FILED
Superior Court of California
County of Los Angeles
DEC 18 2024
David W. Slayton, Executive Officer/Clerk of Court
By: M. Mort, Deputy

Superior Court of California
County of Los Angeles

YES IN MY BACK YARD, *et al.*,	
Petitioners,	Case No. 24STCP00385
vs.	**RULING ON VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF**
CITY OF LOS ANGELES, *et al.*,	
Respondents.	Dept. 86 (Hon. Curtis A. Kin)

Petitioners Yes In My Back Yard, Sonja Trauss, 7749 Wilbur Avenue Real Estate, LLC, and Evolve Realty and Development Corp's petition for a writ of mandate directing respondents City of Los Angeles ("City") and City Council of the City of Los Angeles ("City Council") to review and process Evolve Realty and Development Corp's application for a 100% affordable housing development.

I. Statutory and Factual Background

A. Housing Accountability Act

Commonly characterized as the "Anti-NIMBY" (Not In My Backyard) law, the Housing Accountability Act ("HAA") was enacted in 1982 and has since been repeatedly amended to limit local governments' ability to disapprove housing. (*California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 835 ("*CARLA*").) The HAA, codified in Government Code § 65589.5,[1] is intended to address the lack of affordable housing "by encouraging and facilitating the construction of housing in general and affordable housing in particular." (*Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 312; *see also* Gov. Code § 65589.5(q) [section shall be known as Housing Accountability Act].) The HAA must be "interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." (§ 65589.5(a)(2)(L).)

[1] All statutory references are to the Government Code, unless otherwise indicated.

In 2019, the Legislature enacted the Housing Crisis Act ("HCA"), which added subdivision (o) to section 65589.5 to prevent local governments from "changing the rules on builders who are in the midst of going through the approval process." (Pet. RJN Ex. D at 7-8.) Subject to compliance with section 65941.1(d)—part of the Permit Streamlining Act, as discussed further below—the HAA subjects housing development projects "only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted." (§ 65589.5(o)(1).) "Ordinances, policies, and standards" include "general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000...." (§ 65589.5(o)(4).)

The HAA prohibits local agencies from disapproving housing development projects, including affordable housing projects, "unless it makes written findings, based upon a preponderance of the evidence in the record" as to one of five enumerated findings. (§ 65589.5(d).) Disapproval of a housing project includes "any instance" where the local agency "[v]otes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit." (§ 65589.5(h)(6).) In any action challenging a city's decision to disapprove a project, the city bears the burden to demonstrate that its disapproval complies with the HAA. (§ 65589.6.)

B. Permit Streamlining Act

The Permit Streamlining Act ("PSA"), codified in Government Code § 65920, *et seq.*, was enacted "to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects." (Gov. Code § 65921.) As pertinent here, before the ordinances, policies, and standards in effect at the time of submission of a preliminary application are locked in or become "vested," preliminary applications must comply with subdivision (d) of section 65941.1. (§ 65589.5(o)(1).)

An applicant for a housing development project has 180 calendar days after submitting a preliminary application to submit an application that includes "all of the information required to process the development application" consistent with specified statutes. (§ 65941.1(d)(1).) The public agency then has 30 calendar days to determine whether the application is complete and inform the applicant of the determination. (§ 65943(a); *see also* § 65932 [definition of "public agency" includes any city].) The public agency must provide the applicant with "an exhaustive list of items that were not complete." (§ 65943(a).)

If the public agency finds the application to be incomplete, the applicant has 90 days from receipt of the information missing from the application to submit the missing information and complete the application. (§ 65941.1(d)(2).) If the applicant does not complete the application within 90 days, the preliminary application "shall expire and have no further force or effect." (§ 65941.1(d)(2).) In any subsequent review for completeness, the public agency "shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete." (§ 65943(a).)

Once a public agency accepts an application as complete, "the agency shall not subsequently request of an applicant any new or additional information" not specified in the agency's list of information required from any applicant for a development project. (§ 65944(a).) While processing the application, the agency may "request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application." (§ 65944(a).)

C. Mayor's Emergency Declaration and Executive Directive 1

On December 12, 2022, Mayor Karen Bass issued a Declaration of Local Emergency ("Declaration") in response to the City's ongoing housing and homelessness crisis. (AR 622-27.) The Declaration directed City agencies to provide "[r]egulatory relief...to create flexibility to address the crisis." (AR 626.) On December 16, 2022, Mayor Bass issued Executive Directive No. 1 ("ED1") directing City departments to provide a streamlined ministerial application review process to 100% affordable housing projects. (AR 629-31.)

As relevant here, ED1 states:

> Applications for 100% affordable housing projects...shall be, and hereby are deemed exempt from discretionary review processes otherwise required by either the zoning provisions of Chapter 1 of the LAMC or other Project Review including Site Plan Review as described in LAMC Section 16.05 and LAMC Section 13B.2.4, as long as such plans do not require any zoning change, variance, or General Plan amendment. All City departments are directed to process all plans for such 100 percent affordable housing projects...using the streamlined ministerial review process currently used for projects eligible under Government Code section 65913.4, State Density Bonus law.

