Case Number: 25STCP00546 **Hearing Date:** June 24, 2025 **Dept:** 85

Californians for Homeownership, Inc. et al v. City of Los Angeles, 25STCP00546

Tentative decision on demurrer: partly sustained

Respondent City of Lost Angeles ("City") demurs to the First Amended Petition ("FAP") of Petitioners Californians for Homeownership, Inc. ("CFH") and Yes in My Back Yard ("YIMBY").

The court has read and considered the moving papers, opposition, and reply, and renders the following decision.

A. Statement of the Case

1. Petition

On February 13, 2025, Petitioners CFH and YIMBY filed the Petition against Respondent City alleging two causes of action for traditional mandamus. On April1 1, 2025, Petitioners filed the FAP, the operative pleading, which alleges in pertinent part as follows.

On June 14, 2022, the City adopted its General Plan Housing Element ("Housing Element"). FAP, ¶28. On June 29, 2022, the California Department of Housing and Community Development ("HCD") certified the Housing Element. FAP, ¶29.

Government Code section 65583.4 required the City to complete all necessary rezoning by February 12, 2025. FAP, ¶30. Housing Element Program 121 is the City's rezoning program, and it commits the City to rezone parcels to accommodate 255,432 new housing units, including 130,553 units for lower-income households. FAP, ¶31. Program 121 anticipates the rezoning will occur through16 community plan updates, the adoption of two specific plans, and establishment of a new citywide affordable housing program. FAP, ¶32. The City has completed no more than six of these actions. FAP, ¶33.

The City has published no information or analysis showing it has rezoned to accommodate the shortfall of 255,432 units. FAP, ¶34.

Housing Element Program 65 committed the City to update community and neighborhood plans starting between 2021 and 2023, and the City has not even begun the updates. FAP, ¶¶ 35-36.

Housing Element Program 3 committed the City to recommend and adopt policy changes to facilitate subdivisions by 2023, which the City has not done. FAP, ¶37.

Housing Element Programs 4 and 16 both committed the City to study the feasibility of certain housing policies, which the City has not done. FAP, ¶38.

Housing Element Program 8 committed the City to establish public counters to assist affordable and accessible housing applicants by 2024, which the City has not done. FAP, ¶39.

Housing Element Program 11 committed the City to update the Density Bonus Ordinance to create new incentives for senior and special needs housing by 2024, which the City has not done. FAP, ¶40.

Housing Element Program 12 committed the City to hold an International Building Exhibition by 2022, which the City has not done. FAP, ¶41.

Housing Element Program 15 committed the City to identify publicly owned housing opportunity sites and issue Requests for Proposals to develop the sites by 2023, which the City has not done. FAP, ¶42.

Housing Element Program 49 committed the City to create a Citywide Housing Needs allocation by 2024, which the City has not done. FAP, ¶43.

Housing Element 54 committed the City to reduce post-entitlement permit processing times for affordable housing projects, which the City has not begun. FAP, ¶44.

Housing Element Program 59 committed the City to create a white paper recommending at least five potential high-value low-rise infill housing projects as well as new findings on the underlying economics and market potential therefor by 2022, which the City has not done. FAP, ¶45.

Housing Element Program 63 committed the City to amend its zoning code to alleviate challenges to accessory dwelling unit production by 2024, which the City has not done. FAP, ¶46.

Housing Element Program 115 committed the City to amend its zoning code to facilitate by-right siting of shelter and transitional housing facilities by 2025, which the City has not done. FAP, ¶47.

The rezoning the City has completed does not comply with the requirements for the establishment of a by-right development process under Government Code section 65583.2(h)(1) because it (a) limits its application to a subset of the lower income sites identified for rezoning in the Housing Element and (b) subjects the list to modification by the City Council. FAP, ¶48.

Petitioners seek a writ of mandate compelling the City to complete the rezoning required by Government Code section 65583(c) within 60 days and to complete the program actions described in the Housing Element. Prayer, ¶¶ 67-68. Petitioners also seek costs of suit, attorney fees, and such other and further relief as may be just and proper. Prayer, ¶¶ 69-70.

2. <u>Course of Proceedings</u>

Proof of service on file shows that Petitioners CFH and YIMBY served Respondent City with the Petition and Summons by personal service on February 14, 2025.

B. Demurrers

Demurrers are permitted in administrative mandate proceedings. CCP §§1108, 1109. A demurrer tests the legal sufficiency of the pleading alone and will be sustained where the pleading is defective on its face.

Where pleadings are defective, a party may raise the defect by way of a demurrer or motion to strike or by motion for judgment on the pleadings. CCP §430.30(a); Coyne v. Krempels, (1950) The party against whom a complaint or cross-complaint has been filed may object by demurrer or answer to the pleading. CCP §430.10. A demurrer is timely filed within the 30-day period after service of the complaint. CCP §430.40; Skrbina v. Fleming Companies, (1996) 45 Cal.App.4th 1353, 1364.

A demurrer may be asserted on any one or more of the following grounds: (a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading; (b) The person who filed the pleading does not have legal capacity to sue; (c) There is another action pending between the same parties on the same cause of action; (d) There is a defect or misjoinder of parties; (e) The pleading does not state facts sufficient to constitute a cause of action; (f) The pleading is uncertain ("uncertain" includes ambiguous and unintelligible); (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct; (h) No certificate was filed as required by CCP section 411.35 or (i) by CCP section 411.36. CCP §430.10. Accordingly, a demurrer tests the sufficiency of a pleading, and the grounds for a demurrer must appear on the face of the pleading or from judicially noticeable matters. CCP §430.30(a); Blank v. Kirwan, (1985) 39 Cal.3d 311, 318. The face of the pleading includes attachments and incorporations by reference (Frantz v. Blackwell, (1987) 189 Cal.App.3d 91, 94); it does not include inadmissible hearsay. Day v. Sharp, (1975) 50 Cal.App.3d 904, 914.

The sole issue on demurrer for failure to state a cause of action is whether the facts pleaded, if true, would entitle the plaintiff to relief. Garcetti v. Superior Court, (1996) 49 Cal.App.4th 1533, 1547; Limandri v. Judkins, (1997) 52 Cal.App.4th 326, 339. The question of plaintiff's ability to prove the allegations of the complaint or the possible difficulty in making such proof does not concern the reviewing court. Quelimane Co. v. Stewart Title Guaranty Co., (1998) 19 Cal.4th 26, 47. The ultimate facts alleged in the complaint must be deemed true, as well as all facts that may be implied or inferred from those expressly alleged. Marshall v. Gibson, Dunn & Crutcher, (1995) 37 Cal.App.4th 1397, 1403. Nevertheless, this rule does not apply to allegations expressing mere conclusions of law, or allegations contradicted by the exhibits to the complaint or by matters of which judicial notice may be taken. Vance v. Villa Park Mobilehome Estates, (1995) 36 Cal.App.4th 698, 709.

For all demurrers filed after January 1, 2016, the demurring party must meet and confer in person or by telephone with the party who filed the pleading for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. CCP §430.41(a). As part of the meet and confer process, the demurring party must identify all of the specific causes of action that it believes are subject to demurrer and provide legal support for the claimed deficiencies. CCP §430.41(a)(1). The party who filed the pleading must in turn provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency. Id. The demurring party is responsible for filing and serving a declaration that the meet and confer requirement has been met. CCP §430.41(a)(3).

If a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended pleading shall be filed. CCP §472a(c). In response to a demurrer and prior to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action. CCP §430.41(e)(1).

