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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CALIFORNIANS FOR HOMEOWNERSHIP, INC. a California nonprofit public benefit corporation, and YES IN MY BACK YARD, a California nonprofit public benefit corporation Petitioners, v. CITY OF LOS ANGELES, a municipal corporation; Respondent.	Case No.: 25STCP00546 *Assigned to Hon. James C. Chalfant, Dept. 85* **CITY'S NOTICE OF DEMURRER AND DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** [Filed concurrently with Declaration of Kathryn Phelan and Request for Judicial Notice in Support of City's Demurrer, and [Proposed] Order] Hearing Date: June 12, 2025 Hearing Time: 9:30 a.m. Department: 85 Action Filed: February 13, 2025 Trial Date: Not Set

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

NOTICE IS HEREBY GIVEN that on June 12, 2025, at 9:30 a.m. in Department 85 of the above-entitled Court located at the Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles, California, 90012, the Honorable James C. Chalfant, presiding, Respondents, City of Los Angeles will and hereby do demur to the Verified First Amended Petition for Writ of Mandate ("Petition") filed by Petitioners Californians for Homeownership, Inc. and Yes in My Backyard ("Petitioners") against the City in its entirety and demurrer specifically to the First Cause of Action (Writ of Mandate to Compel Rezoning [Gov. Code §§ 65587; C.C.P. §1085), and the Second Cause of Action (Gov. Code §§ 65583; C.C.P. § 1085) therein.

The City demurs pursuant to Code of Civil Procedure sections 430.10(a) and (e) and related case law, on the basis that the Petition fails to plead facts sufficient to constitute a cause of action against the City and this Court lacks jurisdiction over the cause of action which raises only non-justiciable issues that seek to invade the discretion of the City.

This Demurrer is based on this Notice, the attached Demurrer, the attached Memorandum of Points and Authorities, and the concurrently filed Request for Judicial Notice with exhibits and Declaration of Kathryn Phelan, on all documents on file herein, and upon other oral and documentary evidence as may be presented at the time of the hearing on this matter.

As outlined in the accompanying Declaration of Kathryn Phelan, counsel for the City timely met and conferred with Petitioners' counsel regarding the grounds for this demurrer, as required by Code of Civil Procedure § 430.41(a)(3) but did not reach an agreement resolving the matters raised in the Demurrer.

DATED: May 1, 2025

Respectfully submitted,

HYDEE FELDSTEIN SOTO, City Attorney

By: _____

Kathryn Phelan, Deputy City Attorney
Attorney for Respondent

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DEMURRER

The City demurs to the entire Petition and to each cause of action pled against the City in the Petition, the First Cause of Action (Writ of Mandamus), and Second Cause of Action (For Relief Under Code of Civil Procedure § 526a), on the following grounds:

DEMURRER TO PETITION

1. The entire Petition fails to state facts sufficient to constitute a cause of action against the City. (Code Civ. Proc. § 430.10(e).)
2. The entire Petition fails because the Court has no jurisdiction over the City regarding the subject of any cause of action alleged in the pleading against the City. (Code Civ. Proc. § 430.10(a).)

DEMURRER TO THE FIRST CAUSE OF ACTION

1. The first Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10(e).)
2. The first Cause of Action fails because the Court has no jurisdiction over the subject of the cause of action alleged in the pleading. (Code Civ. Proc. § 430.10(a).)

DEMURRER TO THE SECOND CAUSE OF ACTION

1. The second Cause of Action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10(e).)
2. The second Cause of Action fails because the Court has no jurisdiction over the subject of the cause of action alleged in the pleading. (Code Civ. Proc. § 430.10(a).)

DATED: May 1, 2025

Respectfully submitted,
HYDEE FELDSTEIN SOTO, City Attorney



By: _____
Kathryn Phelan, Deputy City Attorney
Attorney for Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The City of Los Angeles (City) files this demurrer because Petitioners, Californians for Homeownership and Yes In My Backyard, fail to plead a ministerial duty and otherwise seek to control the City's legislative discretion in rezoning. Petitioners have not pled any regulatory text or facts to support their claim the City failed to complete its regional housing needs assessment (RHNA) rezoning pursuant to Government Code Section 65583(c)(1)(A)[1] (RHNA Rezoning), or their claim the City failed to complete actions required by programs in the City's Housing Element. Instead, Petitioners have pled deficient claims as a means to improperly propound discovery in a case that facially challenges the City's adopted rezoning legislation, a case that is, by law, limited to a review of the record before the City's legislative body.

