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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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, Respondent.	Case No. 25STCP00546 **PETITIONERS' OPPOSITION TO DEMURRER TO FIRST AMENDED PETITION** Assigned for all purposes to: Hon. James C. Chalfant (Dept. 85) Petition Filed: February 13, 2025 Hearing: June 12, 2025 at 9:30 a.m.

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I. INTRODUCTION

The City has demurred to Petitioners' First Amended Petition, which alleges two causes of action against the City for failing to live up to the commitments in the City's sixth cycle housing element.

As to the first cause of action, the demurrer must be overruled because the adequacy of the City's rezoning is in dispute. The City's housing element received support from housing advocates because of its use of an advanced probabilistic model to assess the realistic capacity of its housing element inventory sites. Three years later, the City has abandoned that celebrated model and calculated the impact of its "rezoning" using an alternative analysis that drastically overestimates the realistic capacities attributed to its housing element sites. In truth, the City has made only modest improvements to zoned capacity, and most of the City's claimed "rezoning" is a change in arithmetic, not in policy.

An example illustrates the City's math trick. For a site in Leimert Park, the City's new zoning allows about eight ***fewer*** units than were allowed under existing zoning and bonus programs. Yet the new realistic capacity the City attributes to the site is 20 times ***higher*** than before.[1] This is not an isolated example; nearly the entirety of the City's rezoning analysis employs this trick.

And there are plenty of other reasons to question the City's analysis. For example, the City has attributed realistic capacity to the Stanley Mosk Courthouse, to the office building where the City's own lawyers work, and to the Cathedral of Our Lady of the Angels, none of which have any prospect of being redeveloped as housing by 2029. The City also has not explained what baseline it is using to calculate the amount it has "rezoned," and has not justified its assumptions about the incentives created by its new incentive program. These flaws form the basis for Petitioners' claim that the City has not sufficiently rezoned, and the City will bear the burden of proof on the issue at trial.

As to the second cause of action, Petitioners' claim is specifically authorized by Government Code section 65583(h). Petitioners are seeking to enforce specific commitments to undertake specific actions by specific dates, and are entitled to do so under section 65583(h).

II. LEGAL BACKGROUND

In recent years, the California Legislature has sought to address what it has described as a "housing supply and affordability crisis of historic proportions." (Gov. Code 65589.5(a)(2).) The

[1] *See infra* pp. 9-10.

Regional Housing Needs Allocation ("RHNA") and housing element laws are critical components of the Legislature's interconnected system for addressing this crisis.

The RHNA system is a process for allocating housing targets to cities and counties, generally every eight years. (Gov. Code § 65588.) After the RHNA allocation is final, each local government update the housing element of its general plan. At the core of this housing element update is the "sites inventory," a listing of potential sites for housing. Housing element law contains strict requirements for sites listed on sites inventories, especially non-vacant parcels. (*See* Gov. Code § 65583.2(g).) If needed, the local government must make changes to its land use rules, including by rezoning land, to enable housing production sufficient to meet its RHNA goals. (Gov. Code § 65583(c), 65583.2(h).)

III. STATEMENT OF FACTS

A. The City Adopted A Sixth Cycle Housing Element That Used An Advanced Probabilistic Approach To Realistic Capacity.

The City of Los Angeles adopted its final sixth cycle housing element on June 14, 2022.

In light of the City's size, it took an unusual approach to identifying housing element inventory sites, particularly as to state law's limits on the use of non-vacant sites. For built-up cities like Los Angeles, housing element law mandates that the "existing use [on each non-vacant site] shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period." Gov. Code § 65583.2(g)(2). To comply with this requirement, the City would have needed to review the existing uses on hundreds of thousands of potential inventory sites and remove all of the sites for which there was inadequate evidence that the existing use would likely discontinue.

Instead, the City developed its sites inventory using a probabilistic model that adjusted the realistic capacity on each housing element site by a probability of development factor designed to account for the impediment created by the existing use on that site, among other factors. More specifically, for each site, the model calculated (1) a likelihood of development and (2) a realistic capacity factor assuming that development does occur. (Opp. RJN Ex. N, p. Appendix 4.6-12.) To obtain these factors, the model considered a variety of inputs, such as the age of existing structures, the nature of the existing use, development trends in the neighborhood, and economic data. (*Id.*, pp. Appendix 4.6-14 to Appendix 4.6-15.) The City then multiplied both of these factors by the total zoned

capacity of the site to calculate the model-adjusted realistic capacity for the site.

