalizations for the legal basis for the Midvale  
14 Project.

15 Exhibit 88, the City’s 22 motions on other projects, presents an interesting example.  
16 On page 14 of its Objections, the City argues: “Fix cites the various motions presented at  
17 Exhibit 88 in support of its new and incorrect Reply contention that the City’s approval of  
18 the Midvale Project was not made upon motion. (Reply, p. 15:23-37) It was improper for  
19 Fix to withhold this argument and citation to law from its trial brief and to assert it for the  
20 first time on reply in support of a contention never before raised.” The City’s argument is  
21 jaw dropping. It was the City that raised the 22 other projects in an attempt to justify the  
22 Midvale Project by saying in effect, “See, this is the way we do it.” The City “opened the  
23 door” to Petitioner showing that the way the City has pursued approvals of shelter projects  
24 – the very ones the City introduced in its opposition brief – were by motion. But Midvale  
25 was not initiated by motion as was required. Petitioner’s reply argument exists solely  
26 because the City introduced the 22 other projects in its opposition brief.

27 Petitioner’s Exhibit 80, the FY 24-25 Tiny Home Interim Housing Program Scope  
28 of Required Services, is also supplemental evidence to Exhibit 16, which included the

1 following language from the Tiny Home Villages Interim Housing Program SRS 16,  
2 Updated 05/10/23: “THV-IH Program **has no time limit**: the total length of stay can and  
3 should be individually determined, based on the participant’s need. Progress and  
4 engagement towards housing goals must be documented and reviewed when a participant  
5 is approaching an initial 90-day length of stay and, so long as participant stays in the  
6 program, every 90 days after. (Emphasis added.)” (Opening Brief, Exhibit 16, p. 18.)<sup>2</sup>  
7 That same language is repeated in Exhibit 80, which Petitioner provided in reply because  
8 the LAHSA form on which Petitioner had relied for the “no time limit” fact was  
9 mysteriously and conveniently dropped in July 2024. The supplemental evidence in  
10 Exhibit 80 does not change Petitioner’s argument that stays at Midvale are not time  
11 limited. Nor is there any evidence presented by the City that a time limit exists for stays at  
12 Midvale. The City only cites a *goal* to transition the homeless to other facilities within 90  
13 days. Aspirations are nice, but they are by definition neither a firm nor binding time limit.

14 Petitioner must be able to reply to the new arguments the City has admittedly raised  
15 for the first time in its opposition. The new and supplemental evidence submitted by  
16 Petitioner in its Supplemental Request for Judicial Notice should be admitted into  
17 evidence.

18 **B. Foundation For The Exhibits In The Supplement RJN Is Proper.**

19 The City also challenges the declaration laying the foundation for the exhibits  
20 attached to the Supplemental Request for Judicial Notice. The foundation is proper.

21 Hooked Media Group, Inc. v. Apple Inc. (2020) 55 Cal.App.5th 323, 338 addresses  
22 the authenticity of documents produced by the opposing party. In the case, the Court  
23 upheld the authentication of produced documents when the facts for the authentication  
24 were presented by the declaration of counsel – as occurred here. The Court restated the  
25 applicable law: “As with any other fact, the authenticity of a document can be established  
26 by circumstantial evidence. (People v. Valdez (2011) 201 Cal.App.4th 1429, 1435 [135

27  
28 <sup>2</sup> The City did not object to Exhibit 16.

1 Cal. Rptr. 3d 628].)” Id. The Hooked Court then held: “We see nothing that would cast  
2 doubt on the authenticity of the evidence to which Hooked objects.” Id. The documents in  
3 that case authenticated by declaration were “mostly e-mails bearing clear indicia that they  
4 are what Apple claims they are.” Id.

5 Exhibits 81, 86 and 87 were produced by the City to Petitioner via Public Records  
6 Act requests. Exhibit 81 are the plans prepared by the City of Los Angeles Engineering  
7 department, which are stamped by an engineer and signed. Exhibits 86 and 87 are emails  
8 that provide complete information on the sender and receivers. The circumstantial  
9 evidence presented by the declaration and the exhibits themselves authenticates the  
10 documents. Hooked at id. The City has not presented any evidence to challenge the  
11 authenticity of its own documents that it produced to Petitioner.

