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No Fee ~ Gov't Code § 6103

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

Fix the City, Inc., a California Nonprofit
Corporation,

Petitioner,

vs.

City of Los Angeles, a Municipal
Corporation; The City of Los Angeles
City Council; and Does 1 Through 10,
inclusive,

Respondent.

Case No.: 23STCP04410

*Honorable James C. Chalfant
Department 85*

**Respondent City of Los Angeles Request for
Judicial Notice in support of its Opening Trial
Brief**

[Exhibits 31 – 68 & 70-76 attached to the Robert
Mahlowitz Declaration]

Action Filed: December 5, 2023

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

Respondent City of Los Angeles (“City”) submits this request for judicial notice, pursuant to Evidence Code sections 450 *et. seq.* and California Rule of Court 3.1306(c), in support of its Opening Trial Brief pursuant of Evidence Code sections 450 *et. seq.* and

1 California Rule of Court 3.1306(c), for the reasons set forth below. The City refers to each of
2 the Exhibits attached to the Declaration of Robert M .Mahlowitz filed in support of the City’s
3 demurrer as “CX” referring to City Exhibits (RMM Decl.). The City requests judicial notice of
4 CX 31 – 68 and 70-76.

5 **A. The City has provided notice of its requests for judicial notice**

6 Evidence Code section 453 provides that a trial court shall take judicial notice “of any
7 matter specified in Section 452 if a party requests it and: (a) gives each adverse party sufficient
8 notice of the request ... to enable such adverse party to prepare to meet the request; and (b)
9 furnishes the court with sufficient information to enable it to take judicial notice of the matter.”

10 The City has served this request on Petitioner concurrently with the Declaration of
11 Robert Mahlowitz and the attached Exhibits, which includes all the exhibits for which the City
12 seeks judicial notice. Below, the City provides the court with sufficient information to take
13 judicial notice of each Exhibit, thereby satisfying the requirements of Evidence Code section
14 453. Pursuant to Evidence Code section 453 or section 452, judicial notice of the Exhibits is
15 warranted.

16 **B. All exhibits are authenticated and qualify pursuant to Evidence Code § 452(h)**

17 CX 31 – 68 & 70-76 are authenticated individually by the concurrently filed Declaration
18 of Robert M. Mahlowitz, demonstrating they are official records of either the California
19 legislature, a California state agency posted online, the City of Los Angeles, or the Los
20 Angeles County Superior Court. Evidence Code section 452(h) authorizes the Court to take
21 judicial notice of facts or propositions “not reasonably subject to dispute and are capable of
22 immediate and accurate determination by resort to sources of reasonably indisputable
23 accuracy.” These exhibits also present records found on websites maintained by public entities.
24 In addition to the other provision of the Evidence Code authorizing judicial notice of them
25 noted below, the exhibits are subject to judicial notice as matters not reasonably subject to
26 dispute, capable of immediate and accurate determination.

27 **C. Official acts and regulations (CX 31 – 68, 70-72, 75 & 76)**

28 Evidence Code Section 452(b), allows judicial notice of “[r]egulations and legislative

1 enactments issued by or under the authority of the United States or any public entity in the
2 United States.” Evidence Code Section 452(c) allows judicial notice of “Official acts of the
3 legislative, executive, and judicial departments of the United States and of any state of the
4 United States. Judicial notice of CX 31 – 68, 70-72, 75 & 76 is proper pursuant to Section
5 452(b) and/or 452(c) for the following reasons:

6 **1. Published adopted bills and Legislative Counsel Digests are admissible**
7 **without judicial notice (CX 31-36)**

8 Although CX 31-36 qualify for judicial notice as indicated below, judicial notice is not
9 required of published government records, including Legislative Council Digest reports.
10 (*Merced Irrigation Dist. v. Superior Court* (2017) 7 Cal.App.5th 916, 933; *People v. Rodriguez*
11 (2012) 55 Cal.4th 1125, 1129). The following exhibits attached to the Declaration of Robert
12 Mahlowitz are admissible without judicial notice:

13 a. **CX 31**, Assembly Bill No. 2210 (1986-1987), “An act to add Chapter 7.8
14 (commencing with Section 8698) to Division 1 of Title 2 of the Government Code (RMM
15 Decl., ¶ 4).