For example, the City's housing element sites inventory lists 700 North Alameda Street, the recently renovated headquarters of the Metropolitan Water District of Southern California. (Opp. RJN Ex. O, row 18224[2].) Because this site was recently renovated and its existing use is likely to continue well beyond the October 2029 end date for the current housing element planning period, a site-by-site analysis under Government Code Section 65583.2(g)(2) would ordinarily bar this site from inclusion in the City's sites inventory altogether. But the City instead decreased the total capacity of the site from 678 units to just under 1.8 units to account for realistic capacity factors—a decrease of 99.7%.

Based on the City's model-adjusted capacity figures, the City determined that it could realistically accommodate only a portion of its RHNA allocation through its existing zoning. Accordingly, the City determined that it would need to rezone sites to accommodate an additional 255,432 units, including 130,553 units affordable to lower income households. (Demurrer at 15.)

As with the City's probabilistic approach to its sites inventory, the City took an unusual approach to identifying its rezoning plans in its housing element. While most cities identify specific sites to be rezoned at specific densities, Los Angeles instead identified an overarching rezoning program involving sixteen community plan updates, the adoption of two specific plans, and the establishment of a new citywide affordable housing incentive program. (Demurrer Decl. Ex. M, pp. 132-133 [program 121]; *see also* Demurrer Decl. Ex. M, pp. 127-129 [program 65].) The City published a table identifying sites whose housing capacity could be impacted by these nineteen program actions. While the City committed to identify and recommend rezoning of sites sufficient to add "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," Demurrer Decl. Ex. M, p. 132, the housing element did not explain how the City would actually calculate rezoned capacity for these sites after it completed the rezoning.

B. When It Came Time To Rezone, The City Abandoned Its Probabilistic Approach And Fell Far Short Of The Commitments Made In Its Housing Element.

The rezoning deadline applicable to the City of Los Angeles was February 12, 2025. (Demurrer

[2] The official version of the City's housing element sites inventory is an Excel spreadsheet, which Petitioners have lodged as Exhibit O to their Opp. RJN. Because the City never generated a print version of this document, page numbers are unavailable, and we refer to entries in the table by row number.

at 10.) As the deadline approached, it became increasingly clear that the City would not even begin developing most of the community plan updates identified in its housing element by the deadline. So the City began publicly suggesting that it would instead rely on its new affordable housing incentive program ("CHIP") to accomplish most of its rezoning. This culminated in the City's February 2025 adoption of the findings included with the City's Demurrer as Exhibit F.4, which purported to determine that the City had achieved its legally required rezoning through CHIP and a handful of other recent policy changes, including the adoption of two community plans.

The City's February 2025 findings are based on a table that claims to identify the realistic capacity on each rezoned site. (Demurrer Decl. Ex. F.4, pp. 37 *et seq*.) This table did not use the City's probabilistic likelihood of development model to calculate these realistic capacities. Instead, it used a simplistic realistic capacity adjustment that does not meaningfully adjust for likelihood of development. As a result, the City is attributing to its rezoned sites realistic capacity numbers that are orders of magnitude higher than what the City attributed to the same sites in its sites inventory, even where the zoned capacity on those sites has not significantly increased.

As we discuss in greater detail below, the City appears to be taking the position that the adjustment for likelihood of development the City used in its site inventory model was necessary only at the time of housing element adoption and not in the context of the analysis of whether the City has met its obligation to rezone. So the City is relying on its purported rezoning of sites that would ordinarily have been excluded by Government Code section 65583.2(g)(2), but without using the probabilistic model that allowed the City to avoid scrutiny under section 65583.2(g)(2) in the first place.

IV. ARGUMENT

A. The City's Demurrer Attempts To Short-Circuit This Case By Litigating Contested Factual Issues Before The Facts Have Been Developed.

1. The City Is Improperly Attempting To Rely On The Truth Of The City Council's Factual Findings Regarding The Sufficiency Of Its Rezoning.

"To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action." (*C.A. v. William S. Hart Union High School District* (2012) 53 Cal.4th 861, 872.) If a plaintiff has stated a cause of action under any possible legal theory, a demurrer cannot be sustained. (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) A court must treat all properly pleaded

material facts as true. (*Schmier v. City of Berkeley* (2022) 76 Cal.App.5th 549, 553 n.4.) While a court may consider matters judicially noticed on demurrer, "the taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom." (*Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134 ["[B]ecause a demurrer is simply not the appropriate procedure for determining the truth of disputed facts, judicial notice of matters upon demurrer will be dispositive only in those instances where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed." [internal quotation marks omitted]].).

