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FILING FEE EXEMPT PURSUANT TO GOVERNMENT CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

HOWARD JARVIS TAXPAYERS ASSOCIATION and APARTMENT ASSOCIATION OF GREATER LOS ANGELES,

Plaintiffs,

v.

CITY OF LOS ANGELES, and ALL PERSONS INTERESTED IN THE MATTER OF MEASURE ULA of the November 8, 2022, ballot, a real property transfer tax,

Defendants.

AND RELATED CONSOLIDATED CASE

Lead Case No. 22STCV39662
(Consolidated with Case No.: 23STCV00352)

Assigned for All Purposes to the Honorable Barbara Scheper; Department 30

DEFENDANT CITY OF LOS ANGELES' REPLY TO HOWARD JARVIS TAXPAYERS ASSOCIATION ET AL.'S OPPOSITION TO CITY'S MOTION FOR JUDGMENT ON THE PLEADINGS AND TO NEWCASTLE COURTYARD, LLC ET AL.'S AMENDED JOINDER

See 6.13.23 Order re Briefing Schedule; Prior Reservation IDs: 254311419406 (Lead Case) and 757938091417 (Consolidated Case) for:

Date: September 26, 2023
Time: 8:30 AM
Dept.: 30 [formerly Dept. 72]

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Defendant City of Los Angeles ("City") hereby replies to (1) Plaintiffs Howard Jarvis Taxpayers Association et al.'s (collectively, "HJTA") Opposition to the City's Motion for Judgment on the Pleadings ("Opposition" or "Opp'n") and (2) Plaintiffs Newcastle Courtyards, LLC et al.'s (collectively, "Newcastle") Amended Joinder in HJTA's Opposition ("Jonder").[1]

I. INTRODUCTION

The voters of the City of Los Angeles, exercising their policy and legislative judgment, approved a citizen-sponsored measure imposing taxes on conveyances of real property to fund affordable housing and rental assistance programs. Plaintiffs HJTA and Newcastle believe that the voters acted in excess of their power of initiative and challenge their policy judgments. But the plaintiffs have no legal grounds to seek to invalidate the voters' will.

The courts have dispositively held that voters enjoy inherent, reserved, and constitutional authority to enact citizen-sponsored tax measures, and that the voters are not subject to Proposition 13 provisions regarding special taxes, which exclusively apply to government-sponsored tax measures. HJTA and Newcastle also misconstrue City Charter section 450(a) in a failed effort to diminish and repeal the voters' lawful approval of Measure ULA.

In addition, Newcastle has no basis to contend that state law preempts charter city authority to impose transfer taxes. It is settled law that transfer taxes are within charter cities' home rule authority, and that cities may properly fund and support affordable housing and rental assistance programs.

To effectuate the voters' will, this Court should grant the City's Motion for Judgment on the Pleadings, without leave to amend.

II. DISCUSSION

A. HJTA's Article XIIIA Contentions Fail: Section 4 Does Not Apply to Measure ULA Because It Is a Citizen-Sponsored Initiative, and Charter Section 450(a) Does Not Diminish the Voters' Authority to Propose and Adopt Tax Legislation.

HJTA acknowledges that Measure ULA is a citizen-sponsored initiative. HJTA also

[1] The City files this Reply to pursuant to the schedule and page-limit extension set forth in the June 13, 2023 Order. Following the filing of the City's and Defendants-Supporters' Replies (and their contemporaneously-filed Replies to Newcastle's two-volume Opposition), the City will address resetting the hearing on parties' Motions for Judgment on the Pleadings.

acknowledges that the Courts of Appeal have consistently and unequivocally held that Article XIIIA, section 4 does not apply to citizen-sponsored initiatives. Nonetheless, HJTA seeks to distinguish the controlling precedents on two grounds: (1) the special taxes at issue in the precedents were not real property transfer taxes, and (2) City Charter section 450(a) renders Article XIIIA, section 4 applicable to citizen-sponsored initiatives. HJTA's contentions fail.

1. Article XIIIA, Section 4 Does Not Apply to Citizen-Sponsored Special Tax Initiatives, Irrespective of the Type of Special Tax at Issue.

HJTA acknowledges that the Courts of Appeal have unequivocally and uniformly ruled that Section 4 does not apply to citizen-sponsored special tax initiatives.[2] Yet HJTA contends that the precedents are not controlling. HJTA's theory: none of those decisions apply because the tax at issue in those cases was not a real property transfer tax. (Opp'n at 8:11 – 9:3.)

