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CITY OF CULVER CITY and CITY COUNCIL
OF THE CITY OF CULVER CITY

FILED
Superior Court of California
County of Los Angeles

MAY 26 2022

Sherri R. Carter, Executive Officer/Clerk
By [signature] Deputy
N. Didiambattista

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

YES IN MY BACK YARD, a California nonprofit corporation; and SONJA TRAUSS,

Petitioner and Plaintiff,

v.

CITY OF CULVER CITY; CITY COUNCIL OF THE CITY OF CULVER CITY; and DOES 1-25,

Respondents and Defendants.

CASE NO. 20STCV43253

~~[PROPOSED]~~ JUDGMENT GRANTING PETITION FOR WRIT OF MANDATE

Dept: 82
Judge: Hon. Mary Strobel
Hearing Date: February 22, 2022
Time: 9:30 a.m

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This matter came regularly before this court on February 22, 2022, at 9:30 a.m. for hearing in Department 82 of the Los Angeles County Superior Court, the Honorable Mary Strobel presiding. Ryan J. Patterson and Brian O'Neill appeared as attorneys for Petitioners and Plaintiffs Yes In My Back Yard and Sonja Trauss ("Petitioners"). June S. Ailin appeared as attorney for Respondents City of Culver City and City Council of the City of Culver ("Respondents").

The record of the administrative proceedings having been received into evidence and examined by the court, arguments having been presented, requests for judicial notice having been considered, and the court having issued an order stating the grounds for its ruling ("Order"), which was filed on February 22, 2022 and which is incorporated here by reference,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED that:

1. Judgment be, and hereby is, entered in favor of Petitioners and against Respondents for the reasons set forth in the Court's Order, a copy of which is attached hereto as Exhibit 1.

2. A peremptory writ of mandamus ("Writ") will issue from this Court, directing Respondents to take the following actions not later than 30 days from the date Respondents are served with the Writ:

a. Repeal Ordinance No. 2020-010 and its approval of zoning code amendment P2019-0036-ZCA.

b. Remove all changes to Title 17 of the City of Culver City Municipal Code effected by Ordinance No. 2020-010.

c. Refrain from enforcing any of the provisions of Ordinance No. 2020-010, specifically and including refraining from applying any provisions of Ordinance No. 2020-010 in performing plan check of documents submitted to the City for plan check as part of the building permit application process which were submitted to the City after July 13, 2020, the date on which Ordinance No. 2020-010 was approved by the City Council.

d. If persons with building permit applications in process or who have obtained building permits which were subject to the provisions of Ordinance No. 2020-010 choose to revise their plans and/or building permits in light of the judgment in this case, the City shall

credit all plan check and building permit fees paid previously against the plan check and building permit fees required under the City's fee schedule for the revised project.

3. The Court exercises continuing jurisdiction, and orders Respondents to file with the Court and serve on all parties a return to the Writ not later than 60 days from the date Respondents are served with the Writ, in which Respondents must demonstrate what they have done to comply with the Court's Order, this Judgment, and the Writ.

4. Under Code of Civil Procedure section 1096, the Court orders that electronic service of the Writ per the parties' electronic service stipulation in this case constitutes personal service of the Writ upon all named Respondents for all purposes, including but not limited to for purposes of sections 1096 and 1097 of the Code of Civil Procedure.

5. Petitioners are the prevailing parties entitled to recover costs per statute and Ca Rules of Court. Petitioners may file a motion for attorneys' fees separately per statute.

IT IS SO ORDERED.

Dated: 5/26/22

Hon. Mary Strobel
Judge of the Superior Court

Mary Strobel

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

20STCV43253
YES IN MY BACK YARD, A CALIFORNIA CORPORATION, et al. vs CITY OF CULVER CITY, et al.

February 22, 2022
9:30 AM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N DiGiambattista
Courtroom Assistant: R Monterroso

CSR: Cindy Cameron/CSR 10315
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Ryan J Patterson, Esq. (Telephonic) and Brian O'Neill (X)

For Respondent(s): June S. Ailin (x) (Telephonic)

NATURE OF PROCEEDINGS: HEARING ON PETITION FOR WRIT OF MANDATE

Matter comes on for hearing and is argued.

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Petitioner's exhibit 1 (administrative record) is admitted into evidence.

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The court adopts its tentative ruling except for the declaratory relief cause of action as the order of the court and is set forth in this minute order.

Petitioners Yes In My Back Yard ("YIMBY") and Sonja Trauss (collectively "Petitioners") petition for a writ of ordinary mandate directing Respondents City of Culver City and the City Council of the City of Culver City ("Respondents") to refrain from enforcing City's Ordinance No. 2020-010 (hereafter "Ordinance"). Petitioners also pray for an order declaring the Ordinance null and void.

Judicial Notice

Respondents' RJN Exhibits 1-3 – Granted.

Petitioners' Reply RJN Exhibits 1-2 – Granted.

Background

The City Conducts Research to Protect Neighborhood Character

In or about July 2017, the City retained John Kaliski Architects ("JKA") to conduct neighborhood studies to address community concerns regarding "mansionization" in the single-family residential zones. (AR 66.) In June-August 2018, JKA held a series of community

meetings that found, inter alia, that residents believed houses "should not be built to maximize the existing zoning envelope and allowable floor area ratio (FAR)," and that "new homes were too large and allowed excessive building area on a parcel." (AR 67, 69; see also AR 29, 170, 207, 210, 212, 216, 218, 392, 539, 553.) In its presentations, JKA defined FAR as the ratio of floor area to total lot area. (AR 12.)