At the core of the City's demurrer is its assertion that it has adequately rezoned. The City's basis for this assertion is its February 2025 finding that its rezoning met the requirements of state housing element law, and the attached table (the "Rezoning Table") purporting to identify the rezoned realistic capacities for over 80,000 sites. (Demurrer at 15-18; Demurrer Decl. Ex. F-4, pp. 37 *et seq*.) On demurrer, the Court cannot rely on the truth of these items. Instead, it must treat as true Petitioners' 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 ¶ 32.) Once the scope of judicial notice is properly limited, the City's demurrer easily fails.

Nor is the City entitled to rely on the City Council's findings based on principles of judicial deference to local decision-making. The City has not cited any authority for the proposition that a local agency is entitled to deference as to its own assessment of whether it has complied with *state* housing laws, and Petitioners are not aware of any. Indeed, the courts have held to the contrary in interpreting other state 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]]; *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 301 ["In the present case, the City was *not* given discretion to impose conditions and then determine whether they were satisfied: It was *required* to approve the

development project if the conditions specified by the *Legislature* were met. . . . [W]e find the highly deferential standard of review applied by the trial court inappropriate here."].)

2. To Be Clear, The City's February 2025 Findings Are Baseless.

For the reasons described above, the City is not permitted to rely on the truth of its February 2025 findings on demurrer. But even if it were otherwise appropriate, the City's findings are unreliable on their face, and (at best) present contested factual issues.

First, the City's February 2025 findings are fundamentally flawed because they are based on an approach that ignores 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. The following table provides illustrative examples of parcels for which the city has barely increased zoned capacity, or has actually decreased capacity relative to pre-existing density bonus law, but for which the City now claims a drastic increase in realistic capacity:

	Housing Element Appendix 4.1			**Rezoning Table**	
PIN[3]	Zoned Capacity	Zoned Capacity (w/ pre-existing density bonus)	Realistic Capacity[4]	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

(Opp. RJN Ex. P, rows 150894, 164625, 169571, 169587; Demurrer RJN Ex. F.4, pp. 38.)

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 its housing element, yet the City claims that 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

[3] 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.
[4] Figures have been rounded to three significant digits.

a single page of the City's Rezoning Table. When the Court considers the merits of this litigation, Petitioners are prepared to demonstrate that these anomalies pervade the City's capacity calculations.

Second, the Rezoning Table contains entries that are 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 Los Angeles 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 30377-30378, 30380-30384, 30386-30387, 30389-30391, 36414, 37478, 37488, 41928, 85901-85903.)[5] 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.

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 is using to calculate the additional capacity it has created through rezoning, including whether the City has properly accounted for the genuine prior capacities on its rezone sies, including the capacity allowed by pre-existing incentive programs such as the State Density Bonus Law, Gov. Code § 65915 *et seq*.

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 developments for which funding and development capacity is 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. (*See* Gov. Code §§ 65583(a)(5), (6); 65583.2(c)(2).)

For these reasons, the City's findings regarding the effect of its rezoning lack substantial evidence and cannot meet the City's burden to demonstrate that it has complied with state law.

[5] To the extent necessary, Petitioners request that the Court take judicial notice of the existing uses on these sites, which are of common knowledge in the County. (*See* Evid. Code § 452(g).)

B. The FAP Adequately Alleges That The City Has Not Satisfied Its Rezoning Obligations Under Housing Element Law.

1. A Demurrer Cannot Be Granted On The First Cause Of Action, For Which The City Bears The Burden Of Proof.

Under subdivision (d)(2) of Government Code section 65587, the City bears the burden of proof in an action challenging its failure to rezone. Because the City bears the burden of proof, it faces a very high bar on demurrer, akin to a defendant that has filed a demurrer on the basis of an affirmative defense. It "must appear clearly and affirmatively," from the face of the FAP and judicially noticeable documents, that Petitioners' claim will fail. (*Silva v. Langford* (2022) 79 Cal.App.5th 710, 716 [quoting *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 223] [discussing demurrer on affirmative defense].) Because the City comes nowhere near meeting this high bar, the demurrer must be overruled.

2. The City Was Required To Complete The Specific Rezoning Program Identified In Its Adopted Housing Element By February 12, 2025, And Petitioners Have Adequately Alleged That It Did Not Do So.

