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

9 **NO FEE – GOV. CODE § 6103**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**

12  
13 **FIX THE CITY INC.**, a California Nonprofit  
Corporation

14 **Petitioner and Plaintiff,**

15 vs.

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

20 **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  
NOTICE OF DEMURRER AND  
DEMURRER TO VERIFIED FIRST  
AMENDED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT**

[Declaration of Felix Lebron re Failure to  
Resolve Objections before Filing Demurrer  
(C.C.P. § 430.41); Request for Judicial Notice  
filed concurrently]

Date: March 28, 2024

Time: 1:30 p.m.

Dept. 82

Action Filed – September 25, 2023

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 28, 2024, at 1:30 p.m. as soon thereafter as the  
3 matter may be heard in Department 82 of the Los Angeles Superior Court, located at 111 North Hill  
4 Street, Respondents and Defendants City of Los Angeles and City of Los Angeles City Council  
5 (collectively the “City”) will and hereby do demurrer to each and every cause of action alleged in the  
6 Verified First Amended Petition for Writ of Mandamus and Complaint for Declaratory and  
7 Injunctive Relief (“FAP”) filed by Petitioner and Plaintiff Fix the City, Inc. (“Petitioner” or “FTC”)   
8 on the ground that the FAP as a whole and each and every cause of action alleged therein fails to  
9 state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10(e)).

10 This Demurrer is made pursuant to Code of Civil Procedure (“C.C.P.”) Section 430.10(e) and  
11 California Rules of Court Rule (“C.R.C.”) Rule 3.1320. This Demurrer will be based upon this  
12 Notice of Demurrer and Demurrer, the attached Memorandum of Points and Authorities, the City’s  
13 Request for Judicial Notice, the Declaration of Deputy City Attorney Felix Lebron (C.C.P. §  
14 430.41), the files and records in this action, and any further evidence and argument that the Court  
15 may receive at or before the hearing.

16 This Demurrer was filed following the conference of counsel conducted pursuant to C.C.P. §  
17 430.41 on February 8, 2024.

18 Dated: February 16, 2024

19 HYDEE FELDSTEIN SOTO, City Attorney  
20 DENISE C. MILLS, Chief Deputy City Attorney  
21 SCOTT MARCUS, Chief Assistant City Attorney  
22 GABRIEL S. DERMER, Assistant City Attorney  
23 **FELIX LEBRON, Deputy City Attorney**

24 /s/ Felix Lebron

25 Felix Lebron  
26 Deputy City Attorney  
27 Attorneys for Respondents and Defendants City of Los  
28 Angeles and City of Los Angeles City Council

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The City of Los Angeles (“City”) enacted an ordinance specifying the procedures for declaring  
4 a local emergency relating to the City’s crisis of homelessness and lack of affordable housing. On  
5 July 7, 2023, the City’s Mayor declared a local emergency under the ordinance as part of the City’s  
6 effort to address the approximately 46,000 homeless individuals residing within the City. Petitioner  
7 Fix the City, Inc. (“FTC”) is an organization that has not suffered any concrete harms or any actual  
8 or imminent injuries under the ordinance. FTC alleges hypothetical concerns about harms that  
9 might, but have not, occurred. FTC’s goal is to have this Court invalidate the ordinance, set aside  
10 the declaration, and impede the City’s efforts to secure housing for the City’s 46,000 homeless.  
11 FTC’s remedy, if any, for challenging the City’s response to this emergency is at the ballot box.

12 The City is a chartered city under the California Constitution and its home rule authority is  
13 not preempted by the state statutes alleged in the FAP. The City’s Charter addresses the governing  
14 standards for local emergencies and the ordinance and declaration at issue fall within the power of  
15 the City to address its own existing homelessness and local housing crisis. For the reasons discussed  
16 below, FTC’s claims all fail as a matter of law. An amendment cannot cure these fatal defects. The  
17 Court should sustain the demurrer in its entirety without leave to amend.

18 **II. STANDARD FOR DEMURRER**

19 A demurrer is proper where the pleading fails to state facts sufficient to constitute a cause of  
20 action. C.C.P. § 430.10(e). The court should consider “all material facts properly pleaded, but not  
21 contentions, deductions, or conclusions of fact or law.” *Blank v. Kirwan*, 39 Cal.3d 311, 318 (1985).  
22 In determining the sufficiency of a complaint, the court considers not only the contents of the  
23 complaint but also matters of which judicial notice may be taken. *Barnett v. Fireman’s Fund Ins.*  
24 *Co.* (2001) 90 Cal.App.4th 500, 505 (In ruling on a demurrer, courts “rely on and accept as true the  
25 contents of the exhibits” to a complaint.); *Julian Volunteer Fire Co. Ass’n. v. Julian-Cuyamaca Fire*  
26 *Protection Dist.*, 62 Cal. App. 5th 583, 599 (2021) (court may take judicial notice of a city’s  
27 resolutions, reports, and other official acts). “If there is no liability as a matter of law, leave to  
28 amend should not be granted.” *Schonfeldt v. State of Cal.* (1998) 61 Cal.App.4th 1462, 1465.