Based on the public's input, JKA developed a set of recommendations for amending the City's R-1 development standards and also developed unique hillside development standards addressing the differences between development standards for the City's hillside neighborhoods relative to neighborhoods built on largely level topography. (AR 12-15, 36-57.) As relevant to the issues raised by Petitioners in this case, JKA's initial recommendations included the following proposed changes to the development standards:

- Change FAR from .60 to .45 for lots less than 10,000 square feet ("SF") and .35 for lots 10,000 SF and larger (AR 12)
- Modify the FAR definition "to include mezzanine area and accessory buildings in addition to any floor area within the main dwelling unit" (AR 12)

A footnote in the JKA recommendations states that the 0.60 FAR in existing standards "excludes detached garages in rear 1/3 of property and basements." (AR 12.) The JKA recommendations also states that the "existing" definition of FAR "is the ratio of floor area to total lot area" and that a basement is not included in the calculation. (Ibid.)

On May 8, 2019, the City held a Joint Study Session to discuss and provide direction on potential zoning changes for single-family homes. (AR 66.) In that session, JKA confirmed residents' opinions that "[h]ouses that maximize the existing zoning envelope and allowable [FAR] are consistently disliked across all neighborhoods." (AR 29.) Members of the Planning Commission and City Council discussed various zoning code amendments, including a reduction of the existing 0.60 FAR standard to 0.50. (AR 169-171.) A staff report states that "the intent of the proposed FAR reduction is to reduce bulk and mass of new structures as a part of overall allowable square footage." (AR 169.)

The City Council and Planning Commission also directed staff to consider how accessory structures, such as garages and ADUs, contribute to lot coverage and FAR. (AR 70.) City Planning staff and JKA held an internal meeting following the joint session where staff members noted that exempting ADUs from FAR calculations "[o]ptically encourages" ADUs. (AR 79.)

Housing Crisis of Act of 2019 (SB 330)

The California Legislature has determined that California's housing shortage is "a crisis of historic proportions despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing." (Gov. Code § 65589.5(a)(2)(J).) To address this crisis, the California Legislature enacted Senate Bill 330, the Housing Crisis Act of 2019, codified at Gov. Code § 66300 et al. ("SB 330"). As relevant to this case, SB 330 prohibits a local agency from enacting an ordinance that would reduce the "intensity of land use" for a zoning district below what was allowed under zoning ordinances in effect on January 1, 2018.

City's Ordinance Regarding ADUs and JADUs

On January 13, 2020, the City Council had adopted an ordinance regarding accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"), in compliance with new statutes requiring, among other things, that ADUs and JADUs not be counted toward FAR. (See Oppo. 7:22-26; AR 148-159.) The City's ordinance prohibits ADUs in the Culver Crest overlay zone, but not other hillside areas, due to differing topographic, roadway geometrics, and geologic conditions. (AR 140, 155, 156, 158.)

The City's Planning Commission Adopts Recommendations to the City Council Regarding Amending Development Standards in the R-1 Zone

On January 22, 2020, City staff presented to the City's Planning Commission revised recommendations from JKA for amendments to development standards for the single-family (R-1) residential zone. (AR 160-165, 166- 296, 297-306.) The recommendations included:

- Reduce the FAR in single-family neighborhoods from 0.60 to 0.45 (AR 169, 181)
- Exclude detached garages located "entirely behind" the dwelling unit from calculation of FAR (previously all detached garages were excluded from calculation of FAR) (AR 170)
- Increase front and side yard setbacks (AR 171)
- Count double height area twice in calculating FAR, but exclude 250 SF of that area from the calculation (AR 171-172)
- Allow half covered or uncovered parking in rear or sideyard setbacks (AR 172, 188-189)

The Planning Commission voted to recommend the changes to the City Council as proposed with the exception of the FAR. The Planning Commission recommended, on a 3 to 2 vote, that the FAR be changed to .50 instead of .45. (AR 304, 450-451.)

First Reading of Ordinance by City Council

The City Council held a public hearing on the Planning Commission's recommendation on May 26, 2020, and Ordinance No. 2020-010 ("Ordinance") was introduced. (AR 495-772.) The proposed changes to the development standards, largely in line with prior proposals, are summarized in the staff report for that meeting. (AR 513-516.) Much of the discussion at the meeting centered around whether the FAR should be .50 or .45. (AR 691-692, 742, 750-765.) The City Council decided to set the FAR at .45 and to adopt the other changes in the development standards as recommended by the Planning Commission. (AR 647-648, 768-770.)

Petitioners' Comments

On June 5, 2020, the City received a comment letter regarding the proposed ordinance from Petitioner Sonja Trauss of YIMBY Law. (AR 854-855.) Petitioners asserted that the proposed ordinance, particularly the FAR and setback modifications, would violate Government Code section 66300 of the Housing Crisis Act of 2019, also referred to as SB 330. (AR 854.) Among other things, the letter asserts: "The ordinance under consideration would violate [section 66300] in two ways. First, the reduction in permitted floor-area-ratio from .60 to .45 would clearly reduce the intensity of residential use in the affected zones. Second, the changes in the method by which side and front yard setback requirements are applied to buildings of particular heights would also result in a reduction in residential intensity permitted on affected sites." (AR 855.)