C. Governing Law

1. Housing Element Law

Pursuant to the Housing Element Law (Government Code[1] §65580 *et seq*.), each city and county[2] in California must "adopt a comprehensive, long-term general plan" for its future physical development. §65300. This general plan is the basic land use charter with which all planning and development decisions must be consistent, and has been described as "a constitution for all future development within the city." Committee for Responsible Planning v. City of Indian Wells, (1989) 209 Cal.App.3d 1005, 1013 (citation omitted). The housing element is one of the general plan elements prescribed by law (§65302(c)), and holds a status of "preeminent importance" in the general plan. Id., at 1013. Cities have a responsibility to facilitate new housing construction that "make[s] adequate provision for the housing needs of all economic segments of the community," including lower-income households. §65580(d).

The Regional Housing Needs Allocation ("RHNA") system is a process to assess and allocate housing targets on a periodic basis, generally every eight years. HCD, the state agency with primary responsibility for housing policy, performs an assessment of statewide housing needs and allocates them on a region-by-region basis at different levels of affordability, based on established criteria. HCD, after consultation with each council of governments, allocates to each region in California the number of new housing units that must be constructed over the upcoming planning period in order to accommodate population growth. §65584(b). In Southern California, SCAG then allocates a RHNA requiring every city to accommodate its "fair share" of housing needs for each of the following income levels: very-low- and low-income, moderate-income, and above-moderate income. *See* §65584.

The city must then develop an action plan -- the housing element -- to enact land use policies that will produce enough housing to meet their RHNA. The city must prepare a housing element that accommodates its allocated share of the RHNA. *See* §§ 65583, 65583.2. The city shall consider HCD-adopted guidelines in preparation of the housing element. §65585(a).

HCD is charged with evaluating a city's housing element for substantial compliance with the Housing Element Law. §65585. HCD is required to review the drafts and make written findings whether the draft substantially complies with state law. §65585(b), (d). The city shall consider HCD's findings in adopting its housing element. §65585(e). If HCD disapproves a housing element, the local jurisdiction must change it or adopt the housing element with a resolution of findings explaining why the element complies with the Housing Element Law. §65585(f). In any action challenging the housing element, there is a rebuttable presumption of its validity if HCD has made a finding that the housing element substantially complies with the Housing Element Law. §65589.3. Once a jurisdiction adopts a general plan including a housing element and obtains approval from HCD, the jurisdiction is prohibited from adopting a specific plan that is inconsistent with the general plan, including its housing element. §§ 65454, 65860.

A city's housing element shall include an inventory of sites suitable and available for residential development during the planning period. §§ 65583(a)(3), 65583.2(a). The inventory must detail information about the sites -- such as size and type of zoning -- as well as a determination of what portion of the RHNA each site can accommodate by income level. §65583.2(b), (c). To aid this determination, the Housing Element Law provides set densities (housing units per acre) deemed appropriate to accommodate lower-income housing. §65583.2 (c)(3)(B). For jurisdictions in a metropolitan county, sites allowing at least 30 units per acre represent the appropriate density to facilitate lower-income development. §65583.2(c)(3)(B)(iv).

The inventory of land shall include, *inter alia*, a listing of properties by assessor parcel number, the size of each property and its zoning, and a map of their location. §65583.2(b). For non-vacant sites, the inventory shall also include a description of the existing use of each property. §65583.2(b)(3). If the site is owned by the city, the description shall also include whether there are any plans to dispose of the property during the planning period and how the city will comply with the Government Code's provisions for surplus lands (§54220 *et seq*.) §65583.2(b)(3).

As amended in 2017, section 65583.2 provides that the city shall specify the development potential for each non-vacant site within the planning period and shall provide an explanation of the methodology used to determine the development potential. §65583.2(g)(1). The methodology shall consider factors that include the extent to which existing uses may constitute an impediment to additional residential development, the city's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. §65583.2(g)(1).

When the city is relying on non-vacant sites to accommodate 50% or more of its housing need for lower income households, the methodology shall demonstrate that the existing use does not constitute an impediment to additional residential development during the period covered by the housing element. §65583.2(g)(2). An existing use is presumed to impede additional residential development absent contrary findings based on substantial evidence that the use is likely to be discontinued during the planning period. §65583.2(g)(2).

When a jurisdiction's inventory lacks the sites to accommodate its full RHNA allocation, its housing element must include a program to rezone and make additional sites available within deadlines to accommodate any unmet RHNA. §65583(c)(1)(A).

Section 65583(c) reads in pertinent part:

"[The city's housing element shall contain a program that does all of the following]:

(1) Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need that could not be accommodated on sites identified in the inventory…without rezoning….

(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:…." (emphasis added).

A city that rezones sites pursuant to section 65583(c)(1)(A) to accommodate unmet allocation in lower-income RHNA categories must provide for "by-right" approval of certain mixed-income projects on the rezoned parcels:

"The program required by [section 65583(c)(1)(A)] shall accommodate 100 percent of the need for housing for lower income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites . . . on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right for developments in which at least 20 percent of the units are affordable to lower income households during the planning period." §65583.2(h)(1) (emphasis added).

As used, the term "by-right" means that the process must be exempt from the California Environmental Quality Act—*i.e.*, ministerial – but a city may still require design review. § 65583.2(i).

If a court finds that 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 …." §65587(d)(1).

Any interested person may bring an action to compel compliance with the deadlines and requirements of section 65583(c)(1), (2), and (3). §65587(d)(2). The action shall be brought pursuant to CCP section 1085, and the city shall bear the burden of proof. Id.

An action to enforce the program actions of a city's housing element shall be brought pursuant to CCP section 1085. §65583(h).

2. Standard of Review

A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station...." CCP §1085. Traditional mandamus permits judicial review of ministerial duties as well as quasi-legislative and legislative acts. County of Del Norte v. City of Crescent City, (1999) 71 Cal.App.4th 965, 972.

A traditional writ of mandate is the method of compelling the performance of a legal, ministerial duty required by statute. *See* 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, 583-84 (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.

In the absence of a ministerial duty, traditional mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. In applying this deferential test, a court "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." Western States Petroleum Assn v. Superior Court, (1995) 9 Cal.4th 559, 577. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable

minds may disagree as to its wisdom. Id. at 371. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

D. Analysis[3]

The City demurs to the FAP on the ground that its two causes of action fail to state a claim.[4]

1. Section 65587(d)(1) Refers to the RHNA Rezoning Necessary to Accommodate the City's Shortfall in Housing Development Capacity

In the first cause of action, the FAP alleges that the City has not complied with RHNA rezoning requirements because it has not completed Program 121. FAP, ¶56, 67. The City's rezoning deadline was February 12, 2025. §65583.4. The FAP specifically alleges that the City's rezoning program is contained in Housing Element Program 121, 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, ¶31. Program 121 anticipates that this rezoning will take the form of 19 specific actions: sixteen community plan updates, the adoption of two specific plans, and the establishment of a new citywide affordable housing incentive program." FAP, ¶32. At most, the City has completed six of these 19 actions. FAP, ¶33.

When a jurisdiction's inventory lacks the sites to accommodate its full RHNA allocation, its housing element must include a program to rezone and make additional sites available within deadlines to accommodate any unmet RHNA. §65583(c)(1)(A).

Section 65583(c) reads in pertinent part:

"[The city's housing element shall contain a program that does all of the following]:

(1) Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need that could not be accommodated on sites identified in the inventory…without rezoning….

(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:…." (emphasis added).