The City's primary legal argument on demurrer is that subdivision (d)(1) of Government Code section 65587 does not apply to Petitioners' claims. More specifically, the City argues that the phrase "the rezoning" in subdivision (d)(1) does not refer to the specific rezoning program identified in the City's housing element, but instead to the state law rezoning requirement that the rezoning program is intended to satisfy. (Demurrer at 13-15.) The City's argument fails for at least three reasons.

First, the plain language of the statute does not support the City's position. Government Code section 65587(d)(1) refers to Government Code section 65583(c)(1)(A). Section 65583(c)(1)(A), in turn, is the provision in housing element law that requires each local agency to create a specific rezoning program. It follows that "the rezoning" in subdivision (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 litigation under section 65587(d)(1) to the question whether the City had merely complied with its obligation to accommodate its RHNA, it would have referred to other provisions of law setting forth that obligation.

Second, the City's argument is fundamentally at odds with the design of state housing element law, which requires the timely adoption of a housing element but grants compliant cities several years to complete their rezonings. Under the City's interpretation, a local agency is 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, avoid the penalties for housing element non-compliance, and avoid facing litigation over the substance of its adopted housing element until the statute of limitations has passed. The same agency 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.

State housing law sets forth extremely detailed and specific requirements for a local agency's rezoning program. This rezoning requirement is the central substantive policy obligation under state housing element law. But under the City's interpretation, all of these requirements around the development of the rezoning program for the housing element become a mere paper exercise, free to be disregarded at the time of rezoning—just as Los Angeles has done here. The Legislature could not have intended that result. So, to the extent that there is any ambiguity in section 65587(d)(1), that ambiguity should be resolved in favor of Petitioners' interpretation. (*See Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038-9; *Gaetani v. Goss-Golden West Sheet Metal Profit Sharing Plan* (2000) 84 Cal. App. 4th 1118, 1127.)

The City instead argues that its own interpretation is more consistent with the overall statutory scheme, claiming that Petitioners' "interpretation fundamentally ignores the purpose of the housing element and RHNA Rezoning as a tool to satisfy a jurisdiction's RHNA requirements." (Demurrer at 14). The City is right about the purpose of housing element law, of course, but it is wrong about the order of operations. The RHNA requirements are implemented through the *housing element phase* of the process, when a local agency must design its rezoning program and convince HCD and the public to support the program as drafted. During the *rezoning phase*, the purpose of the statutory scheme is to compel a local agency to implement the program as drafted, not to develop its rezoning plan anew. Nor is the City helped by Government Code section 65581(c), which again gave the City the power to make decisions about its rezoning program during the *housing element phase* of the process, not to ignore those decisions when it came time to complete the promised rezoning.

Third, even if the City is correct that subdivision (d)(1) of Government Code section 65587 does not apply to this case, subdivision (d)(2) would apply in any event. Subdivision (d)(2) authorizes an interested party to "bring an action to compel compliance with the deadlines and requirements" in

subdivisions (c)(1), (c)(2), and (c)(3) of Government Code section 65583. The rezoning program requirements are contained in section 65583(c)(1), so are enforceable under subdivision (d)(2). Unlike subdivision (d)(1), subdivision (d)(2) is not limited by the phrase "the rezoning," so the City's arguments attempting to limit that phrase are irrelevant to interpreting subdivision (d)(2). Because Petitioners have alleged that subdivision (d)(2) applies to the City's failure to rezone, FAP ¶¶ 26 & 54, the demurrer can be overruled on that independent basis.

3. Government Code Section 65583(c) Does Not Authorize "Ongoing" Rezoning.

In addition to its claims about the scope of obligations enforceable under Government Code section 65587(d), the City makes a broader argument about the enforcement of deadlines in housing element law. Pointing to Government Code section 65583(c)'s mandate that each housing element program contain "a timeline for implementation, that may recognize that certain programs are ongoing," the City argues that "all programs in a housing element, including the rezoning program, may include actions that will be 'ongoing' during the 'planning period.'" (Demurrer at 14-15.)

This is not true. Section 65583(c)'s proviso that housing element programs *in general* may be ongoing is not an invitation to ignore the law's much more specific deadlines and mandates for *rezoning* programs in particular. (*See* Gov. Code §§ 65583(c)(1)(A), 65583.2(c), 65588(e)(4)(C); *State Department of Public Health v. Superior Court* (2015) 60 Cal. 4th 940, 960-961 [specific statutory provisions trump general provisions]; C.C.P. § 1859 [same].) The City's rezoning deadline was February 12, 2025, Demurrer at 10 n.3, and it was required to complete its rezoning programs by that date.