16 b. **CX 32**, Assembly Bill No. 932 (2017-2018), “An act to add and repeal
17 Section 8698.4 of the Government Code, relating to housing. (*Id.*, ¶ 6).

18 c. **CX 33**, Bill 765 (2017-2018) amending Section 8698.5 to add a CEQA
19 exemption. (*Id.*, ¶ 7).

20 d. **CX 34**, Assembly Bill 143 (2018-2019) expanding Section 8698.4 to
21 cover the San Jose, Alameda and Orange counties and cities within those counties. (*Id.*, ¶ 8).

22 e. **CX 35**, Assembly Bill No. 2253 (2019-2020), “An act to amend Section
23 8698.4 of the Government Code, relating to local government.” (*Id.*, ¶ 9).

24 f. **CX 36** is a true and correct copy of Senate Bill No. 1395 (2023-2024),
25 “An act to amend Section 8698.4 . . .of the Government Code. . . .” (*Id.*, ¶ 10).

26 **2. State legislative bills, legislative reports, Legislative Counsel Digest, and**
27 **state publications [CX 31 – 36 & 72][Evid. Code §§ 452(b) & (c)]**

28 As Regulations and legislative enactments issued by or under the authority a public

1 entity in the United States, and the official acts of the California legislatures, CX 31 – 36
2 qualify for judicial notice pursuant to Evidence Code section 452(b) and 452 (c). On that basis,
3 the City requests judicial notice of **CX 31 – 36** attached to the October 7, 2024 Declaration of
4 Robert M. Mahlowitz. Additionally, the City requests judicial notice of **CX 72**, printouts of
5 requirements of the California Department of Social Services to investigate unlicensed
6 operation of a community care facility. (RMM Decl., ¶ 28).

7 **3. Official actions and publications of the City of Los Angeles**

8 **[CX 37 -68, 70, 71, 75 & 76, Evid. Code §§ 452(b) & (c)]**

9 Judicial notice of the records listed below is proper pursuant to Evidence Code sections
10 452(b) and 452(c) because they are regulations or legislative enactments issued by or under the
11 authority of the City of Los Angeles and as the official acts of the legislative department of the
12 City of Los Angeles. Pursuant to either Evidence Code section 452(b) or (c), a court may
13 judicially notice the official resolutions, reports, and other official acts of a city. (*E.g., Trinity*
14 *Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1027 disapproved on other
15 grounds by *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193). On that basis, the
16 City requests judicial notice of CX 37 -68, 70, 71, 75 & 76 attached to the October 7, 2024,
17 Declaration of Robert M. Mahlowitz which are:

18 a. **CX 37, City ordinance 162520, effective June 19, adopting Los Angeles**
19 **Municipal Code (LAMC) LAMC 12.80.** (RMM Decl., ¶ 11.a).

20 b. **CX 38, April 17, 2018, City resolution affirming a declared shelter crisis.**
21 (*Id.*, ¶ 11.b).

22 c. **CX 39, January 21, 1992, City Ordinance 168440 amending LAMC**
23 **12.80.** (*Id.*, ¶ 11.c).

24 d. **CX 40, April 13, 1998, City Ordinance 16338,5 LAMC 12.80**
25 **Amendment.** (*Id.*, ¶ 11.d).

26 e. **CX 41, March 28, 2017 City Ordinance amending LAMC 12.03 and**
27 **12.81 and legislative history as part of that official action.** (*Id.*, ¶ 11.e).

28 f. **CX 42, April 28, 2017, City Ordinance establishing uncodified procedures**

1 to establish a homeless shelter during a declared shelter crisis adopted in advance of the
2 January 1, 2018, newly adopted Government Code section 8698 shelter crisis laws. (*Id.*, ¶
3 11.f).