The City timely adopted rezoning ordinances and other legislation to increase the housing development capacity of tens of thousands of parcels by the City's RHNA Rezoning deadline of February 12, 2025. This is the rezoning required by Section 65583(c)(1)(A) that is intended to make up for the City's shortfall of adequately zoned sites to accommodate the City's RHNA.

Ignoring the RHNA Rezoning text, Petitioners instead misread Section 65587(d)(1) to claim that the Court should order the City to rezone beyond its RHNA, and that the City must complete every action listed in the City's Housing Element rezoning program (Program Actions) by the RHNA Rezoning deadline. Petitioners' interpretation of the phrase "rezoning required" in Section 65587(d)(1) is wrong under the plain language of the statute and the statutory scheme and would lead to the absurd consequence of an order for the City to rezone more housing capacity when it has already rezoned for more than double its RHNA shortfall. Even assuming arguendo Petitioners' interpretation of Section 65587(d)(1) is correct, the City has complied with Program 121, because Program 121 only committed the City to rezone in order to accommodate its RHNA.

Petitioners' other claims under the first cause of action also fail because there is no regulatory text establishing a ministerial duty to support those claims. There is no statutory obligation for the City to publish information or analysis on its rezoning program. And in any

[1] All statutory references in this memorandum are to the Government Code unless otherwise expressly provided.

case, the City did publish such information and analysis. Further, there is no violation of Section 65583.2(h)(1) because the City is not prohibited from establishing a list of low-income sites that may be modified in the future. Finally, the City has not failed in any of its Housing Element commitments; and there is no jurisdiction for the Court to issue a writ of mandamus because all of the programs in the City's Housing Element are discretionary, with implementation subject to available resources and future policy decisions.

II. SUMMARY OF PERTINENT FACTUAL ALLEGATIONS

A. Program 121 Is the City's RHNA Rezoning Program

On November 24, 2021, the Council adopted the 2021-2029 Housing Element (Housing Element)[2]. (RJN Ex.B.1 and B.2.) On June 29, 2022, the California Department of Housing and Community Development (HCD) certified the Housing Element as substantially compliant with Article 10.6 (Housing Elements) of Chapter 3 (Local Planning) of the Division 1 (Planning and Zoning) of the Government Code (the State Housing Element law), including Section 65583(c)(1)(A). (RJN Ex. J at 89.) Section 65583(c)(1)(A) requires an agency to include a program in its housing element to adequately rezone sites by certain deadlines in order to make up for an agency's shortfall in its existing inventory of land zoned to accommodate its RHNA. Program 121 in the Housing Element identifies itself as the City's program to rezone land to comply with Section 65583(c)(1)(A). (RJN Ex.M at 132.)

B. The City Completed RHNA Rezoning by its Statutory Deadline

To comply with the RHNA Rezoning provision by the City's deadline of February 12, 2025[3], the Council adopted the following ordinances between December 4, 2024 and February 7, 2025: Downtown Community Update (DTCPU) zoning ordinances, Hollywood Community Plan Update (HCPU) zoning ordinances; the Citywide Housing Incentive Program ordinance (CHIP), the Housing Element Sites and Minimum Density Ordinance (HESMD), and the Resident Protections Ordinance (RPO). (RJN Exs.D.1, D.2, D.3, E.1, E.2, F.1, F.2, F.3. G.1, G.2, G.3, H.1, H.2, H.3.) The CHIP Ordinance staff report identified the above ordinances (collectively, the

[2] Targeted amendments were adopted on June 14, 2022. (RJN Ex.C.1 and C.2.)

[3] Section 65583.4 extended the City's rezoning deadline to February 12, 2025.

"City's RHNA Rezoning Program") as intended to meet the State rezoning requirements:

> **Alongside the CHIP Ordinance, it is expected that the Downtown and Hollywood Community Plan updates will be effectuated by February 12, 2025, to comply with the statutory deadline for rezoning**. The CHIP, RP[O], and HESMD Ordinances will work alongside the City's more localized planning tools to create citywide incentive-based strategies to provide affordable housing **and to meet the housing needs identified in the 2021-2029 Housing Element**." (RJN Ex.F.5 at 46.)