HJTA is mistaken. Whether special taxes proposed by a citizens' initiative are sales taxes, commercial rent taxes, parcel taxes, or gross receipts taxes, as were at issue in the precedents, or real property transfer taxes as are at issue now, Section 4 has no application. As the courts have repeatedly held, Section 4 does not apply to citizen-sponsored special tax initiatives. Accordingly, neither the two-thirds voter approval threshold nor the proscription against special-tax transfer taxes applies to a special tax initiative enacted via citizen's initiative.

Indeed, to continue to assert a position that the Courts of Appeal have conclusively rejected defies both common sense and stare decisis. To contend that this Court need not follow the precedents because they have yet to consider citizen-sponsored real property transfer taxes is to search for a distinction without a difference. HJTA cannot avoid settled law that Section 4 does not apply, and that stare decisis requires this Court to follow the on-point precedents. (*Olson v. Cory* (1982) 134 Cal.App.3d 85, 96, 99-100, 104 [stare decisis binds courts to follow on-point precedents and to reject immaterial factual distinctions].) Accordingly, this Court may summarily

[2] *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1070-72 ("*All Persons re Prop G*"); *Howard Jarvis Taxpayers Association v. City and County of San Francisco* (2021) 60 Cal.App.5th 227, 242 ("*HJTA v. CCSF*"); *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, 234-35 ("*City of Fresno*"); *City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 714-18 ("*All Persons re Prop C*").

reject HJTA's illogical, precedent-defying argument.

To the extent that HJTA is pressing its position in the hope that, at some point, another Court of Appeal will disagree with the First and Fifth Districts, its hopes have surely faded. On August 11, 2023, the Fourth District ruled, as the First and Fifth Districts had, that Section 4 does not apply to citizen-sponsored initiatives. (*Alliance San Diego v. City of San Diego* (2023) 94 Cal.App.5th 419, __, 2023 WL 5163284, *2, 8.)[3]

Thus, the City's Motion is now supported by five uncontradicted, controlling precedents, issued by First, Fourth, and Fifth District Courts of Appeal.

2. Charter Section 450 Does Not Limit the Voters' Power of Initiative.

(a) HJTA Cannot Distinguish the Controlling Precedents.

HJTA attempts to distinguish the on-point precedents on the ground that City Charter section 450(a) took away the voters' power of initiative. (Opp'n at 10:1 – 11:14.) This effort fails.

HJTA's primary theory is that, although Article XIIIA, section 4 did not itself bar Measure ULA, Charter section 450(a) implicitly or impliedly rendered Article XIIIA, section 4 applicable to citizen-sponsored special-tax transfer taxes. HJTA is mistaken, for many reasons.

First, HJTA incorrectly suggests that only the state electorate has an inherent, reserved power of initiative, and that a city charter may diminish a local electorate's power of initiative. (Opp'n at 10:11 – 11:14.) The California Supreme Court disagreed, and made it crystal clear that

[3] In *Alliance San Diego*, the Fourth District remanded for consideration of allegations that a city official's involvement in the measure – though her contemporaneous work as a city official and as "a principal organizer, proponent and treasurer" for the citizen-sponsors – established that the initiative was not a "bona find citizens' initiative," and that the city "retained substantial control." (*Id.* at *17.) Here, there was no similar sponsorship by City officials, and the Impartial Summary attached to HJTA's Complaint and Voter Information Packet attached to Newcastle's Complaint demonstrate that Measure ULA was sponsored and promoted by private citizens.

Further, HJTA pleaded and argued that Measure ULA is a *citizen-sponsored* initiative, and sought to circumvent the precedents by arguing that Charter section 450(a) makes Article XIIIA, section 4's provisions regarding *government-sponsored* special taxes applicable to citizen-sponsored initiatives. HJTA is bound by its admissions, and cannot now not contradict them. (*Kenworthy v. Brown* (1967) 248 Cal.App.2d 298, 302.) Newcastle has agreed with HJTA's claim that, even though Measure ULA was citizen-sponsored, Charter section 450(a) took away the voters' right to approve citizen-sponsored special-tax transfer taxes. (Joinder at 1:22-25.)

both state and city voters have inherent, reserved powers of initiative, which have been codified in Article II, sections 8 and 11, of the California Constitution. (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 930. 934.) The courts "jealously guard" and "liberally construe" these inherent, reserved powers. (*Ibid.*) Charter section 450(a) simply codifies this right, as the California Constitution does, by providing that the City's voters may exercise their power of initiative by petitioning the City Council to adopt an ordinance or place it on the ballot.