1 **III. RELEVANT ALLEGATIONS**

2 Los Angeles is a chartered City. RJN **Ex. A** (Los Angeles City Charter (“Charter”), art. I, §  
3 100 *et seq.*); FAP ¶ 16. On December 12, 2022, Mayor Karen Bass exercised her authority under  
4 Charter Section 231(i) and issued a Declaration of Local Emergency pursuant to Los Angeles  
5 Administrative Code (“LAAC”) 8.27 to address the City’s interrelated issues of homelessness and  
6 shortage of affordable housing (the “8.27 Declaration”). FAP ¶ 42, Ex. 1; RJN **Ex. B** (Charter, art.  
7 II, § 231); RJN **Ex. D** (LAAC div. 8, ch. 3, art. 2 § 8.22 *et seq.*, art. 3 § 8.27 *et seq.*). On December  
8 13, 2022, the City Council unanimously approved a resolution confirming the 8.27 Declaration.  
9 FAP ¶ 42; RJN **Ex. F** (12/13/22 Resolution). Thereafter, the City Council unanimously approved  
10 resolutions confirming the 8.27 Declaration every 30 days as required under LAAC 8.27, including  
11 on January 10, January 31, February, 28, March 24, April 21, and May 16, 2023. RJN **Exs. G-L**  
12 (Council File CF 22-1545 Resolutions).

13 On December 16, 2022, the Mayor Issued Executive Directive 1 (ED1) titled “Expedition of  
14 Permits and Clearances for Temporary Shelters and Affordable Housing Types” pursuant to LAAC  
15 8.29. FAP ¶ 43, Ex. 2. On December 21, 2022, the Mayor issued Executive Directive 2 (ED2)  
16 known as the “Inside Safe Initiative” pursuant to LAAC 8.29. FAP ¶ 44, Ex. 3. On February 10,  
17 2023, the Mayor issued Executive Directive 3 (ED3) titled “Emergency Use of Viable City-Owned  
18 Property” pursuant to LAAC 8.29. FAP ¶ 46, Ex. 5.

19 On June 16, 2023, Council President Paul Krekorian moved that the City Attorney draft a  
20 new LAAC 8.33 and prepare and present an ordinance with an urgency clause to effectuate this  
21 section. FAP ¶ 48, Ex. 7. On June 20, 2023 the City Council amended and adopted the motion.  
22 FAP ¶ 49, Ex. 8. On June 27, 2023, the City Council unanimously adopted LAAC 8.33 – an  
23 ordinance specifically governing the procedures for any declaration of a local emergency relating to  
24 homeless or affordable housing – in Ordinance No. 187922, which was signed by the Mayor and  
25 became effective on July 5, 2023. FAP ¶¶ 51-52, Exs. 10-11.

26 LAAC 8.33 addresses the City’s unique homeless crisis and fashioned customized  
27 procedures to address the enormity of sheltering the 46,000 people. RJN Ex. D at § 8.33. Section  
28 8.33(a) specifies the circumstances that must exist to declare or continue a local emergency relating

1 to homelessness or lack of affordable housing. *Id.* at 8.33(a). A local emergency may only be  
2 declared when the housing supply is at least 40% below production goals in the Housing Element  
3 approved by the state or the unhoused population reaches crisis levels (defined as double the number  
4 of available interim beds) or the homeless population increases more than 20% in a single year. *Id.*

5 Section 8.33(d) specifies the powers available to the Mayor during a declared homelessness  
6 emergency, consistent with – not in contravention of – the Charter, including commandeering  
7 (expressly for fair value) property for interim housing, activating City employees to provide  
8 emergency services, and procurement of supplies to protect persons experiencing homelessness. *Id.*  
9 Section 8.33 avails itself of the contract fast-tracking provisions already available under Charter  
10 Section 371(e)(6), which allow suspension of competitive bidding mandates during time of war or  
11 national, state, or local emergencies. *Id.* at 8.33(d)(v); RJN **Ex. C** (Charter, art. III, § 370 *et seq.*).  
12 Section 8.33 limits no bid contracts to agreements less than one year in duration. RJN **Ex. D** at §  
13 8.33(d)(v)(1).

14 Section 8.33 also recognizes that the City’s homelessness crisis has no easy or quick  
15 solutions and could take years to resolve. *Id.* at 8.33(e). Accordingly, unlike the shorter approval  
16 timeframes in LAAC 8.27 dealing with other types of local emergencies common to the City, like  
17 flooding or wild fires, Council resolutions approving the continuance of the Mayor’s homelessness  
18 emergency powers under Section 8.33 need only occur in the first instance 120 days after the  
19 declaration of emergency and then every 90 days thereafter. *Id.* Section 8.33 allows, but does not  
20 mandate, Council to consider an emergency declaration relating to homelessness within the first 30  
21 days after the declaration is first promulgated. *Id.*

22 On July 7, 2023, the Mayor issued a Declaration of Local Housing and Homelessness  
23 Emergency under the newly enacted LAAC 8.33 (the “8.33 Declaration”). FAP ¶ 53, Ex. 12. On  
24 July 7, 2023, the Mayor re-issued ED1 pursuant to LAAC 8.33. FAP ¶ 56, Ex. 13. On August 4,  
25 2023, the Mayor issued the Housing and Homelessness Emergency Action Plan. FAP ¶ 58, Ex. 14.  
26 On October 31, 2023, the Council unanimously approved the continuation of the 8.33 Declaration by  
27 Resolution. RJN **Ex. M** (Resolution); FAP ¶¶ 59, 65. On January 23, 2024, the Council renewed  
28 and adopted the Resolution continuing the 8.33 Declaration. RJN **Ex. O** (Council Action).