The Council adopted findings that the City's RHNA Rezoning Program would implement Program 121 and far exceed the City's statutory RHNA Rezoning obligations. The findings read:

> Under Housing Element law, the City must demonstrate that it has adequate land zoned to accommodate the entirety of its 2021-2029 Regional Housing Needs Assessment (RHNA) allocation of 456,643 housing units. …the City's 2021-2029 Housing Element identified a need to create a Rezoning Program to meet the 255,432 unit shortfall. **The City proposes two mechanisms, through the adoption of the Citywide Housing Incentive Program (CHIP) and two Community Plan Updates (Downtown LA and Hollywood Community Plans) to accommodate the RHNA shortfall.**
>
> **The Housing Element included Program 121 (RHNA Rezoning)…, which outlined the City's strategy to address the remaining RHNA shortfall and meet state law**. …
>
> If adopted, **the total added capacity to the City's existing zoning from CHIP and the Community Plans will more than twice exceed the City's RHNA shortfall**. (RJN Ex.F.4 at 31-33 [emphasis added].)

III. STANDARD OF REVIEW

A demurrer should be sustained where "the pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc. § 430.10(e).) It may be asserted where: (i) the court has no jurisdiction of the subject of the cause of action alleged; or (ii) the pleading does not state facts sufficient to constitute a cause of action. (Code Civ. Proc. §430.10(a) and (e).) The grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. (Code Civ. Proc. §430.30(a); *Blank v. Kirwan*, (1985) 39 Cal.3d 311, 318.) A writ under Code Civ. Proc. §1085 is only available to compel the performance of an act which the law specifically enjoins as a duty where a statute or ordinance proscribes a "clear, present and usually ministerial duty." (Code Civ. Proc. §1085(a); *Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 632.)

IV. ARGUMENT

A. The First Cause of Action Does Not State Facts Sufficient to Support a Claim that the City Has Not Complied with the RHNA Rezoning Requirements and Deadlines in State Law.

Petitioners erroneously contend the City has not complied with RHNA Rezoning requirements because it has not taken every action in Program 121 and prays for a Court order to require the City to complete its rezoning. (FAP at ¶56, 67.) This is based on what appears to be a misconstruction of Section 65587(d)(1) and its reference to "required rezoning" in Section 65583(c)(1)(A) to mean taking every rezoning action referenced in a housing element program, rather than rezoning to meet an agency's RHNA shortfall.

Petitioners' interpretation of "required rezoning" in Section 65587(d)(1) is not supported by the plain language of the statute or the statutory scheme, or the strong policy to avoid absurd consequences in statutory interpretation as discussed below.

1. The "required rezoning" in Section 65587(d)(1) is a reference to the RHNA Rezoning necessary to accommodate the City's shortfall in housing development capacity, not every Program Action identified in the Housing Element.

To support relief under Section 65587(d)(1), Petitioners erroneously allege the City failed to complete every community plan update, specific plan, and piece of rezoning legislation that was contemplated in Program 121. (FAP at ¶31-33, 35-36.) They allege:

> "The City's rezoning program is contained in Program 121 of its housing element, which commits the City to rezone parcels to accommodate an identified shortfall of 255,432 units, including 130,553 units of housing for lower income households." (FAP at ¶31.) "Program 121 anticipates that this rezoning will take the form of nineteen specific actions: sixteen community plan updates, the adoption of two specific plans, and the establishment of a new citywide affordable housing incentive program." (FAP at ¶32.) "At most, as of the date of this Amended Petition, the City has completed six of nineteen actions anticipated in Program 121." (FAP at ¶33). "Additionally, in Program 65 of the City's housing element, the City committed to implement community plan and neighborhood plan updates, with adoption processes starting between 2021 and 2023." (FAP at ¶35.) "To date, the City has not even begun the adoption process for most of the community plan updates required by Program 65." (FAP at ¶36.)