Second, HJTA cannot avoid the rule that a city charter may *broaden* the voters' initiative and referendum power, but *may not diminish it*. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 698, 704.) In *Rossi v. Brown*, the Supreme Court rejected a proffered interpretation of a San Francisco Charter provision which, while plausible, would have taken away the voters' use of the power of initiative to repeal a local tax. The subject provision – which barred the voters from repealing a tax by referendum – was not illegal, but instead did not operate to preclude the repeal of the tax by initiative. (*Id.* at 696.)[4] The Supreme Court thus preserved the voters' power of initiative without striking the subject provision (while keeping intact its decision in *Hunt v. Mayor and City Council of the City of Riverside* (1948) 31 Cal.2d 619 ("*Hunt v. Riverside*"), holding only that the voters lack any reserved or constitutional power of referendum to repeal tax legislation *by referendum*).[5]

Accordingly, HJTA's contentions that the City's voters' lack an inherent, reserved power of initiative, and that the City Charter may diminish that power, are wrong. As a consequence, HJTA's primary argument – which is that, although Article XIIIA, section 4 did not itself bar

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[4] By referendum, the voters have time-limited power to decide whether to retain legislation adopted by the governing body (a referendum petition must be submitted within a certain number of days of the governing body's adoption of the subject legislation). By initiative, the voters have standing, open-ended power to decide whether to adopt or, as *Rossi v. Brown* made clear, repeal legislation. (See, e.g., Cal. Const. Art. II, §§ 8, 9, 11; Elec. Code § 9237 [30-day deadline for submission of referendum regarding legislation adopted by governing body of general law city].)

[5] HJTA illegitimately accuses the City of "dishonst[ly] butchering" *Rossi v. Brown*, contending that the Supreme Court declared that its decision was about procedural rules governing initiatives. (Opp'n at 15:7-11.) As the City has explained, *Rossi v. Brown* was about whether the voters retained the power of initiative to repeal a tax. The case does not discuss initiative procedures. (See generally *Rossi v. Brown*, 9 Cal.4th 688.) Similarly, *Hunt v. Riverside* is not about referendum procedures, but whether Riverside voters had inherent, constitutional, or charter-expanded power of referendum to repeal legislation. (*Hunt v. Riverside*, 31 Cal.2d at 621-23, 628.)

Measure ULA, Charter section 450(a) impliedly made it applicable to citizen-sponsored special-tax transfer taxes – collapses. Charter section 450(a) could not do so.[6]

Further, HJTA misconstrues Charter section 450(a), particularly the italicized phrase: "Any proposed ordinance *which the Council itself might adopt* may be submitted to the Council by a petition filed with the City Clerk, requesting that the ordinance be adopted by the Council or be submitted to a vote of the electors of the City." HJTA asserts this phrase as a substantive limit on the voters' power of initiative. They are wrong. This provision does not impose any substantive limit on the power of initiative, as is made clear in two cases involving a similar provision of the San Francisco Charter. Pursuant to Charter section 450(a), the voters may propose and enact legislation within the subject matter scope of the City's legislative authority.

In *City and County of San Francisco v. Patterson* ("*CCSF v. Patterson"*), the Court considered the scope of San Francisco voters' initiative power under a charter provision authorizing the voters to propose and enact " 'any ordinance, act or other measure *which is within the power conferred upon the board of supervisors to enact*.' " (*CCSF v. Patterson* (1988) 202 Cal.App.3d 95, 101.) A city voter petitioned the board of supervisors to place on the ballot an ordinance that would dictate terms and conditions regarding both city and school district leases and sales of real property. (*Id.* at 98.) But a city lacks legislative authority with respect to school district leases and sales of property, and the proposed ordinance was thus not within the voters' authority. (*Id.* at 101-02.) In other words, the SF Charter did not take away any power of initiative, as the voters had no such power over extra-municipal subject matter. Thus, properly

[6] HJTA seeks to avoid the history of the City Charter, the Supreme Court precedent in *Rossi v. Brown*, and the on-point precedents by continuing to press its argument that other cases support HJTA's interpretation of Charter section 450(a) as a substantive limit. HJTA refers, without context, to passages in three of the on-point First District cases which mention a similar provision of the SF Charter which the Court of Appeal generally characterized as a substantive limit on the initiative power. (Opp'n at 9:16-25.) These cases each held that the SF Charter did not render Article XIIIA, section 4 applicable to citizen-sponsored initiatives. (*All Persons re Prop G*, 66 Cal.App.5th at 1078; *All Persons re Prop C*, 51 Cal.App.5th at 724-25; *HJTA v. CCSF,* 60 Cal.App.5th at 236-37, 242.) These cases do not suggest that, even if the subject charter language could be interpreted to as an attempt to substantively limit the voters' power of initiative, the courts would have so ruled (and ignored the Supreme Court's decision in *Rossi v. Brown*).

construed, Charter section 450(a) similarly provides that the voters of the City of Los Angeles may exercise the power of initiative with respect to municipal, but not extra-municipal, legislation.