(AR 629.) On February 9, 2023, City departments issued implementing guidelines for ED1 ("Guidelines") that outlined the eligibility criteria and general procedures

for any project seeking ministerial ED1 approval. (AR 633-46.) The Guidelines state in pertinent part:

> An ED 1 project may qualify for vesting of City ordinances policies and standards through either the submittal of plans sufficient for a complete plan check to LADBS, consistent with LAMC §12.26-A.3 or the submittal of a complete Housing Crisis Act (HCA) Vesting Preliminary Application prior to case filing.

(AR 643.) The Guidelines also state: "Most housing projects qualify to submit an optional HCA Vesting Preliminary Application, which 'locks in' local planning and zoning rules at the time the complete application is submitted." (AR 646.)

D. Evolve's Application for Affordable Housing Development

On April 26, 2023, petitioner Evolve Realty and Development Corp ("Evolve") submitted a "preliminary application" for a 100% affordable, 6-story, 220-unit housing development project ("Project" or "Wilbur Project") pursuant to the Housing Crisis Act ("HCA"). (AR 46-56.) The Project is located at 7745-7751 N. Wilbur Avenue in the City of Los Angeles. (AR 47.) On May 4, 2023, City staff signed the preliminary application, affirmed a "submittal completion date" of April 26, 2023, and checked the box identifying the Project as "ED 1 Eligible." (AR 46-47.) The City assigned the application an "administrative review" case number (ADM-2023-4428). (AR 46.) Evolve developed a full plan set and submitted various referral forms to multiple city departments. (AR 1-32, 36, 44, 84, 140.)

On June 22, 2023, Evolve submitted a formal Department of City Planning ("City Planning") application. (AR 100-11.) The City assigned the application an "administrative review" case number (Case No. ADM-2023-4428-DB-ED1-VHCA). (AR 100.) On June 28, 2023, a City Planning planner reviewed the application materials against the City application checklist. (AR 126-38.) All the application checklist boxes were marked either "complete" or "not applicable." (AR 126-38.) By June 28, 2023, Evolve paid $7,070.38 for a building permit and a certificate of occupancy and $4,892.94 for administrative review and other application fees. (AR 44, 125.)

E. Amendment of ED1 and Determination of Ineligibility Under ED1

On July 7, 2023, Mayor Bass issued an amended version of ED1 ("Amended ED1"). (AR 680-82.) Amended ED1 was largely the same as the original ED1, except that it excluded from ministerial, non-discretionary approval any 100% affordable housing project "located in a single family or more restrictive zone." (AR 680.)

On July 6, 2023, City Planning sent Evolve a letter stating that "the proposed project located at 7749 N Wilbur Avenue is in the RA-1 [single-family] zone and is not eligible for ED1 processing" pursuant to Amended ED1. (AR 139.)

On July 18, 2023, the City issued a letter stating the application was incomplete. (AR 167-79.) The City maintained that the following information on the City Planning application contained inconsistencies based on the application itself or other application forms: (1) claiming the Project would seek on- and off-menu incentives, but requesting no on-menu incentives (AR 168); (2) stating that two existing single-family dwellings were on site and other places stating that number was three (AR 168); (3) requesting seven waivers of development standards, but seeking eight in the Affordable Housing Referral Form ("AHRF") (AR 133); (4) stating that 285 parking spaces are required, in contradiction of the statement in the AHRF form that 190 are required (AR 168); (5) requesting a waiver of tree requirement, but not stating what was required or what is requested in lieu of the requirement (AR 168); (6) omitting one level of subterranean parking information in the Project description (AR 168); (7) making inconsistent height requests (AR 1334); (8) requesting incentives for an increase in floor area and reductions in yard, parking, bicycle parking, building line, open space, and tree planting, but also duplicating these requests as waivers (AR 1334; *see also* AR 1302 ["RFAR" stands for Residential Floor Area Ratio]); (9) omitting a bicycle parking calculation verified with Los Angeles Department of Building and Safety ("LADBS") pursuant to LAMC § 12.21 A.16 (AR 1334); (10) inconsistently seeking setback reductions of both 40% and 30% (AR 1334); and (11) omitting an open space requirement verified with LADBS (AR 1335).

