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Judge: James C. Chalfant, Case: 22STCP03359, Date: 2024-06-04 Tentative Ruling

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Case Number: 22STCP03359 **Hearing Date:** June 4, 2024 **Dept:** 85

Coalition for Safe Coastal Development, et al v. City of Los Angeles, et al., 22STCP03359

Tentative decision on petition for writ of mandate: denied

Petitioners Coalition for Safe Coastal Development (CSCD") and Charles Rosin ("Rosin") seek a writ of mandate challenging the actions taken by Respondent City of Los Angeles ("City") in approving a Disposition and Development Agreement ("DDA") for the Reese Davidson, renamed Venice Dell Median, Project of Real Parties-in-Interest Hollywood Community Development and Venice Community Development Corporations (collectively, "Developerss").

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

A. Statement of the Case

1. Petition

Petitioners commenced this proceeding on September 13, 2022 against Respondents City (erroneously sued also as the Los Angeles Housing Department ("LAHD"), Los Angeles Transportation Commission ("Transportation Commission"), Los Angeles Department of Transportation ("LADOT"), Ann Sewill ("Sewill"), and Seleta Reynolds ("Reynolds"). Real Parties-in-Interest Developerss are Venice Dell GP, LLC and Venice Dell, LP.

Petitioners filed the verified First Amended Petition ("FAP") on February 2, 2023, seeking declaratory and mandamus relief based on violations of Los Angeles Administrative Code

("LAAC") provisions as well as taxpayer injunctive relief. The FAP alleges in pertinent part as follows.

This proceeding concerns the disposition of LADOT Parking Lot No. 731 (the "parking lot") for the purpose of development of an affordable housing/mixed use commercial project referred to as the Venice Dell Median Project ("Venice Dell Project" or "Project"). The disposal would involve the acquisition of a new public parking tower on the east side of the parking lot's location. FAP ¶17. Respondents failed to follow the necessary administrative procedures by not referring the matter to the Transportation Commission to review or approve the disposition of the parking lot. FAP ¶3.

The Project is located within the City's community of Venice between two one-way streets, North Venice Boulevard and South Venice Boulevard, and bounded by Dell Avenue and South Pacific Avenue. FAP ¶41. A public parking lot is currently located on the western and eastern portions of the Project site, and the eastern portion of the Project site is a two-story, four-unit residential structure that low-income tenants rent from the City. FAP ¶41. The Project site also includes a boat launch area. FAP ¶41. The existing public parking lot represents 5% of all parking revenue from all the City's parking lots, and the area is zoned for Open Space due to its low-lying character. FAP ¶43.

The Project proposes demolishing the existing parking lot and the residential apartments owned by the City and constructing a 104,140-square foot, mixed-use, 100% affordable housing development (a 36,340 square-foot structure west of Grand Canal and a 67,800 square-foot structure east of Grand Canal consisting of a total of 140 residential dwelling units, 136 restricted affordable dwelling units, and four unrestricted Manager Units), 685 square feet of office use, 2,255 square feet of retail use, 810 square feet of restaurant use with 500 square feet of outdoor Service Floor Area, and 3,155 square feet of community arts center/art studio use distributed in both structures. FAP ¶44. Two additional parking garage structures are proposed to be constructed in the middle of the west and east sites. FAP ¶¶ 45-47. Over the course of the Project, the number of parking spaces will be reduced from 360 to 252. FAP ¶49. The Project is designed to include only a minimum number of supporting housing units required by law. FAP ¶51.

In 2016, under then Mayor Eric Garcetti's administration, the City identified the existing parking lot as an "opportunity site" for development of affordable housing projects. In these early stages, the City did not ensure that the existing parking lot was safe for a large development that would include retail, restaurant, art gallery and replacement parking towers. FAP ¶53.

On October 13, 2017, the City Council drafted an ordinance proposing an amendment to the LAAC that would authorize LAHD to manage City properties that are identified to support affordable housing goals. Through this ordinance, City's property could be conveyed via a DDA between City and the developer. FAP ¶11. These transactions would be subject to a noticed public hearing where real estate appraisals and assessments would be considered to determine the resale value of the subject property. If the disposition of the subject property were less than fair market value, then certain conditions would be imposed within the DDA. FAP ¶11. The LAAC requires these conditions to be imposed on the transaction as part of the negotiated DDA, not at the end of the life of the DDA when the deed or lease is issued if all conditions are satisfied by the developer. FAP ¶12.

In December 2018, the Developers applied for the Project land-use entitlements for the property which were inconsistent with the site's zoning. FAP ¶54. In 2019, the Garcetti administration requested an exemption from CEQA environmental review from the state legislature for any project for bridge or supportive housing, which was adopted. FAP ¶55. As a result, all environmental studies of the Project site stopped, and City ignored the community's concerns that the CEQA exemption did not also exempt this site from independent review under the Subdivision Map Act and Coastal Act. FAP ¶55.

By June 17 and 24, 2022, the City Council approved certain amendments as part of the Project's approvals. FAP ¶¶ 66-68. In July 2022, City gave notice to the Coastal Commission that City had

approved a Coastal Development Permit ("CDP") in the Dual Jurisdiction Zone. Thereafter, several community organizations and individuals filed appeals with the Coastal Commission against the Project. FAP ¶69.

City officials recommended that LAHD be authorized to negotiate and execute a 99-year lease and DDA for the Project even though LAHD had not prepared the necessary real estate appraisals, financial analysis, or the impact analysis that the DDA conditions would have on the resale price of the parking lot as required under LAAC sections 22.606.2(c) and 7.27.3. FAP ¶14. Additionally, there was no public hearing before the approval of the DDA for the Project. FAP ¶14. Because the appropriate administrative procedures were not followed in negotiating the 99-year lease and DDA, these actions are null and void and constitute a waste of taxpayer funds. FAP ¶15.

Public records show that LADOT staff was meeting with Developers to further design the public parking garage, even after the Project had been approved by City Council and after notice had been given to the Coastal Commission. FAP ¶79. Furthermore, the record does not reveal that the City abided by LAAC sections 22.474(g)(2)(A)(7), 22.606.2(c), or 7.27.3. FAP ¶¶ 80-81, 90-92, 95. The Transportation Commission had a duty to review all aspects of the conversion of the parking lot, but the City unlawfully excluded it from performing this legal duty. FAP ¶¶ 82-84. Developers lobbied Councilman Mike Bonin and the Mayor's office to streamline the process by entering into the DDA without following the requisite procedures. FAP ¶85. Developers understood that the DDA could not be entered into until after the requisite entitlements had been secured, but LAHD authorized the execution the DDA on April 27, 2022 before those entitlements had been secured. FAP ¶¶ 86-87. A public hearing was never conducted for the actions proposed by LAHD. FAP ¶¶ 94-96. The report that was ultimately adopted by the City Council's Homelessness and Poverty Committee did not contain copies of the land appraisals, conditions imposed in the DDA, a valuation of the cost of those conditions, or factual findings justifying the sale or lease of the City's land to Developers as required by LAAC sections 22.606.2(c) and 7.27.3. FAP ¶97.

Since June 15, 2022, when the City Council approved execution of the DDA, the City has used City resources paid for by taxpayers to process the 99-year lease, DDA, and related instruments, and such expenditures are a waste of taxpayer funds in pursuit of the unlawfully adopted authorization by the City Council. FAP ¶100.

2. Course of Proceedings

On February 1, 2023, the parties stipulated to allow Petitioners to file the FAP on or before February 2, 2023. Respondents and Developers filed their answers to the FAP on April 10, 2023. Thereafter, on May 26, 2023, they both filed amended answers to the FAP.

By a stipulation filed on January 9, 2024, the trial was continued to June 4, 2024.

B. Governing Law[1]

1. City Charter

Los Angeles is a charter city. Some of its departments are created and delegated with authority over particular subject matter either as created in the City Charter by voters (*e.g.*, police, fire, public works, library, recreation and parks, pensions, personnel, planning). City Charter §§ 500–97; Pet. RJN, Ex. A.

The City Council may create other departments by ordinance. City Charter section 214 states:

> "The Council may by ordinance create additional departments, offices and boards, and consistent with the Charter, provide for the election or appointment of officers other than those designated in the Charter, whenever the public necessity or convenience may require. The Council may by ordinance prescribe the duties of those officers, provided that those duties shall not include any of the duties of any officer designated in the Charter, except as authorized under Section 514." Pet. RJN Ex. A (emphasis added).

Under City Charter section 240, the City Council possesses all legislative power to pass laws by ordinance subject to mayoral veto and City Council override. "Other action of the Council may be by order or resolution, not inconsistent with the duties and responsibilities set forth in the Charter or ordinance." City Charter §240 (Emphasis added.) Pet. RJN, Ex. A.