City Council Adopts the Ordinance

On the July 13, 2020 City Council agenda, the second reading and adoption of the Ordinance was again on the consent calendar. (AR 974 [item C-15].) The staff report concluded the Ordinance is consistent with SB 330, noting that the Ordinance did not reduce the number of units that could be built on a lot, facilitates construction of more units per lot, and overall does not actually decrease the total square footage allowed on a lot. (AR 981-983.) The City Council voted unanimously to approve the Ordinance. (AR 1058, 1075; see AR 1043-1058 [the Ordinance].)

Procedural History

On November 10, 2020, Petitioners filed their petition for writ of mandate pursuant to CCP section 1085 and complaint for declaratory relief.

20STCV43253
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Judge: Honorable Mary H. Strobel
Judicial Assistant: N DiGiambattista
Courtroom Assistant: R Monterroso

CSR: Cindy Cameron/CSR 10315
ERM: None
Deputy Sheriff: None

On December 8, 2020, Respondents filed an answer.

On April 29, 2021, at a trial setting conference, the court set the writ petition for hearing for February 22, 2022, and set a briefing schedule.

On December 9, 2021, Petitioners filed their opening brief in support of the petition. The court has received Respondents' opposition, Petitioners' reply, the administrative record, and the joint appendix.

Standard of Review

The petition for writ of mandate is brought pursuant to CCP section 1085. There are two essential requirements to the issuance of an ordinary writ of mandate under Code of Civil Procedure section 1085: (1) a clear, present, and ministerial duty on the part of the respondent, and (2) a clear, present, and beneficial right on the part of the petitioner to the performance of that duty. (California Ass'n for Health Services at Home v. Department of Health Services (2007) 148 Cal.App.4th 696, 704.) "An action in ordinary mandamus is proper where … the claim is that an agency has failed to act as required by law." (Id. at 705.)

"Normally, mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner. However, it will lie to correct abuses of discretion. In determining whether a public agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld. A court must ask whether the public agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires." (County of Los Angeles v. City of Los Angeles (2013) 214 Cal.App.4th 643, 654.)

"'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' …. Interpretation of a statute or regulation is a question of law." (Christensen v. Lightbourne (2017) 15 Cal.App.5th 1239, 1251.)

Petitioners bear the burden of proof and persuasion in a mandate proceeding brought under CCP section 1085. (California Correctional Peace Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4th 1133, 1154; Fukuda v. City of Angels (1999) 20 Cal. 4th 805, 817.)

Analysis

Petitioners contend that SB 330 "prohibits any reduction in FAR," and that the Ordinance plainly violates SB 330 because it reduces the existing FAR for residential properties in the City's R-1 Zone. (Opening Brief ("OB") 9-13.) Respondents interpret SB 330 differently. Respondents contend that Government Code section 66300, which codifies SB 330, "does not contain an absolute prohibition on certain changes in development regulations" and "recognizes that development regulations, if read literally and narrowly, may appear to reduce housing density and intensity when they do not." (Oppo. 4.) As framed, Respondents concede that the Ordinance, "if read literally," appears to reduce the intensity of land use by reducing the FAR in the R1 zone from 0.60 to 0.45. Nonetheless, Respondents contend that the Ordinance does not violate SB 330 because it does not "actually" reduce the maximum buildable square footage in the R1 zone and also facilities the development of ADUs and "housing for lower income households."

The parties raise questions of statutory interpretation. "The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (Nolan v. City of Anaheim (2004) 33 Cal.4th 335, 340.)

When interpreting a statute, the court must construe the statute, if possible to achieve harmony among its parts. (People v. Hall (1991) 1 Cal. 4th 266, 272; Legacy Group v. City of Wasco (2003) 106 Cal.App. 4th 1305, 1313.) "When the legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded." (Wasatch Property Management v. Degrate (2005) 35 Cal.4th 1111.)

Respondents' Exhaustion Defense

As a preliminary matter, Respondents argue that Petitioners "did not exhaust administrative remedies as to the claim the Legislature's intent was the creation of larger homes and more bedrooms." (Oppo. 11.) This argument is not persuasive. Exhaustion of administrative remedies is "a jurisdictional prerequisite to judicial review." (Cal. Water Impact Network v. Newhall County Water Dist. (2008) 161 Cal.App.4th 1464, 1489.) The petitioner is not required to have

brought the precise legal inadequacy that it raises before the trial court to the administrative agency's attention to preserve the issue for judicial review so long as the petitioner fairly apprised the agency of the substance of its claim. (Save Our Residential Environment v. City of West Hollywood (1992) 9 Cal.App.4th 1745, 1750.) As applied here, Petitioners clearly exhausted the pertinent argument that the Ordinance violates SB 330 because the change in FAR would reduce the intensity of residential use in the affected zone. (AR 854-855; see also AR 857-859, 955-956.) Respondents' exhaustion defense is denied.

SB 330 Generally Prohibits Reductions in FAR for Residential Parcels and Zones

In July 2020, when the Ordinance was adopted, Government Code section 66300 provided in pertinent part:

(b)(1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:

(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, "less intensive use" includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.

....[¶]

(f)(1) Except as provided in paragraphs (3) and (4) and subdivisions (h) and (i), this section shall prevail over any conflicting provision of this title or other law regulating housing development in this state to the extent that this section more fully advances the intent specified in paragraph (2). (2) It is the intent of the Legislature that this section be broadly construed so as to maximize the development of housing within this state. Any exception to the requirements of this section, including an exception for the health and safety of occupants of a housing development project, shall be construed narrowly.