The City also noted that the following materials needed to be "amplified, corrected, clarified, and supplemented" or were otherwise missing: (1) an Affordable Housing Referral Form lacking a staff signature and containing internally inconsistent information described above (AR 170-72); (2) a Preliminary Zoning Assessment Form completed or stamped by LADBS with information internally consistent with other application materials with respect to the number of units and floor area (AR 173); (3) a Replacement Unit Determination letter from the Los Angeles Housing Department (AR 173); (4) copies of grant deeds (AR 173); (5) copies of the Certificate of Occupancy and Application for Building Permit (AR 174); (6) an index map indicating where submitted photos were taken (AR 174); (7) sets of LADBS-stamped and LADBS-signed plans with dimensions (AR 174); (8) site plans with open space and landscape calculations that demonstrate compliance with municipal code and verifications of parking calculations (AR 174-75); (9) floor plans with accurate details consistent with other application forms (AR 175-76); (10) elevation plans with dimensions (AR 176); (11) plan sections corrected to scale (AR 176); (12) plans for solar panels, a landscape plan, and open space plan (AR 177); (13) a tree disclosure statement form (AR 179); and (14) a complete Citywide Guidelines Form which failed to show or include (i) entrances, sidewalks, and elevators, (ii) parking entry, parking access, or a parking gate, (iii) Wilbur Avenue

bicycle parking and entrances, (iv) window locations, (v) planted area for residents and dogs, (vi) a trash room, (vii) the site's unique and natural resources, or (viii) a landscape plan (AR 177-78).

On August 4, 2023, City Planning issued a second incompleteness letter with a discretionary case number. (AR 180-81.) This second letter cancelled the administrative review application and converted the Project to a discretionary review process. (AR 180-81.) The letter referred to the issues raised in the July 18, 2023 incompleteness letter, requested an Environmental Assessment Form required for discretionary review, and demanded payment of over $35,000 in additional fees. (AR 180-83.)

On September 20, 2023, Evolve appealed the City's application conversion. (AR 418-29.) The appeal explained that "as a matter of State law the HCA Preliminary Application filed for the Project grants vesting protections that require the City's continued ED 1 processing." (AR 419.)

Evolve did not submit the missing information that the City requested. (AR 764, 592, 608.) On November 1, 2023, City Planning submitted its appeal report to the City Council which stated "no City Planning decision-maker has issued...a disapproval on the merits.... City Planning recommends the appeal be denied and that the Appellant be required to provide a complete application for processing." (AR 587-868, 608.) City Planning's appeal response also argued that ED1 "is not the equivalent of an ordinance, policy, standard, planning rule, or zoning rule," and there is no ability to "vest" in ED1's ministerial process. (AR 598-600.) The report concluded that vesting in ED1 "is beyond the authorization" of state law. (AR 1201.)

F. The City Grants Vesting Rights to a Similarly Situated Project

City Planning also deemed a project at 5511 North Ethel Avenue ("Ethel Project") ineligible for ED1, and the applicant for that project appealed. On September 14, 2023, the state Department of Housing and Community Development ("HCD") sent the City a guidance letter, stating: "The central question between the City and the Applicant is as follows: Is an executive directive one of the rules, regulations, requirements, and policies that vest upon submission of a complete Preliminary Application? The answer is 'yes.'" (AR 866-67.) HCD's letter further opined that "ED1 is not excluded from the expansive HAA definition of 'ordinances, policies, and standards'" and is therefore eligible for vesting. (AR 866-67.)

On September 26, 2023, the City Council discussed the Ethel Project appeal. City Council members asked whether their decision would impact other projects. (Pet. RJN Ex. B at 23.) City Planning staff explained that "this is an issue related to process, we would want to look consistently across all of these projects" and that "it is really a decision as to whether these processes will be administrative or discretionary in nature. It is really not about the particulars of each individual

project or the property or which council district it's located in." (Pet. RJN Ex. B at 24-25.) After several council members asked for clarification on whether their decision would set a precedent, a deputy city attorney stated: "[A]ny decision that is made on subsequent appeals that may come before the council with similar facts will need to have a record that each decision is not arbitrary and capricious, and it's based on substantial evidence, so because this is a procedural issue...it would be incumbent upon the council in considering future appeals to be able to meet that legal standard." (Pet. RJN Ex. B at 50-51.) Council member Krekorian summed up the discussion by explaining "there is only two choices that are possible in this. Either [ED1] created a vested right, in which case we have no alternative but to grant this appeal, or it did not grant a vested right...." (Pet. RJN Ex. B at 52.)

Councilmember Blumenfield, the representative for the district where the Wilbur Project would be located, argued for disapproval of the Ethel Project, stating: "If we deny the appeal, the developer will likely sue, and if we don't deny the appeal, then the homeowners are going to sue.... I would rather have that—you know, that legal issue with the developer and not with the homeowners." (Pet. RJN Ex. B at 41.)

On October 12, 2023, HCD wrote the City another letter specifically regarding whether the Wilbur Project vested in the original ED1. (AR 1138-39.) HCD stated that the Wilbur and Ethel projects "address the same question" and told the City that "HCD urges the City to apply the law evenly across all ED1 projects and allow projects vested by the preliminary applications to be processed under the 'ordinances, policies, and standards' in effect, including Executive Directive No. 1 when the complete preliminary application was submitted." (AR 1138-39.)

The City Council granted the Ethel Appeal on an 8 to 5 vote and determined the Ethel Project could vest in ED1's ministerial process, even though the Ethel Project is in a single-family-residential zone. (Pet. RJN Ex. B at 17-18, 64; Pet. RJN Ex. C.)