The City Council has the power to review, modify, or overturn some decisions of the City's boards of commissioners. If the City Council timely asserts jurisdiction over the action, it may, by 2/3 vote, veto the action but may not amend or take other action with respect to the board's action. A vetoed action shall be remanded to the board, which shall have the authority it originally held to take action. City Charter §245.

The City Charter specifically endows the City Council with the power to provide for public improvements. City Charter §247; Resp RJN, Ex. 1.

City Charter section 534 delegates "full control" over library property to the Board of Library Commissioners: "Acquisition of real property by the City for library sites shall first be approved by the Board of Library Commissioners. The board shall have full control over all library sites and none of these sites shall be devoted to any other purpose in whole or in part without permission from the board." Resp. RJN, Ex. 1 (emphasis added).

The City Charter requires that transfer of public recreation sites "shall require a resolution of the [Board of Recreation and Park Commissioners], approved by the Council by ordinance . . ." City Charter § 594(d)(1); Resp. RJN, Ex. 1 (emphasis added).

The boards of City proprietary departments of LAWA, Harbor, and DWP "shall have the power to grant and set the terms and conditions for any . . . lease concerning any property under its control . . ." City Charter § 605; Resp. RJN, Ex. 1. DWP board commissioners specifically have decision-making authority over DWP property: "Subject to the water and water rights of the City set forth in Section 673, no real property or any rights or interests in real property held by the board shall be sold, leased or otherwise disposed of, or in any manner withdrawn from its control, unless by written instrument authorized by the board, and approved by the Council." City Charter §675(e)(2); Resp. RJN, Ex. 1.

2. LAAC

The LAAC, created in 1969, is a codification of City ordinances that create non-charter created City departments such as LADOT and LAHD. LAAC Foreword, §2.17; Pet. RJN, Ex. B. LAAC section 2.1 provides: "All legislative power of the City except as otherwise provided in the Charter is vested in the Council and shall be exercised by ordinance, subject to the power of veto or approval by the Mayor as set forth in the Charter. "Other action of the Council may be by order or resolution, upon motion."

"Except as otherwise in the Charter specifically provided, the Council shall have full power to pass ordinances upon any subject of municipal control, or to carry into effect any of the powers of the City." LAAC §2.14; Resp. RJN, Ex. 1.

LAAC section 2.17 provides in relevant part: "The Council may provide by ordinance the duties of all boards or officers whose duties are not defined by the Charter, and it may by ordinance provide for

any board or officer created by the Charter or by ordinance, duties other than those herein prescribed and not inconsistent with the provisions of the Charter." Pet. RJN, Ex. B (emphasis added).

LAAC section 7.27.3 provides:

"With the exception of those properties subject to Section 7.33.2, et seq. of this Code, the Los Angeles Housing Department is authorized to convey any interest owned or controlled by the City in any real property below its fair market value, subject to the Council making a finding that the conveyance at the price with the terms and conditions imposed thereon serves a public purpose. Such conveyance may be made by either sale or lease; however, the sale or lease shall be first approved by the City Council after public hearing and shall be subject to approval by the Mayor.

Any disposition of real property, whether by sale or lease, which is made at a price below fair market value shall be supported by findings and an appraisal setting forth the following:
a. The estimated fair market value of the interest to be conveyed, determined at the highest and best use;
b. The purchase price or present value of the lease payments which the lessee will be required to make during the term of the lease;
c. The conditions and covenants imposed by the City for the conveyance ("City Conditions") and an estimate of the increased development costs to be incurred by the developer of the real property as a result of compliance with the City Conditions;
d. The estimated value of the interest to be conveyed determined at the use and with the City Conditions ("Fair Reuse Value"); and
e. An explanation as to why the sale or lease of the real property will assist in the development of affordable housing in the City, with reference to all supporting facts and materials relied upon in making this explanation." Pet. RJN, Ex. B (emphasis added).

3. LADOT

By Ordinance No. 151832, operative 2–25–1979, the City Council created LADOT and the Transportation Commission. LAAC §§ 22.480, 22.481, 22.482, 22.483, 22.484; Pet. RJN, Ex. B. LADOT and the Transportation Commission were created by Division 22 of LAAC as "Departments, Bureaus And Agencies Under The Control Of The Mayor And Council." LAAC Division 22; Pet. RJN, Ex. B. The ordinance provided or transferred certain authority to LADOT (LAAC §§ 22.481(a)(3)), 22.487), LADOT's General Manager (LAAC §22.483(a)(5)), and the Transportation Commission (LAAC §22.484(g)(2)(A)(5)-(8).[2]

LAAC section 22.484(g) provides in pertinent part:

"(g) Powers and Duties [of the Transportation Commission].
The Transportation Commission's relationship to the General Manager of the Transportation Department shall be advisory.
Notwithstanding its advisory capacity, the Transportation Commission shall exercise the following powers and duties, and such other powers and duties as may be conferred by ordinance:
…
(7) The Transportation Commission shall have the power, duty, and responsibility of coordinating, directing, and managing all matters respecting the acquisition, and therefore the management, of all public off-street parking places by the City…." LAAC §22484.(2)(A)(7); Pet. RJN, Ex. B; SE Ex. 6, pp. 11-13 (emphasis added).

4. LAHD

By Ordinance No. 166009, operative 8–2-1990, the City Council created LAHD and assigned duties related to affordable housing to it. LAAC §§ 22.600, 22.601, 22.606. The ordinance also created an Affordable Housing Commission. LAAC §§ 22.607, 22.608, 22.609, 22.611; Pet. RJN Ex. B. The Affordable Housing Commission appears to be wholly advisory on housing policy. LAAC §22.611; Pet. RJN Ex. B.

By Ordinance No. 185283, operative 1–15–2018, the City Council amended the LAAC's Chapter 24 to add Article 3.5 to set forth additional LAHD authority, duties and responsibilities related to control, acquisition and disposition of real property for affordable housing development. LAAC §§ 22.606.1, 22.606.2, 22.606.3; Pet. RJN, Ex. B.

LAAC section 22.606.2(c) provides in relevant part:

"Conveyance of City Interests in Real Property. The Department is authorized to convey any interest owned or controlled by the City in real property at its fair reuse value for the public purposes and objectives of this chapter in accordance with the procedures set forth in Section 7.27.3 of this Code. Any such conveyance shall be made pursuant to one or more agreements requiring the development, use and maintenance of such real property for affordable housing purposes. Such agreement(s) shall additionally require as a condition precedent to the conveyance that one or more deed restrictions be recorded against the conveyed interest restricting the development and use, and requiring the maintenance of such real property, so as to insure that the affordable housing purpose for which the conveyance was made is fulfilled for such period of time as is determined to be appropriate…." Pet. RJN, Ex. B (emphasis added).

C. Standard of Review

There are three general categories of agency decisions challenged by mandamus: (1) quasi-adjudicative decisions in which the agency exercised its discretion, and which are challenged by administrative mandamus under CCP section 1094.5, (2) quasi-legislative decisions challenged by traditional mandamus under CCP section 1085, and (3) ministerial or informal administrative actions also challenged by traditional mandamus. *See* Western States Petroleum Assn. v. Superior Court, ("Western States") (1995) 9 Cal.4th 571-76.

An agency decision is quasi-adjudicative where it concerns the agency's application of discretion in the determination of facts after a hearing is required. *See* Neighborhood Action Group v. County of Calaveras, (1984) 156 Cal.App.3d 1176, 1186. In contrast, a legislative act provides what the law shall be in future cases arising under it. Dominey v. Dept. of Pers. Admin., (1988) 205 Cal.App.3d 729, 737 (quoting Union Pac. R. Co. v. United States, ("Sinking Funds Cases") (1878) 99 U.S. 700, 761). Quasi-legislative actions generally concern the adoption of a "broad, generally applicable rule of conduct on the basis of general public policy." Saleeby v. State Bar, (1985) 39 Cal.3d 547. Actions are legislative in nature when they declare a public purpose and make provisions for the accomplishment of that purpose. O'Loane v. O'Rourke (1965) 231 Cal.App.2d 774, 784-85 (adoption of a general plan by way of a resolution was a legislative act because it prescribed a new policy rather than implementing an existing one). The distinction between a judicial and legislative act is that the former determines what the law is and what the rights of the parties are with reference to transactions already had and the other provides what the law shall be in future cases arising under. Sinking Funds Cases, *supra*, 99 U.S. at 761.

An agency's quasi-legislative 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; Dominey, *supra*, 205 Cal.App.3d at 736. Although mandate will not lie to control the agency's discretion, it will lie to correct abuses of discretion. California Public Records Research, Inc. v. County of Alameda, ("California Public Records") (2019) 37 Cal.App.5th 800, 806. The court may not substitute its judgment for that of the agency, and it must uphold the decision if reasonable minds can differ. Id.