1 **IV. ARGUMENT**

2 The FAP alleges two causes of action. The first cause of action is for a writ of mandamus  
3 under C.C.P. Section 1085. FTC alleges that the City had ministerial duties under Government Code  
4 Section 8630, part of the California Emergency Services Act (“CESA”), and, alternatively, under  
5 LAAC 8.33, to ratify and renew the 8.33 Declaration within specified time periods, and that the City  
6 failed to do so. FTC seeks a writ invalidating LAAC 8.33, voiding the 8.33 Declaration, and  
7 vacating all contracts, approvals and building entitlements thereunder. FAP ¶¶ 60-67. The second  
8 cause of action is for declaratory and injunctive relief. FTC seeks a declaration that LAAC 8.33  
9 violates Government Code Sections 8558 and 8630, Article I, Section 19 of the California  
10 Constitution, and the eminent domain laws (C.C.P. §§ 1230.010 *et seq.*), Public Contracts Code  
11 Section 20162, and LAAC 8.22. FTC asks the Court to enjoin the City from taking any further  
12 actions to address the City’s local housing and homeless emergency under LAAC 8.33, the 8.33  
13 Declaration, and related Executive Directives. FAP ¶¶ 68-82. FTC’s claims fail as a matter of law.

14 **A. The FAP Fails to State a Claim for Traditional Mandamus (C.C.P. § 1085).**

15 A writ of mandate will lie “to compel the performance of an act which the law specifically  
16 enjoins, as a duty resulting from an office, trust, or station” (C.C.P. § 1085) in cases “where there is  
17 not a plain, speedy, and adequate remedy in the ordinary course of law.” C.C.P. § 1086; *Weinstein*  
18 *v. County of Los Angeles* (2015) 237 Cal.App.4th 944, 964. The two essential elements for the  
19 issuance of the writ are: (1) a clear, present, and usually ministerial duty upon the part of the  
20 respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that  
21 duty. *Helena F. v. W. Contra Costa Unified Sch. Dist.* (1996) 49 Cal.App.4th 1793, 1799. A  
22 “ministerial duty” is “one that the entity is required to perform in a prescribed manner without any  
23 exercise of judgment or opinion concerning the propriety of the act.” *Cal. Assn. for Health Svcs. at*  
24 *Home v. State Dept. of Health Svcs.* (2007) 148 Cal.App.4th 696, 707-08. Mandate will not lie to  
25 compel a public agency’s discretion. *Weinstein*, 237 Cal.App.4th at 965.

26 Here, the FAP alleges that the City’s declaration of a local emergency is subject to  
27 ministerial duties under LAAC 8.33 and Government Code Section 8630 relating to the timing for  
28 ratifying and renewing a local emergency. FAP ¶¶ 66-67. These claims are addressed in turn below.

1                   1. The Charter Governs the Procedures for Responding to a Local Emergency.

2                   The City is a chartered city with the maximum allowable control over municipal affairs. Cal.  
3 Const., art. XI § 5; RJN Ex. A at Charter § 101; *Domar Elec. Inc. v. City of Los Angeles* (1994) 9  
4 Cal.4th 161, 171. “Charter provisions are construed in favor of the exercise of power over municipal  
5 affairs and against the existence of any limitation of restriction thereon which is not expressly stated  
6 in the charter.” *Domar*, 9 Cal.4th at 171. Article XI, Section 5(a) represents an “affirmative  
7 constitutional grant to charter cities of ‘all powers appropriate for a municipality to possess . . .’ and  
8 of the important corollary that ‘so far as municipal affairs are concerns’ charter cities are supreme  
9 and beyond the reach of [state] legislative enactment.” *California Fed. Savings & Loan Assn v. City*  
10 *of Los Angeles* (1991) 54 Cal.3d 1, 12, citing *Ex Parte Braun* (1903) 141 Cal. 204, 207.

11                   Charter section 231(f) vests in the Mayor power to declare a state of local emergency and to  
12 direct the response: “The Mayor shall have the power and duty to . . . (f) declare a local emergency  
13 and coordinate the City’s emergency response in accordance with procedures established by  
14 ordinance . . . .” RJN Ex. B at Charter § 231(f); *see also* RJN Ex. D at §§ 8.27, 8.29. Charter  
15 Section 240, in turn, vests legislative power with the City Council. RJN Ex. B at Charter § 240.