G. The City Denies Evolve's Appeal

On September 27, 2023, prior to the hearing on the appeal of the Project, Councilmember Blumenfield wrote a letter to his constituents urging them to submit comments in opposition to affordable housing in their neighborhoods. (AR 541-42.) Councilmember Blumenfield asserted that ED1 did not expressly state that it applied to areas only zoned for apartments, and the Mayor's office had made clear that the Mayor's intent was not to allow 100% affordable housing projects in single-family areas. (AR 541.) The letter argued that affordable housing projects "radically change communities" and opposed such projects in his district due to concerns over the "peace and safety of the neighborhood." (AR 542.) Multiple members of the public submitted comments. (*See, e.g.*, AR 870, 878, 891, 922, 1464.)

On November 7, 2023, the City Council held a hearing on Evolve's appeal. (AR 2160, 2171, 2187-88.) On November 8, 2023, City Council heard and adopted City Planning's report. The City Council denied the appeal on a 12 to 0 vote. (AR 2306-07.)

II. Procedural History

On February 6, 2024, petitioners filed a Verified Petition for Writ of Mandate, Prohibition, or Other Extraordinary Relief. On March 8, 2024, respondents filed an Answer. On March 18, 2024, respondents filed an Amended Answer.

On September 20, 2024, petitioners filed an opening brief. On October 22, 2024, respondents filed an opposition. On November 4, 2024, petitioners filed a reply. The Court has received an electronic copy of the administrative record and a hard copy of the joint appendix.

III. Standard of Review

Petitioners assert causes of action under both the Housing Accountability Act and the Permit Streamlining Act. (Pet. ¶¶ 111-126 [first and second causes of action].)

Actions to enforce the HAA are governed by CCP § 1094.5. (§ 65589.5(m)(1).) Under CCP § 1094.5(b), the relevant issues are whether the respondent has proceeded without jurisdiction, whether there was a fair trial, and whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the agency has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (CCP § 1094.5(b).)

With respect to the PSA, petitioners may seek traditional mandate to compel the performance of a ministerial duty. (*California Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704.) "When a party seeks review of an administrative decision pursuant to Code of Civil Procedure section 1085, judicial review is limited to examining the agency proceedings to ascertain whether the agency's action has been arbitrary, capricious or lacking entirely in evidentiary support, or whether the agency failed to follow the proper procedure and give notices required by law." (*Ideal Boat & Camper Storage v. County of Alameda* (2012) 208 Cal.App.4th 301, 311, citing *Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 584.)

The essential issue to be determined in this proceeding is whether the Wilbur Project was vested in the ministerial process set forth in ED1. This issue presents questions of interpretation of the HAA and PSA. While courts accord great weight and respect to agency interpretation of statutes as the circumstances allow, the Court ultimately exercises independent judgment in resolving questions of law. (*Chaplin v. State Personnel Board* (2020) 54 Cal.App.5th 1104, 1114 [CCP § 1094.5

proceeding]; *see also Housing Partners I, Inc. v. Duncan* (2012) 206 Cal.App.4th 1335, 1343 [CCP § 1085 proceeding].)

IV. Analysis

Petitioners' requests to take judicial notice of Exhibits A-F and respondents' requests to take judicial notice of Exhibits A-C are GRANTED. (Evid. Code § 452(c).)

A. The Wilbur Project Is Vested in ED1's Ministerial Approval Process

a. *Evolve's Submission of an HCA Vesting Preliminary Application Vested the Wilbur Project in ED1*

Petitioners contend that the Wilbur Project is entitled to ministerial approval under ED1, as the declaration and accompanying interpretive guidelines were in effect at the time Evolve submitted a preliminary application. Under the HAA, submission of a preliminary application containing all of the information required under section 65941.1 of the PSA locks in or vests the ordinances, policies, and standards in effect at the time of submission. (§ 65589.5(o)(1).)

On December 12, 2022, the Mayor issued ED1. (AR 622-27.) Under ED1, 100% affordable housing projects were entitled to a streamlined ministerial review process, as opposed to a discretionary review process involving site plan review. (AR 629.) On February 29, 2023, City departments, including City Planning, issued implementing guidelines. (AR 633-46.) As relevant here, under the Guidelines, submission of a complete HCA Vesting Preliminary Application will vest an ED1 project for vesting. (AR 643, 646.) Rules, regulations, orders, and directives issued by the Mayor during a local emergency "take effect immediately upon their issuance." (Los Angeles Administrative Code ("LAAC") § 8.29 [appointing Mayor as Director of Emergency Operations Organization]; *see also* Charter § 231(j) [Mayor implements policies through executive directives.)