Petitioners' allegations do not support an action under Section 65587(d)(1). They fail to read subdivision (d)(1) within the context of other Housing Element laws, and impermissibly add

text to the statute. Section 65587(d)(1) provides that if a court finds a city "failed to complete the rezoning required by [Section 65583(c)(1)(A)] the court shall issue an order or judgment … compelling the local government to complete the rezoning within 60 days …." The "rezoning required" in Section 65583(c)(1)(A) is rezoning to meet any shortfall in an agency's existing inventory of sites necessary to accommodate its RHNA. Section 65583(c)(1)(A) reads:

> (A) **Where the inventory of sites**, pursuant to paragraph (3) of subdivision (a), **does not identify adequate sites to accommodate the need** for groups of all household income levels pursuant to Section 65584, a program for **rezoning of those sites**, subject to the following deadlines: ….[4]

Petitioners improperly ask the Court to modify or insert the below underlined language into Section 65587(d)(1), so it would instead read: "[agency] failed to complete the <u>program</u> required by [65583(c)(1)(A)]" or "[agency] failed to complete the rezoning <u>included in the program</u> required by [65583(c)(1)(A)]." However, courts are admonished to not insert language in statutes when interpreting them. (*Wells Fargo Bank v. Superior Court* (1991) 53 Cal.3d 1082, 1097 [inserting word violates "cardinal rule" that statutes be interpreted as written].)

To the extent there is any ambiguity in what "required rezoning" refers to in Section 65587(d)(1), a review of the statutory context supports that it means rezoning adequate to accommodate the City's required RHNA. (*Moyer v. Work. Comp. App. Bd*. (1973) 10 Cal.3d 222, 230, 232 [word susceptible of different meanings construed in conformity with general purpose of statute].)

Section 65587(d)(1) is found in State Housing Element law which is expressly intended to ensure that cities and counties have adequate zoning capacity to accommodate their RHNA. The Legislature's findings read: "designating and maintaining a supply of land and adequate sites suitable, feasible, and available for the development of housing sufficient to meet the locality's ***housing need*** for all income levels is essential to achieving the state's housing goals and purposes of this article." (Gov. Code, § 65580(f).) The express intent is "to ensure each local government cooperates with other local governments in order to address regional ***housing needs***." (Gov. Code,

[4] The City's deadline was extended by Section 65583.4 to February 12, 2025.

§ 65581(d)). And that, "cities … undertake all necessary actions to … accommodate the entire ***regional housing need***…." (Gov. Code, § 65584(a)(2).)

To meet this intent, the scheme makes agencies study, identify, plan and then rezone adequate sites to meet an agency's RHNA in order to cover any shortfall in housing development capacity identified in the housing element. (Gov. Code, §§ 65583(c)(1)(A), 65583.4, 65587(d)(1).) It involves determining RHNA unit requirements for every city and county in the State. (Gov. Code, §§ 65584-65584.6.) It requires every city and county to prepare and adopt housing elements to plan for their RHNA. (Gov. Code, §§ 65583-65583.4, 65585-65588.) Housing elements are required to "consist of an identification and analysis of existing and projected ***housing needs*** …. [and] identify adequate sites … and … make adequate provision for the existing and ***projected needs*** …." (Gov. Code, § 65583.)

An interpretation that requires an agency to complete all rezoning actions referenced in a program without regard to an agency having met its RHNA—the absurd result sought in this case—is contrary to the State Housing Element law scheme and should be rejected. Such an interpretation fundamentally ignores the purpose of the housing element and RHNA Rezoning as a tool to satisfy a jurisdiction's RHNA requirements.

Finally, Petitioners' interpretation should be rejected because it requires the Court to replace the Council's discretion with its own regarding the type of legislation used to satisfy the City's RHNA unit requirements, and the timing of Program Actions after the City has zoned for its RHNA. This conflicts with the statute. Section 65581(c) provides the law is intended "to recognize each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such determination is compatible with the state housing goal and regional housing needs."

Here, the City chose which rezoning ordinances to adopt to fully accommodate its RHNA shortfall and satisfy its statutory requirements. (RJN Ex.F.4 at 33). However, Petitioners are asking the Court to decide that the City needs to adopt additional ordinances to accommodate the City's RHNA, demanding more development capacity than is legally required under the City's RHNA obligations – a policy decision that is reserved for the City and not the Court.

