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10 FIX THE CITY, INC.

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

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

19
20 Petitioner and Plaintiff,

21 vs.

22
23 CITY OF LOS ANGELES, a municipal
24 corporation; the CITY OF LOS
25 ANGELES CITY COUNCIL; and DOES
26 1 through 10, inclusive,

27 Respondents and Defendants

Case No. 23STCP04410

**PETITIONER'S REPLY TRIAL BRIEF;
DECLARATION OF LAURA LAKE**

**[Supplemental Request for Judicial Notice,
Objections to City's Declarations and
Evidence, and Reply to City's Evidentiary
Objections, 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.¹**

2 Petitioner replies to the City’s inaccurate claim that the Midvale Project is a “shelter for
3 the homeless” as defined in LAMC § 12.03, or “homeless shelter” as defined in Govt. Code §§
4 8698 and 8698.4, and Executive Directive 3 (ED3). The City erroneously argues that ED3
5 exempts Midvale from discretionary review. Even if ED3 applied, which it does not as detailed
6 below, ED1 must be construed with ED3, and ED1 precludes the City’s asserted exemption.
7 Additionally, Midvale’s required characteristics, including unlimited duration of stay, disqualify it
8 as a homeless shelter. The City’s interpretation of Govt. Code §§ 8698 and 8698.4, like its use of
9 ED3, violates the law. The City’s reliance on prior approvals of allegedly similar projects to
10 justify its actions is also flawed; repeated past definitional missteps do not make Midvale legal.
11 This brief will show that the City’s approval of Midvale contravened State and City law. The
12 Project’s approval should be invalidated.

13 **II. TRADITIONAL MANDATE AND DECLARATORY RELIEF APPLY.**

14 The City claims administrative mandate applies. It is wrong. “The nature of the agency’s
15 action or decision under review determines which type of mandate applies. **Administrative**
16 **mandate is used only to review an agency’s decision that resulted from ‘a proceeding in**
17 **which, by law:** (1) a hearing is required to be given, (2) evidence is required to be taken, and (3)
18 discretion in the determination of facts is vested in the agency.’ [Citation.] In comparison,
19 ‘**ordinary mandate is used to review adjudicatory actions or decisions when the agency was**
20 **not required to hold an evidentiary hearing.**’ [Citation.]” Cisneros v. Department of Motor
21 Vehicles (2024) 104 Cal.App.5th 381, 417 (emphasis added). The law stated in Cisneros has been
22 so for decades. Western States Petroleum Assn. v. Superior Court (1995) 9 Cal.4th 559, 566-567.

23 Approval of Midvale occurred without discretionary review or evidentiary hearing. The
24 City has never argued there was a discretionary review. To the contrary, the City’s whole
25 argument is that the Project is exempt from discretionary review processes.

26 “A traditional writ of mandate under Section 1085 is the method for compelling the
27 performance of a legal, ministerial duty.” Pomona Police Officers’ Assn. v. City of Pomona
28 (1997) 58 Cal.App.4th 578, 583-584. “A public entity has a ministerial duty to comply with its
29 own rules and regulations where they are valid and unambiguous.” Galzinski v. Somers (2016) 2
30 Cal.App.5th 1164, 1171. The ministerial duty here is compliance with the Expo Specific Plan,
31 LAMC § 12.03, LAMC § 12.80, ED1 and ED3.² Traditional mandate applies and has been
32

33
34 ¹ Petitioner files this reply trial brief in compliance with CRC Rule 2.108(1), which allows
35 lines to “be one and one-half spaced.” Tiffany v. State Farm Mut. Auto. Ins. Co. (1993) 14
36 Cal.App.4th 1763, 1767-1768. Because of the number and gravity of issues at stake, Petitioner
37 greatly appreciates the Court’s review of the issues presented herein.

² Beach & Bluff Conservancy v. City of Solana Beach (2018) 28 Cal.App.5th 244, 259
cited by the City, does not disagree; ministerial duties are the subject of traditional mandamus.

1 properly alleged.