On April 26, 2023, Evolve submitted an HCA Vesting Preliminary Application for the Wilbur Project. (AR 46-56.) City Planning entered a "Submittal Completion Date" of April 26, 2023 and assigned an "administrative review" case number. (AR 46.) Because Evolve's HCA Vesting Preliminary Application was complete, the Wilbur Project was vested in ED1 and the implementing Guidelines, which were in effect when the preliminary application was submitted.

b. *ED1 Qualifies as an Ordinance, Policy, or Standard Under the HAA*

The City argues that there is no vesting in an emergency declaration or directive because emergencies declared by the Mayor are limited in duration, unlike zoning and planning policies, which are more permanent and adopted through a process that allows more time for review. (*Compare* LAAC §§ 8.27, 8.31 ["The Council

shall declare and publicize the termination of such local emergency at the earliest possible date that conditions warrant."] *with* Charter § 558 [providing for review of zoning ordinance proposal by City Planning before City Council acts on proposal].) The City maintains that ED1 is unlike zoning and planning policies, which are purportedly the types of standards in which project applicants typically vest.

The City's argument raises a question regarding how to interpret the HAA. "The general principles that guide interpretation of a statutory scheme are well[ ] settled. Our function is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. To ascertain such intent, courts turn first to the words of the statute itself, and seek to give the words employed by the Legislature their usual and ordinary meaning. When interpreting statutory language, we may neither insert language which has been omitted nor ignore language which has been inserted. The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute [citation], and where possible the language should be read so as to conform to the spirit of the enactment." (*Welch v. Welch* (2022) 79 Cal.App.5th 283, 296.)

The HAA does not exclude ordinances, policies, or standards which arise from a local emergency. While the HAA expressly sets forth planning (*e.g.*, general plan, community plan, and specific plan) and zoning criteria as the types of "ordinances, policies, and standards" subject to vesting, the HAA also defines "ordinances, policies, and standards" to include "*any other* rules, regulations, requirements, and policies of a local agency." (§ 65589.5(o)(4), emphasis added.) On its face, the HAA's explicit inclusion of "any other rules, regulations, requirements, and polices" would appear to plainly encompass ED1. "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.)

The original ED1 set forth a rule, requirement, and policy that applications for 100% affordable housing projects reviewed by City departments are to be reviewed using a ministerial review process. (AR 629.) The City does not cite any authority under which ordinances, policies, and standards of limited duration are excluded from the HAA. The HAA expressly requires that it is to be interpreted in a manner which affords "the fullest possible weight" to the approval and provision of housing. (§ 65589.5(a)(2)(L).) Excluding requirements and policies in emergency declarations from vesting would be detrimental to the approval and provision of housing, especially when ED1 ostensibly seeks to increase the approval of 100% affordable housing projects.

To the extent that there were ambiguity in the vesting provision of the HAA, petitioners' interpretation is supported by the interpretation of the Department of Housing and Community Development ("HCD"), the state agency charged with enforcing the HAA. (*See* § 65585(j)(1).) On September 14, 2023, in connection with the Ethel Project, a 100% affordable housing project located in a single-family zone,

HCD noted that the Mayor issued ED1 pursuant to emergency powers that allow the Mayor to issue directives that are necessary to protect life and property. (AR 867-68, citing Charter § 231(i), LAAC § 8.29.) HCD also cited Charter § 231(j) in asserting that executive directives are "binding on all departments, commissions, appointed officers and employees of the City." (AR 868.) Having determined that ED1 was lawfully issued, HCD opined that ED1 was a rule, requirement, or policy under section 65589.5(o)(4). (AR 868.) In its October 12, 2023 letter, HCD explicitly informed the City Council that HCD's opinion with respect to the Ethel Project also applied to the Wilbur Project. (AR 1138-39.)

While courts are ultimately responsible for construing the HAA, they "accord[] great weight and respect to the administrative construction such as is appropriate under the circumstances." (*California Dept. of Corrections v. State Personnel Bd.* (2004) 121 Cal.App.4th 1601, 1611, citing *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7, 11-13.) Because the HCD is responsible for enforcing the HAA and the September 14, 2023 opinion letter is well-reasoned and supported, the Court finds persuasive HCD's opinion that the Wilbur Project is vested in ED1.

The City argues that HCD's letter should not be treated as persuasive because the State cannot interfere in the City's land use and zoning regulations as a charter city. Municipal land use and zoning regulations are municipal affairs. (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 511.) With respect to the municipal affairs of charter cities, the Legislature is prohibited from "interfer[ing] in the government and management of the municipality." (*Ex parte Braun* (1903) 141 Cal. 204, 209.) However, the HAA applies to charter cities. As explained by the Court of Appeal, "the HAA does not wrest control from local governments so much as require them to proceed by way of clear rules adopted in advance, rather than by ad hoc decisions to accept or reject proposed housing." (*California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 851.) The HAA's vesting provision does not prevent the City from enforcing its land use and zoning standards; rather, it seeks to have such standards instituted in a clear manner so that applicants may rely on them.

The City also asserts that single-family zones were intended to be excluded from ED1 because all the affordable housing projects pending at the time ED1 was issued were in zones that allowed multi-family housing. (AR 1184 [City Planning recommendation report regarding Wilbur Project appeal].) The City also notes that the Mayor excluded single-family zones in Amended ED1, purportedly clarifying the meaning of original ED1. (AR 680 ["...and in no instance shall the project be located in a single family or more restrictive zone"].) The City contends that its interpretation of ED1 is entitled to deference.

