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Liaison Counsel for Individual Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

PALISADES FIRE LITIGATION

DAN GRIGSBY, et al.,

Plaintiff,

vs.

CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER, et al.,

Defendants.

AND ALL RELATED CASES

Lead Case No. 25STCV00832

INDIVIDUAL PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO THE DEMURRER BY DEFENDANTS CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER AND CITY OF LOS ANGELES

Date: February 5, 2026
Time: 1:45 p.m.
Dept.: 7

Assigned for All Purposes to:
Hon. Samantha Jessner, Dept 7

Action Filed: January 13, 2025
Trial Date: Not set

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

PLEASE TAKE NOTICE THAT in connection with Individual Plaintiffs' Opposition to the Demurrer of Defendants City of Los Angeles and City of Los Angeles, acting by and through the Los Angeles Department of Water and Power (together, "Defendants"), Individual Plaintiffs ("Plaintiffs") respectfully request that the Court take judicial notice of the following documents: (1) Defendants' Reply In Support of Demurrer, *Fix the City, Inc. v. City of Los Angeles et al.*, No. 23STCP03519 (Super. Ct. L.A. County, Central Dist., Dept. 86, filed Mar. 21, 2024) ("City's Reply Brief") (non-certified copy attached as Exhibit A); (2) Ruling on Demurrer to Verified First Amended Petition for Writ of Mandate, *Fix the City, Inc. v. City of Los Angeles et al.*, No. 23STCP03519 (Super. Ct. L.A. Cnty., Central Dist., filed May 30, 3024) ("Ruling Sustaining Demurrer") (non-certified copy attached as Exhibit B); and (3) Respondents' Brief, *Fix the City, Inc. v. City of Los Angeles et al.*, No. B339464 (Cal. Ct. App., 2d Dist., 1st Div., filed Oct. 20, 2025) ("City's Respondent Brief") (certified copy attached as Exhibit C).

1. Plaintiffs request judicial notice pursuant to California Rule of Court 3.1113(*l*).

2. Exhibit A and Exhibit B are non-certified copies of records contained in a file of this Court's district. In compliance with California Rule of Court 3.1306(c) and L.A. County Superior Court Local Rule 3.8(a), Plaintiffs have concurrently filed a separate document requesting that the clerk submit the case file in *Fix the City, Inc. v. City of Los Angeles et al.*, No. 23STCP03519 (L.A. County Super. Ct., Central Dist., Dept. 86, action filed Sept. 25, 2023) to the Honorable Samantha Jessner in Department 7 no later than February 3, 2025, or two days before the hearing on Defendants' Demurrer. Plaintiffs have attached Exhibit A and Exhibit B for the Court's and the parties' convenience and in further compliance with Rule 3.1306(c).

3. Exhibit C is a certified copy of a record contained in a file of a court outside of this Court's district. It is attached here in compliance with Rule 3.1306(c) and Local Rule 3.8(b).

4. Because the City's Reply Brief (Exhibit A), the Ruling Sustaining Demurrer (Exhibit B), and the City's Respondent Brief (Exhibit C) are "records of any court of this state," they are properly the subject of judicial notice. *See* Cal. Evid. Code § 452(d)(1).

5. Plaintiffs cite these records only to show that Defendants have taken a position totally inconsistent with their Demurrer arguments regarding the California Emergency Services Act, that they did so intentionally in a judicial proceeding, and that they were successful in that judicial proceeding. (*See* Opposition 18-20, Demurrer 22-24.) Judicial notice of court records is proper where they are introduced for the purpose of assessing judicial estoppel. *See, e.g., Hamilton v. Greenwich Investors XXVI, LLC*, 195 Cal. App. 4th 1602, 1608-09, n.3 (2011) (affirming judgment sustaining demurrer on judicial estoppel grounds and observing trial court properly took judicial notice of filings, including "the fact the documents were filed 'and that they say what they say'"); *Minish v. Hanuman Fellowship*, 214 Cal. App. 4th 437, 455 n.11 (2013) ("We note, however, that in deciding whether to apply judicial estoppel, a court may properly consider a party's statements in properly noticed judicial records and documents for the *nonhearsay* purpose of determining whether a plaintiff has asserted inconsistent positions."); *Cf. The Press Democrat v. Sonoma Cnty. Herald Recorder*, 207 Cal. App. 4th 578, 589 (2012) (denying request for judicial notice because plaintiff did *not* "claim judicial estoppel precludes [defendant's] arguments").

6. Rule of Court 8.1115 does not prohibit the Court from considering the Ruling Sustaining Demurrer (Exhibit B). California courts have previously applied the judicial notice statute to review unpublished opinions. *See, e.g.*, *Gilbert v. Master Washer & Stamping Co.*, 87 Cal. App. 4th 212, 218, n.14 (2001) ("Although the Court of Appeal opinion in *Trope v. Katz* is not published, we may take judicial notice thereof as a court record pursuant to Evidence Code section 452."); *see also* Rafi Moghadam, *Judge Nullification: A Perception of Unpublished Opinions*, 62 Hastings L.J. 1397, 1400 (2011) ("In this battle between the no-citation rule and judicial notice [under Evidence Code 452(d)(1)], the statute overrides the rule. Inconsistency between the no-citation rule and the judicial notice statute is fatal to the former."). Plaintiffs cite the Ruling Sustaining Demurrer not for persuasive authority but only to show that Defendants succeeded in the prior judicial proceeding where they took a position totally inconsistent with their position here.

7. Because Plaintiffs have requested judicial notice of a matter specified in section 452 of the Evidence Code, and they have "[g]ive[n] each adverse party sufficient notice of th[is] request"

and "[f]urnishe[d] the court with sufficient information to enable it to take judicial notice of the matter," judicial notice is mandatory under section 453.

8. For the foregoing reasons, Plaintiffs respectfully request that the Court take judicial notice of Exhibit A, Exhibit B, and Exhibit C for the limited purpose of assessing whether judicial estoppel applies.

Dated: December 18, 2025 ROBERTSON & ASSOCIATES, LLP

By: */s/ Alexander Robertson, IV*
Alexander Robertson, IV

Dated: December 18, 2025 FOLEY BEZEK BEHLE & CURTIS, LLP

By: */s/ Roger N. Behle, Jr.*
Roger N. Behle, Jr.
Robert A. Curtis

Dated: December 18, 2025 BOYLE LAW PC

By: */s/ Kevin R. Boyle*
Kevin R. Boyle
Matthew J. Stumpf

Dated: December 18, 2025 MCNULTY LAW FIRM
WOOD LAW FIRM

By: */s/ Peter McNulty*
Peter McNulty
E. Kirk Wood

Liaison Counsel for Individual Plaintiffs

Exhibit A

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Attorneys for Respondents and Defendants CITY OF LOS ANGELES and CITY OF LOS ANGELES CITY COUNCIL

NO FEE – GOV. CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FIX THE CITY INC., a California Nonprofit Corporation

Petitioner and Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal corporation; the CITY OF LOS ANGELES CITY COUNCIL; KAREN BASS, MAYOR OF THE CITY OF LOS ANGELES, in her official capacity; and DOES 1 through 10, inclusive

Respondents and Defendants.

Case No. **23STCP03519**
Assigned to Hon. Curtis A. Kin
Stanley Mosk Courthouse Dept. 82

RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES' AND CITY OF LOS ANGELES CITY COUNCIL'S REPLY ISO DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Date: March 28, 2024
Time: 1:30 p.m.
Dept. 82

Action Filed – September 25, 2023

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I. INTRODUCTION

Petitioner Fix the City, Inc. ("FTC") is trying to stop the City of Los Angeles ("City") from addressing a genuine local emergency relating to the City's housing and homelessness crisis. In response to this crisis, the City duly enacted Los Angeles Administrative Code ("LAAC") 8.33 in an effort to preserve the lives and protect the health and safety of the City's homeless population. No one, including FTC suffered any harm from the City's efforts to address its local emergency, but FTC nevertheless seeks to have this Court set aside and void LAAC 8.33, the Mayor's emergency declaration and executive directives, and all actions taken thereunder to address this crisis. FTC's claims are based on the local procedure and timing for how the City Council ratifies and renews the local emergency, and the specious contention that extreme peril to the lives, health and safety of the City's homeless population does not constitute an "emergency" as a matter of law.

The California Emergency Services Act ("CESA") does not purport to apply, much less govern, charter cities, like the City of Los Angeles. The California Supreme Court has made clear that the first step in the preemption analysis under the home rule doctrine is to review the state legislation to confirm whether it expressly applies to charter cities and, if so, determine whether an actual conflict exists between the state and local laws. Where, as here, the state law does not expressly apply to charter cities, then there is no actual conflict as a matter of law and that ends the preemption analysis. And even under the four-part preemption test, FTC's claims under CESA fail. There is no statewide concern under CESA in having uniform, prescribed time periods in which charter cities can ratify and renew declarations of local emergencies that would trump the City's constitutional home rule authority over municipal affairs in the mode and manner of adopting ordinances and municipal enactments, including emergency declarations.

FTC's challenges to the Mayor's emergency declaration under LAAC 8.33 also fail. The City's ratification and renewal of the resolution continuing the local emergency are timely under LAAC 8.33. And the well-established doctrine of ratification confirms that any alleged procedural defects were cured by City Council's legislative actions. As discussed in the City's demurrer and further addressed below, the City's demurrer should be sustained in its entirety and leave to amend denied because no amendment can cure these fatal defects.

II. ARGUMENT

FTC's opposition narrows the issues to be resolved on demurrer. There is no dispute that the City's demurrer raises legal issues on statutory interpretation and preemption appropriate for resolution on demurrer. Any facts relevant to the legal analysis are all subject to judicial notice pending before the Court. FTC makes no effort to address, much less refute, the City's dispositive arguments and caselaw confirming that the FAP alleges no viable declaratory relief claims for violations of the Public Contracts Code or Section 19(a) of the California Constitution and Eminent Domain statutes. *See* Dem. at 12-14; Opp. at 21. Instead, FTC's opposition focuses almost entirely on preemption arguments under CESA and the interpretation of LAAC 8.33. Thus, the City's reply focuses on FTC's arguments and refers the Court back to the demurrer on the other issues.

A. There Is No Actual Conflict Between LAAC 8.33 and CESA

FTC's opposition confuses the order in which the Court is required to address the preemption analysis under the home rule doctrine and cases cited in the City's demurrer. *See* Dem. at 5, 7-9. The first step in the preemption analysis is to "determine whether there is an 'actual conflict' between general state law and charter city authority." *Johnson v. Bradley* (1992) 4 Cal.4th 389, 400 quoting *California Fed. Savings & Loan Assn v. City of Los Angeles* (1991) 54 Cal.3d 1, 16 ("*Cal. Fed.*"). "If it does not, a choice between the conclusions 'municipal affair' and 'statewide concern' is not required." *Cal. Fed.*, 54 Cal.3d at 16. As the Supreme Court explained: "[t]o the extent difficult choices between competing claims of municipal and state governments can be forestalled in this sensitive area of constitutional law, they ought to be: courts can avoid making such unnecessary choices by carefully insuring that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other." *Id.* at 16-17; *see also State Bldg. & Constr. Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 559 (*Cal. Fed.* "emphasized the importance of determining, as a matter of statutory construction, that state law actually conflicts with local law before proceeding to the difficult state constitutional question of which law governs a particular matter.").

Thus, the Court's initial inquiry is whether or not the statute in question – here Government Code Section 8630 – applies to charter cities because, if not, there is no actual conflict and the

Court's analysis ends there. *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 911-12. *Padilla* is instructive on the required statutory analysis.

In *Padilla*, the Court considered whether the California Voter Participation Act, Elections Code §§ 14050-14057 ("VPRA"), applied to the charter city of Redondo Beach. *Id.* at 906. The VPRA sought to align municipal elections dates to occur on statewide election dates. *Id.* The Court started with the plain language of the statute, which applied to "political subdivisions" defined as "a geographic area of representation created for the provision of government services, including but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law." *Id.* at 906-07 (quoting Elec. Code § 14051(a)). The Court noted that when the Legislature intended to include charter cities within the definition of "political subdivision," that it did so expressly. *Id.* The "Government code often specifies 'charter cities' or 'any city' when defining or utilizing the term 'political subdivision.'" *Id.* at 912 (citing examples of Government Code provisions expressly identifying "charter cities" or "any cities"). "[T]he Supreme Court and Courts of Appeal have often demanded a clearer intention than the use of a general term, be it a 'political subdivision' or 'a city' before concluding a statute is intended to apply to charter cities." *Id.* at 913 (citing cases).

The Court also found that nothing in the VPRA's legislative history indicated a clear intention to include charter cities. *Id.* at 914. Rather, the Court found as relevant that another section the Elections Code (part of the California Voting Rights Act) defined "political subdivision" to expressly include "charter city." *Id.* at 915. In addition, certain failed legislation that would have amended the Elections Code to expressly include "charter cities" was considered relevant to the analysis. *Id.* at 916-17. The Court found that legislative history reinforced the textual analysis in confirming that the VPRA did not apply to charter cities. *Id.* at 918. Because there was no actual conflict with the VPRA, the Court did not conduct preemption analysis under the *Cal. Fed. Id.*

Here, Government Code Section 8630(a) states that a "local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body." Like the VPRA in *Padilla*, the use of "a city" in Section 8630(a) rather than "charter city" or "any city" is insufficient to find that this section of the

Government Code governs charter cities' procedures for proclaiming, ratifying and/or renewing emergency declarations. *See Padilla*, 46 Cal.App.5th at 912-913.