Section 65587(d)(1) provides that, if a court finds that 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 ….” §65587(d)(1) (emphasis added).

The FAP’s first cause of action interprets section 65587(d)(1)’s reference to “the rezoning required” by section 65583(c) to mean that the City must complete every rezoning action referenced in its Housing Element program and not simply rezone to meet its RHNA shortfall. The City disagrees with Petitioners’ interpretation. Dem. at 12.

The court must apply familiar rules for the statutory interpretation of section 65587(d)(1). In construing a statute, a court must ascertain the intent of the legislature so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., (1989) 48 Cal.3d 711, 724. The court first looks to the language of the statute, attempting to give effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841. The statutory language must be harmonized with provisions relating to the same subject matter to the extent possible. Id. “’The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, ‘[t]here is no need for judicial construction and a court may not indulge in it. [Citation.]’” MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration, (“MCI”) (2018) 28 Cal. App. 5th 635, 643.

“If the words themselves are not ambiguous, we presume the Legislature meant what it said, and the statute’s plain meaning governs.” Wells v. One2One Learning Foundation (2006) 39 Cal.4th 1164, 1190. “When statutory language is unambiguous, we must follow its plain meaning ‘“‘whatever may be thought of the wisdom, expediency, or policy of the act, even if it appears probable that a different object was in the mind of the legislature.’”’ In re D.B., (2014) 58 Cal.4th 941, 94 (citations omitted).

If a statute is ambiguous and susceptible to more than one reasonable interpretation, the court may resort to extrinsic aids, including principles of construction and legislative history. MacIsaac v. Waste Management Collection & Recycling, Inc., (“MacIsaac”) (2005) 134 Cal.App.4th 1076, 1082 (*quoting* Riverview Fire Protection Dist. v. Workers’ Comp. Appeals Bd., (1994) 23 Cal.App.4th 1120, 1126). The judiciary’s role in determining the meaning of a statute “‘“is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or omit what has been inserted….We may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used.’ [Citation.]” People v. Leal (2004) 33 Cal.4th 999, 1008 (citations omitted).

Where ambiguity still remains, the court should consider “reason, practicality, and common sense.” MacIsaac, *supra,* 134 Cal.App.4th at 1084. This requires consideration of the statute’s purpose, the evils to be remedied, public policy, and contemporaneous administrative construction. MCI, *supra,* 28 Cal.App.5th at 643. The enactment must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intent of the lawmakers, practical rather than technical in nature, and which, when applied, will result in wise policy rather than mischief or absurdity. Lungren v. Deukmejian, (1988) 45 Cal. 3d 727, 735.

Finally, statutes are not construed in isolation and every statute must be read and harmonized with the statutory scheme. People v. Ledesma, (1997) 16 Cal.4th 90, 95.

Petitioners argue that the plain language of section 65587(d)(1) refers to section 65583(c)(1)(A). In turn, section 65583(c)(1)(A) is the provision of the Housing Element Law that requires each city to create a specific rezoning program. It follows that "the rezoning" referred to in section 65587(d)(1) is the specific rezoning plan created by the city pursuant to the obligation in section 65583(c)(1)(A). Had the Legislature intended to limit section 65587(d)(1) to whether the city merely had complied with its obligation to accommodate its RHNA, it would have referred to other provisions of law setting forth that obligation. Opp. at 11.

The court disagrees. The plain language interpretation of section 65587(d)(1)'s "rezoning required by [section 65583(c)(1)(A)]" is the RHNA rezoning necessary to accommodate the city's shortfall in housing development capacity, not every program action identified in the housing element – *i.e.,* Program 121's 16 community plan updates, the adoption of two specific plans, and establishment of a new citywide affordable housing program. 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.

Petitioners' interpretation that a city must rezone to complete each action identified in the housing element would add language to section 65587(d)(1) that would read: "If a court finds that [a city] failed to complete the rezoning that is included in the program required by [section 65583(c)(1)(A)]". Courts should not insert language in statutes when interpreting them. Wells Fargo Bank v. Superior Court, (1991) 53 Cal.3d 1082, 1097.[5]

To the extent there is any ambiguity, the statutory context shows that section 65586(d)(1) means only rezoning adequate to accommodate the City's required RHNA. Petitioners argue that the Housing Element Law requires the timely adoption of a housing element but grants compliant cities several years to complete their rezoning. State housing law sets forth detailed and specific requirements for a city's rezoning program, which is the central substantive policy obligation under the Housing Element Law. Under the City's interpretation, a city would be free to create a sham rezoning program for use in its housing element, and then to use that sham rezoning program to obtain HCD certification of its housing element. The city would then be free, three years later, to ignore the details of its sham program and instead adopt an alternative rezoning program, all without completing the extensive public review process associated with adopting or amending a housing element. The requirements for the housing element's rezoning program would become a mere paper exercise, free to be disregarded at the time of rezoning. The Legislature could not have intended such a result. *See* Tuolumne Jobs & Small Business Alliance v. Superior Court, (2014) 59 Cal.4th 1029, 1038-39 (interpretation that renders statutory language a nullity should be avoided). Opp. at 11-12.

Not so. Nothing in the Housing Element Law requires a city to rezone to a greater extent than necessary to meet its RHNA. The Housing Element Law is expressly intended to ensure that cities have adequate zoning capacity to accommodate their RHNA. *See* § 65580(f). The purpose is "to ensure each local government cooperates with other local governments in order to address regional housing needs." §65581(d). "[C]ities …should undertake all necessary

actions to … accommodate the entire regional housing need…." §65584(a)(2)(emphasis added). To meet this intent, cities must study, identify, plan, and then rezone adequate sites to meet their RHNA to cover any shortfall in housing development capacity identified in the housing element. §§ 65583(c)(1)(A), 65583.4, 65587(d)(1). 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 …." §65583.[6]

There is nothing in the Housing Element Law that compels a city to fulfill its housing element program beyond its RHNA. Petitioners' interpretation ignores the purpose of the housing element and RHNA rezoning as a tool to satisfy the city's RHNA requirements. Petitioners' contention that a city could commit a sham is undermined by the fact that the city must rezone to meet its RHNA. The argument also chills cities from rezoning beyond RHNA requirements.

The City correctly adds that Petitioners' interpretation of section 65587(d)(1) requires the court to intrude on the City Council's discretion for the type of ordinance necessary to satisfy its RHNA requirements, and the timing of its program actions after the City rezoned for its RHNA. This conflicts with the Housing Element Law, which the Legislature intended "to recognize that 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." §65581(c). The City chose which rezoning ordinances to adopt to fully accommodate its RHNA shortfall and satisfy its statutory requirements. RJN Ex.F.4, p. 33. Petitioners ask the court to decide that the City must adopt ordinances to create more development capacity than legally required under the City's RHNA obligations, a policy decision that is reserved for the City. Dem. at 14.

Moreover, under section 65583(c), a city's housing element programs, including the rezoning program, may include actions that will be "ongoing" during the "planning period." Nothing prohibits the City from listing ongoing actions in its section 65583(c)(1)(A) rezoning program. *See* Yost v. Thomas*,* (1984) 36 Cal.3d 561, 572-73 (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 actions in Program 121 will occur over the course of the Housing Element period and provide additional development capacity beyond the "rezoning required" in section 65587(d)(1). The court may not supplant its discretion for the City's exercise of discretion for the timing and nature of these ongoing programs. "[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. Dem. at 15.