A record is required for traditional mandamus review of quasi-legislative decisions where there are land use issues of zoning, CEQA, general plans, public contracts, or charter schools, or other issues of general application, depending on if the law requires a hearing at which evidence is presented and fact-findings made. *See* SN Sands Corp. v. City and County of San Francisco, (2008) 167 Cal.App.4th 185, 191 (award of public contract is quasi-legislative decision and judicial review is limited to administrative record); Cypress Security, Inc. v. City and County of San Francisco, (2010) 184 Cal.App.4th 1003, 1010 (same). If the hearing does not require the presentation of evidence, the quasi-legislative decision is challenged based on declarations and exhibits.

An agency is presumed to have regularly performed its official duties (Evid. Code §664), and the petitioner therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137. The burden of proof falls upon the party attacking the agency's decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion. California Public Records, *supra*, 37 Cal.App.5th at 805.

Extra-record evidence is not admissible to contradict evidence upon which the agency relied in making a quasi-legislative decision, or to raise a question regarding the wisdom of that decision. Western States, *supra,* 9 Cal.4th at 579. A potential exception exists for extra-record evidence that provides background information for the quasi-legislative decision, establishes whether the agency fulfilled its duties in making the decision, or assists the court in understanding the decision. Id. at 578-79.

In this case, Petitioners contend that the City Council's action is a failure to proceed in the manner required by law which is subject to de novo review. Tracy Rural County Fire Protection District v. Local Agency Formation Commission of San Joaquin County, (2022) 84 Cal.App.5th 91, 107. Petitioners further contend that this case is partly quasi-legislative, for which an administrative record is required, but that extra-record evidence is permitted. Pet. Op. Br. at 8.

The City does not dispute these contentions. *See* Reply at 4. The quasi-administrative record was collectively agreed upon by the parties, and Petitioners also conducted limited discovery by deposing two City witnesses: Kenneth Husting ("Husting") in his capacity as the head of LADOT's Bureau of Parking Management, and Daniel Huynh ("Huynh") in his capacity as LAHD's Assistant General Manager and as the City's Person Most Knowledgeable ("PMK"). SE Exs. 2, 8.[3]

D. Statement of Facts

1. The Project

The idea to dedicate the City's public parking lot to an affordable housing project arose in 2016. AR 511–20. As part of LAHD's Public Land Development Program, the City identified the Project site as an Affordable Housing Opportunity Site. AR 611.

The Project site is a City-owned asphalt parking lot and four-unit multi-family residential building located in the Venice neighborhood of the City. AR 24. A small four-unit residential building is located on a part of the Project site. The site is bisected by the Grand Canal, which is part of the

Venice Canal system. AR 1150-51. The property is located within walking distance of Venice beaches and canals, in close proximity to local and regional public transit opportunities, and with a surrounding area which is a mix of commercial, retail, and residential uses. AR 1135, 1145.

The Project's target population is homeless individuals and families, low-income artists, and low-income families and individuals. AR 189. The Project will be a two-building project that will consist of 140 residential units, 68 of which will be dedicated to homeless households, 34 to low-income households, and 34 for low-income households with an artist preference. AR 189. Four units will be set aside for on-site managers. AR 189. The Project will provide social services and support for tenants, including assistance with employment and educational pursuits and on-site therapeutic and community groups for housing support and stability, mental health support, harm reduction and recovery. AR 945.

The Project proposes 105 parking spaces to be provided in the west side parking structure that will include 57 residential spaces, 42 commercial spaces, a boat launch space, and five non-required spaces. AR 189. Outside the DDA, and subject to a separate agreement with LADOT, the Project requires a new public parking structure to replace the existing 196 surface parking spaces. AR 189. The current plan is to place these spaces in an east side public parking structure that contains 252 public spaces. AR 189.

2. <u>The Staff Reports</u>

The City and Developers engaged in several years of community engagement, reaching thousands of residents and interested persons with over one hundred activities including more than ten large-scale public events designed to "elevate[] the voices and ideas of low-income people." AR 5684; Hanelin Decl., ¶6, Ex. A (AR 34357), Ex. B (AR 15488-94).

The Project required legislative and quasi-adjudicative approvals, for which the City held three hearings before the Deputy Advisory Agency, Planning Commission, and City Council, with hours of public testimony. AR 1211. After the City Council approved many Project land use entitlements on December 1, 2021, [4] the Developers asked the City to develop and execute a DDA for the project so that they could score higher in the state's next Notice of Funding Availability round, which closed applications on July 1, 2022. *Cf.* SE, Ex. 2, pp.42–46 (Huynh Depo.) (In some cases, state deadlines require presentation of the DDA and ground lease to the City Council at the same time). Meetings and communications commenced to develop the term sheet (which would summarize the key terms that would inform the development of the DDA). Ex. 2, p. 42 (term sheet starts DDA). On April 17, 2022, LAHD's Huynh executed the Project's term sheet. AR 615-24; SE Ex. 2, pp. 33-42 (Huynh Depo.) (LAHD must receive City Council approval to execute a term sheet).

LAHD commissioned its financial consultant, Keyser Marston Associates, Inc. ("KM"), to run the numbers for determining the less than Fair Market Value price Developers would pay. On March 3, 2022, Julie Romey ("Romey") of KM discussed with LAHD employees the challenges she was having to justify the Fair Reuse Value of the $1 per year lease. SE Ex. 3. Under some scenarios Romey laid out, the Developers would be required to pay significant rental payments. <u>Id</u>.

On April 27, 2022, LAHD submitted its report seeking City Council authorization (1) for LADOT to effectuate a non-monetary transfer of the parking lot from LADOT to LAHD and (2) for LAHD to negotiate and execute a DDA for the Project. AR 610-771. The draft DDA (AR 654-71) at page 1 stated that "[t]he Developers will lease the Site for a Ninety Nine (99) year term and will pay rent to the City for a below Fair Market Value ("FMV") ground lease rent based on a Reuse Value Appraisal to be conducted prior to the execution of the Ground Lease." AR 659. The DDA stated that Developers would pay $1 per year for the initial 55-year term of the ground lease. AR 659.[5]

On May 19, 2022, KM delivered a Reuse Value Report authored by Romey "in accordance with Los Angeles Administrative Code section 7.27.3." AR 8. KM relied upon a December 22, 2020 appraisal by Gold Coast Appraisals, Inc. ("Gold Coast") appraising the property's Fair Market Value at

$3,349,000 (whole site). AR 10. After imposition of the City's Conditions to develop the affordable housing and commercial uses, KM stated that the costs associated with the City Conditions reduced the Fair Market Value of the Project site to less than the City's proposed $1 per year lease payment. AR 20. Neither the appraisal nor the Reuse Value Report by KM was distributed to the City Council or made available for public review. SE Ex. 2, pp. 47-52 (Huynh Depo.) (Reuse Report is "internal" and never disclosed).[6]

The next day, May 20, 2022, the CAO reported to Mayor Garcetti, concurring with LAHD. AR 772-74.

3. The Objections

The City Clerk scheduled the Project item for the May 26, 2022 meeting of the Homelessness and Poverty ("HP") Committee of the City Council. SE Ex. 4. This item immediately received concerned public comment and was continued to June 9, 2022. SE Ex. 5; AR 777, 782, 783–85, 928–37, 922–27, 997, 1020–38, 1081–83, 1091–95, 1097–1101. On June 3, 2022, the CAO sent a report to the Mayor and City Council correcting the LAHD April 27 report related to the number of parking spaces for the Project, and the street addresses proposed for disposition by the ground lease terms set forth in the Term Sheet and the proposed DDA.[7] AR 938-96.

There were objections filed by the now City Attorney Hydee Feldstein Soto (AR 782) and now City Councilmember Traci Park. AR 777. City Councilmember Park, who lives in Venice, opined:

> "Including the fair market value of the City's land, cost of the LADOT parking garage ($25 million), and cost of the west parking garage ($3 million), the total price tag per door comes in at a whopping $1.24 million per 460 square foot unit. This is an egregious waste of taxpayer dollars, and overall, the proposed mixed-use development does little or nothing to address either the homelessness or affordability crisis in our City or the Westside of LA. Further, this project is opposed by the vast majority of Venice residents, and has repeatedly been voted down by the Venice Land Use and Planning Committee and the Venice Neighborhood Council." AR 777 (emphasis added).

Petitioners also submitted objections. AR 998–1019. CSCD expressed alarm that the City was proposing to dedicate land far more valuable than the $3.3 million figure used in the Developers' pro forma, submitting evidence that residentially zoned lots across the street were selling for $1.7 to $2.1 million per lot. AR 923–27. Given that the Project site was the merger of 40 lots, CSCD asserted that the cost to taxpayers was a donation of a 99-year leasehold interest with a conservative Fair Market Value of up to $60 million. Id.