The City cited other cases in its demurrer confirming that specific statutory language applying state laws to charter cities is needed to find an "actual conflict" that would warrant addressing the constitutional questions under the preemption analysis. *See* Dem. at 5, 7-8. In *Trader Sports*, the Court considered Proposition 62, a statewide initiative intended "to apply to all municipalities, including those with home rule charters." *Trader Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 45. Specifically, Government Code Section 53720(a) defined "local governments" to include "any county, city, city and county, *including a chartered city or county*…." *Id.* (emphasis in original). In *State Building and Construction*, the Court considered the prevailing wage law, including Labor Code Section 1720(a)(3), which made express references to charter cities, defining "public works" to include "street, sewer, or other improvement work … of any political subdivision or district [of the state], *whether the political subdivision or district operates under a freeholder's charter or not*." *State Bldg. & Constr. Trades Council,* 54 Cal.4th at 560 (emphasis in original). The Supreme Court found that an actual conflict existed because the prevailing wage law expressly applied to charter cities and the ordinance at issue prohibited compliance with that law. *Id.* In *Johnson*, the California Supreme Court addressed the Political Reform Act of 1974, Government Code §§ 81000-91015), which included Section 82008 that expressly defined "city" to mean "a general law or chartered city." *See Johnson,* 4 Cal.4th at 392.

FTC's reliance on *Lundeen Coatings* for the proposition that a "city" under Government Code Section 53050 includes charter cities is misplaced. Opp. at 13 (citing *Lundeen Coatings Corp. v. Dep't of Water & Power* (1991) 232 Cal.App.3d 816, 830, fn.8). *Lundeen* involved tort claims asserted against the Department of Water and Power ("DWP") and noncompliance with claims presentation requirement under the Government Claims Act, Government Code §§ 900 *et seq.* *See Lundeen*, 232 Cal.App.3d at 827-28. A footnote in the opinion addressed plaintiff's argument that it was excused from complying with the Claims Act because DWP failed to file a statement in Utah as required by Government Code Section 53051. *Id.* at 830, fn.8. The Court noted that Section 53050 exempted from this requirement any "state or county, city and county, or a city", and stated that the

DWP was a department of the City and therefore exempt. *Id.* *Lundeen* did not consider, much less address, preemption under the home rule doctrine, and the footnote is dicta on a different section of the Government Code. "It is axiomatic that cases are not authority for proposition not considered." *Padilla*, 46 Cal.App.5th at 914.

Moreover, CESA itself specifies that only one subsection is applicable to chartered cities – Section 8635. *See* Gov. Code § 8635. FTC argues that Section 8635 is irrelevant to the issues in this dispute. Opp. at 13. But Section 8635 is relevant to the Court's statutory analysis of CESA and whether the reference to "a city" in Section 8630 includes charter cities. *See Padilla*, 46 Cal.App.5th at 915 ("as a general rule, when the Legislature uses a term in one provision of a statute but omits it from another … we generally presume that the Legislature did so deliberately, in order to convey a different meaning.") (quoting *Scher v. Burke* (2017) 3 Cal.5th 136, 144-45).

FTC also contends that the Legislature's failed attempt to extend CESA to charter cities under Senate Bill 933 (2021-2022 Session) is also irrelevant to the analysis. Opp. at 13-14 (citing *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 28); Dem. at 8. *Arnett* addressed a dispute over whether the State Medical Board's issuance of a subpoena for peer review records of a doctor constituted prohibited discovery under Evidence Code Section 1157. *Arnett*, 14 Cal.4th at 7-8. In contrast to *Arnett*, courts analyzing preemption under the home rule doctrine have found evidence of a failed amendment to add charter cities into the scope of a state law as relevant to the statutory analysis. *See Padilla,* 46 Cal.App.5th at 916-18 (analyzing *Ector v. City of Torrance* (1973) 10 Cal.3d 129).

In *Padilla*, the Court considered evidence of failed legislation to be relevant to the statutory analysis under *Ector v. City of Torrance* (1973) 10 Cal.3d 129. *Ector* involved a challenge to a charter provision requiring employees to live within the city's jurisdiction under Government Code Section 50083. *Ector*, 10 Cal.3d at 131-32. Government Code Section 50001 defined the term "local agency" to mean "county, city, or city and county, unless the context requires otherwise." *Id.* at 132. The California Supreme Court found that the term "local agency" did not include charter cities, and concluded that legislative history confirmed the interpretation. *Id.* at 132-33. Specifically, the Legislature attempted to amend the statute to expressly include charter cities, but the amendment failed. *Id.* at 133-34. The Supreme Court explained: "We may reasonably infer that

by so voting the Legislature rejected the very extension of the statute which appellant now asks us to adopt under the guise of judicial construction. This, of course, we may not do." *Id.* at 134. Even if the Court deems the legislative history of Senate Bill 933 irrelevant, FTC cites no other legislative history demonstrating a clear intention to include charter cities in Section 8630 or CESA generally.

FTC's last argument is that Section 8630 applies to the City because of a City Attorney memorandum submitted to the City Council in 2015 that addressed emergency declarations under various local, state, and federal laws. *See* Opp. at 14; Pet. RJN, Ex. 1. The memorandum is irrelevant for two reasons. First, the Supreme Court has made clear that the statutory analysis for preemption under the home rule doctrine presents legal issues for the Court to decide. *State Bldg. & Constr. Trades*, 54 Cal.4th at 562 ("the determination of what constitutes a municipal affair (over which the state has no legislative authority) and what constitutes a statewide concern (as to which state law is controlling) is a matter for the courts, not the Legislature, to decide."); *Johnson*, 4 Cal.4th at 405 ("the Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern."). Second, the memorandum does not address the question presented here – whether Section 8630 *preempts* the City's home rule authority to enact ordinances specifying the procedures for declaring, ratifying and renewing local emergencies in response to its local housing and homelessness crisis. Rather, the memorandum provided an overview of various laws on emergency declarations existing back in 2015.

In sum, there is no actual conflict between LAAC 8.33 and CESA based on the statutory language and legislative history confirming the statute does not apply to charter cities. Absent an actual conflict, the Court is to refrain from adjudicating constitutional questions under the home rule doctrine and preemption analysis. *Padilla*, 46 Cal.App.5th at 918; *Cal. Fed.*, 54 Cal.3d at 16-17. Thus, this ends the analysis on FTC's preemption arguments under CESA.

B. <u>Even Assuming an Actual Conflict, CESA Does Not Preempt LAAC 8.33</u>

Even if the Court conducts the preemption analysis (notwithstanding the absence of an actual conflict), FTC still loses. The "inquiry regarding statewide concern focuses not on the legislative body's intent, but on the 'identification of a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic

considerations.'" *Johnson*, 4 Cal.4th at 405 (quoting *Cal. Fed.*, 54 Cal.3d at 18). FTC contends that several issues constitute matters of statewide concern, including "declarations of emergencies, even local ones" (Opp. at 8), "emergencies in general" (Opp. at 12); and "basic oversight, timing and management required to protect due process rights as well as residents and property of the community" (Opp. at 12). These alleged interests are too abstract to meet the standard for a statewide concern. *Johnson*, 4 Cal.4th at 406-07; *State Bldg. & Constr. Trades*, 54 Cal.4th at 561-62 ("the question presented here is not whether the state government has an abstract interest in labor conditions and vocational training. Rather, the question presented is whether the state can require a charter city to exercise its purchasing power in the construction market in a way that supports regional wages and subsidizes vocational training, while increasing the charter city's costs.").

Here, the relevant question is whether CESA addresses a statewide concern in having uniform, prescribed time periods in which charter cities can ratify and renew declarations of local emergencies and, if so, whether that statewide concern trumps the City's constitutional home rule authority over municipal affairs in the mode and manner of adopting ordinances and municipal enactments, including emergency declarations. *Id.; Trader Sports,* 93 Cal.App.4th at 47.

There is nothing in CESA itself that reflects any legislative intent to address a statewide concern regarding the need for a uniform process for charter cities to ratify emergency declarations within seven days and review every 60 days as prescribed under Section 8630. *See* Gov. Code §§ 8550; 8630. Nor is there any legislative history to suggest that was even a statewide concern. And even if the statutory language reflected such an intent, the "bare interest in uniformity in the manner" in which emergency declarations are ratified and reviewed would be deemed insufficient to constitute a "convincing basis for legislative action originating in extramunicipal concerns." *Johnson*, 4 Cal.4th at 406.

C. <u>LAAC 8.33 Addresses the City's Local Housing and Homelessness Emergency</u>

FTC contends the City's local housing and homelessness crisis does not constitute an "emergency" as a matter of law. Opp. at 15-16. FTC's specious contention is wrong several reasons. First, in enacting LAAC 8.33, the City Council legislatively declared an emergency within its local governance structure under Charter Sections 231(f), 240, and LAAC 8.22. *See* Dem. at 5,

15. The term "Local Housing and/or Homelessness Emergency" is defined under LAAC 8.33(a) and the conditions upon which the Mayor may declare such an emergency under LAAC 8.33(b).

Second, courts have recognized that to "state what constitutes an 'emergency' is not an easy task. The term depends greatly upon the special circumstances of each case[.]" *Mullins v. Henderson* (1946) 75 Cal.App.2d 117, 127. In *Mullins*, the Court noted that an "emergency" included "an unforeseen occurrence or combination of circumstances which calls for an immediate action or remedy; pressing necessity, exigency." *Id.* In addition, an "emergency" "has reference to a method adopted as an expedient for meeting a situation which ordinarily calls for immediate action." *Id.; see also Verros v. City & Cnty. of San Francisco* (1976) 63 Cal.App.3d 86, 97.[1] The City's local housing and homelessness crisis likewise meet this broad standard for an emergency.

Third, even assuming Government Code Section 8558 governed the analysis of what constitutes a "local emergency" for charter cities, like the City, FTC's argument still fails. *See* Dem. at 14-15; *Cal. Correctional Peace Officers Assn. v. Schwarzenegger* (2008) 163 Cal.App.4th 802 ("*CCPOA*"). FTC's opposition does not address *CCPOA* because the case refutes FTC's contentions regarding what circumstances constitute an emergency under Section 8558. Similar to FTC's arguments regarding homelessness and local housing, the plaintiffs in *CCPOA* argued that the Governor "had no statutory authority to declare a prison overcrowding emergency" under CESA. *CCPOA*, 163 Cal.App.4th at 810. Section 8558(b) did not include "prison overcrowding" among the list of enumerated examples of disasters or extreme perils. *See id.* at 812. The Court stated that CESA allowed the Governor to declare a state of emergency "in conditions of extreme peril to life, property, and the resources of the state so as to mitigate the effects of the emergency in order to protect the health and safety and preserve the lives and property of the people of the state." *Id.* at 811 (internal quotations omitted; citing Gov. Code § 8550). The prison overcrowding emergency was not a result of an unexpected or unforeseen occurrence, but still constituted an emergency. *Id.* at 817-18. Similarly, the City's local housing and homelessness crisis presents conditions of extreme

[1] FTC cites *Cal. Teacher Assn. v. Bd. of Trustees* (1977) 70 Cal. App.3d 431, 435 (Opp. at 16) in support of its contention on what constitutes an "emergency" under the law, but that case addressed the Education Code and the differences between a "personal necessity" and a "personal emergency" for purposes of paid leave. The case is inapposite.

peril to life requiring extraordinary resources to mitigate the effects of the emergency in order to preserve lives and protect the health and safety of the City's homeless population.

Finally, no court has ever held that the extreme perils to lives of individuals experiencing homelessness does not constitute an emergency as a matter of law. FTC does not contend otherwise. The existing case law supports the City's argument. The Court should reject FTC's novel legal argument on what circumstances constitute an "emergency" as a matter of law.

D. FTC Alleges No Other Viable Claims Under LAAC 8.33

FTC's challenges to LAAC 8.33 based on CESA, specifically Government Code Sections 8630 and 8558, fail for the reasons discussed above and in the Demurrer. FTC's remaining challenges to LAAC 8.33 similarly fail as a matter of law.

FTC seeks to have the Court set aside and void the Mayor's Emergency Declaration under LAAC 8.33 ("8.33 Declaration"), all Executive Directives ("EDs"), and all actions taken thereunder to address the City's local housing and homelessness emergency based on the alleged failure to comply with LAAC 8.33(e). Opp. at 16-18. Specifically, FTC lists (i) the failure to submit a resolution to the City Council so that the Council could consider the resolution and, if it elected to do so, the Council could have rescinded the resolution by majority vote within 30 days of the issuance of the 8.33 Declaration; and (ii) the failure to renew the 8.33 Declaration in the first instance within 90 days. *See id.* LAAC 8.33(e) states:

> Whenever the Mayor declares a local housing and/or homelessness emergency, the Chief Legislative Analyst's Office shall prepare, with the assistance of the City Attorney, a resolution ratifying the existence of a local housing and/or homelessness emergency. Such resolution shall be submitted by the Mayor to the City Clerk for presentation to the City Council. Within 30 days from the date of the original declaration by the Mayor, the City Council may consider the resolution and rescind it by majority vote. Thereafter, the declaration shall expire unless the City Council renews it by a majority vote every 90 calendar days. (RJN Ex. D at § 8.33(e).)