(3) This section shall not be construed as prohibiting the adoption or amendment of a development policy, standard, or condition in a manner that:
(A) Allows greater density.
(B) Facilitates the development of housing.
(C) Reduces the costs to a housing development project.

....[¶]

(i)(1) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.

(See 2019 Cal. Legis. Serv. Ch. 654 (S.B. 330) (WEST) [bold italics added].)

As a preliminary matter, Section 66300(b)(1)(A) has been subsequently amended by the Legislature, including amendments enacted by SB 8 that went into effect in January 2022. The parties appear to agree that the court's determination of the legality of the Ordinance should be based on the statute in effect in July 2020. (See OB 9-11 and Oppo. 13-18, discussing 2020 version of section 66300.) For purposes of analysis in this tentative ruling, the court, like the parties, focuses on the version of section 66300 in effect in July 2020, when the Ordinance was adopted. In any event, it appears any relevant amendments to section 66300 are consistent with the court's interpretation of the July 2020 version set forth below.

Section 66300 defines "development policy, standard, or condition" to include a provision of or an amendment to a zoning ordinance. Here, the Ordinance is a "development policy, standard, or condition" within the meaning of section 66300 because it amends City's zoning code. (AR 147-153.)

Petitioners contend that the definition of "less intensive use" is clear and unambiguous and shows that SB 330 prohibits "any reduction" in FAR. (OB 10.) For the most part the court agrees. In the version in effect in July 2020, Section 66300 provided that "less intensive use includes, but is not limited to, reductions to height, density, or floor area ratio." (bold italics added.) When construing a statute, "significance should be given to every word, phrase, sentence and part of an act." (People v. McCart (1982) 32 Cal.3d 338, 342-343.) "The ordinary, familiar meaning of 'or' is a delineation of alternatives." (Kray Cabling Co. v. County of Contra Costa (1995) 39 Cal.App.4th 1588, 1593.) The Legislature's use of the word "or" shows that a "less

intensive use" includes a reduction in height, density, or floor area ratio, meaning that a reduction in FAR alone constitutes a "less intensive use."

Petitioners appear to contend that the definition of "less intensive use" also applies to the phrase "reducing the intensity of land use" in section 66300(b)(1)(A). (See OB 10:12-18.) Respondents contend that section 66300 "does not define the terms 'intensity of land use,' [and] 'intensity of housing.'" (Oppo. 14-15.) As noted above, SB 330 included an express definition of "less intensive use." Given the close similarity between the concepts of "less intensive use" and "reducing the intensity of land use," the court agrees with Petitioners that the definition of "less intensive use" is reasonably interpreted also to apply to "intensity of land use." When interpreting a statute, the court must construe the statute, if possible to achieve harmony among its parts. (People v. Hall (1991) 1 Cal. 4th 266, 272; Legacy Group v. City of Wasco (2003) 106 Cal.App. 4th 1305, 1313.) Respondents develop no reasonable interpretation of the statute under which a "less intensive use" includes a reduction in FAR, while a reduction in the "intensity of land use" does not. The court interprets section 66300(b)(1)(A) such that a reduction in "the intensity of land use" may be caused by a reduction in FAR. 1

The parties agree that section 66300(b) focuses on the effect of a change in development standards. (See OB 12-13; Oppo. 15:15-16; Reply 5-6.) Here, the Ordinance amended the development standards for the entire R1 zone. (See AR 1041-1058.) Section 66300(b)(1)(A) provides that "with respect to land where housing is an allowable use, … an affected city shall not enact a development policy, standard, or condition that would have any of the following effects: (A) …. reducing the intensity of land use within an existing … zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018." (bold italics added.) As discussed below, the pertinent issue here is whether the Ordinance has the effect of reducing FAR in the R1 zone to below what was allowed under the City's zoning ordinance in effect on January 1, 2018.

In the title to section III.B of the opposition, Respondents contend that section 66300 does not "absolutely prohibit" changes in development standards that affect housing density and intensity. (Oppo. 13-15.) While Respondents cite various provisions from section 66300, they provide no legal analysis in support of the assertion made. (See Oppo. 15:1-6.) As presented, this section of Respondents' brief is not persuasive.

Respondents also cite to section 66300(f)(3), which states that section 66300 "shall not be construed as prohibiting the adoption or amendment of a development policy, standard, or condition in a manner that: (A) Allows greater density. (B) Facilitates the development of

housing. (C) Reduces the costs to a housing development project." (Oppo. 14.)

While the argument is not fully developed by Respondents, the court views some potential ambiguity created by the definition of "less intensive use" in section 66300(b)(1)(A) and the interpretive instruction provided in section 66300(f)(3) that section 66300. In the abstract, if an amendment to a zoning ordinance had the effect of reducing FAR for residential parcels, but such FAR reduction also had the effect of allowing greater density or facilitating the development of housing, section 66300(f)(3) plausibly would suggest that, in such circumstances, a FAR reduction should not be viewed as a "less intensive use." However an arguably more reasonable interpretation is that section 66300(f)(3) is a general interpretive provision, not a statutory exemption from the requirements of section 66300(b)(1)(A). In any event, the court does not find this potential ambiguity in section 66300 to be dispositive in this case for reasons discussed further below.

Respondents contend that "statements of legislative intent make it clear the objective [of SB 330] was increased density – more dwelling units per lot – rather than increased square footage per dwelling unit." Relatedly, Respondents contend that "the Legislature is focused on additional homes, not additional bedrooms." (Oppo. 11.)