Petitioners argue that section 65583(c)'s authorization for ongoing housing element programs is not an invitation to ignore the statute's specific deadlines and mandates for rezoning programs. State Department of Public Health v. Superior Court*,* (2015) 60 Cal. 4th 940, 960-61 (specific statutory provisions trump general provisions); CCP §1859. In any event, while certain of the City's Housing Element programs are ongoing as authorized by section 65583(c), this lawsuit does not seek to enforce any ongoing commitments; it seeks to enforce rezoning programs for

which the City listed specific deadlines, timelines, and commitments. *See* FAP, ¶¶ 31-36. Opp. at 13. Perhaps so, but section 65587(d)(1) does not permit enforcement of rezoning programs beyond a city's RHNA.

Petitioners fall back on section 65587(d)(2), which authorizes an interested party to "bring an action to compel compliance with the deadlines and requirements" in section 65583(c)(1), (2), and (3). The rezoning requirements are contained in section 65583(c)(1), and so are enforceable under subdivision (d)(2). Unlike subdivision (d)(1), subdivision (d)(2) is not limited by the phrase "the rezoning" so the limits of that phrase are irrelevant to subdivision (d)(2). Because Petitioners have alleged that section 65587(d)(2) applies to the City's failure to rezone (FAP, ¶¶ 26, 54), the demurrer can be overruled on that independent basis. Opp. at 12-13.

The City acknowledges that a traditional writ of mandamus may be brought under section 65587(d)(2) to enforce any violation of the requirements or deadlines in section 65583(c)(1)-(3). Under section 65587(d)(1), an action may be brought only for a city's failure to "complete the rezoning required by [section 65583(c)(1)(A) by the applicable deadline]". If a court finds such a failure, the court shall issue an order for the local agency to complete its rezoning in 60 days. A general principle of statutory construction is a general provision is controlled by a more specific provision covering the same matter. San Francisco Taxpayer's Association v. Board of Supervisors, (1992) 2 Cal.4th 571, 577. Since the main purpose of the Housing Element Law is to provide adequate sites for housing, it is a reasonable to conclude that the Legislature created a different and more severe remedy for a city's failure to provide adequate sites to meet its RHNA than for its failure to implement a program. In any case, compelling a local agency to do additional rezoning even where that agency has already rezoned to accommodate its RHNA is an absurd result. Reply at 6-7.

The City does not answer Petitioners' point, which is that the express language of section 65587(d)(2) authorizes an interested party to "bring an action to compel compliance with the deadlines and requirements" in section 65583(c)(1), (2), and (3). Section 65583(c)(1)(A) contains the rezoning requirement, and it may be enforced under section 65587(d)(2).

However, the rezoning required by section 65583(c)(1)(A) is only the rezoning necessary to meet the city's RHNA. Under section 65587(d)(2), the City bears the burden of proof. From the face of the FAP and judicially noticeable documents, it "must appear clearly and affirmatively" that the first cause of action will fail. *See* Silva v. Langford, (2022) 79 Cal.App.5th 710, 716. Opp. at 11.

2. Program 121 Did Not Commit the City to Complete All Discussed Actions

The City argues that, assuming *arguendo* the rezoning required by section 65587(d)(1) means the implementation of all the Housing Element's program commitments, HCD found that the City's Housing Element complied with state housing element laws. RJN Ex. J. This means that Program 121 complies with section 65583(c)(1)(A)'s rezoning requirement. Dem. at 15.

Program 121 only committed the City to complete rezoning for its unmet RHNA. Program 121 states: "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, pp. 132-33 (emphasis added).

The City argues, and the court agrees, that Program 121 did not commit it to all proposed actions discussed in the program text. Program 121 only anticipated actions that may be taken for purposes of RHNA rezoning:

"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, pp. 132-33 (emphasis added).

The word "anticipated" is defined in Merriam-Webster Dictionary as "expected or looked-forward to." www.Merriam-Webster.com. 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 (language gave the agency discretion because the general plan policy lacked words, such as "shall" or "must"). Additionally, the term "up to" is "used as a function word to indicate a limit or boundary." www.Merriam-Webster.com. The City's RHNA rezoning program of three community plan updates and one citywide ordinance is, by definition, up to, or within the anticipated limit of, 16 community plans, two specific plans, and one citywide ordinance. Dem. at 16.

The City Council adopted findings that Program 121 does not mandate all 16 community plans to be adopted:

"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….Contrary to this assertion, all of the pending Community Plan updates remain active and are on track for adoption (likely within the current housing element period ending 2029). [However,] [n]either 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 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…." RJN Ex. F.4, p. 29 (emphasis added).

The City Council's interpretation of its Program 121 language is entitled to deference. No Oil, Inc. v. City of Los Angeles, (1987) 196 Cal.App.3d 223, 246, 249. Program 121 does not create a mandatory duty for the City to update all listed community and specific plans by the City's February 12, 2025 RHNA rezoning deadline. Dem. at 17.

In reply, the City adds that, even if Program 121 did commit the City to adopt all 16 community plan updates, the City was free to implement its rezoning in the City's community plans through alternative legislation. The CHIP ordinance rezoned sites in all community plans listed in Program 121. RJN Ex. Y. Community plan updates can take up to ten years or more to complete and involve scores of community meetings, a process which involves discretionary policy choices by the City. If the Council decided to increase zoning capacity in community plans through the CHIP ordinance rather than a more costly and resource demanding community plan update, it was free to do that. *See* §§ 65581(c), 65589(c). Reply at 8.

The City was not required to complete all Program 121 actions so long as it rezoned to satisfy its RHNA obligations.

3. The City Is Required to Prove that It Complied With Its Section 65583(c)(1)(A) Rezoning Obligation

HCD found that the City's Housing Element complied with state housing element laws, which means that HCD found that Program 121 complies with section 65583(c)(1)(A)'s rezoning requirement. The City also was not required to complete all Program 121 actions so long as it rezoned to satisfy its RHNA obligations. Under section 65587(d)(2), the City bears the burden of proof that it did so.

Petitioners argue that the FAP adequately alleges that the City has not rezoned adequate sites to meet its RHNA allocation. FAP, ¶¶ 33-34.

a. Pleading Defect

The City agrees that it has the burden to prove that it has rezoned adequate sites to meet its RHNA allocation under section 65587(d)(1). But the FAP never included such an allegation. It only alleged section 65587(d)(1) requires completing a rezoning program rather than rezoning adequate sites to meet a RHNA shortfall. The FAP does allege the following: "No information or analysis has been published by the City demonstrating that it has rezoned in a manner that will

accommodate its identified shortfall of 255,432 units relative to the zoning policies in place on June 14, 2022." FAP, ¶34. But an allegation about publishing information is not the same as alleging that the City did not rezone adequate sites to accommodate its identified shortfall. Reply at 4.

Moreover, there is no legal requirement in section 65583(c)(1)(A) for the City to publish any "information or analysis" that demonstrates that it "rezoned in a manner that will accommodate its identified shortfall". FAP, ¶34. The only requirement is that every April the City's Planning Department must HCD its annual report identifying any sites rezoned to accommodate the RHNA. §65400(a)(2)(G). Nothing in section 65587(d)(1) or any other section cited by Petitioners requires the City to publish "information or analysis" demonstrating an adequate rezone. *See* §§ 65587(d)(1), 65583(c)(1)(A). Petitioners' arguments about the City's burden of proof does not overcome Petitioners' pleading burden. Reply at 4.