The submission of a resolution under LAAC 8.33(e) is so that the City Council, should it elect to do so, *may* consider and rescind the resolution within 30 days from the date of the original emergency declaration. The Mayor's submission of the resolution to the City Clerk is for the Council to consider the resolution should it elect to do so. The City Council unanimously adopted LAAC 8.33 on June 27, 2023 and the ordinance became effective on July 5, 2023. FAP ¶¶ 51-52,

Exs. 10-11. In response, the Mayor issued the 8.33 Declaration on July 7, 2023. No resolution was presented to the City Council within 30 days.[2] However, it is clear that the submission of a resolution would not have resulted in Council action to rescind it because Council unanimously adopted the resolution continuing the 8.33 Declaration on October 31, 2023, and renewed it a second time on January 23, 2024. *See* City RJN, Exs. M, O. Similarly, Council's action on October 31, 2023 was timely because LAAC 8.33(e) requires the Council resolution ratifying the continuance of the emergency to occur – *in the first instance* – 120 days after the issuance of the 8.33 Declaration.

The interpretation of the ordinance enacted in LAAC 8.33 is a legal issue for the Court. *Chun v. Del Cid* (2019) 34 Cal.App.5th 806, 815. FTC's reliance on CPRA documents (Opp. at 17-18) is therefore misplaced and the documents are irrelevant to the Court's statutory construction. And the rules of statutory construction favor the City's interpretation of LAAC 8.33(e) for the reasons discussed in more detail in the Demurrer. *See* Dem. at 5-7.

Moreover, even assuming that the Court agreed with FTC's interpretation, the City Council's subsequent actions cured any procedural defects on timing under the doctrine of ratification. *Mott v. Horstmann* (1950) 36 Cal.2d 388, 391; Dem. at 6-7. *Mott* (and the cases cited therein) confirm that the doctrine of ratification apply here to cure any procedural defects. *Id.* In its opposition, FTC cites to portions of the ***dissenting opinion*** in *Haight v. Marin* (1930) 208 Cal. 753, 764. Opp. at 18. The dissent in *Haight* is not precedential and does not refute the well-established ratification doctrine under *Mott*. The demurrer to FTC's claims under LAAC 8.33 must be sustained.

III. CONCLUSION

For the foregoing reasons, and reasons set discussed in the Demurrer, the City respectfully requests that the Court sustain the Demurrer to the FAP in its entirety without leave to amend.

Dated: March 21, 2024

HYDEE FELDSTEIN SOTO, City Attorney

/s/ Felix Lebron
Felix Lebron, Deputy City Attorney
Attorney for Respondents and Defendants City of Los Angeles and City of Los Angeles City Council

[2] The City Council was on recess in July 2023.

PROOF OF SERVICE

I, Evelyn Rodriguez, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 North Main Street, City Hall East, 6th Floor Rm 675, Los Angeles, California 90012.

On March 21, 2024, I served the foregoing documents described as: **RESPONDENTS AND DEFENDANTS CITY OF LOS ANGELES' AND CITY OF LOS ANGELES CITY COUNCIL'S REPLY ISO DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** on the interested parties:

Robert P. Silverstein, Esq. The Silverstein Law Firm, APC 215 North Marengo Avenue, 3rd Floor Pasadena, CA 91101-1504 Telephone: (626) 449-4200 Facsimile: (626) 449-4205 Email: Robert@RobertSilversteinLaw.com james.s.link@att.net esther@robertsilversteinlaw.com Gabby@RobertSilversteinLaw.com	Attorney for Petitioner

[ ] **BY MAIL:** I am readily familiar with the practice of the Los Angeles City Attorney's Office for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is placed for collection and mailing. On the date referenced above, I placed a true copy of the above documents(s) in a sealed envelope and placed it for collection in the proper place in our office at Los Angeles, California.

[X] **BY ELECTRONIC MAIL:** I transmitted the document(s) to the addressee(s) via electronic mail to the addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 21, 2024

X _____

Evelyn Rodriguez

Exhibit B

Superior Court of California
County of Los Angeles

FIX THE CITY, INC. Petitioner, vs. CITY OF LOS ANGELES, *et al.* Respondents.	Case No. 23STCP03519 [TENTATIVE] RULING ON DEMURRER TO VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE Dept. 86 (Hon. Curtis A. Kin)

Respondents City of Los Angeles and City of Los Angeles City Council demur to the Verified First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("FAP").

I. Factual Allegations

On July 5, 2023, respondent City of Los Angeles City Council enacted Los Angeles Administrative Code ("LACC") § 8.33, which empowers the Mayor to declare the existence of a local housing and/or homelessness emergency. (FAP Ex. 11; LAAC § 8.33(a).)[1] Upon such declaration, the Mayor is empowered to "[p]romulgate, issue and enforce rules, regulations, orders and directives which the Mayor considers necessary to address the emergency," "[c]ommandeer property deemed necessary to meet interim and temporary housing needs and bind the City for the fair value thereof," "[r]equire emergency service of any City officer or employee and requisition necessary personnel or material of any City department or agency," "[o]rder any action relative to the procurement of construction contracts, service provider contracts, supplies, and equipment for homelessness facilities to safeguard life, health or property caused by the emergency," and "[s]uspend competitive bidding restrictions enumerated in Charter Section 371(e)(6) and Los Angeles Administrative Code Sections 10.15 and 10.17 for contracts entered into by City departments and offices in response to the emergency and mitigation efforts related to the emergency." (LAAC § 8.33(d).)

[1] LAAC § 8.33 is submitted as Exhibit D to Respondent's Request for Judicial Notice.

On July 7, 2023, pursuant to LAAC § 8.33, Karen Bass, Mayor of respondent City of Los Angeles, declared a local housing and homelessness emergency. (FAP Ex. 12.)

Petitioner Fix the City, Inc.'s "mission is to promote public safety, support adequate infrastructure, and to hold City government accountable, especially with regard to land use issues." (FAP ¶ 12.) Petitioner contends that the Mayor's declaration is ineffective and void because it was not ratified in accordance with the timing requirements for ratification set forth in the California Emergency Services Act ("CESA"), specifically Government Code § 8630. (FAP ¶ 61.) Petitioner also alleges that the declaration is void because, as purportedly required by LAAC § 8.33, there was no resolution ratifying the existence of a local housing and/or homelessness emergency and the declaration was not renewed within 90 days of its issuance. (FAP ¶¶ 62-67.) Petitioner thus seeks a writ of mandate directing respondents to "void the 8.33 Declaration [of local housing and homelessness emergency] and vacate all contracts, approvals, and building entitlements based thereon." (FAP ¶ 67; Prayer for Relief ¶ 1.)

II. Procedural History

On September 25, 2023, petitioner filed a Verified Petition for Writ of Mandamus, Petition for Writ of Prohibition, and Complaint for Declaratory and Injunctive Relief. On October 16, 2023, pursuant to petitioner's request, respondent Karen Bass, Mayor of the City of Los Angeles was dismissed without prejudice.

On January 2, 2024, petitioner filed the operative Verified First Amended Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief. On February 16, 2024, respondents filed the instant demurrer to the First Amended Petition. On March 15, 2024, petitioner filed an opposition. On March 21, 2024, respondents filed a reply.

On April 25, 2024, the Court conducted a hearing on the instant demurrer and continued the hearing to May 30, 2024 to allow for supplemental briefing concerning the second cause of action for declaratory relief. On April 26, 2024, the Court issued a minute order inviting the parties to file supplemental briefs concerning whether the legislative history for the California Emergency Services Act ("CESA") provides any guidance as to whether the State Legislature intended CESA to apply to charter cities and/or the City of Los Angeles in whole or in part. On May 17, 2024, the parties filed supplemental briefs.

III. Analysis

A. Evidentiary Matters

Respondents' request to take judicial notice of Exhibits A through E are GRANTED, pursuant to Evidence Code § 452(b) (regulations and legislative

enactments). Respondents' request to take judicial notice of Exhibits F through M and O are GRANTED, pursuant to Evidence Code § 452(c) (official legislative acts). (*See Julian Volunteer Fire Co. Assn. v. Julian-Cuyamaca Fire Protection Dist.* (2021) 62 Cal.App.5th 583, 599 [allowing for judicial notice of records reflecting city's official acts, including resolutions, minutes, and agendas].) Respondents' request to take judicial notice of Exhibit N is GRANTED. (*United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (2012) 54 Cal.4th 504, 528 [judicial notice of legislative history].)

Petitioner's request to take judicial notice of Exhibit 1 is GRANTED. (*Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 186 [judicial notice of city attorney opinion].) Petitioner's request to take judicial notice of Exhibit 2 is GRANTED, pursuant to Evidence Code § 452(c).

Petitioner's supplemental request to take judicial notice of Exhibit 1 is GRANTED. (*United Teachers,* 54 Cal.4th at 528 [judicial notice of legislative history].) Petitioner's supplemental request to take judicial notice of Exhibits 2 and 4 are GRANTED, pursuant to Evidence Code § 452(c). Petitioner's supplemental request to take judicial notice of Exhibits 3 and 9-13 are GRANTED, pursuant to Evidence Code § 452(b). Petitioner's supplemental request to take judicial notice of Exhibits 5, 7, and 8 are GRANTED, but only for the existence of the documents, not the truth of the matters asserted therein. (*See* Evid. Code § 452(d); *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-69.) Petitioner's supplemental request to take judicial notice of Exhibit 6 is GRANTED, pursuant to Evidence Code § 452(d).

B. First Cause of Action – Petition for Writ of Mandamus

1. Standing

As a preliminary matter, petitioner sufficiently alleges standing. "[W]here the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439, internal citations omitted.) Petitioner seeks to enforce laws governing land use, as implicated by LAAC § 8.33.

2. Whether Government Code Section 8630 Preempts LAAC § 8.33

Petitioner contends that LAAC § 8.33 is preempted by CESA, specifically Government Code § 8630's provision that a declaration of local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body. (FAP ¶ 61.) If that is the case, as alleged by petitioner, the declaration issued by Mayor Bass pursuant to LAAC § 8.33 is "ineffective and void"

because it was not ratified within seven days in accordance with Section 8630. (FAP ¶ 61.)

"[A] court asked to resolve a putative conflict between a state statute and a charter city measure initially must satisfy itself that the case presents an actual conflict between the two." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 16 [*Cal Fed Savings*].) Thus, in determining whether LAAC § 8.33 is preempted by CESA, the Court must first determine whether there is even a conflict between the two. Government Code § 8630 states, in full (emphasis added):

> (a) A local emergency may be proclaimed only by the governing body of *a city*, county, or *city* and county, or by an official designated by ordinance adopted by that governing body.
>
> (b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.
>
> (c) The governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency.
>
> (d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.

Los Angeles is a charter city. (FAP ¶ 16; RJN Ex. A [Los Angeles City Charter ["Charter"], art. I, § 100, *et seq.*].) This accordingly begs the question whether reference to a "city" in Government Code § 8630 means that the statute also applies to charter cities. If Government Code § 8630 governs charter cities, which would include respondent Los Angeles, the Court must then determine whether LAAC § 8.33 is preempted by Government Code § 8630 using the four-step inquiry set forth in *Cal Fed Savings* to determine whether the statute reflects a statewide concern (for which preemption applies) or a municipal affair (for which preemption does not). But, if Government Code § 8630 does not govern charter cities, then no actual conflict is presented, and no analysis of whether the statute implicates a "municipal affair" or a "statewide concern" is required. (*Cal Fed Savings*, 54 Cal.3d at 16.)

"[T]he Supreme Court and Courts of Appeal have often demanded a clearer indication than the use of a general term, be it 'a political subdivision' or 'a city,' before concluding a statute is intended to apply to charter cities." (*City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 913 [*Padilla*].) "City" is not defined in the CESA. (*See* Gov. Code §§ 8555-8562.) By contrast, as recounted by the Court of Appeal in *Padilla*, the laws at issue in other cases in which the courts found such

state laws applicable to charter cities expressly referred to charter cities or defined "city" to include charter cities or "any city."[2] (*Padilla,* 46 Cal.App.5th at 913 [citing cases].) The *Padilla* Court noted that "city," without more, is a term with "inherent ambiguity." (*Id.* at 917.)

In *Padilla,* the Court of Appeal affirmed a writ of mandate barring the Secretary of State from enforcing the California Voter Participation Rights Act against a charter city. (*Padilla,* 46 Cal.App.5th at 906.) The VPRA provided that a "political subdivision," defined to include a "city," shall not hold an election other than on the same date as a statewide election if holding an election on a different date resulted in a significant decrease in voter turnout, as defined in the statute. (*Id.* at 906-07.) Based on the legislative history of the VPRA and the authority conferred on charter cities by the California Constitution to set the timing of their elections, the Court of Appeal declined to infer an intent by the Legislature to apply the VPRA to charter cities. (*Id.* at 914-18.)

Similarly, the Court here declines to find that the CESA evidences a clear intention to apply to charter cities. The procedures for enacting municipal ordinances are a municipal affair. (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 47; *Adler v. City Council of City of Culver City* (1960) 184 Cal.App.2d 763, 776 ["mode and manner of passing ordinances is a municipal affair"].) With respect to that municipal affair, LAAC § 8.33(e) sets forth how and when a declaration of a local housing and/or homelessness emergency is ratified, rescinded, and renewed. Given that LAAC § 8.33(e) contains its own procedures for declaring an emergency, this Court must demand a "clearer indication" that the State meant to supplant those procedures with its own when using the inherently ambiguous term "city" without any additional definition, explanation, or modifier. In fact, the Legislature demonstrated it could send a clearer indication of when a provision of CESA concerns charter cities in Government Code § 8635, which explicitly empowers charter cities to amend their charters for the preservation and continuation of its government in a state of war emergency. (*See* Gov. Code § 8635.) That the Legislature did not explicitly do so with respect to the procedures set forth in

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[2] Notably, absent from the numerous cases cited and discussed in Padilla, is *Lundeen Coatings Corp. v. Department of Water & Power* (1991) 232 Cal.App.3d 816, which contains a single footnote upon which petitioner relies. (Opp. at 13:21-24.) That is because Lundeen is entirely inapt. In *Lundeen*, the Court stated in passing that the Department of Water and Power was a department of the City of Los Angeles and was therefore exempt from the requirement to file a statement per Government Code § 53051, which did not apply to the "state, or a county, city and county, or city." (Lundeen, 232 Cal.App.3d 816, 830 n.8.) *Lundeen* never addressed the question of whether a statute's use of "city" necessarily includes charter cities, let alone within the context of the home-rule doctrine of our State Constitution. "It is axiomatic that cases are not authority for propositions not considered." (*Padilla,* 46 Cal.App.5th at 914, quoting *People v. Alvarez* (2002) 27 Cal.4th 1161, 1176.)