Statutes must be considered "in the context of the entire statutory system." (People v. Woodhead (1987) 43 Cal. 3d 1002, 1009.) The Legislature "is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof." (People v. Harrison (1989) 48 Cal.3d 321, 329.) The The legislature used the term less intensive use rather than density in section 66300. For example, the Housing Accountability Act, codified at Gov. Code § 65589.5 et al., which was amended as part of SB 330, defines "lower density" to include "any conditions that have the same effect or impact on the ability of the project to provide housing." (Gov. Code § 65589.5(h)(7).) If the Legislature had intended for SB 330 to only apply to zoning changes that would lower density, or have the same effect as lowering density, it would have used the term "lower density" in the same manner as in the Housing Accountability Act.

The statements of legislative intent cited by Respondents do suggest that the Legislature was focused in SB 330, to substantial degree, on increasing the housing supply and the number of available housing units in California. (See Oppo. 11, citing AR 1009-1011; see also Resp. RJN Exh. 1-2.) However, the Legislature has acknowledged that the housing crisis is caused by a variety of factors, including lengthy permitting times, fees, and "excessive standards for housing development projects." (Gov. Code § 65589.5(a)(1)(D) and (2)(B).) As argued by Petitioners in

reply, the statutory language that was eventually enacted demonstrates that the Legislature intended for Government Code section 66300(b) to cast a wide net to prohibit any standard that would potentially lessen the intensity of housing. (Reply 6-7; see Reply RJN Exh. 1, pp. 11-12.) Furthermore, in some circumstances, the development of larger, multi-generational houses instead of adding an ADU could be entirely consistent with the policies set forth in SB 330. (See discussion at OB 15, citing AR 961-962 [resident comment that building an ADU would be cost prohibitive for housing her aging father, and that expanding the main house was the preferred option for her family].)

The Legislature also broadly defined "less intensive use" to include "anything that would lessen the intensity of housing." (§ 66300(b)(1)(A).) Section 66300(f)(2) also states, "It is the intent of the Legislature that this section be broadly construed so as to maximize the development of housing within this state." The Legislature has therefore directed that any question of interpretation should land on the side of more protections for housing.

Based on the foregoing, section 66300(b)(1)(A) prohibited City from enacting a zoning ordinance that has the effect of reducing the intensity of land use in the R1 zone to below what was allowed under the City's zoning ordinance in effect on January 1, 2018. The court interprets "reducing the intensity of land use" in section 66300(b)(1)(A) to include a reduction in FAR for parcels within the applicable zone. Applying this interpretation, the court considers below whether the Ordinance violated section 66300(b)(1)(A).

Did the Ordinance Reduce FAR in the City's R-1 Zone?

Petitioners contend that the Ordinance effectively reduces FAR for R-1 parcels in violation of section 66300(b)(1)(A). (OB 12-13.) Respondents, in contrast, contend that the Ordinance does not "actually" result in a reduction of "maximum buildable square footage" in the R-1 zone. (Oppo. 15-16.)

In their briefs, the parties do not discuss the standard of review that the court should apply to these arguments. 2 The parties rely primarily on the language of the Ordinance and other undisputed evidence. In this context, the court applies a de novo standard in determining whether the Ordinance violates section 66300(b)(1)(A). However, even if a more deferential standard applies, the court would reach the same result.

Prior to enacting the Ordinance, the existing FAR limit for R-1 parcels in Culver City was 0.60. The Ordinance reduced the FAR for the primary residence from 0.60 to 0.45, a reduction of 0.15

FAR. (AR 169, 1046.) Thus, unless the definition of FAR materially changed in the Ordinance, it appears that the Ordinance reduced FAR in the R1 zone by about 0.15 (0.60 – 0.45.)

In the opening brief, Petitioners provide calculations suggesting that, including ADUs, the Ordinance reduced the effective or actual FAR for R-1 zones from 0.84 to 0.69, which (like the reduction from 0.60 to 0.45) is a difference of 0.15. (OB 12:3-22.) Petitioners represent, and Respondents do not dispute, that "state ADU law exempts ADUs from FAR regulations and requires the approval of a maximum of one 1,200 square-foot ADU per lot." (OB 12.) Thus, Petitioners calculate the "effective", pre-Ordinance FAR by multiplying 0.60 by the typical lot square footage and then adding a 1,200 square-foot ADU to the FAR calculation. Petitioners calculate the effective, post-Ordinance FAR in the same way, except they substitute 0.45 for 0.60 in the calculation of FAR excluding any ADU or JADU. Petitioners' calculations of effective FAR in the R1 zone before or after the Ordinance are reasonable and support the conclusion that the Ordinance reduced the intensity of land use in the R1 zone. While it is unnecessary for the court to quantify the reduction in the intensity of land use, Petitioners estimate that the Ordinance could have caused a total reduction in residential capacity of more than 3,000,000 square feet. (See OB 12 and fn. 2.)