4. The City Council Approval

On June 9, 2022, the HP Committee reported to the City Council, approving the item with Councilmember Busciano casting a "no" vote consistent with his contention that the Project is a waste of taxpayer funds. AR 1039–40.

On June 15, 2022, without taking any further public comment, the City Council adopted the Report of the HP Committee recommending approval of the DDA for the Project. AR 1096.

The process culminated in execution of the DDA between the City and Developers on June 30, 2022. AR 175-76. The DDA identified the conditions precedent imposed by the City for the eventual conveyance of the property. AR 100-03; see §7.27.3(c). The 7.27.3 Reuse Analysis

estimated the increased development costs to be incurred by Developers as a result of compliance with those conditions. AR 14-15, 987; *see* LAAC[8] §7.27.3(c)). No ground lease of the Project site has been negotiated with Developers, approved, or executed. SE Ex. 2, pp. 164-65 (Huynh Depo.).[9]

5. Other Cases Concerning the Project

On August 3, 2021, Venice Vision, a member of Petitioner CSCD, filed a petition for writ of mandate alleging that the City actions related to the Project violated the Brown Act (LASC Case No. 21STCP02522). After failing to name Affordable Housing Providers as real parties in interest, Venice Vision voluntarily dismissed the petition on October 4, 2022. Hanelin Decl., ¶2.

On August 22, 2022, CSCD filed another petition for writ of mandate asserting similar Brown Act theories (LASC Case No. 22STCP03125). Judge Beckloff granted the City's motion for judgment on the pleading for the causes of action challenging the Project's approvals, CSCD dismissed its petition as to the remaining causes of action, and judgment was entered for the City on August 18, 2023. Hanelin Decl., ¶3.

On January 13 and October 5, 2022, respectively, CSCD and Los Indios De San Gabriel, Inc. filed two lawsuits (LASC Case Nos. 22STCP00162 and 22STCP03626) (collectively, "CEQA Litigation"), which were later consolidated, challenging the City's compliance with the Mello Act, Los Angeles Municipal Code, CEQA, and the Subdivision Map Act in granting various land use entitlements for the Project and determining that the Project is statutorily exempt from CEQA. The CEQA Litigation is currently pending before Judge Fruin. Trial concluded on March 11, 2024. Hanelin Decl., ¶4.

E. Analysis

Petitioners argue that (1) section 22484(g) required the Transportation Commission approval before the DDA was approved, and (2) the City failed to comply with the public disclosure requirements of sections 7.23.3 and 22606.2 before approving the DDA.[10]

1. Principles of Statutory Interpretation

Petitioners' arguments require interpretation of City ordinances. An ordinance in its primary and usual sense means a local law. San Diego City Firefighters, Local 145, AFL-CIO v. Board of Admin. of San Diego City Employees' Retirement System, (2012) 206 Cal.App.4th 594, 607. The construction of local agency charter provisions, ordinances, and rules is subject to the same standards applied to the judicial review of statutory enactments. Domar Electric v. City of Los Angeles, (1994) 9 Cal.4th 161, 170-72; Department of Health Services of County of Los Angeles v. Civil Service Commission, (1993) 17 Cal.App.4th 487, 494.

In construing a legislative enactment, a court must ascertain the intent of the legislative body which enacted it so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., (1989) 48 Cal.3d 711, 724; Orange County Employees Assn. v. County of Orange, ("Orange County") (1991) 234 Cal.App.3d 833, 841. 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., *supra,* 48 Cal 3d at 724. Significance, if possible, is attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. Orange County, *supra,* 234 Cal.App.3d at 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 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., (2005) 134 Cal.App.4th 1076, 1082 (*quoting* Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd., (1994) 23 Cal.App.4th 1120, 1126). Where ambiguity remains, the court should consider "reason, practicality, and common sense." Id. 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.

An agency's interpretation of an ambiguous statute consisting only of the agency's litigating position, without promulgation of formal regulations, is entitled to no deference. Culligan Water Conditioning, Inc. v. State Bd. of Equalization, (1976) 17 Cal. 3d 86, 92-93.

2. Section 22.484(g)(2)(A)(7) Does Not Require Transportation Commission Approval of the DDA and Transfer of the Parking Lot to LAHD

Petitioners argue that the HP Committee on June 9, 2022, and the City Council on June 15, 2022, lacked authority to direct LADOT to effectuate a non-monetary transfer of the parking lot to LAHD. As a result, the City failed to proceed in accordance with law. Pet. Op. Br. at 12.

In the LAAC, the City Council delegated to the Transportation Commission authority over all City off-street parking lots and facilities (except for some not relevant in this case). SE Ex. 6, pp.11–13. Section 22.484(g)(2)(A)(7) expressed the City Council's intent to delegate decision-making for off-street parking lots to the Transportation Commission:

> "(g) Powers and Duties [of the Transportation Commission].
> The Transportation Commission's relationship to the General Manager of the Transportation Department shall be advisory.
> Notwithstanding its advisory capacity, the Transportation Commission shall exercise the following powers and duties, and such other powers and duties as may be conferred by ordinance:…
> (7) The Transportation Commission shall have the power, duty and responsibility of coordinating, directing, and managing all matters respecting acquisition,
> and thereafter the management, of all public off-street parking places by the City except for those parking facilities which are under jurisdiction or control of departments controlling their own funds. (emphasis added).

Section 22.484(g)(2)(A)(7) is a specific delegation to the Transportation Commission of the City Council's authority over public off-street parking places. Petitioners note that City Charter section 240's second sentence states: "Other action of the Council may be by order or resolution, not inconsistent with the duties and responsibilities set forth in the Charter or ordinance." (emphasis added). The Transportation Commission was given plenary initial authority to make decisions on "all matters

respecting the acquisition and thereafter the management, of all public off-street parking places by the City." (emphasis added). The phrase "by the City" makes clear that the City Council delegated these decisions to the Transportation Commission. If the assignment to the Transportation Commission to act for "the City" as the initial decision maker includes a role in the decision to dedicate a portion of the off-street parking lot to a long-term lease for the mixed use component of the Project, then the City Council violated City Charter section 240's second sentence when it directed LADOT to make a non-monetary transfer of a portion of the parking lot to LAHD. Pet. Op. Br. at 12-13; Reply at 7.

Due to the political sensitivity of homelessness, Mayor Garcetti's office, through the CAO, identified City parking lots as possible candidates to dedicate to construction of low-cost housing. AR 511–20. In haste, no one considered that the Transportation Commission possessed authority over actions involving these valuable assets. The Transportation Commission has not heard or determined any of the major policy issues affecting the Project's parking lot site: (1) the creation of the development program to use the City's off-street parking lots, (2) the review and approval of RFPs for construction of the Project's replacement parking, (3) the selection of the developer for the construction of the Project's replacement parking facilities that LADOT would operate, (4) review and approval of an exclusive negotiating agreement with Developers, (5) review and approval of Project conceptual plans for the replacement parking, (6) review of the binding DDA that commits the City to the specific Project terms, including Coastal Commission jurisdiction over parking rates, and (7) the decision to direct LADOT's General Manager to effectuate the non-monetary transfer of the Project parking lot to Developers. Pet. Op. Br. at 13.

In response to discovery, the City admitted that, from 2016 to mid-2022, the Transportation Commission was never given a presentation about the Venice Dell Project. SE Ex. 7 (RFAs 1 & 2). At his deposition, Husting, Principal Transportation Engineer at LADOT, confirmed that the Project was never presented to the Transportation Commission. He also confirmed that, when the public was expressing concerns about the Project, he had discussions with Assistant General Manager Jay Kim and the City Attorney's office about taking the Project to the Transportation Commission, but that did not occur. SE Ex. 8, pp. 14, 65–74.

After this lawsuit was filed, the City now seeks Transportation Commission approval of changes of the use of the City's parking lots to temporary or long-term uses for homelessness or housing projects. SE Ex. 2, p. 189-91 (Huynh Depo.) (staff will go to the Transportation Commission but that issue is better answered by LADOT staff); SE, Ex. 9 (October 18, 2023 General Manager report) (August 23, 2023 General Manager report). The Transportation Commission minutes show City attorneys advising that the Transportation Commission has authority to approve the change of use, or enter into Exclusive Negotiating Agreements, none of which were done for the Venice Dell Project. SE Ex. 9 (October 18, 2023 Minutes) (City attorney confirming Transportation Commission has discretionary authority to approve temporary change of use of parking lot to interim housing); (August 23, 2023 Minutes) (City attorney asking for approval of terms of Exclusive Negotiating Agreement for five LADOT lots). Pet. Op. Br. at 10; Reply at 10.