Government Code § 8630 provides a more clear indication it did not intend for those provisions to apply to charter cities. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 ["*Expressio unius est exclusion alterius.* The expression of some things in a statute necessarily means the exclusion of other things not expressed"].)

Further, insofar as the text of CESA is not itself sufficient to convey the Legislature's intent, on February 7, 2022, in Senate Bill 933, the Legislature sought to amend CESA to add Section 8662.6 to the Government Code, which would have stated: "The Legislature finds and declares that safeguarding the liberties of the residents of this state during a state of emergency or local emergency is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this article applies to all 33 cities, including charter cities." (Resp. RJN Ex. 5.) If CESA already included charter cities and the Legislature believed it to be so, this provision of Senate Bill 933 would have been unnecessary. Petitioner's argument that Senate Bill 933 failed is beside the point. It is the fact that Senate Bill 933 was proposed at all which demonstrates a general reference to "city" in CESA does not include charter cities, and this Court certainly may consider the import of that fact when interpreting CESA's reach as to charter cities. (*See Padilla,* 46 Cal.App.5th at 915-16, discussing *Ector v. City of Torrance* (1973) 10 Cal.3d 129, 134.)

In supplemental briefing, petitioner presents four arguments: (1) the definitions in CESA encompass charter cities; (2) the legislative history of CESA shows an intent to establish CESA as an act of statewide concern; (3) the City has previously interpreted CESA to supersede local emergency declaration; and (4) the City is judicially estopped from arguing that CESA does not apply to the local housing and homeless emergency declared in this case.

The first, third, and fourth supplemental arguments have nothing to do with the legislative history of CESA, which was the limited issue for which the Court requested supplemental briefing as to the interpretation of CESA. (4/26/24 Minute Order.) Indeed, the Court notes that, during the initial hearing, petitioner asked the Court to allow supplemental briefing concerning CESA's legislative history, which the Court ultimately did allow. The Court, however, did not allow for additional arguments concerning the interpretation of CESA. Further, while one-and-a-half line spacing is allowed by Rule of Court 2.108(1), petitioner abused the rule to fit arguments exceeding the Court's order within the five pages allowed by the Court. Notwithstanding such an unbecoming approach to advocacy, the Court addresses the uninvited, supplemental arguments, which the Court finds to be without merit.

With respect to the first supplemental argument, petitioner argues that Government Code § 8550 declares that an intent of CESA was to "confer upon the Governor and upon the chief executives and governing bodies of political subdivisions of this state the emergency powers provided herein." (Gov. Code § 8550(a).) Government Code § 8557 defines "political subdivision" to include "any city," which

petitioner contends includes charter cities. (Gov. Code § 8557(b); *see Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 562, 569 [finding use of "any city" in Labor Code wage provision included charter cities].) However, Government Code § 8630, the application of which is at issue here, does not use the term "political subdivision" or "any city." Rather, Government Code § 8630 states that the governing body of "a city" may proclaim a local emergency. (Gov. Code § 8630(a).) For the reasons stated above, the Court finds that reference to "a city" does not include charter cities, as discussed and held in *Padilla.*

With respect to the second supplemental argument, petitioner presents the analysis of the bill that repealed the California Disaster Act and enacted CESA. The analysis stated: "This bill is of importance to city and county governments as well as to the State Government, since many of its provisions are concerned with emergency preparedness responsibilities of local government." (Pet. Supp. RJN Ex. 1 at 3.) Petitioner thus argues that CESA was established as a "an act of statewide concern" applicable to charter cities. While the language of the bill analysis may be helpful in the determination of whether CESA implicates a matter of statewide concern, it does little to show that Government Code § 8630 applies to charter cities. Indeed, the analysis of whether CESA—or, more to the point, Government Code § 8630—implicates a "municipal affair" or "statewide concern" and impinges on the rights of charter cities only occurs if Government Code § 8630 applies to charter cities, which, as discussed above, is not the case. (*Cal Fed Savings*, 54 Cal.3d at 16.) In arguing that the bill analysis would not suggest CESA implicates a statewide concern if charter cities were not subject to CESA, petitioner ignores the possibility that some, but not all, provisions of CESA may apply to charter cities. As noted above, for example, Government Code § 8635 concerns charter cities and explicitly references them, whereas § 8630 does not.

Petitioner also cites an Attorney General opinion to support its assertion that implementation of CESA is a matter of statewide concern. (Pet. Supp. RJN Ex. 2 at 8-10.) The opinion addressed whether a local emergency declared by a county applies to a city therein. Similar to the Attorney General opinion found to be unpersuasive in *Padilla,* the opinion did not in any way address the issue at hand, namely, whether the reference to "city" in Government Code § 8630 includes "charter city." (*See Padilla,* 46 Cal.App.5th at 917 [noting Attorney General relied on "plain meaning" of "city" and "political subdivision" to render opinion without recognizing or analyzing "inherent ambiguity" in those terms].) Petitioner's reliance on the Attorney General opinion is therefore unconvincing.

With respect to the third and fourth arguments, petitioner relies on the City's past interpretations of Government Code § 8630, including in a memorandum dated November 13, 2015 and a 2023 Base Emergency Operations Plan ("EOP"). (Pet. RJN Ex. 1 at 2 ["Government Code Section 8630 confers upon the City the ability to declare a local emergency...."]; Pet. Supp. RJN Ex. 3 at 108 ["While mayoral declaration of emergency may loosen restrictions on requesting processes, State law

supersedes local emergency declaration."], Ex. 5 at 8 [City's argument in 2020 opposition to ex parte application that power to declare emergency derived from CESA], Ex. 13 at 3 [2017 City Emergency Proclamation stating that City shall review need to continue emergency at least every 30 days pursuant to Gov. Code § 8630(c)].) Such reliance is unavailing. While consistent administrative construction is given great weight, statutory interpretation is ultimately a legal question. (*People v. Harrison* (2013) 57 Cal.4th 1211, 1225.) Even if the 2015 memorandum, 2017 Emergency Proclamation, 2020 opposition to an ex parte application, and 2023 EOP support the contention that the City has relied upon Government Code § 8630 to declare an emergency, the Court is nevertheless bound by *Padilla* and its holding that a clearer indication than use of the term "city" is required before a state statute is applied to charter cities. (*Padilla,* 46 Cal.App.5th at 913.) Put simply, binding case law must control over the City's prior interpretation of the statute.

With respect to the 2020 opposition to an ex parte application, petitioner also argues that the City is judicially estopped from arguing that Government Code § 8630 is inapplicable to its emergency declarations. In *Turner's Operations, Inc. v.* Garcetti, LASC Case No. 20STCP01258, the City cited CESA as the source of the Mayor's emergency powers in opposing the ex parte application (Pet. Supp. RJN Ex. 5 at 8), but petitioner fails to show that the court in *Turner's* adopted the City's position as true. That is fatal to petitioner's claim for judicial estoppel, because application of judicial estoppel requires that "the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true)." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183.) The portion of the ruling in *Turner's* highlighted by petitioner does not mention Government Code § 8630. (Pet. Supp. RJN Ex. 6 at 3.) Nor does the ruling discuss whether Government Code § 8630 applies to charter cities.

For the foregoing reasons, the Court finds that Government Code § 8630 does not apply to charter cities, including respondent City of Los Angeles. Accordingly, the question of whether the Mayor's declaration was timely ratified and renewed is governed by LAAC § 8.33.

3. Whether 8.33 Declaration Was Timely Ratified and Renewed Pursuant to LAAC § 8.33

It is undisputed that Mayor Bass issued a Declaration of Local Housing and Homelessness Emergency on July 7, 2023. (FAP ¶ 61 & Ex. 12.) Petitioner alleges the declaration was rendered void because the City Council was not initially presented with a resolution to ratify it per the provisions of LAAC § 8.33(e). (FAP ¶ 62.) Petitioner further alleges that, under LAAC § 8.33(e), the declaration expired on October 5, 2023 (*i.e.*, 90 days from the date of the declaration) because the City Council did not renew it by majority vote by that date. (FAP ¶ 64.) LAAC § 8.33(e) states:

> Whenever the Mayor declares a local housing and/or homelessness emergency, the Chief Legislative Analyst's Office shall prepare, with the assistance of the City Attorney, a resolution ratifying the existence of a local housing and/or homelessness emergency. Such resolution shall be submitted by the Mayor to the City Clerk for presentation to the City Council. Within 30 days from the date of the original declaration by the Mayor, the City Council may consider the resolution and rescind it by majority vote. Thereafter, the declaration shall expire unless the City Council renews it by a majority vote every 90 calendar days.

Under LAAC § 8.33(e), once the Mayor declared the emergency on July 7, 2023, the City Council had 30 days, *i.e.*, until August 6, 2023, to consider a resolution ratifying the existence of the emergency and rescind it by majority vote. LAAC § 8.33(e) further provides that, after the expiration of the 30 days, the Mayor's declaration would expire unless the City Council renewed it within 90 days *thereafter*, *i.e.*, by November 4, 2023. The City Council timely renewed the declaration on October 31, 2023 and again on January 23, 2024. (FAP ¶ 65; Resp. RJN Exs. M, O.)

Petitioner alleges that a resolution to ratify the existence of the emergency was never presented to the City Council. (FAP ¶ 62.) Respondents do not appear to dispute this allegation (Reply at 10:1-2), and, in any event, the Court takes that allegation to be true on demurrer. However, the fact that a resolution was not prepared for, presented to, and thereafter voted on by the City Council pursuant to one provision of LAAC § 8.33(e) does not invalidate the separate provision of LAAC § 8.33(e) that allows for the City Council to renew the declaration to avoid expiration during the 90-day period thereafter. The former provision gives the City Council the option to rescind the declaration of emergency within the first 30 days. It operates independently of the latter provision that otherwise provides for expiration or renewal of the declaration. It is hard to see logically how the Mayor's declaration should be deemed void simply because the City Council did not exercise its option to rescind it within the first 30 days. Indeed, it is highly illogical to conclude that not voting to rescind the declaration should result in the declaration being deemed invalid or void; rather, the opposite must be true—that not voting to rescind means the declaration remains in effect.[3]

As for petitioner's contention that the declaration expired 90 days after the Mayor issued her declaration, that argument misreads the expiration and renewal provision of LAAC § 8.33(e). Immediately following the provision that allows the City Council 30 days from date of the declaration to rescind it, LAAC § 8.33(e) states

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[3] The Court also notes, as respondents suggest, that it is unlikely the City Council would have rescinded the declaration if presented with a resolution, as the City Council has instead renewed the declaration twice. (Reply at 10:2-5.)

"[t]herafter, the declaration shall expire" in 90 days unless renewed by the City Council. "Thereafter" logically refers to after the 30 days referenced in the preceding sentence. It does not, as argued by petitioner, awkwardly refer to when the Mayor makes the emergency declaration, which is raised three sentences earlier in LAAC § 8.33(e) and separated by the 30 days for rescission provision. Thus, in accordance with the plain language of LAAC § 8.33(e), the 90-days expiration period began after the 30-day period for rescission.[4] The City Council has twice timely renewed the declaration in accordance with the provisions of LAAC § 8.33(e).

For the foregoing reasons, the Court finds that petitioner has failed to set forth a basis upon which a writ of mandate would issue. Accordingly, the demurrer to the first cause of action is SUSTAINED.

C. Second Cause of Action – Declaratory Relief

A general demurrer to a cause of action for declaratory relief must be overruled so long as an actual controversy is alleged; the pleader need not establish any entitlement to a favorable judgment. (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606.)

Petitioner alleges that LAAC § 8.33 violates CESA. (FAP ¶¶ 70-72.) For the reasons stated above, there is no conflict between CESA and LAAC § 8.33, which respondent enacted as a charter city.

Petitioner also alleges that LAAC § 8.33 violates Article 1, Section 19 of the California Constitution and the Eminent Domain Law, Code of Civil Procedure §§ 1230.010, *et seq.*, "by granting the Mayor the power to commandeer property and to set the value of the taking." (FAP ¶ 73.) What LAAC § 8.33(d)(ii) actually states is that the Mayor may "[c]ommandeer property deemed necessary to meet interim and temporary housing needs and bind the City for the fair value thereof." Article I, Section 19(a) of the California Constitution allows for eminent domain and the payment of just compensation therefor. LAAC § 8.33(d)(ii) does not authorize the Mayor to "set the value of the taking," but instead is fully consistent with our Constitution by allowing the Mayor to seize property by binding the City to pay "fair value," *i.e.*, just compensation for any such property seized.