Consistent with Petitioners' calculations, Respondents have made certain admissions suggesting that the Ordinance effectively reduced FAR in the R1 Zone. At the Planning Commission meeting held May 26, 2020, City's Planning Manager Michael Allen, stated that without the ordinance, actual "FAR would otherwise be approximately .85." (AR 671.) In their opposition brief, Respondents state that "maximum square footage on a typical 5,000 square foot loot, including areas that were modified to not count towards FAR, such as garages, and ADUs, is 4,250 square feet, which would result in an actual FAR of as much as .70. (AR 666-667; see also AR 981-982.)" (Oppo. 15:26-28.) Respondents appear to include ADUs in the calculation of FAR, but, as discussed below, they do not show with record citation that City's pre-Ordinance law included ADUs in the calculation of FAR. Respondents appear to admit that the Ordinance would reduce effective FAR from about 0.85 to 0.70, or a difference of about 0.15.

Respondents contend that Petitioners' calculations "ignore[] the fact the Ordinance also made changes in the type of building area included in calculating FAR, with the result being that the amount of square footage that can be built is not impacted by the Ordinance." (Oppo. 15:23-25.) As support for this contention, Respondents suggest that the Ordinance materially changed how City calculates FAR in the R-1 zone with respect to ADUs and JADUs, basements, garages, covered parking, setbacks, staircases, elevators, and other "double height spaces." (Oppo. 15-16, 17-18.)

Changes to FAR Related to Basements, Garages, Covered Parking, Setbacks, and "Double Height Spaces"

Respondents do not show any material changes to the calculation of FAR related to basements, garages, covered parking, setbacks, staircases, elevators, and other "double height spaces." (Oppo. 15-16, 17-18.)

The Ordinance made no changes to how basements are calculated toward FAR. The floor area of basements was excluded from FAR in the pre-Ordinance standards and also in the Ordinance. (See AR 1046-1055.)

Respondents do not cite any material changes to the FAR calculation with respect to covered parking. (Oppo. 15-16.)

The existing pre-Ordinance standards already exempted detached garages from FAR calculations. (See AR 1046-1055.) The Ordinance restricted this exemption to apply only to detached garages located in the rear half of the lot. (See AR 1051.) The Ordinance made no change with respect to attached garages, which are included in the FAR in the pre-Ordinance standards and under the Ordinance. (AR 1048, 1051.) Respondents have not cited any evidence that this change in the exemption for detached garages – specifically the inclusion of detached garages in the front half of the lot – shows that the Ordinance did not have the effect of reducing FAR.

As Petitioners note (see Reply 8, fn. 3), the Ordinance does contain one new 200-square-foot exemption for attached, front-facing garages within the Residential Hillsides Overlay Zone. (AR 1052.) Petitioners contend in reply that this zone represents a small portion of the total parcels affected by the Ordinance and that ADUs are prohibited in this zone. (See Reply 8, fn. 3.) While Respondents should address that reply contention at the hearing, Petitioners appear to be correct. (See e.g. AR 1052-53, 156-158.) In any event, Respondents do not show, with record citation, that this minor exemption, which does not apply throughout the R-1 zone, establishes that the Ordinance does not have the effect of reducing FAR in the R-1 zone.

While there were some minor changes to the setback requirements, Respondents do not show that any setback changes are dispositive to the FAR calculation. Previously, the front setback required for a single-story home was 20 feet; that setback is unchanged. (AR 1046.) For two-story homes, the previous requirement was 20 feet for the first story if the second floor were

stepped back an additional 5 feet, but 25 feet if the second story was not stepped back. The Ordinance changed that to simply 20 feet for the first story and 25 feet for the second story. (AR 1047.) While presumably this could have some minor impact on the FAR calculation for some two-story homes, Respondents fail to show, with record citation, that this change materially impacts the overall calculation of FAR after the Ordinance.

Respondents state that the Ordinance added a new 250-square-foot exemption for staircases, elevators, and other "double height" spaces. Respondents assert that "Double height spaces such as stairwells and elevator shafts increase mass but are not living space" and that this new provision "discourages double height spaces." (Oppo. 17-18.) The Ordinance added an exemption to FAR in the R1 zone which states that "Interior areas with ceiling heights greater than 14 feet shall be counted twice towards the floor area with the exception that the first 250 square feet of such areas shall be counted only once towards the floor area." (AR 995, 1051.) In reply, Petitioners cite a red-lined version of City's zoning code section 17.260.040, which was apparently the prior version of the Culver Crest Hillsides Overlay amended by the Ordinance. As Petitioners note (see Reply 8), this red-lined document suggests that, prior to the adoption of the Ordinance, City's relevant definition of FAR stated that "Staircases, elevator shafts, and the like, shall be counted as one (1) plane per floor." (AR 996.) The 250-square-foot exemption in the amended FAR definition was intended to discourage the construction of "a grand entry hall with a grand stair in it." (AR 410.) The court agrees with Respondents that the double counting of "double height spaces," except for the 250-foot exemption, seems consistent with the policies of SB 330 to encourage the development of housing and "living space." However, Respondents fail to show that, when the 250-foot exemption is applied, the double counting of "double height spaces" applies to a meaningful number of houses in City. On this briefing, the court has no basis to conclude that the new 250-square-foot exemption materially impacts the analysis of whether the Ordinance had the effect of reducing the intensity of land use in the R1 Zone.

Did the Ordinance Reduce or Change FAR in R1 Zone Related to ADUs and JADUs?

Petitioners argue persuasively that the prior 0.60 FAR did not preclude the development of ADUs. (See OB 13-14.) For the typical 5,000 square foot lot, a 0.60 FAR allows for a 3,000 square foot primary residence. In the proceedings below, architectural consultant JKA provided City a diagram showing the "typical massing" for a residence at the existing 0.60 FAR, plus "California's new maximum of 1,200 square feet, exempted from FAR, for an ADU." (AR 296.) This evidence, not rebutted or explained by Respondents, strongly suggests that the pre-Ordinance 0.60 FAR did not preclude homeowners in the R1 zone from developing a full-sized ADU on their property.