While courts may consider a lawmaking entity's interpretation of an already enacted statute, such interpretation is not binding or conclusive, because the judiciary is tasked with interpreting statutes. (*National Asian American Coalition v. Newsom* (2019) 33 Cal.App.5th 993, 1011.) More directly stated, a lawmaking entity has no authority "simply to say what it *did* mean" in the past. (*Id.* at 1011-12, quoting *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 473.) Courts "cannot accept the Legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms." (*California Employment Stabilization Commission v. Payne* (1947) 31 Cal.2d 210, 214.)

The original ED1 contained no exemption for 100% affordable housing projects in single-family zones. Indeed, there was no indication whatsoever in the original ED1 that it was intended not to apply to single-family zones. The City cites to City Planning's recommendation report on Evolve's appeal, which set forth a timeline of events and asserted that all the 100% affordable housing projects pending at the time ED1 was issued were in zones that allowed for multi-family housing. (AR 1184.) Crucially, the City fails to cite any language *in ED1* supporting its assertion that Amended ED1 merely clarified the original ED1. Amended ED1 unmistakably changed—rather than clarified—original ED1 by excluding single-family zones from the ministerial review process for 100% affordable housing projects. There is no reason to believe the substantive change enacted by Amended ED1 was secretly and silently lurking in original ED1's unambiguous language. The Court therefore accords no deference to the City's interpretation of ED1. Due to the vesting provision of the HAA, petitioners should not incur harm from the City's failure to insert in ED1 a single-family zone exclusion from the ministerial review process, even if the City subsequently regrets that it failed to do so.

The City also argues that an exception to vesting exists based on its police powers over land use decisions. (*See DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782.) The HAA provides that ordinances, policies, or standards adopted after a preliminary application was submitted may govern a housing development project when "[a] preponderance of the evidence in the record establishes that subjecting the housing development project to an ordinance, policy, or standard beyond those in effect when a preliminary application was submitted is necessary to mitigate or avoid a specific, adverse impact upon the public health or safety...and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact." (§ 65589.5(o)(2)(B).) Having disapproved the Wilbur Project (*see* section IV.B, *infra*), the City bears the burden to demonstrate such exception applies. (§ 65589.6.)

The City does not explain how ED1's ministerial review process for 100% affordable housing projects in single-family zones would have a specific, adverse impact on public health or safety. The City also does not explain how Amended ED1's exclusion of single-family zones from the ministerial review process is necessary to mitigate or avoid whatever specific, adverse impact the original ED1 may have on

public health and safety. The City only mentions that the Wilbur Project is located not just in a single-family zone but also in an equine keeping zone, which requires a 35-foot separation between horses or equine enclosures and dwelling units. (*See, e.g.*, Opp. at 9, fn. 1; City RJN Ex. A [LAMC § 13.05.C.2 and Los Angeles County Health & Safety Code § 11.16.090].) The City fails to advance any specific, adverse health or safety impact that would result from granting a ministerial review process to 100% affordable housing projects in equine keeping zones. Moreover, the City does not even demonstrate that any dwelling unit within the Wilbur Project would be located within 35 feet of an equine enclosure, which would give rise to an adverse impact. Given the foregoing, the City does not meet its burden.

Because ED1 qualifies as an ordinance, policy, or standard under the HAA, the Wilbur Project vested in ED1. The City could not exclude the Wilbur Project from ministerial review through Amended ED1 or any other means.

c. Petitioners Do Not Seek Any Estoppel Ruling Against the City

The City maintains that it is entitled to correct its processing of Evolve's application under the original ED1 and a ruling in favor of petitioners would impermissibly estop the City from applying its zoning laws. (*See Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 267 [finding county had right to enforce land use requirements despite enjoyment of offending structures for 35 years]; *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 820 ["[T]he public and community interest in preserving the community patterns established by zoning laws outweighs the injustice that may be incurred by the individual in relying upon an Invalid permit to build issued in violation of zoning laws"].)

Petitioners do not seek to estop the City by arguing the Wilbur Project was subject to ministerial approval under ED1. Perhaps the City's claim of estoppel might have legs if petitioners sought to prevent Amended ED1's exclusion of 100% affordable housing projects in a single family or more restrictive zone on the ground that the City did not include such exclusion in original ED1. But that is not what petitioners seek here. Rather, petitioners seek to enforce their statutory vested right in ED1, which courts have recognized as providing a "degree of assurance...against changes in regulations." (*See Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783, 793 [vesting provisions of Subdivision Map Act "freeze in place those 'ordinances, policies, and standards in effect' at the time vesting tentative map application is deemed complete].) The vesting provided by the HAA prevents cities from "changing the rules on builders who are in the midst of going through the approval process." (Pet. RJN Ex. D at 7-8.)