16                   Procedures governing the response to a local emergency constitute a municipal affair. *See*  
17 *Verros v. City & Cnty. of San Francisco* (1976) 63 Cal.App.3d 86, 96-97; *Mullins v. Henderson*  
18 (1946) 75 Cal.App.2d 117, 127. The “mode and manner” of adopting city ordinances are considered  
19 “core” areas of municipal concern, including the process for adopting any municipal enactment,  
20 including a declaration of emergency. *See Trader Sports v. City of San Leandro* (2001) 93  
21 Cal.App.4th 37, 47. In *Trader Sports*, the Court upheld a charter city law that allowed the city  
22 council to place a special tax on the ballot by a majority vote, even though a state law required a  
23 two-thirds vote of the council of non-charter cities. *Id.* The Court’s ruling was based on the charter  
24 city’s home rule authority over the conduct of its elections and the procedures for enacting municipal  
25 ordinances. *Id.*

26                   2. The City Council Ratified and Renewed the 8.33 Declaration Per LAAC 8.33.

27                   FTC alleges that the City had a ministerial duty under LAAC 8.33(e) to ratify the 8.33  
28 Declaration within 90 days of the issuance date of July 7, 2023 (on or before October 5, 2023). FAP

¶ 64. The City Council adopted a resolution ratifying the 8.33 Declaration on October 31, 2023. RJN Ex. M; FAP ¶¶ 59, 65. The Council renewed the resolution less than 90 days later on January 23, 2024. RJN Ex. O. 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).)

Established rules of statutory construction are equally applicable to municipal ordinances.

*Chun v. Del Cid* (2019) 34 Cal.App.5th 806, 815. The interpretation of an ordinance is a legal issue. *Id.* The plain language of Section 8.33(e) confirms that the Council resolution ratifying the continuance of the 8.33 Declaration must occur – in the first instance – 120 days after the declaration of emergency and subsequently every 90 days thereafter. Section 8.33(e) allows, but does not mandate, Council to consider an emergency declaration relating to homelessness within the first 30 days after the declaration is first promulgated and rescind it by majority vote. If Council does not consider the emergency declaration within the first 30 days, then the declaration expires 90 days *thereafter* (or 120 days after the declaration is first promulgated), unless renewed by a majority vote of Council. The use of the term “thereafter” in the ordinance reflects consecutive (not concurrent) time periods; otherwise, the term “thereafter” would be rendered a nullity in violation of the rules of statutory construction. *See Dyna Med Inc. v. Fair Employment & Housing Comm’n* (1987) 43 Cal.3d 1379, 1387.

Here, the Mayor issued the 8.33 Declaration on July 7, 2023, which requires Council to act in the first instance within 120 days on or before November 4, 2023. Therefore, the Council’s adoption of the resolution ratifying the 8.33 Declaration in the first instance on October 31, 2023 is timely under Section 8.33(e), as is the Council’s renewal on January 23, 2024. RJN Exs. M, O.

Even assuming, *arguendo*, that FTC’s interpretation of Section 8.33(e) is correct, the Council’s resolution adopted on October 31, 2023 cured any procedural irregularity under the doctrine of ratification. *Mott v. Horstmann* (1950) 36 Cal.2d 388, 391. “It is the general rule that a

1 governmental body may effectively ratify what it could theretofore have lawfully authorized.” *Id.*  
2 “The doctrine of ratification is subject to the limitation that the subsequent ratification should be  
3 made with the same formalities required for the original exercise of the power.” *Id.* “As the city  
4 council could have originally exercised its power of approval by resolution, it could and did  
5 effectively ratify by the same means.” *Id.*; *see also id.* (string cite of cases applying the rule). In  
6 sum, FTC fails to allege any viable writ claim under LAAC 8.33.

7 3. LAAC 8.33 Is Not Preempted by Government Code Section 8630.

8 Government Code Section 8630, part of the CESA, applies to a “city, county, or city and  
9 county. As an initial matter, CESA does not generally apply to chartered cities, like the City.  
10 CESA’s definitional sections do not reference charter cities. *See* Gov. Code §§ 8555-8562. Indeed,  
11 CESA specifies that only one subsection is applicable to chartered cities. *See* Gov. Code § 8635  
12 (empowering charter cities to amend their charters for the preservation and continuance of  
13 government during a state of war emergency). Where, as here, the Legislature uses a specific term  
14 in one section and omits the term in others, the Court must infer that the omission is intentional  
15 under the statutory construction doctrine of *expressio unius est exclusio alterius* (“the expression of  
16 certain things in a statute necessarily involves exclusion of other things not expressed...”). *See*  
17 *Dyna Med Inc.*, 43 Cal.3d at 1391, n.13, 1397. The Legislature knows how to include charter cities  
18 when it intends to do so and does so expressly.

19 A state statute must include language clearly applying state law to charter cities, or  
20 legislative history establishing that intent, in order for state law to preempt contrary charter city law.  
21 *See City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 912-913 (state law establishing  
22 municipal election dates did not apply to charter cities absent clear statutory language or legislative  
23 intent). “[T]he Supreme Court and Courts of Appeal have often demanded a clearer indication than  
24 the use of a general term, be it “a political subdivision” or “a city,” before concluding a statute is  
25 intended to apply to charter cities.” *Id.*

26 Legislative history further confirms this interpretation. The Legislature amended  
27 Government Code Section 8630 as recently as 2009 and again 2018, but charter cities were not  
28 included in the section. More recently, the Legislature considered a failed bill to extend CESA to

1 charter cities. RJN Ex. N (SB 933). Senate Bill 933 (2021-2022 Session) would have added a new  
2 Section 8662.6 to the California Government Code stating the following: “*The Legislature finds and*  
3 *declares that safeguarding the liberties of the residents of this state during a state of emergency or*  
4 *local emergency is a matter of statewide concern and is not a municipal affair as that term is used in*  
5 *Section 5 of Article XI of the California Constitution. Therefore, this article applies to all cities,*  
6 *including charter cities.”* *Id.* Including such language in proposed legislation would have been  
7 unnecessary if, as FTC contends, CESA already applied to charter cities. CESA’s omission of  
8 charter cities in Section 8630 was intentional and is dispositive. *Dyna Med*, 43 Cal.3d at 1397.