Petitioner also alleges that LAAC § 8.33 violates Public Contract Code § 20162 because it empowers the Mayor to suspend competitive bidding and allow sole-source contracting. (FAP ¶ 74.) However, "state general law bidding procedures do not bind

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[4] Petitioner's reference to a communication from the Office of the City Clerk for the assertion that the time to renew the declaration expired on October 4, 2023 is unavailing. Interpretation of an ordinance is a legal issue for the Court. (*Chun v. Del Cid* (2019) 34 Cal.App.5th 806, 815.) When the language of an ordinance is clear, resort to extrinsic aids is unnecessary. (*Ibid.*)

chartered cities where the subject matter of the bid constitutes a municipal affair." (*R & A Vending Services, Inc. v. City of Los Angeles* (1985) 172 Cal.App.3d 1188, 1191.) "[T]he manner in which a city is empowered to form a contract is generally a 'municipal affair' which can be controlled by the terms of its charter." (*First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4th 650, 661.) "[I]f a city charter specifies the manner in which that city may enter into a contract, the terms of the charter control over otherwise applicable state law." (*Ibid.*) Charter Section 371(a) governs the formation of contracts and competitive bidding. (Resp. Ex. C.) Accordingly, the terms of the Charter control over state law. Petitioner does not sufficiently allege how LAAC § 8.33 violates Public Contract Code § 20162.

Petitioner also alleges that LAAC § 8.33 violates LAAC § 8.22 because LAAC § 8.33 allows for a "local emergency" to be declared for chronic conditions instead of for "sudden or unexpected" occurrences, as is purportedly required under LAAC § 8.22. (FAP ¶¶ 75, 78-80.) LAAC § 8.22 defines "local emergency" to mean "any occurrence which by reason of its magnitude is or is likely to become beyond the control of the normal services, personnel, equipment and facilities of the regularly constituted branches and departments of the City government." LAAC § 8.33(a) defines "Local Housing and/or Homelessness Emergency" as "a local emergency due to the existence of a critical shortage of local affordable housing and/or an emergency on homelessness as further defined in this section."

Although LAAC § 8.33(a) uses the term "local emergency," Section 8.33(a) states that it "shall not be subject to the other provisions of Article 3, Chapter 3, Division 8 of the Los Angeles Administrative Code." Contained within Article 3, Chapter 3, Division 8 of the LAAC is Section 8.27, which states that the Mayor is empowered "to declare the existence of a local emergency or disaster when he finds that any of the circumstances described in Section 8.22 hereof exist." Thus, even though Section 8.22 is contained in Chapter 2, Article 2 of Division 8 of the LACC, it is incorporated by reference in Section 8.27, which is contained in Article 3, Chapter 3 of Division 8 of the LACC. Accordingly, Section 8.33(a)'s statement that it is not subject to the provisions of Article 3, Chapter 3, Division 8 means that it is not subject to Section 8.22's definition of "local emergency," because Section 8.22 is incorporated by reference into Section 8.27, which is found in Article 3, Chapter 3, Division 8.

Section 8.33 sets forth the conditions separate and apart of Section 8.22 under which a "Local Housing and/or Homelessness Emergency" can be declared, specifically when the Mayor finds that: (1) the City's "housing supply is projected to be at least 40 percent below its annual housing production goals as established in the Housing Element"; and/or (2) homelessness has reached a crisis because either (a) the "unhoused population in the City is greater than two times the total number of interim beds as established in the annual Homeless Inventory Count" or (b) there is a "citywide increase by more than 20 percent in a single year as reported in the annual Point-in-Time Count." (LACC § 8.33(b).) Petitioner admits that the criteria

set forth in Section 8.33 were satisfied when Section 8.33 was passed. (FAP at ¶ 39 and p. 13, fn. 2.) Accordingly, even if the "Local Housing and/or Homelessness Emergency" does not constitute an occurrence under Section 8.22, petitioner presents no allegation indicating that the declaration of a "Local Housing and/or Homelessness Emergency" violates Section 8.33 or any other provision of the LAAC.

Petitioner having failed to allege the existence of an actual controversy, the demurrer to the second cause of action is SUSTAINED.

IV. Conclusion

The demurrer is SUSTAINED in its entirety. As petitioner has not indicated how it might reasonably cure any of the defects discussed herein, there is no basis to grant any leave to amend.

Date: May 30, 2024

HON. CURTIS A. KIN

06/03/2024

Exhibit C

Case No. B339464

IN THE COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 1

FIX THE CITY, INC.,
Plaintiff and Appellant,

v.

CITY OF LOS ANGELES, et al.,
Defendants and Respondents.

On Appeal from Los Angeles Superior Court
Honorable Curtis A. Kin, Judge Presiding
L.A.S.C. Case No. 23STCP03519

RESPONDENTS' BRIEF

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CERTIFICATE OF INTERESTED ENTITIES

Case Name: Fix *the City, Inc. v. City of Los Angeles*

Please check the applicable box:

☒ There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

☐ Interested entities or parties are listed below:

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

/s/ Sara Ugaz
Signature of Attorney/Party Submitting Form

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INTRODUCTION

It cannot be disputed that the City of Los Angeles (the "City"), a charter city, is facing a homeless crisis, especially when compared to the rest of California. While the City represents about 10% of California's population, it accounts for about 25% of California's homeless population. As anyone who lives or works in the city will readily appreciate, the homeless population has dramatically increased in recent years. Currently, approximately 40,000 people are unhoused in the city. The California Constitution grants substantial "home rule" powers to local governments that adopt a charter to operate their own government. Given this broad authority, City Council enacted legislation to directly address this tragic, local situation. Los Angeles Administrative Code ("LAAC") section 8.33 empowers the Mayor to declare a local emergency based on critical shortages of affordable housing and temporary shelter beds in the City. As part of the Mayor's emergency powers under LAAC section 8.33, the Mayor can cut through bureaucratic red tape, expediting permits and clearances to efficiently shelter the City's poorest and most vulnerable residents.

On July 7, 2023, Mayor Karen Bass declared a local emergency pursuant to LAAC section 8.33. Fix the City, Inc. ("Petitioner") sued the City and City Council ("Respondents") to stop these efforts, alleging they were illegal under provisions of

the California Emergency Services Act (Gov. Code, §§ 8550-8669.87) ("CESA"), specifically sections 8558 and 8630, which establish the conditions and procedures for declaring a local emergency. The trial court sustained the City's demurrer to the operative complaint without leave to amend. The trial court held that the plain language of section 8630 did not evidence a clear intention to apply to charter cities, nor did the legislative history of CESA indicate an intention to regulate local emergencies on a statewide uniform basis. The trial court further ruled that Petitioner's other legal challenges to LAAC section 8.33 were meritless.

On appeal, Petitioner baselessly claims that the City "will be left on its own" in emergency situations if the trial court's ruling is allowed to stand. Petitioner's primary contention is that the City cannot address homelessness on any emergency, local basis without violating CESA. According to Petitioner, Government Code sections 8558 and 8630 apply to charter cities and therefore preempt LAAC section 8.33. Petitioner further contends that LAAC section 8.33 conflicts with these sections as well as other laws. According to Petitioner, the definition of a local emergency set forth in Government Code section 8558, subdivision (c)(1), only includes sudden events like fires or earthquakes, not "chronic conditions" like housing shortages and homelessness. Petitioner also argues that another provision of

the LAAC, section 8.22, defines a local emergency as "any occurrence" which is likely to overwhelm normal City services, which would similarly not include chronic conditions. Nor does LAAC section 8.33 comply with the "key procedural safeguards" set forth in Government Code section 8630, which require the governing body of a city to promptly ratify and regularly review the declaration of a local emergency. Finally, Petitioner argues the City is estopped from arguing that it is not subject to CESA when it comes to local emergencies. According to Petitioner, in a 2015 legal memorandum, the City contended that its authority to declare a local emergency stemmed from CESA.

None of Petitioner's arguments warrant reversal of the trial court's ruling. Contrary to Petitioner's assertions, the City has taken lawful efforts to alleviate—not create—a local crisis. The City properly enacted ordinances specifying the procedures for declaring, ratifying, and renewing local emergencies in response to its local homelessness crisis. Applying the rules of statutory interpretation to Government Code sections 8630 and 8558 establishes that the Legislature did not intend to contravene the City's home rule authority and regulate local emergencies on a statewide basis. The City has a right to adopt a different approach to its local homeless emergency that does not follow the state statute. Thus, the trial court correctly ruled that no actual conflict existed between the City's enactments and CESA. Nor

did Petitioner establish the elements of judicial estoppel as the City has never contended that CESA preempted its ability to regulate local emergencies. For these reasons, as well as others discussed below, the trial court properly sustained the demurrer without leave to amend and this Court should affirm judgment in the City's favor.

STATEMENT OF THE CASE

A. The California Constitution's home rule doctrine confers on charter cities, like the City of Los Angeles, autonomy as to municipal affairs.

California law recognizes two types of cities: "general law cities," which are organized under the general law of California, and "chartered cities," which are organized under a charter. (Gov. Code, §§ 34101, 34102; *G.L. Mozzetta, Inc. v. City of American Canyon* (2000) 78 Cal.App.4th 1087, 1092.) Article XI, section 5, subdivision (a), of the California Constitution, establishes the "home rule doctrine," specifically authorizing charter cities to "govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs." (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 555 (*Vista*).) A charter city may make and enforce all ordinances and regulations regarding municipal affairs; with respect to such matters, the cities' charters supersede all laws inconsistent therewith. (Cal. Const., art. XI, §

5, subd. (a).) The broad authority of charter cities was originally enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large. (*Johnson v. Bradley* (1992) 4 Cal.4th 389, 395-396.)

B. The California Emergency Services Act ("CESA") describes the conditions that can constitute a local emergency (Gov. Code, § 8558), and the procedures "a governing body of a city" must follow to declare one (Gov. Code, § 8630).

In 1970, the Legislature enacted the California Emergency Services Act ("CESA") in recognition of the state's "responsibility to mitigate the effects of natural, manmade, or war-caused emergencies that result in conditions of disaster or in extreme peril to life, property, and the resources of the state, and generally to protect the health and safety and preserve the lives and property of the people of the state." (Gov. Code, §§ 8550, 8551.) Government Code section 8558, subdivision (b), defines the circumstances that must exist for the Governor to proclaim "a state of emergency," which include "conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease..." (*California Correctional Peace Officers Assn. v. Schwarzenegger* (2008) 163 Cal.App.4th 802

(*CCPOA*) [Governor can proclaim a state of emergency under CESA based on state prison overcrowding crisis].)

A "local emergency," on the other hand, "may be proclaimed only by the governing body of a city, county, or a city and county, or by an official designated by ordinance adopted by that governing body." (Gov. Code, § 8630, subd. (a).) Government Code section 8558, subdivision (c)(1), defines the circumstances that must exist to establish a "local emergency," which are "conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought..." (Gov. Code, § 8558, subd. (c)(1).) Government Code section 8630, subdivision (b), provides that if an official designated by ordinance proclaims a local emergency, then "the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body." Subdivision (c) provides that "[t]he governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency." (Gov. Code, § 8630, subd. (c).) A governing body must terminate the proclamation of a local emergency as soon as conditions warrant. (Gov. Code, § 8630, subd. (d).)

C. City Council enacts Los Angeles Administrative Code ("LAAC") § 8.33, which empowers the Mayor to declare a local emergency based on homelessness. Pursuant to this authority, Mayor Karen Bass declares such an emergency on July 7, 2023.

The City of Los Angeles is a charter city. (1 AA 350 [Los Angeles City Charter ("Charter"), art. I, § 100, et seq.]; 1 AA 225.) Under the City's charter, the Mayor is vested with the power to declare a local emergency. (1 AA 347, 355 [Charter, art. II, § 231].) LAAC section 8.22 states, "[T]he term 'local emergency' as used in this chapter shall mean any occurrence which by reason of its magnitude is or is likely to become beyond the control of the normal services, personnel, equipment and facilities of the regularly constituted branches and departments of the City government." (1 AA 347, 363 [LAAC div. 8, Ch. 3, art. 2, § 8.22].) LAAC section 8.27 states, "The Mayor is hereby empowered to declare the existence of a local emergency or disaster when he finds that any of the circumstances described in Section 8.22 hereof exist..." (1 AA 347, 364 [LAAC div. 8, Ch. 3, art. 3, § 8.27].)

On July 5, 2023, City Council enacted LAAC section 8.33, which empowers the Mayor "to declare the existence of a local housing and/or homelessness emergency." (1 AA 295-299 [First Amended Petition, Ex. 11].) In its findings, City Council identified facts which supported the existence of a local

emergency, including the City's homeless population greatly exceeding the homeless population state and nationwide, the City's homeless population dramatically increasing in recent years, and over 40,000 people currently experiencing homelessness in the City. (1 AA 243-246, 411-412, 426.) Under LAAC section 8.33, subdivisions (a) and (b), a "local housing and/or homelessness emergency" exists when there is a "critical shortage of local affordable housing" or when the "unhoused population" is increasing or exceeds "the total number of interim beds." (1 AA 295.) A declaration pursuant to section 8.33 "empowers the Mayor to: (i) Promulgate, issue and enforce rules, regulations, orders and directives which the Mayor considers necessary to address the emergency... (ii) Commandeer property deemed necessary to meet interim and temporary housing needs and bind the City for the fair value thereof... (iii) Require emergency service of any City officer or employee and requisition necessary personnel or material of any City department or agency; (iv) Order any action relative to the procurement of construction contracts, service provider contracts, supplies, and equipment for homelessness facilities to safeguard life, heath or property caused by the emergency. (v) Suspend competitive bidding restrictions...for contracts entered into by City departments and officers in response to the emergency and

mitigation efforts related to the emergency..." (1 AA 296 [LAAC § 8.33, subd. (d)(i)-(v)].)