The City cites no authority for the proposition that its ability to make changes to, or correct errors in, a prior ordinance, policy, or standard may defeat vested rights in the prior ordinance, policy, or standard. This Court declines to embrace such unsupported proposition. To conclude otherwise would mean a City could always

avoid having to honor an applicant's vested rights by simply making a change to the ordinance, policy, or standard at issue. In other words, under the City's view of estoppel, no right could truly ever vest, and the vesting provision of the HAA would be rendered meaningless.

B. The City Violated the HAA by Denying Evolve Review of Its Application Under a Ministerial Review Process

Under the HAA, a local agency cannot disapprove an affordable housing project unless it makes written findings, based on a preponderance of evidence, concerning one of five enumerated topics, *e.g.*, the city has adopted a housing element and exceeded its share of regional housing or the project would have a specific, adverse impact on public health or safety. (§ 65589.5(d)(1-5).) The City made no such findings. (AR 2306-07 [City Council adopted City Planning recommendation report on Evolve's appeal]; 608 ["no City Planning decision-maker has issued...a disapproval on the merits...."].) Instead, Evolve's appeal was denied because the City Council agreed with City Planning that the Project was not eligible for vesting under ED1 and that the application for the Wilbur Project did not have all required items under a discretionary review process. (AR 608.) Having not having made the findings required under the HAA to disapprove the project, the City violated the HAA.

The City argues that petitioners' HAA claim is premature because no decision on the merits of the application for the Wilbur project was ever made. A city disapproves a housing development project in "any instance" where the agency "[v]otes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit." (§ 65589.5(h)(6)(A).) On November 8, 2023, the City Council voted on whether to adopt City Planning's recommendation to deny Evolve's appeal of City Planning's determination that the application was incomplete. (AR 2171, 2277 [Council agendas stating that it was considering appeal from City Planning's "determination of completeness under the Permit Streamlining Act"].) The City Council adopted City Planning's recommendation and denied Evolve's appeal on a 12 to 0 vote. (AR 2306-07.)

The City Council's vote qualifies as a disapproval under section 65589.5(h)(6)(A). By adopting City Planning's recommendation report, the City Council agreed with City Planning's determination that the Project was not eligible under ED1 and additional information was required under a discretionary review process. (AR 598-99.) The City Council's vote therefore effectively disapproved Evolve's application for ministerial approval of the Wilbur Project under ED1.

The City notes that the definition of "disapprove" in the HAA references approvals or entitlements for building permits. (Opp. at 23:3-6.) Arguably, ministerial approval was not a *necessary* approval or entitlement for the issuance of a building permit under section 65589.5(h)(6)(A), as discretionary approval could

have also resulted in a building permit. However, the statute's reference to approvals or entitlements for a building permit comes after the word "including," which is not a word of limitation but rather a word of enlargement that provides an illustration of the preceding definition. (*See Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 774 ["The 'statutory definition of a thing as "including" certain things does not necessarily place thereon a meaning limited to the inclusions.' [Citation]"].) Under this principle, the disapproval need not expressly reference or directly pertain to any building permit. Under section 65589.5(h)(6)(A), a city can disapprove a proposed housing project by voting in any manner which results in the disapproval of a housing application.

The City also contends that Evolve's application for the Wilbur Project was never disapproved because City Planning determined that the application was merely incomplete under the PSA. The City also contends that Evolve's preliminary application expired, thereby divesting Evolve of any rights vested in ED1, because Evolve never provided the information requested in City Planning's July 18, 2023 letter within 90 days of the letter. (§ 65941.1(d)(2).)

The determination of incompleteness under the PSA was based on City Planning's claim that the Project was not eligible for ED1 and conversion of the application from a ministerial application to a discretionary application. (AB 139.) Thus, the completeness checks conducted by the City were pursuant to discretionary review processes, as opposed to a ministerial review process. On July 6, 2023, City Planning told Evolve that the Wilbur Project was not eligible for ministerial review pursuant to ED1. (AR 139.) On August 4, 2023, City Planning converted the case number of Evolve's application from "ADM" to "CPC," indicating that the Project did not qualify for ED1 processing and Evolve's application would be reviewed under a discretionary review process as of July 6, 2023. (AR 180-81 [application would be reviewed based on processes set forth in LAMC § 12.22 A.25 for off-menu density bonus incentives and waivers]; *see also* Los Angeles City Planning Density Bonus, found at https://planning.lacity.gov/plans-policies/density-bonus-program ["A project that includes an off-menu request, as outlined in LAMC §12.22 A.25, is reviewed by City Planning through a discretionary review process"]; *see also* AR 598 [determination from City Planning that analysis under California Environment Quality Act required].)

Accordingly, the City's July 18, 2023 and August 4, 2023 letters setting forth forms that were purportedly missing or information that purportedly needed clarification were pursuant to a process contrary to the ED1 ministerial process that had already vested. To the extent the City was entitled to correct errors in the processing of Evolve's application, the City was required to make such corrections pursuant to the ministerial process set forth in ED1. The City was not entitled to change the rules while Evolve's application was pending.