9 Even if a state statute purports to apply to charter cities, the court must engage in a four-part  
10 test to determine whether the state statute can be given preemptive effect over a conflicting, local  
11 enactment: 1) does the city law regulate a municipal affair; 2) is there an actual conflict between city  
12 and state law; 3) does the state law address a statewide concern sufficient to override the city’s  
13 interest; and 4) is the state law reasonably related to the statewide concerns and narrowly tailored to  
14 limit incursion into legitimate municipal interests. *See California Fed.*, 54 Cal.3d at 16-17; *Johnson*  
15 *v. Bradley* (1992) 4 Cal.4th 389, 398; and *State Building & Construction Trades Council of*  
16 *California v. City of Vista* (2012) 54 Cal.4th 547, 556. Applying the “home rule” analysis to LAAC  
17 Section 8.33 confirms that it would not be preempted by Government Code Section 8630.

18 **First**, as discussed above, an ordinance specifying procedures for responding to a local  
19 emergency are a municipal affair. *Trader Sports*, 93 Cal.App.4th at 47.

20 **Second**, any alleged conflict between LAAC 8.33 and Section 8630 is procedural, minor, and  
21 reflects the realities associated with long-term homelessness in the City. The fact that the time  
22 period in LAAC 8.33 is longer than the initial 7-day review or 60-day renewal established in Section  
23 8630 is legally insignificant, especially when one recognizes that Section 8.33 authorizes the City  
24 Council to “consider the resolution and rescind it by majority vote” anytime within the first 30 days.  
25 *See Johnson*, 4 Cal.4th at 406 (the bare interest of “uniformity” with state law is not a justification to  
26 conclude a statewide concern exists). LAAC 8.33 recognizes that the City’s homeless crisis cannot  
27 be solved in 30-days increments and requires Council review every 90 days (and reporting on  
28 existing conditions every quarter). This is a reasonable and relatively minor deviation from state

1 law, given the unique nature of the local emergency. *See id.*

2 **Third**, while a statewide concern exists to ensure that every jurisdiction has authority and  
3 power to deal with emergencies, CESA provides a default schedule, not applicable to charter cities,  
4 who can conform or deviate as they see fit. And, while CESA reflects the state’s undoubted interest  
5 in ensuring local emergencies are handled appropriately to prevent spillover effect into other  
6 jurisdictions, that concern is insufficient to establish that CESA represents a “statewide” concern  
7 capable of surmounting the City’s home rule authority over the procedural mechanisms for  
8 reviewing declarations of emergency. *State Building and Construction Trades Council of*  
9 *California*, 54 Cal.4th at 562 (noting that almost anything a local jurisdiction does “can have  
10 consequences beyond its borders,” but such circumstances are insufficient to allow a state legislature  
11 to do what the home rule provision of the Constitution prohibit).

12 **Fourth**, Section 8630 is not narrowly tailored to deal with the procedures best suited to the  
13 City’s homelessness crisis. CESA’s “Purpose” section does not reference charter cities at all, and to  
14 the extent non-chartered local entities are mentioned, CESA states as its purpose the need to  
15 “confer” emergency powers and provide mutual aid to political subdivisions. Gov. Code § 8550.  
16 No statewide interest is articulated, and none exists, to explain why the procedural mechanism of  
17 Section 8630 should override a charter city’s determination that a local declaration of emergency  
18 relating to homelessness and lack of affordable housing should be reviewed every 90 days instead of  
19 every 30. Accordingly, for all these reasons, Government Code Section 8630 does not preempt  
20 LAAC Section 8.33. *See California Fed.*, 54 Cal.3d at 16-17.

21 4. FTC Lacks the Necessary Beneficial Interest in the Writ.

22 FTC must be “beneficially interested” to seek a writ of mandate. C.C.P. § 1086; *People ex*  
23 *rel. Becerra v. Superior Court* (2018) 29 Cal.App.5th 486, 495-96. This beneficial-interest standard  
24 is equivalent to the federal ‘injury in fact’ test, which requires a party to show that it has suffered an  
25 invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or  
26 imminent, not conjectural or hypothetical. *Associated Builders & Contractors Inc., v. San Francisco*  
27 *Airports Comm’n* (1999) 21 Cal.4th 352, 362; *see also* C.C.P. §§ 367, 1086. A party’s standing may  
28 be raised by demurrer. *Carsten v. Psychology Examining Comm.* (1980) 27 Cal.3d 793, 796.