Under Section 65583(c), all programs in a housing element, including the rezoning

program, may include actions that will be "ongoing" during the "planning period." (Gov. Code Sec. 65583(c).) Nothing in the statutes prohibit the City from listing ongoing actions in its Section 65583(c)(1)(A) RHNA rezoning program. (*Yost v. Thomas* (1984) 36 Cal.3d 561, 572-573 (rejecting limitation on local discretion in land use authority under Coastal Act where the Act left local agency broad discretion as to content and implementation). As such, some Program Actions in Program 121, Program 65 and elsewhere in the Housing Element, will occur over the course of the Housing Element period and provide additional development capacity beyond the "rezoning required" in Section 65587(d)(1).

A court may not supplant its discretion for an agency when an agency, like the City, exercises its discretion over selecting the timing and type of land use legislation. "Zoning and rezoning ordinances, and the adoption of an amendment to general plans, are legislative actions." (*W.W. Dean & Assocs. v. City of S. San Francisco* (1987) 190 Cal.App.3d 1368, 1374.) "[E]xcessive judicial interference with the [agency's] quasi-legislative actions would conflict with the well-settled principle that the legislative branch is entitled to deference from the courts because of the constitutional separation of powers." (*Western States Petroleum Administration v. Superior Court* (1995) 9 Cal.4th 559, 572.) "[M]andamus cannot be applied to control discretion as to a matter lawfully entrusted to a governmental agency. . .." (*Cal. Slurry Seal Ass'n v. Dep't of Indus. Rels.* (2002) 98 Cal.App.4th 651, 662 [internal cites and quotes omitted].)

2. Assuming arguendo, "required rezoning" in Section 65587(d)(1) refers to the rezoning program, the City fulfilled its commitments in Program 121

Assuming *arguendo*, the required rezoning in Section 65587(d)(1) is intended to mean the implementation of its Program 121 commitments, the City satisfied that program. Program 121 only committed the City to complete RHNA Rezoning, or rezoning for the City's unmet RHNA. As found by HCD, the City's Housing Element complied with state housing element laws. (RJN Ex.J). As such Program 121 complied with Section 65583(c)(1)(A), the RHNA Rezoning requirement. Program 121 reads:

> To accommodate the remaining RHNA of 255,432 units, [City Planning] ***will*** identify and recommend rezoning for a minimum of 124,880 moderate and above moderate units and a minimum of 130,553 lower income (VLI and LI) units by October 30, 2024. [RJN Ex.M at 132-133.]

Program 121 did not commit the City to all proposed actions discussed in the program text. Instead the text anticipated what actions might be taken for purposes of RHNA Rezoning. It reads:

> The Rezoning Program is ***anticipated to be*** implemented through a number of work efforts including updates to ***up to*** 16 Community Plans (four West LA plans and six SE/SW Valley plans, two Downtown plans, Boyle Heights, Hollywood, Harbor-Gateway and Wilmington), two Specific Plans (CASP and Slauson TNP) as well as at least one citywide ordinance that will create additional zoning capacity through an expansion of affordable housing incentive programs (Density Bonus Update - See Program 48) or other zoning code amendments, as further described below. (RJN Ex.M at 132-133 (emphasis added).)

"Anticipated" is defined in Merriam-Webster Dictionary as "expected or looked-forward to." (www.Merriam-Webster.com, accessed on April 18, 2025.) This language "lacks the type of directive that courts use to determine whether a policy is mandatory." (*San Francisco Tomorrow v. City and Co. of San Francisco* (2014) 229 Cal.App.4th 498, 520 [reasonable person could find language gave the agency discretion because the general plan policy lacked words, such as "shall" or "must"].) Also, Program 121 anticipated adopting "up to" 16 community plans and 2 specific plans and a citywide ordinance. "Up to" is "used as a function word to indicate a limit or boundary." (www.Merriam-Webster.com , accessed on April 18, 2025.) The City's RHNA Rezoning Program of three community plan updates[5] and one citywide ordinance is by definition ***up to*** the limit of 16 community plans, two specific plans[6], and one citywide ordinance. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 639 [using dictionary to interpret general plan].)