2 The City also says declaratory relief is only available for facial challenges. That is not the
3 general statement of the law in Action Apartment Assn., Inc. v. City of Santa Monica (2007) 41
4 Cal.4th 1232, 1250, fn. 5: “It is well established that parties may seek declaratory relief with
5 respect to the interpretation and application of local ordinances.” See also Walker v. County of
6 Los Angeles (1961) 55 Cal.2d 626, 637, cited in Action Apartment, where the Court said: “The
7 interpretation of ordinances and statutes are proper matters for declaratory relief. [Citation.]
8 **Petitioners are not looking to the court to control the board’s legislative discretion but to**
9 **determine the meaning of charter section 47 and its effect on the prescribed legislative**
10 **process.”** (Emphasis added.) That is exactly what Petitioner seeks here.

11 The City’s argument shows the propriety of declaratory relief. The City claims it has
12 approved 22 “shelter” projects in the same fashion as Midvale and has never applied the
13 restrictions of LAMC § 12.03 to the projects. (Respondent’s Trial Brief (RTB), p. 9.) In other
14 words, without this Court’s declaration of rights and duties, the City will proceed in its illegal
15 manner again and again. The City’s interpretation of law is properly challenged not only for
16 Midvale but all future projects. This also shows the ripeness argument by the City is inapt.

17 The City’s interpretation of LAMC § 12.03 is properly judged by declaratory relief for this
18 case, and many likely to follow. This Court may and should declare the City’s interpretation and
19 application of its own laws illegal.

20 **III. LENGTH OF STAY IS THE DETERMINATIVE FACTOR IF A PROJECT IS A**
21 **“SHELTER FOR THE HOMELESS” OR A “HOMELESS SHELTER”.**

22 One factor consistently defined and applied in state and City law determines if a project is
23 a “Shelter for the Homeless” or “Homeless Shelter.” That is maximum allowable length of stay.

24 (1) LAMC § 12.03 mandates that “Shelter for the Homeless” applies to “temporary”
25 shelters, and the term “‘temporary accommodations’ means that a homeless person or family will
26 be allowed to reside at the shelter **for a time period not to exceed six months.**” (Exh. 26;
27 emphasis added.)³

28 (2) Title 25, Division 1, Chapter 7 of Cal. Code of Regs. § 7950 states: “‘Emergency
29 shelter’ means housing with **minimal supportive services** for homeless persons that is **limited to**
30 **occupancy of six months or less** by a homeless person and that is not withheld due to a client’s
31 inability to pay.” (Emphasis added.)

32 State law contains identical definitions. See, e.g.:

33 (3) Health and Safety Code § 50801(e): “‘Emergency shelter’ means housing with
34 **minimal supportive services** for homeless persons that is **limited to occupancy of six months or**
35 **less** by a homeless person.” (Emphasis added.)

36
37 ³ Unless otherwise noted, “Exh.” is to the RJN filed with Petitioner’s opening brief.

1 (4) Govt. Code § 65582(d): “‘Emergency shelter’ has the **same meaning** as defined
2 in subdivision (e) of Section 50801 of the Health and Safety Code.” (Emphasis added.)

3 Govt. Code § 8698.4 uses length of stay (and enhanced services) to differentiate between
4 “emergency shelter” and permanent supportive housing, with emphasis on “temporary”. It reads:

5 (5) § 8698.4(c)(1): “‘Homeless shelter’ means a facility with overnight sleeping
6 accommodations, the primary purpose of which is to provide **temporary shelter** for the homeless
7 that is **not in existence after the declared shelter crisis**.” (Emphasis added.)

8 (6) § 8698.4(c)(2): “‘Permanent supportive housing’ means housing for people who
9 are homeless, with **no limit on length of stay**, and that is **linked to onsite or offsite services** that
10 assist the supportive housing resident in retaining the housing, improving the person’s health
11 status, and maximizing the person’s ability to live and, when possible, work in the community.”
12 (Emphasis added.)

13 **IV. BECAUSE MIDVALE HAS NO LIMIT ON LENGTH OF STAY, IT IS BY**
14 **DEFINITION NOT A “SHELTER FOR THE HOMELESS.”**

15 Petitioner showed in its opening brief that Midvale has no limit on length of stay. (Open.
16 Br., pp. 14-15.) In its brief, the City tries to misdirect by stating that one of the forms Petitioner
17 provided as evidence was no longer in use and that, somehow, despite the explicit requirement for
18 Midvale to have no time limit on length of stay based on the scope of services (**Exh. 16**, p. FTC-
19 002-021349), the issue would not be ripe until a provider was selected. (RTB p. 9, 14.)