1           FTC alleges that it is a “California nonprofit public benefit corporation” whose “mission is to  
2 improve neighborhoods and advocate for sufficient critical infrastructure and public services  
3 throughout the [City].” FAP ¶ 12. FTC’s “board are residents and taxpayers of the [City] and its  
4 board are filing this action as private attorneys general.” *Id.* FTC alleges that it “experienced loss of  
5 due process and other rights” because of the alleged failure to timely ratify the 8.33 Declaration.

6           FTC suffered no harm under LAAC 8.33(e) and the City’s enacted procedure for ratifying  
7 and renewing the 8.33 Declaration. FTC alleges the speculative assertion that the failure to set aside  
8 the 8.33 Declaration and related Executive Directives “exempts from discretionary review permits  
9 for 100% affordable housing, i.e., which in turn eliminates public hearings, due process and the right  
10 of appeal.” FAP ¶ 66; *see also id.* at ¶ 81 (Mayor’s ED1 “exempts from discretionary review  
11 permits for 100% affordable housing” and “permits years of construction for which development  
12 planning is non-existent”). FTC does not allege a direct interest in any such permits, whether such  
13 permits have been issued and, if so, how any development of 100% affordable housing harms FTC’s  
14 interest. “A concrete injury must be *de facto*; that it, it must actually exist.” *Dominguez v. Bonta*  
15 (2022) 87 Cal.App.5th 389, 413. FTC’s alleged harms are not only hypothetical but also “too  
16 imaginary [and] speculative to support jurisdiction.” *Id.*; *see also SJJC Aviation Servs., LLC v. City*  
17 *of San Jose* (2017) 12 Cal.App.5th 1043, 1053 (petitioner lacks a beneficial interest in a writ when it  
18 “will gain no direct benefit from the writ’s issuance and suffer no direct detriment if it is denied.”).

19           5. The Limited Public-Interest Standing Exception Does Not Apply Here.

20           “There is no general public interest exception to the requirement of standing.” *People ex rel.*  
21 *Becerra*, 29 Cal.App.5th at 497. The public-interest standing exception is available *only* in certain  
22 mandamus proceedings under Section 1085. *Id.* at 503. Public interest standing is not a matter of  
23 right since it is an exception to, rather than a repudiation of, the usual requirement of a beneficial  
24 interest, and will not be applied if its underlying policy is outweighed by competing interests. *SJJC*  
25 *Aviation Servs.*, 12 Cal.App.5th at 1057. Application of the public interest exception is  
26 discretionary, and the exercise of jurisdiction in mandamus rests to a considerable extent in the wise  
27 discretion of the court. *McDonald v. Stockton Met. Transit Dist.*, (1973) 36 Cal.App.3d 436, 440;  
28 *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 874. “When the duty is sharp and the

1 public need weighty, the courts will grant a mandamus at the behest of an applicant who shows no  
2 greater personal interest than that of a citizen who wants the law enforced. When the public need is  
3 less pointed, the courts hold the petitioner to a sharper showing of personal need.” *Reynolds*, 223  
4 Cal.App.4th at 875. “Decisions of the latter sort declare that the applicant’s right to the writ must be  
5 ‘clear and certain.’” *McDonald*, 36 Cal.App.3d at 440. Where the claim of public interest standing  
6 “is driven by personal objections rather than broader public concerns, a court may find the litigant to  
7 lack such standing.” *SJJC Aviation Servs., LLC*, 12 Cal.App.5th at 1057.

8 Here, there is no “weighty public need” and FTC not established that their right to mandamus  
9 relief is “clear and certain,” nor have they demonstrated a sharper showing of personal need. *Id.* at  
10 1059. FTC alleges that it has a “weighty public interest” in “open governance and how their tax  
11 dollars are spent.” FAP ¶ 14. But FTC’s claim is based on the timing for ratifying and renewing the  
12 8.33 Declaration. Moreover, the present case is not a situation in which an alleged right will go  
13 unaddressed and unvindicated if public interest standing is denied to FTC. *See Dept. of Consumer*  
14 *Affairs v. Superior Court* (2016) 245 Cal.App.4th 256, 263.

15 **B. The FAP Fails to State Any Claims for Declaratory Relief (C.C.P. § 1060).**

16 A claim for declaratory relief under C.C.P. Section 1060 must allege “two essential elements:  
17 (1) a proper subject of declaratory relief; and (2) an actual controversy involving justiciable  
18 questions relating to the rights or obligations of a party.” *Childhelp, Inc. v. City of Los Angeles*  
19 (2023) 91 Cal.App.5th 224, 235. An “actual controversy” is “one which admits of definitive and  
20 conclusive relief by judgment within the field of judicial administration, as distinguished from an  
21 advisory opinion upon a particular or hypothetical state of facts.” *Wilson & Wilson v. City Council*  
22 *of Redwood* (2011) 191 Cal.App.4th 1559, 1573. “The fact that an issue raised in an action for  
23 declaratory relief is of broad general interest is not enough for the courts to grant such relief in the  
24 absence of a true justiciable controversy.” *People ex rel. Becerra*, 29 Cal.App.5th at 496. The Court  
25 may “properly sustain a general demurrer to a declaratory relief action without leave to amend when  
26 the controversy presented can be determined as a matter of law.” *Childhelp, Inc.*, 91 Cal.App.5th at  
27 235.

1           1. Section 19(a) of the California Constitution and Eminent Domain Law.