4 g. CX 43, April 20, 2018, City Ordinance amending LAMC 91.8605 and
5 legislative history as part of that official action, including a letter issued by the State
6 Department of Housing and Community Development. (*Id.*, ¶ 11.g).

7 h. CX 44, March 27, 2019, City resolution requesting the City Attorney
8 prepare and submit an ordinance “that would align the LAMC with State Government Code
9 Section 8698 relative to the shelter crisis declaration” and legislative history as part of that
10 official action. (*Id.*, ¶ 11.h).

11 i. CX 45, October 4, 201, City Ordinance No. 186339 amending LAMC
12 12.80 and legislative history as part of that official action. (*Id.*, ¶ 11.i).

13 j. CX 46, June 23, 2023, City Ordinance No. 187922, adopting Los Angeles
14 Administrative Code (LAAC) section 8.33 and legislative history as part of that official action.
15 (*Id.*, ¶ 12).

16 k. CX 47, All versions of the official act of the Mayor of the City of Los
17 Angeles enacting Mayoral Executive Directive 1. (*Id.*, ¶ 13).

18 l. CX 48, All versions of the official act of the Mayor of the City of Los
19 Angeles enacting Mayoral Executive Directive 3. (*Id.*, ¶ 14).

20 m. CX 49 – 52, The October 20, 2023, resolution and Official Action of the
21 Los Angeles City Council approving the Midvale Shelter project by adopting the October 4,
22 2023 Report from the Housing and Homelessness Committee and the September 29, 2023
23 reports of the City Bureau of Engineering and City Administrative Officer. The Court
24 previously took judicial notice of these exhibits as part of its May 28, 2024, ruling on the
25 City’s demurrer to the First Amended Petition in this action. CX 51 is attached as Exhibit 13 to
26 the August 27, 2024, Stipulation Regarding Authentication of Petitioner’s Exhibits For
27 Opening Trial Brief (Exhibit Stipulation). CX 52 is attached as Exhibit 14 to Exhibit
28 Stipulation. (*Id.*, ¶ 15).

1 n. CX 53, the December 12, 2023, City resolution providing initial Midvale
2 service provider bid instructions to the Los Angeles Homeless Services Authority and all
3 components of that resolution. (*Id.*, ¶ 17).

4 o. CX 54, the December 12, 2023, City resolution providing revised Midvale
5 service provider bid instructions to the Los Angeles Homeless Services Authority and all
6 components of that resolution. (*Id.*, ¶ 18).

7 p. CX 55 – 68, the City resolutions and all components of those resolutions
8 approving City transitional shelters at the following locations: 3248 Riverside Drive, 1479 S.
9 La Cienega Blvd, 1455 N. Alvarado Street, Mayfair Hotel, 1060 N. Vignes Street, 406 N.
10 Bonnie Brae Street, 1818 S. Manhattan Place, 668 S. Hoover Street, 11471 Chandler Blvd,
11 1215 N. Lodi Place, 100 E. Sunset Blvd, 407 N. Beacon Street, 499 N. San Fernando Road, 14
12 N. Mission Road, 600 E 116th Place, 7570 North Figueroa Street, 2301 West 3rd Street,
13 Compton Avenue and Nevin Avenue, 9700 San Fernando Road,) 1533 N. Schrader Blvd,
14 1920 W. 3rd Street, and 850 N. Mission Road. (*Id.*, ¶ 19).

15 q. CX 70, a printout of the City’s 53 current specific plants. (*Id.*, ¶ 21.a).

16 r. CX 71, pages from the following City ordinances establishing specific
17 plans: (1) City Ordinance 171139, establishing the Alameda District Specific Plan (pp. 1 & 3);
18 (2) City Ordinance 174663, establishing the Avenue 57 Transit Oriented District Specific Plan
19 (pp. 1 & 7); (3) City Ordinance 182576, establishing the Bunker Hill Specific Plan (pp. 1 - 7).
20 CX 71 also contains The Central City West Specific Plan Document, presenting the original
21 adopting ordinance and all amending ordinances, Ordinance Nos. 166704, 167944, 169110,
22 176519, 179420, 180983, and 186370 (Pages 1 & 5). (*Id.*, ¶ 23).