On July 7, 2023, Mayor Karen Bass declared a local housing and homelessness emergency pursuant to section 8.33. (1 AA 301 [First Amended Petition, Ex. 12].)[1] Whenever the Mayor makes such a declaration, the Chief Legislative Analyst's Office must prepare a resolution ratifying the existence of the emergency. (1 AA 297 [LAAC § 8.33, subd. (e)].) "Such resolution shall be submitted by the Mayor to the City Clerk for presentation to the City Council. Within 30 days from the date of the original declaration by the Mayor, the City Council may consider the resolution or rescind it by majority vote. Thereafter, the declaration shall expire unless the City Council renews it by majority vote every 90 calendar days." (1 AA 297 [LAAC § 8.33, subd. (e)].)

On October 31, 2023, in a resolution, City Council renewed the Mayor's declaration of a local emergency. (1 AA 426.) After

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[1] According to a recital in the declaration and the allegations in the First Amended Petition, Mayor Bass declared a local homeless emergency under a now-obsolete ordinance on December 12, 2022 "with a sunset of six months subject to renewal. The City Council renewed the declaration of emergency and established a new sunset date of July 9, 2023." (1 AA 220, 301.)

recitals on the increase of unhoused people and the dearth of affordable housing, the resolution stated that "there is a need to renew the declaration of local emergency, which City Council hereby ratifies and continues through 90 days from the adoption of this Resolution." (1 AA 426.) The resolution also stated that "[t]he Mayor shall continue to be empowered to respond to the local emergency as granted in LAAC section 8.33." (1 AA 426.) On January 23, 2024, 84 days later, City Council renewed the adoption of the October 31, 2023, resolution. (1 AA 437.)

D. Petitioner alleges that the Mayor's declaration of a local homelessness emergency is void because it does not comply with CESA.

Fix the City, Inc., "a nonprofit public benefit corporation," whose mission is to "promote public safety, support adequate infrastructure, and to hold City government accountable, especially with regard to land use issues" filed the First Amended Petition. (1 AA 224.) The First Amended Petition alleged that Petitioner's board is comprised of the City's residents and taxpayers. (1 AA 224.)

The First Amended Petition alleged that the Mayor's declaration of a local homelessness emergency on June 7, 2023, was invalid because it did not comply with Government Code sections 8558 and 8630, other provisions of the LAAC, as well as other laws. (1 AA 220-221.) First, the First Amended Petition

alleged that the "governing body" (here, City Council) did not ratify the Mayor's declaration within seven days as purportedly required by Government Code section 8630, subdivision (b). (1 AA 220, 225.) Second, City Council did not "review the need for continuing the local emergency at least once every 60 days" as purportedly required by Government Code section 8630, subdivision (c). (1 AA 220, 225.) Third, the Chief Legislative Analyst did not present a resolution to City Council ratifying the existence of the local emergency within 30 days of the initial emergency declaration nor did City Council renew the declaration within 90 days in the first instance as purportedly required by LAAC section 8.33, subdivision (e). (1 AA 220-221.) Fourth, the First Amended Petition alleged that homelessness does not qualify as a "local emergency" under Government Code section 8558, subdivision (c)(1), or LAAC section 8.22. (1 AA 226-230.) According to the First Amended Petition, a local emergency is a "sudden, unexpected occurrence" such as an old pipe rupturing, not "well known, chronic problems" like homelessness or the lack of affordable housing. (1 AA 227-228.) Fifth, the commandeering provision set forth in section 8.33, subdivision (d)(ii), allegedly violated the Constitution's takings clause and eminent domain laws. (1 AA 238.) Finally, the suspension of competitive bidding provision set forth in section 8.33, subdivision (d)(v), allegedly violated Public Contracts Code section 20162. (1 AA 229, 238.)

The First Amended Petition sought: (1) a writ of mandamus directing Respondents to vacate, set aside, and invalidate LAAC section 8.33, the Mayor's declaration of a local emergency, and all directives, contracts, building approvals, and entitlements issued thereunder; (2) an injunction preventing Respondents from enforcing LAAC section 8.33, the Mayor's declaration of a local emergency, and all directives, contracts, building approvals, and entitlements issued thereunder; and (3) declaratory relief that LAAC section 8.33, the Mayor's declaration of a local emergency, and directives issued thereunder are illegal, invalid, and ultra vires. (1 AA 240-241.)

E. The trial court sustains the City's demurrer, ruling that CESA's definition of a local emergency and procedural requirements do not apply to charter cities, like the City of Los Angeles. Petitioner timely appeals.

In its tentative ruling on Respondents' demurrer to the First Amended Petition, the trial court determined that Government Code section 8630 does not govern charter cities, so no actual conflict exists between section 8630 and LAAC section 8.33. (1 RA 5-8.) "[T]he Court here declines to find that the CESA evidences a clear intention to apply to charter cities. The procedures for enacting municipal ordinances are a municipal affair. With respect to that municipal affair, LAAC § 8.33 [subd.] (e) contains its own procedures for declaring an emergency, this

Court must demand a 'clearer indication' that the State meant to supplant those procedures with its own when using the inherently ambiguous term 'city' without any additional definition, explanation, or modifier." (1 RA 7.) Furthermore, in Senate Bill 933, a former Senator sought—but failed—to amend CESA by specifying that it applied "to all 33 cities, including charter cities." (1 RA 7.) The trial court reasoned that "[i]f CESA already included charter cities and the Legislature believed it to be so, this provision of Senate Bill 933 would have been unnecessary." (1 RA 7.) The trial court concluded that "the question of whether the Mayor's declaration was timely ratified and renewed is governed by LAAC § 8.33." (1 RA 8.) The trial court then found that "City Council has twice timely renewed the declaration in accordance with the provisions of LAAC § 8.33 [subd.] (e)." (1 RA 9.) Accordingly, the trial court tentatively sustained the demurrer as to the first cause of action for writ of mandate. (1 RA 9.)

Next, the trial court tentatively ruled that the First Amended Petition did not sufficiently allege a declaratory relief claim based on violations of eminent domain or public contracts law.[2] (1 RA 10.) Although LAAC section 8.33, subdivision (e),

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[2] The Opening Brief does not mention these issues (AOB 24-25), so Petitioner abandoned them on appeal. (See *Paulus v. Bob*

allows the Mayor to commandeer property, it binds the City to pay "for the fair value thereof." (1 RA 10.) The trial court found this language "fully consistent with our Constitution" by allowing the Mayor to pay just compensation for any property seized.[3] (1 RA 10.) The trial court also found that Public Contract Code section 20162, which requires the award of public construction contracts to lowest responsible bidder, did not apply to charter cities. (1 RA 10.)

Finally, the trial court tentatively ruled that it was a question of fact whether LAAC section 8.33 violated LAAC section 8.22. (1 RA 10-11.) LAAC section 8.33 defines "local housing and/or homelessness emergency" as a "local emergency due to the existence of a critical shortage of local affordable housing and/or an emergency on homelessness." (1 AA 283.) LAAC section 8.22, on the other hand, defines a local emergency as "any occurrence" likely to overwhelm City government. (1 AA 363.) According to the tentative ruling, the First Amended Petition established an actual controversy whether a chronic condition such as homelessness qualifies as a local emergency

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Lynch Ford, Inc. (2006) 139 Cal.App.4th 659, 685 [deeming abandoned any challenge to the trial court's ruling not addressed in the opening brief].)

[3] The First Amended Complaint does not allege that the City actually seized or commandeered any property. (1 AA 219-241.)

under LAAC section 8.22. (1 RA 10-11.) So, the trial court tentatively overruled the demurrer as to the second cause of action for declaratory relief. (1 RA 11.)

After the hearing on the demurrer, the trial court requested supplemental briefing on two issues: (1) the second cause of action for declaratory relief, and (2) "whether the legislative history for the CESA, including Government Code section 8630, provides any guidance as to whether the Legislature intended CESA to apply to charter cities and/or the City of Los Angeles in whole or in part." (1 AA 552-553.)

After reviewing the supplemental briefing and conducting another hearing, the trial court issued its final ruling. (1 AA 880-891.) The trial court adopted its tentative ruling as to the first cause of action for writ of mandate but amended it as to the second cause of action for declaratory relief. (1 AA 880-891.) The trial court determined that the definition of a local emergency in LAAC section 8.33 is not subject to the definition of a local emergency in LAAC section 8.22. (1 AA 890.) The trial court reasoned that section 8.33, subdivision (a), states that a "Local Housing and/or Homelessness Emergency, as used in this Section, shall not be subject to the other provisions of Chapter 3, Article 3 of Division 8 of the Los Angeles Administrative Code." (1 AA 283, 890.) Section 8.27, entitled Powers of the Mayor and Council, states that "[t]he Mayor is hereby empowered to declare

the existence of a local emergency or disaster when he finds that any of the circumstances described in Section 8.22 hereof exist...". (1 AA 364, 890.) "Thus, even though Section 8.22 is contained in Chapter 2, Article 2 of Division 8 of the LACC, it is incorporated by reference in Section 8.27, which is contained in Article 3, Chapter 3 of Division 8 of the LACC." (1 AA 890.) So, the statement in section 8.33, subdivision (a), "that it is not subject to the provisions of Article 3, Chapter 3, Division 8 means that it is not subject to Section 8.22's definition of a 'local emergency,' because Section 8.22 is incorporated by reference into Section 8.27, which is found in Article 3, Chapter 3, Division 8." (1 AA 890.) The First Amended Petition alleged that "each of the criteria [establishing a local housing or homelessness emergency] were already satisfied when LAAC [section] 8.33 was passed." (1 AA 230-231.) Since the First Amended Petition alleged no violation of 8.33, nothing supported a basis for declaratory relief. (1 AA 890-891.) The trial court also determined that the analysis of the bill that repealed the California Disaster Act and enacted CESA did "little to show that Government Code § 8630 applies to charter cities." (1 AA 886.) In sum, the trial court's final ruling rejected all of Petitioner's legal theories and sustained the demurrer in its entirety without leave to amend. (1 AA 880-891.)

The trial court filed a judgment dismissing the entire action on June 5, 2024. (1 AA 893.) Petitioner filed a timely notice of appeal on June 20, 2024. (1 AA 899.)

STANDARD OF REVIEW

Because this appeal is taken from a dismissal on demurrer, and involves questions of statutory interpretation, this Court's review is de novo. (*Stone v. Alameda Health System* (2024) 16 Cal.5th 1040, 1052.)

ARGUMENT

I. Government Code sections 8630 and 8558 do not apply to the City, so the trial court correctly ruled that no actual conflict exists between those sections and LAAC section 8.33.

A. The City enacted LAAC section 8.33 to address the local homeless emergency.

A charter city has home rule authority over local emergencies. (See *Verros v. City & Cnty. of San Francisco* (1976) 63 Cal.App.3d 86, 96-97 [Mayor's settlement of a police and firefighter strike, which led to an almost complete cessation of police and fire services citywide, was an appropriate exercise of local emergency powers under the city's charter]; *Mullins v. Henderson* (1946) 75 Cal.App.2d 117, 127 [rejecting a similar challenge to the emergency powers provision of the city's charter and refusing to restrict its operation "to emergencies brought

about by the elements, bombings or like causes"].) Relatedly, the "mode and manner" of adopting city ordinances are considered "core" areas of municipal concern, including the process for adopting any municipal enactment. (*Trader Sports v. City of San Leandro* (2001) 93 Cal.App.4th 37, 47-48.)

Here, pursuant to its home rule authority, on June 27, 2023, City Council unanimously adopted LAAC section 8.33 – an ordinance governing the procedures for any declaration of a local emergency relating to homelessness or affordable housing – in Ordinance No. 187922, which was signed by the Mayor and became effective on July 5, 2023. (1 AA 234, 293, 295-299.) LAAC section 8.33 addresses the City's unique homeless crisis and fashioned customized procedures to address the enormity of sheltering 46,000 people. (1 AA 365-367.) Section 8.33, subdivision (a), specifies the circumstances that must exist to declare or continue a local emergency relating to homelessness or lack of affordable housing. (1 AA 365.) The Mayor may declare a local emergency only when the housing supply is at least 40% below production goals in the state approved Housing Element or the unhoused population reaches crisis levels (defined as double the number of available interim beds) or the homeless population increases more than 20% in a single year. (1 AA 365-366.)

B. Supreme Court authority demonstrates no "actual conflict" exists.

The task of determining whether a given activity is a municipal affair over which charter cities have sovereignty, pursuant to California Constitution, article XI, section 5, subdivision (a), or one of statewide concern, is an ad hoc inquiry, and courts must answer the question in light of the facts and circumstances surrounding each case. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 16 (*CalFed*).) A court asked to resolve a putative conflict between a state statute and a charter city measure initially must satisfy itself that the case presents an actual conflict between the two. (*Ibid.*) "To the extent difficult choices between competing claims of municipal and state governments can be forestalled in this sensitive area of constitutional law, they ought to be..." (*Id.* at pp. 16-17.)

Here, the Court should not have to make the "difficult choices" described in *CalFed*. Considering the City's sovereignty over local emergencies and bearing in mind that judicial restraint requires that the Court not decide constitutional questions where statutory grounds are available and dispositive, it should not infer an intent to contravene the City's home rule authority. As discussed below, CESA's definition of a local emergency and procedural requirements for declaring one do not apply to charter cities. So, the trial court correctly ruled that no "actual conflict"

exists between those sections and LAAC section 8.33. Notably, the Opening Brief does not discuss *CalFed*'s holding—that if no actual conflict exists, then the matter ends without any further inquiry.