In their opposition brief, Respondents acknowledge that, before the Ordinance was passed, state law already prohibited City from counting ADUs and JADUs toward FAR. Respondents further appear to admit that, when the Ordinance was passed in July 2020, City had already amended its municipal code to exempt ADUs and JADUs from FAR. (See Oppo. 7; AR 148-159.) Based on this briefing, it appears that neither the 0.60 FAR in the pre-Ordinance development standards nor the 0.45 FAR in the Ordinance included ADUs or JADUs in the FAR calculation. (See Oppo. 7:22-26; see also AR 148-159 and 1046-1055.) Thus, in their opposition brief, Respondents do not show any material changes to the FAR calculation with respect to ADUs or JADUs. (Oppo. 15-16.)

Subject to argument at the hearing, the court concludes that the Ordinance violates section 66300(b)(1)(A) because it has the effect of reducing the intensity of land use in the R1 zone to below what was allowed under the City's zoning ordinance in effect on January 1, 2018. Specifically, the Ordinance reduces the intensity of land use because it causes a reduction in the FAR for the R1 zone. The reduction in FAR, both as defined in the zoning code and the "actual" or "effective" FAR including an ADU, was about 0.15. City had admitted that approximately 4,165 residential parcels are subject to the Ordinance. (AR 1133.) Applied across the entire R1 zone the reduction in FAR is substantial and clearly shows that the Ordinance reduces the intensity of land use in violation of section 66300(b)(1)(A).

Does the Ordinance "Incentivize" ADUs?; and Does the Ordinance Facilitate the Development of Housing for Lower Income Households and Increase Density?

In the administrative proceedings, City argued that the Ordinance incentivizes ADUs by reducing costs and providing property owners "a potential income source to offset their own housing costs and provide additional housing supply to multigenerational family members." (AR 982.) In their opposition brief here, Respondents similarly argue that the "Ordinance increase[s] the potential for construction of up to three dwelling units on a lot where only one unit could have been built." (Oppo. 12.) Relatedly, Respondents argue that "[a] property owner who wants to maximize square footage can do so by including an ADU or JADU on the property, which doubles density on an R-1 lot, and creates housing for lower income households as contemplated by § 66300(f)(A) and (C) and (j)." (Oppo. 18.)

Section 66300(f)(3) states that section 66300 "shall not be construed as prohibiting the adoption or amendment of a development policy, standard, or condition in a manner that: (A) Allows greater density. (B) Facilitates the development of housing. (C) Reduces the costs to a housing

development project."

Section 66300(j) states: "Notwithstanding subdivisions (b) and (f), this section does not prohibit an affected city or an affected county from enacting a development policy, standard, or condition that is intended to preserve or facilitate the production of housing for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or housing types that traditionally serve lower income households, including mobilehome parks, single-room occupancy units, or units subject to any form of rent or price control through a public entity's valid exercise of its police power."

The court has concluded above that the Ordinance violates section 66300(b)(1)(A) because it has the effect of reducing the intensity of land use in the R1 zone because it causes a substantial reduction in FAR. As noted above, and despite the reduction in FAR, there is a potential interpretation of sections 66300(f)(3) and (j) under which a reduction in FAR might be permissible if it allowed for greater density, facilitated the development of housing, reduced the costs to a housing development project, or facilitated the production of housing for lower income households. section 66300(b)(1)(A). As discussed further below, it is unnecessary for the court to resolve this issue of statutory interpretation under the circumstances of this case.

Respondents fail to support their contention that reducing FAR, as defined in City's zoning ordinances, encourages development of ADUs or reduces the costs of building an ADU. As discussed above, Petitioners argue persuasively that the prior 0.60 FAR did not preclude the development of ADUs. (See OB 13-14; see AR 296.) Based on the court's independent review of the record, the court has no reason to believe that the pre-Ordinance 0.60 FAR precluded homeowners in the R1 zone from developing a full-sized ADU (i.e. up to 1,200 square feet) on their property. Because full-sized ADUs could be developed under the pre-Ordinance standards in the R1 zone, the FAR reduction cannot be justified on the grounds that it allows greater density or facilitates the development of housing.

Nor does Respondents show that the Ordinance "reduces the costs to a housing development project." (§ 66300(f)(3)(C).) Respondents do not identify any pertinent "housing development project" or explain how the Ordinance reduced the costs for the project.

Finally, Respondents do not show that the Ordinance falls within the exemption set forth in section 66300(j). This exemption provides a specific list of four instances where a zoning change to a less intensive use is allowed – none of which is applicable to changes intended to facilitate ADUs. ADUs are not restricted as housing for qualified lower income households, are not

mobilehome parks, are not single-room occupancy units, and are not necessarily subject to rent or price control. Respondents have provided no evidence to demonstrate that ADUs within the City qualify as "housing for lower income households" within the meaning of section 66300(j).

Based on the foregoing, Respondents do not show that the Ordinance is permissible under section 66300(f)(3) or (j).

Does the Ordinance Effectively Lower Density?

SB 330's definition of "less intensive use" includes a list of specific changes that constitute a less intensive use, such as reductions in density or FAR. However, the definition also provides a catchall provision that includes "anything that would lessen the intensity of housing." (Gov. Code § 66300(b)(1)(A).)