23 s. CX 75, containing (a) The table of contents of the Los Angeles Municipal
24 Code (“LAMC”) showing all of its Chapters; (b) The table of contents of LAMC Chapter I -
25 General Provisions and Zoning; (c) The table of contents of LAMC Chapter I, Article 2 -
26 Specific Planning - Zoning - Comprehensive Zoning Plan; (d) the table of contents of LAMC
27 Chapter IX – Building Regulations; and (e) the table of contents of LAMC Chapter IX,
28 Division 86 - Special Provisions for Existing Buildings. (*Id.*, ¶ 32).

1 t. CX 76, Section 231 of the Los Angeles City Charter setting forth the
2 powers of the Mayor. (Id., ¶ 33)

3 **D. Court Records [CX 73 & 74, Evid. Code § 452 (d)]**

4 The City requests judicial notice of the following records of the Los Angeles County
5 Superior Court pursuant to Evidence Code section 452(d)

6 a. CX 73 is a copy of the January 2, 2024, First Amended Petition and
7 Complaint filed in *Fix the City v City of Los Angeles*, LASC Case No. 23STCP03519 (Dept.
8 82) (FTC-1), annotated to illustrate which allegations are identical to the allegations of the
9 Petitioner’s initial petition filed in this action on December 5, 2023. Exhibit 73 omits the
10 exhibits to the January 2, 2024 FAP.

11 b. CX 74, the June 5, 2024, judgment dismissing Fix’s petition *Fix the City v*
12 *City of Los Angeles*, LASC Case No. 23STCP03519, as well as the court’s May 30, 2024 order
13 sustaining the City’s demurrer to the First Amended Petition in that action.

14 **E. The records are relevant**

15 The exhibits above for which the City requests judicial notice are relevant to trial of the
16 First Amended Petition in this action as provided next.

17 **1. California Bills adopting provisions of Gov’t Code section 8698**

18 The records at CX 31 to 36 are bills enacted into law by the State Legislature enacting
19 and amending portions of Government Code section 8698 et. seq. These are all relevant to
20 demonstrating the scope of regulations showing the City’s approval of the Midvale low barrier
21 transitional homeless shelter was proper. Petitioner’s FAP seeks to set aside that approval.

22 **2. City ordinances adopting shelter crisis laws and shelter crisis declaration**

23 The records at CX 37 and 39 - 46 are City ordinances adopting and revising the City’s
24 shelter crisis laws, including LAMC 12.03 which provides the definition of “shelter for the
25 homeless” which Petitioner asserts disqualifies the Midvale Shelter from relying on LAMC
26 12.80 to approve the Midvale Shelter, thus requires the approval be set aside. These records
27 show the City’s intent when adopting its shelter crisis rules to align entirely with the definition
28 of “homeless shelter” set by Government Code section 8698.4(c) which includes no service-

1 based exclusions. The record at CX 38 is an April 17, 2018, City declaration of shelter crisis
2 which also states the City’s intent concerning the meaning of its own shelter crisis rules.

3 **3. Mayoral Executive Directives 1 and 3**

4 The records at CX 47 & 48 are the Mayor’s ED-1 and ED-3. ED-1 is relevant only to
5 refute Petitioner’s incorrect assertion that ED-1 bars all shelters for the homeless in a single-
6 family residential zone, thus bars the Midvale Shelter project. ED-1 shows that Petitioner’s
7 contention is incorrect and that the streamlined development program established by ED-1 may
8 not be applied in a single-family residential zone, but nothing more. ED-1 is not relevant to the
9 Midvale Shelter approval because the streamlined emergency development approval
10 established by ED-1 is not available for the development of the Midvale Shelter. In contrast,
11 ED-3 establishes a different streamlined development program, for which Lot 707 was
12 identified as qualified, thus presenting one of the grounds pursuant to which the Midvale
13 Shelter project approval was properly made.