The Court considered this same provision in *All Persons re Prop G*. The challengers asserted that because Article XIIIA, section 4 barred the board of supervisors from enacting a special tax unless it received supermajority approval, the San Francisco Charter "imposes a substantive limit on the initiative power," and thus subjected a citizen-sponsored initiative to this limitation. (*All Persons re Prop G*, 66 Cal.App.5th at 1078.) The First District disagreed. The Court reiterated that "the law shuns repeals by implication" and held that the San Francisco Charter did not impose any substantive constraint on the voters' authority to approve citizen-sponsored tax measures. (*Ibid.*) Moreover, there was no evidence that the city's voters intended, through the city charter, to limit their authority to approve citizen-sponsored tax measures. (*Ibid.*)

Here, the answer is the same. The City's Charter also provides that the voters may enact any legislation that the City Council may enact – which enshrines the voters' authority to adopt legislation on municipal matters – and imposes no substantive constraint on the voters' authority to approve citizen-sponsored tax measures. Moreover, even if Charter section 450(a) could be construed as a substantive limit on the initiative power, which it cannot, *Rossi v. Brown* plainly holds that a city charter may not diminish the voters' inherent, reserved power of initiative.[7]

Finally, HJTA suggest that a 100-plus year-old phrase in Charter section 450(a) – "which the Council itself might adopt" – supports its theory. It does not. This phrase dates to the 1911 City Charter, and has been carried forward in Charter section 450(a). (See Exh. L to HJTA's RJN, filed 6/23/23 [1911 City Charter stated that the voters may propose any ordinance "which the Council itself might adopt," in what was then Charter section 198a]; Exh. D to City's RJN, filed 6/23/23 [1975 City Charter stated that the voters may propose any ordinance "which the Council itself might adopt," in what was then Charter section 272 (precursor to Charter section 450(a))].)

[7] Of course, this Court should construe Charter section 450(a) to preserve its constitutionality, consistent with the City's reasonable and supported interpretation, and reject HJTA's unsupported interpretation, which interprets Section 450(a) to unconstitutionally diminish the power of initiative. (*Lockheed Aircraft Corp. v. Superior Court* (1946) 28 Cal.2d 481, 484.)

Without citing any authority, HJTA asks this Court, out-of-the-blue, to interpret it as an implied incorporation of a provision of a 1978 state proposition (Proposition 13) that *exclusively* applies to government-sponsored initiatives, as five on-point precedents have held. Again, "the law shuns repeals by implication." (*All Persons re Prop G*, 66 Cal.App.5th at 1078.) Since there is no evidence that the City voters intended, when adopting and amending the City Charter in 1911 and thereafter, to substantively limit and diminish their power of initiative to adopt special taxes, this Court should reject HJTA' claims.

In sum, as *All Persons re Prop G*, *HJTA v. CCSF*, *All Persons re Prop C*, *City of Fresno*, and *Alliance San Diego* make clear, voters' authority to propose and adopt tax measures by initiative is not affected by Article XIIIA, section 4. Charter section 450(a) cannot legitimately be construed as a substantive limit to the voters' authority to adopt Measure ULA.

(b) This Court Should Reject HJTA's Distracting, Ancillary Contentions.

HJTA presents many distracting, ancillary contentions. Each is meritless.

HJTA contends that the 1985 amendment to Charter section 450(a), which struck references to the power of initiative with respect to administrative or executive matters, is a more severe diminishment of the power of initiative than advanced by HJTA. (Opp'n at 17:17-22.) But the voters' inherent, reserved power of initiative does not include administrative or executive action, whereas it does include legislative action. (*Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514, 515 fn. 4, and 525; *San Bruno Committee for Economic Justice v. City of San Bruno* (2017) 15 Cal.App.5th 524, 530, 533 fn. 5.) The 1985 amendment restored the voters' power of initiative to that which is reserved to them, whereas HJTA seeks – though a convoluted, illogical, contrary-to-precedent theory – to partially rescind that power.