The City is correct. However, this issue was raised for the first time in reply and is disregarded. Regency Outdoor Advertising v. Carolina Lances, Inc., (1995) 31 Cal.App.4th 1323, 1333.

b. The City's Compliance Is a Factual Issue Not Suitable for Demurrer

The City relies on the City Council's February 2025 finding that its rezoning met the requirements of the Housing Element Law. RJN Ex. F-4, p. 33 ("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."). The City Council's findings expressly include the methodology for calculating its rezoning capacity and a 4,300 plus page table (the "Rezoning Table") with maximum and realistic capacity for each site rezoned. *See* RJN Ex.F.4, pp. 36, 37-40 (excerpts of methodology for determining rezoning capacity and Draft Annual Report listing all parcels rezoned with capacity).

Petitioners argue that the court cannot rely on the truth of the City Council's findings. Instead, it must treat as true the FAP's allegation that the findings do not "demonstrat[e] that it has rezoned in a manner that will accommodate its identified shortfall of 255,432 units relative to the zoning policies in place on June 14, 2022." FAP, ¶34. Once the scope of judicial notice is properly limited, the City's demurrer fails. Opp. at 8.

This is not correct. The allegations in a complaint may be contradicted by matters of which judicial notice may be taken. Vance v. Villa Park Mobilehome Estates, *supra,* 36 Cal.App.4th at 709. Unlike findings in a court record (Sosinsky v. Grant, (1992) 6 Cal.App.4th 1548, 1551), legislative findings may be considered as evidence of their truth. However, the parties fail to address the weight legislative findings carry and whether they may be overcome by other evidence.

Petitioners do correctly argue that the City is not entitled to rely on principles of deference for its compliance. The City has not cited any authority that a local agency is entitled to deference for its assessment that it has complied with state housing laws. The courts have held to the contrary in interpreting other housing laws that place similarly stringent requirements on local

agencies. California Renters Legal Advocacy & Education Fund v. City of San Mateo, (2021) 68 Cal.App.5th 820, 844 ("Precisely because the HAA cabins the discretion of a local agency to reject proposals for new housing, it is inappropriate for us to defer to the City's interpretation of the Guidelines. We must engage in more rigorous independent review . . . in order to prevent the City from circumventing what was intended to be a strict limitation on its authority.") (internal quotation marks omitted). Opp. at 8-9.

Petitioners argue that, even if the City can rely on its judicially noticeable findings, they are unreliable on their face and present contested factual issues. Opp. at 9.

First, the City Council's findings are flawed because they are based on an approach that ignores the likelihood of development. As a result, the findings assume that a small increase in potential total capacity on a housing element site will result in an enormous increase in the realistic capacity of that site. Opp. at 9.

The following table provides illustrative examples of parcels for which the City has barely increased zoned capacity, or has actually decreased capacity relative to the Density Bonus Law, but for which the City now claims a drastic increase in realistic capacity:

	Housing Element Appendix 4.1			**Rezoning Table**	
PIN[7]	Zoned Capacity	Zoned Capacity (w/ pre-existing density bonus)	Realistic Capacity[8]	Zoned Capacity w/ New Zoning & Incentives	Post-Rezoning Realistic Capacity
114B185-1207	9 units	28 units	0.0949 units	19.8 units	2 units
126B145-848	8 units	20 units	0.0688 units	22.96 units	10 units
129A201-70	13 units	21 units	0.0226 units	27.3 units	3 units
129A201-173	22 units	35 units	0.0344 units	46.2 units	4 units

Pet. RJN Ex. P, rows 150894, 164625, 169571, 169587; RJN Ex. F.4, p. 38. Opp. at 9.

Taking PIN 126B145-848 as an example, the City claims that the zoned capacity of the site (accounting for pre-existing density bonuses) increased by around 15% (from 20 units to 22.96 units) based on the City's CHIP program, and as a result the realistic capacity for the site somehow increased by around 14,500% (from 0.0688 units to 10 units). For PIN 114B185-1207, the City's incentive program actually offers less capacity than the capacity of the site with pre-existing density bonuses at the time the City adopted the Housing Element. Yet, the City claims the realistic capacity of the site has increased by over 2,000% (from 0.0949 units to 2 units). These are just a few illustrative examples from a single page of the City's Rezoning Table. Petitioners are prepared to demonstrate that these anomalies pervade the City's capacity calculations. Opp. at 9-10.

Second, the Rezoning Table contains entries so plainly baseless as to call into question the City's method for preparing the document. For example, the table identifies the Stanley Mosk Courthouse, the Ronald Reagan State Building (home to the Second District Court of Appeal and other state offices), the County Law Library, City Hall East (home to the City Attorney's Office), the Cathedral of Our Lady of the Angels, and the Ramón C. Cortines School of Visual and Performing Arts as sites that have been rezoned and have realistic capacity for development as housing by October 2029. Opp. RJN Ex. P, rows 30377-78, 30380-84, 30386-87, 30389-91, 36414, 37478, 37488, 41928, 85901-03. The inclusion of these transparently inappropriate sites reflects that the Rezoning Table was not the result of careful analysis, but rather a hastily-prepared effort to demonstrate compliance with the rezoning requirement on the eve of the City's deadline to complete it. Opp. at 10.

Third, the materials presented by the City do not identify the baseline realistic capacities against which the City is benchmarking its purported rezoned realistic capacities. Petitioners cannot determine what initial capacities the City used to calculate the additional capacity it has created through rezoning, including whether the City has properly accounted for the genuine prior capacities on its rezoned sites, including the capacity allowed by pre-existing incentive programs such as the Density Bonus Law (§65915 *et seq*.). Opp. at 10.[9]

Fourth and finally, a significant proportion of the City's purported rezoned capacity has been created using an incentive program limited to 100% affordable housing, a category of development for which funding and development capacity are sharply limited. Because the City did not originally anticipate that it would accomplish its rezoning in this way, it did not properly analyze the constraints or feasibility issues created by relying on 100% affordable, rather than mixed-income housing, for such a large proportion of its rezoning. §§ 65583(a)(5), (6), 65583.2(c)(2). Opp. at 10.

The City responds that Petitioners paint a distorted version of the facts. Each of the specific sites discussed by Petitioners -- Stanley Mosk Courthouse, Ronald Reagan State Building, County Law Library and City Hall East – is considered an historic and/or public site, which are deeply discounted by for any realistic potential development. *See* RJN Ex. W, Table 4.18, p. 509. For example, while City Hall East is listed in the City's Table C, the rezone program only takes credit for one unit towards the City's RHNA even though the rezoning program could permit 344 potential units. RJN Ex. Y, p. 518, row 36414, columns R and S. Petitioners ignore

similar discounts made against the other public sites which in most cases yield about one unit per site. Based on the City's discount factors, if any public land is redeveloped in the City, the projected numbers would be met for dozens of other public sites. Reply at 3.

These are factual issues for a trial.

4. Section 65583.2(h)(1) Does Not Prevent the List of Low-Income Sites from Being Modified

The FAP alleges that 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 (a) limits its application to a subset of the lower income sites identified for rezoning in the City's housing element and (b) subjects the list of those sites to modification by the City Council. FAP, ¶48.

Over the last decade, the Legislature adopted a series of amendments to the Housing Element Law intended to strengthen the practical effect of housing element rezonings. Among these changes, the Legislature added language requiring a city that rezones sites pursuant to section 65583(c)(1)(A) to accommodate unmet allocation for lower-income RHNA categories must provide for by-right approval of certain mixed-income projects on the rezoned parcels:

"The program required by [section 65583(c)(1)(A)] shall accommodate 100 percent of the need for housing for lower income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites . . . on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right for developments in which at least 20 percent of the units are affordable to lower income households during the planning period." §65583.2(h)(1) (emphasis added).