In adopting the City's RHNA Rezoning Program, Council adopted express findings that Program 121 did not mandate all 16 community plans be adopted. Council found:

> The City has received comments during the ordinance adoption process claiming the City is not fulfilling its Program 121 commitments by not adopting all 16 Community Plans by February 2025. A comment letter purports that the City has made a "decision to jettison most of its rezoning plans." Contrary to this assertion, all of the pending Community Plan updates remain

[5] The Downtown CPU updated two existing community plans (the Central City and Central City North Community Plans) listed in Program 121. (RJN Ex.D.2 at 11, Ex. M at 133.)

[6] The Slauson TNP listed in Program 121 was adopted on July 2, 2024. (RJN EX. I.1 and I.2.)

> active and are on track for adoption (likely within the current housing element period ending 2029). **Neither Housing Element law, nor Program 121 mandate the completion of a specific number of implementation actions particularly regarding Community Plans. Rather, the law sets a deadline by which a local agency must rezone any shortfall of units to meet its RHNA requirements, leaving the methods of rezoning to the discretion of the local agency.** Program 121 concerns the City's completion of its RHNA Rezoning target, which …, the City has achieved twofold. Program 121 states that it is "anticipated" to be implemented through "a number" of efforts, including "up to" 16 Community Plans. The use of this directory, as opposed to mandatory, language is significant. Where specific commitments related to state law compliance are concerned, the word "will" is used. In contrast, the more flexible language regarding the City's approach to Community Plans and other strategies acknowledges that not all of the actions outlined in the program description may be fully executed by the February 2025 deadline. In addition, the Housing Element includes language clarifying that factors such as staffing resources and City funding may alter implementation timelines. (RJN Ex. F.4 at 29.)

The City Council's interpretation of its Housing Element's Program 121 language is supported by the plain language of the Housing Element and is entitled to deference by the Court. (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 246, 249 [deferring to the City Council's interpretation of "industrial" in the district plan, its own document]; *Carson Harbor Village, Ltd v. City of Carson etc.* (*Carson*) (1999) 70 Cal.App.4th 281, 290; *Greenfield v. Mandalay Shores etc.* (2018) 21 Cal.App.5th 896, 901 fn.3 [deferring to a city's interpretation of its ordinances].)

As such, Program 121 does not create a mandatory duty for the City to update all community and specific plans discussed therein by the City's RHNA Rezoning deadline.

3. Section 65583(c)(1)(A) does not Require the Publication of Information and Analysis of the City's RHNA Rezoning Program

Contrary to Petitioners' claim, there is no legal requirement in Section 65583(c)(1)(A) for the City to publish "information or analysis" that demonstrates the City "rezoned in a manner that will accommodate its identified shortfall" (FAP ¶34); Gov. Code, § 65583(c)(1)(A). The only requirement on the City to publish information is for the City's Planning Department to publish its annual report to HCD in April, which identifies any sites rezoned to accommodate the RHNA. Gov. Code, § 65400(a)(2)(G). Also, the allegation is demonstrably false based on Council's adopted findings, which include the City's methodology for calculating its rezoning capacity and a

4,300 plus page table with maximum and realistic capacity for each and every site the City rezoned. (See RJN Ex.F.4 at 36, 37-40 [excerpts of methodology for determining rezoning capacity and Draft Annual Report listing all parcels rezoned with capacity]; see Phelan Decl. ¶11 [explaining the original table is 4,322 pages].)

4. Section 65583.2(h)(1) does not prevent the list of low-income sites from being modified in the future

Petitioners erroneously allege the City failed to comply with "the requirements for the establishment of a by-right development process under Section 65583.2(h)(1) because it limits its application to a subset of the lower income sites identified for rezoning in the City's housing element and subjects the list of those sites to modification by the City Council." (FAP at ¶48.) This allegation cannot support a violation because Section 65583.2(h)(1) does not require the City to rezone all of the lower income sites identified for potential rezoning in the Housing Element and it does not provide that the rezoned sites cannot be modified later, nor could it. The City adopted the HESMD Ordinance and Low-Income Sites List to implement Section 65583.2(h)(1). (RJN Ex.G.4 at 56-58, Ex.G.5 at 62; Ex.G.7 at 73.) Under the HESMD Ordinance, any project on a site on the "Lower Income Rezoning Housing Element Sites" list established by Council resolution, must be processed as by-right with ministerial approval if the project includes at least 20 percent affordable units. (RJN Ex. G.5 at 64 and G.6 at 67-68, 71, G.7 at 73-79.)