HJTA mistakenly relies on *McMahan v. City and County of San Francisco* (2005) 127 Cal.App.4th 1368, 1371-72, which explained that San Francisco voters could not, by initiative ordinance, take an action that the city charter provides is within the board of supervisors' exclusive authority. The Court did not declare that the voters lacked the power of initiative to legislate on this subject matter, only that they could not *by ordinance* (a lesser legislative

enactment) amend the charter. (*Id.* at 1372.)[8] Thus, *McMahan* is inapt.

Finally, HJTA incorrectly asserts that the City and Defendant-Supporters' contentions, if accepted, "will promote chaos between state and local law" by allowing local legislators to invalidate state law. (Opp'n at 19:15 and 19:26-28.) HJTA's hyperbole is baseless.

Neither the City nor Defendant-Supporters have asserted, or implied, that a city electorate has the power to invalidate state legislation. And our arguments neither support nor lead to such a contention. Rather, we have merely explained that the courts have consistently and unequivocally held that Article XIIIA, section 4 does not affect the voters' power of initiative with respect citizen-sponsored special taxes, and that Charter section 450(a) did not impliedly incorporate Article XIIIA, section 4 to diminish the voters' inherent, reserved power of initiative.

B. Newcastle's Preemption Contentions Fail: State Law Does Not Preempt Measure ULA Because the Challenged Real Property Transfer Taxes Are Within the City's Charter City Authority and Do Not Conflict with State Law.

Newcastle contends that state law preempts the imposition of real property transfer taxes to fund affordable housing and rental assistance programs on the theory that housing and homelessness matters, writ large, are exclusively of concern to, and exclusively within the jurisdiction of, the State of California. (Joinder at 1:13 – 19:25, 25:14 – 28-14.) Newcastle could not be more wrong. Measure ULA taxes are indisputably within charter city authority, and not in conflict with any state law – indeed are consistent with state laws encouraging local action to support affordable housing and programs to assist persons in need of housing, as discussed below.

Newcastle also claims that Measure ULA conflicts with the Documentary Transfer Tax Act ("DTT Act"). (Joinder at 20:4 – 24:9.) It is well-established that charter cities have home rule authority to impose real property transfer taxes, independent of state law. Further, when the State Legislature adopted the DTT Act, it expressly declared and recognized that charter cities may adopt non-conforming, or conflicting, transfer taxes (*CIM Urban Reit 211 Main St. (SF), LP v. City and County of San Francisco* (2022) 75 Cal.App.5th 939, 950), as further discussed below.

[8] Of course, the voters have the power of initiative to enact charter amendments. (*CCSF v. Patterson*, 202 Cal.App.3d at 102 fn. 5.)

1. Newcastle's Contentions that Housing and Homelessness Are Statewide Concerns Are Misplaced, as Measure ULA Is Within the City's Legislative Authority and Does Not Conflict with State Law.

Under the Home Rule Doctrine charter cities are authorized to "make and enforce all ordinances and regulations in respect to municipal affairs." (Cal. Const., art. XI, § 5(a); see also *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 45 ["constitutional 'home rule' doctrine reserves to charter cities the right to adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a 'municipal affair' rather than one of 'statewide concern' "].) Charter cities are constitutionally vested with the power to tax pursuant to this Home Rule Doctrine. (*Weekes v. City of Oakland* (1978) 21 Cal.3d 386, 392.) Whether a state law preempts charter city legislation is a question of law. (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556 556.)

The courts apply a four-factor test: (1) whether local legislation addresses a municipal affair; (2) whether there is an "actual conflict" between certain state and local legislation; (3) whether the state legislation concerns a matter of statewide interest; and, if so, (4) whether the state legislation is narrowly tailored. (*Ibid.*)

First, the courts have expressly and repeatedly held that the imposition of real property transfer taxes to fund city programs is a municipal affair within a charter city's home rule authority. (*CIM Urban Reit*, 75 Cal.App.5th at 950; see also *Weekes*, 21 Cal.3d at 392 ["The power to tax for local purposes clearly is one of the privileges accorded chartered cities by the home rule provision of the California Constitution," and is a "absolutely vital for a municipality"].) Newcastle does not contend otherwise (although it ignores on-point authority).[9]

[9] Instead, Newcastle jumps to the third factor of the preemption test, asserting that the State has declared housing and homelessness to be statewide concerns, within the State's exclusive jurisdiction, and overridden charter cities' legislative authority to fund such programs. But such contentions are irrelevant to the analysis under the first and second factors of the preemption test. In any event, it cannot reasonably be disputed that imposition of local taxes to fund affordable housing and rental assistance programs is within a city's authority, as demonstrated by the cases cited above and, as further discussed below, with respect to the actual-conflict factor and the numerous statutes declaring it to be the State's intention to support and facilitate such programs. (See also Governor's Homelessness Plan for 2022-23 Budget (https://lao.ca.gov/Publications/Report/4521, visited 8/22/23) [emphasizing that cities should do