20 This is a red herring. The Midvale approval stated: “The homeless shelter will be
21 operated consistent with LAHSA’s program requirements for crisis and bridge shelters including,
22 but not limited to, LAHSA’s Scope of Required Services and Program Standards, as noted in the
23 references section.” (**Exh. 13**, p. 4 of 25.) The scope of required services states “THV-IH [Tiny
24 Home Village Interim Housing] Program **has no time limit: the total length of stay can and**
25 **should be individually determined, based on the participant’s need. . . .**” (**Exh. 16**, p. FTC-
26 002-021341, FTC-002-021349.)

27 The City also went out of its way to state that a new RFP was imminent for Midvale. The
28 new RFP has now been released and contains the **exact same language** confirming that Midvale
29 has “no time limit.” (Supp. RJN **Exh. 80**, p. 18.) This establishes conclusively that Midvale has
30 no limit on length of stay. As a result, Midvale fails the not-to-exceed-6-month maximum
31 statutory definition of “Shelter for the Homeless.”

32 **V. THE CITY STATED MIDVALE IS AN LAMC § 12.80 PROJECT, BUT IT DOES**
33 **NOT QUALIFY UNDER LAMC § 12.80.**

34 In her declaration with the City’s opposition, Marina Quinonez confirms her direct
35 oversight regarding Midvale. (Quinonez Decl., ¶ 2.) In a May 17, 2023 email to City staff,
36 Quinonez confirms Midvale is an LAMC § 12.80 project, writing: “These will be used for Interim
37 Housing under the current temporary homeless shelters section 12.80.” (Supp. RJN **Exh. 86**.) See

1 also July 27, 2023 email from Quinonez where she indicates the Project is a 12.80 project and that
2 if the Project uses a service provider such as LA Family Housing, that would change the Project to
3 a “permanent interim housing project,” i.e., not a shelter for the homeless. (Supp. RJN **Exh. 87**, p.
4 3.) Interestingly, at Quinones Decl. ¶¶ 7-8, she attacks a “mid-level engineer,” Mr. Voung, for his
5 addition of notes to interim plans (**Exh. 15**) that indicated Midvale is an LAMC § 12.80 project.
6 (See also RTB p. 19, fn. 6, where the City tries to throw the engineer under the proverbial bus by
7 claiming his notations on draft plans were unauthorized.) However, **plans stamped and signed** –
8 which are *not* marked “not for construction” as were the pages at **Exh. 15** – state:

9 “HOMELESS SHELTER. THIS PROJECT IS PURSUANT TO THE LOS
10 ANGELES MUNICIPAL CODE SECTION 12.80, THE CITY OF LOS
11 ANGELES MAYOR’S EXECUTIVE DIRECTIVE #1, 3 AND 7”

12 (Supp. RJN **Exh. 81**, p. 1.)

13 LAMC § 12.80 is limited to “shelter for the homeless” (as defined in Section 12.03 of this
14 Code)” LAMC § 12.03 has three mandatory requirements. A “shelter for the homeless”:

15 (1) Must be “**other than a ‘community care facility’** as defined in California Health
16 and Safety Code Section 1502”

17 (2) Must provide “**temporary accommodations**” “which meet the **standards for**
18 **shelters** contained in Title 25, Division 1, Chapter 7 of the California Code of Regulations.”

19 (3) And where the “term ‘temporary accommodations’ means that a homeless person
20 or family will be allowed to **reside at the shelter for a time period not to exceed six months.**”
21 (Emphasis added.)

22 Midvale does not meet the time-limit specification in 25 CCR § 7950. Nor does it satisfy
23 the time-limited requirement of “temporary accommodations” in LAMC § 12.03.