The case of Langsom v. City of Sausalito, (1987) 190 Cal.App.3d 871, 878-79, is instructive. There, the Sausalito city council refused to follow the plain language of its off-street parking law, and the court held the City accountable to its own code: "[W]e determine that the city council's interpretation of the ordinance was in error….[C]lear standards have been lawfully enacted, they must control and cannot be ignored." Id. at 878, 882. In this case, the Transportation Commission is the decision-maker for the acquisition and management of off-street parking, not the City Council. Yet, even after being alerted, Mayor Garcetti's staff presented nothing to the Transportation Commission. Pet. Op. Br. at 14.

The City responds that Petitioners' argument fails that section 22.484(g) delegates the City Council's authority over public off-street parking to the Transportation Commission, and therefore requires the Transportation Commission's approval of the non-monetary transfer of the parking lot from LADOT to LAHD fails. Opp. at 14.

First, it is elementary government law that the City Council's authority cannot be usurped by subordinate commissions. The City is a charter city. "A chartered city under the 'home rule'

provisions of article XI, section 5, of the California Constitution has complete powers over municipal affairs and unless limited by the charter, the city council may exercise all powers not in conflict with the California Constitution." Miller v. City of Sacramento, (1977) 66 Cal. App. 3d 863, 867-68 ("no restriction on the [chartered city]'s power may be implied"). The City Charter specifically endows the City Council with (1) "all legislative power of the City except as otherwise provided in the Charter" and (2) the power to provide for public improvements.[11] City Charter §§ 240, 247; Resp. RJN, Ex. 1. The LAAC similarly provides: "Except as otherwise in the Charter specifically provided, the Council shall have full power to pass ordinances upon any subject of municipal control, or to carry into effect any of the powers of the City." LAAC §2.14; Resp. RJN, Ex. 1. As the City's PMK testified, "[the City] Council is ultimately the key decision-maker." SE Ex. 2, p. 18 (Huynh Depo.). Consistent with these provisions, LADOT and the Transportation Commission were created by LAAC Division 22 as "Departments, Bureaus And Agencies Under The Control Of The Mayor And Council." Pet. RJN, Ex. B. Opp. at 14-15.

Petitioners properly rebut this point. The issue is not whether the City Council has authority to control the transfer of the parking lot, but rather whether it delegated that initial authority. The City relies on the holding in Miller v. City of Sacramento, *supra,* 66 Cal.App.3d at 867-68, that no restriction on a chartered city's power may be implied, but Petitioners are arguing that the City Council was explicit in its delegation of authority over acquisition and management of off-street parking places in section 22.484(g)(A)(7). *See* Reply at 8.

However, the City correctly argues (Opp. at 16) that the City Council did not delegate its power to the Transportation Commission concerning the conveyance of an interest in City-owned parking lots. Nothing in the City Charter grants initial or ultimate decision-making authority to the Transportation Commission to dispose of City-owned parking lots, regardless of whether they are operated by LADOT. Section 22.484(g)(A)(7) provides that the Transportation Commission has "the power, duty, and responsibility of coordinating, directing, and managing all matters respecting the acquisition, and thereafter the management, of all public off-street parking places by the City." (emphasis added). There is no "acquisition" at issue in this case; the Project site is owned by the City. AR 24. Section 22.484(g)(A)(7) only concerns the Transportation Commission's management power, not an exclusive power to transfer jurisdiction between City departments or to dispose of City-owned property. Section 22.606.1 provides that LAHD, not the Transportation Commission, "shall have charge, superintendence and control of all City-owned real property, the use of which currently is or is intended to be for affordable housing development purposes, projects or activities."

When the City delegates authority to a City department to acquire and convey interests in real property owned by the City, that transfer of authority is express and unambiguous. As examples, City Charter section 534 delegates "full control" over library property to the Board of Library Commissioners. Resp. RJN, Ex. 1. The City Charter states that transfer of public recreation sites "shall require a resolution of the [Board of Recreation and Park Commissioners], approved by the Council by ordinance . . ." City Charter §594(d)(1) (emphasis added); Resp. RJN, Ex. 1. City Charter section 605 provides that boards of City proprietary departments LAWA, Harbor, and DWP "shall have the power to grant and set the terms and conditions for any …lease concerning any property under its control…." *See* City Charter §675(d)(2); Resp. RJN, Ex. 1. The City Council could have used similar language unequivocally delegating full authority over the City's off-street parking lots to the Transportation Commission and chose not to do so. "It is not the role of the courts to add statutory provisions the Legislature could have included, but did not." Artus v. Gramercy Towers Condo. Assn., (2018) 19 Cal. App. 5th 923, 945. Opp. at 15-16.

Petitioners reply that this is a *non sequitur*. The difference between City Charter-created departments (which control their own funds or perform proprietary functions) and ordinance-created departments and commissions is who delegates the authority: the voters or the City Council. The people voted language in the City Charter that withdraws absolute power of the Mayor and Council to divert special revenue streams dedicated to libraries and parks/recreation, or to dedicate their lands to other uses without Commission oversight. The voters also put citizen commissions directly in charge of the City's proprietary departments -- DWP, LAWA, and Harbor – that perform public utility-type functions that require

management of the City's lands dedicated to these uses. It is no surprise the City Charter does not expressly delegate to the Transportation Commission because LADOT and the Transportation Commission are an ordinance-created department and commission, respectively. Reply at 9.

This argument does not really respond to the City's point. Whether created by City Charter or ordinance, the delegation of functions to City departments usually is express. The City Council can do so just as easily as the voters did. In any event, the City is correct that section 22.484(g)(A)(7) only delegates the acquisition and management of the City's public off-street parking places to the Transportation Commission. The disposition of the City's real property, including parking places, intended to be for affordable housing development purposes is delegated to LAHD by section 22.606.1.

Petitioners also argue that the City deemphasizes critical wording in section 22.484(g)(A)(7) granting the Transportation Commission authority over "all matters" concerning acquisition and management of off-street parking places "by the City." They ask: How is this not delegation of full control over off-street parking matters including decisions whether to dedicate the use of off-street parking places for short or long-term leases to support homelessness and affordable housing? The City claims the proposed transfer land to LAHD for a long-term lease is not an acquisition, but the very purpose of the transfer necessitates replacement of critically needed beach parking and the acquisition of the new public parking garage that will be managed by LADOT/Transportation Commission. The requested transfer to LAHD is the first step to acquire the new parking facility, and it is definitely a management issue when the City retains ownership of land and the Transportation Commission, which has expertise, must decide if the new user should replace the parking spaces lost. The plain language of the statute makes the delegation mandatory ("shall"), total ("all matters"), and on behalf of the entire City ("by the City"). Reply at 9-10.

This argument is answered by the City's third point, which is that section 22.484(g) does not specify the timing of when the Project needs to be put before the Transportation Commission. *See* SE pp. 116-17. The City and Developers have not yet negotiated an agreement regarding the ownership, construction, and operation of the new public parking structure portion of the Project, and this agreement will be separate from the DDA. Thus, no Transportation Commission consideration is required at this time. *See* Opp. at 16.

Huynh, the City's PMK, confirmed that the Project (or some agreement related to the Project's parking component) will be put before the Transportation Commission prior to seeking approval for the ground lease. Ex. 2, p. 189. Huynh also testified that the "nonfinancial transfer of jurisdiction" from LADOT to LAHD has not yet occurred. SE Ex. 2, p. 181 (Huynh Depo.). Such transfer "typically happens after the approval of the ground lease by [the City C]ouncil and we work toward the full conveyance of the property. That's when we typically procedurally go through that process to transfer the property over to LAHD." Id. Husting, the head of LADOT's Bureau of Parking Management, testified to this same procedure. SE Ex. 8, pp. 68, 73, 78, 93, 94, 116-17 (Husting Depo.). Petitioners cite no authority requiring Transportation Commission consideration at this stage.

Section 22.484(g)(2)(A)(7) does not require that the Transportation Commission be included in the DDA process.

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3. Failure to Comply with Sections 2.606.2 and 7.27.3

Section 22.606.2(c) states:

> "[LAHD] is authorized to convey any interest owned or controlled by the City in real property at its fair reuse value for the public purposes and objectives of this chapter in accordance with the procedures set forth in Section 7.27.3 of this Code. Any such conveyance shall be made pursuant to one or more agreements requiring the development, use and maintenance of such real property for affordable housing purposes. Such agreement(s) shall additionally require as a condition precedent to the conveyance that

> one or more deed restrictions be recorded against the conveyed interest restricting the development and use, and requiring the maintenance of such
> real property, so as to insure that the affordable housing purpose for which the conveyance was made is fulfilled for such period of time as is determined to be appropriate." (emphasis added).