The determination of incompleteness was therefore invalid, because City Planning had already determined that both Evolve's preliminary application and subsequent formal application were complete on April 26, 2023 and June 28, 2023, respectively, under the ministerial review process provided by ED1. (AR 46-47 [Project identified as "ED 1 Eligible"], 126-38 [application checklist completed by City Planning were marked either "complete" or "not applicable"].) The ministerial review process under ED1 was locked in under the HAA. (*See* § 65589.5(o)(1).)

Under the PSA, after City Planning accepted the application as complete, it could not require new or additional information not specified in its previously prepared list of requirements. (§ 65944(a) ["After a public agency accepts an application as complete, the agency shall not subsequently request of an applicant any new or additional information which was not specified in the list prepared pursuant to Section 65940"].) While City Planning could request clarification, correction, or supplementation of information already provided, this does not affect the previous determination that the application was complete. (*See* § 65943 ["Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project"]; *see also* Pet. RJN Ex. F ["Any other comments on or questions about the Project cannot be used as a basis for determining the completeness of the application and must be addressed as a separate matter"].) City Planning could not undo the vesting of ED1 by subsequently converting Evolve's ministerial application to a discretionary application as of July 6, 2023 and then claiming that the application was incomplete based on the new requirements of a discretionary application.

The PSA provides a process to appeal any determination that an application for a development project is incomplete. (§ 65943(c).) The Court sees no reason why Evolve should have engaged in the discretionary review process and provided information that was not required under a ministerial process, instead of immediately appealing the determination of incompleteness. (*See* Civ. Code § 3532 ["The law neither does nor requires idle acts"].)

For the foregoing reasons, the Court finds that the City violated the HAA by requiring Evolve to comply with a discretionary review process, thereby disapproving the Wilbur Project without the written findings required under the HAA.

C. The City Did Not Act in Bad Faith

In an action to enforce the HAA, if the Court finds that the "the local agency, in violation of subdivision (j), disapproved a housing development project...without making the findings required by [the HAA] or without making findings supported by a preponderance of the evidence," the Court may "issue an order or judgment directing the local agency to approve the housing development project...if the court

finds that the local agency acted in bad faith when it disapproved...the housing development...in violation of" the HAA. (§ 65589.5(k)(1)(A)(i)(I), (ii).) "[B]ad faith includes, but is not limited to, an action that is frivolous or otherwise entirely without merit." (§ 65589.5(l).)

Petitioners argue that the City acted in bad faith because the Wilbur Project was denied solely based on the opinion of the Councilmember of the district where the project was to be located. (AR 541-42.) Petitioners point to HCD's letter submitted in support of the Ethel and Wilbur projects, which contained its opinion that both projects vested in ED1, (AR 866-67, 1138-39) and the approval of the similarly situated Ethel Project, which purportedly demonstrated the City's knowledge that ED1 qualified for vesting under the HAA.

The Court finds that the City did not disapprove the Wilbur Project in bad faith. No authority concerning whether an emergency directive can vest under the HAA, as asserted by City Planning (AR 608), appears to have existed at the time. Even though HCD opined on this issue, its opinion was not binding. Further, this proceeding presents the issue of the interplay between the HAA and PSA. No authority directly addressing whether a city can correct a determination of completeness under the PSA and undo vesting under the HAA appears to have existed at the time either. The City was entitled to assert its best arguments regarding why vesting should not apply to ED1.

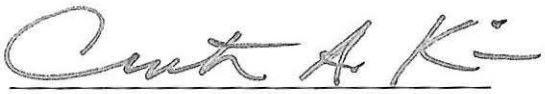
With respect to Councilmember Blumenfield's letter to his constituents opposing the Wilbur Project, he opined that ED1 was intended only to apply to areas zoned for apartments and that the Mayor's office amended ED1 to clarify that ED1 excluded single-family zones. (AR 541.) While the Court disagrees that there is any ambiguity in the original ED1, the position asserted was not entirely frivolous. As noted by the City, 31 applications for 100% affordable housing projects were pending at the time ED1 was issued, and all proposed projects were in areas zoned for apartments. (AR 1184.) Further, Councilmember Blumenfield opined that affordable housing in single-family zones should be subject to community input and environmental review. (AR 541-42.) As zoning serves to protect public health and welfare (*Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698, 709), Councilmember Blumenfield's advocacy for discretionary review was not entirely unreasonable. Lastly, even if Councilmember Blumenfield had an improper motive in voting against the Wilbur Project, that would not render the decision by the City Council as a whole in bad faith.

Given the foregoing, the Court does not make a finding that the City disapproved the Wilbur Project in bad faith.

V. Conclusion

The petition is GRANTED. Pursuant to Local Rule 3.231(n), petitioners shall prepare, serve, and ultimately file a proposed judgment and proposed writ of mandate consistent herewith.

Date: December 18, 2024



HON. CURTIS A. KIN