In any event, while the City's housing element notes that certain of the City's programs are "ongoing," as authorized by section 65583(c), this lawsuit does not seek to enforce any of the "ongoing" commitments. Instead, it seeks to enforce rezoning programs for which the City listed specific deadlines, timelines, and commitments. (*See* FAP ¶¶ 31-36.)

4. The City Has Not Adequately Rezoned Under Any Interpretation Of The Rezoning Requirement Subject To Enforcement Through Government Code Section 65587(d).

As Petitioners have alleged, the City completed only a small fraction of the specific rezoning commitments it set forth in its housing element. (*See* FAP ¶¶ 31-36.) These commitments are enforceable, and the demurrer as to Petitioners' first cause of action can be overruled on that basis.

But even accepting the City's argument that it can ignore its specific housing element rezoning commitments entirely (Demurrer at 12-15), or that they were sufficiently vague to render them unenforceable (Demurrer at 15-17), Petitioners have adequately alleged that the City cannot meet its burden to prove that it has rezoned adequate sites to meet its RHNA allocation. (FAP ¶¶ 33-34.) Indeed, for the reasons described above, the evidence the City apparently intends to use to demonstrate that it has done so is deeply flawed. (*See supra* pp. 9-10.) And the City's approach violates Government Code section 65583.2(g)(2), which applies to rezone sites,[6] 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.

C. The FAP Adequately Alleges That The City's Rezoning Implementation Ordinance Does Not Comply With Government Code Section 65583.2(h)(1).

Over the last decade, the Legislature adopted a series of amendments to housing element law intended to strengthen the practical effect of housing element rezonings. Among these changes, the Legislature added language requiring that cities that rezone sites to accommodate unmet allocation in the lower-income RHNA categories must provide for "by right" approval of certain mixed-income projects on the rezoned parcels. Today, this provision is codified in Government Code section 65583.2(h)(1):

> The program required by [Gov. Code 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.

(Gov. Code § 65583.2(h)(1) [emphasis added].) Here, "by right" means that the process must be exempt from the California Environmental Quality Act—i.e., it must be ministerial. (Gov. Code § 65583.2(i).)

The City has implemented this requirement through an implementation ordinance separate from the ordinances that make up the core of its claim that it has rezoned adequate sites. (Demurrer Decl. Ex. G.6 [the "HESMDO"].) Under the HESMDO, the City maintains a list of sites eligible for by-right treatment under section 65583.2(h)(1), and the City Council is free to change that list, by resolution, at

[6] (Gov. Code § 65583.2(a)(4).)

any time. (*Id.* at New L.A.M.C. § 16.70(C)(3).) The City concedes as much. (Demurrer at 18.)

The City's approach does not properly implement Government Code section 65583.2(h)(1), because it allows the City to withdraw sites from by-right treatment even though those sites have been 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 purportedly granted itself the right to do so by resolution rather than ordinance, the City would be free to do so 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* Gov. Code §§ 65090, 65091, 65353, 65355, 65853-65858.)

The City has lost seven Housing Accountability Act cases in the last five years, including two where it was found to have acted in bad faith,[7] so there is plenty of reason to believe that it will take advantage of the opening it has created for itself though this implementation of section 65583.2(h)(1).

Read properly, section 65583.2(h)(1) instead required 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 Government Code section 65941.1 and vest in their rights.

And the City knows how to implement this provision correctly. A separate provision of the HESMDO implements the third sentence in Government Code section 65583.2(c), a similar by-right requirement for sites that have been listed in multiple rounds of housing element sites inventories. For these sites, the City does not use the rigmarole of a separately maintained list that is free to be amended by resolution. Instead, the City identifies the qualifying sites by reference to the listing in the City's adopted housing element. (Demurrer Decl. Ex. G.6 at New L.A.M.C. § 16.70(B)(5).) The City could have taken a similar approach for section 65583.2(h)(1) qualifying parcels by simply granting by-right

[7] *District Square LLC v. City of Los Angeles*, L.A.S.C. Case No. 20STCP00654 (bad faith finding); *Yes In My Back Yard et al. v. City Council of the City of Los Angeles et al.*, L.A.S.C. Case No. 21STCP03883; *Janet Jha v. City of Los Angeles et al.*, L.A.S.C. Case No. 23STCP03499; *Yes In My Back Yard, et al. v. City Of Los Angeles, et al.*, Case No. 24STCP00070; *Yes In My Back Yard, et al. v. City of Los Angeles, et al.*, Case No. 24STCP00385; *Sonja Trauss, et al. v. City Of Los Angeles, et al.*, L.A.S.C. Case No. 24STCP00524; *Cesar Chavez 888, LLC v. City of Los Angeles*, L.A.S.C. Case No. 24STCP01880 (bad faith finding).

treatment to all of the lower income sites it has rezoned in its purported rezoning ordinances without allowing parcels to be added or removed by resolution. Its decision not to do so is telling.