24 Next, in an attempt to avoid the evidence that Midvale is a “community care facility” as
25 defined under Health & Saf. Code § 1502, the City raises licensure from an entirely different code
26 section. The City argues Midvale cannot be a community care facility, referencing licensing
27 requirements in 22 CCR § 80001, *et seq.*, and that Petitioner does not have standing to challenge
28 the lack of licensure. But LAMC § 12.03 makes no mention of licensure as part of the definition
29 of community care facility. Rather, LAMC § 12.03 cites Health & Safety Code § 1502 for the
30 definition, and further cites “Title 25, Division 1, Chapter 7 of the California Code of
31 Regulations.” There is no mention of Title 22 of the Cal. Code of Regulations. In other words, the
32 licensure requirement is not part of the definition of community care facility utilized by LAMC §
33 12.03. The City asks this Court to do what it cannot. “In the construction of a statute or
34 instrument, the office of the Judge is simply to ascertain and declare what is in terms or in
35 substance contained therein, **not to insert what has been omitted.** Code Civ. Proc. § 1858
36 (emphasis added). The City’s argument is misdirection.

37 The City’s misdirection continues when the it argues Petitioner’s challenge to Midvale is

1 not ripe because “no service agreement yet exists, and until that occurs, which of the City’s desired
2 services a qualified operator will agree to perform is unknown.” (RTB, p. 9.) However, the
3 approval/justification for Midvale depends on the services to be provided as discussed below in
4 Section VIII. To suggest there will be no services cannot be reconciled with the approval. But the
5 City claims “The City Council has never applied LAMC § 12.03 [22 times], which it drafted, as a
6 bar to the City’s model transitional shelter program developments, including Midvale.” (RTB, pp.
7 14, 22.) The City’s argument is misdirection: the City’s BOE report specifies the scope of
8 services to be provided by whomever the provider is. (Exh. 13, p. 4 of 25.) The approval set the
9 scope of required services, and the provider is to be selected based on the scope of required
10 services. The City’s ripeness argument is sophistry and ludicrous.

11 Finally, also making clear that Midvale is a “community care facility,” and therefore not
12 a “shelter for the homeless,” LAMC § 57.105.6.11 defines “community care facility” as “any
13 facility maintained to provide nonmedical day treatment, adult day care, or transitional care
14 services, including but not limited to a therapeutic day services facility, social rehabilitation
15 facility, or transitional shelter care facility.” (Supp. RJN Exh. 79.) Petitioner’s opening brief
16 describes the precise services for Midvale which match LAMC § 57.105.6.11. (Open. Br., p. 15.)
17 Those services – including counseling, job placement, and transitional housing – demonstrate that
18 Midvale is a “community care facility” as defined in LAMC § 57.105.6.11.

19 **VI. THE CITY’S RELIANCE ON EXECUTIVE DIRECTIVE 3 (ED3) FAILS.**

20 For the first time, the City in its opposition brief claims ED3 authorizes Midvale. The
21 City’s argument fails for several reasons.

22 **A. ED3 Only Applies To “Designated Properties.” No Evidence Exists To Show**
23 **That Midvale Was Assessed And Then Designated As Required By ED3.**

24 ED3 (Exh. 2) contains the following required sequential steps:

25 (1) Identification of viable properties within 45 days of the directive’s effective date (ED3,
26 Section 1); (2) Assessment of viability within 60 days of identification (Section 2); (3) Formal
27 designation by the Mayor within 30 days of assessment (Section 3); (4) Specification of the
28 contracting process by the Mayor or CAO within 45 days of designation (Section 3).

29 The City has tellingly only provided evidence that Midvale was on a list of “Potential
30 Properties.” The list of potential properties was step 1 of 4. There is no evidence that Midvale was
31 assessed and designated as required (steps 2 and 3). If the City had such evidence, it would have
32 and should have produced it. There is no such evidence. Absent assessment and then designation,
33 Midvale cannot avail itself of the benefits of ED3, per the Mayor’s own directives.

34 **B. Even If ED3 Were Applicable, It Only Excuses “Discretionary Review,” Not**
35 **Definitions or Ministerial Duties.**

36 ED3 exempts designated properties “for the duration of this order from **discretionary**
37

1 **review processes** otherwise required by either the zoning provisions of Chapter I or Project
2 Review as described in LAMC Section 16.05 and LAMC Section 13B.2.4.” (Emphasis added.) In
3 other words, the exemption is limited to “discretionary review processes.” ED3 does not eliminate
4 a project’s compliance with definitions and non-discretionary elements, including LAMC §§ 12.03
5 and 12.80. Critically, neither section implicates a “discretionary review process,” and neither can
6 be “set aside” by ED3. ED3 certainly does not set aside LAMC § 91.8605, which is in Chapter 2.