Petitioners argue that the plain language of the first sentence states that compliance with section 7.27.3 is required when LAHD proposes to convey any real property interest (1) at its Fair Reuse Value (less than Fair Market Value) (2) for the public purpose of affordable housing. The second sentence defines the meaning of the phrase "to convey" in the first sentence: "Any such conveyance shall be made pursuant to one or more agreements," and the agreements require "the development, use and maintenance of such real property [the property proposed to be transferred] for affordable housing purposes." Pet. Op. Br. at 15.

Thus, when the City commits to sell at "Fair Reuse Value", the developer commits to restrict the transferred real property interest to "affordable housing purposes" and the parties include a condition precedent that deed restrictions be recorded against the conveyed interest to assure that the affordable housing purpose shall be fulfilled, the resulting DDA memorializing these mutually enforceable binding promises is the conveyance of the real property interest, even though the actual deed or ground lease transfer will occur later. Pet. Op. Br. at 15.

This construction of section 22.606.2 is consistent with the City staff's interpretation of its Public Land Development Program and Ordinance 185283 that codified portions of this Program in sections 22.606.2 and 7.27.3:

> "Disposition Process
> The Land Development Program disposition process consists of four steps. The first step is to define the project vision with the City Council. . . . Step two involves the selection of a developer. . . . Step three involves defining the project and negotiating deal terms. . . . Step four, the last step, is to execute the Disposition and Development Agreement (DDA). This agreement enables the transfer of public land for development**.** The DDA describes project scope, development timeline and milestones, the comprehensive financing plan, and codifies the City's commitment to transfer or ground lease the property once the project milestones have been achieved**.**" SE Ex. 10, p. 3 (staff report). *See also* SE Ex. 10 (powerpoint presentation of the Public Land Development Program).

Petitioners conclude that this statement shows that the City consistently treated the City Council's authorization of LAHD's authority to negotiate and execute the DDA as the final discretionary step until this action was filed. Pet. Op. Br. at 16.

Concurrent with the enactment of sections 7.27.3 and 22.606.2, the City Council approved a Housing Development Land Conveyance Policy (the "Policy"). SE Ex. 10.[12] Relevant to this case, the Policy says that a ground lease will be "at fair market value, however, in some cases the fair reuse value will be more appropriate." Id. The Policy acknowledges the obligation of public agencies to dispose of real estate at Fair Market Value, but states that if "fair reuse value" is pursued a Financial Gap Analysis or Fair Reuse Analysis "pursuant to Health and Safety Code section 33433 will be prepared." Id. Based upon that analysis, the property will be recommended for sale or ground lease at "fair market value or below fair market value." Id. Pet. Op. Br. at 16.

Health and Safety Code section 33433 required redevelopment agencies (which no longer exist) to provide public notice and a review period so that Fair Market Value appraisal and Fair Reuse Value analysis reports of could be reviewed and challenged by the public at a public hearing before the

redevelopment agency entered into a binding sale or lease of the real property. The Legislature required transparency and accountability when valuable public real estate was being disposed of/sold at less than Fair Market Value for redevelopment. Id. Pet. Op. Br. at 16.

Petitioners argue that section 7.27.3 is patterned after Health and Safety Code section 33433. It provides:

"With the exception of those properties subject to Section 7.33.2, et seq. of this Code, the Los Angeles Housing Department is authorized to convey any interest owned or controlled by the City in any real property below its fair market value, subject to the Council making a finding that the conveyance at the price with the terms and conditions imposed thereon serves a public purpose. Such conveyance may be made by either sale or lease; however, the sale or lease shall be first approved by the City Council after public hearing and shall be subject to approval by the Mayor.

> Any disposition of real property, whether by sale or lease, which is made at a price below fair market value shall be supported by findings and an appraisal setting forth the following:
> f. The estimated fair market value of the interest to be conveyed, determined at the highest and best use;
> g. The purchase price or present value of the lease payments which the lessee will be required to make during the term of the lease;
> h. The conditions and covenants imposed by the City for the conveyance ("City Conditions") and an estimate of the increased development costs to be incurred by the developer of the real property as a result of compliance with the City Conditions;
> i. The estimated value of the interest to be conveyed determined at the use and with the City Conditions ("Fair Reuse Value"); and
> k. An explanation as to why the sale or lease of the real property will assist in the development of affordable housing in the City, with reference to all supporting facts and materials relied upon in making this explanation." Pet. RJN, Ex. B (emphasis added).

Petitioners contend that sections 22.606.2, 7.27.3, and the Policy (SE Ex. 10) must be read in harmony. Together they specify the timing of when section 7.27.3 requirements must be met, and how the City must be transparent with its taxpayers about disposition of assets worth billions of dollars. The phrase "authorized to convey" in section 7.27.3 dovetails with section 22.606.2's statement that "such conveyance" occurs through one or more agreements that require the "development, use, and maintenance of such real property for affordable housing purposes." Section 7.27.3 also must be construed consistent with the City's interpretation before this lawsuit, which was to apply it at the first time in the development process where the City makes an irrevocable commitment to transfer the real estate interest. That is the logical and constitutional time of public accountability when the City can show its math justifying a below market value or free disposition of public real estate. Pet. Op. Br. at 14, 16-17.

Petitioners argue that the City failed to comply with sections 7.27.3 and 22.606.2(c) by approving the DDA without releasing the appraisal or Reuse Report, and by not making findings required by section 7.27.3. The staff of Mayor Garcetti, acting through the CAO, and LAHD failed to comply at the time they sought City Council authority to negotiate and execute the DDA for the Project. In fact, it appears to be a City pattern and practice to prepare staff reports that purposely fail to identify for the public that sections 22.606.2 and 7.27.3 even exist. Both the CAO and LAHD staff reports seeking City Council approval to negotiate and execute the DDA do not mention sections 7.27.3 and 22.606.2. AR 610–14, 712-74, 938-40 (CAO staff report and LADH staff report). Pet. Op. Br. at 17-18.

Petitioners contend that the Policy supports their interpretation. The Policy cites Health and Safety Code section 33433, stating that when the City's valuable land assets are disposed of for less than Fair Market Value, a Reuse Report comparable to that required for redevelopment agencies to dispose of

their assets by sale or lease will be prepared. Health and Safety Code section 33433 required a redevelopment agency to give notice, a ten-day public review period for the Reuse Report, and a public hearing. The City's' former redevelopment agency conducted hearings under Health and Safety Code section 33433, including at the DDA approval stage. SE Ex. 11 (Ex. 6 dated March 2, 2024 showing City Council approval of Mercy Housing Reuse Report at the DDA approval stage). The City drafted sections 22.606.2 and 7.27.3 without the same transparency as Health and Safety Code section 33433, even though City officials said in the Policy that they would emulate this statute. The City's historic compliance with Health and Safety Code section 33433 at the time of DDA approval is consistent with Petitioners' interpretation. Reply at 13.[13]

The City did not comply with these requirements. LAHD commissioned its financial consultant, KM, to prepare a Fair Reuse Value Report ("KM Report"). The KM Report, dated May 19, 2022, was prepared after LAHD submitted its March 27, 2022 staff report proposing authority to enter into the binding DDA with the $1 per year lease. AR 8–22.[14] Despite possessing the KM Report and the $3.349 million fair market value appraisal, the CAO and LAHD made no effort to disclose them for consideration at the public hearing cited in the City's Policy. Sections 22.606.3 and 7.27.3 required the release of these reports before the City Council exercised its discretion to enter into a binding DDA with Developers so that the public could bring to the City Council's attention discrepancies or facts that warrant modification of the price at which the public's land would be sold or leased to the Developers. Pet. Op. Br. at 18-19.

Petitioners conclude that the Project is a poster child why the failure of the City to comply with sections 22.606.3 and 7.27.3 at the time of proposed entry into a binding DDA undermines the public's confidence in the City's homelessness and housing program. At the outset of the City's Affordable Housing Opportunity Site program, the General Services Department ("GSD"), which has authority over disposition of surplus City property, commissioned a 2016 Fair Market Value appraisal which valued the Venice Dell site at $34 million. SE Ex. 13. Gold Coast's 2020 appraisal valued the site at $3.349 million, more than 90% less. Pet. Op. Br. at 19.

When KM's consultant, Romey, prepared the Fair Reuse Value report, she started with the Gold Coast appraisal of $3.349 million. AR 8–22; SE Ex. 3. Romey expressed concerns that she could not get the Fair Reuse Value down to $0. Id. Ultimately, the KM Report asserted that the $1 per year lease is justifiable under Fair Reuse Value. But if the true Fair Market Value is closer to the 2016 appraisal of $34 million, LADH should be required to reappraise the property or at least properly run the numbers. The Project demonstrates the harm stemming from the hubris of the Mayor's staff at the CAO and of LAHD thinking that they could hide from the public the fact that millions of dollars of public land is being given to a private developer without the rational justification the City Council required of itself in enacting these laws. The City failed to proceed in accordance with law, and the discretionary authorization of the execution of the DDA must be set aside for the City to comply with sections 22.606.3 and 7.27.3. Pet. Op. Br. at 20.