D. The FAP Adequately Alleges That The City Has Not Completed Numerous Program Actions In The Housing Element.

1. This Litigation Is Specifically Authorized By Government Code Section 65583(h).

Petitioners' second cause of action alleges that the City has failed to comply with the commitments and deadlines it included in its housing element programs. (FAP ¶¶ 32-47, 63.) As to this cause of action, the City argues that the commitments in its housing element programs are not ministerial duties subject to enforcement under Code of Civil Procedure section 1085. (Demurrer at 19-20.)

The City's argument ignores the fact that the Legislature has specifically anticipated litigation to enforce the program commitments in a local agency's housing element and directed that such an "action to enforce the program actions of the housing element shall be brought pursuant to Section 1085 of the Code of Civil Procedure." (Gov. Code § 65583(h).) Indeed, the Court of Appeal has recognized the fact 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 Gov. Code § 65583(h), which is explicit in directing that litigation be filed under C.C.P. § 1085, with the state law duty to affirmatively further fair housing, which contains no such direction, but ultimately determining that latter can also be enforced in a writ under C.C.P. § 1085].)

Under the City's interpretation, Government Code section 65583(h) would be rendered meaningless because (according to the City) the program commitments in a housing element are not ministerial within the meaning of traditional case law interpreting Code of Civil Procedure section 1085. Instead, the Court should interpret Government Code section 65583(h) as a specific authorization to enforce program commitments under Code of Civil Procedure section 1085, without meeting the more general standards applicable to actions under section 1085 in the absence of such specific authorization.

2. The City's Housing Element Contains Programs With Specific Commitments To Undertake Specific Actions By Specific Dates, And These Commitments Are Enforceable Under Gov. Code § 65583(h) and C.C.P. § 1085.

Despite the City's efforts to paint its program commitments as vague or non-mandatory, Petitioners have limited their second cause of action to specific commitments with specific timelines.

For example, Program 49 of the City's housing element 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 its own 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 was ostensibly to inform the City's rezoning process and ensure that it fairly allocated rezoning across the City. But it now claims to have completed the rezoning process without ever 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) and would also be enforceable under the standards applicable to actions under Code of Civil Procedure section 1085 more generally.

Nor is the City saved by the noncommittal language it references in introductory text in its housing element. (*See* Demurrer at 20-22.) The obligation to develop program commitments is carefully laid out in state housing element law, as is the right to enforce those commitments in court. (Gov. Code §§ 65583(c), (h).) If a city or county can excuse itself from living up to those commitments through vague introductory language, this carefully crafted and frequently enhanced statutory scheme will be all for naught. The Court should interpret the specific commitments made in the City's housing element programs—the commitments that earned the City HCD certification—as overriding any vague introductory language elsewhere in the document.

Petitioners agree with the City that "a statute must be read 'with reference to the entire scheme of law of which it is part.'" (Demurrer at 22.) Here, the statutory scheme would not be furthered by allowing the City to renege on the specific commitments, with specific deadlines, made in its housing element, based on vague language in the preamble to the City's housing element programs.

3. Many Of The City's Program Commitments Are Also Enforceable Under Gov. Code § 65587(d)(2).

Separate from the litigation authorization in Government Code section 65583(h), many of the program commitments being enforced in Petitioners' second cause of action are also enforceable under Government Code section 65587(d)(2).

Government Code section 65587(d)(2) authorizes litigation—and places the burden of proof on

the respondent in such litigation—to enforce any program commitment intended to "[a]ssist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households" or "[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." (Gov. Code § 65587(d)(2) [authorizing litigation to enforce commitments in Gov. Code §§ 65583(c)(2) & (3)].)

Many of the programs being enforced through Petitioners' second cause of action meet these criteria and are enforceable under section 65587(d)(2). For example:

- 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."

V. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court overrule the demurrer.

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