Second, Newcastle does not and could not identify an actual conflict between Measure ULA and state law, thus the contentions and references to state laws regarding housing and homelessness do not advance its claim that state law preempted the voters' authority to adopt Measure ULA. (*State Building & Construction Trades Council,* 54 Cal.4th at 556 [whether an issue is of statewide concern, for preemption purposes, is only relevant where state legislation *actually conflicts* with charter city legislation, on a particular issue in which the State has a sufficient statewide concern that justifies its preemption of conflicting city legislation]; see also *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 143.)

To satisfy this prong, there must be an "actual" and "genuine" conflict, which is "unresolvable short of choosing between one enactment and the other." (*State Building & Construction Trades Council,* 54 Cal.4th at 556.) Even minor deviations between the laws establish there is no conflict.

Weekes is particularly instructive. The Supreme Court considered whether a Revenue & Taxation Code provision, which expressly prohibited municipal taxes on income, conflicted with a charter city's tax on employees' gross earnings. (*Weekes*, 21 Cal.3d at 390-91.) While Oakland's tax on employees' earnings was similar to an income tax, the Court identified differences, including with respect to whether unearned income (e.g., rental income) was captured and expenses deducted. (*Id.* at 392-93.) Moreover, the purpose of Oakland's tax, which Oakland described as a license fee imposed for granting employees the privilege of working in the city, distinguished it from standard income taxes. (*Id.* at 396-97.) Thus, despite the similarity between income taxes and Oakland's tax on employees' revenues, the Court held that the taxes did not actually conflict, and Oakland's tax was not preempted. (*Id.* at 398.)

Birkenfeld v. City of Berkeley is another example of the Supreme Court holding that similar state and local laws did not conflict. The Supreme Court considered whether an initiative amendment to Berkeley's City Charter imposing substantive restrictions on landlords' rights to evict tenants, as a component of rent control regulations, was preempted by unlawful detainer

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more to support housing development and alleviate homelessness, with support from the State, but without the State preempting cities' efforts].)

statutes. While the unlawful detainer statutes governed the manner in which a property owner may evict a tenant, city legislation imposing substantive restrictions to eviction did not actually conflict with state law. The Court so held even though the unlawful detainer statutes provided that a landlord may recover possession at the end of the lease term (Code Civ. Proc. § 1161(1)), and the local legislation prohibited such a recovery by requiring instead that the landlord have another basis for recovery of possession. Thus, even though state and local laws both addressed landlord's and tenants' respective rights and obligations vis-à-vis evictions, there was an absence of an actual conflict, and hence no preemption. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 147-49; see also *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 706-07 [charter city not preempted from establishing eviction defenses even though state law already delineates certain defenses to eviction]; *Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 869 [Subdivision Map Act, which governs applications to subdivide property (including into condominiums), does not conflict with condominium conversion ordinance, which restricts property owners' rights to remove rental housing from the market through condominium conversions].)[10]

Here, Newcastle does not and could not identify any state law that conflicts with and arguably preempts Measure ULA, which imposes real property transfer taxes on conveyances within the City to fund affordable housing and rental assistance programs.[11] In addition, Newcastle identifies no statute that is remotely similar to Measure ULA.

Instead, Newcastle includes page-after-page of scattershot references to statutes by which the State addresses and regulates in other, non-tax matters, including statutes that (i) declare the

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[10] By contrast, state statutes that declared a state income tax on financial corporations … was in lieu of all other taxes" preempted charter city ordinances that imposed such taxes. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 6, 25.) And state statutes that comprehensively regulated predatory lending practices in home mortgages preempted charter city ordinances that regulated the very same lending activities. (*American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1244, 1254, 1264-65.)

[11] Of course, Government Code section 53725 (added by Proposition 62), which provides that no local government may impose "any transaction or sales tax on the sale of real property," conflicts with local real property transfer tax legislation. However, because local taxation is not a statewide concern, Government Code section 53725 does not preempt local transfer taxes. (*CIM Urban Reit*, 75 Cal.App.5th at 950; *Fielder*, 14 Cal.App.4th at 143, 146.) And Newcastle does not contend otherwise.