As used, the term "by-right" means that the process must be exempt from the California Environmental Quality Act—*i.e.*, ministerial – but a city may still require design review. § 65583.2(i).

The City has implemented section 65583(c)(1)(A)'s requirement through an implementation ordinance, the Housing Elements Sites and Minimum Density Ordinance ("HESDMO") (LAMC §16.70), separate from the ordinances that make up the core of its claim that it has rezoned adequate sites. RJN Ex. G.6. Under the HESMDO, Under the HESMDO, the City maintains a list of Lower Income Rezoning Housing Element Sites ("Low-Income Sites List") established by Council resolution eligible for by-right treatment under section 65583.2(h)(1). RJN Ex. G.5, p. 61. Any project located on a site that is on the Low-Income Sites List must be processed as by-right with ministerial approval if the project includes at least 20% affordable units. RJN Ex. G.6, p. 71. The City adopted the HESMDO and established the Low-Income Sites List by resolution to implement section 65583.2(h)(1). RJN Ex.G.4, pp. 57-58; RJN Ex.G.5, p. 61-62.

The City Council is free to change the Low-Income Sites List by resolution at any time. *See* RJN Ex. G.5, p. 61; RJN Ex. G.6, p. 68.

Petitioners argue that the City's approach does not properly implement section 65583.2(h)(1) because it allows the City to withdraw sites from by-right treatment even though those sites have been listed as rezoned as part of the City's rezoning program. For example, the City could learn that an affordable housing developer has purchased a parcel and immediately remove that parcel from the by-right list. Because the City Council has granted itself the right to do so by resolution rather than ordinance, the City would be free to do withdraw the site with minimal notice to the public and no direct notice to the impacted property owner or other parties ordinarily entitled to notice of a zoning or general plan amendment. *See* §§ 65090, 65091, 65353, 65355, 65853-58. Opp. at 15.[10]

Read properly, section 65583.2(h)(1) requires the City's rezoning program to actually rezone the eligible parcels for development by-right. If the City later desires to remove a parcel from by-right treatment, it must do so by rezoning the parcel and complying with state law "No Net Loss" rules. The lengthy rezoning process would, in turn, offer any impacted property owner sufficient notice to submit a preliminary application under section 65941.1 and vest in their rights. Opp. at 15.

Petitioners argue that the City knows how to implement this provision correctly. A separate provision of the HESMDO implements the third sentence in section 65583.2(c) -- a similar by-right requirement for sites that have been listed in multiple rounds of housing element sites inventories. For such sites, the HESMDO does not use a separately maintained list that may be amended by resolution. Instead, the HESMDO identifies the qualifying sites by reference to listing in the Housing Element. RJN Ex. G.6, p. 68. The City could have taken a similar approach for section 65583.2(h)(1) qualifying parcels by simply granting by-right treatment to all the lower income sites it has rezoned without allowing parcels to be added or removed by resolution. Opp. at 15-16.

The City argues that the FAP does not allege a violation of 65583.2(h)(1) on the basis that the City adopted the low-income sites list by resolution instead of an ordinance, or because the City could withdraw a property from its rezoned sites list without providing notice to a property owner. Reply at 8.

Aside from the fact that the City raises this procedural issue for the first time in reply (Regency Outdoor Advertising v. Carolina Lances, Inc., *supra,* 31 Cal.App.4th at 1333), it is not true. The FAP expressly alleges that the City's rezoning does not comply with the requirements for the establishment of a by-right development process under Government Code section 65583.2(h)(1) because it subjects the list to modification by the City Council. FAP, ¶48. This allegation is sufficient to object to the resolution process.

The City next argues that section 65583.2(h)(1) does not require it to rezone all the lower income sites identified for potential rezoning in the Housing Element. Nor does it provide that the rezoned sites cannot be withdrawn later. There is no violation of section 65583.2(h)(1) simply because the sites were identified by a resolution which City Council has authority to

amend. RJN Ex. G.5, p. 61; RJN Ex. G.6, p. 68. Nothing in Section 65583.2(h)(1) regulates any particular procedure or any notice requirement for a future modification to a low-income rezoned site. It also does not restrict the use of a resolution, or combination of a zoning ordinance and resolution, as in this case, in a rezoning program. Petitioners' reasoning would prevent any satisfactory means of identifying sites because the City Council can also amend an ordinance identify sites. RJN Exs. K (City Charter §558), L (LAMC §13B.1.4). Moreover, both the HESMDO and state law have "No Net Loss" requirements that would require the City Council to rezone additional sites if zoning capacity on existing sites was reduced such that the City to no longer met the requirements for zoned sites to accommodate its RHNA. §§ 65863(c)(2), 65400(a)(2)(G). Additionally, Program 121 requires the City to report and monitor any lost capacity. RJN Ex. M, p. 132. Dem. at 18-19; Reply at 8-9.

The City adds in reply that it adopted the HESMDO to change the rules for thousands of sites to satisfy the requirements of section 65583.2(h)(1). RJN Exs. G.5, G.6, G.7. Nothing in section 65583.2(h)(1) prohibits a city from removing or adding any low-income site from its rezoned list. The only applicable rules in state law are found in the "No Net Loss" rules in section 65863. The No Net Loss rules prohibits the City from removing any site that has been rezoned to comply with the Housing Element Law, including the low-income sites required under section 65583.2(h)(1), unless the City finds there are adequate sites to accommodate its RHNA or rezones a site(s) to offset the loss in housing capacity. The No Net Loss rule applies to an amendment to a city resolution because it broadly applies to any "administrative, quasi-judicial, legislation, or other action" by the city. §65863(b), (c). Reply at 8.

The City has dealt with the issue practically. The problem with the City's argument, however, is that section 65583.2(h)(1) specifically requires that the sites "shall be zoned" to permit owner-occupied and rental multifamily residential use by-right for affordable housing. A zone is a land use requirement adopted by ordinance. An ordinance is the equivalent of a municipal statute, passed by the city council or equivalent body, and is adopted with the legal formality of a statute. California Aviation Council v. City of Ceres, (1992) 9 Cal.App.4th 1384, 1391; City of Sausalito v. County of Mann, (1970) 12 Cal.App.3d 550, 565-66. In contrast, a "resolution" is "a formal expression of opinion, will, or intent voted by an official body or assembled group." Marquez v. Medical Board, (2010) 182 CalApp.4th 548, 557-58. A resolution does not require the same formality of enactment as an ordinance, such as being initiated by a bill or having more than one reading. Id. at 558. A resolution is adopted by a recorded vote of the governing body in accordance with statutory open meeting and agenda laws. Ibid. Unlike a statute, a resolution is temporary in the sense that it does not prevent the governing body from addressing the issue again. Ibid. (citations omitted).

Based on the current arguments, it does not appear that the City could act through resolution to amend the list of sites eligible for by-right treatment under section 65583.2(h)(1). Rather, section 65583.2(h)(1) requires a rezoning ordinance.

5. The Second Cause of Action Fails to Plead a Ministerial Duty

The FAP alleges that the City has not completed Housing Element Programs 3, 4, 8, 11, 12, 15, 16, 49, 54, 59, 63, 65, and 115. FAP, ¶¶ 35-47. The second cause of action seeks mandamus under section 65583(h) to enforce these Housing Element program actions. FAP, ¶¶ 61, 63, 66.