There is no violation simply because the sites were identified by a resolution which Council has authority to amend. (RJN G.5 at 61 G.6 at 68.) Petitioners' reasoning would mean that there are no satisfactory means to identify sites because even if the sites were identified by ordinance, another usual means of Council action, there would be a violation because Council can amend an ordinance. (RJN Exs.K and L [Charter Section 558 and LAMC Section 13B.1.4].) Moreover, both the City's ordinance and State law have "no net loss" requirements that would require the Council to rezone additional sites if it were to reduce zoning capacity on existing sites in a manner that causes the City to no longer meet requirements that it maintain adequately zoned sites during the planning period to accommodate its RHNA. Gov. Code, §§ 65863(c)(2); and 65400(a)(2)(G). Additionally, Program 121 requires the City to report and monitor on any lost capacity. (RJN Ex.M at 132 ["Objective: Citywide Rezoning to meet RHNA Targets by 2024. Annual reporting to indicate any

loss in capacity ***that could require additional rezoning***."])

B. The Second Cause of Action Fails to Plead a Ministerial Duty Against the City, and Instead Pleads Violations of Laws That Provide the City with Discretion to Implement Its Housing Element Programs

Petitioners pray for a writ of mandate pursuant to Section 65583(h) without identifying any statutory language that compels the City to complete certain discretionary actions described in its Housing Element. (FAP at ¶68.)

In addition to the allegations discussed in section IV.A of this brief related to Program 121, Petitioners allege the City has failed to implement Programs 3, 4, 8, 11, 12, 15, 49, 54, 59, 63, 65, 115, which Petitioners allege the City committed to implement by certain deadlines. (FAP at ¶¶37-47.)

Petitioner's allegations under Section 65583(h) provides no such ministerial duty. Section 65583(h) provides that, "[a]n action to enforce the program actions of the housing element shall be brought pursuant to Section 1085 of the Code of Civil Procedure." A writ under Civil Procedure Code Section 1085 is only available to compel the performance of an act which the law specifically enjoins as a duty where a statute or ordinance proscribes a "clear, present and usually ministerial duty." (Code Civ. Proc. §1085(a); *Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613, 632; *California Assn. for Health Serv's. at Home v. State Dept. of Health Serv's.* (2007) 148 Cal.App.4th 696, 707-708.) The Court may not substitute its judgment for that of the public agency, whose decision must be upheld if reasonable minds may disagree as to the wisdom. (*Manjares v. Newton* (1966) 64 Cal.2d 365, 371.) "A ministerial act is one that a public functionary is required to perform in a prescribed manner in obedience to the mandate of legal authority, without regard to his or her own judgment or opinion concerning the propriety of such act." (*Childhelp, Inc. v. City of Los Angeles*, 91 Cal. App. 5th 224, 239 [internal quotations omitted].)

A traditional writ of mandate is the method of compelling the performance of a legal, ministerial duty required by statute. (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501-02.) Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to

performance. (*Pomona Police Officers' Assn. v. City of Pomona*, (1997) 58 Cal.App.4th 578, 84 [internal citations omitted].) Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. (*AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health*, (2011) 197 Cal.App.4th 693, 701.)

The Housing Element in defining the role and function of 'programs' in the plan, explicitly stated that its programs are not obligations:

> Programs: An implementation program is an action, procedure, program or technique that carries out goals and policies. **The listing of recommended implementation programs does not obligate the City to accomplish them.**

(RJN Ex. M at 105.)