C. Plain language, legislative history, and statutory context establish that the Legislature did not intend CESA to contravene home rule authority and regulate local emergencies on a uniform statewide basis.

"Statutory interpretation questions are guided by familiar principles." (*Stone, supra,*16 Cal.5th at 1052.) A court's "fundamental task is to ascertain the Legislature's intent and effectuate the law's purpose, giving the statutory language its plain and commonsense meaning." (*Ibid.*) The court begins its inquiry by examining "the language in the context of the entire statutory framework to discern its scope and purpose and to harmonize the various parts of the enactment." (*Ibid.*) "If the language is clear, [then the statute's] plain meaning controls. If, however, the language supports more than one reasonable construction, then we may look to extrinsic aids, including the ostensible objects to be achieved and the legislative history." (*Ibid.*)

1. **Government Code section 8630 uses the general term "a city," without specifying the statute applies to "charter cities" or "any city." Such language indicates that the Legislature did not intend for the statute to apply to charter cities.**

In *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 906-907 (*Padilla*), the Court of Appeal found that the California Voter Participation Rights Act (VPRA) did not apply to Redondo Beach, a charter city, because the statute did not expressly state that it did. To address a "significant decrease in voter turnout" in local elections, the VPRA requires "political subdivisions" in the state to consolidate local elections with statewide on-cycle elections if the local jurisdiction's turnout falls at least 25 percent below the locality's average voter turnout in the previous four statewide general elections. (*Id.* at 906.) The VPRA defines a "political subdivision" as "a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law." (*Ibid.*) Redondo Beach's last four local off-cycle elections met the definition of a significant decrease in voter turnout under the VPRA. (*Id.* at 907.) The Attorney General issued an opinion concluding the VPRA applied to charter cities and charter school districts governed by a city charter. (*Ibid.*) Nonetheless, Redondo Beach was unconvinced the statute applied to it and sued the Secretary of the State to bar enforcement. (*Ibid.*)

The Court of Appeal rejected the Secretary of State's argument that the plain language of the VPRA, including the definition of political subdivision, established the Legislature's intent that the VPRA applies to all cities, including charter cities. (*Id.* at 912.) The Court of Appeal reasoned that the Legislature is "usually quite specific when it intends the term 'political subdivision' to include charter cities." (*Ibid.*) "Likewise, the Supreme Court and Courts of Appeal have often demanded a clearer indication than the use of a general term, be it 'a political subdivision' or 'a city,' before concluding a statute is intended to apply to charter cities." (*Id.* at 913.) The Court of Appeal identified several other statutes which specified their application to charter cities. (*Ibid.*) For example, a provision of the Political Reform Act, Government Code section 82008, defined "city" as "a general law or a chartered city," and a provision of the Surplus Land Act, Government Code section 54221, subdivision (a), defined "local agency" as "every city, whether organized under general law or by charter." (*Ibid.*) The Court of Appeal also identified laws which used the terms "any city" or "any public safety department," and were therefore interpreted as applying to charter cities. (*Ibid.*)

Here, like in *Padilla,* the language of the statute does not clearly include charter cities. Government Code section 8630, subdivision (a), states that "[a] local emergency may be

proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body." None of these enumerated terms encompass any and all cities. Nor do they account for the legal distinction between general law cities and charter cities. (*Padilla, supra*, 46 Cal.App.5th at 917.) Accordingly, the Legislature's use of the general term "a city" in section 8630—without specifying it included charter cities—indicates that it did not intend for the statute to apply to them. (See *id.* at 911-914.) "When the Legislature wishes expressly to preempt all regulation of an activity, it knows how to do so." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1155; see, e.g., Gov. Code, § 65666 ["Low Barrier Navigation Center developments are essential tools for alleviating the homelessness crisis in this state and are a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this article shall apply to all cities, including charter cities."].)

Although the very recently decided *Levy v. City and County of San Francisco* (Cal. Ct. App., Sept. 30, 2025, No. A172068) 2025 WL 2787868, *8 (*Levy*), criticized *Padilla's* analysis, it acknowledged that the "case is instructive." In *Levy*, the Court of Appeal found that Labor Code section 512.1, which extends meal and rest break protections to specific public healthcare

employees, does not include charter cities such as San Francisco. (*Id.* at *1.) The provision applies to an "employer" defined as "the state, political divisions of the state, counties, municipalities, and the Regents of the University of California." (*Ibid.* [citing Labor Code, § 512.1, subd. (e)(2)].) The Court rejected the plaintiffs' argument that the "broad definition" of employer included the City of San Francisco, as a charter city and county. (*Id.* at *6.) None of the enumerated terms unambiguously encompassed charter cities, nor did the definition of "employer" mean any municipality. (*Id.* at *8.) The Court of Appeal reasoned that "[t]o be sure, in isolation, the term 'municipalities' facially applies to the City...But we do not view words in isolation; plain meaning is derived within the statutory context." (*Ibid.*) Since the statute regulates "specified government entities," then it was not clear that the term meant to encompass charter cities who have broad home rule authority. (*Ibid.*) Accordingly, the Court found that the plain meaning of Labor Code section 512.1, subdivision (e)(2), did not establish that it applied to charter cities. (*Id.* *7-8.)

Like in *Levy*, even if the Court here only considered the plain language of the statute, rather than "a clear indication of intent" as in *Padilla*, it should come to the same conclusion. The plain language analysis is not as superficial as the Opening Brief contends. (AOB 41 [arguing that that the terms "a city, county, or a city and county" used in Gov. Code, § 8630, are "ordinary

enough words that appear all-inclusive by the plain language."].) Instead, specificity is required to overcome the City's broad home rule authority over local affairs. (*Levy, supra*, 2025 WL 2787868, *7, *13 ["[W]e will not infer an intent to contravene the City's home rule authority without more explicit guidance from the Legislature."].) Since Government Code section 8630 does not specifically state it applies to charter cities, then the Court should infer that it does not.

2. The Legislature *rejected* a proposed amendment to CESA which would have preempted home rule authority on local emergencies.

The legislative history further establishes that the statute's plain meaning does not cover the City. The Legislature considered—and then rejected—a Senate Bill, which would have amended CESA to regulate local emergencies on a uniform statewide basis. (1 AA 428-435 [SB 933].) Senate Bill 933 (2021-2022 Reg. Sess.) would have added section 8662.6 to CESA stating: "The Legislature finds and declares that safeguarding the liberties of the residents of this state during a state of emergency or local emergency is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this article applies to all cities, including charter cities." (1 AA 432.)

Such an amendment would have been unnecessary if, as Petitioner contends, the statute's plain meaning applied to charter cities. (AOB 40-42.) Instead, the failed legislation establishes that CESA does not apply a statewide uniform rule on local emergencies. (*Ector v. City of Torrance* (1973) 10 Cal.3d 129, 134 ["We may reasonably infer that by so voting the Legislature rejected the very extension of the statute which appellant now asks us to adopt under the guise of judicial construction. This, of course, we may not do."]; see *Levy*, *supra*, 2025 WL 2787868, *11 [failed legislation aids in construing a statute's plain meaning].)

3. The statutory context of CESA further establishes that the Legislature did not intend to regulate local emergencies as matters of statewide concern.

As discussed above, when the Legislature intends to regulate charter cities and establish uniform regulation on a matter of statewide concern it uses language to that effect. (*Levy, supra*, 2025 WL 2787868, *10.) Only one provision of CESA plainly applies to charter cities, Government Code section 8635. Government Code section 8635 states that "the Legislature finds and declares that the preservation of local government in the event of enemy attack or in the event of a state of emergency or a local emergency is a matter of statewide concern...Nothing in this article shall prevent a city or county existing under a charter

from amending said charter to provide for the preservation and continuation of its government in the event of a state of war emergency." If the Legislature intended to regulate local emergencies on a statewide basis and contravene the home rule authority of charter cities, then it would have used similar language in Government Code sections 8558 and 8630. Under the statutory construction doctrine of expressio unius est exclusio alterius (the expression of certain things in a statute necessarily involves exclusion of other things not expressed), the Legislature's use of specific language in one provision and omission of that language in other provisions, means that the omission was intentional. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1390-1391.)

While the Opening Brief discusses the "dangers of declarations of emergencies" and the potential for "chronic use of emergency powers" (AOB 12-16), the Legislature did not discuss such concerns in CESA (Gov. Code, §§ 8550-8669.87). Regardless of validity, nowhere in CESA does the Legislature state that declarations of local or statewide emergencies "undermine" democracy and lead to the executive branch "usurping" the Legislature's powers.[4] (Compare AOB 12-16, to Gov. Code, §§

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[4] In fact, failed Senate Bill 933 would have added section 8662.1 to CESA, which would have limited the ability of state and local

8550-8669.87.) Nor does any provision of CESA, including Government Code section 8558, which defines a local emergency, state that local emergencies are matters of statewide concern. Instead, CESA's findings and declarations demonstrate that the Legislature focused on conferring emergency powers to the Governor and marshalling adequate and coordinated resources for dealing with any emergency that may occur. (See Gov. Code, § 8550.) Contrary to the assertions in the Opening Brief (AOB 43-46), the statutory context does not indicate an intention to create a statewide rule, nor does it assert statewide concern regarding declarations of local emergencies. Since the statutory context does not manifest that intent, this Court should conclude that the City had a right to adopt an approach to local emergencies that does not follow CESA. (See *Levy*, *supra*, 2025 WL 2787868, *9-10.)

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governments to issue emergency orders based, in part, on the concerns raised in the Opening Brief. (1 AA 430.) SB 933 contained the following unadopted language: "Because the issuance of emergency orders by state and local officials infringes on individual liberty and constitutes an exception to the Legislature's power to enact binding rules of behavior on citizens, those emergency orders should be limited in scope and duration to the maximum extent possible." (1 AA 430.)

The Opening Brief contends that the trial court's ruling could have "disastrous results" for the City, including losing statewide disaster response assistance and funding. (AOB 13-14, 46-47.) This case, however, only addresses whether two provisions of CESA, Government Code sections 8630 and 8558, apply to charter cities, and conflict with and preempt LAAC section 8.33. The statutory analysis establishes that the Legislature did not intend for those provisions to apply to charter cities, so no actual conflict exists between them and the City's enactment. This conclusion does not mean that the City is on its own when disaster strikes, receiving no statewide assistance whatsoever.[5] The goal of CESA, which the Court must consider when interpreting it, is "to protect the health and safety and preserve the lives and property of the people of the state." (Gov. Code, § 8550.) Nothing in CESA suggests the Legislature intended to punish charter cities for exercising their home rule authority by depriving them of aid, especially in emergency situations. (See *People v. Moore* (2004) 118 Cal.App.4th 74, 77 ["[T]he fundamental goal of statutory interpretation is to ascertain and carry out the intent of the Legislature."].)

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[5] In any event, whether it is prudent public policy to provide charter cities with autonomy in this regard is irrelevant to the analysis. (See *CalFed*, *supra*, 54 Cal.3d at 23-24.)

II. The City has not asserted in other proceedings that it was preempted from regulating local emergencies, nor is it judicially estopped from asserting home rule authority as a basis to enact LAAC section 8.33.

The Supreme Court has made clear that the statutory analysis for preemption under the home rule doctrine presents legal issues for the Court to decide. (*State Bldg. & Constr. Trades*, *supra*, 54 Cal.4th at 562 ["the determination of what constitutes a municipal affair (over which the state has no legislative authority) and what constitutes a statewide concern (as to which state law is controlling) is a matter for the courts, not the Legislature, to decide."]; *Johnson*, *supra*, 4 Cal.4th at 405 ["the Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern."].)

Despite this Supreme Court authority, Petitioner contends that Government Code section 8630, applies to charter cities because the Los Angeles City Attorney's Office "agreed" that it did in an "opinion letter." (AOB 49-50.) As ostensible support for this contention, Petitioner cites to *Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 187 (*Linda Vista*), holding that "opinions of a city attorney construing its charter provisions are equivalent to the construction of a statute by officials charged with its administration, and are entitled to consideration in charter

interpretation." (AOB 49.) This argument misses the mark for several reasons.

In the first place, contrary to the assertions in the Opening Brief, the letter did not "opine" or "agree" that Government Code section 8630 applied to charter cities. (See 1 AA 467-479.) Instead, the letter dated November 13, 2015, reported to City Council the "options" available under local, state, and federal laws "to address the homelessness crisis in the City of Los Angeles." (1 AA 467.) Nowhere in this letter does the City claim that it is preempted from enacting its own law to specifically address the local homeless crisis. (1 AA 467-479.) Second, Petitioner's reliance on *Linda Vista*, *supra*, 234 Cal.App.4th at 187, is misplaced because in that case the Court of Appeal was interpreting a section of a city charter to determine the validity of a lease agreement. The City Attorney's opinion letter was relevant because it analyzed the legislative history of the charter section at issue. (*Ibid.*) Here, on the other hand, the issue is whether the Legislature intended Government Code sections 8630 and 8558 to apply to charter cities. That issue is for the Court to decide by analyzing statutory language and legislative history and applying the canons of statutory construction. (See, e.g., *Grassi v. Superior Court* (2021) 73 Cal.App.5th 283, 290-308 [discussing how courts interpret a statute].) Finally, and relatedly, extrinsic evidence such as the 2015 letter to City

Council has no bearing on the Court's analysis here because it does not reveal legislative intent. (See *California Country Club Homes Assn. v. City of Los Angeles* (1993) 18 Cal.App.4th 1425 [extrinsic evidence is not controlling in statutory interpretation; rather, courts must ultimately derive legislative intent from the language of a statute].)