Section 65583(h) provides: "An action to enforce the program actions of the housing element shall be brought pursuant to Section 1085 of the Code of Civil Procedure." A traditional writ of mandate pursuant to CCP section 1085 is the method of compelling the performance of a legal, ministerial duty required by statute. *See* Rodriguez v. Solis, *supra,* 1 Cal.App.4th at 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, *supra,* 58 Cal.App.4th at 583-84 (internal citations omitted).

The City argues that the FAP seeks mandamus pursuant to section 65583(h) without identifying any ministerial duty. In defining the role and function of its "programs", the Housing Element 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, p. 105.

The Housing Element 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.…

"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….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, p. 106 (emphasis added). Dem. at 19-20.

The City argues that the Housing Element programs must be read in the context of these Housing Element introductory statements in the City's Housing Element. *See* 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). Dem. at 21.

The City argues, moreover, that the programs themselves do not include any mandatory language. The word "shall" is not used in any of the programs. RJN Ex. M, pp. 108-31 (Programs 3, 4, 8, 11, 12, 15, 49, 54, 59, 63, 65, 115); *see* §14 ("shall" is mandatory and "may" is permissive); San Francisco Tomorrow v. City and County of San Francisco, (2014) 229 Cal.App.4th 498, 520 (general plan lacked language like "must" or "shall" that courts use to find that a policy is mandatory);.[11] Even if "will' were considered mandatory, no mandate can be found in any of the relevant programs in light of the introductory language in the Housing Element which gave the City Council and City departments flexibility to implement the Housing Element programs regardless of the language in any of the particular policies. The language in the Housing Element establishes that program implementation under the Housing Element is dependent on various factors, including funding, and therefore not mandatory as a ministerial duty. Dem. at 22.

Petitioners respond that the City ignores the fact that the Legislature has specifically authorized litigation to enforce the program commitments in a city's housing element in section 65583(h). The Court of Appeal has recognized that, unlike with some other provisions in state housing law, the program action commitments include a direction by the Legislature as to "how [they are] to be enforced." Martinez v. City of Clovis, (2023) 90 Cal.App.5th 193, 290 [contrasting section 65583(h)'s explicit direction that litigation be filed under CCP section 1085 with the state law duty under section 8899.50 to affirmatively further fair housing, which contains no such direction, but ultimately determining that the latter can be enforced by traditional mandamus). Opp. at 16.

Petitioners contend that the City's position would render section 65583(h) meaningless because the program commitments in a housing element would not be ministerial within the meaning of case law interpreting CCP section 1085. The court should interpret section 65583(h) as a specific authorization to enforce program commitments under CCP section 1085 without meeting the ministerial duty standards generally applicable to traditional mandamus actions. Opp. at 16.

This argument is spurious. The City is correct that the City's Housing Element programs have no ministerial duty and reserve discretion to the City and its departments. Petitioners' argument that the court should interpret section 65583(h) as authorization to enforce program commitments under CCP section 1085 without meeting its elements is lacking support in the language of section 65583(h) or case law. Section 65583(h) simply provides that an action to enforce the program actions of the housing element shall be brought pursuant to CCP section 1085. It does not state that programs listed in the housing element must be completed without the exercise of discretion, or anything that would support such a conclusion.[12]

Petitioners next argue that the City's program commitments are mandatory because the second cause of action is limited to specific commitments with specific timelines. For example, Program 49 commits the City to "[c]reate a Citywide Housing Needs Allocation" that "allocates the citywide RHNA to community plan areas" by 2024. FAP, ¶41. Essentially, this program requires the City to develop an internal version of the RHNA allocation by neighborhood (a "CHNA") in a process similar to the regional RHNA allocation to cities and counties. The purpose of this program ostensibly is to inform the City's rezoning process. But the City now claims to have completed the rezoning process without producing the promised CHNA. This was a specific commitment to do a specific thing by a specific date, and the City has reneged on that commitment. Commitments like this are enforceable under section 65583(h) as ministerial duties under CCP section 1085. Opp. at 16-17.

Petitioners contend that the City is not saved by the noncommittal language it references in the Housing Element's introductory text. The obligation to develop program commitments is carefully laid out in the Housing Element Law, as is the right to enforce those commitments in court. §65583(c), (h). If a city could excuse itself from living up to those commitments through vague introductory language, this statutory scheme will be all for naught. The specific commitments in the City's Housing Element programs—commitments that earned HCD certification—should override vague introductory language elsewhere in the document. Opp. at 17.

The court does not agree. General plans ordinarily do not state specific mandates; they state policies and set forth goals. *See* Friends of Lagoon Valley v. City of Vacaville, *supra,* 154 Cal.App.4th at 817. A housing element is part of a city's general plan. It follows that they, too, state policies and set forth goals.

It is true that the Housing Element Law sets forth specific and mandatory duties for a city. The city must prepare a housing element that accommodates its allocated share of the RHNA. *See* §§ 65583, 65583.2. A city's housing element shall include an inventory of sites suitable and available for residential development during the planning period with specific detailed information. §§ 65583(a)(3), 65583.2(a), (b), (c), (g). When a jurisdiction's inventory lacks the sites to accommodate its full RHNA allocation, its housing element must include a program to rezone and make additional sites available within deadlines to accommodate any unmet RHNA. §65583(c)(1)(A). A city that rezones sites pursuant to section 65583(c)(1)(A) to accommodate unmet allocation in lower-income RHNA categories must provide for "by-right" approval of certain mixed-income projects on the rezoned parcels. §65583.2(h)(1).

These are the duties that can be enforced through traditional mandamus. Yet, Petitioners do not state that any of the Housing Element programs at issue in the second cause of action fulfill these mandatory duties. Consequently, the uncompleted programs are discretionary.[13]

Petitioners fall back on an argument that many of the program commitments in the second cause of action are also enforceable under section 65587(d)(2).

As discussed *ante*, any interested person may bring an action to compel compliance with the deadlines and requirements of section 65583(c)(1), (2), and (3). §65587(d)(2). When a jurisdiction's inventory lacks the sites to accommodate its full RHNA allocation, the city's housing element must include a program to rezone and make additional sites available within deadlines to accommodate any unmet RHNA. §65583(c)(1)(A). The city's program must assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households". §65583(c)(2). The city's program shall "[a]ddress and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities."

Petitioners argue that many of the programs listed in the second cause of action meet the criteria in section 65583(c)(2) or (3):

· Program 8 commits the City to "[e]stablish public counters for assistance in applying for affordable and accessible housing by 2024."

· Program 11 commits the City to "[c]reate new incentives for senior and other special needs housing through the update to the Density Bonus Ordinance by 2024."

· Program 54 commits the City to reduce post-entitlement permit processing times for affordable housing projects.

· Program 63 commits the City to adopt amendments to the City's zoning code to alleviate challenges to the production of accessory dwelling units.

· Program 115 commits the City to "[a]dopt [an] amendment to [the] zoning code to facilitate by-right siting of shelter and transitional housing facilities by 2025." Opp. at 18.

Programs 8 and 54 appear to be within the scope of section 65883(c)(2) and Programs 63 and 115 appear to be within the scope of section 65883(c)(3). Program 11 does not appear to be within the scope of either provision. §65587(d)(2). However, the action under section 65587(d)(2) shall be brought pursuant to CCP section 1085 and there is no ministerial duty to complete these programs. The demurrer must be sustained to the second cause of action.

E. <u>Conclusion</u>

For the reasons stated, the demurrer is overruled for the first cause of action and sustained without leave to amend for the second cause of action. The City has 30 days' leave to answer only.

---

[1] All further statutory references are to the Government Code unless otherwise stated.