12 With respect to the remainder of the exhibits, they are Court records or public  
13 records readily available to parties, the public and this Court on either the Court and City  
14 websites. Relying on People v. Valdez, the Supreme Court ruled in People v. Goldsmith  
15 (2014) 59 Cal.4th 258, 267: “The foundation requires that there be sufficient evidence for  
16 a trier of fact to find that the writing is what it purports to be, i.e., that it is genuine for the  
17 purpose offered. [Citation.] Essentially, what is necessary is a prima facie case. ‘As long  
18 as the evidence would support a finding of authenticity, the writing is admissible. The fact  
19 conflicting inferences can be drawn regarding authenticity goes to the document’s weight  
20 as evidence, not its admissibility.’ [Citation.]” No conflicting inferences can even be  
21 drawn here regarding authenticity of the City records Petitioner has presented in the Supp.  
22 RJN. See also, People v. Wilson (2021) 11 Cal.5th 259, 305 (“The trial court did not abuse  
23 its discretion by concluding the writings were adequately authenticated. . . . “As long as  
24 the evidence would support a finding of authenticity, the writing is admissible.””  
25 [Citation.]”)

26 Once again, the declaration and documents provide sufficient evidence for  
27 authentication of the exhibits.  
28

1           **C.       The Supplemental Exhibits Are Relevant.**

2           Exhibits 77 and 78 from the trial court case of Friends of Waverly, Inc. v. City of  
3 Los Angeles directly address the question of whether the City can approve a shelter for the  
4 homeless pursuant to Govt. Code §§ 8698, *et seq.*, but at the same time “set aside” LAMC  
5 § 12.80 – which enabled the City to utilize the shelter crisis declaration permitted by the  
6 Government Code. The City’s judicially noticeable (Evid. Code § 452(d)) and judicially  
7 estoppable argument in Friends of Waverly demonstrates the incongruity of it arguing to  
8 this Court that ED3 “set aside” LAMC §§ 12.03 and 12.80. And ED3 by its terms requires  
9 compliance with Govt. Code §§ 8698, *et seq.*, which is implemented in the City through  
10 LAMC § 12.80.

11           Exhibit 82, the November 13, 2015 City Attorney Report, is relevant for the same  
12 purpose. In that Report, the City Attorney stated: “Through LAMC Section 12.80, the  
13 City avails itself of the benefits of declaring a shelter crisis under Government Code  
14 Sections 8698, *et seq.* . . .”

15           Exhibit 79 provides an additional local law definition of “community care facility”  
16 in LAMC § 57.105.6.11. The exhibit further opposes the City’s argument that Midvale is  
17 not a community care facility, which is directly relevant to show the impropriety of the  
18 Midvale Project approval.

19           Exhibit 80, the FY 24-25 Tiny Home Interim Housing Program Scope of Required  
20 Service, is relevant to show the Midvale Project is not a “shelter for the homeless” because  
21 there is no time limit for a stay at the Midvale facility.

22           Exhibit 81, the Stamped and Signed Electrical Plans for Midvale Tiny Home  
23 Village, directly addresses the City’s Opposition Trial Brief claim of the inadmissibility of  
24 the *draft* plans that showed the Project is proceeding pursuant to LAMC § 12.80, ED1 and  
25 ED3. Exhibit 81 is stamped and signed plans, not draft plans, which show the City’s  
26 reliance on LAMC § 12.80 and ED1 as bases for the Midvale Project.

27           Exhibits 83 and 84 are Charter and Administrative Code provisions that require the  
28 City Council to act by ordinance, order or resolution, which require the presentation of

1 initiating motions.

2 Exhibit 88 is a list of, and initiating motions for, 21 of 22 projects cited by the City.  
3 These exhibits are relevant to show how the City’s attempted use of the other 22 project  
4 approvals to justify Midvale is unavailing. In fact it belies the City’s arguments to this  
5 Court in its opposition brief because those other projects were started with a motion. By  
6 contrast, there was no motion for Midvale, which additionally shows under the Charter or  
7 Administrative Code that the City cannot justify the Midvale approval by reference to its  
8 other approvals.