14 **4. The City’s Midvale Shelter project approval**

15 The records at CX 49 – 52 are the components of the City’s approval of the Midvale
16 Homeless Shelter which Petitioner seeks to set aside as improper.

17 **5. The City’s Midvale service provider bidding instructions**

18 The records at CX 53- 54 present the City’s instructions to the Los Angeles Homeless
19 Services Authority concerning the timing of the City’s request to bid and award the service
20 provider agreement for the operation of the Midvale Shelter. These records show that the City
21 has requested a revised bid to be issued and that no service agreement will be in place before
22 trial of this action. This shows that Petitioner’s argument that the Midvale Shelter is a
23 Community Care Facility “CCF”), thus disqualified as a “shelter for the homeless” is not ripe
24 because no provider has agreed to provide specific services. This shows Petitioner’s argument
25 that the Shelter services could qualify as a CCF under the State Community Care Facilities Act
26 presents a hypothetical question for which no jurisdiction exists to consider.

27 **6. Twenty-two City transitional shelter approvals**

28 The records at CX 55 – 68, present examples of 22 transitional homeless shelters that

1 provide the same services as the challenged Midvale Shelter has been approved to provide, all
2 approved while the same City definition of “shelter for the homeless” at LAMC 12.03 has been
3 in effect. This shows that the City Council has determined its own definition of “shelter for the
4 homeless” encompasses all of the transitional shelters the City has developed as part of its
5 shelter crisis program, including the challenged Midvale Shelter.

6 **7. City specific plans**

7 The records at CX 70 and 71 establish that there are 53 specific plans in the City. The
8 petitioner argues that the City’s shelter crisis ordinance at LAMC 12.80, or thus any other
9 ordinance such as the homelessness emergency ordinance at LAAC 8.33, cannot set aside its
10 specific plans and that the City’s approval of the Midvale Shelter was required to, but did not,
11 comply with the Exposition Corridor Transit Neighborhood Plan, specific plan. (Pet. Opening
12 Trial Brief, pp. 6:17-22 & 11-13). These exhibits show that the City Council intended to set
13 aside specific plans along with all other planning and land use ordinances. They also show that
14 the City’s specific plans incorporate provisions of the Los Angeles Municipal Code’s planning
15 chapter, set aside by operation of LAAC 8.33 effectuating ED-3 and by operation of LAMC
16 12.80 and Government Code section 8698.4, thus have no ability to be enforced – again
17 showing the City Council intended specific plans to be set aside alongside all other City land
18 use regulations. CX 75 demonstrates the organization of the City’s Municipal Code, which
19 demonstrates which sections are set aside by operation of ED-3, which includes the set aside of
20 LAMC 12.80 and 12.03, which Petitioner asserts as a basis that the City’s approval of the
21 Midvale Project was not proper.

22 **8. Department of Social Services CCF license investigation procedures**

23 The records at CX 72 demonstrate the available procedures established by the DSS
24 allowing any person to trigger a DSS investigation of a facility to determine whether it is
25 operating as an unlicensed Community Care Facility. This is part of the City’s demonstration
26 that a full administrative review and appeal process exists before the DSS which Petitioner was
27 required to exhaust before it could ask a court to determine that a facility is a CCF, as the
28 Petitioner here improperly requests.

1 **9. Court records from *Fix the City v City of Los Angeles*, LASC Case No.**
2 **23STCP03519**

3 The records at CX 73 and 74 are records filed in *Fix the City v City of Los Angeles*,
4 LASC Case No. 23STCP03519 (“FTC-1”). The Petition at CX 73 shows Petitioner filed
5 identical facial challenges in FTC-1 and in its initial petition in this action (“FTC-2). Petitioner
6 argued in its response to the City’s demurrer to its first amended petition in this action that it
7 had dismissed these facial challenges to City enactments to pursue them solely in the FTC-1
8 action. In its April 1, 2024 demurrer opposition filed with this department, Petitioner wrote,
9 “Petitioner need not, and does not, challenge LAAC 8.33 in FTC-2. Petitioner’s First Amended
10 Petition (FAP) in FTC-2 removed any causes of action related to challenging LAAC 8.33. That
11 is now solely in FTC-1.” (Demurrer Opposition, p. 5:4-13). CX 73 demonstrates the facial
12 contentions Petitioner dismissed in this, FTC-2, action.