2           FTC challenges the Mayor’s emergency power under LAAC 8.33(d)(ii) to “commandeer  
3 property deemed necessary to meet interim and temporary housing needs and bind the City for the  
4 fair value thereof.” FAP ¶ 41, 73. But FTC does not allege that it possesses any property capable of  
5 being commandeered to meet interim or temporary housing needs or, if it did, that such property was  
6 commandeered or faced an imminent threat of being commandeered for such purposes. *See Wilson*  
7 *& Wilson*, 191 Cal.App.4th at 1583-84 (demurrer sustained on ripeness where declaratory relief  
8 claim “required the trial court to speculate on the resolution of entirely hypothetical situation” when  
9 the city had taken “no steps to acquire Wilson’s property and, indeed, may never do so.”).

10           Moreover, Section 19(a) of the California Constitution specifically allows for a waiver of the  
11 judicial process for establishing fair value. Cal. Const. art. I, § 19(a). Indeed, FTC does not allege  
12 that *any* property was commandeered, much less that property was commandeered for interim and  
13 temporary housing absent a waiver *and* without payment just compensation. Moreover, a property  
14 owner may bring a claim for inverse condemnation to recover damages resulting from an alleged  
15 unlawful taking of property without just compensation. *Lafayette Bollinger Dev. LLC v. Town of*  
16 *Moraga* (2023) 93 Cal.App.5th 752, 777; *City of Oroville v. Superior Court* (2019) 7 Cal.5th 1091,  
17 1102 (When the government “fails to pay the requisite compensation for the property in question, the  
18 property’s owner can, as here, pursue an ‘inverse condemnation’ action”).<sup>1</sup>

19           2. Public Contracts Code Section 20162.

20           FTC challenges the suspension of competitive bidding under LAAC 8.33(d)(v)(2). FTC’s  
21 alleged harm is based on an entirely speculative concern that bypassing competitive bidding “will  
22 bypass City and state ethics laws” and “Measure H” which “restricts campaign contributions and  
23 fundraising by bidders on certain City contracts” “would be rendered moot.” FAP ¶ 74. FTC does  
24 not allege that it is an existing or prospective contractor harmed by the suspension of competitive  
25 bidding, or that any contracts have even been entered into under LACC 8.33(d)(v)(2). The Court  
26 cannot issue an advisory opinion on a dispute that FTC imagines may arise but which does not

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27 <sup>1</sup> CESA also authorizes the Governor to “commandeer” property and, like LAAC 8.33, is not  
28 invalidated by the Section 19(a) or eminent domain laws. *See* Gov. Code §§ 8572 (commandeer  
authority); Gov. Code § 8652 (claims for takings or damage to private property used in emergency).

1 presently exist. *Stonehouse Homes, LLC v. City of Sierre Madre* (2008) 167 Cal.App.4th 531, 542.

2         FTC’s claim regarding Public Contracts Code (“P.C.C.”) Section 20162 fails for several  
3 additional reasons. The City is a charter city “with the maximum allowable control over its  
4 municipal affairs, including the power to enter contracts.” *Childhelp, Inc.*, 91 Cal.App.5th at 236.  
5 The Charter and LAAC expressly address the formation of contracts. RJN, **Ex. C** (Charter art. III, §  
6 370 *et seq.*); RJN, **Ex. E** (LAAC div. 10, ch. 1, art. 1 § 10.1 *et seq.*; *id.* art. 2 § 10.15 *et seq.*).  
7 Charter section 371(a) states, in relevant part, that “[c]ontracts shall be let to the lowest responsive  
8 and responsible bidder furnishing satisfactory security for performance. This determination may be  
9 made on the basis of the lowest ultimate cost of the items in place and use.” RJN Ex. C at Charter §  
10 371(a); RJN Ex. E at LAAC § 10.15(f). Charter section 371(e), in turn, contains ten express  
11 exceptions to the competitive bid requirements, including contracts entered into during a “local  
12 emergency”, such as the declared under LAAC 8.33. *See* RJN Ex. C at Charter § 371(e)(6).

13         “[I]f a city charter specifies the manner in which that city may enter into a contract, the terms  
14 of the charter control over otherwise applicable state law.” *First Street Plaza Ptnrs. v. City of Los*  
15 *Angeles*, 65 Cal. App. 4th 650, 661 (1998). Specifically, P.C.C. Section 20162 does not govern the  
16 City’s contracting requirements. *R&A Vending Servs., Inc. v. City of Los Angeles* (1985) 172  
17 Cal.App.3d 1188, 1191. In *R&A Vending*, the Court addressed a similar contention that the City was  
18 bound by Section 20162 requiring that any expenditure for a public project exceeding five thousand  
19 dollars “be contracted for and let to the lowest responsible bidder after notice.” *R&A Vending*, 172  
20 Cal.App.3d at 1191. The Court held: “The City of Los Angeles is a charter city, not a general law  
21 city. The law is settled: these state general law bidding procedures do not bind charter cities where  
22 the subject matter of the bid constitutes a municipal affair.” *Id.*