[2] For convenience, the court will refer only to cities, not counties, in discussing the Housing Element Law.

[3] Respondent City requests judicial notice of the following exhibits: (1) Council File Number 21-1230 excerpts (RJN Exs. B.1-B.2); (2) Council File Number 21-1230-s1 excerpts (RJN Exs. C.1-C.2); (3) Council File Number 22-0617 excerpts (RJN Exs. D.1-C.3); (4) Council File Number 21-0934 excerpts (RJN Exs. E.1-E.2); (5) Council File Number 21-1230-s5 excerpts (RJN Exs. F.1-F.5); (6) Council File Number 21-1230-s6 excerpts (RJN Exs. G.1-G.7); (7) Council File Number 21-1230-s6 excerpts (RJN Exs. H.1-H.3); (8) Council File Number 18-0445-s1 excerpts (RJN Exs. I.1-I.2); (9) Planning Department Case File (Case No. CPC-2020-1365-GPA) (RJN Ex. J); (10) City Charter section 558 (RJN Ex. K); (11) City Charter section 13B.1.3 (RJN Ex. L); and (12) the City's 2021-2029 Housing Element excerpts (RJN Ex. M).

When a party desires a court to take judicial notice of a document, the party should furnish the court with a copy of such document or record and an authenticating declaration or certification by its custodian to establish its authenticity. *See* Ross v. Creel Printing & Publishing Co., (2002) 100 Cal.App.4th 736, 743 (declining to take judicial notice of uncertified copy of complaint from Nevada). The City has complied with this requirement. *See* Phelan Decl. The requests are granted. Evid. Code §452(b), (c).

Petitioners request judicial notice of the following exhibits: (1) the City's Housing Element excerpts (Pet. RJN Ex. N); (2) Appendix 4.1 to the City's Housing Element (Pet. RJN Ex. O); and (3) the City's Rezoning Table (Pet. RJN Ex. P). The requests are granted. Evid. Code §452(b), (c).

In reply, the City requests judicial notice of the following exhibits: (1) California Assembly Bill 3093 and Legislative Counsel's Digest (RJN Ex. N); (2) California Assembly Bill 2667 and Legislative Counsel's Digest (RJN Ex. O); (3) California Assembly Bill 2023 and Legislative Counsel's Digest (RJN Ex. P); (4) California Assembly Bill 3093 Assembly Floor Analysis (RJN Ex. Q); (5) California Assembly Bill 2667 Assembly Floor Analysis (RJN Ex. R); (6) California Assembly Bill 2023 Assembly Floor Analysis (RJN Ex. S); (7) California Senate Bill 375 and Legislative Counsel's Digest (RJN Ex. T); (8) California Senate Bill 375 Assembly Local Government Floor Analysis (RJN Ex. U); (9) Housing Element Annual Progress Report (RJN V); (10) Excerpts of Housing Element Chapter 4 – Adequate Sites for Housing (RJN Ex. W); (11)

Housing Element Appendix 4.1 – Table (RJN Ex. X); (12) Housing Element Appendix 5 – Rezone Sites (RJN Ex. Y). Again, the City has provided an authenticating declaration (Medellin Decl.) and the requests are granted. Evid. Code §452(b).

[4] On April 23, 2025, the City's counsel, Kathryn C. Phelan Esq. ("Phelan"), sent an email to CFH counsel Matthew P. Gelfand, Esq. ("Gelfand") and YIMBY counsel Kenneth A. Stahl, Esq. ("Stahl") requesting to meet and confer regarding the City's intent to file a demurrer. Phelan Decl., ¶3, Ex. A.1. Gelfand responded on April 30, 2025 with legal contentions on behalf of Petitioners. Phelan Decl., ¶4. The City and Petitioners were unable to reach agreement. Phelan Decl., ¶4. The City has complied with CCP section 430.41(a).

[5] Petitioners' argument -- that, if the Legislature intended to limit section 65587(d)(1) to a city's compliance with its obligation to accommodate its RHNA it would have referred to other provisions of the Housing Element Law – also fails because section 65583(c)(1)(A) is the only provision in the Housing Element Law that creates the rezoning obligation. Reply at 4-5.

[6] In reply, the City presents legislative history to support the conclusion that section 65587(d)(1) is only intended to enforce rezoning adequate to accommodate a RHNA shortfall. Reply at 5-6. The lack of any legislative history reference to a requirement for completion of housing element rezoning programs is not particularly persuasive, but it is also unnecessary to the court's interpretation of section 65586(d)(1).

[7] Because the City's lists subdivide some parcels (APNs) into smaller units (identified by PIN), and use inconsistent site addresses, PIN (rather than APN or address) must be used to identify unique sites. Opp. at 9, n. 3.

[8] Figures have been rounded to three significant digits. Opp. at 9, n. 4.

[9] Petitioners add that the City's approach violates section 65583.2(g)(2), which applies to rezone sites (§65583.2(a)(4)), because the City abandoned its own probabilistic likelihood of development model when it came time to assess the additional realistic capacity created through rezoning. In short, the City has not rezoned sites sufficient to meet its RHNA allocation at any income level, and it is properly subject to litigation to compel it to do so. Opp. at 14.

The City correctly replies that these provisions apply to the inventory of sites in a housing element developed pursuant to section 65583(a), and Petitioners do not show how these inventory provisions apply to the sites rezoned under section 65583(c)(1)(A). Reply at 4, n. 2. The City also argues that its Housing Element, certified by HCD, sanctioned the City's use of a different model for rezoning purposes. RJN Ex. W (Housing Element, Regression Methodology, pp. 497-503; Rezoning Program and Inventory of Candidate Sites), pp. 503–09). Reply at 3. The court need not address this contention.

[10] Petitioners make no argument in support of the FAP's allegation that the City failed to comply with section 65583.2(h)(1) because the Low-Income Sites List eligible for by-right treatment is a subset of lower income sites identified for rezoning in the City's Housing Element.

[11] The City argues that, to the extent the City Council's findings for Program 121 interpreted the word "will" as indicating a commitment (RJN Ex. F.4, p. 36), it was only considering Program 121 – not other Housing Element programs -- when it made the finding. The City Council also was considering Program 121 in the context of state law compliance. The same is not true of the other Housing Element programs. Dem. at 21.

[12] Nor does Martinez v. City of Clovis, *supra,* 90 Cal.App.5th at 290, support Petitioners' argument. It concluded that traditional mandamus was available precisely because section 8899.50 expressly stated a mandatory duty. Id. at 290-91.

The City also argues that the legislative history does not support any such reading. RJN Exs. N–S. Reply at 9. There is no need to look at the legislative history because section 65583(h) is not ambiguous.

[13] The City adds that is committed to the Housing Element programs as demonstrated by its recent Annual Progress Report to HCD. RJN Ex. V. Every program listed includes progress or completion. RJN Ex. V, pp. 482-83, 490 (Program 8 (Accessible Housing Program)—94% compliance with the City's Fair Housing Policies; Program 11 (Land Use and Building Code Policies to Support Aging in Place)--three eldercare facilities approved and senior housing incentives in the CHIP Ordinance; Program 54 (Expedite Affordable Housing Projects)--CHIP ordinance streamlines review for affordable housing projects; Program 63 (Accessory Dwelling Units)--revised ADU implementation memo released in December 2024 to reflect changes to state law and remove barriers and LAMC amendment initiated; Program 115 (Zoning and Development Standards for Homeless Housing)—City Council directed preparation of revisions to harmonize the City's shelter ordinance with state law). Reply at 10.