13 CX 74 is the court judgment of Petitioner’s facial challenges and the basis for them
14 entered in FTC-1, showing that these claims were asserted in FTC-1 as Fix explained when Fix
15 dismissed those claims from this FTC-2 action. This is relevant because Petitioner’s trial brief
16 asserts that provisions of the **Public Contract Code** set aside the City’s rules excusing
17 competitive bidding established by LAAC 8.33, and asserts the Public Contract Code pre-
18 empts City Charter bidding laws, including exceptions to bidding. All present facial challenges
19 to City laws which Petitioner asserts it dismissed. (Pet. Trial Brief, p. 18-20). In addition, the
20 City’s trial brief demonstrates Petitioner’s contentions are wrong.

21 **10. Charter Section 231**


22 The record at CX 76 is City Charter section 231, which establishes the Mayor’s
23 authority to issue executive directives. **ED-3** issued by the Mayor establishes the Midvale
24 Shelter **project approval was proper.**

25 **II. Conclusion**

26 The City requests the Court take judicial of City Exhibits 31 – 68 and 70 – 76. They are
27 all relevant, are authenticated, and are properly the subject of judicial notice.
28

1 Dated: October 7, 2024

Hydee Feldstein Soto, City Attorney
Valerie L. Flores, Chief Deputy City Attorney
John W. Heath, Chief Assistant City Attorney

2
3
4 By: 
5 **Robert M. Mahlowitz, Deputy City Attorney**
6 Attorney for Respondent, City of Los Angeles
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1 **PROOF OF SERVICE**

2 I, the undersigned, say: I am over the age of 18 years and not a party to the within
3 action or proceeding. My business address is 200 North Main Street, 701 City Hall East, Los
4 Angeles, California 90012.

5 On October 7, 2024, I served the foregoing documents described as: **Respondent City of Los**
6 **Angeles Request for Judicial Notice in support of its Opening Trial Brief** on all interested
7 parties in this action as follows:

8 **SEE ATTACHED SERVICE LIST**

9
10 [] **BY MAIL** – I placed a copy thereof enclosed in a sealed envelope addressed to each
11 addressee stated above. I deposited such envelope for collection, processing and
12 mailing by United States mail by my office in the ordinary course of business. I am
13 readily familiar with the business practice of my office for collection, processing, and
14 mailing of correspondence by the United States mail. Under that practice, it is
15 collected and deposited with first class postage thereon fully prepaid with the United
16 States Postal Service on that same day, at Los Angeles, California. I am aware that on
17 motion of the party served, service is presumed invalid if postage cancellation date or
18 postage meter date is more than one (1) day after the date of deposit for mailing in
19 affidavit; and/or

20 [X] **BY ELECTRONIC MAIL** – I electronically transmitted the document listed above to
21 the email address stated above which has been confirmed for each addressee stated
22 above. My electronic service address is leilany.roman@lacity.org.

23 I declare that I am employed in the office of a member of the bar of this court at whose
24 direction the service was made. I declare under penalty of perjury under the laws of the State
25 of California that the foregoing is true and correct. Executed on October 7, 2024, at Los
26 Angeles, California.

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Leilany Roman

SERVICE LIST

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<p>Robert P. Silverstein Esther Kornfeld Gabby Piceno James Link THE SILVERSTEIN LAW FIRM, APC 215 North Marengo Avenue, 3rd Floor Pasadena, CA 91101-1504 Tel: (626) 449-4200 Fax: (626) 449-4205 Robert@RobertSilversteinLaw.com, Esther@RobertSilversteinLaw.com Gabby@RobertSilversteinLaw.com James.S.Link@att.net</p> <p>FIX THE CITY, INC. Case Number: 23STCP04410 <i>Attorneys for Petitioners</i></p>	