9 Exhibit 85, the Application For Fire Sprinkler/Plan Check And Inspection, is  
10 relevant to the City’s opposition brief claim that Govt. Code §§ 8698, *et seq.* allowed the  
11 approval of Midvale. Section 8698.1(c) precludes any project needing a permit after  
12 January 1, 2023. Exhibit 85 shows that Midvale needed a permit and that Midvale, *a*  
13 *fortiori*, is barred because the permit was issued on October 16, 2024.

14 Exhibits 86 and 87, the emails from the City’s Marina Quinonez, are relevant to  
15 show the person in charge of the Project stated Midvale is an LAMC § 12.80 project. The  
16 emails again show the incongruity of the position the City now tries to stake out that  
17 LAMC § 12.80 is “set aside” by ED3.

18 Exhibit 89, the Los Angeles City Council Resolution dated February 28, 2023, is  
19 relevant to show that the mandatory 2/3 vote by the City Council for sole source  
20 contracting had expired prior to the award of the contract to LifeArk. The exhibit shows  
21 the City violated competitive bidding requirement under state and local law.

22 The City’s relevancy objections should be overruled.

23 **D. The Exhibits Are Subject To Judicial Notice And The Facts Stated**  
24 **Therein Are Admissible.**

25 With the exception of Exhibits 77 and 78, which are Court records subject to  
26 judicial notice (In re Vicks (2013) 56 Cal.4th 274, 314), the remaining exhibits are  
27 documents prepared by public agencies or officials and are subject to judicial notice.  
28 Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist. (2021) 62

1 Cal.App.5th 583, 599.


2 The facts referenced, quoted and/or cited from the exhibits are admissible. “Among  
3 other things, the Evidence Code provides that judicial notice may be taken of ‘[f]acts and  
4 propositions that are not reasonably subject to dispute and are capable of immediate and  
5 accurate determination by resort to sources of reasonably indisputable accuracy.’  
6 [Citation.] We may therefore take judicial notice of an agreement where ‘there is and can  
7 be no factual dispute concerning the contents of the agreements. [Citation.]’ [Citation.]  
8 However, we keep in mind the general rule that ‘[w]hen judicial notice is taken of a  
9 document . . . the truthfulness and proper interpretation of the document are disputable.  
10 [Citation.]’ [Citation.]” Trinity Park, L.P. v. City of Sunnyvale (2011) 193 Cal.App.4th  
11 1014, 1026-1027.

12 The facts contained in Petitioner’s Supplemental RJN exhibits cannot be disputed.  
13 The legal affect may be subject to argument, but the documents are all public records  
14 created and produced by the City, reflecting acts of the City.

15 The City’s objections should be overruled.

16  
17 DATED: November 15, 2024

**THE SILVERSTEIN LAW FIRM, APC**

18 By:   
19 ROBERT P. SILVERSTEIN  
20 JAMES S. LINK  
21 Attorneys for Petitioner and Plaintiff,  
22 FIX THE CITY, INC.  
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1 **PROOF OF SERVICE**

2 I, GABBY PICENO, declare:

3 I am a resident of the state of California and over the age of eighteen years, and not  
4 a party to the within action; my business address is The Silverstein Law Firm, 215 North  
5 Marengo Ave, Third Floor, Pasadena, California 91101-1504. On November 15, 2024, I  
served the within document(s):

6 **PETITIONER’S REPLY TO CITY’S OBJECTIONS TO PETITIONER’S**  
7 **SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE**

8  
9  By transmitting via email the document(s) listed above to the email  
10 addresses set forth below.

11 **CASE NAME: FIX THE CITY, INC., a California Nonprofit Corporation v.**  
**CITY OF LOS ANGELES, a municipal corporation; et al.**  
12 **CASE NO.: 23STCP04410**

13  
14  
15 I declare under penalty of perjury under the laws of the State of California that the  
above is true and correct.

16 Executed on November 15, 2024, at Pasadena, California.

17 */s/ Gabby Piceno*  
18 \_\_\_\_\_  
GABBY PICENO

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COUNCIL*