This is a fair argument. There appears little doubt that it would be good policy to submit the Fair Use Value appraisal, analysis, and findings required by section 7.27.3 at a public hearing before the City Council approves a DDA. The City's argument notwithstanding, the DDA is a binding agreement requiring the City to enter into a long-term lease with Developers under certain conditions precedent. AR 84. Petitioners have shown that the Project's Fair Use Value appears to have been seriously manipulated to ensure the Project proceeds. If so, this manipulation undermines the credibility of the City's homelessness housing program. Submission of these key documents at a public hearing before entry into a DDA would shed light on a program project and enable rationale decision-making.

The question is, however, is not whether it would be good practice to do so but whether sections 7.27.3, 22.606.2(c) and the Policy required this exposure before entry into the DDA. The City is correct that these provisions only apply before the actual conveyance of a real property interest.

Section 7.27 governs the sale, conveyance, or exchange of City-owned land, and it authorizes LAHD to convey City-owned property below its fair market value for the purposes of affordable housing development and sets forth the procedure and requirements for such conveyance. Relatedly, section 22.606 describes the duties and powers of LAHD, which include disposition of real property for affordable housing development pursuant to section 22.606.2.

Contrary to Petitioners' claim, the City is only required to comply with these sections upon execution of the ground lease, and the DDA is not a conveyance of an interest in real property. The plain language of section 7.27.3 expressly provides that such conveyance may be made by either sale or lease, not by a DDA. Section 22.606.2(c) also plainly establishes that conveyance is separate and distinct from a DDA by providing that there must be "one or more agreements" in place -- such as a DDA -- requiring the property's "development, use and maintenance…for affordable housing purposes" in order for the City to be able to avail itself of the conveyance procedure in section 7.27.3. Section 22.606.2(c) does not provide that such an agreement is the vehicle for disposition.

Section 22.606.2(c)'s requirement to follow the procedures set forth in section 7.27.3 exists at the time of conveyance, which is made clear by the plain language of section 7.27.3 which uses the words "convey," "conveyance," "lease," and "disposition" throughout. The agreement with Developers that will convey the interest in the Project site will be the ground lease, not the DDA. This is consistent with the well-established legal principle that a lease of real property constitutes a conveyance of an estate in land (a leasehold) and a contract. Valley Investments v. BancAmerica Commercial Corp., (2001) 88 Cal.App.4th 816, 822.

Although a binding agreement with conditions precedent, the DDA does not purport to convey an interest in real property. To the contrary, the DDA contains numerous provisions that contemplate the future conveyance of real property through a ground lease. Section 1.2 of the DDA defines "Ground Lease" as the "99-year ground lease with respect to the Site to be entered into between the City, as ground lessor, and Developers, as ground lessee, subject to and contemplated in this agreement . . ." AR 91 (emphasis added). The use of the phrase "to be entered into" indicates that conveyance has not yet occurred. DDA section 1.1(b) similarly establishes that conveyance is a future occurrence by stating that "[t]he Developers will lease the Site for a Ninety Nine (99) year term . . ." AR 84 (emphasis added). Section 3.1 sets forth conditions precedent that must be satisfied prior to conveyance via ground lease: "Subject to the terms and conditions of this Agreement, the City shall execute and deliver the Ground Lease to the Site to Developers for redevelopment and the provision of affordable housing. The City shall not be obligated to convey title to the Site to Developers, and the Close of Escrow shall not occur, if an Event of Default has occurred and has not been cured within the applicable cure period, if any." AR 100 (emphasis added); *see* AR 105 ("Provided the conditions precedent in Section 3.1 of this Agreement have been satisfied, upon the terms, covenants and conditions set forth in this Agreement, the City agrees to lease and convey the leasehold interest in the Site to Developers…)". Section 3.9(a) again confirms that conveyance has not yet occurred: "Subject to any extensions of time mutually agreed upon in writing between the City and Developers, the conveyance of leasehold interest to Developers pursuant to the Ground Lease shall be completed upon the occurrence of all of the following (the "Closing Date") (i) not sooner than the satisfaction of all Conditions Precedent to the Close of Escrow set forth in Section 3.1 of this Agreement; and (ii) not later than the date specified for the scheduled Closing Date in the Schedule of Performance." AR 114 (emphasis added).

The City's Policy also provides that conveyance is by sale or by lease. SE Ex. 10, p. 4. The Policy is described as "a standardized framework as to how real property is to be conveyed" and requires that LAHD "shall utilize long-term ground leases" where feasible. Ibid.

Petitioners reply that this interpretation is based upon the faulty premise that the words "convey" and "conveyance" have a plain dictionary meaning. Our Supreme Court has held, however, that "the intent prevails over the letter of the words". Calatayud v. State of California, (1998) 18 Cal.4th 1057, 1064-65. This court should find that the City's litigation-adopted "interpretation" is of "no use at all"

(Yamaha Corp. of America v. State Board of Equalization, (1998) 19 Cal.4th 1, 8) because it defeats the essential purpose of the statutory scheme and contradicts the legislative intent. Reply at 12-13.

Petitioners add that the City's interpretation of sections 22.606.2 and 7.27.3, premised on a law dictionary literal reading of the words "convey" and "conveyance", would postpone compliance with these transparency laws so late in the process that the City Council and public would be deprived of a meaningful opportunity to review or affect the decision-making for the Land Appraisal, Reuse Report, and price at which the City proposes to sell or lease its valuable land. This is an evil that the Court's construction of these sections must avoid because it contradicts the City's interpretation of its own program before this litigation started. Reply at 11.[15]

Although the plain language of sections 7.27.3, 22.606.2(c) and the Policy require an actual conveyance of a property interest before disclosure of the reports and findings required by section 7.27.3, Petitioners are correct that the intent of these provisions must control. But the plain language is supported by the legislative intent because the City Council will address the issues required by section 727.3 before entry into a ground lease.

Petitioners claim that the DDA is the "final discretionary step", but this is incorrect. The DDA provides that the City Council's retention of its authority and obligations under applicable law. DDA section 11.23 provides that nothing contained in the DDA restricts or limits "any of the City's duties, obligations, rights or remedies . . . pursuant [to its ordinances] or the general police powers, rights, privileges, and discretion of the City . . . including, without limitation, the right under law to make and implement independent judgments, decisions and/or acts with respect to planning, development and/or redevelopment matters . . . whether or not consistent with the provisions of this Agreement." AR 172-73 (emphasis added). DDA section 3.1(v) states as a Condition Precedent that an "Appraisal or Other Determination of Value" by which "[t]he City shall have determined, in their (*sic.*) sole discretion, that the City Rent payable by Developers is acceptable." AR 101 (emphasis added). This means that the City Council can address the Fair Use Value appraisal and analysis, and make the findings required by section 7.27.3, at a public hearing held after the DDA is executed. As Huynh, the City's PMK, testified: "[N]othing in the Venice Dell DDA restricts or waives the [C]ity's duty to follow its own ordinances among other things," and this duty includes compliance with section 7.27.3. SE Ex. 2, p. 240 (Huynh Depo.).

Thus, the City's decision concerning section 7.27.3 compliance is one of the obligations retained and required by DDA section 11.23. When the Project reaches the stage of ground lease consideration, it will be presented to the City Council for approval in compliance with section 7.27.3 before "full conveyance" occurs. SE Ex. 2, pp. 240-41 (Huynh Depo.); see id., pp. 164-65 ("we have to go back to council to receive authority to execute the ground lease"). City Council consideration is a necessary and expected next step, as the City Council is ultimately the key decision-maker. Ex. 2, p. 188. It is at this point that the City Council's decision will be subject to section 7.27.3 and its requirement of findings, which must be supported by substantial evidence. *See* CCP §1094.5; Topanga Assn. for a Scenic Community v. County of Los Angeles, (1974) 11 Cal.3d 506, 514-15. While it may be a better policy to perform this decision-making before entry into a DDA, it is not required.

The Policy is not inconsistent with this interpretation. The Policy recommends that "a Financial Gap Analysis or a Fair Reuse Analysis. . . will be prepared" before real property is sold or ground leased; it does not recommend doing so at the time of seeking approval to enter into a DDA. SE Ex. 10 (Attachment 3).

Nor has City staff interpreted the Public Land Development Program and sections 22.606.2 and 7.27.3 as treating the City Council's authorization of LAHD's authority to negotiate and execute the DDA as the final discretionary step. Staff merely stated that step four, the last step, is to execute the DDA, which enables the transfer of public land for development. The DDA codifies the City's commitment to transfer or ground lease the property once the project milestones have been achieved. SE Ex. 10, p. 3. This is not a statement that the City Council has no further discretion.