The Opening Brief also cites to instances where the City purportedly claimed that various statutes that used the term "a city" applied to itself. (AOB 50-51.) Without even questioning the veracity of this contention, it is irrelevant for the same reasons discussed above. The Court determines whether the Legislature intended CESA to contravene home rule authority and regulate local emergencies on a uniform statewide basis by evaluating statutory language, legislative history, and the canons of statutory construction.

The Opening Brief's contention that the City is "judicially estopped from its present argument that charter cities are not bound by section 8630(a)" also fails. (AOB 53-56.) "Judicial estoppel prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.) The City's position here is that it is not bound by section 8630, and that is consistent with

the City's position in *Turner's Operations, Inc. v. Garcetti*, LASC Case No. 20STCP01258 (*Turner's*).

In *Turner's*, a group of gun stores and gun rights organizations sought ex parte relief to prohibit enforcement of Mayor Garcetti's 2020 Safer at Home public order as it applied to temporarily halt the operations of gun stores. (1 AA 797.) The City opposed the ex parte application, arguing that Government Code section 8630 conferred authority on Mayor Garcetti to issue the order. (1 AA 784.) In other words, the City cited the statute as a source of Mayor Garcetti's authority to issue emergency orders during the pandemic in 2020, but it never contended it had no other legal basis to do so, especially if local conditions changed. (1 AA 784.) Local conditions have changed since Mayor Garcetti's Safer at Home order. The pandemic ended in 2023, but the homelessness crisis in the City worsened. (1 AA 243-246, 411-412 [factual findings supporting the existence of a local homelessness emergency in the City].) Accordingly, the City invoked its home rule authority in 2023, to enact ordinances specifying the procedures for declaring, ratifying and renewing local emergencies in response to its local housing and homelessness crisis. (1 AA 64-68.) As discussed above, the City has the right as a charter city to adopt a different approach to local emergencies than what Government Code sections 8630 and 8558 outline. (See *Traders Sports, Inc., supra*, 93 Cal.App.4th at

47 [the residents of a charter city "who are familiar with local conditions...are best able to regulate such matters by means of charter provisions and municipal codes."].) In doing so, the City is not playing a "gambit," but is responding to a local crisis as a matter of its home rule authority.

Additionally, the trial court correctly ruled that Petitioner failed to establish judicial estoppel because it did not show that the trial court in *Turner's* accepted the City's position as true. (1 AA 887.) Without ever referencing Government Code section 8630, the trial court ruled "there is no direct conflict with state law." (1 AA 799.)

III. Should the Court find an actual conflict, the four-part inquiry demonstrates that the City's enactment does not have to cede to the State's.

When legislation that applies to charter cities conflicts with their home rule authority, courts utilize a four-part analytical framework to determine whether the city's authority must cede to the state's. (*Vista, supra*, 54 Cal.4th at 556, citing *CalFed*, 54 Cal.3d at 16-24.) The framework consists of the following questions: 1) does the city law regulate a municipal affair; 2) is there an actual conflict between city and state law; 3) does the state law address a statewide concern sufficient to override the city's interest; and 4) is the state law reasonably related to the statewide concerns and narrowly tailored to limit incursion into

legitimate municipal interests. (*CalFed*, 54 Cal.3d at 16-17; *Johnson, supra,* 4 Cal.4th 389, 398; and *Vista*, *supra*, 54 Cal.4th at 556.) Applying this framework to LAAC section 8.33 confirms that Government Code section 8630 or 8558 would not preempt it.

With respect to the first question, as discussed in section I.A. above, an ordinance specifying procedures for responding to a local emergency is a municipal affair. (*Trader Sports*, *supra*, 93 Cal.App.4th at 47.)

With respect to the second question, any alleged conflict between LAAC section 8.33 and Government Code section 8630 is procedural, minor, and reflects the realities associated with long-term, worsening homelessness in the City.[6] The fact that the

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[6] Without any citation to authority, the Opening Brief repeatedly and wrongly contends that "the power of cities and counties to declare local emergencies exists only because of Section 8630." (AOB 13, 45, 47.) Indeed, charter cities have been declaring local emergencies long before CESA's enactment in 1970. (See, e.g., *Campbell v. Board of Civil Service Com'rs of City of Los Angeles* (1946) 76 Cal.App.2d 399 [Since the City could not retain employees because of the war, City Council adopted an ordinance stating that a local emergency existed necessitating temporary city service appointments]; *Mullins, supra,* 75 Cal.App.2d at 121 ["The question as to whether the existing conditions shown by the evidence justified the action taken by the mayor pursuant to the emergency powers granted by the charter was and is one of fact to be determined by the trial court."].)

time period in LAAC section 8.33 is longer than the initial seven-day review period or 60-day renewal period established in section 8630 is legally insignificant, especially when one recognizes that section 8.33 authorizes the City Council to "consider the resolution and rescind it by majority vote" anytime within the first 30 days. (*See Johnson*, *supra*, 4 Cal.4th at 406 [the bare interest of "uniformity" with state law is not a justification to conclude a statewide concern exists].) LAAC section 8.33 recognizes that the City cannot solve its homelessness crisis in 30-days increments and requires Council review every 90 days (and reporting on existing conditions every quarter). This is a reasonable and relatively minor deviation from state law, given the unique nature of the local emergency. (*See id.*)

Contrary to the assertions in the Opening Brief, even if Government Code section 8558, subdivision (c)(1), applied to the City (which it does not), nothing in its plain language limits local emergencies to "sudden events like fires or earthquakes." (AOB 15.) The statute identifies non-exhaustive examples of what *could* constitute a local emergency. (Gov. Code, § 8558, subd. (c)(1) [defining a local emergency as being "caused by conditions *such as* air pollution, fire, flood, storm..."] (emphasis added).) Petitioner has no authority to supports its claim that the

Legislature intended to establish a categorical rule barring "chronic conditions," such as homelessness, from qualifying as a local emergency.

In fact, in *CCPOA, supra*, 163 Cal.App.4th at 817-18, the Court of Appeal rejected an argument like the one Petitioner makes here. In that case, an association challenged then Governor Schwarzenegger's declaration of emergency to address the severe overcrowding of state prisons under Government Code section 8558. (*Id.* at 807-08.) The Court of Appeal explained that "the Governor may proclaim a state of emergency when a condition of extreme peril to the safety or persons and property exists 'within the state,' even in an area under the exclusive control of the state government" like the prison systems. (*Id.* at 813.) The association argued that "overcrowding had long existed in California prisons" and "the problem [was] chronic" and not sudden or unexpected. (*Id.* at 818.) Nonetheless, the Court confirmed that the Governor did not exceed his authority in issuing the emergency declaration. (*Id.* at 820; see also *id.* at 824 ["The Governor has declared a valid state of emergency based on inadequate prison facilities, finding it endangers the lives of correctional officers and inmates. What matters is not what caused the emergency, but that the emergency exists, that adequate facilities must be provided, and they must be provided now."].) Similarly, here, the chronic nature of homelessness does

not change the existence of the City's local housing and homelessness emergency.

With respect to the third question, while a statewide concern exists to ensure that every jurisdiction has authority and power to deal with emergencies, CESA provides a default schedule, not applicable to charter cities, which can conform or deviate as they see fit. And, while CESA reflects the state's undoubted interest in ensuring local emergencies are handled appropriately to prevent spillover effect into other jurisdictions, that concern is insufficient to establish that CESA represents a "statewide" concern capable of surmounting the City's home rule authority over the procedural mechanisms for reviewing declarations of emergency. (*Vista, supra*, 54 Cal.4th at 562 [almost anything a local jurisdiction does "can have consequences beyond its borders," but such circumstances are insufficient to allow a state legislature to do what the home rule provision of the Constitution prohibits].)

With respect to the fourth question, Government Code section 8630 is not narrowly tailored to deal with the procedures best suited to the City's homelessness crisis. As discussed above, CESA's "Purpose" section does not reference charter cities at all, and to the extent it mentions non-chartered local entities, CESA states as its purpose the need to "confer" emergency powers and provide mutual aid to political subdivisions. (Gov. Code, § 8550.)

CESA does not articulate a statewide interest, and none exists, to explain why the procedural mechanism of section 8630 should override a charter city's determination that it should review a local declaration of emergency relating to homelessness and lack of affordable housing every 90 days instead of every 30. Accordingly, for all these reasons, Government Code sections 8630 and 8558 do not preempt LAAC section 8.33. (See *CalFed*, *supra*, 54 Cal.3d at 16-17.)

IV. LAAC section 8.22's definition of a local emergency does not conflict with LAAC section 8.33.

Petitioner has no basis to assert that LAAC section 8.22 "controls" or somehow supersedes LAAC section 8.33. (AOB 64.) As the trial court correctly ruled (1 AA 890), the plain language of the sections demonstrates that section 8.33, with its definition of a "Local Housing and/or Homelessness Emergency," is not subject to the general definition of a "local emergency" in section 8.22. (Compare 1 AA 365 [LAAC section 8.33] to 363 [LAAC section 8.22].) Further, section 8.33 plainly states that its definition of a Local Housing and/or Homelessness Emergency "shall not be subject to the other provisions of Article 3, Chapter 3, Division 8 of the Los Angeles Administrative Code" (1 AA 365), which govern City conduct in a "local emergency or disaster."

Petitioner argues that section 8.22 is not found within Article 3, Chapter 3, Division 8 of the Los Angeles Administrative Code; it is in Article 2. But one of the specific provisions in Article 3 and which section 8.33 excludes, is LAAC section 8.27, which provides that "[t]he Mayor is hereby empowered to declare the existence of a local emergency or disaster when he finds that any of the circumstances described in Section 8.22 hereof exist, or at any time a disaster or local emergency is declared by the President of the United States or the Governor of California." (1 AA 364). Section 8.27's citation to section 8.22 would be superfluous and rendered a nullity if the term "local emergency" already imposed the requirements described in section 8.22. A fair reading of the sections is that a local emergency for sections 8.22 and 8.27 and a local housing emergency for section 8.33 are separate (local) emergencies set forth in the Administrative Code and do not conflict in any way. (See *Chun v. Del Cid* (2019) 34 Cal.App.5th 806, 815 ["the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole."]).

Finally, to the extent that any conflict exists between the requirements or criteria for a local emergency under section 8.22 and a Local Housing and/or Homeless Emergency under section 8.33, then "a recent, specific provision is deemed to carve out an exception to and thereby limit an older, general provision."

(*Green v. Marin County Flood & Water Conservation Dist.* (2010) 49 Cal.4th 277, 290; *Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 634 ["If conflicting statutes cannot be reconciled, later enactments supersede earlier ones, and more specific provisions take precedence over more general ones."].) Here, the conditions for declaring an emergency under LAAC section 8.33, subdivision (b) are more specific, and City Council enacted them after it enacted section 8.22. (Compare 1 AA 365 [LAAC section 8.33] to 363 [LAAC section 8.22].) Accordingly, the criteria and standards under section 8.33 govern and take precedence over section 8.22.

CONCLUSION

This Court should affirm the trial court's judgment in the City's favor.

Respectfully submitted,

Dated: October 20, 2025

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this RESPONDENTS' BRIEF contains 9,093 words, not including the tables of contents and authorities, the caption page, the signature blocks, or this certification page.

Date: October 20, 2025

/s/ Sara Ugaz
Sara Ugaz

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 N. Spring Street, 14th Floor, Los Angeles, California 90012.

On October 20, 2025, I served a copy of "**RESPONDENTS' BRIEF**" on the participants listed below.

Via TrueFiling	Via Email Service
Counsel for Appellant: Robert P. Silverstein, Esq. James S. Link, Esq. The Silverstein Law Firm robert@robertsilversteinlaw.com james@robertsilversteinlaw.com	Honorable Curtis A. Kin Los Angeles Superior Court Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90012 appellatebriefs@lacourt.org

Via TrueFiling: Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 20, 2025, at Los Angeles, California

Brenda Perez

STATE OF CALIFORNIA California Court of Appeal, Second Appellate District	**PROOF OF SERVICE** **STATE OF CALIFORNIA** California Court of Appeal, Second Appellate District

Case Name: **Fix the City, Inc. v. City of Los Angeles et al.**
Case Number: **B339464**
Lower Court Case Number: **23STCP03519**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

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BRIEF - RESPONDENTS BRIEF (FEE PREVIOUSLY PAID)	2025-10-20 RB
APPENDIX - JOINT APPENDIX	2025-10-20 RA (Vol. 1 of 1)

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10/20/2025

Date

/s/Sara Ugaz

Signature

Ugaz, Sara (239031)

Last Name, First Name (PNum)

Office of the City Attorney

Law Firm

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 24025 Park Sorrento, Suite 100-1, Calabasas, California 91302

On December 18, 2025, I served true copies of the following document(s) described as **INDIVIDUAL PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO THE DEMURRER BY DEFENDANTS CITY OF LOS ANGELES ACTING BY AND THROUGH THE LOS ANGELES DEPARTMENT OF WATER AND POWER AND CITY OF LOS ANGELES** on the interested parties in this action as follows:

BY ELECTRONIC TRANSMISSION: Pursuant to Court Order Authorizing Electronic Service, I provided the document(s) listed above electronically on the CASE ANYWHERE Website to the parties on the Service List maintained on the CASE ANYWHERE Website for this case. Case Anywhere is the on-line e-service provider designated in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 18, 2025, at Los Angeles, California.

Maria Alegria