7 Thus, ED3 is limited not only to formally assessed and designated properties, which as
8 just discussed Midvale was not, but is also limited by LAMC § 12.03 and its requirements.

9 At p. 19 of its opposition, the City argues: “For the Midvale Project, thus, ED-3 set aside
10 LAMC 12.03 and 12.80 because those provisions are found within Chapter I of the LAMC. (CX
11 75). According to the ED-3 program, the Midvale Project approval proceeds solely pursuant to the
12 requirements of Section 8698.” The claimed “set aside” of LAMC §§ 12.03 and 12.80 is
13 unsupported in the actual language of ED3.⁴

14 Not only are LAMC §§ 12.03 and 12.80 still applicable as they are not and do not involve
15 “discretionary review,” but the City’s argument that ED3 sets aside compliance with those sections
16 and solely relies on Govt. Code § 8698 is absurd as LAMC § 12.80 is the City’s implementation of
17 Govt. Code § 8698. (See also Supp. RJN **Exh. 82**, p. 2 [LA City Attorney opinion (November 13,
18 2015): “Through LAMC Section 12.80, the City avails itself of the benefits of declaring a shelter
19 crisis under Government Code 8698 et seq.”]). The City’s arguments are incorrect.

20 ED3 cannot set aside LAMC § 12.80 – the foundation for the approval and construction of
21 shelters for the homeless – or LAMC § 12.03, which defines homeless shelter for use in § 12.80.
22 Borrowing from the City’s opposing brief in this case, ““Absurd or unjust results will never be
23 ascribed to the Legislature”” (RTB, p. 20.)

24 Further belying the City’s analysis/interpretation is its successful Motion for Judgment in
25 the case of Friends of Waverly, Inc. v. City of Los Angeles, LASC Case No 20STCP00082, where
26 the City made this argument that directly conflicts with its position here:

27 “Petitioner willfully ignores the purpose and effect of Government Code Section
28 8698.4. That section allows the City to develop shelters consistent with minimum
29 health and safety standards established by local ordinance, and thereby exempts
30 such projects from compliance with other regulations, including zoning and
31 planning regulations. The entire purpose of the legislative scheme under
32 Government Code 8698.4 is to dispense with the entitlement process and avoid
33 unnecessary delay in erecting these shelters, providing: . . . [Quoting Govt. Code
34 § 8698.4(a)(2)(A)(ii)].

35 _____
36 ⁴ Also undermining the City’s argument is that ED3, in its Section 2, is directed at ED3
37 “shelter for those experiencing homelessness.” It is absurd for the City to claim that its own
definition of “shelter for the homeless” does not apply.

1 “Upon adoption of Ordinance Number 185490 (the state-approved amendment to
2 LAMC 91.8605 that established the development standards for shelters developed
3 pursuant to a shelter crisis declaration) **the City was able to proceed with
4 emergency homeless shelters like the Bridge Home Project, subject only to
5 the provisions of LAMC Sections 12.80 and 91.8605, as provided by state
6 law.**” (Supp. RJN Exh. 77, p. 19; emphasis added (City Motion).)

7 The Court granted the City’s motion for judgment in Friends of Waverly, ruling the City
8 had adopted the health and safety standards and procedures required in Govt. Code §
9 8698.4(a)(2)(A)(ii) by LAMC §§ 12.80 and 91.8605. (Supp. RJN Exh. 78, p. 5.)

10 The City should be estopped from now arguing that ED3 sets aside LAMC §§ 12.03 and
11 12.80. Judicial estoppel prevents a party from “asserting a position in a legal proceeding that is
12 contrary to a position previously taken in the same or some earlier proceeding.” Jackson v. Los
13 Angeles (1997) 60 Cal.App.4th 171, 181. Necessary to judicial estoppel is showing the same party
14 has taken two positions, which are totally inconsistent. MW Erectors, Inc. v. Niederhauser
15 Ornamental & Metal Works Co., Inc. (2005) 36 Cal.4th 412, 422. The City’s winning position in
16 Friends of Waverly is directly contrary to the position now taken by the City that ED3 “sets aside”
17 LAMC §§ 12.03 and 12.80.