State's intention to support local government' efforts to meet housing needs and address homeless; (ii) regulate the planning and housing application review processes; and (iii) regulate the disposition of surplus property. (See, e.g., Health & Saf. Code §§ 50001, 50005, 50006, and 50150 et seq. [legislative declaration that State should support local government efforts to meet housing needs, and delineation of state agency roles]; Welf. & Inst. Code § 8257 [State Interagency Council on Homelessness should support local government programs to address homelessness]; Gov. Code §§ 65580, 65581, 65589.4 [purpose of Housing Element Law is to facilitate local government planning efforts to support housing development];[12] Health & Saf. Code § 52000 et seq. [authorizing and supporting local government action to finance preservation and development of housing]; Gov. Code §§ 65650 – 65656 and §§ 65660 – 65658 [supportive-housing and navigation-center development regulations]; Gov. Code § 65913 et seq. [zoning requirements intended to support availability of land for housing]; Gov. Code 65913.4 [statute requiring ministerial approval of housing projects that meet certain objective planning criteria];[13] Gov. Code §§ 37364 and 54220 – 54233 [statutes regarding processes for disposing of public property, including surplus lands, intended to ensure that property is made available for affordable housing before disposition].)

Given rulings in cases such as *Weekes* and *Birkenfeld*, where relatively minor deviations in purpose and operation of state and local law meant that the legislation did not conflict as matter of law, there is plainly no conflict here. Accordingly, Newcastle's contentions regarding the State's interest in other matters regarding housing and homelessness are of no import. As the Court in *Fielder* made clear, where, as here, there is no conflict between state legislation and charter city

[12] In Buena *Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.* (1985) 175 Cal.App.3d 289, 295, cited by Newcastle, the Court explained that the purposes of the Housing Element Law including ensuring that local governments proactively engage in planning efforts to facilitate development of housing.

[13] In *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277, 310-15, cited by Newcastle, the Court explained that State's express interest in regulating housing project applications to support the development of housing authorized it to preempt, through Government Code section 65913.4, conflicting local, discretionary planning regulations, for projects that satisfy local agencies' objective planning standards.

legislation, the court need not address whether state legislation addresses a statewide concern (the third factor) such that the charter city's home rule authority to enact legislation with respect to municipal affairs may be pre-empted. (*Ibid.*)

But even if there were an actual conflict and an attempt by the State to preempt, Newcastle could not satisfy the statewide concern factor, which requires it to show that the State has a "convincing basis" to supersede charter city authority, which is founded on a non-local, statewide concern that the State has a sufficient basis to determine requires state, rather than municipal legislation. (*State Building & Construction Trades Council*, 54 Cal.4th at 560.) The courts consider legislative findings and the legal and historical context (*id.* at 557-58), but "[t]he decision as to what areas of governance are municipal concerns and what are statewide concerns is ultimately a legal one. (*Id.* at 558.) This is because "[f]undamentally, the question [of statewide concern] is one of constitutional interpretation; the controlling inquiry is how the state Constitution allocates governmental authority between charter cities and the state." (*Id.* at 557.)

In *Fielder,* the Second District held that charter cities' transfer taxes are within their home rule authority. There, the plaintiffs alleged that Los Angeles' City Council's adoption of a real estate transfer tax in 1991, at $2.25 for each $500, was preempted by conflicting provisions of Government Code section 53725 (adopted by Proposition 62 in 1986), which states: "No local government … may impose any transaction tax or sales tax on the sale of real property." (*Fielder*, 14 Cal.App.4th at 140, 143.) Since the legislation actually conflicts, the question was whether the state legislation addressed a statewide concern sufficient to qualify as preemptive. The plaintiffs asserted that "eliminating the ability of local governments to impose transfer or sales taxes on real property" is a statewide concern, as reflected in Proposition 62 as well as Proposition 13, which rolled back and limited property taxes and required voter approval thereof. Although, generally speaking, limiting taxation was a statewide concern, state legislation had not specifically targeted excuse taxes imposed on conveyances of property within a city. Thus, despite the actual conflict between Government Code section 53725 and charter city transfer taxes, the state legislation did not actually address a statewide concern that supported preemption of taxes on real property transactions within the City to fund City programs. (*Id.* at 146.)

Here too, in addition to failing to identify any conflict between state legislation and Measure ULA, Newcastle does not and could not identify any justification for its contention that the State has a statewide interest warranting preemption of transfer taxes to fund affordable housing and rental assistance programs.