Petitioners contend that the Ordinance effectively lowers density, in violation of section 66300(b)(1)(A), because "definitions were added to prohibit an owner from creating multiple independent living spaces within a single unit, which was entirely permissible prior to the enactment of the ordinance." Specifically, Petitioners contend that the Ordinance added definitions to the term "kitchen" and "dwelling unit" to explicitly prohibit more than one kitchen per unit. (OB 16, citing AR 321-22.) Petitioners contend that the definitions were added to address concerns that "people were building lots of kitchens in units and, in essence, were creating internal apartment buildings…." (OB 16, citing AR 321-22.)

The revised definition of dwelling unit in the Ordinance states that "a dwelling unit shall have no more than one (1) kitchen." (AR 1051.) While perhaps not dispositive on its own, in conjunction with the FAR reduction this limitation on building more than one kitchen in a dwelling unit is an additional factor showing that the Ordinance "lessen[s] the intensity of housing" in violation of SB 330 and section 66300(b)(1)(A). Respondents failed to address this issue in opposition and apparently concede this argument. (See Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc. (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].)

SB 330 Exemptions

As noted by Petitioners in the opening brief, Section 66300(i) provides certain exemptions from section 66300(b)(1)(A). (OB 17.) The most relevant exemption states: "This section does not prohibit an affected county or an affected city from changing a land use designation or zoning

ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity." (§ 66300(i)(1).) In their opposition brief, Respondents have not argued that any of the exemptions in section 66300(i) apply here.

For the reasons stated above, the Ordinance violates section 66300(b)(1)(A) because it has the effect of reducing the intensity of land use in the R1 zone to below what was allowed under the City's zoning ordinance in effect on January 1, 2018. Respondents do not show any valid exemptions. Accordingly, the offending provisions of the Ordinance must be set aside.

HDC's Statements Regarding the Ordinance Are Not Entitled to Deference

Respondents contend that "HCD was on notice of the City's Ordinance, both before and after its adoption, and concluded it did not have any issues with the Ordinance's consistency with SB 330. (AR 1122- 1130, 1373-1383.)" (Oppo. 16.)

To the extent "purely legal issues involve the interpretation of a statute an administrative agency is responsible for enforcing, [the court] exercise[s] [its] independent judgment, 'taking into account and respecting the agency's interpretation of its meaning.'" (Housing Partners I, Inc. v. Duncan (2012) 206 Cal.App.4th 1335, 1343.)

The deference owed to an administrative agency's interpretation of a statute "has limits" and depends on the circumstances of each case. (Orange Citizens for Parks & Recreation v. Superior Court (2016) 2 Cal. 5th 141, 146; see American Coatings Assn. v. South Coast Air Quality Management Dist. (2012) 54 Cal.4th 446, 461-462.)

In this case, an individual HCD staff member remarked that the ordinance "seems to be inline with SB 330" after she received multiple emails explaining City's position about the alleged validity of the Ordinance. (AR 1123.) This same staff member had previously explained that the Ordinance's consistency with SB 330 was "actually a hard question" because "what it could impact in the number of bedrooms that can be built in a structure, that might trigger the less intensive use provision." (AR 1127.) This staff member's equivocal opinion is not dispositive of HCD's position or the legality of the ordinance. Nor do Respondents show that HCD had any obligation to review the Ordinance formally at the time of its adoption or that HCD provided any formal opinion on the Ordinance. In these circumstances, HCD's equivocal and informal opinion in the record is entitled to no deference.

20STCV43253 February 22, 2022
YES IN MY BACK YARD, A CALIFORNIA CORPORATION, 9:30 AM
et al. vs CITY OF CULVER CITY, et al.

Judge: Honorable Mary H. Strobel
Judicial Assistant: N DiGiambattista
Courtroom Assistant: R Monterroso

CSR: Cindy Cameron/CSR 10315
ERM: None
Deputy Sheriff: None

The court schedules a status conference for March 17, 2022, at 1:30 p.m. in Department 82 regarding whether further proceedings with respect to the declaratory relief cause of action are necessary. Counsel are to meet and confer regarding any possible severance.

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Counsel for petitioner is to give notice.

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FOOTNOTES:

1- Although not dispositive to the court's interpretation of the 2020 version of section 66300(b)(1)(A), the court notes that the 2022 amended version now defines the phrase "reducing the intensity of land use" instead of the phrase "less intensive use." Like the prior definition of "less intensive use," the 2022 version defines "reducing the intensity of land use" to include "reductions to … floor area ratio." The amended definition also includes "any other action that would individually or cumulatively reduce the site's residential development capacity." (2021 Cal. Legis. Serv. Ch. 161 (S.B. 8) (WEST).)
2- In violation of Local Rules, Respondents' brief does not include any discussion of the applicable standard of review. (Local Rule 3.231(i).)

PROOF OF SERVICE

Yes In My Back Yard, et al. vs. City of Culver City, et al.
Case No. 20STCV43253

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

On May 24, 2022, I served true copies of the following document(s) described as **[PROPOSED] JUDGMENT GRANTING PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

ZACKS, FREEDMAN & PATTERSON, PC
Ryan J. Patterson, Esq.
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San Francisco, CA 94111
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Attorneys for Petitioner and Plaintiffs YES IN MY BACK YARD SONJA TRAUSS

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address cevans@awattorneys.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on May 24, 2022, at El Segundo, California.

Claire Evans

Claire Z. Evans