18 **C. ED1 And ED3 Must Be Read Together.**

19 ED1 instructs that “in no instance” shall the streamlined process afforded by ED1 apply to
20 single-family property. (Exh. 6.) ED3 (July 3, 2023 ver.) is titled “Subject: Emergency Use of
21 Viable City-Owned Property”. (City’s RMM Decl., Vol. 1, p. 190.) ED3’s purpose is “To aid in
22 sheltering people who are unhoused in the City of Los Angeles”, with the directive issued pursuant
23 to “Charter Section 213(i) [sic] of the City of Los Angeles and the provisions of Section 8.33 of
24 the Los Angeles Administrative Code”. (Id.) ED3 utilizes substantially the same language as ED1
25 to streamline construction, but on public property, such that it is “exempt for the duration of this
26 order from discretionary review processes otherwise required by either the zoning provisions of
27 Chapter I of the LAMC or Project Review as described in LAMC Section 16.05 and LAMC
28 Section 13B.2.4; or other ordinance”. (City’s RMM Decl., Vol. 1, p. 190, 191.)

29 The Mayor issued ED1 and ED3 pursuant to the same charter and administrative code
30 provisions. Both directives exempt “shelter for the homeless” projects from the same explicitly-
31 cited discretionary project review provisions. ED3 does not override ED1, but rather extends the
32 R1-zoning protections of ED1 to properties owned by certain other public agencies (LA County
33 Metro, HACLA, and LA Community College Dist. (ED3, §§ 5, 8))

34 ED3 must be construed to include ED1’s preclusion of shelters on single family residential
35 zoned property. “It is a ‘well-settled rule of statutory construction that, if possible, the codes are to
36 be read together and blended into each other as though there was but a single statute [citations],
37 and that the existence of a particular statute does not negate the effect of a general statute’
[Citation.]” Imperial Merch. Servs., Inc. v. Hunt (2009) 47 Cal. 4th 381, 389. This rule applies to

1 executive orders. Coble v. Ventura County Health Care Agency (2021) 73 Cal.App.5th 417, 425.

2 ED1 prohibits exemption from discretionary review processes for R1-zoned property.
3 There is no dispute Midvale includes property zoned single family or R1. (RTB, p. 19.) Because
4 ED1 and ED3 can and must be construed together, even if ED3 were deemed to actually apply,
5 Midvale was still illegally approved as the approval illegally avoided discretionary review.

6 **VII. THE CITY’S RELIANCE ON GOVT. CODE § 8698, ET SEQ. FAILS.**

7 **A. Govt. Code § 8698 Is Implemented Through LAMC §§ 12.03, 12.80, 91.8605.**

8 As stated above, the City has implemented Govt. Code § 8698, *et seq.* through LAMC
9 §12.80 and LAMC § 91.8605. The City has so admitted. (Supp. RJN **Exh. 81**, p. 2 [LA City
10 Attorney opinion].) As shown above, Midvale fails under LAMC §§ 12.03 and 12.80 – the City’s
11 implementation of Govt. Code § 8698.

12 **B. Under Govt. Code § 8698(c), Midvale Is Not A “Public Facility.”**

13 Govt. Code § 8698, *et seq.* only applies to “Public Facilities” as defined and discussed in
14 Petitioner’s opening brief. Unable to controvert Petitioner’s evidence that Midvale’s “acquisition,
15 operation and maintenance” are paid for through user fees, not taxes or assessments, the City’s
16 opposition brief weakly states, without evidence, that writing parking citations and collecting on
17 those citations is the same as operating the lot. (RTB, p. 21.) This is the City’s only defense. It
18 fails. Midvale operates, or used to, with people pulling their cars in, parking and then paying.
19 (Lake Decl., ¶ 3) That is the totality of Lot 707 operations. Citations are not required for
20 operation, and are in fact specifically isolated from operations by the SPRF. LAAC § 5.117 – the
21 SPRF – states: “For purposes of this section, the policing of parking meters shall not include the
22 routine and customary issuance of parking citations.” (Silverstein Decl. to Opening Brief, **Exh. C**,
23 Item 1.) The City admits in **Exhibit 12** that Lot 707 is an SPRF lot. Midvale is thus not a “Public
24 Facility” under Govt. Code § 8698(c). The City’s last-ditch, unsupported assertion about parking
25 citations is unavailing. (See also Petitioner’s Evidentiary Objections to City’s Cervantes Decl.)