If there were any doubt, the City's interpretation of its LAAC provisions is "'entitled to deference' in [a court's] review of the meaning or application of the law." Harrington v. City of Davis, (2017) 16 Cal.App.5th 420, 434. "[A]n agency's view of the meaning and scope of its own . . . ordinance is entitled to great weight unless it is clearly erroneous or unauthorized." Anderson First Coalition v. City of Anderson, (2005) 130 Cal.App.4th 1173, 1193. Opp. at 12-13.

Petitioners argue that the City's litigation-inspired interpretation is entitled to no judicial deference. An agency's interpretation of an ambiguous statute consisting only of the agency's litigating position, without promulgation of formal regulations, is entitled to no deference. Culligan Water Conditioning, Inc. v. State Bd. of Equalization, *supra,* 17 Cal. 3d at 92-93.

The City's interpretation is not inspired by litigation. The city's practice is to present the ground lease to the City Council for approval in compliance with section 7.27.3 before "full conveyance" occurs. SE Ex. 2, pp. 240-41 (Huynh Depo.); *see* id., pp. 164-65 ("we have to go back to council to receive authority to execute the ground lease"); Id., p. 188. Huynh testified that the Reuse analysis really is needed for the formal transfer. SE Ex. 2, p. 42. It depends on the financing and funding sources when the reuse analysis gets ordered. Ex. 2, p. 42. The Reuse Report is usually prepared after the City Council approves the term sheet because at that point the critical deal terms, including the proposed price of the sale or lease, are crystalized. Ex. 2, pp. 42-43. Authority for entry into the ground lease requires approval by the City Council. Ex. 2, p. 45. In some cases, state deadlines require presentation of the DDA and ground lease to the City Council at the same time. Ex. 2, p. 45-46. The City does not have a policy of providing the Reuse Analysis to the City Council for approval of the DDA. Ex. 2, p. 47. As a result, the City's interpretation is entitled to deference.

Sections 7.27.3, 22.606.2(c) and the Policy do not require submission of the Fair Use Value appraisal, analysis, and findings required by section 7.27.3 at a public hearing before the City Council approves a DDA. The City is correct that these provisions only apply before the actual conveyance of a real property interest.

F. Conclusion

Petitioners are correct that this case is about timing, but the required timing is not as they contend. The FAP is denied.

The City's counsel is ordered to prepare a proposed judgment, serve it on all other counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for July 18, 2024 at 9:30 a.m.

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[1] Petitioners ask the court to judicially notice various City Charter provisions (Pet. RJN Ex. A) and provisions from the Los Angeles Administrative Code ("LAAC") (Pet. RJN Ex. B). The City also seeks judicial notice of provisions of the City Charter (Resp. Ex. 1). In reply, Petitioners seek judicial notice of two more City Charter provisions (Exs. 1-2). All of the requests are granted. Evid. Code §452(b).

[2] LAAC section 22.484(g)(2)(A)(5), (6) and (8) delegates employment of personnel, the Special Parking Revenue Fund, and state law concerning parking to the Transportation Commission, with (5) and (6) "subject to Council approval", prior authorization of the mayor", or City Charter limitations.

[3] The parties refer to the quasi-administrative record as "QAR" but the court will use "AR". The parties refer to Petitioners Supplemental Evidence as "SE" and the court also will use that acronym.

[4] The Project does not have a CDP from the Coastal Commission. SE Ex. 15 (six letters of incomplete application for CDP or plan amendment). The Coastal Commission asked that LADOT be a co-applicant with Developers because of the Project's new parking garage and LADOT has declined. *Compare* SE Ex. 15 *and* SE Ex. 16. Reply at 6, n. 2.

[5] Petitioners note that the LAHD Report did not contain a Fair Reuse Value report, appraisal report, or any of the analysis for the findings of the City Council to support the DDA. Pet. Op. Br. at 6.

[6] Petitioners contend that neither of the LAHD and CAO reports cited any statutory authority under which the City Council was proposing to act in directing LADOT to transfer the parking lot to LAHD or in authorizing LAHD to negotiate and execute a DDA disposing of the parking lot. Pet. Op. Br. at 7.

[7] The CAO report and meeting agenda item called for the April 27 LAHD report to be subject to "note and file" and for the June 3 CAO report to be adopted instead. AR 938-39; SE Ex. 5. Petitioners contend that, since the executed term sheet and proposed DDA were part of the April 27 LAHD report, the City Council's action to note and file the April 27 LAHD report did not approve the term sheet or the draft DDA attached to it. Pet. Op. Br. at 7, n. 3.

[8] All further statutory references are to the LAAC unless otherwise noted.

[9] The public parking garage is part of the approved DDA. AR 189. The Transportation Commission has never reviewed or approved any aspect of this change in use of its parking lot. SE Ex. 7 (Admissions 1, 2); SE Ex. 8, pp. 14, 65-74 (Husting Depo.). Reply at 6, n. 1.

[10] Petitioners argue that they have both taxpayer and public interest standing. Pet. Op. Br. at 20-21. The City does not dispute Petitioners' standing. *See* Reply at 4.

[11] The City argues that, while the term "public improvement" is not defined in the City Charter or LAAC, "a public improvement is a project or use that involves '(1) a deliberate action by the state (2) taken in furtherance of public purposes.'" Mercury Cas. Co. v. City of Pasadena, (2017) 14 Cal. App. 5th 917, 928.) Under this standard, the Project is clearly a "public improvement." Opp. at 15, n. 4.

Petitioners reply that "public improvement" is defined by City Charter sections 580 and 581 define it. Pet. RJN, Ex. A. Reply at 8, n. 5. Not so. These provisions and state laws cited by Petitioners concern public works improvements (water, storm and sanitary sewers, streets, bridges, etc.), which differ from public improvements.

Petitioners add that City Charter section 247 (Public Improvements) merely recognizes the authority of the City or the City Council to provide for public improvements by issuing bonds or notes to finance residential housing developments, including low-income developments. Pet. Reply RJN, Ex. C. City Charter section 248 (Issuance Of Housing Revenue Bonds) is the next provision in the City Charter and it confirms the City Council's power to issue revenue bonds to develop market rate and affordable housing so long as none of the costs are paid from tax revenues of the City. Pet. Reply RJN, Ex. C. Reply at 8-9. The court agrees.

[12] Petitioners miscite the Policy as Pet. RJN Ex. B.

[13] In discovery, the City was asked to admit that its staff reports failed to notify the public of the City Council's authority to approve the DDA. The City denied that it failed to notify the public of its authority, stating that the LAHD and CAO reports were contained in Council File No. 22-0496 and the CAO report referred to the Policy. SE Ex. 7 (RFA 3). Yet, a policy is not authorization for a municipal body to act. That takes a law. Reply at 13-14.

[14] The KM Report was based upon a LAHD procured December 22, 2020 appraisal of the Venice Dell Project site. SE Ex. 12. Gold Coast concluded that the Fair Market Value of the site was $3.349 million. Ex 12, p. 7. The KM Report took Gold Coast's $3.349 Fair Market Value, estimated the increased development cost of the City's conditions imposed upon the Project that lowered its value to the Fair

Reuse Value (the site value with the use reduced by the cost of the City's Conditions). AR 17–20. The KM Report concluded that the increased development costs reduced the Fair Market Value of $3.349 million to below $0 and therefore, the lease price of $1 per year was a fair price for the City to long-term lease the land in exchange for the deed restrictions for low cost housing purposes. AR 21–22. Petitioners argue that the KM Report inadequately (a) fails to comply with section 7.27.3's requirement to disclose what increases in costs are specifically attributable to the City's Conditions and (b) does not include the benefit of the public funding for which the Project qualifies due to affordable housing requirements. Pet. Op. Br. at 18, n. 6.

[15] Petitioners explain that sections 22.606.2 and 7.27.3 use the terms "convey" and "disposition" interchangeably, particularly in section 7.27.3 where the City imposes the obligation to comply with the list of disclosures required to justify a below fair market price. This language uses the word "disposition" to trigger the timing. Reply at 11-12. In 2017, the staff report summary of this program described the process using the term "disposition" multiple times without ever using the words "convey" or "conveyance." Pet. Op. Br. at 15–16; SE Ex. 10, p. 3 (October 13, 2017 staff report: Disposition Process). Only when the City Attorney was tasked with drafting the ordinances did the words "convey" and "conveyance" appear. But even the word "convey" reflects the intent to trigger the transparency of the Property Appraisal, Fair Reuse Valuation Report, and required findings in conjunction with entering into an agreement that imposes the affordable housing conditions. The intent expressed in the City's 2017 reports for the program requires that the words "disposition" and "convey" or "conveyance" be read in harmony, rather than the literal reading the City urges. Reply at 12.