23         Moreover, P.C.C. Section 1100.7 further confirms that Section 20162 does not apply to the  
24 City. Section 1100.7 states, in relevant part, that “[w]ith regard to charter cities, this code applies in  
25 the absence of an express exemption or a city charter provision or ordinance that conflicts with the  
26 relevant provision of this code.” Pub. Con. Code § 1100.7. Here, there are clear conflicts that  
27 confirm the Charter governs. Section 20162 states that “[w]hen the expenditure required for a public  
28 project exceeds five thousand dollars (\$5,000), it shall be contracted for and let to the lowest

1 responsible bidder after notice.” The Charter and LAAC, in contrast, address the award of contracts  
2 to “the lowest responsive and responsible bidder” on the basis of “the lowest ultimate cost of the  
3 items in place and use” which permits the use of bid preferences for local businesses or requirements  
4 for use of domestic or recycled content. RJN Ex. C at Charter § 371(a); RJN Ex. E at LAAC §  
5 10.15(a). Section 20162 does not permit the use of bid preferences. The Charter and LAAC reserve  
6 “the right to reject any and all bids or proposals and to waive any informality in the bid or proposal  
7 when to do so would be to the advantage of the City.” RJN Ex. C § 371(c); RJN Ex. E at LAAC §  
8 10.15(c). No such right appears in Section 20162. Charter section 371(e) contains ten express  
9 exceptions to the competitive bid requirements, none of which appear in Section 20162. RJN Ex. C  
10 at Charter § 371(e). Similarly, the requirements for contracting under emergencies differ. *C.f.*,  
11 P.C.C. § 20168 and Charter § 371(e)(6). For all these reasons, the demurrer must be sustained.  
12 *R&A Vending*, 172 Cal. App. 3d at 1191-93.

13 3. CESA and Government Code Sections 8558 and 8630.

14 FTC’s declaratory relief claim under Government Code Section 8630 (FAP ¶¶ 71-72) fails  
15 for the same reasons discussed above. LAAC 8.33 is not preempted by CESA. FTC separately  
16 alleges the City’s local housing and homelessness crisis is not a local emergency under Government  
17 Code Section 8558 because “[h]ousing and/or homelessness are neither sudden or unexpected.”  
18 FAP ¶ 70. Assuming, *arguendo*, Section 8558(c) governed (it does not), FTC’s claim still fails.

19 A “local emergency” under Section 8558 includes conditions “of extreme peril to the safety  
20 of persons and property” “within the territorial limits of a ... city” and which are likely to “require  
21 the combined forces of other political subdivisions to combat.” Gov. Code § 8558(c)(1). These  
22 conditions are satisfied under LAAC 8.33 and the 8.33 Declaration. RJN Ex. D at §§ 8.33(b), (c);  
23 FAP ¶ 53, Ex. 12; *see also e.g., Cal. Correctional Peace Officers’ Ass’n v. Schwarzenegger* (2008)  
24 163 Cal.App.4th 802, 817-18 (“*CCPOA*”).

25 In *CCPOA*, an association challenged then Governor Schwarzenegger’s declaration of  
26 emergency to address the severe overcrowding of state prisons under Government Code Section  
27 8558. *See CCPOA*, 163 Cal.App.4th at 807-08. The Court explained that “the Governor may  
28 proclaim a state of emergency when a condition of extreme peril to the safety or persons and

1 property exists ‘within the state,’ even in an area under the exclusive control of the state  
2 government” like the prison systems. *Id.* at 813. Similar to FTC’s allegations, the association  
3 argued that “overcrowding had long existed in California prisons” and “the problem [was] chronic”  
4 and not sudden or unexpected. *Id.* at 818. Nonetheless, the Court confirmed that the Governor did  
5 not exceed his authority in issuing the emergency declaration. *Id.* at 820; *see also id.* at 824 (“The  
6 Governor has declared a valid state of emergency based on inadequate prison facilities, finding it  
7 endangers the lives of correctional officers and inmates. What matters is not what caused the  
8 emergency, but that the emergency exists, that adequate facilities must be provided, and they must  
9 be provided now.”). Similarly, here, the chronic nature of homelessness does not change the  
10 existence of the City’s local housing and homelessness emergency.

11 4. LAAC 8.22.

12 As discussed in Section IV.A(1) above, the Charter governs local emergencies and  
13 procedures as prescribed by ordinance. RJN Ex. B at Charter §§ 231(f), 240; RJN Ex. D. LAAC  
14 8.22. states that the term “local emergency” “shall mean any occurrence which by reason of its  
15 magnitude is or is likely to become beyond the control of the normal services, personnel, equipment  
16 and facilities of the regularly constituted branches and departments of the City government.” RJN  
17 Ex. D. Section 8.33(a) states that the term “Local Housing and/or Homelessness Emergency” “shall  
18 mean a local emergency due to the existence of a critical shortage of local affordable housing and/or  
19 an emergency on homelessness as further defined in this section.” *Id.* Both sections are duly  
20 enacted ordinances. There are no conflicts *vis-à-vis* the defined terms. Moreover, LAAC 8.33  
21 addresses the legislative determination that “normal” operations were insufficient to respond to the  
22 magnitude of the existing crisis on homelessness and lack of affordable housing.

23 **V. CONCLUSION**

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

26 Dated: February 16, 2024

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27 /s/ Felix Lebron

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