26 **C. Even If Midvale Were A Public Facility, Permits Cannot Issue.**

27 As noted, the City appears to justify Midvale – for the first time – on “the requirements of
28 Section 8698.” (RTB, p. 19.) If that is the case, then Midvale must also be invalidated because the
29 City cannot issue a permit. But Midvale requires permits. (See, e.g., permit applications at Supp.
30 RJN **Exh. 85**.) Govt. Code § 8698.1(c)(1) provides for the operation of an emergency housing
31 facility in cities with more than 3.5 million in population, that “does not comply with state building
32 standards for local fire and life safety standards if they submit reasonable standards to the State
33 Fire Marshal.” But subpart (5) provides: “**No new permits shall be authorized pursuant to this
34 subdivision on and after January 1, 2023.**” (Emphasis added.) Midvale was approved on
35 October 20, 2023. (City **Exh. 49**.)
36
37

1 **VIII. THE CITY’S RELIANCE ON GOVT. CODE § 8698.4 FAILS.**

2 As described in Section III, Govt. Code § 8698.4 only applies to “homeless shelters,” not
3 to “Permanent supportive housing.” Midvale is “permanent supportive housing,” not a “homeless
4 shelter” under § 8698.4. Specifically:

5 (1) Midvale has no time limit on length of stay and is thus not “temporary.” (**Exh. 16,**
6 p. FTC-002-021341, FTC-002-021349.) (See also Supp. RJN **Exh. 80**, p. 18.)

7 (2) Midvale is to exist for 10 years without a prohibition on existing after the shelter
8 crisis, further showing it is not a “homeless shelter.” (**Exh. 10**, p. 4.)

9 (3) Far from just the “supportive and self-sufficiency development services” listed in
10 the Govt. Code § 8698.4 definition of “Homeless Shelter,” Midvale explicitly “is linked to onsite
11 or offsite services” per the definition of “Permanent supportive housing” in Govt. Code § 8698.4.
12 This extensive services list can be found in the BOE Midvale report. (**Exh. 13**, pp. 13, 16, 17 of
13 25.) The scope of required services for Midvale makes these services mandatory:

14 **“SUPPORTIVE SERVICES AND ACTIVITIES**

15 “17. Contractor **must provide** the required Supportive Services and Activities
16 directly or through subcontracted services arrangements.” (Emphasis added).
17 (Supp. RJN **Exh. 80**, p. 7.)

18 Midvale is “permanent supportive housing” under Govt. Code § 8698.4. Thus, it is not afforded
19 any special deference or allowance.

20 **IX. THE CITY’S ASSERTION THAT THE CITY ALWAYS APPROVES PROJECTS**
21 **AS IT DID FOR MIDVALE IS FALSE AND EXPOSES KEY FLAWS IN THE**
22 **MIDVALE APPROVAL.**

23 The City suggests it approved Midvale based on a City Council **Resolution**, just like in
24 those other 22 projects. (RTB, p. 17.) The City’s assertion is false. No such resolution exists. Far
25 from showing that the 22 projects cited show that Midvale was properly approved, they prove the
26 opposite. The City approved 21 of the 22 projects founded **on initiating motions**. (Supp. RJN
27 **Exh. 88** [list and compilation of the initiating motions in those other cases, contrasted with
28 Midvale].) By contrast, no initiating motion for Midvale has been presented in evidence by the
29 City because no initiating motion exists. The purported approval of Midvale is thus unlawful
30 under Charter Section 240 and LA Administrative Code (“LAAC”) § 2.1.1. (Supp. RJN **Exhs. 83**
31 **& 84.**) The City’s attempted reliance on other approvals thus discredits the City’s position.

32 Charter § 240 provides in relevant part: “All legislative power of the City except as
33 otherwise provided in the Charter is vested in the Council,” which shall exercise that power “by
34 ordinance, subject to the power of veto or approval by the Mayor” or “by order or resolution, not
35 inconsistent with the duties and responsibilities set forth in the Charter or ordinance.” There was
36 no ordinance or resolution for Midvale. To exercise legislative power by an order, LAAC § 2.1
37 provides: “Other action of the Council may be by order or resolution, upon motion.”