The Housing Element also explained that all programs are subject to available resources, and subject to variable timelines:

> Programs are subject to the review and direction of the City Council and Mayor, as well as the relevant City Departments, subsequent to City's approval of the Housing Element 2021-2029 Update. …
>
> Program implementation actions include a combination of ordinances, programs, policies, resolutions, and incentives, as well as outreach and education activities. **Successful program development is often contingent on the availability of funding and staff resources**, which is likely to change over time due to economic conditions, the priorities of federal and regional governments and funding agencies, and other conditions. **The programs will be reviewed annually through an Annual Progress Report (APR) and prioritized, where necessary, to reflect funding limitations and the City's objectives**. Not all plan policies can be achieved in any single action, and, in relation to any decision, some goals may be more compelling than others. On a program-by-program basis, taking into consideration factual circumstances, **decision makers will determine how best to implement the adopted policies of the General Plan in any way which best serves the public health, safety, and general welfare**.
>
> The City also recognizes that upon further outreach and monitoring, it may become necessary to modify certain actions as circumstances change over time as there may be multiple ways to achieve the desired outcomes. Amounts and sources of funding, initiation dates, responsible agencies, and the detailed work scope of programs may be changed without requesting amendments to the Housing Element. Before items are presented to the City Council, a robust outreach effort will take place for each proposal. **Anticipated timelines** and

> schedules of specific actions are indicated alongside program objectives, or if not, it can be assumed the work will continue throughout the eight-year planning period. (RJN Ex.M at 106.)

All of the programs must be read in the context of these introductory statements in the City's Housing Element, and Petitioners' claims ask the Court to ignore this text contrary to caselaw. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817 [introductory statements in general plan support flexibility in balancing specific policies]; *People v. Pieters* (1991) 52 Cal.3d 894, 898-899 [a statute must be read "with reference to the entire scheme of law of which it is part"].)

The programs themselves do not include any mandatory language. There is no "shall" used in any of these programs. (RJN Ex.M at 108-131 [Programs 3, 4, 8, 11, 12, 15, 49, 54, 59, 63, 65, 115); (See *San Francisco Tomorrow, supra,* 229 Cal.App.4th at 520 [finding plain language in plan lacked language courts use to find a policy is mandatory, like "must" or "shall"]; Gov. Code Section 14.) To the extent Council, in its findings adopting the City's RHNA Rezoning Program, interpreted the word "will" in a program as indicating commitment, the Council was only considering Program 121 when it made these findings. More specifically, the Council's full statement is, "Where specific commitments related to state law compliance are concerned, the word "will" is used." (RJN Ex.M at 29). So Council was considering Program 121 in the context of state law compliance, and as discussed above, Program 121 was adopted to implement a mandatory statutory duty. The same is not true of these other programs.

Finally, even if "will' is considered mandatory language, no mandate can be found in any of the relevant programs in light of the introductory language in the Housing Element. Under the express language of the Housing Element, timelines in programs are "anticipated," which as discussed above is not a commitment. (RJN Ex.M at 106 ["anticipated timelines].) And implementation of programs is subject to resources and future policy choices. (RJN Ex.M at 106). *Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 84 Cal.App.4th 605, 614 ("not every statute that uses the word "shall" is obligatory rather than permissive, and there may be factors other than statutory language that may indicate that apparent obligatory language was not intended

to foreclose the government entity's exercise of discretion") (citing *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 500.)

The introductory language in the plan gave the City Council and City departments flexibility to implement the Housing Element programs regardless of the language in any of the particular policies. *Friends of Lagoon Valley*, *supra*, 154 Cal.App.4th at 817 (introductory statements in general plan supports flexibility in balancing specific policies); *Pieters*, *supra*, 52 Cal.3d at 898-899 (a statute must be read "with reference to the entire scheme of law of which it is part"). The language in the Housing Element unequivocally establishes program implementation under the Housing Element as dependent on various factors, including funding, and therefore not mandatory in the sense that the actions are a ministerial duty that confers the Court with authority to issue a writ of mandate. The demurrer should be sustained as to the second cause of action.

V. Conclusion

Based on all of the foregoing, the City's Demurrer should be sustained as to the First and Second Cause of Action.

Date: May 1, 2025

Respectfully submitted

HYDEE FELDSTEIN SOTO, City Attorney



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Attorney for Respondent

PROOF OF SERVICE

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

On May 1, 2025, I served the foregoing documents described as: **CITY'S NOTICE OF DEMURRER AND DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on all interested parties in this action as follows:

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[X] **BY ELECTRONIC MAIL** – I electronically transmitted the document listed above to the email addresses stated above which have been confirmed for each addressee stated above. My electronic service address is lashon.simmons@lacity.org.

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

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 1, 2025 at Los Angeles, California.

La Shon Simmons

La Shon Simmons