2. Measure ULA Does Not Conflict with the Documentary Transfer Tax Act.

Newcastle also contends that Measure ULA conflicts with the DTT Act. (Joinder at 20:5 – 24:9.) Newcastle is mistaken. When the State adopted the DTT Act (Rev. & Taxation Code, Part 6.7 of Division 2, § 11901 et seq.), it declared and recognized that charter cities have home rule authority to impose transfer taxes that conflict with, and do not conform to, the DTT Act.

In *CIM Urban Reit*, the Court of Appeal considered claims that a charter city may not impose real property transfer taxes that conflict with, or do not confirm to, the DTT Act, and that the Act preempts any conflicting charter city tax legislation. The Court explained that the State has expressly declared and recognized that charter cities have home rule authority to impose real property transfer taxes that are inconsistent with the Act. (*CIM Urban Reit*, 75 Cal.App.5th 939, 957.) The Court quoted an uncodified section of the DTT Act, which states that it does not apply to charter cities. (*Ibid.*; see also Request for Judicial Notice filed and served herewith, Exh. A.) Thus, Newcastle's contention that Measure ULA conflicts with the DTT Act lacks merit.

Newcastle also contends that the County of Los Angeles will be entitled to keep Measure ULA taxes, pursuant to Revenue & Taxation Code sections 11911(c) and 11931(3). But Newcastle's contentions are irrelevant, as they do not relate to whether Measure ULA is valid. Moreover, Newcastle lacks standing to assert how the County, a party to this suit, may or must allocate transfer taxes between itself and the City. (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 61 [litigant cannot assert claims on behalf of third party, absent unique relationship in which litigant is effectively in third party's shoes and third party is unable to represent itself]; see also *Singleton v. Wulff* (1976) 428 U.S. 106, 114-16.)

In any event, Newcastle misconstrues the DTT Act. Where both the County and a city within the county impose transfer taxes pursuant to, and that conform with, the DTT Act, they equally share the taxes. However, where "the legislative body" of a city, imposes a transfer tax

pursuant to the DTT Act, but the city council-imposed tax is non-conforming, that tax is not credited against the County's tax. (Rev. & Taxation Code § 11911(c), § 11931, subds. (2) and (3).) Here, ULA was imposed by the City's voters and not pursuant to the DTT Act, and Rev. & Taxation Code sections 11911(c) and 11931(3), upon which Newcastle relies, do not apply.[14]

C. The Court Should Deny Leave to Amend.

HJTA has not requested leave to amend. Newcastle purports to request leave to amend in its Joinder, but has no basis to propose that HJTA be granted leave to amend its complaint, and has not identified any allegations that could possibly state a viable claim. (*Lowry v. Port San Luis Harbor District* (2020) 56 Cal.App.5th 211, 221.) Indeed, the City has established that it is entitled to judgment as a matter of law and that there is no theory or factual allegation a challenger could present that would state a potential basis to invalidate Measure ULA. Measure ULA funds are desperately needed to aid the homeless, and this Court should remove the unwarranted cloud HJTA has created by pursuit of this litigation.

III. CONCLUSION

This Court should grant the City's Motion, and enter Judgment for the City.

Dated: September 8, 2023

BURKE, WILLIAMS & SORENSEN, LLP

By: _____

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J. Leah Castella
Eileen L. Ollivier
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CITY OF LOS ANGELES

[14] Newcastle also argues that Measure ULA is bad policy because, according to (improperly cited, irrelevant) news reports, sales of real property over $5 million have slowed, negatively affecting re-assessments and property tax revenues. (Joinder at 24:10 – 25:13.) Newcastle's policy contentions lack factual and legal support, and have no bearing on voters' authority to adopt legislation they have determined is good public policy.

PROOF OF SERVICE

Howard Jarvis Taxpayers Assoc., et al. v. City of Los Angeles, et al.
Los Angeles County Superior Court
Lead Case No. 22STCV39662
(Consolidated with Case No.: 23STCV00352)

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

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 San Francisco, State of California. My business address is 1 California Street, Suite 3050, San Francisco, CA 94111-5432.

On September 8, 2023, I served true copies of the following document(s) described as **DEFENDANT CITY OF LOS ANGELES' REPLY TO HOWARD JARVIS TAXPAYERS ASSOCIATION ET AL.'S OPPOSITION TO CITY'S MOTION FOR JUDGMENT ON THE PLEADINGS AND TO NEWCASTLE COURTYARD, LLC ET AL.'S AMENDED JOINDER** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address thenry@bwslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on September 8, 2023, at San Francisco, California.

Theresa V. Henry

Theresa Henry

SERVICE LIST
Howard Jarvis Taxpayers Assoc., et al. v. City of Los Angeles, et al.
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