1 **X. THE CITY FAILS TO DEMONSTRATE ANY APPLICABLE EXEMPTION TO**
2 **COMPETITIVE BIDDING, THUS A FURTHER GROUND TO INVALIDATE.**

3 The City’s argument on the competitive bidding of the \$2.5 million LifeArk contract boils
4 down to claims that the contract has been completed, LifeArk’s product is unique, and as a start up
5 company, it should not be punished. These do not justify the sole source contract.

6 Per Charter § 371(a), contracts not awarded by competitive bidding are not binding.
7 While LifeArk may be harmed economically if a contract is lost, that is not a basis for violating the
8 law. Most importantly, Exhibit B to the City’s Wee Decl. – Annual Contract Requirements –
9 proves the City violated the law with the sole source contract. There, the City states:

10 “This contract is awarded as a Critical Need Contract for Trailer, Mobile Shelter
11 and Lease in accordance with City of Los Angeles, Administrative Code, Division,
12 10, Chapter 1, Article 2, Section 10.15 (a) (6); Contracts entered into during time
13 of war or national, state or local emergency, declared in accordance with federal,
14 state or local law, **where the council by resolution, adopted by two-thirds vote
15 and approved by the Mayor, suspended, any or all of the restrictions** of this
16 section or their applicability to specific boards, officers, or employees.” (City’s
17 Wee Decl. p. 20; emphasis added.)

18 The prior Council authorization expired on September 1, 2023 (Supp. RJN **Exh. 89**, p. 2,
19 Item 4), before the City Council voted on Midvale on October 20, 2023. No other City Council
20 authorization exists. The sole source contract to LifeArk is illegal.

21 The existence of an illegal contract and the argument that LifeArk should not be punished
22 to make this a *fait accompli* ignore the fact the City chose to proceed with the Project even though
23 this action had been filed and objection letters sent. It is the City that chose to ignore the illegality
24 of its of actions, not LifeArk. The City is responsible for actions taken at its own peril. Gogerty v.
25 Coachella Valley Junior College Dist. (1962) 57 Cal.2d 727, 732 (district found not to be in a
26 position to complain of injury “which it brought upon itself when it proceeded at its own peril to
27 continue the construction of buildings . . . before the courts had finally determined that it had a
28 right to do so); Woodward Park Homeowners Assn. v. Garreks Inc. (2000) 77 Cal.App.4th 880,
29 889 (mootness defense rejected where project applicant had completed project at its own peril).

30 The City violated state and local competitive bidding laws. The Project should be
31 invalidated on this additional ground.

32 **XI. CONCLUSION.**

33 For all of the foregoing reasons, Petitioner respectfully requests that the Court issue
34 mandamus and enter judgment as prayed to invalidate the City’s approval of the Midvale Project.

35 Dated: November 4, 2024

THE SILVERSTEIN LAW FIRM, APC

36 By: /s/ Robert P. Silverstein

37 ROBERT P. SILVERSTEIN, JAMES S. LINK
Attorneys for Petitioner FIX THE CITY, INC.

**LAURA LAKE
DECLARATION**

DECLARATION OF LAURA LAKE

I, LAURA M. LAKE, declare as follows:

1. I am the corporate secretary and an authorized officer of Petitioner Fix the City, Inc., and a resident of the City of Los Angeles. Fix the City is a volunteer group whose mission is to promote public safety, support adequate infrastructure, and to hold local government accountable, especially with regard to land use issues.

2. I have personal knowledge of the facts stated within this declaration. If called as a witness, I could and would competently testify to the facts stated herein.

3. I am personally familiar with City of Los Angeles Lot 707, having used it for many years up until its recent closure by the City. I would estimate that I have parked my car there on at least 40 occasions. The operation of the lot has always been the same. First, no parking attendant worked at the lot. Second, people simply would pull into a parking space, pay at a pay station for at least the last approximately ten years, and leave when they were done.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of November 2024, at Los Angeles, California.



LAURA M. LAKE, Ph.D.

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COUNCIL*